

HEARING DATE: January 31, 2012 at 10:00 a.m.
OBJECTIONS DUE: January 24, 2012 at 4:00 p.m.

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

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

In re:

MADISON 92ND STREET ASSOCIATES
LLC, et al.,

Debtor.

Chapter 11

Case No. 11-13917 (SMB)

**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**

Robert Gladstone, as Co-Managing Member of the above captioned Debtor (the
“Movant”), respectfully submits this motion (the “Sale Motion”) for entry of an Order
substantially in the form attached hereto as Exhibit “A”: (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. In support of the Sale Motion, the Movant represents and sets forth as follows:

INTRODUCTION

1. As described in greater detail below, pursuant to the Order Resolving Motion for Dismissal, Appointment of a Chapter 11 Trustee or Appointment of a Chapter 11 Examiner By Appointment of an Examiner, so-ordered on September 20, 2011 (the "Examiner Order," Docket No. 44), the Movant and the Debtor's other Co-Managing Member, 92nd St. Hotel Associates LLC ("Hotel Associates"), are each entitled to file competing plans of reorganization on behalf of the Debtor now that the Examiner has filed his report on the competing plans. The Movant has filed a proposed plan and disclosure statement on behalf of the Debtor (the "Sale Plan") which contemplates a sale of the Debtor's Hotel (as defined below) pursuant to an auction process to ensure that the estate receives the highest and best price for the Hotel (the "Sale"). By this Sale Motion, and consistent with the Sale Plan, the Movant seeks to establish a two-step sale process to run parallel with the confirmation process so that the closing of the sale can occur promptly following confirmation of the Sale Plan. At the initial hearing on this Sale Motion (expected to occur together with the hearing on the approval of Movant's Disclosure Statement), the Movant will request approval of bidding procedures, and the auction and

sale process (the “Sale Procedures Hearing”). If and when the Court grants the relief requested at the Sale Procedures Hearing, the Movant, in consultation with proposed broker Cushman, and on behalf of the estate, will conduct the auction and proceed to a hearing to approve the sale described herein to Stalking Horse Bidder (the “Sale Approval Hearing”) which would occur at or prior to confirmation of Movant’s proposed Sale Plan.

A separate motion to retain Cushman to market the Hotel has been or will be filed with the Bankruptcy Court.

2. As a result of the Movant’s efforts, a contract of sale has been executed (the “Purchase Agreement”) with CIM Group Acquisitions, LLC (“CIM” or “Stalking Horse Bidder”). Under the Purchase Agreement, CIM has agreed to purchase the Debtor’s Hotel and assume and assign certain leases and executory contracts, for a purchase price of \$84,100,000.00. A true copy of the Purchase Agreement is attached hereto as Exhibit “B”. CIM has agreed to be the stalking horse in the auction under Purchase Agreement and the terms and conditions provided for herein (the “Stalking Horse Agreement”).

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. § 157(b)(2). The statutory basis for the relief requested herein is Bankruptcy Code §§ 105(a), 363(b), (f), (m) and (n), 365(a), (b), (f) and (k) and Rules 2002 (a)(2), 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

4. The Debtor is a Delaware limited liability company formed to develop, own and operate a hotel and related businesses.

5. The Debtor is the fee owner of a commercial condominium unit (the "Hotel") in the 410 East 92nd Street Condominium situated on a parcel of land described herein, in the building known as 410 East 92nd Street, New York, N.Y. and by the Manhattan Tax Map designation: Block 1571, Lot 1006. The Hotel consists of the cellar, portions of the first floor, and the fifth through fifteenth floors of the Building and has a 76.79% interest in the common elements of the condominium.

6. The Hotel is presently operated as a Courtyard by Marriott Hotel pursuant to the terms of a Management Agreement dated October 7, 2002, as amended (the "Management Agreement") between the Debtor and Courtyard Management Corporation ("Courtyard").

7. General Electric Credit Corporation ("GECC") holds a first mortgage ("Mortgage") on the Hotel dated May 12, 2008, in the original principal amount of Sixty Two Million Dollars (\$62,000,000.00). Following an event of default under the Mortgage (which the Debtor believes was caused directly by of Courtyard's improper actions) GECC commenced a foreclosure proceeding against the Debtor. On June 8, 2011, a Consensual Judgment of Foreclosure and Sale was entered in the amount of \$74,007,716.71 (the "Consensual Judgment"). Pursuant to the terms of the Consensual Judgment, the Debtor agreed to sell the Hotel and pay-off GECC.

8. On or around September 4, 2009, the Debtor commenced an action in the Supreme Court of the State of New York, New York County, styled *Madison 92nd Street Associates, LLC v. Courtyard Management Corporation*, Index No. 602762/09 (the “State Court Action”), in which the Debtor alleged breaches of the Management Agreement and of obligations of good faith and fair dealing by a bad faith scheme involving Courtyard Management Corporation. The State Court Action and related issues are described in greater detail in the Movant’s proposed Disclosure Statement, dated December 14, 2011 (Docket No. 92).

