

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re :
FKF 3, LLC, : Chapter 11
: Case No. 10-37170 (CGM)
Debtor. :
-----X

DISCLOSURE STATEMENT
FOR FIRST AMENDED JOINT PLAN OF LIQUIDATION OF THE DEBTOR AND
OFFICIAL COMMITTEE OF UNSECURED CREDITORS

REICH REICH & REICH, P.C.
235 Main Street, 4th Floor
White Plains, NY 10601
Telephone: (914) 949-2126
Facsimile: (914) 949-1604

Lawrence R. Reich
Jeffrey A. Reich

Attorneys for FKF 3, LLC, Debtor

KLESTADT & WINTERS, LLP
570 Seventh Avenue, 17th Floor
New York, NY 10018
Telephone: (212) 972-3000
Facsimile: (212) 972-2245

Fred Stevens
Sean C. Southard
Carrie V. Hardman

*Attorneys for Official Committee
of Unsecured Creditors*

Dated: January 28, 2011

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ARTICLE I.
SUMMARY OF THE PLAN

INTRODUCTION

FKF 3, LLC, (“FKF”), as debtor and debtor-in-possession (the “Debtor”), and the Official Committee of Unsecured Creditors in the Debtor’s case (the “Committee”), pursuant the provisions of chapter 11 of the Bankruptcy Code, submits the following Disclosure Statement (the “Disclosure Statement”) with respect to the Joint Plan of Liquidation for the Debtor for the resolution of the outstanding Claims against, and Interests in, the Debtor (as it may be further amended and modified, the “Plan”). A copy of the Plan is annexed to this Disclosure Statement as Exhibit A. Unless otherwise noted, all capitalized terms used but not defined herein have the meaning ascribed to them in the Plan.

The Debtor and Committee are soliciting votes from unsecured creditors of the Debtor for the acceptance of the Plan. Under the Plan, Allowed Administrative Expense Claims, Priority Tax Claims and Secured Claims (if any) are unimpaired and will be satisfied in full. The acceptance of the Plan by holders of these Claims is not required and the Debtor is not soliciting their votes. Holders of General Unsecured Claims are impaired under the Plan and are entitled to vote. The Debtor and Committee are requesting that all Holders of General Unsecured Claims vote to accept the Plan. The Plan cancels all Interests in the Debtor. Holders of Interests will receive no distributions under the Plan and are deemed to have voted to reject the Plan.

The Plan provides for the creation of the FKF Trust, into which all of the Debtor’s Assets as of the Effective Date will be transferred pursuant to the FKF Trust Agreement.

Holders of Allowed General Unsecured Claims (Class 3) against the Debtor will receive their Pro Rata Share of FKF Trust Assets after the payment of Administrative Expense Claims, Priority Tax Claims (if any) and Secured Claims (if any). The following table summarizes the treatment accorded Creditors and Interests of the Debtor under the Plan:

Class	Description	Treatment	Entitled To Vote	Est. Amount of Allowed Claims	Est. % Recovery
Unclassified Claims	Administrative Expense Claims	Payment in Full	No	TBD	100%
	Priority Tax	Payment in Full	No	TBD	100%
1	Non-Tax Priority Claims	Payment in Full	No	TBD	100%
2	Secured Claims	Payment in Full	No	TBD	100%

3	General Unsecured Claims	Payment of the Holder's Pro Rata share of FKF Trust Assets	Yes	\$62.9 million ¹	TBD
4	Interests	This class will receive no distribution under the Plan and the Debtor's equity interests will be extinguished and cancelled	No	N/A	0%

Voting Procedures and Instructions

In accordance with section 1126(f) of the Bankruptcy Code, only Classes of Claims and Interests that are Impaired under the Plan may vote to accept or reject the Plan. Unimpaired Classes are conclusively presumed to have accepted the Plan. A Class is Impaired if the legal, equitable, or contractual rights attaching to Claims in that Class are modified other than by curing defaults and reinstating maturity of obligations, or payment in full in Cash.

The votes of Holders of General Unsecured Claims in Class 3 are being solicited, and such creditors will have the opportunity to vote to accept or reject the Plan. Ballots for acceptance or rejection of the Plan are being provided to Creditors in Class 3 Claims entitled to vote to accept or reject the Plan.

Only actual votes will be counted. A failure to return a ballot will not be counted as a vote for or against the Plan. Improperly completed or late ballots will not be counted. Any ballot that indicates both an acceptance and rejection of the Plan will be deemed a vote to accept the Plan. If a creditor casts more than one ballot voting the same Claim before the Voting Deadline, the latest dated ballot received before the Voting Deadline will be deemed to reflect the voter's intent and thus to supersede any prior ballots.

¹ Pursuant to the Debtor's books and records, there are no Class 2 Claims, and the total amount of Class 3 Claims is approximately \$62,849,552.88. The total amount of Class 2 and Class 3 Claims filed against the Debtor in this case is \$110,364,431.24. The filed claims have not yet been reviewed. However, the Committee and Debtor believe that the amount and classification of many filed Claims are subject to legitimate objections and anticipate that the amount of Allowed Claims will be significantly less than what was filed.

Confirmation of the Plan.

Your vote on the Plan is important. Acceptance of the Plan requires the affirmative vote of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the voting Holders of General Unsecured Claims in Class 3.

The Bankruptcy Court has scheduled a hearing on confirmation of the Plan for **11:00 a.m. (prevailing Eastern time) on March 21, 2011** at the United States Bankruptcy Court for the Southern District of New York, 355 Main Street, Poughkeepsie, New York. Any party in interest may object to confirmation of the Plan. The Bankruptcy Court has directed that objections, if any, to confirmation of the Plan, be served upon: (i) counsel to the Debtor, Reich Reich & Reich, P.C., 235 Main Street, 4th Floor, White Plains, New York 10601, Attn: Lawrence R. Reich, Esq.; (ii) counsel to the Official Committee of Unsecured Creditors, Klestadt & Winters, LLP, 570 Seventh Avenue, 17th Floor, New York, New York 10018, Attn: Fred Stevens and Carrie V. Hardman; and (iii) the Office of the United States Trustee, 74 Chapel Street, Albany, New York 12207-2190, Attn: Eric Small, Esq., on or before 5:00 p.m. (prevailing Eastern Time) on March 14, 2011, in the manner described in the Disclosure Statement Order. **The Confirmation Hearing may be adjourned from time to time without further notice other than by announcement in open court.**

DISCLAIMER

THIS DISCLOSURE STATEMENT IS THE ONLY DOCUMENT AUTHORIZED BY THE BANKRUPTCY COURT TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES ACCEPTING THE PLAN. NO REPRESENTATIONS OTHER THAN THOSE EXPLICITLY SET FORTH IN THIS DISCLOSURE STATEMENT (INCLUDING ANY EXHIBITS) ARE AUTHORIZED CONCERNING THE DEBTOR, INCLUDING THE VALUE OF ITS ASSETS OR THE CLAIMS OF ITS CREDITORS. THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS FOR THE PURPOSE OF SOLICITING ACCEPTANCES OF THE PLAN AND MAY NOT BE RELIED UPON FOR ANY OTHER PURPOSE. THE BANKRUPTCY COURT'S APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT CONSTITUTE EITHER A GUARANTY OF THE ACCURACY OF THE INFORMATION CONTAINED HEREIN OR AN ENDORSEMENT OF THE PLAN BY THE BANKRUPTCY COURT.

THIS DISCLOSURE STATEMENT CONTAINS SUMMARIES OF CERTAIN PROVISIONS OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN DOCUMENTS RELATED TO THE PLAN, CERTAIN EVENTS IN THE CASE AND CERTAIN FINANCIAL INFORMATION. ALTHOUGH THE DEBTOR BELIEVES THAT THE DISCLOSURE STATEMENT AND RELATED DOCUMENT SUMMARIES ARE FAIR AND ACCURATE, THEY ARE QUALIFIED TO THE EXTENT THAT THEY DO NOT SET FORTH THE ENTIRE TEXT OF THE PLAN, SUCH UNDERLYING DOCUMENTS, OR ANY APPLICABLE STATUTORY PROVISIONS. THE TERMS OF THE PLAN GOVERN IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT. ALL EXHIBITS TO THE DISCLOSURE STATEMENT ARE INCORPORATED INTO AND ARE A PART

OF THIS DISCLOSURE STATEMENT AS IF SET FORTH IN FULL HEREIN. THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFIED, AND THE DEBTOR DISCLAIMS ANY OBLIGATION TO UPDATE ANY SUCH STATEMENTS AFTER THE HEARING ON THE APPROVAL OF THE DISCLOSURE STATEMENT.

EXCEPT AS OTHERWISE SPECIFICALLY NOTED, THE FINANCIAL INFORMATION CONTAINED HEREIN HAS NOT BEEN AUDITED BY A CERTIFIED PUBLIC ACCOUNTANT AND HAS NOT NECESSARILY BEEN PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

ALL PARTIES IN INTEREST ARE ENCOURAGED TO READ THE ENTIRE DISCLOSURE STATEMENT CAREFULLY, INCLUDING THE PLAN AND OTHER EXHIBITS, BEFORE DECIDING TO VOTE EITHER TO ACCEPT OR REJECT THE PLAN. HOLDERS OF CLAIMS SHOULD, HOWEVER, NOT CONSTRUE THE CONTENTS OF THIS DISCLOSURE STATEMENT AS PROVIDING ANY LEGAL, BUSINESS, FINANCIAL, OR TAX ADVICE AND SHOULD CONSULT WITH THEIR OWN ADVISORS.

ARTICLE II. BACKGROUND MATTERS

The Chapter 11 Case

On July 19, 2010 (the “Petition Date”), an involuntary petition for relief under chapter 11 of the Bankruptcy Code was filed against FKF. On August 9, 2010, FKF filed an answer consenting to such relief and on August 9, 2010 an order for relief was entered by the Court.

Since the Petition Date, the Debtor, through its manager, Day Seckler, LLP, (“Day Seckler”) has continued in possession of its property and in control of its business operations pursuant to section 1107 and 1108 of the Bankruptcy Code. The Debtor filed the requisite schedules of assets and liabilities and statements required by section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, as well as several monthly financial statements required by section 1106 of the Bankruptcy Code, Bankruptcy Rule 2015(a), and the guidelines of the United States Trustee’s Office (the “U.S. Trustee”). The initial Case Management Conference was held before the Court on October 5, 2010. The Bankruptcy Code section 341(a) Meeting of Creditors was held on October 6, 2010.

Employment of Professionals During this Case.

By order dated September 22, 2010, the Court approved the retention of Reich Reich & Reich, P.C. as the attorneys for the Debtor.

By order dated November 2, 2010, the Court approved the retention of Fox Rothschild LLP as the attorneys for the Committee, and on December 6, 2010, the Court approved the retention of Klestadt & Winters, LLP, as substitute counsel for the Committee as of November 22, 2010.

The Creditors’ Committee filed an application for authority to retain BDO USA LLP as its financial advisors. That application is still pending before the Court.

By order dated December 30, 2010, the Court approved the retention of Oxman, Tulis, Kirkpatrick, Whyatt and Geiger, LLP, as special litigation counsel for the Debtor.

The Creditors’ Committee filed an application for authority to Womble Carlyle Sandridge & Rice, PLLC, as special local Delaware counsel. That application is still pending before the Court.

History of the Debtor

The Debtor was organized on May 26, 2004, under Section 211 of the Limited Liability Company Law of the State of New York. The Debtor’s principal business was providing financing for contractors, developers and related entities for construction and real estate development activities.

Upon information and belief, the Debtor is currently owned by Burton Dorfman (“Dorfman”), Mitchell Klein (“Klein”) and John Magee (“Magee”) in equal shares. Under the

original Operating Agreement, Klein was appointed the managing member of the Debtor and continued to manage the Debtor until the appointment of Day Seckler on June 23, 2010, as referred to below.

The Debtor was capitalized through loans and investments that its managers and members solicited from individual and corporate investors. In exchange for such loans and investments, such parties were promised significant returns.

Creditor Concerns with FKF's Operations.

Until in or around December, 2009, FKF routinely made the periodic payments due to creditors on account of their loans to FKF. In or around December, 2009, FKF ran out of the funds necessary to continue to serve its debt obligations, prompting a significant inquiry by creditors. Certain of FKF's creditors discovered that certain loans made by the Debtor were to other entities owned and/or controlled by the Debtor's principals, Dorfman, Klein and Magee. These creditors also discovered that many of the loans made by the Debtor were unsecured despite what was represented to them previously.

On June 23, 2010, in response to these concerns, the Debtor amended its Operating Agreement to remove Klein as manager of the Debtor and appoint the accounting firm of Day Seckler to manage the Debtor through an orderly liquidation and wind-down. On December 17th, 2010, the Court authorized Day Seckler's retention as the non-member, manager of the Debtor.

Day Seckler's Efforts as FKF Manager

According to Debtor's books and records, as of the Petition Date, the Debtor owed in excess of \$60 million to its creditors/investors with respect to notes (most of which are unsecured) that bear interest at rates of between ten and twelve (10-12%) percent. These notes are held by approximately one hundred (100) individuals and/or entities.

There are approximately twenty-three (23) outstanding investments and/or loans made by FKF that comprise the majority of the assets of FKF's estate. According to FKF's books and records, the principal amount of these loans is approximately \$60 million. Day Seckler has been actively pursuing collection of these assets and has discovered a number of challenges inherent in the collection. A description of the Debtor's loans and accounts receivable, and some of the challenges to collection, is contained in the following section of this Disclosure Statement.

The Debtor is in the early stages of conducting an investigation of the Debtor's prepetition transactions. Both the Debtor and Committee have commenced an aggressive discovery campaign, seeking documents and information from numerous individuals and entities both informally, and formally pursuant to subpoenas issued under Bankruptcy Rule 2004(a).

The Debtor's and Committee's investigation to date indicates that the estate may have significant claims against certain insiders and third parties. Pursuant to the Plan, the Debtor's and Committee's investigation and prosecution of any claims will be continued by the FKF Trust. All claims and causes of action against all parties are expressly preserved and transferred to the FKF Trust for its prosecution.

**LITIGATION BY JOHN MAGEE
AGAINST DEBTOR AND DAY SECKLER**

Magee, one of the current owners of FKF, filed an adversary proceeding in this Court on November 29, 2010 (Adv. Proc. No. 10-09100), against FKF, as Debtor in this case, and Day Seckler, seeking judgment as follows:

- (a) against the Debtor seeking to enjoin and direct it to deliver to Magee all of FKF's books and records in Day Seckler's possession which were copied by Day Seckler for delivery to Magee on the afternoon of November 23, 2010;
- (b) against Day Seckler seeking to enjoin and direct it to deliver to Magee all of FKF's books and records in Day Seckler's possession which were copied for delivery to Magee on the afternoon of November 23, 2010;
- (c) against Day Seckler in an amount yet to be determined for Day Seckler's breach of its duty of loyalty to Magee; and
- (d) against Day Seckler in an amount yet to be determined for Day Seckler's knowing violation of Article 9.3 of FKF's Operating Agreement.²

The Debtor, Day Seckler and the Committee have, or will shortly, each file an answer to Magee's first amended complaint controverting the material allegations of the complaint and asserting affirmative defenses. Those affirmative defenses are:

- (a) The Complaint fails to state a claim(s) upon which relief can be granted;
- (b) Magee is not entitled to the relief sought because he breached his contractual and fiduciary obligations; and
- (c) Magee is not entitled to the relief sought because any right he holds to access to the Debtor's books and records is superseded by the interest in protecting estate assets from an active and ongoing threat to the administration of the Debtor's estate to Magee.

The Debtor, Day Seckler and the Committee each reserved the right to assert additional affirmative defenses and counterclaims upon discovery of further information regarding Magee's claims and upon the development of other relevant information.

² Article 9.3 of the Operating Agreement provides:

All books of account shall, at all times, be maintained in the principal office of the Company. Upon reasonable request, each Member of Economic Interest Owner shall have the right during ordinary business hours, to inspect and copy all accounts, books and other relevant Company documents at the requesting Member's and Economic Interest Owner's expense. Upon written request of any Member, the Manager shall provide a list showing the names, addresses and Membership interests and Economic Interests of all Members, and a copy of the operating agreement and Certificate of Formation.

ARTICLE III. FINANCIAL STATUS

Debtor's Assets.

Loans and Accounts Receivable.

The Debtor's primary assets are its loans and accounts receivable which are comprised of approximately twenty-three known real estate loans and investments. A copy of the Debtor's unaudited balance sheet dated as of December 31, 2010, is annexed hereto as Exhibit B. The Debtor and the Committee are actively investigating each of the loans and accounts receivable and are discovering significant issues and challenges with respect to pursuing many of the claims. Also, the Debtor and Committee are actively investigating whether additional loans and accounts receivable exist that can be pursued for the benefit of the estate and creditors (collectively, all loans and accounts receivable of the Debtor are referred to as the "Loans Receivable"). The FKF Trust will be charged with the duty of actively pursuing the maximum recovery with respect to any and all Loans Receivable that are not recovered in full or compromised by a Court-approved stipulation prior to the Effective Date.

A brief description of each of the Loans Receivable follows. The book value of the Loans Receivable is provided, along with the believed purpose of the loan.³ However, readers of this Disclosure Statement should recognize that there a number of factors that may affect the actual, collectable amount of the Loans Receivable. Those factors include, but may not be limited to:

- i. The book value was provided by Debtor's prior management and has not been audited or verified by Day Seckler or the Committee;
- ii. The book value does not provide for interest, penalties, fees and other amounts that have come due on and after the Petition Date;
- iii. No downward adjustment has been made with respect to the collectability of the claim. In many cases, borrowers may be insolvent or otherwise unable to pay any amount due and owing;
- iv. No downward adjustment has been made with respect to any defenses to liability available to the borrower; and
- v. No upward adjustment has been made with respect to the various related litigation claims that may be combined with the simple contractual claim for recovery of the Loans Receivable, all of which may enhance the ultimate amount owed, or provide another theory for the recovery of the amount of the loan from the borrower or third parties.

³ No admissions are intended to be made by describing the stated purpose of each Loan Receivable in this Disclosure Statement. Rather, the information contained herein with respect to each Loan Receivable is based upon the information available to the Debtor (and its new management) at this time. All rights are expressly reserved with respect to the Estate's positions concerning the proprieties of each transaction described herein.

Accordingly, the outstanding amounts due the Debtor according to its books and records is not necessarily the actual amount deemed to be owed the Debtor or its Estate on account of the respective Loans Receivable, and should not be treated as such by any Person reading the Disclosure Statement.

a. One Madison Park.

Claim Amount per Books and Records: \$30,715,568

Purpose of Loan: To finance the construction of the condominium towers at One Madison Park, New York, New York⁴.

Relationship to Insiders: Debtor's members, Klein, Dorfman and Magee, have equity interests in the One Madison Park project.

The Debtor's largest receivable is its claim against Slazer Enterprises Owner LLC and Slazer Enterprises LLC, which was reduced to judgment in the principal amount of \$29,715,567, on or around February 19, 2010 (*FKF 3, LLC v. Slazer Enterprises Owner LLC, et al.*, Index No. 12371/09 (N.Y.S. Sup. Ct., Rock. Cty, Feb. 19, 2010)). The Debtor's judgment was filed with the County Clerk for the County of New York on or around February 23, 2010, thereby creating a lien against any real property owned by the defendants in the County of New York. One defendant, Slazer Enterprises Owner LLC, owns a purported 78% interest in the real property and buildings erected thereon at One Madison Park, New York, New York. Other parties may be liable for some or all of that obligation, including, but not limited to, Ira Shapiro, Heather Shapiro, Marc Jacobs⁵ and Rochelle Jacobs.

The claims related to the One Madison Park project (the "OMP Claims") present a myriad of issues and obstacles with respect to successful collection. Among other things, the following should be considered:

- The One Madison Park project appears to be in significant financial trouble. Construction and unit sales have halted. Although there are a few residents living in the building, it is largely dark, with no major amenities;
- All the owners of the One Madison Park Project are currently debtors in a highly contentious bankruptcy case pending in the U.S. Bankruptcy Court for the District of Delaware (*In re FKF Madison Park Group Owners, LLC, et al.*, Case No. 10-11867 (Bankr. Del. June 8, 2010) (Gross, J.) (the "OMP Case");
- iStar Tara LLC, asserts that it is the holder of a series of senior liens against the One Madison Park project totaling approximately \$230,000,000, and at the same time, it values the property at approximately \$130,000,000. If iStar's positions as to priority and valuation were proven to be true, this would mean that the

⁴ See <http://onemadisonpark.com/>

⁵ Mr. Jacobs is currently a debtor in bankruptcy in the case captioned: *In re Marc Jacobs*, Case No. 10-24232 (RDD) (Bankr. S.D.N.Y. Oct. 27, 2010)

Debtor's judgment would be completely unsecured and likely difficult to collect; and

- Slazer Enterprises Owner LLC has indicated its intention to object to the Debtor's claims and potentially try to reclassify it as an equity investment.

The Committee has actively followed and pursued collection of the OMP Claims. Among other things, the Committee retained the firm of Womble Carlyle Sandridge & Rice, PLLC, to assist it in prosecuting and protecting its claim in the Delaware case. The Committee actively sought a seat on the creditors' committee for the Debtor in the OMP Case, as the largest potential unsecured claimant in the case. However, the United States Trustee for Region 3 declined to grant the Debtor a seat on that committee without disclosing any reason or basis for the decision.

The Committee is actively investigating any available claim or cause of action that would challenge the validity or priority of iStar Tara's alleged liens against the property in favor of the Debtor. The FKF Trust will continue the investigation and pursuit of any and all such claims and theories for recovery of the OMP Claims.

b. Bashert, LLC – Newtown, Connecticut.

Claim Amount per Books and Records: \$5,022,500

Purpose of Loan: Construction project in Newtown, Connecticut.

Relationship to Insiders: Upon information and belief, Debtor's members, Klein, Dorfman and Magee have equity interests in the project.

This loan is currently non-performing with interest accruing. TD Bank has a purported senior lien on the property and project, and is owed approximately \$7.2 million. The value and disposition of the property, and availability of third party claims, will largely determine the Estate's ultimate recovery on this loan.

c. Caulfield Loans.

The Debtor made a series of loans to projects spearheaded by Fields Development Group and Fields Construction Corp., and their principals, Robert A. Caulfield and James F. Caulfield, Jr. The relationship between the Debtor's members and the Caulfield's is being investigated. The Loans Receivable per the Debtor's books and records are:

159 2nd Street Urban LLC: \$25,000

150 Essex Street Urban Renewal LLC⁶: \$2,619,407

Newark St. LLC⁷: \$4,942,000

⁶ See <http://fieldsdevelopment.com/#/150Essex>

⁷ See <http://fieldsdevelopment.com/#/TheSaffron>

These loans were made to fund construction related projects in Jersey City, New Jersey. The two larger Loans Receivable, 150 Essex Street Urban Renewal LLC and Newark St. LLC, are allegedly subordinate to the senior, secured positions of Bank of America N.A., which claims to be owed approximately \$6,000,000 and \$21,800,000 on the properties, respectively. The value and dispositions of the properties, and availability of third party claims, will largely determine the Estate's ultimate recovery on these loans.

d. Aventine Edgewater LLC.

Claim Amount per Books and Records: \$7,611,897

Purpose of Loan: Construction of condominiums in Edgewater, New Jersey⁸.

Relationship to Insiders: Debtor's members, Klein, Dorfman and Magee have equity interests in the borrower, and Magee is currently the managing member of the borrower.

This loan is currently non-performing with interest accruing. The loan is allegedly junior to the senior, secured position of TD Bank, which claims to be owed approximately \$21,565,000. There are a number of issues that will affect the Debtor's ability to recover on this loan including: (i) property value; (ii) defaults and collection action by the senior lender; and (iii) the actions of the managing member of the borrower, John Magee. Most significantly, the Debtor's interest in the receivable was assigned to creditor, Forest Mall LLC, in or around January 2010. The Debtor and Committee are investigating both issues of recovery on the receivable and recoverability of the assignment to Forest Mall LLC, and intend to pursue both if permitted by law.

e. Diane Roberts LLC.

Claim Amount per Books and Records: \$500,000

Purpose of Loan: Purchase of land in Ocean County, New Jersey, and/or construction thereon.

Relationship to Insiders: Unknown. Currently under investigation.

The Diane Roberts LLC receivable has and continues to be investigated significantly by the Committee. Among other things, the Committee has discovered that: (i) the borrower paid at least \$773,000 of the amount owed to the Debtor directly to the Debtor's member, John Magee; and (ii) John Magee executed lien releases on, around, or after the Petition Date, purporting to release the liens on property previously granted by the borrower for the benefit of the Debtor in order to secure the loan.

The Committee is currently investigating many aspects of this transaction, including, but not limited to: (i) whether the borrower continues to have liability to the Debtor; (ii) whether the lien releases granted to borrower by John Magee are valid; (iii) whether the lien releases were granted by John Magee after the Petition Date, and if so, whether such act is criminal under Title

⁸ See <http://www.aventinecondos.com/>

18 of the United States Code; and (iv) whether funds collected by John Magee are recoverable against him personally, or third party transferees. The Debtor and Committee intend to pursue any and all available claims for recovery with respect to these transactions.

f. One Degree LLC (a/k/a GMR, LLC).

Claim Amount per Books and Records: \$1,500,000

Purpose of Loan: Currently unclear.

Relationship to Insiders: Unknown. Currently under investigation.

This loan appears to be an additional loan to the Edgewater Aventine LLC project (discussed above). The precise recipient(s) and beneficiary(ies) of the transfer of these funds is currently under investigation. All claims for the recovery of these monies are preserved and will be investigated and pursued.

g. Aventine Retail, LLC.

Claim Amount per Books and Records: \$977,411

Purpose of Loan: To fund construction or operating expenses with respect to commercial property leased to retail stores in Edgewater, New Jersey.

Relationship to Insiders: Debtor's members, Klein, Dorfman and Magee have equity interests in the borrower.

The Debtor does not currently have a lien against the borrower's real property. The borrower's property is subject to a lien by Oritani Savings Bank to secure a loan to the borrower with an approximate outstanding balance of \$2,800,000. On October 19, 2010, the Debtor commenced an action against the borrower titled: *FKF 3, LLC v. Aventine Retail, LLC*, Adv. Pro. No. 10-09088 (CGM) (Bankr. S.D.N.Y. Oct. 19, 2010), seeking the recovery of all amounts owed. That action is currently pending and all collection efforts by the Debtor, Committee, and ultimately the FKF Trust, will continue.

h. Jerry's Self Storage LLC.

Claim Amount per Books and Records: \$1,592,542

Purpose of Loan: To fund construction or purchase of self-storage center in New Windsor, New York.

Relationship to Insiders: Debtor's members, Klein, Dorfman and Magee have equity interests in the borrower. Magee is the managing member.

The Debtor is pursuing collection of this receivable. However, in addition to collection, there are a number of issues concerning this transaction. In or around the end of 2008, the Debtor was owed in excess of \$5,000,000 by the borrower, which was secured by a note and

mortgage. At or around that time, the loan was refinanced by a new loan from Oritani Savings Bank. The proceeds of the refinancing were around \$5,000,000, although there is uncertainty on how these proceeds were disbursed. Thus, in addition to the collection of this outstanding receivable, the Debtor and Committee are contemplating a full investigation of the disbursement of the prior refinancing, and the pursuit of any amounts improperly transferred.

i. Samtov Properties LLC.

Claim Amount per Books and Records: \$600,000

Purpose of Loan: To fund construction or purchase of the Barclay Manor Condominium.

Relationship to Insiders: Currently unknown. Possible connection under investigation.

The borrower's property is subject to liens by New York Community Bank ("NYCB") in the amount of \$1,300,236, which the bank alleges are senior to the Debtor's lien. NYCB has filed a motion in the Debtor's case seeking to lift the automatic stay so that it can pursue a foreclosure with respect to its lien [DE 64]. The Committee and Debtor have opposed NYCB's motion, alleging, among other things, that the Debtor's mortgage actually primes approximately \$500,000 of NYCB's position. NYCB, the Debtor and Committee, are currently negotiating a resolution to the issue. The Committee has been informed that NYCB has asserted a claim to the relevant title insurer with respect to the Debtor's claim that it primed a portion of NYCB's claim. If the claim is paid, the proceeds should be paid to the Debtor. Otherwise, the Debtor will continue collection efforts against the borrower and its property.

j. Conte Property.

Claim Amount per Books and Records: \$114,085

Purpose of Loan: Currently unknown.

Relationship to Insiders: Borrower is owned by Rhonda Conte, Mitchell Klein's sister.

Upon information and belief, the purpose of the loan was to purchase Ms. Conte's personal residence. The Debtor is pursuing collection of this receivable. The borrower disputes the amount owed.

k. Burt Dorfman.

Claim Amount per Books and Records: \$211,222

Purpose of Loan: Currently unknown.

Relationship to Insiders: Borrower is a member of the Debtor.

The loan is being paid by Dorfman pursuant to the terms of a promissory note with monthly payments of \$2,500 beginning September 1, 2010, increasing to \$5,000 on March 1, 2011. The estate will pursue full payment of all amounts due.

l. Griffin.

Claim Amount per Books and Records: \$325,000

Purpose of Loan: Currently Unknown.

Relationship to Insiders: Currently Unknown.

This obligation is contained on the Debtor's books and records and has existed for at least five years. The borrower is also a creditor of the Debtor, asserting a claim of \$2.5 million. This loan is being investigated and will be pursued as appropriate.

m. Hayden.

Claim Amount per Books and Records: \$100,000

Purpose of Loan: Currently Unknown.

Relationship to Insiders: Currently unknown. Connection is under investigation.

The borrower asserts that the loan has been satisfied. As evidence of repayment, the borrower produced two cancelled checks, dated June 28 and June 30, 2010, in the amount of \$50,000 each, made payable to John Magee personally. The memo line of each check contained a notation that the payment was made on account of the loan from the Debtor. The Committee is currently investigating many aspects of this transaction, including, but not limited to: (i) whether the borrower continues to have liability to the Debtor; and (ii) whether funds collected by John Magee are recoverable against him personally, or third party transferees. The Debtor and Committee intend to pursue any and all available claims for recovery with respect to these transactions.

n. Hemmerle, a/k/a 700 MGMT LLC.

Claim Amount per Books and Records: \$575,437

Purpose of Loan: To fund the purchase of or construction on the real property at 700 Chancellor Ave., Irvington, New Jersey.

Relationship to Insiders: Currently unknown. Connection is under investigation.

The Debtor holds a first priority lien against the borrower's real property, which may be subject to approximately \$100,000 in property taxes. The Debtor is currently pursuing the recovery of this claim.

o. Historical Car Sales.

Claim Amount per Books and Records: \$110,000

Purpose of Loan: Currently Unknown.

Relationship to Insiders: Borrower is owned and operated by Debtor's member, John Magee.

The Debtor intends to aggressively pursue recovery of this obligation.

p. JRMA LLC.

Claim Amount per Books and Records: \$50,000

Purpose of Loan: Currently Unknown.

Relationship to Insiders: Borrower is owned by Jonathan Blondie, who is believed to be related to Dorfman through marriage.

The borrower disputes the amount owed. The Debtor is actively seeking recovery of this obligation.

q. Cole-Hatchert.

Claim Amount per Books and Records: \$140,000

Purpose of Loan: Currently Unknown.

Relationship to Insiders: Currently unknown. Connection is under investigation.

The Debtor commenced a legal action to collect the amount owed prior to the Petition Date. The Debtor will continue that action and pursuit of all amounts owed.

r. Weiffel.

Claim Amount per Books and Records: \$161,626

Purpose of Loan: Currently Unknown.

Relationship to Insiders: Relationship currently being investigated.

All aspects of this loan are under investigation. Collection of this loan will be aggressively pursued.

s. Route 9W.

