

and Seller . . . . agree that (a) an amount equal to the Down Payment, together with all interest accrued thereon, is a reasonable estimate of the loss Seller would suffer in the event Purchaser defaults and fails to complete the transaction contemplated by this Agreement, and (b) such amount will be delivered by Escrow Agent to Seller as the agreed and liquidated damages for Purchaser's default and failure to complete the transaction contemplated by this Agreement, and subject to Section 20.18 will be Seller's sole and exclusive remedy (whether at law or in equity) for any default of Purchaser resulting in the failure of consummation of the Closing, whereupon this Agreement will terminate . . . . Notwithstanding the foregoing, none of the above liquidated damages shall be deemed to (i) reduce or waive in any respect the additional obligations of Purchaser to indemnify Seller as provided in this Agreement or (ii) limit Seller's remedies at law, in equity or as herein provided in the event of a breach by Purchaser of any of the Termination Surviving Obligations. Section 14.3 of the Fifth Avenue Purchase Agreement provides: If (i) the Closing does not occur as provided herein by reason of any default of Purchaser (including without limitation the termination of this Agreement by reason of the Purchaser's failure to satisfy the conditions set forth in Sections 9.2(a) or 9.2(b)), or (ii) this Agreement is terminated by Seller pursuant to Section 13.1(d) (but in the case of Section 13.1(d), only with respect to a breach of Purchaser's representations and warranties in Section 8.2(b), (c), (d), (e), (g) and (h)), Purchaser and Seller . . . . agree that (a) an amount equal to the Down Payment, together with all interest accrued thereon, is a reasonable estimate of the loss Seller would suffer in the event Purchaser defaults and fails to complete the transaction contemplated by this Agreement, and (b) such amount will be delivered by Escrow Agent to Seller as the agreed and liquidated damages for Purchaser's default and failure to complete the transaction contemplated by this Agreement, and subject to Section 20.18 will be Seller's sole and exclusive remedy (whether at law or in equity) for any default of Purchaser resulting in the failure of consummation of the Closing, whereupon this Agreement will terminate . . . . Notwithstanding the foregoing, none of the above liquidated damages shall be deemed to (i) reduce or waive in any respect the additional obligations of Purchaser to indemnify Seller as provided in this Agreement or (ii) limit Seller's remedies at law, in equity or as herein provided in the event of a breach by Purchaser of any of the Termination Surviving Obligations.

(v) Brokers. Article XVII of the Purchase Agreements provide, among other things, that subject to the approval of the Bankruptcy Court, Seller agrees to pay to Studley an advisory fee in connection with the transaction contemplated by this Agreement pursuant to separate agreements between Seller and Studley and any other fees which may be due Studley or any other advisor in connection with this transaction. Further, Purchaser represents that it has not dealt with any brokers, finders or salesmen in connection with this transaction other than Studley, and agrees to indemnify, defend and hold each Seller Indemnified Party and Seller's Advisor harmless from and against any and all claims, losses, liabilities, actions, demands, judgments, proceedings, damages, fines, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees and costs), which may arise by reason of any claim for fees or commissions (other than by Studley) and which involves a breach of such representation.

(vi) Escrow Agent. Article XIX of the Purchase Agreements contain terms and conditions regarding the Escrow Agent and the deposit of the Down Payments.

(vii) Miscellaneous Provisions. Article XX of the Purchase Agreements contain certain miscellaneous provisions including, among other things, governing law provisions.

#### IV. SUMMARY OF THE PLAN

**THIS SECTION IV IS INTENDED ONLY TO PROVIDE A SUMMARY OF THE MATERIAL TERMS OF THE PLAN AND IS QUALIFIED BY REFERENCE TO THE ENTIRE DISCLOSURE STATEMENT AND THE PLAN AND SHOULD NOT BE RELIED ON FOR A COMPREHENSIVE DESCRIPTION OF THE PLAN. TO THE EXTENT THERE ARE ANY INCONSISTENCIES BETWEEN THIS SECTION, OR ANY OTHER SECTION HEREOF, AND THE PLAN, THE TERMS AND CONDITIONS SET FORTH IN THE PLAN SHALL GOVERN.**

##### A. OVERVIEW OF CHAPTER 11

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code and promotes equality of treatment for similarly situated creditors and equity interest holders, subject to the priority of distributions prescribed by the Bankruptcy Code. The commencement of a Chapter 11 case creates an estate that comprises all of the legal and equitable interests of the debtor as of the bankruptcy commencement date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a “debtor in possession.”

A “prepackaged” plan of reorganization is one in which a debtor seeks approval of a plan of reorganization from some or all affected creditors before filing for bankruptcy. Because solicitation of acceptances takes place before the bankruptcy filing, the amount of time required for the bankruptcy case is often less than in more conventional bankruptcy cases. Greater certainty of results and reduced costs are other benefits generally associated with prepackaged bankruptcy cases.

Consummating a plan is the principal objective of a Chapter 11 case. The bankruptcy court’s confirmation of a plan binds the debtor, any person acquiring property under the plan, any creditor or equity interest holder of a debtor, and any other person or entity as may be ordered by the bankruptcy court, in accordance with the applicable provisions of the Bankruptcy Code. Subject to certain limited exceptions, the order issued by the bankruptcy court confirming a plan provides for the treatment of the debtors’ creditors and interest holders in accordance with the terms of the confirmed plan.

##### B. PURPOSE OF THE PLAN

The Plan is intended to facilitate the sale of the Debtors’ Properties in a transparent process, free and clear of liens and encumbrances. The process in place is intended to maximize the recoveries available for the benefit of the estates, and the Bank is agreeing to fund the costs of operation of the properties, the payment of ordinary course obligations of the Properties and special capital improvements, and the costs of confirming the Plan, out of its Cash Collateral and asset sale proceeds. All other secured and priority liabilities are being funded as part of the transactions contemplated by the Plan. Given the Debtors’ current debt obligations and lack of adequate liquidity to fund all of its operating needs, the Debtors have no choice but to pursue the sale process in the manner described.

##### C. FINANCIAL TRANSACTIONS UNDER THE PLAN

The transactions proposed under the Plan, if consummated in accordance with Article IX of the Plan and on the terms set forth in the respective exhibits thereto, will:

- pay all Allowed Administrative Claims, Priority Tax Claims, Other Secured Claims and Other Priority Claims in full;
- facilitate the sale or other disposition of the Properties and other assets of the Debtors;

- provide a mechanism for relieving the Properties of the encumbrances caused by the ROFR, ROFO, and Landmark Designation Process; and
- allow the orderly winddown of the operations of the Debtors.

#### **D. EFFECT OF THE PLAN**

The Plan's primary purpose is to make the most of the Debtors' finite assets to maximize creditor recoveries. The transactions outlined above will convey clean title to the Fifth Avenue Property to the Fifth Avenue Purchaser and the Madison Avenue Property to the Madison Avenue Purchaser in exchange for, as applicable, Cash consideration and/or the assumption of mortgage debt and other liabilities, or cancellation of debt if the Senior Lenders determine to take title to the Properties in accordance with Section 5.01(c) of the Plan. Section 5.01(c) of the Plan provides that, if the Madison Avenue Purchase Agreement and/or the Fifth Avenue Purchase Agreement have terminated prior to their respective closing dates, at the Senior Lenders' option, the Senior Lenders may convey title to either or both of the Properties to the Senior Lenders in full satisfaction of their Allowed Class 1 Claims or designate one more entities, as applicable, as purchasers of the Properties. The Debtors strongly believe that the Plan presents the best possibility for creditor recoveries under these facts. The transfer of title to the Properties under the Plan will be free and clear of transfer and other stamp taxes pursuant to section 1146 of the Bankruptcy Code.

Pursuant to Bankruptcy Code sections 1141(c) and 1141(d)(3), Confirmation will not discharge Claims against the Debtors; provided, however, that no Holder of a Claim or Interest may, on account of such Claim or Interest, seek or receive any payment or other distribution from, or seek recourse against, the Debtors, their officers, directors, members or stockholder, the Administrators, the Bank, the Senior Agent, the Senior Lenders, the Subordinated Agent, the Subordinated Lenders, and/or their successors, assigns and/or property, including, without limitation, the Property, except as expressly provided in the Plan.

**ACCORDINGLY, THE DEBTORS STRONGLY RECOMMEND THAT HOLDERS OF CLASS 1 SENIOR LENDER CLAIMS VOTE TO ACCEPT THE PLAN.**

#### **E. TREATMENT OF UNCLASSIFIED CLAIMS UNDER THE PLAN**

The following is a summary of the treatment of Administrative Claims and Priority Tax Claims under the Plan. For a more detailed description of the treatment of such Claims under the Plan, please see Article III of the Plan.