9. Upon information and belief, Marriott International, Inc., in 2003 entered into a self-dealing agreement with the NYC Hotel Trades Council to facilitate the unionization of the workforce at the not-yet-constructed Hotel. The agreement was intended to be kept secret from the Debtor and other owners to be affected by the agreement. Pursuant to that agreement Courtyard as the exclusive Employer under the Management Agreement took actions resulting in the unionization of the majority its employees during the opening of the Hotel in accordance with agreements (including a collective bargaining agreement or CBA) signed by Marriott International, Inc. The Debtor is not a party to the CBA or any similar agreement. Pursuant to the Management Agreement, all Hotel employees are exclusively employees of Courtyard or its affiliates, and the Debtor has no relationship with the Hotel employees.

10. In November 2010, the Debtor retained the firm of Cushman & Wakefield Sonnenblock-Goldman LLC (“Cushman”) as exclusive financial advisor in connection with the sale of the Hotel. Cushman officially launched marketing on or about November 23, 2010 and conducted a multi-week marketing process. It should be noted that the sale was then marketed

with the assumption that the Courtyard Marriott Agreement would remain in place. The marketing process was extensive and thorough. Over 130 investors were presented with the opportunity, including substantially all substantive investors then publicly active in the hotel acquisition market. Forty three (43) parties signed confidentiality agreements to obtain diligence materials. Cushman set an initial “call for offers” date of February 11, 2011. Five (5) investors submitted written indications of interest and one investor submitted a verbal indication of interest, which is in accord with common practice. All of these indication included terms and conditions in addition to a proposed price. The indications yielded a range of values between \$56 million and \$77 million. After deliberations between Cushman and the Debtor, Cushman invited three investors into a “best and final” round of bidding. It should be noted that all investors who were invited into the best and final round of bidding had proceeded to that stage on the basis that the Courtyard Management Agreement would remain in place, but each had also stated as conditions that Courtyard would agree to specified concessions and modifications to the Management Agreement before the investors would be obligated to close upon sale of the property. Best and final round bids yielded a proposed sale price range of \$74 to \$81.5 million, again in the form of offers requiring concessions and amendments to the Management Agreement as conditions of any obligation to purchase. Bidders were then afforded the opportunity to confidentially negotiate concessions and amendments with Courtyard. Ultimately, all bidders either abandoned the negotiations and/or withdrew their offers.

11. Based on the failure of any of the 130 already-canvassed investors, or any of the 40 thereof who had undertaken due diligence, to proceed with the existing Management

Agreement in place, the Debtor recognized that the rejection of the Management Agreement was likely necessary to establish the highest value of the Hotel for sale or financing. Accordingly, upon the filing of the bankruptcy petition, the Debtor deemed it advisable to prepare for a free and clear sale or refinancing of the Hotel and filed its motion to reject the Management Agreement (Docket No. 71). As of the filing of this Motion, the hearing on rejection has not taken place.

12. As described in previous pleadings filed with the Court, just hours before the bankruptcy filing, Messrs. Loius Taic and Jeffrey Kosow (“Kosow”), on behalf of Hotel Associates, attempted to remove Gladstone from his position as Co-Managing Member and to replace him with Kosow, a member whose admittance into the LLC was specifically conditioned on him having no management rights. This was a violation of the Operating Agreement because such removal and replacement of a Co-Managing Member required a formal amendment approved by all of the members and required the consent of Mr. Gladstone.

13. Taic’s and Kosow’s attempted takeover was an attempt to break a deadlock between Hotel Associates and Gladstone as the Debtor’s Co-Managing Members. Underlying the deadlock was a fundamental disagreement that emerged as to how the Debtor should proceed in the face of the \$74 million Consensual Judgment against it and how the Debtor should respond to offers to purchase its Hotel. More particularly, at the last minute and after protracted negotiations with a prior buyer, Mr. Taic refused to sign a fully-negotiated \$86 million stalking

horse Initial Sale Contract (the “Initial Sale Contract”).¹ Taic’s refusal to sign the Initial Sale Contract came after he had (i) agreed to sell the Hotel, (ii) participated in the negotiations of the Initial Sale Contract, (iii) agreed to the Consensual Judgment, under which the Debtor agreed to sell the Hotel, (iv) agreed to the retention of a broker to market the Hotel, and (v) agreed to the retention of counsel to negotiate the sale and to consummate that sale in a bankruptcy proceeding, if one was needed. This sudden refusal to proceed with the Debtor’s agreed upon strategy to sell the Hotel became clearer when, during the course of discovery in this case, unbeknownst and undisclosed to Gladstone, while the Initial Sale Contract was being finalized and readied for signing, Hotel Associates was attempting to refinance the Hotel and squeeze out Gladstone and his supporting members in the process.

14. On August 23, 2011, the Movant moved this Court (the “Motion to Dismiss”) for entry of an order dismissing the case pursuant to 28 U.S.C. § 1112(b), or, in the alternative, appointing a chapter 11 trustee, pursuant to 28 U.S.C. §1104(a)(1) and (2), or a chapter 11 examiner, pursuant to 28 U.S.C. §1104(c)(1).

