

Sheldon I. Hirshon (SH-0070)
Craig A. Damast (CD-4234)
Lawrence S. Elbaum (LE-4157)
PROSKAUER ROSE LLP
Eleven Times Square
New York, New York 10036-8299
Telephone: (212) 969-3000
Facsimile: (212) 969-2900

Counsel for Debtor and Debtor in Possession

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

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

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

Dated: October 17, 2011

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

Counsel for Debtor and
Debtor in Possession

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

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

ARTICLE I

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Confirmation” means the Bankruptcy Court’s confirmation of the Plan pursuant to section 1129 of the Bankruptcy Code.

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

“Confirmation Order” means the order of the Bankruptcy Court approving Confirmation of the Plan.

“Consummation” means the occurrence of the Effective Date.

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

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

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

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

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

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

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

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

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

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

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

“Donal O’ Sullivan” is a member of 8 Avenue.

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

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

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

“End Unit Purchasers’ Claims” means, collectively, the Claims of the End Unit Purchasers to all of the BPA Down Payment Escrow.

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

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

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

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

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

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

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

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

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

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

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

“Fuerta” means Fuerta Property Limited, an Ireland limited liability company.

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

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

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

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

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

“Holder” means the beneficial holder of any Claim or Interest.

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

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

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

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

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

“Kevin O’ Sullivan” is a member of 8 Avenue.

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

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

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

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

“Mortgages” mean the mortgages on the Property and the Units securing the Notes.

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

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

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

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

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

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

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

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

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

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

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

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

“Plan Supplement” means the compilation of documents, including any exhibits to this Plan not included herewith, that the Debtor shall file with the Bankruptcy Court ten (10) days prior to the voting deadline for the Plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Receiver’s Property Manager” means Sanjay Gandhi of New York City Management LLC.

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

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

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

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

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

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

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

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

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

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

“State Court” means the Supreme Court of the State of New York.

“Subclass” means a subdivision of any Class described herein.

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

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

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

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

“Time Square Lien” means the Lien against the Property securing the Time Square Claim.

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE II
DESIGNATION OF CLAIMS AND INTERESTS**

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

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

**ARTICLE III
TREATMENT OF CLAIMS AND INTERESTS**

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

3.2. Administrative Expense Claims.

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

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

3.2.2 Professional Compensation.

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

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

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

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

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

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

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

3.5. Class 2 (Other Secured Claims).

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

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

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

3.6. Class 3 (First Manhattan Claim).

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

(b) Allowance. For purposes of voting to accept or reject the Plan and receiving distributions under the Plan, the First Manhattan Claim shall be deemed Allowed in the aggregate amount of \$ _____, consisting of \$ _____ in principal plus \$ _____ of accrued and unpaid interest through the Petition Date.

(c) Treatment. On or as soon as practicable after the Effective Date, the Holder of the Allowed First Manhattan Claim, in full and final satisfaction, release, settlement and

discharge of such Claim, shall (i) receive a payment, in Cash, from the BPA Down Payment Escrow, as and to the extent set forth in Section 4.2 of the Plan,¹ (ii) receive (a) the Amended and Restated Note, in the amount of \$_____ (the amount of the Allowed First Manhattan Claim less the Cash payment made pursuant to (i) immediately above)², which shall have a _____ year term [term TBD], and (b) the Amended and Restated Mortgage, (iii) receive interest at the rate of _____ percent per annum on \$_____ [amortization rate TBD]; and (iv) retain the Lien securing such Claim until full and final payment of such Claim is made as provided herein, and upon such full and final payment, such Lien shall be deemed to have been satisfied and shall be null and void and unenforceable for all purposes. In addition to the foregoing, the Holder of the Allowed First Manhattan Claim shall be entitled to a portion of (i) the proceeds from a Liquidity Event, if any, as and to the extent set forth in Section 4.5 of the Plan, and (ii) NOI Surplus, if any, as and to the extent set forth in Section 4.6 of the Plan.

3.7. Class 4 (Time Square Claim).

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

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

3.8. Class 5 (Fuerta Claim).

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

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

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

(a) Impairment. Class 6 consists of the End Unit Purchasers' Claims. Class 6 is Impaired, and the Holders of the End Unit Purchasers' Claims are entitled to vote to accept or reject the Plan.³

¹ The Debtor estimates that the amount of this payment will be \$11,800,000.

² This amount assumes that the Cash payment to made pursuant to (i) immediately above will be \$11,800,000.

³ 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.