Claim Amount per Books and Records: \$185,000

Purpose of Loan: To fund construction on commercial property in Sparkill, NY.

Relationship to Insiders: Borrower was owned by Debtor's three members, Klein, Dorfman and Magee. Upon information and belief, ownership in the borrower was recently transferred to Jesse Dorfman, Dorfman's son.

Prior to October 2010, the borrower's real property was unencumbered by the liens of creditors, but the borrower had two significant known obligations – a line of credit with Provident Bank in the approximate amount of \$500,000, and the obligation to the Debtor. The line of credit with Provident Bank was also guaranteed by the Debtor's members, Klein, Dorfman and Magee. The Committee recently discovered that in and around October 2010, the borrower (by its members), purported to transfer its real property to an entity owned by Jesse Dorfman. The new entity then assumed the obligations to Provident Bank and the Debtor. In addition, the new entity purported to grant Provident Bank a mortgage on the property that it did not previously possess. At the same time, no security interest or mortgage was granted to the Debtor, thus pushing down the priority of the Debtor's payment *vis a vis* the new obligor and limiting the Debtor's ability to collect in the event of a liquidation by the new obligor. It appears that Klein, Dorfman and Magee were also released from their guarantees to Provident Bank in connection with this series of recent transactions.

In addition to pursuing the collection in full of this obligation from old borrower and new borrower, the Committee is actively investigating, and will pursue if appropriate, claims in connection with the conveyance of borrower's property, and the grant of a mortgage to Provident Bank.

t. 5 Corners New Windsor.

Claim Amount per Books and Records: \$2,000

Purpose of Loan: Currently Unknown.

Relationship to Insiders: Currently unknown. Connection is under investigation.

The collection of this claim is currently under investigation and will be pursued as appropriate.

u. Mount Glenn at Warwick.

Claim Amount per Books and Records: \$100,000

Purpose of Loan: Currently Unknown.

Relationship to Insiders: Currently unknown. Connection is under investigation.

The collection of this claim is currently under investigation and will be pursued as appropriate.

Litigation Claims.

In addition to any claims that the estate may have with respect to its Loans Receivable, the Committee and Debtor believe there are significant claims and Causes of Action that may be pursued for the benefit of creditors. According to the Debtor's books and records, the Debtor disbursed over \$170 million from 2004 to 2010. Although the investigation into the facts surrounding those transfers is just beginning, it appears that many may have been made for less

than reasonably equivalent value. The Committee and Debtor are actively investigating all such claims and will timely report their findings to creditors. All Causes of Action and claims are subject to further investigation and are expressly reserved and will be transferred to the FKF Trust to be pursued for the benefit of creditors.

a. Members Claims.

The Committee and Debtor's investigation of the conduct of the Debtor's members is still underway. There is no doubt that the Committee and Debtor have yet to discover all claims and Causes of Action against the members, in addition to the actual quantum of damages incurred as a result of the members' offensive conduct. However, it is already clear that the Debtor's members have committed a number of acts that will give rise to claims in favor of the Debtor's Estate. Among other things, the Committee and Debtor have identified:

- Multiple breaches of the duty of loyalty, where the Debtor's members favored borrowers and other individuals and entities over the interests of the Debtor;
- Multiple breaches of the duty of care, where the Debtor's members entered into business transactions on behalf of the Debtor without proper due diligence or obtaining prudent protections for the Debtor; and
- Significant transfers that may be recoverable for the benefit of the Debtor's estate, including, among others:
 - \$100,000 collected by Magee from Gregory Hayden on account of money owed to the Debtor;
 - \$773,000 collected by Magee from Diane Roberts LLC on account of money owed to the Debtor;
 - \$400,000 paid to Bradley Corporate Park, John Magee's company, by the Debtor;
 - \$1,782,246 paid to Commercial Construction, John Magee's company, by the Debtor;
 - \$1,971,409 paid to Dorfman by the Debtor;
 - \$1,776,228 paid to Klein by the Debtor; and
 - \$1,531,628 paid to Magee by the Debtor.

The Committee and Debtor are confident that additional discovery will lead to the discovery of additional direct and indirect transfers to the members.

Any and all claims and Causes of Action against the Debtor's members, for any reason or based upon any facts, are expressly reserved and will be pursued by the FKF Trust to the full extent permitted by the facts and the law.

b. Professionals Claims.

The Committee and Debtor have also already identified a number of instances of attorneys and other professionals sitting on both sides of transactions and having irreconcilable conflicts of interest. These claims will be investigated and pursued by the FKF Trust as appropriate.

c. Avoidance Actions.

The Committee and Debtor expect that the FKF Trust will assert significant claims for the recovery of transfers pursuant to sections 510, 542, 544, 545, 547, 548, 549, 550, 552(b) and 553 of the Bankruptcy Code or equivalent provisions of applicable non-bankruptcy law. The Committee has identified \$171,927,356 in transfers that have been made by the Debtor directly from its bank accounts since its inception in 2004. Many of those transfers are believed to be for legitimate business purposes such as lending, and interest service to creditors. However, at this time, any recipient of the transfers may be subject to an action by this Estate seeking to avoid and recover the value of such transfers. The FKF Trust will investigate each and every transfer made by the Debtor and pursue all those that may be subject to avoidance and recovery. In addition to investigating the purpose and integrity of each transfer and the initial transferee, the FKF Trust will investigate any immediate or mediate transferees, or other beneficiaries of any questionable transfers to ensure that all claims for recovery are discovered and asserted.

In addition to the transfers made directly by the Debtor from accounts already discovered, the Committee has already discovered other transfers that may be subject to avoidance. For example, Magee has admitted to transferring property the Debtor may have an interest in to creditors of the Debtor, which may be preferential. Also, as stated above, the assignment of the Debtor's claim against Aventine Edgewater LLC, to Forest Mall LLC, is being investigated for possible avoidance. The Committee and Debtor expect that they and the FKF Trust will continue to discover additional transfers and transactions that may be subject to avoidance and recovery for the Estate.

Debtor's Liabilities.

The Debtor's schedules (on an aggregate basis) indicated a total of approximately \$62,849,552.88 million in debt for General Unsecured Claims as of the Petition Date.

Claims Bar Date – Deadline to File Proofs of Claim.

On October 20, 2010, the Debtor filed a Motion For An Order Establishing Deadlines And Procedures For Filing Proofs Of Claim And Approving The Form And Manner Of Notice Thereof seeking to establish a claims bar date of December 15, 2010 as the deadline by which Proofs of Claim against the Debtor (other than governmental units) must be filed. As to governmental units, the Debtor sought to fix February 7, 2011 as the governmental unit Bar Date. On November 5, 2010, the Bankruptcy Court entered an order setting those dates as the Claim Bar Date for all creditors (including governmental units) (Docket No.58). Annexed hereto as Exhibit C is a current analysis of all claims pursuant to the Debtor's books and records and all proofs of claim filed against the Debtor. The Committee and Debtor believe that many of the

filed and scheduled claims will be subject to avoidance in whole or in part, and/or reclassification.

ARTICLE IV. DESCRIPTION OF THE PLAN

Introduction.

This section summarizes the salient provisions of the Plan. The Plan is annexed to this Disclosure Statement as Exhibit A. Parties are encouraged to review the Plan in its entirety for a full understanding of its provisions and impact on creditors.

Under the Plan, all Claims and all Interests except Administrative Expense Claims, Priority Tax Claims (if any) and Secured Claims (if any) are placed into the Classes set forth below. Pursuant to section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims, as described below, are not classified in the Plan. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of such Claim or Interest falls within the description of such other Classes. A Claim or Interest is also placed in a particular Class for the purpose of receiving Distributions pursuant to the Plan only to the extent that such Claim or Interest is an Allowed Claim in that Class and such Claim or Interest has not been paid, discharged, released or otherwise settled prior to the Effective Date.

Unclassified Claims. Administrative Expense Claims and Priority Tax Claims are Unimpaired by the Plan. Each Holder of an Unclassified Claim is conclusively presumed to have accepted the Plan and, therefore, is not entitled to vote to accept or reject the Plan. Priority Tax Claims and Administrative Expense Claims are the Unclassified Claims.

Unimpaired Class of Claims. Each Holder of an Unimpaired Claim is deemed to have accepted the Plan and, therefore, is not entitled to vote to accept or reject the Plan. Class 1 consists of all Non-Tax Priority Claims. Class 2 consists of all Secured Claims. The Holders of Class 1 Claims and Class 2 Claims are Unimpaired and are deemed to accept the Plan. The Debtor does not believe, however, that there are any Holders of Claims in those Classes at the date of this Disclosure Statement.

Impaired Classes of Claims. Each Holder of a General Unsecured Claim is placed in Class 3.

Class 3: General Unsecured Claims. Class 3 consists of all Claims that are not Secured Claims, Priority Tax Claims, Non-Tax Priority Claims or Other Priority Claims.

Class 4: Interests. Class 4 consists of Interests in the Debtor. The Holders of Class 4 Interests shall retain the right to receive any access recoveries in the event that all senior classes of Claims are paid in full, plus interest. Any and all voting rights, or rights under any bylaws or management agreement of the Debtor will be extinguished. Interest Holders are deemed to have rejected the Plan.

Treatment of Unclassified Claims.

The Plan provides for the following treatment of Unclassified Claims:

Administrative Expense Claims. The legal and equitable rights of the Holders of Administrative Expense Claims are unaltered by the Plan. As soon as reasonably practicable after the later of (i) the Effective Date or (ii) the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, the FKF Trustee shall pay to each Holder of an Allowed Administrative Expense Claim, from the FKF Trust Assets, in full satisfaction, settlement, and release of and in exchange for such Allowed Administrative Expense Claim: (a) Cash equal to the amount of such Allowed Administrative Expense Claim or (b) such other treatment as to which the FKF Trustee and the Holder of such Allowed Administrative Expense Claim shall have agreed upon.

The Debtor estimates that the allowed Administrative Claims of the professionals retained in this case will be approximately \$369,306.36 in the aggregate through December 31, 2010. The amount of Administrative Claims is expected to increase through confirmation of the plan given the level of services provided by Professionals in connection with the same. All additional amounts incurred will be included in monthly operating reports filed by the Debtor, and in any fee application filed with the Court. The Professionals and their estimated Claims included within the estimate set forth above through December 31, 2010 are: (a) the Debtor's attorneys, Reich Reich & Reich, P.C. (Fees - \$107,200.00; Expenses - \$1,986.59); (b) the attorneys for the Creditors' Committee, Fox Rothschild LLP (through November 19, 2010) (Fees - \$33,467.50; Expenses - \$419.08), and Klestadt & Winters, LLP (from November 22, 2010) (Fees - \$75,048.00; Expenses - \$2,167.00); (c) the financial advisors to the Creditors' Committee BDO Seidman (Fees - \$67,258.35); (d) special litigation counsel to the Debtor, Oxman, Tulis, Kirkpatrick, Whyatt and Geiger, LLP (no fees as of December 31, 2010) and; (e) special counsel to the Creditors Committee, Womble Carlyle Sandridge & Rice, PLLC (Fees - \$13,415.00; Expenses - \$111.20). All such fees and disbursements are subject to the approval of the Court following appropriate application.

The Debtor estimates that its manager, Day Seckler, LLP will have an Administrative Claim in the total estimated amount of (Fees - \$68,233.64).

Bar Dates for Administrative Claims. The Confirmation Order will establish an Administrative Expense Claims Bar Date for filing Administrative Expense Claims, except for Claims of the kind specified in Section 3.3 of the Plan. The Administrative Expense Claims Bar Date will be thirty (30) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Holders of Administrative Expense Claims that are subject to the Administrative Expense Claims Bar Date shall submit requests for payment on or before such Administrative Expense Claims Bar Date or forever be barred from submitting any request on account of such Administrative Expense Claims.

Applications for Fee Claims. All applications by Professionals in respect of Fee Claims shall be filed with the Bankruptcy Court within sixty (60) days after the Confirmation Date. Any such application not filed within sixty (60) days after the Confirmation Date shall be deemed waived and the Holder of such Claim shall be forever barred from receiving payment on account thereof.

U.S. Trustee Fees. All unpaid U.S. Trustee Fees incurred before the Effective Date shall be paid by the Debtor in full on the Effective Date. In addition, all U.S. Trustee Fees incurred after the Effective Date shall be timely paid from FKF Trust Assets by the FKF Trustee in the ordinary course as such U.S. Trustee Fees become due and payable until the entry of a final decree closing the Case. No later than the twentieth (20th) day of each month until entry of a final decree, the FKF Trustee shall file with the Bankruptcy Court a Post-Confirmation Monthly Operating Report in the form and substance established by the United States Trustee. Unpaid U.S. Trustee Fees shall accrue interest as an FKF Trust Expense. The Administrative Expense Claims Bar Date shall not apply to U.S. Trustee Fees.

Priority Tax Claims. On the later of (i) the Effective Date, (ii) the date a Priority Tax Claim becomes an Allowed Priority Tax Claim, or (iii) when the FKF Trust has sufficient assets to pay an Allowed Priority Tax Claim, such Holder of an Allowed Priority Tax Claim shall be entitled to receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Priority Tax Claim, either (i) Cash equal to the Allowed amount of such Priority Tax Claim, (ii) equal Cash payments during a period not to exceed five (5) years after the Bankruptcy Relief Date, totaling the aggregate amount of such Claim, plus simple interest at the rate required by applicable law on any outstanding balance from the Effective Date, or such lesser rate as is agreed to by the Holder, or (iii) such other treatment as is agreed to by the Holder of an Allowed Priority Tax Claim and the FKF Trustee. Unless agreed to by the Holder of an Allowed Priority Tax Claim, payment of such Claim shall not occur later than five (5) years after the Bankruptcy Relief Date.

Treatment of Classified Claims.

The Plan provides for the following treatment of Claims in the following Classes:

Class 1: Non-Tax Priority Claims. The legal and equitable rights of the Holders of Allowed Non-Tax Priority Claims are unaltered by the Plan. As soon as reasonably practicable after the latest of (i) the Effective Date; (ii) the date on which such Non-Tax Priority Claim becomes an Allowed Non-Tax Priority Claim; (iii) the date at which time the FKF Trustee has sufficient funds, after applicable reserves, to pay the Allowed Non-Tax Priority Claim, or (iv) the date on which such Non-Tax Priority Claim becomes due and owing in the ordinary course of the Debtor's business, the FKF Trustee shall pay from FKF Trust Assets to each Holder of an Allowed Non-Tax Priority Claim, in full satisfaction, settlement and release of and in exchange for such Allowed Non-Tax Priority Claim, (a) Cash equal to the amount of such Allowed Non-Tax Priority Claim; or (b) such other treatment which the FKF Trustee and the Holder of such Allowed Non-Tax Priority Claim have agreed upon in writing. Based upon a preliminary review of all claims filed against the Debtor, there do not appear to be any Holders of Non-Tax Priority Claims.

Class 2: Secured Claims. As soon as reasonably practicable after the latest of (i) the Effective Date; (ii) the date on which such Secured Claim becomes an Allowed Secured Claim; (iii) the date at which time the FKF Trustee has sufficient funds, after applicable reserves, to pay the Allowed Secured Claim, or (iv) the date on which such Secured Claim becomes due and owing in the ordinary course of the Debtor's business, any Holder of an Allowed Secured Claim shall receive, in full and final satisfaction, settlement, and release of and in exchange for such

Allowed Secured Claim, at the discretion of the FKF Trustee, (a) Cash equal to the Allowed amount of such Secured Claim; (b) the property securing such Claim; or (c) such other treatment to which the Holder and the FKF Trustee agree to in writing. The Debtor and Committee do not believe there are any Holders of Claims in this Class. Based upon a preliminary review of all claims filed as Secured Claims against the Debtor, the Debtor and the Committee believe that such claims are lacking any evidence of proper perfection and expect that the same will be recharacterized as General Unsecured Claims, through formal objections before the Court if necessary.

Class 3 (General Unsecured Claims). As soon as reasonably practicable after the FKF Trust has pursued, reduced to money, or abandoned, all of its known assets and claims the FKF Trustee shall pay from FKF Trust Assets to each Holder of an Allowed General Unsecured Claim, in full satisfaction, settlement, and release of and in exchange for such Allowed General Unsecured Claim against the FKF Trust, such Holder's Pro Rata share of the FKF Trust Assets after satisfaction of senior claims and applicable reserves. Distributions to the Holders of Allowed General Unsecured Claims shall be made on the later of: (i) the initial Distribution Date as defined in section 7.2 herein, or (ii) the date on which such General Unsecured Claim becomes an Allowed General Unsecured Claim. In the event that the FKF Trust is able to satisfy all Allowed General Unsecured Claims in full, Holders of such claims shall be entitled to the payment of interest on their claims accruing on and after the Petition Date at the rate or amount provided for in any applicable contract between such Holder and the Debtor, or if no such contract exists, at the then-current Applicable Federal Rate. . To the extent reasonably practicable and provided there are sufficient funds net of applicable reserves, Class 3 Claimants shall receive interim distributions from the FKF Trust at the discretion of the FKF Trust Board.

Class 4 (Interests). On the Effective Date, any and all rights of Interest holders shall be automatically extinguished and cancelled, except for the right to receive any excess assets of the FKF Trust as set forth below. In the event that the FKF Trust has sufficient assets to pay all Allowed Claims in full, plus any and all interest due or accruing on and after the Petition Date in accordance with the Plan, then the FKF Trust shall disburse any remaining assets, net of applicable reserves, including costs for administration, to the Holders of Interests.

Implementation of the Plan.

The following provisions govern implementation of the Plan after the Confirmation Date.

Conditions Precedent to the Effective Date. Each of the following events shall occur on or before the Effective Date:

(1) the Confirmation Order, which shall include findings that (i) the Plan was proposed in good faith, and (ii) the Plan satisfies the applicable provisions of the Bankruptcy Code, as set forth in section 1125(e) of the Bankruptcy Code, shall have been entered by the Bankruptcy Court and shall be a Final Order;

(2) the Bankruptcy Court shall have determined that the FKF Trustee is duly authorized to take the actions contemplated in the Plan and the FKF Trust Agreement, which approval and authorization may be set forth in the Confirmation Order;

(3) the FKF Trust Agreement shall be executed and the FKF Trust shall be established and become effective;

(4) all documents, instruments, and agreements provided under, or necessary to implement, the Plan shall have been executed and delivered by the applicable parties;

(5) the FKF Trustee shall obtain a bond or surety for the performance of his/her duties; and

(6) all other documents required to be Filed with the Plan Supplement, shall have been duly and validly executed and delivered by the parties thereto (or provisions therefore shall have been made) and all conditions to their effectiveness shall have been satisfied or waived.

Reduction of Allowed Claims. Solely for calculating any Distribution from the FKF Trust under the Plan to the Holder of an Allowed Claim, the amount of such Claim shall be reduced by the amount of any Third Party Payment or Insurance Payment received by such Holder. Nothing in the Plan or Confirmation Order shall limit or impact an insurer's right of subrogation, limit or impact the rights of any Person rendering a Third Party Payment in respect of an Allowed Claim to the Holder of such Claim to assert a Claim against the Estate or the FKF Trust or, subject to the Plan, impair or otherwise affect the ability of any Holder of an Allowed Claim to assign such Claim to any Person.

Reports of Third Party Payments. Within five (5) Business Days of the receipt of a Third Party Payment, the Holder of an Allowed Claim shall notify the FKF Trustee in writing of (i) the name of the Holder, (ii) the amount of such Holder's Allowed Claim in respect of which such payment was received, and (iii) the amount of any such payment received or rights of setoff exercised, and (iv) the source of such Third Party Payment.

Cancellation of Instruments and Stock. On the Effective Date, (i) all Interests in the Debtor; and (ii) any instrument evidencing or creating any indebtedness or obligation of the Debtor, except such instruments that are reinstated (or amended and restated) under the Plan, shall be cancelled and extinguished. Additionally, as of the Effective Date, all Interests in the Debtor, and any and all warrants, options, rights or interests with respect to any existing or prospective Equity Interest in the Debtor that have been authorized to be issued but that have not been issued automatically shall be deemed cancelled and extinguished without any further action of any party.

Classes Entitled to Vote. Holders of Claims in Class 3 (General Unsecured Claims) are Impaired by the Plan and shall be entitled to vote to accept or reject the Plan.

Acceptance by Impaired Classes of Claims. An Impaired Class of Claims shall have accepted the Plan if: (i) the Holders, other than any Holder designated under section 1126(e) of the Bankruptcy Code, of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan and (ii) the Holders, other than any Holder designated under § 1126(e) of the Bankruptcy Code, of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

The FKF Trust.

Creation of FKF Trust. On the Effective Date, the FKF Trust shall be formed pursuant to the Plan and the FKF Trust Agreement, and the FKF Trust Assets shall be transferred to and vest in the FKF Trustee for the benefit of the FKF Trust Beneficiaries pursuant to the terms of the Plan and FKF Trust Agreement. A copy of the FKF Trust is annexed to the Plan as Exhibit “A”. In the event of any inconsistencies or conflict between the FKF Trust Agreement and the Plan the terms and provisions of the FKF Trust Agreement shall control.

Transfer of FKF Trust Assets. On the Effective Date all of the Debtor’s right, title, and interest in all Assets shall vest in the FKF Trust for the benefit of the FKF Trust Beneficiaries and shall become and be deemed for all purposes to the FKF Trust Assets without any further Bankruptcy Court order, action, or notice to any Person.

Plan is Motion to Transfer FKF Trust Assets. The Plan shall be considered a motion pursuant to sections 105, 363(b) and (f), and 365 of the Bankruptcy Code to transfer to, and vest in, the FKF Trustee, for the benefit of the FKF Trust Beneficiaries any and all Assets as of the Effective Date. The transfers, and vesting of the Assets in the FKF Trust for the benefit of the FKF Trust Beneficiaries shall be free and clear of all Liens and Claims except as set forth in the Plan, and the Confirmation Order shall so provide. Any objections to such transfer, assignment, and vesting must be made as an objection to Confirmation of the Plan to be heard at the Confirmation Hearing. Notwithstanding the foregoing, after the Effective Date, the FKF Trustee may present an Order or Orders to the Bankruptcy Court, suitable for filing in the records of every county or governmental agency where any Assets of the Debtor is or was located, to designate all Liens, Claims, encumbrances, or other interests which appear of record and from which the property is being transferred, assigned, and vested free and clear.

Execution of the FKF Trust Agreement. The Debtor and the FKF Trustee shall execute the FKF Trust Agreement on the Effective Date and shall take all other steps necessary to establish the FKF Trust.

Appointment of FKF Trustee. The Committee shall appoint the FKF Trustee, who shall be independent of the Debtor. The FKF Trustee shall, in accordance with the FKF Trust Agreement, serve in such capacity in the discretion of the FKF Trust Board through the earlier of (i) the date of the FKF Trust is dissolved and (ii) the date such FKF Trustee resigns, is terminated, or is otherwise unable to serve; provided, however, that, in the event that the FKF Trustee resigns, is terminated, or is unable to serve, then the FKF Trust Board shall have the right to select a successor who shall be appointed as the FKF Trustee and shall serve in such capacity until the FKF Trust Claim is dissolved or until such FKF Trustee resigns, is replaced, or is terminated and no successor is appointed.

The Committee has considered several candidates for the position of FKF Trustee. After due consideration given to the facts and circumstances of this case, the Committee has selected Gregory Messer to serve as the initial FKF Trustee.

Gregory Messer has been practicing law in the areas of bankruptcy and creditors’ rights for over 30 years. He routinely represents individual and business debtors and creditors in bankruptcy cases, and since 1980 has been a member of the U.S. Trustee’s panel of private chapter 7 trustees for the United States Bankruptcy Courts for the Southern and Eastern Districts

of New York. He has also served as a mediator, examiner and chapter 11 trustee in several bankruptcy cases. Mr. Messer received his B.A. degree from Drew University and his J.D. from Albany Law School. He is Board Certified in Bankruptcy Law, a Fellow of the American Bar Foundation and a frequent speaker on bankruptcy law and practice before local and national bar associations and trade groups.

The FKF Trust Board shall immediately inform the United States Trustee and the Bankruptcy Court in writing of any changes to the identity of the FKF Trustee.

Bonding of FKF Trustee. The FKF Trustee, and any successor FKF Trustee appointed pursuant to the FKF Trust Agreement, shall, before the Effective Date or upon being selected as a successor FKF Trustee, as the case may be, obtain a bond or surety for the performance of his/her duties. Notice of the effectiveness of such bond or surety shall be provided to the U.S. Trustee and FKF Trust Board, and shall be a condition precedent to the Effective Date of the Plan. Furthermore, the FKF Trustee shall notify the Bankruptcy Court and the U.S. Trustee in writing before terminating any such bond or surety. The FKF Trustee shall increase the bond routinely as necessary to ensure that the amount of the bond is at least 110% of the amount of any assets in the FKF Trust.

Causes of Action Assigned to FKF Trustee; Litigation. Except as provided in, and unless expressly waived, relinquished, exculpated, released, compromised or settled in the Plan, the Confirmation Order or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan: (a) the FKF Trustee shall exclusively retain and may prosecute and enforce, and the Debtor expressly reserves and preserves for these purposes, in accordance with sections 1123(a)(5)(B) and 1123(b)(3) of the Bankruptcy Code, any Claims, demands, rights and Causes of Action that the Debtor or its estate may hold against any person, including, but not limited to, (i) any action, adversary proceeding or contested matter that has been commenced, or action, Cause of Action or claim that may be commenced, under sections 510, 542, 544, 545, 547, 548, 550, 552(b) and 553 of the Bankruptcy Code or equivalent provisions of applicable non-bankruptcy law, (ii) all actions, Causes of Action, suits or claims of the Debtor or its estate arising under any theory of law or equity, including, without limitation, for breach of contract, breach of fiduciary duty, negligence, tort or otherwise, with respect to the former officers and members of the Debtor, and (iii) any other actions, Causes of Action, suits or claims of the Debtor or its estate against any other person or entity under any theory in law or equity (collectively, the “Preserved Causes of Action”); and (b) accordingly, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), claim splitting or laches shall apply to any of the Preserved Causes of Action by virtue of or in connection with the confirmation, consummation or effectiveness of the Plan.

From and after the Effective Date, the FKF Trustee may commence, litigate, and settle any Causes of Action or rights to payment or claims that belong to the Debtor or its Estate that may be pending on the Effective Date or instituted by the FKF Trustee after the Effective Date, except as otherwise expressly provided in the Plan and the FKF Trust Agreement. Other than as set forth in the Plan, no other Person, unless designated by the FKF Trustee, may pursue such Preserved Causes of Action after the Effective Date; provided, however, that for the avoidance of doubt, nothing in the Plan or the FKF Trust Agreement shall waive, limit, or otherwise impair

any Person's direct right of action, if any, against any insurer, including the Debtor's insurance providers, companies, or carriers, if any. Upon the Effective Date, the FKF Trustee shall be deemed substituted as plaintiff, defendant, or in any other capacity for the Debtor or the Committee in all actions pending before the Bankruptcy Court or any other court or tribunal that relates to a Cause of Action without the need for filing any motion for such relief. In connection with the above-described Preserved Causes of Action, any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) shall also exist for the benefit of the FKF Trust Beneficiaries and shall vest in the FKF Trustee and its representatives, and shall also be preserved for and as to the Debtor. The FKF Trustee is authorized to take all necessary actions to benefit from such privileges. The Bankruptcy Court shall retain jurisdiction to adjudicate any and all Preserved Causes of Action and approve any such settlement, whether commenced prior to or after confirmation of the Plan and the Effective Date.

The FKF Trustee's rights to settle or abandon any Causes of Action, and consensually resolve any objections to Claims, shall be subject to the following procedures:

1) *De minimis* Causes of Action – The FKF Trustee may settle any Causes of Action or resolve any objection to Claims where the gross amount being compromised is less than \$50,000.00, without any notice or approval of the Bankruptcy Court.

2) All other Causes of Action – If the FKF Trustee desires to settle any Causes of Action that are not *de minimis*, he must follow the following procedures:

a. File a statement of intent to settle a controversy with the Bankruptcy Court setting forth: (i) a description of the claims or Causes of Action being compromised; (ii) a summary of the terms of the settlement, including any monetary exchange and any releases being proposed; (iii) the identity of all counter-parties and release parties with respect to the proposed compromise; and (iv) the time and method for objecting to the proposed settlement, which shall not be less than twenty (20) days from the date the statement is filed with the Bankruptcy Court as set forth below (the "Settlement Statement");

b. The Settlement Statement shall be served upon all parties who have filed notices of appearance in the Debtor's case, or otherwise requested from the FKF Trustee notice of any Settlement Statements, in any manner for service provided for under the Bankruptcy Rules and Local Rules of the Bankruptcy Court;

c. Parties may object to the proposals set forth in any Settlement Statement by filing with the Bankruptcy Court a written objection setting forth the factual and legal grounds for the objection;

d. The FKF Trustee shall endeavor to resolve any objections and provide any information reasonably requested to any objecting party with respect to any proposed settlement;

e. In the event that objections cannot be resolved, the FKF Trustee and objecting party shall schedule with the Bankruptcy Court a hearing on the proposed settlement and objection;

f. If no objections are timely filed to any Settlement Statement, then the compromise proposed therein shall be deemed approved as of the twenty-first (21st) day following the filing of the Settlement Statement with the Bankruptcy Court, without the need for further order of the court, provided, however, that the FKF Trustee may submit and request entry of an order if reasonably required by the settling party as a condition of the settlement; and

g. If exigencies exist with respect to any proposed settlement, the FKF Trustee shall have the right to apply to the Bankruptcy Court for expedited consideration of any proposed settlement.

3) The foregoing procedures shall apply to any proposed abandonment of Causes of Action.

Expenses of FKF Trustee and Professionals. Subject to the discretion of the FKF Trust Board, the FKF Trustee shall be permitted to retain attorneys, advisors and other professionals to assist in the administration of the FKF Trust (including the Professionals for the Committee and the Debtor). Reasonable fees and expenses incurred by the FKF Trustee and his or her professionals shall be paid from the FKF Trust Assets.

The FKF Trustee and any and all professionals retained after the Effective Date, as well as the out-of-pocket non-professional expenses of the FKF Trust Board, will be paid for their services and reimbursed for their expenses subject to the following terms: On or before the twenty-fifth (25th) day of each month following the month for which compensation is sought, the FKF Trustee and all professionals retained after the Effective Date will file with the Bankruptcy Court a monthly statement describing with reasonable particularity the time expended and the nature, extent and value of the services provided during the period covered by such request. The members of the FKF Trust Board may similarly file documented requests for out-of-pocket non-professional expenses. Any party in interest shall have until the fifteenth (15th) calendar day after the submission of the statement to review it. If no objections are filed, the FKF Trustee shall promptly pay 100% of the fees and 100% of the disbursement identified in each statement. In the event that any party in interest determines that the compensation or reimbursement sought in a particular statement is inappropriate or unreasonable, or that any number or calculation is incorrect, that party shall, on or before the fifteenth (15th) calendar day after the submission of the statement is objected to, a "Notice of Objection to the Monthly Fee Statement" setting forth the precise nature of the objection and the amount in issue. Thereafter, the objecting party and the Professional or individual whose statement is objected to shall meet or confer to attempt to reach an agreement regarding the correct payment to be made, and if no agreement is reached with regard to such objection, the FKF Trustee shall not pay the disputed amount until further order of the Bankruptcy Court. The FKF Trustee will promptly pay any portion of the fees and disbursements requested that are not the subject of a Notice of Objection, as well as any adjusted fees and disbursements that have been agreed to by the objecting party and the Professional or the individual.

