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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	Chapter 11
785 Partners LLC,	)	Case No. 11-13702 (SMB)
Debtor.	)	

DISCLOSURE STATEMENT PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE FOR THE DEBTOR'S AMENDED PLAN OF REORGANIZATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

THIS IS NOT A SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN. ACEEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT.

Dated: October 31, 2011

TABLE OF CONTENTS

Page

EXHIBITS

IMPORTANT INFORMATION ABOUT THIS DISCLOSURE STATEMENT

YOU ARE RECEIVING THIS DISCLOSURE STATEMENT (AS IT MAY BE AMENDED FROM TIME TO TIME, THE "DISCLOSURE STATEMENT") TO PROVIDE YOU WITH INFORMATION RELATING TO THE *DEBTOR'S AMENDED PLAN OF REORGANIZATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE* (AS IT MAY BE FURTHER AMENDED FROM TIME TO TIME, THE "PLAN"). THE DEBTOR HAS FILED THE PLAN, A COPY OF WHICH IS ATTACHED AS EXHIBIT A HERETO, WITH THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND IS SEEKING TO HAVE THE PLAN CONFIRMED BY THE BANKRUPTCY COURT. ALL CAPITALIZED TERMS USED BUT NOT OTHERWISE DEFINED IN THIS DISCLOSURE STATEMENT SHALL HAVE THE MEANINGS ASCRIBED TO THEM IN THE PLAN. INFORMATION REGARDING THE DEBTOR, THE PLAN AND THE REASONS THE DEBTOR HAS FILED FOR CHAPTER 11 IS PROVIDED IN THIS DISCLOSURE STATEMENT COMMENCING ON PAGE 1. OTHER IMPORTANT INFORMATION REGARDING THIS DISCLOSURE STATEMENT AND THE INFORMATION CONTAINED HEREIN IS SET FORTH IMMEDIATELY BELOW.

[THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY ORDER OF THE BANKRUPTCY COURT AS CONTAINING INFORMATION OF A KIND, AND IN SUFFICIENT DETAIL, TO ENABLE HOLDERS OF CLAIMS AND INTERESTS TO MAKE AN INFORMED JUDGMENT IN VOTING TO ACCEPT OR REJECT THE PLAN. APPROVAL OF THIS DISCLOSURE STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION OR RECOMMENDATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR THE MERITS OF THE PLAN.][1]

THIS DISCLOSURE STATEMENT DESCRIBES CERTAIN ASPECTS OF THE PLAN, THE DEBTOR'S FINANCIAL FORECASTS AND OTHER RELATED MATTERS. FOR A COMPLETE UNDERSTANDING OF THE PLAN, YOU SHOULD READ CAREFULLY THIS DISCLOSURE STATEMENT, THE PLAN AND THE EXHIBITS, APPENDICES, AND ANY SCHEDULES THERETO IN THEIR ENTIRETY. IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THIS DISCLOSURE STATEMENT, THE TERMS OF THE PLAN ARE CONTROLLING.

SUBJECT TO APPLICABLE LAW, THE DEBTOR MAY SUPPLEMENT OR AMEND THIS DISCLOSURE STATEMENT OR ANY EXHIBITS ATTACHED HERETO AT ANY TIME PRIOR TO THE HEARING TO APPROVE THE DISCLOSURE STATEMENT.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS INCLUDED HEREIN SOLELY FOR PURPOSES OF SOLICITING ACCEPTANCES AND CONFIRMATION OF THE PLAN AND MAY NOT BE RELIED UPON FOR ANY OTHER PURPOSE. NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY

[1] This Disclosure Statement is being submitted to the Bankruptcy Court for approval, but has not yet been approved. Therefore, this bracketed text and other similar language herein are applicable to the final version of the Disclosure Statement only.

REPRESENTATIONS REGARDING THE PLAN OR THE SOLICITATION OF ACCEPTANCES OF THE PLAN OTHER THAN THE INFORMATION AND REPRESENTATIONS CONTAINED IN THIS DISCLOSURE STATEMENT AND ANY ACCOMPANYING DOCUMENTS.

ALL CREDITORS AND INTEREST HOLDERS ENTITLED TO VOTE ARE ADVISED AND ENCOURAGED TO READ CAREFULLY THIS DISCLOSURE STATEMENT AND THE PLAN IN THEIR ENTIRETY AND ARE STRONGLY URGED TO CONSULT THEIR OWN LEGAL, TAX AND/OR OTHER PROFESSIONAL ADVISORS BEFORE VOTING TO ACCEPT OR REJECT THE PLAN. PLAN SUMMARIES AND STATEMENTS MADE IN THIS DISCLOSURE STATEMENT ARE QUALIFIED IN THEIR ENTIRETY BY REFERENCE TO THE PLAN, WHICH CONTROLS IN THE EVENT OF ANY INCONSISTENCY OR INCOMPLETENESS. UNLESS OTHERWISE STATED, THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE ONLY AS OF THE DATE HEREOF, AND THERE CAN BE NO ASSURANCE THAT THE STATEMENTS CONTAINED HEREIN WILL BE CORRECT AT ANY TIME AFTER THAT DATE.

ANY STATEMENTS IN THIS DISCLOSURE STATEMENT CONCERNING THE TERMS OF ANY DOCUMENT REFERENCED HEREIN ARE NOT NECESSARILY COMPLETE, AND IN EACH INSTANCE REFERENCE IS MADE TO SUCH DOCUMENT FOR THE FULL TEXT THEREOF. CERTAIN DOCUMENTS DESCRIBED OR REFERRED TO IN THIS DISCLOSURE STATEMENT HAVE NOT BEEN ATTACHED AS EXHIBITS BECAUSE OF THE IMPRACTICABILITY OF FURNISHING COPIES OF SUCH DOCUMENTS TO ALL RECIPIENTS OF THIS DISCLOSURE STATEMENT. THE MATERIAL TERMS OF CERTAIN DOCUMENTS EVIDENCING THE TRANSACTIONS CONTEMPLATED BY THE PLAN ARE DESCRIBED HEREIN. DEFINITIVE VERSIONS OF SUCH TRANSACTION DOCUMENTS SHALL BE FILED IN ADVANCE OF THE CONFIRMATION HEARING.

THIS DISCLOSURE STATEMENT HAS BEEN PREPARED IN ACCORDANCE WITH SECTION 1125(a) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3016 AND NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER NON-BANKRUPTCY LAW OR THE LAWS OF ANY FOREIGN JURISDICTION.

THIS DISCLOSURE STATEMENT HAS BEEN NEITHER APPROVED NOR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION ("SEC") OR ANY STATE OR FOREIGN SECURITIES REGULATOR, AND NEITHER THE SEC NOR ANY STATE OR FOREIGN SECURITIES REGULATOR HAS PASSED UPON THE ACCURACY OR ADEQUACY OF THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT. THE DISTRIBUTION OF THIS DISCLOSURE STATEMENT, AND THE ISSUANCE OF ANY SECURITIES PURSUANT TO THE PLAN, SHALL BE IN RELIANCE UPON ONE OR MORE EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF FEDERAL AND STATE SECURITES LAWS. ALL PERSONS OR ENTITIES TRADING IN OR OTHERWISE PURCHASING, SELLING OR TRANSFERRING SECURITIES OF OR CLAIMS AGAINST THE DEBTOR SHOULD

EVALUATE THIS DISCLOSURE STATEMENT AND THE PLAN IN LIGHT OF THE PURPOSE FOR WHICH THEY WERE PREPARED.

THIS DISCLOSURE STATEMENT AND ANY ACCOMPANYING DOCUMENTS ARE THE ONLY DOCUMENTS THAT THE DEBTOR HAS AUTHORIZED TO BE USED IN CONNECTION WITH THE SOLICITATION OF VOTES ON THE PLAN. NO SOLICITATION OF VOTES MAY BE MADE EXCEPT AFTER DISTRIBUTION OF THIS DISCLOSURE STATEMENT.

CERTAIN OF THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS, BY ITS NATURE, FORWARD LOOKING AND CONTAINS ESTIMATES, ASSUMPTIONS AND PROJECTIONS THAT MAY BE MATERIALLY DIFFERENT FROM ACTUAL FUTURE RESULTS. THE WORDS "BELIEVE," "MAY," "WILL," "ESTIMATE," "CONTINUE," "ANTICIPATE," "INTEND," "EXPECT" AND SIMILAR EXPRESSIONS IDENTIFY THESE FORWARD-LOOKING STATEMENTS. THESE FORWARD-LOOKING STATEMENTS ARE SUBJECT TO A NUMBER OF RISKS, UNCERTAINTIES AND ASSUMPTIONS. IN LIGHT OF THESE RISKS AND UNCERTAINTIES, THE FORWARD-LOOKING STATEMENTS, EVENTS AND CIRCUMSTANCES DISCUSSED IN THIS DISCLOSURE STATEMENT MAY NOT OCCUR, AND ACTUAL RESULTS COULD DIFFER MATERIALLY FROM THOSE ANTICIPATED IN SUCH FORWARD-LOOKING STATEMENTS, EVENTS AND CIRCUMSTANCES. THE DEBTOR HAS NO OBLIGATION TO UPDATE PUBLICLY OR REVISE ANY FORWARD-LOOKING STATEMENTS, EVENTS AND CIRCUMSTANCES, WHETHER AS A RESULT OF NEW INFORMATION, FUTURE EVENTS OR OTHERWISE.

EXCEPT WHERE SPECIFICALLY NOTED, THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT AND IN ITS EXHIBITS HAS NOT BEEN AUDITED BY A CERTIFIED PUBLIC ACCOUNTANT AND HAS NOT BEEN PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

THE DEBTOR PREPARED THE PROJECTIONS PROVIDED IN THIS DISCLOSURE STATEMENT. WHILE THE DEBTOR HAS PRESENTED THESE PROJECTIONS WITH NUMERICAL SPECIFICITY, IT HAS NECESSARILY BASED THE PROJECTIONS ON A VARIETY OF ESTIMATES AND ASSUMPTIONS WHICH, THOUGH CONSIDERED REASONABLE BY THE DEBTOR, MAY NOT BE REALIZED, AND ARE INHERENTLY SUBJECT TO SIGNIFICANT BUSINESS, ECONOMIC, COMPETITIVE, INDUSTRY, REGULATORY, MARKET AND FINANCIAL UNCERTAINTIES AND CONTINGENCIES, MANY OF WHICH WILL BE BEYOND THE REORGANIZED DEBTOR'S CONTROL. THE DEBTOR CAUTIONS THAT IT CANNOT MAKE ANY REPRESENTATIONS AS TO THE ACCURACY OF THESE PROJECTIONS OR TO THE REORGANIZED DEBTOR'S ABILITY TO ACHIEVE THE PROJECTED RESULTS. SOME ASSUMPTIONS INEVITABLY WILL NOT MATERIALIZE. FURTHERMORE, EVENTS AND CIRCUMSTANCES OCCURRING SUBSEQUENT TO THE DATE ON WHICH THESE PROJECTIONS WERE PREPARED MAY DIFFER FROM ANY ASSUMED FACTS AND CIRCUMSTANCES. ALTERNATIVELY, ANY EVENTS

AND CIRCUMSTANCES THAT COME TO PASS MAY WELL HAVE BEEN UNANTICIPATED, AND THUS MAY AFFECT FINANCIAL RESULTS IN A MATERIALLY ADVERSE OR MATERIALLY BENEFICIAL MANNER. THE PROJECTIONS, THEREFORE, MAY NOT BE RELIED UPON AS A GUARANTY OR OTHER ASSURANCE OF THE ACTUAL RESULTS THAT WILL OCCUR.

AS TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER ACTIONS, POTENTIAL ACTIONS OR THREATENED ACTIONS, THIS DISCLOSURE STATEMENT SHALL NOT CONSTITUTE OR BE CONSTRUED AS AN ADMISSION OF ANY FACT OR LIABILITY, STIPULATION OR WAIVER, BUT RATHER AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS. THIS DISCLOSURE STATEMENT SHALL NOT BE ADMISSIBLE IN ANY NON-BANKRUPTCY PROCEEDING NOR SHALL IT BE CONSTRUED TO BE ADVICE ON THE TAX, SECURITIES OR OTHER LEGAL EFFECTS OF THE PLAN AS TO HOLDERS OF CLAIMS AGAINST, OR INTERESTS IN, EITHER THE DEBTOR OR THE REORGANIZED DEBTOR.

CONFIRMATION AND CONSUMMATION OF THE PLAN ARE SUBJECT TO MATERIAL CONDITIONS PRECEDENT DESCRIBED IN ARTICLE XI OF THE PLAN. THERE CAN BE NO ASSURANCE THAT THE PLAN WILL BE CONFIRMED OR, IF CONFIRMED, THAT SUCH MATERIAL CONDITIONS PRECEDENT WILL BE SATISFIED OR WAIVED. YOU ARE ENCOURAGED TO READ THIS DISCLOSURE STATEMENT IN ITS ENTIRETY, INCLUDING THE PLAN, AND THE SECTION HEREIN ENTITLED "RISK FACTORS" PRIOR TO SUBMITTING YOUR BALLOT TO ACCEPT OR REJECT THE PLAN.

INTERNAL REVENUE SERVICE CIRCULAR 230 DISCLOSURE

TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE INTERNAL REVENUE SERVICE, EACH HOLDER IS HEREBY NOTIFIED THAT (A) ANY DISCUSSION OF U.S. FEDERAL TAX ISSUES IN THIS DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE RELIED UPON, AND CANNOT BE RELIED UPON BY HOLDERS, FOR PURPOSES OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON SUCH HOLDERS UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; (B) SUCH DISCUSSION IS WRITTEN TO SUPPORT THE PROMOTION OF THE PLAN; AND (C) EACH HOLDER OF A CLAIM SHOULD SEEK ADVICE BASED ON SUCH HOLDER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

I. INTRODUCTION AND SUMMARY

A. Overview

On August 3, 2011 (the "Petition Date"), 785 Partners LLC (the "Debtor") filed a voluntary petition for relief under chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

As discussed more fully below, the Debtor is the owner and developer of a luxury residential apartment building located at 785 Eighth Avenue, New York, New York (the "Property" or "Building"). The Debtor commenced this chapter 11 case in order to take advantage of the "breathing spell" afforded to a debtor under chapter 11, and to develop a viable business plan, negotiate a restructuring of its indebtedness with creditors, and ultimately formulate and implement a chapter 11 plan of reorganization that restructures its indebtedness and maximizes the recovery to all creditors and interest holders.

Accordingly, on October 31, 2011, the Debtor filed the Plan with the Bankruptcy Court.[2] Except as otherwise specified, capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan (and a schedule of terms defined in the Plan is contained in Article I of the Plan).

Why You Are Receiving This Disclosure Statement

Chapter 11 of the Bankruptcy Code allows a debtor to sponsor a plan of reorganization that proposes how it intends to administer or dispose of its assets, and how it intends to treat claims against, and interests in, the debtor. A plan of reorganization typically may provide for a debtor to reorganize by continuing to operate upon emergence from chapter 11 protection, to liquidate by selling assets, or to implement a combination of both. Here, by its proposed Plan, the Debtor seeks to implement a financial restructuring that will enable the Debtor to emerge from bankruptcy as a viable entity.

The Bankruptcy Code requires that a party filing a chapter 11 plan must also prepare and file a document called a "disclosure statement." The purpose of a disclosure statement is to provide creditors and interest holders that are entitled to vote on a chapter 11 plan with "adequate information" in order for such parties to make an informed decision in determining whether to vote to accept or reject the plan.

Accordingly, this Disclosure Statement is being disseminated pursuant to section 1125 of the Bankruptcy Code to provide adequate information to enable holders of claims and interests that are impaired under (and entitled to vote on) the Plan to make an informed judgment in exercising their right to vote to accept or reject the Plan. [The Bankruptcy Court has reviewed this Disclosure Statement and has determined that it contains adequate information and may be circulated to creditors and interest holders to solicit their votes on the Plan.] At this time, however, the Bankruptcy Court has not passed upon the merits of the Plan or determined that the

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[2] The Plan amended the chapter 11 plan filed by the Debtor with the Bankruptcy Court on October 17, 2011.

Plan should be confirmed. That determination will be made at a hearing to consider confirmation of the Plan which is presently scheduled to occur on **[_____]**, 2011 at **[__]**:00 **[__]**.m. (although it is possible that such hearing date could be adjourned to a different date).

This Disclosure Statement summarizes the Plan's content and provides other information relating to the Plan and the processes the Bankruptcy Court will follow in determining whether to confirm the Plan. The Disclosure Statement also discusses the Debtor's history, business, assets and prepetition capital structure, describes the events leading to the Debtor's filing of its chapter 11 case, describes the main events that have occurred during the pendency of the case, and contains a summary of the terms of the Plan, including the proposed treatment of claims against, and interests in, the Debtor. The Disclosure Statement also describes certain U.S. Federal income tax consequences of the Plan to the Debtor and holders of claims and equity interests, voting procedures, and includes a discussion of the confirmation process. The table of contents to this Disclosure Statement provides an outline of the topics and areas covered in this Disclosure Statement and lists the exhibits that are annexed to and incorporated into this Disclosure Statement.

All creditors and interest holders entitled to vote on the Plan should carefully review both the Disclosure Statement and all exhibits hereto (including the Plan and all exhibits attached to the Plan) before voting to accept or reject the Plan. Indeed, creditors and interest holders should not rely solely on the Disclosure Statement but should also read the Plan in its entirety. Moreover, the provisions of the Plan will govern if there are any inconsistencies between the Plan and the Disclosure Statement.

B. Summary Of Classification And Treatment Under The Plan

The Plan (i) divides Claims and Interests into two categories and eight classes, (ii) sets forth the treatment afforded to each category and class, and (iii) provides the means by which the Plan will be implemented. The following table sets forth a summary of the treatment of each class of Claims and Interests under the Plan -- a more detailed description of the Plan is set forth in Section V of this Disclosure Statement entitled "The Plan of Reorganization".[3]

Class	Type of Claim or Interest	Treatment of Allowed Claims and Interests
—	Administrative Expense Claims	Except to the extent that a Holder of an Allowed Administrative Expense Claim has been paid by the Debtor prior to the Effective Date, each Holder of an Allowed Administrative Expense Claim (other than a Professional Fee Claim), in full and final satisfaction, release, settlement and discharge of such Administrative Expense Claim, shall be paid in full, in Cash, in

[3] This summary contains only a brief and simplified description of the classification and treatment of Claims and Interests under the Plan. It does not describe every provision of the Plan. Accordingly, reference should be made to the entire Disclosure Statement (including exhibits) and the Plan for a complete description of the classification and treatment of Claims and Interests.

Class	Type of Claim or Interest	Treatment of Allowed Claims and Interests
		such amounts as (a) are incurred in the ordinary course of business by the Debtor when and as such Claim becomes due and owing, (b) are Allowed by the Bankruptcy Court upon the later of the Effective Date, the date upon which there is a Final Order allowing such Administrative Expense Claim or any other date specified in such order, or (c) may be agreed upon between the Holder of such Administrative Expense Claim and the Debtor. All final requests for payment of Professional Fee Claims, including the Holdback Amount and Professional Fee Claims incurred during the period from the Petition Date through the Confirmation Date, must be filed with the Bankruptcy Court and served on the Reorganized Debtor no later than forty-five (45) days after the Confirmation Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and any applicable orders of the Bankruptcy Court, the Allowed amounts of such Professional Fee Claims shall be determined and paid as directed by the Bankruptcy Court. Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Reorganized Debtor shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Reorganized Debtor. Upon the Confirmation Date, any requirement that Professional Persons comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor may employ and pay any Professional Person in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.
—	Priority Tax Claims	Except to the extent that a Holder of an Allowed Priority Tax Claim has been paid by the Debtor prior to the Effective Date or agrees to a different treatment, each Holder of an Allowed Priority Tax Claim, in full and final satisfaction, release, settlement and discharge of such Priority Tax Claim, shall receive on account of such Claim, at the option of the Debtor,

Class	Type of Claim or Interest	Treatment of Allowed Claims and Interests
		either payment in full in Cash as soon as reasonably practicable after the Effective Date, or in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, regular installment payments in Cash: (i) of a total value, as of the Effective Date, equal to the Allowed amount of such Claim; (ii) which total value shall include simple interest to accrue on any outstanding balance of such Allowed Priority Tax Claim starting on the Effective Date at the rate of interest determined under applicable nonbankruptcy law pursuant to section 511 of the Bankruptcy Code; (iii) over a period ending not later than five (5) years after the Petition Date; and (iv) in a manner not less favorable than the most favored nonpriority unsecured Claim provided for by the Plan. Each Holder of an Allowed Secured Tax Claim shall retain the Lien securing its Allowed Secured Tax Claim as of the Effective Date until full and final payment of such Allowed Secured Tax Claim is made as provided in the Plan, and upon such full and final payment, such Lien shall be deemed to have been satisfied and shall be null and void and unenforceable for all purposes.
1	Non-Tax Priority Claims	Unimpaired. The legal, equitable and contractual rights of the Holders of Allowed Non-Tax Priority Claims are unaltered by the Plan. Each Holder of an Allowed Non-Tax Priority Claim, in full and final satisfaction, release, settlement and discharge of such Allowed Non-Tax Priority Claim, shall be paid in full, in Cash, on the Effective Date or in accordance with the terms of any agreement between the Debtor and the Holder of an Allowed Non-Tax Priority Claim or on such other terms and conditions as are acceptable to the Debtor and the Holder of an Allowed Non-Tax Priority Claim.
2	Other Secured Claims	Unimpaired. The legal, equitable and contractual rights of the Holders of Allowed Other Secured Claims are unaltered by the Plan. On or as soon as practicable after the Effective Date, each Allowed Other Secured Claim, in full and final satisfaction, release, settlement and discharge of such Allowed Other Secured Claim, shall be paid in full, in Cash, from the BPA Down Payment Escrow, except to the extent the Reorganized Debtor and such Holder agree to a different treatment.
3	First Manhattan Claim	Impaired. On or as soon as practicable after the Effective Date, the Holder of the Allowed First Manhattan Claim, in full and final satisfaction, release, settlement and discharge of such

Class	Type of Claim or Interest	Treatment of Allowed Claims and Interests
		Claim, shall (i) receive a payment, in Cash, from the BPA Down Payment Escrow, as and to the extent set forth in Section 4.2 of the Plan,[4] (ii) receive (a) the Amended and Restated Note, in the amount of $73,878,373.03 (the amount of the Allowed First Manhattan Claim less the Cash payment made pursuant to (i) immediately above),[5] which shall have a term of five years, and (b) the Amended and Restated Mortgage, (iii) receive (a) for year one, monthly payments of interest only at a fixed rate equal to the 5-year U.S. treasury rate plus 2.50% per annum on $73,878,373.03,[6] and (b) for years two through five, monthly payments of principal and interest at a fixed rate equal to the 5-year U.S. treasury rate plus 2.50% per annum on $73,878,373.03 based upon a thirty year amortization rate,[7] with a balloon payment at the end of the note term;[8] and (iv) retain the Lien securing such Claim until full and final payment of such Claim is made as provided in the Plan, and upon such full and final payment, such Lien shall be deemed to have been satisfied and shall be null and void and unenforceable for all purposes. In addition to the foregoing, the Holder of the Allowed First Manhattan Claim shall be entitled to a portion of (i) the proceeds from a Liquidity Event, if any, as and to the extent set forth in Section 4.5 of the Plan, and (ii) NOI Surplus, if any, as and to the extent set forth in Section 4.6 of the Plan.
4	Time Square Claim	Impaired. Upon the Effective Date, the Time Square Claim shall be waived and released, and the Time Square Lien shall be released and extinguished.
5	Fuerta Claim	Impaired. On or as soon as practicable after the Effective Date, the Holder of the Fuerta Claim, in full and final satisfaction, release, settlement and discharge of such Claim, shall receive a Cash payment of $350,000 from the BPA Down Payment Escrow.

[4] The Debtor estimates that the amount of this payment will be $11,870,964.13.

[5] This amount assumes that the Cash payment to be made pursuant to (i) immediately above will be $11,870,964.13.

[6] The monthly payments during this period shall be approximately $230,869.92.

[7] The monthly payments during this period shall be approximately $342,142.26.

[8] The amount of the balloon payment is estimated to be $68,125,591.35.

Class	Type of Claim or Interest	Treatment of Allowed Claims and Interests
6	End Unit Purchasers' Claims	Impaired. On or as soon as practicable after the Effective Date, in full and final satisfaction, release, settlement and discharge of the End Unit Purchasers' Claims, Newco shall receive (i) a Cash payment of $1,550,000 from the BPA Down Payment Escrow and (ii) 35% of the New Membership Interests.
7	General Unsecured Claims	Unimpaired. On or as soon as practicable after the Effective Date, except to the extent a Holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each Holder of an Allowed General Unsecured Claim, in full and final satisfaction, release, settlement and discharge of such Claim, shall be paid in full, in Cash, from the BPA Down Payment Escrow.
8	Old Membership Interests	Impaired. On the Effective Date, all Old Membership Interests shall be cancelled and extinguished. 8 Avenue shall receive 63.75% of the New Membership Interests, Tower shall receive 1.00% of the New Membership Interests, and Esplanade shall receive 0.25% of the New Membership Interests.

C. Voting and Confirmation Procedures

Accompanying this Disclosure Statement are copies of the following documents (collectively, the "Solicitation Package"):

(i) the Plan, which is annexed hereto as **Exhibit A**;

(ii) the Order of the Bankruptcy Court dated **[_____]**, 2011 (the "Disclosure Statement Approval Order"), which is annexed hereto as **Exhibit B**, among other things, (a) approving the Disclosure Statement as containing adequate information pursuant to section 1125 of the Bankruptcy Code, (b) establishing a voting record date, voting deadline, and other dates, (c) approving procedures for soliciting, receiving and tabulating votes on the Plan and for filing objections to the Plan, and (d) approving the manner and forms of notice and other related documents, including the forms of Ballots to be executed by Holders of Claims and Interests entitled to vote on the Plan; and

The forms of ballots (the "Ballots") delivered together herewith are approved for purposes of soliciting votes to accept or reject the Plan pursuant to Bankruptcy Rule 3018; provided, however, that the Debtor shall have the right to prepare and distribute other or modified forms of Ballots, substantially conforming with the Ballots and Official Form No. 14,

as the Debtor deems necessary due to further refinement of the balloting process or modifications to the Plan.

The Ballots, and the related solicitation materials delivered together herewith, are being furnished for purposes of soliciting votes on the Plan to Holders of Claims in Classes 3, 5 and 6, and Holders of Interests in Class 8, which are the only Impaired classes of Claims and Interests entitled to vote on the Plan. The Disclosure Statement is also being provided to Holders of Claims in Classes 1, 2 and 7 (which classes are Unimpaired and therefore deemed to accept the Plan), the Holder of the Claim in Class 4 (which class is not receiving or retaining property under the Plan and is therefore deemed to reject the Plan), and other entities, solely for informational purposes.

1. Who May Vote on the Plan

Pursuant to the provisions of the Bankruptcy Code, only impaired classes of claims or equity interests are entitled to vote to accept or reject a plan of reorganization. A class which is not "impaired" (also referred to as "unimpaired") under a plan is deemed to have accepted such plan and is not entitled to vote.

A class is "impaired" under the Bankruptcy Code unless the legal, equitable, and contractual rights of the holders of claims or equity interests in such class are not modified or altered. For purposes of the Plan, the Holders of Claims in Classes 3, 5 and 6, and Holders of Interests in Class 8 are the only Impaired Classes that are entitled to vote on the Plan. Holders of Claims in Classes 1, 2 and 7 are Unimpaired and therefore are deemed to accept the Plan and are not entitled to vote. The Holder of the Claim in Class 4 will not receive or retain any property or interest in property under the Plan, and therefore is deemed to reject the Plan and is not entitled to vote.

2. Voting Procedures

All votes to accept or reject the Plan must be cast by using the form of Ballot enclosed with this Disclosure Statement. No votes other than ones using such Ballots will be counted except to the extent the Bankruptcy Court orders otherwise. The Bankruptcy Court has fixed **[_____]**, 2011 at **[__]**:00 **[__]**.m., prevailing Eastern Time, as the time and date for the determination of holders of record of Claims and Interests who are entitled to (a) receive a copy of this Disclosure Statement and all of the related materials and (b) where applicable, vote to accept or reject the Plan.

After carefully reviewing the Plan and this Disclosure Statement, including the attached exhibits, please indicate your acceptance or rejection of the Plan on the appropriate Ballot and return such Ballot in the enclosed envelope to the Debtor's counsel:

If by regular mail, hand delivery or overnight courier:

Proskauer Rose LLP
Eleven Times Square

New York, New York 10036-8299
Attn: Sheldon I. Hirshon

Ballots must be actually received by the Debtor's counsel by [__]:00 [__].m., prevailing Eastern Time, on [_____], 2011 (the "Voting Deadline"). The following Ballots will not be counted: any Ballot which (i) is not executed, (ii) is properly completed, executed and timely returned to the Debtor's counsel but which does not indicate an acceptance or rejection of the Plan, (iii) has both the acceptance and rejection boxes checked, (iv) is sent by telecopier, facsimile or other electronic communication, (v) does not bear an original signature, or (vi) is not received by the Voting Deadline.

If a Holder of a Claim or Interest casts more than one Ballot voting the same Claim or Interest prior to the Voting Deadline, only the last properly executed Ballot received by the Debtor's counsel on or prior to the Voting Deadline shall be counted.

If a Holder of a Claim indicates a Claim amount on its Ballot that is different than the amount otherwise calculated in accordance with the procedures set forth herein, such Claim shall be temporarily allowed for voting purposes in the lesser of the two said amounts.

If you have any questions on the procedures for voting on the Plan, please contact the Debtor's counsel by phone at 212-969-3000.

3. Confirmation Hearing

The Bankruptcy Court has scheduled the hearing to consider confirmation of the Plan for [_____], 2011 at [__]:00 [__].m., prevailing Eastern Time (the "Confirmation Hearing"). The Confirmation Hearing may be adjourned from time to time without further notice except by announcing the adjournment at the Confirmation Hearing or by notice of any adjournment of the Confirmation Hearing filed by the Debtor on the Bankruptcy Court's docket which is available at https://ecf.nysb.uscourts.gov.

4. Plan Objection Deadline

The deadline for filing objections to the Plan is [_____], 2011 at [__]:00 [__].m., prevailing Eastern Time (the "Plan Objection Deadline").

All objections, if any, to the Plan must: (a) be in writing; (b) conform to the Bankruptcy Rules, the Local Bankruptcy Rules, and any orders of the Bankruptcy Court; (c) state the name and address of the objecting party and the amount and nature of the Claim or Interest of such party; (d) state with particularity the legal and factual basis and nature of any objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and (e) be filed with the Bankruptcy Court, together with proof of service thereof, and served so that it is actually received no later than the Plan Objection Deadline by the following parties: (i) counsel for the Debtor, Proskauer Rose LLP, Eleven Times Square, New York, New York 10036, Attn: Sheldon I. Hirshon, e-mail: shirshon@proskauer.com; and (ii) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004.

D. Voting Recommendation

THE DEBTOR HAS APPROVED THE SOLICITATION OF VOTES ON THE PLAN, THE PLAN, AND THE TRANSACTIONS CONTEMPLATED THEREBY, AND RECOMMENDS THAT ALL IMPAIRED CREDITORS AND INTEREST HOLDERS SUBMIT BALLOTS ACCEPTING THE PLAN AND THE TRANSACTIONS CONTEMPLATED THEREBY.

II. THE DEBTOR'S HISTORY, BUSINESS, AND PREPETITION CAPITAL STRUCTURE

A. The Debtor

The Debtor is owned 98.75% by 8 Avenue and 48th Street Development LLC ("8 Avenue"). The remaining membership interests in the Debtor are held by Esplanade Tower Corporation ("Tower") (the Debtor's managing member, the holder of a 1% membership interest, and a wholly-owned subsidiary of 8 Avenue) and Esplanade 8th Avenue LLC ("Esplanade") (the holder of a passive 0.25% membership interest).[9] The sole members of 8 Avenue are Kevin and Donal O'Sullivan (the "O'Sullivans"), and the sole members of Esplanade are David Scharf ("Scharf"), Jay Eisenstadt ("Eisenstadt"), and Ulo Barad.

The Debtor is the owner and developer of the Property. The O'Sullivans own Time Square Construction & Development ("Time Square"), the construction manager for the residential development at the Property (the "Project"), and Navillus Tile, Inc. ("Navillus"), a substantial subcontractor in the construction of the Project.

B. The O'Sullivan Brothers/Navillus/Time Square

The O'Sullivans immigrated to New York City from Ireland in 1984. They settled in Queens and found jobs as bricklayers and tilers. In 1987, the O'Sullivans started their own subcontracting business, Navillus. Navillus operated its first office from a garage in Queens.

Navillus' first jobs were small construction projects, ranging in value from $1,000 to $10,000 per job. Although the O'Sullivans founded Navillus during a time of recession, it grew steadily and gained a reputation for quality craftsmanship and meeting budgets. Navillus began to grow steadily, taking on sizeable sub-contracting projects for large general contracting firms.

In 1994, a general contractor went out of business during a project for the New York City Metropolitan Transit Authority (the "MTA"), at which Navillus was a subcontractor. Navillus took a substantial risk, assumed the role of the general contractor and completed the project for the MTA. Navillus has since expanded considerably in the New York construction industry and provides jobs to about 800 employees. In nearly 25 years of business, Navillus has never defaulted on any contract. As a result, its bonding capacity has increased to over $400 million.

[9] Prior to August 2, 2011, Debtor was owned 49.5% by 8 Avenue, 49.5% by Esplanade, and 1% by Tower. Tower was previously owned by the O'Sullivans, Scharf and Eisenstadt (each as defined below). Pursuant to a Stock Purchase Agreement dated as of August 2, 2011, the interests of Esplanade, Scharf and Eisenstadt were transferred to 8 Avenue, apart from a 0.25% passive interest in the Debtor, which Esplanade retained.

Navillus recently, with great pride, constructed the concrete reflecting pools at the World Trade Center Memorial -- the largest awarded trade contract at the site.

In 2006, the O'Sullivans established Time Square, a commercial and residential construction and development firm.

C. The Property

The O'Sullivans were introduced to the Property and their future partner, Esplanade, in 2006 through a commercial real estate broker, Haves Pine Seligman. At the time, Esplanade was under contract to obtain the rights to assemble the Property, which was once two separate taxable lots, into a single taxable lot (the "Assemblage Contract"). Previously, in or around November 2005, Esplanade had formed an entity called Esplanade Condominiums LLC ("Esplanade Condominiums") to develop the Property.

On or about April 10, 2006, the O'Sullivans, through 8 Avenue, contributed approximately $7.5 million in cash equity to obtain a 49.5% ownership interest in Esplanade Condominiums, the name of which subsequently was changed to 785 Partners LLC, the Debtor in this chapter 11 case. 8 Avenue's equity contribution allowed the Assemblage Contract on the Property to close.

Although Esplanade contributed the Assemblage Contract to the Debtor for its 49.5% equity in the Debtor, Esplanade did not invest any of its own cash in the Property or the Project. Its equity stake, therefore, was a capital account. Esplanade also derived substantial fees as the developer of the Property.

The Property, as ultimately constructed, is a 43-story, 122-unit (each, a "Unit", and collectively, the "Units") residential building, which was intended to be sold as a condominium building via a bulk sale agreement (as discussed in more detail below). The Project was initially planned as a 29-story residential high-rise, which grew to 43 stories late in the development/design process with the purchase of additional air rights. It now encompasses 94,311 net square feet ("nsf") of residential space and 2,767 nsf of commercial space. The Property's unique design is featured in the Skyscraper Museum in Lower Manhattan and has won the 2009 Roger H. Corbetta Concrete Industry Board Award of Merit.

From a technical construction point of view, the Project was one of the most difficult projects in New York City. It entailed the construction of a slender building on a site with a notably narrow foot print. As described in more detail below, Esplanade and 8 Avenue recognized these difficulties before construction commenced and entered into an agreement that ultimately made the O'Sullivans responsible for funding construction overruns (the "Construction Overruns") out of pocket.

Despite these difficulties, the Debtor delivered a completed Project with full temporary certificates of occupancy and approvals from the New York City Department of Buildings in early July 2009. Nearly all subcontractors, suppliers and consultants have been paid in full. Though residents currently do not occupy Units, the Debtor estimates that, with the completion

of a "punch list," residents could begin occupying Units within approximately 30 to 45 days under a rental program. Although the original concept in 2006 was to develop a condominium at the Property, the market and economy have changed dramatically since that time, and the Debtor currently understands, based upon appraisals, market analysis, and its own market knowledge, that a luxury rental program would maximize the value of the Property.

D. The Debtor Enters into the Bulk Purchase Agreement with Fuerta

On or about April 13, 2006, before construction at the Property commenced (and around the same time that the O'Sullivans bought their membership interest in the Debtor), the Debtor entered into an Agreement of Purchase and Sale with Fuerta Property Limited ("Fuerta"),[10] a company formed and based in Dublin, Ireland (as subsequently amended, the "Bulk Purchase Agreement"), under which Fuerta agreed to purchase all of the Units at the Property at a negotiated wholesale price per square foot.

The total purchase price for the Units under the Bulk Purchase Agreement with Fuerta was $118,485,440.00 (the "Final Purchase Price").[11]

Upon executing the Bulk Purchase Agreement, Fuerta deposited 10% of the Final Purchase Price in an escrow account held by the law firm of Seiden & Schein, P.C. ("Seiden"), as escrow agent. Upon the acceptance of the condominium plan (the "Condo Plan") by the New York State Attorney General (the "AG") in November 2007, as required by the Bulk Purchase Agreement, Fuerta deposited an additional 5% of the Final Purchase Price into the escrow account, bringing the total deposit held in escrow by Seiden to $17,772,816.55 (the "BPA Down Payment Escrow").[12] As of August 31, 2011, together with accrued interest, the BPA Down Payment Escrow totaled $18,781,286.21.[13]

Under the Bulk Purchase Agreement, Fuerta was obligated to acquire the Units from the Debtor, but had the option to require the Units to be conveyed directly to an "End Unit Purchaser" (as defined in the Plan) (the "End Unit Purchaser Option"). To allow for the bulk sale of Units to Fuerta under the Bulk Purchase Agreement without filing or registration with the AG, the Debtor was obligated to apply for a "No-Action" Letter (the "No Action Letter") from the AG. The AG issued the No Action Letter on July 20, 2006, stating that it had determined not

[10] Upon information and belief, Fuerta was formed by its parent affiliate, Sorrento Capital Management ("Sorrento"), an Ireland-based hedge fund, for the purpose of investing in U.S. real estate.

[11] The initial purchase price was $80,750,430. The Debtor's acquisition of additional air rights and construction of additional Units triggered Fuerta's obligation under section 2(d) of the Bulk Purchase Agreement to purchase the Units at the Final Purchase Price.

[12] Fuerta's initial deposit to the BPA Down Payment Escrow was $12,112,565. The construction of additional Units required Fuerta, under Section 2(d) of the Bulk Purchase Agreement, to remit additional deposits to the BPA Down Payment Escrow, bringing the total to $17,772,816.55.

[13] Additional accrued interest held in the escrow account was used to fund Construction Overruns related to the Project with the approval of the Original Lenders (as defined below). In addition, approximately $1.5 million of accrued interest on the BPA Down Payment Escrow was released to the Original Lenders during construction of the Project to rebalance the Loans due to Construction Overruns, but the O'Sullivans had to match the $1.5 million to bring the total rebalancing to $3 million (for which Esplanade did not contribute any funds).

to take any enforcement action based on the transaction contemplated by the Bulk Purchase Agreement occurring "without filing or registration pursuant to Section 352-e and Section 359-e of the General Business Law."

Upon information and belief, Fuerta's plan was to resell the Units to its high net worth investors in Ireland upon the Property receiving confirmation of an approved and effective Condo Plan from the AG, which explains the purpose of the End Unit Purchaser Option.

Section 2A(b)(i) of the Bulk Purchase Agreement provides, in part, that "[Fuerta], as contract vendee, shall be the sponsor under the [condominium] Offering Plan" to be filed with the AG in connection with the offering of Units for sale to [End Unit Purchasers].[14] It also provides that Fuerta "shall be deemed to be in default of this Agreement if [Fuerta] shall fail to enter into Unit Contracts with [End Unit Purchasers] for a minimum of fifteen (15) percent of the Units within four (4) months after the date on which the Offering Plan is accepted for filing by the Attorney General."

Under Section 2A(b)(ii) of the Bulk Purchase Agreement, Fuerta agreed to indemnify the Debtor and all parties related to it from any costs or liabilities in connection with any claim based on any: (a) misrepresentation, inaccuracy or omission of fact by Fuerta with respect to the Condo Plan; (b) sales or marketing activity in violation of the Condo Plan, including violations of the Martin Act or any federal or state law; and (c) representation or disclosure made in a purchase agreement or any document executed by Fuerta in connection with the sale of Units.

E. The Debtor Obtains Construction Financing for the Project

In January 2007, with an executed Bulk Purchase Agreement and the BPA Down Payment Escrow in place, among other collateral, the Debtor was able to obtain construction financing for the Project from lenders, as described below. The Project was financed by, among others, PB Capital Corporation, as administrative agent and lender ("PB Capital" or "Administrative Agent"), and TD Bank, N.A. ("TD Bank", and together with PB Capital, the "Original Lenders").[15]

The Original Lenders purported to sell and transfer their interest in the Loans to First Manhattan Developments REIT ("First Manhattan") on or around July 29, 2011.

[14] Because Fuerta was an Irish entity and not the developer of the Project, the AG required that the Debtor become a co-sponsor of the Offering Plan. Under the Third Amendment to the Bulk Purchase Agreement, dated December 11, 2007, the Debtor agreed to "act as a co-sponsor under the Offering Plan solely as an accommodation to [Fuerta] and without any additional consideration and it is the intention of the parties that . . . [the Debtor] shall in no way incur any liability of any nature whatsoever relating to the Offering Plan or the sale of Units thereunder."

[15] TD Bank acquired Commerce Bank, N.A., the original holder of this syndicated interest, after the Loans (as defined below) were executed.

First Manhattan now contends that it is the holder of various notes in the total face amount of $81,212,506[16] issued by the Debtor, including notes made by the Debtor in the aggregate face amounts of: (i) $14,000,000 (the "Transfer Loan Notes") pursuant to that certain Transfer Loan Agreement dated as of January 25, 2007 (the "Transfer Loan Agreement"); (ii) $49,591,000 (the "Building Loan Notes") pursuant to that certain Building Loan Agreement dated as of January 25, 2007 (the "Building Loan Agreement"); and (iii) $20,621,506 (the "Project Loan Notes", together with the Transfer Loan Notes and the Building Loan Notes, the "Notes" or the "Loans") made pursuant to that certain Project Loan Agreement dated as of January 25, 2007 (the "Project Loan Agreement", and together with the Transfer Loan Agreement and the Building Loan Agreement, the "Loan Agreements"). The Notes are secured by mortgages on the Property and the Units (the "Mortgages"), as well as other security.

As further security for the Loans, the Administrative Agent, the Debtor, Fuerta, and Seiden entered into that certain Assignment of Purchase Contract and Purchase Contract Deposit Pledge Agreement dated as of January 25, 2007 (as subsequently amended, the "Assignment Agreement"). The Assignment Agreement provided the Original Lenders with the BPA Down Payment Escrow as additional collateral.

Moreover, as collateral security and further consideration for the payment of the Notes, the O'Sullivans, contemporaneously with the Notes, each individually executed and delivered:

> (i) a Guaranty of Payment (the "Guaranty"), guarantying the payment of a portion of the principal indebtedness evidenced by the Notes, together with payment of all interest and other amounts payable in connection with the Debtor's obligations under the Notes, the Loan Agreements, and the Mortgages;
>
> (ii) an Indemnity Agreement, indemnifying the Original Lenders for liability arising from hazardous materials on the Property;
>
> (iii) a Completion Costs Guaranty (the "Completion Guaranty"), guarantying the payment of certain of the Original Lenders' "hard" and "soft" costs in connection with the completion of the Project; and
>
> (iv) an irrevocable letter of credit in the amount of $3 million in favor of the Original Lenders (the "Letter of Credit") posted and guaranteed by the O'Sullivans on behalf of 8 Avenue. The Letter of Credit provided for a reduction to $2 million, upon written confirmation from the managing member of the Debtor to the Original Lenders that Fuerta had fully funded the 15% deposit under the Bulk Purchase Agreement and that the Debtor had its Condo Plan approved by the AG (the "Confirmation"). Esplanade, the managing member of the Debtor at the time, never provided such Confirmation, but the Original Lenders were fully aware that both criteria were met. As discussed more fully below, in or around

[16] The original loan commitment was approximately $84 million, but the Original Lenders drew down the $3 million Letter of Credit (as defined below) posted by the O'Sullivans, bringing the principal down to approximately $81 million.

August 2009, the Original Lenders drew down the full $3 million when Fuerta's breach caused the Debtor to be unable to meet its obligations under the Loans.

Esplanade did not contribute to the posting of any of the foregoing collateral.

Before the Loans closed, the members of the Debtor recognized that there were going to be significant Construction Overruns stemming from a combination of the Building increasing from 29 to 43 stories, the slenderness of the Building, and the narrow footprint of the Building.[17] 8 Avenue and Esplanade therefore entered into an agreement (the "Overrun Agreement") reflecting that such Construction Overruns would be funded by mezzanine financing that the O'Sullivans would source.

Accordingly, the O'Sullivans obtained commitment letters from various mezzanine lenders (the "Mezzanine Commitment Letters"), including PB Bank, to fund the Construction Overruns. The O'Sullivans agreed to guaranty the loans outlined in the Mezzanine Commitment Letters. Esplanade, on the other hand, refused to sign off on mezzanine financing and refused to contribute to any Construction Overruns. As a result, because the O'Sullivans executed the Completion Guaranty, they had to fund Construction Overruns of $14,229,106, through Time Square, all of which Esplanade refused to contribute to, despite the Overrun Agreement.[18]

III. EVENTS LEADING TO THIS CHAPTER 11 CASE

A. Default Under the Bulk Purchase Agreement

Time Square completed the construction of the Project in or about July 2009. On July 2, 2009, a temporary certificate of occupancy (the "TCO") was issued for 117 Units. Shortly after the issuance of the TCO, on July 6, 2009, the Debtor fulfilled its final obligation under the Bulk Purchase Agreement by delivering a "Completion Notice" notifying Fuerta that the closing of the sale on the 117 Units (the "Closing") would take place on August 5, 2009.

On August 4, 2009, Fuerta purported by letter (the "August 4th Letter") to terminate the Bulk Purchase Agreement. It demanded return of the BPA Down Payment Escrow on the ground that the Debtor had breached a provision of the Bulk Purchase Agreement, which Fuerta alleged required the Debtor to convey the first Unit to Fuerta on or before July 21, 2009.

The Bulk Purchase Agreement did not close. As a result, the Units remained unsold, and the Property remained vacant. The Debtor has been able -- in fact -- to convey all 117 Units since the issuance of the TCO for the Units on July 2, 2009.

By letter dated August 6, 2009 (the "August 6th Letter"), the Debtor: (i) rejected Fuerta's August 4th Letter on the grounds, among other things, that (a) paragraph 2A(a) permits Fuerta to terminate the Bulk Purchase Agreement only if the Debtor was unable to convey the first Unit by

[17] The frontage on 8th Avenue is less than 25 feet wide.

[18] Time Square has a lien reflecting the Construction Overruns it paid to satisfy and obtain final lien waivers from all of the subcontractors.

July 21, 2009 and then only after Fuerta serves a thirty (30) day notice to cure such default (which notice Fuerta failed to serve), (b) the Debtor had been able to convey all 117 Units since the issuance of the TCO for the Units on July 2, 2009, and (c) none of the Debtor's obligations under the Bulk Purchase Agreement are "time is of the essence" (whereas Fuerta's obligation to meet all dates, deadlines and time frames is "time is of the essence"); (ii) objected to Fuerta's request to release the BPA Down Payment Escrow; (iii) terminated the Bulk Purchase Agreement based on Fuerta's default in failing to close on August 5, 2009; and (iv) demanded that Seiden release the BPA Down Payment Escrow, together with accrued interest, to the Debtor.

The AG accepted the Condo Plan for filing on November 28, 2007. The AG never declared the Condo Plan effective.

B. The Loans Mature

Due to the defaults of the Bulk Purchase Agreement, the Debtor was unable to satisfy its obligations under the Loan Agreements. On July 23, 2009, the Debtor and the Original Lenders entered into a letter agreement that extended the original maturity date of July 25, 2009 on the Notes until August 7, 2009. The maturity date was not formally extended further, although the parties continued negotiations to refinance and restructure the indebtedness.

By letter dated August 13, 2009, the Original Lenders notified and declared to the Debtor that the entire outstanding balance on the Notes, together with all accrued and unpaid interest and other monies owing to the Original Lenders under the Notes and Mortgages, was due and owing and demanded that such amount be immediately paid to the Original Lenders. In or around August 2009, the Original Lenders also drew down the $3 million Letter of Credit.

On or about September 2009, the Original Lenders commenced an action against Fuerta, the Debtor and Seiden, as escrow agent, in the Supreme Court of the State of New York (the "State Court"), Index No. 602814/09 (the "Bulk Sale Default Action"), demanding the release of the BPA Down Payment Escrow. The Debtor counterclaimed, asserting its right to the BPA Down Payment Escrow pursuant to the Bulk Purchase Agreement. Fuerta asserted a cross-claim against the Debtor seeking a return of the BPA Down Payment Escrow. The Bulk Sale Default Action has not been prosecuted since November 2009.

C. The O'Sullivans Negotiate with Fuerta and the Original Lenders

In order to avoid protracted litigation, the O'Sullivans, on behalf of the Debtor, approached Fuerta to negotiate a deal whereby Fuerta would release the BPA Down Payment Escrow. In exchange, the Debtor would recognize Fuerta's deposit and allow Fuerta to close on Units for a period of up to three years. This would have allowed the Debtor to use the BPA Down Payment Escrow to pay down the Loans, which the Original Lenders required in order to extend the Debtor's obligations. The Debtor kept the Original Lenders apprised of the negotiations with Fuerta.

During the negotiations with Fuerta, Fuerta represented that it had the full authority to release the BPA Down Payment Escrow and to deliver to the Debtor a long term master lease from Bridgestreet, one of its affiliates, to operate the Building as corporate housing. Based on these representations, the O'Sullivans continued to negotiate in good faith with Fuerta for many months.

By April 2010, the O'Sullivans realized that time was of the essence with the Original Lenders and that negotiations with Fuerta had become futile. The O'Sullivans, therefore, approached the End Unit Purchasers, who were, and currently are, represented by Conor Sheahan ("Sheahan" or the "End Unit Purchaser Representative"), to negotiate a deal whereby they could close on their Units and direct Fuerta to release the BPA Down Payment Escrow. The Original Lenders were kept up to date on the negotiations with the End Unit Purchasers.