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

3.10. Class 7 (General Unsecured Claims).

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

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

3.11. Class 8 (Old Membership Interests).

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

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

**ARTICLE IV
MEANS FOR EXECUTION AND IMPLEMENTATION OF THE PLAN**

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

4.2. Disposition of BPA Down Payment Escrow. On or as soon as practicable after the Effective Date, the BPA Down Payment Escrow shall be applied as follows: (i) \$180,017 to the Reorganized Debtor to pay in full the Holders of Allowed Other Secured Claims and Allowed General Unsecured Claims under the Plan; (ii) \$1,000,000 to the Reorganized Debtor to pay in full the Holders of Allowed Professional Fee Claims under the Plan and post-Effective Date legal fees, costs and expenses; (iii) \$1,550,000 to Newco in accordance with the treatment of the End Unit Purchasers' Claims under the Plan; (iv) \$350,000 to Fuerta in accordance with the treatment of the Fuerta Claim under the Plan; (v) \$328,788 to the Reorganized Debtor to fund the final improvements and repairs required for the Lease-Up (the "Punch List"); (vi) \$595,806 to the Reorganized Debtor to cover building costs incidental to the Lease-Up; (vii) \$880,336 to the Reorganized Debtor to fund the costs of marketing the Lease-Up; (viii) \$335,788 to the Reorganized Debtor to fund the management of the Property for approximately three months,

including the fees of Cooper Square; (ix) \$1,500,000 to the Reorganized Debtor to be held in reserve to cover interest payments to the Holder of the Allowed First Manhattan Claim under the Plan; (x) \$195,000 to the Reorganized Debtor to cover contingencies; (xi) any savings realized with respect to the projected expenses set forth in (i) through (x) above to pay down the then-remaining principal balance of the Allowed First Manhattan Claim; and (xii) after the application of (i) through (xi) above, to pay down the then-remaining principal balance of the Allowed First Manhattan Claim.⁴

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

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

4.5. Equity Waterfall.

(a) In the event of the consummation of a sale or refinancing of the Property (a "Liquidity Event") within 18 months of the Effective Date, proceeds from such Liquidity Event shall be distributed in the following order of priority: (i) first, to pay the outstanding obligations of the Reorganized Debtor, including the then-remaining principal balance of the Allowed First Manhattan Claim; (ii) second, to pay the balance of any Pre-Confirmation Mezzanine Financing or Post-Confirmation Mezzanine Financing approved by the members of the Reorganized Debtor, and any Preferred Membership Interest resulting from a member's failure to fund any capital call made by the Manager (a "Capital Call"); (iii) third, \$3.3 million to 8 Avenue; (iv) fourth, any previously deferred and accumulated portion of the \$350,000 annual expense described in Section 4.3 of the Plan shall be shared between 8 Avenue and Newco (80% to 8 Avenue and 20% to Newco), to the extent this expense has not been theretofore paid; (v) fifth, \$17,000,000 to be shared between 8 Avenue and Newco (50% to 8 Avenue and 50% to Newco); (vi) sixth, \$7,285,714.29 to 8 Avenue; (vii) seventh, Pro Rata to the members of the Reorganized

⁴ The Debtor estimates that the amount of this payment will approximate \$11,800,000.

Debtor. In no event shall Newco receive equity distributions in excess of \$19 million under this Section 4.5(a).

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

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

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

4.8. New LLC Agreement. The holders of the New Membership Interests shall be party to the New LLC Agreement, the terms of which shall be consistent with the terms of the Fuerta Settlement Agreement and reasonably acceptable to such holders, and which shall be included in the Plan Supplement. The New LLC Agreement shall be binding on all holders of

New Membership Interests. Newco, 8 Avenue, Tower and Esplanade shall be required to execute and deliver to the Reorganized Debtor a signature page to the New LLC Agreement as a condition precedent to receiving any distribution of New Membership Interests pursuant to the Plan. The Reorganized Debtor shall take all actions necessary to file, register and/or otherwise effectuate the New LLC Agreement. The New LLC Agreement shall contain provisions necessary to prohibit the issuance of nonvoting equity securities as required by section 1123(a)(6) of the Bankruptcy Code.