FKF Trust Board. There shall no more than seven (7) members of the FKF Trust Board. The initial FKF Trust Board shall consist of:

- 1) Kevin Romano
- 2) Kathryn Bareket
- 3) Ken Beck
- 4) Elias Josephs
- 5) Walter Klauser
- 6) Rabbi Ely Rosenzveig; and
- 7) Uri Sasson

The simultaneous appointment of a Person to both the Committee and the FKF Trust Board shall be permissible.

Members of the FKF Trust Board shall be entitled to reimbursement for reasonable, out-of-pocket costs, incurred during the course of their service. Members of the FKF Trust Board will not be entitled to reimbursement for any amounts incurred for the retention of their own attorneys or advisors.

Many creditors and prospective FKF Trust Board members have business relationships with the Debtor, the Debtor's principals, the Debtor's borrowers, and/or other potential parties in interest, in addition to holding general, unsecured claims against the Debtor and its estate. These relationships were disclosed to the United States Trustee during the Committee formation process and in the interests of full disclosure, are set forth again here. The following is a summary of all such known relationships:

- 1) Kevin Romano – Mr. Romano, along with Walter Klauser, Mitchell Klein and Howard Josephs have alleged an equity interest in an entity Madison Park Group Owner, LLC, which owns twelve (12%) percent of the One Madison Park project. Mr. Romano also owns one-third (1/3) of the membership interests in Rose Glasses LLC, along with Messrs. Klein and Dorfman. Rose Glasses LLC owns fifty (50%) percent of Bashert LLC, a borrower of the Debtor as described above.
- 2) Kathryn Bareket – No known relationships other than debtor-creditor.
- 3) Ken Beck – No known relationships other than debtor-creditor.
- 4) Elias Josephs – Mr. Josephs, members of his family, and/or affiliated entities⁹, have alleged that they hold a number of partial assignments of the Debtor's loans, and partial

⁹ The "Josephs Family" includes Elias Josephs, Howard Josephs, Ruth Josephs, Judy Josephs, Forest Mall LLC, Blueberry Hill Corp., Blue Sky LLC, Rubin Josephs QTIP Trust, Rubin Josephs Credit Shelter Trust, and Rubin Josephs d/b/a Blueberry Investors Company.

assignments for the underlying mortgages held as security for those loans, relating to Bashert Developers, LLC, 77 Acres Road realty Co., LLC, Amazon Realty Associates, Inc., Burdock Realty Associates, Inc., Commandeer Realty Associates, Inc., Diligent Realty Associates, Inc., Aventine Edgewater, LLC, Samtov Properties, LLC, Phillip Griffin, Diane Roberts, LLC, Jerry's Self Storage, LLC, 150 Essex Street Urban Renewal, LLC, Rolling Acres Chestnut Ridge, LLC, . Mr. Josephs' brother, Howard Josephs, has a partial equity interest in the One Madison Park project as described above. As described above, Forest Mall LLC, and entity owned by the Josephs family, received an additional assignment of the Debtor's interest in the Aventine Edgewater, LLC loan in or around December 2009. The Debtor and Committee are conferring with the Josephs regarding the details of that transaction.

- 5) Walter Klauser – Mr. Klauser has a partial equity interest in the One Madison Park project as described above.
- 6) Rabbi Ely J. Rosenzweig – No known relationships other than debtor-creditor.
- 7) Uri Sasson – Mr. Sasson owns twenty (20%) of the equity of both the West Rock Tennis Club and GMS, which own the underlying real estate and the West Rock Tennis Club, respectfully. Mr. Klein also has a twenty (20%) percent interest in each entity.

The Committee and prospective FKF Trust Board members do not believe that any of the foregoing relationships will impair any of the members' respective abilities to discharge their fiduciary duties to creditors and beneficiaries of the FKF Trust. No Committee member or FKF Trust Board member is or will be permitted to vote on any matter in which he or she has a conflict of interest.

Dissolution of the FKF Trust. The FKF Trust shall be dissolved no later than three (3) years from the Effective Date unless the Bankruptcy Court, upon a motion Filed before the expiration of such three-year period (as such period may be extended by the Bankruptcy Court as set forth in the Plan), determines that a fixed-period extension is necessary to facilitate or complete the recovery and liquidation of the FKF Trust Assets. The timely Filing of a motion to extend the term of the FKF Trust shall automatically extend the term of the FKF Trust pending the entry of an order by the Bankruptcy Court granting or denying such motion. Any extension of the term of the FKF Trust, together with any prior extensions thereof, shall not exceed two years without a favorable letter ruling from the Internal Revenue Service ("IRS") that a further extension will not adversely affect the status of the FKF Trust as a liquidating trust for federal income tax purposes.

Liability and Indemnifications. None of the FKF Trustee, the FKF Trust Board, their respective members, designees, or professionals, or any duly authorized agent or representative of the FKF Trust, the FKF Trustee, or the FKF Trust Board, or their respective employees or members, shall be liable for the act or omission of any other member, designee, agent, or representative of such FKF Trustee or FKF Trust Board, nor shall FKF Trustee, FKF Trust Board, or any member of the FKF Trust Board be liable for any act or omission taken or not taken in its capacity as FKF Trustee, FKF Trust Board, or member of such Board, respectively, other than for specific acts or omissions resulting from such FKF Trustee's, Board's or such

member's willful misconduct, gross negligence, fraud, actions constituting a willful violation of Federal securities laws or the Internal Revenue Code, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, or *ultra vires* acts. Each of the FKF Trustee or the FKF Trust Board may, in connection with the performance of their respective functions, and in their sole and absolute discretion, consult with their attorneys, accountants, financial advisors, and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinion rendered by such entities, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, neither the FKF Trustee nor the FKF Trust Board shall be under any obligation to consult with its attorneys, accountants, financial advisors, and agents, and their determination not to do so shall not result in the imposition of liability on the FKF Trustee or the FKF Trust Board or their respective members or designees, unless such determination is based on willful misconduct, gross negligence, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, or *ultra vires* acts. The FKF Trust shall indemnify and hold harmless the FKF Trustee, the FKF Trust board and any duly authorized member, agent, or designee thereof (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs, and expenses (including, without limitation, reasonable attorney's fees, disbursements, and related expenses), which such entities may incur or to which such entities may become subject in connection with any action, suit, proceeding, or investigation brought by or threatened against such entities arising out of or due to their acts or omissions or consequences of such acts or omissions, with respect to the implementation or administration of the FKF Trust or the Plan or the discharge of their duties thereunder; provided, however, that no such indemnification will be provided to such entities for actions or omissions as a result of their willful misconduct, gross negligence, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, or *ultra vires* acts.

Full and Final Satisfaction Against FKF Trust. On and after the Effective Date, the FKF Trust shall have no liability on account of any Claims or Interests except as set forth in the Plan and in the FKF Trust Agreement. All payments and all Distributions made by the FKF Trustee under the Plan shall be in full and final satisfaction, settlement, and release of and in exchange for all Claims against FKF Trust; provided, however, that nothing contained in section 6.5 of the Plan, or in any other provision of the Plan, shall be deemed to constitute or result in a discharge of the Debtor under section 1141(d) of the Bankruptcy Code.

Conflicts Between FKF Trust Agreement and Plan. In the event of any inconsistencies or conflict between the FKF Trust Agreement and the Plan, the terms and provisions of the FKF Trust Agreement shall control.

Preservation of Causes of Action; Settlement of Litigation Claims.

Preservation of Rights of Action. On the Effective Date, the FKF Trustee shall be vested with authority and standing to prosecute the Preserved Causes of Action and to compromise, settle or litigate the Causes of Action. The Professionals retained by the Debtor, the Committee and individual Committee members, the FKF Trustee, and Day Seckler LLP, the manager of the Debtor, shall have no liability for pursuing or failing to pursue any Causes of Action, unless such failure constitutes fraud, willful misconduct, or gross negligence.

Settlement of Litigation Claims and Disputed Claims. At any time prior to the Effective Date, the Debtor, with the consent of the Committee, may settle some or all of the Causes of Action or Disputed Claims subject to obtaining any necessary Bankruptcy Court approval. The net proceeds (after deducting the reasonable attorneys' fees and costs) from the settlement of a Preserved Cause of Action shall constitute a FKF Trust Asset that shall be transferred to the FKF Trust on or after the Effective Date.

Provisions Governing Distributions Generally.

The Plan provides for Distributions to Creditors to be made as follows.

Distributions for Claims Allowed as of the Effective Date. Except as otherwise ordered by the Bankruptcy Court in a Final Order, following the Effective Date, Distributions shall be made by the FKF Trustee pursuant to the Plan. Distributions on account of any Claim that first becomes an Allowed Claims after the Effective Date shall be made on the first Distribution Date after such Claim becomes an Allowed Claim. The FKF Trustee may withhold from the FKF Trust Assets and each Distribution of FKF Trust Assets an amount of Cash reasonably estimated to be necessary to pay the expenses incurred by the FKF Trustee in administering the FKF Trust, establish the Disputed Claim Reserves and to ensure that no Distribution on account of any Allowed Claim exceeds 100% of the Allowed amount of such Claim, unless the FKF Trust has sufficient assets to pay all Allowed Claims in full, in which case the holders of Allowed Claims would be entitled to interest accrued on and after the Petition Date.

Initial Distribution. The Initial Distribution Date shall be a Business Day that is not more than thirty (30) days following the date on which both (i) the first Claim is Allowed, and (ii) the FKF Trust has sufficient assets to make sure distribution. Subsequent Distributions will be made on a periodic basis on account of Claims that become Allowed between the prior Distribution Date and the Subsequent Distribution Date.

Means of Cash Payment. Cash payments made pursuant to the Plan shall be in U.S. funds, by the means, including by check or wire transfer, determined by the FKF Trustee.

Delivery of Distribution. Distributions to Holders of Allowed Claims shall be made (i) at the addresses set forth on the Proofs of Claim Filed by such Holders (or at the last known addresses of such Holders if no Proof of Claim is Filed or if the Debtor has been notified of a change of address); (ii) at the addresses set forth in any written notices of address changes delivered to the FKF Trustee; or (iii) if no Proof of Claim has been Filed and the FKF Trustee has not received a written notice of a change of address, at the addresses reflected in the Bankruptcy Schedules, if any.

Record Date for Distributions. The FKF Trustee will have no obligation to recognize the transfer of, or the sale of any participation in, any Allowed Claim that occurs after the close of business on the Record Date, and will be entitled for all purposes in the Plan to recognize and distribute only to those Holders of Allowed Claims that are Holders of such Claims, or participants therein, as of the close of business on the Record Date. The FKF Trustee shall

instead be entitled to recognize and deal for all purposes under the Plan with only those Holders indicated on the official claims register as of the close of business on the Record Date.

No Distributions Pending Allowance. Notwithstanding any other provision of the Plan, no payments or Distributions by the FKF Trustee shall be made with respect to all or any portion of a Disputed Claim unless and until all avoidance actions with respect to the Holder of such Claim and all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim.

Establishment and Maintenance of Reserve for Disputed Claim Reserve. Upon the filing of any Claim Objection, the FKF Trustee shall establish a reserve sufficient to pay the proportionate distribution on any claim that is not yet Allowed (the “Disputed Claim Reserve”). The amount of Cash deposited into the Disputed Claim Reserve shall be equal to the percentage of Cash that Holders of Disputed Claims would be entitled under the Plan if such Claims were Allowed Claims in the amount asserted by the Holder of such Disputed Claim or such lesser amount as authorized by a Final Order. For the purposes of effectuating the provisions of section 7.8 of the Plan and the Distributions to Holders of Allowed Claims, the FKF Trustee may, at any time and regardless of whether a Claim Objection to a Disputed Claim has been Filed, request that the Bankruptcy Court estimate, set, fix or liquidate the amount of such Disputed Claim pursuant to section 502(c) of the Bankruptcy Code, in which event the amounts so estimated, fixed or liquidated shall be deemed the Allowed amounts of such Claims for purposes of Distribution under this Plan. In lieu of estimating, fixing or liquidating the amount of any Disputed Claim, the Bankruptcy Court may determine the amount to be reserved for such Disputed Claims (singularly or in the aggregate), or such amount may be fixed as to a particular Holder of a Disputed Claim by an agreement in writing by and between the FKF Trustee and the Holder of such Claim.

Provisions Governing Distributions Generally.

The Plan provides for Distributions to Creditors to be made as follows:

Distribution for Claims Allowed as of the Effective Date. Except as otherwise ordered by the Bankruptcy Court in a Final Order, following the Effective Date, Distributions shall be made by the FKF Trustee pursuant to the Plan. Distributions on account of any Claim that first becomes an Allowed Claim after the Effective Date shall be made on the first Distribution Date after such Claim becomes an Allowed Claim. The FKF Trustee may withhold from the FKF Trust Assets and each Distribution of FKF Trust Assets an amount of Cash Reasonably estimated to be necessary to pay the expenses incurred by the FKF Trustee in administering the FKF Trust, establish the Disputed Claim Reserve, and to ensure that no Distribution on account of any Allowed Claim exceeds 100% of the Allowed amount of such Claim.

Distributions Upon Allowance of Disputed Claims. The Holder of a Disputed Claim that becomes an Allowed Claim subsequent to the Effective Date shall receive a Distribution from the Disputed Claim Reserve as soon as practical following the date on which such Disputed Claim becomes an Allowed Claim. Such Distributions shall be made in accordance with the Plan based upon the Distributions that would have been made to such Holder under the Plan if

the Disputed Claim had been an Allowed Claim on the Effective Date. No Holder of a Disputed Claim shall have any Claim against the Disputed Claim Reserve, the FKF Trustee or the Debtor with respect to such Claim until such Disputed Claim shall become an Allowed Claim, and no Holder of a Disputed Claim shall have any right to interest, dividends or other Distribution on such Disputed Claim except as provided in Plan section 7.9 of the Plan.

Surplus Distribution. To the extent that a Disputed Claim is not Allowed or becomes an Allowed Claim in an amount less than the Disputed Claim amount, any excess of Cash in the Disputed Claim Reserve attributable to such Disputed Claim in excess of Cash actually distributed on account on such Disputed Claim shall be deemed Surplus Distributions. The FKF Trustee shall make a supplemental Distribution or Distributions of the Surplus Distributions to Holders of Allowed Claims on a Pro Rata basis on the next Distribution Date.

Undeliverable Distributions. If any Distribution is returned as undeliverable, the FKF Trustee shall make reasonable efforts to determine the current address of the Holder of the Claim. Amounts in respect of any undeliverable Distributions made by the FKF Trustee shall be returned to the FKF Trust until the Distributions are claimed or are deemed to be unclaimed property under section 347(b) of the Bankruptcy Code and the Plan (“Unclaimed Property”).

Unclaimed Property. Distributions that are not claimed within one year from the date of the Distribution shall be deemed to be Unclaimed Property and shall vest or revert in the FKF Trust for the benefit of the FKF Trust Beneficiaries, and the Claims with respect to which those Distributions are made shall be automatically canceled. After the expiration of that one-year period, the Claim of any Person or Entity to those Distributions shall be discharged and forever barred. Nothing contained in the Plan or the FKF Trust Agreement shall require the FKF Trustee to attempt to locate any Holder of an Allowed Claim. All funds or other property that vests or reverts in the FKF Trust for the benefit of the FKF Trust Beneficiaries pursuant to the Plan shall be distributed by the FKF Trustee to the other Holders of Allowed Claims in accordance with the provisions of the Plan and the FKF Trust Agreement. A Claim, and the Unclaimed Property distributed on account of such Claim, shall not escheat to any federal, state, or local government or other entity by reason of the failure of its Holder to claim a Distribution in respect of such Claim.

Time Bar to Cash Payments by Check. Checks issued by the FKF Trustee on account of Allowed Claims shall be null and void if not negotiated within 90 days after the date of issuance thereof. Requests for the reissuance of any check that becomes null and void pursuant to the Plan shall be made directly to the FKF Trustee by the Holder of the Allowed Claim to whom the check was originally issued. Any Claim in respect of such voided check shall be made in writing on or before the first anniversary of the date of the check was issued, or shall be discharged and forever barred. The funds that would otherwise constitute the proceeds of such checks shall revert in and become property of the FKF Trust for the benefit of the FKF Trust Beneficiaries as Unclaimed Property in accordance with section 347(b) of the Bankruptcy Code, and be distributed as Unclaimed Property in accordance with the Plan.

Withholding and Reporting Requirements. In connection with the Plan and all Distributions hereunder, the FKF Trustee shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions shall be subject to any such withholding and reporting requirements. The FKF Trustee shall be authorized to take any and all actions that may be reasonably necessary or appropriate to comply with such withholding and reporting requirements.

Distributions on Non-Business Days. Any payment or Distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

No Distribution in Excess of Allowed Amount of Claim. Notwithstanding anything to the contrary in the Plan, subject to section 4.7 of the Plan, the aggregate Distribution or Distributions, including any Third Party Payments, to a Holder of a Claim shall not exceed the Allowed amount of such Claim, plus any interest that may be payable under Section 4.2 of the Plan. If a Holder of an Allowed Claim receives a Distribution or Distributions under the Plan that, together with any Third Party Payments, exceeds the total amount of the related Allowed Claim, the Holder shall, within five (5) Business Days, refund such excess amounts to the FKF Trustee. The FKF Trustee may seek the return of any such excess amounts by the commencement of a contested matter or adversary proceeding in the Bankruptcy Court.

De Minimis Distributions. No Cash payment of less than ten dollars (\$10.00) will be made by the FKF Trustee to any Creditor unless a request is made in writing to the FKF Trustee to make such a payment.

Fractional Dollars. Notwithstanding any other provision of the Plan, Cash Distributions of fractions of dollars will not be made; rather, whenever any payment of a fraction of a dollar would be called for, the actual payment made shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent that Cash remains undistributed as a result of the rounding of such fraction to the nearest whole cent, such Cash shall be treated as Unclaimed Property under this Plan.

Setoff and Recoupment. The FKF Trustee may, but shall not be required to, setoff against, or recoup from any Claim and the Distribution to be made pursuant to the Plan in respect thereof, any claims or defenses of any nature whatsoever that any of the Debtor, the Estate or the FKF Trustee may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtor, the Estate or the FKF Trustee of any claim, defense, right of setoff, or recoupment that any of them may have against the Holder of any Claim.

Reports of Third Party Payments. Within five (5) Business Days of the receipt of a Third Party Payment, the Holder of an Allowed Claim shall notify the FKF Trustee in writing of (i) the name of the Holder; (ii) the amount of such Holder's Allowed Claim in respect of which such payment was received; (iii) the amount of any payment received or rights of setoff exercised; and (iv) the source of such Third Party Payment.

Dissolution of Committee. The Committee shall automatically be dissolved on the Confirmation Date and the members of, and Professionals retained by, the Committee shall have no further duties or obligations after the Confirmation Date.

Treatment of Executory Contracts and Unexpired Leases.

Executory Contracts and Unexpired Leases Deemed Rejected. All of FKF's executory contracts and unexpired leases, other than the Insurance Policies, shall be deemed rejected on the Effective Date, except to the extent that the Debtor has (i) previously assumed or rejected an executory contract or unexpired lease or (ii) Filed a motion, prior to the Effective Date, to assume an executory contract or unexpired lease upon which the Bankruptcy Court has not ruled. For the avoidance of doubt, pursuant to section 365 of the Bankruptcy Code, all Insurance Policies shall be assumed on the Effective Date.

Effects of Confirmation.

Legal Binding Effect. Except as otherwise provided in Article IX of the Plan, the provisions of the Plan shall bind all Holders of Claims and Interests and their respective successors and assigns, whether or not they accept the Plan. On and after the Effective Date, except as provided in the Plan, all Holders of Claims and Interests shall be precluded from asserting any Claim against the Debtor, the Estate, the Committee, the FKF Trust, or the FKF Trustee, or their respective property and Assets based on any transaction or other activity of any kind that occurred prior to the Effective Date. For the avoidance of doubt, section 9.1 of the Plan will not impact claims against the Debtor's Insiders and/or the Debtor's insurance providers, companies or carriers.

Moratorium, Injunction and Limitation of Recourse For Payment. Except as otherwise provided in the Plan, the Confirmation Order shall so provide, among other things, that from and after the Effective Date, all Persons who have held, hold, or may hold Claims against, or Interests in, the Debtor are permanently enjoined from taking any of the following actions against the Estate, the Debtor, or the FKF Trust or any of their respective property or other Assets on account of any such Claims or Interests, except in the manner provided for in the Plan: (i) commencing or continuing, in any manner or in any place, any action or other proceeding, (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order, (iii) creating, perfecting or enforcing any Lien or encumbrance, and (iv) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions hereof; provided, however, that nothing contained in this Plan or in the Confirmation Order shall preclude: (x) the FKF Trust or the FKF Trustee from pursuing any Preserved Causes of Action including, but not limited to, actions against its members or other non-debtor entities; (y) any Person from exercising their rights pursuant to or not inconsistent with the terms hereof; or (z) the FKF Trustee from exercising his or her rights or remedies pursuant to and not inconsistent with the terms hereof or the FKF Trust Agreement.

Exculpation and Limitation of Liability. Notwithstanding any other provision of the Plan, no Holder of a Claim or Interest shall have any right of action against the Debtor, the Estate, the Committee or any member of the Committee, the FKF Trustee, or the FKF Trust, any of their respective employees, managers, officers, directors, agents, attorneys, investment

bankers, financial advisors, other professionals, or any of their respective property and Assets for any act or omission in connection with, relating to, or arising out of the Case, the pursuit of Confirmation of the Plan, the consummation of the Plan, or the administration of the FKF Trust, the Plan, or the property to be distributed under the Plan, except for acts or omissions which constitute willful misconduct, gross negligence, fraud, criminal misconduct, malpractice, or damages resulting from *ultra vires* acts. Notwithstanding anything else set forth in this paragraph, Magee will have the right to litigate to its conclusion by final non-appealable order the adversary proceeding brought by him against the Debtor and Day Seckler, LLP, which is more particularly described in this Disclosure Statement hereinabove.

No Discharge of Government Claims. Nothing in the Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including, without limitation, any claim arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state or local authority against the Estate, the Debtor, the Committee or any member of the Committee, the FKF Trustee, the FKF Trust, or any of the respective employees, managers, officers, directors, agents, attorneys, investment bankers, financial advisors or other professionals, nor shall anything in the Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceeding against any party for any liability whatsoever, including, without limitation, any claim, suit, or action arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state or local authority, nor shall anything in the Confirmation Order or the Plan exculpate any party from any liability to the United States Government or any of its agencies or any state or local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state or local authority against the released parties.

Retention of Jurisdiction. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Case, the Plan and the FKF Trust to the fullest extent permitted by law, including, among other things, jurisdiction to:

(1) allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim, including the resolution of any application or request for payment of any Administrative Claim, and the resolution of any objections to the allowance or priority of Claims;

(2) hear and determine all Professionals' applications for compensation and reimbursement of expenses incurred in the Case;

(3) determine any and all adversary proceedings, motions, applications, and contested or litigated matters, including, but not limited to, all Preserved Causes of Action vested in the FKF Trust, and consider and act upon the compromise and settlement of any Claim against, or Preserved Causes of Action on behalf of, the FKF Trust;

(4) enter such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of the Plan, the FKF Trust Agreement, and all contracts, instruments, releases, and other agreements or documents created in connection therewith;

(5) hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan or the FKF Trust Agreement, including disputes arising under agreements, documents or instruments executed in connection therewith;

(6) consider any modifications of the Plan or the FKF Trust Agreement, cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;

(7) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person with the implementation, consummation, or enforcement of the Plan or the Confirmation Order;

(8) hear and determine any matters arising in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order, the FKF Trust Agreement or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement, the Confirmation Order or the FKF Trust Agreement;

(9) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Case;

(10) hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;

(11) hear and determine all matters related to the property of the Estate, the Debtor, the FKF Trust, or the FKF Trustee from and after the Effective Date;

(12) hear and determine such other matters as may be provided in the Plan, the Confirmation Order and as may be authorized under the provisions of the Bankruptcy Code; and

(13) enter a final decree closing the Case.

Miscellaneous Provisions of the Plan.

Severability of Plan Provisions. If, prior to Confirmation, any term or provision of the Plan is held by the Bankruptcy Court to be invalid, void or unenforceable, the Bankruptcy Court, at the request of the Debtor or the Committee, shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of the Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial

determination and shall provide that each term and provision of the Plan, as it may be altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms.

Exemption from Transfer Taxes. In accordance with section 1146(a) of the Bankruptcy Code, the Bankruptcy Court will be requested to make findings, in the Confirmation Order, that the sale of the Debtor's Assets pursuant to one or more Final Orders authorizing and approving such sale(s) shall not be taxed under any law imposing stamp or similar tax. Consistent with the foregoing, each recorder of deeds or similar official for any county, city or governmental unit in which any instrument hereunder is to be recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such instrument, without requiring the payment of any stamp or similar tax.

Interest Accrual. No post-petition interest shall accrue on any Claim or scheduled liability, except as set forth in the Plan.

Allocation of Plan Distributions between Principal and Interest. To the extent that any Allowed Claim entitled to a Distribution under the Plan is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall, for federal income tax purposes, be allocated to the principal amount of the Claim first, and then, to the extent the consideration exceeds the principal amount of the Claim, to accrued but unpaid interest.

Rules of Interpretation; Computation of Time. For purposes of the Plan, (i) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document as being in a particular form or containing particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions; (ii) any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified, or supplemented; (iii) unless otherwise specified, all references in the Plan to sections, articles, and exhibits, if any, are references to sections, articles, and exhibits of or to the Plan; (iv) the words "herein," "hereof," and "hereto" refer to the Plan in its entirety rather than to a particular portion thereof; (v) captions and headings to articles and sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of the Plan; and (vi) the rules of construction set forth in section 102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply. In computing any period of time prescribed or allowed by the Plan, unless otherwise specifically designated in the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

Plan Documents. The Plan Documents are incorporated in the Plan and are a part of the Plan as if set forth in full in the Plan.

Successors and Assigns. The rights, benefits and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Person.

Governing Law. Unless a rule of law or procedure is supplied by federal law, including the Bankruptcy Code and Bankruptcy Rules, (i) the construction and implementation of the Plan and any agreements, documents, and instruments executed in connection with the Plan and (ii)

governance matters shall be governed by the laws of the State of New York, without giving effect to the principles of conflict of law thereof.

Notice of Effective Date. Within five (5) Business Days after the occurrence of the Effective Date, the FKF Trustee shall file with the Bankruptcy Court and mail or cause to be mailed to all Holders of Allowed Claims in Class 3 (General Unsecured Claims) a notice that informs such Persons of (i) of the entry of the Confirmation Order; (ii) the occurrence of the Effective Date, and (iii) such other matters as the FKF Trustee deems appropriate or as may be ordered by the Bankruptcy Court. The aforesaid notice shall also be served upon the U.S. Trustee and Filed with the Court. In the event the Effective Date does not occur within thirty (30) days of the Confirmation Date, the Debtor shall file with the Bankruptcy Court a *Notice of Failure to Achieve Effective Date* and shall request a status conference with the Bankruptcy Court. The foregoing notice shall be served upon the U.S. Trustee and all parties requesting notice and service of pleadings pursuant to Bankruptcy Rule 2002.

ARTICLE V. RISK FACTORS

Holders of Claims against and Interests in the Debtor who are entitled to vote to accept or reject the Plan should carefully consider the risk factors set forth below prior to voting to accept or reject the Plan.

Failure to Receive Requisite Accepting Votes.

Acceptance of the Plan requires the affirmative vote of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the voting Holders of Claims in Class 3. If the requisite votes are not received to accept the Plan, and if the Plan is not confirmed by the Bankruptcy Court pursuant to the so-called “cram down” provision of section 1129(b) of the Bankruptcy Code, the Debtor may seek to liquidate the Estate in accordance with chapter 7 of the Bankruptcy Code. There can be no assurance that the terms of a liquidation under chapter 7 of the Bankruptcy Code would be similar to or as favorable to Holders of Claims and Interests as those proposed in the Plan. The Debtor believes that the financial results of a proceeding under chapter 7 of the Bankruptcy Code would be less favorable to such Holders.

Risk of Non-Confirmation of the Plan.

Although the Debtor believes that the Plan satisfies all legal requirements necessary for Confirmation by the Bankruptcy Court, there can be no assurance that the Bankruptcy Court will confirm the Plan. There can also be no assurance that modifications to the Plan will not be required for Confirmation or that such modifications would not necessitate re-solicitation of votes to accept or reject the Plan.

Risk of Additional or Larger Claims.

The Disclosure Statement and its attached exhibits necessarily include estimates, including estimates of future events. These estimates include, without limitation, estimates of future income and expenses, estimates as to the total amount of Claims that will be asserted against the Debtor and the outcome of Disputed Claims. The Debtor believes that the estimates presented are reasonable and appropriate under the circumstances. Nevertheless, there is a risk that unforeseen future events may cause one or more of these estimates to be materially inaccurate. Among the potential risks are the risk that additional prepetition or Administrative Expense Claims may be asserted, that Disputed Claims may be resolved at higher amounts than expected or in different classes than expected, or that the resolution of such Claims may require the expenditure of unanticipated professional fees. If one or more of these estimates proves to be inaccurate, the amount of funds available for Distribution pursuant to the Plan may be reduced.

ARTICLE VI. FEASIBILITY OF THE PLAN

As a condition to Confirmation, Bankruptcy Code section 1129(a)(11) requires that the Debtor show that confirmation is not likely to be followed by the liquidation of the Debtor or the need for further financial reorganization, unless such liquidation or reorganization is a component of the Plan.

The Plan provides for the Debtor's Assets to be liquidated for the benefit of Holders of Claims in the manner and on the terms set forth in the Plan. Accordingly, the Debtor submits that the requirements of Bankruptcy Code section 1129(a)(11) are inapplicable in the Debtor's Case.

ARTICLE VII. BEST INTERESTS TEST

Notwithstanding acceptance of a chapter 11 plan by each Impaired class, the Bankruptcy Court must also determine that the plan is in the best interests of each Holder of an impaired Claim or Interest that has not voted to accept the plan. Accordingly, if an impaired Class does not unanimously accept the Plan, the best interests test of Bankruptcy Code section 1129(a)(7) requires that the Bankruptcy Court find that the Plan provides to each Holder of such Claim or Interest a recovery on account thereof that has a value at least equal to the amount that such Holder would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code.

To estimate the recovery of an impaired Holder of a Claim or Interest under a chapter 7 liquidation, the Bankruptcy Court first determines the aggregate dollar amount that would be available if the chapter 11 case were converted to a chapter 7 case and the assets of the Debtor liquidated by a chapter 7 trustee. The liquidation value would consist of the net proceeds of the disposition of the Assets and Cash held by the Debtor, reduced by the additional increased costs of liquidation and the administrative claims that would arise in a chapter 7 liquidation case but that do not arise in a chapter 11 case.

The additional costs and expenses of liquidation under chapter 7 of the Bankruptcy Code would include the compensation of a chapter 7 trustee and compensation for services rendered

and reimbursement of disbursements incurred on behalf of such trustee's counsel and other professionals, disposition expenses, litigation costs, and claims arising during the pendency of the chapter 7 liquidation case. The liquidation itself may trigger certain priority claims, which must be paid out of liquidation proceeds before the balance is made available to pay other claims.

The proponents of the Plan believe that in a chapter 7 liquidation, Holders of Claims would likely receive a lesser distribution from the Debtor than under the Plan. Also, the FKF Trust has more flexibility to make timely, interim distributions to Holders of Claims than does a trustee in a chapter 7 liquidation where distributions generally come only at the end of the case after all claims and Causes of Action have been fully administered. The proponents of the Plan believe that the Plan is the more favorable alternative to a liquidation under chapter 7. Accordingly, the proponents of the Plan submit that the Plan satisfies the best interests test set forth in section 1129(a)(7) of the Bankruptcy Code.

ARTICLE VIII. TITLE TO PROPERTY AND TAX CONSEQUENCES

Vesting of Property.