15. The Motion to Dismiss was resolved by the Examiner Order, which was a practical and pragmatic way of attempting to resolve the deadlock. Pursuant to the Examiner Order, on September 22, 2011 Thomas R. Slome was appointed as the Debtor’s examiner (the “Examiner”). The Examiner Order further provided that as of September 13, 2011, Gladstone was re-appointed as a Co-Managing Member of the Debtor, and Kosow was no longer a Co-Managing Member.

¹ It is notable that, consistent with the above-described marketing process and the CIM Purchase Agreement, the Initial

16. The Examiner Order was important for several reasons. First, it avoided the imposition of a chapter 11 trustee, which most, if not all, of the Debtor's constituencies agreed would be detrimental to the estate and its creditors. Second, it was a practical and pragmatic way of resolving the deadlock that had existed. Third, all parties in interest and the United States Trustee consented to it. Simply said, the Examiner Order was a meaningful step toward building a process in the chapter 11 case that would lead to a clear resolution on which strategy- sale vs. refinance- was best for the Debtor's estate.

17. Pursuant to the Examiner Order, after meeting with each Co-Managing Member, the Examiner was required to file a report recommending either a sale strategy (proposed by Gladstone and his supporters) or a refinance strategy (as proposed by Hotel Associates and its supporters). After such report was filed, if a consensual exit strategy could not be agreed to, each group could "immediately file their own plans of reorganization". *See* Examiner Order at ¶ 6.

18. After his appointment, each of the Co-Managing Members met extensively with the Examiner to provide specifics on their proposed plans and to provide rationales and business justification for their plan strategies for the Debtor. In one corner, Gladstone presented the Examiner with the terms of the offer from CIM, which were thereafter ratified in the Purchase Agreement. In the other corner, Hotel Associates was apparently unable provide any specific plan on their refinancing plan prior to the Examiner's Report.

19. On December 12, 2011, the Examiner issued his report (the "Examiner's Report"). The Examiner suggests a hybrid sale auction of either the Hotel assets or the

Sale Contract also required the rejection of the Management Agreement.

equity of the Debtor, though neither Gladstone nor Taic suggested or requested such an approach. Importantly, however, the Examiner made clear his recommendation of supporting a sale plan (like the Gladstone Sale Plan) as opposed to a refinance plan. The Examiner's Report makes the following findings and conclusions:

<p>“The Refi Approach alone is simply too problematic. I have not seen a concrete plan for a refinancing of this Hotel and any such plan appears to me to be far from moving forward.” (Examiner's Report at page 10)</p>
<p>“Assuming that the two equity factions will not agree to the Hybrid Approach or better yet, one agree to buy the other out, I recommend that the Debtor pursue only the Sale Approach. Pursuit solely of the Sale Approach will still get the Debtor the full benefit of a united approach against Marriott. The Sale Approach is more concrete.” (Examiner's Report at page 11)</p>
<p>“Accordingly, for the best interests of both factions (and ultimately the estate), I recommend that the Sale Approach proceed alone if the two factions cannot get behind the Hybrid Approach. This way the Debtor can push forward unimpeded by a competing refi plan.” (Examiner's Report at page 11)</p>
<p>“I also recommend the Sale Approach over the Refi Approach because the secured and unsecured creditors of the Debtor have expressed to me a preference for an auction sale of the Hotel.” (Examiner's Report at page 12)</p>
<p>“The two large unsecured creditors who filed papers in support of the Dismissal Motion brought by the Gladstone Group told me that they favor an auction sale of the Hotel over a refi approach, because they believe that a sale is more of a sure thing and more likely to happen faster than a refi.” (Examiner's Report at page 13)</p>
<p>“I also recommend that the Debtor pursue the Sale Approach over the Refi Approach because it is more equitable to the owners as a whole. Again, I have not seen a refi plan but it would likely require the Debtor's members to put up new capital in order to have a substantial chance at realizing value from the Hotel in the future.” (Examiner's Report at page 13)</p>
<p>“As further support for the unfairness to the Gladstone Group of having to contribute funds and stay locked in with partners who it no longer trusts, I note that outside of bankruptcy and under applicable Delaware law, the deadlock between management and ownership would likely be resolved through a sale of the business, including through the appointment of a liquidation trustee. See, e.g., Del. C. §18-103; <u>Villa v. BVWebties LLC</u>, 2010 WL 3866098 (Del. Ch. 2010) (granting judicial dissolution and appointing liquidation trustee to dispose of the assets).” (Examiner's Report pages 13-14)</p>

“Finally, particularly with the Refi Approach not yet formulated, I and RSR Consulting are concerned about the current high cost of capital for hotel deals (much worse than even six months ago) and the risks of what happens when new investors look to be repaid in some period of time, such as three years, when the hotel industry might be in decline.” (Examiner’s Report at page 14)

“Absent the Debtor pursuing such a hybrid sale approach, I recommend that the Debtor get behind one approach rather than the other, and I recommend that it be the Sale Approach, because it is more concrete, further along, more easily confirmable if done under a plan, saves transfer taxes, and is fairer to the equity holders than an as-of-yet unformulated Refi Approach.” (Examiner’s Report at page 17)

20. On December 14, 2011, Gladstone filed the Sale Plan and is taking all steps necessary to confirm same. The Sale Plan requires the filing of this Sale Motion and the establishment of the procedures set forth herein. The rejection of the Management Agreement and the sale of the Hotel are the essential means of implementing the Sale Plan, which will permit significant distributions to creditors and possibly to equity holders. Delay in determining the future ownership of the Hotel will undoubtedly undermine its value. Moreover, it is undisputed that the Hotel has now entered a multi-month seasonal phase of negative cash flow, which was significantly underestimated last year and will place the Debtor and its estate at significant increased risk. Absent the relief requested, the terms of the Purchase Agreement cannot be fulfilled and the estate will be left at risk of being unable to pay its bills. The Purchase Agreement requires a closing of the sale by April 16, 2012, and provides that **time is of the essence**.