##### **1. Administrative Claims**

Subject to the provisions of sections 328, 330(a), and 331 of the Bankruptcy Code, in full and final satisfaction, settlement, release and discharge of, and in exchange for, each Allowed Administrative Claim, each Holder of an Allowed Administrative Claim shall be paid such Allowed Administrative Claim in accordance with the terms of the applicable contract or agreement governing such Claim, if any. Except to the extent a Holder of an Allowed Administrative Claim has been paid by the Debtors prior to the Effective Date or the Holder of an Allowed Administrative Claim and the Debtors agree otherwise, all other Holders of Allowed Administrative Claims will be paid, in full and final satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Administrative Claim, in full in Cash on or as soon as reasonably practicable after the Effective Date. The foregoing provisions, to the extent they apply to payment of Allowed Administrative Claims, shall not apply to the payment of Fee Claims which is governed by Section 13.02(a) of the Plan.

## 2. Priority Tax Claims

Except to the extent a Holder of an Allowed Priority Tax Claim has been paid by the Debtors prior to the Effective Date or the Holder of an Allowed Priority Tax Claim and the Debtors agree otherwise, in full and final satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Priority Tax Claim, at the sole option of the Debtors, each Holder of an Allowed Priority Tax Claim, if any, shall receive on account of such Allowed Priority Tax Claim: (1) Cash in an amount equal to such Allowed Priority Tax Claim on or as soon as reasonably practicable after the Effective Date; or (2) Cash equal to the amount of such Allowed Priority Tax Claim, together with interest at the applicable rate under section 511 of the Bankruptcy Code (or such lesser rate as is agreed to by the Holder of such Holder of an Allowed Priority Tax Claim), payable over a period ending no later than five (5) years from the Petition Date; provided, however, that the Debtors reserve the right to prepay such amounts at any time under the latter option. All Allowed Priority Tax Claims that are not due and payable on or prior to the Effective Date shall be paid in the ordinary course of business by the transferee of the Fifth Avenue Property and Madison Avenue Property, respectively, as such obligations become due.

## 3. Withholding and Reporting Requirements

In accordance with section 346 of the Bankruptcy Code and in connection with the Plan and all distributions hereunder, the Debtors shall, to the extent applicable, comply with all withholding and reporting requirements imposed by any federal, state, provincial, local or foreign taxing authority. The Debtors shall be authorized to take any and all actions necessary and appropriate to comply with such requirements.

All distributions made pursuant to the Plan shall be subject to applicable legal withholding and reporting requirements. As a condition of making any distribution under the Plan, the Debtor may require the holder of an Allowed Claim to provide such holder's taxpayer identification number, and such other information, certification or forms as necessary to comply with applicable tax reporting and withholding laws. Notwithstanding any other provision of the Plan, each entity receiving distribution pursuant to the Plan shall have sole and exclusive responsibility for the satisfaction and payment of tax obligations on account of any such distribution.

## F. CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS

The following table provides a summary of the classification and treatment of Claims and Interests and the potential distributions to Holders of Allowed Claims and Interests under the Plan.

**THE PROJECTED RECOVERIES SET FORTH IN THE TABLE BELOW ARE ESTIMATES ONLY AND THEREFORE ARE SUBJECT TO CHANGE. FOR A COMPLETE DESCRIPTION OF THE CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN, REFERENCE SHOULD BE MADE TO THE ENTIRE PLAN.**

**SUMMARY OF EXPECTED RECOVERIES**

Class	Claim/ Interest	Treatment of Claims/Interests	Projected Recovery Under the Plan
1	<p>Senior Lender Claims</p> <p>Approximately \$266,854,742, in aggregate, consisting of principal and accrued pre-petition interest, plus costs and fees</p>	<p>(a) <i>Classification:</i> Class 1 consists of all Senior Lender Claims.</p> <p>(b) <i>Treatment:</i></p> <p>(a) <i>Allowance.</i> The Senior Lender Claims are hereby deemed Allowed in the aggregate principal amount of not less than \$266,854,742, <i>plus:</i> (i) accrued and unpaid interest at the applicable default rate set forth in the Senior Loan Documents for the period from the last interest capitalization date through and including the Petition Date; (ii) protective advances made pursuant to the Senior Loan Agreement prior to the Petition Date, if any; and (iii) reasonable and documented out-of-pocket fees and actual expenses payable from the Default Date through and including the Petition Date, subject to the terms and conditions of the Senior Loan Documents.</p> <p>(b) <i>Treatment.</i> In full and final satisfaction, settlement, release and discharge of, and in exchange for, all Allowed Senior Lender Claims:</p> <p>(1) on the Fifth Avenue Closing Date, the Fifth Avenue Property shall be conveyed to the Fifth Avenue Purchaser free and clear of all Liens, Claims, Encumbrances or interests (other than permitted Liens or Encumbrances and the assumed liabilities specified by the Fifth Avenue Purchaser);</p> <p>(2) on the Madison Avenue Closing Date, the Madison Avenue Property shall be conveyed to the Madison Avenue Purchaser free and clear of all Liens, Claims, Encumbrances or interests (other than permitted Liens or Encumbrances and the assumed liabilities specified in the Madison Avenue Purchase Agreement);</p> <p>(3) subject to Section 5.01(c) of this Plan, on the Fifth Avenue Property Closing Date, the Senior Agent, as Disbursing Agent for the Senior Lenders shall receive the net proceeds of the sale of such Property in accordance with this</p>	63.2% (est.)

**SUMMARY OF EXPECTED RECOVERIES**

Class	Claim/ Interest	Treatment of Claims/Interests	Projected Recovery Under the Plan
		<p>Plan and the Confirmation Order;</p> <p>(4) subject to Section 5.01(c) of this Plan, on the Madison Avenue Property Closing Date, the Senior Agent, as Disbursing Agent for the Senior Lenders shall receive the net proceeds of the sale of such Property in accordance with this Plan and the Confirmation Order;</p> <p>(5) subject to Section 5.01(c) of this Plan, on the Effective Date, the Senior Agent on behalf of the Senior Lenders shall receive an Allowed Unsecured Deficiency Claim classified in Class 6 in the amount of not less than \$98,100,598; and</p> <p>(6) on the Effective Date, any Cash, including Cash Collateral, remaining in the Debtors' Cash balances after payment of Allowed Administrative Claims and Priority Tax Claims pursuant to this Plan, other than amounts for wind-up fees, costs and expenses included in the approved Cash Collateral budget or any subsequent budget agreed to by the Debtors and the Senior Lenders, shall be disbursed to the Senior Agent on behalf of the Senior Lenders</p> <p>(7) on the Effective Date, the proceeds, or rights to proceeds, as applicable, of any insurance policies maintained in connection with the Fifth Avenue Property in relation to a casualty thereto, shall be disbursed or assigned to the Fifth Avenue Purchaser to the extent required under the Fifth Avenue Purchase Agreement;</p> <p>(8) on the Effective Date, the proceeds, or rights to proceeds, as applicable, of any insurance policies maintained in connection with the Madison Avenue Property in relation to a casualty thereto, shall be disbursed or assigned to the Madison Avenue Purchaser to the extent required under the Madison Avenue Purchase</p>	

**SUMMARY OF EXPECTED RECOVERIES**

Class	Claim/ Interest	Treatment of Claims/Interests	Projected Recovery Under the Plan
		<p>Agreement;</p> <p>(9) on the Effective Date, any refunds of real estate taxes paid with respect to the Fifth Avenue Property shall be disbursed to the Fifth Avenue Purchaser to the extent required under the Fifth Avenue Purchase Agreement; and</p> <p>(10) on the Effective Date, any refunds of real estate taxes paid with respect to the Madison Avenue Property shall be disbursed to the Madison Avenue Purchaser to the extent required under the Madison Avenue Purchase Agreement.</p> <p>(c) <i>Voting:</i> Class 1 is an Impaired Class. Each Holder of a Senior Lender Claim is entitled to vote on the Plan.</p>	
2	<p>Other Secured Claims</p> <p><i>De minimus</i> amount</p>	<p>(a) <i>Classification:</i> Class 2 consists of all Other Secured Claims.</p> <p>(b) <i>Treatment:</i> The legal, equitable and contractual rights of the Holders of Allowed Other Secured Claims will not be altered by the Plan. Except to the extent a Holder of an Allowed Other Secured Claim has been paid by the Debtors prior to the Effective Date or the Holder of an Allowed Other Secured Claim and the Debtors agree otherwise, each Holder of an Allowed Other Secured Claim (including, to the extent permitted under the Bankruptcy Code, any Claim for post-petition interest accrued until the Confirmation Date at the non-default rate provided in the applicable contract or, if there is no contract, then at the Federal Judgment Rate, to the extent applicable) shall receive, in full and final satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Other Secured Claim, in the sole discretion of the Debtors, one of the following alternative treatments:</p> <ul style="list-style-type: none"> <li>• Reinstatement of such Allowed Other Secured Claim;</li> <li>• payment of such Allowed Other Secured Claim either (i) in the ordinary course of business in accordance with applicable law or the terms of any agreement that governs such Other Secured Claim or (ii) in accordance with the course of practice between</li> </ul>	100%