Upon the Effective Date, all Assets of the Debtor shall vest in the FKF Trust free and clear of all Liens, security interests, Interests, and Claims of Creditors, except obligations pursuant to the Plan and Confirmation Order.

Tax Consequences of Confirmation.

Circular 230 Disclaimer. TO ENSURE COMPLIANCE WITH TREASURY DEPARTMENT CIRCULAR 230 EACH HOLDER IS HEREBY NOTIFIED THAT: (I) ANY DISCUSSION OF UNITED STATES FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON, BY ANY HOLDER FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON A HOLDER UNDER THE INTERNAL REVENUE CODE; (II) SUCH DISCUSSION IS INCLUDED HEREIN BY THE DEBTOR IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY THE DEBTOR OF THE TRANSACTIONS OR MATTER ADDRESSED HEREIN; AND (III) EACH HOLDER SHOULD SEEK ADVICE BASED ON ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

Confirmation and having a beneficial interest in the FKF Trust may have federal, state, local and foreign income tax consequences for the Debtor and Holders of Claims or Interests. The Debtor has not obtained and does not intend to request a ruling from the IRS, nor has the Debtor obtained an opinion of counsel with respect to any tax matters. Any federal income tax matters raised by Confirmation of the Plan are governed by the Internal Revenue Code and the regulations promulgated thereunder. Creditors and Holders of Interests are urged to consult their own counsel and tax advisors as to the consequences to them, under federal and applicable state, local and foreign tax laws, of the Plan. The following is intended to be a summary only and not

a substitute for careful tax planning with a tax professional. The federal, state and local tax consequences of the Plan may be complex in some circumstances and, in some cases, uncertain. Accordingly, each Holder of a Claim or Interest is strongly urged to consult with his or her own tax advisor regarding the federal, state and local tax consequences of the Plan.

Tax Consequences to the Debtor. The Debtor may not recognize income as a result of the discharge of debt pursuant to the Plan because section 108 of the Internal Revenue Code provides that taxpayers in bankruptcy proceedings do not recognize income from the discharge of debt. However, a taxpayer is required to reduce its “tax attributes” by the amount of the debt discharged. Tax attributes are reduced in the following order: (i) net operating losses; (ii) general business credits; (iii) minimum tax credits; (iv) capital loss carryovers; (v) basis in assets; (vi) passive activity loss and credit carryovers; and (vii) foreign tax credits carryovers.

Tax Consequences to Unsecured Creditors. An unsecured Creditor that receives only Cash and/or other property in satisfaction of its Claim may recognize gain or loss, with respect to the principal amount of the Claim, equal to the difference between (i) the Creditor’s basis in the Claim (other than the portion of the Claim, if any, attributable to accrued interest) and (ii) the balance of the Cash and/or other property received after any allocation to accrued interest. The character of the gain or loss as capital gain or loss, or ordinary income or loss, will generally be determined by whether the Claim is a capital asset in the Creditor’s hands. A Creditor will also recognize ordinary income or loss in respect of consideration received for accrued interest on the Claim. A Creditor may also recognize gain or loss or otherwise have income as a result of having a beneficial interest in the FKF Trust during the pendency of the FKF Trust.

DISCLAIMER. HOLDERS OF CLAIMS OR INTERESTS SHOULD NOT RELY ON THIS DISCLOSURE STATEMENT WITH RESPECT TO THE TAX CONSEQUENCES OF THE PLAN. THEY SHOULD CONSULT WITH THEIR OWN TAX COUNSEL OR ADVISOR. THE DISCUSSION OF TAX CONSEQUENCES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED TO BE A COMPLETE DISCUSSION OR ANALYSIS.

ARTICLE IX NOTICES

All notices required or desired to be given pursuant to or in connection with the Plan shall be made to the following addresses:

If to the Debtor:

FKF3, LLC c/o
Day Seckler, LLP
300 Westage Center Drive
Suite 160
Fishkill, NY 12524
Attn: G. Wayne Day, CPA, CIRA, CVA

With a copy to:
(which shall not
constitute notice):

Reich Reich & Reich, P.C.
235 Main Street, 4th Fl.
White Plains, NY 10601
Attn: Lawrence R. Reich, Esq.
and Jeffrey A. Reich, Esq.

If to the Committee:

KLESTADT & WINTERS, LLP
570 Seventh Avenue, 17th Floor
New York, NY 10018
Attn: Fred Stevens
And Carrie V. Hardman

If to FKF Trustee:

Gregory Messer
395 Pearl Street, 2nd Floor
Brooklyn, NY 11201

ARTICLE X. CONCLUSION

Based on the information in this Disclosure Statement, the Debtor and Committee believe that confirmation of the Plan is in the best interests of the Debtor, the Estate and holders of Claims against the Debtor. Accordingly, the Debtor and Committee ask that Creditors vote in favor of the Plan on the enclosed ballot and return the ballot as described above and on the ballot.

RECOMMENDATION

THE DEBTOR AND THE CREDITORS' COMMITTEE RECOMMEND THAT YOU VOTE TO ACCEPT THE PLAN. THEY BELIEVE THAT CONFIRMATION OF THE PLAN IS PREFERABLE TO ANY OF THE ALTERNATIVES DESCRIBED ABOVE. THE DEBTOR AND CREDITORS' COMMITTEE BELIEVE THAT ANY OTHER ALTERNATIVE WOULD CAUSE SIGNIFICANT DELAY AND UNCERTAINTY, AS WELL AS ADDITIONAL ADMINISTRATIVE COSTS. THE DEBTOR AND CREDITORS' COMMITTEE BELIEVE THAT THE PLAN IS DESIGNED TO PROVIDE GREATER RECOVERIES THAN THOSE AVAILABLE IN ANY OTHER FORM OF LIQUIDATION.

Respectfully submitted,

FKF 3, LLC

By: /s/G. Wayne Day
G. Wayne Day, CPA, CIRA, CVA
Day Seckler, LLP
300 Westage Center Dr, Ste 160
Fishkill, NY 12524

REICH REICH & REICH, P.C.

By: /s/Lawrence R. Reich
Lawrence R. Reich
235 Main Street, 4th Fl.
White Plains, NY 10601
(914) 949-2126
Email: Reichlaw@aol.com
*Attorneys for FKF 3, LLC,
Debtor and Debtor-in-Possession*

Official Committee of Unsecured Creditors
for FKF 3, LLC

By: /s/Kevin Romano
Kevin Romano, Chairperson

KLESTADT & WINTERS, LLP

By: /s/Fred Stevens
Fred Stevens
Carrie V. Hardman
570 Fifth Avenue, 17th Floor
New York, NY 10018
Telephone: (212) 972-3000
Facsimile: (212) 972-2245
Email: fstevens@klestadt.com
*Attorneys for Official Committee
of Unsecured Creditors of FKF 3, LLC*

Exhibit “A”

Exhibit “A”

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
In re	:	
	:	Chapter 11
FKF 3, LLC,	:	
	:	Case No. 10-37170 (CGM)
Debtor.	:	
-----X		

**FIRST AMENDED JOINT PLAN OF LIQUIDATION OF THE DEBTOR
AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

REICH REICH & REICH, P.C.

235 Main Street, 4th Fl.
White Plains, NY 10601
Telephone: (914) 949-2126
Facsimile: (914) 949-1604

Lawrence R. Reich
Jeffrey A. Reich

Attorneys for FKF 3, LLC, Debtor

KLESTADT & WINTERS, LLP

570 Seventh Avenue, 17th Floor
New York, NY 10018
Telephone: (212) 972-3000
Facsimile: (212) 972-2245

Fred Stevens
Sean C. Southard
Carrie V. Hardman

*Attorneys for Official Committee of Unsecured
Creditors*

Date: January 28, 2011

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Exhibits Enclosed:

FKF 3, LLC Trust Agreement

Exhibit

A

INTRODUCTION

FKF 3, LLC (“FKF”), as debtor and debtor in possession (the “**Debtor**”), together with the Official Committee of Unsecured Creditors appointed in the Debtor’s case (the “**Committee**”) submit this Plan of Liquidation for the resolution of outstanding Claims against and Interests in the Debtor (as it may be further amended and modified, the “**Plan**”), pursuant to the provisions of chapter 11 of the Bankruptcy Code.

ARTICLE I. **CERTAIN DEFINITIONS**

Unless otherwise provided in the Plan, all capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms under chapter 11 of the Bankruptcy Code. For the purposes hereof, the following terms (which appear in the Plan in capitalized terms) shall have the meanings set forth below:

1.1 “Administrative Expense Claim” means a Claim for payment of a kind specified under § 503(b), or, if applicable, 1114(e)(2) of the Bankruptcy Code, and entitled to priority under § 507(a), including (i) any actual and necessary costs and expenses incurred after the Bankruptcy Relief Date of preserving the Debtor’s Estate and operating the business of the Debtor (including, without limitation, wages, salaries, commissions for services and payments for leased equipment and leased premises) and Government Claims for post-petition taxes (excluding, for the avoidance of doubt, taxes that accrued on or before the Petition Date) and (ii) compensation for legal, financial, advisory, accounting and other services and reimbursement of expenses allowed by the Bankruptcy Court under §§ 330, 331 or 503(b) of the Bankruptcy Code to the extent incurred prior to the Effective Date.

1.2 “Allowed” means (a) when used with respect to an Administrative Expense Claim, all or any portion of such a Claim that was incurred by the Debtor in the ordinary course of business during this case, and as to which there is no dispute as to the Debtor’s liability, or that has been allowed or adjudicated in favor of the Holder by estimation or liquidation by a Final Order, or (b) when used with respect to a Claim other than an Administrative Expense Claim, such Claim or any portion thereof (i) that has been allowed or adjudicated in favor of the Holder by estimation or liquidation in a Final Order; or (ii) as to which (x) no Proof of Claim has been Filed and (y) the liquidated and noncontingent amount of which is included in the Bankruptcy Schedules, other than a Claim that is included in the Bankruptcy Schedules at zero, in an unknown amount, or as Disputed; or (iii) for which a Proof of Claim in a liquidated amount has been timely Filed; or (iv) that is expressly allowed in a liquidated amount in the Plan. A Claim shall be Allowed only if (a) no objection to the allowance thereof has been Filed within the applicable period of time fixed by the Plan or the Bankruptcy Court or (b) if an objection is so Filed, such objection has been settled or withdrawn or the Claim or Interest has been Allowed by a Final Order (but only if such allowance was not solely for the purpose of voting to accept or reject the Plan). No Claim or Interest shall be Allowed to the extent that the Holder thereof either possesses property recoverable by the Estate or the FKF Trust under §§ 542, 543, 550, or 553 of the Bankruptcy Code or is the transferee of a transfer avoidable under §§ 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code until such time as such Holder has paid the amount or turned over any such property for which the Holder is liable. Except as

otherwise specified in the Plan or a Final Order, the amount of an Allowed Claim shall not include interest on such Claim from and after the Petition Date. Nothing in this Plan shall prejudice the ability of the Debtor or the FKF Trustee to object to any Claim.

1.3 “Applicable Federal Rate” means the rate set forth in 28 U.S.C. § 1961.

1.4 “Assets” means all of the rights, title, and interests of the Debtor in and to property of any type or nature (real, personal, intangible, and mixed), known and unknown, including property of the Estate as such property is defined in § 541 of the Bankruptcy Code, as well as all property and Cash in the Debtor’s possession, custody, or control on the Effective Date, including without limitation Claims, Causes of Action and the proceeds thereof, and Insurance Policies and the proceeds thereof.

1.5 “Avoidance Actions” means Causes of Action of the Debtor pursuant to §§ 510 and 542 through 553 of the Bankruptcy Code.

1.6 “Bankruptcy Code” means title 11 of the United States Code, 11 U.S.C. Sections 101 *et. Seq.*, as now in effect or hereafter amended.

1.7 “Bankruptcy Court” means the District Court and, to the extent of any reference made pursuant to 28 U.S.C. § 157, the United States Bankruptcy Court for the Southern District of New York, or any court having competent jurisdiction to enter the Confirmation Order.

1.8 “Bankruptcy Relief Date” means August 9, 2010, the date an order for relief was entered by the Bankruptcy Court in the Debtor’s Case.

1.9 “Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, the Official Bankruptcy Forms, the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Southern District of New York, and the Local Rules of the Bankruptcy Court, as applicable to the Cases or proceedings therein, as the case may be.

1.10 “Bankruptcy Schedules” means the schedules of assets and liabilities, lists of executory contracts and unexpired leases, statements of financial affairs, and related information filed by the Debtor pursuant to Bankruptcy Rule 1007 on August 24, 2010 (Docket No. 11), as the same may be amended or supplemented from time to time.

1.11 “Bar Date Order” means the *Order Establishing Deadlines and Procedures for Filing Proofs of Claim and Approving the Form and Manner of Notice Thereof* dated November 5, 2010 (Docket No. 58).

1.12 “Business Day” means any day, excluding Saturdays, Sundays, or “legal holidays” (as referenced in Bankruptcy Rule 9006(a)), on which commercial banks are open for business in New York, New York.

1.13 “Case” means the Debtor’s chapter 11 case administered under the Debtor’s case number.

1.14 “**Cash**” means legal tender of the United States of America and equivalents thereof.

1.15 “**Cause of Action**” or “**Causes of Action**” shall have the broadest possible meaning and shall include, without limitation, all of the Debtor’s and its Estate’s rights (including, without limitation, rights of setoff, counterclaim, or recoupment and Avoidance Actions, claims, counterclaims, defenses, actions, demands, causes of action, damages, special, indirect, or consequential damages, punitive damages, debts, charges, attorneys’ fees and costs, arbitration fees and costs, forfeitures, and liens), whether arising before or after the Petition Date, whether known or unknown, whether in express or implied contract, tort, arising at law or in equity, or arising under or by virtue of any statute or regulation enacted by any governmental unit (as such term is defined in § 101(27) of the Bankruptcy Code).

1.16 “**Claim**” means a claim against the Debtor as defined by §101(5) of the Bankruptcy Code.

1.17 “**Claims Bar Date**” means **December 15, 2010** for General Unsecured Claims and **February 7, 2011** for Governmental Claims, as set forth in the Bar Date Order, and any other date established in the Cases for the filing of Proofs of Claim.

1.18 “**Claim Objection**” means any objection to a Proof of Claim Filed by the Debtor or Committee (prior to the Effective Date) or the FKF Trustee (following the Effective Date).

1.19 “**Claims Objection Deadline**” means the deadline established by the Bankruptcy Court for the FKF Trustee to File an objection, or objections, to Claims and serve such objection(s) upon the Holders of such Disputed Claims. Unless another date is established in the Confirmation Order, the Claims Objection Deadline shall be the date that is the one year anniversary of the Effective Date, provided, however, that upon motion of the FKF Trustee, the Bankruptcy Court may extend the Claims Objection Deadline.

1.20 “**Class**” means a category of Holders of Claims as described in Article II of this Plan.

1.21 “**Committee**” means the Official Committee of Unsecured Creditors of FKF 3, LLC appointed pursuant to § 1102 of the Bankruptcy Code.

1.22 “**Confirmation**” means confirmation of this Plan by the Bankruptcy Court pursuant to § 1129 of the Bankruptcy Code.

1.23 “**Confirmation Date**” means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order on the docket in the Case.

1.24 “**Confirmation Hearing**” means any hearing or hearings conducted by the Bankruptcy Court, pursuant to § 1128 of the Bankruptcy Code, to consider Confirmation of the Plan.

1.25 “Confirmation Order” means the Final Order of the Bankruptcy Court confirming the Plan pursuant to § 1129 of the Bankruptcy Code.

1.26 “Creditor” means a Holder of a Claim against the Debtor.

1.27 “Debtor” means FKF 3, LLC.

1.28 “Disclosure Statement” means the written Disclosure Statement for this First Amended Plan of Liquidation approved in accordance with § 1125 of the Bankruptcy Code and Rule 3018 of the Bankruptcy Rules.

1.29 “Disclosure Statement Order” means the Order, dated February 10, 2011, Approving the Disclosure Statement entered by the Bankruptcy Court.

1.30 “Disputed” means, with respect to any Claim that has not been Allowed by a Final Order, as to which the Debtor, the Committee or the FKF Trustee has timely Filed a Claim Objection or request for estimation in accordance with the Bankruptcy Code and the Bankruptcy Rules, or any Claim otherwise challenged by the Debtor, the FKF Trustee or a party in interest in accordance with applicable law.

1.31 “Distribution” means a payment from FKF Trust Assets made by the FKF Trustee to the Holders of Allowed Claims pursuant to the Plan or a Final Order of the Bankruptcy Court.

1.32 “Distribution Date” means the date on which a Distribution is made under the Plan.

1.33 “District Court” means the United States District Court for the Southern District of New York.

1.34 “Effective Date” means the first Business Day on which all conditions precedent to the effectiveness of the Plan have been satisfied or waived as provided in Section 6.5 of the Plan.

1.35 “Estate” means the estate created pursuant to § 541 of the Bankruptcy Code upon the commencement of this Case.

1.36 “Fee Claim” means a Claim under §§ 328, 330(a), 503, or 1103 of the Bankruptcy Code for (i) payment of reasonable fees and reimbursement of reasonable expenses of a Professional with respect to services rendered in this Case on or prior to the Effective Date and (ii) reimbursement of the reasonable expenses of the members of the Committee incurred in this Case on or prior to the Effective Date, that has, in either instance, been approved by a Final Order.

1.37 “Filed” means filed with the Clerk of the Bankruptcy Court, including electronic filing via the Bankruptcy Court’s CM/ECF system.

1.38 “Final Order” means an order entered by the Bankruptcy Court or other court of competent jurisdiction on its docket as to which (i) the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing are then pending or (ii) in the event that an appeal, writ of certiorari, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court or any other court or adjudicative body has been affirmed by the highest court to which such order was appealed, or certiorari has been denied, or from which reargument or rehearing was sought, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing has expired; provided, however, that no order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure, Rule 9024 of the Bankruptcy Rules, or any similar rule under the Bankruptcy Rules or the Federal Rules of Civil Procedure may be filed with respect to such order.

1.39 “FKF” means FKF 3, LLC.

1.40 “FKF Trust” means the liquidating trust created pursuant to the FKF Trust Agreement for the benefit of the Holders of Allowed Claims.

1.41 “FKF Trust Agreement” means that certain agreement, in substantially the form annexed hereto as Exhibit A, establishing and delineating the terms and conditions of the FKF Trust.

1.42 “FKF Trust Assets” means all Assets of the Debtor on the Effective Date, including, without limitation, all Cash, accounts receivable, Causes of Action (including Avoidance Actions), and rights to or under any Insurance Policies.

1.43 “FKF Trust Beneficiaries” means all Holders of Allowed Claims entitled to Distributions under the Plan.

1.44 “FKF Trust Board” means the board comprised of no more than seven (7) members appointed initially by the Committee in accordance with the FKF Trust Agreement, vested with the powers and responsibilities set forth therein.

1.45 “FKF Trust Expenses” means any and all actual and necessary costs and expenses incurred by the FKF Trustee after the Effective Date in connection with winding-up the affairs of the Debtor and the administration hereof, including, without limitation, (i) attorneys’, accounting, expert witness, and collection fees in connection with the investigation, filing, liquidation, settlement, or withdrawal of objections to Claims and the Preserved Causes of Action; (ii) all costs related to the performance of the FKF Trustee’s duties set forth in the Plan; (iii) U.S. Trustee Fees; and (iv) the reasonable expenses of the FKF Trustee and the FKF Trust Board.

1.46 “FKF Trustee” means Gregory Messer, the Person designated by the Committee who is responsible for implementing the functions of the FKF Trust.

1.47 “General Unsecured Claim” means any Claim against the Debtor other than a Secured Claim, an Administrative Expense Claim, a Fee Claim, a Priority Tax Claim, a Non-Priority Tax Claim or a Convenience Claim.

1.48 “Government Claim” means any Claim filed by a “governmental unit” as defined in § 101(27) of the Bankruptcy Code.

1.49 “Holder” means any Person holding a Claim against or Interest in the Debtor’s Estate.

1.50 “Impaired” shall have the meaning set forth in § 1124 of the Bankruptcy Code.

1.51 “Insider” shall have the meaning set forth in §101(31) of the Bankruptcy Code and shall specifically include, but is not limited to, Burton Dorfman, Mitchell Klein and John Magee.

1.52 “Insurance Payment” means a payment received from an insurance company by a Holder of an Allowed Claim in respect of such Claim, under a contract of or other right to insurance under which the Holder may assert any rights as an insured party, additional named insured party, loss payee, or otherwise.

1.53 “Insurance Policy” means any contract of or other rights to insurance under which the Debtor has, may have or assert any direct rights as an insured party, additional named insured party, loss payee, or otherwise.

1.54 “Interest” means the legal, equitable, contractual, or other rights of a Holder of any existing or prospective equity interest in the Debtor (solely in their capacity as Holders thereof), including the rights of any Person to purchase or demand the issuance of any Interest, including (i) conversion, exchange, voting, participation, and dividend rights; (ii) liquidation preferences; (iii) stock options, warrants, and put rights; and (iv) share-appreciation rights; or (v) any other stock, membership, or other equity right pertaining or in any way relating to the Debtor.

1.55 “Lien” shall have the meaning set forth in § 101(37) of the Bankruptcy Code.

1.56 “Non-Tax Priority Claim” means a Claim that is accorded priority in right of payment pursuant to § 507(a) of the Bankruptcy Code and that is not an Administrative Expense Claim or a Priority Tax Claim.

1.57 “Other Priority Claim” means a Claim accorded priority in right of payment under § 507(a) of the Bankruptcy Code that is not a Priority Tax Claim.

1.58 “Person” means any individual or entity of any nature whatsoever, specifically including, without limitation, an individual, firm, company, corporation, partnership, trust, governmental unit, joint venture, association, joint stock company, limited liability company, Estates, unincorporated organization, or other entity.

1.59 “Petition Date” means July 19, 2010, the date on which an involuntary Petition for relief under Chapter 11 of the Bankruptcy Code was filed against the Debtor.

1.60 “Plan” means this *Joint Plan of Liquidation* for the Debtor, as it may be amended, modified, or supplemented from time to time.

1.61 “Plan Documents” means all documents, forms, lists, and agreements contemplated under the Plan to effectuate the terms hereof, including but not limited to the FKF Trust Agreement.

1.62 “Preserved Causes of Action” means all Causes of Action of the Debtor or its estate that are not expressly released under the terms of this Plan, as more particularly described in Section 6.4(d) of this Plan.

1.63 “Priority Tax Claim” means a Government Claim of the kind specified in §§ 502(i) and 507(a)(8) of the Bankruptcy Code.

1.64 “Professionals” means those Persons in this Case who are (i) employed pursuant to an order of the Bankruptcy Court in accordance with §§ 327 or 1103 of the Bankruptcy Code and to be compensated for services rendered prior to the Effective Date, pursuant to §§ 327, 328, 329, 330 or 331 of the Bankruptcy Code or (ii) for which compensation and reimbursement has been allowed by the Bankruptcy Court pursuant to § 503(b)(4) of the Bankruptcy Code.

1.65 “Proof of Claim” means a written statement that (i) sets forth a Claim and (ii) conforms substantially to the Bankruptcy Rules and the Bar Date Order.

1.66 “Pro Rata” means, at any time, a proportion calculated as a ratio of the amount of an Allowed Claim in a Class to (i) the amount of all Allowed claims in such Class of Claims or (ii) prior to allowance or disallowance of Claims in a Class, the sum of all Allowed Claims and Disputed Claims in such Class. For purposes of this calculation, the amount of a Disputed Claim will equal the lesser of (x) its face amount and (y) the amount estimated as Allowed.

1.67 “Record Date” means the Confirmation Date.

1.68 “Secured Claim” means a Claim that is (i) secured by a Lien on Assets, which Lien is valid, perfected and enforceable under applicable law by reason of a Final Order, limited to the extent of the Lien on such Assets; or (ii) subject to setoff, under § 553 of the Bankruptcy Code, against any Assets, to the extent of the amount subject to setoff, as applicable, as determined pursuant to § 506(a) of the Bankruptcy Code; or (iii) Allowed under the Plan as a Secured Claims.

1.69 “Surplus Distribution” shall have the meaning set forth in section 7.10 hereof.

1.70 “Third Party Payment” means a payment received by a Holder of an Allowed Claim from any Person other than the FKF Trustee in respect of such Allowed Claim. For the avoidance of doubt, an Insurance Payment shall not constitute a Third Party Payment.

1.71 “Unimpaired” means any Claim that is not Impaired within the meaning of § 1124 of the Bankruptcy Code.

1.72 “U.S. Trustee Fees” means fees payable pursuant to 28 U.S.C. § 1930 and any interest accruing thereon pursuant to 31 U.S.C. § 3717.

1.73 “Voting Deadline” means the deadline or deadlines established by the Bankruptcy Court in the Disclosure Statement Order for Creditors to return ballots accepting or rejecting the Plan.

ARTICLE II.

CLASSIFICATION OF CLAIMS AND INTERESTS

2.1 Pursuant to § 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims are not classified in the Plan. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of such Claim or Interest falls within the description of such other Classes. A Claim is also placed in a particular Class for the purpose of Distributions pursuant to the Plan, but only to the extent that such Claim is Allowed in that Class and such Claim has not been paid, discharged, released, or otherwise settled prior to the Effective Date.

2.2 Unclassified Claims. Except for Priority Tax Claims, which are Impaired only to the extent permitted by the Bankruptcy Code, unclassified claims (“Unclassified Claims”) are Unimpaired by the Plan. Each Holder of an Unclassified Claim is conclusively presumed to have accepted the Plan and therefore, is not entitled to vote to accept or reject the Plan. Priority Tax Claims and Administrative Expense Claims are the unclassified Claims.

2.3 Unimpaired Class of Claims. Each Holder of an Unimpaired Claim is deemed to have accepted the Plan and, therefore, is not entitled to vote to accept or reject the Plan. Class 1 consists of all Class 1 (Non-Tax Priority) and Class 2 (Secured) Claims. The Holders of Class 1 and Class 2 Claims are Unimpaired and are deemed to accept the Plan.

2.4 Impaired Classes of Claims. Each Holder of a Claim placed in the Class 3 (set forth below) is Impaired under the Plan and entitled to vote to accept or reject the Plan.

(a) Class 3 (General Unsecured Claims). Class 3 consists of all Claims that are not Secured Claims, Priority Tax Claims, Non-Priority Tax Claims, or Other Priority Claims.

2.5 Classes of Interests.

(a) Class 4 (Interests). Class 4 consists of Interests in the Debtor. The Holders of Class 4 Interests shall neither receive nor retain any property under the Plan. Interest Holders are deemed to have rejected the Plan.

ARTICLE III.
TREATMENT OF UNCLASSIFIED CLAIMS

3.1 Administrative Expense Claims. The legal and equitable rights of the Holders of Administrative Expense Claims are unaltered by the Plan. As soon as reasonably practicable after the later of: (i) the Effective Date; or (ii) the date on which an Administrative Expense Claim becomes an Allowed Administrative Expense Claim, the FKF Trustee shall pay to each Holder of an Allowed Administrative Expense Claim, from the FKF Trust Assets, in full satisfaction, settlement, and release of and in exchange for such Allowed Administrative Expense Claim: (i) Cash equal to the amount of such Allowed Administrative Expense Claim; or (ii) such other treatment as to which the FKF Trustee and the Holder of such Allowed Administrative Expense Claim shall have agreed upon.

3.2 Bar Dates for Administrative Expense Claims. The Confirmation Order will establish a deadline (the “Administrative Expense Claims Bar Date”) for filing Administrative Expense Claims, except for Claims of the kind specified in section 3.3 hereof. The Administrative Expense Claims Bar Date will be thirty (30) days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Holders of Administrative Expense Claims that are subject to the Administrative Expense Claims Bar Date shall submit requests for payment on or before such Administrative Expense Claims Bar Date or forever be barred from submitting any request on account of such Administrative Expense Claims.

3.3 Applications for Fee Claims. All applications by Professionals in respect of Fee Claims shall be filed with the Bankruptcy Court within sixty (60) days after the Effective Date. Any such application not filed within sixty (60) days after the Effective Date shall be deemed waived and the Holder of such Claim shall be forever barred from receiving payment on account thereof.

3.4 U.S. Trustee Fees. All unpaid U.S. Trustee Fees incurred before the Effective Date shall be paid by the Debtor in full on the Effective Date. In addition, all U.S. Trustee Fees incurred after the Effective Date shall be timely paid from FKF Trust Assets by the FKF Trustee in the ordinary course as such U.S. Trustee Fees become due and payable, until the entry of a final decree. Unpaid U.S. Trustee Fees shall accrue interest that is an FKF Trust Expense. The Administrative Expense Claims Bar Date shall not apply to U.S. Trustee Fees. No later than the twentieth (20th) day of each month until entry of a final decree, the FKF Trustee shall file with the Bankruptcy Court a Post-Confirmation Monthly Operating Report in the form and substance established by the United States Trustee.

3.5 Priority Tax Claims. On the later of (i) the Effective Date, (ii) the date a Priority Tax Claim becomes an Allowed Priority Tax Claim, or (iii) when the FKF Trust has sufficient assets to pay an Allowed Priority Tax Claim, such Holder of an Allowed Priority Tax Claim shall be entitled to receive, in full satisfaction, settlement, release, and discharge of and in exchange for such Priority Tax Claim, either (i) Cash equal to the Allowed amount of such Priority Tax Claim, (ii) equal Cash payments during a period not to exceed five (5) years after the Bankruptcy Relief Date, totaling the aggregate amount of such Claim, plus simple interest at the rate required by applicable law on any outstanding balance from the Effective Date, or such lesser rate as is agreed to by the Holder, or (iii) such other treatment as is agreed to by the Holder

of an Allowed Priority Tax Claim and the FKF Trustee. Unless agreed to by the Holder of an Allowed Priority Tax Claim, payment of such Claim shall not occur later than five (5) years after the Bankruptcy Relief Date.

ARTICLE IV.

TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS

4.1 Class 1: Non-Tax Priority Claims. The legal and equitable rights of the Holders of Allowed Non-Tax Priority Claims are unaltered by the Plan. As soon as reasonably practicable after the latest of (i) the Effective Date; (ii) the date on which such Non-Tax Priority Claim becomes an Allowed Non-Tax Priority Claim; (iii) the date at which time the FKF Trustee has sufficient funds, after applicable reserves, to pay the Allowed Non-Tax Priority Claim, or (iv) the date on which such Non-Tax Priority Claim becomes due and owing in the ordinary course of the Debtor's business, the FKF Trustee shall pay from FKF Trust Assets to each Holder of an Allowed Non-Tax Priority Claim, in full satisfaction, settlement and release of and in exchange for such Allowed Non-Tax Priority Claim, (a) Cash equal to the amount of such Allowed Non-Tax Priority Claim; or (b) such other treatment which the FKF Trustee and the Holder of such Allowed Non-Tax Priority Claim have agreed upon in writing.

4.2 Class 2: Secured Claims: As soon as reasonably practicable after the latest of (i) the Effective Date; (ii) the date on which such Secured Claim becomes an Allowed Secured Claim; (iii) the date at which time the FKF Trustee has sufficient funds, after applicable reserves, to pay the Allowed Secured Claim, or (iv) the date on which such Secured Claim becomes due and owing in the ordinary course of the Debtor's business, the Holder of an Allowed Secured Claim shall receive, in full and final satisfaction, settlement, and release of and in exchange for such Allowed Secured Claim, at the discretion of the FKF Trustee, (a) Cash equal to the Allowed amount of such Secured Claim; (b) the property securing such Claim; or (c) such other treatment to which the Holder and the FKF Trustee agree to in writing.

