

3. Sale of Real Estate

(a) **Sale of Right to Market Debtors' Real Estate.** Concurrently with the liquidation of their inventory, the Debtors commenced preparation for the disposition of their real estate interests. The Debtors, together with the Committee and GE Capital, developed a strategy to maximize the value of their real estate interests, while minimizing Administrative Expense Claims for use and occupancy of the real property after completion of the GOB Sales. On February 19, 2001, the Debtors filed a real estate disposition motion with the Bankruptcy Court proposing dual-track disposition procedures, initially for the sale of the exclusive rights to find buyers for the Debtors' real property interests (the "Designation Rights"), and, failing that, to sell real estate directly through auction procedures. Following several weeks of negotiations among the Debtors, the Committee, GE Capital, and KRC Acquisition Corporation (collectively with its designee Kimsward Corporation, "Kimco"), the Debtors agreed to sell the Designation Rights to all of their real property to Kimco under the Designation Rights Agreement, dated as of February 23, 2001 (the "Designation Rights Agreement"), subject to higher and better offers. On February 27, 2001, the Debtors conducted the auction to sell the Designation Rights with respect to their real estate interests. Kimco emerged as the winning bidder. On March 1, 2001, the Bankruptcy Court issued an Order under 11 U.S.C. § 105, 363, 365 and 1146 and Fed. R. Bankr. P. 2002, 6004 and 6006 (i) Authorizing the Debtors to Enter into Sale Agreement pursuant to which the Right to Sell or Assign the Debtors' Interests in All or Substantially All of their Real Property Will Be Sold Free and Clear of Claims, Liens and Encumbrances, (ii) Approving a Process for the Subsequent Sale or Assumption and Assignment of Such Real Property to Designees, and (iii) Granting Other Relief (the "Designation Rights Order"), in which it authorized the Debtors to sell their Designation Rights for all of their real estate interests to Kimco in accordance with the terms of the Designation Rights Agreement.

(b) **Summary of Pertinent Terms of Designation Rights Agreement.**

- Designation Rights. Kimco was granted the sole and exclusive right and discretion to select, identify, and designate which of the real estate properties subject to the Designation Rights Order would be conveyed, which leases would be assumed and assigned, to whom such interests would be conveyed, the manner in which these properties would be sold, and which properties would be excluded from such transactions.
- Schedule A and B Properties. All of the Debtors' real properties subject to the Designation Rights Agreement were divided into (a) 108 "Schedule A" fee-owned and ground-leased properties subject to the mortgages of GE Capital ("Schedule A Properties"), and (b) 169 "Schedule B" leased and other properties not subject to the mortgages of GE Capital, ("Schedule B Properties"), each as set forth in the Designation Rights Agreement.

- Designation Period. Kimco was given until December 31, 2004, to sell the owned properties and until February 28, 2002 to cause the Debtors to assume and assign the leased properties (the “Designation Period”). During that period and until a property is sold or excluded by Kimco from the sale process, Kimco is obligated to pay the carrying costs of the property which it may recoup from the proceeds of sale.
- Allocation of Net Sale Proceeds of Schedule A Properties. The net proceeds of the sale of the Schedule A Properties were paid directly to GE Capital (subject to the reservation of rights on the part of the Committee to seek disgorgement from GE Capital) and were allocated as follows:
 - 1) a \$30 million deposit was paid by Kimco to GE Capital with respect to the Schedule A Properties (the “Schedule A Deposit”);
 - 2) the first \$370 million of the net proceeds from the sale of the Schedule A Properties (in addition to the Schedule A Deposit), plus interest thereon, was paid to GE Capital;
 - 3) the next \$30 million (plus interest thereon) in net proceeds of sales of such properties was paid to Kimco as reimbursement for the Schedule A Deposit;
 - 4) the next \$24 million in net proceeds was paid two-thirds (\$16 million) to GE Capital and one-third (\$8 million) to Kimco; and
 - 5) the remaining net proceeds from the sale of the Schedule A Properties are to be shared equally between GE Capital and Kimco.
- Interest Paid with Respect to Schedule A Properties. Kimco paid interest to GE Capital on the first \$370 million of net proceeds (reduced, from time to time, by the amount of net sale proceeds received by GE Capital) until that amount was paid in full to GE Capital on or about June 29, 2001.
- Allocation of Net Sale Proceeds of Schedule B Properties. The net proceeds of the sale of the Schedule B Properties were allocated as follows:
 - 1) A \$30.5 million deposit was paid by Kimco to Wards with respect to the Schedule B Properties (the “Schedule B Deposit”);

