

Hersh Kozlov (*pro hac vice* application pending)
Patrick Matusky (*pro hac vice* application pending)
Vincent Nolan (*pro hac vice* application pending)

DUANE MORRIS LLP
1940 Route 70 East, Suite 200
Cherry Hill, NJ 08003
856.874.4200 - Telephone
856.424.4446 – Facsimile
hkozlov@duanemorris.com
pmatusky@duanemorris.com
vnolan@duanemorris.com

Wayne Mack (*pro hac vice* application pending)
James Steigerwald (*pro hac vice* application pending)

DUANE MORRIS LLP
30 South 17th Street
Philadelphia, PA 19103-4196
215.979.1000 - Telephone
215.979.1020 – Facsimile
wamack@duanemorris.com
jhsteigerwald@duanemorris.com

Lead Counsel

*Counsel For Kenneth L. Tepper, In His Capacity As
The Liquidation Trustee For The GFGI Liquidation Trust*

E. Lee Morris
TX Bar No. 00788079
Kevin M. Lippman
TX Bar No. 00784479
MUNSCH HARDT KOPF & HARR, P.C.
500 N. Akard Street
Suite 3800
Dallas, TX 75201-6659
Telephone: 214.855.7500
Facsimile: 214.855.7584
lmorris@munsch.com
klippman@munsch.com

Local Counsel

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

KENNETH L. TEPPER, IN HIS CAPACITY
AS THE LIQUIDATION TRUSTEE FOR
THE GFGI LIQUIDATION TRUST AND
ASSIGNEE OF THE FEDERAL DEPOSIT
INSURANCE CORPORATION,

Plaintiff,

v.

TEMPLE-INLAND, INC., TIN, INC.,
FORESTAR (USA) REAL ESTATE GROUP
INC., KENNETH M. JASTROW II,
KENNETH R. DUBUQUE, RANDALL D.
LEVY, ARTHUR TEMPLE III, AND LARRY
E. TEMPLE

Defendants.

CIVIL CASE NO. _____

JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

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TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, Kenneth L. Tepper, in his capacity as the Liquidation Trustee for the GFGI Liquidation Trust (“Liquidation Trustee”) and as assignee of the Federal Deposit Insurance Corporation (“FDIC”), for his Complaint against Defendants, Temple-Inland, Inc. (“Temple-Inland”), TIN, Inc., Forestar (USA) Real Estate Group, Inc., Kenneth R. Dubuque, Randall D. Levy, Kenneth M. Jastrow II, Arthur Temple III, and Larry E. Temple alleges as follows:

PRELIMINARY STATEMENT

1. This case arises out of one of the largest financial institution failures in U.S. history -- a failure which cost the creditors of Guaranty Financial Group Inc. (“GFG”), Guaranty Bank (sometimes “Bank”) and the American taxpayers through the FDIC, an estimated loss well exceeding one billion dollars.

2. GFG’s ultimate parent corporation, Temple-Inland, and its affiliates, several of Temple-Inland’s directors, and GFG’s directors caused the failure of GFG and the Bank by fraudulently looting GFG and the Bank of assets exceeding one billion dollars. Among the creditors most victimized by the Defendants’ fraudulent scheme were holders of trust preferred securities issued by GFG approximating \$305 million, a significant portion of which is managed by Holdco Advisors L.P. (through its principals Vik Ghei and Misha Zaitzeff).

3. The Defendants carried out this fraudulent scheme for the benefit of Temple-Inland. At relevant times, Temple-Inland was a publicly held corporation the core business of which included the manufacture and sale of building products used in the residential building industry, including lumber and wallboard. Temple-Inland exerted total control and dominance over its subsidiaries, including GFG and Guaranty Bank, and operated the Bank not as a traditional bank, but rather as a captive finance arm of Temple-Inland’s manufacturing operation

and to provide support to, and create demand and generate profits for, its core building products business.

4. Defendants' fraudulent looting of GFG and Guaranty Bank included taking \$170 million in dividends from the Bank and GFG in 2006 and 2007, just as the Bank and GFG were facing historically bad market conditions and while they were being forced to borrow hundreds of millions of dollars from the Federal Home Loan Bank to support a highly-risky, highly-leveraged, mortgage-backed securities acquisition scheme (sometimes "MBS"); transferring approximately \$335 million in real estate assets from GFG for little or no consideration; forcing GFG to incur over \$305 million in debt obligations to trust preferred securities holders to fund the buyout of preferred stockholders to whom Temple-Inland had guaranteed payment; imposing tax restrictions on GFG's right to carry back net operating losses on its federal income tax returns, forcing GFG to forego approximately \$300-350 million in tax refund.

5. Temple-Inland had its own debt obligations which contained cross-default covenants providing that if GFG or the Bank became insolvent or failed to make payments, Temple-Inland's own debt obligations would default with catastrophic results including bankruptcy. For that reason, Temple-Inland had a compelling incentive to provide capital support to GFG and the Bank as long as they remained subsidiaries of Temple-Inland, which in turn provided an enormous benefit to GFG and the Bank that was taken for no consideration upon the occurrence of the spin-off. Temple-Inland, as the ultimate corporate parent of GFG, also had an obligation to maintain the capital of the Bank at adequate levels.

6. After fraudulently stripping GFG and the Bank of assets beyond the point of solvency and adequate capitalization, Defendants then attempted to avoid the clear and present danger of a disastrous cross-default on Temple-Inland's own debt obligations and any potential

liability for Temple-Inland's capital maintenance obligation by spinning off the fatally crippled and doomed-to-fail GFG and its subsidiaries as separate stand-alone corporations, leaving GFG's creditors, the FDIC, and the American taxpayers to suffer the enormous losses Defendants created.

7. Temple-Inland, its affiliates, and the defendant directors, engaged in this scheme to strip GFG of its value and to avoid Temple-Inland's capital maintenance obligation because they recognized that GFG and the Bank were headed for financial disaster. Temple-Inland caused the Bank to heavily invest in high-risk, private-label MBS collateralized by toxic residential mortgages known as Option ARMs. These MBS were dramatically overvalued on the Bank's and Temple-Inland's consolidated financial statements, as Temple-Inland well knew.

8. In fact, shortly before the spin-off of GFG and the Bank, the Bank's Director of Quantitative Analysis warned of the potentially disastrous nature of these high-risk, private-label mortgage-backed securities and the impending catastrophic consequences of the unsafe and unsound investment strategy Temple-Inland had imposed on the Bank -- the consumption of the Bank's entire stated capital of approximately \$1 billion. These concerns were dismissed in curt internal emails that called the Director of Quantitative Analysis a "pussy."

9. In addition to the highly-risky MBS portfolio, Temple-Inland also caused the Bank to incur excessive exposure to loans for construction and real estate development or home builder loans. The majority of these loans were collateralized by California, Florida, Georgia, Arizona and Texas real estate. The Bank overvalued its loan portfolio by failing to account for the significant risk of having such a geographically and industry concentrated loan portfolio. The Bank's unsafe and unsound investment and lending practices were driven by Temple-

Inland's scheme to use the Bank not as a legitimate financial institution, but as an instrument to promote Temple-Inland's core building products business.

10. Temple-Inland was able to complete the spin-off despite the Bank's dire financial condition by misrepresenting and overvaluing the Bank's risky, homebuilder focused, loan and MBS portfolios. Had Temple-Inland disclosed the Bank's true financial condition, or had Temple-Inland retained ownership of GFG, Temple-Inland would have been ordered or otherwise required to provide additional capital support for the Bank. That capital support would have reduced the catastrophic losses suffered by the Bank, the FDIC, and GFG's creditors.

11. The Liquidation Trustee brings this action to hold Temple-Inland, its affiliates, and the defendant directors accountable for GFG and Bank's failure and the estimated billions of dollars of losses suffered by the creditors of GFG and the American taxpayers through the FDIC.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1334, because this action involves proceedings arising under Title 11 of the United States Code, 11 U.S.C. §101, et seq. (the "Bankruptcy Code") and related to the bankruptcy case of GFG and its affiliated debtors, pending in the United States Bankruptcy Court for the Northern District of Texas. This Court also has jurisdiction over this action pursuant to 28 U.S.C. §1331, because this matter is a civil action arising under the laws of the United States and all state law claims alleged are so related to the claims within this Court's jurisdiction that they form part of the same case or controversy and are therefore within the Court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

13. This Court also has jurisdiction under 28 U.S.C. §1332, because the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000 and the case is between

citizens of different states. Plaintiff is a citizen of the Commonwealth of Pennsylvania. All of the Defendants are citizens of either the States of Delaware, New York, Texas, Colorado and/or Nevada, but not Pennsylvania.

14. Venue is proper in this district pursuant to 28 U.S.C. §1391(b)(2) because a substantial part of the events and omissions giving rise to Plaintiff's claims occurred in this district and pursuant to 28 U.S.C. § 1409 because this action involves claims arising under the Bankruptcy Code and/or related to the Bankruptcy Case of GFG and its affiliated debtors, which is pending in this District.

PARTIES

A. Plaintiff

15. Plaintiff, Kenneth L. Tepper, is the Liquidation Trustee of the GFGI Liquidation Trust. Mr. Tepper is a resident, domiciliary, and citizen of the Commonwealth of Pennsylvania. On August 27, 2009 (the "Petition Date"), each of the Debtors defined below filed voluntary cases under Chapter 11 (the "Chapter 11 Cases") of the Bankruptcy Code. The GFGI Liquidation Trust is a trust arising out of the bankruptcy proceedings of GFG, formerly known as Temple-Inland Financial Services, Inc., (hereinafter, collectively, "GFG") and affiliated debtors (namely Guaranty Group Ventures, Inc. ("GGVI"), formerly known as LIC Investments, Inc., Guaranty Holdings, Inc. I ("GHI"), and Guaranty Group Capital Inc.) (collectively, the "Debtors"). The referenced bankruptcy proceedings are encaptioned, *In re Guaranty Financial Group Inc., et al.*, United States Bankruptcy Court for the Northern District of Texas, Dallas Division, Case Nos. 09-35582, 09-35583, 09-35584; 09-35586 (jointly administered under Case No. 09-35582-bjh).

16. The GFGI Liquidation Trust was created pursuant to the Second Amended Joint Plan of Liquidation for Guaranty Financial Group, Inc., et al., under Chapter 11 of the United States Bankruptcy Code (the “Second Amended Plan”) and the Liquidation Trust Agreement attached thereto. The Honorable Barbara J. Houser, of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, approved and confirmed the Second Amended Plan by her Order dated May 11, 2011. Pursuant to that same Order, Judge Houser approved Kenneth L. Tepper’s appointment as Liquidation Trustee.

17. Pursuant to the terms of Articles V.H. and X. of the Second Amended Plan, the Debtors and their estates reserved certain rights of action and assigned such rights of action to the GFGI Liquidation Trust. Under Article X. of the Second Amended Plan, and the provisions of the Liquidation Trust Agreement, Plaintiff, Kenneth L. Tepper, as Liquidation Trustee, is vested with the right, authority, and discretion to pursue such rights of action, as well as certain rights of action assigned to the Debtors (and in turn assigned by the Debtors to the Liquidation Trust) by the Federal Deposit Insurance Corporation acting in its capacity as the receiver of Guaranty Bank (“FDIC”). Under Article IV.D. of the Second Amended Plan, each holder of a general unsecured claim against the Debtors, including the holders of the trust preferred securities issued by GFG (such as Holdco Advisors, L.P.) possesses a beneficial interest in the Liquidation Trust.

18. Among the claims assigned to the Debtors by the FDIC and, in turn, assigned by the Debtors to the Liquidation Trust, are the following: (1) all of the FDIC’s claims related to the divestiture of GFG and Forestar Real Estate Group, Inc. from Temple-Inland (hereinafter sometimes, the “Spin” or “Spin-Off”) against Temple-Inland, Temple-Inland’s directors and officers, and the Debtors’ former directors and officers; and (2) all of the FDIC’s claims against

Temple-Inland for any tax refunds, tax benefits, and/or tax related entitlements whatsoever including, but not limited to, net operating losses, whether or not related to the Spin-Off. Under the Second Amended Plan, in consideration for the claims assigned by the FDIC, the FDIC has an interest in the net recovery in this action.

B. Defendants

19. Defendant, Temple-Inland, is a publicly-held corporation organized, existing and incorporated under the laws of the State of Delaware with its principal place of business located at 1300 MoPac Expressway South, 3rd Floor, Austin, TX 78746. Temple-Inland is a citizen of the States of Delaware and Texas. At relevant times prior to December 28, 2007, Temple-Inland was a holding company engaged through its various subsidiaries in a number of businesses, including corrugated packaging, forest products, the manufacture and sale of building products, real estate and financial services.

20. Prior to December 28, 2007, GFG was a wholly-owned subsidiary of Temple-Inland through which Temple-Inland conducted its financial services business. Before the Spin-Off, Temple-Inland, as the ultimate corporate parent, exercised domination and control over all of its subsidiaries, including its financial services subsidiaries such as GFG and the Bank.

21. Defendant, TIN, Inc. (“TIN”), is a corporation organized, existing and incorporated under the laws of the State of Delaware with its principal place of business located at 1300 MoPac Expressway South, 3rd Floor, Austin, TX 78746. TIN is a citizen of the States of Delaware and Texas. At relevant times, TIN was a first-tier wholly-owned subsidiary of Temple-Inland standing immediately above the GFG chain of subsidiaries and through which Temple-Inland carried on business other than its financial services business, including its

corrugated packaging, building products, and timberlands businesses. TIN was dominated and controlled by Temple-Inland.

22. Defendant, Forestar (USA) Real Estate Group, Inc. (“Forestar”), is a corporation organized, existing and incorporated under the laws of the State of Delaware with its principal place of business located at 6300 Bee Cave Road, Building Two, Suite 500, Austin, TX 78746. Forestar is a citizen of the States of Delaware and Texas. At relevant times, Forestar was an indirect wholly-owned subsidiary of Temple-Inland outside of the GFG chain of subsidiaries and through which Temple-Inland carried on real estate business. Like TIN, GFG and the Bank, Forestar was dominated and controlled by Temple-Inland.

23. Defendant, Kenneth M. Jastrow II (“Jastrow”), is a resident, domiciliary, and citizen of Texas. At relevant times, Jastrow was a member of the board of directors of Temple-Inland, GFG and Guaranty Bank, serving simultaneously at relevant times as the Chair of all three boards, as well as the Chief Executive Officer of Temple-Inland. Upon information and belief, Jastrow performed services required of him in these roles in this judicial district.

24. Defendant, Randall D. Levy (“Levy”), is a resident, domiciliary, and citizen of Texas. At relevant times, Levy was a director of GFG and the Chief Financial Officer of Temple-Inland. Upon information and belief, Levy performed services required of him in these roles in this judicial district.

25. Defendant, Kenneth R. Dubuque (“Dubuque”), is a resident, domiciliary, and citizen of New York. At relevant times, Dubuque was the President and Chief Executive Officer and a director of GFG and Guaranty Bank, and simultaneously served as an officer of Temple-Inland, holding the title of Group Vice President. Upon information and belief, Dubuque performed services required of him in these roles in this judicial district.

26. Defendant, Arthur Temple III (“A. Temple”), is a resident, domiciliary, and citizen of Texas. At relevant times, A. Temple was a director of GFG, Guaranty Bank and Temple-Inland. Upon information and belief, A. Temple performed services required of him in these roles in this judicial district.

27. Defendant, Larry E. Temple is a resident, domiciliary, and citizen of Texas. At relevant times, Larry Temple was a director of Temple-Inland, while simultaneously serving as a director of the Bank. Upon information and belief, Defendant Larry Temple performed services required of him in these roles in this judicial district.

FACTUAL BACKGROUND

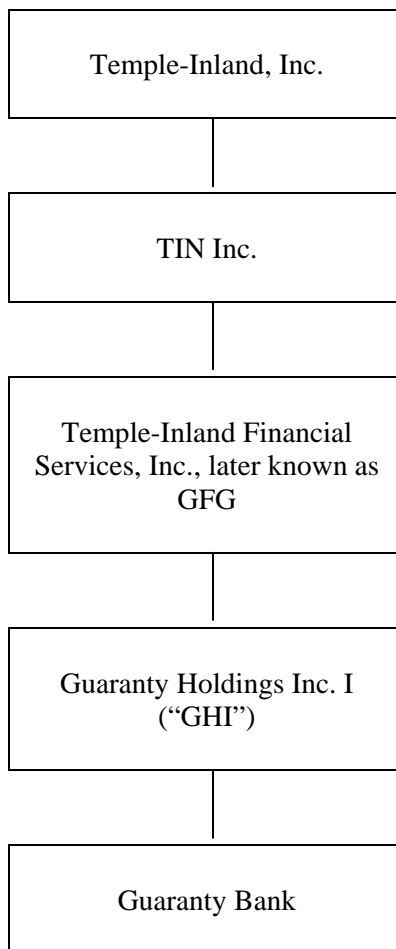
A. Temple-Inland Corporate Structure

28. At relevant times prior to December 28, 2007 and thereafter, Temple-Inland was a publicly-held Delaware corporation engaged in a number of different lines of business.

29. Prior to 2006, Temple-Inland, in annual and quarterly reports filed with the United States Securities and Exchange Commission, reported its financial results in three principal business segments: corrugated packaging, forest products, and financial services. The forest products segment housed Temple-Inland’s core building products manufacturing business. Temple-Inland’s venture into the financial services industry in 1988 was for the purpose of providing support to, and generating demand and profits for, that core business. In short, being owned and dominated by an industrial company, Temple-Inland, Guaranty Bank was not a traditional bank, but rather was a captive finance arm of a manufacturing enterprise.

30. Prior to July 9, 2007, Temple-Inland conducted its financial services business through its indirect wholly-owned subsidiary, then known as Temple-Inland Financial Services, Inc. On or about July 9, 2007, in anticipation of the Spin-Off, Temple-Inland changed the name

of Temple-Inland Financial Services, Inc. to Guaranty Financial Group, Inc., the entity defined herein as “GFG.” (References hereinafter to GFG should be understood to mean and include Temple-Inland Financial Services, Inc. where the temporal context so requires.) GFG owned 100% of the stock of Guaranty Holdings Inc. I, which in turn wholly-owned Guaranty Bank, a federally chartered stock savings bank that began operations in 1988. The general corporate structure of Temple-Inland’s financial services business as of January 5, 2005, is depicted by the following chart:



31. As alleged more fully below, at all relevant times prior to the Spin-Off, Temple-Inland dominated and controlled each of its directly and indirectly held subsidiaries depicted above such that each was the alter-ego of Temple-Inland.

32. The corporate structure depicted above, with the exception of the noted name change, remained essentially intact until, effective December 28, 2007, Temple-Inland spun off GFG by distributing the common stock of GFG to Temple-Inland's shareholders. In the same transaction, Temple-Inland also spun-off another of its subsidiaries, Forestar Real Estate Group, Inc., which was in the real estate business.

B. Summary of the Fraudulent Scheme

33. As alleged in detail below, the fraudulent scheme conceived and carried out by Temple-Inland and the other Defendants entailed a consistent pattern of fraudulent transfers over the course of several years by which assets of GFG and the Bank in excess of one billion dollars were converted for the benefit of Temple-Inland.

34. After Temple-Inland had raided GFG and the Bank beyond the point of solvency and adequate capitalization, Temple-Inland and the other Defendants then brought the fraudulent scheme to its ultimate climax. In December 2007, and as Temple-Inland and the other Defendants had contemplated, Temple-Inland divested itself of GFG and the Bank by spinning off GFG. This had the effect of removing Temple-Inland as a source of strength for GFG and the Bank and either caused or substantially contributed to the demise of GFG and the Bank given their insolvent and undercapitalized condition, and left GFG's creditors, the FDIC, and the American taxpayers to suffer the losses Temple-Inland, its Directors and the other Defendants had created. Thus, Temple-Inland irresponsibly spun-off GFG in a crippled condition to avoid

the capital maintenance obligation Temple-Inland would have continued to have but for the Spin-Off.

35. Temple-Inland and its Directors engaged in this scheme and pattern of fraudulent transfers with the knowledge that GFG was headed for financial disaster and with the ultimate goal of divesting Temple-Inland of GFG and the Bank with the purpose of avoiding Temple-Inland's responsibilities to GFG, the Bank, and their creditors. Temple-Inland made numerous misrepresentations about the value of the Bank's assets and the adequacy of its capital to facilitate this fraudulent scheme.

C. The Genesis of the Fraudulent Scheme: Improprieties in Guaranty Bank's Mortgage Origination Operation and the 2004 Cease and Desist Order

36. As early as 2004, Temple-Inland recognized that there were serious risks in the real estate lending business of GFG and Guaranty Bank.

37. Guaranty Bank operated banking centers in Texas and California and invested in single-family adjustable-rate mortgages and mortgage-backed securities and loans for the residential housing and construction industries.

38. In 2004 and years prior thereto, Guaranty Bank's lending operations included a retail mortgage origination operation that issued residential mortgage loans through various retail mortgage origination outlets.