Through several months of intense negotiations, the O'Sullivans believed they had an agreement with Sheahan in which the End Unit Purchasers would close immediately on their Units, and receive a guaranteed fixed rate of return on the leasing of their Units. As part of this agreement, the O'Sullivans would have been responsible for leasing the Units and paying common charges and taxes. Those End Unit Purchasers that could not close immediately would have a three year period to close on their Units. Furthermore, the O'Sullivans gave the End Unit Purchasers the option to not close and to receive in return a portion of the monies they contributed toward the BPA Down Payment Escrow.

Soon thereafter, Sheahan informed that the End Unit Purchasers did not have the ability to immediately close on their Units. In order to keep the negotiations moving forward and accommodate the End Unit Purchasers, the O'Sullivans received permission from the Original Lenders to use part of the proceeds from the BPA Down Payment Escrow to permit the End Unit Purchasers to close on their Units without having to come out of pocket on the full balances owed. The O'Sullivans also informed Sheahan that the Debtor, through the Original Lenders, could provide seller financing pursuant to the End Unit Purchasers' request at competitive market rates. However, Sheahan later told the O'Sullivans that the End Unit Purchasers could not accept the financing because of restrictions on the use of the money they had invested in Fuerta.

At that time, the End Unit Purchasers and the O'Sullivans did not reach an agreement. Sheahan informed the O'Sullivans that the majority of the End Unit Purchasers could not close on their Units at any time in the near future.

In or around September 2010, the O'Sullivans last offered the End Unit Purchasers a block of Units (the "Block of Units") on lower floors in the Building to allocate among themselves. Specifically, the O'Sullivans offered the Block of Units at a highly discounted price and a closing at which the End Unit Purchasers would immediately receive title in exchange for all or part of their contributions to the BPA Down Payment Escrow. This offer did not require the End Unit Purchasers to post any additional cash to close. It also made the O'Sullivans responsible for the costs of furnishing and leasing their Units, as well as paying common charges and taxes. The End Unit Purchasers declined this offer as well.

D. The End Unit Purchasers File a Complaint with the AG

Six months of failed negotiations culminated with the End Unit Purchasers filing a complaint with the AG (the "AG Complaint"), claiming that the Debtor along with Fuerta had violated the Martin Act by allegedly selling units before there was an approved Condo Plan. The Debtor learned from the End Unit Purchasers' submissions to the AG that:

> (i) Fuerta collected cash from their End Unit Purchasers via purported unsecured zero coupon bonds to fund the BPA Down Payment Escrow; and
>
> (ii) Upon obtaining an accepted Condo Plan, Fuerta collected $1,000 deposits (the "Condo Deposits") and procured Condo Unit Agreements from 31 of the same End Unit Purchasers (the "31 Investors") that purchased the zero coupon bonds. The Condo Deposits of the 31 Investors were effectively debits of the monies posted by the End Unit Purchasers as part of the BPA Down Payment Escrow maintained separately by Seiden in another escrow account. Additionally, Fuerta purported to procure six other contracts, each with Condo Deposits (five contracts executed by three of the principals of Sorrento (Bryan Turley, Darina Heavey and John Ryan) and one executed by Scharf).

The Debtor has been added to the AG Complaint by virtue of the AG requiring the Debtor to co-sponsor the Condo Plan. The Debtor has no contracts with the End Unit Purchasers and was not involved in any way in Fuerta's business dealings with its investors.

E. The Original Lenders Bring a Foreclosure Action

In or around September 2010, after the negotiations with Fuerta and the End Unit Purchasers broke down, the Debtor notified the Original Lenders that the Debtor could not obtain a full release of the BPA Down Payment Escrow. As a result, the Debtor could not pay down the Loans to the level the Original Lenders required in order to extend their maturity.

During negotiations with the Original Lenders, the Debtor proposed a plan to operate the Building as corporate housing (the "Corporate Housing Plan"), in order to get the Building cash flowing, bring interest current and to begin paying down the Loans. The O'Sullivans spent several hundred thousand dollars to carry out the Corporate Housing Plan. They created an entity, OSG Partners, LLC ("OSG"), through which they would fund the operational, marketing, lease up and furnishing costs related to the Corporate Housing Plan. OSG engaged Graves Hospitality Corporation and WorldHotels to, respectively, oversee the operations and marketing of the Building. OSG also secured $7 million of financing from U.S. Bancorp Equipment Finance ("U.S. Banc") to assist in funding the costs of furnishing the Building.[19] The Original Lenders did not accept the Corporate Housing Plan -- though the O'Sullivans were prepared to move forward with it -- because it did not involve a resolution of the BPA Down Payment Escrow dispute.

[19] The financing agreement between OSG and U.S. Banc did not provide U.S Banc with a lien on the Units.

The O'Sullivans also proposed to fund the Bulk Sale Default Action. The O'Sullivans further proposed, pursuant to a term sheet to be negotiated, to use the net proceeds of a successful Bulk Sale Default Action to further pay down the principal amount due on the Loans and to buy out Esplanade's equity share in the Debtor.

The Original Lenders filed a complaint for foreclosure respecting the Property on September 27, 2010 in the State Court, Index No. 810039/10 (the "Foreclosure Action"). On October 7, 2010, a Receiver was appointed by the State Court to manage the Property.

As part of the Foreclosure Action, the Original Lenders named the Debtor as a defendant, and sought foreclosure of the Mortgages securing the Loans, as well as payment of the principal due on the Loans, together with allegedly accrued and unpaid interest at the default rate, as well as other sums allegedly incurred by the Original Lenders. The Original Lenders also made a claim to enforce the Guarantys entered into by the O'Sullivans.

The Original Lenders also named Fuerta, the End Unit Purchasers and Seiden as defendants and sought to collect the BPA Down Payment Escrow, which the Original Lenders alleged was pledged to them as additional collateral for the Loans. The End Unit Purchasers have set forth an opposition, arguing that Fuerta defrauded them and that the Debtor "was aware" of the fraud. The Debtor denies it had any connection to the alleged fraud.

Consequently, a dispute remains as to the rightful beneficiary of the BPA Down Payment Escrow. Each of Fuerta, the End Unit Purchasers, the Original Lenders and the Debtor allege rightful ownership of the BPA Down Payment Escrow.

F. Prepetition Restructuring Negotiations

The O'Sullivans, on behalf of the Debtor, negotiated over a loan extension and refinancing package with the Original Lenders for a period of many months. The O'Sullivans' partner, Esplanade, played no role in these negotiations. In addition, the O'Sullivans were involved in discussions with various lending institutions with respect to obtaining a new credit facility to replace the Loans. The O'Sullivans offered the Original Lenders numerous proposals during this time, with an eye toward generating cash flow to service and/or pay down the Loans.

During negotiations in April 2010, the Original Lenders agreed to release their remaining commitment on the Loans in the amount of $4,307,119.92 (the "Remaining Loan Commitment"). In April 2010, the Original Lenders released the Remaining Loan Commitment of which $1,380,934.00 went to bring interest on the Loans current through December 2009 and $2,926,185.92 went toward the costs of completing the Project and obtaining TCOs for the remaining Units. None of the Remaining Loan Commitment covered the costs of the invoices or obtaining final lien waivers from subcontractors (the "Invoices and Lien Waivers"). The O'Sullivans funded the Invoices and Lien Waivers out of pocket through Time Square, which now maintains a lien for this amount.

In January of 2011, on behalf of the Debtor, Kevin O'Sullivan approached Mark Lawler ("Lawler") of TD Bank to engage TD Bank and PB Capital concerning a negotiated resolution.

Lawler could not set up a meeting with PB Capital, but agreed to meet Matthew Vroom, from the O'Sullivans' office, and Kevin O'Sullivan at TD Bank's New York offices in February of 2011.

The Debtor discussed with Lawler its proposal involving the letters of intent it had secured to provide new financing to pay down the Loans. The Debtor explained that it could use the new financing to bring the Original Lenders current on an agreed upon amount of accrued interest and to pay down the principal in lieu of an extension on the Loans. The Debtor expressed its concern that the significant hyper-amortization or cash flow above the debt service payment (the "Debt Service Payment") demanded by the Original Lenders would likely create problems closing on such financing since the new investors would expect a return on their investment as well. The term sheet the Debtor received from the Original Lenders after the meeting with Lawler did not account at all for the Debtor's concerns, as it set the Debt Service Payment below what was discussed, and included a 20 year amortization period and 50% of the cash flows beyond the Debt Service Payment.

Thereafter, Kevin O'Sullivan had multiple conversations with Lawler via email, text and phone in order to keep the negotiations moving forward. Lawler explained that he believed PB Capital's preference was to sell its position in the Loans altogether. Lawler also explained that TD Bank would consider not selling its positions in the Loans, so long as its position was reduced and the Loans began to perform. Accordingly, Kevin O'Sullivan began to source new debt to step into PB Capital's position and to reduce TD Bank's exposure. Kevin O'Sullivan also explained to Lawler how critical the Project was to the O'Sullivans, as they had approximately $30 million invested in the Property. Kevin O'Sullivan also asked Lawler to let the Debtor have the right of first refusal (the "Right of First Refusal") if the Original Lenders decided to sell the Notes, which Lawler acknowledged.

As of May 2011, the Debtor believed it had in place new proposed lenders to replace the Original Lenders, mezzanine financing, a deal regarding release of the BPA Down Payment Escrow, and a master lease to rent up the Building. To keep the Original Lenders fully apprised, the Debtor sent term sheets and arranged for the Original Lenders to speak with the proposed new lenders. Upon information and belief, both Lawler and Robert Persico, Managing Director Real Estate Credit and Syndication at PB Capital ("Persico"), spoke to one such proposed new lender, CIBC.

On the morning of May 19, 2011, Time Square, on behalf of the Debtor, made an offer to the Original Lenders setting forth several options under which it would buy or pay down the Loans (the "May 19th Offer"). The Original Lenders responded in the afternoon on May 19, 2011 that the May 19th Offer did not "work" and was "unacceptable." The Original Lenders still, however, "welcomed" other offers and further negotiations.

In an effort to come to a resolution, Kevin O'Sullivan reached out to Persico to schedule an in-person meeting with him on May 20, 2011. Kevin O'Sullivan met with Persico at his office and, over approximately 30 to 40 minutes, explained the May 19th Offer and how it would resolve all outstanding issues concerning the Loans, the Foreclosure Action, the Bulk Sale Default Action and the AG Complaint, including buying out the Original Lenders at a market rate because of their interest in exiting the deal. At the end of the meeting, Persico informed

Kevin O'Sullivan that the Original Lenders had entered into a contract with another party the night before to sell the Notes for $78 million, which the Debtor later learned was First Manhattan. The Debtor also learned for the first time that the Original Lenders never intended to honor the Right of First Refusal discussed with Lawler.

First Manhattan reached out to the Debtor on Monday May 23, 2011 and a meeting between them took place in Time Square's offices on Tuesday May 24, 2011 (the "May 24 Meeting"). During the May 24 Meeting, Barry Zagdanski ("Zagdanski") and Jeff Schumacher ("Schumacher"), both representatives of First Manhattan, introduced themselves as the new lenders. Zagdanski and Schumacher asked whether the Debtor planned on paying the approximately $100 million that they claimed was owed under the Loans or whether the Debtor wanted to give First Manhattan the keys to the Building.

Kevin O'Sullivan reached out to Zagdanski in or around June 29, 2011 to gauge his interest in discussing a settlement. Zagdanski told Kevin O'Sullivan that he would reach out to him after the weekend, but never did.

On July 1, 2011, Kevin O'Sullivan sent a revised proposal to the Original Lenders (who had not yet closed on the sale of the Notes to First Manhattan) to buy out the Loans and to settle all disputes between the parties (the "July 1 Offer"). Persico summarily rejected the July 1 Offer and stated that only a pay off in full was acceptable; this was far off from what was discussed with the Original Lenders during earlier negotiations.

In or around July 2011, the O'Sullivans learned from their attorneys, John Snyder and David Abrams, that First Manhattan, through its attorney, Mark Mermel ("Mermel"), was open to a settlement and that First Manhattan preferred that the O'Sullivans make a proposal through their attorneys. Accordingly, on or around July 22, 2011, the O'Sullivans, on behalf of the Debtor, sent a verbal settlement proposal through their attorneys to Mermel. The attorneys followed up with Mermel one week later after having received no response. Mermel indicated that First Manhattan would respond in a day or two.

First Manhattan did not respond to the Debtor's proposal and has since closed on the purchase of the Notes.

G. The Debtor Commences This Chapter 11 Case

As noted earlier, the Debtor commenced this chapter 11 case in order to take advantage of the "breathing spell" afforded to a debtor under chapter 11, and to develop a viable business plan, negotiate a restructuring of its indebtedness with creditors, and ultimately formulate and implement a chapter 11 plan of reorganization that restructures its indebtedness and maximizes the recovery to all creditors and interest holders.

IV. SIGNIFICANT EVENTS DURING THE CHAPTER 11 CASE

A. Overview Of Chapter 11 And Commencement Of Chapter 11 Case

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under Chapter 11, a debtor is authorized to reorganize its finances, business and/or operations for the benefit of itself, its creditors and its equity interest holders. In addition to permitting the rehabilitation of a debtor, another goal of Chapter 11 is to promote the optimization of a debtor's assets and equality of treatment of similarly-situated creditors and equity interest holders with respect to the distribution of a debtor's assets.

The commencement of a Chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the filing of the debtor's bankruptcy petition. The Bankruptcy Code provides that a Chapter 11 debtor may continue to operate its business and remain in possession of its property as a "debtor-in-possession."

The Debtor filed its Chapter 11 Case with the Bankruptcy Court on August 3, 2011. The Debtor's case was assigned to the Honorable Stuart M. Bernstein, United States Bankruptcy Judge for the Southern District of New York.

Confirmation and consummation of a plan of reorganization are the principal objectives of a Chapter 11 reorganization case. A plan of reorganization sets forth the means for satisfying claims against and equity interests in the debtor. In general, confirmation of a plan of reorganization by the bankruptcy court makes the plan binding, subject to the occurrence of the effective date, upon the debtor, any issuer of securities under the plan, any person acquiring property under the plan, and any creditor or equity interest holder of a debtor. Subject to certain limited exceptions, the order approving confirmation of a plan discharges a debtor from any debt that arose prior to the date of confirmation of the plan and substitutes the obligations specified under the confirmed plan.

Before soliciting acceptances of a proposed plan, section 1125(a) of the Bankruptcy Code requires a plan proponent to prepare and distribute a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment whether to accept or reject the plan. The Debtor is transmitting this Disclosure Statement to, and soliciting votes from, Holders of Impaired Claims and Interests who are entitled to vote on the Plan in order to satisfy the requirements of section 1125(a) of the Bankruptcy Code.

The following is a brief description of some of the major events that have occurred during the Chapter 11 Case.

B. "First Day" Orders

On August 18, 2011, the Bankruptcy Court entered an order extending the Debtor's time to file its chapter 11 schedules of assets and liabilities and statement of financial affairs [Docket No. 21].

C. Retention of Debtor's Professionals

On September 15, 2011, the Bankruptcy Court entered an order authorizing the Debtor to retain and employ the law firm of Proskauer Rose LLP ("Proskauer") as its bankruptcy counsel *nunc pro tunc* to August 10, 2011 [Docket No. 38].[20] Although Proskauer was retained by and represents the Debtor, its fees will be paid by Time Square, an affiliate of the Debtor.

On October 14, 2011, the Bankruptcy Court entered an order authorizing the Debtor to retain and employ the firm of Miller Cicero, LLC ("Miller Cicero") as its appraiser *nunc pro tunc* to September 26, 2011 [Docket No. 58]. Although Miller Cicero was retained by and represents the Debtor, its fees will be paid by Time Square.

On October 12, 2011, the Debtor filed an application to retain and employ The Weitzman Group, Inc. ("Weitzman") as its real estate and financial consultant *nunc pro tunc* to September 27, 2011 [Docket No. 55]. The application states that although Weitzman will be retained by and represent the Debtor, its fees will be paid by Time Square. On October 21, 2011, First Manhattan filed an objection to the application [Docket No. 66]. On October 25, 2011, the Debtor filed a reply to First Manhattan's objection [Docket No. 68]. This matter has been scheduled for a hearing on November 10, 2011.

D. Chapter 11 Schedules and Statements of Financial Affairs

On September 12, 2011, the Debtor filed its chapter 11 schedules of assets and liabilities and statement of financial affairs [Docket Nos. 32-33].

E. Bar Date Order

On October 7, 2011, the Bankruptcy Court entered an order establishing (i) November 23, 2011 at 5:00 p.m. (Eastern time) as the bar date for filing proofs of prepetition claims (for all creditors other than governmental units) and (ii) February 6, 2012 at 5:00 p.m. (Eastern time) as the bar date for governmental units to file prepetition proofs of claim [Docket No. 48].

F. First Manhattan Motion to Excuse Receiver from Requirements Imposed by Sections 543(a) and (b)(1) of the Bankruptcy Code; Debtor's Motion to Compel Receiver to Comply with Sections 543(a) and (b) of the Bankruptcy Code

On August 9, 2011, First Manhattan filed a motion for an order pursuant to section 543(d)(2) of the Bankruptcy Code excusing the Receiver from the requirements imposed by sections 543(a) and (b)(1) of the Bankruptcy Code (the "First Manhattan 543 Motion") [Docket No. 7]. The First Manhattan 543 Motion originally was scheduled for a hearing on August 15, 2011, but First Manhattan and the Debtor agreed to adjourn the hearing from time to time and ultimately to October 19, 2011, the same date as the evidentiary hearing to consider the Dismissal/Stay Relief Motion (as defined and discussed below).

[20] The Debtor was originally represented as bankruptcy counsel by Kasowitz Benson Torres & Friedman LLP ("Kasowitz"), but retained Proskauer to replace Kasowitz effective as of August 10, 2011.

On September 20, 2011, the Debtor filed a motion for entry of an order (i) compelling the Receiver to comply with sections 543(a) and (b) of the Bankruptcy Code and granting related relief and (ii) approving a property management agreement with Cooper Square Realty, Inc. (the "Debtor's 543 Motion") [Docket No. 42]. The Debtor's 543 Motion originally was scheduled for a hearing on October 4, 2011, but after a telephonic conference with Judge Bernstein, the hearing was adjourned to October 19, 2011, the same date as the evidentiary hearing to consider the Dismissal/Stay Relief Motion.

On October 11, 2011, First Manhattan filed an objection to the Debtor's 543 Motion (the "First Manhattan Objection") [Docket No. 54].

On October 18, 2011, the Debtor filed an objection to the First Manhattan 543 Motion and a reply to the First Manhattan Objection [Docket No. 61].

The disposition of the First Manhattan 543 Motion and the Debtor's 543 Motion is discussed below in connection with the Dismissal/Stay Relief Motion.

G. First Manhattan Motion to Dismiss Chapter 11 Case or, in the Alternative, Granting Relief From the Automatic Stay

On August 19, 2011, First Manhattan filed a motion for an order dismissing the Debtor's Chapter 11 Case, or in the alternative, granting First Manhattan relief from the automatic stay so that it could proceed with its state court foreclosure action with respect to the Property (the "Dismissal/Stay Relief Motion") [Docket No. 23].

On September 13, 2011, the Debtor filed an objection to the Dismissal/Stay Relief Motion [Docket No. 36].

On September 15, 2011, the Bankruptcy Court held a preliminary hearing on the Dismissal/Stay Relief Motion and scheduled an evidentiary hearing on the motion for October 19, 2011. The parties thereafter agreed to a briefing and discovery schedule with respect to the motion.

On September 19, 2011, First Manhattan filed a reply to the Debtor's objection to the Dismissal/Stay Relief Motion [Docket No. 40].

The Debtor and First Manhattan engaged in extensive discovery and a number of depositions in connection with the Dismissal/Stay Relief Motion (as well as the First Manhattan 543 Motion and the Debtor's 543 Motion).

H. Hearing on Dismissal/Stay Relief Motion, First Manhattan 543 Motion and the Debtor's 543 Motion

On October 19, 2011, the Bankruptcy Court held a hearing on the Dismissal/Stay Relief Motion, the First Manhattan 543 Motion, and the Debtor's 543 Motion. After opening statements by respective counsel for the Debtor and First Manhattan, Judge Bernstein requested a chambers conference with counsel. During the chambers conference, the parties agreed, among other things, to the following, which agreement was placed on the record: (i) the Debtor would

file the Disclosure Statement by October 31, 2011; (ii) with respect to the stay relief portion of the Dismissal/Stay Relief Motion, First Manhattan would be granted relief from the automatic stay to proceed regarding the foreclosure action with respect to the Property but only up to the point of sale; (iii) the hearing on the First Manhattan 543 Motion and the Debtor's 543 Motion would be adjourned until the date of the hearing to consider approval of the Disclosure Statement, and the Receiver would remain in place until such hearing; (iv) the hearing on the dismissal portion of the Dismissal/Stay Relief Motion would be adjourned until the date of the hearing to consider confirmation of the Plan; and (v) the Debtor would be permitted to begin the process for the leasing of Units at the Property, including the marketing of the Units, but not signing any actual leases, provided that the associated costs would be borne by an affiliate of the Debtor which would not seek reimbursement from the Debtor's estate [Docket No. 67]. The foregoing agreement respecting the stay relief portion of the Dismissal/Stay Relief Motion is the subject of conflicting proposed orders by the Debtor and First Manhattan. The Bankruptcy Court has scheduled a hearing to resolve such conflict on November 10, 2011.

With respect to the state court foreclosure action, the Debtor will argue, among other things, that First Manhattan is not an "Eligible Lender" under the Building Loan Agreement and, therefore, that First Manhattan is unable to proceed with the foreclosure action.

I. Fuerta Settlement and Chapter 11 Plan

Effective as of October 10, 2011, the Debtor, Time Square, 8 Avenue, Fuerta, the End Unit Purchasers, Tower and the End Unit Purchaser Representative (collectively, the "Fuerta Settlement Agreement Parties") entered into that certain Settlement and Plan Support Agreement, which is attached to and incorporated into the Plan (the "Fuerta Settlement Agreement"). Pursuant to the Fuerta Settlement Agreement, among other things, the Fuerta Settlement Agreement Parties agreed to a global settlement of all of their respective claims and potential claims against one another and, subject to the terms of the agreement, to support a restructuring of the Debtor's capital structure and financial obligations pursuant to the Plan. Specifically, the Fuerta Settlement Agreement, among other things, resolves all of the claims and potential claims of Fuerta and the End Unit Purchasers against the Debtor and provides for the disposition of the BPA Down Payment Escrow upon the occurrence of the Effective Date of the Plan. Approval of the Fuerta Settlement Agreement, which was the product of extensive negotiations between the Debtor and various creditor constituencies over several months, will avoid time-consuming, expensive and complex litigation respecting the claims and allegations of Fuerta and the End Unit Purchasers, the results of which are far from certain. The Debtor believes that the Fuerta Settlement Agreement is fair, reasonable and in the best interests of the Debtor and its Estate.

Pursuant to the Fuerta Settlement Agreement, each of the parties thereto including, without limitation, Fuerta and the End Unit Purchasers, agreed to support the Plan provided, among other things, that such parties are properly solicited pursuant to section 1125 of the Bankruptcy Code. Under the Fuerta Settlement Agreement, and as set forth in the Plan, the End Unit Purchaser Representative has been appointed as the sole representative and agent for the End Unit Purchasers for, among other things, voting to accept or reject the Plan in respect of the End Unit Purchasers' Claims.

V. THE PLAN OF REORGANIZATION

A. General

The following is a summary intended as a brief overview of the Plan and is qualified in its entirety by reference to the full text of the Plan, a copy of which is annexed hereto as **Exhibit A**. Holders of Claims and Interests are respectfully referred to the relevant provisions of the Bankruptcy Code and are encouraged to review the Plan and this Disclosure Statement with their counsel.

In general, a Chapter 11 plan of reorganization must (i) divide claims and interests into separate categories and classes, (ii) specify the treatment that each category and class is to receive under such plan, and (iii) contain other provisions necessary to implement the plan. A Chapter 11 plan may specify that the legal, equitable, and contractual rights of the holders of claims or interests in certain classes are to remain unchanged by the restructuring effectuated by the plan. Such classes are referred to as "unimpaired" and, because of such favorable treatment, are deemed to vote to accept the plan. Accordingly, it is not necessary to solicit votes from holders of claims or interests in such "unimpaired" classes. Pursuant to section 1124(1) of the Bankruptcy Code, a class of claims or interests is "impaired," and entitled to vote on a plan, unless the plan "leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest." 11 U.S.C. §1124(1).

B. Classification Of Claims And Interests

Section 1123 of the Bankruptcy Code provides that, except for administrative expense claims and priority tax claims, a plan of reorganization must categorize claims against and equity interests in a debtor into individual classes. Although the Bankruptcy Code gives a debtor significant flexibility in classifying claims and interests, section 1122 of the Bankruptcy Code dictates that a plan of reorganization may only place a claim or an equity interest into a class containing claims or equity interests that are substantially similar.

In compliance with section 1122 of the Bankruptcy Code, the Plan divides the Holders of Claims and Interests into two categories and eight Classes, and sets forth the treatment offered to each Class. These Classes take into account the differing nature and priority of Claims against and Interests in the Debtor. Section 101(5) of the Bankruptcy Code defines "claim" as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured" or a "right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured." 11 U.S.C. § 101(5). A "claim" against the Debtor also includes a claim against property of the Debtor, as provided in section 102(2) of the Bankruptcy Code. 11 U.S.C. § 102(2). An "interest" is an equity interest in a debtor.

For the holder of a claim to participate in a plan of reorganization and receive the treatment offered to the class in which it is classified, its claim must be "allowed." Under the Plan, "*Allowed*" is defined as: with respect to any Claim or Interest, except as otherwise

specified herein, any of the following: (a) a Claim or Interest that has been scheduled by the Debtor in its Schedules as other than disputed, contingent or unliquidated and as to which (i) the Debtor or any other party in interest has not filed an objection, and (ii) no contrary Proof of Claim has been filed; (b) a Claim or Interest that is not a Disputed Claim or Disputed Interest, except to the extent that any such Disputed Claim or Disputed Interest has been allowed by a Final Order; or (c) a Claim or Interest that is expressly allowed (i) by a Final Order, (ii) by an agreement between the Holder of such Claim or Interest and the Debtor or the Reorganized Debtor, or (iii) pursuant to the terms of the Plan.

C. Treatment Of Claims And Interests Under The Plan

The Plan segregates the various Claims against, and Interests in, the Debtor into Administrative Expense Claims, Priority Tax Claims, Class 1 consisting of Non-Tax Priority Claims, Class 2 consisting of Other Secured Claims, Class 3 consisting of the First Manhattan Claim, Class 4 consisting of the Time Square Claim, Class 5 consisting of the Fuerta Claim, Class 6 consisting of the End Unit Purchasers' Claims, Class 7 consisting of General Unsecured Claims, and Class 8 consisting of Old Membership Interests.

Under the Plan, Claims in Classes 1, 2 and 7 are Unimpaired, and Claims in Classes 3, 4, 5 and 6 and Interests in Class 8 are Impaired. The treatment accorded to the Impaired Classes of Claims and Interests under the Plan represents the best treatment that can be provided to such Classes pursuant to the priority provisions of the Bankruptcy Code. Set forth below is a summary of the Plan's treatment of the various categories and Classes of Claims and Interests. This summary is qualified in its entirety by the full text of the Plan. In the event of an inconsistency between the Plan and the description contained herein, the terms of the Plan shall govern. The Plan is complicated and substantial. Time should be allowed for its analysis; consultation with a legal and/or financial advisor is recommended and should be considered.

1. Unclassified Categories of Claims

(a) Category 1 -- Administrative Expense Claims

In General. Except to the extent that a Holder of an Allowed Administrative Expense Claim has been paid by the Debtor prior to the Effective Date, each Holder of an Allowed Administrative Expense Claim (other than a Professional Fee Claim), in full and final satisfaction, release, settlement and discharge of such Administrative Expense Claim, shall be paid in full, in Cash, in such amounts as (a) are incurred in the ordinary course of business by the Debtor when and as such Claim becomes due and owing, (b) are Allowed by the Bankruptcy Court upon the later of the Effective Date, the date upon which there is a Final Order allowing such Administrative Expense Claim or any other date specified in such order, or (c) may be agreed upon between the Holder of such Administrative Expense Claim and the Debtor.

The Debtor believes that there will be no Allowed Administrative Expense Claims as of the Effective Date to be paid under the Plan other than amounts payable to Professional Persons.

Professional Compensation.

(a) Final Fee Applications. All final requests for payment of Professional Fee Claims, including the Holdback Amount and Professional Fee Claims incurred during the period from the Petition Date through the Confirmation Date, must be filed with the Bankruptcy Court and served on the Reorganized Debtor no later than forty-five (45) days after the Confirmation Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and any applicable orders of the Bankruptcy Court, the Allowed amounts of such Professional Fee Claims shall be determined and paid as directed by the Bankruptcy Court.

(b) Post-Confirmation Date Fees and Expenses. Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Reorganized Debtor shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Reorganized Debtor. Upon the Confirmation Date, any requirement that Professional Persons comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor may employ and pay any Professional Person in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

(b) Category 2 -- Priority Tax Claims

Except to the extent that a Holder of an Allowed Priority Tax Claim has been paid by the Debtor prior to the Effective Date or agrees to a different treatment, each Holder of an Allowed Priority Tax Claim, in full and final satisfaction, release, settlement and discharge of such Priority Tax Claim, shall receive on account of such Claim, at the option of the Debtor, either payment in full in Cash as soon as reasonably practicable after the Effective Date, or in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, regular installment payments in Cash: (i) of a total value, as of the Effective Date, equal to the Allowed amount of such Claim; (ii) which total value shall include simple interest to accrue on any outstanding balance of such Allowed Priority Tax Claim starting on the Effective Date at the rate of interest determined under applicable nonbankruptcy law pursuant to section 511 of the Bankruptcy Code; (iii) over a period ending not later than five (5) years after the Petition Date; and (iv) in a manner not less favorable than the most favored nonpriority unsecured Claim provided for by the Plan. Each Holder of an Allowed Secured Tax Claim shall retain the Lien securing its Allowed Secured Tax Claim as of the Effective Date until full and final payment of such Allowed Secured Tax Claim is made as provided in the Plan, and upon such full and final payment, such Lien shall be deemed to have been satisfied and shall be null and void and unenforceable for all purposes.

The Debtor believes that there will be no Allowed Priority Tax Claims as of the Effective Date to be paid under the Plan.

2. Unimpaired Classes of Claims and Interests

A Chapter 11 plan may specify that the legal, equitable, and contractual rights of the holders of claims or interests in certain classes are to remain unchanged by the plan. Such

classes are referred to as "unimpaired" and, because of such favorable treatment, are deemed to vote to accept the plan. Accordingly, it is not necessary to solicit votes from holders of claims or interests in such "unimpaired" classes. Under the Plan, Claims in Classes 1, 2 and 7 are Unimpaired and, therefore, are deemed to have accepted the Plan.

(a) Class 1 -- Non-Tax Priority Claims

Non-Impairment. Class 1 consists of all Non-Tax Priority Claims. Class 1 is Unimpaired, and pursuant to section 1126(f) of the Bankruptcy Code, the Holders of Claims in Class 1 are conclusively presumed to have accepted the Plan and are not entitled to vote to accept or reject the Plan.

Treatment. The legal, equitable and contractual rights of the Holders of Allowed Non-Tax Priority Claims are unaltered by the Plan. Each Holder of an Allowed Non-Tax Priority Claim, in full and final satisfaction, release, settlement and discharge of such Allowed Non-Tax Priority Claim, shall be paid in full, in Cash, on the Effective Date or in accordance with the terms of any agreement between the Debtor and the Holder of an Allowed Non-Tax Priority Claim or on such other terms and conditions as are acceptable to the Debtor and the Holder of an Allowed Non-Tax Priority Claim.

The Debtor believes that there will be no Allowed Non-Tax Priority Claims as of the Effective Date to be paid under the Plan.

(b) Class 2 -- Other Secured Claims

Non-Impairment. Class 2 consists of all Other Secured Claims. Class 2 is Unimpaired, and pursuant to section 1126(f) of the Bankruptcy Code, the Holders of Claims in Class 2 are conclusively presumed to have accepted the Plan and are not entitled to vote to accept or reject the Plan.

Subclassification. Each Other Secured Claim, if any, shall constitute and comprise a separate Subclass numbered 3.5.1, 3.5.2, 3.5.3 and so on.

Treatment. The legal, equitable and contractual rights of the Holders of Allowed Other Secured Claims are unaltered by the Plan. On or as soon as practicable after the Effective Date, each Allowed Other Secured Claim, in full and final satisfaction, release, settlement and discharge of such Allowed Other Secured Claim, shall be paid in full, in Cash, from the BPA Down Payment Escrow, except to the extent the Reorganized Debtor and such Holder agree to a different treatment.

The Debtor believes that the amount of Allowed Other Secured Claims as of the Effective Date to be paid under the Plan will be approximately $35,000.

(c) Class 7 – General Unsecured Claims

Non-Impairment. Class 7 consists of all General Unsecured Claims. Class 7 is Unimpaired, and pursuant to section 1126(f) of the Bankruptcy Code, the Holders of Claims in

Class 7 are conclusively presumed to have accepted the Plan and are not entitled to vote to accept or reject the Plan.

Treatment. On or as soon as practicable after the Effective Date, except to the extent a Holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each Holder of an Allowed General Unsecured Claim, in full and final satisfaction, release, settlement and discharge of such Claim, shall be paid in full, in Cash, from the BPA Down Payment Escrow.

The Debtor believes that the amount of Allowed General Unsecured Claims as of the Effective Date to be paid under the Plan will be approximately $145,000.

3. Impaired Classes of Claims and Interests

Pursuant to section 1124 of the Bankruptcy Code, a class of claims or interests is impaired unless the legal, equitable, and contractual rights of the holders of claims or interests in such class are not modified or altered by a plan. Holders of allowed claims and equity interests in impaired classes that receive or retain property under a plan of reorganization are entitled to vote on such plan. Under the Plan, Holders of Claims in Classes 3, 5 and 6 and Interests in Class 8 are Impaired and, therefore, entitled to vote on the Plan. The Holder of the Claim in Class 4 is not entitled to vote on the Plan because it is not receiving or retaining any property thereunder, and therefore is deemed to reject the Plan.

(a) Class 3 – First Manhattan Claim

Impairment. Class 3 consists of the First Manhattan Claim. Class 3 is Impaired, and the Holder of the First Manhattan Claim is entitled to vote to accept or reject the Plan.

Allowance. For purposes of voting to accept or reject the Plan and receiving distributions under the Plan, the First Manhattan Claim shall be deemed Allowed in the aggregate amount of $85,749,337.16, consisting of $81,212,506.00 in principal plus $4,536,831.16 of accrued and unpaid interest and other costs and fees through the Petition Date.[21]

Treatment. On or as soon as practicable after the Effective Date, the Holder of the Allowed First Manhattan Claim, in full and final satisfaction, release, settlement and discharge of such Claim, shall (i) receive a payment, in Cash, from the BPA Down Payment Escrow, as and to the extent set forth in Section 4.2 of the Plan,[22] (ii) receive (a) the Amended and Restated Note, in the amount of $73,878,373.03 (the amount of the Allowed First Manhattan Claim less the Cash payment made pursuant to (i) immediately above),[23] which shall have a term of five years, and (b) the Amended and Restated Mortgage, (iii) receive (a) for year one, monthly payments of interest only at a fixed rate equal to the 5-year U.S. treasury rate plus 2.50% per

[21] The $4,536,831.16 in interest and other costs and fees consists of $3,500,881.10 in interest (at LIBOR plus 2.75%), $886,690.23 in protective advances and enforcement costs, $11,259,83 in interest on the protective advances and enforcement costs, and $138,000 in unpaid administrative fees.

[22] The Debtor estimates that the amount of this payment will be $11,870,964.13.

[23] This amount assumes that the Cash payment to be made pursuant to (i) immediately above will be $11,870,964.13.

annum on $73,878,373.03,[24] and (b) for years two through five, monthly payments of principal and interest at a fixed rate equal to the 5-year U.S. treasury rate plus 2.50% per annum on $73,878,373.03 based upon a thirty year amortization rate,[25] with a balloon payment at the end of the note term;[26] and (iv) retain the Lien securing such Claim until full and final payment of such Claim is made as provided in the Plan, and upon such full and final payment, such Lien shall be deemed to have been satisfied and shall be null and void and unenforceable for all purposes. In addition to the foregoing, the Holder of the Allowed First Manhattan Claim shall be entitled to a portion of (i) the proceeds from a Liquidity Event, if any, as and to the extent set forth in Section 4.5 of the Plan, and (ii) NOI Surplus, if any, as and to the extent set forth in Section 4.6 of the Plan.

Based upon an appraisal of the Property prepared by Miller Cicero, the Debtor believes that the estimated market value of the Property upon completion[27] is $101,000,000 and as a stabilized rental building -- which the Debtor in its business judgment believes is currently the highest and best use of the Property -- is $104,000,000 as of November 1, 2011. The Debtor's belief as to the highest and best use of the Property is supported by the Miller Cicero appraisal, as well as a marketability study prepared by Weitzman.[28]

The Debtor expects that the Holder of the Class 3 Claim will vote to reject the Plan. In that event, the Debtor shall seek to confirm the Plan under section 1129(b) of the Bankruptcy Code. *See* Section VI. B. 3. of this Disclosure Statement.

(b) Class 4 – Time Square Claim

Impairment. Class 4 consists of the Time Square Claim. Class 4 is Impaired, and pursuant to section 1126(g) of the Bankruptcy Code, the Holder of the Time Square Claim is deemed to reject the Plan and is not entitled to vote to accept or reject the Plan.

Treatment. Upon the Effective Date, the Time Square Claim shall be waived and released, and the Time Square Lien shall be released and extinguished.

The Holder of the Class 4 Claim has consented to this treatment.

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[24] The monthly payments during this period shall be approximately $230,869.92.

[25] The monthly payments during this period shall be approximately $342,142.26.

[26] The amount of the balloon payment is estimated to be $68,125,591.35.

[27] As set forth in Section V. D. of this Disclosure Statement, the cost to finish a minor "punch list" of final improvements and repairs to the Property required for the Lease-Up will be approximately $330,000.

[28] As set forth in Section VI. B. 2. (j) of this Disclosure Statement, the Debtor's Projections demonstrate that the cash flow from the Property throughout the projection period should be sufficient to satisfy ongoing operating expenses for the Property and to pay debt service under the Amended and Restated Note. Although the Debtor believes that the highest and best use of the Property is as a stabilized rental building, the highest and best use of the Property is irrelevant as long as the Debtor can pay such debt service and that the Plan otherwise treats the First Manhattan Claim "fairly and equitably" pursuant to section 1129(b)(2)(A) of the Bankruptcy Code.

(c) Class 5 – Fuerta Claim

Impairment. Class 5 consists of the Fuerta Claim. Class 5 is Impaired, and the Holder of the Fuerta Claim is entitled to vote to accept or reject the Plan.

Treatment. On or as soon as practicable after the Effective Date, the Holder of the Fuerta Claim, in full and final satisfaction, release, settlement and discharge of such Claim, shall receive a Cash payment of $350,000 from the BPA Down Payment Escrow.

The Debtor expects that the Holder of the Class 5 Claim will vote to accept the Plan.

(d) Class 6 -- End Unit Purchasers' Claims

Impairment. Class 6 consists of the End Unit Purchasers' Claims. Class 6 is Impaired, and the Holders of the End Unit Purchasers' Claims are entitled to vote to accept or reject the Plan.[29]

Treatment. On or as soon as practicable after the Effective Date, in full and final satisfaction, release, settlement and discharge of the End Unit Purchasers' Claims, Newco shall receive (i) a Cash payment of $1,550,000 from the BPA Down Payment Escrow and (ii) 35% of the New Membership Interests.

The Debtor expects that the End Unit Purchaser Representative, on behalf of the Holders of the Class 6 Claims, will vote to accept the Plan.

(e) Class 8 – Old Membership Interests

Impairment. Class 8 consists of all Old Membership Interests. Class 8 is Impaired, and the Holders of Old Membership Interests in Class 8 are entitled to vote to accept or reject the Plan.

Treatment. On the Effective Date, all Old Membership Interests shall be cancelled and extinguished. 8 Avenue shall receive 63.75% of the New Membership Interests, Tower shall receive 1.00% of the New Membership Interests, and Esplanade shall receive 0.25% of the New Membership Interests.

The Debtor expects that the Holders of the Class 8 Interests will vote to accept the Plan.

D. Means For Execution And Implementation Of The Plan

Plan Funding. The funds utilized to make Cash payments under the Plan will be generated from, among other things, the disposition of the BPA Down Payment Escrow, as set forth in Section 4.2 of the Plan, and the Lease-Up, as set forth in Section 4.3 of the Plan.

[29] As set forth in Section 6.1 of the Plan, the End Unit Purchaser Representative has been appointed as the sole representative and agent for the End Unit Purchasers for, among other things, voting to accept or reject the Plan in respect of the End Unit Purchasers' Claims.

Disposition of BPA Down Payment Escrow. On or as soon as practicable after the Effective Date, the BPA Down Payment Escrow shall be applied as follows: (i) $180,017 to the Reorganized Debtor to pay in full the Holders of Allowed Other Secured Claims and Allowed General Unsecured Claims under the Plan; (ii) $1,000,000 to the Reorganized Debtor to pay in full the Holders of Allowed Professional Fee Claims under the Plan and post-Effective Date legal fees, costs and expenses; (iii) $1,550,000 to Newco in accordance with the treatment of the End Unit Purchasers' Claims under the Plan; (iv) $350,000 to Fuerta in accordance with the treatment of the Fuerta Claim under the Plan; (v) $328,788 to the Reorganized Debtor to fund the final improvements and repairs required for the Lease-Up (the "Punch List"); (vi) $595,806 to the Reorganized Debtor to cover building costs incidental to the Lease-Up; (vii) $880,336 to the Reorganized Debtor to fund the costs of marketing the Lease-Up; (viii) $335,788 to the Reorganized Debtor to fund the management of the Property for approximately three months, including the fees of Cooper Square; (ix) $1,500,000 to the Reorganized Debtor to be held in reserve to cover interest payments to the Holder of the Allowed First Manhattan Claim under the Plan; (x) $195,000 to the Reorganized Debtor to cover contingencies; (xi) any savings realized with respect to the projected expenses set forth in (i) through (x) above to pay down the then-remaining principal balance of the Allowed First Manhattan Claim; and (xii) after the application of (i) through (xi) above, to pay down the then-remaining principal balance of the Allowed First Manhattan Claim.[30]

Management and Lease-Up of Property. Unless initiated prior to Confirmation, on or as soon as practicable after the Effective Date, the Reorganized Debtor shall initiate a program of leasing the Units to residential tenants (the "Lease-Up"). In connection with the Lease-Up, (i) the Reorganized Debtor shall engage Time Square to manage and/or perform the work set forth in the Punch List on commercially reasonable, arm's-length terms; (ii) the Reorganized Debtor shall engage Citi Habitats ("Citi Habitats") as marketing and leasing agent for the Property on commercially reasonable, arm's-length terms; (iii) the Reorganized Debtor shall engage Cooper Square Realty, Inc. ("Cooper Square") as the manager of the Property on commercially reasonable, arm's-length terms; (iv) the End Unit Purchaser Representative shall be entitled to meet with Time Square, Citi Habitats and Cooper Square and any successors to the foregoing; and (v) $350,000 shall be payable annually on a quarterly basis by the Reorganized Company (80% to 8 Avenue and 20% to Newco) to cover administrative and reporting costs (any portion of the $350,000 not paid out in a given year shall be accumulated and deferred and paid out in the next succeeding year, and so forth going forward).

Waiver of Time Square Claim and Relinquishment of Time Square Lien. As set forth in Section 3.7(b) of the Plan, upon the Effective Date, the Time Square Claim shall be waived and released, and the Time Square Lien shall be released and extinguished, which shall result in the elimination of a Secured Claim against the Estate in excess of $14,000,000.

Equity Waterfall.

(a) In the event of the consummation of a sale or refinancing of the Property (a "Liquidity Event") within 18 months of the Effective Date, proceeds from such Liquidity Event

[30] The Debtor estimates that the amount of this payment will approximate $11,800,000.

shall be distributed in the following order of priority: (i) first, to pay the outstanding obligations of the Reorganized Debtor, including the then-remaining principal balance of the Allowed First Manhattan Claim; (ii) second, to pay the balance of any Pre-Confirmation Mezzanine Financing or Post-Confirmation Mezzanine Financing approved by the members of the Reorganized Debtor, and any Preferred Membership Interest resulting from a member's failure to fund any capital call made by the Manager (a "Capital Call"); (iii) third, $3.3 million to 8 Avenue; (iv) fourth, any previously deferred and accumulated portion of the $350,000 annual expense described in Section 4.3 of the Plan shall be shared between 8 Avenue and Newco (80% to 8 Avenue and 20% to Newco), to the extent this expense has not been theretofore paid; (v) fifth, $17,000,000 to be shared between 8 Avenue and Newco (50% to 8 Avenue and 50% to Newco); (vi) sixth, $7,285,714.29 to 8 Avenue; (vii) seventh, Pro Rata to the members of the Reorganized Debtor. In no event shall Newco receive equity distributions in excess of $19 million under Section 4.5(a) of the Plan.

(b) In the event of a Liquidity Event after 18 months from the Effective Date, proceeds from such Liquidity Event shall be distributed in the following order of priority: (i) first, to pay the outstanding obligations of the Reorganized Debtor, including the then-remaining principal balance of the Allowed First Manhattan Claim; (ii) second, to pay the balance of any Pre-Confirmation Mezzanine Financing or Post-Confirmation Mezzanine Financing approved by the members of the Reorganized Debtor, and any Preferred Membership Interest resulting from a member's failure to fund a Capital Call; (iii) third, $3.3 million to 8 Avenue; (iv) fourth, any previously deferred and accumulated portion of the $350,000 annual expense described in Section 4.3 of the Plan shall be shared between 8 Avenue and Newco (80% to 8 Avenue and 20% to Newco), to the extent this expense has not been theretofore paid; (v) fifth, Pro Rata to the members of the Reorganized Debtor. In no event shall Newco receive equity distributions in excess of $19 million; provided, however, that such $19 million cap shall remain constant for three years commencing on the Effective Date, but shall thereafter be increased annually by the annual change in the consumer price index (All Urban Consumers NY-NJ-CT region 1982-82=100) commencing three years after the Effective Date (it being understood that such CPI increases start from $19 million).

Cash Flow Waterfall. If, in any fiscal year, the Reorganized Debtor generates positive net operating income after deducting all expenses (including debt service respecting the First Manhattan Claim and payment of the $350,000 described in Section 4.3 of the Plan) (a "NOI Surplus"), the NOI Surplus shall be used as follows: (i) first, if sufficient NOI Surplus is available, distributions shall be allocated 65% to 8 Avenue and 35% to Newco and shall be made in an amount sufficient for the members of Newco and 8 Avenue to pay any taxes on allocated taxable income generated by the Reorganized Debtor, such amount to be determined in good faith by the Reorganized Debtor and its accountants after consultation with Newco; and (ii) second, any remaining NOI Surplus shall be allocated 65% to 8 Avenue and 35% to Newco, and such NOI Surplus may be used, in the sole discretion of 8 Avenue, toward repayment of the then-remaining principal balance of the Allowed First Manhattan Claim, distribution to the members of the Reorganized Debtor, as a capital reserve, or any combination thereof.

Authorization and Issuance of New Membership Interests. On the Effective Date, the Reorganized Debtor shall have authorized New Membership Interests of a single class in such

amount as shall be necessary or appropriate in connection with consummation of the Plan. On or as soon as practicable after the Effective Date, the Reorganized Debtor shall issue, in accordance with the terms of the Plan, a sufficient number of New Membership Interests as is necessary to consummate the Plan without the need for any further corporate or shareholder action. All New Membership Interests to be issued pursuant to the Plan shall be, upon issuance, fully paid and non-assessable, and shall be subject to dilution for future issuances as authorized by the Manager.

New LLC Agreement. The holders of the New Membership Interests shall be party to the New LLC Agreement, the terms of which shall be consistent with the terms of the Fuerta Settlement Agreement and reasonably acceptable to such holders, and which shall be included in the Plan Supplement. The New LLC Agreement shall be binding on all holders of New Membership Interests. Newco, 8 Avenue, Tower and Esplanade shall be required to execute and deliver to the Reorganized Debtor a signature page to the New LLC Agreement as a condition precedent to receiving any distribution of New Membership Interests pursuant to the Plan. The Reorganized Debtor shall take all actions necessary to file, register and/or otherwise effectuate the New LLC Agreement. The New LLC Agreement shall contain provisions necessary to prohibit the issuance of nonvoting equity securities as required by section 1123(a)(6) of the Bankruptcy Code.

Cancellation and Surrender of Existing Securities and Agreements.

(a) Except as may otherwise be provided in the Plan, on the date distributions are made, the promissory notes, share certificates, membership interests, bonds and other Instruments evidencing any Claim or Interest shall be deemed cancelled without further act or action under any applicable agreement, law, regulation, order or rule and the obligations of the Debtor (and, as applicable, any non-Debtor subsidiaries and affiliates of the Debtor) under the agreements, indentures and certificates of designations governing such Claims and Interests, as the case may be, shall be discharged and released.

(b) Except as otherwise provided in the Plan or agreed by the Reorganized Debtor, each holder of a promissory note, share certificate, membership interest, bond or other Instrument evidencing a Claim or Interest shall surrender such promissory note, share certificate, membership interest, bond or Instrument to the Reorganized Debtor (or the Disbursing Agent). No distribution of property under the Plan shall be made to or on behalf of any such holders unless and until such promissory note, share certificate, membership interest, bond or Instrument is received by the Reorganized Debtor (or the Disbursing Agent), or the unavailability of such promissory note, share certificate, membership interest, bond or Instrument is established to the reasonable satisfaction of the Reorganized Debtor (or the Disbursing Agent), or such requirement is waived by the Reorganized Debtor. The Reorganized Debtor may require any holder that is unable to surrender or cause to be surrendered any such promissory notes, share certificates, membership interests, bonds or Instruments to deliver an affidavit of loss and indemnity reasonably satisfactory to the Reorganized Debtor. Any holder that fails within the later of six months after the Effective Date and the date of allowance of its Claim or Interest (i) to surrender or cause to be surrendered such promissory note, share certificate, membership interest, bond or Instrument and (ii) if requested, to execute and deliver an affidavit of loss and indemnity reasonably satisfactory to the Reorganized Debtor (or the Disbursing Agent), shall be

deemed to have forfeited all rights, Claims and Causes of Action against the Debtor and the Reorganized Debtor and shall not participate in any distribution under the Plan.