**SUMMARY OF EXPECTED RECOVERIES**

Class	Claim/ Interest	Treatment of Claims/Interests	Projected Recovery Under the Plan
		<p>the Debtors and such Holder with respect to such Other Secured Claim;</p> <ul style="list-style-type: none"> <li>• delivery of the collateral securing such Allowed Other Secured Claim; or</li> <li>• such other treatment so as to render the Allowed Other Secured Claim Unimpaired pursuant to section 1124 of the Bankruptcy Code.</li> </ul> <p>(c) <i>Voting:</i> Class 2 is an Unimpaired Class. Each Holder of an Other Secured Claim is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, is not entitled to vote to accept or reject the Plan.</p>	
3	<p>Other Priority Claims</p> <p><i>De minimus</i> amount</p>	<p>(a) <i>Classification:</i> Class 3 consists of all Other Priority Claims.</p> <p>(b) <i>Treatment:</i> The legal, equitable and contractual rights of the Holders of Other Priority Claims will not be altered by the Plan. Except to the extent a Holder of an Other Priority Claim has been paid by the Debtors prior to the Effective Date or the Holder of an Allowed Other Priority Claim and the Debtors agree otherwise, each Holder of an Allowed Other Priority Claim shall receive, in full and final satisfaction, settlement, release and discharge of, and in exchange for, such Allowed Other Priority Claim, one of the following alternative treatments:</p> <ul style="list-style-type: none"> <li>• to the extent an Other Priority Claim is Allowed on or prior to the Effective Date, such Claim shall be paid in full in Cash on or as soon as reasonably practicable after the Effective Date;</li> <li>• to the extent an Other Priority Claim is Allowed after the Effective Date, such Claim shall be paid thereafter either (i) in the ordinary course of business in accordance with applicable law or the terms of any agreement that governs such Other Priority Claim or (ii) in accordance with the course of practice between the Debtors and such Holder with respect to such an Other Priority Claim; or</li> <li>• such other treatment so as to render the Allowed Other Priority Claim Unimpaired pursuant to section 1124 of the Bankruptcy Code.</li> </ul>	100%



**SUMMARY OF EXPECTED RECOVERIES**

<b>Class</b>	<b>Claim/ Interest</b>	<b>Treatment of Claims/Interests</b>	<b>Projected Recovery Under the Plan</b>
		(c) <i>Voting:</i> Class 3 is an Unimpaired Class. Each Holder of an Other Priority Claim is conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, is not entitled to vote to accept or reject the Plan.	
4	Subordinated Lender Claims  Approximately \$25,978,525, in aggregate, consisting of principal, accrued pre-petition interest, plus costs and fees	(a) <i>Classification:</i> Class 4 consists of all Subordinated Lender Claims.  (b) <i>Treatment:</i> No property of the Estates will be distributed to or retained by Holders of Class 4 Claims.  (c) <i>Voting:</i> Class 4 is an Impaired Class. Each Holder of a Class 4 Claim is conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, is not entitled to vote to accept or reject the Plan.	0%
5	Fifth Avenue Note Claims  Not less than \$10,500,000, plus accrued pre-petition interest, costs and fees	(a) <i>Classification:</i> Class 5 consists of all Fifth Avenue Note Claims.  (b) <i>Treatment:</i> No property of the Estates will be distributed to or retained by Holders of Class 5 Claims.  (c) <i>Voting:</i> Class 5 is an Impaired Class. Each Holder of a Class 5 Claim is conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, is not entitled to vote to accept or reject the Plan.	0%
6	General Unsecured Claims  Approximately \$98,491,997 in aggregate	(a) <i>Classification:</i> Class 6 consists of all General Unsecured Claims, including the Unsecured Deficiency Claim.  (b) <i>Treatment:</i> No property of the Estates will be distributed to or retained by Holders of Class 6 Claims.  (c) <i>Voting:</i> Class 6 is an Impaired Class. Each Holder of a Class 6 Claim is conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, is not entitled to vote to accept or reject the Plan.	0%
7	Intercompany Claims	(a) <i>Classification:</i> Class 7 consists of all Intercompany Claims.  (b) <i>Treatment:</i> No property of the Estates will be distributed	0%

<b>SUMMARY OF EXPECTED RECOVERIES</b>			
<b>Class</b>	<b>Claim/ Interest</b>	<b>Treatment of Claims/Interests</b>	<b>Projected Recovery Under the Plan</b>
	\$2,266,684	to or retained by Holders of Class 7 Claims.  (c) <i>Voting:</i> Class 7 is an Impaired Class. Each Holder of a Class 7 Claim is conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, is not entitled to vote to accept or reject the Plan.	
8	Interests	(a) <i>Classification:</i> Class 8 consists of all Interests.  (b) <i>Treatment:</i> No property of the Estates will be distributed or retained by Holders of Class 8 Interests and such Interests shall be deemed cancelled and extinguished on the Effective Date.  (c) <i>Voting:</i> Class 8 is an Impaired Class. Each Holder of a Class 8 Interest is conclusively presumed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, is not entitled to vote to accept or reject the Plan.	0%

**V. SOLICITATION PROCEDURES**

**THIS DISCUSSION OF THE SOLICITATION PROCESS IS ONLY A SUMMARY. HOLDERS OF CLASS 1 SENIOR LENDER CLAIMS ARE ENCOURAGED TO REVIEW THE RELEVANT PROVISIONS OF THE BANKRUPTCY CODE AND/OR CONSULT THEIR OWN ATTORNEY PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN.**

**A. HOLDERS OF CLAIMS AND INTERESTS ENTITLED TO VOTE ON THE PLAN**

Under the Bankruptcy Code, not all holders of claims against, and interests in, a debtor are entitled to vote on a Chapter 11 plan. The following table provides a summary of the status and voting rights of each Class (and, therefore, of each Holder of a Claim or Interest within such Class) under the Plan:

SUMMARY OF STATUS AND VOTING RIGHTS			
Class	Claim/Interest	Status	Voting Rights
1	Senior Lender Claims	Impaired	Entitled to Vote
2	Other Secured Claims	Unimpaired	Not Entitled To Vote – Deemed to Accept
3	Other Priority Claims	Unimpaired	Not Entitled To Vote – Deemed to Accept
4	Subordinated Lender Claims	Impaired	Not Entitled to Vote - Deemed to Reject
5	Fifth Avenue Note Claims	Impaired	Not Entitled to Vote - Deemed to Reject
6	General Unsecured Claims	Impaired	Not Entitled to Vote - Deemed to Reject
7	Intercompany Claims	Impaired	Not Entitled to Vote - Deemed to Reject
8	Interests	Impaired	Not Entitled to Vote - Deemed to Reject

Based on the classifications set forth in the Plan and described above, only Holders of Class 1 Senior Lender Claims will be solicited with respect to voting on the Plan.

**1. Contents of the Solicitation Package**

The following documents and materials will collectively constitute the solicitation package:

- the Disclosure Statement,
- the Plan and the other exhibits annexed to the Disclosure Statement; and
- a Ballot, voting instructions, and a pre-addressed, postage prepaid return envelope.

**B. VOTING PROCEDURES AND INSTRUCTIONS**

THIS DISCUSSION IS ONLY A SUMMARY. PLEASE REFER TO THE “VOTING INSTRUCTIONS” ACCOMPANYING EACH BALLOT FOR VOTING REQUIREMENTS TO ENSURE THAT YOUR VOTE IS COUNTED.

**1. The Voting Deadline**

In order to be counted, all Ballots must be properly executed, completed and delivered to the Debtors (the “Voting Deadline”) by **5:00 p.m. prevailing Eastern Time on September 15, 2010**, unless the Debtors, in consultation with the Lender, extend the date by which Ballots must be received. Except to the extent that the Debtors so determine or as permitted by the Bankruptcy Court, Ballots that are received after the Voting Deadline will not be counted or otherwise used by the Debtors in connection with the Debtors’ request for Confirmation of the Plan (or any permitted modification thereof).

**UNLESS THE DEBTORS DETERMINE OTHERWISE, YOUR VOTE WILL NOT BE COUNTED UNLESS A PROPERLY EXECUTED, COMPLETED AND DELIVERED BALLOT IS ACTUALLY RECEIVED BY THE DEBTORS ON OR BEFORE THE VOTING DEADLINE.**

## 2. Voting Instructions

Under the Plan, Holders of Claims in Class 1 are entitled to vote to accept or reject the Plan. Those Holders may so vote by completing a Ballot and returning it to the Debtors prior to the Voting Deadline. To be counted as votes to accept or reject the Plan, all Ballots (which will clearly indicate the appropriate return address) must be properly executed, completed and delivered by using the return envelope provided by (a) first class mail, (b) overnight courier or (c) personal delivery, so that they are actually received on or before the Voting Deadline by the Debtors at the following address:

Rock US Holdings Inc., et al  
c/o Bayard, P.A.  
222 Delaware Avenue, Suite 900  
Wilmington, Delaware 19899  
Attn: Neil Glassman, Esq.  
Jamie L. Edmonson, Esq.

