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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.	)	

<u>SECOND</u> AMENDED DISCLOSURE STATEMENT PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE FOR THE DEBTOR'S ~~SECOND~~<u>THIRD</u> AMENDED PLAN OF REORGANIZATION PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

THIS IS NOT A SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THE PLAN. ACCEPTANCES 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: December ~~5,~~<u>13,</u> 2011

TABLE OF CONTENTS

Page

EXHIBITS

IMPORTANT INFORMATION ABOUT THIS DISCLOSURE STATEMENT

YOU ARE RECEIVING THIS DISCLOSURE STATEMENT (AS IT MAY BE FURTHER AMENDED FROM TIME TO TIME, THE "DISCLOSURE STATEMENT") TO PROVIDE YOU WITH INFORMATION RELATING TO THE *DEBTOR'S ~~SECOND~~THIRD 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

[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.

PURPOSE. NO PERSON MAY GIVE ANY INFORMATION OR MAKE ANY 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 December ~~5,~~13, 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,

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[2] The Plan amended the chapter 11 plan filed by the Debtor with the Bankruptcy Court on ~~October 31,~~December 5, 2011.

however, the Bankruptcy Court has not passed upon the merits of the Plan or determined that the 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

[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
		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. 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

Class	Type of Claim or Interest	Treatment of Allowed Claims and Interests
		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.
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.

Class	Type of Claim or Interest	Treatment of Allowed Claims and Interests
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 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 $79,228,854.32 (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 $79,228,854.32,[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 $79,228,854.32 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~~ (i) In the event the Bankruptcy Court approves the Fuerta

[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 $225,802.23.

[7] The monthly payments during this period shall be approximately $352,244.31.

[8] The amount of the balloon payment is estimated to be $72,734,801.42.

Class	Type of Claim or Interest	Treatment of Allowed Claims and Interests
		Settlement Agreement pursuant to Bankruptcy Rule 9019 and determines that this Class is 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 pursuant to the Fuerta Settlement Agreement. (ii) In the event the Plan is not confirmed under Section 3.8(b)(i) of the Plan, the Holder of the Fuerta Claim, in full and final satisfaction, release, settlement and discharge of such Claim, shall receive (x) a Cash payment of $450,000 from the BPA Down Payment Escrow on or as soon as practicable after the Effective Date and (y) the rights and obligations set forth in Exhibit B attached to the Plan.
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) either (x) a Cash payment of $1,550,000 from the BPA Down Payment Escrow ~~and~~in the event the Plan is confirmed pursuant to Section 3.8(b)(i) of the Plan or (y) a Cash payment of $1,450,000 from the BPA Down Payment Escrow in the event the Plan is confirmed pursuant to Section 3.8(b)(ii) of the Plan, (ii) 35% of the New Membership Interests and (iii) the rights and obligations set forth in Exhibit B attached to the Plan.
7	General Unsecured Claims	~~Unimpaired~~Impaired. 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~~5, 6 and ~~6,~~7, 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~~1 and ~~7~~2 (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~~5, 6 and ~~6,~~7, 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~~1 and ~~7~~2 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.

[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.

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. 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.

[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.

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 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

[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).

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.

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

[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.

[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.

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 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.

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

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 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.

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

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.

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

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

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.

[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 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]. On November 14, 2011, the Bankruptcy Court entered an order granting the Debtor's application (and providing that Time Square shall not be entitled to reimbursement from the estate for the fees it pays). [Docket No. 79].

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).

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].

On November 14, 2011, the Bankruptcy Court entered an order granting the stay relief portion of the Dismissal/Stay Relief Motion [Docket No. 81].

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. First Manhattan Motion to Terminate Exclusivity and for Adequate Protection

On November 3, 2011, First Manhattan filed a motion for an order (i) terminating the Debtor's exclusive period to solicit acceptances to the Plan under section 1121 of the Bankruptcy Code and (ii) requiring adequate protection payments pursuant to section 363(e) of the Bankruptcy Code (the "Exclusivity/Adequate Protection Motion") [Docket No. 75].

On November 11, 2011, the Debtor filed an objection to the Exclusivity/Adequate Protection Motion [Docket No. 76].

On November 28, 2011, the Bankruptcy Court entered an order (i) denying the adequate protection portion of the motion and (ii) adjourning the hearing on the exclusivity portion of the motion until the date of the hearing to consider approval of this Disclosure Statement.

At the December 6, 2011 hearing to consider approval of the Debtor's disclosure statement, the Bankruptcy Court (i) approved the Disclosure Statement, subject to the Debtor making certain modifications which are contained herein, and (ii) authorized First Manhattan to file a competing plan (and attendant disclosure statement), but advised First Manhattan that the Debtor would be afforded the opportunity to confirm its Plan before any competing plan filed by First Manhattan would be considered.