4.9. Cancellation and Surrender of Existing Securities and Agreements.

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

(b) Except as otherwise provided herein or agreed by the Reorganized Debtor, each holder of a promissory note, share certificate, membership interest, bond or other Instrument evidencing a Claim or Interest shall surrender such promissory note, share certificate, membership interest, bond or Instrument to the Reorganized Debtor (or the Disbursing Agent). No distribution of property hereunder shall be made to or on behalf of any such holders unless and until such promissory note, share certificate, membership interest, bond or Instrument is received by the Reorganized Debtor (or the Disbursing Agent), or the unavailability of such promissory note, share certificate, membership interest, bond or Instrument is established to the reasonable satisfaction of the Reorganized Debtor (or the Disbursing Agent), or such requirement is waived by the Reorganized Debtor. The Reorganized Debtor may require any holder that is unable to surrender or cause to be surrendered any such promissory notes, share certificates, membership interests, bonds or Instruments to deliver an affidavit of loss and indemnity reasonably satisfactory to the Reorganized Debtor. Any holder that fails within the later of six months after the Effective Date and the date of allowance of its Claim or Interest (i) to surrender or cause to be surrendered such promissory note, share certificate, membership interest, bond or Instrument and (ii) if requested, to execute and deliver an affidavit of loss and indemnity reasonably satisfactory to the Reorganized Debtor (or the Disbursing Agent), shall be deemed to have forfeited all rights, Claims and Causes of Action against the Debtor and the Reorganized Debtor and shall not participate in any distribution hereunder.

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

4.11. Retention of Causes of Action. Except as otherwise provided in the Plan, the Confirmation Order, or in any settlement agreement approved during the Chapter 11 Case: (1) any and all rights, Claims, Causes of Action, defenses, and counterclaims of or accruing to the Debtor or its Estate shall remain assets of and vest in the Reorganized Debtor, whether or not

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

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

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

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

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

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

**ARTICLE V
CORPORATE GOVERNANCE AND
MANAGEMENT OF THE REORGANIZED DEBTOR**

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

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

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

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

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

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

ARTICLE VI VOTING

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

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

ARTICLE VII DISTRIBUTIONS UNDER THE PLAN

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

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

Distribution Record Date. Subject to the foregoing, the Distribution Record Date shall be the record date for purposes of making distributions under the Plan.

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

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

7.5. Delivery of Distributions.

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

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

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

7.6. Time Bar to Cash Payments. Checks issued by the Reorganized Debtor on account of Allowed Claims shall be null and void if not negotiated within ninety (90) days from and after the date of issuance thereof. Holders of Allowed Claims shall make all requests for reissuance of checks to the Reorganized Debtor. Any Claim in respect of a voided check must

be made on or before the six month anniversary of the date of issuance. After such date, all Claims and respective voided checks shall be discharged and forever barred and the Reorganized Debtor shall retain all monies related thereto.

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

ARTICLE VIII PROCEDURES FOR DISPUTED CLAIMS

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

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

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

8.4. Distributions After Allowance. To the extent a Disputed Claim becomes an Allowed Claim, the Disbursing Agent shall distribute to the Holder thereof the distributions, if

any, to which such Holder is then entitled under the Plan. Any such distributions shall be made in accordance with and at the time mandated by the Plan. No interest shall be paid on any Disputed Claim that later becomes an Allowed Claim.

ARTICLE IX EXECUTORY CONTRACTS AND UNEXPIRED LEASES

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

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

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

(b) Assumption of any executory contract or unexpired lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims or defaults, whether monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed executory contract or unexpired lease at any time prior to the effective date of assumption. Any Proofs of Claim filed with respect to an executory contract or unexpired lease that has been

assumed shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court.

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

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

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

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

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

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

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

- (a) notice of entry of the Confirmation Order; or
- (b) such other notice that the executory contract or unexpired lease has been rejected.

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

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

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

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

ARTICLE X RELEASES, INJUNCTIONS AND DISCHARGE

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

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

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

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

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third Party Release, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that the Third Party Release is: (1) in exchange for the

good and valuable consideration provided by the Third Party Releasees; (2) a good faith settlement and compromise of the Claims and Interests released by this Section 10.2; (3) in the best interests of the Debtor and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for hearing; and (6) a bar to any Entity granting a Third Party Release from asserting any claim or Cause of Action released pursuant to the Third Party Release.

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

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

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

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

such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

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

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

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

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

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

**ARTICLE XI
CONDITIONS PRECEDENT TO CONFIRMATION
AND CONSUMMATION OF THE PLAN**

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

- (a) the Bankruptcy Court shall have entered an order approving the adequacy of the Disclosure Statement;
- (b) the Bankruptcy Court shall have entered the Confirmation Order;
- (c) the final version of the Plan Supplement and all of the schedules, documents, and exhibits contained therein shall have been filed with the Bankruptcy Court; and
- (d) the Fuerta Settlement Agreement shall have been approved by the Bankruptcy Court.

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

- (a) all conditions to Confirmation in Section 11.1 of the Plan shall have been either satisfied or waived pursuant to Section 11.3 of the Plan;
- (b) the Confirmation Order shall have become a Final Order;
- (c) all actions, documents, certificates, and agreements necessary to implement the Plan, including documents contained in the Plan Supplement, shall have been effected or executed and delivered, as the case may be, to the required parties and, to the extent required, filed with the applicable governmental units in accordance with applicable laws; and
- (d) the Holdback Escrow Account shall have been fully funded as required pursuant to the Plan.