## 3. Voting Tabulation

Only Holders of Claims in Class 1 shall be entitled to vote. The following procedures will be used for tabulating votes to accept or reject the Plan:

- a. Votes Not Counted. The following Ballots will not be counted in determining whether the Plan has been accepted or rejected:
  - i. any Ballot that is received after the Voting Deadline (and for which the Voting Deadline was not extended), even if post-marked or otherwise sent prior to the Voting Deadline;
  - ii. any Ballot that is illegible or contains insufficient information to permit the identification of the voting creditor;
  - iii. any Ballot cast by an entity that does not hold a Claim classified in Class 1;
  - iv. any Ballot sent to anyone other than the Debtors' at the address given above;
  - v. any Ballot transmitted by facsimile or other electronic means;
  - vi. any unsigned Ballot; or
  - vii. any Ballot not marked to accept or reject the Plan or any Ballot marked both to accept and reject the Plan.

**THE METHOD OF ALLOWED DELIVERY OF THE BALLOTS TO BE SENT TO THE DEBTORS IS AT THE ELECTION AND RISK OF EACH VOTING HOLDER.**

- b. Rejected Ballots. Except as provided herein and subject to any contrary order of the Court, unless the Ballot being furnished is timely submitted on or prior to the Voting Deadline, the Debtors shall reject such Ballot as invalid and not count it. Furthermore, the Debtors reserve the right to reject any and all Ballots not in proper form, the acceptance of which, in the opinion of the Debtors, would not be in accordance with the provisions of the Bankruptcy Code or the Bankruptcy Rules (which rejections shall be documented in the voting report to be prepared by Hogan Lovells (the “Voting Report”) after receipt and tabulation of all Ballots received from Holders of Class 1 Claims).
- c. Multiple Ballots. If multiple Ballots are received from the same voting party with respect to the same Claim prior to the Voting Deadline, the last Ballot timely received shall count (*i.e.*, the last Ballot will be deemed to reflect that voter’s intent and will supersede and revoke any prior Ballot); provided, however, that in instances where ambiguity exists in respect of which Ballot was last mailed, the Debtors have the right to contact the respective claimant to determine such Claimant’s intent and calculate the vote according thereto. **BY SIGNING AND RETURNING A BALLOT, EACH HOLDER OF A CLAIM CERTIFIES TO THE BANKRUPTCY COURT AND THE DEBTORS THAT NO OTHER BALLOTS WITH RESPECT TO SUCH CLAIM HAVE BEEN CAST OR, IF ANY OTHER BALLOTS HAVE BEEN CAST WITH RESPECT TO SUCH CLAIM, SUCH EARLIER BALLOTS ARE THEREBY SUPERSEDED AND REVOKED.**
- d. Withdrawal. No Ballot may be withdrawn at any time without the prior consent of the Debtors, in the Debtors’ sole discretion, or upon later Bankruptcy Court order.
- e. No Vote-Splitting. Holders of Class 1 Senior Lender Claims must vote all of their Claims within Class 1 either to accept or reject the Plan and may not split any such votes. Accordingly, any Ballot that partially rejects and partially accepts the Plan will not be counted.
- f. Defective Ballots. The Debtors, subject to contrary order of the Bankruptcy Court, may waive any defects or irregularities as to any particular Ballot at any time, either before or after the Voting Deadline, provided, however, that:
- i. any such waivers will be documented in the Voting Report;
  - ii. neither the Debtors, nor any other Entity, will be under any duty to provide notification of such defects or irregularities other than as provided in the Voting Report, nor will any of them incur any liability for failure to provide such notification; and
  - iii. unless waived by the Debtors, subject to contrary order of the Bankruptcy Court, any defects or irregularities associated with the delivery of Ballots must be cured prior to the Voting Deadline or such Ballots will not be counted;
- g. Lack of Good Faith Designation. In the event a designation for lack of good faith is requested by a party in interest under section 1126(e) of the Bankruptcy Code, the Court will determine whether any vote to accept and/or reject the Plan cast with respect to that Claim will be counted for purposes of determining whether the Plan has been accepted and/or rejected by such Claim.

#### **4. The Voting Report**

Assuming the Debtors receive an appropriate Ballot accepting the Plan, the Debtors will File with the Bankruptcy Court, on the Petition Date or as soon as practicable thereafter, the Voting Report.

#### **5. Modifications to the Plan**

The Debtors expressly reserve the right to amend from time to time the terms of the Plan (subject to compliance with the requirements of section 1127 of the Bankruptcy Code and the terms of the Plan regarding modifications). The Bankruptcy Code may require the Debtors to disseminate additional solicitation materials if the changes are material or the Debtors waive a material condition to Confirmation. In that event, the solicitation will be extended as directed by the Bankruptcy Court.

#### **6. Filing of the Plan Supplement**

The Debtors will file the Plan Supplement no fewer than seven (7) days prior to the Confirmation Hearing. The Plan Supplement will include, without limitation, the following information:

- the documents, agreements and/or other instruments to be executed and delivered in connection with the sale of the Properties and all other agreements and settlements required to be implemented to consummate the Plan; and
- a schedule of the Executory Contracts and Unexpired Leases to be assumed by the Debtors and/or assumed by the Debtors and assigned to the Fifth Avenue Purchaser and Madison Avenue Purchaser, respectively, under the Plan.

### **VI. CONFIRMATION OF THE PLAN**

#### **A. THE CONFIRMATION HEARING**

Because votes to accept or reject the Plan were solicited prior to the Petition Date, section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing to consider approval of the adequacy of the information set forth in this Disclosure Statement, the prepetition procedures for the Solicitation, and confirmation of the Plan (the "Confirmation Hearing"). Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to Confirmation. On or about the Petition Date, the Debtors will seek entry of an order of the Bankruptcy Court scheduling the Confirmation Hearing.

Notice of the Confirmation Hearing will be provided in the manner prescribed by the Bankruptcy Court. **The Confirmation Hearing may be adjourned from time to time by the Bankruptcy Court without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing.**

#### **B. EFFECT OF CONFIRMATION OF THE PLAN**

Article X of the Plan contains certain provisions relating to, among other things: (a) the compromise and settlement of Claims; (b) the release of the Debtors and related parties and certain other third parties; (c) the exculpation of certain parties; and (d) the enjoining of Claims and Causes of Action. **It is important to read such provisions carefully so that you understand the implications of these provisions with respect to your Claim such that you may cast your vote accordingly.**

THE PLAN PROPOSES TO BIND ALL HOLDERS OF CLAIMS AGAINST AND INTERESTS IN THE DEBTORS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NOTWITHSTANDING WHETHER OR NOT SUCH HOLDER: (A) WILL RECEIVE OR RETAIN ANY PROPERTY OR INTEREST IN PROPERTY UNDER THE PLAN; (B) FILED A PROOF OF CLAIM OR INTEREST IN THE CHAPTER 11 CASES (PROOFS OF CLAIM ARE NOT REQUIRED TO BE FILED IN THE CASES); OR (C) FAILED TO VOTE TO ACCEPT OR REJECT THE PLAN OR VOTED TO REJECT THE PLAN.

**C. STATUTORY REQUIREMENTS FOR CONFIRMATION OF THE PLAN**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the Plan satisfies, or will satisfy, the applicable requirements of section 1129 of the Bankruptcy Code set forth below:

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtors, as the Plan proponents, will have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Chapter 11 Cases, or in connection with the Plan and incident to the case, has been disclosed to the Bankruptcy Court, and any such payment: (a) made before the Confirmation of the Plan is reasonable; or (b) is subject to the approval of the Bankruptcy Court as reasonable, if it is to be fixed after Confirmation of the Plan.
- Either each Holder of an Impaired Claim or Interest has accepted the Plan, or will receive or retain under the Plan on account of such Claim, property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would receive or retain if the Debtors were liquidated on that date under Chapter 7 of the Bankruptcy Code.
- Each Class of Claims that is entitled to vote on the Plan has either accepted the Plan or is not Impaired under the Plan, or the Plan can be confirmed without the approval of such voting Class pursuant to section 1129(b) of the Bankruptcy Code.
- Except to the extent that the Holder of a particular Claim will agree to a different treatment of its Claim, the Plan provides that Administrative Claims and Other Priority Claims will be paid in full on the Effective Date, or as soon thereafter as is reasonably practicable.
- At least one Class of Impaired Claims has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in that Class.
- Confirmation of the Plan is not likely to be followed by the need for further financial reorganization of the Debtors or any successors thereto under the Plan.
- The Debtors have paid the required filing fees pursuant to 28 U.S.C. § 1930 to the clerk of the Bankruptcy Court.
- In addition to the filing fees paid to the clerk of the Bankruptcy Court, the Debtors will pay quarterly fees no later than the last day of the calendar month following the calendar quarter

for which the fee is owed in each of the Debtors' Chapter 11 Cases for each quarter (including any fraction thereof), to the Office of the U.S. Trustee, until the case is converted or dismissed or the final decree is entered, whichever occurs first.

