

HEARING DATE: February 23, 2012 at 10:00 a.m.
OBJECTIONS DUE: February 20, 2012 at 4:00 p.m.
(By agreement of the Movant)

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

In re:

MADISON 92ND STREET ASSOCIATES
LLC,

Debtor.

Chapter 11

Case No. 11-13917 (SMB)

**AMENDMENT TO THE MOTION FOR AN ORDER (A) SCHEDULING HEARING TO APPROVE SALE PROCEDURES, BREAK-UP FEE AND NOTICE REQUIREMENTS; (B) SCHEDULING A HEARING AUTHORIZING SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S REAL ESTATE ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS; (C) THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS; AND
(D) GRANTING OTHER RELIEF RELATED TO THE FOREGOING**

Madison 92nd Street Associates, LLC, as debtor and debtor in possession, (the “Debtor”), acting through all of its equity holders, respectfully submits this amendment to its previously filed motion (the “Amendment”) for entry of an Order substantially in the form attached hereto as Exhibit “A” granting the Motion (A) Scheduling Hearing to Approve Sale Procedures, Break-up Fee and Notice Requirements; (B) Scheduling a Hearing Authorizing Sale of Substantially All of the Debtor’s Real Estate Assets Free and Clear of Liens, Claims and Interests; (C) the Assumption and Assignment of Executory Contracts and Payment of Senior Secured Claims; and (D) Granting Other Relief Related to the Foregoing (the “Sale Motion” Docket No. 111). In support of the Amendment and the Sale Motion, the Debtor represents and sets forth as follows:¹

INTRODUCTION

1. Robert Gladstone, as co-manager of the Debtor (“Gladstone”), previously filed a proposed plan and disclosure statement on behalf of the Debtor, dated December 14, 2011 (the “Sale Plan”) which contemplates a sale of the Debtor’s Hotel pursuant to an auction process, to ensure that the estate receives the highest and best price for the Hotel (the “Sale”). In aid of the Sale Plan, On January 9, 2012, Gladstone also previously filed the Sale Motion. For the reasons

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion or in the Bidding Procedures (as defined below), as appropriate.

described below, the Debtor seeks to modify the sale and auction procedures set forth in the Sale Motion, to provide for a sale process without a stalking horse bidder at the outset and to authorize the Debtor's senior lender to credit bid its allowed secured claim at the auction.

Background

2. The Sale Motion requested relief to approve a purchase agreement that had been previously executed with CIM Group Acquisitions, LLC ("CIM"). The purchase price under the CIM purchase agreement was \$84,100,000.00, subject to higher or better bids.

3. Following the filing of the Sale Motion, CIM engaged in discussions with various constituencies in the estate concerning a possible consensual CIM purchase of the Hotel. As a result, CIM requested, and the Debtor agreed, to extend the CIM diligence period multiple times, most recently to February 14, 2012. As allowed by agreement with CIM, the Debtor was allowed to accept offers and negotiate an alternative transaction with other interested buyers. During this period, another buyer surfaced and became interested in becoming an alternate stalking horse bidder.

4. As explained below, both of these buyers have elected recently not to proceed with a stalking horse proposal. The Debtor believes that the sale process commencing at once is in the best interests of the estate constituents. Thus, while having a firm stalking horse bidder was preferable before the start of an auction process, the Debtor has come to the conclusion that the estate needs to proceed to an auction with or without a stalking horse bidder.² Thus, the

²This was discussed at the January 31, 2012 hearing on the General Electric Credit Corporation ("GECC") motion for relief from the automatic stay, when the Court inquired about this very issue.

THE COURT: What happens if this [CIM] deal falls through?

Debtor's members have come together to break an impasse that previously existed and are filing this Amendment on behalf of the Debtor. To facilitate a settlement, at the recommendation of the Examiner, the two Co-Managing Members agreed in principle on the terms of a buy-out by Gladstone of the other Co-Manager, Hotel Associates. A term sheet was signed which contemplated a buy out and allocation of proceeds between the equity owners. The up-front payment was to occur upon the CIM contract and deposit becoming firm. As CIM has elected to terminate its contract, this settlement was not able to be closed. However, the Debtor is united in its agreement to proceed with the instant sale process, about which no impasse exists, and to make prudent business decisions in the best interests of the estate. In the event a stalking horse bidder re-surfaces, the buy-out may be achievable.

5. The Debtor's efforts to move ahead with a sale have been burdened by interrelated actions of the Hotel union, Marriott International, Inc. and affiliates, and Courtyard Management Corporation ("Courtyard"), each of whose efforts have chilled the sale process.

MR. FRIEDMAN: Your Honor, if this deal --

THE COURT: Do we just go on and on and on?

MR. FRIEDMAN: No.

THE COURT: Or are you going to have an auction? They'll come in and they'll credit bid, and if somebody wants to take them out they can do it?

MR. FRIEDMAN: I believe there will be an auction here. If CIM is not at that auction, GE, maybe they will credit bid their paper and they'll get just -- they'll get the very same sale that they've been asking for.

THE COURT: So why don't you just have -- if CIM drops out, why don't you just have a plan that says you're going to have an auction on a particular day and they can come in and credit bid, and if anybody wants to come in and overbid them they can do that.

MR. FRIEDMAN: Your Honor, we could say that. There are a lot of interested bidders, including some in court today that we believe will be in that auction.

Transcript of Hearing regarding General Electric Capital's Motion for Relief from Stay at p.25. (Attached hereto as Exhibit B).

6. In early January 2012 the Debtor received a letter from counsel for Marriott International, Inc. referring to an arbitration proceeding that had been pending for weeks or months between Marriott International, Inc and the NY Hotel Trades Council (the “Union”). The letter indicated that the Union was seeking an order against Marriott International, Inc. and Courtyard based on an alleged failure by Marriott International to secure the contractual agreement of the Debtor to assume a collective bargaining agreement that was agreed to by Marriott regarding to the Hotel. In fact, the Debtor has not signed any collective bargaining agreement, or any other agreement, with the Union and it is undisputed that the “employer” under the collective bargaining agreement is Marriott, not the Debtor. It is also undisputed that all of the “employees” who are in the Union, are employees of Marriott, not the Debtor. The Union has no agreements, written or otherwise, with the Debtor.

7. The next notice received by the Debtor was on February 13, 2012, when it received notice (the “Notice”) from counsel for Marriott and the Union attaching a partial order in the arbitration proceeding to which the Debtor was not a party. The order indicated that the arbitrator had previously held that Marriott International, Inc. as the “employer”, was in breach as alleged by the Union for its failure to obtain an agreement from the Debtor to be bound by the collective bargaining agreement at issue. The Notice also stated that that a strike or picketing against Marriott International, Inc. and Courtyard would soon be permissible at the Debtor’s Hotel. On February 14, 2012, CIM sent a formal termination of its contract.

8. The Debtor requests that it be allowed to proceed with the auction and, in that process, to solicit other interested parties to become the stalking horse or bidders at the auction.