Revesting of Assets and Operation of Business. Except as otherwise set forth in the Plan or in the Confirmation Order, as of the Effective Date, all property of the Estate shall revest in the Reorganized Debtor free and clear of all Claims, Liens, encumbrances and other Interests of the Holders of Claims or Interests.

Retention of Causes of Action. Except as otherwise provided in the Plan, the Confirmation Order, or in any settlement agreement approved during the Chapter 11 Case: (1) any and all rights, Claims, Causes of Action, defenses, and counterclaims of or accruing to the Debtor or its Estate shall remain assets of and vest in the Reorganized Debtor, whether or not litigation relating thereto is pending on the Effective Date, and whether or not any such rights, claims, Causes of Action, defenses, and counterclaims have been listed or referred to in the Plan, the Schedules, or any other document filed with the Bankruptcy Court, and (2) neither the Debtor nor the Reorganized Debtor waives, relinquishes, or abandons (nor shall they be estopped or otherwise precluded from asserting) any right, Claim, Cause of Action, defense, or counterclaim that constitutes property of the Estate: (a) whether or not such right, Claim, Cause of Action, defense, or counterclaim has been listed or referred to in the Plan or the Schedules, or any other document filed with the Bankruptcy Court, (b) whether or not such right, Claim, Cause of Action, defense, or counterclaim is currently known to the Debtor, and (c) whether or not a defendant in any litigation relating to such right, Claim, Cause of Action, defense, or counterclaim filed a Proof of Claim in the Chapter 11 Case, filed a notice of appearance or any other pleading or notice in the Chapter 11 Case, voted for or against the Plan, or received or retained any consideration under the Plan. Without in any manner limiting the generality of the foregoing, notwithstanding any otherwise applicable principle of law or equity, including, without limitation, any principles of judicial estoppel, res judicata, collateral estoppel, issue preclusion, or any similar doctrine, the failure to list, disclose, describe, identify, or refer to a right, Claim, Cause of Action, defense, or counterclaim, or potential right, Claim, Cause of Action, defense, or counterclaim, in the Plan, the Schedules, or any other document filed with the Bankruptcy Court shall in no manner waive, eliminate, modify, release, or alter the Reorganized Debtor's right to commence, prosecute, defend against, settle, and realize upon any rights, Claims, Causes of Action, defenses, or counterclaims that the Debtor or the Reorganized Debtor has, or may have, as of the Confirmation Date. The Reorganized Debtor may commence, prosecute, defend against, settle, and realize upon any rights, Claims, Causes of Action, defenses, and counterclaims in its sole discretion, in accordance with what is in the best interests, and for the benefit, of the Reorganized Debtor.

Satisfaction of Claims or Interests. Unless otherwise provided in the Plan, any distributions and deliveries to be made on account of Allowed Claims shall be in full and final satisfaction, release, settlement and discharge of such Allowed Claims.

Continuation of Bankruptcy Injunction or Stays. All injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

Administration Pending Effective Date. Prior to the Effective Date, the Debtor shall continue to operate its business as a debtor-in-possession, subject to all applicable requirements of the Bankruptcy Code and the Bankruptcy Rules. After the Effective Date, the Reorganized Debtor may operate its business, and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, but subject to the continuing jurisdiction of the Bankruptcy Court as set forth in Article XII of the Plan.

Exemption From Securities Laws. The issuance of the New Membership Interests, Amended and Restated Note and any other security that may be deemed to be issued pursuant to the Plan shall be exempt from any federal, state or local laws requiring registration for the offer and sale of such securities or registration or licensing of an issuer of, underwriters of, or broker or dealer in, such securities, to the fullest extent permitted by section 1145 of the Bankruptcy Code.

Corporate Action. Each of the matters provided for by the Plan involving the corporate structure of the Debtor or corporate, financing or related actions to be taken by or required of the Reorganized Debtor shall, as of the Effective Date, be deemed to have occurred and be effective as provided in the Plan (except to the extent otherwise indicated), and shall be authorized, approved, and, to the extent taken prior to the Effective Date, ratified in all respects without any requirement of further corporate or shareholder action. Without limiting the foregoing, such actions will include: (i) the adoption and (as applicable) filing of the New LLC Agreement, (ii) the issuance of the New Membership Interests, and all related documents and Instruments, (iii) the issuance of the Amended and Restated Note and the Amended and Restated Mortgage, and all related documents and Instruments, and (iv) the appointment of the Manager and officers, if any, for the Reorganized Debtor.

E. Corporate Governance and Management of the Reorganized Debtor

Corporate Existence. Except as otherwise provided in the Plan, the Debtor shall continue to exist after the Effective Date as a separate corporate entity, limited liability company, partnership, or other form, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form, as the case may be, pursuant to the applicable law in the jurisdiction in which the Debtor is incorporated or formed and pursuant to its certificate of incorporation and bylaws (or other formation documents) in effect prior to the Effective Date, except to the extent such certificate of incorporation and bylaws (or other formation documents) are amended under the Plan, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than any requisite filings required under applicable state, provincial, or federal law). Without limiting the generality of the foregoing, as of the Effective Date, the Reorganized Debtor shall be governed by the New LLC Agreement.

Management of Reorganized Debtor. On the Effective Date, 8 Avenue shall be the initial managing member of the Reorganized Debtor (the "Manager"). The Manager shall have the power, authority and obligation to manage the business of the Reorganized Debtor, to make all decisions regarding the Reorganized Debtor and the Property, and to perform all other acts customary or incident to the management of the Reorganized Debtor, and Newco shall have no management role with respect to the Reorganized Debtor or the Property; provided, however,

that the Manager may not take any of the actions set forth in section 1.c.iv. of the Fuerta Settlement Agreement without the prior written approval of Newco, not to be unreasonably withheld, delayed or conditioned. 8 Avenue, as managing member of the Reorganized Debtor, shall owe fiduciary duties only to the holders of New Membership Interests, and shall have no duties or liability to Fuerta or the End Unit Purchasers individually.

Removal of Receiver. As of the Confirmation Date, (i) the Receiver Order shall be of no further force and effect, (ii) the Receiver shall immediately comply with all of the requirements of sections 543(a) and (b) of the Bankruptcy Code, (iii) the Receiver shall immediately turn over all property of the Debtor in his possession including, without limitation, the Property, to the Debtor, and (iv) the services of the Receiver's Property Manager shall be terminated effective immediately.

Board Of Managers of Reorganized Debtor. In accordance with section 1129(a)(5) of the Bankruptcy Code, the Debtor will disclose on or before the Confirmation Date the identity and affiliations of any Person proposed to serve on the initial board of managers of the Reorganized Debtor, if any.

Officers of Reorganized Debtor. In accordance with section 1129(a)(5) of the Bankruptcy Code, the Debtor will disclose on or before the Confirmation Date the identity and affiliations of any Person proposed to serve as an officer of the Reorganized Debtor, if any.

Indemnification of Post-Effective Date Managers and Officers. The New LLC Agreement shall authorize the Reorganized Debtor to indemnify and exculpate its respective officers, directors, partners, managing members, managers, and agents, as applicable, to the fullest extent permitted under applicable law.

F. Voting

Voting Generally. Each holder of an Allowed Claim in an Impaired Class which is entitled to vote under the Plan shall be entitled to vote separately to accept or reject the Plan and indicate such vote on a duly executed and delivered ballot as provided in such order as is entered by the Bankruptcy Court establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan, or any other controlling order or orders of the Bankruptcy Court; provided, however, that the End Unit Purchaser Representative shall be the End Unit Purchasers' sole representative and agent in connection with, among other things, receiving any and all solicitation materials in connection with the Plan and voting, executing and returning any ballot for the acceptance or rejection of the Plan in respect of the End Unit Purchasers' Claims.

Nonconsensual Confirmation. If any Impaired Class entitled to vote shall not accept the Plan by the requisite statutory majorities provided in section 1126 of the Bankruptcy Code, or if any Impaired Class is deemed to have rejected the Plan, the Debtor reserves the right (a) to undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code and (b) to amend the Plan to the extent necessary to obtain entry of the Confirmation Order.

G. Distributions Under the Plan

Distributions to Holders of Allowed Claims Only. Until a Disputed Claim becomes an Allowed Claim, distributions of Cash or property otherwise available to the Holder of such Claim shall not be made. Prior to the Effective Date, Holders of Claims shall be required to provide the Disbursing Agent an Internal Revenue Service Form W-9 (or, if applicable, an appropriate Internal Revenue Service Form W-8).

Distribution Record Date. The Debtor shall have no obligation to recognize, but may, in its sole and absolute discretion, recognize any transfer of any Claims occurring on or after the Distribution Record Date. The Debtor or the Reorganized Debtor, as applicable, will be entitled to recognize only those record holders of Claims as of the close of business on the Distribution Record Date. Subject to the foregoing, the Distribution Record Date shall be the record date for purposes of making distributions under the Plan.

Disbursing Agent. The Reorganized Debtor, as Disbursing Agent, or such other Entity designated by the Reorganized Debtor as a Disbursing Agent, shall make all distributions under the Plan when required by the Plan. A Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court.

Rights and Powers of Disbursing Agent. The Disbursing Agent shall be empowered to (a) effect all actions and execute all agreements, Instruments and other documents necessary to perform its duties under the Plan, (b) make all distributions contemplated by the Plan, and (c) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions of the Plan.

Delivery of Distributions.

In General. Subject to Bankruptcy Rule 9010, all distributions to any Holder of an Allowed Claim shall be made at the address of such Holder as set forth in the Debtor's books and records and/or on the Schedules filed with the Bankruptcy Court unless the Debtor or their Disbursing Agent have been notified in writing of a change of address including, without limitation, by the filing of a Proof of Claim by such Holder that contains an address for such Holder different from the address reflected on such books and records or Schedules for such Holder.

Timing of Distributions. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, and if so completed shall be deemed to have been completed as of the required date.

Distributions of Unclaimed Property. In the event that any distribution to any Holder is returned as undeliverable, the Disbursing Agent shall use reasonable efforts to determine the current address of such Holder, but no distribution to such Holder shall be made unless and until the Disbursing Agent has determined the then current address of such Holder, at

which time such distribution shall be made to such Holder without interest or accruals of any kind. Such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code on the six month anniversary of the Effective Date. After that date, all unclaimed property or interest in property shall revert to the Reorganized Debtor and the Claim of any Holder to such property or interest in property shall be discharged and forever barred.

Time Bar to Cash Payments. Checks issued by the Reorganized Debtor on account of Allowed Claims shall be null and void if not negotiated within ninety (90) days from and after the date of issuance thereof. Holders of Allowed Claims shall make all requests for reissuance of checks to the Reorganized Debtor. Any Claim in respect of a voided check must be made on or before the six month anniversary of the date of issuance. After such date, all Claims and respective voided checks shall be discharged and forever barred and the Reorganized Debtor shall retain all monies related thereto.

Setoffs. The Debtor or the Reorganized Debtor may, but shall not be required to, set off or recoup against any Allowed Claim, and the payments or other distributions to be made pursuant to the Plan in respect of such Allowed Claim, any claims, rights or Causes of Action of any nature whatsoever that the Debtor or Reorganized Debtor may have against the Holder of such Claim; provided, however, that neither the failure to do so nor the allowance of any Claim under the Plan shall constitute a waiver or release by the Debtor or the Reorganized Debtor of any such claims, rights or Causes of Action.

H. Procedures for Disputed Claims

Resolution of Disputed Claims. Except as set forth in any order of the Bankruptcy Court, any Holder of a Claim against the Debtor shall file a Proof of Claim with the Bankruptcy Court or with the agent designated by the Debtor for this purpose on or before the Claims Bar Date. The Debtor prior to the Effective Date, and thereafter the Reorganized Debtor, shall have the exclusive authority to file objections to Proofs of Claim on or before the Claims Objection Bar Date, and to settle, compromise, withdraw or litigate to judgment objections to any and all Claims, regardless of whether classified or otherwise. From and after the Effective Date, the Reorganized Debtor may settle or compromise any Disputed Claim without approval of the Bankruptcy Court.

Estimation of Claims. The Debtor may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Debtor has previously objected to such Claim or whether the Bankruptcy Court has ruled on such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal related to any such objection. In the event the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtor may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the aforementioned objection, estimation and resolution procedures are cumulative and are not necessarily exclusive of one another. Claims may be estimated and thereafter resolved by any permitted mechanism.

No Partial Distributions Pending Allowance. Notwithstanding any other provision in the Plan, except as otherwise agreed by the Debtor or the Reorganized Debtor, no partial payments or distributions shall be made with respect to a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by a Final Order.

Distributions After Allowance. To the extent a Disputed Claim becomes an Allowed Claim, the Disbursing Agent shall distribute to the Holder thereof the distributions, if any, to which such Holder is then entitled under the Plan. Any such distributions shall be made in accordance with and at the time mandated by the Plan. No interest shall be paid on any Disputed Claim that later becomes an Allowed Claim.

I. Executory Contracts And Unexpired Leases

Assumption of Executory Contracts and Unexpired Leases. As of the Effective Date, all executory contracts and unexpired leases to which the Debtor is a party and which are listed on a schedule to be filed with the Plan Supplement (the "Rejected Contracts Schedule") shall be and shall be deemed to be rejected in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code. All executory contracts and unexpired leases not listed on the Rejected Contracts Schedule and not rejected prior to the Confirmation Date or otherwise the subject of a motion to reject filed on or before the Confirmation Date shall be assumed as of the Effective Date in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions and rejections pursuant to sections 365 and 1123 of the Bankruptcy Code. Each executory contract and unexpired lease assumed pursuant to the Plan shall revest in and be fully enforceable by the Reorganized Debtor in accordance with its terms, except as modified by the provisions of the Plan or any order of the Bankruptcy Court authorizing and providing for its assumption or applicable federal law.

Cure of Defaults of Assumed Executory Contracts and Unexpired Leases.

(a) Except as otherwise specifically provided in the Plan, any monetary defaults under each executory contract and unexpired lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount in Cash on the Effective Date or in the ordinary course of business, subject to the limitation described below, or on such other terms as the parties to such executory contracts or unexpired leases may otherwise agree. In the event of a dispute regarding: (1) the amount of any payments to cure such a default, (2) the ability of the Reorganized Debtor or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the executory contract or unexpired lease to be assumed, or (3) any other matter pertaining to assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption; provided, however, that based on the Bankruptcy Court's resolution of any such dispute, the Debtor or Reorganized Debtor shall have the right, within 30 days after the entry of such Final Order and subject to approval of the Bankruptcy Court pursuant to section 365 of the Bankruptcy Code, to reject the applicable executory contract or unexpired lease.

(b) Assumption of any executory contract or unexpired lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed executory contract or unexpired lease at any time prior to the effective date of assumption. Any Proofs of Claim filed with respect to an executory contract or unexpired lease that has been assumed shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.

Pass-Through. Any rights or arrangements necessary or useful to the operation of the Debtor's business but not otherwise addressed as a Claim or Interest, including non-exclusive or exclusive patent, trademark, copyright, maskwork or other intellectual property licenses and other executory contracts not assumable under section 365(c) of the Bankruptcy Code, shall, in the absence of any other treatment, be passed through the bankruptcy proceedings for the Debtor and the Debtor's counterparty's benefit, unaltered and unaffected by the bankruptcy filings or the Chapter 11 Case.

Survival of Indemnification and Corporation Contribution. The obligations of the Debtor, if any, to indemnify and/or provide contribution to its current and former directors, officers, employees, managing agents, members and attorneys, and such parties' respective affiliates, pursuant to the Corporate Documents and/or any employment contracts, applicable statutes or other contractual obligations, in respect of all past, present and future actions, suits and proceedings against any of such parties, based on any act or omission related to the service with, for or on behalf of the Debtor, will be deemed and treated as executory contracts that are assumed by the Debtor or Reorganized Debtor pursuant to the Plan and sections 365 and 1123 of the Bankruptcy Code as of the Effective Date. Accordingly, such indemnification and contribution obligations will not be discharged, but will instead survive and be unaffected by entry of the Confirmation Order.

Insurance Policies. Each of the Debtor's insurance policies and any agreements, documents, or Instruments relating thereto, are treated as executory contracts under the Plan. On the Effective Date, the Debtor shall be deemed to have assumed all insurance policies and any agreements, documents, and Instruments relating to coverage of all insured Claims.

Modifications, Amendments, Supplements, Restatements, or Other Agreements.

(a) Unless otherwise provided in the Plan, each executory contract or unexpired lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such executory contract or unexpired lease, and all executory contracts and unexpired leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

(b) Modifications, amendments, supplements, and restatements to prepetition executory contracts and unexpired leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the executory contract or

unexpired lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

Bar Date for Filing Claims for Rejection Damages. If the rejection of an executory contract or unexpired lease pursuant to the Plan gives rise to a Claim, a Proof of Claim must be served upon the Debtor and the Debtor's counsel within 30 days after the later of: (a) notice of entry of the Confirmation Order; or (b) such other notice that the executory contract or unexpired lease has been rejected. Any such Claim not served within such time period will be forever barred. Each such Claim will constitute a General Unsecured Claim, to the extent such Claim is Allowed by the Bankruptcy Court.

Reservation of Rights. Nothing contained in the Plan shall constitute an admission by the Debtor that any executory contract or unexpired lease is in fact an executory contract or unexpired lease or that the Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor or the Reorganized Debtor, as applicable, shall have 30 days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

Nonoccurrence of Effective Date. In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting unexpired leases pursuant to section 365(d)(4) of the Bankruptcy Code.

Contracts and Leases Entered Into After the Petition Date. Contracts and leases entered into after the Petition Date by the Debtor, including any executory contracts and unexpired leases assumed by the Debtor, will be performed by the Debtor or Reorganized Debtor liable thereunder in the ordinary course of its business. Accordingly, such contracts and leases (including any assumed executory contracts and unexpired leases) will survive and remain unaffected by entry of the Confirmation Order.

J. Releases, Injunctions and Discharge

Releases by the Debtor. Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, for good and valuable consideration, on and after the Effective Date, the Released Parties are deemed released and discharged by the Debtor, the Reorganized Debtor, and the Estate from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether for tort, fraud, contract, violations of federal or state securities laws, or otherwise, including any derivative Claims asserted or that could possibly have been asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that the Debtor or the Estate would have been legally entitled to assert in its own right or on behalf of the Holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Chapter 11 Case, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtor, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Case, the negotiation, formulation, or preparation of

the Plan, the related Disclosure Statement, the related Plan Supplement, or related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date of the Plan. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any party under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including, without limitation, the terms and conditions of the Fuerta Settlement Agreement.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the Claims released by Section 10.1 of the Plan; (3) in the best interests of the Debtor and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to the Debtor asserting any claim or Cause of Action released pursuant to the Debtor Release.

Releases by Holders of Claims and Interests. To the greatest extent permissible by law and except as otherwise provided in Section 10.2 of the Plan, as of the Effective Date, each Holder of a Claim or Interest against the Debtor shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged the Third Party Releasees from any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether for tort, fraud, contract, violations of federal or state securities laws, or otherwise, including any derivative Claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, that such entity would have been legally entitled to assert, based on or in any way relating to, or in any manner arising from, in whole or in part, the Debtor, the Debtor's restructuring, the Chapter 11 Case, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Case, the negotiation, formulation, or preparation of the Plan, the related Disclosure Statement, the related Plan Supplement, or related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date of the Plan. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any party under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including, without limitation, the terms and conditions of the Fuerta Settlement Agreement.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third Party Release, which includes by reference

each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that the Third Party Release is: (1) in exchange for the good and valuable consideration provided by the Third Party Releasees; (2) a good faith settlement and compromise of the Claims and Interests released by Section 10.2 of the Plan; (3) in the best interests of the Debtor and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any Entity granting a Third Party Release from asserting any claim or Cause of Action released pursuant to the Third Party Release.

Notwithstanding anything to the contrary in Section 10.2 of the Plan, nothing therein shall release a Third Party Releasee from any Claims or Causes of Action relating to a violation by such party of federal, state or local securities laws.

Mutual Releases by Released Parties. As of the Effective Date, each of the Released Parties hereby conclusively, absolutely, unconditionally, irrevocably, and forever releases, waives and discharges all known and unknown Causes of Action of any nature that such Released Party has asserted, may have asserted, could have asserted, or could in the future assert, directly or indirectly, against any of the other Released Parties based on any act or omission relating to the Debtor or its business operations (including, without limitation, the organization or capitalization of the Debtor or extensions of credit and other financial services and accommodations made or not made to the Debtor), the Chapter 11 Case, the Property, and the Bulk Purchase Agreement on or prior to the Effective Date; provided, however, that the foregoing releases shall not apply to Causes of Action that arise post-Effective Date from obligations or rights created under or in connection with the Plan or any agreement provided for or contemplated in the Plan, including, without limitation, the terms and conditions of the Fuerta Settlement Agreement.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Mutual Release, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that the Mutual Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the Claims released by Section 10.3 of the Plan; (3) in the best interests of the Debtor and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any Entity granting a Mutual Release from asserting any claim or Cause of Action released pursuant to the Mutual Release.

Exculpation. To the greatest extent permissible by law, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any Exculpated Claim or any obligation, Cause of Action, or liability for any Exculpated Claim; provided, however, that in all respects such Exculpated Parties shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to, or in connection with, the Plan. The Debtor and the Reorganized Debtor (and each of their respective affiliates, officers, directors, employees, managers, principals, agents, attorneys, financial advisors, accountants, investment bankers, consultants, representatives, and other professionals) have participated in compliance with the

applicable provisions of the Bankruptcy Code with regard to the solicitation of the Plan and distributions made pursuant to the Plan, and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

Injunction. Except as otherwise expressly provided in the Plan or for obligations issued pursuant to the Plan, all Entities who have held, hold, or may hold Claims or Interests that have been released pursuant to Section 10.1 or Section 10.2 of the Plan, discharged pursuant to Section 10.6 of the Plan, or are subject to exculpation pursuant to Section 10.4 of the Plan are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtor, the Reorganized Debtor, the Released Parties, or the Exculpated Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (3) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (4) asserting any right of subrogation or recoupment of any kind against any obligation due from such Entities or against the property or Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; and (5) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan.

Violation of Injunctions. Any Person injured by any willful violation of such injunction may recover actual damages, including costs and attorneys' fees and, in appropriate circumstances, may recover punitive damages from the willful violator.

Consent to Injunctions. By accepting distributions or other benefits pursuant to the Plan, each Holder of an Allowed Claim or Interest receiving distributions pursuant to the Plan shall be deemed to have specifically consented to the injunctions set forth in the Plan.

Discharge of Claims and Interests. Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, Instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims, Interests and Causes of Action of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtor or any of its assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the

Bankruptcy Code. Any default by the Debtor with respect to any Claim or Interest that existed immediately prior to or on account of the filing of the Chapter 11 Case shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.

K. Conditions Precedent to Confirmation and Consummation of the Plan

Conditions Precedent to Confirmation. It shall be a condition precedent to Confirmation of the Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Section 11.3 of the Plan:

(a) the Bankruptcy Court shall have entered an order approving the adequacy of the Disclosure Statement;

(b) the Bankruptcy Court shall have entered the Confirmation Order;

(c) the final version of the Plan Supplement and all of the schedules, documents, and exhibits contained therein shall have been filed with the Bankruptcy Court; and

(d) the Fuerta Settlement Agreement shall have been approved by the Bankruptcy Court.

Conditions Precedent to the Effective Date. It shall be a condition precedent to the Effective Date of the Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Section 11.3 of the Plan:

(a) all conditions to Confirmation in Section 11.1 of the Plan shall have been either satisfied or waived pursuant to Section 11.3 of the Plan;

(b) the Confirmation Order shall have become a Final Order;

(c) all actions, documents, certificates, and agreements necessary to implement the Plan, including documents contained in the Plan Supplement, shall have been effected or executed and delivered, as the case may be, to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws; and

(d) the Holdback Escrow Account shall have been fully funded as required pursuant to the Plan.

Waiver of Conditions. The conditions to Confirmation and the Effective Date set forth in Article XI of the Plan may be waived by the Debtor without notice, leave, or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate the Plan.

Effect of Failure of Conditions. If Consummation does not occur, the Plan shall be null and void in all respects, and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by the Debtor, any Holders of Claims or Interests, or any other Entity; (2) prejudice in any manner the rights of the Debtor, any Holders of Claims or Interests, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtor, any Holders of Claims or Interests, or any other Entity in any respect.

Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

L. Retention Of Jurisdiction

Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding the Plan's Confirmation and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction (except with respect to the purposes described under clauses (a) and (n) below, with respect to which jurisdiction shall not be exclusive) over all matters arising out of or related to the Chapter 11 Case and the Plan, to the fullest extent permitted by law, including jurisdiction to:

(a) determine any and all objections to the allowance of Claims or Interests;

(b) determine any and all motions to estimate Claims at any time, regardless of whether the Claim to be estimated is the subject of a pending objection, a pending appeal, or otherwise;

(c) determine any and all motions to subordinate Claims or Interests at any time and on any basis permitted by applicable law;

(d) hear and determine all Administrative Expense Claims;

(e) hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor may be liable, including, if necessary, the nature or amount of any required cure or the liquidation of any Claims arising therefrom;

(f) hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters arising out of, under, or related to, the Chapter 11 Case;

(g) enter such orders as may be necessary or appropriate in aid of the Consummation of the Plan and to execute, implement, or consummate the provisions thereof and all contracts, Instruments, releases, and other agreements or documents created in connection with the Plan or the Confirmation Order;

(h) hear and determine disputes arising in connection with the interpretation, implementation, Consummation, or enforcement of the Plan and all contracts, Instruments, and other agreements executed in connection with the Plan;

(i) hear and determine any request to modify the Plan or to cure any defect or omission or reconcile any inconsistency therein or any order of the Bankruptcy Court;

(j) issue and enforce injunctions or other orders, or take any other action that may be necessary or appropriate to restrain any interference with or compel action for the implementation, Consummation, or enforcement of the Plan or the Confirmation Order;

(k) enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified, or vacated;

(l) hear and determine any matters arising in connection with or relating to the Plan, the Confirmation Order or any contract, Instrument, release, or other agreement or document created in connection with the Plan or the Confirmation Order;

(m) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Case;

(n) recover all assets of the Debtor and property of the Estate, wherever located;

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

(p) enforce the terms of the Fuerta Settlement Agreement and hear and determine any matters arising in connection therewith;

(q) hear and determine all disputes involving the existence, nature, or scope of the discharge of the Debtor;

(r) hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;

(s) hear and determine all other motions, applications and contested or litigated matters which were pending but not resolved as of the Effective Date including, without limitation, any motions, applications and contested or litigated matters to sell or otherwise dispose of assets and/or grant related relief; and

(t) enter a final decree closing the Chapter 11 Case.

M. Miscellaneous Provisions

Immediate Binding Effect. Subject to Section 11.2 of the Plan and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtor, the Reorganized Debtor, and any and all

Holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all parties to executory contracts and unexpired leases with the Debtor.

Effectuating Documents; Further Transactions. The Debtor or the Reorganized Debtor (as the case may be) is authorized to execute, deliver, file, or record such contracts, Instruments, releases, indentures, and other agreements or documents, and take such actions, as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The secretary or any assistant secretary (or other authorized Person) of the Debtor or the Reorganized Debtor is authorized to certify or attest to any of the foregoing actions.

Payment of Statutory Fees. All fees payable pursuant to section 1930(a) of the Judicial Code shall be paid by the Reorganized Debtor (or the Disbursing Agent on behalf of the Reorganized Debtor) for each quarter (including any fraction thereof) until the Chapter 11 Case is converted, dismissed, or closed, whichever occurs first.

Dissolution of Any Statutory Committee. On the Effective Date, any statutory committee appointed in the Chapter 11 Case shall dissolve, and members thereof shall be released and discharged from all rights and duties from or related to the Chapter 11 Case. The Reorganized Debtor shall no longer be responsible for paying any fees or expenses incurred by any statutory committees after the Effective Date.

Entire Agreement. On the Effective Date, except as otherwise indicated, the Plan and the Plan Supplement shall supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

Exhibits. All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are filed, copies of such exhibits and documents shall be available upon written request to the Debtor's counsel at the address below or by downloading such exhibits and documents from the Bankruptcy Court's website at www.nysb.uscourts.gov. To the extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control.

Exemption From Certain Transfer Taxes. Pursuant to section 1146(c) of the Bankruptcy Code, any transfers from the Debtor to the Reorganized Debtor or any other Person or Entity pursuant to or in connection with the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing Instruments or other documents without the payment of any such tax or governmental assessment.

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

(a) The Plan may be amended or modified before the Effective Date by the Debtor to the extent provided by section 1127 of the Bankruptcy Code.

(b) The Debtor reserves the right to modify or amend the Plan upon a determination by the Bankruptcy Court that the Plan, in its current form, is not confirmable pursuant to section 1129 of the Bankruptcy Code. To the extent such a modification or amendment is permissible under section 1127 of the Bankruptcy Code, without the need to resolicit acceptances, the Debtor reserves the right to sever any provisions of the Plan that the Bankruptcy Court finds objectionable.

(c) The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtor revokes or withdraws the Plan, or if Confirmation does not occur, then the Plan shall be null and void, and nothing contained in the Plan shall: (1) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor; or (2) prejudice in any manner the rights of the Debtor in any further proceedings.

Withholding and Reporting Requirements. In connection with the Plan and all distributions thereunder, the Disbursing Agent shall, to the extent applicable, comply with all tax withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions thereunder shall be subject to any such withholding and reporting requirements. The Disbursing Agent shall be authorized to take all actions necessary or appropriate to comply with such withholding and reporting requirements.

Closing of Chapter 11 Case. The Reorganized Debtor shall, promptly after the full administration of the Chapter 11 Case, file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

Conflicts. To the extent that any provision of the Disclosure Statement, the Plan Supplement, or any other order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control.

Notices to Debtor. Any notice, request, or demand required or permitted to be made or provided to or upon the Debtor or the Reorganized Debtor under the Plan shall be (i) in writing, (ii) served by (a) certified mail, return receipt requested, (b) hand delivery, (c) overnight delivery service, (d) first class mail, or (e) facsimile transmission, and (iii) deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

785 PARTNERS LLC
c/o Kevin O'Sullivan
355 Lexington Avenue
17th Floor
New York, New York 10017
Telephone: (212) 687-1400
Facsimile: (212) 687-1415

with a copy to:

PROSKAUER ROSE LLP
Eleven Times Square
New York, New York 10036-8299
Attn: Sheldon I. Hirshon
Craig A. Damast
Lawrence S. Elbaum
Telephone: (212) 969-3000
Facsimile: (212) 969-2900

Binding Effect. The Plan shall be binding upon and inure to the benefit of the Debtor, all present and former Holders of Claims against and Interests in the Debtor, their respective successors and assigns, including the Reorganized Debtor, and all other parties-in-interest in the Chapter 11 Case.

No Admissions. Notwithstanding anything herein or in the Plan to the contrary, nothing contained herein or in the Plan shall be deemed as an admission by the Debtor with respect to any matter set forth therein including, without limitation, liability on any Claim.

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

Headings. Headings are used in the Plan for convenience and reference only, and shall not constitute a part of the Plan for any other purpose.

VI. ACCEPTANCE AND CONFIRMATION OF THE PLAN

The following is a summary of the provisions of the Bankruptcy Code respecting acceptance and confirmation of a plan of reorganization. Holders of Claims and Interests are encouraged to review the relevant provisions of the Bankruptcy Code and/or to consult their own attorneys.

A. Acceptance Of The Plan

The Bankruptcy Code defines acceptance of a plan by a class of claims as acceptance by Holders of at least two-thirds in dollar amount, and more than one-half in number, of the allowed claims of that class that have actually voted or are deemed to have voted to accept or reject a plan. The Bankruptcy Code defines acceptance of a plan by a class of interests as acceptance by at least two-thirds in amount of the allowed interests of that class that have actually voted or are deemed to have voted to accept or reject a plan.

If one or more Impaired Classes rejects the Plan, the Debtor may, in its discretion, nevertheless seek confirmation of the Plan if the Debtor believes that it will be able to meet the requirements of section 1129(b) of the Bankruptcy Code for Confirmation of the Plan (which are set forth below) despite lack of acceptance by all Impaired Classes.

B. Confirmation

1. Confirmation Hearing

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of a plan. Notice of the Confirmation Hearing respecting the Plan has been provided to all known Holders of Claims and Interests or their representatives, along with this Disclosure Statement. The Confirmation Hearing may be adjourned from time to time by the Debtor or the Bankruptcy Court, without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing.

Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may object to confirmation of a plan. Any objection to confirmation of the Plan must: (i) be made in writing; (ii) conform to the Bankruptcy Rules, the Local Bankruptcy Rules, and any orders of the Bankruptcy Court; (iii) state with particularity the legal and factual basis for the objection; and (iv) be filed with the Bankruptcy Court (contemporaneously with a proof of service), and served upon the following parties so as to be actually received by each of following parties on or before the Plan Objection Deadline:

Proskauer Rose LLP Eleven Times Square New York, NY 10036 Attention: Sheldon I. Hirshon Email address: shirshon@proskauer.com *Counsel to the Debtor*
The Office of the United States Trustee for the Southern District of New York 33 Whitehall Street, 21st Floor New York, New York 10004

2. Statutory Requirements for Confirmation of the Plan

At the Confirmation Hearing, the Debtor will request that the Bankruptcy Court determine that the Plan satisfies the requirements of section 1129 of the Bankruptcy Code. If so, the Court shall enter an order confirming the Plan. The applicable requirements of section 1129 of the Bankruptcy Code are as follows:

(a) The Plan must comply with the applicable provisions of the Bankruptcy Code;

(b) The Debtor must have complied with the applicable provisions of the Bankruptcy Code;

(c) The Plan has been proposed in good faith and not by any means forbidden by law;

(d) Any payment made or promised to be made by the Debtor under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, has been disclosed to the Bankruptcy Court, and any such payment made before Confirmation of the Plan is reasonable, or if such payment is to be fixed after Confirmation of the Plan, such payment is subject to the approval of the Bankruptcy Court as reasonable;

(e) The Debtor has disclosed the identity and affiliations of any individual proposed to serve, after Confirmation of the Plan, as a director, officer, manager, or voting trustee of the Debtor under the Plan. Moreover, the appointment to, or continuance in, such office of such individual, is consistent with the interests of Holders of Claims and Interests and with public policy, and the Debtor has disclosed the identity of any insider that the Reorganized Debtor will employ or retain, and the nature of any compensation for such insider;

(f) Best Interests Test. The "best interests" test requires that with respect to each Class of Impaired Claims or Interests, either each Holder of a Claim or Interest of such Class has accepted the Plan, or will receive or retain under the Plan on account of such Claim or Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would receive or retain if the Debtor were liquidated on such date under chapter 7 of the Bankruptcy Code. In a chapter 7 liquidation, creditors and interest holders of a debtor are paid from available assets generally in the following order, with no lower class receiving any payments until all amounts due to senior classes have either been paid in full or payment in full is provided for: (i) first to secured creditors (to the extent of the value of their collateral), (ii) next to priority creditors, (iii) next to unsecured creditors, (iv) next to debt expressly subordinated by its terms or by order of the Court, and (v) last to holders of interests. The starting point in determining whether the Plan meets the "best interests" test is a determination of the amount of proceeds that would be generated from the liquidation of the Debtor's remaining assets in the context of a chapter 7 liquidation. Such value must then be reduced by the costs of such liquidation, including costs incurred during the Chapter 11 Case and allowed under chapter 7 of the Bankruptcy Code (such as fees and expenses of Professional Persons), a chapter 7 trustee's fees, and the fees and expenses of professionals retained by a chapter 7 trustee. The potential chapter 7 liquidation distribution in respect of each class must be further reduced by the costs imposed as a result of the delay that would be caused by conversion of the Chapter 11 Case to a case under chapter 7. For the reasons set forth above, the Debtor submits that Holders of Claims and Interests will receive under the Plan a recovery at least equal in value to the recovery such Holders would receive pursuant to a liquidation of the Debtor under chapter 7 of the Bankruptcy Code. The Debtor believes that under the Plan, Holders of Impaired Claims and Interests will receive property with a value equal to or in excess of the value such Holders would receive in a liquidation of the Debtor under chapter 7 of the Bankruptcy Code, and therefore that the Plan satisfies the "best interests" test.

In this regard, the Debtor has prepared a liquidation analysis (the "Liquidation Analysis"), a copy of which is attached hereto as **Exhibit C**, which is premised upon a liquidation of the Debtor in a hypothetical chapter 7 case. In the Liquidation Analysis, the Debtor has taken into account the ultimate realizable value of the Property and the existence of liens against the Property. As demonstrated by the Liquidation Analysis, the Debtor believes that if the Chapter 11 Case were converted to a chapter 7 liquidation and the Property were to be subjected to a "forced sale" by a trustee in a chapter 7 case, Holders of Claims and Interests would receive less than they will receive under the Plan.

(g) Each class of Claims or Interests has either accepted the Plan or is not Impaired under the Plan;

(h) Except to the extent that the Holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that (i) Holders of Allowed Administrative Expense Claims shall be paid in full in Cash; (ii) Holders of Allowed Priority Tax Claims shall receive on account of such Claims either payment in full in Cash or, in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, regular installment payments in Cash: (w) of a total value, as of the Effective Date, equal to the Allowed amount of such Claim, (x) which total value shall include simple interest to accrue on any outstanding balance of such Allowed Priority Tax

Claim starting on the Effective Date at the rate of interest determined under applicable nonbankruptcy law pursuant to section 511 of the Bankruptcy Code, (y) over a period ending not later than five (5) years after the Petition Date, and (z) in a manner not less favorable than the most favored nonpriority Unsecured Claim provided for by the Plan (other than payments in Cash made to a Class of creditors under section 1122(b) of the Bankruptcy Code); and (iii) Holders of Allowed Non-Tax Priority Claims shall be paid in full in Cash;

(i) At least one Impaired Class of Claims has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim of such Class;

(j) Feasibility. Section 1129(a)(11) of the Bankruptcy Code provides that a Chapter 11 plan may be confirmed only if the bankruptcy court finds that such plan is feasible. A feasible plan is one which will not lead to a need for further reorganization or liquidation of the debtor. The Bankruptcy Court will find that the Plan is feasible if it determines that the Debtor will be able to satisfy the conditions precedent to the Effective Date and otherwise have sufficient funds to meet its post-Confirmation Date obligations to pay for the costs of administering and fully consummating the Plan and closing the Chapter 11 Case.

For purposes of determining whether the Plan meets the feasibility requirement, the Debtor, in consultation with its advisors, has analyzed the Debtor's ability to meet its obligations under the Plan. As part of that analysis, the Debtor has prepared projected financial results for a five year period ("Projections"), which set forth the current projected cash flow and expenses from the Property during that period. The Projections, and the assumptions on which they are based, are annexed hereto as **Exhibit D**. Based on the Projections, the Debtor believes that the Plan is feasible and that the Reorganized Debtor will be able to satisfy its obligations under the Plan, as well as its obligations associated with post-Effective Date business operations. Specifically, the Projections demonstrate, subject to the estimates and assumptions set forth therein, that the cash flow from the Property throughout the projection period should be sufficient to satisfy ongoing operating expenses for the Property and to pay debt service under the Amended and Restated Note.

THE PROJECTIONS WERE NOT PREPARED TO COMPLY WITH THE GUIDELINES FOR PROSPECTIVE FINANCIAL STATEMENTS PUBLISHED BY THE AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS. THE DEBTOR'S INDEPENDENT ACCOUNTANTS HAVE NEITHER EXAMINED NOR COMPILED THE PROJECTIONS AND, ACCORDINGLY, DO NOT EXPRESS AN OPINION OR ANY OTHER FORM OF ASSURANCE WITH RESPECT TO THE PROJECTIONS, ASSUME NO RESPONSIBILITY FOR THE PROJECTIONS, AND DISCLAIM ANY ASSOCIATION WITH THE PROJECTIONS. EXCEPT FOR PURPOSES OF THIS DISCLOSURE STATEMENT, THE DEBTOR DOES NOT PUBLISH PROJECTIONS OF ITS ANTICIPATED FINANCIAL POSITION OR RESULTS OF OPERATIONS. THE DEBTOR DOES NOT INTEND TO UPDATE OR OTHERWISE REVISE THE PROJECTIONS TO REFLECT EVENTS OR CIRCUMSTANCES EXISTING OR ARISING AFTER THE DATE OF THIS DISCLOSURE STATEMENT OR TO REFLECT THE OCCURRENCE OF UNANTICIPATED EVENTS.

THE DEBTOR BELIEVES THAT THE PROJECTIONS ARE BASED ON ESTIMATES AND ASSUMPTIONS THAT ARE REASONABLE. THE ESTIMATES AND ASSUMPTIONS MAY NOT BE REALIZED, HOWEVER, AND ARE INHERENTLY SUBJECT TO SIGNIFICANT BUSINESS, ECONOMIC AND COMPETITIVE UNCERTAINTIES AND CONTINGENCIES, MANY OF WHICH ARE BEYOND THE DEBTOR'S CONTROL. NO REPRESENTATIONS CAN BE OR ARE MADE AS TO WHETHER THE ACTUAL RESULTS WILL BE WITHIN THE RANGE SET FORTH IN THE PROJECTIONS. SOME ASSUMPTIONS INEVITABLY WILL NOT MATERIALIZE, AND EVENTS AND CIRCUMSTANCES OCCURRING SUBSEQUENT TO THE DATE ON WHICH THE PROJECTIONS WERE PREPARED MAY BE DIFFERENT FROM THOSE ASSUMED, OR MAY BE UNANTICIPATED, AND THEREFORE MAY AFFECT FINANCIAL RESULTS IN A MATERIAL AND POSSIBLY ADVERSE MANNER. THE PROJECTIONS, THEREFORE, MAY NOT BE RELIED UPON AS A GUARANTEE OR OTHER ASSURANCE OF THE ACTUAL RESULTS THAT WILL OCCUR. *SEE* SECTION VII, "RISK FACTORS" HEREIN.

ALL HOLDERS OF CLAIMS AND INTERESTS THAT ARE ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN ARE URGED TO EXAMINE CAREFULLY ALL OF THE ASSUMPTIONS ON WHICH THE PROJECTIONS ARE BASED IN EVALUATING THE FEASIBILITY OF THE PLAN.

3. Confirmation Without Acceptance by All Impaired Classes

Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan, even if such plan has not been accepted by all impaired classes entitled to vote on such plan, provided that such plan has been accepted by at least one impaired class.

Section 1129(b) of the Bankruptcy Code provides that notwithstanding the failure of an impaired class to accept a plan of reorganization, the plan shall be confirmed, on request of the proponent of the plan, in a procedure commonly known as "cram-down," so long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to each class of claims or interests that is impaired under and has not accepted the plan.

The condition that a plan be "fair and equitable" with respect to a non-accepting class of secured claims includes the requirements that (a) the holders of such secured claims retain the liens securing such claims to the extent of the allowed amount of the claims, whether the property subject to the liens is retained by the debtor or transferred to another entity under the plan, and (b) each holder of a secured claim in the class receive deferred cash payments totaling at least the allowed amount of such claim with a present value, as of the effective date of the plan, at least equivalent to the value of the secured claimant's interest in the debtor's property subject to the liens.

The condition that a plan be "fair and equitable" with respect to a non-accepting class of unsecured claims includes the requirement that either (a) such class receive or retain under the plan property of a value as of the effective date of the plan equal to the allowed amount of such claim, or (b) if the class does not receive such amount, no class junior to the non-accepting class will receive a distribution under the plan.

The condition that a plan be "fair and equitable" with respect to a non-accepting class of interests includes the requirements that either (a) the plan provides that each holder of an equity interest in such class receive or retain under the plan, on account of such equity interest, property of a value, as of the effective date of the plan, equal to the greater of (i) the allowed amount of any fixed liquidation preference to which such holder is entitled, (ii) any fixed redemption price to which such holder is entitled, or (iii) the value of such equity interest, or (b) if the class does not receive such amount, no class of interests junior to the non-accepting class will receive a distribution under the plan.

As noted, the Holder of the Class 4 Claim is deemed to have rejected the Plan and the Debtor shall not solicit the vote of the Holder of the Claim in Class 4 -- although the Holder of the Class 4 Claim has consented to the treatment of its Claim. In addition, the Debtor expects the Holder of the Class 3 Claim to reject the Plan. As a result, the Debtor shall request Confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code.

THE DEBTOR BELIEVES THAT THE PLAN MAY BE CONFIRMED ON A NONCONSENSUAL BASIS. ACCORDINGLY, THE DEBTOR WILL DEMONSTRATE AT THE CONFIRMATION HEARING THAT THE PLAN SATISFIES THE REQUIREMENTS OF SECTION 1129(b) OF THE BANKRUPTCY CODE AS TO ANY NON-ACCEPTING CLASS.

VII. RISK FACTORS

THE IMPLEMENTATION OF THE PLAN AND THE ISSUANCE OF NEW MEMBERSHIP INTERESTS ARE SUBJECT TO A NUMBER OF MATERIAL RISKS, INCLUDING THOSE ENUMERATED BELOW.

IN EVALUATING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN, HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTOR ENTITLED TO VOTE ON THE PLAN SHOULD READ AND CAREFULLY CONSIDER THE RISK FACTORS SET FORTH BELOW, AS WELL AS THE OTHER INFORMATION SET FORTH IN THIS DISCLOSURE STATEMENT (AND THE DOCUMENTS DELIVERED TOGETHER HEREWITH AND/OR INCORPORATED BY REFERENCE HEREIN), PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN. THESE RISK FACTORS SHOULD NOT, HOWEVER, BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN CONNECTION WITH THE PLAN AND ITS IMPLEMENTATION, OR ALTERNATIVES TO THE PLAN.

THESE RISK FACTORS CONTAIN CERTAIN STATEMENTS THAT ARE "FORWARD-LOOKING STATEMENTS." THESE STATEMENTS ARE SUBJECT TO A NUMBER OF ASSUMPTIONS, RISKS AND UNCERTAINTIES, MANY OF WHICH ARE BEYOND THE CONTROL OF THE DEBTOR, INCLUDING THE IMPLEMENTATION OF THE PLAN, THE CONTINUING AVAILABILITY OF SUFFICIENT REVENUES, BORROWING CAPACITY OR OTHER FINANCING TO FUND OPERATIONS, THE EFFECT OF THE REORGANIZATION ON SUPPLIERS, VENDORS AND EMPLOYEES, FLUCTUATIONS IN RAW MATERIAL PRICES AND ENERGY COSTS, DOWNTURNS IN

THE HOUSING AND CONSTRUCTION INDUSTRY, THE DEGREE AND NATURE OF COMPETITION, INCREASES IN INSURANCE COSTS, CHANGES IN GOVERNMENT REGULATIONS, THE APPLICATION OR INTERPRETATION OF THOSE REGULATIONS OR IN THE SYSTEMS, PERSONNEL, TECHNOLOGIES OR OTHER RESOURCES THE DEBTOR DEVOTES TO COMPLIANCE WITH REGULATIONS, TERRORIST ACTIONS OR ACTS OF WAR, OPERATING EFFICIENCIES, LABOR RELATIONS, AND OTHER MARKET AND COMPETITIVE CONDITIONS. HOLDERS OF CLAIMS AND INTERESTS ARE CAUTIONED THAT THE FORWARD-LOOKING STATEMENTS SPEAK AS OF THE DATE MADE AND ARE NOT GUARANTEES OF FUTURE PERFORMANCE. ACTUAL RESULTS OR DEVELOPMENTS MAY DIFFER MATERIALLY FROM THE EXPECTATIONS EXPRESSED OR IMPLIED IN THE FORWARD-LOOKING STATEMENTS. NO PARTY, INCLUDING, WITHOUT LIMITATION, THE DEBTOR OR THE REORGANIZED DEBTOR, UNDERTAKES AN OBLIGATION TO UPDATE ANY SUCH STATEMENTS.

A. General Bankruptcy Law Considerations

1. Failure to Obtain Confirmation of the Plan May Result in Liquidation or Confirmation of an Alternative Plan on Less Favorable Terms

Although the Debtor believes that the Plan will satisfy all requirements for confirmation under the Bankruptcy Code, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Moreover, there can be no assurance that modifications to the Plan will not be required for confirmation or that such modifications would not be sufficiently material as to necessitate the re-solicitation of votes on the Plan.

In the event that the Bankruptcy Court refuses to confirm the Plan, either as a result of an objection to the Plan by a party in interest or otherwise, the Debtor may be required to seek an alternative restructuring of its obligations to creditors and equity security holders. There can be no assurance that the terms of any such alternative restructuring would be similar to or as favorable to the Debtor's creditors and equity security holders as those proposed in the Plan.

The confirmation of the Plan is subject to certain conditions and requirements of the Bankruptcy Code. The Bankruptcy Court may determine that one or more of those requirements is not satisfied. For example, the Bankruptcy Court might determine that the Plan is not "feasible" pursuant to section 1129(a)(11) of the Bankruptcy Code. For the Plan to be feasible, the Debtor must establish that the confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor of the Debtor under the Plan, unless such liquidation or reorganization is proposed in the Plan. While the feasibility requirement is not rigorous, it does require the Debtor to put forth concrete evidence indicating that the Debtor has a reasonable likelihood of meeting its obligations under the Plan and remaining a viable entity. The Debtor believes that its projections demonstrate that the Plan is feasible in that the Debtor will be able to satisfy all of its obligations under the Plan and confirmation of the Plan is not likely to be followed by a liquidation or the need for a further financial reorganization.

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests of such class. The Debtor believes that the classification of claims and equity interests under the Plan complies with the requirements set forth in the Bankruptcy Code. However, a claimant or equity interest holder could challenge the classification. In such event, the cost of the Plan and the time needed to confirm the Plan could increase and the Bankruptcy Court may not agree with the Debtor's classification of claims and equity interests. If the Bankruptcy Court concludes that the classification of claims and equity interests under the Plan does not comply with the requirements of the Bankruptcy Code, the Debtor may need to modify the Plan. Such modification could require a resolicitation of votes on the Plan. If the Bankruptcy Court determines that the Debtor's classification of claims and equity interests is not appropriate or if the Bankruptcy Court determines that the different treatment provided to claim or equity interest holders is unfair or inappropriate, the Plan might not be confirmed. If this occurs, the amended plan of reorganization that may ultimately be confirmed may be less attractive to certain classes of the Debtor's creditors and equity interest holders than the Plan.

Also, the United States Trustee or other parties in interest could move the Bankruptcy Court to "designate" the votes of certain Holders of Claims. Section 1126(e) permits a bankruptcy court to designate any entity whose acceptance or rejection of a plan was not, among other things, made, solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code. "Designation" in this context could result in such party's vote not being counted for purposes of determining acceptances or rejections of the Plan.