39. At that time, improprieties in Guaranty Bank's mortgage origination operations came to the attention of high-ranking officers and directors of Temple-Inland and Guaranty Bank. The improprieties were so substantial that Guaranty Bank conducted an internal investigation of its mortgage origination lending business. That internal investigation revealed, among other things, that Guaranty Bank's mortgage origination operation had not filed certain statutorily required reports on a timely basis and may have violated applicable laws and

regulations. The President and CEO of GFG and the Bank at the time (Defendant Dubuque) believed that there was evidence of fraudulent conduct in the mortgage origination operations.

40. Guaranty Bank reported the findings of its investigation to one of its federal regulators, the Office of Thrift Supervision (“OTS”). OTS conducted its own examination and found that Guaranty Bank, either directly or through its then wholly-owned operating subsidiary, Guaranty Residential Lending, Inc. (“GRL”), had violated:

- a. 12 C.F.R. § 203.4 (regarding compilation of loan data);
- b. 12 C.F.R. § 203.5 (regarding disclosure and reporting pertaining to home mortgage disclosure);
- c. 12 C.F.R. § 560.170 (regarding records for lending transactions);
- d. 12 C.F.R. § 563.170(c) (regarding establishment and maintenance of records);
- e. 12 C.F.R. § 563.180(d) (regarding suspicious activity reports);
- f. The guidelines of Section II.A of the Interagency Guidelines Establishing Standards for Safety and Soundness, Appendix A to 12 C.F.R. Part 570 (regarding internal controls and information systems); and
- g. 31 C.F.R. § 103.18 (regarding reports of suspicious activity).

41. After the OTS’s investigation, on December 22, 2004, Guaranty Bank entered into a Stipulation and Consent to the Issuance of an Order to Cease and Desist and for Affirmative Relief, pursuant to the terms of which a Consent Order to Cease and Desist was entered (“Cease and Desist Order”). Under the Cease and Desist Order, Guaranty Bank agreed and was required, among other things, to take certain corrective actions relating to its mortgage origination activities, including strengthening its regulatory compliance controls and

management, enhancing its suspicious activity reporting and regulatory training programs, and implementing improved risk assessment and loan application register programs.

42. In addition, a minimum capital requirement was imposed upon the Bank in excess of the generally applicable requirement thrifts needed to satisfy to be characterized as “well capitalized.” Although federal regulations at the time generally required thrifts to maintain a risk-based capital ratio of 10% to be deemed well capitalized, Guaranty Bank was required to maintain a risk-based capital ratio of at least 10.75% to maintain that characterization. Later, that requirement was reduced to 10.50%, an amount still above the generally applicable 10% ratio to be characterized as well capitalized.

43. Thus, based on its own experience, Temple-Inland and its directors knew, or should have known, about the rampant abuse in the mortgage industry including, but not limited to, inflated appraisals, failure to perform proper credit checks, and bad loans. Temple-Inland and its directors, likewise, knew or should have known that risks inherent in the residential mortgage business could result in substantial losses that might diminish the capital of the Bank. In the event of such losses, Temple-Inland knew, and acknowledged in annual and quarterly reports filed with the Securities Exchange Commission (“SEC”), that Temple-Inland would be expected to maintain adequate capital for the Bank, which would require Temple-Inland to inject additional capital into the Bank.

D. The Impact of the Events of 2004 on Guaranty Bank’s Operations

1. Discontinuance of the Retail Mortgage Origination Operation

44. As a result of the Cease and Desist Order, the Bank discontinued its loan servicing operations, sold its mortgage-servicing portfolio, and outsourced all servicing on mortgage loans to third-party servicers. These actions affected over 1,500 employees and

resulted in the closure or sale of over 100 of Guaranty Bank's mortgage origination outlets. Temple-Inland took these actions in lieu of other more labor and capital-intensive actions to strengthen and enhance the regulatory compliance controls, management and reporting functions of the mortgage origination business that might have enabled Guaranty Bank to retain that business.

45. Temple-Inland's response to the Cease and Desist Order was consistent with its overall strategy for GFG and Guaranty Bank. For Temple-Inland, GFG and the Bank were not companies into which labor and capital were to be invested for the purposes of maintaining and growing a profitable financial services business, but rather they were dominated and subservient companies to support and create demand for Temple-Inland's core building products business.

2. **Increased Reliance on Investment in High-Risk Mortgage-Backed Securities**

46. Temple-Inland's termination of Guaranty Bank's mortgage origination operations forced a change in Guaranty Bank's investment strategies. After the discontinuance of its mortgage origination operations, Guaranty Bank began to invest more heavily in mortgage-backed securities. Mortgage-backed securities are debt instruments with a pool of real estate loans as the underlying collateral. The mortgage payments of the individual real estate loans are used to pay interest and principal on the securities.

47. In pursuing this new investment strategy, Temple-Inland avoided the risk inherent in the Bank's own mortgage origination operations, but the Bank became (to a greater extent) subject to the risk of other loan originators (such as Washington Mutual Bank ("Washington Mutual") and Countrywide Financial Corporation ("Countrywide")) which sold high-risk mortgages that secured the mortgage-backed securities the Bank acquired. Thus, Temple-Inland caused the Bank to replace risk on its balance sheet that it had a greater ability to supervise and

control with risk that was to a greater extent beyond its control and only within the purview of third-party mortgage originators. In addition, the Bank also expanded into riskier asset classes in which it invested in order to chase higher yields for the ultimate benefit of Temple-Inland.

48. As alleged more fully below, Temple-Inland dictated the shift in the Bank's investment strategy which led to an unsafe and unsound concentration in highly risk, homebuilder-focused, MBS on the Bank's balance sheet. During 2006 and 2007, the Bank's reported investment in MBS as a percentage of total assets substantially exceeded the percentage of assets invested in such securities by similarly situated thrifts. That excessive concentration of investment in mortgage-backed securities, again driven by Temple-Inland, was a substantial factor in the Bank's failure.

E. Temple-Inland's Imposition of Rates of Return Forcing a Migration from Lower Risk Government-Sponsored Agency MBS to High Risk, Toxic Private-Label MBS

49. At all relevant times, Temple-Inland and the Temple-Inland board of directors (including Defendants Jastrow, A. Temple and L. Temple) established the target rates of return to be achieved on Temple-Inland's investment in GFG.

50. Initially, the Bank invested heavily in mortgage-backed securities issued by government-sponsored agencies, such as FNMA and FHLMC. These government-sponsored agency securities, while of less perceived risk than mortgage-backed securities issued by private companies, typically yielded lower returns than the much riskier private-label securities.

51. Eventually, government-sponsored agency securities did not satisfy the higher rates of return that Temple-Inland and its directors dictated that GFG achieve. To satisfy these requirements, Guaranty Bank reduced its percentage investment in the lower risk government-sponsored agency investments, and instead invested in the higher risk, toxic private-label

securities, which were collateralized by risky mortgages (originated by others such as Washington Mutual and Countrywide) known as Option ARMs.

52. Many of these risky private-label securities were not available through open-market transactions. Instead, they were sourced and created for the Bank by investment banks and mortgage originators which effectively took orders from the Bank to create custom-made securities based on the Bank's stated parameters relating to such criteria as FICO scores, interest rate, interest rate sensitivity, collateral and geography.

53. The risky private-label securities not only advanced Temple-Inland's rate of return requirements, they also served Temple-Inland's objective of using the Bank to pursue Temple-Inland's own, self-serving, policy of promoting the homebuilding industry at the expense of GFG and the Bank.

54. Certain mortgage-originators, and mortgage-backed securities issuers, such as Washington Mutual and Countrywide, issued huge amounts of poorly underwritten, undocumented, risky loans. Those loans enabled borrowers to purchase homes, including newly constructed homes, that they otherwise could not afford. The short-term result of these irresponsible loans was additional new home construction, which benefited Temple-Inland's building products division. Temple-Inland caused the Bank to purchase huge amounts of MBS collateralized by these risky loans. Those purchases furthered Temple-Inland's efforts to promote the homebuilding industry. GFG and the Bank, however, were forced to suffer the consequences of these highly risky MBS.

55. Temple-Inland's annual and quarterly reports reflect the migration to the higher risk private-label MBS. Temple-Inland's Form 10-K for the fiscal year ended January 1, 2005 (the "2004 10-K"), for example, noted that approximately 91% of the Bank's MBS portfolio

were government-sponsored agency securities while private-label securities constituted approximately 9% of the portfolio.

56. During 2005, the percentage of the MBS portfolio that Guaranty Bank invested in government-sponsored agency securities fell from 91% to 49%, and the percentage invested in much riskier private-label MBS securities rose dramatically from 9% to 51%.

57. By September 30, 2007, the government-sponsored agency securities portion of the MBS portfolio was approximately 33% and the private-label portion was approximately 67% of the portfolio.

58. The Bank's significant investment in these high risk private-label mortgage-backed securities was unsafe and unsound and far surpassed the concentration of such investments made by other similarly sized thrifts during 2006 and 2007.

59. Thus, while Guaranty Bank's huge investment in these risky MBS served Temple-Inland's rate of return requirements, Temple-Inland's directions to invest in the homebuilder and construction industry, and Temple-Inland's desire to Spin-Off GFG, this strategy devastated GFG and Guaranty Bank.

60. The United States Department of Treasury, Office of Inspector General ("OIG") later concluded that the investment in these higher-risk, private-label MBS caused the failure of Guaranty Bank:

In brief, Guaranty failed primarily because of losses in its nonagency mortgage-backed security (MBS) portfolio.

* * *

Guaranty failed because of large losses and significant levels of criticized assets in the nonagency MBS with underlying assets concentrated in California and primarily consisting of option ARMS.

See, Department of the Treasury, Office of Inspector General, Safety and Soundness: Material Loss Review of Guaranty Bank (OIG-11-066) dated April 29, 2011 at p. 2, 3.

F. Temple-Inland Directs The Bank to Make Risky Loans to Temple-Inland's Customers Contrary to Responsible Banking Practices and Against The Best Interests of The Bank and GFG

61. Temple-Inland owned and operated GFG and the Bank for the purpose of serving Temple-Inland's core building products business. Temple-Inland's own self-serving objectives for GFG and the Bank caused them to make unnecessary and irresponsible loans to Temple-Inland's customers. The largest of these residential homebuilder borrowers at the time of the Spin-Off were J.F. Shea; Standard Pacific; MDC Holdings; M/I Financial; Lennar Corporation; Hovnanian Enterprises; Provident Funding; Woodside Group; W.R. Starkey; and KB Home. Other significant homebuilder finance borrowers included: Weekley Homes; WL Homes; Centerline Homes, Inc.; Ivory Homes; William Lyon Homes; Highland Homes Ltd.; Dunmore Homes, LLC; Mercedes Homes; Meritage Corporation; GL Homes of Florida Holding Corp.; WCI Communities; Village Homes of Colorado; Wathen-Castanos, Inc.; Wall Homes, Inc.; and McMillan Companies. Several of these significant borrowers have filed for protection under the Bankruptcy Code underscoring the risky nature of these bad loans.

62. During 2006 and 2007, Temple-Inland, GFG and the Bank knew the housing market was deteriorating. Nevertheless, construction and development loans constituted nearly 36% of the Bank's loan portfolio – far greater than the construction loan portfolio for similarly sized thrifts.

63. Further, at Temple-Inland's direction, the Bank's loan portfolio was heavily concentrated on loans collateralized by property in California, Texas, Florida and Georgia. While those geographic concentrations were consistent with Temple-Inland's focus on its building products business, they violated responsible banking practices of maintaining diverse

loan portfolios, particularly with the signs of severe economic turmoil for California's housing market in 2006 and 2007.

64. Temple-Inland caused the Bank to make these loans to Temple-Inland's building industry customers who, in turn, used the funds to purchase Temple-Inland's building products and, on information and belief, to invest in projects and/or real estate joint ventures with Temple-Inland. This lending policy served the needs of Temple-Inland's building products business, but GFG and the Bank suffered the consequences by taking unnecessary and irresponsible risks leading to significant losses and contributing to their ultimate demise.

65. Temple-Inland hid the risky and irresponsible nature of the Bank's loan portfolio by characterizing the loan portfolio as "diversified" and by substantially overvaluing it.

G. GFG as a Source of Substantial Cash Flow for Temple-Inland: the Fraudulent Up-Streaming of Dividends

66. Notwithstanding Temple-Inland's understanding of the significant risk in the residential lending business and the long term problems that would face GFG and the Bank, Temple-Inland continued to take substantial dividends from GFG and Guaranty Bank.

67. Prior and subsequent to 2004, the financial services segment of Temple-Inland's operations served as a substantial source of cash flow for Temple-Inland. For the years 2002, 2003 and 2004, GFG paid dividends to Temple-Inland of \$125 million, \$166 million, and \$105 million, respectively.

68. After 2004, as Temple-Inland and its directors planned and undertook initial steps in anticipation of the inevitable Spin-Off, Temple-Inland continued to take dividends from GFG. In 2005, 2006 and 2007, GFG paid dividends to Temple-Inland of \$25 million, \$135 million and, \$35 million, respectively.

69. Thus, in the six years prior to the Spin-Off, Temple-Inland siphoned \$591 million in cash out of GFG. Those dividends amounted to roughly 80% of GFG's net earnings over that period. GFG's dividend to net earnings ratio far surpassed the ratios of similarly sized thrifts.

70. Upon information and belief, at some point well prior to February 14, 2007, Temple-Inland and its board of directors came to the realization that the spin-off of Temple-Inland's financial services segment was critical to shielding Temple-Inland from the inevitable losses that would be suffered by the Bank and GFG. They deferred that maneuver, however, out of a desire, among other things, to further strip GFG and the Bank of their cash and assets to the significant detriment of GFG and its creditors (including the holders of the trust preferred securities) as well as the FDIC and the American taxpayers.

H. Temple-Inland's Misrepresentations to Facilitate Its Scheme

71. As set forth more fully below, Temple-Inland's ability to continue to siphon cash from GFG, notwithstanding Temple-Inland's recognition that eventually the Spin-Off of GFG would occur, was facilitated by repeated misrepresentations made by Temple-Inland regarding the value of Guaranty Bank's assets (including the value of the Bank's private-label mortgage-backed securities portfolio) as well as the amount and adequacy of the Bank's capital, which depended upon the valuation of those assets.

1. Temple-Inland's Representations Regarding the Capital Adequacy of Guaranty Bank

72. Guaranty Bank was required to satisfy certain capital requirements measured by capital adequacy ratios, including ratios known as the "tangible capital ratio," the "leverage capital ratio," the "tier 1 risk-based capital ratio" and the "total risk-based capital ratio."

73. At relevant times prior to 2008, Temple-Inland consistently represented in its annual reports and quarterly reports that Guaranty Bank was a “well capitalized” savings bank under applicable regulatory capital requirements. Temple-Inland further announced its intention and commitment to maintain the Bank as “well capitalized.” *See* Temple-Inland’s 2004 10-K, p. 35; Temple-Inland’s 2005 10-K, pp. 35, 106; Temple-Inland 2006 10-K, pp. 43, 116; Temple-Inland’s 1st Qtr. 2007 10-Q, p. 38; Temple-Inland’s 2nd Qtr. 2007 10-Q, p. 38; Temple-Inland’s 3rd Qtr. 2007 10-Q, p. 42.

2. Temple-Inland’s Representations Regarding Guaranty Bank’s Mortgage-Backed Securities Portfolio

74. Temple-Inland’s capital adequacy representations could only be accurate and reliable if the valuation of the assets on Guaranty Bank’s balance sheet was also accurate and reliable. But those valuations were dramatically overstated in large part due to the “toxic” private-label mortgage-backed securities Temple-Inland had effectively compelled GFG and Guaranty Bank to acquire.

75. At all relevant times, Guaranty Bank’s balance sheet contained various assets, the valuation of which depended upon, among other things, the making of significant assumptions and estimates and the exercise of subjective judgments. Among such assets was the Bank’s portfolio of mortgage-backed securities. In valuing the highly risky, homebuilder-focused MBS portfolio for purposes of balance sheet reporting, Temple-Inland and the Bank relied upon internal processes, in-house valuation models and assumptions, and did not request or receive the input of independent third parties or back-test valuations, as is customary in the industry when marking to the market.

76. The MBS portfolio was a very significant asset on the balance sheet of Guaranty Bank. For example, at year end 2004, Temple-Inland represented in its annual report that

Guaranty Bank's total risk-based capital equaled \$1.219 billion and that the amount of MBS then owned by Guaranty Bank equaled \$4.692 billion, nearly four times the risk-based capital amount.

77. Throughout the period from January 1, 2004 through December 27, 2007, Temple-Inland consistently identified the value of Guaranty Bank's MBS on Temple-Inland's published financial statements at amortized cost even though Temple-Inland and its directors knew or should have known that the fair value of those securities was less than the amortized cost of those securities. The difference between the lower fair market value of the securities and their amortized cost was referred to in Temple-Inland's annual and quarterly reports as "unrealized losses." Those unrealized losses, however, were treated by Temple-Inland as so-called "temporary losses" and were not charged to expense. Over time, Temple-Inland made a variety of false representations to justify that accounting treatment, including representations to the effect that:

- The MBS contained in the Bank's portfolio could not be settled in such a way that substantially all of the recorded investment could not be recovered;
- The MBS portfolio was comprised entirely of either securities guaranteed directly or indirectly by government-sponsored enterprises, or were "senior-tranche" mortgage-backed securities; and
- Temple-Inland had the intent and ability to hold to maturity the substantial portions of the MBS portfolio that it, from time to time, classified as securities "Held-to-maturity."

See Temple-Inland's 2004 10-K, p. 96; Temple-Inland's 2005 10-K, p. 99; Temple-Inland's 2006 10-K, p. 110.

3. Temple-Inland's Misrepresentations

78. Temple-Inland's assertion that Guaranty Bank's toxic MBS portfolio could not be settled under any circumstance that would not allow the Bank to recover substantially all of its recorded investment was knowingly, recklessly or negligently inaccurate and unrealistic, especially with respect to the Option ARM securities. That assertion ignored the risks inherent in the portfolio arising not just from the risks of the Option ARMs (and their negative amortization characteristic) which underlay a substantial portion of the portfolio, but also the geographic concentration of the mortgages within the securities, especially in California and Florida. GFG's annual report on Form 10-K for the year ended December 31, 2007 stated that 55% of the mortgage loans underlying the Bank's private-label MBS at year-end 2007 were for California properties.

79. Similarly, the repeated statements by Temple-Inland that the Option ARM securities were comprised entirely of either government-sponsored agency securities or securities which were private-label "senior tranche" securities were false and misleading. Those assertions created the false impression that the Bank's right to payment on those securities was senior to all others. In fact, a substantial portion of the Bank's private-label MBS were significantly subordinated to more senior tranches. For example, on or about the effective date of the Spin-Off from Temple-Inland, December 28, 2007, nearly 50% of the private-label, Option ARM portfolio of the Bank was comprised of securities properly characterized as "junior mezz."

80. Temple-Inland's misrepresentations that the MBS were "senior tranche" were important and material. Because "junior mezz" securities are subordinated to senior tranche securities, "junior mezz" securities bear greater exposure to loss and absorb losses arising from defaults on underlying mortgage collateral before the senior tranche securities. "Junior mezz" securities, therefore, were more likely to erode in value. By the time of the Spin-Off, given the

condition of the market, particularly for securities collateralized by risky negatively amortizing Option ARMs with high concentrations in California, these junior mezz securities were significantly and permanently impaired.

81. Likewise, the repeated assertions by Temple-Inland to the effect that it had the intent and ability to hold to maturity the substantial portions of the MBS portfolio that it, from time to time, classified as “Held-to-Maturity” were false and misleading. In truth and in fact, the classification of portions of the MBS portfolio was not based upon any *bona fide* assessment of Temple-Inland’s intent or ability to hold such securities to maturity, but rather was based on a desire to maintain the stability of Temple-Inland’s equity. As Bank officer Michael D. Calcote reported at a meeting of the Bank’s Asset/Liability Management Committee (“ALCO”),

The held-to-maturity designation had been for the purpose of keeping Temple-Inland equity stable, since available-for-sale-classified mark-to-market changes are reflected in GAAP equity (while bypassing the income statement, and not impacting regulatory capital). Currently only 10% of the MBS portfolio is available-for-sale. Guaranty has a relatively high balance sheet allocation to securities, compared to banks.

82. Temple-Inland’s mischaracterization of the securities, and its failure to properly assess the risk associated with the non-senior securities in the Bank’s portfolio, resulted in a failure to properly value those highly risky securities. The Bank’s MBS portfolio was substantially less valuable than the amounts that Temple-Inland repeatedly reported in its 10-Ks and 10-Qs, including in, among other places, the financial statement notes which highlighted differences in the carrying value as compared to fair value of financial instruments. The overvaluation of these assets resulted in a substantial misrepresentation of tangible capital and GFG’s and the Bank’s capitalization.

83. For these reasons, at relevant times during 2006 and 2007, when Temple-Inland was characterizing the Bank as well-capitalized based on the internal valuation of assets and diverting assets from GFG's financial services operations and up-streaming hundreds of millions of dollars in dividends, the Bank in fact was undercapitalized. The Bank was, for these reasons, and during these times, inadequately capitalized given the risk associated with the business in which it was engaged.