RELIEF REQUESTED

21. By this Sale Motion in furtherance of the Sale Plan, the Movant requests entry an Order (A) scheduling the Sale Procedure Hearing to approve sale procedures, break-up fee and

notice requirements, (B) scheduling the Sale Approval Hearing to authorize the sale of substantially all of estate's real estate assets free and clear of liens, claims and interests and assumption and assignment of executory contracts and payment of senior secured claims; and (C) granting other relief related to the foregoing. The Movant will separately be seeking the retention of Cushman to further market the Hotel to maximize the possibility of a competitive auction. In contrast to Cushman's prior marketing efforts, the Hotel may now be offered without the burden of the Management Agreement.

A. Proposed Sale Transaction

22. The general terms of the proposed sale are as follows:²

- 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.
- Purchase Price: \$84,100,000.00
- Conditions to Closing: The conditions to closing are set forth in Article 11 of the Purchase Agreement.³

B. Proposed Auction and Bidding Procedures

23. As set forth above, the Movant has determined, and the Examiner has concurred, that the conducting of an auction, shall enable the Debtor to obtain the highest and best offers, and thereby maximize the value of the estate for the benefit of creditors. The sale proceeds will be used to fund the Sale Plan. Accordingly, the Movant believes it is in the best interests of the

² The Purchase Agreement (Exhibit B) should be read carefully for the specific terms and conditions of the sale.

³ Pursuant to Article 5 of the Hotel Purchase Agreement, CIM has the right of termination up to January 9, 2012 at 6pm Pacific Time.

Debtor and the estate to conduct the auction. The Movant believes good cause exists to approve the terms and conditions of the below-described Bidding Procedures, which are reasonable and will enable the Debtor to yield the highest and best bids for their assets. The Movant proposes the following procedures:

- a. **Participation Requirements:** To participate in the bidding process or otherwise be considered for any purpose hereunder, a party (other than the Stalking Horse Bidder) interested in purchasing the Hotel (a "Potential Bidder") must, in the time set by the Court, deliver to counsel for the Movant, 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 Movant, 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 Movant, in consultation with Cushman, shall determine and notify each Potential Bidder whether such Potential Bidder has submitted acceptable Preliminary Bid Documents. The Movant and Cushman 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, Movant shall provide each Acceptable Bidder reasonable due diligence information, as requested, as soon as reasonably practicable after such request, which information shall be commensurate with that information given to the Stalking Horse Bidder. 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 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 Movant'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. include (i) an initial cash overbid amount of at least \$87,100,000 plus (ii) a cash payment equal to any required executory contract cure costs, if any (the "Initial Overbid");
 - iii. 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");
 - iv. be accompanied by an executed purchase agreement (the "Overbid Contract") substantially in the form of the 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 from the Purchase Agreement executed with the Stalking Horse Bidder;
- v. identify with particularity each and every condition to closing, including any regulatory conditions and a timeline for satisfying such conditions;
 - vi. identify with particularity the executory contracts and unexpired leases for which assumption and assignment is required;
 - vii. 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, and/or (d) the outcome or completion of a due diligence review by the Acceptable Bidder;
 - viii. remain open and irrevocable until the closing of the sale;
 - ix. provide the Movant with sufficient and adequate information to demonstrate, to the satisfaction of the Movant, 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
 - x. 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.
 - xi. 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 Movant, in consultation with Cushman, shall determine which bids are deemed to be "Qualified Bids" and which Acceptable Bidders are "Qualified Bidders". The Movant will notify the Acceptable Bidders and the Stalking Horse Bidder 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. The Stalking Horse Bidder is deemed to be a Qualified Bidder. By participating at the Auction, each bidder agrees to the terms of these Bidding Procedures, including without limitation the requirement to be a Back-Up 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 **[March 14], 2012** (the "Bid Deadline").
- e. **Evaluation of Qualified Bids:** Prior to the Auction, the Movant, 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. **No Qualified Bids:** If no Qualified Bids are received by the Bid Deadline, then the Auction will not occur, the Purchase Agreement will be deemed the Successful Bid (as defined below) and the Debtor will immediately pursue entry of a Sale Order by the Court approving the Stalking Horse Agreement and authorizing the sale of the Sale Assets to the Stalking Horse Bidder.
- g. **Auction:** If one or more Qualified Bids are received by the Bid Deadline, then the Movant shall conduct the Auction. The Auction shall commence on **[March 21, 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 Stalking Horse Bidder and all other Qualified Bidders; provided, however, that the Auction shall not be continued to a date later than the Sale Hearing (as defined below) without the consent of the Stalking Horse Bidder.