If the Bankruptcy Court were to find any of these deficiencies, the Debtor could be required to restart the process of filing another plan and disclosure statement, seeking Bankruptcy Court approval of a disclosure statement, soliciting votes from classes of debt and equity holders, and seeking Bankruptcy Court confirmation of the plan of reorganization. If this occurs, confirmation of the Plan would be delayed and possibly jeopardized. Additionally, should the Plan fail to be approved, confirmed, or consummated, the Debtor's creditors and equity interest holders may be in a position to propose alternative plans of reorganization.[31] Any such failure to confirm the Plan would likely entail significantly greater risk of delay, expense and uncertainty, which would likely have a material adverse effect upon the Debtor's business and financial condition.

As noted, Class 4 is deemed to have rejected the Plan and the Debtor shall not solicit the vote of the Holder of the Claim in Class 4 -- although the Holder of the Class 4 Claim has consented to the treatment of its Claim. In addition, the Debtor expects the Holder of the Class 3 Claim to reject the Plan. As a result, the Debtor shall request Confirmation of the Plan, as it may be modified from time to time, under section 1129(b) of the Bankruptcy Code.

While the Debtor believes that the Plan satisfies the requirements for non-consensual confirmation under section 1129(b) of the Bankruptcy Code because it does not "discriminate unfairly" and is "fair and equitable" with respect to the Classes that reject or are deemed to reject

[31] *See* Section X. A. of this Disclosure Statement.

the Plan, there can be no assurance that the Bankruptcy Court will reach the same conclusion. There can be no assurance that any such challenge to the requirements for non-consensual confirmation will not delay the Debtor's emergence from chapter 11 or prevent confirmation of the Plan.

If the Plan is not confirmed, there can be no assurance that the Chapter 11 Case will continue rather than being dismissed or converted into a chapter 7 liquidation case or that any alternative plan or plans of reorganization would be on terms as favorable to the Holders of Claims against and Interests in the Debtor as the terms of the Plan. If a liquidation or protracted reorganization of the Debtor's Estate were to occur, or if the Chapter 11 Case were to be dismissed, there is a substantial risk that the Debtor's value would be substantially eroded to the detriment of all stakeholders.

2. Failure of Occurrence of the Effective Date May Result in Dismissal, Liquidation or an Alternative Plan on Less Favorable Terms

Although the Debtor believes that the Effective Date may occur shortly after the Confirmation Date, there can be no assurance as to such timing. The occurrence of the Effective Date is also subject to certain conditions precedent as described in Article XI of the Plan. Failure to meet any of these conditions could result in the Plan not being consummated.

If the Effective Date of the Plan does not occur, there can be no assurance that the Chapter 11 Case will continue rather than being dismissed or converted into a chapter 7 liquidation case or that any alternative plan or plans of reorganization would be on terms as favorable to the Holders of Claims against and Interests in the Debtor as the terms of the Plan. If a dismissal, liquidation or protracted reorganization of the Debtor's Estates were to occur, there is a substantial risk that the Debtor's value would be eroded to the detriment of all stakeholders.

B. Other Risk Factors Related To The Debtor

1. Variances from Projections May Affect Ability to Pay Obligations

The Debtor has prepared the Projections contained in **Exhibit D** to this Disclosure Statement relating to the Reorganized Debtor in connection with the development of the Plan. The Projections are intended to illustrate the estimated effects of the Plan and certain related transactions on the results of operations, cash flow and financial position of the Reorganized Debtor for the periods indicated. The Projections are qualified by the accompanying assumptions, and must be read in conjunction with such assumptions, which constitute an integral part of the Projections. The Projections are based upon a variety of assumptions as set forth therein, and the Reorganized Debtor's future operating results are subject to and likely to be affected by a number of factors, including significant business, economic and competitive uncertainties, many of which are beyond the control of the Reorganized Debtor. In addition, unanticipated events and circumstances occurring subsequent to the date of the Projections may affect the actual financial results of the Reorganized Debtor's operations. Accordingly, actual results may vary materially from those shown in the Projections, which may adversely affect the ability of the Reorganized Debtor to pay the obligations owing to certain Holders of Claims

entitled to distributions under the Plan and other indebtedness incurred after confirmation of the Plan.

The Debtor believes that the business climate in which the Reorganized Debtor will be operating is volatile due to numerous factors, all of which make accurate forecasting very difficult. Although it is not possible to predict all risks associated with the Projections and their underlying assumptions, there are some risks which the Debtor is presently able to identify. The Projections assume that all aspects of the Plan will be successfully implemented on the terms set forth in this Disclosure Statement and that the publicity associated with the bankruptcy proceeding contemplated by the Plan will not adversely affect the Reorganized Debtor's operating results. There can be no assurance that these two assumptions are accurate, and the failure of the Plan to be successfully implemented, or adverse publicity, could have a materially detrimental effect on the Reorganized Debtor's business, results of operations and financial condition.

Moreover, the Projections were not prepared with a view toward public disclosure or with a view toward complying with the guidelines established by the American Institute of Certified Public Accountants with respect to prospective financial information. Rather, the Projections were developed in connection with the planning, negotiation and development of the Plan. The Reorganized Debtor does not undertake any obligation to update or otherwise revise the Projections to reflect events or circumstances existing or arising after the date of the Projections or to reflect the occurrence of unanticipated events. In the Debtor's view, however, the Projections were prepared on a reasonable basis and represent a reasonable view of the expected future financial performance of the Reorganized Debtor after the Effective Date. Nevertheless, the Projections should not be regarded as a representation, guaranty or other assurance by the Debtor, the Reorganized Debtor or any other person that the Projections will be achieved, and Holders are therefore cautioned not to place undue reliance on the projected financial information contained in this Disclosure Statement.

2. Assumptions Regarding Value of the Property May Prove Incorrect

It has been generally assumed in the preparation of the Projections that the value of the Property approximates the Property's fair value. For financial reporting purposes, the fair value of the Property must be determined as of the Effective Date. This determination will be based on an independent valuation. Although the Debtor does not presently expect this valuation to result in a value that is materially greater or less than the value assumed in the preparation of the Projections, the Debtor can make no assurances with respect thereto.

3. Terrorist Attacks/Other Military Disruptions

Additional terrorist attacks in the U.S. or against U.S. targets, or threats of war or the escalation of current hostilities involving the U.S. or its allies may impact the Reorganized Debtor's operations. More generally, any of these events could cause consumer confidence and spending to decrease. These events could also exacerbate the economic recession in the U.S. or abroad. Any of these occurrences could have a significant impact on the Reorganized Debtor's business, financial condition, or results of operations.

C. Risks To Creditors Who Will Receive Securities

The ultimate recoveries under the Plan to Holders of Claims in Classes 3 and 6 and Interests in Class 8 that receive the Amended and Restated Note or the New Membership Interests, as applicable, pursuant to the Plan will depend on the realizable value of such securities. The securities to be issued pursuant to the Plan are subject to a number of material risks, including, but not limited to, those specified below. Prior to voting on the Plan, each Holder of Claims in Classes 3 and 6 and Interests in Class 8 should carefully consider the risk factors specified or referred to below, as well as all of the information contained in the Plan and the Disclosure Statement.

1. Lack of Market for Securities Issued Pursuant to the Plan

There is no currently existing market for the Amended and Restated Note and the New Membership Interests and there can be no assurance that an active trading market will develop. Accordingly, no assurance can be given that a holder of securities issued pursuant to the Plan will be able to sell such securities in the future or as to the price at which any such sale may occur. If such market were to exist, the liquidity of the market for such securities and the prices at which such securities will trade will depend upon many factors, including the number of holders, investor expectations for the Debtor, and other factors beyond the Debtor's control. In addition, given the anticipated number of its equity holders, the Debtor believes that the Reorganized Debtor will not be required to file periodic reports pursuant to the Securities Exchange Act of 1934, as amended. Accordingly, information that would be included in such reports (such as financial statements and other information about the Reorganized Debtor's business) may not be publicly available.

2. The Value of the Amended and Restated Note and the New Membership Interests May Fluctuate for Many Reasons

The value of the Amended and Restated Note and the New Membership Interests could be subject to significant fluctuations. Among the factors that could affect such value are: (a) variations in the Reorganized Debtor's operating results; (b) the Reorganized Debtor's ability to meet its liquidity needs; (c) general market conditions; and (d) domestic and international economic factors unrelated to the Reorganized Debtor's performance.

3. The Value of the New Membership Interests May Decline Due to Future Issuances

The issuance of additional New Membership Interests after consummation of the Plan could materially depress the value of the New Membership Interests. Further, the Reorganized Debtor may issue additional New Membership Interests in the future. As a result, holders of New Membership Interests may experience dilution of their percentage ownership of New Membership Interests.

4. The Reorganized Debtor Does Not Intend on Paying Any Dividends on the New Membership Interests in the Foreseeable Future

The Reorganized Debtor does not anticipate that it will pay any dividends on the New Membership Interests in the foreseeable future. The Reorganized Debtor intends to retain any future earnings to fund operations, future debt service requirements (if any) and other corporate needs.

D. Certain Tax Law Considerations

There are a number of income tax considerations, risks and uncertainties associated with consummation of the Plan. Interested parties should read carefully the discussions set forth in Article VIII of this Disclosure Statement regarding certain U.S. federal income tax consequences of the transactions proposed by the Plan to the Debtor, the Reorganized Debtor, and to certain Holders of Claims and Interests.

VIII. CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following discussion is a summary of certain U.S. federal income tax considerations relevant to the Plan. The summary is based on the Internal Revenue Code (the "IRC"), Treasury Regulations promulgated thereunder, judicial decisions, published positions of the Internal Revenue Service (the "IRS") and other applicable authorities, all as in effect as of the date hereof and all of which are subject to change or differing interpretations (possibly with retroactive effect). The discussion does not address all of the tax consequences that may be relevant to a particular person or to persons subject to special treatment under U.S. federal income tax laws (including broker-dealers, mutual funds, insurance companies, banks, other financial institutions, regulated investment companies, tax-exempt organizations, those holding claims through a partnership or other pass-through entity, and "Non-U.S. Holders" (as defined below)). This summary deals only with persons who hold Claims in Classes 3, 4, 5 and 6 and persons who hold Old Membership Interests and New Membership Interests as capital assets, within the meaning of Section 1221 of the IRC. A substantial amount of time may elapse between the date of this Disclosure Statement and the receipt of a final distribution under the Plan. Events subsequent to the date of this Disclosure Statement, such as additional tax legislation, court decisions, or administrative changes, could affect the U.S. federal income tax consequences of the Plan and the transactions contemplated thereunder. No opinion of counsel or IRS ruling has been or will be sought regarding any matter provided for in the Plan. No assurance can be given that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax consequences set forth below. **Holders should consult their own tax advisors as to the particular U.S. federal income tax consequences to them of the Plan and of holding and disposing of the New Membership Interests, as well as the effects of state, local, non-U.S. income and other tax laws.**

For purposes of this summary, a "U.S. Holder" means a beneficial owner of a Claim, Old Membership Interest or New Membership Interest, as determined for U.S. federal income tax purposes, as applicable, that is a citizen or individual resident of the United States, a corporation, or other entity treated as a corporation for U.S. federal income tax purposes, created or organized in the United States or under the laws of the United States or any political subdivision thereof, an

estate the income of which is subject to U.S. federal income taxation regardless of its source, or a trust if (i) a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. fiduciaries have the authority to control all substantial decisions of the trust, or (ii) the trust was in existence on August 20, 1996 and properly elected to be treated as a U.S. person. A "Non-U.S. Holder" means any beneficial owner that is not a U.S. Holder or a partnership for U.S. federal income tax purposes.

If a partnership (including an entity treated as a partnership for U.S. federal income tax purposes) is the beneficial owner of a Claim or Old Membership Interest, as applicable, the tax treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. A beneficial owner that is treated as a partnership for U.S. federal income tax purposes and partners in such a partnership should consult their tax advisors about the U.S. federal income tax consequences of the Plan and the ownership and disposition of New Membership Interests.

Internal Revenue Service Circular 230 Notice

To ensure compliance with requirements imposed by the IRS, each Holder is hereby notified that (a) any discussion of U.S. federal tax issues in this Disclosure Statement is not intended or written to be relied upon, and cannot be relied upon by Holders, for purposes of avoiding penalties that may be imposed on such Holders under the IRC; (b) such discussion is written to support the promotion of the Plan; and (c) each Holder of a Claim should seek advice based on such Holder's particular circumstance from an independent tax advisor.

A. U.S. Federal Income Tax Consequences To The Debtor And Its Members

1. General Tax Principles

The Debtor is classified as a partnership for federal income tax purposes. Section 1399 of the IRC provides that no separate taxable entity is created as a result of a partnership in bankruptcy. Therefore, the commencement of a bankruptcy proceeding by or against the Debtor will not result in the creation of a new taxable entity, nor will the commencement of the proceedings result in the recognition of any income, gain or loss to the Debtor, or result in the acceleration of any income or recapture of any tax benefits to the Debtor or its members. Moreover, following the cancellation and extinguishment of the Old Membership Interests and the issuance of the New Membership Interests, income and deductions of the Reorganized Debtor will continue to flow through to its members in the same manner as before the bankruptcy except to the extent that there has been a change in the percentage of outstanding membership interests owned by the member.

Under the IRC, any cancellation of debt income recognized by the Debtor flows through to the ultimate beneficial owners of membership interests in the Debtor. Because the IRC exclusions from cancellation of debt income for discharge of debt in a title 11 bankruptcy case or with respect to an insolvent taxpayer are applied at the ultimate beneficial owner level, they are not available with respect to a member's allocable share of cancellation of debt income of the

Debtor, unless that ultimate beneficial owner is itself the subject of a title 11 bankruptcy case or insolvent.

If cancellation of debt income were recognized by the Debtor, all or a portion of that income might qualify for exclusion from gross income for federal income tax purposes as "qualified real property business indebtedness", in which case the Debtor's tax basis in the Property would be decreased by the amount of excluded cancellation of debt income.

The law is unclear whether any income that might arise for federal income tax purposes in connection with the Debtor's reorganization (the "Reorganization") would be allocated to the Holders of the Old Membership Interests (in proportion to their respective holdings of those interests) or to the Holders of the New Membership Interests, which will include Newco (in proportion to their respective holdings of those interests). Any income so allocated to Newco would, in turn, be allocated to the members of Newco and might be subject to U.S. federal income tax withholding.

2. Tax Consequences of the Reorganization

(a) Release of the BPA Down Payment Escrow

The law is unclear as to the federal income tax treatment of the release of the BPA Down Payment Escrow (the "Escrow"). The Debtor expects to take the position for federal income tax purposes that the excess of the amount of the Escrow over the sum of the $1,550,000 payment to Newco and the $350,000 payment to Fuerta is to be treated as a capital contribution to the Debtor, on account of which there will be issued to Newco the 35% New Membership Interest, and accordingly that no income will be recognized by the Debtor with respect to the release of the Escrow. The IRS may challenge that position and seek to treat all or some of the amount of the Escrow as income recognized by the Debtor for federal income tax purposes. There can be no assurance that the courts would not uphold such an IRS position. In that case, the income recognized by the Debtor (less possibly certain deductions available to the Debtor for federal income tax purposes) would be allocated to the members of the Debtor, possibly including Newco.

(b) Restructuring of the First Manhattan Debt

Although the changes in the terms of the First Manhattan debt may cause the debt to be treated for federal income tax purposes as significantly modified, and therefore as reissued, the Debtor believes that there has been no change in the principal amount of the debt and accordingly that no cancellation of debt income will be recognized by the Debtor with respect to this debt.

(c) Waiver and Release of Time Square Claim

The Debtor expects to take the position that because the ownership of the membership interests in Time Square is substantially identical to the ownership of the membership interest in 8 Avenue (the controlling member of the Debtor, with 98.75% of the Old Membership Interests and 63.75% of the New Membership Interests), the waiver and release of the Time Square Claim

will constitute a contribution to the capital of the Debtor and therefore no income will be recognized by the Debtor with respect to the release of the Time Square Claim. The Debtor also expects to also make a protective election to have the qualified real property business indebtedness exclusion apply if it is determined that cancellation of indebtedness income was recognized on the waiver and release. The IRS may take the position that cancellation of indebtedness income was recognized on the release and that the income was not subject to the qualified real property business indebtedness exclusion, and that position may be upheld by the courts, in which case that cancellation of debt income would be allocated to the members of the Debtor, possibly including Newco.

B. U.S. Federal Income Tax Consequences To U.S. Holders

1. Holder of First Manhattan Claim (Class 3)

Because the tax consequences of the Reorganization to the Holder depend on transactions entered into, and tax actions and positions taken, by it with respect to the Claim, as to which the Debtor does not have knowledge, the Holder is advised to consult its own tax advisor as to the federal income tax consequences of the Reorganization.

2. Holder of Time Square Claim (Class 4)

Because of the substantially identical ownership of 8 Avenue and Time Square, the latter is expected to follow the Debtor's treatment of the waiver and release of the Claim as a contribution to capital, and not to claim a deduction or loss with respect to thereto.

3. Holder of Fuerta Claim (Class 5)

The Debtor understands that there is no U.S. Holder of this Claim.

4. Holders of End Unit Purchasers' Claims (Class 6)

The Debtor understands that there are no U.S. Holders of these Claims.

Holders of End Unit Purchasers' Claims should note that, as discussed in section A.1 of this Article VIII of the Disclosure Statement, if any income is recognized by the Debtor for U.S. federal income tax purposes in connection with the Reorganization, a portion of that income may be allocated to these Holders (as indirect owners of New Membership Interests), and they may incur U.S. federal income tax liability with respect to that income.

5. Holders of Old Membership Interests (Class 8)

No income, gain or loss for federal income tax purposes should be recognized by the Holders upon the receipt of New Membership Interests in exchange for their Old Membership Interests. As discussed in section A.1 of this Article VIII of the Disclosure Statement, if any income is recognized by the Debtor for federal income tax purposes in connection with the Reorganization, a portion of that income will be allocated to these holders (as owners of New Membership Interests), and they (or their beneficial owners) may incur federal income tax liability with respect to that income.

C. Information Reporting and Withholding

Certain payments, including certain distributions pursuant to the Plan, may be subject to information reporting to the IRS. Moreover, such reportable payments may be subject to backup withholding at the rate of 28% unless the taxpayer: (i) comes within certain exempt categories and, when required, demonstrates this fact or (ii) provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the taxpayer is not subject to backup withholding because of a failure to report all dividend and interest income. Backup withholding is not an additional tax but merely an advance payment, which may be refunded to the extent it results in an overpayment of tax and the appropriate information is timely supplied to the IRS. In addition, Non-U.S. Holders may be subject to withholding, currently at the rate of 35%, on certain income that is recognized by the Debtor in connection with the Reorganization and in connection with its subsequent operations.

D. Importance Of Obtaining Professional Tax Assistance

THE FOREGOING DISCUSSION IS INTENDED ONLY AS A SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS OF THE PLAN AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING WITH A TAX PROFESSIONAL. THE ABOVE DISCUSSION IS FOR INFORMATION PURPOSES ONLY AND IS NOT TAX ADVICE. THE TAX CONSEQUENCES ARE IN MANY CASES UNCERTAIN AND MAY VARY DEPENDING ON A HOLDER'S INDIVIDUAL CIRCUMSTANCES. ACCORDINGLY, HOLDERS SHOULD CONSULT THEIR TAX ADVISORS ABOUT THE U.S. FEDERAL, STATE, LOCAL AND NON-U.S. INCOME AND OTHER TAX CONSEQUENCES OF THE PLAN.

IX. CERTAIN FEDERAL AND STATE SECURITIES LAW CONSIDERATIONS

A. Exemption From Registration Requirements For New Securities Issued Pursuant to Plan

With respect to the Amended and Restated Note and the New Membership Interests to be issued on the Effective Date, the Debtor intends to rely upon the exemption from the registration requirements of the Securities Act (and the equivalent state securities or "blue sky" laws) provided by section 1145(a)(1) of the Bankruptcy Code. Generally, section 1145(a)(1) of the Bankruptcy Code exempts the issuance of securities from the requirements of the Securities Act and the equivalent state securities and "blue sky" laws if the following conditions are satisfied: (i) the securities are issued by a debtor, an affiliate participating in a joint plan of reorganization with the debtor, or a successor of the debtor under a plan of reorganization, (ii) the recipients of the securities hold a claim against, an interest in, or a claim for an administrative expense against, the debtor, and (iii) the securities are issued entirely in exchange for the recipient's claim against or interest in the debtor, or are issued "principally" in such exchange and "partly" for Cash or property. The Debtor believes that the issuance of securities contemplated by the Plan will satisfy the aforementioned requirements and therefore is exempt from federal and state securities laws, although as discussed in Section B below, under certain circumstances, subsequent transfers of such securities may be subject to registration requirements under such securities laws.

B. Subsequent Transfers Of New Securities

The securities issued pursuant to the Plan may be resold by the holders thereof without restriction unless, as more fully described below, any such holder is deemed to be an "underwriter" with respect to such securities, as defined in section 1145(b)(1) of the Bankruptcy Code. Generally, section 1145(b)(1) of the Bankruptcy Code defines an "underwriter" as any person who (1) purchases a claim against, or interest in, a bankruptcy case, with a view towards the distribution of any security to be received in exchange for such claim or interest, (2) offers to sell securities issued under a bankruptcy plan on behalf of the holders of such securities, (3) offers to buy securities issued under a bankruptcy plan from persons receiving such securities, if the offer to buy is made with a view towards distribution of such securities, or (4) is an issuer as contemplated by section 2(11) of the Securities Act. Although the definition of the term "issuer" appears in section 2(4) of the Securities Act, the reference (contained in section 1145(b)(1)(D) of the Bankruptcy Code) to section 2(11) of the Securities Act purports to include as "underwriters" all persons who, directly or indirectly, through one or more intermediaries, control, are controlled by, or are under common control with, an issuer of securities. "Control" (as such term is defined in Rule 405 of Regulation C under the Securities Act) means the possession, direct or indirect, of the power to direct or cause the direction of the policies of a person, whether through the ownership of voting securities, by contract or otherwise. Accordingly, an officer, director or manager of a reorganized debtor (or its successor) under a plan of reorganization may be deemed to be a "control person," particularly if such management position is coupled with the ownership of a significant percentage of the debtor's (or successor's) voting securities. Moreover, the legislative history of section 1145 of the Bankruptcy Code suggests that a creditor who owns at least 10% of the voting securities of a reorganized debtor may be presumed to be a "control person."

THE FOREGOING SUMMARY DISCUSSION IS GENERAL IN NATURE AND HAS BEEN INCLUDED IN THIS DISCLOSURE STATEMENT SOLELY FOR INFORMATIONAL PURPOSES. THE DEBTOR MAKES NO REPRESENTATIONS CONCERNING, AND DOES NOT HEREBY PROVIDE ANY OPINION OR ADVICE WITH RESPECT TO, THE SECURITIES LAW AND BANKRUPTCY LAW MATTERS DESCRIBED ABOVE. IN LIGHT OF THE COMPLEX AND SUBJECTIVE INTERPRETIVE NATURE OF WHETHER A PARTICULAR RECIPIENT OF SECURITIES UNDER THE PLAN MAY BE DEEMED TO BE AN "UNDERWRITER" WITHIN THE MEANING OF SECTION 1145(b)(1) OF THE BANKRUPTCY CODE AND/OR AN "AFFILIATE" OR "CONTROL PERSON" UNDER APPLICABLE FEDERAL AND STATE SECURITIES LAWS AND, CONSEQUENTLY, THE UNCERTAINTY CONCERNING THE AVAILABILITY OF EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND EQUIVALENT STATE SECURITIES AND "BLUE SKY" LAWS, THE DEBTOR ENCOURAGES POTENTIAL RECIPIENTS OF NEW MEMBERSHIP INTERESTS AND THE AMENDED AND RESTATED NOTE TO CONSIDER CAREFULLY AND CONSULT WITH HIS, HER, OR ITS OWN LEGAL ADVISOR(S) WITH RESPECT TO SUCH (AND ANY RELATED) MATTERS.

X. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN

If the Plan is not confirmed, the alternatives include (a) continuation of the Chapter 11 Case and formulation of an alternative plan or plans of reorganization, (b) dismissal of the Chapter 11 Case, or (c) liquidation of the Debtor under chapter 7 or chapter 11 of the Bankruptcy Code. Each of these possibilities is discussed in turn below.

A. Continuation Of The Chapter 11 Case

If the Debtor remains in chapter 11, the Debtor could continue to operate its business and manage its property as a debtor-in-possession, but it would remain subject to the restrictions imposed by the Bankruptcy Code and could require additional financing both to fund operations and to pay administrative expenses of its Estate. It is not clear whether the Debtor could continue as a viable entity in a protracted Chapter 11 Case. If the Debtor were able to obtain financing and continue as a viable entity, it is possible that the Debtor (or other parties in interest) could ultimately propose another plan or attempt to liquidate the Debtor under chapter 7 or chapter 11. Such alternative plans might involve either a reorganization and continuation of the Debtor's business, an orderly liquidation of its assets, or a combination of both. The Debtor believes that the Plan represents the best and most certain alternative to maximize values and recoveries under the circumstances.

B. Dismissal of the Chapter 11 Case

If the Plan is not confirmed and the Chapter 11 Case ultimately is dismissed, First Manhattan may seek to proceed with a foreclosure sale of the Property in connection with its state court foreclosure action. The Debtor believes that the Property is worth substantially less in a foreclosure sale scenario. Based on the Debtor's liquidation analysis, the Debtor believes that if the Chapter 11 Case were dismissed and First Manhattan were to proceed to a foreclosure sale, Holders of Claims and Interests would receive less than they will receive under the Plan.

C. Liquidation Under Chapter 7 Or Chapter 11

If the Plan is not confirmed, the Chapter 11 Case could be converted to a liquidation case under chapter 7 of the Bankruptcy Code. In chapter 7, a trustee would be appointed to promptly liquidate the assets of the Debtor.

Although it is impossible to predict precisely how the proceeds of a liquidation would be distributed to the respective Holders of Claims against or Interests in the Debtor, the Debtor believes that in a liquidation under chapter 7, before creditors received any distributions, additional administrative expenses involved in the appointment of a trustee and attorneys, accountants, and other professionals to assist such trustee, along with an increase in expenses associated with an increase in the number of unsecured Claims that would be expected, would cause a substantial diminution in the value of the Estate. The assets available for distribution to Holders of Claims and Interests would be reduced by such additional expenses and by Claims, some of which would be entitled to priority, which would arise by reason of the liquidation and from the rejection of executory contracts in connection with the cessation of the Debtor's

operations. As discussed earlier in this Disclosure Statement, attached as **Exhibit C** hereto is a chapter 7 liquidation analysis prepared by the Debtor. Based on that liquidation analysis, the Debtor believes that if the Chapter 11 Case were converted to a chapter 7 liquidation, Holders of Claims and Interests would receive less than they will receive under the Plan.

The Debtor could also be liquidated pursuant to the provisions of a chapter 11 plan of reorganization. In a liquidation under chapter 11, the Debtor's assets could be sold in a more orderly fashion over a longer period of time than in a liquidation under chapter 7. Thus, a chapter 11 liquidation might result in larger recoveries than in a chapter 7 liquidation, but the delay in distributions could result in lower present values being received and higher administrative costs. Because a trustee is not required in a chapter 11 liquidation, expenses for professional fees could be lower than in a chapter 7 liquidation, in which a trustee must be appointed. Any distributions to the Holders of Claims under a chapter 11 liquidation plan probably would be delayed substantially.

It is highly unlikely that Interest Holders would receive any distribution in a liquidation under either chapter 7 or chapter 11.

Although a chapter 11 liquidation is preferable to a chapter 7 liquidation, the Debtor believes that any liquidation is a much less attractive alternative for creditors than the Plan because of the greater return the Debtor anticipates will be provided by the Plan. The Debtor believes that the Plan affords substantially greater benefits to Holders of Impaired Claims than would any other reasonably confirmable reorganization plan or liquidation under any chapter of the Bankruptcy Code.

XI. CONCLUSION AND RECOMMENDATION

The Debtor believes that confirmation of the Plan is preferable to the alternatives described above because it provides the best opportunity to maximize recoveries to Holders of Allowed Claims and Interests under the circumstances. In addition, any alternative to confirmation of the Plan could result in extensive delays, substantially increased administrative expenses, and significant uncertainty regarding the prospects for the Debtor and recoveries to Holders of Claims and Interests.

[SIGNATURE PAGE FOLLOWS]

Accordingly, the Debtor strongly recommends confirmation of the Plan and urges all Holders of Impaired Claims and Interests entitled to vote to accept the Plan, and evidence such acceptance by returning their Ballots so that they are received no later than [__]:00 p.m., prevailing Eastern Time, on [_____], 2011.

Dated: October 31, 2011

785 Partners LLC
Debtor and Debtor in Possession

By: /s/ Kevin O'Sullivan
Kevin O'Sullivan
Authorized Representative

PROSKAUER ROSE LLP

By: /s/ Sheldon I. Hirshon

Sheldon I. Hirshon (SH-0070)
Craig A. Damast (CD-4234)
Lawrence S. Elbaum (LE-4157)
Eleven Times Square
New York, New York 10036-8299
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Counsel for Debtor and Debtor in Possession

Exhibit A
Plan of Reorganization

Sheldon I. Hirshon (SH-0070)
Craig A. Damast (CD-4234)
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Counsel for Debtor and Debtor in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	)	Chapter 11
785 Partners LLC,	)	Case No. 11-13702 (SMB)
Debtor.	)	

DEBTOR'S AMENDED PLAN OF REORGANIZATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

Dated: October 31, 2011

PROSKAUER ROSE LLP
Eleven Times Square
New York, New York 10036-8299
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Sheldon I. Hirshon
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Counsel for Debtor and
Debtor in Possession

TABLE OF CONTENTS

Page

785 Partners LLC, as debtor and debtor in possession, proposes this amended plan of reorganization for the resolution of outstanding Claims against and Interests in the Debtor pursuant to chapter 11 of the Bankruptcy Code. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in Article I hereof. Holders of Claims and Interests should refer to the Disclosure Statement for a discussion of the Debtor's history, business, assets, projections of future operations, a liquidation analysis, as well as a summary and description of the Plan and certain related matters. The Debtor is the proponent of the Plan within the meaning of section 1129 of the Bankruptcy Code.

ALL HOLDERS OF CLAIMS AND INTERESTS, TO THE EXTENT APPLICABLE, ARE ENCOURAGED TO READ THE PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THE PLAN.

ARTICLE I

DEFINITIONS, RULES OF INTERPRETATION, COMPUTATION OF TIME, AND GOVERNING LAW

1.1. Definitions. As used in the Plan, the following terms shall have the following meanings:

"8 Avenue" means 8 Avenue and 48th Street Development LLC, the holder of 98.75% of the Old Membership Interests.

"Adam Mirzoeff" is, upon information and belief, a former director of Tower.

"Administrative Expense Claim" means a Claim for costs and expenses of administration of the Estate pursuant to sections 328, 330, 331, 503(b), 507(a)(2), 507(b) or, if applicable, 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving the Estate and operating the business of the Debtor (such as wages, salaries or commissions for services, and payments for goods and other services and leased premises); (b) all fees and charges assessed against the Estate pursuant to sections 1911 through 1930 of chapter 123 of the Judicial Code; and (c) Professional Fee Claims.

"Affiliate" has the meaning set forth in section 101(2) of the Bankruptcy Code.

"Allowed" means, with respect to any Claim or Interest, except as otherwise specified herein, any of the following: (a) a Claim or Interest that has been scheduled by the Debtor in its Schedules as other than disputed, contingent or unliquidated and as to which (i) the Debtor or any other party in interest has not filed an objection, and (ii) no contrary Proof of Claim has been filed; (b) a Claim or Interest that is not a Disputed Claim or Disputed Interest, except to the extent that any such Disputed Claim or Disputed Interest has been allowed by a Final Order; or (c) a Claim or Interest that is expressly allowed (i) by a Final Order, (ii) by an agreement between the Holder of such Claim or Interest and the Debtor or the Reorganized Debtor, or (iii) pursuant to the terms of the Plan.

"Amended and Restated Note" means the note, the form of which shall be included in the Plan Supplement, to be issued by the Reorganized Debtor to the Holder of the Allowed First Manhattan Claim, and which shall contain the terms described in Section 3.6(c) of the Plan and which shall be in form and substance reasonably acceptable to the Debtor and First Manhattan.

"Amended and Restated Mortgage" means the mortgage securing the Amended and Restated Note, the form of which shall be included in the Plan Supplement, and which shall be in form and substance reasonably acceptable to the Debtor and First Manhattan.

"Bankruptcy Code" means the Bankruptcy Reform Act of 1978, as codified in title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.*, now in effect and as amended by the Bankruptcy Abuse Prevention and Consumer Prevention Act of 2005 or hereafter amended (to the extent any such amendments are applicable to the Chapter 11 Case).

"Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of New York, or any other court having jurisdiction over this Chapter 11 Case.

"Bankruptcy Rules" means, collectively, the (a) Federal Rules of Bankruptcy Procedure and (b) Local Rules of the Bankruptcy Court, all as now in effect or hereafter amended (to the extent any such amendments are applicable to the Chapter 11 Case).

"BPA Down Payment Escrow" means the escrow account held by Seiden, as escrow agent, containing the aggregate amount of fifteen percent (15%) of the total purchase price under the Bulk Purchase Agreement deposited by Fuerta. As of August 31, 2011, together with accrued interest, the BPA Down Payment Escrow totaled $18,781,286.21.

"Bryan Turley" is, upon information and belief, a principal of Fuerta.

"Building Loan Notes" mean notes issued by the Debtor pursuant to that certain Building Loan Agreement dated as of January 25, 2007 in the principal amount of $49,591,000.

"Bulk Purchase Agreement" means that certain bulk sale agreement entered into on or about April 13, 2006, together with all amendments thereto, between the Debtor and Fuerta pursuant to which Fuerta agreed to purchase all of the Units for a total purchase price of $118,485,440.00.

"Business Day" means any day, excluding Saturdays, Sundays or "legal holidays" as defined in Bankruptcy Rule 9006(a), or any other day on which banking institutions in New York, New York are required or authorized to close by law or executive order.

"Capital Call" shall have the meaning set forth in Section 4.5(a) of the Plan.

"Cash" means legal tender of the United States of America including, but not limited to, bank deposits, checks and other similar items.

"Causes of Action" means any: (a) Claims, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, and franchises; (b) all rights of setoff, counterclaim, or recoupment and Claims on contracts or for

breaches of duties imposed by law; (c) rights to object to Claims or Interests; (d) Claims pursuant to sections 362, 510, 542, 543, 544, 545, 546, 547, 548, 549, 550, or 553 of the Bankruptcy Code; and (e) Claims and defenses as fraud, mistake, duress, and usury and any other defenses set forth in section 558 of the Bankruptcy Code of any kind or character whatsoever, known or unknown, contingent or non-contingent, matured or unmatured, suspected or unsuspected, whether arising before, on, or after the Petition Date including through the Effective Date, in contract, in tort, in law, or in equity, or pursuant to any other theory of law, and whether asserted or assertable directly or derivatively.

"Chapter 11 Case" means the bankruptcy case of the Debtor commenced under chapter 11 of the Bankruptcy Code, captioned "In re 785 Partners LLC" (Case No. 11-13702) (SMB).

"Citi Habitats" shall have the meaning set forth in Section 4.3 of the Plan.

"CKS Finance Ltd." is, upon information and belief, an Irish Entity owned and controlled by Conor Sheahan.

"Claim" means a "claim", as defined in section 101(5) of the Bankruptcy Code, against the Debtor.

"Claims Bar Date" means the date or dates fixed by the order of the Bankruptcy Court, entered on October 7, 2011 (Docket No. 48), by which Persons or Entities asserting a Claim against the Debtor, and who are required to file a Proof of Claim on account of such Claim, must file a Proof of Claim or be forever barred from asserting a Claim against the Debtor or their property and from voting on the Plan and/or sharing in distributions under the Plan.

"Claims Objection Bar Date" means the bar date for objecting to Proofs of Claim, which date shall be the date which is 120 days following the Effective Date, provided that the Debtor and/or the Reorganized Debtor may seek additional extensions of this date from the Bankruptcy Court.

"Class" means a class of Claims or Interests as listed in Article II of the Plan pursuant to section 1122(a) of the Bankruptcy Code.

"Confirmation" means the Bankruptcy Court's confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code.

"Confirmation Date" means the day on which the Confirmation Order is entered by the Bankruptcy Court on its docket.

"Confirmation Order" means the order of the Bankruptcy Court approving Confirmation of the Plan.

"Consummation" means the occurrence of the Effective Date.

"Cooper Square" shall have the meaning set forth in Section 4.3 of the Plan.

"Corporate Documents" means, as applicable, the formation documents and by-laws (or any other applicable organizational documents) of the Debtor in effect as of the Petition Date.

"Darina Heavey" is, upon information and belief, a principal or former principal of Fuerta.

"David Scharf" is, upon information and belief, a member of Esplanade.

"Debtor Release" means the release given by the Debtor to the Released Parties as set forth in Section 10.1 of the Plan.

"Debtor" means 785 Partners LLC, a New York limited liability company.

"Debtor In Possession" means the Debtor when acting in the capacity of representative of its Estate in the Chapter 11 Case.

"Disbursing Agent" means the Reorganized Debtor and/or one or more Entities designated by the Debtor or Reorganized Debtor to serve as a disbursing agent under the Plan.

"Disclosure Statement" means the disclosure statement relating to the Plan, as approved by order of the Bankruptcy Court, including all exhibits and schedules thereto and references therein that relate to the Plan.

"Disputed Claim or Interest" means a Claim or Interest, or any portion thereof, as to which any one of the following applies: (a) that is listed on the Schedules as unliquidated, disputed, contingent or unknown; (b) that is the subject of a timely objection or request for estimation in accordance with the Bankruptcy Code, the Bankruptcy Rules, any applicable order of the Bankruptcy Court, the Plan or applicable non-bankruptcy law, which objection or request for estimation has not been withdrawn, resolved or overruled by a Final Order; (c) that is otherwise disputed by the Debtor or any other party in interest in accordance with applicable law, which dispute has not been withdrawn, resolved, or overruled by a Final Order; or (d) that is otherwise treated as a 'Disputed Claim' pursuant to the Plan.

"Distribution Record Date" means the record date for purposes of making distributions under the Plan on account of Allowed Claims, which date shall be the Confirmation Date or such other date prior to the Effective Date as may be designated in the Confirmation Order.

"Donal O' Sullivan" is a member of 8 Avenue.

"Effective Date" means the date selected by the Debtor that is the first Business Day after the Confirmation Date on which (a) the conditions to the occurrence of the Effective Date have been satisfied or waived pursuant to Article XI hereof and (b) no stay of the Confirmation Order is in effect; provided, however, that such date shall be within fifteen (15) days after entry of the Confirmation Order.

"End Unit Purchaser Representative" means Conor Sheahan, solely in his capacity as a representative and agent for the End Unit Purchasers.

"End Unit Purchasers" means, collectively, the various individuals listed on Schedule F to the Fuerta Settlement Agreement who purportedly were end purchasers of Units prior to the Petition Date.

"End Unit Purchasers' Claims" means, collectively, the Claims of the End Unit Purchasers to all of the BPA Down Payment Escrow.

"Entity" means an entity as such term is defined in section 101(15) of the Bankruptcy Code.

"Esplanade" means Esplanade 8th Avenue LLC, the holder of 0.25% of the Old Membership Interests.

"Estate" means the estate of the Debtor in the Chapter 11 Case created pursuant to section 541 of the Bankruptcy Code.

"Exculpated Claim" means any Claim related to any prepetition or postpetition act taken or omitted to be taken in connection with, relating to, or arising out of the Debtor's pre- and post-petition business operations, the Chapter 11 Case, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement or the Plan, or any contract, instrument, release, or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the preparation or filing of the Chapter 11 Case, the pursuit of Confirmation, the pursuit of Consummation, and the administration and implementation of the Plan, including, without limitation, the distribution of property under the Plan or any other agreement.

"Exculpated Party" means each of (a) the Debtor and (b) the Released Parties.

"Final Order" means, as applicable, an order or judgment entered by the Bankruptcy Court or other court of competent jurisdiction with respect to the relevant subject matter that has not been reversed, stayed, modified or amended, and as to which the time to appeal, petition for certiorari, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for certiorari, or motion or other proceedings for a new trial, reargument or rehearing shall then be pending or as to which any right to appeal, petition for certiorari, move for a new trial, reargue, or rehear shall have been waived in writing in form and substance satisfactory to the Debtor or, in the event that an appeal, writ of certiorari, new trial or reargument or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court or other applicable court shall have been affirmed by the highest court to which such order or judgment was appealed, or certiorari has been denied, or from which a new trial, reargument or rehearing was sought, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument or rehearing shall have expired; provided, however, that the possibility that a motion under section 502(j) of the Bankruptcy Code, Rules 59 or 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules may be but has not then been filed with respect to such order or judgment shall not cause such order or judgment not to be a Final Order.

"Jay Eisenstadt" is, upon information and belief, a member of Esplanade.

"John Ryan" is, upon information and belief, a principal or former principal of Fuerta.

"Ken Healy" is, upon information and belief, a principal of Fuerta.

"First Manhattan" means First Manhattan Developments REIT, the current holder of the Notes.

"First Manhattan Claim" means the Claim of First Manhattan arising under the Notes and the Mortgages.

"Fuerta" means Fuerta Property Limited, an Ireland limited liability company.

"Fuerta Claim" means the Claim of Fuerta to all of the BPA Down Payment Escrow.

"Fuerta Settlement Agreement" means the Settlement and Plan Support Agreement dated as of October 10, 2011, a copy of which is attached as Exhibit A to the Plan, entered into by and among the Debtor, Time Square, 8 Avenue, Fuerta, the End Unit Purchasers, Tower, and the End Unit Purchaser Representative. The Fuerta Settlement Agreement is incorporated into and constitutes a part of the Plan.

"General Unsecured Claim" means any Claim against the Debtor that is not an Administrative Expense Claim, a Priority Tax Claim, a Secured Tax Claim, a Non-Tax Priority Claim, an Other Secured Claim, the First Manhattan Claim, the Time Square Claim, the Fuerta Claim, or the End Unit Purchasers' Claims.

"Holdback Amount" means the aggregate holdback of those fees of Professional Persons billed to the Debtor during the Chapter 11 Case that are held back pursuant to any order of the Bankruptcy Court, which amount is to be deposited in the Holdback Escrow Account as of the Effective Date. The Holdback Amount shall not be considered property of the Debtor or the Reorganized Debtor. When all Professional Fee Claims have been paid, amounts remaining in the Holdback Escrow Account, if any, shall be paid to the Reorganized Debtor.

"Holdback Escrow Account" means the escrow account established by the Reorganized Debtor into which Cash equal to the Holdback Amount shall be deposited on the Effective Date for the payment of Allowed Professional Fee Claims to the extent not previously paid or disallowed.

"Holder" means the beneficial holder of any Claim or Interest.

"Impaired" means, when used with reference to a Claim or Interest, a Claim or Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

"Instrument" means any share of stock, security, promissory note, bond, or any other 'Instrument,' as that term is defined in section 9-102(47) of the Uniform Commercial Code in effect on the Petition Date.

"Interest" means the interest of any holder of an "equity security" (as defined in section 101(16) of the Bankruptcy Code) represented by any issued and outstanding Old

Membership Interests or other Instrument evidencing a present ownership interest in the Debtor, whether or not transferable, or any option, warrant or right, contractual or otherwise, to acquire any such interest and any redemption, conversion, exchange, voting, participation and dividend rights and liquidation preferences relating to any such equity security.

"Judicial Code" means title 28 of the United States Code, 28 U.S.C §§1-4001.

"Kevin O' Sullivan" is a member of 8 Avenue.

"Lease-Up" shall have the meaning set forth in Section 4.3 of the Plan.

"Lien" has the meaning set forth in section 101(37) of the Bankruptcy Code.

"Liquidity Event" shall have the meaning set forth in Section 4.5(a) of the Plan.

"Manager" shall have the meaning set forth in Section 5.2 of the Plan.

"Mortgages" mean the mortgages on the Property and the Units securing the Notes.

"Mutual Release" means the release provision set forth in Section 10.3 of the Plan.

"New LLC Agreement" means the new limited liability company agreement respecting the Reorganized Debtor, substantially in the form of that attached to the Plan Supplement, to be executed by all entities that receive New Membership Interests.

"New Membership Interests" mean the membership interests of the Reorganized Debtor authorized pursuant to the Plan and to be issued on the Effective Date pursuant to Section 4.7 of the Plan.

"Newco" means the New York limited liability company, to be formed in accordance with the Fuerta Settlement Agreement, in which the End Unit Purchasers shall be the initial members.

"NOI Surplus" shall have the meaning set forth in Section 4.6 of the Plan.

"Non-Tax Priority Claim" means a Claim, other than an Administrative Expense Claim or a Priority Tax Claim, entitled to priority in right of payment under section 507(a) of the Bankruptcy Code.

"Notes" means, collectively, the Transfer Loan Notes, the Building Loan Notes and the Project Loan Notes, in the total principal amount of $81,212,506 as of the Petition Date.

"Old Membership Interests" mean the membership interests in the Debtor issued and outstanding as of the Petition Date, all unissued and/or authorized membership interests in the Debtor, and any warrants, options, or contractual rights to purchase or acquire such membership interests at any time and all rights arising with respect thereto.

"Other Secured Claim" means any Secured Claim other than the First Manhattan Claim and the Time Square Claim.

"Person" has the meaning set forth in section 101(41) of the Bankruptcy Code.

"Petition Date" means August 3, 2011, the date on which the Debtor filed its Voluntary Petition.

"Plan" means this amended plan of reorganization and any schedules or exhibits hereto, as same may be amended, modified, or supplemented from time to time.

"Plan Supplement" means the compilation of documents, including any exhibits to this Plan not included herewith, that the Debtor shall file with the Bankruptcy Court prior to the voting deadline for the Plan.

"Post-Confirmation Mezzanine Financing" means any mezzanine financing obtained by the Reorganized Debtor after the Effective Date, on commercially reasonable terms, from independent third-party lenders in such amounts as the Reorganized Debtor may in good faith deem necessary for the benefit of the Property in two scenarios: (a) in the context of a Capital Call, to fund a Capital Call which was not funded by one or more members of the Reorganized Debtor, or (b) in any other context, with the prior written consent of Newco, which consent shall not be unreasonably withheld, delayed or conditioned.

"Pre-Confirmation Mezzanine Financing" means any mezzanine financing obtained by the Debtor prior to the Effective Date, subordinate to the First Manhattan Claim, on commercially reasonable terms, either from independent third-party lenders or from Time Square or an Affiliate of Time Square and/or Kevin O'Sullivan and Donal O'Sullivan as a "bridge" until replacement mezzanine debt can be sourced from the market (provided that in the case of financing sourced from Time Square or an Affiliate, the loan terms shall be commercially reasonable and the interest on such financing shall be as follows: (a) up to $2.5 million: 250 basis points above the interest rate on the First Manhattan Claim; (b) from $2.5 million to $5 million: 400 basis points above the interest rate on the First Manhattan Claim; and (c) above $5 million: 12% per annum). Any Pre-Confirmation Mezzanine Financing shall be limited to the minimum amount necessary for the purpose of obtaining Confirmation, in the good faith judgment of the Debtor, as advised by legal counsel. Further, any such Pre-Confirmation Mezzanine Financing shall have the additional terms and conditions set forth in section 1.k.ii of the Fuerta Settlement Agreement.

"Preferred Membership Interests" means all capital contributed pursuant to any Capital Call.

"Priority Tax Claim" means a Claim that is entitled to priority pursuant to section 507(a)(8) of the Bankruptcy Code.

"Project Loan Notes" mean notes issued by the Debtor pursuant to that certain Project Loan Agreement dated as of January 25, 2007 in the principal amount of $20,621,506.

"Pro Rata" means a share to be received, or an amount to be paid, based on proportionate share of ownership, responsibility, or time used.

"Professional Fee Claims" means the Claims of (a) Professional Persons and (b) any Person making a Claim for compensation or expense reimbursement under section 503(b) of the Bankruptcy Code, in each case for reasonable compensation or reimbursement of reasonable costs and expenses relating to services performed during the period commencing on the Petition Date and ending on (and including) the Confirmation Date.

"Professional Person" means a Person or Entity who is employed pursuant to a Final Order in accordance with sections 327 or 1103 of the Bankruptcy Code and is to be compensated for services rendered prior to the Confirmation Date pursuant to sections 327, 328, 329, 330 and 331 of the Bankruptcy Code.

"Proof of Claim" means any proof of claim that is filed by a Holder of a Claim.

"Property" means the 43-story, 122-unit residential building with commercial space owned by the Debtor located at 785 Eighth Avenue, New York, New York.

"Punch List" shall have the meaning set forth in Section 4.2 of the Plan.

"Receiver" means Gerald Kahn, solely in his capacity as receiver of the Property.

"Receiver Order" means the October 6, 2010 order of the State Court appointing the Receiver.

"Receiver's Property Manager" means Sanjay Gandhi of New York City Management LLC.

"Rejected Contracts Schedule" has the meaning set forth in Section 9.1 of the Plan.

"Released Party" means each of: (a) the Debtor, (b) Time Square, (c) 8 Avenue, (d) Tower, (e) Esplanade, (f) Fuerta, (g) the End Unit Purchasers, (h) the End Unit Purchaser Representative, (i) Kevin O'Sullivan, (j) Donal O'Sullivan, (k) David Scharf, (l) Jay Eisenstadt, (m) Ulo Barad, (n) Adam Mirzoeff, (o) Bryan Turley, (p) Darina Heavey, (q) John Ryan, (r) Ken Healy, (s) CKS Finance Ltd., and (t) the officers, directors, principals, managing members, agents, employees, Affiliates, attorneys (except as may be provided in the Fuerta Settlement Agreement or in a separate agreement), financial advisors, accountants, investment bankers, consultants, representatives, other professionals, predecessors, and successors and assigns of the entities listed in (a) through (t) immediately above and in each case in their capacity as such.

"Reorganized Debtor" means the Debtor as revested with the property of the Estate on and after the Effective Date.

"Schedules" means the schedules of assets and liabilities, the list of equity interests, and the statement of financial affairs filed by the Debtor with the Bankruptcy Court pursuant to section 521 of the Bankruptcy Code and Bankruptcy Rule 1007(b), as the same may be amended or supplemented from time to time.

"Secured" means when referring to a Claim: (a) secured by a Lien on property in which the Estate has an interest, which Lien is valid, perfected, and enforceable pursuant to applicable

law or by reason of a Bankruptcy Court order, or that is subject to setoff pursuant to section 553 of the Bankruptcy Code, to the extent of the value of the creditor's interest in the Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to section 506(a) of the Bankruptcy Code; or (b) Allowed as such pursuant to the Plan.

"Secured Tax Claim" means any Secured Claim which, absent its secured status, would be entitled to priority in right of payment under section 507(a)(8) of the Bankruptcy Code.

"Securities Act" means the Securities Act of 1933, 15 U.S.C. §§ 77a-77aa, together with the rules and regulations promulgated thereunder.

"Security" means a security as defined in section 2(a)(1) of the Securities Act.