J. First Manhattan Adversary Proceeding Against Fuerta, Seiden and End Unit Purchasers

On November 22, 2011, First Manhattan filed an adversary proceeding complaint (Adv. Proc. No. 11-02914) against Fuerta, Seiden and the End Unit Purchasers seeking (i) a determination that the BPA Down Payment Escrow constitutes property of the estate pursuant to section 541 of the Bankruptcy Code, (ii) declaratory and related relief finding that First Manhattan has a priority, perfected security interest in the BPA Down Payment Escrow and that First Manhattan may setoff and apply the BPA Down Payment Escrow against and in reduction of its claim against the Debtor, and (iii) declaratory relief disallowing any claims by Fuerta and the End Unit Purchasers against the Debtor's estate [Docket No. 87]. The Debtor expects that Fuerta and the End Unit Purchasers will vigorously oppose the request that their claims be disallowed. Although the Debtor is not a named defendant in this adversary proceeding, the Debtor reserves the right to respond thereto as appropriate and in due course.

The Debtor believes that this adversary proceeding will be rendered moot in the event the Plan is confirmed.

K. First Manhattan Adversary Proceeding
Against the Debtor, Time Square and the O'Sullivans

On November 22, 2011, First Manhattan filed an adversary proceeding complaint (Adv. Proc. No. 11-02915) against the Debtor, Time Square and the O'Sullivans seeking (i) disallowance of Time Square's claim against the Debtor's estate and Time Square's lien against the Property (in the amount of $14,229,106), (ii) damages against the O'Sullivans for purported breach of fiduciary duty, and (iii) equitable subordination of Time Square's claim against the Debtor's estate and Time Square's lien against the Property, disallowance of such claim for plan voting purposes, and disqualification of any vote on account of Time Square's claim under section 1126(e) of the Bankruptcy Code [Docket No. 88]. The Debtor intends to respond to this adversary proceeding as appropriate and in due course. The Debtor expects that both Time Square and the O'Sullivans will vigorously oppose the relief requested in this adversary proceeding.

Counsel to Time Square has advised that Time Square believes that First Manhattan's challenge to the validity of Time Square's claim and lien is without merit. First Manhattan raises three primary objections to the Time Square claim and lien.

First, First Manhattan states that under the Debtor's governance documents, Time Square was limited to the Guaranteed Maximum Price and was responsible for all costs above it. Time Square is expected to respond that the members of the Debtor entered into a side letter agreement dated November 30, 2006 which recognized that certain change requests were not included in the Guaranteed Maximum Price. Time Square is expected to further assert that the Debtor is equitably estopped from challenging any change orders, and that such change orders have been ratified.

Second, First Manhattan states that a letter agreement dated November 27, 2006 provides that Time Square "shall not perform work pursuant to any change order to the Contract which will result in (A) a change of the contract price in excess of the Change Order Amount [$250,000], nor pursuant to any such change order which, together with the aggregate of change orders theretofore executed between Borrower and us (excluding those specifically approved by [Administrative Agent]) will result in an increase or decrease in such price in excess of the Aggregate Change Order Amount [$750,000], unless in either case, we shall have received [Administrative Agent's] specific approval of such change order." Time Square is expected to respond that (i) as a factual matter, PB Capital was aware of, and approved, substantial cost overruns in construction. This is evidenced, among other things, by the fact that PB Capital issued and signed a term sheet for $10.3 million in mezzanine financing, the purpose of which included, among other things, "[t]o … provide additional capital for construction costs"; (ii) the above-referenced letter agreement does not provide for forfeiture as a remedy for failure to obtain consent to a change order, and that the appropriate remedy, if any, would be limited to actual damages; (iii) that First Manhattan is equitably barred from challenging Time Square's lien and claim; and (iv) that First Manhattan lacks standing to challenge Time Square's lien and claim.

Third, First Manhattan states that Time Square's mechanics lien is invalid because the lien was filed more than eight months after the work was complete. Time Square is expected to

respond that, although the Debtor received temporary certificates of occupancy in July 2009 for most of the Units in the Building, its records reflect that substantial work was done pursuant to the contract after that time, including a particularly active period of work in May 2010. Thus, the lien, which First Manhattan states was filed on October 20, 2010, was within the eight-month limitations period prescribed by the New York Lien Law, § 10.

Time Square also believes that this adversary proceeding will be rendered moot in the event that the Plan is confirmed.