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. the bidding will be transcribed to ensure an accurate recording of the bidding at the Auction; and
 - vi. 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.
- h. Acceptance of the Successful Bid:** Upon the conclusion of the Auction (if such Auction is conducted), Movant, in the exercise of reasonable, good-faith business judgment, and after consulting with his 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 Movant 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 (or to approve the Stalking Horse Agreement if no

Auction is held) (the "Sale Hearing") and seek entry of a Sale Order on or about [March 27, 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 Movant 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 Movant 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 Movant.
- 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. If the Stalking Horse Bidder is not the Successful Bidder or a Back-Up Bidder it may, at its election, terminate the Stalking Horse Agreement in which case the Escrow Agent shall immediately return the Deposit, together with interest accrued thereon, to the Stalking Horse Bidder marked cancelled and undrawn or return any amounts drawn thereunder.

- l. **Reservation of Rights to Modify Bidding Procedures:** The Movant

reserves rights, following consultation with advisors to modify these Bidding Procedures in any manner that is not inconsistent with the Stalking Horse Agreement or 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 Movant's business judgment, following consultation with its advisors the Movant 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 Movant 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, which shall serve as protection and security for the Stalking Horse Bidder as outlined herein or (y) does not equal or exceed the Initial Overbid.

24. 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 Movant, on behalf of the Debtor, reserves the right (subject to Court approval) to (i) determine in his 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 Movant, in his 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 Movant reserves the right to seek the Court's approval of addition terms and conditions at the Sale Approval

Hearing. The offer from the Stalking Horse Bidder shall be deemed to be an acceptable offer in the absence of higher and better offers from a Qualified Bidder.

C. Proposed Break-Up Fee and Expense Reimbursement

25. In order to compensate the Stalking Horse Bidder for the time, effort, expense, and risk that it has incurred and will incur in negotiating, documenting, and seeking to consummate the sale transaction, if the Successful Bidder is other than the Stalking Horse Bidder, a break-up fee of \$2,500,000 (the “Break-Up Fee”) (or approximately 3% of the total purchase price) plus reimbursement of expenses up to \$100,000 (the “Expense Reimbursement”) (or approximately 0.1% of the total purchase price) which payments shall have a first priority in and be paid out of the proceeds paid by an Other Buyer without further order of the Court.

26. Break-up and other termination fees are a normal and, in many cases, necessary component of significant sales conducted under section 363 of the Bankruptcy Code as “Break-up fees are important tools to encourage bidding and to maximize the value of the debtor’s assets.... In fact, because the... corporation ha(s) a duty to encourage bidding, break-up fees can be *necessary* to discharge [such] duties to maximize values. *Integrated Resources*, 147 B.R. 650, 659-60 (S.D.N.Y. 1992) (emphasis in original).

27. Moreover, “breakup fees and other strategies may be legitimately necessary to convince a ‘white knight’ bidder to enter the bidding by providing some form of compensation for the risks it is undertaking.” *995 Fifth Ave.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (quotations omitted); *In re Hupp Indus., Inc.*, 140 B.R. 191, 194 (Bankr. N.D. Ohio 1992) (“without such fees, bidders would be reluctant to make an initial bid for fear that their first bid will be shopped

around for a higher bid from another bidder who would capitalize on the initial bidder's . . . due diligence").

28. A break-up fee may encourage bidding by serving "any of three possible useful functions: (1) to attract or retain a potentially successful bid, (2) to establish a bid standard or minimum for other bidders to follow, or (3) to attract additional bidders." *Integrated Resources, Inc.*, 147 B.R. at 662. By virtue of the forgoing, the Break-Up Fee and Expense Reimbursement here accomplishes all of these objectives.

29. The Movant believes that the willingness of the Stalking Horse Bidder to commit to a purchase of the Hotel (and to perform the activities necessary to consummate that purchase), subject to higher and better offers, provides substantial value by encouraging third parties to consider making a bid.

30. Courts also routinely approve break-up fees where, as here, such fees are not tainted by self-dealing and instead are the product of arm's length negotiations. See, e.g., *Integrated Resources*, 147 B.R. at 657; *995 Fifth Ave.*, 96 B.R. at 28;

31. The Movant and the Stalking Horse Bidder are not affiliated in any way, engaged in extensive arm's-length negotiations regarding the proposed sale, and the Stalking Horse Bidder consistently indicated that the break-up fee provision would be a critical component of any offer made for the Hotel.

32. The Stalking Horse Bidder's willingness to commit to the purchase, to continue to perform the activities necessary to consummate a sale and to serve as a "stalking horse" against which other prospective purchasers will be compared, in and of itself represents a significant

contribution to the estate. As a result, by agreeing to pay the Break-Up Fee and Expense Reimbursement, the Movant has used their best efforts to ensure, at a minimum, that the estate would have the benefit of the initial offer, without sacrificing the potential for interested parties to submit overbids at the hearing on approval of a sale of the Assets.