84. The misrepresentations by Temple-Inland, both with respect to valuation of its assets, including specifically the MBS, and in turn, the capital adequacy of Guaranty Bank were intentionally, recklessly and/or negligently inaccurate and misleading.

85. Temple-Inland's misrepresentations about the toxic MBS portfolio hid Temple-Inland's purpose of using the Bank to further Temple-Inland's own homebuilding-industry strategy and enabled Temple-Inland to continue to strip GFG of assets and then to Spin-Off GFG to avoid its own capital maintenance obligation.

I. Fraudulent Steps Taken in 2006 in Anticipation of the Spin-Off

1. Temple-Inland's Siphoning of GFG Real Estate Assets

86. Temple-Inland and its directors knew that GFG and the Bank would not continue to serve as Temple-Inland's personal ATM for much longer. Thus, Temple-Inland stripped GFG of much of its value while attempting to extract Temple-Inland from the financial crisis GFG and the Bank would face as a result of Temple-Inland's scheme.

87. As an early step in connection with the inevitable Spin-Off, Temple-Inland changed its segment structure for financial reporting purposes. Whereas previously, Temple-Inland had classified its operations into three reporting segments: corrugated packaging, forest products, and financial services, effective January 1, 2006 Temple-Inland began reporting in four

business segments, the fourth being a real estate segment. The real estate operations previously, at least in part, were included within Temple-Inland's financial services segment.

88. In keeping with this restructuring of its business segment reporting, Temple-Inland required GFG to distribute all of the stock which GFG held in an entity then known as Lumberman's Investment Corporation (sometimes "Lumberman's") to another entity, Defendant TIN, a wholly-owned subsidiary of Temple-Inland outside the GFG line of subsidiaries. At the time of that distribution, Lumberman's owned substantial real estate assets and carried on a substantial real estate business, with its assets being valued in the hundreds of millions of dollars.

89. The distribution of the stock of Lumberman's to TIN was authorized pursuant to a "Unanimous Written Consent of the Board of Directors of Temple-Inland Financial Services Inc. [later known as GFG]" executed effective December 27, 2005, by four members of the GFG board, Defendants Dubuque, Jastrow, Levy and A. Temple. Messrs. Dubuque, Levy and Jastrow were then officers of Temple-Inland. Messrs. Jastrow and A. Temple were members of Temple-Inland's board of directors.

90. The Unanimous Consent which authorized the distribution of the Lumberman's Investment Corporation stock to Defendant TIN also authorized several other related transactions including the following:

- Prior to the distribution of the Lumberman's stock, a capital contribution by GFG to Lumberman's of all of the capital stock of Temple-Inland Life Insurance Inc. then owned by GFG, and valued for purposes of the contribution at \$56,871,728.94;
- Prior to the distribution of the Lumberman's stock, a capital contribution by GFG to Lumberman's of all of the capital stock of Temple-Inland Realty Inc., then owned by GFG and valued for purposes of such contribution at \$14,735,685.50; and

- GFG's assumption of the obligations of Lumberman's due to Temple-Inland Capital, Inc.

91. The Unanimous Consent valued the shares of Lumberman's for purposes of GFG's distribution of those shares to TIN at \$209,322,631.50.

92. Temple-Inland's quarterly report for the first quarter of 2006 stated that Temple-Inland's creation of a fourth reporting segment, real estate, resulted in the reclassification and corresponding reduction of the assets of the financial services reporting segment in the amount of \$336 million.

93. The decision by Temple-Inland and its board of directors to transfer the real estate assets outside the GFG chain of subsidiaries was a further exercise of Temple-Inland's complete domination and control over its subsidiaries including TIN, GFG and its subsidiaries.

94. Lumberman's Investment Corporation later came to be known as Forestar (USA) Real Estate Group, Inc., the Defendant identified above as Forestar. The distribution by GFG of the stock of Lumberman's Investment Corporation was made without consideration to GFG and for the purpose of placing ownership of the real estate assets outside of the GFG chain of subsidiaries. These assets became part of Forestar, a subsidiary of Forestar Real Estate Group, Inc., the corporation which was spun-off from Temple-Inland contemporaneously with its Spin-Off of GFG. Through the distribution of Lumberman's stock to TIN, GFG was stripped of a valuable asset for which it did not receive reasonably equivalent value in anticipation of the Spin-Off.

95. This intrinsically unfair transaction was only one step in a series self-dealing acts designed to benefit Temple-Inland to the significant detriment of GFG and its creditors.

2. **Temple-Inland's Refinancing of Preferred Stock Through Trust Preferred Securities, Thereby Extinguishing Temple-Inland's Guarantee**

96. In 2006, Temple-Inland continued its scheme to insulate itself from the financial crisis it created for GFG by refinancing certain preferred stock through the issuance by GFG of trust preferred securities. Temple-Inland structured the refinancing transaction so as to replace its obligations to preferred stockholders with GFG's obligation to trust preferred securities investors.

97. At all relevant times prior to 2007, GFG had two subsidiaries that qualified as real estate investment trusts, Guaranty Preferred Capital Corporation ("GPCC") and Guaranty Preferred Capital Corporation II ("GPCC II"). Both issued preferred stock to institutional investors. The total face amount of such stock was \$305 million. That preferred stock was automatically exchangeable into preferred stock of Guaranty Bank if, among other things, federal banking regulators determined that Guaranty Bank was or would become undercapitalized in the near future.

98. Temple-Inland was obligated to acquire the preferred stock of all affected GPCC and GPCC II preferred stockholders if the preferred stock of GPCC or GPCC II were exchanged. Thus, under these arrangements, Temple-Inland effectively guaranteed the preferred stock and had a contingent liability in the amount of approximately \$305 million in the event that, among other things, the federal banking regulators determined that Guaranty was or would become undercapitalized in the near future.

99. In or about May 2006, Temple-Inland determined to redeem the \$305 million of preferred stock issued by GFG's subsidiaries, GPCC and GPCC II. Proceeds for the redemption of such preferred stock were raised through the issuance of \$305 million of trust preferred securities issued by a trust formed and owned by GFG in 2006. The proceeds of the trust preferred securities issuance were lent by the trust to GFG under the terms of a subordinated note

given by GFG, and GFG guaranteed certain payments due to the trust preferred securities holders pursuant to the trust preferred securities.

100. The proceeds of the trust preferred securities issuance were, in turn, lent by GFG to GPCC and GPCC II and used by them to redeem the preferred stock. Throughout 2006 and early 2007, the trust preferred securities were acquired by investors and, in the first 6 months of 2007, Temple-Inland, using the proceeds from the issuance of those trust preferred securities, redeemed the \$305 million of preferred stock issued by GPCC and GPCC II. This benefitted Temple-Inland by causing a reduction of its debt obligations in the amount of approximately \$305 million, in the event federal banking regulators were to determine that Guaranty Bank was or would become undercapitalized in the near term.

101. By burdening GFG with the obligations of the trust preferred securities, Temple-Inland was released from its obligation to acquire the preferred stock of the investors in GPCC and GPCC II. The purchasers of the trust preferred securities became substantial unsecured creditors of GFG in the bankruptcy which ensued. The refinancing of the preferred stock by the issuance of the trust preferred securities was dictated by Temple-Inland and constituted a further exercise of its complete domination and control over GFG and its subsidiaries.

J. Weakening Market Conditions, Guaranty Bank's Financial Performance, and Further Up-Streaming of Dividends in 2006

102. Notwithstanding the overstatement of asset values and understatement of capital, throughout 2006, Temple Inland continued to take substantial dividends from GFG. During 2006, Temple-Inland and its directors caused GFG to pay dividends to Temple-Inland in the amount of \$135 million. From 2003 through 2006, Temple-Inland took \$431 million in dividends from GFG. These dividends occurred even though Temple-Inland and its directors

knew or should have known that economic conditions in the market in which GFG and Guaranty Bank were operating would be rapidly deteriorating.

103. In 2006, GFG, Guaranty Bank and Temple-Inland recognized that the credit market would deteriorate. Guaranty Bank's then-Chief Financial Officer, Michael Calcote, recognized as much at a meeting of Guaranty Bank's board of directors on August 29, 2006.

104. At the Bank's August 29, 2006 board of directors meeting, Mr. Calcote suggested that the Bank was likely to face credit losses in the future. These comments were made in the presence of no fewer than seven officers or directors of Temple-Inland (Defendant Jastrow (Chairman of the Board and Chief Executive Officer of Temple-Inland), Defendants A. Temple and L. Temple and Larry R. Faulkner (each members of Temple-Inland's board), as well as Defendant Dubuque, Doyle R. Simons and J. Patrick Maley, III (each executive officers of Temple-Inland)). Thus, Temple-Inland knew full well in 2006 that the credit markets were changing for the worse and that GFG's and Guaranty Bank's financial performance, likewise, was about to weaken.

105. In addition, by no later than early 2006, Temple-Inland knew that the housing market had begun to weaken. That knowledge came to Temple-Inland not only by reason of its domination and control of GFG and the Bank, but also by reason of Temple-Inland's unique position as a major manufacturer of home building products.

106. Further, at a February 27, 2006, Guaranty Bank ALCO (Asset/Liability Management Committee) meeting, Jack Falconi, one of the committee members, reported to the group that the housing industry was showing increasing signs of a slowdown. The meeting was attended by, among others, Defendant Dubuque (who was also then a Temple-Inland Executive

Officer). Another member of the ALCO, Michael Calcote, noted, “Option ARM originations have been slowing nationwide.”

107. Following the February 27, 2006 ALCO meeting, conditions in the housing market continued to deteriorate. The minutes of the Bank’s August 28, 2006 ALCO meeting (also attended by Defendant Dubuque) reflect that one committee member reported that “there is widespread concern that housing is slowing too quickly, putting the economy at risk.” This observation was made one day prior to Mr. Calcote’s comment to the Guaranty Bank board on August 29, 2006, to the effect that the strong credit market could not be expected to continue.

108. As Temple-Inland well knew, the weakening in the housing market in 2006 did not bode well for the prospects of GFG and Guaranty Bank in 2007, which had unusually high concentrations of loans to homebuilders, for properties in California, and for risky Option ARMs.

109. As Mr. Calcote predicted at the August 29, 2006 Bank board of directors meeting and, as the ALCO meeting comments portended, the credit market deteriorated. As 2006 drew to a close, Mr. Calcote, as Guaranty Bank’s CFO, gave a presentation to the Bank’s board of directors predicting significant difficulties and a down year for 2007. The minutes of the November 28, 2006 meeting of Guaranty Bank’s board of directors state:

[Mr. Calcote] outlined certain challenges to banking in the near term including a return to a more normalized credit environment, an adverse interest rate environment, to include margin compression and an unfavorable environment for ARM originations, a challenging environment for deposit gathering, and a slowdown in the housing market.

. . . Mr. Calcote identified regions of the U.S. evidencing housing risk, and offered perspective on what Management is doing to address that risk in its portfolio management.

Mr. Calcote offered projections in earnings for 2007, which may be \$18 million lower than 2006.

110. Again, no fewer than seven (7) Temple-Inland representatives were in attendance at this November 28, 2006 board meeting: Defendants Jastrow, Dubuque, A. Temple and L. Temple, and Messrs. Faulkner, Maley and Simons.

K. Temple-Inland's Decision to Pursue the Spin-Off to Avoid Its Capital Maintenance Obligation and The Spin-Off Announcement

111. Having sufficient capital is integral to the safe and sound functioning of a thrift. Simply put, without sufficient capital, a thrift cannot survive. As the ultimate parent corporation and ultimate holding company for the Bank, Temple-Inland had an acknowledged obligation to maintain adequate capital in the Bank.

112. Temple-Inland understood its capital maintenance obligation and acknowledged that obligation in, among other places, the SEC filings referenced above in which confirmed its intention to maintain the Bank as "well capitalized."

113. Temple-Inland further acknowledged that obligation in October 2006 by returning \$10 million in dividends it had taken earlier in 2006 when the Bank's capital fell below targeted limits set by the OTS.

114. Temple-Inland's requirement to return capital in 2006 was not the only sign that the Bank was entering a period of economic difficulty. Because of their intimate relationship to the housing and construction industry and their access to industry data and trends, Temple-Inland and its directors knew that the residential markets would significantly decline leading to potentially catastrophic losses for the homebuilder industry in which the Banks had heavily invested at Temple-Inland's direction.

115. With trouble clearly visible on the horizon, Temple-Inland attempted to distance itself from its capital maintenance obligation, GFG and the challenges facing the banking industry and the Bank in particular. Temple-Inland was motivated, in part, by the obvious practical consequences of continuing to retain ownership of GFG and the Bank after they had begun to sustain the inevitable losses that lay ahead – that Temple-Inland’s own financial condition and stock price would suffer and that Temple-Inland would inevitably be called upon by federal regulators to provide capital support for Guaranty Bank as its financial condition deteriorated.

116. Toward that end, on February 26, 2007, Temple-Inland issued a press release with the headline “**Temple-Inland Announces Transformation Plan.**”

117. In that press release, Temple-Inland announced that its board of directors had approved a transformation plan that would divide the company into three stand-alone public companies comprised of a financial services operation, a real estate operation, and a corrugated packaging and building products operation, and which would also entail a sale of Temple-Inland’s strategic timberlands.

118. In the press release, Temple-Inland Chairman and Chief Executive Officer Defendant Jastrow (who also at the time was the Chairman of the boards of Guaranty Bank and GFG) stated, “Each of the three public companies – manufacturing, financial services, and real estate – will be well positioned in the marketplace, **have an appropriate capital structure**, and will benefit from greater strategic focus.” (Emphasis added).

119. With respect to the announced sale of Temple-Inland’s strategic timberlands, the press release reported that a portion of the proceeds would be used “to establish appropriate

capital structures for each of the ongoing stand-alone businesses to ensure flexibility for shareholder value creation in the future.”

120. Contemporaneously with Temple-Inland’s issuance of the press release, Defendant Jastrow participated in a conference call with potential investors and financial analysts. The presentation materials for that conference call were attached to a current report on Form 8-K issued by Temple-Inland in connection with Temple-Inland’s announcement of its transformation plan. In those presentation materials, Defendant Jastrow presented Guaranty Bank as a \$16 billion financial services provider with record earnings for each of the preceding three years and a solid foundation for continued strong financial performance. In making those representations, Defendant Jastrow, in the presentation, made no reference to the challenges confronting Guaranty Bank for the year 2007, as reviewed during the November 28, 2006 Guaranty Bank board of directors meeting. Defendant Jastrow, in that presentation, withheld reference to the \$18 million decrease in Bank earnings, which were projected at that meeting.

121. Defendant Jastrow’s presentation materials reiterated the promise made in the press release to the effect that post-spin the independent stand-alone financial services company (GFG) would have an appropriate capital structure, reiterating that a portion of the proceeds from the sale of timberland would be used “to establish and maintain an appropriate capital structure for the three independent businesses.”

L. The Further Looting of GFG and The Bank After the Spin-Off Announcement: The Up-Streaming of \$35 Million in Additional Dividends

122. Notwithstanding the known challenges that GFG and Guaranty Bank confronted for 2007, the promises that post-spin GFG would have an appropriate capital structure, and the required return in October 2006 of \$10 million in dividends previously taken, a mere one day after it announced the Spin-Off, Temple-Inland caused GFG and Guaranty Bank to up-stream

further dividends to Temple-Inland, further evidencing Temple-Inland's intent to loot Guaranty Bank. At a meeting of the board of directors of Guaranty Bank held on February 27, 2007, the board (with Temple-Inland directors Defendants Jastrow, A. Temple and L. Temple and Mr. Faulkner participating and approving), authorized the payment of a dividend. Thereafter, the GFG board authorized that dividend to Temple-Inland and on or about March 28, 2007, GFG paid to Temple-Inland a dividend in the amount of \$35 million.

123. As reported by Temple-Inland in its quarterly report on Form 10-Q for the quarter ended March 31, 2007, the \$35 million dividend up-streamed from GFG to Temple-Inland in the face of a predicted decrease in earnings in 2007 far exceeded the dividend paid during the first quarter of 2006.

124. The \$35 million dividend to Temple-Inland during 2007 was no doubt made possible by the repeated misrepresentations about the Bank's highly risky MBS portfolio as consisting of "senior tranche" securities and about the value of the Bank's highly concentrated loan portfolio. Without such misrepresentations, the OTS likely would have forced Temple-Inland to return this inappropriate dividend given the Bank's unreasonably small capital and its risky investments.

125. As set forth more fully below, soon after GFG's payment of the \$35 million dividend to Temple-Inland, officers and directors of both GFG, Guaranty Bank and Temple-Inland acknowledged the Bank's need to raise additional capital far exceeding even that amount.

M. Negative Economic Developments in 2007

126. As Mr. Calcote advised the Guaranty Bank board, and as Temple-Inland and its directors well knew, 2007 did indeed present challenges to the banking industry in general, and to GFG and Guaranty Bank in particular.

127. The weakening in the economy in general, and in particular in the housing industry that the Bank and Temple-Inland had observed in 2006, worsened dramatically in 2007. In June 2007, the rating agencies of Standard and Poors and Moody's downgraded over 100 bonds backed by sub-prime mortgages.

128. On June 15, 2007, Moody's cut its ratings on MBS totaling approximately \$3 billion. That ratings downgrade was followed on July 11, 2007 by Standard and Poors, which placed 612 MBS on a credit watch list.

129. In the interim, the markets became aware of serious problems associated with two Bear Stearns hedge funds involved in mortgage investments, the Bear Stearns High-Grade Structured Credit Strategies Enhanced Leverage Master Fund Ltd. and the Bear Stearns High-Grade Structured Credit Strategies Master Fund Ltd. (the "Bear Stearns Hedge Funds"), requiring extraordinary measures by Bear Stearns in an effort to support those funds. Those developments were not lost on the Bank.

130. As reported by Jack Falconi at the June 25, 2007 ALCO meeting:

Continuing problems in the sub-prime market (highlighted by the Bear Stearns hedge fund blow-up) suggest that the outlook for housing is still tenuous. Also, a true mark-to-market on Bear's sub-prime exposure might force a mark-to-market of sub-prime exposure across the capital markets (heretofore dominated by a more optimistic "mark-to-model"), setting the stage for potential (though still unlikely) contagion which could lead to a fundamental repricing of credit risk across the capital markets.

131. On July 31, 2007, the Bear Stearns Hedge Funds filed for bankruptcy. At the time, Bear Stearns was the fifth largest investment bank. Just prior to the bankruptcies, Bear Stearns reported to investors that the two hedge funds were almost worthless.

132. Notwithstanding these negative developments in the market, Temple-Inland continued to carry financial services assets, including the risky MBS portfolio, on its balance sheet at inflated values, thereby distorting and overstating Guaranty Bank's capital and capital ratios. Temple-Inland, undaunted and acting solely in its own self-interest, continued on its path toward a Spin-Off of GFG and the financial services segment.

N. The Bank and Temple-Inland Continued to Recognize the Need for Additional Capital at the Bank in 2007

133. While these tumultuous events in the economy were transpiring, the need for the Bank to raise capital was apparent to the Bank's board of directors, including those board members who also served as officers and members of the board of directors of Temple-Inland.

134. At a meeting of the Bank's board of directors on September 25, 2007, as reflected in the board's minutes, then-Treasurer, Calcote, reported to the board, among other things, that year-to-date pre-tax income of the Bank stood at an amount less than had been forecasted, a forecast which itself was lower than actual pre-tax income earned for the corresponding period of the prior year.

135. In executive session following Calcote's presentation, Defendant Jastrow of Temple-Inland led a discussion of the need to raise capital. Jastrow noted that given changes in the markets and industry, there may be cause for the Bank to hold greater capital. In this regard, Jastrow acknowledged that Temple-Inland's public-company transformation strategy was premised, in part, upon the Bank achieving proper capitalization. Jastrow posited that it would

be prudent for the Bank to add \$30 million in additional capital before year-end and recommended that a capital acquisition strategy be pursued.

136. A discussion among the directors and certain members of management ensued with some concern expressed as to whether an additional \$30 million in capital would be adequate. The discussion concluded with a resolution which authorized the pursuit of at least \$30 million in additional capital. The resolution read, in part, as follows:

WHEREAS, it is the sense of the Committee that the interests of the Bank and its shareholder are furthered by the augmentation of the Bank's current risk based capital ratio; and

WHEREAS, Management has reviewed various alternatives and strategies to enhancing the Bank's risk based capital position, has reviewed such strategies with outside investment bankers and advisors, and recommends proceeding with certain of those strategies.

NOW, THEREFORE, BE IT RESOLVED, that the President and Chief Executive Officer and Chief Financial Officer, including their respective designees, are hereby authorized and directed to continue analysis of the procurement of at least \$30 million in additional risk based capital, through the issuance of trust-preferred securities, sub-debt, or other means that Management believes appropriately enhances the Bank's capital position

Thus, as Defendant Jastrow (and hence Temple-Inland recognized at the time) the \$35 million in dividends Temple-Inland had taken from GFG and the Bank a few short months earlier in the year needed to be replenished.