"Seiden" means the law firm of Seiden & Schein, P.C.

"State Court" means the Supreme Court of the State of New York.

"Subclass" means a subdivision of any Class described herein.

"Third Party Release" means the release provision set forth in Section 10.2 of the Plan.

"Third Party Releasees" means the Debtor, the Reorganized Debtor and the Released Parties.

"Time Square" means Time Square Construction & Development, the construction manager for the Property, and the holder of the Time Square Claim.

"Time Square Claim" means the Claim of Time Square arising in connection with the construction of the Property.

"Time Square Lien" means the Lien against the Property securing the Time Square Claim.

"Tower" means Esplanade Tower Corp., a wholly-owned subsidiary of 8 Avenue and the holder of 1.00% of the Old Membership Interests.

"Transfer Loan Notes" mean notes issued by the Debtor pursuant to that certain Transfer Loan Agreement dated as of January 25, 2007 in the principal amount of $14,000,000.

"Ulo Barad" is, upon information and belief, a member of Esplanade.

"Unimpaired" means, when used with reference to a Claim or Interest, a Claim or Interest that is not Impaired.

"Units" mean, collectively, the 122 residential units located at the Property.

"Voluntary Petition" means the voluntary petition filed by the Debtor under chapter 11 of the Bankruptcy Code commencing the Chapter 11 Case.

1.2. Interpretation, Rules of Construction, Computation of Time, Settlement and Governing Law.

1.2.1 Defined Terms. Any term used in the Plan that is not defined in the Plan, either in Section 1.1 or elsewhere, but that is used in the Bankruptcy Code or the Bankruptcy Rules has the meaning ascribed to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

1.2.2 Rules of Interpretation. For purposes of the Plan: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, shall include both the singular and the plural; (b) any reference in the Plan to a contract, Instrument, release or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions, but if there exists any inconsistency between a summary of, or reference to, any document in the Plan or Confirmation Order and the document itself, the terms of the document as of the Effective Date shall control; (c) any reference in the Plan to an existing document or Plan Supplement that is filed or to be filed means such document or Plan Supplement, as it may have been or may subsequently be amended, modified or supplemented; (d) unless otherwise specified in a particular reference, all references in the Plan to "section," "article" and "Plan Supplement" are references to a section, article and Plan Supplement of or to the Plan; (e) the words "herein," "hereof," "hereto," "hereunder," and other words of similar import refer to the Plan in its entirety rather than to only a particular portion of the Plan; (f) captions and headings to articles and sections are inserted for convenience or reference only and are not intended to be a part of or to affect the interpretation of the Plan; and (g) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply.

1.2.3 Computation of Time. Unless otherwise specifically stated herein, in computing any period of time prescribed or allowed by the Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

1.2.4 Governing Law. Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of New York, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of the Plan, any agreements, documents, Instruments, or contracts executed or entered into in connection with the Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control); provided, however, that corporate governance matters relating to the Debtor or the Reorganized Debtor, as applicable, not incorporated or formed in New York shall be governed by the laws of the state of incorporation or formation of the Debtor or Reorganized Debtor, as applicable.

1.2.5 Settlements Incorporated Into The Plan. With respect to any and all settlements incorporated into, or otherwise implemented pursuant to or in connection with, the Plan (including, without limitation, the Fuerta Settlement Agreement), the Plan

and Disclosure Statement shall be deemed to constitute a motion for approval of such settlements pursuant to Bankruptcy Rule 9019 and any other applicable provisions of the Bankruptcy Rules and the Bankruptcy Code.

ARTICLE II
DESIGNATION OF CLAIMS AND INTERESTS

2.1. Summary of Designation of Claim and Interests. The following is a designation of the Classes of Claims and Interests under the Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims have not been classified and are excluded from the following Classes. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest is within the description of that Class and is classified in another Class to the extent that any remainder of the Claim or Interest qualifies within the description of such other Class or Classes. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest is an Allowed Claim or Allowed Interest and has not been paid, released or otherwise satisfied before the Effective Date.

Class	Claims and Interests	Status	Voting Rights
Class 1:	Non-Tax Priority Claims	Unimpaired	Deemed to Accept; Not Entitled to Vote
Class 2:	Other Secured Claims	Unimpaired	Deemed to Accept; Not Entitled to Vote
Class 3:	First Manhattan Claim	Impaired	Entitled to Vote
Class 4:	Time Square Claim	Impaired	Deemed to Reject; Not Entitled to Vote
Class 5:	Fuerta Claim	Impaired	Entitled to Vote
Class 6:	End Unit Purchasers' Claims	Impaired	Entitled to Vote
Class 7:	General Unsecured Claims	Unimpaired	Deemed to Accept; Not Entitled to Vote
Class 8:	Old Membership Interests	Impaired	Entitled to Vote

ARTICLE III
TREATMENT OF CLAIMS AND INTERESTS

3.1. Unclassified Claims. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims are not classified, are Unimpaired, and are not entitled to vote on the Plan.

3.2. Administrative Expense Claims.

3.2.1 In General. Except to the extent that a Holder of an Allowed Administrative Expense Claim has been paid by the Debtor prior to the Effective Date, each Holder of an Allowed Administrative Expense Claim (other than a Professional Fee

Claim), in full and final satisfaction, release, settlement and discharge of such Administrative Expense Claim, shall be paid in full, in Cash, in such amounts as (a) are incurred in the ordinary course of business by the Debtor when and as such Claim becomes due and owing, (b) are Allowed by the Bankruptcy Court upon the later of the Effective Date, the date upon which there is a Final Order allowing such Administrative Expense Claim or any other date specified in such order, or (c) may be agreed upon between the Holder of such Administrative Expense Claim and the Debtor.

3.2.2 Professional Compensation.

(a) Final Fee Applications. All final requests for payment of Professional Fee Claims, including the Holdback Amount and Professional Fee Claims incurred during the period from the Petition Date through the Confirmation Date, must be filed with the Bankruptcy Court and served on the Reorganized Debtor no later than forty-five (45) days after the Confirmation Date. After notice and a hearing in accordance with the procedures established by the Bankruptcy Code and any applicable orders of the Bankruptcy Court, the Allowed amounts of such Professional Fee Claims shall be determined and paid as directed by the Bankruptcy Court.

(b) Post-Confirmation Date Fees and Expenses. Except as otherwise specifically provided in the Plan, from and after the Confirmation Date, the Reorganized Debtor shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable legal, professional, or other fees and expenses related to implementation of the Plan and Consummation incurred by the Reorganized Debtor. Upon the Confirmation Date, any requirement that Professional Persons comply with sections 327 through 331 and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtor may employ and pay any Professional Person in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

3.3. Priority Tax Claims. Except to the extent that a Holder of an Allowed Priority Tax Claim has been paid by the Debtor prior to the Effective Date or agrees to a different treatment, each Holder of an Allowed Priority Tax Claim, in full and final satisfaction, release, settlement and discharge of such Priority Tax Claim, shall receive on account of such Claim, at the option of the Debtor, either payment in full in Cash as soon as reasonably practicable after the Effective Date, or in accordance with section 1129(a)(9)(C) of the Bankruptcy Code, regular installment payments in Cash: (i) of a total value, as of the Effective Date, equal to the Allowed amount of such Claim; (ii) which total value shall include simple interest to accrue on any outstanding balance of such Allowed Priority Tax Claim starting on the Effective Date at the rate of interest determined under applicable nonbankruptcy law pursuant to section 511 of the Bankruptcy Code; (iii) over a period ending not later than five (5) years after the Petition Date; and (iv) in a manner not less favorable than the most favored nonpriority unsecured Claim provided for by the Plan. Each Holder of an Allowed Secured Tax Claim shall retain the Lien securing its Allowed Secured Tax Claim as of the Effective Date until full and final payment of

such Allowed Secured Tax Claim is made as provided herein, and upon such full and final payment, such Lien shall be deemed to have been satisfied and shall be null and void and unenforceable for all purposes.

3.4. Class 1 (Non-Tax Priority Claims).

(a) Non-Impairment. Class 1 consists of all Non-Tax Priority Claims. Class 1 is Unimpaired, and pursuant to section 1126(f) of the Bankruptcy Code, the Holders of Claims in Class 1 are conclusively presumed to have accepted the Plan and are not entitled to vote to accept or reject the Plan.

(b) Treatment. The legal, equitable and contractual rights of the Holders of Allowed Non-Tax Priority Claims are unaltered by the Plan. Each Holder of an Allowed Non-Tax Priority Claim, in full and final satisfaction, release, settlement and discharge of such Allowed Non-Tax Priority Claim, shall be paid in full, in Cash, on the Effective Date or in accordance with the terms of any agreement between the Debtor and the Holder of an Allowed Non-Tax Priority Claim or on such other terms and conditions as are acceptable to the Debtor and the Holder of an Allowed Non-Tax Priority Claim.

3.5. Class 2 (Other Secured Claims).

(a) Non-Impairment. Class 2 consists of all Other Secured Claims. Class 2 is Unimpaired, and pursuant to section 1126(f) of the Bankruptcy Code, the Holders of Claims in Class 2 are conclusively presumed to have accepted the Plan and are not entitled to vote to accept or reject the Plan.

(b) Subclassification. Each Other Secured Claim, if any, shall constitute and comprise a separate Subclass numbered 3.5.1, 3.5.2, 3.5.3 and so on.

(c) Treatment. The legal, equitable and contractual rights of the Holders of Allowed Other Secured Claims are unaltered by the Plan. On or as soon as practicable after the Effective Date, each Allowed Other Secured Claim, in full and final satisfaction, release, settlement and discharge of such Allowed Other Secured Claim, shall be paid in full, in Cash, from the BPA Down Payment Escrow, except to the extent the Reorganized Debtor and such Holder agree to a different treatment.

3.6. Class 3 (First Manhattan Claim).

(a) Impairment. Class 3 consists of the First Manhattan Claim. Class 3 is Impaired, and the Holder of the First Manhattan Claim is entitled to vote to accept or reject the Plan.

(b) Allowance. For purposes of voting to accept or reject the Plan and receiving distributions under the Plan, the First Manhattan Claim shall be deemed Allowed in the

aggregate amount of $85,749,337.16, consisting of $81,212,506.00 in principal plus $4,536,831.16 of accrued and unpaid interest and other costs and fees through the Petition Date.[1]

(c) Treatment. On or as soon as practicable after the Effective Date, the Holder of the Allowed First Manhattan Claim, in full and final satisfaction, release, settlement and discharge of such Claim, shall (i) receive a payment, in Cash, from the BPA Down Payment Escrow, as and to the extent set forth in Section 4.2 of the Plan,[2] (ii) receive (a) the Amended and Restated Note, in the amount of $73,878,373.03 (the amount of the Allowed First Manhattan Claim less the Cash payment made pursuant to (i) immediately above),[3] which shall have a term of five years, and (b) the Amended and Restated Mortgage, (iii) receive (a) for year one, monthly payments of interest only at a fixed rate equal to the 5-year U.S. treasury rate plus 2.50% per annum on $73,878,373.03,[4] and (b) for years two through five, monthly payments of principal and interest at a fixed rate equal to the 5-year U.S. treasury rate plus 2.50% per annum on $73,878,373.03 based upon a thirty year amortization rate,[5] with a balloon payment at the end of the note term;[6] and (iv) retain the Lien securing such Claim until full and final payment of such Claim is made as provided in the Plan, and upon such full and final payment, such Lien shall be deemed to have been satisfied and shall be null and void and unenforceable for all purposes. In addition to the foregoing, the Holder of the Allowed First Manhattan Claim shall be entitled to a portion of (i) the proceeds from a Liquidity Event, if any, as and to the extent set forth in Section 4.5 of the Plan, and (ii) NOI Surplus, if any, as and to the extent set forth in Section 4.6 of the Plan.

3.7. Class 4 (Time Square Claim).

(a) Impairment. Class 4 consists of the Time Square Claim. Class 4 is Impaired, and pursuant to section 1126(g) of the Bankruptcy Code, the Holder of the Time Square Claim is deemed to reject the Plan and is not entitled to vote to accept or reject the Plan.

(b) Treatment. Upon the Effective Date, the Time Square Claim shall be waived and released, and the Time Square Lien shall be released and extinguished.

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[1] The $4,536,831.16 in interest and other costs and fees consists of $3,500,881.10 in interest (at LIBOR plus 2.75%), $886,690.23 in protective advances and enforcement costs, $11,259,83 in interest on the protective advances and enforcement costs, and $138,000 in unpaid administrative fees.

[2] The Debtor estimates that the amount of this payment will be $11,870,964.13.

[3] This amount assumes that the Cash payment to be made pursuant to (i) immediately above will be $11,870,964.13.

[4] The monthly payments during this period shall be approximately $230,869.92.

[5] The monthly payments during this period shall be approximately $342,142.26.

[6] The amount of the balloon payment is estimated to be $68,125,591.35.

3.8. Class 5 (Fuerta Claim).

(a) Impairment. Class 5 consists of the Fuerta Claim. Class 5 is Impaired, and the Holder of the Fuerta Claim is entitled to vote to accept or reject the Plan.

(b) Treatment. On or as soon as practicable after the Effective Date, the Holder of the Fuerta Claim, in full and final satisfaction, release, settlement and discharge of such Claim, shall receive a Cash payment of $350,000 from the BPA Down Payment Escrow.

3.9. Class 6 (End Unit Purchasers' Claims).

(a) Impairment. Class 6 consists of the End Unit Purchasers' Claims. Class 6 is Impaired, and the Holders of the End Unit Purchasers' Claims are entitled to vote to accept or reject the Plan.[7]

(b) Treatment. On or as soon as practicable after the Effective Date, in full and final satisfaction, release, settlement and discharge of the End Unit Purchasers' Claims, Newco shall receive (i) a Cash payment of $1,550,000 from the BPA Down Payment Escrow and (ii) 35% of the New Membership Interests.

3.10. Class 7 (General Unsecured Claims).

(a) Non-Impairment. Class 7 consists of all General Unsecured Claims. Class 7 is Unimpaired, and pursuant to section 1126(f) of the Bankruptcy Code, the Holders of Claims in Class 7 are conclusively presumed to have accepted the Plan and are not entitled to vote to accept or reject the Plan.

(b) Treatment. On or as soon as practicable after the Effective Date, except to the extent a Holder of an Allowed General Unsecured Claim agrees to less favorable treatment, each Holder of an Allowed General Unsecured Claim, in full and final satisfaction, release, settlement and discharge of such Claim, shall be paid in full, in Cash, from the BPA Down Payment Escrow.

3.11. Class 8 (Old Membership Interests).

(a) Impairment. Class 8 consists of all Old Membership Interests. Class 8 is Impaired, and the Holders of Old Membership Interests in Class 8 are entitled to vote to accept or reject the Plan.

(b) Treatment. On the Effective Date, all Old Membership Interests shall be cancelled and extinguished. 8 Avenue shall receive 63.75% of the New Membership Interests, Tower shall receive 1.00% of the New Membership Interests, and Esplanade shall receive 0.25% of the New Membership Interests.

[7] As set forth in Section 6.1 of the Plan, the End Unit Purchaser Representative has been appointed as the sole representative and agent for the End Unit Purchasers for, among other things, voting to accept or reject the Plan in respect of the End Unit Purchasers' Claims.

ARTICLE IV
MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN

4.1. Plan Funding. The funds utilized to make Cash payments under the Plan will be generated from, among other things, the disposition of the BPA Down Payment Escrow, as set forth in Section 4.2 of the Plan, and the Lease-Up, as set forth in Section 4.3 of the Plan.

4.2. Disposition of BPA Down Payment Escrow. On or as soon as practicable after the Effective Date, the BPA Down Payment Escrow shall be applied as follows: (i) $180,017 to the Reorganized Debtor to pay in full the Holders of Allowed Other Secured Claims and Allowed General Unsecured Claims under the Plan; (ii) $1,000,000 to the Reorganized Debtor to pay in full the Holders of Allowed Professional Fee Claims under the Plan and post-Effective Date legal fees, costs and expenses; (iii) $1,550,000 to Newco in accordance with the treatment of the End Unit Purchasers' Claims under the Plan; (iv) $350,000 to Fuerta in accordance with the treatment of the Fuerta Claim under the Plan; (v) $328,788 to the Reorganized Debtor to fund the final improvements and repairs required for the Lease-Up (the "Punch List"); (vi) $595,806 to the Reorganized Debtor to cover building costs incidental to the Lease-Up; (vii) $880,336 to the Reorganized Debtor to fund the costs of marketing the Lease-Up; (viii) $335,788 to the Reorganized Debtor to fund the management of the Property for approximately three months, including the fees of Cooper Square; (ix) $1,500,000 to the Reorganized Debtor to be held in reserve to cover interest payments to the Holder of the Allowed First Manhattan Claim under the Plan; (x) $195,000 to the Reorganized Debtor to cover contingencies; (xi) any savings realized with respect to the projected expenses set forth in (i) through (x) above to pay down the then-remaining principal balance of the Allowed First Manhattan Claim; and (xii) after the application of (i) through (xi) above, to pay down the then-remaining principal balance of the Allowed First Manhattan Claim.[8]

4.3. Management and Lease-Up of Property. Unless initiated prior to Confirmation, on or as soon as practicable after the Effective Date, the Reorganized Debtor shall initiate a program of leasing the Units to residential tenants (the "Lease-Up"). In connection with the Lease-Up, (i) the Reorganized Debtor shall engage Time Square to manage and/or perform the work set forth in the Punch List on commercially reasonable, arm's-length terms; (ii) the Reorganized Debtor shall engage Citi Habitats ("Citi Habitats") as marketing and leasing agent for the Property on commercially reasonable, arm's-length terms; (iii) the Reorganized Debtor shall engage Cooper Square Realty, Inc. ("Cooper Square") as the manager of the Property on commercially reasonable, arm's-length terms; (iv) the End Unit Purchaser Representative shall be entitled to meet with Time Square, Citi Habitats and Cooper Square and any successors to the foregoing; and (v) $350,000 shall be payable annually on a quarterly basis by the Reorganized Company (80% to 8 Avenue and 20% to Newco) to cover administrative and reporting costs (any portion of the $350,000 not paid out in a given year shall be accumulated and deferred and paid out in the next succeeding year, and so forth going forward).

[8] The Debtor estimates that the amount of this payment will approximate $11,800,000.

4.4. Waiver of Time Square Claim and Relinquishment of Time Square Lien. As set forth in Section 3.7(b) of the Plan, upon the Effective Date, the Time Square Claim shall be waived and released, and the Time Square Lien shall be released and extinguished, which shall result in the elimination of a Secured Claim against the Estate in excess of $14,000,000.

4.5. Equity Waterfall.

(a) In the event of the consummation of a sale or refinancing of the Property (a "Liquidity Event") within 18 months of the Effective Date, proceeds from such Liquidity Event shall be distributed in the following order of priority: (i) first, to pay the outstanding obligations of the Reorganized Debtor, including the then-remaining principal balance of the Allowed First Manhattan Claim; (ii) second, to pay the balance of any Pre-Confirmation Mezzanine Financing or Post-Confirmation Mezzanine Financing approved by the members of the Reorganized Debtor, and any Preferred Membership Interest resulting from a member's failure to fund any capital call made by the Manager (a "Capital Call"); (iii) third, $3.3 million to 8 Avenue; (iv) fourth, any previously deferred and accumulated portion of the $350,000 annual expense described in Section 4.3 of the Plan shall be shared between 8 Avenue and Newco (80% to 8 Avenue and 20% to Newco), to the extent this expense has not been theretofore paid; (v) fifth, $17,000,000 to be shared between 8 Avenue and Newco (50% to 8 Avenue and 50% to Newco); (vi) sixth, $7,285,714.29 to 8 Avenue; (vii) seventh, Pro Rata to the members of the Reorganized Debtor. In no event shall Newco receive equity distributions in excess of $19 million under this Section 4.5(a).

(b) In the event of a Liquidity Event after 18 months from the Effective Date, proceeds from such Liquidity Event shall be distributed in the following order of priority: (i) first, to pay the outstanding obligations of the Reorganized Debtor, including the then-remaining principal balance of the Allowed First Manhattan Claim; (ii) second, to pay the balance of any Pre-Confirmation Mezzanine Financing or Post-Confirmation Mezzanine Financing approved by the members of the Reorganized Debtor, and any Preferred Membership Interest resulting from a member's failure to fund a Capital Call; (iii) third, $3.3 million to 8 Avenue; (iv) fourth, any previously deferred and accumulated portion of the $350,000 annual expense described in Section 4.3 of the Plan shall be shared between 8 Avenue and Newco (80% to 8 Avenue and 20% to Newco), to the extent this expense has not been theretofore paid; (v) fifth, Pro Rata to the members of the Reorganized Debtor. In no event shall Newco receive equity distributions in excess of $19 million; provided, however, that such $19 million cap shall remain constant for three years commencing on the Effective Date, but shall thereafter be increased annually by the annual change in the consumer price index (All Urban Consumers NY-NJ-CT region 1982-82=100) commencing three years after the Effective Date (it being understood that such CPI increases start from $19 million).

4.6. Cash Flow Waterfall. If, in any fiscal year, the Reorganized Debtor generates positive net operating income after deducting all expenses (including debt service respecting the First Manhattan Claim and payment of the $350,000 described in Section 4.3 of the Plan) (a "NOI Surplus"), the NOI Surplus shall be used as follows: (i) first, if sufficient NOI Surplus is available, distributions shall be allocated 65% to 8 Avenue and 35% to Newco and shall be made in an amount sufficient for the members of Newco and 8 Avenue to pay any taxes on allocated taxable income generated by the Reorganized Debtor, such amount to be determined in good

faith by the Reorganized Debtor and its accountants after consultation with Newco; and (ii) second, any remaining NOI Surplus shall be allocated 65% to 8 Avenue and 35% to Newco, and such NOI Surplus may be used, in the sole discretion of 8 Avenue, toward repayment of the then-remaining principal balance of the Allowed First Manhattan Claim, distribution to the members of the Reorganized Debtor, as a capital reserve, or any combination thereof.

4.7. Authorization and Issuance of New Membership Interests. On the Effective Date, the Reorganized Debtor shall have authorized New Membership Interests of a single class in such amount as shall be necessary or appropriate in connection with consummation of the Plan. On or as soon as practicable after the Effective Date, the Reorganized Debtor shall issue, in accordance with the terms of the Plan, a sufficient number of New Membership Interests as is necessary to consummate the Plan without the need for any further corporate or shareholder action. All New Membership Interests to be issued pursuant to the Plan shall be, upon issuance, fully paid and non-assessable, and shall be subject to dilution for future issuances as authorized by the Manager.

4.8. New LLC Agreement. The holders of the New Membership Interests shall be party to the New LLC Agreement, the terms of which shall be consistent with the terms of the Fuerta Settlement Agreement and reasonably acceptable to such holders, and which shall be included in the Plan Supplement. The New LLC Agreement shall be binding on all holders of New Membership Interests. Newco, 8 Avenue, Tower and Esplanade shall be required to execute and deliver to the Reorganized Debtor a signature page to the New LLC Agreement as a condition precedent to receiving any distribution of New Membership Interests pursuant to the Plan. The Reorganized Debtor shall take all actions necessary to file, register and/or otherwise effectuate the New LLC Agreement. The New LLC Agreement shall contain provisions necessary to prohibit the issuance of nonvoting equity securities as required by section 1123(a)(6) of the Bankruptcy Code.

4.9. Cancellation and Surrender of Existing Securities and Agreements.

(a) Except as may otherwise be provided in the Plan, on the date distributions are made, the promissory notes, share certificates, membership interests, bonds and other Instruments evidencing any Claim or Interest shall be deemed cancelled without further act or action under any applicable agreement, law, regulation, order or rule and the obligations of the Debtor (and, as applicable, any non-Debtor subsidiaries and affiliates of the Debtor) under the agreements, indentures and certificates of designations governing such Claims and Interests, as the case may be, shall be discharged and released.

(b) Except as otherwise provided herein or agreed by the Reorganized Debtor, each holder of a promissory note, share certificate, membership interest, bond or other Instrument evidencing a Claim or Interest shall surrender such promissory note, share certificate, membership interest, bond or Instrument to the Reorganized Debtor (or the Disbursing Agent). No distribution of property hereunder shall be made to or on behalf of any such holders unless and until such promissory note, share certificate, membership interest, bond or Instrument is received by the Reorganized Debtor (or the Disbursing Agent), or the unavailability of such promissory note, share certificate, membership interest, bond or Instrument is established to the reasonable satisfaction of the Reorganized Debtor (or the Disbursing Agent), or such

requirement is waived by the Reorganized Debtor. The Reorganized Debtor may require any holder that is unable to surrender or cause to be surrendered any such promissory notes, share certificates, membership interests, bonds or Instruments to deliver an affidavit of loss and indemnity reasonably satisfactory to the Reorganized Debtor. Any holder that fails within the later of six months after the Effective Date and the date of allowance of its Claim or Interest (i) to surrender or cause to be surrendered such promissory note, share certificate, membership interest, bond or Instrument and (ii) if requested, to execute and deliver an affidavit of loss and indemnity reasonably satisfactory to the Reorganized Debtor (or the Disbursing Agent), shall be deemed to have forfeited all rights, Claims and Causes of Action against the Debtor and the Reorganized Debtor and shall not participate in any distribution hereunder.

4.10. Revesting of Assets and Operation of Business. Except as otherwise set forth herein or in the Confirmation Order, as of the Effective Date, all property of the Estate shall revest in the Reorganized Debtor free and clear of all Claims, Liens, encumbrances and other Interests of the Holders of Claims or Interests.

4.11. Retention of Causes of Action. Except as otherwise provided in the Plan, the Confirmation Order, or in any settlement agreement approved during the Chapter 11 Case: (1) any and all rights, Claims, Causes of Action, defenses, and counterclaims of or accruing to the Debtor or its Estate shall remain assets of and vest in the Reorganized Debtor, whether or not litigation relating thereto is pending on the Effective Date, and whether or not any such rights, claims, Causes of Action, defenses, and counterclaims have been listed or referred to in the Plan, the Schedules, or any other document filed with the Bankruptcy Court, and (2) neither the Debtor nor the Reorganized Debtor waives, relinquishes, or abandons (nor shall they be estopped or otherwise precluded from asserting) any right, Claim, Cause of Action, defense, or counterclaim that constitutes property of the Estate: (a) whether or not such right, Claim, Cause of Action, defense, or counterclaim has been listed or referred to in the Plan or the Schedules, or any other document filed with the Bankruptcy Court, (b) whether or not such right, Claim, Cause of Action, defense, or counterclaim is currently known to the Debtor, and (c) whether or not a defendant in any litigation relating to such right, Claim, Cause of Action, defense, or counterclaim filed a Proof of Claim in the Chapter 11 Case, filed a notice of appearance or any other pleading or notice in the Chapter 11 Case, voted for or against the Plan, or received or retained any consideration under the Plan. Without in any manner limiting the generality of the foregoing, notwithstanding any otherwise applicable principle of law or equity, including, without limitation, any principles of judicial estoppel, res judicata, collateral estoppel, issue preclusion, or any similar doctrine, the failure to list, disclose, describe, identify, or refer to a right, Claim, Cause of Action, defense, or counterclaim, or potential right, Claim, Cause of Action, defense, or counterclaim, in the Plan, the Schedules, or any other document filed with the Bankruptcy Court shall in no manner waive, eliminate, modify, release, or alter the Reorganized Debtor's right to commence, prosecute, defend against, settle, and realize upon any rights, Claims, Causes of Action, defenses, or counterclaims that the Debtor or the Reorganized Debtor has, or may have, as of the Confirmation Date. The Reorganized Debtor may commence, prosecute, defend against, settle, and realize upon any rights, Claims, Causes of Action, defenses, and counterclaims in its sole discretion, in accordance with what is in the best interests, and for the benefit, of the Reorganized Debtor.

4.12. Satisfaction of Claims or Interests. Unless otherwise provided herein, any distributions and deliveries to be made on account of Allowed Claims shall be in full and final satisfaction, release, settlement and discharge of such Allowed Claims.

4.13. Continuation of Bankruptcy Injunction or Stays. All injunctions or stays provided for in the Chapter 11 Case under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

4.14. Administration Pending Effective Date. Prior to the Effective Date, the Debtor shall continue to operate its business as a debtor-in-possession, subject to all applicable requirements of the Bankruptcy Code and the Bankruptcy Rules. After the Effective Date, the Reorganized Debtor may operate its business, and may use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules, but subject to the continuing jurisdiction of the Bankruptcy Court as set forth in Article XII hereof.

4.15. Exemption From Securities Laws. The issuance of the New Membership Interests and any other security that may be deemed to be issued pursuant to the Plan shall be exempt from any federal, state or local laws requiring registration for the offer and sale of such securities or registration or licensing of an issuer of, underwriters of, or broker or dealer in, such securities, to the fullest extent permitted by section 1145 of the Bankruptcy Code.

4.16. Corporate Action. Each of the matters provided for by the Plan involving the corporate structure of the Debtor or corporate, financing or related actions to be taken by or required of the Reorganized Debtor shall, as of the Effective Date, be deemed to have occurred and be effective as provided in the Plan (except to the extent otherwise indicated), and shall be authorized, approved, and, to the extent taken prior to the Effective Date, ratified in all respects without any requirement of further corporate or shareholder action. Without limiting the foregoing, such actions will include: (i) the adoption and (as applicable) filing of the New LLC Agreement, (ii) the issuance of the New Membership Interests, and all related documents and Instruments, (iii) the issuance of the Amended and Restated Note and the Amended and Restated Mortgage, and all related documents and Instruments, and (iv) the appointment of the Manager and officers, if any, for the Reorganized Debtor.

ARTICLE V
CORPORATE GOVERNANCE AND MANAGEMENT OF THE REORGANIZED DEBTOR

5.1. Corporate Existence. Except as otherwise provided in the Plan, the Debtor shall continue to exist after the Effective Date as a separate corporate entity, limited liability company, partnership, or other form, as the case may be, with all the powers of a corporation, limited liability company, partnership, or other form, as the case may be, pursuant to the applicable law in the jurisdiction in which the Debtor is incorporated or formed and pursuant to its certificate of incorporation and bylaws (or other formation documents) in effect prior to the Effective Date, except to the extent such certificate of incorporation and bylaws (or other formation documents) are amended under the Plan, and to the extent such documents are amended, such documents are deemed to be amended pursuant to the Plan and require no further action or approval (other than

any requisite filings required under applicable state, provincial, or federal law). Without limiting the generality of the foregoing, as of the Effective Date, the Reorganized Debtor shall be governed by the New LLC Agreement.

5.2. Management of Reorganized Debtor. On the Effective Date, 8 Avenue shall be the initial managing member of the Reorganized Debtor (the "Manager"). The Manager shall have the power, authority and obligation to manage the business of the Reorganized Debtor, to make all decisions regarding the Reorganized Debtor and the Property, and to perform all other acts customary or incident to the management of the Reorganized Debtor, and Newco shall have no management role with respect to the Reorganized Debtor or the Property; provided, however, that the Manager may not take any of the actions set forth in section 1.c.iv. of the Fuerta Settlement Agreement without the prior written approval of Newco, not to be unreasonably withheld, delayed or conditioned. 8 Avenue, as managing member of the Reorganized Debtor, shall owe fiduciary duties only to the holders of New Membership Interests, and shall have no duties or liability to Fuerta or the End Unit Purchasers individually.

5.3. Removal of Receiver. As of the Confirmation Date, (i) the Receiver Order shall be of no further force and effect, (ii) the Receiver shall immediately comply with all of the requirements of sections 543(a) and (b) of the Bankruptcy Code, (iii) the Receiver shall immediately turn over all property of the Debtor in his possession including, without limitation, the Property, to the Debtor, and (iv) the services of the Receiver's Property Manager shall be terminated effective immediately.

5.4. Board Of Managers of Reorganized Debtor. In accordance with section 1129(a)(5) of the Bankruptcy Code, the Debtor will disclose on or before the Confirmation Date the identity and affiliations of any Person proposed to serve on the initial board of managers of the Reorganized Debtor, if any.

5.5. Officers of Reorganized Debtor. In accordance with section 1129(a)(5) of the Bankruptcy Code, the Debtor will disclose on or before the Confirmation Date the identity and affiliations of any Person proposed to serve as an officer of the Reorganized Debtor, if any.

5.6. Indemnification of Post-Effective Date Managers and Officers. The New LLC Agreement shall authorize the Reorganized Debtor to indemnify and exculpate its respective officers, directors, partners, managing members, managers, and agents, as applicable, to the fullest extent permitted under applicable law.

ARTICLE VI
VOTING

6.1. Voting Generally. Each holder of an Allowed Claim in an Impaired Class which is entitled to vote under the Plan shall be entitled to vote separately to accept or reject the Plan and indicate such vote on a duly executed and delivered ballot as provided in such order as is entered by the Bankruptcy Court establishing certain procedures with respect to the solicitation and tabulation of votes to accept or reject the Plan, or any other controlling order or orders of the Bankruptcy Court; provided, however, that the End Unit Purchaser Representative shall be the End Unit Purchasers' sole representative and agent in connection with, among other things,

receiving any and all solicitation materials in connection with the Plan and voting, executing and returning any ballot for the acceptance or rejection of the Plan in respect of the End Unit Purchasers' Claims.

6.2. Nonconsensual Confirmation. If any Impaired Class entitled to vote shall not accept the Plan by the requisite statutory majorities provided in section 1126 of the Bankruptcy Code, or if any Impaired Class is deemed to have rejected the Plan, the Debtor reserves the right (a) to undertake to have the Bankruptcy Court confirm the Plan under section 1129(b) of the Bankruptcy Code and (b) to amend the Plan to the extent necessary to obtain entry of the Confirmation Order.

ARTICLE VII
DISTRIBUTIONS UNDER THE PLAN

7.1. Distributions to Holders of Allowed Claims Only. Until a Disputed Claim becomes an Allowed Claim, distributions of Cash or property otherwise available to the Holder of such Claim shall not be made. Prior to the Effective Date, Holders of Claims shall be required to provide the Disbursing Agent an Internal Revenue Service Form W-9 (or, if applicable, an appropriate Internal Revenue Service Form W-8).

7.2. Distribution Record Date. The Debtor shall have no obligation to recognize, but may, in its sole and absolute discretion, recognize any transfer of any Claims occurring on or after the Distribution Record Date. The Debtor or the Reorganized Debtor, as applicable, will be entitled to recognize only those record holders of Claims as of the close of business on the Distribution Record Date. Subject to the foregoing, the Distribution Record Date shall be the record date for purposes of making distributions under the Plan.

7.3. Disbursing Agent. The Reorganized Debtor, as Disbursing Agent, or such other Entity designated by the Reorganized Debtor as a Disbursing Agent, shall make all distributions under the Plan when required by the Plan. A Disbursing Agent shall not be required to give any bond or surety or other security for the performance of its duties unless otherwise ordered by the Bankruptcy Court.

7.4. Rights and Powers of Disbursing Agent. The Disbursing Agent shall be empowered to (a) effect all actions and execute all agreements, Instruments and other documents necessary to perform its duties under the Plan, (b) make all distributions contemplated by the Plan, and (c) exercise such other powers as may be vested in the Disbursing Agent by order of the Bankruptcy Court, pursuant to the Plan, or as deemed by the Disbursing Agent to be necessary and proper to implement the provisions of the Plan.

7.5. Delivery of Distributions.

7.5.1 In General. Subject to Bankruptcy Rule 9010, all distributions to any Holder of an Allowed Claim shall be made at the address of such Holder as set forth in the Debtor's books and records and/or on the Schedules filed with the Bankruptcy Court unless the Debtor or their Disbursing Agent have been notified in writing of a change of address including, without limitation, by the filing of a Proof of Claim by such Holder

that contains an address for such Holder different from the address reflected on such books and records or Schedules for such Holder.

7.5.2 Timing of Distributions. In the event that any payment or act under the Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, and if so completed shall be deemed to have been completed as of the required date.

7.5.3 Distributions of Unclaimed Property. In the event that any distribution to any Holder is returned as undeliverable, the Disbursing Agent shall use reasonable efforts to determine the current address of such Holder, but no distribution to such Holder shall be made unless and until the Disbursing Agent has determined the then current address of such Holder, at which time such distribution shall be made to such Holder without interest or accruals of any kind. Such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code on the six month anniversary of the Effective Date. After that date, all unclaimed property or interest in property shall revert to the Reorganized Debtor and the Claim of any Holder to such property or interest in property shall be discharged and forever barred.

7.6. Time Bar to Cash Payments. Checks issued by the Reorganized Debtor on account of Allowed Claims shall be null and void if not negotiated within ninety (90) days from and after the date of issuance thereof. Holders of Allowed Claims shall make all requests for reissuance of checks to the Reorganized Debtor. Any Claim in respect of a voided check must be made on or before the six month anniversary of the date of issuance. After such date, all Claims and respective voided checks shall be discharged and forever barred and the Reorganized Debtor shall retain all monies related thereto.

7.7. Setoffs. The Debtor or the Reorganized Debtor may, but shall not be required to, set off or recoup against any Allowed Claim, and the payments or other distributions to be made pursuant to the Plan in respect of such Allowed Claim, any claims, rights or Causes of Action of any nature whatsoever that the Debtor or Reorganized Debtor may have against the Holder of such Claim; provided, however, that neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Debtor or the Reorganized Debtor of any such claims, rights or Causes of Action.

ARTICLE VIII
PROCEDURES FOR DISPUTED CLAIMS

8.1. Resolution of Disputed Claims. Except as set forth in any order of the Bankruptcy Court, any Holder of a Claim against the Debtor shall file a Proof of Claim with the Bankruptcy Court or with the agent designated by the Debtor for this purpose on or before the Claims Bar Date. The Debtor prior to the Effective Date, and thereafter the Reorganized Debtor, shall have the exclusive authority to file objections to Proofs of Claim on or before the Claims Objection Bar Date, and to settle, compromise, withdraw or litigate to judgment objections to any and all Claims, regardless of whether classified or otherwise. From and after the Effective

Date, the Reorganized Debtor may settle or compromise any Disputed Claim without approval of the Bankruptcy Court.

8.2. Estimation of Claims. The Debtor may, at any time, request that the Bankruptcy Court estimate any contingent or unliquidated Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Debtor has previously objected to such Claim or whether the Bankruptcy Court has ruled on such objection, and the Bankruptcy Court shall retain jurisdiction to estimate any Claim at any time during litigation concerning any objection to any Claim, including during the pendency of any appeal related to any such objection. In the event the Bankruptcy Court estimates any contingent or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court. If the estimated amount constitutes a maximum limitation on such Claim, the Debtor may elect to pursue any supplemental proceedings to object to any ultimate payment on such Claim. All of the aforementioned objection, estimation and resolution procedures are cumulative and are not necessarily exclusive of one another. Claims may be estimated and thereafter resolved by any permitted mechanism.

8.3. No Partial Distributions Pending Allowance. Notwithstanding any other provision in the Plan, except as otherwise agreed by the Debtor or the Reorganized Debtor, no partial payments or distributions shall be made with respect to a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by a Final Order.

8.4. Distributions After Allowance. To the extent a Disputed Claim becomes an Allowed Claim, the Disbursing Agent shall distribute to the Holder thereof the distributions, if any, to which such Holder is then entitled under the Plan. Any such distributions shall be made in accordance with and at the time mandated by the Plan. No interest shall be paid on any Disputed Claim that later becomes an Allowed Claim.

ARTICLE IX
EXECUTORY CONTRACTS AND UNEXPIRED LEASES

9.1. Assumption of Executory Contracts and Unexpired Leases. As of the Effective Date, all executory contracts and unexpired leases to which the Debtor is a party and which are listed on a schedule to be filed with the Plan Supplement (the "Rejected Contracts Schedule") shall be and shall be deemed to be rejected in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code. All executory contracts and unexpired leases not listed on the Rejected Contracts Schedule and not rejected prior to the Confirmation Date or otherwise the subject of a motion to reject filed on or before the Confirmation Date shall be assumed as of the Effective Date in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions and rejections pursuant to sections 365 and 1123 of the Bankruptcy Code. Each executory contract and unexpired lease assumed pursuant to the Plan shall revest in and be fully enforceable by the Reorganized Debtor in accordance with its terms, except as modified by the provisions of the Plan or any order of the Bankruptcy Court authorizing and providing for its assumption or applicable federal law.

9.2. Cure of Defaults of Assumed Executory Contracts and Unexpired Leases.

(a) Except as otherwise specifically provided in the Plan, any monetary defaults under each executory contract and unexpired lease to be assumed pursuant to the Plan shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount in Cash on the Effective Date or in the ordinary course of business, subject to the limitation described below, or on such other terms as the parties to such executory contracts or unexpired leases may otherwise agree. In the event of a dispute regarding: (1) the amount of any payments to cure such a default, (2) the ability of the Reorganized Debtor or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the executory contract or unexpired lease to be assumed, or (3) any other matter pertaining to assumption, the cure payments required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order or orders resolving the dispute and approving the assumption; provided, however, that based on the Bankruptcy Court's resolution of any such dispute, the Debtor or Reorganized Debtor shall have the right, within 30 days after the entry of such Final Order and subject to approval of the Bankruptcy Court pursuant to section 365 of the Bankruptcy Code, to reject the applicable executory contract or unexpired lease.

(b) Assumption of any executory contract or unexpired lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed executory contract or unexpired lease at any time prior to the effective date of assumption. Any Proofs of Claim filed with respect to an executory contract or unexpired lease that has been assumed shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.

9.3. Pass-Through. Any rights or arrangements necessary or useful to the operation of the Debtor's business but not otherwise addressed as a Claim or Interest, including non-exclusive or exclusive patent, trademark, copyright, maskwork or other intellectual property licenses and other executory contracts not assumable under section 365(c) of the Bankruptcy Code, shall, in the absence of any other treatment, be passed through the bankruptcy proceedings for the Debtor and the Debtor's counterparty's benefit, unaltered and unaffected by the bankruptcy filings or the Chapter 11 Case.

9.4. Survival of Indemnification and Corporation Contribution. The obligations of the Debtor, if any, to indemnify and/or provide contribution to its current and former directors, officers, employees, managing agents, members and attorneys, and such parties' respective affiliates, pursuant to the Corporate Documents and/or any employment contracts, applicable statutes or other contractual obligations, in respect of all past, present and future actions, suits and proceedings against any of such parties, based on any act or omission related to the service with, for or on behalf of the Debtor, will be deemed and treated as executory contracts that are assumed by the Debtor or Reorganized Debtor pursuant to the Plan and sections 365 and 1123 of the Bankruptcy Code as of the Effective Date. Accordingly, such indemnification and contribution obligations will not be discharged, but will instead survive and be unaffected by entry of the Confirmation Order.

9.5. Insurance Policies. Each of the Debtor's insurance policies and any agreements, documents, or Instruments relating thereto, are treated as executory contracts under the Plan. On the Effective Date, the Debtor shall be deemed to have assumed all insurance policies and any agreements, documents, and Instruments relating to coverage of all insured Claims.

9.6. Modifications, Amendments, Supplements, Restatements, or Other Agreements.

(a) Unless otherwise provided in the Plan, each executory contract or unexpired lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such executory contract or unexpired lease, and all executory contracts and unexpired leases related thereto, if any, including all easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

(b) Modifications, amendments, supplements, and restatements to prepetition executory contracts and unexpired leases that have been executed by the Debtor during the Chapter 11 Case shall not be deemed to alter the prepetition nature of the executory contract or unexpired lease, or the validity, priority, or amount of any Claims that may arise in connection therewith.

9.7. Bar Date for Filing Claims for Rejection Damages. If the rejection of an executory contract or unexpired lease pursuant to the Plan gives rise to a Claim, a Proof of Claim must be served upon the Debtor and the Debtor's counsel within 30 days after the later of:

(a) notice of entry of the Confirmation Order; or

(b) such other notice that the executory contract or unexpired lease has been rejected.

Any such Claim not served within such time period will be forever barred. Each such Claim will constitute a General Unsecured Claim, to the extent such Claim is Allowed by the Bankruptcy Court.

9.8. Reservation of Rights. Nothing contained in the Plan shall constitute an admission by the Debtor that any executory contract or unexpired lease is in fact an executory contract or unexpired lease or that the Reorganized Debtor has any liability thereunder. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of assumption or rejection, the Debtor or the Reorganized Debtor, as applicable, shall have 30 days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

9.9. Nonoccurrence of Effective Date. In the event that the Effective Date does not occur, the Bankruptcy Court shall retain jurisdiction with respect to any request to extend the deadline for assuming or rejecting unexpired leases pursuant to section 365(d)(4) of the Bankruptcy Code.

9.10. Contracts and Leases Entered Into After the Petition Date. Contracts and leases entered into after the Petition Date by the Debtor, including any executory contracts and

unexpired leases assumed by the Debtor, will be performed by the Debtor or Reorganized Debtor liable thereunder in the ordinary course of its business. Accordingly, such contracts and leases (including any assumed executory contracts and unexpired leases) will survive and remain unaffected by entry of the Confirmation Order.

ARTICLE X
RELEASES, INJUNCTIONS AND DISCHARGE

10.1. **Releases by the Debtor. Pursuant to section 1123(b) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan, for good and valuable consideration, on and after the Effective Date, the Released Parties are deemed released and discharged by the Debtor, the Reorganized Debtor, and the Estate from any and all Claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether for tort, fraud, contract, violations of federal or state securities laws, or otherwise, including any derivative Claims asserted or that could possibly have been asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that the Debtor or the Estate would have been legally entitled to assert in its own right or on behalf of the Holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Chapter 11 Case, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtor, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Case, the negotiation, formulation, or preparation of the Plan, the related Disclosure Statement, the related Plan Supplement, or related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date of the Plan. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any party under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including, without limitation, the terms and conditions of the Fuerta Settlement Agreement.**

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the Claims released by this Section 10.1; (3) in the best interests of the Debtor and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to the Debtor asserting any claim or Cause of Action released pursuant to the Debtor Release.

10.2. **Releases by Holders of Claims and Interests. To the greatest extent permissible by law and except as otherwise provided in this Section 10.2, as of the Effective Date, each Holder of a Claim or Interest against the Debtor shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever, released and discharged**

the Third Party Releasees from any and all Claims, Interests, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, whether for tort, fraud, contract, violations of federal or state securities laws, or otherwise, including any derivative Claims, asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, that such entity would have been legally entitled to assert, based on or in any way relating to, or in any manner arising from, in whole or in part, the Debtor, the Debtor's restructuring, the Chapter 11 Case, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between the Debtor and any Released Party, the restructuring of Claims and Interests prior to or in the Chapter 11 Case, the negotiation, formulation, or preparation of the Plan, the related Disclosure Statement, the related Plan Supplement, or related agreements, instruments, or other documents, upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date of the Plan. Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release any post-Effective Date obligations of any party under the Plan or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, including, without limitation, the terms and conditions of the Fuerta Settlement Agreement.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third Party Release, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that the Third Party Release is: (1) in exchange for the good and valuable consideration provided by the Third Party Releasees; (2) a good faith settlement and compromise of the Claims and Interests released by this Section 10.2; (3) in the best interests of the Debtor and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any Entity granting a Third Party Release from asserting any claim or Cause of Action released pursuant to the Third Party Release.

Notwithstanding anything to the contrary in this Section 10.2, nothing in Section 10.2 shall release a Third Party Releasee from any Claims or Causes of Action relating to a violation by such party of federal, state or local securities laws.

10.3. **Mutual Releases by Released Parties. As of the Effective Date, each of the Released Parties hereby conclusively, absolutely, unconditionally, irrevocably, and forever releases, waives and discharges all known and unknown Causes of Action of any nature that such Released Party has asserted, may have asserted, could have asserted, or could in the future assert, directly or indirectly, against any of the other Released Parties based on any act or omission relating to the Debtor or its business operations (including, without limitation, the organization or capitalization of the Debtor or extensions of credit and other financial services and accommodations made or not made to the Debtor), the Chapter 11 Case, the Property, and the Bulk Purchase Agreement on or prior to the Effective Date; provided, however, that the foregoing releases shall not apply to Causes of Action that arise post-Effective Date from obligations or rights created under or in connection with the Plan**

or any agreement provided for or contemplated in the Plan, including, without limitation, the terms and conditions of the Fuerta Settlement Agreement.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Mutual Release, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that the Mutual Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties; (2) a good faith settlement and compromise of the Claims released by this Section 10.3; (3) in the best interests of the Debtor and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any Entity granting a Mutual Release from asserting any claim or Cause of Action released pursuant to the Mutual Release.

10.4. **Exculpation. To the greatest extent permissible by law, no Exculpated Party shall have or incur, and each Exculpated Party is hereby released and exculpated from, any Exculpated Claim or any obligation, Cause of Action, or liability for any Exculpated Claim; provided, however, that in all respects such Exculpated Parties shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to, or in connection with, the Plan. The Debtor and the Reorganized Debtor (and each of their respective affiliates, officers, directors, employees, managers, principals, agents, attorneys, financial advisors, accountants, investment bankers, consultants, representatives, and other professionals) have participated in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation of the Plan and distributions made pursuant to the Plan, and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.**

10.5. **Injunction. Except as otherwise expressly provided in the Plan or for obligations issued pursuant to the Plan, all Entities who have held, hold, or may hold Claims or Interests that have been released pursuant to Section 10.1 or Section 10.2 hereof, discharged pursuant to Section 10.6 hereof, or are subject to exculpation pursuant to Section 10.4 hereof are permanently enjoined, from and after the Effective Date, from taking any of the following actions against, as applicable, the Debtor, the Reorganized Debtor, the Released Parties, or the Exculpated Parties: (1) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (2) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (3) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (4) asserting any right of subrogation or recoupment of any kind against any obligation due from such Entities or against the property or Estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; and (5) commencing or continuing in any manner any action or other proceeding**

of any kind on account of or in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan.

10.5.1 **Violation of Injunctions. Any Person injured by any willful violation of such injunction may recover actual damages, including costs and attorneys' fees and, in appropriate circumstances, may recover punitive damages from the willful violator.**

10.5.2 **Consent to Injunctions. By accepting distributions or other benefits pursuant to the Plan, each Holder of an Allowed Claim or Interest receiving distributions pursuant to the Plan shall be deemed to have specifically consented to the injunctions set forth in the Plan.**

10.6. **Discharge of Claims and Interests. Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan or in any contract, Instrument, or other agreement or document created pursuant to the Plan, the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of the Effective Date, of Claims, Interests and Causes of Action of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against, and Interests in, the Debtor or any of its assets or properties, regardless of whether any property shall have been distributed or retained pursuant to the Plan on account of such Claims and Interests, including demands, liabilities, and Causes of Action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code. Any default by the Debtor with respect to any Claim or Interest that existed immediately prior to or on account of the filing of the Chapter 11 Case shall be deemed cured on the Effective Date. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Interests subject to the Effective Date occurring.**

ARTICLE XI
CONDITIONS PRECEDENT TO CONFIRMATION AND CONSUMMATION OF THE PLAN

11.1. Conditions Precedent to Confirmation. It shall be a condition precedent to Confirmation of the Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Section 11.3 hereof:

(a) the Bankruptcy Court shall have entered an order approving the adequacy of the Disclosure Statement;

(b) the Bankruptcy Court shall have entered the Confirmation Order;

(c) the final version of the Plan Supplement and all of the schedules, documents, and exhibits contained therein shall have been filed with the Bankruptcy Court; and

(d) the Fuerta Settlement Agreement shall have been approved by the Bankruptcy Court.