4.3 Class 3 (General Unsecured Claims). As soon as reasonably practicable after the FKF Trust has pursued, reduced to money, or abandoned, all of its known assets and claims, the FKF Trustee shall pay from FKF Trust Assets to each Holder of an Allowed General Unsecured Claim, in full satisfaction, settlement, and release of and in exchange for such Allowed General Unsecured Claim against the FKF Trust, such Holder's Pro Rata share of the FKF Trust Assets after satisfaction of senior claims and applicable reserves. Distributions to the Holders of Allowed General Unsecured Claims shall be made on the later of: (i) the initial Distribution Date as defined in section 7.2 herein, or (ii) the date on which such General Unsecured Claim becomes an Allowed General Unsecured Claim. In the event that the FKF Trust is able to satisfy all Allowed General Unsecured Claims in full, Holders of such claims shall be entitled to the payment of interest on their claims accruing on and after the Petition Date at the rate or amount provided for in any applicable contract between such Holder and the Debtor, or if no such contract exists, at the then-current Applicable Federal Rate. To the extent reasonably practicable and provided there are sufficient funds net of applicable reserves, Class 3 Claimants shall receive interim distributions from the FKF Trust at the discretion of the FKF Trust Board.

4.4 Class 4 (Equity Interests). On the Effective Date, Interests in the Debtor shall automatically be extinguished and cancelled. However, in the event that the FKF Trust has sufficient assets to pay all Allowed Claims in full, plus any and all interest due or accruing on and after the Petition Date in accordance with the Plan, then the FKF Trust shall disburse any remaining assets, net of applicable reserves, including costs for administration, to the Holders of Interests.

4.5 Reports of Third Party Payments. Within five (5) Business Days of the receipt of a Third Party Payment, the Holder of an Allowed Claim shall notify the FKF Trustee in writing of (i) the name of the Holder, (ii) the amount of such Holder's Allowed Claim in respect of which such payment was received, (iii) the amount of any payment received or rights of setoff exercised, and (iv) the source of such Third Party Payment.

4.6 Reduction of Allowed Claims. Solely for calculating any Distribution from the FKF Trust under the Plan to the Holder of an Allowed Claim, the amount of such Claim shall be reduced by the amount of any Third Party Payment or Insurance Payment received by such Holder.

4.7 Reservation of Rights. Nothing in the Plan or Confirmation Order shall limit or impact an insurer's right of subrogation, limit or impact the rights of any Person tendering a Third Party Payment in respect of an Allowed Claim to the Holder of such Claim to assert a Claim against the Estate of the FKF Trust or, subject to section 7.16 hereof, impair or otherwise affect the ability of any Holder of an Allowed Claim to assign such Claim to any Person.

ARTICLE V.

ACCEPTANCE OR REJECTION OF THE PLAN

5.1 Classes Entitled to Vote. Holders of Claims in Class 3 (General Unsecured Claims) are Impaired by the Plan and shall be entitled to vote to accept or reject the Plan.

5.2 Acceptance by Impaired Classes of Claims. An Impaired Class of Claims shall have accepted the Plan if: (i) the Holders, other than any Holder designated under § 1126(e) of the Bankruptcy Code, of at least two-thirds in amount of the Allowed Claims actually voting in such Class have voted to accept the Plan; and (ii) the Holders, other than any Holder designated under § 1126(e) of the Bankruptcy Code, of more than one-half in number of the Allowed Claims actually voting in such Class have voted to accept the Plan.

ARTICLE VI.

MEANS FOR IMPLEMENTATION OF THE PLAN

6.1 Implementation on the Effective Date. Subject to section 6.6 hereof, the Plan shall be implemented on the Effective Date.

6.2 Creation of the FKF Trust. On the Effective Date, the FKF Trust shall be formed pursuant to the Plan and the FKF Trust Agreement, and the FKF Trust Assets shall be transferred to and vest in the FKF Trustee for the benefit of the FKF Trust Beneficiaries pursuant to the terms hereof and FKF Trust Agreement. In the event of any inconsistencies or conflict

between the FKF Trust Agreement and the Plan, the terms and provisions of the FKF Trust Agreement shall control.

6.3 Transfer of FKF Trust Assets. On the Effective Date, all of the Debtor's right, title, and interest in all Assets shall vest in the FKF Trust for the benefit of the FKF Trust Beneficiaries and shall become and be deemed for all purposes to be FKF Trust Assets without any further Bankruptcy Court Order, action, or notice to any Person.

6.4 Plan is Motion to Transfer FKF Trust Assets. The Plan shall be considered a motion pursuant to §§ 105, 363(b) and (f), and 365 of the Bankruptcy Code to: transfer to, and vest in, the FKF Trustee, for the benefit of the FKF Trust Beneficiaries, any and all Assets as of the Effective Date. The transfers and vesting of the Assets in the FKF Trustee for the benefit of the FKF Trust Beneficiaries shall be free and clear of all Liens and Claims except as set forth in the Plan, and the Confirmation Order shall so provide. Any objections to such transfer, assignment, and vesting must be made as an objection to Confirmation hereof to be heard at the Confirmation Hearing. Notwithstanding the foregoing, after the Effective Date, the FKF Trustee may present an Order or Orders to the Bankruptcy Court, suitable for filing in the records of every county or governmental agency where any Assets of the Debtor are or were located, to designate all Liens, Claims, encumbrances, or other interests which appear of record and from which the property is being transferred, assigned, and vested free and clear.

(a) Execution of the FKF Trust Agreement. The Debtor and the FKF Trustee shall execute the FKF Trust Agreement on the Effective Date and shall take all other steps necessary to establish the FKF Trust.

(b) Appointment of FKF Trustee. The Committee has selected Gregory Messer as the FKF Trustee. The FKF Trustee shall, in accordance with the FKF Trust Agreement, serve in such capacity in the discretion of the FKF Trust Board through the earlier of (i) the date the FKF Trust is dissolved and (ii) the date such FKF Trustee resigns, is terminated or is otherwise unable to serve; provided, however, that, in the event that the FKF Trustee resigns, is terminated or is unable to serve, then the FKF Trust Board shall have the right to select a successor who shall be appointed as the FKF Trustee and shall serve in such capacity until the FKF Trust is dissolved or until such FKF Trustee resigns, is replaced or is terminated and no successor is appointed.

(c) Bonding of FKF Trustee. The FKF Trustee, and any successor FKF Trustee appointed pursuant to the FKF Trust Agreement, shall, before the Effective Date or upon being selected as a successor FKF Trustee, as the case may be, obtain a bond or surety for the performance of his/her duties. Notice of the effectiveness of such bond or surety shall be provided to the U.S. Trustee and FKF Trust Board, and shall be a condition precedent to the Effective Date of the Plan. Furthermore, the FKF Trustee shall notify the Bankruptcy Court and the U.S. Trustee in writing before terminating any such bond or surety. The FKF Trustee shall increase the bond routinely as necessary to ensure that the amount of the bond is at least 110% of the amount of any assets in the FKF Trust. The FKF Trust Board shall immediately inform the United States Trustee and the Bankruptcy Court in writing of any changes to the identity of the FKF Trustee.

(d) Causes of Action Assigned to FKF Trustee; Litigation. Except as provided in, and unless expressly waived, relinquished, exculpated, released, compromised or settled in the Plan, the Confirmation Order or in any contract, instrument, release or other agreement entered into or delivered in connection with the Plan: (a) the FKF Trustee shall exclusively retain and may prosecute and enforce, and the Debtor expressly reserves and preserves for these purposes, in accordance with sections 1123(a)(5)(B) and 1123(b)(3) of the Bankruptcy Code, any Claims, demands, rights and Causes of Action that the Debtor or its estate may hold against any person, including, but not limited to, (i) any action, adversary proceeding or contested matter that has been commenced, or action, Cause of Action or claim that may be commenced, under sections 510, 542, 544, 545, 547, 548, 549, 550, 552(b) and 553 of the Bankruptcy Code or equivalent provisions of applicable non-bankruptcy law, (ii) all actions, Causes of Action, suits or claims of the Debtor or its estate arising under any theory of law or equity, including, without limitation, for breach of contract, breach of fiduciary duty, negligence, tort or otherwise, with respect to the former officers and members of the Debtor, and (iii) any other actions, Causes of Action, suits or claims of the Debtor or its estate against any other person or entity under any theory in law or equity (collectively, the “Preserved Causes of Action”); and (b) accordingly, no preclusion doctrine, including, without limitation, the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), claim splitting or laches shall apply to any of the Preserved Causes of Action by virtue of or in connection with the confirmation, consummation or effectiveness of the Plan.

From and after the Effective Date, the FKF Trustee may commence, litigate, and settle any Causes of Action or rights to payment or claims that belong to the Debtor or its Estate, whether pending on the Effective Date or instituted by the FKF Trustee after the Effective Date, except as otherwise expressly provided in the Plan and the FKF Trust Agreement. Other than as set forth in the Plan, no other Person, unless designated by the FKF Trustee, may pursue such Preserved Causes of Action after the Effective Date; provided, however, that for the avoidance of doubt, nothing in the Plan or the FKF Trust Agreement shall waive, limit, or otherwise impair any Person’s direct right of action, if any, against any insurer, including the Debtor’s insurance providers, companies, or carriers. Upon the Effective Date, the FKF Trustee shall be deemed substituted as plaintiff, defendant, or in any other capacity for the Debtor or the Committee in all actions pending before the Bankruptcy Court or any other court or tribunal that relates to a Preserved Cause of Action without the need for filing any motion for such relief. In connection with the above-described Preserved Causes of Action, any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) shall also exist for the benefit of the FKF Trust Beneficiaries and shall vest in the FKF Trustee and its representatives, and shall also be preserved for and as to the Debtor. The FKF Trustee is authorized to take all necessary actions to benefit from such privileges. The Bankruptcy Court shall retain jurisdiction to adjudicate any and all Preserved Causes of Action and approve any such settlement, whether commenced prior to or after confirmation of the Plan and the Effective Date.

(e) Expenses of FKF Trustee. Subject to the discretion of the FKF Trust Board, the FKF Trustee shall be permitted to retain attorneys, advisors and other professionals to assist in the administration of the FKF Trust (including the Professionals for the Debtor or the

Committee). Reasonable fees and expenses incurred by the FKF Trustee and his or her professionals shall be paid from the FKF Trust Assets.

The FKF Trustee and any and all professionals retained after the Effective Date, as well as the out-of-pocket non-professional expenses of the FKF Trust Board, will be paid for their services and reimbursed for their expenses subject to the following terms: On or before the twenty-fifth (25th) day of each month following the month for which compensation is sought, the FKF Trustee and all professionals retained after the Effective Date will file with the Bankruptcy Court a monthly statement describing with reasonable particularity the time expended and the nature, extent and value of the services provided during the period covered by such request. The members of the FKF Trust Board may similarly file documented requests for out-of-pocket non-professional expenses. Any party in interest shall have until the fifteenth (15th) calendar day after the submission of the statement to review it. If no objections are filed, the FKF Trustee shall promptly pay 100% of the fees and 100% of the disbursement identified in each statement. In the event that any party in interest determines that the compensation or reimbursement sought in a particular statement is inappropriate or unreasonable, or that any number or calculation is incorrect, that party shall, on or before the fifteenth (15th) calendar day after the submission of the statement is objected to, a "Notice of Objection to the Monthly Fee Statement" setting forth the precise nature of the objection and the amount in issue. Thereafter, the objecting party and the Professional or individual whose statement is objected to shall meet or confer to attempt to reach an agreement regarding the correct payment to be made, and if no agreement is reached with regard to such objection, the FKF Trustee shall not pay the disputed amount until further order of the Bankruptcy Court. The FKF Trustee will promptly pay any portion of the fees and disbursements requested that are not the subject of a Notice of Objection, as well as any adjusted fees and disbursements that have been agreed to by the objecting party and the Professional or the individual.

(f) FKF Trust Board. There shall be no more than seven (7) members of the FKF Trust Board. The initial FKF Trust Board shall consist of:

- 1) Kevin Romano
- 2) Kathryn Bareket
- 3) Ken Beck
- 4) Elias Josephs
- 5) Walter Klauser
- 6) Rabbi Ely Rosenzweig; and
- 7) Uri Sasson

The simultaneous appointment of a Person to both the Committee and the FKF Trust Board shall be permissible.

Members of the FKF Trust Board shall be entitled to reimbursement for reasonable, out-of-pocket costs, incurred during the course of their service. Members of the FKF Trust Board will not be entitled to reimbursement for any amounts incurred for the retention of their own attorneys or advisors.

(g) Dissolution of the FKF Trust. The FKF Trust shall be dissolved no later than three (3) years from the Effective Date unless the Bankruptcy Court, upon a motion Filed before the expiration of such three-year period (as such period may be extended by the Bankruptcy Court as set forth in this Plan), determines that a fixed-period extension is necessary to facilitate or complete the recovery and liquidation of the FKF Trust Assets. The timely Filing of a motion to extend the term of the FKF Trust shall automatically extend the term of the FKF Trust pending the entry of an order by the Bankruptcy Court granting or denying such motion. Any extension of the term of the FKF Trust, together with any prior extensions thereof, shall not exceed two years without a favorable letter ruling from the Internal Revenue Service or an opinion of counsel that a further extension will not adversely affect the status of the FKF Trust as a liquidating trust for federal income tax purposes.

(h) Liability, Indemnification. None of the FKF Trustee, the FKF Trust Board, their respective members, designees, or professionals, or any duly authorized agent or representative of the FKF Trust, the FKF Trustee, or the FKF Trust Board, or their respective employees or members, shall be liable for the act or omission of any other member, designee, agent, or representative of such FKF Trustee or FKF Trust Board, nor shall FKF Trustee, FKF Trust Board, or any member of the FKF Trust Board be liable for any act or omission taken or not taken in its capacity as FKF Trustee, FKF Trust Board, or member of such Board, respectively, except for specific acts or omissions resulting from such FKF Trustee's, Board's or such member's willful misconduct, gross negligence, fraud, actions constituting a willful violation of Federal securities laws or the Internal Revenue Code, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, or *ultra vires* acts. Each of the FKF Trustee or the FKF Trust Board may, in connection with the performance of their respective functions, and in their sole and absolute discretion, consult with their attorneys, accountants, financial advisors, and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinion rendered by such entities, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, neither the FKF Trustee nor the FKF Trust Board shall be under any obligation to consult with its attorneys, accountants, financial advisors, and agents, and their determination not to do so shall not result in the imposition of liability on the FKF Trustee or the FKF Trust Board or their respective members or designees, unless such determination is based on willful misconduct, gross negligence, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, or *ultra vires* acts. The FKF Trust shall indemnify and hold harmless the FKF Trustee, the FKF Trust board and any duly authorized member, agent, or designee thereof (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs, and expenses (including, without limitation, reasonable attorney's fees, disbursements, and related expenses), which such entities may incur or to which such entities may become subject in connection with any action, suit, proceeding, or investigation brought by or threatened against such entities arising out of or due to their acts or omissions or consequences of such acts or omissions, with respect to the implementation or administration of the FKF Trust or the Plan or the discharge of their duties thereunder; provided,

however, that no such indemnification will be provided to such entities for actions or omissions as a result of their willful misconduct, gross negligence, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, or *ultra vires* acts.

(i) **Full and Final Satisfaction Against FKF Trust.** On and after the Effective Date, the FKF Trust shall have no liability on account of any Claims or Interests except as set forth in this Plan and in the FKF Trust Agreement. All payments and all Distributions made by the FKF Trustee under the Plan shall be in full and final satisfaction, settlement and release of and in exchange for all Claims against the FKF Trust; provided, however, that nothing contained in this section 6.4, or in any other provision of this Plan, shall be deemed to constitute or result in a discharge of the Debtor under §1141(d) of the Bankruptcy Code.

6.5 Conditions Precedent to the Effective Date. Each of the following events shall occur on or before the Effective Date:

(a) the Confirmation Order, in a form and substance reasonably acceptable to the Debtor and Committee and which shall include one or more findings that (i) the Plan was proposed in good faith and (ii) the Plan satisfies the applicable provisions of the Bankruptcy Code as set forth in §1125(e) of the Bankruptcy Code, shall have been entered by the Bankruptcy Court and shall be a Final Order;

(b) the Bankruptcy Court shall have determined that the FKF Trustee is duly authorized to take the actions contemplated in the Plan and the FKF Trust Agreement, which approval and authorization may be set forth in the Confirmation Order;

(c) the FKF Trust Agreement shall be executed and the FKF Trust shall be established and become effective;

(d) all documents, instruments, and agreements provided under, or necessary to implement, the Plan shall have been executed and delivered by the applicable parties;

(e) the FKF Trustee shall obtain a bond or surety for the performance of his/her duties; and

(f) all other documents required to be Filed with the Plan, shall have been duly and validly executed and delivered by the parties thereto (or provisions therefor shall have been made) and all conditions to their effectiveness shall have been satisfied or waived.

6.6 Waiver of Conditions Precedent to the Effective Date. The Debtor, in consultation with and with the consent of the Committee, may waive any or all of the conditions precedent to the Effective Date set forth in section 6.5 of the Plan, whereupon the Effective Date shall occur without further action by any Person. In the event the Effective Date does not occur within thirty (30) days of the Confirmation Date, pursuant to section 11.9 of the Plan, the Debtor shall file with the Bankruptcy Court a *Notice of Failure to Achieve Effective Date* and shall request a status conference with the Bankruptcy Court. The foregoing notice shall be served upon the U.S. Trustee, and all parties requesting notice and service of pleadings pursuant to Bankruptcy Rule 2002.

6.7 Cancellation of Instruments and Stock. On the Effective Date: (i) all Interests in the Debtor; and (ii) any instrument evidencing or creating any indebtedness or obligation of the Debtor, except such instruments that are reinstated (or amended and restated) under the Plan, shall automatically be cancelled and extinguished. Additionally, as of the Effective Date, all Interests in the Debtor, and any and all warrants, options, rights or interests with respect to any existing or prospective equity Interest in the Debtor that have been authorized to be issued but that have not been issued automatically shall be deemed cancelled and extinguished without any further action of any party.

6.8 Preservation of Causes of Action; Settlement of Litigation Claims.

(a) Preservation of Rights of Action. On the Effective Date, the FKF Trustee shall be vested with authority and standing to prosecute the Preserved Causes of Action and to compromise, settle or litigate the Causes of Action. The Professionals retained by the Debtor, the Committee and individual Committee members, the FKF Trustee, and Day Seckler LLP, the manager of the Debtor, shall have no liability for pursuing or failing to pursue any Causes of Action, unless such failure constitutes fraud, willful misconduct, gross negligence, malpractice, criminal conduct, or *ultra vires* acts.

(b) Settlement of Litigation Claims and Disputed Claims. At any time prior to the Effective Date, the Debtor, with the consent of the Committee, may settle some or all of the Causes of Action or Disputed Claims subject to obtaining any necessary Bankruptcy Court approval. The net proceeds (after deducting the reasonable attorneys fees and costs) from the settlement of a Preserved Cause of Action shall constitute a FKF Trust Asset that shall be transferred to the FKF Trust on or after the Effective Date.

The FKF Trustee's rights to settle or abandon any Causes of Action, and consensually resolve any objections to Claims, shall be subject to the following procedures:

1) De minimis Causes of Action – The FKF Trustee may settle any Causes of Action or resolve any objection to Claims where the gross amount being compromised is less than \$50,000.00, without any notice or approval of the Bankruptcy Court.

2) All other Causes of Action – If the FKF Trustee desires to settle any Causes of Action that are not de minimis, he must follow the following procedures:

a. File a statement of intent to settle a controversy with the Bankruptcy Court setting forth: (i) a description of the claims or Causes of Action being compromised; (ii) a summary of the terms of the settlement, including any monetary exchange and any releases being proposed; (iii) the identity of all counter-parties and release parties with respect to the proposed compromise; and (iv) the time and method for objecting to the proposed settlement, which shall not be less than twenty (20) days from the date the statement is filed with the Bankruptcy Court as set forth below (the “Settlement Statement”);

b. The Settlement Statement shall be served upon all parties who have filed notices of appearance in the Debtor's case, or otherwise requested from the FKF

Trustee notice of any Settlement Statements, in any manner for service provided for under the Bankruptcy Rules and Local Rules of the Bankruptcy Court;

c. Parties may object to the proposals set forth in any Settlement Statement by filing with the Bankruptcy Court a written objection setting forth the factual and legal grounds for the objection;

d. The FKF Trustee shall endeavor to resolve any objections and provide any information reasonably requested to any objecting party with respect to any proposed settlement;

e. In the event that objections cannot be resolved, the FKF Trustee and objecting party shall schedule with the Bankruptcy Court a hearing on the proposed settlement and objection;

f. If no objections are timely filed to any Settlement Statement, then the compromise proposed therein shall be deemed approved as of the twenty-first (21st) day following the filing of the Settlement Statement with the Bankruptcy Court, without the need for further order of the court, provided, however, that the FKF Trustee may submit and request entry of an order if reasonably required by the settling party as a condition of the settlement; and

g. If exigencies exist with respect to any proposed settlement, the FKF Trustee shall have the right to apply to the Bankruptcy Court for expedited consideration of any proposed settlement.

3) The foregoing procedures shall apply to any proposed abandonment of Causes of Action.

ARTICLE VII.

PROVISIONS GOVERNING DISTRIBUTIONS AND RESERVES

7.1 Distributions for Claims Allowed as of the Effective Date. Except as otherwise ordered by the Bankruptcy Court in a Final Order, Distributions shall be made by the FKF Trustee pursuant to this Plan. Distributions on account of any Claim that first becomes an Allowed Claim after the Effective Date shall be made on the First Distribution Date after such Claim becomes an Allowed Claim. The FKF Trustee may withhold from the FKF Trust Assets and each Distribution of FKF Trust Assets an amount of Cash reasonably estimated to be necessary to pay the expenses of the FKF Trustee in administering the FKF Trust, Allowed Administrative Expense Claims, and any disputed claims pertaining to Class 3. The FKF Trustee may also ensure that no Distribution on account of any Allowed Claim exceeds 100% of the Allowed amount of such Claim, unless the FKF Trust has sufficient assets to pay all Allowed Claims in full, in which case the holders of Allowed Claims would be entitled to interest accrued on and after the Petition Date at the rate or amount provided for in any applicable contract between such Holder and the Debtor, or if no such contract or agreement exists, at the then-current Applicable Federal Rate.

7.2 Initial Distribution. The Initial Distribution Date shall be a Business Day that is not more than thirty (30) days following the date on which both (i) the first Claim is Allowed, and (ii) the FKF Trust has sufficient assets to make sure distribution. Subsequent Distributions will be made on a periodic basis on account of Claims that become Allowed between the prior Distribution Date and the Subsequent Distribution Date.

7.3 Means of Cash Payment. Cash payments made pursuant to the Plan shall be in U.S. funds, by the means, including by check or wire transfer, determined by the FKF Trustee.

7.4 Delivery of Distribution. Distributions to Holders of Allowed Claims shall be made (i) at the addresses set forth on the Proofs of Claim Filed by such Holders (or at the last known addresses of such Holders if no Proof of Claim is Filed or if the Debtor has been notified of a change of address); (ii) at the addresses set forth in any written notices of address changes delivered to the FKF Trustee; or (iii) if no Proof of Claim has been Filed and the FKF Trustee has not received a written notice of a change of address, at the addresses reflected in the Bankruptcy Schedules, if any.

7.5 Prosecution of Objections to Claims. As soon as reasonably practicable, but in no event later than the Claims Objection Deadline (unless extended, after notice to those creditors who requested notice in accordance with Bankruptcy Rule 2002, by an Order of the Bankruptcy Court), the FKF Trustee shall File objections and serve such objections upon the Holders of each of the Disputed Claims. Nothing contained in this Plan shall limit the FKF Trustee's right to object to Claims, if any, Filed or amended after the Claims Objection Deadline. The FKF Trustee shall be authorized to settle and resolve any Disputed Claim by withdrawing or settling such objections thereto without a further order of the Bankruptcy Court.

7.6 Record Date for Distributions. The FKF Trustee will have no obligation to recognize the transfer of, or the sale of any participation in, any Allowed Claim that occurs after the close of business on the Record Date, and will be entitled for all purposes in this Plan to recognize and distribute only to those Holders of Allowed Claims that are Holders of such Claims, or participants therein, as of the close of business on the Record Date. The FKF Trustee shall instead be entitled to recognize and deal for all purposes under this Plan with only those Holders indicated on the official claims register as of the close of business on the Record Date.

7.7 No Distributions Pending Allowance. Notwithstanding any other provision of the Plan, no payments or Distribution by the FKF Trustee shall be made with respect to all or any portion of a Disputed Claim unless and until all avoidance actions with respect to the Holder of such Claim and all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim.

7.8 Establishment and Maintenance of Reserve for Disputed Claim Reserve. Upon the filing of any Claim Objection, the FKF Trustee shall establish a reserve sufficient to pay the proportionate distribution on any claim that is not yet Allowed (the "Disputed Claim Reserve"). The amount of Cash deposited into the Disputed Claim Reserve shall be equal to the percentage of Cash that Holders of Disputed Claims would be entitled under this Plan if such Claims were Allowed Claims in the amount asserted by the Holder of such Disputed Claim or

such lesser amount as authorized by a Final Order. For the purposes of effectuating the provisions of this section 7.8 and the Distributions to Holders of Allowed Claims, the FKF Trustee may, at any time and regardless of whether a Claim Objection to a Disputed Claim has been Filed, request that the Bankruptcy Court estimate, set, fix or liquidate the amount of such Disputed Claim pursuant to §502(c) of the Bankruptcy Code, in which event the amounts so estimated, fixed or liquidated shall be deemed the Allowed amounts of such Claims for purposes of Distribution under this Plan. In lieu of estimating, fixing or liquidating the amount of any Disputed Claim, the Bankruptcy Court may determine the amount to be reserved for such Disputed Claims (singularly or in the aggregate), or such amount may be fixed as to a particular Holder of a Disputed Claim by an agreement in writing by and between the FKF Trustee and the Holder of such Claim.

7.9 Distributions Upon Allowance of Disputed Claims. The Holder of a Disputed Claim that becomes an Allowed Claim subsequent to the Effective Date shall receive a Distribution from the Disputed Claim Reserve as soon as practical following the date on which such Disputed Claim becomes an Allowed Claim. Such Distributions shall be made in accordance with this Plan based upon the Distributions, without any additional interest, that would have been made to each such Holder under this Plan if the Disputed Claim had been an Allowed Claim on the Effective Date. No Holder of a Disputed Claim shall have any Claim against the Disputed Claim Reserve, the FKF Trustee or the Debtor with respect to such Claim until such Disputed Claim shall become an Allowed Claim, and no Holder of a Disputed Claim shall have any right to interest, dividends or other Distribution on such Disputed Claim except as provided in this section 7.9. For the avoidance of doubt, no Holder of an Allowed Claim, which claim was previously disputed in accordance with this Plan, shall be entitled to interest for or as a result of the period of time during which the dispute regarding such Claim was resolved in accordance with the provisions of this Plan.

7.10 Surplus Distribution. To the extent that a Disputed Claim is not Allowed or becomes an Allowed Claim in an amount less than the Disputed Claim amount, any excess of Cash in the Disputed Claim Reserve attributable to such Disputed Claim in excess of Cash actually distributed on account on such Disputed Claim shall be deemed Surplus Distributions. The FKF Trustee shall make a supplemental Distribution or Distributions of the Surplus Distributions to Holders of Allowed Claims on a Pro Rata basis on the next Distribution Date.

7.11 Undeliverable Distributions. If any Distribution is returned as undeliverable, the FKF Trustee shall make reasonable efforts to determine the current address of the Holder of the Claim. Amounts in respect of any undeliverable Distributions made by the FKF Trustee shall be returned to the FKF Trust until the Distributions are claimed or are deemed to be unclaimed property under §347(b) of the Bankruptcy Code and the Plan (“**Unclaimed Property**”).

7.12 Unclaimed Property. Distributions that are not claimed within one year from the date of the Distribution shall be deemed to be Unclaimed Property and shall vest or revest in the FKF Trustee for the benefit of the FKF Trust Beneficiaries, and the Claims with respect to which those Distributions are made shall be automatically canceled. After the expiration of that one-year period, the Claim of any Person to such Distributions shall be discharged and forever barred. Nothing contained in the Plan or the FKF Trust Agreement shall require the FKF Trustee to attempt to locate any Holder of an Allowed Claim. All funds or other property that vests or

revests in the FKF Trustee for the benefit of the FKF Trust Beneficiaries pursuant to the Plan shall be distributed by the FKF Trustee to the other Holders of Allowed Claims in accordance with the provisions hereof and the FKF Trust Agreement. A Claim, and the Unclaimed Property distributed on account of such Claim, shall not escheat to any federal, state, or local government or other entity by reason of the failure of its Holder to claim a Distribution in respect of such Claim.

7.13 Time Bar to Cash Payments by Check. Checks issued by the FKF Trustee on account of Allowed Claims shall be null and void if not negotiated within 90 days after the date of issuance thereof. Requests for the reissuance of any check that becomes null and void pursuant to the Plan shall be made directly to the FKF Trust by the Holder of the Allowed Claim to whom the check was originally issued. Any Claim in respect of such voided check shall be made in writing on or before the first anniversary of the date of the check was issued, or shall be discharged and forever barred. The funds that would otherwise constitute the proceeds of such checks shall revest in and become property of the FKF Trustee for the benefit of the FKF Trust Beneficiaries as Unclaimed Property in accordance with the § 347(b) of the Bankruptcy Code, and be distributed as Unclaimed Property in accordance with the Plan.

7.14 Withholding and Reporting Requirements. In connection with the Plan and all Distributions hereunder, the FKF Trustee shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all Distributions hereunder shall be subject to any such withholding and reporting requirements. The FKF Trustee shall be authorized to take any and all actions that may be reasonably necessary or appropriate to comply with such withholding and reporting requirements.

7.15 Distributions on Non-Business Days. Any payment or Distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

7.16 No Distribution in Excess of Allowed Amount of Claim. Notwithstanding anything to the contrary in this Plan, subject to section 4.7 of the Plan, the aggregate Distribution or Distributions, including any Third Party Payments, to a Holder of a Claim shall not exceed the Allowed amount of such Claim. If a Holder of an Allowed Claim receives a Distribution or Distributions under the Plan that, together with any Third Party Payments exceeds the total amount of the related Allowed Claim, the Holder shall, within five (5) Business Days, refund such excess amounts to the FKF Trustee. The FKF Trustee may seek the return of any such excess amounts by the commencement of a contested matter or adversary proceeding in the Bankruptcy Court.

7.17 De Minimis Distributions. No Cash payment of less than ten dollars (\$10.00) will be made by the FKF Trustee to any Creditor unless a request is made in writing to the FKF Trustee to make such a payment.

7.18 Fractional Dollars. Notwithstanding any other provision of the Plan, Cash Distributions of fractions of dollars will not be made; rather, whenever any payment of a fraction of a dollar would be called for, the actual payment made shall reflect a rounding of such fraction to the nearest whole dollar (up or down), with half dollars being rounded down. To the extent

that Cash remains undistributed as a result of the rounding of such fraction to the nearest whole cent, such Cash shall be treated as Unclaimed Property under this Plan.

7.19 Setoff and Recoupment. The FKF Trustee may, but shall not be required to, setoff against or recoup from any Claim and the Distribution to be made pursuant to the Plan in respect thereof, any claims or defenses of any nature whatsoever that any of the Debtor, the Estate or the FKF Trust may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtor, the Estate or the FKF Trust of any claim, defense, right of setoff, or recoupment that any of them may have against the Holder of any Claim.

7.20 Dissolution of Committee. The Committee shall automatically be dissolved on the Effective Date and the members of, and Professionals retained by, the Committee shall have no further duties or obligations after the Effective Date, except to the extent that members of the Committee become members of the FKF Trust Board, and have duties and obligations related to same.