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

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

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

ARTICLE XII RETENTION OF JURISDICTION

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

- (a) determine any and all objections to the allowance of Claims or Interests;
- (b) determine any and all motions to estimate Claims at any time, regardless of whether the Claim to be estimated is the subject of a pending objection, a pending appeal, or otherwise;
- (c) determine any and all motions to subordinate Claims or Interests at any time and on any basis permitted by applicable law;
- (d) hear and determine all Administrative Expense Claims;
- (e) hear and determine all matters with respect to the assumption or rejection of any executory contract or unexpired lease to which the Debtor is a party or with respect to which the Debtor may be liable, including, if necessary, the nature or amount of any required cure or the liquidation of any Claims arising therefrom;
- (f) hear and determine any and all adversary proceedings, motions, applications, and contested or litigated matters arising out of, under, or related to, the Chapter 11 Case;
- (g) enter such orders as may be necessary or appropriate in aid of the Consummation hereof and to execute, implement, or consummate the provisions hereof and all contracts, Instruments, releases, and other agreements or documents created in connection with the Plan or the Confirmation Order;
- (h) hear and determine disputes arising in connection with the interpretation, implementation, Consummation, or enforcement hereof and all contracts, Instruments, and other agreements executed in connection with the Plan;

- (i) hear and determine any request to modify the Plan or to cure any defect or omission or reconcile any inconsistency herein or any order of the Bankruptcy Court;
- (j) issue and enforce injunctions or other orders, or take any other action that may be necessary or appropriate to restrain any interference with or compel action for the implementation, Consummation, or enforcement hereof or the Confirmation Order;
- (k) enter and implement such orders as may be necessary or appropriate if the Confirmation Order is for any reason reversed, stayed, revoked, modified, or vacated;
- (l) hear and determine any matters arising in connection with or relating to the Plan, the Confirmation Order or any contract, Instrument, release, or other agreement or document created in connection with the Plan or the Confirmation Order;
- (m) enforce all orders, judgments, injunctions, releases, exculpations, indemnifications and rulings entered in connection with the Chapter 11 Case;
- (n) recover all assets of the Debtor and property of the Estate, wherever located;
- (o) hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
- (p) enforce the terms of the Fuerta Settlement Agreement and hear and determine any matters arising in connection therewith;
- (q) hear and determine all disputes involving the existence, nature, or scope of the discharge of the Debtor;
- (r) hear and determine such other matters as may be provided in the Confirmation Order or as may be authorized under, or not inconsistent with, provisions of the Bankruptcy Code;
- (s) hear and determine all other motions, applications and contested or litigated matters which were pending but not resolved as of the Effective Date including, without limitation, any motions, applications and contested or litigated matters to sell or otherwise dispose of assets and/or grant related relief; and
- (t) enter a final decree closing the Chapter 11 Case.

ARTICLE XIII MISCELLANEOUS PROVISIONS

13.1. Immediate Binding Effect. Subject to Section 11.2 hereof and notwithstanding Bankruptcy Rules 3020(e), 6004(h), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of the Plan and the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtor, the Reorganized Debtor, and any and all Holders of Claims or Interests (irrespective of whether such Claims or Interests are deemed to have accepted the Plan), all Entities that are parties to or are subject to the settlements,

compromises, releases, discharges, and injunctions described in the Plan, each Entity acquiring property under the Plan, and any and all parties to executory contracts and unexpired leases with the Debtor.

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

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

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

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

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

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

13.8. Amendment, Modification and Severability of Plan Provisions. If, prior to Confirmation, any term or provision hereof is held by the Bankruptcy Court to be invalid, void,

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

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

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

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

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

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

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

13.12. Notices to Debtor. Any notice, request, or demand required or permitted to be made or provided to or upon the Debtor or the Reorganized Debtor hereunder shall be (i) in

writing, (ii) served by (a) certified mail, return receipt requested, (b) hand delivery, (c) overnight delivery service, (d) first class mail, or (e) facsimile transmission, and (iii) deemed to have been duly given or made when actually delivered or, in the case of notice by facsimile transmission, when received and telephonically confirmed, addressed as follows:

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

with a copy to:

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

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

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

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

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

[SIGNATURE PAGE FOLLOWS]

Dated: October 17, 2011

785 PARTNERS LLC,
Debtor and Debtor in Possession

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

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

Counsel for the Debtor and Debtor in Possession