9. This Amendment is also filed to address certain issues raised by the Debtor's senior lender. To fairly balance the goals of both the Debtor and its senior lender GECC, to ensure that GECC will obtain a sale of its collateral while providing the Debtor (and its estate) the benefits of a section 363 sale under a plan, the Debtor agrees to proceed to a bankruptcy auction with or without a stalking horse bidder. To further allay GECC's concerns, to the extent there was any ambiguity in the previously filed plan and disclosure statement, GECC shall (i) shall be deemed a qualified bidder at the auction and (ii) have the right to credit bid its allowed secured claim at the auction as allowed by Bankruptcy Code § 363(k). The Debtor does not waive any right to challenge the "allowed amount" of GECC's claim. The Debtor shall not repeat all of the terms and requested relief of the Original Sale Motion, but below shall set forth those portions of the sale procedures which have been amended.

10. Finally, contemporaneously herewith, the Debtor is filing an application to retain Cushman to market and otherwise assist the Debtor with Sale and the auction process.

A. Proposed Sale Procedures

11. The general terms of the proposed sale are as follows:

- **Assets To Be Sold:** The Hotel and related assets specifically set forth in the purchase agreement (the "Sale Assets"). Specifically excluded from the Sale Assets are causes of action against third parties, including without limitation avoidance actions, actions against Courtyard, Marriott and any affiliates of such parties.
- **Closing.** The first Friday that is at least 21 days after the later of the sale approval order being entered or the Sale Plan being confirmed by the Bankruptcy Court but not later than May 11, 2012

Proposed Auction and Bidding Procedures

- a. Participation Requirements:** To participate in the bidding process or otherwise be considered for any purpose hereunder, a party interested in purchasing the Hotel (a "Potential Bidder") must, in the time set by the Court, deliver to counsel for the Debtor, c/o Olshan Grundman Frome Rosenzweig & Wolosky LLP, Park Avenue Tower, 65 East 55th Street, New York, NY 10022 (Attn: Adam H. Friedman) afriedman@olshanlaw.com the following items and documents (the "Preliminary Bid Documents"):
- i. an executed confidentiality agreement (the "Confidentiality Agreement") reasonably acceptable to the Movant;
 - ii. unless waived by the Debtor, preliminary written proof by the Potential Bidder of its financial capacity to close the proposed transaction, including, but not limited to, its ability to satisfy the standards to provide adequate assurance of future performance of any contracts and leases to be assumed and assigned under section 365 of the Bankruptcy Code, which may include current unaudited or verified financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the Sale Assets to be sold, the party that will bear liability for a breach), the adequacy of which must be deemed satisfactory to the Movant; and

Within two (2) Business Days after a Potential Bidder delivers the Preliminary Bid Documents, the Debtor, in consultation with Cushman Wakefield, shall determine and notify each Potential Bidder whether such Potential Bidder has submitted acceptable Preliminary Bid Documents. The Debtor and Cushman Wakefield may work with Potential Bidders during the two (2) Business Day period to attempt to correct or cure any deficiencies in any Preliminary Bid Documents. Only those Potential Bidders whose Preliminary Bid Documents have been deemed acceptable by the end of such period (as it may be extended by the Debtor) (each, an "Acceptable Bidder") may conduct a due diligence review with respect to the Debtor and the Sale Assets and submit bids to be evaluated for consideration as a potential Qualified Bidder (as defined below). All Acceptable Bidders shall be deemed to have consented to the core jurisdiction of the Court and have waived any right to a jury trial in connection with any disputes relating to the Auction or the sale of the Sale Assets, or both.

- b. Obtaining Due Diligence Access:** After receipt of an executed Confidentiality Agreement and notification of Acceptable Bidder status, Debtor shall provide each Acceptable Bidder reasonable due diligence information, as requested, as soon as reasonably practicable after such request. Each Qualified Bidder (as defined below) shall be deemed to acknowledge that (a) it has had an opportunity to review all pertinent documents with respect to the Debtor and the Hotel prior to making its bid, and (b) it has relied solely upon that review and upon its own investigation and inspection of the Debtor and the Hotel in making its bid. The due diligence period will end on the Bid Deadline (as defined below) and no conditions relating to the completion of due diligence shall be permitted to exist thereafter.

The Movant designates Cushman Wakefield to coordinate all reasonable requests for additional information and due diligence access.

- c. Bid Requirements:** To be entitled to participate in the Auction, an Acceptable Bidder must deliver to the Debtor's counsel by the Bid Deadline an irrevocable offer that must:
- i. be in writing and constitute a good faith, bona fide offer to acquire the Sale Assets;
 - ii. be in an amount not less than \$82,000,000 and be accompanied by a cash deposit equal to \$2,000,000 by wire transfer of immediately available funds to an account or accounts designated by the Movant (the "Good Faith Deposit");
 - iii. be accompanied by an executed purchase agreement (the "Marked Contract") substantially in the form of the CIM Purchase Agreement and the documents set forth as schedules and exhibits thereto, along with a separate redline clearly marked to reflect any and all the changes, amendments and modifications;
 - iv. identify with particularity each and every condition to closing, including any regulatory conditions and a timeline for satisfying such conditions;
 - v. identify with particularity the executory contracts and unexpired leases for which assumption and assignment is required;

- vi. not be conditioned on any contingency, including, among others, on obtaining any of the following: (a) financing, (b) shareholder, board of directors or other approval, (c) regulatory contingencies of any kind, (d) the outcome or completion of a due diligence review by the Acceptable Bidder, and/or (e) the negotiation or execution of any third-party agreements;
- vii. remain open and irrevocable until the closing of the sale;
- viii. provide the Debtor with sufficient and adequate information to demonstrate, to the satisfaction of the Debtor, that such Acceptable Bidder has the financial wherewithal and ability to consummate the proposed acquisition with readily available funds and satisfy the standards to cure, compensate and provide adequate assurance of future performance of any contracts and leases to be assumed and for which assignment is required under Section 365 of the Bankruptcy Code, including executed copies of any financing agreements, letters or commitments; and
- ix. fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such bid, and the complete terms of any such participation, along with sufficient evidence that the Acceptable Bidder is legally empowered, by power of attorney or otherwise, to complete the transactions on the terms contemplated by the parties.
- x. not include the transfer of any assets that are not Sale Assets or tangible personalty incorporated in the Hotel or require the Debtor or the estate to release any claims against any persons or entities.

The Debtor, in consultation with Cushman, shall determine which bids are deemed to be "Qualified Bids" and which Acceptable Bidders are "Qualified Bidders". The Debtor will notify the Acceptable Bidders at least two (2) days before the date of the Auction whether any bids submitted constitute Qualified Bids so as to enable Qualified Bidders to bid at the Auction. GECC shall be deemed a Qualified Bidder..