137. On October 30, 2007, Calcote reported to the board of directors of Guaranty Bank that two banks, U.S. Bank and Wells Fargo, were considering investing in subordinated debt issued by Guaranty Bank, with anticipated funding in November 2007. Calcote continued that if Guaranty Bank did both deals, it would result in a total increase to the Bank's Tier II risk-based capital of \$65 million. On inquiry by one of the directors as to whether capital funding from

only one of the banks would be sufficient, Calcote responded that “with [the] anxiety caused by the current state of the market, Management would like to try to do both [deals].”

138. Following Calcote’s report on efforts to raise capital, the Executive Committee of the board met. During that meeting, Jastrow noted downward trends in credit quality, charge-offs, and loan loss provision and deteriorating market conditions. He further opined that the real estate markets in California were deteriorating, partly due to ARM resets coupled with mortgagor difficulties in obtaining refinancing in a tight credit underwriting market. Director Stuart observed that market conditions had adversely affected lot prices in California.

139. One of Temple-Inland’s financial advisors (Goldman Sachs) reported in an October 21, 2007 research report that California home prices were then overvalued by as much as 35%-40%. Goldman Sachs also reported that delinquency rates for ARMs were rising dramatically nationally, but particularly in California. Specifically, Goldman Sachs explained “in 2Q07 delinquency rates for prime ARMs and subprime ARMs rose 92% and 73% year on year respectively in California, versus 53% and 38% nationally.”

140. This market downturn during 2007 drastically impacted the value of Guaranty Bank’s assets. For example, the Bank’s risky MBS and loan portfolios consisted of a high concentration of California option ARMs.

141. Temple Inland and its board of directors knew, or should have known, that the Bank’s risky MBS and loan portfolios were materially impaired because of the credit crisis, the looming resets for option ARMs, and negative amortization for many loans. Those trends negatively impacted opportunities for homeowners to refinance and led to increased delinquency rates and decreased pre-payments, fundamentally altering the assumptions that the Bank used to value its assets.

142. In view of the dramatically increasing delinquency rates in a geographic area where the mortgages collateralizing the Bank's MBS and loan portfolios were concentrated, together with the increasing inability of home owners to refinance mortgages by reason of falling home prices and decreasing liquidity in the credit markets, Temple-Inland and its board of directors either knew or should have known that the Bank's risky MBS and loan portfolios were materially impaired.

143. The efforts of Mr. Calcote to close subordinated debt deals with U.S. Bank and Wells Fargo to add \$65 million in capital pre-Spin proved unsuccessful. Further, Bank President and CEO Dubuque and CFO Ronald Murff became very concerned that even \$65 million would not be sufficient additional capital going into the Spin-Off, with the darkening clouds in the economic environment.

144. Mr. Dubuque raised his concerns about the adequacy of the Bank's capital with a committee of Temple-Inland representatives prior to the effective date of the Spin-Off, suggesting that as much as \$200 million in additional capital was needed. Temple-Inland ignored those concerns and proceeded to consummate the Spin-Off without, as it had repeatedly represented and promised, ensuring that GFG was appropriately capitalized.

O. Purchase of Additional Highly Risky MBS in the Third Quarter 2007

145. As Temple-Inland moved forward with its plans to complete the Spin-Off, Temple-Inland caused the Bank in the third quarter of 2007 to acquire additional risky MBS. The Bank was forced to finance those acquisitions, in significant part, through borrowings from the Federal Home Loan Bank, a so-called leveraged acquisition.

146. That decision was made despite the economic conditions, which had been duly noted and understood by the Bank and Temple-Inland, including the seriously weakening

housing market in California, but while knowing of the representations and promises of Temple-Inland that GFG post-spin would be appropriately capitalized.

147. Pursuant to that decision, on various dates in the third quarter 2007, the Bank acquired the following risky MBS, totaling more than \$1.08 billion in principal amount: (a) SAMI 2007-AR6, A2, CUSIP 86364RAB5, in the principal amount of \$404 million; (b) RALI 2007-QO5, A, CUSIP 74924AAA3, in the principal amount of \$204 million; and (c) RALI 2007-QH8, A, CUSIP 74924EAA5, in the principal amount of \$473 million.

148. A substantial part of the mortgage loans underlying these illiquid MBS purchased by Guaranty Bank in the third quarter 2007 were risky Option ARMs on California real estate.

149. Temple-Inland understood the extreme risk Guaranty Bank was taking by purchasing \$1.08 billion of private-label MBS as a result of Temple-Inland's rate of return requirements. For example, Larry Temple, a Temple-Inland and Guaranty Bank Director, explained in August 2007 that loans sold in the secondary market, such as MBS, were being closely scrutinized and, in other cases, "transferred at a steep discount."

P. Guaranty Bank's Deteriorating Financial Performance as Year End 2007 Approached

150. As Temple-Inland well knew, 2007 had been an extremely difficult year for Guaranty Bank and GFG, and the road ahead would likewise be difficult, especially as a stand-alone company after the Spin-Off. This was substantially confirmed at a meeting of the Bank's board of directors on November 26 and 27, 2007 where the directors, including those present who also served as directors or officers of Temple-Inland, were told that "Temple-Inland provided a significant source of strength" for Guaranty Bank and that regulators would "look for the bank to achieve higher capital levels post-transformation." In addition, Mr. Calcote reported that net income for the year 2007 would be approximately \$31 million under plan and explained

various factors contributing to those diminished earnings, including negative variances in the loan loss provision. On inquiry, Mr. Calcote advised that the loan loss provision was projected to stand at \$16 million for the fourth quarter of 2007, when it had been only \$1 million for all of 2006.

151. The notes of one senior executive at the Bank reflect the dire condition in which Temple-Inland left the Bank at the time of the Spin-off. He wrote, “Hunker Down – take cover – bombs are going off. . . which direction to run?” He then listed two options in his notes: “(1) increase capital or (2) merge with stronger [financial institution].”

Q. Further Fraudulent Transfers in Anticipation of the Spin-Off: The Transfer of Additional Real Estate Assets from LIC to TIN in October 2007

152. Following GFG’s distribution of the stock of Lumberman’s to TIN in January 2006, certain real estate assets were stranded in a subsidiary of GFG then known as LIC Investments, Inc. (“LIC”), later by name change known as Guaranty Group Ventures, Inc. or GGVI, one of the Debtors.

153. Prior to the Spin-Off, Temple-Inland caused LIC to transfer these stranded real estate assets to TIN and Forestar.

154. The assets Temple-Inland caused LIC to transfer to TIN or its affiliates included real estate development ventures and all of the stock of Sunbelt Insurance Company, a wholly-owned subsidiary of LIC and thus an indirect wholly-owned subsidiary of GFG.

155. The real estate development ventures transferred by LIC to TIN included those generically known as Westlake Highlands, Buttercup, New Village, Northwest Forest Village, Olympia, Western Oaks, Onion Creek, and Parkside. These transfers were made in or about October 2007, several months prior to the effective date of the Spin-Off.

156. The deeds for the conveyances of Westlake Highlands, Buttercup, Northwest Forest Village, Western Oaks, Onion Creek, and Parkside either failed to recite the dollar amount of the consideration paid in connection with the transfer or cited nominal consideration.

157. Upon information and belief, the consideration received by LIC in exchange for its transfer of assets to TIN was less than the fair market value of those assets and did not constitute reasonably equivalent value.

R. The Consummation of the Fraudulent Scheme: The Decision of The Temple-Inland Board to Effectuate the Spin-Off

158. Despite GFG's and the Bank's weakened and further deteriorating financial condition, Temple-Inland's fraudulent and deceptive scheme continued. At a meeting held on November 29, 2007, the Temple-Inland board of directors, including those directors who sat as members of the board of directors of GFG and/or Guaranty Bank, Defendants Jastrow, L. Temple, A. Temple and Larry Faulkner, voted to consummate the Spin-Off of GFG from Temple-Inland. In connection therewith, they resolved that Temple-Inland would effect and cause GFG and certain of Temple-Inland's other subsidiaries to effectuate a series of further transactions in order to separate Temple-Inland's corrugated packaging and building products operations, its real estate development operations, and its financial services operations from one another.

159. Temple-Inland had an obligation to adequately maintain the Bank's capital. Temple-Inland acknowledged this obligation repeatedly in its public filings with the SEC. Specifically, Temple-Inland represented that it intended to maintain the Bank as "well capitalized." Temple-Inland wanted to protect itself from this capital maintenance obligation so it went forward with the Spin-Off despite GFG's tenuous financial condition. Temple-Inland further acknowledged that obligation in October 2006 when, even using Temple-Inland's inflated

valuation of the Bank's assets, Temple-Inland had to return part of the exorbitant dividends it took from GFG to attempt to maintain an appearance of compliance with its public commitment to keep the Bank "well capitalized." Temple-Inland would have been forced to make additional contributions during 2008 and 2009 had it continued to wholly-own GFG to prevent the collapse of GFG, the Bank, and Temple-Inland's own stock price.

S. The Tax Matters Agreement Under Which GFG Relinquished the Ability to Carry Back Net Operating Losses and Thereby Forfeited a Tax Refund and/or Other Tax Payments from Temple-Inland under the Tax Allocation Policy Worth Hundreds of Millions of Dollars

160. Pursuant to the decision of the board of Temple-Inland to consummate the Spin-Off, Temple-Inland caused GFG to enter into an agreement with Temple-Inland and Forestar Real Estate Group, Inc. entitled the "Tax Matters Agreement."

161. Prior to the Spin-Off, Temple-Inland and its subsidiaries (the "Temple-Inland Consolidated Group"), including GFG and Guaranty Bank, filed consolidated federal income tax returns. On information and belief based on a search of GFG emails and documents and industry custom and standards, there was a tax allocation policy, arrangement or agreement in force prior to the Spin-Off among all of the constituent affiliated corporations of the Temple-Inland Consolidated Group (the "Tax Allocation Policy"), governing how the tax liabilities of the Temple-Inland Consolidated Group would be shared among its constituent affiliated corporations. The Tax Allocation Policy determined how net operating losses of one or more members, including net operating losses carried back from future years, would affect (i) each such corporation's right to tax refunds received for those years by Temple-Inland as parent of the group and (ii) liabilities of each member of the group to the corporation incurring such losses, including losses carried back to the pre-Spin-Off years, and how and when payments with respect to those tax liabilities were to be made.

162. On information and belief based upon statements made by GFG in a December 14, 2007 Form 8-K, and industry standards and custom, (a) under the Tax Allocation Policy, GFG and its subsidiaries (which includes the Bank and other debtors) paid income taxes to Temple-Inland in the amount they would have paid to the IRS if GFG and its subsidiaries had filed tax returns separately, and (b) conversely, under the Tax Allocation Policy, if losses were incurred by GFG and its subsidiaries, Temple-Inland would be required to pay to GFG and its subsidiaries the amount by which GFG's and its subsidiaries' separate tax liabilities would have been reduced if GFG and its subsidiaries had filed tax returns separately. Thus, under this arrangement, if a refund were to come due on taxes previously paid by GFG and its subsidiaries (as for example if a subsequent net operating loss were to be incurred and carried back to prior years when taxes were paid thereby resulting in a refund), that refund (nominally paid by the IRS to Temple-Inland) would have been property of GFG and its subsidiaries. The Tax Matters Agreement that Temple-Inland imposed upon GFG in connection with the Spin-Off, however, contractually precluded GFG from carrying back net operating losses and receiving the benefit of tax refunds they would generate. It also precluded GFG from receiving payment from Temple-Inland on account of the losses carried back under the Tax Allocation Policy.

163. Section 4.02(b) of the Tax Matters Agreement provides as follows:

(b) Net Operating Losses. Notwithstanding any other provision of this Agreement, Forestar and Guaranty each hereby expressly agree to elect (under section 172(b)(3) of the Code and, to the extent feasible, any similar provision of any state, local or foreign Tax law) to relinquish any right to carry back net operating losses to any Pre-Distribution Periods of Temple-Inland (in which event no payment shall be due from Temple-Inland to Forestar in respect of such net operating losses).

164. This punitive and onerous restriction imposed by Temple-Inland on GFG's ability to carry back net operating losses is atypical, off-market, and out of line with any reasonable business standard.

165. The execution of the Tax Matters Agreement on GFG's behalf was a product of the domination and control exercised by Temple-Inland over GFG. The Agreement was entered into by GFG without meaningful representation by counsel. The terms of that agreement were not arms' length terms and were dictated entirely by Temple-Inland.

166. For example, when GFG or its representatives sought to discuss the Tax Matters Agreement with Temple-Inland representatives, they were repeatedly told the agreement was non-negotiable by Louis Brill, among others.

167. There was no *bona fide*, meaningful, or actual consent given by GFG to the Tax Matters Agreement, or to Section 4.02(b) of the provision of the Tax Matters Agreement set forth above. There was no consideration given by Temple-Inland to GFG for this contractual relinquishment of its and its subsidiaries' valuable earnings and taxable income history, which should have been available to GFG and its subsidiaries to permit them to carry back any losses they would incur after the Spin-Off, which losses were inevitable under the circumstances that existed at and before the time of the Spin-Off.

168. The Tax Matters Agreement, including Section 4.02(b), was imposed by Temple-Inland at a time when Temple-Inland and its directors owed fiduciary duties to GFG and its subsidiaries and their respective creditors. The imposition of that Agreement and that provision constituted a breach of those fiduciary duties and cost GFG and its subsidiaries approximately \$300 million in tax refunds, and/or other payments from Temple-Inland under the Tax Allocation

Policy (for taxes GFG and its subsidiaries had previously paid to Temple-Inland out of its own assets).

169. Temple-Inland also breached its fiduciary duty by completing the Spin-Off on December 28, 2007, one day before the end of Temple-Inland's fiscal tax year. That timing caused GFG to have to file a tax return for a three-day tax period and thus further impaired GFG's and its subsidiaries' ability to fully obtain the carry back benefits of their post-Spin-Off net operating losses (which, if not carried back to obtain refunds or payments from Temple-Inland from tax payments previously paid by GFG and its subsidiaries would be rendered worthless). The extra short period tax year effectively reduced GFG's five year carryback to a four year carryback by causing GFG to "burn off" a carryback year (2004) to which its net operating losses could have otherwise been carried to generate an additional tax refund or tax payment from Temple-Inland under the Tax Allocation Policy, to the detriment of GFG and its subsidiaries and their respective creditors.

170. By virtue of the provisions of Section 4.02(b) of the Tax Matters Agreement, Temple-Inland caused GFG and its subsidiaries to relinquish a valuable asset for no consideration in money or money's worth, namely the right to carry back net operating losses against prior period taxable income and thereby receive a tax refund and/or payments from Temple-Inland under the Tax Allocation Policy.

171. The relinquishment of that valuable asset provided a benefit to Temple-Inland with no corresponding consideration provided to GFG and its subsidiaries. The relinquishment of that valuable asset constituted a transfer for less than reasonably equivalent value.

172. Subsequent to the Spin-Off, GFG and its subsidiaries realized for tax purposes a net operating loss in tax-year 2009 in an amount in excess of \$1 billion. Had the Spin-Off not

occurred and had GFG and its subsidiaries carried back that loss to 2004 and subsequent years, or even taking account of the occurrence of the Spin-Off, had GFG not been contractually precluded under the Tax Matters Agreement from carrying back losses, so that GFG had the right and ability to carry back that net operating loss, GFG and its subsidiaries would have received a tax refund and/or payments from Temple-Inland under the Tax Allocation Policy worth approximately \$300 million. Temple-Inland foresaw these losses, but insulated itself from this liability by restricting GFG's and its subsidiaries' ability to carry back losses.

173. In general, Internal Revenue Code ("IRC" or "Code") Section 172(b)(1)(H)(i) permits a taxpayer to elect to carry back an applicable net operating loss for up to five taxable years preceding the taxable year of the loss. For this purpose, the term "applicable net operating loss" means the taxpayer's net operating loss for a taxable year ending after December 31, 2007, and beginning before January 1, 2010 (IRC §172(b)(1)(H)(ii)) and therefore includes GFG's and its subsidiaries' net operating loss for calendar tax year 2009. The section provides that such election, which may be made only with respect to one taxable year, shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extension of time) for filing the return for the taxpayer's last taxable year beginning in 2009. (IRC §172(b)(1)(H)(iii).) Thus, GFG under the terms of the Internal Revenue Code must have made the 5-year carryback election by the time that its tax return for 2009 was due, including extension, in order to have taken advantage of the special five year carry back.

174. Because of the contractual preclusion from carrying back losses imposed on GFG by Temple-Inland under the Tax Matters Agreement, GFG did not make such an election under IRC Section 172(b)(1)(H) and therefore did not carry back losses to any year during which it was a member of the Temple-Inland Consolidated Group.

175. In an effort to redress and mitigate its injury, GFG intends to seek IRS permission to amend its 2009 tax return and carry back its losses under the special 5 year carryback provision of I.R.C. Section 172(b)(1)(H). Such permission may be granted by the IRS at its discretion. However, there is no assurance that such permission will be granted by the IRS.

176. The restriction of Section 4.02(b) of the Tax Matters Agreement constitutes a fraudulent transfer to Temple-Inland.

177. The restriction of Section 4.02(b) arose from a breach of the fiduciary duties by GFG's board of directors and Temple-Inland and its board of directors.

178. The restriction of Section 4.02(b) was *ultra vires*.

179. The Tax Matters Agreement was an executory contract that was rejected under Section 365 of the Bankruptcy Code pursuant to the Second Amended Plan in GFG's bankruptcy proceedings.

180. For the foregoing reasons, Section 4.02(b) is null and void and otherwise unenforceable pursuant to the Second Amended Plan, and does not preclude GFG and its subsidiaries from carrying back losses in its tax returns and any amended tax returns it may file.

T. Other Fraudulent Agreements and Transfers Imposed Upon GFG In Connection with the Spin-Off

181. In addition to the Tax Matters Agreement, Temple-Inland also imposed upon GFG several other agreements in connection with the Spin-Off, namely, a Separation and Distribution Agreement, an Employee Matters Agreement, a Transition Services Agreement, and an agreement pursuant to which Temple-Inland imposed upon GFG a 15% interest in aircraft owned by Temple-Inland (the "Aircraft Agreement").

182. As with the Tax Matters Agreement, the execution of these agreements on GFG's behalf was also the product of the domination and control exercised by Temple-Inland over

GFG. These agreements were entered into by GFG without meaningful representation by counsel. The terms of these agreements were not arms' length terms and were dictated entirely by Temple-Inland. There was no *bona fide*, meaningful, or actual consent given by GFG to these agreements.

183. These agreements were imposed by Temple-Inland at a time when, by virtue of GFG's and Guaranty Bank's insolvency, Temple-Inland and its board of directors owed fiduciary duties to GFG. The imposition of these agreements constituted a breach of those fiduciary duties.

184. These agreements were grossly one-sided, unconscionable contracts of adhesion.

185. For example, under the Aircraft Agreement, Temple-Inland imposed upon GFG the obligation to pay 15% of the fixed costs associated with the ownership of the aircraft. In its insolvent and undercapitalized state following the Spin-Off, GFG was, as Temple-Inland well knew, in no position to justify any significant use of corporate aircraft. Rather, for a company in GFG's post-Spin-Off failing condition, necessary business travel was, as it should have been, taken by less expensive means such as commercial air travel. Accordingly, the Aircraft Agreement imposed an obligation upon GFG with no corresponding benefit. Temple-Inland imposed similar unfair terms upon GFG related to Temple-Inland's lease of office space from GFG and a data center.

186. By way of further example, Article VII, Section 7.1(a)(ii) of the Separation and Distribution Agreement, dated as of December 11, 2007, purported to contain a release by GFG for itself and, to the extent of its power and authority, by each of its subsidiaries and related persons, in favor of Temple-Inland and Forestar and certain of their subsidiaries and related persons, from all liabilities whatsoever arising or resulting from any acts or events occurring,

failing to occur or alleged to have occurred or to have failed to occur on or before the effective date of the Spin-Off.

187. Similarly, Article IX of that Agreement purported to impose upon GFG a dispute resolution mechanism that, among other things, provided for binding arbitration and depriving GFG of any right to assert claims in a judicial forum.

188. Thus, after the fact of the fraudulent transfers orchestrated by Temple-Inland through its exercise of domination and control over GFG and the Bank, Temple-Inland, through the device of imposing the Separation and Distribution Agreement upon GFG, attempted to exculpate itself from liability and deprive GFG of judicial remedies for the wrongs that Temple-Inland had already and was continuing to perpetrate.

189. All of the referenced agreements -- the Separation and Distribution Agreement, the Tax Matters Agreement, the Employee Matters Agreement, the Transition Services Agreement, and the Aircraft Agreement -- caused GFG to transfer assets and incur obligations (including the obligation to release claims and be deprived of a judicial forum to pursue remedies, as well as to pay the costs of aircraft unusable to GFG) with GFG receiving less than a reasonably equivalent value in exchange for such transfers and obligations. All of the Agreements were executed at a time when GFG was (i) legally insolvent; (ii) was engaged in business or a transaction, or was about to engage in business or a transaction, for which it had unreasonably small capital; and/or (iii) intended to incur, or believed that it would incur, debts that would be beyond its ability to pay as such debts matured.