- 2) the first \$30.5 million (plus interest thereon) of the net sale proceeds of the Schedule B Properties was paid to Kimco, as reimbursement for the Schedule B Deposit;
- 3) the next \$24 million of the net proceeds of sales of Schedule B Properties was paid two-thirds (\$16 million) to Wards and one-third (\$8 million) to Kimco; and
- 4) the remaining net proceeds from the sale of the Schedule B Properties are to be shared equally between Wards and Kimco.

(c) **Sale Results To Date.** As of March 25, 2002, 91 of the 108 Schedule A Properties and, as of February 15, 2002, 60 of 153 Schedule B Properties were sold or assigned for gross sale proceeds of \$496 million and \$153 million, respectively. As of March 25, 2002, GE Capital received the net sale proceeds of approximately \$432 million, inclusive of a \$30 million deposit, plus interest on the unpaid portion of the \$370 million through the date it was paid in full, with respect to the Schedule A Properties, and the Debtors' Estates have received the net sale proceeds of approximately \$87 million, inclusive of a \$30.5 million deposit, with respect to the Schedule B Properties. As of March 25, 2002, there were 11 Schedule A Properties and as of February 15, 2002, there were 12 Schedule B Properties left to be sold or assigned.

(d) **Lease Rejections and Other Dispositions.** Section 365 of the Bankruptcy Code authorizes a debtor-in-possession, subject to Bankruptcy Court approval, to assume or reject executory contracts and unexpired leases. If an executory contract or unexpired lease is rejected, the other party to the rejected agreement may file an unsecured claim for damages incurred by reason of the rejection, subject to certain statutory limitations. If the Debtors seek to assign an Executory Contract or Unexpired Lease to a third party, the agreement must first be assumed. In order to assume a contract or lease, the debtor must generally cure outstanding defaults and provide adequate assurance of future performance.

The Debtors, the Committee and Keen Realty worked closely with Kimco to thoroughly analyze the Debtors' lease portfolio to determine whether leases should be rejected or should be marketed with a view to assuming and assigning the Debtors' leasehold interests.

In conjunction with the sale of the Designation Rights, the Bankruptcy Court authorized the Debtors to extend their time to assume or reject their non-residential real property leases through February 28, 2002, subject to separate agreements with respect to individual leases. The extensions gave the Debtors, Kimco and the Committee time to investigate, evaluate and seek to maximize the value of the Debtors' leasehold interests for the benefit of creditors. Subsequently, further extensions with respect to specific properties were sought and negotiated with various lessors. The Debtors' remaining personnel, the Committee, Kimco, and their respective Professionals expended significant time and effort in analyzing each of the Debtors'

leasehold interests in order to evaluate, market, and sell those considered valuable to the Debtors' Estates.

In instances where the Debtors and the Committee wished to assume and assign leases to third parties for valuable consideration, the Debtors were obligated to give the respective lessors notice of a proposed assignment to permit the lessors to serve and file objections with the Bankruptcy Court to either the assumption and assignment, or to any alleged cure amount due. The Debtors' leaseholds located in shopping centers were also governed by the special provisions concerning assumption and assignment of shopping center leases found in section 365(b)(3) of the Bankruptcy Code. The Debtors' and the Committee's Professionals made every effort to satisfy the concerns of prospective assignees, landlords and others about various proposed lease assignments and, where necessary, litigated the terms of assumptions and assignments before the Bankruptcy Court and reaching numerous negotiated resolutions with assignees and objecting lessors.

With respect to those leases for which Kimco was unable to find a buyer and which it elected to exclude from the Designation Rights Agreement, Wards with the consent of, and in consultation with, the Committee, either (i) rejected such leases pursuant to an order of the Bankruptcy Court, dated March 28, 2001, which established procedures for rejection of unexpired leases and executory contracts, or (ii) found another buyer.