- d. **Bid Deadline:** To be entitled to be Qualified Bids, binding bids must be received by the Movant so as to be actually received no later than 9:00 a.m. (prevailing Eastern Time) on **April 12, 2012** (the "Bid Deadline").
- e. **Evaluation of Qualified Bids:** Prior to the Auction, the Debtor, in consultation with Cushman Wakefield, shall evaluate Qualified Bids and identify the Qualified Bid that is, in the Movant's judgment, the highest or otherwise best bid (the "Starting Bid"). At or prior to the date of the Auction, the Debtor shall notify the Stalking Horse Bidder and all parties who have submitted Qualified Bids as to which Qualified Bid is the Starting Bid for the Auction. In making this determination (and subsequent determinations of what is the highest or best offer during the Auction), the Movant shall have the right to consider, among other things: (a) the number, type, and nature of any changes to the Purchase Agreement requested by each Qualified Bidder, (b) the extent to which such modifications are likely to delay closing of the sale and the cost to the estate of such modifications or delay, (c) the likelihood of the Qualified Bidder's ability to close the transaction and the timing thereof. In addition, in determining the highest or best offer the Movant may discount any bids that do not contemplate the termination, rejection or cancellation of the Management Contract, (d) the amount of time required for the Qualified Bidder to consummate the transaction and (e) whether the Qualified Bid is entirely for cash or if non-cash consideration is offered.
- f. **Selection of Stalking Horse and Reserve Price:** The Movant may, after consultation with its professionals, decide to enter into a stalking horse agreement with a Qualified Bidder that will act as a stalking horse (the "Stalking Horse"). In this event, the Debtor may file a separate motion to approve a break-up fee and expense reimbursement for such Stalking Horse.

In the absence of a Stalking Horse bid, the Debtor proposes to set a reserve price at auction of \$82,000,000, which is an amount the Debtor believes is required to maximize value at the auction and fund the Sale Plan. If no bidder offers the reserve price, nothing will preclude GECC from credit bidding its allowed secured claim pursuant to Bankruptcy Code § 363(k).

- g. **Auction:** If one or more Qualified Bids are received by the Bid Deadline, then the Debtor shall conduct the Auction. The Auction shall commence on **April 16, 2012** at the offices of Olshan Grundman Frome Rosenzweig & Wolosky LLP, Park Avenue Tower, 65 East 55th Street, New York, NY 10022 at 9:00 a.m. (prevailing eastern time), or such later time or other place as the Debtor shall timely notify the Qualified Bidders.

The Auction will be conducted in accordance with the following procedures

(the "Auction Procedures"):

- i. the Qualified Bidders shall appear in person or through duly-authorized representatives at the Auction;
 - ii. only Qualified Bidders, their duly authorized representative and advisors shall be entitled to bid at the Auction;
 - iii. bidding at the Auction shall begin at the Starting Bid;
 - iv. subsequent bids at the Auction shall be made in minimum increments of \$250,000;
 - v. each Qualified Bidder will be informed of the terms of the previous bids;
 - vi. the bidding will be transcribed to ensure an accurate recording of the bidding at the Auction;
 - vii. the Auction shall be governed by such other Auction Procedures as may be announced by the Debtor, after consultation with its advisors, from time to time on the record at the Auction; provided, that any such other Auction Procedures shall not be inconsistent with these Bidding Procedures or any order of the Court in the Debtor's Chapter 11 Case; and
 - viii. absent irregularities in the conduct of the Auction, neither the Bankruptcy Court nor the Debtor will consider bids after the Auction is closed.
- h. Acceptance of the Successful Bid:** Upon the conclusion of the Auction, Debtor, in the exercise of reasonable, good-faith business judgment, and after consulting with its advisors shall identify the highest or otherwise best bid(s) (the "Successful Bid"). The Qualified Bidder having submitted the Successful Bid will be deemed the "Successful Bidder." The Successful Bidder and the Debtor shall, as soon as commercially reasonable and practicable, complete and sign all agreements, contracts, instruments or other documents evidencing and containing the terms upon which such Successful Bid was made.
- i. Sale Hearing:** A hearing to consider approval of the sale of the Sale Assets to the Successful Bidder (the "Sale Hearing") and seek entry of a Sale Order

on or about **April 20, 2012 at 10:00 a.m.** (prevailing eastern time), or as soon thereafter as counsel may be heard, before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge.

The Sale Hearing may be continued to a later date by the Debtor by sending notice to the notice parties and all prospective bidders prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party.

- j. Designation of Back-Up Bidder:** Upon the conclusion of the Auction and the selection of the Successful Bidder, the Debtor shall have the option of selecting one (1) Qualified Bid as the next highest or otherwise best Qualified Bid as back-up bid (the "Back-Up Bid" and the party submitting the Back-Up Bid, the "Back-Up Bidder"). The Back-Up Bid shall remain open until the first business day following the closing of the sale of the Sale Assets to the Successful Bidder. The Debtor may designate the Back-Up Bidder to close the sale pursuant to its Back-Up Bid in the event the Successful Bidder fails to close without further Court approval, and the Back-Up Bidder will be required to close the sale within seven (7) days after such designation by the Debtor.
- k. Return of Good Faith Deposit:** The Good Faith Deposit of the Successful Bidder shall, upon consummation of the purchase of the Sale Assets, be credited to the purchase price paid for the Assets. If the Successful Bidder fails to consummate the purchase of the Sale Assets for any reason other than the failure of the Seller to perform its obligations under the Overbid Contract, then the Good Faith Deposit shall be forfeited to, and be retained irrevocably by, the estate.

All Good Faith Deposits, other than those of the Successful Bidder and any Back-Up Bidder will be returned within three (3) business days after the date of entry of the Sale Order. The Good Faith Deposit of the Back-Up Bidder, if any, will be held pending the close of the sale to the Successful Bidder or the Back-Up Bidder and returned within three (3) business days thereafter or such earlier date as ordered by the Bankruptcy Court.

- l. Reservation of Rights to Modify Bidding Procedures:** The Debtor reserves the right, following consultation with advisors to modify these Bidding Procedures in any manner that is not inconsistent with the Bidding Procedures Order and that will best promote the goals of the bidding process and to impose, at or prior to the Auction, additional customary terms and conditions on the Sale of the Sale Assets, including, without limitation, modifying the requirements for a Qualified Bid, extending the deadlines set

forth in these Bidding Procedures, adjourning the Auction at the Auction and/or adjourning the Sale Hearing in open court without further notice, canceling the Auction, and rejecting any or all Qualified Bids if, in the Debtor's business judgment, following consultation with its advisors the Debtor determines that such Qualified Bid is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or any related rules or the terms set forth herein, or (iii) contrary to the best interests of the Debtor. Notwithstanding the foregoing, the provisions of this paragraph shall not operate or be construed to permit the Debtor to accept any Qualified Bid that (x) does not require a bid deposit of at least the amount of the Good Faith Deposit be placed in a protected, segregated account, or (y) does not equal or exceed the Initial Overbid.

12. Acceptance of a bid shall, in all respects, be subject to confirmation of the Sale Plan and the entry of an order by the Bankruptcy Court, which, among other things, authorizes the Debtor to consummate the sale to the successful bidder. The Debtor, reserves the right (subject to Court approval) to (i) determine in its discretion which offer, if any, for the Assets is the highest and best offer and (ii) reject at any time prior to entry of an order of the Court approving an offer, any offer which the Debtor, in its discretion, deems to be (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules or the terms and conditions of sale set forth herein, or (c) contrary to the best interests of the Debtor and its estate. The Debtor reserves the right to seek the Court's approval of addition terms and conditions at the Sale Approval Hearing.