ARTICLE VIII.

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

8.1 Executory Contracts and Unexpired Leases Deemed Rejected. All of the Debtor's executory contracts and unexpired leases, other than the Insurance Policies, shall be deemed rejected on the Effective Date, except to the extent that the Debtor has (i) previously assumed or rejected an executory contract or unexpired lease or (ii) filed a motion, prior to the Effective Date, to assume an executory contract or unexpired lease upon which the Bankruptcy Court has not ruled. For the avoidance of doubt, pursuant to §365 of the Bankruptcy Code, all Insurance Policies shall be assumed on the Effective Date.

ARTICLE IX.

EFFECTS OF CONFIRMATION

9.1 Legal Binding Effect. Except as otherwise provided in this Article IX, the provisions of this Plan shall bind all Holders of Claims and Interests and their respective successors and assigns, whether or not they accept the Plan. On and after the Effective Date, except as provided in the Plan, all Holders of Claims and Interests shall be precluded from asserting any Claim against the Debtor, the Estate, the Committee, the FKF Trust, or the FKF Trustee, or their respective property and assets based on any transaction or other activity, act, or omission of any kind that occurred prior to the Effective Date. For the avoidance of doubt, this section 9.1 shall not impact claims against the Debtor's insurance providers, companies, or carriers on account of any potential claims against the Insurance Policy or Policies, or any individual claims against officers or members of the Debtor.

9.2 Moratorium, Injunction and Limitation of Recourse For Payment. Except as otherwise provided in the Plan and the Disclosure Statement, the Confirmation Order shall so provide, among other things, that from and after the Effective Date, all Persons who have held, hold, or may hold Claims against, or Interests in, the Debtor are permanently enjoined from taking any of the following actions against the Estate, the Debtor, or the FKF Trust or any of

their respective property or other Assets on account of any such Claims or Interests, except in the manner provided for in the Plan: (i) commencing or continuing, in any manner or in any place, any action or other proceeding, (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order, (iii) creating, perfecting or enforcing any Lien or encumbrance, and (iv) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions hereof; provided, however, that nothing contained in this Plan or in the Confirmation Order shall preclude: (w) the FKF Trust or the FKF Trustee from pursuing any Preserved Causes of Action; (x) any Person from exercising their rights pursuant to or not inconsistent with the terms hereof; (y) the FKF Trustee from exercising his or her rights or remedies pursuant to and not inconsistent with the terms hereof or the FKF Trust Agreement; or (z) Magee from litigating to its conclusion by non-appealable order that certain adversary proceeding filed by Magee in this Court on November 29, 2010 (Adv. Proc. No. 10-09100) against the Debtor and Day Seckler, LLP, the Debtor's manager.

9.3 Exculpation and Limitation of Liability. Notwithstanding any other provision hereof, no Holder of a Claim or Interest shall have any right of action against the Debtor, the Estate, the Committee or any member of the Committee, the FKF Trustee, or the FKF Trust, any of their respective employees, managers, officers, directors, agents, attorneys, investment bankers, financial advisors, other professionals, or any of their respective property and Assets for any act or omission in connection with, relating to or arising out of the Case, the pursuit of Confirmation hereof, the consummation hereof, or the administration of the FKF Trust, the Plan or the property to be distributed under the Plan, except for acts or omissions which constitute willful misconduct, gross negligence or fraud. For the avoidance of doubt, this exculpation and limitation of liability does not apply to any acts or conduct that occurred prior to the Petition Date, or any acts or conduct whatsoever of, among others, Mitchell Klein, Burton Dorfman and John Magee.

9.4 No Discharge of Government Claims. Nothing in the Confirmation Order or the Plan shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including, without limitation, any claim arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state or local authority against the Estate, the Debtor, the Committee or any member of the Committee, the FKF Trustee, the FKF Trust, or any of the respective employees, managers, officers, directors, agents, attorneys, investment bankers, financial advisors or other professionals, nor shall anything in the Confirmation Order or the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action, or other proceeding against any party for any liability whatsoever, including, without limitation, any claim, suit, or action arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state or local authority, nor shall anything in the Confirmation Order or the Plan exculpate any party from any liability to the United States Government or any of its agencies or any state or local authority whatsoever, including any liabilities arising under the Internal Revenue Code, the environmental laws, or any criminal laws of the United States or any state or local authority against the released parties.

ARTICLE X.
RETENTION OF JURISDICTION

10.1 Retention of Jurisdiction. Pursuant to §105(a) and §1142 of the Bankruptcy Code, and notwithstanding entry of the Confirmation Order and occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, and related to, the Case, the Plan and the FKF Trust to the fullest extent permitted by law, including, among other things, jurisdiction to:

- (a) allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim), including the resolution of any application or request for payment of any Administrative Expense Claim, and the resolution of any objections to the allowance or priority of Claims;
- (b) hear and determine all Professionals' applications for compensation and reimbursement of expenses incurred in the Case;
- (c) determine any and all adversary proceedings, motions, applications, and contested or litigated matters, including, but not limited to, all Preserved Causes of Action vested in the FKF Trust, and consider and act upon the compromise and settlement of any Claim against, or Preserved Causes of Action on behalf of, the FKF Trust;
- (d) enter such orders as may be necessary or appropriate to execute, implement, or consummate the provisions hereof, the FKF Trust Agreement and all contracts, instruments, releases, and other agreements or documents created in connection therewith;
- (e) hear and determine disputes arising in connection with the interpretation, implementation, consummation, or enforcement of the Plan or the FKF Trust Agreement, including disputes arising under agreements, documents or instruments executed in connection therewith;
- (f) consider any modifications hereof or the FKF Trust Agreement, cure any defect or omission, or reconcile any inconsistency in any order of the Bankruptcy Court, including, without limitation, the Confirmation Order;
- (g) issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any Person with the implementation, consummation, or enforcement hereof or the Confirmation Order;
- (h) hear and determine any matters arising in connection with or relating to the Plan, the Disclosure Statement, the Confirmation Order, the FKF Trust Agreement or any contract, instrument, release, or other agreement or document created in connection with the Plan, the Disclosure Statement, the Confirmation Order or the FKF Trust Agreement;
- (i) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Case;

- (j) hear and determine matters concerning state, local, and federal taxes in accordance with §§346, 505 and §1146 of the Bankruptcy Code;
- (k) hear and determine all matters related to the property of the Estate, the Debtor, the FKF Trust, or the FKF Trustee from and after the Effective Date;
- (l) hear and determine such other matters as may be provided in the Plan or the Confirmation Order and as may be authorized under the provisions of the Bankruptcy Code; and
- (m) enter a final decree closing the Case.

ARTICLE XI.

MISCELLANEOUS PROVISIONS

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

11.2 Exemption from Transfer Taxes. In accordance with §1146(a) of the Bankruptcy Code, the Bankruptcy Court will be requested to make findings, in the Confirmation Order, that the sale of the Debtor's Assets pursuant to one or more Final Orders authorizing and approving such sale(s) shall not be taxed under any law imposing stamp or similar tax. Consistent with the foregoing, each recorder of deeds or similar official for any county, city or governmental unit in which any instrument hereunder is to be recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such instrument, without requiring the payment of any stamp or similar tax.

11.3 Interest Accrual. No post-petition interest shall accrue on any Claim or scheduled liability, except as set forth in this Plan.

11.4 Allocation of Plan Distributions between Principal and Interest. To the extent that any Allowed Claim entitled to a Distribution under the Plan is comprised of indebtedness and accrued but unpaid interest thereon, such Distribution shall, for federal income tax purposes, be allocated to the principal amount of the Claim first, and then, to the extent the consideration exceeds the principal amount of the Claim, to accrued but unpaid interest.

11.5 Rules of Interpretation; Computation of Time. For purposes hereof, (i) any reference in the Plan to a contract, instrument, release, indenture, or other agreement or document as being in a particular form or containing particular terms and conditions means that

such document shall be substantially in such form or substantially on such terms and conditions; (ii) any reference in the Plan to an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified, or supplemented; (iii) unless otherwise specified, all references in the Plan to sections, articles, and exhibits, if any, are references to sections, articles, and exhibits of or to the Plan; (iv) the words “herein,” “hereof,” and “hereto” refer to the Plan in its entirety rather than to a particular portion hereof; (v) captions and headings to articles and sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof; and (vi) the rules of construction set forth in §102 of the Bankruptcy Code and in the Bankruptcy Rules shall apply. In computing any period of time prescribed or allowed by the Plan, unless otherwise specifically designated in this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

11.6 Plan Documents. The Plan Documents are incorporated herein and are a part hereof as if set forth in full herein.

11.7 Successors and Assigns. The rights, benefits and obligations of any Person named or referred to in the Plan shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Person.

11.8 Governing Law. Unless a rule of law or procedure is supplied by federal law, including the Bankruptcy Code and Bankruptcy Rules, (i) the construction and implementation hereof and any agreements, documents, and instruments executed in connection with the Plan, and (ii) governance matters shall be governed by the laws of the State of New York, without giving effect to the principles of conflict of law thereof.

11.9 Notice of Effective Date. Within five (5) Business Days after the occurrence of the Effective Date, the FKF Trustee shall File with the Bankruptcy Court and mail or cause to be mailed to all Holders of Allowed Claims in Class 1-A (Non-Tax Priority Claims), Class 1-B (Secured Claims), Class 2 (General Unsecured Claims), and Class 3 (Equity Interests) a notice that informs such Persons of (i) the entry of the Confirmation Order, (ii) the occurrence of the Effective Date, and (iii) such other matters as the FKF Trustee deems appropriate or as may be ordered by the Bankruptcy Court. The aforesaid notice shall also be served upon the U.S. Trustee and Filed with the Court.

In the event the Effective Date does not occur within thirty (30) days of the Confirmation Date, the Debtor shall file with the Bankruptcy Court a *Notice of Failure to Achieve Effective Date* and shall request a status conference with the Bankruptcy Court. The foregoing notice shall be served upon the U.S. Trustee and all parties requesting notice and service of pleadings pursuant to Bankruptcy Rule 2002.

ARTICLE XII.
NOTICES

12.1 All notices required or desired to be given pursuant to or in connection with the Plan shall be made to the following addresses:

If to the Debtor:	FKF3, LLC c/o Day Seckler, LLP 300 Westage Center Drive Suite 160 Fishkill, NY 12524 Attn: G. Wayne Day, CPA, CIRA, CVA
With a copy to: (which shall not constitute notice):	Reich Reich & Reich, P.C. 235 Main Street, 4 th Fl. White Plains, NY 10601 Attn: Lawrence R. Reich, Esq. and Jeffrey A. Reich, Esq.
If to the Committee:	KLESTADT & WINTERS, LLP 570 Seventh Avenue, 17 th Floor New York, NY 10018 Attn: Fred Stevens And Carrie V. Hardman
If to FKF Trustee:	Gregory Messer 395 Pearl Street, 2 nd Floor Brooklyn, NY 11201

ARTICLE XIII.
MODIFICATION OF THE PLAN

13.1 The Debtor or Committee may alter, amend, or modify the Plan or any Plan Documents under §1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. After the Confirmation Date and prior to substantial consummation hereof, the Debtor may, under §1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, Disclosure Statement, or the Confirmation Order, and such matters as may be necessary to carry out the purposes and effects hereof so long as such proceedings do not materially or adversely affect the treatment of Holders of Claims or Interests under the Plan; provided, however, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or Order of the Bankruptcy Court.

FKF 3, LLC, Debtor

REICH REICH & REICH, P.C.

By: s/ G. Wayne Day
G. Wayne Day, CPA, CIRA, CVA
Manager
Day Seckler, LLP
300 Westage Center Dr, Ste 160
Fishkill, NY 12524

By: s/ Lawrence R. Reich
Lawrence R. Reich
Jeffrey A. Reich
235 Main Street, 4th Floor
White Plains, New York 10601
Telephone: (914) 949-2126
Facsimile: (914) 949-1604
Email: reichlaw@aol.com

Attorneys for Debtor FKF 3, LLC

OFFICIAL COMMITTEE OF
UNSECURED CREDITORS

KLESTADT & WINTERS, LLP

By: s/ Kevin Romano
Kevin Romano
Chairperson

By: s/ Fred Stevens
Fred Stevens
Carrie V. Hardman
570 Seventh Avenue, 17th Floor
New York, New York 10018
Telephone: (212) 972-3000
Facsimile: (212) 972-2245
Email: fstevens@klestadt.com

*Attorneys for Official Committee of
Unsecured Creditors of FKF 3, LLC*

Exhibit “1”

Exhibit “1”

FKF TRUST AGREEMENT

THIS AGREEMENT AND DECLARATION OF THE FKF TRUST (the “**FKF Trust Agreement**”) dated as of _____, 2011, by and between FKF 3, LLC (“**FKF**”) as debtor and debtor-in-possession (the “**Debtor**”) and Gregory Messer as trustee (the “**FKF Trustee**”) is executed to facilitate the implementation of the First Amended Joint Plan of Liquidation dated January 28, 2011 (as amended, modified and supplemented from time to time, the “**Plan**”). All capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Plan.

WHEREAS:

A. On July 19, 2010 (the “**Petition Date**”), an involuntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) was filed against the Debtor in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).

B. On August 9, 2010, the Debtor filed an answer consenting to such relief and, on the same date, an order for relief was entered by the Bankruptcy Court.

C. On October 27, 2010, the United States Trustee appointed Kevin Romano, Elias Josephs, Kathryn Bareket, Walter Klauser and Rabbi Ely J. Rosenzweig, to the Official Committee of Unsecured Creditors (the “**Committee**”).

D. The Plan provides for, among other things the transfer of all Assets to the FKF Trust, the management and liquidation of the FKF Trust Assets by the FKF Trustee and the making of Distributions to Holders of Allowed Claims¹ pursuant to the Plan.

E. The FKF Trust is established for the sole purpose of administering and distributing the FKF Trust Assets, in accordance with Treasury Regulation Section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein and in the Plan, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I.

DECLARATION OF FKF TRUST

Section 1.01. Creation and Purpose of the FKF Trust. The Debtor, Committee and the FKF Trustee hereby create the FKF Trust for the purpose of liquidating and distributing the FKF

¹ All capitalized terms not otherwise defined in this Trust Agreement shall have the meanings ascribed to them in the Plan.

Trust Assets to the FKF Trust Beneficiaries in accordance with the Plan in an expeditious but orderly manner, with no objective to continue or engage in the conduct of a trade or business. In particular, the FKF Trustee shall: (a) make continuing efforts to collect and reduce the FKF Trust Assets to Cash; and (b) make timely Distributions and not unduly prolong the duration of the FKF Trust.

Section 1.02. Declaration of FKF Trust. To declare the terms and conditions hereof, and in consideration of the confirmation of the Plan, the Debtor and the Committee have executed this Trust Agreement and, effective on the Effective Date, the Debtor hereby irrevocably transfers to the FKF Trust, all of the right, title, and interests of the Debtor in and to the Assets, to have and to hold unto the FKF Trust and its successors and assigns forever, under and subject to the terms of the Plan and the Confirmation Order for the benefit of the FKF Trust Beneficiaries and their successors and assigns as provided for in this FKF Trust Agreement and in the Plan and Confirmation Order.

Section 1.03. Vesting of Assets. On the Effective Date, pursuant to the terms of the Plan, all of the Assets (not otherwise abandoned pursuant to the terms of the Plan) shall be vested in the FKF Trust, which also shall be authorized to obtain, liquidate, and collect all of the FKF Trust Assets in the possession of third parties and pursue all of the Causes of Action. Subject to the provisions of the Plan, all such FKF Trust Assets shall be delivered to the FKF Trust free and clear of Interests, Claims, Liens, or other encumbrances of any kind. The FKF Trustee shall have no duty to arrange for any of the transfers contemplated hereunder and shall be conclusively entitled to rely on the legality and validity of such transfers. Moreover, on the Effective Date, all privileges with respect to any FKF Trust Assets, including without limitation, any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) to which the Debtor is entitled shall be automatically vested in, and available for assertion by or waiver by the FKF Trustee on behalf of the FKF Trust. To the extent any of the foregoing does not automatically occur on the Effective Date or is not effectuated through the Confirmation Order or the terms hereof, the Debtor shall, as of the Effective Date, execute such other and further documents as are reasonably necessary to effectuate all of the foregoing.

Section 1.04. Funding of the FKF Trust. The FKF Trust shall be funded, on the Effective Date, with the FKF Trust Assets, as provided for in the Plan and in the Confirmation Order.

Section 1.05. Acceptance by Trustee. The FKF Trustee hereby accepts the FKF Trust imposed upon it by this FKF Trust Agreement and agrees to observe and perform that FKF Trust on and subject to the terms and conditions set forth in this FKF Trust Agreement, the Plan, and the Confirmation Order. In connection with and in furtherance of the purposes of the FKF Trust, the FKF Trustee hereby accepts the transfer of the FKF Trust Assets.

Section 1.06. FKF Trust Board. Pursuant to the Plan and this FKF Trust Agreement, the FKF Trust Board shall be created on the Effective Date. The FKF Trust Board shall be comprised of no more than seven (7) members. The initial FKF Trust Board shall consist of:

- 1) Kevin Romano
- 2) Kathryn Bareket
- 3) Ken Beck
- 4) Elias Josephs
- 5) Walter Klauser
- 6) Rabbi Ely Rosenzweig; and
- 7) Uri Sasson

The FKF Trust Board shall have the duties and powers as provided for in the Plan and in this FKF Trust Agreement, including the duty to maximize the value of the FKF Trust Assets in the most expeditious manner possible for the benefit of the FKF Trust Beneficiaries and Holders of Administrative Expense Claims.

Section 1.07. Fiduciary Duties of the FKF Trust Board. Pursuant to the Plan and this FKF Trust Agreement, the FKF Trust Board shall act in a fiduciary capacity on behalf of the interests of all FKF Trust Beneficiaries.

ARTICLE II.

THE FKF TRUSTEE

Section 2.01. Appointment. The FKF Trustee has been selected by the Committee pursuant to the provisions of the Plan and has been appointed as of the Effective Date. The FKF Trustee shall, in accordance with the FKF Trust Agreement, serve in such capacity through the earlier of (i) the date the FKF Trust is dissolved; and (ii) the date such FKF Trustee resigns, is terminated or is otherwise unable to serve; provided, however, that, in the event that the FKF Trustee resigns, is terminated or is unable to serve, then the FKF Trust Board shall have the right to select a successor who shall be appointed as the FKF Trustee and shall serve in such capacity until the FKF Trust is dissolved or until such FKF Trustee resigns, is replaced or is terminated and no successor is appointed.

Section 2.02. General Powers. Except as otherwise provided in this FKF Trust Agreement, the Plan, or the Confirmation Order, the FKF Trustee may control and exercise authority over the FKF Trust Assets, over the acquisition, management, and disposition thereof, and over the management and conduct of the business of the FKF Trust. Regarding all matters identified in section 3.03 hereof, the Trustee shall follow the direction of the FKF Trust Board, provided, however, that nothing in this Agreement shall be deemed to prevent the FKF Trustee from taking, or failing to take, any action that, based upon the advice of counsel, he or she determines it is obligated to take (or fail to take) in the performance of any fiduciary or similar duty which the FKF Trustee owes to the FKF Trust Beneficiaries or any other Person or Entity. No Person dealing with the FKF Trust shall be obligated to inquire into the FKF Trustee's authority in connection with the acquisition, management, or disposition of Trust Assets; provided, however, that the members of the FKF Trust Board are entitled to make such inquiries

in connection with the exercise of their rights or powers pursuant to this FKF Trust Agreement. Without limiting the foregoing, but subject to the Plan, the Confirmation Order, and other provisions of this FKF Trust Agreement, the FKF Trustee shall be expressly authorized to, with respect to the FKF Trust and the FKF Trust Assets:

(a) Exercise all power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced, and take all actions that may be or could have been taken with respect to the FKF Trust Assets by any officer, director, shareholder, or other party acting in the name of the Debtor or its Estate with like effect as if duly authorized, exercised, and taken by action of such officers, directors, shareholders, or other party;

(b) Open and maintain bank accounts on behalf of or in the name of the FKF Trust, calculate and make Distributions, and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment, and maintenance of appropriate reserves, in the name of the FKF Trust;

(c) Receive, manage, invest, supervise, and protect the FKF Trust Assets, subject to the limitations provided herein;

(d) Hold legal title to any and all FKF Trust Assets;

(e) Subject to the applicable provisions of the Plan and this FKF Trust Agreement, collect and liquidate all FKF Trust Assets pursuant to the Plan;

(f) Review, and where appropriate, object to claims, and supervise and administer the commencement, prosecution, settlement, compromise, withdrawal, or resolution in any manner approved by the Bankruptcy Court of all Disputed Claims and the Distributions to the FKF Trust Beneficiaries and creditors of the FKF Trust, in accordance with this FKF Trust Agreement, the Plan, and the Confirmation Order;

(g) Commence, prosecute, compromise, settle, withdraw, abandon, or resolve in any manner approved by the Bankruptcy Court all Causes of Action;

(h) (1) Seek a determination of tax liability under section 505 of the Bankruptcy Code; (2) file, if necessary, any and all tax and information returns required with respect to the FKF Trust; (3) make tax elections for and on behalf of the FKF Trust; and (4) pay taxes, if any, payable for and on behalf of the FKF Trust;

(i) Pay all lawful expenses, debts, charges, taxes, and liabilities of the FKF Trust;

(j) Take all other actions consistent with the provisions of the Plan which the FKF Trustee deems reasonably necessary or desirable to administer the Plan;

(k) Make Distributions to the FKF Trust Beneficiaries, and to creditors of the FKF Trust, including holders of Allowed Claims pursuant to the Plan, as provided for, or as contemplated by, the Plan;

(l) Withhold from the amount distributable to any Person or Entity such amount as may be sufficient to pay any tax or other charge which the FKF Trustee has determined, based upon the advice of its agents and/or professionals, may be required to be withheld therefrom under the income tax laws of the United States or of any state or political subdivision thereof;

(m) Enter into any agreement or execute any document or instrument required by or consistent with the Plan, the Confirmation Order or this FKF Trust Agreement and perform all obligations thereunder;

(n) If any of the FKF Trust Assets are situated in any state or other jurisdiction in which the FKF Trustee is not qualified to act as trustee, the FKF Trustee shall, subject to the approval of the FKF Trust Board, nominate and appoint a person duly qualified to act as trustee in such state or jurisdiction and require from each such trustee such security as may be designated by the FKF Trustee in his or her discretion; confer upon such trustee all the rights, powers, privileges, and duties of the FKF Trustee hereunder, subject to the conditions and limitations of this FKF Trust Agreement, except as modified or limited by the FKF Trustee and except where the conditions and limitations may be modified by the laws of such state or other jurisdiction (in which case, the laws of the state or other jurisdiction in which such trustee is acting shall prevail to the extent necessary); require such trustee to be answerable to the FKF Trustee for all monies, assets, and other property that may be received in connection with the administration of all property; and, subject to the approval of the FKF Trust Board, remove such trustee, with or without cause, and appoint a successor trustee at any time by the execution by the FKF Trustee of a written instrument declaring such trustee removed from office, and specifying the effective date and time of removal;

(o) Subject to section 5.05 of this FKF Trust Agreement, purchase and carry all insurance policies and pay all insurance premiums and costs deemed reasonably necessary or advisable;

(p) Implement, enforce, or discharge all of the terms, conditions, and all other provisions of, and all duties and obligations under, the Plan, the Confirmation Order, and this FKF Trust Agreement;

(q) Employ and compensate professionals and other agents retained by the FKF Trust Agreement;

(r) Undertake all administrative functions remaining in the Cases, including closing of the Case; and

(s) Invest in demand and time deposits in banks or savings institutions, or temporary investments such as short term certificates of deposit or Treasury bills or other investments that a “FKF Trust” within the meaning of Treasury Regulation Section 301.7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations or any modification in the Internal Revenue Service (“**IRS**”) guidelines, whether set forth in IRS rulings, revenue procedures, other IRS pronouncements or otherwise.

Section 2.03. Limitation on the FKF Trustee. Notwithstanding anything under applicable law, this FKF Trust Agreement or the Plan to the contrary, the FKF Trustee shall not do or undertake any of the following:

- (a) Disregard the instructions of the FKF Trust Board regarding any of the matters identified in section 3.03 hereof, provided, however, that nothing in this FKF Trust Agreement shall be deemed to prevent the FKF Trustee from taking, or failing to take, any action that, based upon the advice of counsel, he or she is obligated to take (or fail to take) in the performance of any fiduciary or similar duty which the FKF Trustee owes to the FKF Trust Beneficiaries or any other Person; or
- (b) Take, or fail to take, any action that would jeopardize treatment of the FKF Trust as a “liquidating trust” for federal income tax purposes; or
- (c) Receive transfers of any listed stocks or securities, any readily-marketable assets or any operating assets of a going business; or
- (d) Exercise any investment power other than the power to invest in demand and time deposits in banks or savings institutions, or temporary investments such as short term certificates of deposit or Treasury bills or other investments that a “liquidating trust” within the meaning of Treasury Regulation Section 301-7701-4(d) may be permitted to hold, pursuant to the Treasury Regulations or any modification in the IRS guidelines, whether set forth in IRS rulings revenue procedures, other IRS pronouncements or otherwise; or
- (e) Receive or retain any operating assets of a going business, a partnership interest in a partnership that holds operating assets; or
- (f) Receive or retain Cash in excess of a reasonable amount necessary to meet Claims and contingent liabilities (including Disputed Claims) or to maintain the value of the FKF Trust Assets during the term of the FKF Trust.

Notwithstanding any of the foregoing, the FKF Trustee shall not be prohibited from engaging in any trade or business on his or her own account, provided that such activity does not interfere with the FKF Trustee’s administration of the FKF Trust.

Section 2.04. Compensation of FKF Trustee and its Agents and Professionals

a. The FKF Trustee shall be entitled to receive reimbursement for professional fees and expenses incurred by his or her counsel and professionals, at their normal hourly rates, in reviewing, negotiating, executing, and implementing this FKF Trust Agreement prior to the Effective Date, plus the reimbursement of all reasonable out-of-pocket expenses incurred connection with this FKF Trust Agreement. Any successor to the FKF Trustee shall also be entitled to reasonable compensation in connection with the performance of his or her duties, which compensation may be different from the terms provided herein and shall be approved by the FKF Trust Board, plus the reimbursement of reasonable out-of-pocket expenses.

b. The compensation to be paid to the FKF Trustee shall be agreed upon by and between the FKF Trust Board or the Committee if decided prior to the creation of the FKF Trust,

but in no event shall it be greater than the caps established for the compensation of trustees under section 326(a) of the Bankruptcy Code.

c. The FKF Trustee and any and all professionals retained after the Effective Date, as well as the out-of-pocket non-professional expenses of the FKF Trust Board, will be paid for their services and reimbursed for their expenses subject to the following terms: On or before the twenty-fifth (25th) day of each month following the month for which compensation is sought, the FKF Trustee and all professionals retained after the Effective Date will file with the Bankruptcy Court a monthly statement describing with reasonable particularity the time expended and the nature, extent and value of the services provided during the period covered by such request. The members of the FKF Trust Board may similarly file documented requests for out-of-pocket non-professional expenses. Any party in interest shall have until the fifteenth (15th) calendar day after the submission of the statement to review it. If no objections are filed, the FKF Trustee shall promptly pay 100% of the fees and 100% of the disbursement identified in each statement. In the event that any party in interest determines that the compensation or reimbursement sought in a particular statement is inappropriate or unreasonable, or that any number or calculation is incorrect, that party shall, on or before the fifteenth (15th) calendar day after the submission of the statement is objected to, a “Notice of Objection to the Monthly Fee Statement” setting forth the precise nature of the objection and the amount in issue. Thereafter, the objecting party and the Professional or individual whose statement is objected to shall meet or confer to attempt to reach an agreement regarding the correct payment to be made, and if no agreement is reached with regard to such objection, the FKF Trustee shall not pay the disputed amount until further order of the Bankruptcy Court. The FKF Trustee will promptly pay any portion of the fees and disbursements requested that are not the subject of a Notice of Objection, as well as any adjusted fees and disbursements that have been agreed to by the objecting party and the Professional or the individual.

Section 2.05. General Duties, Obligations, Rights, and Benefits of the FKF Trustee.

The FKF Trustee shall have all duties, obligations, rights, and benefits assumed by, assigned to or vested in the FKF Trust Agreement and any other agreement entered into pursuant to or in connection with the Plan. Such duties, obligations, rights, and benefits include, without limitation, all duties, obligations, rights and benefits relating to the liquidation and/or collection of accounts receivable, the FKF Trust Assets, administration of Claims, satisfaction of claims of creditors, the pursuit of Causes of Action, distributions to FKF Trust Beneficiaries, administration of the FKF Trust, and any other duties, obligations, rights, and benefits reasonably necessary to accomplish the purpose of the FKF Trust under the Plan, the Confirmation Order, this FKF Trust Agreement, and any other agreement entered into pursuant to or in connection with the Plan. Without limiting the duties, obligations, rights, and benefits of the FKF Trustee under this section or any other provision of this FKF Trust Agreement, the FKF Trustee shall have all duties, obligations, rights, and benefits assigned to the FKF Trustee under the Plan and Confirmation Order.

Section 2.06. Allowed Administrative Claims Reserve. The FKF Trustee may establish, from time to time fund, and administer a reserve (the “**Allowed Administrative Claims Reserve**”), that shall consist of Cash in an amount reasonably believed by the FKF Trustee to be necessary to satisfy the Allowed Claims payable out of the FKF Trust Assets to holders of Allowed Administrative Expense Claims. The FKF Trustee shall be authorized to

make distributions from the Allowed Administrative Claims Reserve in satisfaction of such Allowed Claims in accordance with this FKF Trust Agreement, the Plan and the Confirmation Order.

Section 2.07. Replacement of the Trustee. The FKF Trustee may resign at any time upon thirty (30) days written notice delivered to the Bankruptcy Court and the FKF Trust Board, provided that such resignation shall only become effective upon the appointment of a permanent or interim successor FKF Trustee. A majority of the FKF Trust Board may remove the FKF Trustee at any time with or without cause. The FKF Trustee may also be removed by the Bankruptcy Court upon application and after notice and a hearing, which application may be brought by any party in interest (including any member of the FKF Trust Board). In the event of the resignation or removal of the FKF Trustee, the FKF Trust Board shall designate a person to serve as permanent or interim successor FKF Trustee. If the FKF Trust Board shall fail to appoint a successor within thirty (30) days of delivery of the FKF Trustee's written notice of resignation to the Bankruptcy Court and the FKF Trust Board, a successor FKF Trustee shall be appointed by the Bankruptcy Court based upon submissions from interested parties (including the FKF Trustee, the FKF Trust Board or any FKF Trust Beneficiary). Upon his or her appointment, the successor FKF Trustee, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of his or her predecessor and all responsibilities of the predecessor FKF Trustee relating to the FKF Trust shall be terminated. In the event the FKF Trustee's appointment terminates by reason of death, dissolution, liquidation, resignation, or removal, such FKF Trustee shall be immediately compensated for all reasonable fees and expenses accrued through the effective date of termination, whether or not previously invoiced. The provisions of Article V of this FKF Trust Agreement shall survive the resignation or removal of any FKF Trustee.

Section 2.08. FKF Trust Continuance. The death, dissolution, liquidation, resignation, or removal of the FKF Trustee shall not terminate the FKF Trust or revoke any existing agency created by the FKF Trustee pursuant to this FKF Trust Agreement or invalidate any action theretofore taken by the FKF Trustee, and the provisions of this FKF Trust Agreement shall be binding upon and inure to the benefit of the successor FKF Trustee and all of his or her successors or assigns.