11.2. Conditions Precedent to the Effective Date. It shall be a condition precedent to the Effective Date of the Plan that the following conditions shall have been satisfied or waived pursuant to the provisions of Section 11.3 hereof:

(a) all conditions to Confirmation in Section 11.1 of the Plan shall have been either satisfied or waived pursuant to Section 11.3 of the Plan;

(b) the Confirmation Order shall have become a Final Order;

(c) all actions, documents, certificates, and agreements necessary to implement the Plan, including documents contained in the Plan Supplement, shall have been effected or executed and delivered, as the case may be, to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws; and

(d) the Holdback Escrow Account shall have been fully funded as required pursuant to the Plan.

11.3. Waiver of Conditions. The conditions to Confirmation and the Effective Date set forth in this Article XI may be waived by the Debtor without notice, leave, or order of the Bankruptcy Court or any formal action other than proceedings to confirm or consummate the Plan.

11.4. Effect of Failure of Conditions. If Consummation does not occur, the Plan shall be null and void in all respects, and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any claims by the Debtor, any Holders of Claims or Interests, or any other Entity; (2) prejudice in any manner the rights of the Debtor, any Holders of Claims or Interests, or any other Entity; or (3) constitute an admission, acknowledgment, offer, or undertaking by the Debtor, any Holders of Claims or Interests, or any other Entity in any respect.

11.5. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127(b) of the Bankruptcy Code.

ARTICLE XII
RETENTION OF JURISDICTION

12.1. Retention of Jurisdiction. Under sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding the Plan's Confirmation and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction (except with respect to the purposes described under clauses (a) and (n) below, with respect to which jurisdiction shall not be exclusive) over all matters arising out of or related to the Chapter 11 Case and the Plan, to the fullest extent permitted by law, including jurisdiction to:

(a) determine any and all objections to the allowance of Claims or Interests;

(b) determine any and all motions to estimate Claims at any time, regardless of whether the Claim to be estimated is the subject of a pending objection, a pending appeal, or otherwise;

(c) determine any and all motions to subordinate Claims or Interests at any time and on any basis permitted by applicable law;

(d) hear and determine all Administrative Expense Claims;

(e) hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor may be liable, including, if necessary, the nature or amount of any required cure or the liquidation of any Claims arising therefrom;

(f) hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters arising out of, under, or related to, the Chapter 11 Case;

(g) enter such orders as may be necessary or appropriate in aid of the Consummation hereof and to execute, implement, or consummate the provisions hereof and all contracts, Instruments, releases, and other agreements or documents created in connection with the Plan or the Confirmation Order;

(h) hear and determine disputes arising in connection with the interpretation, implementation, Consummation, or enforcement hereof and all contracts, Instruments, and other agreements executed in connection with the Plan;

(i) hear and determine any request to modify the Plan or to cure any defect or omission or reconcile any inconsistency herein or any order of the Bankruptcy Court;

(j) issue and enforce injunctions or other orders, or take any other action that may be necessary or appropriate to restrain any interference with or compel action for the implementation, Consummation, or enforcement hereof or the Confirmation Order;

(k) enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified, or vacated;

(l) hear and determine any matters arising in connection with or relating to the Plan, the Confirmation Order or any contract, Instrument, release, or other agreement or document created in connection with the Plan or the Confirmation Order;

(m) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Case;

(n) recover all assets of the Debtor and property of the Estate, wherever located;

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

(p) enforce the terms of the Fuerta Settlement Agreement and hear and determine any matters arising in connection therewith;

(q) hear and determine all disputes involving the existence, nature, or scope of the discharge of the Debtor;

(r) hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;

(s) hear and determine all other motions, applications and contested or litigated matters which were pending but not resolved as of the Effective Date including, without limitation, any motions, applications and contested or litigated matters to sell or otherwise dispose of assets and/or grant related relief; and

(t) enter a final decree closing the Chapter 11 Case.

ARTICLE XIII
MISCELLANEOUS PROVISIONS

13.1. Immediate Binding Effect. Subject to Section 11.2 hereof and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtor, the Reorganized Debtor, and any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all parties to executory contracts and unexpired leases with the Debtor.

13.2. Effectuating Documents; Further Transactions. The Debtor or the Reorganized Debtor (as the case may be) is authorized to execute, deliver, file, or record such contracts, Instruments, releases, indentures, and other agreements or documents, and take such actions, as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The secretary or any assistant secretary (or other authorized Person) of the Debtor or the Reorganized Debtor is authorized to certify or attest to any of the foregoing actions.

13.3. Payment of Statutory Fees. All fees payable pursuant to section 1930(a) of the Judicial Code shall be paid by the Reorganized Debtor (or the Disbursing Agent on behalf of the Reorganized Debtor) for each quarter (including any fraction thereof) until the Chapter 11 Case is converted, dismissed, or closed, whichever occurs first.

13.4. Dissolution of Any Statutory Committee. On the Effective Date, any statutory committee appointed in the Chapter 11 Case shall dissolve, and members thereof shall be released and discharged from all rights and duties from or related to the Chapter 11 Case. The Reorganized Debtor shall no longer be responsible for paying any fees or expenses incurred by any statutory committees after the Effective Date.

13.5. Entire Agreement. On the Effective Date, except as otherwise indicated, the Plan and the Plan Supplement shall supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

13.6. Exhibits. All exhibits and documents included in the Plan Supplement are incorporated into and are a part of the Plan as if set forth in full in the Plan. After the exhibits and documents are filed, copies of such exhibits and documents shall be available upon written request to the Debtor's counsel at the address below or by downloading such exhibits and documents from the Bankruptcy Court's website at www.nysb.uscourts.gov. To the extent any exhibit or document is inconsistent with the terms of the Plan, unless otherwise ordered by the Bankruptcy Court, the non-exhibit or non-document portion of the Plan shall control.

13.7. Exemption From Certain Transfer Taxes. Pursuant to section 1146(c) of the Bankruptcy Code, any transfers from the Debtor to the Reorganized Debtor or any other Person or Entity pursuant to or in connection with the Plan shall not be subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, stamp act, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment, and the Confirmation Order shall direct the appropriate state or local governmental officials or agents to forego the collection of any such tax or governmental assessment and to accept for filing and recordation any of the foregoing Instruments or other documents without the payment of any such tax or governmental assessment.

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

(a) The Plan may be amended or modified before the Effective Date by the Debtor to the extent provided by section 1127 of the Bankruptcy Code.

(b) The Debtor reserves the right to modify or amend the Plan upon a determination by the Bankruptcy Court that the Plan, in its current form, is not confirmable pursuant to section 1129 of the Bankruptcy Code. To the extent such a modification or amendment is permissible under section 1127 of the Bankruptcy Code, without the need to resolicit acceptances, the Debtor reserves the right to sever any provisions of the Plan that the Bankruptcy Court finds objectionable.

(c) The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtor revokes or withdraws the Plan, or if Confirmation does not occur, then the Plan shall be null and void, and nothing contained in the Plan shall: (1) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtor; or (2) prejudice in any manner the rights of the Debtor in any further proceedings.

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

13.10. Closing of Chapter 11 Case. The Reorganized Debtor shall, promptly after the full administration of the Chapter 11 Case, file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Case.

13.11. Conflicts. To the extent that any provision of the Disclosure Statement, the Plan Supplement, or any other order (other than the Confirmation Order) referenced in the Plan (or any exhibits, schedules, appendices, supplements, or amendments to any of the foregoing), conflict with or are in any way inconsistent with any provision of the Plan, the Plan shall govern and control.

13.12. Notices to Debtor. Any notice, request, or demand required or permitted to be made or provided to or upon the Debtor or the Reorganized Debtor hereunder shall be (i) in writing, (ii) served by (a) certified mail, return receipt requested, (b) hand delivery, (c) overnight delivery service, (d) first class mail, or (e) facsimile transmission, and (iii) deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

785 PARTNERS LLC
c/o Kevin O'Sullivan
355 Lexington Avenue
17th Floor
New York, New York 10017
Telephone: (212) 687-1400
Facsimile: (212) 687-1415

with a copy to:

PROSKAUER ROSE LLP
Eleven Times Square
New York, New York 10036-8299
Attn: Sheldon I. Hirshon
Craig A. Damast
Lawrence S. Elbaum

Telephone: (212) 969-3000
Facsimile: (212) 969-2900

13.13. Binding Effect. The Plan shall be binding upon and inure to the benefit of the Debtor, all present and former Holders of Claims against and Interests in the Debtor, their respective successors and assigns, including the Reorganized Debtor, and all other parties-in-interest in the Chapter 11 Case.

13.14. No Admissions. Notwithstanding anything herein to the contrary, nothing contained in the Plan shall be deemed as an admission by the Debtor with respect to any matter set forth herein including, without limitation, liability on any Claim.

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

13.16. Headings. Headings are used in the Plan for convenience and reference only, and shall not constitute a part of the Plan for any other purpose.

[SIGNATURE PAGE FOLLOWS]

Dated: October 31, 2011

785 PARTNERS LLC,
Debtor and Debtor in Possession

By: /s/ Kevin O'Sullivan
Kevin O'Sullivan
Authorized Representative

PROSKAUER ROSE LLP
Sheldon I. Hirshon
Craig A. Damast
Lawrence S. Elbaum
Eleven Times Square
New York, New York 10036-8299
Telephone: (212) 969-3000
Facsimile: (212) 969-2900

Counsel for the Debtor and Debtor in Possession

Exhibit A

SETTLEMENT AND PLAN SUPPORT AGREEMENT

This Settlement and Plan Support Agreement is entered into as of October 10, 2011 (this "Agreement") by and among (i) 785 Partners LLC (the "Company" or, for all times after the Effective Date, the "Reorganized Company"), (ii) Time Square Construction & Development ("Time Square"), (iii) 8 Avenue & 48th Street Development LLC ("8 Avenue"), (iv) Fuerta Property Limited ("Fuerta"), (v) each of the undersigned end purchasers of units in the 306 West 48th Street Condominium (collectively, the "End Unit Purchasers"); (vi) Esplanade Tower Corp. ("Tower"); and (vii) Conor Sheahan, solely in his capacity as a representative and agent for the End Unit Purchasers (the "End Unit Purchaser Representative"). The Company, Time Square, 8 Avenue, Fuerta, the End Unit Purchasers, Tower, and the End Unit Purchase Representative are sometimes referred to herein individually as a "Party" and collectively as the "Parties." Time Square, 8 Avenue, Fuerta, the End Unit Purchasers, Tower, and the End Unit Purchase Representative are sometimes referred to herein individually as a "Non-Debtor Party" and collectively as the "Non-Debtor Parties."

RECITALS

WHEREAS, 8 Avenue is the current owner of 98.75% of the membership interests in the Company;

WHEREAS, the remaining membership interests in the Company are held by Tower (1.0%), and Esplanade 8th Avenue LLC ("Esplanade") (0.25%);

WHEREAS, 8 Avenue controls the Company and is authorized to act on its behalf;

WHEREAS, the Company is the owner and developer of the 43-story, 122-unit (each, a "Unit", and collectively, the "Units") residential building located at 785 Eighth Avenue, New York, New York (the "Property");

WHEREAS, Time Square was the construction manager for the Property and, in connection therewith has asserted a lien against the Property in the amount of $14,229,106 (the "Time Square Lien") which is proposed to be released as of the Effective Date (as defined herein);

WHEREAS, on or about April 13, 2006, before construction at the Property commenced, the Company entered into an Agreement of Purchase and Sale with Fuerta (the "Bulk Purchase Agreement"), pursuant to which Fuerta agreed to purchase all of the Units at the Property at a negotiated wholesale price per square foot;

WHEREAS, on or about January 25, 2007, the Company entered into certain loan agreements with PB Capital Corporation ("PB Capital") and Commerce Bank, N.A. (as lenders) and PB Capital (as administrative agent), including a certain Building Loan Agreement, Project Loan Agreement, and Transfer Loan Agreement (collectively, the "Loan");

WHEREAS, on or about January 25, 2007, the Company, Fuerta, and PB Capital entered into a certain Assignment of Purchase Contract and Purchase Contract Deposit Pledge Agreement (the "Deposit Assignment");

WHEREAS, the total purchase price for the Units per the Bulk Purchase Agreement with Fuerta was $118,485,440.00 (the "Final Purchase Price");

WHEREAS, upon executing the Bulk Purchase Agreement, Fuerta deposited 10% of the Final Purchase Price in an escrow account held by the law firm of Seiden & Schein, P.C. ("Seiden"), as escrow agent and upon the acceptance of the condominium plan for filing by the New York State Attorney General (the "NYAG") on or about November 27, 2007, as required by the Bulk Purchase Agreement, Fuerta deposited an additional 5% of the Final Purchase Price into the escrow account, bringing the total deposit held in escrow by Seiden to $17,772,816.55 (which, together with all interest accrued and hereafter accruing thereon is referred to as the "Escrow Funds");

WHEREAS, as of August 31, 2011, the Escrow Funds, including accrued interest, total $18,781,286.21;

WHEREAS, the Company has asserted that Fuerta breached its obligations under the Bulk Purchase Agreement, and that under the Bulk Purchase Agreement and the Deposit Assignment, the Company is entitled to apply the Escrow Funds against the balance of the Loan;

WHEREAS, Fuerta has asserted that the Company failed to satisfy certain conditions precedent to the performance of Fuerta's obligations under the Bulk Purchase Agreement, and that the Company breached its obligations under the Bulk Purchase Agreement and that, as a result, Fuerta is entitled to possession of all of the Escrow Funds;

WHEREAS, the End Unit Purchasers have asserted that the Escrow Funds constitute trust funds which are the property of the End Unit Purchasers and have been misappropriated and misapplied by Fuerta and the Company, and that they are entitled to a return of all of the Escrow Funds;

WHEREAS, in October 2010, certain of the End Unit Purchasers, through counsel, requested that the NYAG initiate an investigation relating to the Escrow Funds, and the conduct of the Company, Fuerta, and other parties in respect thereto;

WHEREAS, on or about July 29, 2011, the Company was advised by PB Capital that the Loan had been assigned to First Manhattan Developments REIT ("First Manhattan");

WHEREAS, the Company was advised by PB Capital on or about July 12, 2011 that as of August 3, 2011, the payoff amount on the Loan was $100,845,002.80, inclusive of principal, interest, default interest, fees, and all other items claimed by PB Capital to be included in said payoff amount (the "Payoff Amount");

WHEREAS, the Company disputes the computation of the Payoff Amount as provided by PB Capital;

WHEREAS, on August 3, 2011, the Company filed a voluntary petition under chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") commencing its chapter 11 case (the "Bankruptcy Case");

WHEREAS, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Company is operating its business and managing its property as a debtor in possession, subject to the order of the Supreme Court of the State of New York appointing Gerald Kahn as receiver (the "Receiver") for the Property;

WHEREAS, the Parties have negotiated a global settlement of all of their respective claims and potential claims against one another, and furthermore have agreed, subject to and pursuant to the terms of this Agreement, to support a restructuring of the Company's capital structure and financial obligations pursuant to a Plan (as defined below) containing the terms and conditions set forth hereunder (the "Restructuring").

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **The Restructuring.** The Restructuring will be implemented pursuant to a chapter 11 plan (the "Plan") confirmed under section 1129 of the Bankruptcy Code, which shall include substantially the following terms. Unless otherwise indicated, the effectiveness of the below agreements and obligations as set forth in this Section 1 are contingent upon confirmation of the Plan and such other conditions and covenants as are set forth in this Agreement:

    a. Formation of Newco.

        i. The End Unit Purchasers shall direct Thompson Hine LLP to form a new limited liability company ("Newco") under the laws of the State of New York, no later than October 31, 2011.

        ii. The initial members of Newco shall consist of the End Unit Purchasers identified in Schedule A hereto, and any other individuals or entities entitled to become members of Newco pursuant to Section 20.e, herein.

        iii. It is contemplated that such formation of Newco shall occur prior to the Company's filing of the Plan with the Bankruptcy Court.

        iv. The End Unit Purchaser Representative shall have the right, at any time after the date of this Agreement to designate additional End Unit Purchasers to execute this Agreement, and to execute this Agreement on their behalf provided the End Unit Purchaser Representative shall be duly authorized to

do so at such time. The execution of this Agreement by such additional End Unit Purchasers shall be evidenced by the delivery of one or more counterpart signature pages executed by the End Unit Purchaser Representative on behalf of such End Unit Purchaser(s). Any such End Unit Purchaser shall become a Non-Debtor Party to this Agreement upon the delivery of such signature pages.

b. Formation of the Reorganized Company

i. On the effective date of the Plan (the "Effective Date"), all property comprising the Company's bankruptcy estate, including, but not limited to, all avoidance actions and all causes of action, shall automatically be retained and revest in the reorganized Company (the "Reorganized Company") or its respective successor, free and clear of all claims, liens, contractually-imposed restrictions, charges, encumbrances and interests of creditors and equity security holders on the Effective Date, with all such claims, liens, contractually-imposed restrictions, charges, encumbrances and interests being extinguished except as otherwise provided in the Plan.

ii. On the Effective Date, all of the issued and outstanding membership interests of the Company shall be canceled and extinguished.

c. Membership Interests in the Reorganized Company.

i. On the Effective Date, the Reorganized Company shall issue new membership interests (the "New Membership Interests") in the following percentages, subject to the terms and restrictions set forth herein, including but not limited to the Equity Waterfall and Cash Flow Waterfall provided herein: (i) 35% to Newco; (ii) 63.75% to 8 Avenue; (iii) 1% to Tower; and (iv) 0.25% to Esplanade (collectively, the "Members").

ii. Management of the Reorganized Company shall be governed by a new limited liability company agreement (the "New LLC Agreement") to be entered into by all entities that receive New Membership Interests on terms as set forth herein and such other terms as are reasonably acceptable to such entities. The terms of the New LLC Agreement shall incorporate, to the extent applicable, the terms and conditions of this Agreement which are applicable to the Reorganized Company, be satisfactory in form and substance to all of the entities that receive New Membership Interests on terms as set forth herein; provided, however, that any disagreement over the terms of such New LLC Agreement shall be determined by Quick Arbitration as set forth herein.

iii. 8 Avenue shall be the initial managing member (sometimes referred to herein as the "Manager") and shall have the power, authority and obligation to manage the business of the Reorganized Company, to make all decisions regarding the Reorganized Company and the Property and to perform all

other acts customary or incident to the management of the Reorganized Company, subject to the limitations hereinafter set forth. Newco shall have no management role with respect to the Reorganized Company or the Property.

iv. Notwithstanding the other provisions of this Agreement, the Manager may not take any of the following actions without the prior written approval of Newco, not to be unreasonably withheld, delayed or conditioned:

A) making any change to the Approved Budget (as herein defined) (or to any subsequent annual operating budget for the Property ("Operating Budget"), which budget shall be prepared at the beginning of each fiscal year of the Reorganized Company by the Management Company (as herein defined)) that would, if implemented, cause the operating costs of the Property (inclusive of debt service, but excluding real property taxes) of the Property to exceed the Operating Budget by more than 25 percent or the operating income available to pay such operating costs.

B) using the Property in any way other than as a residential rental property or as a condominium project, with ground floor retail space;

C) making a general assignment for the benefit of creditors or appoint or acquiesce in the appointment of a custodian, receiver or trustee for all or any part of the assets of the Reorganized Company, or institute any proceedings for bankruptcy or make an assignment for the benefit of creditors on behalf of the Reorganized Company or dissolve the Reorganized Company or confess a judgment;

D) except as permitted under this Agreement, guaranteeing the obligations of another, borrowing money or pledging the Property as collateral for any loan or using any proceeds from any financing of the Property for a use not contemplated under the Approved Budget (or any subsequent annual operating budget for the Property) or for a purpose other than the operation of the Property (it being agreed that 8 Avenue may pledge its membership interests in the Reorganized Company, but not the Property itself, as collateral for a loan not related to the Property);

E) modifying any loan documentation or any other material agreement after the same has been duly approved by the Members and executed by the Reorganized Company in a manner that materially disadvantages Newco;

F) entering into a contract or transaction with 8 Avenue or an affiliate of 8 Avenue or amending, terminating or waiving any right under

such contract; it being understood that Newco hereby consents to the Company and/or the Reorganized Company engaging Time Square to perform and/or manage the work on the Punch List, subject to the terms set forth herein;

G) filing any tax return on behalf of the Reorganized Company or taking any tax position which is inconsistent with the provisions of this Agreement;

H) commencing any major lawsuit or proceeding on behalf of the Reorganized Company (which shall be defined as a lawsuit or proceeding in which attorney fees are reasonably expected to exceed $250,000);

I) taking any action which would cause the economic interests and rights of Newco in the Reorganized Company to be diluted or subordinated in any respect including, without limitation, issuing additional membership interests in the Reorganized Company, or pledging any asset of Newco in the Reorganized Company (except in connection with a Capital Call or Mezzanine Financing, both as defined herein, and subject to the provisions of this Agreement with respect thereto);

J) doing any act in contravention of this Agreement, or which would make it impossible to carry out the purposes of the Reorganized Company, or using any of the property, assets, or income of the Reorganized Company for any purpose other than a Reorganized Company purpose.

v. Call Option.

A) From the date of execution of this Agreement until January 1, 2013, 8 Avenue shall have the option, but not the obligation, exercisable in its sole discretion and without regard to any legal duties, fiduciary or otherwise (except as set forth in Section 1.c.v.(E)), to purchase Newco's membership interest (or prospective membership interest) in the Reorganized Company ("Call Option").

B) The price at which the Call Option may be exercised is $10,500,000, less the aggregate $1,900,000 payout provided in Sections 1(f)(i)(C) and (D) herein (in the event the Call Option is exercised after the Effective Date), plus any amounts paid into the Reorganized Company by Newco pursuant to any Capital Call (as herein defined) (the "Call Option Price"). For example:

(1) if the Call Option were exercised before the Effective Date, the Call Option Price would be $10,500,000;

(2) if the Call Option were exercised after the Effective Date and there had been no Capital Calls, the Call Option Price would be $8,600,000;

if the Call Option were exercised after the Effective Date, and Newco had paid $500,000 into the Reorganized Company pursuant to a Capital Call, the Call Option price would be $9,100,000

C) 8 Avenue may exercise the Call Option by supplying Newco with written notice its election to exercise the Call Option, whereupon 8 Avenue shall have 15 days to supply Newco with a check or wire transfer of immediately available funds in the amount of the Call Option Price. Upon request, Newco shall promptly supply wire instructions.

D) Notwithstanding any provision of this Agreement to the contrary, 8 Avenue agrees that it will not exercise the Call Option at any time that it is a party to, or has closed on, a binding letter of intent, term sheet, or agreement for the sale of some or all of the Property, or 8 Avenue's ownership interests therein, nor will 8 Avenue enter into, or close on, any binding letter of intent, term sheet, or agreement for the sale of some or all of the Property or 8 Avenue's ownership's interests therein for 50 days after the date that 8 Avenue completes the closing of the purchase of Newco's interest in the Company pursuant to the Call Option.

E) Notwithstanding anything in subsection D above, 8 Avenue may at any time sell 8 Avenue's equity in the Company or the Reorganized Company to any third party; provided, however, that from the date of this Agreement until January 1, 2013, in the event of such sale of equity, 8 Avenue shall be required to exercise the Call Option, and if 8 Avenue does not exercise the Call Option within 30 days following the date it enters into a binding letter of intent, term sheet or agreement to sell any such equity, Newco shall have the right to "put" its interest in the Reorganized Company to 8 Avenue at the Call Option Price.

(1) For the avoidance of doubt, 8 Avenue's sale of equity in the Company or Reorganized Company, as contemplated in Section 1.c.v.(E), shall not be deemed a "sale of some or all of the Property" as that phrase appears in Section 1.c.v.(D).

(2) Solely for purposes of Section 1.c.v.(E), the deadline for funding an exercise of the Call Option, or for funding a "put," shall be 15 days from issuance, or the date of closing of the sale of equity contemplated in said subparagraph, whichever is later.

F) The closing of the purchase of Newco's interest in the Company pursuant to the Call Option, or the closing of the sale of Newco's interest in the Company pursuant to the"put" under Section 1.c.v.(E), shall terminate all rights of Newco in respect of the Reorganized Company or the Property, except for

(1) Newco's rights to receive any income, profits or benefits attributable to the period prior to the purchase of Newco's interest in the Reorganized Company; and

(2) any surviving indemnification obligations under this Agreement (including, without limitation, the tax indemnities set forth in Section 1.p, which shall survive).

G) If so requested by Newco, 8 Avenue will cooperate in structuring and completing the purchase pursuant to the Call Option so as to minimize any federal, state or local income taxes to Newco and its constituent members (including, to the extent permitted, effectuating a like-kind exchange pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended), provided the structure requested by Newco does not pose any legal risk to 8 Avenue or the Reorganized Company (except to an immaterial degree), and further provided it does not adversely affect the economics of 8 Avenue or the Reorganized Company (except to an immaterial degree).

d. Newco's Access to Information / Meetings.

i. Newco shall receive such financial information as shall be provided by the Management Company (as defined herein) to 8 Avenue at the Property level, as well having access to the accounting books and records of the Reorganized Company relating to the Property upon reasonable request. Newco shall have customary audit rights. The Manager shall, upon request, provide whatever financial and accounting information and financial reports as are generated in the ordinary course of business; provided, however, that the Manager shall not be obligated to create or generate reports that are not in the ordinary course of business.

ii. At Newco's request, up to two (2) meetings of the Members of the Reorganized Company will be scheduled each calendar year, at which the status and future direction of the Reorganized Company and the Property will be discussed among the End Unit Purchaser Representative, Kevin O'Sullivan, and Donal O'Sullivan.

iii. At Newco's request, Newco may meet with Citi Habitats and Cooper Square, and their successors, and 8 Avenue shall facilitate all such meetings.

e. Release of Time Square Lien. The Plan shall provide that, upon occurrence of the Effective Date, the Time Square Lien shall be released and extinguished.

f. Disposition of the Escrow Funds

i. The Plan shall provide that, upon the occurrence of the Effective Date, the Escrow Funds shall be applied as follows:

A) $180,017 shall be disbursed to the Reorganized Company to pay the secured and unsecured creditors listed on Schedule B hereto.

B) $1,000,000 shall be disbursed to the Reorganized Company to pay for past and future legal fees, costs and expenses incurred by or on behalf of the Company and/or Reorganized Company relating directly or indirectly to the Bankruptcy Case, including pre-petition advice and matters relating to the development of the Plan.

C) $1,550,000 shall be disbursed to Newco or any other one person or entity that Newco may designate; however, such payment shall be one single transaction, and any division of that sum shall be the responsibility of Newco.

D) $350,000 shall be disbursed to Fuerta in consideration of its covenants and undertakings under this Agreement, including but not limited to the assignment of its claims under the Bulk Purchase Agreement to the End Unit Purchasers, and the releases effected under this Agreement, with the understanding that Fuerta shall use such funds to pay certain accrued company expenses (subject, however, to the provisions of Section 1.q of this Agreement with respect to the assignment of Fuerta's rights and legal claim to the Escrow Fund to the End Unit Purchasers);

E) $328,788 shall be disbursed to the Reorganized Company for the purpose of funding the final improvements and repairs required for the leasing of Units in the Property (the "Punch List"), as said Punch List and the detailed breakdown of the costs thereof is set forth on Schedule C hereto.

F) $595,806 shall be disbursed to the Reorganized Company to cover building costs incidental to the Lease-Up (as defined herein) as detailed on Schedule D hereto, including 421-a filing fees, window treatments, gym equipment, and hallway and lobby furniture and fixtures.

G) $880,336 shall be disbursed to the Reorganized Company for the purpose of funding the costs of marketing the Lease-Up, as detailed on Schedule D hereto.

H) $335,788 shall be disbursed to the Reorganized Company for the purpose of funding the management of the Property for approximately three months (Management Company fees, utilities, insurance, etc.), as detailed on Schedule D hereto.

I) $1,500,000 shall be disbursed to the Reorganized Company and held in reserve to cover future interest payments on the Loan, as restructured pursuant to the Plan, or as subsequently refinanced, as the case may be (the "Senior Debt").

J) $195,000 shall be disbursed to the Reorganized Company to cover contingencies.

K) Any savings realized with respect to the projected expenses set forth in (A)-(J), above, shall be applied to pay down the balance of the Senior Debt.

L) The remaining Escrow Funds shall be applied to pay down the balance of the Senior Debt.

g. Management and Lease-Up of the Property

i. Prior to or in connection with confirmation of the Plan (as soon as permitted by the Bankruptcy Court), the Company shall initiate a program of leasing the Units of the Property to residential tenants (the "Lease-Up"). In connection with the Lease-Up:

A) Time Square shall be engaged to manage and/or perform the work set forth in the Punch List, as the detailed breakdown of the costs thereof is set forth on Schedule C hereto. The costs paid to Time Square shall be commercially reasonable and the terms of any agreement with Times Square shall be commercially reasonable, arm's-length terms.

B) The Company or the Reorganized Company (as applicable) shall engage Citi Habitats as marketing and leasing agent for the Property. The fees and commissions paid to Citi Habitats shall be

commercially reasonable and the terms of any agreement with Citi Habitats shall be commercially reasonable, arm's-length terms.

C) The Company or the Reorganized Company (as applicable) shall engage Cooper Square as the manager of the Property (the "Management Company"). The management fee paid to the Management Company shall be commercially reasonable, and the terms of any agreement with the Management Company shall be commercially reasonable, arm's-length terms.

D) The End Unit Purchaser Representative shall be entitled to meet with Time Square, Citi Habitats and the Management Company, and any successor(s) to the foregoing.

E) $350,000 shall be payable annually on a quarterly basis by the Company (80% to 8 Avenue and 20% to Newco) to cover administrative and reporting costs. Any portion of the $350,000 not paid out in any given year shall be accumulated and deferred and paid out in the next succeeding year, and so forth going forward.

h. Equity Waterfall

i. The Plan shall provide that, in the event of the consummation of a sale or refinancing of the Property (a "Liquidity Event") within 18 months of the Effective Date, proceeds from such Liquidity Event shall be distributed in the following order of priority:

A) First, to pay the outstanding obligations of the Reorganized Company, including the balance of the Senior Debt.

B) Second, the balance of any Pre-Confirmation Mezzanine Financing or Post-Confirmation Mezzanine Financing (each as defined herein) debt approved by the Members of the Reorganized Company, and any Preferred Membership Interest (as defined herein) resulting from a Member's failure to fund a Capital Call (as defined herein), as set forth above;

C) Third, $3.3 million to 8 Avenue;

D) Fourth, any previously deferred and accumulated portion of the $350,000 annual expense described above shall be split 80/20 between 8 Avenue and Newco, to the extent this expense has not been theretofore paid, as provided below.

(1) For instance, if at the end of 2011, an NOI Surplus (as defined herein) of $50,000 is distributed 80/20, and at the end of 2012, an NOI Surplus of $200,000 is distributed 80/20, then at the end of 2012, if the Property were then sold, $450,000 in this line item would be treated as subject to an 80/20 split in the Equity Waterfall.

E) Fifth, $17,000,000 shared between 8 Avenue and Newco on a 50/50 basis;

F) Sixth, $7,285,714.29 to 8 Avenue;

G) Seventh, to the Members, in accordance with their ownership interests.

H) In no event shall Newco receive equity distributions above and beyond $19 million under this Section 1.h.i.

ii. The Plan shall provide that, in the event of a Liquidity Event occurring after 18 months from the Effective Date, proceeds from such Liquidity Event shall be distributed in the following order of priority:

A) First, to pay the outstanding obligations of the Reorganized Company, including the balance of the Senior Debt;

B) Second, the balance of any Pre-Confirmation Mezzanine Financing or Post-Confirmation Mezzanine Financing debt, and any Preferred Membership Interest;

C) Third, $3.3 million to 8 Avenue;

D) Fourth, any previously deferred and accumulated portion of the $350,000 annual expense described above shall be split 80/20 between 8 Avenue and Newco, to the extent this expense has not been theretofore paid, as provided below (see example in Section 1(h)(i)(D)(1), above);

E) Fifth, to the Members, in accordance with their ownership interests.

F) In no event shall Newco receive equity distributions above and beyond $19 million; provided, however, that such $19 million cap shall remain constant for three years starting on the Effective Date, but shall thereafter be increased annually by the annual change in the consumer price index (All Urban Consumers NY-NJ-CT Region 1982-82=100), commencing three years after Effective Date (understood that such CPI increases start from $19 million).

iii. If the Property is sold off as condominium units on a per-unit basis, the unit

sale proceeds shall be applied in the same manner as provided in Sections 1.h.i or 1.h.ii, above, as the case may be.

iv. 8 Avenue shall attempt to provide Newco with reasonable advance notice of any proposal to sell all or any part of the Property or the interest of all or a part of the Reorganized Company therein. If at any time after the Effective Date, the Manager determines that it intends to sell more than 50% of the Property or the interest of all or more than 50% of the Reorganized Company therein, the Manager shall retain a reputable broker, who shall be engaged to use commercially reasonable efforts to solicit offers (represented by binding term sheets) from bona fide potential purchasers over a period of not less than 45 days. All offers shall be shared with Newco. Upon completion of the solicitation process, the Manager shall present Newco with what it determines to be the best bona fide offer (the "Winning Bid"). Newco shall thereupon have a period of 15 days to elect to present the Manager with a bona fide offer which shall match the terms of the Winning Bid (meaning that the Manager shall receive from Newco exactly the same economic benefits, on the same time frame, as the Manager would have received under the terms of Winning Bid). If Newco does not match the Winning Bid, the Manager shall thereafter be entitled to consummate the sale of the Property to the party who submitted the Winning Bid, without need for any further consent of Newco.

A) As used in the immediately preceding subsection, the following companies shall be conclusively deemed to be reputable brokers, and may be retained for such purposes without further approval of Newco: CBRE; Cushman & Wakefield; Jones Lang LaSalle; Eastern Consolidated Properties; Holiday Fenoglio Fowler L.P.; Eastdil Secure; and Goldman Sachs.

i. Cash Flow Waterfall

i. The Plan shall provide that:

A) If, in any fiscal year, the Reorganized Company generates positive net operating income after deducting all expenses (including service of the Senior Debt and payment of the $350,000 expense set forth above, which $350,000 expense shall be divided 80% to 8 Avenue and 20% to Newco) (a "NOI Surplus"), the NOI Surplus will be used as follows:

(1) First, if sufficient NOI Surplus is available, distributions shall be allocated 65% to 8 Avenue and 35% to Newco and shall be made in an amount sufficient for the members of Newco and 8 Avenue to pay any taxes on allocated taxable income generated by the Reorganized Company, such amount to be determined in good faith by the Company and its accountants after consultation with Newco.

(2) Second, any remaining NOI Surplus shall be allocated 65% to 8 Avenue and 35% to Newco, and such NOI Surplus may be used, in the sole discretion of 8 Avenue, toward repayment of the Senior Debt, distribution to the Members, as a capital reserve, or any combination thereof.

j. Capital Call Requirements

i. The Manager may make a capital call ("Capital Call") to be funded by the Members, pro rata in proportion to their membership interests, provided:

A) The Manager determines in good faith that the Reorganized Company requires additional funds to meet its cash requirements (after first exhausting its net income, operating reserve and available working capital accounts and making reasonable attempts to obtain a deferral in part or in whole of debt service to the extent thereof); and

B) the Manager determines in good faith that it is impracticable to obtain third-party financing to meet such cash requirements (it being understood that an urgent need for immediate cash and/or impracticality of financing relatively small sums of capital are potentially legitimate reasons why third-party financing may be deemed impracticable); and

C) the Management Company provides a letter certifying that, in its judgment, additional capital is required in order for the Property to be properly managed and for required debt service to be maintained.

ii. The Manager shall provide the other Members with notice of any anticipated Capital Call in the next following 90 day period (other than with respect to Capital Calls arising in connection with an emergency). In the event of a Capital Call, the Manager shall provide the other Members with a written explanation for why the Capital Call is needed, with appropriately detailed backup.

iii. Absent an emergency (i.e. an uninsured casualty loss or emergency capital repair or replacement), the non-managing Members shall have 30 days to fund (or elect not to fund) the Capital Call. In an emergency, the Manager may set a shorter deadline, provided the deadline is reasonable under the

circumstances.

iv. If a Member shall fail to meet a Capital Call, the other Member(s) may fund all or part of the non-funding Member's Capital Call obligation.

v. All capital contributed pursuant to any Capital Call shall be designated as preferred membership interests (the "Preferred Membership Interests")

vi. Except as provided in the next subparagraph, all Preferred Membership Interests shall yield a 12% annual rate of return and shall be redeemed by the Reorganized Company without premium or penalty prior to any distributions being made pursuant to the Equity Waterfall or Cash Flow Waterfall. Any redemption of such Preferred Membership Interests shall be repayable solely out of the income and assets of the Reorganized Company.

vii. As a mechanism to discourage any unwarranted Capital Call, within 30 days of the issuance of a Capital Call, the non-managing Member(s) may initiate Quick Arbitration (as defined herein), challenging whether such Capital Call was justified by good faith business judgment. In the event that the Capital Call is upheld by the arbitrator (i.e., the arbitrator agrees that the Capital Call was justified), then all capital contributed by the Manager pursuant to that particular Capital Call shall yield a 12% annual rate of return (as set forth above). However, if the arbitrator determines that the Capital Call was not justified, then all capital contributed by the Manager pursuant to that particular Capital Call shall yield a rate of return of 5%.

viii. If Newco shall fund a Capital Call and the Call Option of 8 Avenue under Section 1.c.v is exercised, the amount paid by Newco into the Reorganized Company pursuant to such Capital Call(s) shall be refunded to Newco upon the exercise of the Call Option.

k. Mezzanine Financing

i. Any mezzanine financing obtained by the Company or the Reorganized Company ("Mezzanine Financing") shall be used exclusively for the benefit of the Property (including by way of illustration and not limitation: for the purpose of (a) aiding in the confirmation of the Plan; (b) funding the operation of the Property and service of Senior Debt in the event of an adverse event; (c) any other legitimate use for the benefit of the Property.

ii. Prior to the Effective Date, the Company may obtain mezzanine financing (subordinate to the Senior Debt) on commercially reasonable terms, either from independent third-party lenders or from Time Square or an affiliate of Time Square and/or the O'Sullivans as a "bridge" until replacement mezzanine debt can be sourced from the market (provided in the case of financing sourced from Time Square or an affiliate, the loan terms shall be

commercially reasonable and the interest rate on such Pre-Confirmation Mezzanine Financing shall be as follows: (x) up to $2.5 million: 250 basis points above the rate on the Senior Debt; (y) from $2.5 million to $5 million: 400 basis points above the rate on the Senior Debt; (z) above $5 million: 12% per annum. Any such mezzanine financing obtained prior to the Effective Date ("Pre-Confirmation Mezzanine Financing") shall be limited in amount to the minimum amount necessary for the purpose of obtaining confirmation of the Plan, in the good faith judgment of the Company, as advised by legal counsel. In the event that any Member provides self-funded Pre-Confirmation Mezzanine Financing, that Member shall have the right to source replacement financing from a third-party on commercially reasonable terms (it being understood that any such replacement mezzanine debt will likely have a higher interest rate). The Company may pledge the Property and any other assets of the Company as collateral for such Pre-Confirmation Mezzanine Financing. The terms of any such Pre-Confirmation Mezzanine Financing applicable to Newco shall be on a "favored nations" basis with respect to the terms provided to 8 Avenue; and shall be non-recourse to the members of Newco. It is understood that any Pre-Confirmation Mezzanine Financing provided by any affiliate of Time Square and/or the O'Sullivans will be provided solely as a short-term "bridge" and that such bridge financing will be replaced by third-party mezzanine financing on commercially reasonable terms as determined in good faith by the Manager. The Company shall obtain the consent of Newco in connection with obtaining any Pre-Confirmation Mezzanine Financing that will cause the aggregate amount of Pre-Confirmation Mezzanine Financing to exceed $5 million, such consent not to be unreasonably withheld, delayed or conditioned; it being further understood that before obtaining any Pre-Confirmation Mezzanine Financing, Kevin O'Sullivan shall discuss the levels, sources and terms with the End Unit Purchaser Representative.

iii. After the Effective Date, the Manager of the Reorganized Company may obtain such mezzanine financing from independent third-party lenders on commercially reasonable terms in such amounts as it may in good faith deem necessary for the benefit of the Property ("Post-Confirmation Mezzanine Financing") in two scenarios: (1) in the context of a Capital Call, to fund a Capital Call which was not funded by one or more Members of the Reorganized Company, or (2) in any other context, with the prior written consent of Newco, which consent shall not be unreasonably withheld, delayed or conditioned, as hereinafter provided. In connection with any such Post-Confirmation Mezzanine Financing, the Reorganized Company may pledge the Property and any other assets of the Company as collateral for such Post-Confirmation Mezzanine Financing, provided:

A) Prior to entering a contract for Post-Confirmation Mezzanine Financing, the Manager shall first present Newco with the proposed mezzanine debt terms.

B) Newco shall then have 30 days to elect to provide capital to the Reorganized Company on the same terms as the proposed mezzanine debt terms.

C) If Newco does not elect to provide capital to the Reorganized Company on the same terms as the proposed mezzanine debt terms, then the Manager may proceed to obtain the proposed Post-Confirmation Mezzanine Financing.

D) Post-Confirmation Mezzanine Financing, and any refinancing of the Pre-Confirmation Mezzanine Financing, shall require the consent of Newco, not to be unreasonably withheld, delayed or conditioned.

l. Reorganized Company's Duties Solely To Newco and 8 Avenue

i. The Plan and the New LLC Agreement shall provide that 8 Avenue, as Manager, shall owe fiduciary duties only to those entities holding New Membership Interests, and shall have no duties or liability to Fuerta or the End Unit Purchasers individually.

ii. In no case shall the Reorganized Company or 8 Avenue have any obligations to make payments or distribute information directly to End Unit Purchasers or members of Newco. All payments and information shall be provided to Newco's manager, who shall have the obligation of dealing with Newco's members.

m. Release and Waiver of Claims. The Plan shall provide for a release and waiver of all claims and causes of action between and among any of the Parties, consistent with the terms of Section 4 hereunder, which release and waiver shall be effective only as of the Effective Date.

n. Provisions Relating To Transfer

i. The members of Newco may not transfer any membership interest, other than to Newco or to 8 Avenue, without the consent of 8 Avenue, which consent shall not be unreasonably withheld, delayed or conditioned; provided, however, that (x) transfers among the constituent members of Newco, or (y) by the constituent members of Newco for intra-family or estate planning purposes shall not require the consent of 8 Avenue. If any member of Newco shall elect to sell its membership interest in Newco to 8 Avenue (which any member of Newco may freely do at any time without consent from Newco or anyone else, but with notice to Newco), such transfer will be recorded as a dilution of Newco's interest in the

Reorganized Company, rather than 8 Avenue taking a membership interest in Newco.

A) For instance, if a 10% member of Newco were to sell its membership interest in Newco to 8 Avenue, then 8 Avenue would not become a member of Newco, but rather, 8 Avenue's membership interest in the Reorganized Company would increase by 3.5% (i.e., 10% of 35%).

ii. In the event that 8 Avenue proposes to sell any of its interest in the Reorganized Company, Newco shall have the right, but not the obligation, to tag along on the same terms and conditions as 8 Avenue.

iii. Neither Newco nor 8 Avenue may transfer its respective membership interest to the current senior secured lender, First Manhattan, or any successor thereto or assignee thereof, or any affiliate thereof, without the prior written approval of the other. Newco and 8 Avenue shall have a right of first offer and a right of first refusal to acquire any, some or all of the interests of the other, except for transfers by Newco or 8 Avenue to its respective affiliates to the extent that the same control, are controlled by or under common control with 8 Avenue or Newco, as the case may be, and only for so long as such control relationship shall exist.

iv. 8 Avenue shall not admit any new member to the Reorganized Company without the consent of Newco, such consent not to be unreasonably withheld.

o. Stipulation as to Settlement

i. The Parties hereto stipulate that the terms of this Section 1 shall, upon the Effective Date, represent a settlement of potential claims by the End Unit Purchasers against the Company, as well as a settlement of potential claims by Fuerta against the Company, as to which no Party makes any admission.

p. Certain Tax Issues

i. 8 Avenue and Newco agree to characterize the settlement in all documentation as follows:

A) As part of the settlement effected by this Agreement, the End Unit Purchasers shall be deemed to make a capital contribution in the amount of the Escrow Funds in exchange for the 35% equity interest in the Reorganized Company provided to Newco and the other terms and conditions of this Agreement (and for no other consideration);

B) Any cancellation of indebtedness income ("CODI") arising under the provisions of the Internal Revenue Code and Regulations

resulting from any reduction of the indebtedness of the Reorganized Company shall be specially allocated to 8 Avenue in the New LLC Agreement so as to be effective prior to the admission of Newco;

C) All expenses paid out of the Escrow Funds will be specially allocated to Newco in the New LLC Agreement (in this Section, the "Specially Allocated Expenses") to the extent necessary to absorb any CODI otherwise allocable to Newco (if any).

q. Assignment of Fuerta's Rights under Bulk Purchase Agreement.

i. In consideration of the releases and agreements set forth herein, Fuerta shall convey, transfer assign and set over unto the End Unit Purchasers all rights of Fuerta under the Bulk Purchase Agreement concurrent with the execution of this Agreement, including, without limitation, the right to bring an action to recover the Escrow Funds. The End Unit Purchasers and Fuerta shall release and compromise said claim effective as of the Effective Date; provided, however, that if the Effective Date shall not occur, or if this Agreement shall be terminated on or before such date, such claim shall not be released and may be asserted by the End Unit Purchasers in any legal forum.

ii. The Company and 8 Avenue and any successor thereto or assignee thereof hereby consents to such assignment, only to the extent such consent may be required.

iii. Fuerta and the Company, and any successors or assigns of each of them, shall take all actions necessary or reasonably desirable to confirm the foregoing assignment.

iv. This provision shall survive any termination of this Agreement.

r. Quick Dispute Resolution Procedures ("Quick Arbitration")

i. The New LLC Agreement shall provide for the following mechanism for resolving any disputes between 8 Avenue and Newco members:

A) The member seeking relief shall contact JAMS and obtain the names of three arbitrators who are acceptable to the member seeking relief and who:

(1) are former state or federal judges;

(2) have experience arbitrating commercial real estate disputes;

(3) are available to arbitrate a dispute within the timeframe that the party seeking relief deems appropriate under the circumstances; and

(4) are not conflicted ("Potential Arbitrators").

B) The Member seeking relief shall provide all other Members with a short statement of the issue to be arbitrated, along with the list of three names of Potential Arbitrators.

C) Within three days, the other member shall select one arbitrator from the list of Potential Arbitrators. 8 Avenue and Newco shall then promptly inform JAMS of their choice of arbitrator.

D) As soon thereafter as is reasonably practicable, the Parties shall contact JAMS and ask for a preliminary conference with the selected arbitrator. At such preliminary conference, the arbitrator will set a briefing schedule, hearing date, and a schedule for any discovery that may be required.

E) The JAMS Streamlined Arbitration Rules shall apply to such arbitration.

F) Quick Arbitration hearings shall be held in Manhattan.

G) The fees (including reasonable attorneys fees) and costs of the arbitration (including any costs charged by JAMS) incurred by the Members in connection with the arbitration shall be allocated among the Members in a manner that the arbitrator deems fair and equitable.

2. **Definitive Documents.** Each of the Parties hereto agrees to negotiate in good faith (i) the Plan, (ii) a disclosure document attendant to and describing the Plan (the "Disclosure Statement"), and such other definitive documents (the "Definitive Documents") as may be reasonably necessary or appropriate to effectuate and consummate the Restructuring and the transactions contemplated in Section 1 above and to comply with the deadlines set forth in Sections 13 and 14 below, each of which shall be consistent with the terms of this Agreement and shall otherwise be in form and substance reasonably acceptable to each of the Parties. This Agreement will be incorporated in, and constitute an integral element of, the Plan. The parties hereto agree that the rights and obligations of Newco under this Agreement may not be amended, modified, varied or compromised in any material respect without the prior written consent of Newco, which consent may be arbitrarily withheld.

3. **Restructuring Support.**

a. Prior to the termination of this Agreement, and subject to the terms and conditions of this Agreement, each of the Parties agrees as follows:

i. Support of the Plan and Disclosure Statement. Each Party agrees that it will take or refrain from taking, as applicable, the following actions:

A) Provided that each Non-Debtor Party has been properly solicited pursuant to section 1125 of the Bankruptcy Code, (i) vote all claims owned or controlled by such Non-Debtor Party which are eligible to vote in favor of the Plan by delivering its duly executed and timely completed ballot accepting the Plan to the Company or voting agent for the Plan (as applicable), and (ii) to the extent such election is available, not elect on its ballot to preserve claims, if any, that may be affected by any releases expressly contemplated herein and provided for under the Plan;

B) Not object to the Plan or otherwise commence any proceeding to oppose or alter any of the terms of the Plan or any other document filed by the Company in connection with the confirmation of the Plan, except to the extent that such Plan or documents are inconsistent in any material respect with the terms of this Agreement;

C) Not directly or indirectly seek, solicit, support, encourage or vote for any other plan, sale, proposal or offer of dissolution, winding up, liquidation, reorganization, merger or restructuring of the Company (other than as provided for herein);

D) Take all reasonable actions necessary or reasonably requested by the Company, at no out-of-pocket cost to Newco, to support the Plan and the transactions contemplated thereby, except to the extent that such Plan and contemplated transactions are inconsistent with the terms of this Agreement in any respect;

E) Not to take any actions inconsistent with, or that would delay approval or confirmation of, the Plan, the Disclosure Statement or any related documents, except to the extent that such Plan, Disclosure Statement and related documents are inconsistent with this Agreement in any respect;

F) Not to oppose, and shall support and consent to (at no out-of-pocket cost to Newco), the Company's request for the entry of customary orders and such other orders as are necessary and appropriate to consummate the Restructuring including, without limitation, requests by the Company for approval of use of cash collateral and/or debtor-in-possession financing, in each case, to the extent not inconsistent with this Agreement in any respect; and

G) Not enter into any agreements, commitments or understandings of any kind with any other entities or persons which are inconsistent with this Agreement in any respect or which otherwise would eliminate, impair or delay in any respect any of the benefits to which Fuerta and the End Unit Purchasers are entitled under this Agreement

ii. Nothing in this Agreement shall, or shall be deemed to, prohibit any Party from appearing as a party-in-interest in any matter to be adjudicated in the Bankruptcy Case if such appearance and the positions advocated in connection therewith: (i) are not inconsistent with this Agreement and the Plan and are not for the purpose of hindering, delaying or preventing the consummation of the Restructuring; or (ii) are for the purposes of contesting whether any matter, fact or thing, is a breach of, or inconsistent with, this Agreement or the Plan. Notwithstanding anything contained in this Agreement, neither a vote to accept the Plan by a Non-Debtor Party, nor the acceptance of the Plan by any class of creditors, shall in any way be deemed to, impair, prohibit, limit, restrict or waive the right, power, privilege or ability of a Non-Debtor Party to assert, raise or prosecute any objection not prohibited by Section 3(a)(i)(B) above that is not, directly or indirectly, inconsistent with, or in breach of, this Agreement.

iii. Prior to termination of this Agreement, the Company agrees to (i) use reasonable commercial efforts to (x) support and complete the Restructuring and all transactions contemplated under the Plan within the time-frame outlined herein, (y) take any and all necessary and appropriate reasonable actions in furtherance of the Restructuring and the transactions contemplated under the Plan, and (z) obtain any and all required regulatory and/or third-party approvals necessary to consummate the Restructuring, and (ii) take no actions that are inconsistent in any respect with this Agreement, or the expeditious confirmation and consummation of the Plan; provided, however, that notwithstanding anything to the contrary herein, nothing in this Agreement shall require the Company or any director, officer or managing member of the Company, in such person's capacity as a director, officer or managing member of the Company, to take any action, or to refrain from taking any action, to the extent required to comply with its fiduciary obligations under applicable law.