B. Good Faith -- Sections 363(m) and (n) Protections

13. The Debtor and the winning bidder may seek findings that the transactions contemplated by the Sale Agreement are (a) subject to the protections afforded to "good faith" purchasers under § 363(m) of the Bankruptcy Code and (b) not subject to avoidance under § 363(n) of the Bankruptcy Code. Section 363(m) of the Bankruptcy Code provides for certain

protections to be provided to good faith purchasers from debtors pursuant to Section 363. In this regard, Section 363(m) provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). In addition, section 363(n) of the Bankruptcy Code provides, in pertinent part, that:

The trustee may avoid a sale under this section if the sale price was controlled by an agreement among potential bidders at such sale, or may recover from a party to such agreement any amount by which the value of the property sold exceeds the price at which such sale was consummated, and may recover any costs, attorneys' fees, or expenses incurred in avoiding such sale or recovering such amount . . . [including] punitive damages

11 U.S.C. § 363(n). While the Bankruptcy Code does not define "good faith," the Second Circuit has held that:

[g]ood faith of a purchaser is shown by the integrity of his conduct during the course of the sale proceedings . . . A purchaser's good faith is lost by "fraud, collusion between the purchaser and other bidders or the trustee, or any attempt to take grossly unfair advantage of other bidders." *Licensing by Paola v. Sinatra (In re Gucci)*, 126 F.3d 380, 390 (2d Cir. 1997) (citations omitted).

14. The Debtor submits that any sale will be an arm's length transaction, in which the Debtor and the purchaser will have at all times acted in good faith under applicable legal standards.

15. The Debtor will, at the sale approval hearing, request that the winning bidder be found to be a “good faith” purchaser within the meaning of Bankruptcy Code §363(m) and that the transaction is be entitled to the protections of §§363(m) and (n) of the Bankruptcy Code.

WHEREFORE, the Debtor respectfully requests that this Court enter appropriate orders granting and authorizing the relief requested in this Amendment and in the Sale Motion; and granting the Debtor such other and further relief as this Court deems just and appropriate under the circumstances.

Dated: New, York, New York
February 16, 2012

**OLSHAN GRUNDMAN FROME
ROSENZWEIG & WOLOSKY LLP**

By: /s/ Adam Friedman

Adam H. Friedman

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Proposed General Counsel for the Debtor

EXHIBIT A TO THE SALE PROCEDURES MOTION

Bidding Procedures Order

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

In re:

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Chapter 11

MADISON 92ND STREET ASSOCIATES, LLC

Case No. 11-13917 (SMB)

Debtor.

**ORDER (A) APPROVING SALE PROCEDURES AND NOTICE REQUIREMENTS; (B) SCHEDULING A HEARING AUTHORIZING SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S REAL ESTATE ASSETS FREE AND CLEAR OF LIENS, CLAIMS AND INTERESTS; (C) THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS; AND
(D) GRANTING OTHER RELIEF RELATED TO THE FOREGOING**

Upon the Sale Motion¹, as amended, of the above-captioned debtor-in-possession (the “Debtor”), for entry of an Order (A) Scheduling Hearing to Approve Sale Procedures, Break-Up Fee and Notice Requirements, (B) Scheduling a Hearing Authorizing Sale of Substantially All of the Estate’s Real Estate Assets Free and Clear of Liens, Claims and Interests; (C) the Assumption and Assignment of Executory Contracts, and (D) Granting Other Relief Related to the Foregoing; and having considered any and all responses and objections to the Sale Motion; and the Court having determined that, to the extent set forth herein, the relief requested in the Sale Motion is in the best interests of the Debtor, its estate and creditors and other parties in interest; due and appropriate notice of the Sale Motion and the relief requested therein was provided by the Movant, on the following parties: (a) the Office of the United States Trustee; (b) all creditors of the Debtor and parties who filed a notice of appearance; (c) all parties who have expressed an interest in acquiring all or a part of the assets; (d) all entities (or counsel therefor) known to have asserted any lien, claim, charge or encumbrance in or on the assets; and (e) all

Third Parties to the Unexpired Leases and Executory Contracts (collectively, the “Bidding Procedure Notice Parties”); and the remainder of the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

FOUND, CONCLUDED AND DECLARED THAT:²

A. This Court has jurisdiction over this matter and over the property of the Debtor and its bankruptcy estates pursuant to 28 U.S.C. §§ 157(a) and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O).

B. Notice of the hearing on the Sale Motion and proposed entry of this Order has been provided to the Bidding Procedure Notice Parties. Under the circumstances, and in light of the relief requested in the Sale Motion, requisite notice of the Sale Motion and the relief requested thereby and this Order has been provided in accordance with Bankruptcy Rules 4001(c) and (d) and 9014, which notice is sufficient for all purposes under the Bankruptcy Code, including, without limitation, section 102(1) of the Bankruptcy Code, and no further notice of, or hearing on, the Sale Motion or this Order is necessary or required.

C. The Movant’s proposed notice of the Auction and Sale, the Bidding Procedures, in substantially the form of the Auction and Sale Notice attached hereto as Exhibit 1, are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of this Order, the Sale, the Auction, the assumption and assignment of the Assumed Contracts, the Purchase Agreement and the Bidding Procedures to be employed in connection therewith.

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Sale Motion or in the Bidding Procedures (as defined below), as appropriate.

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

D. The Movant has articulated good and sufficient reasons for this Court to grant the relief requested in the Motion regarding the Bidding Procedures. The Bidding Procedures were established in good faith by the Debtor and are reasonable and appropriate.

E. The entry of this Order is in the best interests of the Debtor, its estate and creditors and other parties in interest; and it is therefore

ORDERED, ADJUDGED AND DECREED THAT:

1. The relief requested in the Motion is granted to the extent set forth herein.
2. The Bidding Procedures attached hereto as Exhibit 2 are hereby approved and fully incorporated into this Order, and shall apply with respect to the proposed sale of the asset. The Debtor is authorized to take any and all actions necessary to implement the Bidding Procedures.
3. All responses or objections to the relief requested in the Motion that have not been withdrawn, waived or settled as announced to the Court at the hearing on the Motion or by stipulation filed with the Court are overruled.
4. A Potential Bidder that desires to make a Bid shall deliver written copies of its bid to the Debtor's proposed special counsel, Olshan Grundman Frome Rosenzweig & Wolosky LLP (Attn: Adam H. Friedman, Esq.) not later than 9:00 a.m. (Eastern Time) on [April 12], 2012 (the "Bid Deadline") and shall comply with the requirements set forth in the Bidding Procedures for making such bid.
5. The Debtor shall have the right to reject any and all bids that it believes in its reasonable discretion do not comply with the Bidding Procedures.
6. As further described in the Bidding Procedures, if a Qualified Bid is timely received, the Auction will be held on [April 16], 2012, and the Movant shall notify the

Bidding Notice Parties and all Potential Bidders which have submitted a Qualified Bid and expressed their intent to participate in the Auction as to the time and place of the Auction designated by the Movant.