L. First Manhattan Motion to Disallow Time Square's Claim and Lien

On November 23, 2011, First Manhattan filed a motion for an order expunging and disallowing Time Square's claim against the Debtor's estate and Time Square's lien against the Property [Docket No. 89]. The Debtor expects that Time Square will vigorously oppose the relief requested in this motion. Although the Debtor is not a party to this motion, the Debtor reserves the right to respond thereto as appropriate and in due course. The issues raised in this motion, and Time Square's expected responses, are substantially similar to those outlined above, with respect to First Manhattan's adversary proceeding against Time Square.

M. 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.

The claims of the End Unit Purchasers and Fuerta, which are interconnected, posed a significant risk to the Debtor.

Prior to the Petition Date, in the context of the Foreclosure Action, Fuerta moved for summary judgment seeking the return of the funds in the BPA Down Payment Escrow. Fuerta claimed that its obligation to close on the transaction contemplated by the Bulk Purchase Agreement was contingent upon the Debtor obtaining an effective Offering Plan from the AG. Fuerta has stated that this condition was critical because, without an effective Offering Plan, Fuerta could not resell the Units to the End Unit Purchasers. Fuerta also claimed that the Debtor was unable to convey Units to Fuerta by July 21, 2009 and for that reason was entitled to terminate the Bulk Purchase Agreement. The Debtor disputes these contentions.

Based upon the Debtor's failure to convey the first Unit on or before July 21, 2009, Fuerta purported to terminate the Bulk Purchase Agreement on August 4, 2009. On August 6, 2009, the Debtor responded by declaring Fuerta's termination was of no legal effect, declaring Fuerta in default of the Bulk Purchase Agreement, and terminating the Bulk Purchase Agreement.

The End Unit Purchasers also asserted claims against the Debtor in the Foreclosure Action, including claims sounding in misrepresentation, conversion and unjust enrichment, which the Debtor disputes. The End Unit Purchasers, comprised of approximately 40 individuals and pension funds, claim to have advanced over $17.7 million in the form of deposits for the purchase of Units in the Building and further claim that the Debtor and Fuerta converted or misappropriated those funds, which the Debtor disputes.

The End Unit Purchasers also have claimed that the funds in the BPA Down Payment Escrow constitute trust funds under section 352(h) of the New York State General Business Law, and that those funds cannot be subject to a lien or encumbrance. Individuals from Fuerta have submitted affidavits in the Foreclosure Action stating that a large portion of the BPA Down Payment Escrow consisted of payments by End Unit Purchasers for the purchase of specific Units.

The End Unit Purchasers also have noted that they advised PB Capital of the alleged conversion before the Foreclosure Action was commenced and that they advised First Manhattan prior to its purchase of the Notes; however, both entities ignored the End Unit Purchasers.

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.

At the December 6, 2011 hearing, the Bankruptcy Court also raised an issue whether the Class 5 Fuerta Claim and the Class 6 End Unit Purchasers' Claims are impaired, and therefore allowed to vote on the Debtor's second amended plan, as these classes are receiving the treatment provided under the Fuerta Settlement Agreement. The Debtor believes that whether the treatment for the Class 5 Fuerta Claim set forth in Section 3.8(b)(i) of the Plan (which was the same treatment proposed for the Class 5 Fuerta Claim in the second amended plan) and the treatment for the Class 6 End Unit Purchasers' Claims set forth in Section 3.9(b) of the Plan renders them unimpaired is an issue for the confirmation hearing which the Debtor will brief in

connection therewith. However, as an alternative and to address the issue raised by the Bankruptcy Court, the Plan includes a treatment for the Class 5 Fuerta Claim set forth in Section 3.8(b)(ii) of the Plan and a treatment for the Class 6 End Unit Purchasers' Claims that do not involve implementation of the Fuerta Settlement Agreement. An affirmative vote on the Plan by Fuerta or the End Unit Purchasers means that they will accept the Plan whether or not the Fuerta Settlement Agreement is implemented.

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~~1 and ~~7~~2 are Unimpaired, and Claims in Classes 3, 4, ~~5~~5, 6 and ~~6~~7 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~~1 and ~~7~~2 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.[21]

~~(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~~5, 6 and ~~6~~7 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

[21] Aurora Bank FSB has filed a purported $3,000,000 secured proof of claim against the Debtor. The Debtor expects that this claim will be resolved by a non-debtor obligor on or before confirmation of the Plan.