(b) Notwithstanding any provision to the contrary in this Agreement, the End Unit Purchasers will not, in any way, be limited from filing proofs of claims in the Bankruptcy Case.

4. **Waiver and Release of Claims.** Provided no breach of this Agreement shall then have occurred, and subject to and conditioned upon the confirmation of the Plan and the occurrence of the Effective Date, each of the Parties, and each of their officers, managing members, agents, employees, attorneys (except as may be hereafter provided or provided in a separate agreement), professionals, affiliates, predecessors, successors and assigns,

and each of them (collectively, the "Releasors"), shall be conclusively deemed to have unconditionally, absolutely, and irrevocably released all other Parties and their officers, managing members, agents, employees, attorneys (except as may be hereafter provided or provided in a separate agreement), professionals, affiliates, predecessors, heirs, agents, successors and assigns, and each of them (collectively, the "Releasees") with respect any and all actions, causes of action, suits, debts, accounts, promises, warranties, damages and consequential damages, demands, agreements, costs, expenses, claims or demands whatsoever, of any kind or nature, whether known or unknown, liquidated or unliquidated, disputed or undisputed, contingent, inchoate, or matured, in law or in equity, arising in connection with or relating to the Company, the Property, the Bulk Purchase Agreement, and the Bankruptcy Case (including any claims, surcharges or causes of action under chapter 5 of the Bankruptcy Code, which each of the Releasors have or ever had against the Releasees on or at any time prior to the date of this Agreement); provided, however, that nothing contained in this Section 4 shall be deemed or construed to modify or affect, or be a release, waiver or discharge of the terms and conditions of this Agreement. Without limiting the generality of the foregoing, the following entities and individuals shall be included among the Releasees: (i) Kevin O'Sullivan; (ii) Donal O'Sullivan; (iii) David Scharf; (iv) Jay Eisenstadt; (v) Ulo Barad; (vi) Adam Mirzoeff; (vii) Esplanade; (viii) Bryan Turley; (ix) Darina Heavey; (x) John Ryan, (xi) Ken Healy, (xii) CKS Finance Ltd. and (xiii) Conor Sheahan. The foregoing waivers and releases shall be void *ab initio* as of the date that this Agreement is terminated. Fuerta and the End Unit Purchasers reserve any rights they may have against the law firm of Seiden & Schein, PC, and such attorneys are not hereby released.

5. **No Withdrawal of Plan Support.** Each Party hereto will not withdraw or revoke (a) its support of the Plan pursuant to this Agreement, or (b) any properly solicited vote to accept the Plan, in each case, unless the terms of this Agreement have been breached, and such breach shall not have been promptly cured, or this Agreement has been terminated in accordance with its terms.

6. **Tolling Pending Effective Date; Claims Reinstated; Other**. With respect to any claim that any Party had, has or may have relating to another Party or the Escrow Funds, each Party agrees that the running of all statutes of limitation, laches and all other defenses arising from the passage of time shall be tolled during the period beginning on September 30, 2011, up until, and including the Effective Date or any earlier termination of this Agreement. Any claim that any Party had, has or may have relating to another Party or the Escrow Funds, may be reinstated without prejudice following any expiration or termination of this Agreement. This Agreement shall not limit the right of any Party to assert a claim or commence a lawsuit against any person or entity that is not a signatory to this Agreement, except as set forth in Section 4, above.

7. **New York Attorney General.** Within 5 days of execution of this Agreement, the End Unit Purchasers through counsel will send a letter to Lewis Polishook, Esq. and Jeffery Rendin, Esq. of the NYAG withdrawing their request that the NYAG investigate Fuerta and the Company, in substantially the form set forth in Schedule E. The End Unit Purchasers agree not to request any further such investigation by the NYAG with respect

to any matter that occurred prior to the date hereof.

8. **Acknowledgements.** Each Party acknowledges that (i) no securities of the Company or the Reorganized Company are being offered or sold hereby and that this Agreement neither constitutes an offer to sell nor a solicitation of an offer to buy any securities of the Company or the Reorganized Company, and (ii) this Agreement is not and shall not be deemed to be a solicitation of votes to accept or reject the Plan or any plan of reorganization pursuant to chapter 11 of the Bankruptcy Code.

9. **Limitations on Transfer of Claims.** Each Non-Debtor Party agrees that, except as set forth in this Agreement, it shall not (i) sell, transfer, assign, pledge, grant a participation interest in, or otherwise dispose of, directly or indirectly, its right, title, or interest in respect of any claim such Non-Debtor Party holds against the Company, in whole or in part, or (ii) grant any proxies or enter into a voting agreement with respect to any such Claim (collectively, the actions described in clauses (i) and (ii), the "Transfer"), unless such Transfer is to another Non-Debtor Party to this Agreement or any other entity that first agrees in writing to be bound by the terms of this Agreement by executing and delivering to the Company a counterpart signature page to this Agreement and is capable of fulfilling its obligations under this Agreement. Upon compliance with the foregoing, the transferor shall be deemed to relinquish its rights (and be released from its obligations) under this Agreement to the extent of such transferred rights and obligations. No Non-Debtor Party may create any subsidiary or affiliate for the sole purpose of acquiring any claim against the Company. Any Transfer made in violation of this Section 9 shall be deemed null and void and of no force or effect, regardless of any prior notice provided to the Company, and shall not create any obligation or liability of the Company to the purported transferee.

10. **Further Acquisition of Claims.** This Agreement shall in no way be construed to preclude any Non-Debtor Party or any of its affiliates from acquiring additional claims against the Company. Any such additional claims shall automatically be subject to the terms of this Agreement and such acquiring Non-Debtor Party shall promptly (and, in all events, no later than 2 business days) inform the other Parties to this Agreement of the acquisition of such additional Claims.

11. **Effectiveness.** (i) except for Section 1, all provisions of this Agreement shall become effective upon execution and delivery of counterpart signature pages to this Agreement by and among each of the Parties hereto; and (ii) section 1 of this Agreement (other than Section 1.a, which is effective upon execution and delivery) shall become effective upon either an order pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure or confirmation of the Plan.

12. **Company Termination Events.** The Company may, in its sole discretion, terminate this Agreement as to all Parties upon five days' prior written notice to the Non-Debtor Parties delivered in accordance with Section 23 below following the occurrence of a material breach by any Non-Debtor Party of any of its obligations under this Agreement that remains uncured for a period of five (5) business days after receipt by such Party (or Parties) of written notice of such breach from the Company.

13. **Non-Debtor Party Termination Events.** Each of the Non-Debtor Parties may, in their sole discretion, terminate this Agreement, solely as it pertains to their respective individual rights and obligations hereunder, upon five days' prior written notice to the Company and all other Non-Debtor Parties delivered in accordance with Section 23 below following the occurrence of any of the following events:

a. the Company fails to file the Plan on or before the statutory deadline of November 1, 2011, or such later date as the Bankruptcy Court may order;

b. an order entered by the Bankruptcy Court confirming the Plan, including all exhibits, appendices and related documents, shall not have been entered by the Bankruptcy Court on or before March 31, 2012; provided, however, that so long as the Company is proceeding in good faith towards confirmation of the Plan, upon written notice from the Company to the Non-Debtor Parties, the foregoing deadline shall be extended automatically for a period of 30 days;

c. the Plan filed by the Company with the Bankruptcy Court is inconsistent in any material respect with the terms of this Agreement, to the detriment of Newco (i.e., increases Newco's obligations under this Agreement, or reduces Newco's rights under this Agreement except, in each case, to an immaterial degree) and is not withdrawn by the Company (or modified by the Company to eliminate such material inconsistency) within 10 business days after written notice from a Non-Debtor Party (which notice must be given within 10 business days after the date of filing) specifying such inconsistency;

d. any other Definitive Documents filed by the Company with the Bankruptcy Court are inconsistent in any material respect with the terms of this Agreement, to the detriment of Newco (i.e., increases Newco's obligations under this Agreement, or reduces Newco's rights under this Agreement except, in each case, to an immaterial degree), and are not withdrawn by the Company (or modified by the Company to eliminate such inconsistency) within 10 business days after written notice from a Non-Debtor Party (which notice must be given within 10 business days after the date of filing) specifying such inconsistency;

e. any modification, amendment or supplement to, or withdrawal of, the Plan or any other Definitive Document filed by the Company with the Bankruptcy Court is inconsistent in any material respect with the terms of this Agreement, to the detriment of Newco, and is not withdrawn by the Company (or modified by the Company to eliminate such inconsistency) within 10 business days after written notice from a Non-Debtor Party (which notice must be given within 10 business days after the date of filing) specifying such inconsistency;

f. the filing by the Company of any motion or other request for relief seeking (i) to voluntarily dismiss the Bankruptcy Case, (ii) conversion of the Bankruptcy Case to chapter 7 of the Bankruptcy Code, or (iii) appointment of a trustee or an examiner with expanded powers pursuant to section 1104 of the Bankruptcy Code in the Bankruptcy Case;

g. the entry of an order by the Bankruptcy Court (i) dismissing the Bankruptcy Case, (ii) converting the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code, (iii) appointing a trustee or an examiner with expanded powers pursuant to section 1104 of the Bankruptcy Code in the Bankruptcy Case; or (iv) making a finding of fraud, dishonesty or misconduct by any officer, director or managing member of the Company, each in its capacity as such, that would reasonably be expected to have a material adverse effect on the Company;

h. any other material breach by the Company of any of its obligations under this Agreement, and any such breach is not cured within ten (10) business days after receipt by the Company of written notice of such breach from any Non-Debtor Party; and

i. any court of competent jurisdiction or other competent governmental or regulatory authority shall have issued a final, non-appealable order making illegal or otherwise restricting, preventing, or prohibiting the Restructuring in a manner that cannot be reasonably remedied by the Company.

Notwithstanding any provisions in this Agreement to the contrary, (a) the respective deadlines contained above in this Section 13 (other than the deadline set forth in Section 13.b) shall be extended for up to 30 days in the aggregate as may be reasonably necessary to accommodate the docket and availability of the Bankruptcy Court, and (b) no Party shall be entitled to terminate this Agreement if such Party has breached any of its obligations hereunder. Additionally, the deadlines applicable to notices required to be delivered by the Non-Debtor Parties under Sections (e), (f) and (g) shall be extended one day for each day subsequent to such filing that copies of a filing have not been provided to the Non-Debtor Parties.

14. **Other Termination Events:**

a. If not previously terminated in accordance with the provisions hereof, this Agreement shall expire automatically without further required action or notice upon the consummation of the Plan, except for any provisions which, by their terms, survive any such termination.

b. This Agreement, and the obligations of all Parties hereunder, may be terminated by mutual written agreement of the Parties.

15. **Effect of Termination.** Upon termination of this Agreement, all obligations hereunder, except Section 7, shall terminate and shall be of no further force and effect; provided, however, that any claim for breach of this Agreement shall survive termination and all rights and remedies with respect to such claims shall be neither waived nor prejudiced in any way.

16. **Cooperation.** The Company shall use its reasonable efforts to provide draft copies of all pleadings and/or documents related to the Plan to counsel to the Non-Debtor Parties within a reasonable time prior to filing such pleadings and/or documents and shall consult in good faith with such counsel regarding the form and substance of any such proposed pleading

and/or document.

17. **End Unit Purchaser Representative.**

a. Representations and Warranties of Conor Sheahan. The initial End Unit Purchaser Representative, Conor Sheahan, represents and warrants that he has obtained a valid and binding general power-of-attorney from each of the individuals listed on Schedule F. Sheahan further represents and warrants that he has all necessary legal authority to (a) execute this Agreement on behalf of himself and all of the End Unit Purchasers that have executed this Agreement as of the date hereof, (b) receive any and all solicitation materials in connection with the Plan or any other chapter 11 plan which is proposed in the Bankruptcy Case, (c) execute and return any ballot for the acceptance or rejection of the Plan, or any other chapter 11 plan which is proposed in the Bankruptcy Case and on which such End Unit Purchaser is entitled to vote, and (d) to perform all other duties and obligations set forth hereunder. The initial End Unit Purchaser Representative, Conor Sheahan, shall be deemed to restate the foregoing representations and warranties with respect to any additional End Unit Purchasers which are designated by the initial End Unit Purchaser Representative as subsequent parties to this Agreement.

b. Agreement to Act As End Unit Purchaser Representative. Conor Sheahan hereby agrees to act as End Unit Purchaser Representative and to act as the End Unit Purchasers' sole representative and agent in connection with all matters related to this Agreement, including but not limited to receiving any and all solicitation materials in connection with the Plan or any other chapter 11 plan which is proposed in the Bankruptcy Case, and voting the End Unit Purchasers' claims in accordance with the terms of this Agreement. Conor Sheahan shall have the right to appoint a successor End Unit Purchaser Representative; and, after such appointment, such appointed person shall be the "End Unit Purchaser Representative" under this Agreement; provided, however, such successor is reasonably acceptable to 8 Avenue, whose consent to appointment of a successor shall not be unreasonably withheld, delayed or conditioned.

c. Rule 2019 Filing. End Unit Purchaser Representative further agrees to file, within five days of the Company's request, a statement with the Bankruptcy Court, pursuant to Rule 2019 of the Federal Rules of Bankruptcy Procedure, disclosing with respect to each End Unit Purchaser represented by End Unit Purchaser Representative, such End Unit Purchaser's name, address, nature and amount of claim against the Company and the time of acquisition thereof.

18. **Representations and Warranties of Non-Debtor Parties.** Each Non-Debtor Party represents and warrants to each other Party, severally but not jointly, that the following statements are true, correct, and complete as of the date hereof:

a. as to each Non-Debtor Party that is an entity, it is duly organized, validly existing, and in good standing under the laws of the state of its organization or formation, and has all requisite corporate, partnership or other power and authority, and the

legal capacity, to enter into this Agreement and to carry out the transactions contemplated by, and to perform its obligations under, this Agreement;

b. as to each Non-Debtor Party that is a natural person, it has all requisite power and authority, and the legal capacity, to enter into this Agreement and to carry out the transactions contemplated by, and to perform his/her obligations under, this Agreement;

c. as to each Non-Debtor Party that is an entity, the execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary action (corporate, partnership or otherwise) on its part;

d. this Agreement has been duly executed and delivered by it and constitutes its legal, valid, and binding obligation, enforceable in accordance with the terms hereof;

e. the execution, delivery, and performance by it (when such performance is due) of this Agreement does not and shall not (i) violate any provision of law, rule or regulation applicable to it or, in the case of an entity, any of its subsidiaries or its or their certificates of incorporation or bylaws or other organizational or formation documents, or (ii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any material contractual obligation to which it or, as applicable, any of its subsidiaries is a Party;

f. Service on Official Committee. Notwithstanding anything herein to the contrary, if a Non-Debtor Party is appointed to, and serves on an official committee in the Company's Bankruptcy Case, the terms of this Agreement shall not be construed to limit the Non-Debtor Party's exercise of its fiduciary duties in its role as a member of such official committee, and any exercise of such fiduciary duties shall not be deemed to constitute a breach of the terms of this Agreement; provided, however, serving as a member of such committee shall not relieve such Non-Debtor Party of its obligations to affirmatively support, and vote for, the Plan, on the terms and conditions set forth herein.

g. References to Non-Debtor Parties shall be construed as referring to an entity or natural person as the context may require.

19. **Representations and Warranties by 8 Avenue**

a. 8 Avenue represents and warrants the following as of the date of this Agreement:

i. This Agreement and all agreements, instruments and documents herein provided to be executed by 8 Avenue will be duly authorized, executed and delivered by and binding upon 8 Avenue. This Agreement constitutes the legal, valid and binding obligations of 8 Avenue and shall be enforceable against 8 Avenue in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency or other similar laws affecting creditor's rights generally and (ii) general principles of equity. 8 Avenue is

duly organized, validly existing, and in good standing under the laws of the state of its organization or formation, and has all requisite corporate, partnership or other power and authority, and the legal capacity, to enter into this Agreement and to carry out the transactions contemplated by, and to perform its obligations under, this Agreement.

ii. Neither the entry into nor the performance of this Agreement by 8 Avenue will violate or result in a material breach under, or constitute a material default under, any corporate charter, certificate of incorporation, by-law, partnership agreement, indenture, contract, permit, judgment, decree or order to which 8 Avenue is a party or by which 8 Avenue is bound; provided, however, that no representation is made concerning any potential limitations that may be arguably imposed by the Building Loan Agreement, a copy of which has been provided to counsel for Fuerta and the End Unit Purchasers.

iii. Included in Schedule D, attached hereto and made a part hereof, is a true and complete copy of the budget for the first 12 months of operation of the Property (the "Approved Budget"), which Approved Budget represents a good-faith estimate of the income and expenses of the property for the period in question.

iv. All tax returns that have been required to be filed with respect to the business, operations and assets of the Company have been filed and all federal, state or local income taxes have been paid. There are no pending audits with respect to taxes.

v. The Property is, as of the date of this Agreement, free of any leases, licenses or other occupancy agreements and is vacant.

vi. To 8 Avenue's knowledge, there is no material pending or threatened litigation or claims against 8 Avenue or the Company or the Property, except for any claims which have been asserted or threatened by or on behalf of Fuerta and/or the End Unit Purchasers.

vii. As of the date of this Agreement, the Company has not entered into any lending agreements secured in whole or in part by the Property that will be binding on the Company after the Closing Date, except for the Loan (defined above), the operative documentation of which has been supplied to counsel for Fuerta and the End Unit Purchasers.

b. 8 Avenue further represents and warrants that the following representations will be true in all material respects as of the Effective Date (subject to the below):

i. The representations set forth in Section 19(a)(i), (ii), and (iv) shall remain materially true as of the Effective Date.

ii. As to the representation in Section 19(a)(iii): as of the Effective Date, 8 Avenue reserves the right to update and modify the Approved Budget in light of the circumstances at the time. Any material modification of the Approved Budget shall require the consent of Newco, which consent shall not be unreasonably withheld or delayed.

iii. As to the representation in Section 19(a)(v): the Company will use reasonable efforts to obtain any needed approvals from the Bankruptcy Court required to begin work in preparation for the Lease-Up, and/or the actual leasing of units, prior to the Effective Date; it being understood that no representation is made concerning whether and when such Bankruptcy Court approval will be obtained.

iv. As to the representation in Section 19(a)(vi): the Company will notify counsel for Fuerta and the End Unit Purchasers in the event any material litigation is filed between the date of this Agreement and the Effective Date.

v. As to the representation in Section 19(a)(vii): the Company reserves the right to obtain Pre-Confirmation Mezzanine Financing, consistent with Section 1(k) herein.

vi. As of the Effective Date the membership interests in the Reorganized Company which shall be transferred to Newco shall be free of all security interests, liens, encumbrances and pledges. There shall be no outstanding options, subscriptions, warrants or calls outstanding with respect to such membership interests.

20. **Representations, Warranties and Indemnification by Fuerta / End Unit Purchasers**

a. In addition to the representations and warranties set forth in Section 18 above, Fuerta hereby represents and warrants to each other Party that the following statements are true, correct, and complete as of the date hereof:

i. To the knowledge of Fuerta, Fuerta has provided to the Company a true and accurate list of all individuals and entities that have or claim to have invested in Fuerta or otherwise tendered money or anything of value to Fuerta in connection with or related to the Company, the Property, or the Bulk Purchase Agreement (all such persons are herein collectively referred to as "Potential Fuerta Claimants"). Persons or entities that (i) have entered into agreements with Fuerta to purchase units in the 306 West 48th Street Condominium, or (ii) claim to have provided funds to Fuerta or Glorianna Holdings Ltd. ("Glorianna"), including through the purchase of notes issued by Glorianna, in reliance upon a promise that such funds would go toward the purchase price of a specific unit in the Property, are herein each referred to as a "Potential End Unit Purchaser Claimant", and collectively, the "Potential End Unit Purchaser Claimants".

ii. Fuerta has provided to the Company and the End Unit Purchasers all relevant material information in its possession regarding any and all claims or causes of action Fuerta may have against all other Parties hereto in connection with or related to the Company, the Property, or the Bulk Purchase Agreement.

iii. Fuerta has provided to the Company and the End Unit Purchasers all relevant material information in its possession regarding any and all claims or causes of action the End Unit Purchasers or any Potential End Unit Purchaser Claimant may have against all other Parties hereto in connection with or related to the Company, the Property, or the Bulk Purchase Agreement.

b. Fuerta and the End Unit Purchasers represent and warrant to each other Party, severally but not jointly, that the following statements are true, correct, and complete as of the date hereof:

i. they have fully investigated their rights and remedies in relation to the Bulk Purchase Agreement, the Escrow Funds, and all matters relating thereto, with the assistance of counsel, and are fully satisfied that they have received sufficient information to enter into this Agreement;

ii. they have been advised by the Company that the Company is seeking to resolve all potential claims by Fuerta and the End Unit Purchasers, and that the Company is indifferent as to the distribution of settlement proceeds and consideration as between Fuerta and the End Unit Purchasers;

iii. it is the view of Fuerta and the End Unit Purchasers, upon consultation with respective counsel of their choosing, that the allocation of settlement proceeds and consideration is appropriate under the circumstances.

c. Fuerta agrees that if any Potential Fuerta Claimant which has not been identified to the Company by Fuerta prior to the date of this Agreement asserts a claim against the Company which claim is ultimately allowed by the Bankruptcy Court, Fuerta shall indemnify the Company for the full amount of all costs and expenses of defending against, settling and/or satisfying such claim, including, without limitation, reasonable attorneys' fees with respect thereto; and further, the claims of such Potential Fuerta Claimant, if allowed, will be satisfied out of the consideration to Fuerta set forth herein, and that the Company shall not be required to provide further funds or equity to satisfy any such claims.

d. Fuerta hereby agrees that, if any Potential End Unit Purchaser Claimant which has not been identified to the Company by Fuerta prior to the date of this Agreement asserts a claim against the Company which claim is ultimately allowed by the Bankruptcy Court, Fuerta shall indemnify the Company for the full amount of all costs and expenses of defending against, settling and/or satisfying such claim, including, without limitation, reasonable attorneys' fees with respect thereto.

e. The Parties hereby agree that, if any Potential End Unit Purchaser Claimant which has not been identified to the Company by Fuerta or the End Unit Purchasers on or prior to the date of execution of this Agreement by the Parties (other than any person who may subsequently become a Party as contemplated by Section 1.a and/or this Section 20.e hereof) asserts a claim against the Company which claim is ultimately allowed by the Bankruptcy Court, Newco shall indemnify the Company for the reasonable amount of all costs and expenses of defending against, settling and/or satisfying such claim, including, without limitation, reasonable attorneys' fees with respect thereto; provided, however, that such claim shall be defended by Newco and its attorneys and settled by Newco. If the claim(s) of any such Potential End Unit Purchaser Claimant(s), is/are ultimately allowed, such claim shall be satisfied wholly out of the 35% membership interest of Newco in the Reorganized Company, and in such case, neither the Company, Reorganized Company, nor 8 Avenue shall be required to contribute any funds, equity, or any other consideration to satisfy any such claims. Notwithstanding the foregoing, Newco shall not be required to indemnify the Company against claims asserted by persons or entities with whom the Company has dealt prior to the date of this Agreement. The indemnification obligations set forth in this Section 20.e shall be effective only from the Effective Date; and shall not be effective if the Plan is not approved or if the Effective Date does not occur or if this Agreement is terminated or expires pursuant to its terms. The identification of a Potential End Unit Purchaser Claimant shall be made even if the actual name of the Potential End Unit Purchaser Claimant shall vary, to an immaterial degree, from the actual name of such Potential End Unit Purchaser Claimant, or if the beneficial owner of a claim (e.g., an individual that is named when the claim is liable to be asserted by the individual's retirement plan entity) is named so as to provide 8 Avenue with reasonable notice of the existence of a claim.

21. **Access.** The Company will afford counsel to Fuerta and Newco reasonable access, upon reasonable notice during normal business hours, and at other reasonable times, to all properties, books, contracts, commitments, records, management personnel, lenders and advisors of the Company; provided, however, that nothing in this Agreement shall require the Company to disclose or provide access to any documents or information that are subject to the attorney-client or other similar privilege.

22. **Amendment or Waiver.** Except as otherwise specifically provided herein, this Agreement may not be modified, waived, amended, or supplemented unless such modification, waiver, amendment, or supplement is in writing and has been signed by the Company, Time Square, 8 Avenue, Fuerta and the End Unit Purchase Representative; provided, however, that any such amendment, modification or waiver that would materially and adversely affect any particular End Unit Purchaser disproportionately (in comparison to the End Unit Purchasers taken as a whole) shall not be effective without the prior written consent of such particular End Unit Purchaser. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision of this Agreement, whether or not similar, nor shall any waiver be deemed a continuing waiver (unless such waiver expressly provides otherwise).

23. **Specific Performance; Remedies Cumulative.** This Agreement is intended as a binding commitment enforceable in accordance with its terms. Each Party acknowledges and agrees that the exact nature and extent of damages resulting from a breach of this Agreement are uncertain at the time of entering into this Agreement and that any such breach of this Agreement would result in damages that would be difficult to determine with certainty. It is understood and agreed that money damages would not be a sufficient remedy for any such breach of this Agreement, and that any non-breaching Party shall be entitled to seek specific performance and injunctive relief as remedies for any such breach, and each Party further agrees to waive, and to cause each of their representatives to waive, any requirement for the securing or posting of any bond in connection with requesting such remedy. Such remedies shall not be deemed to be the exclusive remedies for the breach of this Agreement by any Party or its representatives. All rights, powers and remedies provided under this Agreement or otherwise available in respect hereof at law or in equity shall be cumulative and not alternative, and the exercise of any right, power or remedy by any Party hereto shall not preclude the simultaneous or later exercise of any other such right, power or remedy hereunder.

24. **Notices.** Any notice required or desired to be served, given, or delivered under this Agreement shall be in writing, and shall be deemed to have been validly served, given, or delivered if provided by personal delivery, or upon receipt of facsimile or electronic mail delivery, as follows:

a. If to any End Unit Purchaser, to the address set forth on its signature page affixed hereto, with a copy to:

Conor Sheahan
CKS Finance Limited
Suite 103
Dublin Airport Business Park
Santry
Dublin 9
Ireland
+353 87 2349964

with a copy to

Thompson Hine LLP
Attn: Mario J. Suarez, Esq.
335 Madison Avenue (12th Floor)
New York, New York 10017
(212) 908-3930

b. if to Newco:

c/o Mr. Conor Sheahan
CKS Finance Limited
Suite 103

Dublin Airport Business Park
Santry
Dublin 9
Ireland
+353 87 2349964

with a copy to

Thompson Hine LLP
Attn: Mario J. Suarez, Esq.
335 Madison Avenue (12th Floor)
New York, New York 10017
(212) 908-3930

c. if to the Company:

Kevin O'Sullivan
Time Square Construction, Inc.
355 Lexington Avenue
17th Floor
New York, New York 10017
(212) 687-1400

with a copy to

Proskauer Rose LLP
Attn: Sheldon Hirshon, Esq.
Eleven Times Square
New York, New York 10019
(212) 969-3000

d. if to Time Square:

Kevin O'Sullivan
Time Square Construction, Inc.
355 Lexington Avenue
17th Floor
New York, New York 10017
(212) 687-1400

with a copy to

John H. Snyder PLLC
Attn: John H. Snyder, Esq.
555 Fifth Avenue, Suite 1700

New York, New York 10017
(212) 856-7280

e. if to 8 Avenue:

Kevin O'Sullivan
Time Square Construction, Inc.
355 Lexington Avenue
17th Floor
New York, New York 10017
(212) 687-1400

with a copy to

John H. Snyder PLLC
Attn: John H. Snyder, Esq.
555 Fifth Avenue, Suite 1700
New York, New York 10017
(212) 856-7280

f. if to Fuerta:

Bryan Turley
222 East 34th Street
Apt 1022
New York, New York 10016

with a copy to

Yeskoo Hogan & Tamlyn, LLP
Attn: Stephen Hogan, Esq.
909 Third Avenue, 28th Floor
New York, New York 10022
(212) 983-0900

25. **Governing Law; Jurisdiction.**

a. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY CONFLICTS OF LAW PROVISION WHICH WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION.

b. By its execution and delivery of this Agreement, each of the Parties hereto irrevocably and unconditionally agrees for itself that any legal action, suit or proceeding against it with respect to any matter under or arising out of or in

connection with this Agreement or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, shall be brought in the Bankruptcy Court. By execution and delivery of this Agreement, each of the Parties hereto irrevocably accepts and submits itself to the exclusive jurisdiction of the Bankruptcy Court generally and unconditionally, with respect to any such action, suit or proceeding, and waives any objection it may have to venue or the convenience of the forum.

c. In the event the Bankruptcy Court does not have or refuses to exercise jurisdiction with respect to this Agreement and any disputes arising therefrom, any legal action, suit, or proceeding against the Parties with respect to any matter under or arising out of or in connection with this Agreement, or for recognition or enforcement of any judgment rendered in any such action, suit or proceeding, may be brought in any Federal or State Court located in New York, and by execution and delivery of this Agreement, each Party hereto irrevocably accepts and submits itself to the non-exclusive jurisdiction of those courts.

26. **Further Assurances.** From and after the date hereof, each of the Parties agrees to execute and deliver (at no out-of-pocket costs) all such agreements, instruments and documents and to take all such further actions as the Parties may reasonably deem necessary from time to time to carry out the intent and purpose of this Agreement and to consummate the transactions contemplated thereby.

27. **Headings.** The headings of the sections, paragraphs and subsections of this Agreement are inserted for convenience only and shall not affect the interpretation hereof.

28. **Interpretation.** This Agreement is the product of negotiations of the Parties, and in the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof.

29. **Successors and Assigns.** This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors, assigns, heirs, transferees, executors, administrators, and representatives, in each case solely as such Parties are permitted under this Agreement.

30. **No Third-Party Beneficiaries.** This Agreement shall be solely for the benefit of the Parties hereto and no other person or entity shall be a third-party beneficiary hereof.

31. **No Waiver of Participation and Reservation of Rights.** Except as expressly provided in this Agreement and in any amendment among the Parties, nothing herein is intended to, or does, in any manner waive, limit, impair, or restrict the ability of each of the Parties to protect and preserve, its rights, claims, defenses, privileges, remedies, and interests, including, without limitation, its claims against any of the other Parties (or their respective affiliates or subsidiaries) or relating to the Escrow Funds. If the transactions contemplated by this Agreement are not consummated, if this Agreement is terminated for any reason, or

if the Plan is not confirmed by the outside date for the confirmation thereof any and all of the rights, claims, defenses, privileges, remedies, or interests that any Party had, has, or may have against another Party and/or with respect to the Escrow Funds are expressly reserved and nothing in this Agreement shall be used, construed or interpreted to constitute or effectuate a waiver of any such rights, claims, defenses, privileges, remedies, or interests.

32. **Settlement Purposes Only.** This Agreement, and all drafts and negotiations relating to it, are governed by Rule 408 of the Federal Rules of Evidence and state law analogues; and shall not be presented formally or informally to any court or law enforcement agency, including but not limited to the NYAG, as evidence or purported evidence of wrongdoing or liability in relation to the Escrow Funds or any other related matter.

33. **No Admissions.** This Agreement shall in no event be construed as or be deemed to be evidence of an admission or concession on the part of any Party of any claim or fault or liability or damages whatsoever. Each of the Parties denies any and all wrongdoing or liability of any kind and does not concede any infirmity in the claims or defenses which it has asserted or could assert. No Party shall have, by reason of this Agreement, a fiduciary relationship in respect of any other Party or any person or entity, and nothing in this Agreement, expressed or implied, is intended to or shall be so construed as to impose upon any Party any obligations in respect of this Agreement except as expressly set forth herein. It is expressly understood that the designation of certain individuals as "End Unit Purchasers" shall not be construed as an admission by any Party as to the legal status of any of the Escrow Funds.

34. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement. Delivery of an executed signature page of this Agreement by facsimile or electronic mail shall be effective as delivery of a manually executed signature page of this Agreement.

35. **Representation by Counsel.** Each Party acknowledges that it has been represented by counsel in connection with this Agreement and the transactions contemplated herein. Accordingly, any rule of law or any legal decision that would provide any Party with a defense to the enforcement of the terms of this Agreement against such Party based upon lack of legal counsel shall have no application and is expressly waived.

36. **Entire Agreement.** This Agreement and the Schedules hereto constitute the entire agreement between the Parties and supersede all prior and contemporaneous agreements, representations, warranties, and understandings of the Parties, whether oral, written, or implied, as to the subject matter hereof.

[signature pages follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

785 Partners LLC

By: _____
Name: Donal O'Sullivan
Title: Authorized Representative

Fuerta Property Limited

By: _____
Name: Bryan Turley
Title:

Time Square Construction, Inc.

By: _____
Name: Kevin O'Sullivan
Title: President

Esplanade Tower Corp.

By: _____
Name: Donal O'Sullivan
Title: President

8 Avenue & 48th Street Development LLC

By: _____
Name: Kevin O'Sullivan
Title: Member

_____
Conor Sheahan
Personally and as Attorney-in-Fact for each of the persons listed on Schedule F

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Title: Authorized Representative

Fuerta Property Limited

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Time Square Construction, Inc.

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Name: Kevin O'Sullivan
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Esplanade Tower Corp.

By: _____
Name: Donal O'Sullivan
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8 Avenue & 48th Street Development LLC

By: _____
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Title: Member

_____
Conor Sheahan
Personally and as Attorney-in-Fact for each of the persons listed on Schedule F

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Title:

Time Square Construction, Inc.

By: _____
Name: Kevin O'Sullivan
Title: President

Esplanade Tower Corp.

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8 Avenue & 48th Street Development LLC

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Name: Kevin O'Sullivan
Title: Member

_____
Conor Sheahan
Personally and as Attorney-in-Fact for each of the persons listed on Schedule F

1 2

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785 Partners LLC

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Name: Donal O'Sullivan
Title: Authorized Representative

Fuerta Property Limited

By: _____
Name: Bryan Turley
Title: DIRECTOR

Time Square Construction, Inc.

By: _____
Name: Kevin O'Sullivan
Title: President

Esplanade Tower Corp.

By: _____
Name: Donal O'Sullivan
Title: President

8 Avenue & 48th Street Development LLC

By: _____
Name: Kevin O'Sullivan
Title: Member

_____
Conor Sheahan
Personally and as Attorney-in-Fact for each of the persons listed on Schedule F

SCHEDULE A

SCHEDULE A

(Initial Members Of Newco)

Name of Member
Martin & Aileen McGinn*
Gill Hess ARF
Patrick Donovan
Stephen Fitzgerald*
Stephen Fitzgerald*
Stephen Fitzgerald*
Shane O'Connor
Gordon Darcy
James Healy (Brass-Founders Engineering Ltd)*
David Coen
Stephen Mackey
John Hogan
Brian O'Kennedy
Stephen Church
Sean Murphy
Frank Murray
Clodagh Blake
Gregor Shanik
The Astech Pension Plan (Shay Hancock)
Breda O'Kennedy
Dominic Glennane
Philip Dillon
Iain Craig & Catherine Day
Rita Fagan ARF
Carmel Kidney ARF
Aine Meagher ARF
Gill Hess Limited – Simon Hess SSAP
Tom Byrne ARF
The Bridge Pension Trust (Joe Murphy)
Brian Walsh
Paul Madden & Deirdre Madden
Amelia Smith
Damien Christie
Brendan Butler
Frank Brennan
Michael Mehigan
Paddy Judge

Eamonn O'Kennedy / Mary Farrell / Patricia Purcell
Emma Loughnane & Tom Hynes
Aidan Gallagher
Charles Cavanagh
Thomas & Ann Horan
Carmel, Albert, Liam & Declan Kidney

* Membership is subject to the indicated individual's execution of the accompanying Settlement and Plan Support Agreement and/or Court order.

SCHEDULE B

Schedule B

Creditor	Amount
G. Stramindinoli S.R.L. a Socio Unico	$35,000.00
Peckar & Abramson, P.C.	$60,636.00
Seiden & Schein, P.C.	$42,084.00
Tractel	$20,000.00
Ismael Levya Architects, P.C.	$11,344.00
Bingham McCutchen, LLP	$3,982.00
Mishkoff Associates	$3,500.00
Fire & Building	$2,900.00
Belkin, Burden, Wenig & Goldman	$371.00
SBLD	$200.00
	$180,017

B 6D (Official Form 6D) (12/07)

In re. 785 Partners LLC, Debtor

Case No. 11-13702 (SMB)

SCHEDULE D — CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests

List creditors in alphabetical order to the extent practicable If a minor child is the creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian " Do not disclose the child's name See, 11 U S.C. §112 and Fed. R. Bankr. P 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H – Codebtors If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community "

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed " (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim Without Deducting Value of Collateral" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion, if Any" on the Statistical Summary of Certain Liabilities and Related Data.

❑ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND AN ACCOUNT NUMBER *(See Instructions Above)*	CODEBTOR	HUSBAND, WIFE, JOINT OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. FIRST MANHATTAN DEVELOPMENTS REIT C/O SILVERMANACAMPORA LLP ATTN: ADAM L. ROSEN & GERARD R. LUCKMAN 100 JERICHO QUADRANGLE, SUITE 300 JERICHO, NEW YORK 11753			JANUARY 25, 2007; MORTGAGE; LAND AND 122 UNIT LUXURY RESIDENTIAL BUILDING WITH RETAIL SPACE LOCATED AT 785 EIGHTH AVENUE, NEW YORK, NEW YORK VALUE $ 106,000,000.00	X	X	X	$81,212,506.00 plus interest	
ACCOUNT NO. TIME SQUARE CONSTRUCTION, INC. ATTN: SYLVESTER STEWART, CPA 355 LEXINGTON AVENUE, 17TH FLOOR NEW YORK, NY 10017			VARIOUS; MECHANIC'S LIEN; LAND AND 122 UNIT LUXURY RESIDENTIAL BUILDING WITH RETAIL SPACE LOCATED AT 785 EIGHTH AVENUE, NEW YORK, NEW YORK VALUE $ 106,000,000.00				$14,229,106.00	
ACCOUNT NO. G STRAMINDINOLI S.R.L. A SOCIO UNICO ATTN: GIANNI STRAMIDINOLI VIA MASSIMO D' ANTONA 16 10040 RIVALTA (TO) ITALY			VARIOUS; MECHANIC'S LIEN; LAND AND 122 UNIT LUXURY RESIDENTIAL BUILDING WITH RETAIL SPACE LOCATED AT 785 EIGHTH AVENUE, NEW YORK, NEW YORK VALUE $ 106,000,000.00				$35,000.00	
							$95,476,612.00	

-0- continuation sheets attached

Total ▸
(Use only on last page)

B 6F (Official Form 6F) (12/07)

In re: 785 Partners LLC, Debtor

Case No 11-13702 (SMB)

SCHEDULE F — CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A B , a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C §112 and Fed R. Bankr P 1007(m). Do not include claims listed in Schedules D and E If all creditors will not fit on this page, use the continuation sheet provided

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data..

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (SEE INSTRUCTIONS.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, AND CONSIDERATION FOR CLAIM, IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. PECKAR & ABRAMSON, P.C. ATTN: HOWARD M. ROSEN 70 GRAND AVENUE RIVER EDGE, NJ 07661			VARIOUS; LEGAL SERVICES				$60,636.00
ACCOUNT NO. SEIDEN & SCHEIN, P.C. ATTN:ALVIN SCHEIN 570 LEXINGTON AVE NEW YORK, NY 10022			VARIOUS; LEGAL SERVICES				$42,084.00
ACCOUNT NO. TRACTEL ATTN: JEROME DE MOULLIAS 1615 WARDEN AVENUE SCARBOROUGH, ON CANADA, M1R 2T3			VARIOUS; WINDOW WASHING EQUIPMENT INSTALLATION				$20,000.00
Sheet no. 1 of 12 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims						Subtotal ▸	$122,720.00
						Total ▸ (Use only on last page of the completed Schedule F. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)	$

In re: 785 Partners LLC, Debtor

Case No. 11-13702 (SMB)

SCHEDULE F — CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (SEE INSTRUCTIONS.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, AND CONSIDERATION FOR CLAIM, IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. ISMAEL LEYVA ARCHITECTS, P.C. ATTN: ISMAEL LEYVA 48 W. 37TH STREET NEW YORK, NY 10018			VARIOUS; ARCHITECT SERVICES				$11,344.00
ACCOUNT NO. BINGHAM MCCUTCHEN, LLP 399 PARK AVE NEW YORK, NY 10022-4699			VARIOUS; LEGAL SERVICES				$3,982.00
ACCOUNT NO. MISHKOFF ASSOCIATES ATTN:MEIR MISHKOFF 38-08 BELL BOULEVARD BAYSIDE, NY 11361			VARIOUS; 421-A CONSULTANT				$3,500.00
ACCOUNT NO. FIRE & BUILDING 10 E. MERRICK ROAD STE 308 VALLEY STREAM, NY 11580			VARIOUS; EXPEDITOR SERVICES				$2,900.00
ACCOUNT NO. BELKIN, BURDEN, WENIG, AND GOLDMAN 270 MADISON AVE NEW YORK, NY 10016			VARIOUS; LEGAL SERVICES				$371.00
ACCOUNT NO. SBLD ATTN:R. DELUCIA 132 W. 36TH ST 10TH FLR NEW YORK, NY 10018			VARIOUS; LIGHTING CONSULTANT SERVICES				$200.00
Sheet no 2 of 12 sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims					Subtotal ▸		$22,297.00
					Total ▸ (Use only on last page of the completed Schedule F. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)		$

SCHEDULE C

Note: As set forth in the Agreement, the "Punch List" items include all of the below, except for "Furnish and Install Window Blinds," which are covered by Section 1.f.i.F. Thus: $450,628 - $121,850 = $328,778.

TIME SQUARE
CONSTRUCTION & DEVELOPMENT
[illegible]

BUDGET HARD COST

Prepare 785 Eighth Avenue for Operation and Occupancy

Date :- 9/6/11

	Scope		Cost Estimate Total
1	Start up & Monitor MEP Systems		$ 10 000
2	Check all appliances and run Laundry and Dishwashers full cycle		$ 5,000
3	Wood Floors Repair & Installation		$ 43,500
4	Miscellaneous Interior Carpentry and Repairs		$ 35,000
5	Window Replacement and Façade Repair		$ 25,000
6	Patch and Repaint as required - walls, ceilings doors and trim		$ 40,000
7	Furnish and Install Window Blinds		$ 121,850
8	Cleaning - Building Interior		$ 35,000
9	Cleaning - Building Exterior		$ 30,000
Total Scope			**$ 345,350**
		% Total Trades	
GC	General Conditions	8.00%	$ 27,628
I	Insurance	2 00%	$ 7,460
General Conditions			**$ 35,088**
Subtotal - Trades, GC, Hoist, Ins.			
C	Contingency	15.00%	$ 57,066
Subtotal incl. Contingency			
FEE	GC Fee	3.00%	13.125
			$ -
Total Hard Cost			**$ 450,628**

PUNCHLIST ITEMS

Prepare 785 Eighth Avenue for Operation and Occupancy

	Scope	Qty's	Location	Materials Availability
1	Window base	250 LF	43A, 40C, 22C, 17B, 16B, 15B, 10B, 9B	
2	Smoke detectors	4+	43A (2),15B, 14C	
3	Mortise locks (entry door)	14	12C, 11C, 10C, 9C, 7C, 7D, 6C, 4A, 4B, 4C, 4D, 3A, 3B, 3D	
4	Passage lock or handle	5	11A, 6C, 4C (2), 4D	
5	Window frame plugs	20 to 25	40A, 16C, 15C, 14A, 12C, 11A, 10C, 8B, 4A	
6	Bathroom shower tile replacement	VIF	42B	
7	Bathroom wall tile	VIF	24A, 12B	
8	Kitchen tile	VIF	31A	
9	Grout tile	VIF	General	
10	Closet door replacement	2	42A, 37A	
11	Window base (paint, replace, or seal).	VIF	43A, 42B, 40C, 31B, 26A, 23B, 22C, 18C, 16B, 15B, 12B, 11A, 11B, 9B	
12	Intercome	4+	42B, 40B, 8B, 7A	
13	Broken glass panels "fixed'	4	29C, 18A, 17B, 12B	
14	Broken glass panels "doors'	1	43A	
15	Broken glass panel "operable window"	2	5A, 20C	
16	Door handle repl. "balcony'	1	42B	
17	Door lock replacement "balcony'	1	26C	
18	Door closer "balcony"	7 to 10	42B, 40C, 39A, 37C, 30A, 26C, 8C	
19	Door handle/opener/hardware repair	1 to 2	10C	
20	PH elevator saddles	2	43A	
21	Door stop	2 to 4	43A, 22B	
22	Cabinet door pulls (bathroom	2	42A	
23	Closet pole	1	38A	
24	Bathroom shower rod (reinstall)	1	9C	
25	Closet shelves	3 to 5	33B, 9B	
26	Outlet caps	8 to 12	VIF	
27	Recessed light housing fixture	1	31C	
28	Bedroom closet hardware	1	31C	
29	Sprinkler cap	1 to 3	VIF	
30	WD aluminum base replacemen	1	36B	
31	Oven Knobs	4	8A	
32	1/4" rubber base at columr	15 to 20	General	
33	PH-residential elevator door	1	43A	
34	Railing bolt	1	8C	
35	Sconces "lobby"	15 to 20	General	
36	Light bulbs "lobby"	11 to 20	General	
37	Plug egress metal door frames	VIF	General	
38	Dented Refrigerator	3	43A, 39B, 30B	

Project: 785 Eighth Avenue
Client: Time Square
Document: Master Punchlist
Update as of: 9/6/2011

TIME SQUARE
CONSTRUCTION & DEVELOPMENT

Item Number	Apartment	Unit	Location/ Trade	Occupied	Punch Item	Author	Inspector Sign-ed off
1	ELEV. MACHINE ROOM				1. Repair insulation at cooling tower pipes.		
2	UPPER ROOF PLAN				1-Remove and reset and remove and replace 3-4 pavers throughout. 2-Roof system pavers at corner. 3-Paint inside parapet wall and main walls, such as bulkhead, to match existing. 4-Jacuzzi to be inspected for water damage. 5-Coat all Ipe wood with oil. 7-Upper roof access hallway needs drainage.		
3	MAIN ROOF				1-Pitch floor to drain and repaint floor. 2-Repair leak in special service fire pump room. 3-Repair leak at water tower. 4-Remove and replace cracked paver and reset loosed pavers. 5-Coat all Ipe wood with oil. 6-Paint inside parapet wall. 7-South side light to be removed and reset at different location to allow space for rig.		
4	43	PH-A			1-Fix kitchen patches. 2-Trim kit for microwave. 3-Dented refrigerator. 4-Kitchen island baseboard to be replaced to match all. 5-Two sections window base to be replaced. 6-Repaint steel frame structure at underside balcony. 7-Repair concrete cracks at underside balcony and repair waterproofing system at roof top above balcony to make it watertight. 8-Sand all rough areas at columns and repaint. 9-Window base to be repainted 100%. 10-Water damaged plaster to be fixed and roof top above to be fixed. 11-Paint apartment 100% eggshell to match existing. 12-Paint elevator doors. 13-Install elevator saddles. 14-Missing smoke detector. 15-Refinish 100% floor. 16-Reset panel and repair damaged wall. 17-Reset WD. 18-Missing smoke detector. 19-Remove and replace door residential elevator (elev. disabled). 20-Install door stop. 21-Paint exposed concrete at exterior. 22-Replace broken glass door.		
5	42	A			1-Caulk at corner. 2-Remove and replace door. 3-Fix bottom door and caulk top left corner of door frame. 4-Repair hairline crack at ceiling. 5-Paint entry door. 6-Fix plaster at ceiling. 7-Repaint water damaged stain areas. Repair as needed. 8-Regrout bathroom tiles. 9-Install door pulls.		
6	42	B			1-Repair soffit. 2-Replace cracked tile. 3-Fix door and repaint. 4-Paint area. 5-Missing intercome. 6-Missing door closer and replace handle. 7-Spot paint window base. 8-Touch-up cabinet. 9-Paint ceiling.		
7	41	Lobby			VIF		
8	41	A			1-Paint stain. 2-Polish or refinish door cabinets. 3-Repair ceiling crack. 4-Caulk at door frame. 5-Repair ceiling crack.		
9	41	B			1-Polish or refinish door cabinets. 2-Touch-up paint.		
10	41	C			1-Retouch paint. 2-Repaint column.		
11	40	Lobby			1. Paint access door, typ.		
12	40	A			1-Floor gap. 2-Plug window mullion. 3-Patch wall above mirror. 4-Paint ceiling. 5-Paint door frame and ceiling.		
13	40	B			1-Paint scratched door. 2-Paint quarter round base and fill holes, at perimeter. 3-Caulk outlet. 4-Gap at wood floor. Paint door frame. 5-Missing intercome. 6-Fix finish ceiling at column corner.		