7. Not later than three (3) business days after entry of this Order, the Debtor will serve the Order and the Auction and Sale Notice (Exhibit 1 hereto), to be sent by first-class mail postage prepaid to: (a) the Office of the United States Trustee; (b) counsel to Courtyard and Marriott; (c) counsel to GECC; (d) the Debtor's creditors; (e) any party which, to the best of the Movants and the Debtor's knowledge, information and belief, has, in the past year, expressed in writing to the Debtor an interest in buying the Hotel and which the Movant reasonably and in good faith determine potentially have the financial wherewithal to effectuate the transactions contemplated by the Motion; (f) all parties which, to the best of the Debtor's knowledge, information and belief, have asserted a lien or security interest against any of the assets; (g) all taxing authorities or recording offices which have a reasonably known interest in relief requested in the Motion; and (h) all parties requesting notice.

8. The Debtor shall provide notice to all parties to any Assumed Contracts of the identity of the Successful Bidder by sending overnight notice to such parties within twenty four hours after the selection of the Successful Bidder. Unless the non-Debtor party to an Assumed Contract files a Cure Objection to the Motion asserting a Disputed Cure Amount, on or before the Cure Objection Deadline, such party to the subject Assumed Contract shall be forever barred from asserting a Cure Amount different from that set forth on the Cure Schedule and from asserting any additional cure or other amounts with respect to its Assumed Contract relating to the period prior to assignment.

9. Any Cure Amounts, or Disputed Cure Amount that is fixed by this Court or otherwise agreed by the Movant (as the case may be, the "Resolved Cure Amount") shall be deemed to include any such other pecuniary or other losses, if any, under the respect Assumed Contract. Consequently, payment of any Cure Amounts and/or Resolved Cure Amount, as the case may be, as determined by this Court or otherwise agreed to by the Movant will compensate the appropriate party for any such other loss.

10. If a Cure Objection is timely filed, such Cure Objection must set forth (i) the basis for the objection set forth therein, (ii) with specificity, the amount the party asserts as the appropriate Cure Amount, and (iii) appropriate documentation in support of its proposed Cure Amount. In the event that the Movant and the non-Debtor party to the Assumed Contract cannot consensually resolve the Cure Objection, a hearing on the Cure Objection shall be held at the Sale Hearing or such other date as the Court designates, provided that if the subject Assumed Contract is assumed and assigned, the Cure Amount asserted by the objecting party (or such lower amount as may be fixed by this Court) shall be deposited and held in a segregated account by the Debtor, pending further order of this Court or mutual agreement of the parties. Non-debtor parties to such Assumed Contracts shall have until the Sale Hearing to raise objections to the Cure Amount or to the sale to the Successful Bidder including, without limitation, to the timing and sufficiency of the adequate assurance of future performance, including as to the timing of adequate assurance of future performance.

11. The Debtor's decision to assume and assign an Assumed Contract is subject to Court approval and consummation of the Sale. Absent consummation of the Sale, each of the Assumed Contracts shall neither be deemed assumed nor assigned and shall in all respects be subject to further administration under the Bankruptcy Code.

12. The Restaurant and Retail Store Lease between 92nd Street Leasing Company LLC and Riverside Apartment Investors LLC ("RAI"), as successor to 92 & First Residential Tower LLC, is included in the assets to be conveyed as part of the Sale. But, because 92nd Street Leasing Company LLC is a non-debtor affiliate of the Seller Debtor, not a debtor, the Restaurant and Retail Store Lease is not and cannot be deemed an Assumed Contract hereunder or under any contract for the Sale. Therefore, nothing contained in this Order, in any Sale contract or in any order approving same or the transactions contemplated thereby shall be construed as permitting the Debtor to assume or assign the Restaurant and Retail Store Lease under the Bankruptcy Code or otherwise.

13. Any assignment of the Restaurant and Retail Store Lease shall be made only in accordance with the terms of the Restaurant and Retail Store Lease and applicable non-bankruptcy law. Nothing contained herein, in the a Sale contract or in any order approving same or the transactions contemplated thereby shall be construed to alter, amend or impact the rights, remedies, powers or privileges of RAI or increase the liabilities or obligations of RAI under the Restaurant and Retail Store Lease or under applicable non-bankruptcy law in connection with any such assignment, all of which rights are expressly preserved.

14. Except to the extent otherwise provided in the purchase and sale agreement with the Successful Bidder, subject to any Cure Amount payments to which the Assignee may be liable, the assignee of any Assumed Contracts will not be subject to any liability to the non-Debtor counterparty to the Assumed Contracts that accrued or arose before the closing date of the Sale and the Debtor shall be relieved of all liability accruing or arising thereafter pursuant to section 365(k) of the Bankruptcy Code.

15. Objections, if any, to the Sale and relief related thereto: (a) be in writing; (b) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules; (c) be filed with the Clerk of the United States Bankruptcy Court for the Southern District of New York, on or before 4:00 p.m. (Eastern Time) on [April 13], 2012 and (d) be served so as to be received no later than 4:00 p.m. (Eastern Time) on the same day upon the undersigned counsel to the Movant, provided, however, , the non-Debtor parties to such Assumed Contracts shall have until the Sale Hearing to raise objections to the sale to the Successful Bidder including, without limitation, to the timing and sufficiency of the adequate assurance of future performance, including as to the timing of adequate assurance of future performance.

16. The Sale Hearing shall be held before this Court on [April 20], 2012 at ___:___0 __.m. (Eastern Time). The Sale Hearing may be adjourned, from time to time, without further notice to creditors or other parties in interest other than by announcement of said adjournment before this Court or on this Court's calendar on the date scheduled for said hearing.

17. This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof.

18. As provided by Bankruptcy Rules 6004(h) and 6006(d), this Order shall not be stayed for fourteen (14) days after the entry thereof and shall be effective and enforceable immediately upon its entry on this Court's docket.

19. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

20. This Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order and the Bidding Procedures.

Dated: _____, 2012
New York, New York

United States Bankruptcy Judge

EXHIBIT 1 TO SALE PROCEDURES ORDER

Auction and Sale Notice

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

In re: :
: Chapter 11
: Case No.
MADISON 92ND STREET ASSOCIATES, LLC :
: :
Debtor. :
:

AUCTION AND SALE NOTICE

PLEASE TAKE NOTICE that the above-captioned debtor (the “Debtor”) filed the Motion For An Order (A) Scheduling Hearing To Approve Sale Procedures, Break-Up Fee And Notice Requirements, (B) Scheduling A Hearing Authorizing Sale Of Substantially All Of The Debtor’s Real Estate Assets Free And Clear Of Liens, Claims And Interests; (C) The Assumption And Assignment Of Executory Contracts, And (D) Granting Other Relief Related To The Foregoing, as amended [Docket Nos. 111 & _____] (the “Bid Procedures Motion”)¹ with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). All parties that may be interested in submitting a bid for the assets or any portion thereof or taking part in the Auction (as defined below) must read carefully the Bid Procedures as outlined in the Bidding Procedures Order (as defined below).