33. Finally, the amounts of the Break-Up Fee and Expense Reimbursement are fair and reasonable under the circumstances. In this case, the Break-Up Fee and Expense Reimbursement are well within the range of fees typically paid in other sales transactions that have been consummated in a bankruptcy setting and should be awarded to the Stalking Horse Bidder in the event that a third party outbids Stalking Horse Bidder at the auction and consummates a purchase of the Assets. See, e.g., *Consumer News & Business Channel Partnership v. Financial News Network, Inc.*, (*In re Financial News Network Inc.*), 980 F.2d 165, 167 (2d Cir. 1992) (noting that the transaction at issue provided for a \$8.2 million break-up fee on the \$149.3 million transaction); *LTV Aerospace and Defense Co. v. Thomson-CSF, S.A.* (*In re Chateaugay Corp.*), 198 B.R. 848, 861 (Bankr. S.D.N.Y. 1996) (\$20 million, or 4.4% break-up fee allowed on \$450 million offer); *Integrated Resources*, 147 B.R. at 662 (3.2% break-up fee).

D. Proposed Sale of Assets

34. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Although section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor’s assets, courts in the Second Circuit and others, in

applying this section, have required that it be based upon the sound business judgment of the debtor. See, e.g., *In re Chateaugay Corp.*, 973 F.2d 141 (2d Cir. 1992) (holding that a judge determining a § 363(b) application must find from the evidence presented a good business reason to grant such application); *The Committee of Equity Security Holders v. The Lionel Corp. (In re The Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (sale of Chapter 11 debtor's 82% interest in their subsidiary would have been permissible if the debtors-in-possession could have demonstrated a "business justification" or "a good business reason"); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 674-77 (Bankr. S.D.N.Y. 1989) (approving sale of Eastern Airline's shuttle operations, the debtor's principal operating assets). Moreover, in this case, the sale is pursuant to a confirmed chapter 11 plan of reorganization.

35. A sound business justification exists for believing a sale of the Hotel is the best course of action for the Debtor, and thus entering into this transaction in order to confirm the Sale Plan. Indeed, it was only after (a) potential alternatives were evaluated by Gladstone, Hotel Associates and the Examiner, (b) a previous sale was marketed by Cushman, (c) this proposed sale will be marketed by Cushman, and (d) intensive negotiations with the Stalking Horse Bidder, that the Movant decided in the exercise of business judgment to proceed with this sale process. Thus, for reasons set forth herein, as will be further shown at the Sale Hearing, Movant believes that the sale will constitute the highest and/or best offer for the Hotel. Accordingly, Movant submits that the instant transaction represents sound and reasonable business judgment.

36. The Purchase Agreement with the Stalking Horse Bidder provides that the Debtor shall receive \$84,100,000. This ensures that with the sale, GE will be paid in full on its allowed

claim as may be determined by the Court, all costs of the sale and administrative claims will be paid in full, and potentially all unsecured creditors' allowed claims will be paid in full, so that the remaining proceeds could be distributed to the Debtor's equity holders. The Stalking Horse Bidder will continue to operate the Hotel, and pay all of the future obligations arising from the operation of the Hotel after the Closing Date. This is extremely beneficial to and in the best interest of the estate.

E. Assumption and Assignment and Executory Contracts

37. The Debtor is a party to certain executor contracts which are not on the Debtor's schedules as filed. The schedules will be amended and the counter parties given appropriate notice.

38. The standard for the assumption and assignment of executory contracts is similar, if not the same as the foregoing; whether the transaction is in the best interest of the debtor, "beneficial or burdensome to the estate", "a good business decision or a bad one." *In re Orion Pictures, Corp.*, 4 F.3rd 1095, 1099 (2d Cir. 1993). Pursuant to section 365 (f) of the Bankruptcy Code:

- (1) Except as provided in subsection (c) of this section, notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection . . .
- (2) The trustee may assign an executory contract or unexpired lease of the debtor only if—
 - (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

- (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f).

39. As use in section 365(f), “[t]he terms ‘adequate assurance’ of future performance are not words of art; the legislative history of the Code shows that they were intended to be given a practical pragmatic construction.” *In re Evelyn Byrnes, Inc.*, 32 B.R. 825, 828-29 (Bankr. S.D.N.Y. 1983) (quoting *In re Sapolin Paints, Inc.*, 5 B.R. 412 (Bankr. E.D.N.Y. 1980)). The “primary focus” of this term is “the assignee’s ability to satisfy the financial obligations imposed by the lease.” *Id.*, 32 B.R. at 829 (citations omitted).

40. The Movant submits that the assumption and assignment of the contracts identified in the Purchase Agreement to the Stalking Horse Bidder will be in full accord with the provisions of section 365. Adequate assurance of future performance will be provided by the Stalking Horse Bidder, and by the Stalking Horse Bidder’s commitment to use the Assets to operate a business consistent with that of the Debtor. To the extent parties require additional financial information concerning the Stalking Horse Bidder, such information may be available and be obtained by such parties on request made to the Movant’s or the Stalking Horse’s counsel.