Item Number	Apartment	Unit	Location/ Trade	Occupied	Punch Item	Author	Inspector Sign-ed off
14	40	C			1-Reset sprinkler head. 2-Missing door closer. 3-Install missing base board. 4-Paint at panel perimeter. 5-Fix ceiling crack. 6-Replace window base.		
15	39	Lobby			VIF		
16	39	A			1-Missing door closer. 2-Gap at base. 3-Paint around ceiling panel.		
17	39	B			1-Gap at wood floor and base board. 2-Dent at refrigerator. 3-Gaps at wood floor. 4-Door to be done at area including base board.		
18	39	C			1-Reset sprinkler head. 2-Fix closet base board. 3-Fix door panel and repaipnt. 4-Caulk behind door. 5-Seal perimeter access panel.		
19	38	Lobby			VIF		
20	38	A			1-Repaint stained wall area. 2-Closet pole missing.		
21	38	B			1-Fix ceiling above cabinets. 2-Gap at wood floor. 3-Paint ceiling.		
22	38	C			1-Caulk sprinkler head. 2-Paint ceiling. 3-Caulk light cap perimeter. 4-Repaint door and closet ceiling. 5-Gap at wood floor. 6-Paint scratcehd column.		
23	37	Lobby			1-Replace light bulb.		
24	37	A			1-Full "BARE" floor to be done. 2-Replace door. 3-Install sheet rock at walls and ceiling. 4-Install sheet rock at ceiling.		
25	37	B			1-Paint door frame. 2-Paint ceiling.		
26	37	C			1-Fix wall plaster. 2-Paint bathroom ceiling. 3-Reset sprinkler head. 4-Fix and paint closet door. 5-Gap at wood floor. 6-Missing door closer.		
27	36	Lobby			VIF		
28	36	A			NA		
29	36	B			1-Gap at base board. 2-Replace WD aluminum base. 3-Paint door frame.		
30	36	C			1-Gap at wood floor. 2-Reset sprinkler head. 3-Paint closet doors.		
31	35	Lobby			1-Caulk gap. 2-Paint base board. 3-Replace light bulb.		
32	35	A			1-Fixed scratched aluminum frame. 2-Paint and caulk access door.		
33	35	B			1-Paint door frame.		
34	35	C			1-Paint ceiling at corner. 2-Paint closet doors. 3-Gap at wood floor. Caulk sprinkler head.		
35	34	Lobby			VIF		
36	34	A			NA		
37	34	B			1-Clean mullion paint. 2-Fix door at bottom. 3-Paint door frame.		
38	34	C			1-Reset sprinkler head. 2-Paint closet doors. 3-Caulk corner.		
39	33	Lobby			1-Replace light bulb.		
40	33	A			1-Replace cracked caulking at door perimeter.		
41	33	B			1-Missing shelf inside closet. 2-Reset light switch. 3-Paint door frame.		
42	33	C			1-Caulk sprinkler head. 2-Caulk access door. 3-Paint closet doors.		
43	32	Lobby			1-Remove or replace wall paper area with paint stain.		
44	32	A			NA		
45	32	B			1-Caulk sprinkler head. 2-Paint door frame.		
46	32	C			1-Caulk base tile. 2-Paint wall and ceiling. 3-Paint wall. 4-Paint closet doors. 5-Caulk base board.		
47	31	Lobby			VIF		
48	31	A			1-Paint closet door. 2-Replace missing backsplash tile in kitchen 3-Paint bathroom walls. 4-Patch kitchen base 5-Repair door closer		
49	31	B			1-Caulk window base perimeter. 2-Caulk tile at top portion of wall.		
50	31	C			1-Paint door. 2-Housing for recessed light fixture missing. 3-Paint closet interior. 4-Fix damaged wall palster. 5-Missing hardware. 6-Paint door.		

Item Number	Apartment	Unit	Location/ Trade	Occupied	Punch Item	Author	Inspector Sign-ed off
51	30	Lobby			VIF		
52	30	A			1-Fix door opener. 2-Fix and paint chipped door. Paint interior base and door frame. 3-Fix and paint chipped door. 4-Caulk top of tile. Regrout tile and paint wall. 5-Fix and paint chipped closet door. Paint touch-up interior. 6-Paint access door. 7-Paint interior closet wall. 8-Caulk gap at recessed ceiling. 9-Caulk louver at perimeter and paint.		
53	30	B			1-Paint wall. 2-Fix wall plaster. 3-Dent at refrigerator. 4-Touched-up door frame. 5-Gap at closet wood floor. 6-Gap at bedroom wood floor. 7-Paint ceiling.		
54	30	C			1-Paint west and south ceiling window cove 2-Touch up paint on apt entry door. 3. Paint entry closet door frame. 4-Paint bathroom wall above shower. 5-Paint bedroom wall between closet doors.		
55	29	Lobby			VIF		
56	29	A			1-Finish doors and paint. 2-Finish vertical wall edge at door fame.		
57	29	B			1/2-Touch up paint ceiling. 3-Paint 100% closet.		
58	29	C			1-Broken glass, inside panel. 2-Touch up column. 3-Paint wall. 4-Touch up bathroom. 5-Paint wall. 6-Small plaster crack above.		
59	28	Lobby			1.Missing light bulb.		
60	28	A			1-Finish vertical wall edge at door fame. 2-Seal small corner base. 3-Paint doors. 4-Crack at ceiling. 5-Caulk sprinkler head. 6-Touch up paint.		
61	28	B			1-Caulk window frame seam, above. 2-Caulk window frame seam, above. 3-Paint ceiling. 4- Crack at ceiling. 5-Paint ceiling and seal small gap.		
62	28	C			1-Touch up paint doors. 2-Fill spall and paint. 3-Touch up wall. 4-Seal sprinkler head.		
63	27	Lobby			1-Missing light bulb.		
64	27	A			1-Caulk edge (see general notes). 2-NA. 3-Fix door chip and paint.		
65	27	B			1-Smooth finish top of door. 2-Caulk wood floor. 3-Fix wall bumb at corner. 4-Smooth finish wall above refrigerator. 5-Seal sprinkler cap. 6-Touch up paint at wall. 7-Fix edge and caulk. 8-Smooth finish chip wall corner. 9-Touch up above door frame.		
66	27	C			1-Missing shelf. 2-Touch up paint wall. 3-Small crack. 4-Paint wall. 5-Caulk.		
67	26	Lobby			1-Paint access door ceiling.		
68	26	A			1-Repair water stain damage at window board. 2-Touch up paint interior furniture. 3-Touch up door. 4-Touch-up bottom frame. 5-Repair dent at entry metal door. 6-Caulk edge between frames. 7-Seal edge above		
69	26	B			1-Smooth finish sprinkler head perimeter. 2-Paint light perimeter. 3-Touch up closet door.		
70	26	C			1-Paint bathroom ceiling 100%. 2-Paint wall. 3-Paint closet interior. 4-Missing hardware and door closer.		
71	25	A			1-Fix floor gap.		
72	25	B			2-Fix switch cap perimeter wall. 3-Reset sprinkler head, cap and caulk. 4-Paint wall.		
73	25	C			1- Paint kitchen ceiling 100%. 2-seal and finish heater perimeter above bathroom door. 3-Paint ceiling.		
74	24	Lobby			VIF		
75	24	A			1-Caulk mullion seams. 2-Install cover for sprinkler (flush with wall). 3-Repair ceiling crack and paint. 4-Fix tile at toilet vaulve. 5-Paint edge wall/frame behinf door.		
76	24	B			1-Replace outlet cap. 2-Reset and caulk sprinkler. 3-Touch up paint ceiling stains. 4-Smooth finish door perimeter at top.		
77	24	C			1-Touch up paint wall. 2-Caulk sprinkler heads. 3-Smooth finish and repair door. 4-Smooth finish ceiling at corner. 5-Touch up paint.		

Item Number	Apartment	Unit	Location/ Trade	Occupied	Punch Item	Author	Inspector Sign-ed off
78	23	Lobby			1-Touch-up ceiling. 2-Reset sprinkler head. 3.Light bulb missing.		
79	23	A			1-Cracked sealant (vertical joint, typical). 2-Paint ceiling. 3-Touch-up pain wall. 4-Reset 1/4" base.		
80	23	B			1-Fix window base. 2-Fix crack below window base. 3-Fix crack above refrigerator.		
81	23	C			1-Paint 100% bathroom. 2-Paint ceiling closet, entry door and frames. 3-Reset return grill. 4-Paint bedroom and closet door. 5-Paint closet. 6-Fix rubber base. 7-Paint edge column.wall. 8-Fix sprinkler head. 9-Reset sprinkler cap.		
82	22	Lobby			1-Touch-up door.		
83	22	A			1-Install outlet cap. 2-Scratched aluminum frame. 3-Smooth finish wyth of door. 4-Fix door chip. 5-Touch up paint corner. 6-Paint top of frame.		
84	22	B			1-Replace outlet cap. 2-Paint ceiling. 3-Ding on wall. Install missing door stop. 4-Paint ceiling.		
85	22	C			1-Patch ceiling hole. 2-Fix small crack. 3-Paint closet. 4- Fix window base.		
86	21	A			1-Smooth finish above tile. 2-NA 3-Gap at wood floor. 4-Replace wood floor. 5-Touch up bathroom door.		
87	21	B			1-Caulk outlet perimeter. 2-Scratched panel door. 3-Scractched drawer. 4-Paint wall. 5-Caulk edge at base. Paint wall.		
88	21	C			1-Patch ceiling hole. 2-Finish corner door panel and paint. 3-Fix closet door.		
89	20	Lobby			VIF		
90	20	A			1-Fix top of door (right) and right top corner of frame. 2-Caulk door vertical joint. 3-Caulk window frame seams. 4-Paint 100% bathroom ceiling.		
91	20	B			1-Crack ceiling. 2-Paint wall/ceiling. 3-Paint door.		
92	20	C			1-Replace outlet cap. 2-Broken glass operable window. 3-Fix top frame. 4-Small crack at corner above. 5-Paint wall.		
93	19	Lobby			VIF		
94	19	A			1-Touch up paint above. 2-Finish top frame. 3-Touch up base.		
95	19	B			1-Fix dents. 2-Touch up paint. 3-Caulk sprinkler head. 4/5-Replace outlet caps (different colors).		
96	19	C			1-Paint wall. 2-Finish frame paint. 3-Paint door frames. 4-Vertical crack at wall. 5-Touch up paint ceiling at corner. 6- Paint 100% kitchen ceiling.		
97	18	Lobby			1-Fix grill.		
98	18	A			1-Paint door. 2-Fix rubber base. 3-Bottom outside pane, broken. 4-Smooth finish ceiling at corner. 5- Touch up paint wall.		
99	18	B			1-Crack ceiling. 2-Paint 100% bathroom.		
100	18	C			1-Adjust closet door (too tight). 2-Paint window base. 3-Fix rubber 1/4" base. 4-Paint closet doors.		
101	17	Lobby			1. Stain on carpet.		
102	17	A			1-Fix door chip bottom. 2-Paint frame and fix door chip. 3-Fix chip corners. 4-Gap at wood floor. 5-Crack at top corner.		
103	17	B			1-100% flooring to be installed includding window base and base board (inside and outside closets). 2-Fix plaster. 3-Broken window glass (outer pane).		
104	17	C			1-Paint wall. 2-Touch up paint at ceiling corner. 3-Paint wall.		
105	16	Lobby			VIF		
106	16	A			1-Replace bottom broken panel. 2-Smooth finish above grill. 3-Seal small hole at top. 4-Caulk top frame corner. 5-Paint bathroom ceiling. 6-Patch bottom of closet door frame.		

Item Number	Apartment	Unit	Location/ Trade	Occupied	Punch Item	Author	Inspector Sign-ed off
107	16	B			1-Paint outside entry door. 2-Remove all damage wood flooring. 3-Replace window base and base board in living room, closets and hallway areas. 4-Paint water stains inside closet.		
108	16	C			1-Plug window frame. 2-Fix rubber 1/4" base.		
109	15	Lobby			1-No fixtures.		
110	15	A			1-Paint closet ceiling. 2-Fix sprinkler head. 3-Paint 100% bathroom ceiling.		
111	15	B			1-Paint 100% kitchen ceiling. 2-Replace window base 100%. 3-CO2 detector missing. 4-Caulk top frame. 5-Gap at wood floor. 6-Crack at window base.		
112	15	C			1-Caulk sprinkler head. 2-Paint wall. 3-Plug window frame. 4-Caulk at corner.		
113	14	Lobby			VIF		
114	14	A			1-Plug window frame. 2-Fix rubber 1/4" base. 3-Paint grill above.		
115	14	B			1-Paint wall. 2-Fix chip door. 3-Paint closet wall. 4-Smooth finish and paint.		
116	14	C			1-Fix chip door. 2-Paint frame. 3-Missinn CO2 detector. 4-Paint 1–5 kitchen ceiling. 5-Fix rubber 1/4" base.		
117	12	Lobby			1-Paint door frame.		
118	12	A			1-Fix rubber 1/4" base. 2-Caulk door saddles, typ. (See general notes). 3-Paitn grill. 4-Paint base water stains.		
119	12	B			1-Broken outter glass pane. 2-Paint window base. 3-Patch access door perimeter. 4-Culk saddle, typ. 5-Replace broken tile.		
120	12	C			1-Missing mortise lock. 2-Paint ceiling stains and access door. 3-Plug window frame (2 plugs). 4-Paint water damage. 5-Paint 100% bedroom ceiling and repair crack. 6-Fix rubber 1/4" base. 7-Crack at bedroom ceiling.		
121	11	Lobby			1-Missing sconces. 2-Peeled wall paper.		
122	11	A			1-Plug window frame. 2-Fix rubber 1/4" base. 3-Caulk sprinkler head. 4-Install closet handles and paint doors. 5-Passage lock missing on bedroom door. 6-Caulk seam at window frame. 7-Fix chip door. 8-Crack at window base. 9-touch up door. 10-Paint 100% bathroom ceiling. 11-Seal access door and paint. 12-Fix chip door on top.		
123	11	B			1-Crack at ceiling corner. 2-Paint window base. 3-Paint closet ceiling. 4-Crack at window base. 5-Paint bathroom walls.		
124	11	C			1-Mortise lock missing at entry door. 2-Paint bathroom wall. 3-Paint closet. 4-Paint vestibule ceiling. 5-Paint entry closet doors. 6-Caulk sprinkler head. 7-Fix rubber 1/4" base.		
125	10	Lobby			1. Missing sconces (2)		
126	10	A			1-Fix chip door. 2-Fix rubber 1/4" base. 3-Caulk corner. 4-Paint 100% bathroom. 5-Fix vaulve tile. 6-Fix door chip at bottom. 7-Loose rubber gasket.		
127	10	B			1-100% flooring to be installed includding window base and base board (inside and outside closets).		
128	10	C			1-Paint 100% bathroom. 2-Paint top wall closet. 3-Paint wall. 4-Paint doors. 5- Plug window frame (5 missing). 6-Fix door. 7-Entry door mortise lock missing. 8-Fix rubber 1/4" base. 9-Touch up ceiling.		
129	9	Lobby			1-Scratched metal frames. 2-Missing sconces (2). 3-Peeling wall paper.		
130	9	A			1-Fix door chip. 2-Saddle sealant (typical). 3-Paint door frame.		
131	9	B			1-Replace all window boards in living room. 2-Caulk and paint base at living room windows 3- Install outlet cover plate 4-Replace closet shelf. 5-Paint bathroom wall. 7-Paint walls outside of bathroom.		

Item Number	Apartment	Unit	Location/ Trade	Occupied	Punch Item	Author	Inspector Sign-ed off
132	9	C			1-Paint 100% apartment including doors, window base, ceiling etc. 2-Caulk base. 3-Install shower rod. 5-Change main entry door mortise lock.		
133	8	lobby			1-Black stain on carpet.		
134	8	A			1-Oven knobs missing. 2-Paint closet doors. 3-Seal and paint gaps at soffit. 4-Paint ceiling stain. 5-Finish ceiling plaster. 6.NA 7-Buff entry floor.		
135	8	B			1-Paint wall water stains. 2-Clean wood panel water stains. 3-Seal corner window base. 4/5-Plug window frame holes, seal gaps and paint. 6-Paint 100% bathroom. 7-Fix chip door. 8-Touch up paint wall. 9-Missing intercome.		
136	8	C			1-Repair concrete underside terrace. 2-Missing railing bolt. 3-Seal nail holes at column base. 4-Paint 100% apartment including bathrooms, ceiling, walls, closets etc. 5-Missing door closer.		
137	7	Lobby			VIF		
138	7	A			1-Missing intercome. 2-Paint sprinkler pipe. 3-Caulk/paint door frame.		
139	7	B			1-Install outlet cap. 2-Seal open seams at ceiling corner and paint. 3-Caulk bottom. 4-Seal and paint gaps at soffit.		
140	7	C			1-Missing mortise lock at entry door. 2-Smooth finish and paint low wall partition. 3-Seal door frame and paint door. 5-Reset DW. 6-Crack at ceiling. 7-Seal and paint gaps at soffit. 8.		
141	7	D			1-Typ. 2-Missing mortise lock at entry door. 3-Touch up paint walls. 4-Paint wall. 5-Smooth finish and paint low wall partition. 6-Smooth finish and paint bottom. 7-Seal and paint gaps at soffit.		
142	6	Lobby			1-Missing sconces (2)		
143	6	A			1-Missing sprinkler head cap. 2-Seal door frame inside. 3-Paint sprinkler pipe. 4-Fix chip door. 5-Crack at ceiling. 6-Seal saddle, typ.		
144	6	B			1-Fix chip door. 2-Paint above window opening. 3-Seal window frame. 4-Fix and paint door. 5-Seal and paint gaps at soffit. 6-Fix chip door. 7-Seal vent perimeter. 8-Seal and paint frame.		
145	6	C			1-Missing mortise lock at entry door and no hardware at bathroom door. 2-Caulk and paint bathroom frame. 3-Smooth finish and paint low wall partition. 4-Seal soffit. 5-Caulk step. 6-Reset sprinkler head. 7-Caulk smoke baffle. 8- Finish corner at ceiling. 9-Reset dishwasher.		
146	6	D			1-Paint wall and smooth finish and paint low wall partition. 2-Paint sprinkler head pipe.		
147	5	Lobby			1-Missing sconces (2)		
148	5	A			1-Paint door and frame. 2-Broken glass outter pane. 3-Install DW.		
149	5	B			1-Patch door frame closet. 2-Caulk smoke baffle. 3-reset DW. 4-Paint interior closet. 5-Patch outlet bedroom. 6-Caulk door frame. 7-Fix chip at corner.		
150	5	C			1-Paint and caulk door frame. 2-Paint batrhoom heater trim. 3-Caulk step. 4-Smooth finish and paint low wall partition. 5-Reset DW. 6-Seal corner at top baffle.		
151	5	D			1-Paint 100% bathroom. 2-Paint ceiling above den. 3-Caulk smoke baffle. 4-Reset DW. 5-Caulk window trim. 6-Caulk floor gap.		
152	4	Lobby			1-Missing light bulbs. 2-Loose wall paper.		
153	4	A			1-Seal corner. 2-Plugs at window frame (6+/-). 3-Paint bedroom doors and frames. 4-Caulk kitchen corner floor. 5-Missing access door. 6-Install wood base. 7-Mortise lock missing at entry door.		
154	4	B			100% Repair. Mortise lock missing at entry door.		
155	4	C			1-Passage lock (2) and entry mortise door missing. 2-Paint and caulk base board closet. 3-Caulk step. 4-Caulk smoke baffle. 5-Smooth finish and paint low wall partition.		

Item Number	Apartment	Unit	Location/ Trade	Occupied	Punch Item	Author	Inspector Sign-ed off
156	4	D			1-Mortisse lock missing at entry door and passage lock at bathroom door. 2-Touch up paint bathroom. 3-Paint base board closet. 4-Caulk smoke baffle. 5-Smooth finish and paint low wall partition.		
157	3	Lobby			1-Caulk ceiling edge. 2-Loose wall paper.		
158	3	A			1-Mortisse lock missing at entry door. 2-Paint 100% bathroom. 3-Paint terrace interior parapet wall. 4-Dented refrigerator. 5-Finish ceiling plaster work at kitchen area. 6-Install base board at wall perimeter.		
159	3	B			1-Mortisse lock missing at entry door. 2-Repair all walls. 3-Change 100% floor. 4-Reset equipment. 5-Paint terrace parapet interior wall. 6- New plaster ceiling at bathroom. Note: Oven showed ERROR code.		
160	3	C			1. Paint 100% bathroom. 2-Paint apartment ceiling including closets, den and entryway. 3-Reset DW. 4-Install outlet cover.		
161	3	D			1-Mortisse lock missing at entry door. 2-Paint 100% bathroom. 3-Paint eiling above den. 4-Paint wall. 5-Smooth finish and paint low wall partition. 6-Caulk smoke baffle. 7-Gap at floor base. 8-Paint wall.		
162	2	MECHANICAL			VIF		
163	1	Lobby			1-Fix reception desk furniture. 2-Fix walll scratched behing reception desk. 3-Install sconces at elevator alcove (3). 4-Replace broken exit sign. 5-Finish plaster work at ceiling. 6-Install light bulbs at floating lamps. 7-Caulk onix panels. 8-Cover glass at trough. 9-Caulk terrazo base. 10-Paint 100% lobby. 11-Sprinkler cap missing. 12-Install drappery as per drawings. 13-Install elevator control box on wall behind reception. 14-Change computer monitor. 15-Main entry saddle, repair.		
164	CELLAR				1-Fix/patch holes at corridor walls. Paint walls. Install lock at bathroom door. 2-Activate skylight fixture at gym.Touch up gym walls. 3-Intall door at mechanical room. 4-Paint ceiling laundry.		
	EXTERIOR				1-Fix entry canopy (clean, seal seams, recaulk, and repair drain system). 2-Paint concrete, where needed, at wall perimeter. 3-Missing wooden fin on 8th Avenue. 4-Between 7th and 8th floor; cracked spandrel glass.		
165	GENERAL NOTES				See NOTES below:		
166					Note 1: 22 sconces are available for installation		
168					Note 2: 10 window restrictors are broken and need to be replaced		
169					Note 3: All lobby access panels to be recaulked at perimeter and painted where applicable.		
170					Note 4: Seal elevator door frames at perimeter where as neeed.		
171					Note 5: Caulk all columns at base perimeter as needed.		
172					Note 6: Plug all metal egress stair door frames.		
173					Note 7: Caulk door saddles at entry doors and bathrooms.		
174					Note 8: Seal corner gap at north west corner of"A" type units.		

SCHEDULE D

Schedule D
(Backup Calculations Attached)

Subparagraph 1.f.i.F

See attached *12-Month Cash Flow Projection*, "Building Collateral" section.

Subparagraph 1.f.i.G

See attached *5-Year Cash Flow Projection*, "Marketing & Leasing" section.

Subparagraph 1.f.i.H

See attached *12-Month Cash Flow Projection*, "Building Management & Maintenance," combined subtotals for months 1, 2 and 3.

Note: This projection is a tentative, good-faith estimate, and is subject to revision.

12-Month Cash Flow Projection
306 West 48th Street Luxury Residences

	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12
$71 00 Residential Rent Per SF												
93,538 Residential SF												
Available Units (super's unit not included)	0	18	20	25	15	25	15	0	0	0	0	0
Move Ins	0	11	19	23	19	21	21	4	0	0	0	0
Cumulative Move-Ins	0	11	30	53	72	93	114	118	118	118	118	118
Vacant Units	121	110	91	68	49	28	7	3	3	3	3	3
Total Resi Rental Income	$0	$50 312	$137,215	$242,413	$329,315	$425,366	$521,416	$539,711	$539,711	$539,711	$539,711	$539,711
$185 00 Retail Rent Per SF												
1,838 Retail SF												
Total Retail Rental Income	$0	$0	$0	$0	$0	$0	$0	$0	$0	$28 336	$28,336	$28,336
Total Rental Income	**$0**	**$50,312**	**$137,215**	**$242,413**	**$329,315**	**$425,366**	**$521,416**	**$539,711**	**$539,711**	**$568,047**	**$568,047**	**$568,047**
Building Completion												
Punch-list & Cleanup	($328,778)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Sub-Total	($328 778)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Building Collateral												$0
Hallway and Lobby Furniture & Fixtures	($50 000)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Gym Equipment	($38 956)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Window Treatment (blinds)	($121,850)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
421-A Filing Fees	($385 000)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Sub-Total	($595,806)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Marketing & Leasing												
Citi Habitats Salaries	$0	($21,708)	($21,708)	($21,708)	($21 708)	($21,708)	($21 708)	$0	$0	$0	$0	$0
Citi Habitat Incentive	$0	$0	$0	($8,743)	($8 743)	($8,743)	($8 743)	($8 743)	($8,743)	$0	$0	$0
Citi Habitats Commission	$0	$0	($25 529)	($28 366)	($35 457)	($21 274)	($35,457)	($21 274)	$0	$0	$0	$0
Co- Broker	$0	($32,932)	($36 591)	($45,738)	($27,443)	($45,738)	($27,443)	$0	$0	$0	$0	$0
Advertising	($13 333)	($13 333)	($13,333)	($13 333)	($13,333)	($13 333)	$0	$0	$0	$0	$0	$0
Broker Events	($3 500)	($3,500)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Model Apartments	($50,000)	($25,000)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Office Furniture	($20 000)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Collateral Materials	($20,000)	($17,667)	($17 667)	($17,667)	$0	$0	$0	$0	$0	$0	$0	$0
Leasing Office Equipment	($2 583)	($2,583)	($2 583)	($2,583)	($2,583)	($2 583)	($2,583)	($2,583)	($2 583)	($2,583)	($2,583)	($2 583)
Sub-Total	($109 417)	($116 723)	($117 411)	($138 138)	($109 268)	($113 380)	($95,935)	($32 601)	($11 327)	($2 583)	($2 583)	($2 583)
Building Management & Maintenance												$0
Labor & Payroll Taxes	($34 718)	($34,718)	($34 718)	($34 718)	($34,718)	($34 718)	($34 718)	($34 718)	($34 718)	($34,718)	($34 718)	($34 718)
Gas-Heat & Hot Water	($9,412)	($9,412)	($9 412)	($9,412)	($9,412)	($9,412)	($9,412)	($9,412)	($9,412)	($9,412)	($9,412)	($9 412)
Gas-Cooking	$0	($1 240)	($1 240)	($1,240)	($1,240)	($1 240)	($1,240)	($1 240)	($1 240)	($1,240)	($1 240)	($1 240)
Electricity (common area)	($13 429)	($13 429)	($13 429)	($13 429)	($13 429)	($13 429)	($13 429)	($13 429)	($13 429)	($13 429)	($13,429)	($13 429)
Water & Sewer	($10,042)	($10,042)	($10 042)	($10,042)	($10,042)	($10,042)	($10,042)	($10 042)	($10,042)	($10,042)	($10,042)	($10,042)
Insurance	($7 917)	($7 917)	($7,917)	($7 917)	($7 917)	($7,917)	($7,917)	($7 917)	($7 917)	($7,917)	($7,917)	($7,917)
Service Contracts	($8 333)	($8 333)	($8 333)	($8 333)	($8 333)	($8,333)	($8 333)	($8 333)	($8 333)	($8,333)	($8 333)	($8 333)
Repairs & Maintenance	$0	($8,433)	($8,433)	($8 433)	($8,433)	($8,433)	($8 433)	($8,433)	($8,433)	($8,433)	($8 433)	($8,433)
Management & Professional Fees	($10 833)	($10,833)	($10 833)	($10,833)	($10 833)	($10 833)	($10,833)	($10,833)	($10 833)	($10 833)	($10 833)	($10 833)
Admin Fees	($1,810)	($1 810)	($1,810)	($1,810)	($1,810)	($1,810)	($1,810)	($1,810)	($1,810)	($1,810)	($1,810)	($1,810)
Real Estate Taxes	($5 937)	($5,937)	($5 937)	($5,937)	($5 937)	($5,937)	($5,937)	($5,937)	($5,937)	($34,249)	($34,249)	($34,249)
Replacement Reserve	($3,050)	($3 050)	($3,050)	($3 050)	($3 050)	($3,050)	($3,050)	($3 050)	($3,050)	($3 050)	($3 050)	($3 050)
Sub-Total	($105 481)	($115,154)	($115,154)	($115,154)	($115,154)	($115 154)	($115,154)	($115,154)	($115,154)	($143,465)	($143,465)	($143 465)
Professional Fees												
Accountant	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	($20,000)
Sub-Total	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	($20,000)
Total Lease-Up Expense	**($1,139,481)**	**($231,876)**	**($232,565)**	**($253,292)**	**($224,422)**	**($228,534)**	**($211,088)**	**($147,755)**	**($126,480)**	**($146,048)**	**($146,048)**	**($166,048)**
Total Net Operating Income	($1,139 481)	($181 564)	($95 350)	($10 879)	$104 894	$196 832	$310 328	$391 957	$413 231	$421 999	$421 999	$401,999

Note: This projection is a tentative, good-faith estimate, and is subject to revision.

5-Year Cash Flow Projection
306 West 48th Street Luxury Residences

	Year 1	Year 2	Year 3	Year 4	Year 5
$71.00 Residential Rent Per SF					
93,538 Residential SF					
Available Units (super's unit not included)	121				
Move Ins	118				
Vacant Units	4				
Total Resi Rental Income	$4,404,594	$6,627,656	$6,870,310	$7,168,473	$7,455,212
$185.00 Retaill Rent Per SF					
1,838 Retail SF					
Total Retail Rental Income	$85,008	$345,981	$356,360	$367,051	$360,280
Total Rental Income	**$4,489,601**	**$6,973,636**	**$7,226,670**	**$7,535,523**	**$7,815,492**
Building Completion					
Punch-list & Cleanup	($328,778)	$0	$0	$0	$0
Sub-Total	($328,778)	$0	$0	$0	$0
Building Collateral					
Hallway and Lobby Furniture & Fixtures	($50,000)	$0	$0	$0	$0
Gym Equipment	($38,956)	$0	$0	$0	$0
Window Treatment (blinds)	($121,850)	$0	$0	$0	$0
421-A Filing Fees	($385,000)	$0	$0	$0	$0
Sub-Total	($595,806)	$0	$0	$0	$0
Marketing & Leasing					
Citi Habitats Salaries	($130,247)	$0	$0	$0	$0
Citi Habitat Incentive	($52,459)	$0	$0	$0	$0
Citi Habitats Commission	($167,358)	$0	$0	$0	$0
Co- Broker	($215,885)	$0	$0	$0	$0
Advertising	($80,000)	$0	$0	$0	$0
Broker Events	($7,000)	$0	$0	$0	$0
Model Apartments	($75,000)	$0	$0	$0	$0
Office Furniture	($20,000)	$0	$0	$0	$0
Collateral Materials	($73,000)	$0	$0	$0	$0
Leasing Office Equipment	($31,000)	($28,417)	$0	$0	$0
Sub-Total	($851,949)	($28,417)	$0	$0	$0
Building Management & Maintenance					
Labor & Payroll Taxes	($416,614)	($422,863)	($432,029)	($440,669)	($449,483)
Gas-Heat & Hot Water	($112,938)	($114,632)	($117,117)	($119,459)	($121,848)
Gas-Cooking	($13,635)	($15,098)	($15,425)	($15,734)	($16,049)
Electricty (common area)	($161,150)	($163,567)	($167,113)	($170,455)	($173,864)
Water & Sewer	($120,500)	($122,308)	($124,959)	($127,458)	($130,007)
Insurance	($95,000)	($96,425)	($98,515)	($100,485)	($102,495)
Service Contracts	($100,000)	($101,500)	($103,700)	($105,774)	($107,889)
Repairs & Maintencance	($92,767)	($102,718)	($104,944)	($107,043)	($109,184)
Management & Profesional Fees	($130,000)	($131,950)	($134,810)	($137,506)	($140,256)
Admin Fees	($21,720)	($22,046)	($22,524)	($22,974)	($23,434)
Real Estate Taxes	($156,181)	($413,038)	($504,630)	($764,716)	($780,010)
Replacement Reserve	($36,600)	($37,149)	($37,954)	($38,713)	($39,488)
Sub-Total	($1,457,105)	($1,743,294)	($1,863,719)	($2,150,987)	($2,194,006)
Professional Fees					
Accountant	($20,000)	$0	$0	$0	$0
Sub-Total	($20,000)	$0	$0	$0	$0
Total Lease-Up Expense	**($3,253,638)**	**($1,771,711)**	**($1,863,719)**	**($2,150,987)**	**($2,194,006)**
Total Net Operating Income	$1,235,963	$5,201,926	$5,362,951	$5,384,537	$5,621,485

SCHEDULE E

October ___, 2011

By Email and U.S. Mail

Lewis A. Polishook, Esq.
Jeffrey R. Rendin, Esq.
New York Attorney General's Office
Real Estate Finance Bureau
120 Broadway, 23rd Floor
New York, New York 10271

Re: 785 Partners LLC

Gentlemen:

We write on behalf of the following individuals: _____.

As you are aware, in October 2010, we requested that your Office commence an investigation into 785 Partners LLC ("785 Partners"), the Sorrento Group, Fuerta Property Limited ("Fuerta"), and others in connection with approximately $18 million in funds that were being held in escrow by Seiden & Schein, P.C.

We are pleased to report that our clients have executed a Settlement and Plan Support Agreement with 785 Partners and other parties, which, upon confirmation of 785 Partners' Chapter 11 Plan of Reorganization, will fully resolve all of our clients' claims and potential claims against 785 Partners and Fuerta.

Accordingly, we respectfully and unconditionally withdraw our request that your Office investigate the matters described above.

We thank you for your attention to this matter.

Very truly yours,

SCHEDULE F

SCHEDULE F

(Individuals / Entities For Whom Sheahan Has Power of Attorney)

Gill Hess ARF
Patrick Donovan
Shane O'Connor
Gordon Darcy
David Coen
Stephen Mackey
John Hogan
Brian O'Kennedy
Stephen Church
Sean Murphy
Frank Murray
Clodagh Blake
Gregor Shanik
The Astech Pension Plan (Shay Hancock)
Breda O'Kennedy
Dominic Glennane
Philip Dillon
Iain Craig & Catherine Day
Rita Fagan ARF
Carmel Kidney ARF
Aine Meagher ARF
Gill Hess Ltd - Simon Hess SSAP
Tom Byrne ARF
The Bridge Pension Trust (Joe Murphy)
Brian Walsh
Paul Madden & Deirdre Madden
Amelia Smith
Damien Christie
Brendan Butler
Frank Brennan
Michael Mehigan
Paddy Judge
Eamonn O'Kennedy / Mary Farrell / Patricia Purcell
Emma Loughnane & Tom Hynes
Aidan Gallagher
Charles Cavanagh
Thomas & Ann Horan
Carmel, Albert, Liam & Declan Kidney

Conor Sheahan

October 17, 2011

Mr. Kevin O'Sullivan
Time Square Construction
335 Lexington Avenue
17th Floor
New York, New York 10017

Re: Settlement and Plan Support Agreement ("Settlement Agreement"), dated as of October 10, 2011, by and among 785 Partners LLC, Time Square Construction & Development, 8 Avenue & 48th Street Development LLC, Fuerta Property Limited, Esplanade Tower Corp., Conor Sheahan and the End Unit Purchasers

Dear Mr. O'Sullivan:

On behalf of the End Unit Purchasers, and in accordance with section 20e. of the Settlement Agreement, I hereby identify each of the below listed individuals and entities, and their respective successors, assigns, beneficiaries and trustees, as a Potential End Unit Purchaser Claimant:

Martin & Aileen McGinn
Gill Hess SSAP
Gill Hess
Paul O Loughlin
Wealth Options
Gill Hess ARF
Patrick Donovan
Stephen Fitzgerald
Adrian O'Connor
Shane O'Connor
Gordon Darcy
James Healy (Brass-Founders Engineering Ltd)
Diarmuid Healy
Cormac Healy
Brian Healy
David Coen
Stephen Mackey
John Hogan
Brian O'Kennedy & Maeve O'Kennedy
Stephen Church
Sean Murphy & Ann Murphy
Frank Murray
Martin Blake, including the Estate of Martin Blake
Clodagh Blake
Bran Keogh

Gerry McAughey
Gregor Shanik
The Astech Pension Fund
Shay Hancock
Breda O'Kennedy
Dominic Glennane
Philip Dillon
Iain Craig & Catherine Day
Denross Limited SSAP - Rita Fagan
Rita Fagan
Rita Fagan ARF
Denross Limited SSAP - Carmel Kidney
Carmel Kidney
Carmel Kidney ARF
Denross Limited SSAP - Aine Meagher
Aine Meagher
Aine Meagher ARF
Gill Hess Ltd – Simon Hess SSAP
Simon Hess
I.M. Ltd Pension Scheme
Tom Byrne
Tom Byrne ARF
Bridge Pension Trust
Joseph Murphy
Brian Walsh
Paul Madden & Deirdre Madden
Amelia Smith
Damien Christie
Brendan Butler & Annette O'Neill
Francis Brennan
Michael Mehigan
Paddy & Mary Judge
Eamonn O'Kennedy
Emma Loughnane & Tom Hynes
Aidan Gallagher
Charles & Bernadette Cavanagh
Horan Developments Ltd
Carmel, Albert, Liam & Declan Kidney
David Scharf
Jay Eisenstadt
Ulo Barad
Brian Turley
Darina Heavey
John Ryan

Ken Healey
Kevin O'Sullivan
Donal O'Sullivan

We reserve the right to amend or otherwise modify the individuals and entities listed above.

Capitalized terms used herein shall have the meanings ascribed to them in the Settlement Agreement unless otherwise indicated.

Thank you.

Sincerely yours,

Conor Sheahan

cc: John H. Snyder, Esq.
Sheldon I. Hirshon, Esq.

Exhibit B
Disclosure Statement Approval Order

[TO COME]

Exhibit C
Liquidation Analysis

785 Partners LLC

Liquidation Analysis

Overview

The following document is a Liquidation Analysis for 785 Partners LLC (the "Debtor").[1] The Debtor has prepared this Liquidation Analysis for the purpose of satisfying the so-called "best interests test" under section 1129(a)(7) of the Bankruptcy Code.

The Debtor has prepared this Liquidation Analysis based on a hypothetical liquidation under Chapter 7 of the Bankruptcy Code. It is assumed, among other things, that the hypothetical liquidation under Chapter 7 would commence under the direction of a Court-appointed trustee and would continue for a period of time, during which time the Property would be sold and the cash proceeds, net of liquidation-related costs, would then be distributed to creditors in accordance with relevant law.

The determination of the costs of, and proceeds from, the hypothetical liquidation of the Property in a Chapter 7 case is an uncertain process involving the extensive use of estimates and assumptions that, although considered reasonable by the Debtor, are inherently subject to significant business, economic, and competitive uncertainties and contingencies beyond the control of the Debtor and its legal advisors. Inevitably, some assumptions in the Liquidation Analysis might not materialize in an actual Chapter 7 liquidation, and unanticipated events and circumstances could affect the ultimate results in an actual Chapter 7 liquidation.

THE LIQUIDATION ANALYSIS IS NOT INTENDED AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE. THE LIQUIDATION ANALYSIS DOES NOT PURPORT TO BE A VALUATION OF THE PROPERTY, AND THERE MAY BE A SIGNIFICANT DIFFERENCE BETWEEN THE LIQUIDATION ANALYSIS AND THE VALUE THAT MAY BE REALIZED IN AN ACTUAL LIQUIDATION. THIS ANALYSIS ASSUMES A "LIQUIDATION VALUE" BASED ON AN APPRAISAL, WHERE AVAILABLE, AND THE DEBTOR'S BUSINESS JUDGMENT, WHERE AN APPRAISAL IS NOT AVAILABLE.

THE UNDERLYING FINANCIAL INFORMATION IN THE LIQUIDATION ANALYSIS WAS NOT COMPILED OR EXAMINED BY ANY INDEPENDENT ACCOUNTANTS. NEITHER THE DEBTOR NOR ITS ADVISORS MAKE ANY REPRESENTATION OR WARRANTY THAT THE ACTUAL RESULTS WOULD OR WOULD NOT APPROXIMATE THE ESTIMATES AND ASSUMPTIONS REPRESENTED IN THE LIQUIDATION ANALYSIS. ACTUAL RESULTS COULD VARY MATERIALLY.

[1] Unless otherwise defined, capitalized terms used herein have the meaning ascribed to them in the Debtor's Disclosure Statement.

LIQUIDATION ANALYSIS
306 West 48th Street Luxury Residences
Prepared - 10/31/2011

Assets (Liquidation and Wind-Down)	Notes	Book Value 10/26/2011	Estimated Recovery Percentage Low	Estimated Recovery Percentage High	Estimated Liquidation Value Low	Estimated Liquidation Value High
Cash and Cash Equivalents		$7,366	100%	100%	$7,366	$7,366
Property Value	A	$76,400,000	100%	100%	$76,400,000	$76,400,000
BPA Down Payment Escrow	B	$18,786,689	0%	100%	$0	$18,786,689
Estimated Liquidation/Sales Proceeds Available for Distribution					$76,407,366	$95,194,055
Estimated Chapter 7 Expenses	C					
Operational Wind-Down Costs					-$1,000,000	-$1,000,000
Chapter 7 Trustee Fees					-$500,000	-$500,000
Chapter 7 Professional Fees					-$1,250,000	-$1,250,000
Net Proceeds after Chapter 7 Administrative Expenses					$73,657,366	$92,444,055

Estimated Creditor Recoveries	Notes	Estimated Claim Amount Low	Estimated Claim Amount High	Estimated Claim Recovery Percentage Low	Estimated Claim Recovery Percentage High	Estimated Claim Recovery Amount Low	Estimated Claim Recovery Amount High
Net Proceeds after Chapter 7 Administrative Expenses						$73,657,366	$92,444,055
Secured Claims	D						
First Manhattan Developments REIT	E	$103,250,000	$103,250,000	71%	90%	$73,657,366	$92,444,055
Time Square Construction		$14,229,106	$14,229,106	0%	0%	$0	$0
Stramindinoli SRI A Socio Unico		$35,000	$35,000	0%	0%	$0	$0
Total Secured Claims		$117,514,106	$117,514,106	63%	79%	$73,657,366	$92,444,055
Net Proceeds for Secured Claims						$73,657,366	$92,444,055
Admin Claims		$0	$0	0%	0%	$0	$0
Priority Claims							
Priority Tax and Other Priority Claims		$0	$0	0%	0%	$0	$0
Net Proceeds for Admin & Priority Claims						$0	$0
Unsecured Claims							
Fuerta	F	$18,786,689	$18,786,689	0%	0%	$0	$0
Peckar & Abramson P.C.		$60,636	$60,636	0%	0%	$0	$0
Seiden & Schein P.C.		$42,084	$42,084	0%	0%	$0	$0
Tractel		$20,000	$20,000	0%	0%	$0	$0
Ismael Leyva Architects, P.C.		$11,344	$11,344	0%	0%	$0	$0
Bingham McCutchen, LLP		$3,982	$3,982	0%	0%	$0	$0
Mishkoff Associates		$3,500	$3,500	0%	0%	$0	$0
Fire & Building		$2,900	$2,900	0%	0%	$0	$0
Belkin, Burden, Wenig, and Goldman		$371	$371	0%	0%	$0	$0
SBLD		$200	$200	0%	0%	$0	$0
Total Unsecured Claims		$18,931,706	$18,931,706	0%	0%	$0	$0
Net Proceeds for Unsecured Claims						$0	$0

A	This is the value of the Property as asserted by First Manhattan which is used as the estimate of the value of the Property in a Chapter 7 forced sale scenario.
B	The entitlement to the BPA Down Payment Escrow is disputed by Fuerta and the End Unit Purchasers, each of which assert rights to the BPA Down Payment Escrow. Without prejudice to the claims of Fuerta and the End Unit Purchasers which are specifically preserved, it is assumed solely for the purposes of this liquidation analysis that First Manhattan would obtain the BPA Down Payment Escrow
C	The Debtor has assumed the liquidation process will take approximately 3 to 6 months. Chapter 7 trustee and professional fees are estimates for this period.
D	The estimates of claims (all categories) contained in this liquidation analysis are solely for the purposes of this analysis, and do not constitute an admission by the Debtor or a waiver of any rights, claims and defenses of the Debtor.
E	This is the amount of the claim asserted by First Manhattan in its filed proof of claim. Without prejudice to the Debtor's objections to the First Manhattan proof of claim which are specifically preserved, the amount asserted by First Manhattan in its proof of claim is shown solely for the purposes of this liquidation analysis.
F	This is the amount of the BPA Down Payment Escrow.

Exhibit D
Projections

785 Partners LLC

Projections

In connection with the Plan,[1] projections of the future financial performance of the Debtor were prepared. Set forth below are financial projections for a five year period (the "Projections"), which set forth the current projected cash flow and expenses from the Property during that period. The Projections reflect significant assumptions, including various assumptions with respect to the anticipated future performance of the Debtor after the Plan is consummated, general business and economic conditions, and other matters, some of which are beyond the control of the Debtor.

In addition, unanticipated events and circumstances may affect the actual financial results of the Debtor in the future. THEREFORE, WHILE THE PROJECTIONS ARE PRESENTED FOR A FIVE YEAR PERIOD (the "PROJECTED PERIOD"), ACTUAL RESULTS MAY VARY FROM THE PROJECTED RESULTS. NO REPRESENTATION CAN BE MADE OR IS MADE WITH RESPECT TO THE ACCURACY OF THE PROJECTIONS OR THE ABILITY OF THE DEBTOR TO ACHIEVE THE PROJECTED RESULTS. See Section VII of the Disclosure Statement entitled "RISK FACTORS" for a discussion of certain factors that may affect the future financial performance of the Debtor and/or Reorganized Debtor.

The Debtor does not, as a matter of course, make public projections of its anticipated financial position or results of operations. Accordingly, the Debtor does not anticipate that it will, and disclaims any obligation to, furnish updated projections in the event that the general economic or business climate differs from that upon which the Projections have been based.

The Projections have been prepared by the Debtor, and while it believes that the assumptions underlying the projections for the Projected Period, when considered on an overall basis, are reasonable in light of current circumstances, no assurance can be given or is given that the Projections will be realized. The Projections were not prepared in accordance with standards for projections promulgated by the American Institute of Certified Accountants, the Financial Account Standards Board or with a view to compliance with published guidelines of the Securities and Exchange Commission regarding projections or forecasts.

The Projections have not been audited, reviewed or compiled by the Debtor's independent auditors. Although presented with numerical specificity, the Projections are based upon a variety of assumptions, some of which have not been achieved to date and may not be realized in the future, and are subject to significant business, litigation, economic and competitive uncertainties and contingencies, many of which are beyond the control of the Debtor. Consequently, the Projections should not be regarded as a

[1] Unless otherwise defined, capitalized terms used herein have the meaning ascribed to them in the Debtor's Disclosure Statement.

representation or warranty by the Debtor, or any other person, that the Projections will be realized.

The Projections contain forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended. Although the Debtor believes the expectations contained in such forward-looking statements are reasonable, it can give no assurance that such expectations will prove to be correct. The Debtor's actual results of operations and future financial condition may differ materially from those expressed or implied in any such forward-looking statements as a result of many factors, including factors that may be beyond the Debtor's control. Factors which could cause or contribute to such differences include, but are not limited to, factors detailed in the Debtor's Disclosure Statement.

5-YEAR CASH PROJECTION
306 West 48th Street Luxury Residences

	Year 1	Year 2	Year 3	Year 4	Year 5
$71.00 Residential Rent Per SF					
93,538 Residential SF					
Available Units (super's unit not included)	121	121	121	121	121
Move Ins	118				
Vacant Units	4	4	4	4	4
Total Resi Rental Income	$3,864,882	$6,627,656	$6,870,310	$7,168,473	$7,455,212
$185.00 Retaill Rent Per SF					
1,838 Retail SF					
Total Retail Rental Income	$85,008	$345,981	$356,360	$367,051	$378,062
Total Rental Income	**$3,949,890**	**$6,973,636**	**$7,226,670**	**$7,535,523**	**$7,833,274**
Building Completion					
Punch-list & Cleanup	($328,778)	$0	$0	$0	$0
Sub-Total	($328,778)	$0	$0	$0	$0
Building Collateral					
Hallway and Lobby Furniture & Fixtures	($50,000)	$0	$0	$0	$0
Gym Equipment	($38,956)	$0	$0	$0	$0
Window Treatment (blinds)	($121,850)	$0	$0	$0	$0
421-A Filing Fees	($385,000)	$0	$0	$0	$0
Sub-Total	($595,806)	$0	$0	$0	$0
Marketing & Leasing					
Citi Habitats Salaries	($130,247)	$0	$0	$0	$0
Citi Habitat Incentive	($52,459)	$0	$0	$0	$0
Citi Habitats Commission	($167,358)	$0	$0	$0	$0
Co- Broker	($215,885)	$0	$0	$0	$0
Advertising	($80,000)	$0	$0	$0	$0
Broker Events	($7,000)	$0	$0	$0	$0
Model Apartments	($75,000)	$0	$0	$0	$0
Office Furnitiure	($20,000)	$0	$0	$0	$0
Collateral Materials	($73,000)	$0	$0	$0	$0
Leasing Office Equipment	($31,000)	($28,417)	$0	$0	$0
Sub-Total	($851,949)	($28,417)	$0	$0	$0
Building Management & Maintenance					
Labor & Payroll Taxes	($416,614)	($422,863)	($432,029)	($440,669)	($449,483)
Gas-Heat & Hot Water	($112,938)	($114,632)	($117,117)	($119,459)	($121,848)
Gas-Cooking	($13,635)	($15,098)	($15,425)	($15,734)	($16,049)
Electricty (common area)	($161,150)	($163,567)	($167,113)	($170,455)	($173,864)
Water & Sewer	($120,500)	($122,308)	($124,959)	($127,458)	($130,007)
Insurance	($95,000)	($96,425)	($98,515)	($100,485)	($102,495)
Service Contracts	($100,000)	($101,500)	($103,700)	($105,774)	($107,889)
Repairs & Maintencance	($92,767)	($102,718)	($104,944)	($107,043)	($109,184)
Management & Profesional Fees	($130,000)	($131,950)	($134,810)	($137,506)	($140,256)
Admin Fees	($21,720)	($22,046)	($22,524)	($22,974)	($23,434)
Real Estate Taxes	($156,181)	($413,038)	($504,630)	($764,716)	($862,431)
Replacement Reserve	($36,600)	($37,149)	($37,954)	($38,713)	($39,488)
Sub-Total	($1,457,105)	($1,743,294)	($1,863,719)	($2,150,987)	($2,276,428)
Professional Fees					
Accountant	($20,000)	$0	$0	$0	$0
Sub-Total	($20,000)	$0	$0	$0	$0
Total Lease-Up Expense	**($3,253,638)**	**($1,771,711)**	**($1,863,719)**	**($2,150,987)**	**($2,276,428)**
Property Reserves					
Building Completion Reserve	$328,778	$0	$0	$0	$0
Building Collateral Reserve	$595,806	$0	$0	$0	$0
Operating Reserve	$335,788	$0	$0	$0	$0
Lease-up Reserve	$851,949	$0	$0	$0	$0
Interest Reserve	$1,500,000	$0	$0	$0	$0
Total Reserve	**$3,612,321**	**$0**	**$0**	**$0**	**$0**
Total Net Operating Income	$4,308,573	$5,201,926	$5,362,951	$5,384,537	$5,556,846