#### **1. Best Interests of Creditors Test/Liquidation Analysis**

Section 1129(a)(7) of the Bankruptcy Code, the so-called "best interests" test, requires that a bankruptcy court find, as a condition to confirmation, that a plan provides, with respect to each class, that each holder of a claim or interest in such class either (a) has accepted the plan or (b) will receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor is liquidated under Chapter 7 of the Bankruptcy Code. To make these findings, the bankruptcy court must: (a) estimate the cash liquidation proceeds that a Chapter 7 trustee would generate if each of the debtor's Chapter 11 cases were converted to a Chapter 7 case and the assets of such debtor's estate were liquidated; (b) determine the liquidation distribution that each non-accepting holder of a claim or an equity interest would receive from such liquidation proceeds under the priority scheme dictated in Chapter 7; and (c) compare such holder's liquidation distribution to the distribution under the plan that such holder would receive if the plan were confirmed.

Accordingly, in theory, the Cash amount that would be available for satisfaction of Claims (other than Senior Lender Claims) would consist of the proceeds resulting from the disposition of the unencumbered assets of the Debtors, augmented by the unencumbered Cash held by the Debtors at the time of the commencement of the liquidation. Such Cash would be reduced by the amount of the costs and expenses of the liquidation and by such additional administrative and priority claims that may result from termination of the Debtors' business and the use of Chapter 7 for purposes of a liquidation.

The bankruptcy court then must compare the value of the distributions from the proceeds of the hypothetical Chapter 7 liquidation of the Debtors (after subtracting the Chapter 7-specific claims and administrative costs) with the value to be distributed to the Holders of Allowed Claims and Interests under the Plan. It is possible that in a Chapter 7 liquidation, Claims and Interests may not be classified in the same manner as set forth in the Plan. In a hypothetical Chapter 7 liquidation of the Debtors' assets, the rule of absolute priority of distribution would apply (*i.e.*, no junior creditor would receive any distribution until payment in full of all senior creditors, and no Holder of an Interest would receive any distribution until all creditors have been paid in full).

However, the Senior Lenders hold validly perfected first-priority liens in all of the Debtors' assets, including, without limitation, the Properties. The Allowed Senior Lender Claims far exceed the current and foreseeable market values of the Debtors' assets. In a forced liquidation scenario, the Senior Lenders would recover an even smaller portion of the amounts outstanding under the Loan Documents than that provided for in the Plan, as a result of the unavailability of the transfer tax exemption, and the overhang on property values from a distressed liquidation sale, as well as the delays and costs of bringing in a Chapter 7 Trustee and bringing him up to speed on the property issues.

Further, payments to secured and priority creditors are being provided by the Senior Lenders' consent to the Plan, which might not be available in a Chapter 7. General Unsecured Claim Holders and Holders of Interests receive no distribution, in either case.

In a Chapter 7 liquidation, a Chapter 7 trustee may investigate and seek to pursue so-called avoidance actions under Chapter 5 of the Bankruptcy Code, which, if successful, could augment creditor recoveries. However, in this case, the Debtors believe no such claims are available. The Debtors' only source of cash is from Cash Collateral, and payments over the last year have been made pursuant to budgets approved by the Senior Agent and Senior Lenders. The Debtors believe, based on their review of



payables data over the past twelve (12) months, that, other than claims against Scott Pudalov, Alan Wildes and possibly other Terminated Officers, there are no claims of any value that might be asserted under Chapter 5 of the Bankruptcy Code, and thus there is no justification to incur the costs of litigating such claims. Further, the Debtors' examination of the validity and priority of the liens of the Senior Lenders indicates it is unlikely that any value would be available for general unsecured creditors as a result of challenges to such liens.

Because the Bankruptcy Code requires that impaired creditors either accept the plan or receive not less than they would in a hypothetical Chapter 7 liquidation, the operative "best interests" inquiry in the context of the Debtors' Plan is whether, after accounting for recoveries by Holders of unclassified or Unimpaired Claims or Interests, Holders of Impaired Claims and Interests will receive more or less under the Plan than would be received in a Chapter 7 liquidation. If the probable distribution to Holders of Impaired Claims and Interests under a hypothetical Chapter 7 liquidation is greater than the distributions to be received by such parties under the Plan, then the Plan is not in the best interests of Holders of Impaired Claims and Interests.

The Debtors believe, and will show in the Liquidation Analysis, which the Debtors will file with the Bankruptcy Court within ten (10) days of the Petition Date as Exhibit D hereto, that confirmation of the Plan will provide Holders of Senior Lender Claims, Other Secured Claims and Other Priority Claims with a greater recovery than the value of any distributions if the Chapter 11 Cases were converted to cases under Chapter 7 of the Bankruptcy Code and Holders of Subordinated Lender Claims, Fifth Avenue Note Claims, Intercompany Claims, General Unsecured Claims and Interests with not less than they would receive in a Chapter 7. In Chapter 7, there is no assurance that the Lender would make any funds available for priority creditors and administrative costs. In addition, the fees and expenses of a Chapter 7 trustee and his/her professionals would augment the total administrative costs. Distributions under a Chapter 7 case may not occur for a longer period of time than distributions under the Plan, thereby reducing the present value of such distributions, as the Chapter 7 trustee and its advisors would need to become knowledgeable about the Debtors and their obligations. Accordingly, the Debtors believe that the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

## **2. Feasibility**

Section 1129(a)(11) of the Bankruptcy Code requires that the Bankruptcy Court find that confirmation is not likely to be followed by further financial reorganization or liquidation, beyond such reorganization or liquidation proposed by the Plan. Because the Plan provides for the sale or conveyance of substantially all of the Debtors' assets and provides a mechanism for the Debtors to fund their winddown costs and dissolve following the Effective Date, the Debtors believe that the Plan meets the feasibility requirement in section 1129(a)(11) of the Bankruptcy Code. The transactions and transfers contemplated by the Plan are normal business transactions that are likely to occur, administrative costs for the Debtors' professionals are voluntarily funded by the Senior Lenders in accordance with the approved budget, and Confirmation is not likely to be followed by any additional liquidation or reorganization. The Plan will be funded from the proceeds of Cash Collateral and from the sale proceeds which are adequate to pay the projected costs.

## **3. Acceptance by Impaired Classes**

The Bankruptcy Code requires that, except as described in the following section, each class of claims or equity interests that is impaired under a plan accept the plan. A class that is not "impaired" under a plan is deemed to have accepted the plan and, therefore, solicitation of acceptances with respect to such class is not required. A class is "impaired" unless the plan: (a) leaves unaltered the legal, equitable and contractual rights to which the claim or the equity interest entitles the holder of such claim

or equity interest; (b) cures any default and reinstates the original terms of such obligation; or (c) provides that, on the consummation date, the holder of such claim or interest receives Cash equal to the allowed amount of that claim or, with respect to any equity interest, any fixed liquidation preference to which the holder of such equity interest is entitled to any fixed price at which the debtor may redeem the security.

Section 1126(c) of the Bankruptcy Code defines acceptance of a plan by a class of impaired claims as acceptance by holders of at least two-thirds in dollar amount and more than one-half in number of claims in that class, but for that purpose counts only those who actually vote to accept or to reject the plan. Thus, a class of claims will have voted to accept the plan only if two-thirds in amount and a majority in number actually voting cast their ballots in favor of acceptance.

The Senior Lender Class 1 Claims are Impaired under the Plan, and as a result, the Senior Lenders are entitled to vote to accept or reject the Plan. Pursuant to section 1129 of the Bankruptcy Code, one Impaired class must accept the Plan for the Plan to be Confirmed. As of the date hereof, the Debtors believe that the Bank is the sole Holder of all Class 1 Senior Lender Claims (as well as the sole Holder of all Subordinated Note Claims and Fifth Avenue Loan Claims). The Bank, as the Holder of all Class 1 Senior Lender Claims, has advised the Debtors that it intends to vote to accept the Plan.

Holders of Claims in Classes 2 and 3 are Unimpaired under the Plan and, as a result, are conclusively deemed to have accepted the Plan.

Holders of Claims in Classes 4, 5, 6, 7 and 8 will not receive any recovery or retain any property under the Plan and, as a result, are conclusively deemed to have rejected the Plan. Class 7 consists primarily of the Senior Lenders' Unsecured Deficiency Claim, and the Senior Lenders support the Plan. In addition, the Holders of Class 8 Interests have agreed not to oppose confirmation of the Plan.

#### **4. Confirmation Without Acceptance by All Impaired Classes**

Section 1129(b) of the Bankruptcy Code allows a bankruptcy court to confirm a plan even if all impaired classes entitled to vote on the plan have not accepted it, provided that the plan has been accepted by at least one impaired class. Pursuant to section 1129(b) of the Bankruptcy Code, notwithstanding an impaired class's rejection or deemed rejection of the plan, such plan will be confirmed, at the plan proponent's request, in a procedure commonly known as "cram down," so long as the plan does not "discriminate unfairly" and is "fair and equitable" with respect to each non-accepting class.