Section 2.09. Fiduciary Duties of the FKF Trustee. Pursuant to the Plan and this FKF Trust Agreement, the FKF Trustee shall act in a fiduciary capacity on behalf of the interests of all FKF Trust Beneficiaries.

ARTICLE III. **FKF TRUST BOARD**

Section 3.01. FKF Trust Board. As of the Effective Date, the FKF Trust Board shall be comprised of no more than seven (7) members (each, a "**Member**", and, collectively, the "**Members**"), which shall be selected by the Committee. The initial Members shall be designated in the Plan Supplement. Except as otherwise expressly provided herein, a majority vote of the Members shall constitute an act or decision of the FKF Trust Board.

Section 3.02. Reports to FKF Trust Board. Notwithstanding any other provision of this FKF Trust Agreement, the FKF Trustee shall report to the FKF Trust Board on a regular basis, not less than each month. The FKF Trust Board may require more frequent reporting. The FKF Trust Board shall keep all such information strictly confidential, except to the extent the FKF Trust Board deems it reasonably necessary to disclose such information to the Bankruptcy Court (in which case, a good faith effort shall be made to file such information under seal).

Section 3.03. Actions Requiring Approval of the FKF Trust Board. The FKF Trustee shall obtain the approval of the FKF Trust Board (by at least a majority vote, which may be obtained by negative notice, provided such negative notice is provided not less than seventy-two (72) hours in advance) prior to taking any action regarding any of the following matters:

(a) The commencement, prosecution, settlement, compromise, withdrawal, or other resolution of any Cause of Action by the FKF Trustee where the amount sought to be recovered in the complaint or other document initiating such Cause of Action exceeds \$25,000;

(b) The sale, transfer, assignment, or other disposition of any non-Cash FKF Trust Assets having a valuation in excess of \$25,000;

(c) The abandonment of any non-Cash FKF Trust Assets having a valuation of at least \$25,000;

(d) The prosecution of objections to Claims, or the commencement, settlement, compromise, withdrawal, or other resolution of any Disputed Claims, wherein the amount of the asserted Claim exceeds \$25,000;

(e) The borrowing of any funds by the FKF Trustee or pledge of any portion of the FKF Trust Assets;

(f) The selection, retention, or termination of any professional Person or Entity by the FKF Trustee after the Effective Date;

(g) Any matter which could reasonably be expected to have a material adverse effect on the amount of distributions to be made by the FKF Trustee;

(h) The exercise of any right or action set forth in this FKF Trust Agreement that expressly requires approval of the FKF Trust Board, unless the applicable provision expressly requires unanimous approval of the FKF Trust Board for the exercise of any such right or action, or as required under this FKF Trust Agreement; or

(i) All investments authorized to be made by the FKF Trustee under this FKF Trust Agreement.

Section 3.04. Investments and Bond. The FKF Trust Board (by at least a majority vote) may authorize the FKF Trustee to invest the FKF Trust Assets in prudent investments other than those described in §345 of the Bankruptcy Code, subject to section 2.03 above. Pursuant to the Plan, the FKF Trustee shall obtain a bond.

ARTICLE IV.
PROSECUTION AND RESOLUTION OF CAUSES OF ACTION

Section 4.01. The FKF Trustee's Exclusive Authority to Pursue, Settle, or Abandon Causes of Action. Pursuant to §1123(b)(3)(B) of the Bankruptcy Code and the Plan, only the FKF Trust and the FKF Trustee shall have the right to pursue or not to pursue, or, subject to the terms of the Plan and this FKF Trust Agreement, compromise or settle any Causes of Action owned or held by the Debtor or its Estate as of the Effective Date, whether or not commenced on the Effective Date. From and after the Effective Date, the FKF Trust and the FKF Trustee may commence, litigate, and settle any Causes of Action or rights to payment or claims that belong to the Debtor that may be pending on the Effective Date or instituted by the FKF Trust and FKF Trustee after the Effective Date, except as otherwise expressly provided in the Plan and this FKF Trust Agreement. Other than as set forth in the Plan, no other Person may pursue such Causes of Action after the Effective Date; provided, however, that for the avoidance of doubt, nothing in the Plan or this FKF Trust Agreement shall waive, limit or otherwise impair any Person's direct right of action, if any, against any insurer.

The FKF Trustee's rights to settle or abandon any Causes of Action, and consensually resolve any objections to Claims, shall be subject to the following procedures:

- 1) De minimis Causes of Action – The FKF Trustee may settle any Causes of Action or resolve any objection to Claims where the gross amount being compromised is less than \$50,000.00, without any notice or approval of the Bankruptcy Court.
- 2) All other Causes of Action – If the FKF Trustee desires to settle any Causes of Action that are not de minimis, he must follow the following procedures:
 - a. File a statement of intent to settle a controversy with the Bankruptcy Court setting forth: (i) a description of the claims or Causes of Action being compromised; (ii) a summary of the terms of the settlement, including any monetary exchange and any releases being proposed; (iii) the identity of all counter-parties and release parties with respect to the proposed compromise; and (iv) the time and method for objecting to the proposed settlement, which shall not be less than twenty (20) days from the date the statement is filed with the Bankruptcy Court as set forth below (the "Settlement Statement");
 - b. The Settlement Statement shall be served upon all parties who have filed notices of appearance in the Debtor's case, or otherwise requested from the FKF Trustee notice of any Settlement Statements, in any manner for service provided for under the Bankruptcy Rules and Local Rules of the Bankruptcy Court;
 - c. Parties may object to the proposals set forth in any Settlement Statement by filing with the Bankruptcy Court a written objection setting forth the factual and legal grounds for the objection;
 - d. The FKF Trustee shall endeavor to resolve any objections and provide any information reasonably requested to any objecting party with respect to any proposed settlement;

e. In the event that objections cannot be resolved, the FKF Trustee and objecting party shall schedule with the Bankruptcy Court a hearing on the proposed settlement and objection;

f. If no objections are timely filed to any Settlement Statement, then the compromise proposed therein shall be deemed approved as of the twenty-first (21st) day following the filing of the Settlement Statement with the Bankruptcy Court, without the need for further order of the court, provided, however, that the FKF Trustee may submit and request entry of an order if reasonably required by the settling party as a condition of the settlement; and

g. If exigencies exist with respect to any proposed settlement, the FKF Trustee shall have the right to apply to the Bankruptcy Court for expedited consideration of any proposed settlement.

3) The foregoing procedures shall apply to any proposed abandonment of Causes of Action.

ARTICLE V.

LIABILITY OF FKF TRUSTEE AND FKF TRUST BOARD

Section 5.01. Standard of Care; Exculpation. Neither the FKF Trustee, the Members of the FKF Trust Board, nor any director, officer, affiliate, employee, employer, professional, successors, assigns, agent, or representative of the FKF Trustee (each, an “**Exculpated Party**” and collectively, the “**Exculpated Parties**”) shall be personally liable for any losses, claims, damages, liabilities, obligations, settlements, proceedings, suits, judgments, causes of action, litigation, actions, or investigations (whether civil or administrative and whether sounding in tort, contract, or otherwise), penalties, costs, and expenses, including reasonable fees and disbursements (collectively referred to herein as “**Losses**”), whether or not in connection with litigation in which any Exculpated Party is a party, or enforcing this FKF Trust Agreement (including these exculpation provisions), as and when imposed on the FKF Trustee, incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the FKF Trustee’s or FKF Trust Board’s execution, delivery, and acceptance of or the performance or nonperformance of its powers, duties and obligations under this FKF Trust Agreement, the Plan, or the Confirmation Order or as may arise by reason of any action, omission, or error of an Exculpated Party; provided, however, that the foregoing limitation shall not apply to any Losses suffered or incurred by any holder of a Claim or Interest or FKF Trust Beneficiary that are found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted primarily and directly from the fraud, gross negligence, willful misconduct, professional malpractice, criminal conduct, or *ultra vires* act, of such Exculpated Party. Every act taken or omitted, power exercised, or obligation assumed by the FKF Trust or any Exculpated Party pursuant to the provisions of this FKF Trust Agreement shall be held to be taken or omitted, exercised, or assumed, as the case may be, by the FKF Trustee or any Exculpated Party acting for and on behalf of the FKF Trust and not otherwise; provided, however, that none of the foregoing Entities or Persons are deemed to be responsible for any other such Entities’ or Persons’ actions or inactions. Except as provided in the first provision of the first sentence of this section 5.01, every Person, firm, corporation, or other Entity contracting or otherwise

dealing with or having any relationship with the FKF Trust or any Exculpated Party shall have recourse only to the FKF Trust Assets for payment of any liabilities or other obligations arising in connection with such contracts, dealings or relationships and the FKF Trustee and the Exculpated Parties shall not be individually liable therefore. In no event shall the FKF Trustee be liable for indirect, punitive, special, incidental, or consequential damage or loss (including but not limited to lost profits) whatsoever, even if the FKF Trustee has been informed of the likelihood of such loss or damages and regardless of the form of action. Any liability of the FKF Trustee under this FKF Trust Agreement will be limited to twice the amount of annual fees paid to the Trustee.

Section 5.02. Liability, Indemnification. None of the FKF Trustee, the FKF Trust Board, their respective members, designees, or professionals, or any duly authorized agent or representative of the FKF Trust, the FKF Trustee, or the FKF Trust Board, or their respective employees or members, shall be liable for the act or omission of any other member, designee, agent, or representative of such FKF Trustee or FKF Trust Board, nor shall FKF Trustee, FKF Trust Board, or any member of the FKF Trust Board be liable for any act or omission taken or not taken in its capacity as FKF Trustee, FKF Trust Board, or member of such Board, respectively, other than for specific acts or omissions resulting from such FKF Trustee's, Board's or such member's willful misconduct, gross negligence, fraud, actions constituting a willful violation of Federal securities laws or the Internal Revenue Code, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, or *ultra vires* acts. Each of the FKF Trustee or the FKF Trust Board may, in connection with the performance of their respective functions, and in their sole and absolute discretion, consult with their attorneys, accountants, financial advisors, and agents, and shall not be liable for any act taken, omitted to be taken, or suffered to be done in accordance with advice or opinion rendered by such entities, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, neither the FKF Trustee nor the FKF Trust Board shall be under any obligation to consult with its attorneys, accountants, financial advisors, and agents, and their determination not to do so shall not result in the imposition of liability on the FKF Trustee or the FKF Trust Board or their respective members or designees, unless such determination is based on willful misconduct, gross negligence, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, or *ultra vires* acts. The FKF Trust shall indemnify and hold harmless the FKF Trustee, the FKF Trust board and any duly authorized member, agent, or designee thereof (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs, and expenses (including, without limitation, reasonable attorney's fees, disbursements, and related expenses), which such entities may incur or to which such entities may become subject in connection with any action, suit, proceeding, or investigation brought by or threatened against such entities arising out of or due to their acts or omissions or consequences of such acts or omissions, with respect to the implementation or administration of the FKF Trust or the Plan or the discharge of their duties thereunder; provided, however, that no such indemnification will be provided to such entities for actions or omissions as a result of their willful misconduct, gross negligence, fraud, malpractice, criminal conduct, unauthorized use of confidential information that causes damages, or *ultra vires* acts.

Section 5.03. No Liability for Acts of Successor/Predecessor FKF Trustees. Upon the appointment of a successor FKF Trustee and the delivery of the FKF Trust Assets to the successor FKF Trustee, the predecessor FKF Trustee and any director, officer, affiliate,

employee, employer, professional, agent, or representative of the predecessor FKF Trustee shall have no further liability or responsibility with respect thereto. A successor FKF Trustee shall have no duty to examine or inquire into the acts or omissions of his or her immediate or remote predecessor and no successor FKF Trustee shall be in any way liable for the acts or omissions of any predecessor FKF Trustee unless a successor FKF Trustee expressly assumes such responsibility. A predecessor FKF Trustee shall have no liability for the acts or omissions of any immediate or subsequent successor FKF Trustee for any events or occurrences subsequent to the cessation of his or her role as FKF Trustee.

Section 5.04. Reliance by FKF Trustee and the FKF Trust Board on Documents or Advice of Counsel. Except as otherwise provided in this FKF Trust Agreement, the FKF Trustee, the FKF Trust Board, any director, officer, affiliate, employee, employer, professional, agent, or representative of the FKF Trustee, and the Members of the FKF Trust Board may rely, and shall be protected from liability for acting or failing to act, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed by the FKF Trustee and/or the FKF Trust Board to be genuine and to have been presented by an authorized party. Neither the FKF Trustee nor the FKF Trust Board shall be liable for any action taken or omitted or suffered by the FKF Trustee or the FKF Trust Board, as applicable, in reasonable reliance upon the advice of counsel or other professionals engaged by the FKF Trustee or the FKF Trust Board, as applicable, in accordance with this FKF Trust Agreement. The FKF Trustee and the FKF Trust Board, as applicable, shall be fully indemnified by the FKF Trust for or in respect of any action taken, suffered or omitted by him or her and in accordance with such advice or opinion.

Section 5.05. Insurance. The FKF Trustee, upon the approval of the FKF Trust Board, may purchase, using the FKF Trust Assets, and carry all insurance policies and pay all insurance premiums and costs the FKF Trust Board and the FKF Trustee deem reasonably necessary or advisable, including, without limitation, purchasing any errors and omissions insurance with regard to any Losses he or she may incur, arising out of or due to his or her actions or omissions, or consequences of such actions or omissions, other than as a result of fraud or willful misconduct, with respect to the implementation and administration of the Plan or this FKF Trust Agreement.

Section 5.06. Survival. The provisions of this Article V shall survive the termination of this FKF Trust Agreement and the death, resignation, removal, liquidation, dissolution, or replacement of the FKF Trustee or the dissolution of the FKF Trust Board.

ARTICLE VI.

GENERAL PROVISIONS CONCERNING ADMINISTRATION OF THE FKF TRUST

Section 6.01. Register of FKF Trust Beneficiaries. The FKF Trustee shall maintain at all times a register of the names, distribution addresses, amounts of Allowed Claims, and the ratable interests in the FKF Trust of the FKF Trust Beneficiaries (the “**Register**”). The initial Register shall be delivered to the FKF Trustee by the Debtor and prepared in accordance with the provisions of the Plan and the Confirmation Order. All references in this FKF Trust Agreement

to holders of beneficial interests in the FKF Trust shall be read to mean holders of record as set forth in the Register maintained by the FKF Trustee and shall exclude any beneficial owner not recorded on such Register. The FKF Trustee shall cause the Register to be kept at his or her office or at such other place or places as may be designated by the FKF Trustee from time to time.

Section 6.02. Books and Records.

(a) On the Effective Date, the Debtor shall transfer and assign to the FKF Trust full title to, and the FKF Trust shall be authorized to take possession of, all of the books and records of the Debtor. The FKF Trust shall have the responsibility of storing and maintaining books and records transferred hereunder until the later of such time that the Case is closed or the FKF Trust is terminated, after which time such books and records may, to the extent not prohibited by applicable law, be abandoned or destroyed without further Bankruptcy Court order. For the purpose of this section, books and records include computer generated or computer maintained books and records and computer data, as well as electronically generated or maintained books and records or data, along with books and records of the Debtor maintained by or in possession of third parties and all of the claims and rights of the Debtor in and to their books and records, wherever located.

(b) The FKF Trustee shall also maintain in respect of the FKF Trust and the FKF Trust Beneficiaries books and records relating to the FKF Trust Assets and any income or proceeds realized therefrom and the payment of expenses of and claims against or assumed by the FKF Trustee in such detail and for such period of time as may be necessary to enable him or her to make full and proper reports in respect thereof. Except as expressly provided in this FKF Trust Agreement, the Plan, or the Confirmation Order, or as may be required by applicable law (including securities law), nothing in this FKF Trust Agreement is intended to require the FKF Trustee to file any accounting or seek approval of any court with respect to the administration of the FKF Trust, or as a condition for making any payment or distribution out of the FKF Trust Assets. The FKF Trust Board shall have the right to inspect the books and records of the FKF Trust at any time upon reasonable notice to the FKF Trustee. FKF Trust Beneficiaries shall have the right upon thirty (30) days' prior written notice delivered to the FKF Trustee to inspect the FKF Trust's books and records, including the Register, provided such FKF Trust Beneficiary shall have entered into a confidentiality agreement in form and substance reasonably satisfactory to the FKF Trustee. Satisfaction of the foregoing condition notwithstanding, if: (a) the FKF Trustee and the FKF Trust Board determine in good faith that the inspection of the FKF Trust's books and records, including the Register, by any Beneficiary would be detrimental to the FKF Trust; or (b) such FKF Trust Beneficiary is a defendant (or potential defendant) in a pending (or potential) action brought by the FKF Trust, the FKF Trustee may deny such request for inspection. The Bankruptcy Court shall resolve any dispute between any FKF Trust Beneficiary and the FKF Trustee under this section 6.02(b).

Section 6.03. Filing of Interim Reports. No later than the twentieth (20th) day of each month until entry of a final decree, the FKF Trustee shall file with the Bankruptcy Court a Post-Confirmation Monthly Operating Report in the form and substance established by the United States Trustee.

Section 6.04. Final Accounting of FKF Trustee. The FKF Trustee (or any such successor FKF Trustee) shall within ninety (90) days after the termination of the FKF Trust or the death, dissolution, liquidation, resignation, or removal of the FKF Trustee, render an accounting containing the following information:

- (a) A description of the FKF Trust Assets.
- (b) A summarized accounting in sufficient detail of all gains, losses, receipts, disbursements and other transactions in connection with the FKF Trust and the FKF Trust Assets during the FKF Trustee's term of service, including their source and nature.
- (c) Separate entries for all receipts of principal and income.
- (d) The ending balance of all FKF Trust Assets as of the date of the accounting, including the Cash balance on hand and the name(s) and location(s) of the depository or depositories where the Cash is kept.
- (e) All known liabilities of the FKF Trust.
- (f) All pending actions by or against the FKF Trust.

Section 6.5. Filing of Accounting. The final accounting described in section 6.04 of this FKF Trust Agreement shall be filed with the Bankruptcy Court and all FKF Trust Beneficiaries shall have notice that the final accounting has been filed and an opportunity to have a hearing on the approval of the accounting and the discharge and release of the FKF Trustee.

ARTICLE VII.

BENEFICIAL INTERESTS AND FKF TRUST BENEFICIARIES

Section 7.01. Trust Beneficial Interests. Each holder of an Allowed Claim shall be entitled to receive beneficial interests in accordance with the treatment of such Claim under the Plan, and shall be entitled to Distributions as set forth in the Plan.

Section 7.02. Interest Beneficial Only. Ownership of a beneficial interest in the FKF Trust shall not entitle any FKF Trust Beneficiary to any title in or to the FKF Trust Assets or to any right to call for a partition or division of the FKF Trust Assets or to require an accounting.

Section 7.03. Evidence of Beneficial Interest. Ownership of a beneficial interest in the FKF Trust shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except as maintained on the books and records of the FKF Trust by the FKF Trustee, which may be the Register.

Section 7.04. Exemption from Registration. The parties hereto intend that the rights of the holders of the beneficial interests arising under this FKF Trust Agreement shall not be "securities" under applicable laws, but none of the parties hereto represents or warrants that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the parties hereto intend for the exemption

from registration provided by § 1145 of the Bankruptcy Code and by other applicable law to apply to their issuance under the Plan.

Section 7.05. Transfers of Beneficial Interests. Beneficial interests in the FKF Trust shall be nontransferable except upon death of the interest holder or by operation of law. The FKF Trustee shall not have any obligation to recognize any transfer of Claims occurring after the Record Date. Only those holders of Claims of record stated on the transfer ledgers as of the close of business on the Record Date, to the extent applicable, shall be entitled to be recognized for all purposes hereunder.

Section 7.06. Absolute Owners. The FKF Trustee may deem and treat the FKF Trust Beneficiary reflected as the owner of a beneficial interest on the Register as the absolute owner thereof for the purposes of receiving Distributions and payments on account thereof for federal and state income tax purposes and for all other purposes whatsoever.

Section 7.07. Change of Address. A FKF Trust Beneficiary may, after the Effective Date, select an alternative Distribution address by serving a notice on the FKF Trustee identifying such alternative Distribution address. Absent such notice, the FKF Trustee shall not recognize any such change of Distribution address. Such notification shall be effective only upon receipt by the FKF Trustee.

Section 7.08. Effect of Death, Dissolution, Incapacity, or Bankruptcy of FKF Trust Beneficiary. The death, dissolution, incapacity, or bankruptcy of a FKF Trust Beneficiary during the term of the FKF Trust shall not operate to terminate the FKF Trust during the term of the FKF Trust nor shall it entitle the representative or creditors of the deceased, incapacitated or bankrupt FKF Trust Beneficiary to an accounting or to take any action in any court or elsewhere for the distribution of the FKF Trust Assets or for a partition thereof nor shall it otherwise affect the rights and obligations of the FKF Trust Beneficiary under this FKF Trust Agreement or in the FKF Trust.

Section 7.09. Standing. Except as expressly provided in this FKF Trust Agreement, the Plan or the Confirmation Order, a FKF Trust Beneficiary does not have standing to direct the FKF Trustee to do or not to do any act or to institute any action or proceeding at law or in equity against any party upon or with respect to the FKF Trust Assets.

ARTICLE VIII.

PROCEDURES FOR RESOLVING AND TREATING DISPUTED CLAIMS

Section 8.01. Incorporation of Plan Provisions. As of the Effective Date, the FKF Trustee shall assume responsibility for all matters related to Claims as established by the Plan. In accordance with the Plan, the FKF Trustee shall establish an appropriate Disputed Claim Reserve pending resolution, as set forth in the Plan, of all Claim Objections, other contested matters and adversary proceedings concerning Disputed Claims.

Section 8.02. Disputed Claim Reserve.

(a) **Establishment and Maintenance of Reserve for Disputed Claim Reserve.**

Upon the filing of any Claim Objection, the FKF Trustee shall establish the Disputed Claim Reserve. The amount of Cash deposited into a reserve fund (the “**Disputed Claim Reserve**”) shall be equal to the percentage of Cash that Holders of Disputed Claims would be entitled under the Plan if such Claims were Allowed Claims in the amount asserted by the Holder of such Disputed Claim or such lesser amount as authorized by a Final Order. For the purposes of effectuating the provisions of the Plan and the Distributions to Holders of Allowed Claims, the FKF Trustee may, at any time and regardless of whether a Claim Objection to a Disputed Claim has been Filed, request that the Bankruptcy Court estimate, set, fix or liquidate the amount of such Disputed Claim pursuant to § 502(c) of the Bankruptcy Code, in which event the amounts so estimated, fixed or liquidated shall be deemed the Allowed amounts of such Claims for purposes of Distribution under this Plan. In lieu of estimating, fixing or liquidating the amount of any Disputed Claim, the Bankruptcy Court may determine the amount to be reserved for such Disputed Claims (singularly or in the aggregate), or such amount may be fixed by an agreement in writing by and between the FKF Trustee and the Holder of a Disputed Claim.

(b) **Distributions Upon Allowance of Disputed Claims.** The Holder of a Disputed Claim that becomes an Allowed Claim subsequent to the Effective Date shall receive a Distribution from the Disputed Claim Reserve as soon as practical following the date on which such Disputed Claim becomes an Allowed Claim pursuant to a Final Order or by agreement of the parties. Such Distributions shall be made in accordance with the Plan based upon the Distributions that would have been made to such Holder under the Plan if the Disputed Claim had been an Allowed Claim on or prior to the Effective Date. No Holder of a Disputed Claim shall have any Claim against the Disputed Claim Reserve, the FKF Trustee or the Debtor with respect to such Claim until such Disputed Claim shall become an Allowed Claim, and no Holder of a Disputed Claim shall have any right to interest, dividends or other Distribution on such Disputed Claim except as provided in the Plan.

(c) **Surplus Distribution.** To the extent that a Disputed Claim is not Allowed or becomes an Allowed Claim in an amount less than the Disputed Claim amount, any excess of Cash in the Disputed Claim Reserve attributable to such Disputed Claim in excess of Cash actually distributed on account on such Disputed Claim shall be deemed Surplus Distributions. The FKF Trustee shall make a supplemental Distribution or Distributions of the Surplus Distributions to Holders of Allowed Claims on a Pro Rata basis on the next Distribution Date.

ARTICLE IX.
DISTRIBUTIONS

Section 9.01. Distributions to FKF Trust Beneficiaries from FKF Trust Assets. All payments to be made by the FKF Trust to any FKF Trust Beneficiary shall be made only in accordance with the Plan, the Confirmation Order, and this FKF Trust Agreement and from the FKF Trust Assets (or from the income and proceeds realized from the FKF Trust Assets) net of the Disputed Claim Reserve and other reserves established by the Trustee, if any, and only to the extent that the FKF Trust has sufficient assets (or income and proceeds realized from the FKF Trust Assets) to make such payments in accordance with and to the extent provided for in the Plan, the Confirmation Order, and this FKF Trust Agreement.

Section 9.02. Distributions; Withholding. The FKF Trustee shall make a Distribution to holders of Allowed Claims as provided in the Plan and, following the initial Distribution under the Plan, the FKF Trustee shall make distributions to holders of Allowed Claims (including distributions of all net Cash (and net income plus net Cash proceeds from the sale of the FKF Trust Assets) quarterly to the extent there are sufficient FKF Trust Assets; provided, however, that the FKF Trust may retain and supplement from time to time a reserve (the “**FKF Trust Reserve**”) in such amount (a) as is reasonably necessary to meet contingent liabilities and to maintain the value of the FKF Trust Assets during the term of the FKF Trust; (b) to pay reasonable administrative expenses including, without limitation, the compensation and the reimbursement of reasonable, actual and necessary costs, fees, and expenses (including attorneys’ fees and expenses, financial advisor fees and expenses, and disbursing agent fees and expenses) of the FKF Trustee and the FKF Trust Board in connection with the performance of their duties in connection with this FKF Trust Agreement; and (c) to satisfy all other liabilities and claims of creditors of the FKF Trust incurred or assumed in respect of the FKF Trust (or to which the FKF Trust Assets are otherwise subject) in accordance with the Plan, the Confirmation Order and this FKF Trust Agreement. All such Distributions shall be made as provided, and subject to any withholding or reserve, in this FKF Trust Agreement, the Plan or the Confirmation Order. Additionally, the FKF Trustee may withhold from amounts distributable to any FKF Trust Beneficiary any and all amounts, determined in the FKF Trustee’s sole discretion, to be required by any law, regulation, rule, ruling, directive, or other governmental requirement. In addition, all distributions under this FKF Trust Agreement shall be net of the actual and reasonable costs of making such distributions. Prior to the making of any Distributions contemplated hereunder to holders of Allowed Claims, the FKF Trustee shall provide the FKF Trust Board with five (5) Business Day’s written notice of any such Distribution, which notice shall include a summary of the aggregate amounts to be distributed. Within three (3) Business Days of receipt of the notice of Distribution, any Member of the FKF Trust Board may request additional information regarding the calculation of the aggregate Distribution amounts for each Class of Allowed Claims.

Section 9.03. No Distribution Pending Allowance. No payments or Distribution by the FKF Trustee shall be made with respect to all or any portion of a Disputed Claim unless and until all avoidance actions with respect to the Holder of such Claim and all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order, and the Disputed Claim, or some portion thereof, has become an Allowed Claim, except for Distributions into the Disputed Claim Reserve in accordance with the Plan, Confirmation Order, and this FKF Trust Agreement.

Section 9.04. Non-Cash Property. Subject to section 3.03 hereof, any non-Cash property of the FKF Trust may be sold, transferred, or abandoned by the FKF Trustee. Notice of such sale, transfer, or abandonment shall be provided to the Holders, if any, of Claims secured by a Lien on non-Cash property. If, in the FKF Trustee’s reasonable judgment, such property cannot be sold in a commercially reasonable manner, or the FKF Trustee believes, in good faith, such property has no value to the FKF Trust, the FKF Trustee shall have the right, subject to the approval of the FKF Trust Board, to abandon or otherwise dispose of such property, including by donation of such property to a charity designated by the FKF Trust Committee. Notice of the abandonment of any property shall be filed with the Bankruptcy Court and served upon all interested parties at least twenty (20) days prior to the proposed abandonment. Except in the

case of fraud, willful misconduct, or gross negligence, no party in interest shall have a cause of action against the FKF Trustee or any director, officer, employee, consultant, or professional of the FKF Trustee, the FKF Trust Board, or of any of its Members or professionals, arising from or related to the disposition of non-Cash property in accordance with this section.

Section 9.05. Undeliverable Distributions. If any Distribution is returned as undeliverable, the FKF Trustee shall make reasonable efforts to determine the current address of the Holder of the Claim with respect to which the Distribution was made as the FKF Trust deems appropriate, but no Distribution to any Holder shall be made unless and until the FKF Trust has determined the then-current address of the Holder, at which time the Distribution to such Holder shall be made to the Holder without interest. Amounts in respect of any undeliverable Distributions made by the FKF Trust shall be returned to the FKF Trust until the Distributions are claimed or are deemed to be unclaimed property under §347(b) of the Bankruptcy Code and the Plan (“**Unclaimed Property**”).

Section 9.06. Unclaimed Property. Distributions that are not claimed by the expiration of one year from the date of the Distribution shall be deemed to be Unclaimed Property and shall vest or revert in the FKF Trust, and the Claims with respect to which those Distributions are made shall be automatically canceled. After the expiration of that one-year period, the Claim of any Person or Entity to those Distributions shall be discharged and forever barred. All funds or other property that vests or reverts in the FKF Trust pursuant to the Plan and shall be distributed by the FKF Trustee to the other holders of Allowed Claims in accordance with the provisions of the Plan and this FKF Trust Agreement. A Claim, and the Unclaimed Property distributed on account of such Claim, shall not escheat to any federal, state, or local government or other entity by reason of the failure of its Holder to claim a distribution in respect of such Claim.

Section 9.07. Time Bar to Cash Payments by Check. Checks issued by the FKF Trust on account of Allowed Claims shall be null and void if not negotiated within 90 days after the date of issuance thereof. Requests for the reissuance of any check that becomes null and void pursuant to the Plan shall be made directly to the FKF Trustee by the Holder of the Allowed Claim to whom the check was originally issued. Any Claim in respect of such voided check shall be made in writing on or before the later of the first anniversary of the date of the Distribution or the first anniversary of the date on which the Claim at issue became an Allowed Claim. After that date, all Claims in respect of void checks shall be discharged and forever barred and the proceeds of those checks shall revert in and become property of the FKF Trust as Unclaimed Property in accordance with §347(b) of the Bankruptcy Code and be distributed as Unclaimed Property.

Section 9.08. Withholding Taxes and Expenses of Distribution. Any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from Distributions hereunder. All holders of Claims shall be required to provide the FKF Trustee with any information necessary to effect the withholding of such taxes. In addition, all Distributions under the Plan shall be net of the actual and reasonable costs of making such distributions.

Section 9.09. Distributions on Non-Business Days. Any payment or Distribution due on a day other than a Business Day shall be made, without interest, on the next Business Day.

Section 9.10. No Distribution in Excess of Allowed Amount of Claim.

Notwithstanding anything to the contrary herein, no Holder of an Allowed Claim shall receive in respect of such Claim any Distribution in excess of the Allowed amount of such Claim.

Section 9.11. Setoff and Recoupment. The FKF Trustee may, but shall not be required to, setoff against, or recoup from, any Claim and the Distribution to be made pursuant to the Plan in respect thereof, any claims or defenses of any nature whatsoever that any of the Debtor, its Estate or the FKF Trustee may have against the Holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtor, the Estate or the FKF Trustee of any claim, defense, right of setoff, or recoupment that any of them may have against the Holder of any Claim.