F. Sale Free and Clear of Liens and Use of Proceeds.

41. Section 363(f) of the Bankruptcy Code provides that a debtor in possession may sell assets free and clear of liens, claims and encumbrances with any such encumbrances attaching to the net proceeds of the Sale (except as otherwise provided in the Agreement) if one of the following conditions is satisfied:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (2) the lienholder or claimholder consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such assets;
- (4) such interest is in bona fide dispute; or
- (5) the lienholder or claimholder could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

42. Section 363(f) is written in the disjunctive and therefore the Movant needs meet only one of the five conditions of Section 363(f). The Movant believes that one or more of the tests of section 363(f) are satisfied with respect to the sale of the Hotel. All liens, claims, encumbrances and other interests of the Debtor shall attach to the sale proceeds in accordance with the Bankruptcy Code.

43. Pursuant to the Sale Plan, the first priority secured claim of GECC is to be satisfied at the closing of the sale by the payment of an amount to be agreed to by the parties.

44. The Debtor believes that at least section 363(f)(2) of the Bankruptcy Code is met because each of the parties holding liens and interests on the Hotel, if any, will consent, or absent any objection to this Motion, will be deemed to have consented to, the Sale.

45. Section 363(f) also is satisfied in this instance because all holders of liens, claims, encumbrances, and other interests could be compelled to accept a money satisfaction of their liens in legal or equitable proceedings in accordance with section

363(f)(5) of the Bankruptcy Code. See, e.g., *In re Boston Generating, LLC*, 440 B.R. 302, 333 (Bankr. S.D.N.Y. 2010) (holding that section 363(f)(5) permitted a sale free and clear of liens).

46. Section 363(f) is also satisfied vis a vis any objection that Courtyard could file, given that fact that the Courtyard claim is in bona fide dispute, as is evident by the State Court Action that is ongoing. Thus, section 363(f)(4) is satisfied.

47. The Movant will establish at the Sale Hearing that the Debtor can satisfy the requirements of Section 363(f). It is requested that the Court authorize the Movant, on behalf of the Debtor, to conclude the sale of the assets free and clear of any and all liens, claims and encumbrances with such liens to be transferred and attached to the net proceeds of the sale, with the same validity, priority and extent that such liens had against the Assets.

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

48. The Movant, on behalf of the Debtor, and the Stalking Horse Bidder 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).

49. The Movant submits that the sale is an arm's length transaction, in which the Movant and the Stalking Horse Bidder have at all times acted in good faith under applicable legal standards. CIM and Madison Equities, LLC, an entity owned and controlled by Mr. Gladstone, are currently negotiating a joint venture agreement in connection with unrelated transactions. Those negotiations, and the current negotiations, are all at arm's length and in good faith. Except for the foregoing, Stalking Horse Bidder is not in any way related to any of the Movant or the Debtor.

50. The Movant therefore requests that the Stalking Horse Bidder be found to be a "good faith" purchaser within the meaning of Bankruptcy Code §363(m) and that the transaction be entitled to the protections of §§363(m) and (n) of the Bankruptcy Code.

**H. Procedures for Contract Cure Claims and
Adequate Assurance of Future Performance**

51. Prior to the Sale Approval Hearing, Movant shall file a schedule of amounts, if any, the Movant has determined will be, as of the closing date of the sale to Stalking Horse Bidder, the amounts necessary to be paid by the Debtor pursuant to §365 in order to assume and assign such executory contract and/or unexpired lease to Stalking Horse Bidder or the successful bidder (the “Cure Amount” and “Cure Schedule”). The Movant requests that unless the non-Debtor party (each a “Third Party”, and collectively, the “Third Parties”) to an assumed executory contract (each an “Assumed Contract”) files a timely objection to this Motion (a “Cure Objection”) asserting a claim for any amounts due and owing under an executory contract and/or unexpired lease in an amount different than the Cure Amount referenced on the Cure Schedule (the “Disputed Cure Amount”) that such Third Party to the subject Assumed Contract will 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.

52. Furthermore, the Movant requests that any Cure Amounts, or Disputed Cure Amount that is fixed by the Court or otherwise agreed by the Debtor (as the case may be, the “Resolved Cure Amount”) be deemed to include any such other pecuniary or other losses, if any, under the respective Assumed Contract. Consequently, payment of any Cure Amounts and/or Resolved Cure Amount, as the case may be, as determined by the Court or otherwise agreed to by the Movant on behalf of the Debtor will compensate the appropriate party for any such other loss.

53. In the event that 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, on behalf of the Debtor, and the non-Debtor party to the Assumed Contract cannot consensually resolve the Cure Objection, the Stalking Horse Bidder, the Successful Bidder or any other assignee will segregate any disputed Cure Amounts pending the resolution of any such disputes by this Court or mutual agreement of the parties.

54. Hearings on Cure Objections may be held (a) at the Sale Approval Hearing or (b) on such other date as this Court may designate, 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 either by the Debtor or by the Successful Bidder or any other assignee, as the case may be, pending further order of this Court or mutual agreement of the parties.

55. The Movant, on behalf of the Debtor, acknowledges that any assumption and assignment of an Assumed Contract, as the case may be, will be subject to all of the provisions of such Assumed Contract, to the extent required by applicable law, and will be subject to all applicable provisions of the Bankruptcy Code. The proposed terms and conditions of the Auction are designed to ensure that any assignees are financially able and prepared to undertake all of the obligations of the Assumed Contracts.