#### **5. No Unfair Discrimination**

This test applies to classes of claims or equity interests that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent, but that such treatment be "fair." In general, bankruptcy courts consider whether a plan discriminates unfairly in its treatment of classes of claims of equal rank (e.g., classes of the same legal character). Bankruptcy courts will take into account a number of factors in determining whether a plan discriminates unfairly, and, accordingly, a plan could treat two classes of unsecured creditors differently without unfairly discriminating against either class. In this instance, no general unsecured creditor receives a different treatment than any other, as no property of the Debtors' estates will be distributed to Holders of General Unsecured Claims in Class 7 or any other creditors, other than Holders of Class 1 Senior Lender Claims.

## 6. Fair and Equitable Test

This test applies to classes of different priority and status (e.g., secured versus unsecured) and includes the general requirement that no class of claims receive more than 100% of the amount of the allowed claims in such class. As to the dissenting class, the test sets different standards depending on the type of claims or interests in such class:

- Secured Claims. The condition that a plan be “fair and equitable” to a non-accepting class of secured claims includes the requirements that: (a) the holders of such secured claims retain the liens securing such claims to the extent of the allowed amount of the claims, whether the property subject to the liens is retained by the debtor or transferred to another entity under the plan; and (b) each holder of a secured claim in the class receives deferred Cash payments totaling at least the allowed amount of such claim with a present value, as of the effective date of the plan, at least equivalent to the value of the secured claimant’s interest in the debtor’s property subject to the liens. If Class 1 votes to accept the Plan, there will be no dissenting secured class. In no event will Holders of Claims in Class 1 receive more than 100% of the Allowed amounts of their Claims, given the existing valuations of the Properties.
- Unsecured Claims. The condition that a plan be “fair and equitable” to a non-accepting class of unsecured claims includes the requirement that either: (a) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or (b) the holder of any claim or any equity interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or junior equity interest any property. Under the Plan, no Holder of a Claim or equity Interest junior to the general unsecured creditors will receive any distribution.
- Interests. The condition that a plan be “fair and equitable” to a non-accepting class of interests includes the requirements that either:
  - o the plan provides that each holder of an interest in that class receives or retains under the plan on account of that equity interest property of a value, as of the effective date of the plan, equal to the greater of: (a) the allowed amount of any fixed liquidation preference to which such holder is entitled; (b) any fixed redemption price to which such holder is entitled; or (c) the value of such interest; or
  - o if the class does not receive the amount required in the paragraph directly above, no class of interests junior to the non-accepting class may receive a distribution under the plan. In the Chapter 11 Cases, there is no junior class of Interests that is receiving any value.

The Debtors do not believe that the Plan discriminates unfairly against any Impaired Class and that the Plan and its proposed treatment of all Classes of Claims and Interests satisfy the requirements set forth in the Bankruptcy Code for Confirmation.

## VII. CONSUMMATION OF THE PLAN

It will be a condition to Confirmation of the Plan that all provisions, terms and conditions of the Plan are approved in the Confirmation Order unless otherwise satisfied or waived pursuant to the provisions of Article IX of the Plan. Following Confirmation, the Plan will be consummated on the

Effective Date. For a more detailed discussion of the conditions precedent to the consummation of the Plan and the impact of failure to meet such conditions, see Article IX of the Plan.

## VIII. PLAN-RELATED RISK FACTORS

PRIOR TO VOTING TO ACCEPT OR REJECT THE PLAN, ALL HOLDERS OF CLASS 1 CLAIMS SHOULD READ AND CONSIDER CAREFULLY THE RISK FACTORS SET FORTH HEREIN, AS WELL AS ALL OTHER INFORMATION SET FORTH OR OTHERWISE REFERENCED IN THIS DISCLOSURE STATEMENT. ALTHOUGH THESE RISK FACTORS ARE MANY, THESE FACTORS SHOULD NOT BE REGARDED AS CONSTITUTING THE ONLY RISKS PRESENT IN CONNECTION WITH THE DEBTORS' BUSINESS OR THE PLAN AND ITS IMPLEMENTATION.

### A. CERTAIN BANKRUPTCY LAW CONSIDERATIONS

#### 1. Parties in Interest May Object to the Debtors' Classification of Claims and Interests.

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Debtors believe that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtors created Classes of Claims and Interests, each encompassing Claims or Interests, as applicable, that are substantially similar to the other Claims and Interests in each such Class, and which reflect the statutory order of priorities under the Bankruptcy Code and applicable law. Nevertheless, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

#### 2. The Debtors May Not Be Able to Secure Confirmation of the Plan.

Even with the pre-packaged acceptance of the Plan by the Holders of the Class 1 Senior Lender Claims, there can be no absolute assurance that the Bankruptcy Court will confirm the Plan. A non-accepting Holder of an Allowed Claim or Interest might challenge, for example, either the adequacy of this Disclosure Statement, or whether the Plan meets the requirements for Confirmation. The Bankruptcy Court could decline to confirm the Plan if it found that any of the statutory requirements for Confirmation had not been met.

Confirmation is also subject to certain conditions as described in Article IX of the Plan. If the Plan is not confirmed, it is unclear what distributions, if any, Holders of Allowed Claims would receive, but it is unlikely those distributions would exceed what is contemplated to be available under the Plan if it is confirmed and becomes effective.

The Debtors, subject to the terms and conditions of the Plan, reserve the right to modify the Plan as necessary for purposes of Confirmation. The impact of such modifications might not be favorable to parties affected by the Plan. Any such modification might require a re-solicitation of votes and there is no assurance that any such revised Plan would be accepted by any impaired Class of Creditors.

#### 3. Non-consensual Confirmation of the Plan.

The Debtors believe that the Plan satisfies the requirements for non-consensual Confirmation of the Plan set forth in section 1129(b) of the Bankruptcy Code. Nevertheless, there can be no absolute assurance that the Bankruptcy Court will reach the same conclusion.

#### **4. The Debtors May Object to the Amount or Classification of a Claim or Interest.**

Except as otherwise provided in the Plan, the Debtors reserve the right to object to the amount or classification of any Claim or Interest. Any Holder of a Claim or Interest that is subject to an objection thus may not receive its expected share of the anticipated distributions under the Plan.

#### **5. Risk of Delay or Non-Occurrence of the Effective Date.**

Although the Debtors believe that the Effective Date will occur quickly after Confirmation, taking into account the closing requirements of the Fifth Avenue Purchaser and Madison Avenue Purchaser, respectively, there can be no assurance as to such timing, or as to whether the Effective Date will, in fact, occur. If the Fifth Avenue Property Closing Date or Madison Avenue Property Closing Date does not occur, or the Effective Date fails to occur, the Senior Lenders may move to lift the automatic stay to allow foreclosure on the Properties to proceed (to the extent title to either Property has not already been transferred following the Confirmation Date or otherwise), which process may eliminate the funds available for the payment of administrative, secured and priority claims.

### **B. RISK FACTORS THAT MAY AFFECT RECOVERIES UNDER THE PLAN**

#### **1. The Valuation of the Debtors May Not Be Adopted by the Bankruptcy Court.**

As described above in Section II.B and in Exhibit C hereto, the 2009 Appraisals place the value of (i) the Fifth Avenue Property at between approximately \$64,700,000 and \$75,100,000 and (ii) the Madison Avenue Property at between approximately \$55,200,000 and \$64,900,000. However, following the marketing of the Properties, the Debtors received binding bids from the Fifth Avenue Purchaser for the Fifth Avenue Property in the amount of \$93,500,000, and an offer from the Madison Avenue Purchaser for the Madison Avenue Purchaser in the amount of \$75,244,144. Therefore, the Debtors assume that the offers received from the Purchasers, which were received following extensive marketing and after numerous rounds of bidding, more accurately reflect the true, current fair market values of the Fifth Avenue Property and Madison Avenue Property, respectively. Parties in interest in the Chapter 11 Cases may oppose Confirmation by alleging that the fair market value of the Properties is higher than the outstanding obligations owed to the Senior Lenders, and that the Plan thereby improperly limits or extinguishes their rights to recoveries under the Plan. At the Confirmation Hearing, the Bankruptcy Court will be presented with evidence regarding the valuation of the Properties, based primarily on the extensive and competitive marketing and sales process followed by the Debtors prior to the Petition Date, which in the Debtors' view conclusively establishes the current value of the Properties. Based on that evidence, the Bankruptcy Court will determine the appropriate valuation for purposes of the Plan. The Debtors believe that there is no reasonable valuation of the Property that would result in a distribution to classes junior to the Senior Lenders.

#### **2. The Sale of the Properties to Third Parties May Not Be Consummated.**

If the Purchasers fail, for unforeseeable reasons, to close on the purchases of the Properties, and no other competing bidder is willing to step into their shoes on short notice, it is possible that the Properties will not be sold for Cash to a third-party purchaser. In such event, the Debtors will not receive Cash in exchange for the Property and may instead simply convey the Property, free and clear of all liens, claims, encumbrances or interests (other than permitted liens or encumbrances, if any, specified by Senior Agent), to the Senior Lenders or an Entity designated by the Senior Lenders, in satisfaction of the Debtors' obligations owed to the Senior Lenders.