Based upon the Debtors' representations the Committee believes that substantially all of the Debtors' Executory Contracts or Unexpired Leases have been or will be either assigned or rejected. However, the Creditors' Plan provides that any remaining Executory Contracts or Unexpired Leases will be considered rejected. Under sections 365(g) and 502(g) of the Bankruptcy Code, all valid claims arising from the rejection of executory contracts and unexpired leases will be treated as general unsecured claims, subject to certain limitations found in section 502(b)(6) on the amount of such claims.

4. **Sale of Furniture, Fixtures, and Equipment.** Following the sale of the Designation Rights, the Debtors negotiated an agreement with Kimco for the right to sell the Debtors' furniture, fixtures, and equipment ("FF&E"), subject to higher and better offers. No other bidders came forward to propose qualified bids for the rights to sell FF&E and on March 28, 2001, the Bankruptcy Court approved the assignment of the right to sell the Debtors' FF&E to Kimco. The Debtors received approximately \$17 million in net proceeds from the sale of their FF&E, which funds were credited to GE Capital's cash collateral account.

5. **Sale of Other Property.** In addition, the Debtors sold and continue to sell their miscellaneous assets, including intellectual property, located in the United States and abroad. As of December 17, 2001, the Debtors had received approximately \$11.9 million in net proceeds of such sales, which funds were credited to GE Capital's cash collateral account.

6. **Use of Cash Collateral.**

(a) **Debtors' Use of Cash Collateral.** Proceeds of liquidation of inventory and collection of accounts receivable were subject to BT Commercial's Liens under the BT Commercial Credit Agreement and thus constituted "cash collateral" as defined in section 363(a) of the Bankruptcy Code, which Wards could not use absent BT Commercial's consent or order of the Bankruptcy Court. To be able to conduct an orderly wind-down of its operations and to fund the GOB Sales, Wards and BT Commercial entered into an agreement (the "Cash Collateral Agreement") for the consensual use of the cash collateral under a budget for the period from December 29, 2000, through March 31, 2001. The Bankruptcy Court approved the Cash Collateral Agreement by orders, dated December 29, 2000 (interim), and January 24, 2001 (the "Final Cash Collateral Order"). Under the Cash Collateral Agreement, sales of inventory and collections of accounts receivable in excess of Wards' expenses were remitted to BT Commercial to repay the outstanding amount due on its pre-petition loan to Wards. As a result of the liquidation of Wards' inventory and collections of accounts receivable, the entire Tranche A indebtedness was paid to BT Commercial on or about March 6, 2001. Between the Commencement Date and March 6, 2001, BT Commercial received \$546.9 million of principal and \$6.0 million of interest. As described below, the Final Cash Collateral Order reserved to the Committee the right to investigate BT Commercial's liens and, if appropriate, to commence an avoidance action against BT Commercial and the Lenders.

(b) **Termination of Cash Collateral Agreement; Implementation of Wind-Down Budget.** Following the expiration of the budget forming the basis for the Cash Collateral Agreement on March 31, 2001, the Cash Collateral Agreement was continued, through a series of bridge orders and interim budgets negotiated among the Debtors, GE Capital, and the Committee, until May 4, 2001, on which date it was terminated under the Stipulated Order Terminating the Debtors' Further Use of Cash Collateral and Granting Related Relief, as amended. GE Capital contributed about \$9.1 million from cash collateral for future wind-down expense at the inception of the wind-down fund in May 2001, plus additional funding to cover outstanding checks and expected future GOB-related expenditures. Wards continued to use GE Capital's cash collateral for a portion of the wind-down expenses until July 31, 2001. Wards is currently funding its wind-down expenses from the Estates' assets (primarily the net proceeds of the sale of the Debtors' leased properties), subject to a tentative allocation agreement between (i) the Debtors and the Committee, on one hand, and (ii) GE Capital, on the other, subject to each party reserving its rights to seek a larger contribution from the other party.