U. GFG's Insolvent and Undercapitalized Financial Condition at the Time of the Spin-Off

190. While Temple-Inland continued falsely to characterize Guaranty Bank as well capitalized, as the date of the Spin-Off, December 28, 2007, approached, in truth and in fact,

Guaranty Bank and its parent, GFG, were then insolvent and undercapitalized for the business in which they were, and would continue to be, engaged. As the minutes of Guaranty Bank's board of directors meetings of September 25, 2007 and October 20, 2007 reflect, those directors, including those who sat on Temple-Inland's board, recognized the need for additional capital. Likewise, GFG and Guaranty Bank knew, understood, intended, and believed that following the Spin-Off, in the absence of substantial additional capital, GFG and Guaranty Bank would incur debts beyond their ability to pay as such debts matured. Temple-Inland knew this, as well.

191. The insolvency, lack of adequate capitalization, and inability to satisfy debts, was driven in large part by the failure to properly value assets on GFG's and Guaranty Bank's balance sheet, including the risky and illiquid MBS and loan portfolios.

192. While even Guaranty Bank recognized that substantial losses were accruing in those portfolios as of the effective date of the Spin-Off, those losses were being treated as unrealized losses for accounting and regulatory purposes based on knowingly untrue and unrealistic assertions.

193. With respect to the risky MBS portfolio, for example, the annual report on Form 10-K filed by GFG for the fiscal year ended December 31, 2007 reflected unrealized losses in GFG's MBS held-to-maturity, private-label portfolio of \$212 million.

194. The existence of unrealized losses in this approximate magnitude was known to Temple-Inland prior to the effective date of the Spin-Off. Nonetheless, Temple-Inland continued to treat such losses as unrealized for GAAP and regulatory accounting purposes based on incorrect and untruthful assertions to the effect that: (a) Temple-Inland possessed the intent and ability to hold to maturity that portion of the Guaranty Bank MBS portfolio which it classified as

held-to-maturity securities; and (b) the losses sustained on the MBS portfolio were not “other than temporary impairments.”

195. A proper valuation of the toxic MBS portfolio at the effective date of the Spin-Off would have resulted in much higher losses, losses which would have made evident the inability to in fact hold to maturity many of the securities classified as those to be held to maturity. In fact, the ALCO (Asset/Liability Management Committee) discussed the impact of selling some or all of the MBS portfolio after the Spin-Off at a June 2007 committee meeting.

196. Further, in an internal email dated Thursday, December 20, 2007, 4:08 p.m., the Director of Quantitative Analysis and a financial analyst at Guaranty Bank responsible for, among other things, carrying out the analysis necessary to address whether losses on the Bank’s MBS portfolio constituted other than temporary impairments, warned about the potential of catastrophic losses on the MBS portfolio and alternative plans for addressing those losses. The email stated:

This graph kills me - do we need to start thinking about a plan B or plan C? Should we start reserving now for potential securities write-downs, or should we start quietly selling \$50MM - \$75MM a month of the MTAs or maybe do a little of both? I know economically it doesn't make sense when we have positive spread and the loss on the bond is greater than the regulatory capital it frees up, but I'm concerned that this market's going to snap and start trading at subprime-like prices - today's loss of 5 points might look cheap to a 25 or 30 point hit in 2010 on a portfolio that is likely to have shrunk very little in the next 2 years.

197. Those warnings were not heeded. To the contrary, the Director of Quantitative Analysis was called a “pussy.”

198. The Director responded by again stressing the merits of his point regarding the possibility that downgrades on the MBS held by the Bank could result in further losses far

exceeding the \$200 million unrealized loss estimated then to exist - - further losses potentially consuming all of the Bank's capital. He wrote:

After looking at several of those Nomura bonds that had price drops of 20 to 50 (yes 50) points after these downgrades, I'd rather be a live pussy than a dead gambler. Right now we have an unrealized loss of \$200MM - if we had wholesale downgrades to single A, that loss looks like it would grow to over \$1B and on top of that we'd have to recognize it. In that scenario, no amount of capital is going to fix the problem, because the problem is MBS as a percent of balance sheet. That's all I'm saying.

199. The Treasurer of the Bank, responded a short time later with a single word, "Pussy."

200. This internal email evidences the risk in the toxic MBS portfolio and GFG's and the Bank's failing financial condition. GFG and the Bank were then insolvent and undercapitalized.

V. The Failure of Guaranty Bank, the FDIC Receivership, and GFG Bankruptcy

201. With the recognition that Guaranty Bank was, in fact, inadequately capitalized, and in an effort to achieve adequate capitalization, the boards of directors of GFG and Guaranty Bank after the Spin-Off promptly turned their attention to capital raising efforts. Toward that end, GFG engaged the investment bank of Keefe, Bruyette & Woods, Inc., and under its advice, initially undertook a rights offering. That offering, however, proved wholly unsuccessful and further efforts to achieve greater capitalization were pursued. In the end, however, sufficient capital was not raised.

202. While the capital raising efforts were underway, the value of various assets on the Bank's balance sheet continued to deteriorate. GFG's quarterly report on Form 10-Q for the quarter ended March 31, 2008 reflected losses on its available-for-sale MBS of \$423 million and

unrealized losses on its held-to-maturity MBS of \$657 million. Likewise, GFG's quarterly report on Form 10-Q for the quarter ended June 30, 2008 reflected losses on the available-for-sale MBS of \$517 million and unrealized losses on its held-to-maturity MBS of \$904 million. Similarly, GFG's quarterly report on Form 10-Q for the third quarter reflected losses on its available-for-sale MBS of \$416 million and unrealized losses on its held-to-maturity MBS of \$788 million.

203. Throughout 2008, GFG continued to carry the vast majority of its held-to-maturity MBS at amortized cost, despite the unrealized losses that had occurred with respect to those securities, based on continuing representations to the effect that GFG possessed the intent and the ability to hold those securities until repayment at maturity, and that, based on GFG's estimates of cash flows on the securities, it believed it would recover all stated interest and principal on those securities.

204. At or about year-end 2008, disagreements arose between GFG, its regulators, and its auditor, Ernst & Young, as to the appropriate valuation of the very risky mortgage-backed securities portfolio and as to whether the unrealized losses in GFG's held-to-maturity MBS constituted other than temporary impairments, thereby diminishing the value of those securities and the capital of the Bank.

205. On March 17, 2009, GFG filed Form NT 10-K for the period ended December 31, 2008. In that document, GFG stated that it was filing Notification of Late Filing on Form 12-b25 with respect to the company's annual report on form 10-K for the year ended December 31, 2008. GFG noted that it was unable, without unreasonable effort and expense, to file the Form 10-K because the company had not completed its financial statements for the fiscal year ended December 31, 2008. GFG noted that it was continuing to analyze and discuss with its

independent registered public accountants the appropriate valuation for balance sheet purposes of its toxic mortgage-backed securities portfolio, including the extent of other-than-temporary impairment of that portfolio. GFG further stated that the outcome of that analysis could affect, among other things, the adequacy of the company's capital and the extent to which additional capital would be required.

206. GFG's Form NT 10-K further stated that GFG expected to report a loss of \$444 million for the year ended December 31, 2008, compared to earnings of \$78 million for the year ended December 31, 2007, and that depending upon the outcome of GFG's continuing review of the appropriate valuation for balance sheet purposes of its risky MBS portfolio, including the extent of other-than-temporary impairment of that portfolio, the loss actually reported by GFG could be higher.

207. On March 31, 2009, GFG filed a Form NT 10-K/A, amending its previously filed Form NT 10-K. In that amended Form NT 10-K/A, GFG noted that on June 8, 2008, GFG disclosed that Guaranty Bank's board of directors had adopted a resolution at the request of the OTS, confirming, among other things, that Guaranty Bank would maintain core and risk-based capital ratios of at least 8% and 11%, respectively. GFG further stated that, on a preliminary unaudited basis, it believed that the Bank had fallen below these prescribed capital ratios, as of March 31, 2009. GFG also stated that the Bank's core and risk-based capital ratios are impacted by regulatory requirements for capital treatment of its MBS portfolio and that Guaranty Bank was in discussions with the OTS regarding the capital treatment of its MBS and additional enforcement action beyond the capital maintenance resolution.

208. On April 6, 2009, GFG and Guaranty Bank each consented to the issuance of an Order to Cease and Desist by the OTS. The Cease and Desist Orders placed significant

restrictions on GFG's and Guaranty Bank's operations. The Orders also required the Bank to meet and maintain a core-capital ratio equal to or greater than 8% and a total risk-based capital ratio equal to or greater than 11%.

209. On May 14, 2009, GFG filed Form NT 10-Q, providing notification of the late filing of GFG's quarterly report on Form 10-Q for the quarter ended March 31, 2009. GFG noted, among other things, its continuing inability to complete its financial statements and its continuing analysis and discussion with its independent registered public accountants regarding its valuation for balance sheet purposes of its MBS portfolio, including the extent of other-than-temporary impairment of that portfolio. The Form NT 10-Q also noted that on April 6, 2009, GFG and its wholly owned subsidiary, Guaranty Bank, consented to the issuance of Orders to Cease and Desist by the OTS, which Orders placed material restrictions on GFG and Guaranty Bank, including the requirement that the Bank meet and maintain both a core capital ratio equal to or greater than 8% and a total risk-based capital ratio equal to or greater than 11% by May 21, 2009.

210. On July 23, 2009, GFG filed a current report on Form 8-K indicating that it and Guaranty Bank had filed an amended Thrift Financial Report ("TFR") as of and for the three months ended March 31, 2009 reflecting substantial asset write downs, which resulted in the Bank having negative capital and being deemed critically undercapitalized. In the July 23, 2009 Form 8-K, GFG stated that it did not believe that it was possible to raise sufficient capital to comply with the Orders to Cease and Desist and that GFG no longer believed that it would be able to continue as a going concern. Thus, by GFG's own reckoning, slightly more than fifteen months after the Spin-Off, the financial institution that Temple-Inland had repeatedly trumpeted

before the Spin-Off as well capitalized and had repeatedly promised pre-Spin-Off would be appropriately capitalized, in fact had negative capital and was critically undercapitalized.

211. On August 21, 2009, the OTS closed Guaranty Bank and appointed the FDIC as receiver.

212. On August 27, 2009, GFG and the other Debtors filed for bankruptcy protection pursuant to Chapter 11 of the Bankruptcy Code. GFG's Directors resigned immediately after that bankruptcy filing.

213. As Temple-Inland and its directors had contemplated and intended, the creditors of GFG and the Bank, not Temple-Inland, suffered the catastrophic loss caused by Temple-Inland's irresponsible and greedy misconduct.

214. The holders of trust preferred securities of approximately \$305 million issued by GFG are among those unsecured creditors who suffered the losses caused by Temple-Inland. Holdco Advisors L.P. (through its principals Vik Ghei and Misha Zaitzeff) is manager for the holder of a significant portion of these trust preferred securities and Wilmington Trust FSB serves as the Indenture Trustee. The Liquidation Trustee stands in the shoes of such creditors holding allowable unsecured claims in the Bankruptcy Case that arose before or within a reasonable time after the transfers alleged herein and who could avoid the transfers under the applicable fraudulent transfer provisions but for the Bankruptcy Case and the vesting of such rights in the Liquidation Trustee.

W. Temple-Inland's Control and Domination of its Subsidiaries, Including GFG and Guaranty Bank

215. In order to facilitate the wrongs complained of herein, Temple-Inland established and maintained complete domination and control over its subsidiaries including GFG, GHI,

GGVI, Guaranty Bank, and other GFG subsidiaries, such that they became the alter ego of Temple-Inland.

216. Temple-Inland achieved domination and control over the business operations of its subsidiaries, including GFG, GHI, Guaranty Bank, GGVI and other GFG subsidiaries, through, among other things, common officers and interlocking boards of directors. At relevant times, as many as four members of Temple-Inland's board of directors also served as directors of Guaranty Bank (namely, Defendants, Jastrow, A. Temple and L. Temple, and Larry Faulkner). The board of directors of GFG, at relevant times, was comprised entirely of Temple-Inland officers and/or directors, namely: Defendants Dubuque (Group Vice President of Temple-Inland), Jastrow (Chairman of the Board and Chief Executive Officer of Temple-Inland), Levy (Chief Financial Officer of Temple-Inland), and A. Temple (a member of Temple-Inland's board of directors). At relevant times, Dubuque, not only simultaneously served as a member of the board of directors of both GFG and Guaranty Bank and as an officer of Temple-Inland holding the title Group Vice President, but also as the President and Chief Executive Officer of GFG and the Bank.

217. Temple-Inland dominated and controlled GFG and its subsidiaries by imposing numerous significant business and strategic decisions on GFG, GHI, GGVI, and Guaranty Bank. Such decisions included the allocation of financial resources and capital, the allocation of management and human resources, and the determination of strategic alternatives, such as acquisitions and divestitures.

218. Among other things, Temple-Inland dictated the payment of hundreds of millions of dollars of dividends by GFG to, and for the benefit of, Temple-Inland and its other subsidiaries; the transfer of hundreds of millions of dollars of real estate from GFG or its

subsidiaries to other Temple-Inland subsidiaries not within the GFG chain of subsidiaries; and the restructuring and refinancing of preferred stock of GFG subsidiaries so as to extinguish Temple-Inland's guarantee obligations in connection with that preferred stock. Through these, and other acts of domination and control, Temple-Inland effectively looted GFG and then knowingly spun it off as an independent company that was inadequately capitalized and ill-equipped to weather the economic climate that it then confronted.

219. The control exercised by Temple-Inland and its board of directors over its subsidiaries, including GFG and the Bank, was recognized by Temple-Inland's management, as well as a Wall Street investment bank engaged by Temple-Inland to provide services in connection with, among other things, Temple-Inland's Spin-Off of GFG.

220. In a letter dated November 29, 2007, to the board of directors of Temple-Inland, that investment bank wrote:

Although Guaranty and Forestar both currently have their own senior management teams, *the management of both Guaranty and Forestar are responsible to, and under control of, Temple-Inland's senior management and board of directors, who have responsibility for all of the Company's businesses.* Temple-Inland's senior management has informed us that this approach does not fully address the need for specific focus on each business. *For example, the Temple-Inland board of directors is required to make decisions involving allocation of capital and human resources, as well as with respect to strategic alternatives, such as acquisition and/or divestiture opportunities,* for all the Company's different businesses, which may not be appropriate for one business if it were operated on a stand-alone basis. [Emphasis added].

221. Temple-Inland's lawyers in connection with the Spin-Off also recognized that Temple-Inland and its board of directors controlled all of the subsidiaries in the Temple-Inland empire, including the financial services subsidiaries. In a July 16, 2007 letter to the Internal Revenue Service requesting a ruling from the IRS regarding the U.S. federal income tax consequences of the Spin-Off, Temple-Inland's counsel, stated to the IRS:

The manufacturing, financial services, and real estate development operations are three distinct businesses that operate in very different business environments. The operation of these diversified businesses under the current holding company structure imposes constraints on the ability of their managements to develop policies and make strategic decisions based upon factors unique to their particular circumstances. As a result, decisions by the Distributing 2 [Temple-Inland] Group on such matters as the allocation of financial and management resources, appropriate capital structure, and business expansion opportunities do not always reflect the determinations that would be made by each of the three units independently, based exclusively on factors relevant to its own specific situation.

222. As those letters reflect, the decisions imposed by Temple-Inland upon GFG and Guaranty Bank were not always appropriate or in their best interests.

223. Temple-Inland not only exercised domination and control over GFG, but in doing so, held itself out as acting in the best interest of GFG and Guaranty Bank, although again its actions were not consistent with that representation. For example, Temple-Inland repeatedly represented in its annual reports on Form 10-K its expectation that it would maintain the capital of Guaranty Bank at a level sufficient for it to be designated as “well capitalized” under applicable regulatory requirements.

224. Through these representations, and others, Temple-Inland undertook obligations to GFG and Guaranty Bank. Through reasonable reliance upon these representations, and others, GFG reposed trust and confidence in Temple-Inland, and Temple-Inland, accepted that trust and confidence so reposed. In this way and other ways, Temple-Inland assumed obligations to GFG, which obligations were breached when, among other things, Temple-Inland spun-off GFG after years of siphoning off its assets and looting its balance sheet, leaving it in an insolvent and undercapitalized condition and unable to survive the economic conditions that then prevailed. Temple-Inland failed to do so.

225. To the extent the following counts and prayer for relief seek declaratory relief, pursuant to 28 U.S.C. §2201, an actual controversy between the parties exists; that controversy is ripe for adjudication; and the parties are in need of judicial relief declaring their rights and obligations.

226. Temple-Inland's outrageous conduct was fraudulent and intentional, with malice, wantonness or other reprehensible state of mind.

COUNT I -- FRAUDULENT TRANSFER
(11 U.S.C. §§ 548 and 550)
(AGAINST TEMPLE-INLAND)

227. Plaintiff incorporates by reference as if fully set forth herein all preceding paragraphs of this Complaint.

228. Since as early as 2005, Temple-Inland knew that GFG and Guaranty Bank were headed for financial upheaval. As a result, Temple-Inland engaged in a fraudulent scheme to strip GFG and the Bank of their value and to disassociate Temple-Inland from the debt and obligations of GFG and the Bank. Temple-Inland's plan led GFG and the Bank to become insolvent and undercapitalized for the banking business in which they engaged. Ultimately, after Temple-Inland pocketed hundreds of millions of dollars, GFG and the Bank failed, costing GFG's creditors and American taxpayers billions of dollars.

229. In 2006, Temple-Inland transferred hundreds of millions of dollars worth of real estate assets from GFG and its affiliates to entities in which GFG had no ownership interests. GFG received no compensation for these transfers.

230. In 2006, despite numerous negative signals about the housing market in which the Bank was heavily invested, Temple-Inland extracted dividends of approximately \$135 million from GFG.

231. In 2007, even after deciding to spin-off GFG, and recognizing that they were in an unprecedented economic downturn, Temple-Inland took dividends of approximately \$35 million from GFG.

232. Further, in September 2007, Temple-Inland caused LIC, a wholly-owned subsidiary of GFG, to transfer certain real property to Forestar, an entity in which GFG had no ownership interest. Neither LIC nor GFG received a reasonably equivalent value for these transfers.

233. In December 2007, Temple-Inland forced on GFG a Tax Matters Agreement purporting to restrict GFG and its subsidiaries from carrying back net operating losses to obtain tax refund payments. This restriction was for the purpose of protecting Temple-Inland, which had filed consolidated tax returns with GFG and its subsidiaries for 2007 and earlier years, from being required to pay the federal government and/or GFG and its subsidiaries as a result of any carry back losses claimed by GFG and its subsidiaries after 2007.

234. These potential refund payments would have been based on tax payments previously paid by GFG and its subsidiaries on their incomes under the Tax Allocation Policy while they were a part of the Temple-Inland Consolidated Group.

235. In December 2007, Temple-Inland forced on GFG a Separation and Distribution Agreement, a Transition Services Agreement, an Employment Matters Agreement and an Aircraft Agreement that were unfair and oppressive. Under the Separation and Distribution Agreement, Temple-Inland purported to extract a release of claims for wrongs it had committed and was continuing to commit and sought to deprive GFG of a judicial forum in which to seek redress for those wrongs.

236. The Aircraft Agreement Temple-Inland forced upon GFG was an unfair and oppressive agreement and imposed upon GFG the obligation to pay 15% of the fixed costs of ownership of certain aircraft, at a time when Temple-Inland well knew that as a failing financial institution GFG could not justify the ownership or use of Temple-Inland's corporate jets.

237. In September 2008, GFG paid approximately \$1.8 million to Temple-Inland to satisfy alleged tax obligations under the Tax Allocation Policy for income earned by GFG and its subsidiaries during their final year of inclusion in the Temple-Inland Consolidated Group's 2007 tax year. That payment was demanded by Temple-Inland and paid by GFG as part of the Spin-Off related transactions at a time when GFG was insolvent and even though Temple-Inland had precluded GFG from ever recovering those tax payments by virtue of the Tax Matters Agreement's purported preclusion of GFG carrying back its impending losses, thereby stripping out even more value from GFG.

238. GFG's property, and property in which GFG had an interest, was transferred to Temple-Inland with the actual intent to hinder, delay, and/or defraud GFG's creditors.

239. Temple-Inland also caused GFG to incur obligations with the actual intent to hinder, delay, and/or defraud GFG's creditors.

240. The value of the consideration received by GFG was not reasonably equivalent to the value of the assets transferred and obligations incurred; GFG was insolvent or became insolvent shortly after the transfers were made or the obligations were incurred; and certain transfers occurred shortly before and shortly after substantial debt, i.e., the trust preferred securities, was incurred.

241. GFG received less than reasonably equivalent value in exchange for the transfers made to Temple-Inland and the obligations that Temple-Inland forced GFG to incur.

242. The transfers to Temple-Inland caused GFG to incur obligations that resulted in the dissipation of GFG's estate.

243. Valued at their fair market value, GFG did not receive a fair and proper price for the transfers to Temple-Inland.

244. At the time of the transfers to Temple-Inland, GFG was insolvent and/or was engaged in business or a transaction, or was about to engage in business or a transaction, for which GFG had unreasonably small capital.

245. These transfers and obligations incurred were made to or for the benefit of Temple-Inland and/or subsidiaries of Temple-Inland in which GFG and its subsidiaries owned no interest. At the time of the transfers to Temple-Inland, GFG intended to incur, or believed that it would incur, debts that would be beyond its ability to pay as such debts matured.