### **3. The Transfer Free and Clear of Transfer Taxes May Not Be Approved.**

The Debtors believe that transfer of title to the Properties under the Plan free and clear of transfer taxes pursuant to section 1146 of the Bankruptcy Code is proper and in accordance with applicable law. See Fla. Dept. of Revenue v. Piccadilly Cafeterias, 128 S.Ct. 2326 (2008) (tax exemption provided under section 1146(a) of the Bankruptcy Code applies to post-confirmation asset transfers made pursuant to a confirmed plan of reorganization); In re New 118th, Inc., 398 B.R. 791 (Bankr. S.D.N.Y. 2009) (transfer of property that was necessary to the consummation of the plan was made "under a plan confirmed" and exempt from the payment of stamp or similar taxes under Bankruptcy Code section 1146(a)). In the event the Bankruptcy Court determines by Final Order that is not the case, the Plan can still be consummated, but the payment of transfer tax obligations would diminish recoveries by Holders of Class 1 Senior Lender Claims under the Plan.

## **C. RISKS ASSOCIATED WITH FORWARD LOOKING STATEMENTS**

### **1. The Financial Information Contained Herein Is Based on the Debtors' Books and Records and No Audit Was Performed.**

The financial information contained in this Disclosure Statement has not been, and will not be, audited. In preparing this Disclosure Statement, the Debtors relied on financial data derived from the books and records maintained primarily by their property manager that was available at the time of such preparation. Although the Debtors have used their reasonable business judgment to ensure the accuracy of the financial information provided in this Disclosure Statement, and while the Debtors believe that such financial information fairly reflects the financial condition of the Debtors, the Debtors are unable to warrant or represent that the financial information contained herein and attached hereto is without inaccuracies.

### **2. Forward Looking Statements Are Not Assured, Are Subject to Inherent Uncertainty Due to the Numerous Assumptions Upon Which They Are Based and, as a Result, Actual Results May Vary.**

This Disclosure Statement contains various forward looking statements, including projections of the value of the Properties, which projections are necessarily based on certain assumptions and estimates. Should any or all of these assumptions or estimates ultimately prove to be incorrect, the actual future value of the Properties may turn out to be different from the financial projections. Therefore, the estimates contained in this Disclosure Statement will not be considered assurances or guarantees of the amount of funds or the value that may be recovered by creditors entitled to receive distributions under the Plan. While the Debtors believe that these estimates are reasonable, there can be no assurance that they will be realized.

## **D. DISCLOSURE STATEMENT DISCLAIMER**

### **1. The Information Contained Herein Is for Soliciting Votes Only.**

The information contained in this Disclosure Statement is for purposes of soliciting votes on the Plan and may not be relied upon for any other purpose.

**2. This Disclosure Statement Contains Forward Looking Statements.**

This Disclosure Statement contains “forward looking statements.” Such statements consist of any statement other than a recitation of historical fact and can be identified by the use of forward looking terminology such as “may,” “expect,” “anticipate,” “estimate” or “continue” or the negative thereof or other variations thereon or comparable terminology. The reader is cautioned that all forward looking statements are necessarily speculative and there are certain risks and uncertainties that could cause actual events or results to differ materially from those referred to in such forward looking statements. The liquidation analysis, distribution projections and other information contained herein and attached hereto are estimates only, and the timing and amount of actual distributions to Holders of Allowed Claims may be affected by many factors that cannot be predicted. Therefore, any analyses, estimates or recovery projections may or may not turn out to be accurate.

**3. No Admissions Are Made by This Disclosure Statement.**

The information and statements contained in this Disclosure Statement will neither (a) constitute an admission of any fact or liability by any Entity (including, without limitation, the Debtors) nor (b) be deemed evidence of the tax or other legal effects of the Plan on the Debtors, Holders of Claims or Interests or any other parties in interest.

**4. No Reliance Should be Placed on any Failure to Identify Particular Litigation Claims or Projected Objections.**

No reliance should be placed on the fact that a particular litigation claim or projected objection to a particular Claim or Interest is, or is not, identified in this Disclosure Statement. The Debtors may seek to investigate, file and prosecute Claims regardless of whether the Disclosure Statement identifies such Claims or Objections to Claims.

**5. Nothing Herein Constitutes a Waiver of any Right to Object to Claims or Recover Transfers and Assets.**

Except as otherwise provided in the Plan, the vote by a Holder of a Claim for or against the Plan does not constitute a waiver or release of any Claims or rights of the Debtors (or any party in interest, as the case may be) to object to that Holder’s Claim, or recover any preferential, fraudulent or other voidable transfer of assets, regardless of whether any Claims or Causes of Action of the Debtors or their respective Estates are specifically or generally identified herein. As stated previously, other than with respect to Scott Pudalov, Alan Wildes and the other Terminated Officers, the Debtors do not believe there are any viable avoidance actions to be pursued.

**6. The Information Used Herein Was Provided by the Debtors and the Lenders, and Was Relied Upon by the Debtors’ Advisors.**

The Debtors’ advisors have relied upon information provided by the Lenders and the Debtors in connection with the preparation of this Disclosure Statement. Although counsel to and other advisors retained by the Debtors have performed certain limited due diligence and provided certain factual information in connection with the preparation of this Disclosure Statement, they have not verified independently the information contained herein.

**7. The Potential Exists for Inaccuracies, and the Debtors Have No Duty to Update.**

The statements contained in this Disclosure Statement are made by the Debtors as of the date hereof, unless otherwise specified herein, and the delivery of this Disclosure Statement after that date does not imply that there has not been a change in the information set forth herein since that date. While the Debtors have used their reasonable business judgment to ensure the accuracy of all of the information provided in this Disclosure Statement and in the Plan, the Debtors nonetheless cannot, and do not, confirm the current accuracy of all statements appearing in this Disclosure Statement. Further, although the Debtors may subsequently update the information in this Disclosure Statement, the Debtors have no affirmative duty to do so unless ordered to do so by the Bankruptcy Court.

**8. No Representations Made Outside the Disclosure Statement Are Authorized.**

No representations concerning or relating to the Debtors, the Chapter 11 Cases or the Plan are authorized by the Bankruptcy Court or the Bankruptcy Code, other than as set forth in this Disclosure Statement. Any representations or inducements made to secure your acceptance or rejection of the Plan that are other than as contained in, or included with, this Disclosure Statement, should not be relied upon by you in arriving at your decision. You should promptly report unauthorized representations or inducements to counsel to the Debtors and the United States Trustee.

**IX. ALTERNATIVES TO CONFIRMATION AND CONSUMMATION OF THE PLAN**

**A. LIQUIDATION UNDER CHAPTER 7 OF THE BANKRUPTCY CODE**

If no Chapter 11 plan is confirmed, the Chapter 11 Cases may be converted to cases under Chapter 7 of the Bankruptcy Code, in which case a Chapter 7 trustee would be appointed or elected to liquidate the Debtors' assets. A discussion of the effect that a Chapter 7 liquidation would have on creditor recoveries is set forth in Section VI herein, entitled "Confirmation of the Plan." In preparing the liquidation analysis, the Debtors assumed that all Holders of Claims will be determined to have "claims" that are entitled to share in the proceeds from any such liquidation. The Debtors believe that liquidation under Chapter 7 would result in: (1) smaller distributions to creditors than provided in the Plan because of the additional administrative expenses involved in the appointment of a trustee and attorneys and other professionals to assist such trustee; (2) no change in the determination that there is no value to be distributed to Holders of Claims or Interests in Classes 4, 5, 6, 7 or 8; (3) additional expenses and claims, some of which would be entitled to priority, which would be generated during the liquidation and from the rejection of unexpired leases and executory contracts in connection with the cessation of the Debtors' operations; (4) the failure to realize the greater value of the Property in an arms-length going concern sale; and (5) the lack of funding for administrative, secured and priority claims.

**B. FILING OF AN ALTERNATIVE PLAN OF REORGANIZATION**

If the Plan is not confirmed, the Debtors—or any other party in interest—could attempt to formulate a different plan of reorganization. However, the Debtors believe that the Plan provides for the greatest possible creditor recoveries and represents the only realistically available option to realize the current value of the assets.



**C. LIFTING OF THE AUTOMATIC STAY**

If the Plan is not confirmed, the Senior Lenders could seek to lift the automatic stay to foreclose against either or both Properties (to the extent title to either Property was not already transferred following the Confirmation Date or otherwise). In that event, it is likely that none of the benefits of the Plan would be available to the Senior Lenders, the Debtors, or other creditors.

**X. U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

THE CONFIRMATION AND EXECUTION OF THE PLAN MAY HAVE TAX CONSEQUENCES TO HOLDERS OF CLAIMS OR INTERESTS. THE DEBTORS DO NOT OFFER ANY OPINION AS TO ANY FEDERAL, STATE, LOCAL OR OTHER TAX CONSEQUENCES TO HOLDERS OF CLAIMS OR INTERESTS AS A RESULT OF CONFIRMATION OF THE PLAN OR OTHERWISE. ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR FOREIGN TAX LAWS, AND OF ANY CHANGE IN APPLICABLE TAX LAWS. THIS DISCLOSURE STATEMENT IS NOT INTENDED, AND SHOULD NOT BE CONSTRUED, AS LEGAL OR TAX ADVICE TO ANY CREDITOR OR ANY OTHER ENTITY.