Only those parties that submit Qualified Bids may participate in the Auction (as defined below); if you are interested in determining how to submit such a Qualified Bid, you must comply with the terms of the Bid Procedures as referenced in the Order approving the Bid Procedures Motion [Docket No. _____] (the “Bidding Procedures Order”). Any party in interest wishing to receive a complete set of the Purchase Agreement, the Bid Procedures Motion and the Bidding Procedures Order may do so free of charge upon request of Debtor’s proposed counsel, Olshan Grundman Frome Rosenzweig & Wolosky LLP (Attn: Adam H. Friedman, Esq.).

A Potential Bidder that desires to make a Bid shall deliver written copies of its bid to counsel, Olshan Grundman Frome Rosenzweig & Wolosky LLP (Attn: Adam H. Friedman, Esq.) not later than 4:00 p.m. (Eastern Time) on _____, 2012 (the “**Bid Deadline**”) and shall comply with the requirements set forth in the Bidding Procedures for making such bid.

If a Qualified Bid other than the Stalking Horse Bidder’s Bid is timely received, the Auction will be held on _____, 2012 at ____:____.m (Eastern Time), and the Movant shall notify the Bidding Notice Parties and all Potential Bidders which have submitted a Qualified Bid and expressed their intent to participate in the Auction as to the time and place of the Auction designated by the Movant not later than 4:00 p.m. (Eastern Time) on _____, 2012.

¹ All capitalized terms not herein defined shall have the same meaning ascribed to them as in the Bid Procedures Motion.

Only a Potential Bidder which has submitted a Qualified Bid of at least \$82,000,000 will be eligible to participate at the Auction. Only the authorized representative of each of the Potential Bidders and the Movant shall be permitted to participate in the Auction. The Auction will be conducted openly and all creditors will be permitted to attend. At the Auction, Potential Bidders will be permitted to increase their bids. The bidding at the Auction shall begin initially with the Qualified Bid that is, in the Movant's judgment, the highest or otherwise best bid (the "Starting Bid") disclosed to all Potential Bidders prior to commencement of the Auction, and continue in minimum increments of at least \$250,000. The highest, best or otherwise financially superior offer for the assets shall be determined by the Movant in its discretion, or as determined by the Bankruptcy Court in the event of a dispute.

At the Sale Hearing, the Movant will present the Successful Bid to the Bankruptcy Court for approval. The Debtor will sell the assets or any portion thereof to the Successful Bidder, or to the Stalking Horse Bidder in accordance with the Purchase Agreement if a higher or otherwise better Qualified Bid is not received and accepted as the Successful Bid. If the Successful Bidder fails to consummate an approved Sale because of a breach or a failure to perform on the part of such Successful Bidder, the Debtor shall be authorized, but not required, to deem the Back-up Bid, as disclosed at the Sale Hearing, the Successful Bid, and the Debtor shall be authorized, but not required, to consummate the sale with the Potential Bidder submitting such Bid without further order of the Bankruptcy Court.

If you seek to object to the sale of the assets or any portion thereof, you must comply with the terms for making such objections as set forth in the Bid Procedures Motion and the Bidding Procedures Order. Such Objections must be filed with the Bankruptcy Court for the Southern District of New York and served on the undersigned no later than 4:00 p.m. (Eastern Time) on _____, 2012. If any party fails to timely file and serve an objection in accordance with the Bidding Procedures Order, the Bankruptcy Court may disregard such objection.

Dated: New York, New York
_____, 2012

**OLSHAN GRUNDMAN FROME
ROSENZWEIG & WOLOSKY LLP**

Adam H. Friedman
Eric Goldberg
Fredrick J. Levy
Park Avenue Tower
65 East 55th Street
New York, New York 10022
Telephone: 12. 451.2216
Facsimile: 212. 451.2222

**GOLDBERG WEPRIN FINKEL
GOLDSTEIN LLP**

Kevin J. Nash
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212.221.5700

Proposed General Counsel for the Debtor

EXHIBIT 2 TO SALE PROCEDURES ORDER

Bid Procedures

**BIDDING PROCEDURES FOR HOTEL ASSETS OF
MADISON 92ND STREET ASSOCIATES, LLC**

General Terms Of The Proposed Sale

- **Assets To Be Sold:** The Hotel and related assets specifically set forth in the purchase agreement with the Successful Bidder (the "Sale Assets"). Specifically excluded from the Sale Assets are causes of action against third parties, including without limitation avoidance actions, actions against Courtyard, Marriott and any affiliates of such parties.

- **Closing**, the first Friday that is at least 21 days after the later of the sale approval order being entered or the Sale Plan being confirmed by the Bankruptcy Court but not later than May 11, 2012

Proposed Auction and Bidding Procedures

- a. **Participation Requirements:** To participate in the bidding process or otherwise be considered for any purpose hereunder, a party interested in purchasing the Hotel (a "Potential Bidder") must, in the time set by the Court, deliver to counsel for the Debtor, c/o Olshan Grundman Frome Rosenzweig & Wolosky LLP, Park Avenue Tower, 65 East 55th Street, New York, NY 10022 (Attn: Adam H. Friedman) afriedman@olshanlaw.com the following items and documents (the "Preliminary Bid Documents"):
 - i. an executed confidentiality agreement (the "Confidentiality Agreement") reasonably acceptable to the Movant;

 - ii. unless waived by the Debtor, preliminary written proof by the Potential Bidder of its financial capacity to close the proposed transaction, including, but not limited to, its ability to satisfy the standards to provide adequate assurance of future performance of any contracts and leases to be assumed and assigned under section 365 of the Bankruptcy Code, which may include current unaudited or verified financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the Sale Assets to be sold, the party that will bear liability for a breach), the adequacy of which must be deemed satisfactory to the Movant; and

Within two (2) Business Days after a Potential Bidder delivers the Preliminary Bid Documents, the Debtor, in consultation with Cushman Wakefield, shall determine and notify each Potential Bidder whether such Potential Bidder has submitted acceptable

Preliminary Bid Documents. The Debtor and Cushman Wakefield may work with Potential Bidders during the two (2) Business Day period to attempt to correct or cure any deficiencies in any Preliminary Bid Documents. Only those Potential Bidders whose Preliminary Bid Documents have been deemed acceptable by the end of such period (as it may be extended by the Debtor) (each, an "Acceptable Bidder") may conduct a due diligence review with respect to the Debtor and the Sale Assets and submit bids to be evaluated for consideration as a potential Qualified Bidder (as defined below). All Acceptable Bidders shall be deemed to have consented to the core jurisdiction of the Court and have waived any right to a jury trial in connection with any disputes relating to the Auction or the sale of the Sale Assets, or both.

- b. **Obtaining Due Diligence Access:** After receipt of an executed Confidentiality Agreement and notification of Acceptable Bidder status, Debtor shall provide each Acceptable Bidder reasonable due diligence information, as requested, as soon as reasonably practicable after such request. Each Qualified Bidder (as defined below) shall be deemed to acknowledge that (a) it has had an opportunity to review all pertinent documents with respect to the Debtor and the Hotel prior to making its bid, and (b) it has relied solely upon that review and upon its own investigation and inspection of the Debtor and the Hotel in making its bid. The due diligence period will end on the Bid Deadline (as defined below) and no conditions relating to the completion of due diligence shall be permitted to exist thereafter.