246. These transfers and obligations incurred were made within two years of the bankruptcy petition date.

COUNT II -- PREFERENTIAL TRANSFER
(11 U.S.C. §§ 547 and 550)
(AGAINST TEMPLE INLAND)

247. Plaintiff incorporates by reference as if fully set forth herein all preceding paragraphs of this Complaint.

248. In September 2008, GFG paid approximately \$1.8 million to Temple-Inland to satisfy alleged tax obligations under the Tax Allocation Policy for income earned by GFG and its subsidiaries during their final year of inclusion in the Temple-Inland Consolidated Group's 2007 tax year. That payment was demanded by Temple-Inland and paid by GFG as part of the Spin-Off related transactions at a time when GFG was insolvent and even though Temple-Inland had precluded GFG from ever recovering those tax payments by virtue of the Tax Matters

Agreement's purported preclusion of GFG carrying back its impending losses, thereby stripping out even more value from GFG.

249. GFG's payment of approximately \$1.8 million benefited Temple-Inland as an unsecured creditor of GFG.

250. The approximately \$1.8 million payment was made on account of an antecedent debt, namely, the tax payment obligation allegedly owed by GFG to Temple-Inland as part of the tax agreements Temple-Inland forced on GFG.

251. GFG made the approximately \$1.8 million payment at a time when it was insolvent.

252. Temple Inland received the payment as an "insider" because, among other reasons, the obligation arose and therefore the payment was arranged while Temple-Inland wholly owned GFG.

253. This transfer was made to Temple-Inland, an "insider", within one year of the bankruptcy petition date.

254. As a result of the approximately \$1.8 million payment to Temple-Inland, Temple-Inland received a larger share of the Estate than it would have received had the payment not been made.

COUNT III -- FRAUDULENT TRANSFER
(11 U.S.C. §§ 548 and 550)
(AGAINST FORESTAR)

255. Plaintiff incorporates by reference as if fully set forth herein all preceding paragraphs of this Complaint.

256. In October 2007, Temple-Inland caused LIC (later known as GGVI and a debtor in the Chapter 11 cases), a wholly-owned subsidiary of GFG, to transfer certain real property to Forestar, an entity in which GFG had no ownership interest.

257. The board of directors' meeting minutes for LIC indicate it would receive approximately \$13,781,422, or "book value," for the real property, which was transferred in October 2007. However, the deeds for the transferred properties state that LIC received only nominal value for most of these transfers.

258. Regardless of whether LIC and GFG received nominal value, as indicated in the deeds, or "book value," it was not reasonably equivalent value for the real property transferred.

259. These transfers to Forestar were undertaken with the actual intent to hinder, delay, and/or defraud LIC's and GFG's creditors.

260. The value of the consideration received by LIC and GFG was not reasonably equivalent to the value of the assets transferred; LIC and GFG were insolvent or became insolvent shortly after the transfers were made; and the transfers occurred shortly before or shortly after a substantial debt was incurred.

261. LIC and GFG received less than reasonably equivalent value in exchange for the transfers made to Forestar.

262. The transfers to Forestar resulted in dissipation of LIC's and GFG's estates.

263. Valued at their fair market value, i.e., under the totality of the circumstances and utilizing a hypothetical willing seller and hypothetical willing buyer with a reasonable time frame to sell, LIC and GFG did not receive a fair and proper price for the transfers to Forestar.

264. At the time of the transfers to Forestar, LIC and GFG were insolvent and/or were engaged in business or a transaction, or were about to engage in business or a transaction, for which they had unreasonably small capital.

265. At the time of the transfers to Forestar, LIC and GFG intended to incur, or believed that they would incur, debts that would be beyond their ability to pay as such debts matured.

266. These transfers and obligations incurred were made within two years of the bankruptcy petition date.

**COUNT IV -- VIOLATIONS OF THE TEXAS FRAUDULENT TRANSFER ACT
(11 U.S.C. §544 and Tex. Bus. Com. Code § 24.001 et seq.)
(AGAINST TEMPLE-INLAND)**

267. Plaintiff incorporates by reference as if fully set forth herein all preceding paragraphs of this Complaint.

268. Since as early as 2005, Temple-Inland knew that GFG and Guaranty Bank were headed for financial upheaval. As a result, Temple-Inland engaged in a fraudulent scheme to strip GFG and the Bank of their value and to disassociate Temple-Inland from the debt and obligations of GFG and the Bank. Temple-Inland's plan led GFG and the Bank to be insolvent and undercapitalized for the banking business in which they engaged. Ultimately, after Temple-Inland pocketed hundreds of millions of dollars, GFG and the Bank failed, costing GFG's creditors and American taxpayers billions of dollars.

269. In 2006, Temple-Inland transferred hundreds of millions of dollars worth of real estate assets from GFG and its affiliates to entities in which GFG had no ownership interests. GFG received no compensation for these transfers.

270. In 2006, despite numerous negative signals about the housing market in which the Bank was heavily invested, Temple-Inland extracted dividends of approximately \$135 million from GFG.

271. In 2007, even after deciding to Spin-Off GFG, and recognizing that they were in an unprecedented downturn, Temple-Inland took dividends of approximately \$35 million from GFG.

272. Further, in September 2007, Temple-Inland caused LIC, a wholly-owned subsidiary of GFG, to transfer certain real property to Forestar, an entity in which GFG had no ownership interest. Neither LIC nor GFG received a reasonably equivalent value for these transfers.

273. In December 2007, Temple-Inland forced on GFG a Tax Matters Agreement purporting to restrict GFG and its subsidiaries from carrying back net operating losses to obtain tax refund payments. This restriction was for the purpose of protecting Temple-Inland, which had filed consolidated tax returns with GFG and its subsidiaries for 2007 and earlier years, from being required to pay the federal government and/or GFG and its subsidiaries as a result of any carry back losses claimed by GFG and its subsidiaries after 2007.

274. These potential refund payments would have been based on tax payments previously paid by GFG and its subsidiaries on their incomes under the Tax Allocation Policy while they were a part of the Temple-Inland Consolidated Group.

275. In December 2007, Temple-Inland forced on GFG a Separation and Distribution Agreement, a Transition Services Agreement, an Employment Matters Agreement, and an Aircraft Agreement that were unfair and oppressive. Under the Separation and Distribution Agreement, Temple-Inland purported to extract a release of claims for wrongs it had committed and was continuing to commit and sought to deprive GFG of a judicial forum in which to seek redress for those wrongs.

276. The Aircraft Agreement that Temple-Inland forced upon GFG was an unfair and oppressive agreement which imposed upon GFG the obligation to pay 15% of the fixed costs of ownership of certain aircraft, at a time when Temple-Inland well knew that as a failing financial institution GFG could not justify the ownership or use of Temple-Inland's corporate jets.

277. In September 2008, GFG paid approximately \$1.8 million to Temple-Inland to satisfy alleged tax obligations under the Tax Allocation Policy for income earned by GFG and its subsidiaries during their final year of inclusion in the Temple-Inland Consolidated Group's 2007 tax year. That payment was demanded by Temple-Inland and paid by GFG as part of the Spin-Off related transactions at a time when GFG was insolvent and even though Temple-Inland had precluded GFG from ever recovering those tax payments by virtue of the Tax Matters Agreement's purported preclusion of GFG carrying back its impending losses, thereby stripping out even more value from GFG.

278. GFG's property, and property in which GFG had an interest, was transferred to Temple-Inland with the actual intent to hinder, delay, and/or defraud GFG's creditors.

279. Temple-Inland also caused GFG to incur obligations with the actual intent to hinder, delay, and/or defraud GFG's creditors.

280. The value of the consideration received by GFG in exchange for the transfers was not reasonably equivalent to the value of the assets transferred and obligations incurred; GFG was insolvent at the time the transfers were made, or became insolvent as a result of the transfers made or the obligations incurred; and certain transfers occurred before and within a reasonable time after a substantial debt, i.e., the trust preferred securities, was incurred.

281. GFG received less than reasonably equivalent value in exchange for the transfers made to Temple-Inland and the obligations that Temple-Inland forced GFG to incur.

282. The transfers to Temple-Inland caused GFG to incur obligations that resulted in the dissipation of GFG's estate.

283. Valued at their fair market value, GFG did not receive a fair and proper price for the transfers to Temple-Inland.

284. At the time of the transfers to Temple-Inland, GFG was insolvent and/or was engaged in business or a transaction, or was about to engage in business or a transaction, for which the remaining assets of GFG were unreasonably small in relation to the business or transaction.

285. At the time of the transfers to Temple-Inland, GFG intended to incur, or believed or reasonably should have believed that it would incur, debts that would be beyond its ability to pay as such debts became due.

286. These transfers and obligations incurred were made to or for the benefit of Temple-Inland and/or Temple-Inland subsidiaries in which GFG and the Bank owned no interest.

287. These transfers and obligations incurred were made within four years of the bankruptcy petition date.

**COUNT V -- VIOLATIONS OF THE TEXAS FRAUDULENT TRANSFER ACT
(11 U.S.C. §544 and Tex. Bus. Com. Code § 24.001 et seq.)
(AGAINST TIN INC.)**

288. Plaintiff incorporates by reference as if fully set forth herein all preceding paragraphs of this Complaint.

289. In January 2006, at the direction of Temple-Inland, GFG transferred most of its real estate holdings to entities in which GFG had no ownership interest without receiving any value in return. According to Temple-Inland's public filings, these real estate assets transferred by GFG were worth approximately \$336 million.

290. As part of these real estate asset transfers, at the direction of Temple-Inland, GFG contributed to the capital of Lumbermen's Investment Corporation all of the capital stock of Temple-Inland Life Inc. owned by GFG, which for purposes of the contribution was valued at \$56,871,728.94.

291. Further, at the direction of Temple-Inland, GFG contributed to the capital of Lumbermen's Investment Corporation all of the stock of Temple-Inland Realty owned by GFG, which for purposes of the contribution was valued at \$14,735,685.50.

292. At the direction of Temple-Inland, GFG then distributed to TIN all of the issued and outstanding capital stock of Lumbermen's Investment Corporation on or about January 4, 2006. For purposes of this distribution, the shares of Lumbermen's Investment Corporation were valued at \$209,322,631.50. GFG received nothing in return for this distribution to TIN.

293. Further, at the direction of Temple-Inland, on or about November 28, 2007, GGVI (formerly known as LIC), transferred 100% of the outstanding common stock of Sunbelt Insurance Company to TIN without receiving reasonably equivalent value for such stock.

294. As noted above, during 2006 and 2007, Temple-Inland extracted exorbitant dividends from GFG and the Bank. To the extent that these dividends were transferred from

GFG to Temple-Inland through TIN, then TIN is also liable for such fraudulent conveyances as an immediate transferee.

295. These transfers to TIN were undertaken with the actual intent to hinder, delay, and/or defraud GFG's creditors.

296. The value of the consideration received by GFG and GGVI in exchange for the transfers was not reasonably equivalent to the value of the assets transferred; GFG was insolvent at the time the transfers were made, or became insolvent as a result of the transfers made; and the transfers occurred before or within a reasonable time after a substantial debt, i.e., the trust preferred securities was incurred.

297. GFG received less than reasonably equivalent value in exchange for the transfers made to TIN.

298. The transfers to TIN resulted in the dissipation of GFG's estate.

299. Valued at their fair market value, i.e., under the totality of the circumstances and utilizing a hypothetical willing seller and hypothetical willing buyer in an arms' length transaction with a reasonable time frame to sell, GFG did not receive a fair and proper price for the transfers to TIN.

300. At the time of the transfers to TIN, GFG and GGVI were insolvent and/or were engaged in business or a transaction, or were about to engage in business or a transaction, for which the remaining assets of GFG and GGVI were unreasonably small in relation to the business or transaction.

301. At the time of the transfers to TIN, GFG and GGVI intended to incur, or believed or reasonably should have believed, that they would incur, debts that would be beyond their ability to pay as such debts became due.

302. These transfers and incurring of obligations were made within four years of the bankruptcy petition date.

**COUNT VI -- VIOLATIONS OF THE TEXAS FRAUDULENT TRANSFER ACT
(11 U.S.C. § 544 and Tex. Bus. Com. Code § 24.001 et seq.)
(AGAINST FORESTAR)**

303. Plaintiff incorporates by reference as if fully set forth herein all preceding paragraphs of this Complaint.

304. In October 2007, Temple-Inland caused LIC, a wholly-owned subsidiary of GFG, to transfer certain real property to Forestar, an entity in which GFG had no ownership interest.

305. The board of directors' meeting minutes for LIC indicate it would receive approximately \$13,781,422, or "book value," for the real property, which was transferred in October 2007. However, the deeds for the transferred properties state that LIC received only nominal value for most of these transfers.

306. Regardless of whether LIC and GFG received nominal value, as indicated in the deeds, or "book value," it was not reasonably equivalent value for the real property transferred.

307. These transfers to Forestar were undertaken with the actual intent to hinder, delay, and/or defraud GFG's creditors.

308. The value of the consideration received by GFG in exchange for the transfer was not reasonably equivalent to the value of the assets transferred; GFG was insolvent at the time the transfers were made, or became insolvent as a result of the transfers made; and the transfers occurred before or within a reasonable time after a substantial debt, i.e., the trust preferred securities was incurred.

309. GFG received less than reasonably equivalent value in exchange for the transfers made to Forestar.

310. The transfers to Forestar resulted in the dissipation of GFG's estate.

311. Valued at their fair market value, i.e., under the totality of the circumstances and utilizing a hypothetical willing seller and hypothetical willing buyer in an arms' length transaction with a reasonable time frame to sell, LIC and GFG did not receive a fair and proper price for the transfers to Forestar.

312. At the time of the transfers to Forestar, LIC and GFG were insolvent and/or were engaged in business or a transaction, or were about to engage in business or a transaction, for which the remaining assets of LIC and GFG were unreasonably small in relation to the business or transaction.

313. At the time of the transfers to Forestar, LIC and GFG intended to incur, or believed or reasonably should have believed, that they would incur, debts that would be beyond their ability to pay as such debts matured.

314. These transfers and obligations incurred were made within four years of the bankruptcy petition date.

**COUNT VII -- BREACH OF CAPITAL MAINTENANCE OBLIGATION
(AGAINST TEMPLE-INLAND)**

315. Plaintiff incorporates by reference as if fully set forth herein all preceding paragraphs of this Complaint.

316. At all relevant times, a significant component of Temple-Inland's business was its building products division. Because of that division, as well as other aspects of its business, Temple-Inland's profits and growth depended to a large extent upon the housing and construction industry. It was for these reasons that Temple-Inland entered the banking industry - to encourage new home building and new home construction. It was also for these reasons that

Temple-Inland operated the Bank, not as a traditional banking institution, but as a captive finance arm for the benefit of its building products business.

317. The negative consequences of Temple-Inland's misguided approach to the operation of the Bank can be seen in both the Bank's loan and MBS portfolios, both of which were unduly concentrated in the home construction industry.

318. For example, at Temple-Inland's direction, the Bank's construction and development loan portfolio constituted nearly 36% of the Bank's overall loan portfolio. This was more than four times the concentration of such loans made by similar thrifts. Worse yet, those loans were outstanding to homebuilders at a time when Temple-Inland knew or should have known the housing and construction market were approaching unprecedented downturns.

319. Similarly, Temple-Inland caused the Bank to excessively invest in risky, illiquid private-label MBS for the benefit of the homebuilding industry. As explained above, the Bank's investment in these toxic MBS far exceeded the concentrations in the MBS portfolios of similar thrifts. In addition, at relevant times, the stated value of the Bank's MBS portfolio was nearly four times the Bank's risk-based capital.

320. Temple-Inland profited from its use of GFG and the Bank for many years. As 2006 approached, however, it became clear to Temple-Inland that GFG and the Bank, which had extremely risky loan and MBS portfolios, would experience severe financial difficulties in the near future. Temple-Inland was uniquely situated to understand these market trends because of its position on the front end of the housing and construction markets as a building products supplier.

321. Regulators, such as the OTS, and GFG looked to Temple-Inland as a source of strength to ensure that the Bank maintained adequate capital. And Temple-Inland had a legal obligation to serve as such a source of strength.

322. The OTS and GFG looked to Temple-Inland for good reason. During 2007, Temple-Inland and its subsidiaries had assets of roughly \$20 billion and a market capitalization between \$4 billion and \$6.28 billion. Simply put, Temple-Inland had the means to provide the Bank with capital when it needed it.

323. Temple-Inland understood and acknowledged that it had an obligation to provide capital to the Bank as expected by the regulators and GFG. It acknowledged that agreement, arrangement or understanding on numerous occasions and in a number of ways.

324. Temple-Inland acknowledged its capital maintenance obligation in each of the annual reports it filed with the SEC for the years 2004-2006 and each of the quarterly reports it filed during 2007 when it stated its intention that it would maintain the Bank as “well capitalized.”

325. Temple-Inland again acknowledged that obligation in 2006 when the Bank’s capital fell below the OTS’s requested capitalization level and Temple-Inland was forced to return approximately \$10 million it had extracted from the Bank as dividends.

326. In February 2007, Temple Inland acknowledged its capital maintenance obligation yet again in both its press release and its presentation to investors about its decision to pursue the Spin-Off of GFG. Specifically, Temple-Inland promised GFG would have an appropriate capital structure to “ensure financial flexibility for shareholder value creation in the future.” GFG and the OTS relied on Temple-Inland’s representations and promises that it would serve as a source of strength for the Bank and maintain it as “well capitalized.”

327. Thus, Temple-Inland had, and knew that it had, an obligation to maintain adequate capital for GFG and the Bank – an obligation that inured to the benefit of GFG, the Bank, and the FDIC.

328. Given developing market conditions and Temple-Inland's knowledge of the weakened condition in which it had placed GFG, Temple-Inland knew that it would be required to infuse huge sums of cash into GFG during 2008 and 2009 to strengthen the capital reserves of GFG and Guaranty Bank. In fact, Temple-Inland knew since at least 2007 (prior to the Spin-Off) that the loss in the securities portfolio could exceed \$1 billion, which Temple Inland knew it would have had to replace in order to sustain the Bank.

329. To avoid that capital maintenance obligation, Temple-Inland spun off GFG, even though Temple-Inland knew that GFG was in no condition to support the Bank. Temple-Inland's misrepresentations to regulators about the value of the Bank's assets enabled it to complete the Spin-Off.

330. But for the Spin-Off, Temple-Inland would have been required to invest more than one billion dollars of additional capital into the Bank. Under such circumstances, the Bank would have survived and the GFG, the trust preferred securities holders, the FDIC, and the American taxpayers would not have suffered the catastrophic losses forced on them by Temple-Inland's tortious scheme.

331. Temple-Inland is now responsible for the capital maintenance obligation it breached and fraudulently avoided through the Spin-Off, causing at least \$1 billion dollars in damages to the FDIC. Plaintiff, as assignee of the FDIC for claims against Temple-Inland related to the Spin-Off, now seeks to hold Temple-Inland responsible for its outrageous conduct.

**COUNT VIII -- BREACH OF FIDUCIARY DUTY
(AGAINST TEMPLE-INLAND)**

332. Plaintiff incorporates by reference as if fully set forth herein all preceding paragraphs of this Complaint.

333. At all relevant times, Temple-Inland was the ultimate sole and controlling shareholder of GFG. Temple-Inland completely dominated and controlled its subsidiaries including TIN, GFG, GHI and Guaranty Bank. At the same time, Temple-Inland purported, undertook, promised and agreed to act in the best interest of GFG and the Bank in connection with, among other things, establishing and maintaining them as well capitalized financial institutions.

334. The acts of domination and control by Temple-Inland over GFG and Guaranty Bank included, among other things, the making and imposition of decisions with respect to:

- The allocation of financial resources and capital;
- The allocation of management and human resources;
- The determination of strategic alternatives, such as acquisitions and divestitures;
- The rates of return to be earned with respect to GFG's financial operations, thereby driving an investment strategy away from less risky government-sponsored agency securities and into more risky private-label securities;
- The distribution of valuable assets, including valuable real estate assets worth hundreds of millions of dollars;
- The refinancing of the preferred stock of subsidiaries of Guaranty Bank through the issuance of trust preferred securities thereby extinguishing Temple-Inland's guarantee of payment of the face value of the preferred stock in the event, inter alia, the Bank's regulators determined that the Bank was or would become undercapitalized;

- The up-streaming of hundreds of millions of dollars of dividends by GFG to Temple-Inland, thereby depleting GFG's financial assets and capital; and
- The imposition of a grossly unfair Tax Matters Agreement under which Temple-Inland caused GFG to relinquish the right to carry back net operating losses against GFG's prior years' income, and thereby, forfeit hundreds of millions of dollars in tax refunds.