(c) **Investigation of BT Commercial's Liens.** Under section 1103(c) of the Bankruptcy Code and the Final Cash Collateral Order, the Committee was authorized to investigate the liens of BT Commercial and, if warranted, to commence an action against BT Commercial and the Lenders by April 30, 2001. The deadline was consensually extended several times, subject to further extensions. After a complete investigation of BT Commercial's Liens, the Committee determined that BT Commercial's Liens on Wards' inventory and its proceeds were valid and enforceable and not subject to challenge, and acknowledged such in the Third Stipulation and Order Among the Debtors, BT Commercial Corporation and Committee

Regarding Cash Collateral Order, dated April 27, 2001, pursuant to the Stipulation and Order Among the Debtors, BT Commercial Corporation and Committee Further Extending Investigation Period under Cash Collateral Order dated June 25, 2001 (the "Extension Stipulation"), the Committee ultimately agreed to waive its rights to challenge the BT Commercial's Liens on the Debtors' other collateral, except with respect to Intangibles and General Intangibles (as those terms are defined in the Extension Stipulation).

(d) **Letters of Credit.** Before the Commencement Date, LaSalle Bank National Association ("LaSalle") issued letters of credit on behalf or for the benefit of Wards' various vendors and suppliers. After the Commencement Date, LaSalle rejected presentments by certain vendors of their letters of credit, asserting that the presentments did not strictly conform to the presentment requirements of the letters of credit. LaSalle's letters of credit were cash collateralized at 105 percent of their face amount under the BT Commercial Credit Agreement. In addition, BT Commercial held approximately \$4 million as additional security for attendant fees and expenses. The total cash collateral held by BT Commercial with respect to such letters of credit is approximately \$22.1 million. GE Capital asserts that it is entitled to \$22.1 million as cash collateral.

7. **Adequate Protection Required by GE Capital.** GE Capital asserted that the Debtors were obligated to compensate it for use during the GOB Sales of the stores subject to mortgages in favor of GE Capital. GE Capital negotiated a consensual order with the Debtors that provided, among other things, for payment to it of a total of \$10.1 million for the period from December 29, 2000, through March 31, 2001, as adequate protection for the use of the Debtors' mortgaged properties, and the establishment of an escrow account for post-petition real estate taxes, subject to the Committee's express reservation of rights to challenge GE Capital's right to such payment and to GE Capital's potential obligation to disgorge the adequate protection payments if the Bankruptcy Court later determined that GE Capital was undersecured with respect to the Debtors' assets. The adequate protection agreement was approved by orders dated December 29, 2000 (interim), and January 24, 2001 (final). Additionally, the final adequate protection order granted the Committee, among other things, certain investigation rights with respect to GE Capital and, if appropriate, the right to commence an action against the GE Entities, which the Committee did on January 18, 2002. A copy of the Committee Complaint is attached as Exhibit B to this Disclosure Statement.

8. **Employee and Retiree Matters.**

(a) **Payment of Pre-Commencement Date Wages, Salaries, and Benefits.** Maintaining the continued support, cooperation, and morale of the employees was of particular importance to Wards, BT Commercial, and GE Capital to ensure that the GOB Sales would proceed with minimal disruption. On and shortly after the Commencement Date, Wards requested and was granted Bankruptcy Court authorization to pay certain pre-petition employee obligations incurred in respect of its then-active employees, up to a maximum of \$4,300 per employee, with respect to wages, salary and compensation earned within the ninety (90) days

before the Commencement Date, and to honor certain employee reimbursement requests for business-related expenses.

(b) **Payment of Pre-Commencement Date Severance Claims.** In addition, by order dated January 24, 2001, the Bankruptcy Court authorized the Debtors to pay the outstanding severance claims of certain former employees of the Debtors in exchange for general releases to the extent that funds designated for that purpose were available (the “Severance Order”).

(c) **Retention Program.** Wards negotiated with BT Commercial, GE Capital, and the Committee for the establishment of a fund using cash collateral from which retention payments could be paid to Wards’ eligible employees (the “Eligible Employees”). By order dated January 24, 2001, the Bankruptcy Court authorized Wards to implement a retention program for its employees in an aggregate amount of approximately \$71 million (the “Retention Order”). Wards has made payments based on the employee’s position, length of service, and importance to Wards, broken down in five categories: (a) full-time hourly wage and salaried field employees, (b) wage and salary headquarters employees, (c) key field managers, (d) the wind-down team, and (e) the so-called core senior leadership group. Because GE Capital believed retaining the Eligible Employees was critical to the liquidation of Debtors’ assets, GE Capital agreed to fund the retention program largely from proceeds of the liquidation of inventory in the GOB sales after the Tranche A facility was paid in full.