ARTICLE X.
TAXES

Section 10.01. Income Tax Status. Consistent with Revenue Procedure 94-45, 1994-28 I.R.B. 124, the FKF Trustee shall be treated as a trust pursuant to Treasury Regulation Section 301.7701-4(d) and as a grantor trust pursuant to IRC Sections 671-677. As such, the FKF Trust Beneficiaries will be treated as both the grantors and the deemed owners of the FKF Trust. Any items of income, deduction, credit, and loss of the FKF Trust shall be allocated for federal income tax purposes to the FKF Trust Beneficiaries.

Section 10.02. Tax Returns. In accordance with IRC Section 6012 and Treasury Regulation Section 1.671-4(a), the FKF Trust shall file with the IRS annual tax returns on Form 1041. In addition, the FKF Trustee shall file in a timely manner such other tax returns, including any state and local tax returns, as are required by applicable law and pay any taxes shown as due thereon out of the FKF Trust Assets (or the income or proceeds thereof). Within a reasonable time following the end of the taxable year, the FKF Trustee shall send to each FKF Trust Beneficiary a separate statement setting forth the FKF Trust Beneficiary's share of items of income, gain, loss, deduction or credit and will instruct each such FKF Trust Beneficiary to report such items on their federal income tax returns. The FKF Trustee may provide each FKF Trust Beneficiary with a copy of the Form 1041 for the FKF Trust (without attaching any other Beneficiary's Schedule K-1 or other applicable information form) along with such FKF Trust Beneficiary's Schedule K-1 or other applicable information form in order to satisfy the foregoing requirement. The FKF Trustee shall allocate the taxable income, gain, loss, deduction, or credit of the FKF Trust with respect to each FKF Trust Beneficiary.

Section 10.03. Withholding of Taxes and Reporting Related to FKF Trust Operations. The FKF Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the FKF Trustee shall be subject to any such withholding and reporting requirements. To the extent that the operation of the FKF Trust or the liquidation of the FKF Trust Assets creates a tax liability, the FKF Trustee shall promptly pay such tax liability out of the FKF Trust Assets (or the income or proceeds thereof) and any such payment shall be considered a cost and expense of the operation of the FKF Trust payable without Bankruptcy Court order. The FKF Trustee may reserve a sum, the amount of which shall be determined by the FKF Trustee with the approval of the FKF Trust Board, sufficient to pay the accrued or potential tax liability arising out of the

operations of the FKF Trust or the operation of the FKF Trust Assets. Upon the approval of the FKF Trust Board, the FKF Trustee, on behalf of the FKF Trust, may enter into agreements with taxing authorities or other governmental units for the payment of such amounts as may be withheld. Any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from distributions hereunder. All FKF Trust Beneficiaries shall be required to provide any information necessary to effect the withholding of such taxes.

Section 10.04. Valuations. As soon as possible after the Effective Date, the FKF Trustee and the FKF Trust Board shall work together to make a good faith determination of the value of all of the FKF Trust Assets. The FKF Trustee shall establish appropriate means to apprise the FKF Trust Beneficiaries of such valuation and such valuation shall be used consistently by all parties (including, without limitation, the FKF Trustee, the FKF Trust, the FKF Trust Beneficiaries, and the FKF Trust Board) for all federal income tax purposes. The FKF Trustee also shall file (or cause to be filed) any other statements, returns, or disclosures relating to the FKF Trust that are required by any governmental unit.

Section 10.05. Treatment of Disputed Claim Reserve. Notwithstanding any other provision of this FKF Trust Agreement to the contrary, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, the FKF Trustee shall: (a) treat any Trust Assets allocable to, or retained on account of, the Disputed Claim Reserve as held by one or more discrete trusts for federal income tax purposes, consisting of separate and independent shares to be established in respect of each Disputed Claim, in accordance with the trust provisions of the IRC (sections 641 *et seq.*); (b) treat as taxable income or loss of each of the Disputed Claim Reserve, with respect to any given taxable year, the portion of the taxable income or loss of the FKF Trust that would have been allocated to the holders of Disputed Claims had such Claims been Allowed on the Effective Date (but only for the portion of the taxable year with respect to which such Claims are unresolved); (c) treat as a distribution from the Disputed Claim Reserve any increased amounts distributed by the FKF Trust as a result of any Disputed Claims resolved earlier in the taxable year, to the extent such distributions relate to taxable income or loss of the Disputed Claim Reserve determined in accordance with the provisions hereof; and (d) to the extent permitted by applicable law, report consistent with the foregoing for state and local income tax purposes. All FKF Trust Beneficiaries shall report, for income tax purposes, consistent with the foregoing. In the event, and to the extent, any Cash retained on account of Disputed Claims in the Disputed Claim Reserve is insufficient to pay the portion of any such taxes attributable to the taxable income arising from the assets allocable to, or retained on account of, Disputed Claims, such taxes shall be: (a) reimbursed from any subsequent Cash amounts retained on account of Disputed Claims; or (b) to the extent such Disputed Claims have subsequently been resolved, deducted from any amounts distributable by the FKF Trustee as a result of the resolutions of such Disputed Claims.

Section 10.06. Expedited Determination of Taxes. The FKF Trust may request an expedited determination of taxes of the Debtor and of the FKF Trust, including the Disputed Claim Reserve, under § 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Debtor and the FKF Trust for all taxable periods through the termination of the FKF Trust.

ARTICLE XI.

TERMINATION OF FKF TRUST

Section 11.01. Termination of FKF Trust. The FKF Trustee shall be discharged and the FKF Trust shall be terminated, at such time as: (a) all Disputed Claims have been resolved; (b) all of the FKF Trust Assets have been liquidated; (c) all duties and obligations of the FKF Trustee hereunder have been fulfilled; (d) all Distributions required to be made by the FKF Trustee under the Plan and this FKF Trust Agreement have been made; and (e) the Case has been closed; provided, however, that in no event shall the FKF Trust be terminated later than the term of the FKF Trust under section 11.02 of this FKF Trust Agreement, as such term may be extended pursuant to said section.

Section 11.02. Maximum Term. The FKF Trust shall be dissolved no later than three (3) years from the Effective Date unless: (i) the Bankruptcy Court, upon a motion filed prior to the third anniversary or the end of any extension period approved by the Bankruptcy Court (the filing of which shall automatically extend the term of the FKF Trust pending the entry of an order by the Bankruptcy Court granting or denying the motion), determines that a fixed period extension (not to exceed two years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the FKF Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the FKF Trust Assets.

Section 11.03. Events Upon Termination. At the conclusion of the term of the FKF Trust, the FKF Trustee shall distribute the remaining FKF Trust Assets, if any, to the FKF Trust Beneficiaries, in accordance with the Plan, the Confirmation Order, and this Trust Agreement.

Section 11.04. Winding Up, Discharge, and Release of the FKF Trustee. For the purposes of winding up the affairs of the FKF Trust at the conclusion of its term, the FKF Trustee shall continue to act in such capacity until its duties under this FKF Trust Agreement have been fully discharged or his or her role as FKF Trustee is otherwise terminated under this FKF Trust Agreement and the Plan. Upon a motion by the FKF Trustee, the Bankruptcy Court may enter an order relieving the FKF Trustee, his or her agents and employees of any further duties, discharging, and releasing the FKF Trustee.

ARTICLE XII.

MISCELLANEOUS PROVISIONS

Section 12.01. Amendments. The FKF Trustee may, with the approval of a majority of the Members of the FKF Trust Board, modify, supplement, or amend this FKF Trust Agreement in any way that is not inconsistent with the Plan or the Confirmation Order. In the event that a majority (as described above) of the Members of the FKF Trust Board is unable to reach a consensus regarding a proposed modification, supplement, or amendment, the FKF Trustee may seek Bankruptcy Court approval of any such modification, supplement, or amendment.

Section 12.02. Waiver. No failure by the FKF Trust, the FKF Trustee, or the FKF Trust Board to exercise or delay in exercising any right, power, or privilege hereunder shall operate as

a waiver, nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

Section 12.03. Cumulative Rights and Remedies. The rights and remedies provided in this FKF Trust Agreement are cumulative and are not exclusive of any rights under law or in equity.

Section 12.04. Irrevocability. This FKF Trust Agreement and the FKF Trust created hereunder shall be irrevocable, except as otherwise expressly provided herein.

Section 12.05. Tax Identification Numbers. The FKF Trustee may require any FKF Trust Beneficiary to furnish to the FKF Trustee its social security number or employer or taxpayer identification number as assigned by the IRS and the FKF Trustee may condition any Distribution to any FKF Trust Beneficiary upon the receipt of such identification number.

Section 12.06. Relationship to the Plan. The principal purpose of this FKF Trust Agreement is to aid in the implementation of the Plan and, therefore, this FKF Trust Agreement incorporates and is subject to the provisions of the Plan and the Confirmation Order. In the event that any provision of this Trust Agreement is found to be inconsistent with a provision of the Plan or the Confirmation Order, the provisions of this FKF Trust Agreement shall control. In the event that any provision of the Plan is found to be inconsistent with a provision of the Confirmation Order, the Confirmation Order shall control.

Section 12.07. Division of FKF Trust. Under no circumstances shall the FKF Trustee have the right or power to divide the FKF Trust unless authorized to do so by the FKF Trust Board and the Bankruptcy Court.

Section 12.08. Applicable Law. This FKF Trust shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to rules governing the conflict of laws.

Section 12.09. Retention of Jurisdiction. Notwithstanding the Effective Date, and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction over the FKF Trust after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection therewith, including, without limitation, this FKF Trust Agreement, or any entity's obligations incurred in connection herewith, including without limitation, any action against the FKF Trustee or any Member of the FKF Trust Board or any professional retained by the FKF Trustee or the FKF Trust Board, in each case in its capacity as such. Each party to this FKF Trust Agreement hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this FKF Trust Agreement or of any other agreement or document delivered in connection with this FKF Trust Agreement, and also hereby irrevocably waives any defense of improper venue, *forum non conveniens* or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that any action to enforce, interpret, or construe any provision of this FKF Trust Agreement will be brought only in the Bankruptcy Court. Each party hereby irrevocably consents to the service by certified or

registered mail, return receipt requested, of any process in any action to enforce, interpret or construe any provision of this Trust Agreement.

Section 12.10. Severability. In the event that any provision of this FKF Trust Agreement or the application thereof to any person or circumstance shall be determined by the Bankruptcy Court to be invalid or unenforceable to any extent, the remainder of this FKF Trust Agreement, or the application of such provision to persons or circumstance, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this FKF Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

Section 12.11. Limitation of Benefits. Except as otherwise specifically provided in this FKF Trust Agreement, the Plan or the Confirmation Order, nothing herein is intended or shall be construed to confer upon or to give any person other than the parties hereto and the Trust Beneficiaries any rights or remedies under or by reason of this FKF Trust Agreement.

Section 12.12. Notices. All notices, requests, demands, consents, and other communications hereunder shall be in writing and shall be deemed to have been duly given to a person, if delivered in person or by facsimile with an electromagnetic report of delivery or if sent by overnight mail, registered mail, certified mail, or regular mail, with postage prepaid, to the following addresses:

If to the Debtor:

FKF3, LLC c/o
Day Seckler, LLP
300 Westage Center Drive
Suite 160
Fishkill, NY 12524
Attn: G. Wayne Day, CPA, CIRA, CVA

With a copy to:
(which shall not
constitute notice):

Reich Reich & Reich, P.C.
235 Main Street, 4th Fl.
White Plains, NY 10601
Attn: Lawrence R. Reich, Esq.
and Jeffrey A. Reich, Esq.

If to FKF Trustee:

Gregory Messer
395 Pearl Street, 2nd Floor
Brooklyn, NY 11201

With a copy to:
(which shall not
constitute notice)

KLESTADT & WINTERS, LLP
570 Seventh Avenue, 17th Floor
New York, NY 10018
Attn: Fred Stevens
and Carrie V. Hardman

Section 12.13. Further Assurances. From and after the Effective Date, the parties hereto covenant and agree to execute and deliver all such documents and notices and to take all such further actions as may reasonably be required from time to time to carry out the intent and

purposes of this FKF Trust Agreement, and to consummate the transactions contemplated hereby.

Section 12.14. Integration. This FKF Trust Agreement, the Plan, and the Confirmation Order constitute the entire agreement with, by and among the parties thereto, and there are no representations, warranties, covenants, or obligations except as set forth herein, in the Plan and in the Confirmation Order. This FKF Trust Agreement, together with the Plan and the Confirmation Order, supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise provided in this FKF Trust Agreement, the Plan or Confirmation Order, nothing herein is intended or shall be construed to confer upon or give any person other than the parties hereto and the FKF Trust Beneficiaries any rights or remedies under or by reason of this FKF Trust Agreement.

Section 12.15. Interpretation. The enumeration and section headings contained in this FKF Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this FKF Trust Agreement or of any term or provision hereof. Unless context otherwise requires, whenever used in this FKF Trust Agreement, the singular shall include the plural and the plural shall include the singular, and words importing the masculine gender shall include the feminine and the neuter, if appropriate, and *vice versa*, and words importing persons shall include partnerships, associations, and corporations. The words herein, hereby, and hereunder and words with similar import, refer to this FKF Trust Agreement as a whole and not to any particular section or subsection hereof unless the context clearly requires otherwise. Any reference to the “FKF Trustee” shall be deemed to include a reference to the “FKF Trust” and any reference to the “FKF Trust” shall be deemed to include a reference to the “FKF Trustee” except for such provisions in which the context clearly otherwise requires.

Section 12.16. Counterparts. This FKF Trust Agreement may be signed by the parties hereto in counterparts, which, when taken together, shall constitute one and the same document. Delivery of an executed counterpart of this FKF Trust Agreement by facsimile or email in .PDF format shall be equally effective as delivery of a manually executed counterpart.

Section 12.17. Representations of Authority. Each party signing this FKF Trust Agreement as an agent or representative of any party hereby covenants and warrants to the other parties that he or she is fully authorized to sign this FKF Trust Agreement on behalf of the party he or she represents and is fully authorized to bind the party to all of the terms of this FKF Trust Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and acknowledged this FKF Trust Agreement all as of the date first above written.

FKF 3, LLC, Debtor

REICH REICH & REICH, P.C.

By: _____
G. Wayne Day, CPA, CIRA, CVA
Manager
Day Seckler, LLP
300 Westage Center Dr, Ste 160
Fishkill, NY 12524

By: _____
Lawrence R. Reich
Jeffrey A. Reich
235 Main Street, 4th Floor
White Plains, New York 10601
Telephone: (914) 949-2126
Facsimile: (914) 949-1604
Email: reichlaw@aol.com

Attorneys for Debtor FKF 3, LLC

FKF TRUSTEE

KLESTADT & WINTERS, LLP

By: _____
Gregory Messer, as Trustee
395 Pearl Street, 2nd Floor
Brooklyn, NY 11201

By: _____
Fred Stevens
Carrie V. Hardman
570 Seventh Avenue, 17th Floor
New York, New York 10018
Telephone: (212) 972-3000
Facsimile: (212) 972-2245
Email: fstevens@klestadt.com

Attorneys for FKF Trustee

Exhibit “B”

Exhibit “B”

9:18 AM
01/14/11
Cash Basis

FKF 3, LLC
Balance Sheet
As of December 31, 2010

	Dec 31, 10
ASSETS	
Current Assets	
Checking/Savings	
M&T Bank	12,195.00
Total Checking/Savings	12,195.00
Other Current Assets	
Aventine Retail, LLC	89,661.33
FKF Edgewater LLC	1,862,196.77
Notes Receivable	
159 2nd Street Urban LLC	100,000.00
5 Corners - New Windsor	2,000.00
Bashert, LLC	5,022,500.00
Bel-Fuse	2,619,407.00
Cole-Hatchert, Steven	140,000.00
Conte Property	114,085.08
Diane Roberts LLC	500,000.00
Dorfman, Burt - Bashert Loan	201,221.65
Edgewater Aventine - Accd Int	899,699.94
Edgewater Aventine LLC	4,750,000.00
FKF Retail, LLC	887,750.00
Griffin - New 7/26/06	325,000.00
Hayden, Greg	100,000.00
Hemmerle, Tom	575,437.00
Historic Car Sales	110,000.00
Jerry's Self Storage LLC	1,592,541.91
JRMA LLC	50,000.00
Mountain Glen at Warwick	100,000.00
Newark St LLC	4,942,000.00
Ricci, Gary (One Degree LLC)	1,500,000.00
Rolling Acres Sunset Ridge, LLC	300,000.00
Samtov Properties LLC	300,000.00
Shapiro/Jacobs - Slazer Ent.	4,291,805.46
Slazer - Madison/23rd St	9,047,381.36
Slazer - One Madison 14%	14,093,974.02
Slazer Development LLC	247,792.03
Slazer Enterprises - 22nd St	779,638.38
Slazer Enterprises - 23rd St	2,254,976.94
Vernon NJ/Welfel Loan	150,000.00
Welfel - IRS Pymt - 2004	11,626.10
Total Notes Receivable	56,108,836.87
Rte 9W Property	189,488.72
Total Other Current Assets	58,250,183.69
Total Current Assets	58,262,378.69
TOTAL ASSETS	58,262,378.69
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	
Due to Wayne Day	20.00

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Cash Basis

FKF 3, LLC
Balance Sheet
As of December 31, 2010

	Dec 31, 10
Notes Payable	
Amvet Management Corp	800,000.00
Assoc of Rkld Cty	200,000.00
Badami Investors LLC	500,000.00
Badami, Angela	525,000.00
Bareket, Kathy	1,505,000.00
Beck, Ken (Madison)	250,000.00
Beck, Patricia	1,050,000.00
Blue Sky, LLC	3,640,000.00
Blueberry Hill Corp	700,000.00
Blueberry Hill Corp - Addl	750,000.00
Blueberry Investors	1,850,000.00
Callahan, Barbara	500,000.00
Carolan, Andrea	100,000.00
Chavkin PSP	113,187.29
Clarksville Court Assoc. LLC	40,000.00
Cleary, Victoria	100,000.00
Commercial Constr. Inc	1,592,724.85
Cuzzocrea, John	700,000.00
David David	29,500.00
Demarest, George	825,000.00
DISara, Velia	500,000.00
Dorfman & Lynch Pens Plan	339,035.67
Dorfman & Lynch PSP	118,317.21
Dorfman Family Trust	50,000.00
Dorfman, Blossom	382,096.48
Dorfman, Burt	25,500.00
Dorfman, Jesse	389,937.00
Dubas, Mrs	50,000.00
Feldman, Alan	60,000.00
Feldman, Becca	40,000.00
Feldman, Ellen	100,000.00
Feldman, Shirley	250,000.00
Fiduciary Abstract	1,042.71
Fiduciary Admin. Svcs Co	38,213.00
FKF V (Schaarschuch, Solomon)	610,000.00
Forest Mall 11%	300,000.00
Forest Mall LLC	700,000.00
Fromson, Steve	100,000.00
Garellick, Arnle	6,599,380.24
Garellick, Susan	200,000.00
Gebbia, Kathryn	1,250,000.00
Graziano, Rob	75,000.00
Greco, Mary	250,000.00
Greenapple, Rhonda	50,000.00
Griffin, Phillip	2,500,000.00
Haddad, Joseph	20,000.00
Hekker, Julie	220,000.00
Hyman, Jay	1,742,934.56
Jacobs, David	300,000.00
Jacobs, Lori	55,000.00
Jacobs, Marc PSP	287,000.00
Jacobs, Shirley	245,000.00
JDJ Holding Co LLC	957,000.00
Josephs, Eli	100,000.00
Josephs, Judy	750,000.00
Josephs, Ruth	100,000.00
Kalman, Fran	230,000.00
Keahon, Jerry	75,000.00
Klauser, Walter	1,950,000.00
Klein, Jason	400,000.00
Klein, Mitchell	1,148,818.47
Klein, Tracy	40,000.00
Knoebel, Rob	50,000.00
Krakowski, Israel	3,000,000.00
Kramer, Gerald	350,000.00

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Cash Basis

FKF 3, LLC

Balance Sheet

As of December 31, 2010

	Dec 31, 10
Landman, Richard	125,000.00
Lender, Adeline	300,000.00
Lender, Jay	250,000.00
Levin Trust	88,148.18
Levine, Harvey	100,000.00
Levy, Isaac	200,000.00
Magee, John Sr	557,243.00
Magee, Jonathan	400,000.00
Magee, Melissa	1,175,000.00
Magee, Patrice	500,000.00
Magee, Patrice Redeposit Acct	39,190.00
Mandel, Herbert	300,000.00
Mandel, Herbert (Madison)	300,000.00
Mann, Margaret	250,000.00
Mason, Allan	250,000.00
Mechanic Group	300,000.00
Mica Creek Ptnrs	250,000.00
Moriarty, Colleen	1,298,109.00
Moriarty, Dan	135,517.78
Mulligan, Priscella	140,000.00
Napoli, Daniel	175,000.00
NCP Realty, LLC	725,000.00
NYAM LLC	200,000.00
Plotkin, Ellen	50,000.00
Plotkin, Roger	1,000,000.00
Price, Ed (M.Kramer Atty)	1,700,000.00
Romano, JoAnn	1,528,779.39
Romano, Kevin	1,200,000.00
Rosenzweig, Aklva	10,000.00
Rosenzweig, Ariel	60,000.00
Rosenzweig, Chana	270,000.00
Salesky, Bill	175,000.00
Sasson, Uri	3,840,000.00
Schneider, Jay (10%)	85,000.00
Siemens, Joy	50,000.00
Solomon, Paul	125,000.00
Solomon, Paul (addl)	150,000.00
Stamsky, Lilly	1,200,000.00
Steiner, Scott	200,000.00
Terrin Family Trust	200,000.00
Terrin, Bruce & Amy	625,000.00
Tully, James	100,000.00
Total Notes Payable	62,394,674.83
Total Other Current Liabilities	62,394,694.83
Total Current Liabilities	62,394,694.83
Long Term Liabilities	
Madison Group REM Bldg Equity	
Kevin Romano	-1,320,000.00
Total Madison Group REM Bldg Equity	-1,320,000.00
Madison Park Group Equity	
Josephs, H - Madison Pk Grp	1,500,000.00
Klauser - Madison Pk Grp	750,000.00
Klein	250,000.00
Madison Park Group LLC	-6,500,000.00
Romano K - Madison Pk Grp	3,750,000.00
Romano, M - Madison Pk Grp	250,000.00
Total Madison Park Group Equity	0.00
Total Long Term Liabilities	-1,320,000.00
Total Liabilities	61,074,694.83

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Cash Basis

FKF 3, LLC
Balance Sheet
As of December 31, 2010

	<u>Dec 31, 10</u>
Equity	
Dorfman, Burt	
Dorfman - Draw	-393,574.39
Total Dorfman, Burt	-393,574.39
Klein, Mitchell	
M Klein - Draw	-361,038.50
Klein, Mitchell - Other	1,100.00
Total Klein, Mitchell	-359,938.50
Magee, John	
J Magee - Draw	-432,121.50
Magee - Contributions	61,000.00
Magee Contribution	168,929.35
Total Magee, John	-202,192.15
Retained Earnings	-1,875,313.98
Net Income	18,702.88
Total Equity	-2,812,316.14
TOTAL LIABILITIES & EQUITY	<u>58,262,378.69</u>

Exhibit “C”

Exhibit “C”

<u>First / Business Name</u>	<u>Last Name</u>	<u>Care of</u>	<u>C</u>	<u>U</u>	<u>D</u>	<u>Schedule F Amount</u>	<u>Proof of Claim Filed (Y/N)</u>	<u>Proof of Claim #</u>	<u>Proof of Claim Amount</u>	<u>Secured / Unsecured (Per Claimant)</u>
Angela	Badami			X		\$ 525,000.00	Y	42	\$ 566,708.33	Unsecured
Kathy	Bareket			X		1,505,000.00	Y	105	1,505,000.00	Unsecured
Ken	Beck			X		250,000.00	Y	107	150,000.00	Unsecured
Patricia	Beck			X		1,050,000.00	Y	108	1,050,000.00	Unsecured
Barbara	Callahan			X	X	500,000.00	N	N/A	N/A	N/A
Andrea	Carolan			X		100,000.00	Y	39	107,000.00	Unsecured
Victoria	Cleary			X		100,000.00	Y	30	100,000.00	Unsecured
John	Cozzocrea			X		700,000.00	Y	33	765,579.69	Unsecured
David	David			X		29,500.00	N	N/A	N/A	N/A
George	Demarest	c/o Anita Hyman		X		825,000.00	Y	10, 45	825,000.00	Secured
Velia	Disara	c/o Victoria Cleary		X		500,000.00	Y	29	500,000.00	Unsecured
Blossom	Dorfman	c/o Rhonda Greenapple		X	X	382,096.48	Y	20	382,000.00	Unsecured
Burt	Dorfman			X	X	25,500.00	N	N/A	N/A	N/A
Jesse	Dorfman			X	X	389,937.00	N	N/A	N/A	N/A
Alan	Feldman			X		60,000.00	Y	21	65,500.00	Unsecured
Becca	Feldman			X		40,000.00	Y	22	43,667.00	Unsecured
Ellen	Feldman			X		100,000.00	Y	24, 70	100,000.00	Unsecured
Shirley	Feldman			X		250,000.00	Y	23, 62	250,000.00	Unsecured
Steve	Fromson			X		100,000.00	Y	110	100,000.00	Unsecured
Arnie	Garelick			X		5,599,380.24	Y	57	5,599,380.24	Unsecured
Susan	Garelick			X		200,000.00	Y	59	200,000.00	Unsecured
Kathryn	Gebbia			X		1,250,000.00	Y	54	1,367,106.59	Unsecured
Rob	Graziano			X		75,000.00	Y	48	75,000.00	Unsecured
Mary	Greco			X		250,000.00	Y	8	250,000.00	Unsecured
Rhonda	Greenapple			X	X	50,000.00	Y	19	50,000.00	Unknown
Phillip	Griffin			X	X	2,500,000.00	Y	91	2,500,000.00	Unsecured
Joseph	Haddad			X		20,000.00	Y	28	21,600.00	Unsecured
Julie & John	Hekker			X		220,000.00	Y	7, 60	220,000.00	Secured
Jay & Anita	Hyman			X		1,742,934.56	Y	6, 40, 46	1,742,050.00	Secured
David	Jacobs			X		300,000.00	Y	67	300,000.00	Unsecured
Lori	Jacobs			X		55,000.00	Y	64	55,000.00	Unsecured
Shirley	Jacobs			X		245,000.00	Y	66	245,000.00	Unsecured
Eli	Josephs			X		100,000.00	Y	76	111,458.33	Secured
Howard	Josephs						Y	97	1,500,000.00	Unsecured
Judy	Josephs			X		750,000.00	Y	78	828,125.00	Partially secured (\$750K)
Ruth	Josephs			X		100,000.00	Y	81	110,416.67	Partially secured (\$100K)
Fran	Kalman			X		248,060.17	Y	1	250,078.63	Unsecured
Hugh	Keahon			X		75,000.00	Y	3	79,825.89	Unsecured
Walter	Klauser			X		1,950,000.00	Y	68	1,950,000.00	Unsecured
Walter	Klauser						Y	96	1,035,000.00	Unsecured
Jason	Klein			X	X	400,000.00	Y	26, 109	400,000.00	Unsecured
Mitchell	Klein			X	X	1,148,818.47	N	N/A	N/A	N/A
Tracey	Klein	c/o Mitchell Klein		X	X	40,000.00	N	N/A	N/A	N/A
Robert	Knoebel			X	X	50,000.00	Y	61	50,000.00	Unsecured
Israel	Krakowski	c/o Skyline Hotel		X		3,000,000.00	Y	73	3,000,000.00	Unsecured

<u>First / Business Name</u>	<u>Last Name</u>	<u>Care of</u>	<u>C</u>	<u>U</u>	<u>D</u>	<u>Schedule F Amount</u>	<u>Proof of Claim Filed (Y/N)</u>	<u>Proof of Claim #</u>	<u>Proof of Claim Amount</u>	<u>Secured / Unsecured (Per Claimant)</u>
Gerald	Kramer			X		350,000.00	Y	9	350,000.00	Unsecured
Richard	Landman			X		125,000.00	Y	49	125,000.00	Unsecured
Adeline	Lender			X		300,000.00	Y	93	300,000.00	Unsecured
Jay	Lender			X		250,000.00	Y	13, 94	250,000.00	Unsecured
Harvey & Linda	Levine			X		107,254.16	Y	47, 69	107,520.38	Unsecured
Isaac	Levy			X		200,000.00	Y	112	219,200.00	Unsecured
Jonathan	Magee			X	X	400,000.00	Y	56	437,474.11	Unsecured
Melissa	Magee			X	X	1,175,000.00	Y	34	1,257,250.00	Unsecured
Patrice	Magee			X	X	500,000.00	Y	31	546,842.64	Unsecured
Patrice	Magee			X	X	39,190.00	Y	32	42,861.53	Unsecured
John	Magee, Sr.			X	X	557,243.00	Y	38, 52	30,609,448.46	Unsecured
Herbert	Mandel			X		600,000.00	Y	95	649,524.19	Unsecured
Margaret	Mann	c/o Uri Sasson		X		250,000.00	Y	87	250,000.00	Unsecured
Allan	Mason			X		250,000.00	N	N/A	N/A	N/A
Daniel & Colleen	Moriarty			X	X	1,510,356.90	Y	14	1,526,382.30	Unsecured
Priscilla	Mulligan			X		140,000.00	Y	104	40,000.00	Unsecured
Daniel	Napoli			X		175,000.00	Y	16, 106	175,000.00	Unsecured
Ellen	Plotkin			X		50,000.00	Y	4	50,000.00	Unsecured
Roger	Plotkin			X		1,000,000.00	Y	5	1,000,000.00	Unsecured
Edward	Price			X	X	1,700,000.00	Y	71	1,811,870.97	Unsecured
JoAnn	Romano						Y	99	208,220.61	Unsecured
JoAnn	Romano			X		1,528,779.39	Y	100	1,528,779.39	Unsecured
Kevin	Romano						Y	98	1,320,000.00	Unsecured
Kevin	Romano			X		1,200,000.00	Y	101	1,200,000.00	Unsecured
Kevin & JoAnn	Romano						Y	102	5,175,000.00	Unsecured
Kevin & JoAnn	Romano						Y	103	2,150,000.00	Unsecured
Michael & Mary	Romano			X		346,000.00	Y	88	346,000.00	Unsecured
Akiva	Rosenzweig			X		10,000.00	Y	35	10,733.36	Unsecured
Ariel	Rosenzweig			X		60,000.00	Y	36	64,400.00	Unsecured
Chana	Rosenzweig			X		270,000.00	Y	37	289,800.00	Unsecured
Bill	Salesky			X		175,000.00	Y	51	175,000.00	Unsecured
Ari	Sasson						Y	84	50,000.00	Unsecured
Elan	Sasson						Y	83	50,000.00	Unsecured
Tami	Sasson						Y	85	50,000.00	Unsecured
Uri	Sasson			X		3,840,000.00	Y	90	3,980,000.00	Unsecured
Jay & Ann	Schneider			X		91,833.60	Y	2	92,580.85	Unsecured
Joy	Siemens			X		50,000.00	Y	27	50,000.00	Unsecured
Paul	Soloman			X		275,000.00	Y	50	275,000.00	Unsecured
Lili	Stawski	c/o Skyline Hotel		X		1,200,000.00	Y	74	1,200,000.00	Unsecured
Scott	Steiner			X		200,000.00	Y	89	200,000.00	Unsecured
Bruce / Amy	Terrin / Tentenbaum			X		625,000.00	Y	11	668,166.64	Unsecured
Levin	Trust			X	X	86,148.18	N	N/A	N/A	N/A
James	Tully			X		100,000.00	Y	63	107,866.54	Unsecured
ALOTS Inc T/A		c/o Greher Law Offices					Y	15	6,223.50	Unsecured
Amvet Management Corp.				X		800,000.00	Y	44	800,000.00	Secured

Preliminary Analysis

Subject to Objection and Other Adjustments