335. The evidence of Temple-Inland's undertaking, promise and agreement to act in the best interest of GFG and Guaranty Bank includes the following:

- Temple-Inland's statement in its 2004 10-K that Temple-Inland expected to maintain Guaranty Bank's capital at a level that would exceed the minimum required for designation as "well capitalized" under the capital adequacy regulations of the OTS;
- Temple-Inland's statement in its 2005 10-K that Temple-Inland expected to maintain Guaranty Bank's capital at a level that would exceed the minimum required for designation as "well capitalized" under the capital adequacy regulations of the OTS;
- Temple-Inland's statement in its 2006 10-K that Temple-Inland expected to maintain Guaranty Bank's capital at a level that would exceed the minimum required for designation as "well capitalized" under the capital adequacy regulations of the OTS;
- Temple-Inland's representation in its February 26, 2007 Press Release that after the Spin-Off GFG would be well positioned in the market place and have an appropriate capital structure; and
- Temple-Inland's representation in the materials presented by Defendant Jastrow to potential investors and financial analyst to the effect that post-Spin-Off, GFG as a standalone company, would have an appropriate capital structure.

336. At relevant times when Temple-Inland purported, promised, agreed and undertook to act and acted on behalf of GFG, GFG was insolvent.

337. By reason of the foregoing, Temple-Inland owed duties, fiduciary and otherwise, to GFG and its creditors. Temple-Inland breached those duties.

338. Temple-Inland breached those duties by treating GFG and the Bank as Temple-Inland's personal ATM at the expense of GFG's creditors and the American taxpayers through the FDIC.

339. Temple-Inland breached those duties by dominating and controlling GFG and the Bank and forcing them to act in the best interests of Temple-Inland, and to the detriment of GFG, the Bank, and their creditors.

340. Temple-Inland breached those duties by forcing GFG and its subsidiaries to divest its real estate assets, which amounted to hundreds of millions of dollars, without receiving fair or reasonably equivalent value, and in some cases, without receiving any value whatsoever.

341. Temple-Inland breached those duties by restructuring the Bank's capital structure to replace preferred stock of subsidiaries with trust preferred securities. The net result of this restructuring was that Temple-Inland was relieved of a \$305 million obligation and GFG incurred a new obligation of approximately \$305 million. In other words, Temple-Inland stuck GFG with Temple-Inland's obligation as Temple-Inland was preparing to spin-off GFG.

342. Temple-Inland breached those duties by imposing unreasonably high rates of return and thereby driving a high risk investment strategy into riskier private-label mortgage-backed securities, all in order to pump up the earnings of the Bank and GFG to support higher dividends to Temple-Inland, before dumping those entities.

343. Temple-Inland breached those duties by forcing GFG and the Bank to issue dividends to Temple-Inland when GFG and the Bank clearly needed the capital. For example, shortly after GFG distributed a dividend of \$35 million to Temple-Inland in or about March 2007, the Bank was forced to borrow funds from the Federal Home Loan Bank that it, in turn, invested in risky mortgage-backed securities to meet Temple-Inland's investment directives. By

no later than September 2007, Guaranty Bank was seeking to replace the very capital that Temple-Inland had taken away by securing that dividend.

344. Temple-Inland breached those duties by, after creating GFG's tenuous financial condition, spinning off GFG on unfavorable, unfair, oppressive and unconscionable terms. For example, while all signs pointed to a depressed housing market, in which Guaranty Bank had heavily invested, Temple-Inland through imposition of the Tax Matters Agreement forced restrictions on GFG prohibiting it from carrying back net operating losses to claim refunds from prior years in which Temple-Inland had filed consolidated returns with GFG. Temple-Inland also sought, through the imposition of the Separation and Distribution Agreement to exact a release for the wrongs it had committed and to deprive GFG and Guaranty Bank of a judicial forum in which to litigate those wrongs. These self-dealing transactions imposed on GFG by Temple Inland were intrinsically unfair.

345. Temple-Inland's outrageous conduct rendered GFG insolvent, undercapitalized and doomed to fail costing GFG, its creditors, and the federal government over \$1 billion.

346. By reason of its numerous breaches of duty, Temple-Inland has caused harm and damage for which it is liable and for which the Liquidation Trustee is entitled to recover.

**COUNT IX -- BREACH OF FIDUCIARY DUTY
(AGAINST KENNETH R. DUBUQUE; RANDALL D. LEVY; KENNETH M.
JASTROW, II; AND ARTHUR TEMPLE, III)**

347. Plaintiff incorporates by reference as if fully set forth herein all preceding paragraphs of this Complaint.

348. Defendants Dubuque, Levy, Jastrow, and A. Temple were directors of GFG. As directors, they owed GFG, a Delaware Corporation, fiduciary duties composed of the duty of care, the duty of loyalty, and the duty to act in good faith.

349. Dubuque, Levy, Jastrow and A. Temple also owed GFG's creditors a fiduciary duty after GFG became insolvent.

350. Dubuque, Levy, Jastrow and A. Temple suffered under conflicts of interest as each was an officer and/or director of Temple-Inland.

351. Dubuque, Levy, Jastrow and A. Temple breached their duty of loyalty by approving self-interested and unfair transactions between Temple-Inland and GFG. For example, as noted above, GFG's board repeatedly approved of dividends to Temple-Inland even though Guaranty Bank and GFG needed capital. At the same time the Bank was borrowing significant funds to purchase mortgage-backed securities, it was issuing dividends that GFG, in turn, distributed to Temple-Inland.

352. Similarly, GFG's board permitted and approved of LIC's significant transfer of real property assets to Forestar, an entity in which GFG owned no interest, without receiving fair value.

353. GFG's board also violated their fiduciary duties by approving of the one-sided and unfair Tax Matters Agreement, which purported to restrict GFG's right to carry back future net operating losses. This restriction cost GFG and its creditors hundreds of millions of dollars in tax refunds.

354. Dubuque, Levy, Jastrow and A. Temple also breached their duty to act in good faith by intentionally acting with a purpose other than that of advancing the best interests of GFG and its creditors, by acting with the intent to violate applicable positive law, and by intentionally failing to act in the face of a known duty to act, demonstrating a conscious disregard for their duties.

**COUNT X -- AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(AGAINST TEMPLE-INLAND)**

355. Plaintiff incorporates by reference as if fully set forth herein all preceding paragraphs of this Complaint.

356. The directors of GFG owed fiduciary duties to GFG and its creditors.

357. During the relevant time periods, the GFG board members breached their fiduciary duties to GFG and its creditors. These board members, including Dubuque, Levy, Jastrow and A. Temple, breached their fiduciary duties at the direction of Temple-Inland and for the interests of Temple-Inland.

358. Accordingly, Temple-Inland knowingly participated in the breaches of fiduciary duties by GFG's directors.

359. GFG and its creditors suffered damages as a result of Temple-Inland's concerted action in conjunction with the directors of GFG.

**COUNT XI -- PIERCING THE CORPORATE VEIL / ALTER EGO
(11 U.S.C. § 541 and Applicable State Law: 11 U.S.C. §544(a), 544(b) and
Applicable State Law)
(AGAINST TEMPLE-INLAND)**

360. Plaintiff incorporates by reference as if fully set forth herein all preceding paragraphs of this Complaint.

361. The Liquidation Trustee brings this claim: (1) standing in the shoes of the Debtors on the ground that the claim asserted herein is property of the estates of the Debtors under 11 U.S.C. § 541; (2) pursuant to 11 U.S.C. § 544(a) asserting the rights and powers, including causes of action, of a hypothetical creditor for the benefit of the estates of the Debtors and hence for all creditors and (3) pursuant to 11 U.S.C. § 544(b) standing in the shoes of the creditors holding allowable unsecured claims.

362. At all relevant times, Temple-Inland was the ultimate sole and controlling shareholder of GFG. Temple-Inland completely dominated and controlled its various subsidiaries, including GFG. The acts of domination and control by Temple-Inland over GFG included, among other things, the making and imposition of decisions with respect to:

- The allocation of financial resources and capital;
- The allocation of management and human resources;
- The determination of strategic alternatives, such as acquisitions and divestitures;
- The rates of return to be earned with respect to GFG's financial operations, thereby driving an investment strategy away from less risky government-sponsored agency securities and into more risky private-label securities;
- The distribution of valuable assets, including valuable real estate assets worth hundreds of millions of dollars;
- The refinancing of the preferred stock of subsidiaries of Guaranty Bank through the issuance of trust preferred securities thereby extinguishing Temple-Inland's guarantee of payment of the face value of the preferred stock in the event that, inter alia, the Bank's regulators determined that the the Bank was or would become undercapitalized;
- The up-streaming of hundreds of millions of dollars of dividends by GFG to Temple-Inland, thereby depleting GFG's financial assets and capital;
- The imposition of a grossly unfair Tax Matters Agreement under which Temple-Inland caused GFG to relinquish the right to carry back net operating losses against GFG's prior years' income, and thereby, forfeit hundreds of millions of dollars in tax refunds.

363. Through domination and control of GFG and Guaranty Bank, Temple-Inland imposed upon them rates of return which could not be satisfied by their investment in lower risk, lower return government-sponsored agency MBS, and thereby forced a riskier investment strategy in higher risk, higher return private-label MBS. The imposition of those rates of return by Temple-Inland was motivated by its desire to achieve greater cash flow through the up-streaming of dividends. That riskier investment strategy in investing in private-label MBS

ultimately contributed to the failure of Guaranty Bank. It also resulted in the bankruptcy of GFG. Thus, Temple-Inland's domination and control of GFG and Guaranty Bank bears a direct causal relationship to the downfall of each.

364. Temple-Inland's domination and control of GFG and Guaranty Bank rendered each of them undercapitalized and insolvent at the time of the Spin-Off and at other relevant times.

365. By Temple-Inland's domination and control of GFG and Guaranty Bank, Temple-Inland, as the dominant parent, siphoned-off the assets of GFG and Guaranty Bank by, among other things, the up-streaming of hundreds of millions of dollars of dividends and the diversion of hundreds of millions of dollars of real estate assets outside the GFG chain of subsidiaries.

366. Temple-Inland's domination and control of its subsidiaries, including GFG and Guaranty Bank, was so extensive and pervasive that they, in fact, operated as a single economic entity.

367. Temple-Inland's domination and control of its subsidiaries, including GFG and Guaranty Bank, was so extensive and pervasive, that it rendered GFG and Guaranty Bank mere alter egos of Temple-Inland.

368. The domination and control that Temple-Inland exercised over GFG and Guaranty Bank worked injustice and unfairness similar in nature to fraud and rendered the ostensible separate corporate existence of GFG and Guaranty Bank a sham.

369. By the siphoning of cash and real estate assets, the engineering of refinancing transactions extinguishing Temple-Inland's own liability, and the imposition of a grossly unfair Tax Matters Agreement precluding GFG from recovering tax refunds on net operating losses accruing after the Spin-Off, among other things, Temple-Inland left GFG and Guaranty Bank

undercapitalized and insolvent entities incapable of surviving the harsh economic times which Temple-Inland knew were on the horizon when it decided to pursue and effectuated the Spin-Off. As a result, GFG and Guaranty Bank, as well as their creditors, including the holders of the trust preferred securities and the FDIC, suffered grave and substantial injury and damage for which Temple-Inland is liable.

**COUNT XII -- BREACH OF FIDUCIARY DUTY
(AGAINST KENNETH M. JASTROW, III, LARRY E. TEMPLE AND ARTHUR
TEMPLE, III)**

370. Plaintiff incorporates by reference as if fully set forth herein all preceding paragraphs of this Complaint.

371. At all relevant times, Defendants Jastrow, A. Temple, and L. Temple were directors of Temple-Inland.

372. As directors, they owed Temple-Inland, a Delaware Corporation, fiduciary duties composed of the duty of care, the duty of loyalty, and the duty to act in good faith.

373. At all relevant times, and as discussed above, Temple-Inland and its directors dominated and controlled GFG such that GFG was the alter ego of Temple-Inland and Temple-Inland and GFG were operated as a single enterprise.

374. As a result, the Temple-Inland directors all owed fiduciary duties to the single enterprise, which included GFG.

375. The Temple-Inland directors also owed GFG's creditors a fiduciary duty after GFG, as part of the single enterprise, became insolvent.

376. By reason of the foregoing, the Temple-Inland directors owed duties, fiduciary and otherwise, to GFG and its creditors.

377. The Temple-Inland directors breached their fiduciary duties by treating GFG and the Bank as Temple-Inland's personal ATM at the expense of GFG's creditors and the FDIC and the American taxpayers through the FDIC.

378. The Temple-Inland directors breached their fiduciary duties by causing Temple-Inland to dominate and control GFG and the Bank and forcing them to act in the best interests of Temple-Inland, and to the detriment of GFG, the Bank, and their creditors.

379. Further, the Temple-Inland directors breached their fiduciary duties by intentionally, recklessly, and/or negligently causing Temple-Inland to force GFG and its subsidiaries to divest their real estate assets, which amounted to hundreds of millions of dollars, without receiving fair or reasonably equivalent value, and in some cases, without receiving any value whatsoever.

380. The Temple-Inland directors breached their fiduciary duties by causing Temple-Inland to restructure the Bank's capital structure to replace preferred stock of subsidiaries with trust preferred securities. The net result of this restructuring was that Temple-Inland avoided a \$305 million obligation and GFG incurred a new obligation of approximately \$305 million. In other words, Temple-Inland stuck GFG with Temple-Inland's obligation as Temple-Inland was preparing to Spin-Off GFG.

381. The Temple-Inland directors breached their fiduciary duties by intentionally, recklessly and/or negligently imposing unreasonably high rates of return on GFG and the Bank, which forced the Bank to invest in toxic, private-label mortgage-backed securities.

382. The Temple-Inland directors breached their fiduciary duties by intentionally, recklessly, and/or negligently causing Temple-Inland to force GFG and the Bank to issue dividends to Temple-Inland when GFG and the Bank clearly needed the capital. For example,

shortly after GFG distributed a dividend of \$35 million to Temple-Inland in or about March 2007, the Bank was forced to borrow funds from the Federal Home Loan Bank that it, in turn, invested in risky mortgage-backed securities to meet Temple-Inland's investment directives. Soon after Temple-Inland extracted the \$35 million dividend, Guaranty Bank was seeking the very capital that Temple-Inland had taken away through that dividend.

383. The Temple-Inland directors also breached their fiduciary duties by intentionally, recklessly, and/or negligently causing Temple-Inland, after creating GFG's tenuous financial condition, to spin-off GFG on unfavorable, unfair, oppressive and unconscionable terms. For example, while all signs pointed to a depressed housing market, in which Guaranty Bank was heavily invested, Temple-Inland through imposition of the Tax Matters Agreement forced restrictions on GFG prohibiting it from carrying back net operating losses to claim refunds from prior years in which Temple-Inland had filed consolidated returns with GFG and to obtain payments from Temple-Inland owed to it under the Tax Allocation Policy or otherwise under law. Temple-Inland also wrongfully sought, through the imposition of the Separation and Distribution Agreement, to exact a release for the wrongs it had committed and to deprive GFG and Guaranty Bank of a judicial forum in which to litigate those wrongs.

384. The Temple-Inland directors imposed on GFG intrinsically unfair transactions, which benefitted Temple-Inland at the expense of GFG and its creditors.

385. The Temple-Inland directors also breached their duty to act in good faith by intentionally acting with a purpose other than that of advancing the best interests of GFG and its creditors, by acting with the intent to violate applicable positive law, and by intentionally failing to act in the face of a known duty to act, demonstrating a conscious disregard for their duties.

386. The Temple-Inland directors outrageous conduct rendered GFG insolvent, undercapitalized and doomed to fail costing GFG, its creditors, and the FDIC, and the American taxpayers through the FDIC in excess of \$1 billion.

387. By reason of their numerous breaches of duty, the Temple-Inland directors have caused harm and damage for which they are liable to the Liquidation Trustee.

**COUNT XIII -- AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(AGAINST LARRY E. TEMPLE)**

388. Plaintiff incorporates by reference as if fully set forth herein all preceding paragraphs of this Complaint.

389. The directors of GFG owed fiduciary duties to GFG and its creditors.

390. During the relevant time periods, the GFG board members breached their fiduciary duties to GFG and its creditors. These board members, including Defendants. Dubuque, Levy, Jastrow and A. Temple, breached their fiduciary duties at the direction of Temple-Inland and for the interests of Temple-Inland.

391. As alleged above, the Temple-Inland directors, of which L. Temple is one, caused Temple-Inland to dominate and control GFG and caused Temple-Inland to direct the GFG directors in their breach of fiduciary duties.

392. Accordingly, the Temple-Inland directors knowingly participated in the breaches of fiduciary duties by GFG's directors.

393. GFG and its creditors suffered damages as a result of the Temple-Inland directors' concerted action in conjunction with the directors of GFG.

**COUNT XIV -- PROMISSORY ESTOPPEL
(AGAINST TEMPLE-INLAND)**

394. Plaintiff incorporates by reference as if fully set forth herein all preceding paragraphs of this Complaint.

395. In February 2007 when Temple-Inland announced its decision to proceed with the Spin-Off, Temple-Inland represented and promised in a press release and in investor presentation materials that GFG would be well-positioned in the market place and have an appropriate capital structure and that a portion of the timberland sale proceeds would be used to ensure such an appropriate capital structure.

396. GFG and Guaranty Bank relied on those representations and promises to operate the Bank in the period after the Spin-Off announcement until its consummation.

397. Among other things, acting in reasonable reliance upon those representations, the Bank acquired in the third quarter of 2007, approximately \$1.1 billion in high risk private-label Option ARM MBS, an acquisition that was substantially financed through borrowings.

398. Temple-Inland knew and reasonably should have known that its promises and representations that GFG would be well positioned and have an appropriate capital structure would induce reasonable reliance on the part of GFG and the Bank.

399. Temple-Inland failed to make good on its representations and promises that GFG would be appropriately capitalized post-Spin-Off, and in fact, it was not. Indeed, GFG and Bank President and CEO Dubuque's expressions of concern to the Temple-Inland transformation committee prior to the Spin-Off that the bank may be in need of as much as \$200 million in additional capital went completely unheeded and were ignored by Temple-Inland.

400. GFG's and the Bank's reliance upon Temple-Inland's representations and promises caused GFG and the Bank substantial detriment and harm in that, among other things,

the Bank's capital post-Spin-Off was inadequate to absorb losses on the approximately \$1.1 billion in risky MBS purchased in the third quarter 2007, and thereby contributing to the Bank's failure and GFG's bankruptcy.

401. Temple-Inland's promises must be enforced to avoid injustice.

402. By reason of Temple-Inland's breaches of its promises, GFG sustained loss and damage for which the Liquidation Trustee, standing in its shoes, is entitled to recover.

403. By reason of Temple-Inland's breaches of its promises, Guaranty Bank sustained loss and damage for which the Liquidation Trustee is entitled to recover.

COUNT XV -- FRAUDULENT TRANSFER
(11 U.S.C. §§ 548 and 550)
(AGAINST TIN)

404. Plaintiff incorporates by reference as if fully set forth herein all preceding paragraphs of this Complaint.

405. At the direction of Temple-Inland, on or about November 28, 2007, Guaranty Group Ventures Inc., transferred 100% of the outstanding common stock of Sunbelt Insurance Company to TIN without receiving reasonably equivalent value for such stock.

406. These transfers to TIN were undertaken with the actual intent to hinder, delay, and/or defraud GFG's creditors.

407. The value of the consideration received by GFG and GGVI was not reasonably equivalent to the value of the asset transferred; GFG and GGVI were insolvent or became insolvent shortly after the transfer was made; and the transfer occurred shortly before and shortly after a substantial debt was incurred.

408. GFG and GGVI received less than reasonably equivalent value in exchange for the transfer made to TIN.

409. The transfer to TIN resulted in the dissipation of GFG's and GGVI's estate.

410. Valued at their fair market value, i.e., under the totality of the circumstances and utilizing a hypothetical willing seller and hypothetical willing buyer with a reasonable time frame to sell, GFG and GGVI did not receive a fair and proper price for the transfers to TIN.

411. At the time of the transfers to TIN, GFG and GGVI were insolvent and/or were engaged in business or a transaction, or were about to engage in business or a transaction, for which they had unreasonably small capital.

412. At the time of the transfers to TIN, GFG and GGVI intended to incur, or believed that they would incur, debts that would be beyond GFG's and GGVI's ability to pay as such debts became due.

413. These transfers made within two years of the bankruptcy petition date.

COUNT XVI -- FRAUDULENT TRANSFER
(11 U.S.C. §§ 544, 548 and 550 and Tex. Bus. Com. Code § 24.001 et seq.)
(AGAINST TEMPLE-INLAND)

414. Plaintiff incorporates by reference as if fully set forth herein all preceding paragraphs of this Complaint.

415. Temple-Inland's debt facilities contained cross-default covenants providing that, if Temple-Inland subsidiaries, such as GFG and the Bank, became insolvent or failed to make any payment on indebtedness when due or were placed into receivership, then Temple-Inland's own debt obligations would default. Guaranty Bank was specifically named and included in certain of these covenants by virtue of its materiality to the Temple-Inland balance sheet.

416. For example, Temple-Inland had a \$750 million revolving line of credit with Bank of America ("BOA"). Temple-Inland would have defaulted under that line of credit if GFG or the Bank were to become insolvent or fail to make such payments.

417. As of December 31, 2006, Temple-Inland had outstanding approximately \$1.3 billion of bonds governed by indentures which would be in default if a receiver were appointed for the Bank. In the event of such a default, the entire principal amount of the bonds could be accelerated.