The Movant designates Cushman Wakefield to coordinate all reasonable requests for additional information and due diligence access.

- c. **Bid Requirements:** To be entitled to participate in the Auction, an Acceptable Bidder must deliver to the Debtor's counsel by the Bid Deadline an irrevocable offer that must:
- i. be in writing and constitute a good faith, bona fide offer to acquire the Sale Assets;
 - ii. be in an amount not less than \$82,000,000 and be accompanied by a cash deposit equal to \$2,000,000 by wire transfer of immediately available funds to an account or accounts designated by the Movant (the "Good Faith Deposit");
 - iii. be accompanied by an executed purchase agreement (the "Marked Contract") substantially in the form of the CIM Purchase Agreement and the documents set forth as schedules and exhibits thereto, along with a separate redline clearly marked to reflect any and all the changes, amendments and modifications;
 - iv. identify with particularity each and every condition to closing, including any regulatory conditions and a timeline for satisfying such conditions;

- v. identify with particularity the executory contracts and unexpired leases for which assumption and assignment is required;
- vi. not be conditioned on any contingency, including, among others, on obtaining any of the following: (a) financing, (b) shareholder, board of directors or other approval, (c) regulatory contingencies of any kind, (d) the outcome or completion of a due diligence review by the Acceptable Bidder, and/or (e) the negotiation or execution of any third-party agreements;;
- vii. remain open and irrevocable until the closing of the sale;
- viii. provide the Debtor with sufficient and adequate information to demonstrate, to the satisfaction of the Debtor, that such Acceptable Bidder has the financial wherewithal and ability to consummate the proposed acquisition with readily available funds and satisfy the standards to cure, compensate and provide adequate assurance of future performance of any contracts and leases to be assumed and for which assignment is required under Section 365 of the Bankruptcy Code, including executed copies of any financing agreements, letters or commitments; and
- ix. fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such bid, and the complete terms of any such participation, along with sufficient evidence that the Acceptable Bidder is legally empowered, by power of attorney or otherwise, to complete the transactions on the terms contemplated by the parties.
- x. not include the transfer of any assets that are not Sale Assets or tangible personalty incorporated in the Hotel or require the Debtor or the estate to release any claims against any persons or entities.

The Debtor, in consultation with Cushman, shall determine which bids are deemed to be "Qualified Bids" and which Acceptable Bidders are "Qualified Bidders". The Debtor will notify the Acceptable Bidders at least two (2) days before the date of the Auction whether any bids submitted constitute Qualified Bids so as to enable Qualified Bidders to bid at the Auction. GECC shall be deemed a Qualified Bidder.

- d. **Bid Deadline:** To be entitled to be Qualified Bids, binding bids must be received by the Movant so as to be actually received no later than 9:00 a.m. (prevailing Eastern Time) on April 12, 2012 (the "Bid Deadline").
- e. **Evaluation of Qualified Bids:** Prior to the Auction, the Debtor, in consultation with Cushman, shall evaluate Qualified Bids and identify the Qualified Bid that is, in the Movant's judgment, the highest or otherwise best bid (the "Starting

Bid"). At or prior to the date of the Auction, the Debtor shall notify the Stalking Horse Bidder and all parties who have submitted Qualified Bids as to which Qualified Bid is the Starting Bid for the Auction. In making this determination (and subsequent determinations of what is the highest or best offer during the Auction), the Movant shall have the right to consider, among other things: (a) the number, type, and nature of any changes to the Purchase Agreement requested by each Qualified Bidder, (b) the extent to which such modifications are likely to delay closing of the sale and the cost to the estate of such modifications or delay, (c) the likelihood of the Qualified Bidder's ability to close the transaction and the timing thereof. In addition, in determining the highest or best offer the Movant may discount any bids that do not contemplate the termination, rejection or cancellation of the Management Contract, (d) the amount of time required for the Qualified Bidder to consummate the transaction and (e) whether the Qualified Bid is entirely for cash or if non-cash consideration is offered.

- f. **Selection of Stalking Horse and Minimum Price:** The Movant may, after consultation with its professionals, decide to enter into a stalking horse agreement with a Qualified Bidder that will act as a stalking horse (the "Stalking Horse"). In this event, the Debtor may file a separate motion to approve a break-up fee and expense reimbursement for such Stalking Horse.

In the absence of a Stalking Horse bid, the Debtor proposes to set a reserve price at auction of \$82,000,000, which is an amount the Debtor believes is required to maximize value at the auction and fund the Sale Plan. If no bidder offers the reserve price, nothing will preclude GECC from credit bidding its allowed secured claim pursuant to Bankruptcy Code section 363(k).

- g. **Auction:** If one or more Qualified Bids are received by the Bid Deadline, then the Debtor shall conduct the Auction. The Auction shall commence on **April 16, 2012** at the offices of Olshan Grundman Frome Rosenzweig & Wolosky LLP, Park Avenue Tower, 65 East 55th Street, New York, NY 10022 at 9:00 a.m. (prevailing eastern time), or such later time or other place as the Debtor shall timely notify the Qualified Bidders.

The Auction will be conducted in accordance with the following procedures (the "Auction Procedures"):

- i. the Qualified Bidders shall appear in person or through duly-authorized representatives at the Auction;
- ii. only Qualified Bidders, their duly authorized representative and advisors shall be entitled to bid at the Auction;
- iii. bidding at the Auction shall begin at the Starting Bid;
- iv. subsequent bids at the Auction shall be made in minimum increments of \$250,000;

- v. each Qualified Bidder will be informed of the terms of the previous bids;
 - vi. the bidding will be transcribed to ensure an accurate recording of the bidding at the Auction;
 - vii. the Auction shall be governed by such other Auction Procedures as may be announced by the Debtor, after consultation with its advisors, from time to time on the record at the Auction; provided, that any such other Auction Procedures shall not be inconsistent with these Bidding Procedures or any order of the Court in the Debtor's Chapter 11 Case; and
 - viii. absent irregularities in the conduct of the Auction, neither the Bankruptcy Court nor the Debtor will consider bids after the Auction is closed.
- h. **Acceptance of the Successful Bid**: Upon the conclusion of the Auction, Debtor, in the exercise of reasonable, good-faith business judgment, and after consulting with its advisors shall identify the highest or otherwise best bid(s) (the "Successful Bid"). The Qualified Bidder having submitted the Successful Bid will be deemed the "Successful Bidder." The Successful Bidder and the Debtor shall, as soon as commercially reasonable and practicable, complete and sign all agreements, contracts, instruments or other documents evidencing and containing the terms upon which such Successful Bid was made.
- i. **Sale Hearing**: A hearing to consider approval of the sale of the Sale Assets to the Successful Bidder (the "Sale Hearing") and seek entry of a Sale Order on or about **April 20, 2012 at 10:00 a.m.** (prevailing eastern time), or as soon thereafter as counsel may be heard, before the Honorable Stuart M. Bernstein, United States Bankruptcy Judge.
- The Sale Hearing may be continued to a later date by the Debtor by sending notice to the notice parties and all prospective bidders prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party.
- j. **Designation of Back-Up Bidder**: Upon the conclusion of the Auction and the selection of the Successful Bidder, the Debtor shall have the option of selecting one (1) Qualified Bid as the next highest or otherwise best Qualified Bid as back-up bid (the "Back-Up Bid" and the party submitting the Back-Up Bid, the "Back-Up Bidder"). The Back-Up Bid shall remain open until the first business day following the closing of the sale of the Sale Assets to the Successful Bidder. The Debtor may designate the Back-Up Bidder to close the sale pursuant to its Back-Up Bid in the event the Successful Bidder fails to close without further Court approval, and the Back-Up Bidder will be required to close the sale within seven (7) days after such designation by the Debtor.