In order to compensate and retain certain selected employees and categories of employees to manage the wind-down of their operations, and following negotiations with certain of their pre-Commencement Date secured lenders, on or about January 16, 2001, the Debtors moved the Bankruptcy Court for authority to implement an employee retention program to provide retention incentives for employees determined to be critical to the liquidation effort. The retention program applied to about 12,000 employees, through the conclusion of the Debtors’ GOB sales in the first quarter of 2001. Specifically, such employees included certain store sales associates and other salaried field personnel and clerks and other employees at distribution centers. These employees were to be terminated before April 30, 2001, and earn total retention payments of approximately \$40 million.

Additionally, approximately 325 headquarters employees were retained at a cost of approximately \$6 million, as well as 465 key store and distribution center managers and loss prevention personnel, to whom approximately \$8 million was payable; 90 national office managers, vice presidents, and wage personnel paid about \$7 million, and six senior executives, to whom the maximum amount payable was estimated at approximately \$7 million, in addition to receiving their pay and benefits at their prior levels. Other employees were to receive their prepetition vacation pay. The total amount payable to fund the retention program and earned vacation payments was limited to \$70.6 million.

Generally, Eligible Employees were entitled to varying amounts of severance based on salary and length of service, 40% at termination and the remainder at a later time as cash flow permitted if they remained with the Debtors until terminated. All retention program payments were subject to setoff against legally required payments such as those under the WARN Act and payments to be made to employees by professional liquidators, and covered employees were required to sign a release of all other claims against the Debtors. The program continues to apply to a small number of headquarters employees who are assisting the Estates with their wind-down.

The Bankruptcy Court approved the employee retention program by order dated January 24, 2001.

(d) **Termination of Retiree and Active Employee Benefit Plans.** By motion dated April 19, 2001, Wards sought to terminate (a) health insurance plans for approximately 9,000 retirees and 300 active employees, and (b) life insurance plans for approximately 11,800 retirees as of June 30, 2001. The motion provided for active employees to receive comparative coverage from the GE Entities, as well as to convert, through purchase, their life insurance coverage into whole life insurance coverage. On May 23, 2001, the Bankruptcy Court adjourned consideration of this motion and ordered the appointment of a retiree committee. On June 6, 2001, the Retiree Committee was appointed. After investigating the rights of the retirees and determining that the applicable benefit plans allowed the Debtors to terminate the benefits at any time, the Retiree Committee, in consultation with the Committee, the Debtors and the GE Entities, negotiated modifications to the relief requested that were acceptable to the Retiree Committee. By order dated June 29, 2001, the Bankruptcy Court granted the relief requested, as modified, authorizing the Debtors to terminate the retiree benefits as of August 31, 2001, and to terminate the active benefits as of September 30, 2001. The Bankruptcy Court also established a special deadline of October 1, 2001, by which retirees were required to file all Claims arising from or in connection with the termination of the retiree benefits.

(e) **Termination of Pension and Savings Plans.** Before the Commencement Date, Wards maintained a pension plan and a savings plan. The pension plan, which was a tax-qualified, defined-benefit, cash-balance plan, provided retirement income in the form of cash payments to eligible participants on their retirement or other separation from service. Under the pension plan, eligible participants earned benefits based on their age, salary, and interest credits, and such benefits accrued each pay period. The savings plan, which was a tax-qualified, defined-contribution plan, provided cash payments to eligible participants on their retirement or other separation from service. The savings plan permitted eligible participants to make salary deferrals to the savings plan for which Wards provided matching contributions. Before May 10, 2001, there were approximately 14,300 participants in the pension plan and approximately 21,600 participants in the savings plan. The Bankruptcy Court authorized Wards, by order dated May 10, 2001, to cease accruals under its pension plan and to cease making contributions to its savings plan and to give all remaining active employees cash payments equal to the amount of the accruals and contributions that would have been made under such plans.