418. Such a default by Temple-Inland under its own debt obligations triggered under such cross-default covenants would have posed catastrophic results for Temple-Inland itself. Such a default would have resulted in a loss of funding under the BOA revolving line of credit and an acceleration of significant debt obligations that would likely have led to Temple-Inland's own bankruptcy, a bankruptcy that would have destroyed all shareholder value in Temple-Inland. In the alternative, Temple-Inland creditors would likely have pursued an action for involuntary bankruptcy if violations of the covenants caused a liquidity crisis for Temple Inland, thereby making Temple-Inland potentially insolvent as the amount of such credit exceeded the available equity on the balance sheet.

419. The existence of Temple-Inland's cross-default covenants under Temple-Inland's own debt obligations and the catastrophic consequences that would have flowed to Temple-Inland had the cross-default covenants been triggered by GFG's or the Bank's insolvency or failure to make payment obligations provided a compelling incentive to Temple-Inland to abandon the Bank, as GFG and the Bank became liabilities instead of assets.

420. The covenants provided a real and tangible benefit to GFG and the Bank because, so long as they remained subsidiaries of Temple-Inland, they had the direct financial support from Temple-Inland flowing from the reality that Temple-Inland would no doubt have maintained their capital adequacy, as it repeatedly promised it would do, rather than face the

financial disaster that would have resulted from not doing so under its own cross-default covenants.

421. The real and tangible benefit to GFG and the Bank flowing from these relationships under these circumstances constituted a valuable asset, every bit as real and valuable as any binding contractual undertaking that Temple-Inland might have offered.

422. The relationships giving rise to this financial support asset were destroyed and the asset itself was in fact extinguished when Temple-Inland unilaterally effected the Spin-Off through the imposition of unfair terms in the absence of any arms' length negotiation. Through the device of the Spin-Off, the asset was effectively given back to Temple-Inland with GFG and the Bank receiving no consideration in return, thereby constituting the transaction a fraudulent transfer.

423. Moreover, but for the Spin-Off, Temple-Inland would have been forced to provide capital support to GFG and the Bank because of Temple-Inland's own contractual commitments. Temple-Inland therefore attempted to complete the Spin-Off at all costs, and through any means (including misrepresentations) in order to avoid its cross-default obligations. This, of course, deprived GFG and the Bank not only of the financial support asset referenced above, but also of Temple-Inland's source of strength and contributed to the ultimate demise of GFG and the Bank.

424. The misconduct of Temple-Inland in destroying this asset constituted not only a fraudulent transfer but also a breach of Temple-Inland's fiduciary duties.

425. GFG and the Bank were beneficiaries of Temple-Inland's own cross-default obligations as well as Temple-Inland's commitments regarding GFG and the Bank.

426. Through the artifice of the Spin-Off, Temple-Inland transferred and extinguished the financial support asset flowing from Temple-Inland's commitments with the actual intent to hinder, delay, and/or defraud GFG's creditors.

427. The value of the consideration received by GFG in exchange for these transfers was not reasonably equivalent to the value of the assets extinguished; GFG was insolvent or became insolvent shortly after the asset was extinguished.

428. GFG received less than reasonably equivalent value in exchange for the transfer of this valuable asset.

429. At the time of this fraudulent transfer, GFG was insolvent and/or was engaged in business or a transaction, or was about to engage in business or a transaction, for which GFG had unreasonably small capital.

430. This transfer was made to or for the benefit of Temple-Inland and/or subsidiaries of Temple-Inland in which GFG and its subsidiaries owned no interest. At the time of the transfers to Temple-Inland, GFG intended to incur, or believed that it would incur, debts that would be beyond its ability to pay as such debts became due.

431. This transfer was made within two years of the bankruptcy petition date.

JURY DEMAND

432. Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Kenneth L. Tepper, in his capacity as Liquidation Trustee for the GFGI Liquidation Trust and as assignee of the FDIC, respectfully prays that the Court grant the following relief:

(1) On Count I:

(a) entering judgment against Temple-Inland finding that the Separation Agreement, the Transition Services Agreement, the Employee Matters Agreement, the Aircraft Agreement and the approximately \$1.8 million tax payment constitute fraudulent transfers pursuant to 11 U.S.C. §§ 548 and 550, avoiding such transfers and agreements on that ground, and allowing the recovery of the property so transferred, or, in the alternative with respect to such transfers only;

(b) to the extent that the property is not now fully recoverable, entering judgment against Temple-Inland, finding such transfers and agreements constitute fraudulent transfers pursuant to 11 U.S.C. §§ 548 and 550, avoiding them on that ground and awarding the Liquidation Trustee the value of the transfers also pursuant to 11 U.S.C. §§ 548 and 550; and

(c) as to the Tax Matters Agreement, entering judgment against Temple-Inland finding that:

(i) in the event the IRS permits GFG to make the election under Section 172(b)(1)(H) of the Internal Revenue Code (the "172(b)(1)(H) Election") to carry back its 2009 net operating loss five (5) taxable years, and if the IRS or any state, local or foreign tax authority issues a refund payable to Temple-Inland as a result of the carryback, then awarding the Liquidation Trustee the amount of such refund from Temple-Inland, and ordering Temple-Inland to forthwith turn over or otherwise pay that refund amount over to the Liquidation Trustee; and

(ii) in addition to subparagraph (i) of paragraph (1)(c) above, in the event that the IRS permits GFG to make the 172(b)(1)(H) Election to carry back its 2009 net operating loss five (5) taxable years, awarding the Liquidating Trustee the aggregate amount such carryback would have reduced GFG's and its subsidiaries'

income tax liabilities (including federal, state, local or foreign) for the tax years during which they were members of the Temple-Inland Consolidated Group as if they had filed separate tax returns for such tax years to the extent the amount in this subparagraph (ii) exceeds the amount recovered in subparagraph (i) of paragraph (1)(c) above; and

(iii) in addition to subparagraphs (i) and (ii) of paragraph (1)(c) above, in the event that the IRS permits GFG to make the 172(b)(1)(H) Election to carry back its 2009 net operating loss five (5) taxable years, but does not allow a carryback to Temple-Inland's taxable year 2004, awarding the Liquidating Trustee the aggregate amount such carryback would have reduced GFG's and its subsidiaries' income tax liabilities (including federal, state, local or foreign) for the tax year 2004, as if they had filed separate tax returns for such tax year;

or, in the alternative to the amounts set forth in subparagraphs (i), (ii) and (iii) of paragraph (1)(c),

(iv) in the event the IRS does not permit GFG to make the 172(b)(1)(H) Election to carry back its 2009 net operating loss 5 taxable years, awarding the Liquidation Trustee the amount that (had the IRS permitted such election and resulting 5-year carryback) such carryback would have reduced GFG's and its subsidiaries' income tax liabilities (including federal, state, local or foreign) for the tax years during which they were members of the Temple-Inland Consolidated Group, including 2004, had they filed separate tax returns for such tax years; and

(d) awarding the Liquidation Trustee costs, disbursements, expenses, and attorneys' fees; awarding pre-judgment and post-judgment interest at the maximum rate provided by law; and awarding such other, further and different relief as this Court deems just, proper or equitable.

(2) On Count II:

(a) entering judgment against Temple-Inland finding that the transfer of the approximately \$1.8 million tax payment constitutes a preference pursuant to 11 U.S.C. §§ 547 and 550, avoiding such preference on that ground, and allowing the recovery of the property so transferred;

(b) to the extent that the property is not now fully recoverable, entering judgment against Temple-Inland, finding that such transfer constitutes a preference pursuant to 11 U.S.C. §§ 547 and 550, avoiding the preference on that ground and awarding the Liquidation Trustee the value of the transfer of the approximately \$1.8 million also pursuant to 11 U.S.C. §§ 547 and 550;

(c) awarding the Liquidation Trustee costs, disbursements, expenses, and attorneys' fees; awarding pre-judgment and post-judgment interest at the maximum rate provided by law; and awarding such other, further and different relief as this Court deems just, proper or equitable.

(3) On Count III:

(a) entering judgment against Forestar finding that the transfers of real property by LIC (a.k.a. GVCC) in October 2007, constitute fraudulent transfers pursuant to 11 U.S.C. §§ 548 and 550, avoiding such transfers on that ground, and allowing the recovery of the property so transferred;

(b) to the extent that the property is not now fully recoverable, entering judgment against Forestar, finding that such transfer constitutes a fraudulent transfer pursuant to 11 U.S.C.

§§ 548 and 550, avoiding the transfer on that ground and awarding the Liquidation Trustee the value of real property so transferred, also pursuant to 11 U.S.C. §§ 548 and 550;

(c) awarding the Liquidation Trustee costs, disbursements, expenses, and attorneys' fees; awarding pre-judgment and post-judgment interest at the maximum rate provided by law; and awarding such other, further and different relief as this Court deems just, proper or equitable.

(4) On Count IV:

(a) entering judgment against Temple-Inland finding that the transfer of the Lumberman's Investment Corporation stock, the up-streaming of dividends in 2006 and 2007, the Tax Matters Agreement, the Separation Agreement, the Transition Services Agreement, the Employee Matters Agreement, the Aircraft Agreement, and the approximately \$1.8 million tax payment constitute fraudulent transfers pursuant to 11 U.S.C. §§ 544 and 550 and under applicable state fraudulent transfer law, Tex. Bus. Com. Code § 24.001, et seq., avoiding such transfers and agreements on that ground, and allowing the recovery of the property so transferred, or, in the alternative with respect to such transfers only;

(b) to the extent that the property is not now fully recoverable, entering judgment against Temple-Inland, finding the transfers and agreements constitute fraudulent transfers pursuant to 11 U.S.C. §§ 544 and 550 and under applicable state fraudulent transfer law, Tex. Bus. Com. Code § 24.001, et seq., avoiding them on that ground and awarding the Liquidation Trustee the value of the transfer of the Lumberman's Investment Corporation stock, the amount of the dividends up-streamed in 2006 and 2007; and

(c) as to the Tax Matters Agreement, entering judgment against Temple-Inland finding that:

(i) in the event the IRS permits GFG to make the election under Section 172(b)(1)(H) of the Internal Revenue Code (the “172(b)(1)(H) Election”) to carry back its 2009 net operating loss five (5) taxable years, and if the IRS or any state local or foreign tax authority issues a refund payable to Temple-Inland as a result of the carryback, then awarding the Liquidation Trustee the amount of such refund from Temple-Inland, and ordering Temple-Inland to forthwith turn over or otherwise pay that refund amount over to the Liquidation Trustee; and

(ii) in addition to subparagraph (i) of paragraph (4) (c) above, in the event that the IRS permits GFG to make the 172(b)(1)(H) Election to carry back its 2009 net operating loss five (5) taxable years, awarding the Liquidating Trustee the aggregate amount such carryback would have reduced GFG’s and its subsidiaries’ income tax liabilities (including federal, state, local or foreign) for the tax years during which they were members of the Temple-Inland Consolidated Group as if they had filed separate tax returns for such tax years to the extent the amount in this subparagraph (ii) exceeds the amount recovered in subparagraph (i) of paragraph (4)(c) above; and

(iii) in addition to subparagraphs (i) and (ii) of paragraph (1)(c) above, in the event that the IRS permits GFG to make the 172(b)(1)(H) Election to carry back its 2009 net operating loss five (5) taxable years, but does not allow a carryback to Temple-Inland’s taxable year 2004, awarding the Liquidating Trustee the aggregate amount such carryback would have reduced GFG’s and its subsidiaries’ income tax liabilities (including federal, state, local or foreign) for the tax year 2004, as if they had filed separate tax returns for such tax year;

or, in the alternative to the amounts set forth in subparagraphs (i), (ii) and (iii) of paragraph (4)(c),

(iv) in the event the IRS does not permit GFG to make the 172(b)(1)(H) Election to carry back its 2009 net operating loss 5 taxable years, awarding the Liquidation Trustee the amount that (had the IRS permitted such election and resulting 5-year carryback) such carryback would have reduced GFG's and its subsidiaries' income tax liabilities (including federal, state, local or foreign) for the tax years during which they were members of the Temple-Inland Consolidated Group, including 2004, had they filed separate tax returns for such tax years; and

(d) awarding the Liquidation Trustee costs, disbursements, expenses, punitive damages and attorneys' fees; awarding pre-judgment and post-judgment interest at the maximum rate provided by law; and awarding such other, further and different relief as this Court deems just, proper or equitable.

(5) On Count V:

(a) entering judgment against TIN finding that the transfer of the Lumberman's stock, all of the stock of the Sunbelt Insurance Company, and the upstreaming of dividends in 2006 and 2007 constitute fraudulent transfers pursuant to 11 U.S.C. §§ 544 and 550 and under applicable state fraudulent transfer law, Tex. Bus. Com. Code § 24.001, et seq., avoiding such transfers on that ground, and allowing the recovery of the property so transferred;

(b) to the extent that the property is not now fully recoverable, entering judgment against TIN, finding that such transfers constitute fraudulent transfers pursuant to 11 U.S.C. §§ 544 and 550 and under applicable state fraudulent transfer law, Tex. Bus. Com. Code § 24.001, et seq., avoiding them on that ground and awarding the Liquidation Trustee the value of the

transfer of the Lumberman's Investment Corporation stock and the Sunbelt Insurance Company stock, also pursuant to 11 U.S.C. §§ 544 and 550 and under applicable state fraudulent transfer law, Tex. Bus. Com. Code § 24.001, et seq.;

(c) awarding the Liquidation Trustee costs, disbursements, expenses, punitive damages and attorneys' fees; awarding pre-judgment and post-judgment interest at the maximum rate provided by law; and awarding such other, further and different relief as this Court deems just, proper or equitable.

(6) On Count VI:

(a) entering judgment against Forestar finding that the transfers of real property by LIC (a.k.a. GVCC) in October 2007, constitute fraudulent transfers pursuant to 11 U.S.C. §§ 544, 550 and under applicable state fraudulent transfer law, Tex. Bus. Com. Code § 24.001, et seq., avoiding such transfers on that ground, and allowing the recovery of the property so transferred;

(b) to the extent that the property is not now fully recoverable, entering judgment against Forestar, finding that such transfer constitutes a fraudulent transfer pursuant to 11 U.S.C. §§ 544 and 550 and under applicable state fraudulent transfer law, Tex. Bus. Com. Code § 24.001, et seq., avoiding the transfer on that ground and awarding the Liquidation Trustee the value of real property so transferred, also pursuant to 11 U.S.C. §§ 544 and 550 and under applicable state fraudulent transfer law, Tex. Bus. Com. Code § 24.001, et seq.;

(c) awarding the Liquidation Trustee costs, disbursements, expenses, punitive damages and attorneys' fees; awarding pre-judgment and post-judgment interest at the maximum rate provided by law; and awarding such other, further and different relief as this Court deems just, proper or equitable.

(7) On Count VII, entering judgment in the Liquidation Trustee's favor and against Temple-Inland; awarding compensatory damages in an amount to be determined at trial but believed to be in excess of \$1 billion; awarding costs, disbursements, expenses, and attorneys' fees; awarding pre-judgment and post-judgment interest at the maximum rate provided by law; and awarding such other, further and different relief as this Court deems just, proper or equitable.

(8) On Count VIII, entering judgment in the Liquidation Trustee's favor and against Temple-Inland; awarding compensatory damages in an amount to be determined at trial but believed to be in excess of \$1 billion; awarding costs, disbursements, expenses, punitive damages and attorneys' fees; awarding pre-judgment and post-judgment interest at the maximum rate provided by law; and awarding such other, further and different relief as this Court deems just, proper or equitable.

(9) On Count IX, entering judgment in the Liquidation Trustee's favor and against Defendants, Kenneth M. Jastrow II, Randall D. Levy, Arthur Temple III, and Kenneth R. Dubuque; awarding compensatory damages in an amount to be determined at trial but believed to be in excess of \$1 billion; awarding costs, disbursements, expenses, and attorneys' fees; awarding pre-judgment and post-judgment interest at the maximum rate provided by law; and awarding such other, further and different relief as this Court deems just, proper or equitable.

(10) On Count X, entering judgment in the Liquidation Trustee's favor and against Temple-Inland; awarding compensatory damages in an amount to be determined at trial but believed to be in excess of \$1 billion; awarding costs, disbursements, expenses, and attorneys' fees; awarding pre-judgment and post-judgment interest at the maximum rate provided by law; and awarding such other, further and different relief as this Court deems just, proper or equitable.

(11) On Count XI, entering judgment in the Liquidation Trustee's favor and against Temple-Inland; awarding compensatory damages in an amount to be determined at trial but believed to be in excess of \$1 billion; awarding costs, disbursements, expenses, and attorneys' fees; awarding pre-judgment and post-judgment interest at the maximum rate provided by law; and awarding such other, further and different relief as this Court deems just, proper or equitable.

(12) On Count XII, entering judgment in the Liquidation Trustee's favor and against Kenneth M. Jastrow, II, Larry E. Temple and Arthur Temple, III; awarding compensatory damages in an amount to be determined at trial but believed to be in excess of \$1 billion; awarding costs, disbursements, expenses, and attorneys' fees; awarding pre-judgment and post-judgment interest at the maximum rate provided by law; and awarding such other, further and different relief as this Court deems just, proper or equitable.

(13) On Count XIII, entering judgment in the Liquidation Trustee's favor and against Larry E. Temple; awarding compensatory damages in an amount to be determined at trial but believed to be in excess of \$1 billion; awarding costs, disbursements, expenses, and attorneys' fees; awarding pre-judgment and post-judgment interest at the maximum rate provided by law; and awarding such other, further and different relief as this Court deems just, proper or equitable.

(14) On Count XIV, entering judgment in the Liquidation Trustee's favor and against Temple-Inland; awarding compensatory damages in an amount to be determined at trial but believed to be in excess of \$1 billion; awarding costs, disbursements, expenses, and attorneys' fees; awarding pre-judgment and post-judgment interest at the maximum rate provided by law; and awarding such other, further and different relief as this Court deems just, proper or equitable.

(15) On Count XV:

(a) entering judgment against TIN finding that the transfer of the stock of Sunbelt Insurance Company to TIN by LIC and GFG in November 2007, constitutes a fraudulent transfer pursuant to 11 U.S.C. §§ 548 and 550, avoiding such transfer on that ground, and allowing the recovery of the property so transferred;

(b) to the extent that the property is not now fully recoverable, entering judgment against TIN, finding that such transfer constitutes a fraudulent transfer pursuant to 11 U.S.C. §§ 548 and 550, avoiding the transfer on that ground and awarding the Liquidation Trustee the value of the property so transferred, also pursuant to 11 U.S.C. §§ 548 and 550;

(c) awarding the Liquidation Trustee costs, disbursements, expenses, and attorneys' fees; awarding pre-judgment and post-judgment interest at the maximum rate provided by law; and awarding such other, further and different relief as this Court deems just, proper or equitable.

(16) On Count XVI:

(a) entering judgment against Temple-Inland finding that the transfer complained of therein constitutes a fraudulent transfer pursuant to 11 U.S.C. §§ 544, 548, 550, and under applicable state fraudulent transfer law, Tex. Bus. Code § 24.001, et seq., avoiding such transfer on that ground, and allowing the recovery of the property so transferred;

(b) to the extent that the property is not now fully recoverable, entering judgment against Temple-Inland, finding that such transfer constitutes a fraudulent transfer pursuant to 11 U.S.C. §§ 544, 548, 550, and under applicable state fraudulent transfer law, Tex. Bus. Code § 24.001, et seq., avoiding the transfer on that ground and awarding the Liquidation Trustee the value of real property so transferred, also pursuant to 11 U.S.C. §§ 544, 548, 550 and under applicable state fraudulent transfer law, Tex. Bus. Code § 24.001, et seq.,

(c) awarding the Liquidation Trustee costs, disbursements, expenses, punitive damages and attorneys' fees; awarding pre-judgment and post-judgment interest at the maximum rate provided by law; and awarding such other, further and different relief as this Court deems just, proper or equitable.

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Dated: August 22, 2011

Respectfully submitted,

Hersh Kozlov (*pro hac vice* application pending)
Patrick Matusky (*pro hac vice* application pending)
Vincent Nolan (*pro hac vice* application pending)

DUANE MORRIS LLP
1940 Route 70 East, Suite 200
Cherry Hill, NJ 08003
856.874.4200 - Telephone
856.424.4446 – Facsimile
hkozlov@duanemorris.com
pmatusky@duanemorris.com
vnolan@duanemorris.com

Wayne Mack (*pro hac vice* application pending)
James Steigerwald (*pro hac vice* application pending)

DUANE MORRIS LLP
30 South 17th Street
Philadelphia, PA 19103-4196
215.979.1000 - Telephone
215.979.1020 – Facsimile
wmack@duanemorris.com
jsteigerwald@duanemorris.com

/s/ E. Lee Morris

E. Lee Morris

TX Bar No. 00788079
Munsch Hardt Kopf & Harr, P.C.
500 N. Akard Street
Suite 3800
Dallas, TX 75201-6659
Telephone: 214.855.7500
Facsimile: 214.855.7584
lmorris@munsch.com

***Counsel for Kenneth L. Tepper, In His
Capacity As The Liquidation Trustee For
The GFGI Liquidation Trust and the
Assignee of the FDIC***