- k. **Return of Good Faith Deposit:** The Good Faith Deposit of the Successful Bidder shall, upon consummation of the purchase of the Sale Assets, be credited to the purchase price paid for the Assets. If the Successful Bidder fails to consummate the purchase of the Sale Assets for any reason other than the failure of the Seller to perform its obligations under the Overbid Contract, then the Good Faith Deposit shall be forfeited to, and be retained irrevocably by, the estate.

All Good Faith Deposits, other than those of the Successful Bidder and any Back-Up Bidder will be returned within three (3) business days after the date of entry of the Sale Order. The Good Faith Deposit of the Back-Up Bidder, if any, will be held pending the close of the sale to the Successful Bidder or the Back-Up Bidder and returned within three (3) business days thereafter or such earlier date as ordered by the Bankruptcy Court.

- l. **Reservation of Rights to Modify Bidding Procedures:** The Debtor reserves the right, following consultation with advisors to modify these Bidding Procedures in any manner that is not inconsistent with the Bidding Procedures Order and that will best promote the goals of the bidding process and to impose, at or prior to the Auction, additional customary terms and conditions on the Sale of the Sale Assets, including, without limitation, modifying the requirements for a Qualified Bid, extending the deadlines set forth in these Bidding Procedures, adjourning the Auction at the Auction and/or adjourning the Sale Hearing in open court without further notice, canceling the Auction, and rejecting any or all Qualified Bids if, in the Debtor's business judgment, following consultation with its advisors the Debtor determines that such Qualified Bid is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or any related rules or the terms set forth herein, or (iii) contrary to the best interests of the Debtor. Notwithstanding the foregoing, the provisions of this paragraph shall not operate or be construed to permit the Debtor to accept any Qualified Bid that (x) does not require a bid deposit of at least the amount of the Good Faith Deposit be placed in a protected, segregated account, or (y) does not equal or exceed the Initial Overbid.

Acceptance of a bid shall, in all respects, be subject to confirmation of the Sale Plan and the entry of an order by the Bankruptcy Court, which, among other things, authorizes the Debtor to consummate the sale to the successful bidder. The Debtor, reserves the right (subject to Court approval) to (i) determine in its discretion which offer, if any, for the Assets is the highest and best offer and (ii) reject at any time prior to entry of an order of the Court approving an offer, any offer which the Debtor, in its discretion, deems to be (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local

Bankruptcy Rules or the terms and conditions of sale set forth herein, or (c) contrary to the best interests of the Debtor and its estate. The Debtor reserves the right to seek the Court's approval of additional terms and conditions at the Sale Approval Hearing.

Dated: New, York, New York
February __, 2012

**OLSHAN GRUNDMAN FROME
ROSENZWEIG & WOLOSKY LLP**

By: _____

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Eric Goldberg
Fredrick J. Levy
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New York, New York 10022
212.451.2300

*Proposed Special Counsel to the Debtor
and Counsel to Robert Gladstone as Co-
Managing Member of Madison 92nd Street
Associates, LLC*

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Proposed General Counsel for the Debtor

EXHIBIT B TO THE SALE PROCEDURES MOTION

Excerpt of the January 31, 2012 Hearing Transcript

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 11-13917-SMB

- - - - -x

In the Matter of:

MADISON 92ND STREET ASSOCIATES LLC,

Debtor.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

January 31, 2012
10:07 AM

B E F O R E:
HON. STUART M. BERNSTEIN
U.S. BANKRUPTCY JUDGE

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HEARING re General Electric Capital's Motion for Relief from
Stay

HEARING re Case Conference.

Transcribed by: Sharona Shapiro

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A P P E A R A N C E S :

GOLDBERG WEPRIN FINKEL GOLDSTEIN LLP

Attorneys for Debtor

1501 Broadway

22nd Floor

New York, NY 10036

BY: KEVIN J. NASH, ESQ.

OLSHAN GRUNDMAN FROME ROSENZWEIG & WOLOSKY LLP

Proposed Special Counsel to Debtors and

Counsel to Mr. Gladstone

Park Avenue Tower

65 East 55th Street

New York, NY 10022

BY: ADAM H. FRIEDMAN, ESQ.

FREDRICK J. LEVY, ESQ.

1 DLA PIPER US LLP

2 Attorneys for Courtyard Management Corporation

3 1251 Avenue of the Americas

4 New York, NY 10020

5

6 BY: WILLIAM M. GOLDMAN, ESQ.

7 CHRISTOPHER P. (KIP) HALL, ESQ.

8

9

10 KING & SPALDING LLP

11 Attorneys for GE Capital

12 1185 Avenue of the Americas

13 New York, NY 10036

14

15 BY: MICHAEL C. RUPE, ESQ.

16

17

18 LANDAU GOTTFRIED & BERGER LLP

19 Attorneys for CIM Group LLC

20 1801 Century Park East

21 Suite 700

22 Los Angeles, CA 90067

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24 BY: PETER J. GURFEIN, ESQ. (TELEPHONICALLY)

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PITTA & GIBLIN LLP
Attorneys for the Union
120 Broadway
New York, NY 10271

BARRY N. SALTZMAN, ESQ.

1 THE COURT: What happens if this deal falls through.

2 MR. FRIEDMAN: Your Honor, if this deal --

3 THE COURT: Do we just go on and on and on?

4 MR. FRIEDMAN: No.

5 THE COURT: Or are you going to have an auction?

6 They'll come in and they'll credit bid, and if somebody wants

7 to take them out they can do it?

8 MR. FRIEDMAN: I believe there will be an auction
9 here. If CIM is not at that auction, GE, maybe they will
10 credit bid their paper and they'll get just -- they'll get the
11 very same sale that they've been asking for.

12 THE COURT: So why don't you just have -- if CIM drops
13 out, why don't you just have a plan that says you're going to
14 have an auction on a particular day and they can come in and
15 credit bid, and if anybody wants to come in and overbid them
16 they can do that.

17 MR. FRIEDMAN: Your Honor, we could say that. There
18 are a lot of interested bidders, including some in court today,
19 that we believe will be in that auction.

20 THE COURT: All right.

21 MR. FRIEDMAN: And so --

22 THE COURT: So whether or not CIM is satisfied with
23 its due diligence, you can still go forward with your plan,
24 right?

25 MR. FRIEDMAN: And --