$91,099,818.45, consisting of $81,212,506.00 in principal plus $9,887,312.45 of accrued and unpaid interest (including default interest) and other costs and fees through January 1, 2012.[22]

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,[23] (ii) receive (a) the Amended and Restated Note, in the amount of $79,228,854.32 (the amount of the Allowed First Manhattan Claim less the Cash payment made pursuant to (i) immediately above),[24] 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 $79,228,854.32,[25] 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 $79,228,854.32 based upon a thirty year amortization rate,[26] with a balloon payment at the end of the note term;[27] 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[28] 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. This estimated market value of the Property also is supported by a letter of intent dated October 28, 2011 to

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[22] The $9,887,312.45 in interest and other costs and fees consists of $8,449,101.47 in interest (at 5.00%, comprised of LIBOR plus 2.75% plus an additional 2.00%), $1,228,923.26 in protective advances and enforcement costs, $41,287.72 in interest on the protective advances and enforcement costs, and $168,000.00 in unpaid administrative fees. Interest for the months of November and December 2011 is estimated. The figures respecting protective advances are estimated and subject to discovery and refinement.

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

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

[25] The monthly payments during this period shall be approximately $225,802.23.

[26] The monthly payments during this period shall be approximately $352,244.31.

[27] The amount of the balloon payment is estimated to be $72,734,801.42.

[28] 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.

purchase the Property for $107,000,000. A copy of the letter of intent (redacted) is annexed hereto as **Exhibit C**. 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.[29]

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.

(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~~

(i) In the event the Bankruptcy Court approves the Fuerta Settlement Agreement pursuant to Bankruptcy Rule 9019 and determines that this Class is 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~~.~~ pursuant to the Fuerta Settlement Agreement.

(ii) In the event the Plan is not confirmed under Section 3.8(b)(i) of the Plan, the Holder of the Fuerta Claim, in full and final satisfaction, release, settlement and discharge of such Claim, shall receive (x) a Cash payment of $450,000 from the BPA Down Payment Escrow on or as soon as practicable after the Effective Date and (y) the rights and obligations set forth in Exhibit B attached to the Plan.

[29] 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.

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.[30]

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) either (x) a Cash payment of $1,550,000 from the BPA Down Payment Escrow ~~and~~in the event the Plan is confirmed pursuant to Section 3.8(b)(i) of the Plan or (y) a Cash payment of $1,450,000 from the BPA Down Payment Escrow in the event the Plan is confirmed pursuant to Section 3.8(b)(ii) of the Plan, (ii) 35% of the New Membership Interests~~.~~ and (iii) the rights and obligations set forth in Exhibit B attached to the Plan.

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 7 -- General Unsecured Claims

Impairment. Class 7 consists of all General Unsecured Claims. Class 7 is Impaired, and the Holders of Claims in Class 7 are 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.

(f) ~~(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

[30] 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.

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.

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) either (x) $1,550,000 to Newco in accordance with ~~the treatment of the End Unit Purchasers' Claims under~~Section 3.9(b)(i)(x) of the Plan or (y) $1,450,000 to Newco in accordance with Section 3.9(b)(i)(y) of the Plan; (iv) either (x) $350,000 to Fuerta in accordance with ~~the treatment~~Section 3.8(b)(i) of the Plan or (y) $450,000 to Fuerta ~~Claim under~~in accordance with Section 3.8(b)(ii) of 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.[31]

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 (a copy of the Debtor's Listing Agreement with Citi Habitats is annexed hereto as **Exhibit D**); (iii) the Reorganized Debtor shall engage Cooper Square Realty, Inc. ("Cooper Square") as the manager of the Property on commercially

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

reasonable, arm's-length terms (a copy of the Debtor's Management Agreement with Cooper Square is annexed hereto as **Exhibit E**); (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 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) either the Fuerta Settlement Agreement shall have been approved by the Bankruptcy Court in accordance with Section 3.8(b)(i) of the Plan or the Bankruptcy Court confirms the Plan under Section 3.8(b)(ii) of the Plan.

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 F**, 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 G**. 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.[32] 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 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.

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

3. If First Manhattan's Asserted Valuation of the Building and/or the Amount of its Asserted Claim Proves to be Correct, There is a Substantial Risk to Confirmation of the Plan

First Manhattan has asserted that the value of the Building is approximately $75 million, which the Debtor disputes. First Manhattan has filed a proof of claim against the Debtor in the approximate amount of $103 million, which the Debtor disputes. If First Manhattan's asserted valuation of the Building and/or the amount of its asserted claim proves to be correct, there is a substantial risk to confirmation of the Plan.

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 G** 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~~$1,900,000 in aggregate payments 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 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 F** 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: December ~~5,~~13, 2011

785 Partners LLC
Debtor and Debtor in Possession

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

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Counsel for Debtor and Debtor in Possession

Exhibit A

Plan of Reorganization

Exhibit B

Disclosure Statement Approval Order

[TO COME]

Exhibit C

Letter of Intent (Redacted)

Exhibit D

Citi Habitats Listing Agreement

Exhibit E

Cooper Square Management Agreement

Exhibit F

Liquidation Analysis

Exhibit G

Projections