## **A. GENERALLY**

The tax consequences under the Plan to Holders of Claims may vary based upon the particular circumstances of each Holder. Moreover, the tax consequences of certain aspects of the Plan are uncertain due to the lack of applicable legal precedent and the possibility of changes in the law. No ruling has been applied for or obtained from the Internal Revenue Service with respect to any of the tax aspects of the Plan and no opinion of counsel has been requested or obtained by the Debtors with respect thereto.

This discussion does not constitute tax advice or a tax opinion concerning the matters described. There can be no assurance that the Internal Revenue Service will not challenge any or all of the tax consequences described herein, or that such a challenge, if asserted, would not be upheld.

Accordingly, each Holder of a Claim is strongly urged to consult with its own independent tax advisor regarding the federal, state, local, foreign or other tax consequences of the Plan based on the taxpayer's particular circumstances.

Internal Revenue Service Circular 230 Disclosure: To ensure compliance with requirements imposed by the Internal Revenue Service, any statements contained in this Disclosure Statement (including any attachments) is not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding tax-related penalties under the Internal Revenue Code of 1986, as amended (the "Tax Code"). Statements regarding tax implications contained in this Disclosure Statement (including any attachments) are not written to support the marketing or promotion of the transactions or matters addressed by the Disclosure Statement.

## **B. U.S. FEDERAL INCOME TAX ENTITY CLASSIFICATION OF DEBTORS**

Rock Madison Avenue has elected to be classified as an association taxable as a corporation for U.S. federal income tax purposes. As a result, Rock Madison Avenue is treated for such purposes as a wholly owned subsidiary of RJV. For U.S. federal income tax purposes, Rock Holdings is classified as an association taxable as a corporation, Rock Investments is disregarded as a separate entity from Rock Holdings and Rock Fifth Avenue is disregarded as a separate entity from Rock Investments. As a result, the items of income, gain, loss and deduction of Rock Fifth Avenue are generally considered for U.S. tax purposes to be consolidated with that of Rock Holdings.

## **C. U.S. FEDERAL INCOME TAX CONSEQUENCES TO THE DEBTORS**

### **1. Cancellation of Debt Income**

Pursuant to Bankruptcy Code sections 1141(c) and 1141(d)(3), Confirmation will not discharge Claims against the Debtors. If, however, Claims are nevertheless considered discharged for U.S. federal income tax purposes, Debtors will realize cancellation of debt ("COD") income to the extent a Holder of an Allowed Claim receives consideration in respect of its Claim that is less than the amount of such Claim. COD income is excluded from a debtor's gross income when the discharge of indebtedness occurs in a proceeding under the Bankruptcy Code (the "Bankruptcy Exclusion"). As a result, the Debtors do not anticipate being subject to U.S. taxation on COD income realized as a result of the Plan.

### **2. Accrued Interest**

Any accrued but unpaid interest that is not paid will not be deductible by the Debtor. Any cancellation (for U.S. federal income tax purposes) of accrued but unpaid interest that has previously been

deducted by a Debtor may give rise to COD income. Any such COD income should, however, be excluded from the Debtor's gross income pursuant to the Bankruptcy Exception.

### **3. Gain or Loss on Sale of Assets**

The Debtors will recognize gain or loss on the sale of their respective Properties. If the sales proceeds are less than the adjusted bases in their respective properties plus other available losses and deductions, if any, the sales of the respective Properties should not result in any income tax liability for the Debtors.

## **D. U.S. FEDERAL INCOME TAX CONSEQUENCES TO NON-US HOLDERS**

### **1. Allocation of Consideration to Interest**

A portion of the consideration received by a Holder in satisfaction of an Allowed Claim pursuant to the Plan may be allocated to the portion of such Allowed Claim (if any) that represents accrued but unpaid interest. Unless otherwise proscribed under applicable statute or rule, distributions under the Plan are allocated first to the principal of the Claim, then to any accrued interest. If any portion of the distribution were required to be allocated to accrued interest, such portion would be taxable to the Holder as interest income, except to the extent the Holder has previously reported such interest as income. To the extent the Holder has previously reported such interest income, the balance of the distribution would be considered received by the Holder in respect of the principal amount of the Allowed Claim.

To the extent that any portion of the distribution is treated as interest, such portion may be subject to U.S. withholding tax of 30%, absent reduction or exemption under an applicable income tax treaty with the U.S. To qualify for reduction or exemption under an applicable income tax treaty, Holders will be required to provide the Debtors with the appropriate version of IRS Form W-8.

deducted by a Debtor may give rise to COD income. Any such COD income should, however, be excluded from the Debtor's gross income pursuant to the Bankruptcy Exception.

### **3. Gain or Loss on Sale of Assets**

The Debtors will recognize gain or loss on the sale of their respective Properties. If the sales proceeds are less than the adjusted bases in their respective properties plus other available losses and deductions, if any, the sales of the respective Properties should not result in any income tax liability for the Debtors.

## **D. U.S. FEDERAL INCOME TAX CONSEQUENCES TO NON-US HOLDERS**

### **1. Allocation of Consideration to Interest**

A portion of the consideration received by a Holder in satisfaction of an Allowed Claim pursuant to the Plan may be allocated to the portion of such Allowed Claim (if any) that represents accrued but unpaid interest. Unless otherwise proscribed under applicable statute or rule, distributions under the Plan are allocated first to the principal of the Claim, then to any accrued interest. If any portion of the distribution were required to be allocated to accrued interest, such portion would be taxable to the Holder as interest income, except to the extent the Holder has previously reported such interest as income. To the extent the Holder has previously reported such interest income, the balance of the distribution would be considered received by the Holder in respect of the principal amount of the Allowed Claim.

To the extent that any portion of the distribution is treated as interest, such portion may be subject to U.S. withholding tax of 30%, absent reduction or exemption under an applicable income tax treaty with the U.S. To qualify for reduction or exemption under an applicable income tax treaty, Holders will be required to provide the Debtors with the appropriate version of IRS Form W-8.

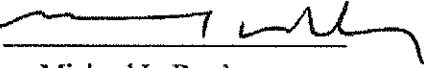
## **XI. RECOMMENDATION**

The Debtors have determined that the Plan is preferable to the alternatives described in this Disclosure Statement because it provides for a larger distribution to the Debtors' creditors than would otherwise result from a forced liquidation under Chapter 7 of the Bankruptcy Code or a foreclosure action. In addition, any other alternative to the Plan might not include the settlements that facilitate the implementation of the Plan, such as the ROFO Waiver and the LPC Standstill Agreement, the benefit of the rejection of the ROFR Agreement, or the benefits of the stamp tax exemptions, which incentivize the cooperation of the participants. Accordingly, the Debtors recommend that Holders of Class 1 Senior Lender Claims support Confirmation of the Plan and vote to accept the Plan.

Dated: September 15, 2010

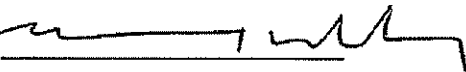
Respectfully submitted,

Rock US Holdings, Inc.,  
a Delaware corporation

By:   
Name: Michael L. Brody  
Title: Director and Senior Vice President

Date: September \_\_, 2010

Rock New York (100-1004 Fifth Avenue) LLC,  
a Delaware limited liability corporation

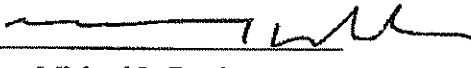
By:   
Name: Michael L. Brody  
Title: Senior Vice President

Date: September \_\_, 2010

Bayard, P.A.  
Neil B. Glassman, Esq.  
Jamie L. Edmonson, Esq.  
222 Delaware Avenue, Suite 900  
P.O. Box 25130  
Wilmington, DE 19899  
Tel: 302-429-4224  
Fax: 302-658-6395

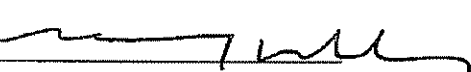
*Proposed Counsel for the Debtors and  
Debtors in Possession*

Rock US Investments LLC,  
a Delaware limited liability corporation

By:   
Name: Michael L. Brody  
Title: Senior Vice President

Date: September \_\_, 2010

Rock New York (183 Madison Avenue) LLC,  
a Delaware limited liability corporation

By:   
Name: Michael L. Brody  
Title: Senior Vice President

Date: September \_\_, 2010

Hogan Lovells (US) LLP  
Robin E. Keller, Esq.  
Scott A. Golden, Esq.  
Christopher R. Bryant, Esq.  
875 Third Avenue  
New York, NY 10022  
Tel: 212-918-3000  
Fax: 212-918-3100

*Proposed Special Corporate and Litigation  
Counsel for the Debtors and Debtors in  
Possession*