56. The Sale Approval Hearing (at which the assumption on assignment of each Assumed Contract will be considered) gives the other parties in interest an opportunity to consider any assignment issues that may be resolved only after identification of a particular assignee and an opportunity to file objections, if any, to such matters. In that regard, the Movant will file with the Court and serve on the Third Parties to the Assumed Contracts, within 24 hours of the designation of the Successful Bidder, at the Auction, and shall further provide each affected Third Party, with (i) a list of the Assumed Contracts to be assumed and assigned to the Successful Bidder and (ii) the information provided by the Successful Bidder demonstrating adequate assurance of future performance as to each respective Assumed Contract to be assumed and assigned to the Successful Bidder.

57. Under these circumstances, the Movant submits that he has established, or will establish at the Auction and/or the Sale Approval Hearing, the requisite adequate assurance of future performance pursuant to § 365 of the Bankruptcy Code with respect to the potential assumption and assignment of the Assumed Contracts.

I. Exemption from Transfer Taxes Under Section 1146(a) of the Bankruptcy Code

58. Section 1146(a) of the Bankruptcy Code provides that “[t]he issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of this title, may not be taxed under any law imposing a stamp tax or similar tax.” 11 U.S.C. § 1146(a). As set for above and in the Sale Plan, the closing of this sale shall occur under the Plan and is to occur on the Effective Date of the Plan. This is not a “pre-plan” sale in contemplation of a plan, but rather it will be a sale occurring under the Plan.

Accordingly, the Sale should be afforded an exemption from stamp or similar taxes pursuant to Bankruptcy Code §1146(a).

NOTICE OF THIS MOTION AND THE SALE

59. The Movant proposes to give Notice of (I) this Sale Motion (II) the Sale, including the date, time and place of the auction and the Sale Hearing, and (iii) the order entered on Sale Motion to (a) the Office of the United States Trustee; (b) counsel to Courtyard; (c) counsel to GECC; (d) counsel to the Hotel Associates Group; (e) all creditors of the Debtor and parties who filed a notice of appearance; (f) all entities (or counsel therefor) known to have asserted any lien, claim, charge or encumbrance in or on the assets; (g) all Third Parties to the Assumed Contracts; (h) the federal, state and city taxing authorities; and (i) with regard only to the Auction and Sale Notice (Exhibit 1 to the proposed order attached hereto as Exhibit A), to all parties, or their counsel, who have expressed interest in purchasing the Hotel.

60. The Movant submits that the foregoing notice procedures satisfy Bankruptcy Rule 2002 and provide adequate and sufficient notice of the Sale, the Auction and related deadlines, including, without limitation, the Bid Deadline and Sale Objection Deadline.

WHEREFORE, the Movant, on behalf of the Debtor and in aid of confirmation of the Sale Plan, respectfully requests that this Court enter appropriate orders granting and authorizing the relief requested herein; and granting the Movant such other and further relief as this Court deems just and appropriate under the circumstances.

Dated: New, York, New York
January 6, 2012

**OLSHAN GRUNDMAN FROME
ROSENZWEIG & WOLOSKY LLP**

By: /s/Adam H. Friedman

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

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) 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

Upon the Motion¹ of Robert Gladstone (the "Movant"), as Co-Managing Member 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 Motion; and the Court having determined that, to the extent set forth herein, the relief requested in the Motion is in the best interests of the Debtor, its estate and creditors and other parties in interest; due and appropriate notice of the 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 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 Motion, requisite notice of the 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 Motion or this Order is necessary or required.

C. The Movant’s proposed notice of the Auction and Sale, s related thereto, (v) the Purchase Agreement and the terms contained therein and (vi) 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 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 negotiated in good faith by the Movant and the Stalking Horse Bidder and are reasonable and appropriate.

E. The Stalking Horse Bidder has expended, and likely will continue to expend, considerable time, money and energy pursuing the Sale and has engaged in extended arms' length and good faith negotiations with the Movant. The Purchase Agreement is the culmination of these efforts.

F. Recognizing this expenditure of time, energy and resources, Movant has agreed that the Debtor shall pay the Expense Reimbursement and the Break-Up Fee to the Stalking Horse Bidder on the terms and conditions set forth in the Purchase Agreement.

G. The Expense Reimbursement and the Break-Up Fee collectively serve as (i) a material inducement for, and condition of, the Stalking Horse Bidder's entry into the Purchase Agreement and (ii) fair and reasonable in view of the fact that if the Expense Reimbursement and the Break-Up Fee are triggered, Stalking Horse Bidder's efforts will have substantially increased the chances that the Debtors will receive the highest or otherwise best offer for the assets.

H. The Movant has demonstrated a sound business justification for authorizing the payment of the Expense Reimbursement and the Break-Up Fee to the Stalking Horse Bidder under the circumstances set forth in the Purchase Agreement and on the record of these chapter 11 proceedings.

I. 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 assets; provided, however, that the terms of the Purchase Agreement shall remain subject to approval by the Court at the Sale Hearing. 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. The Expense Reimbursement, the Break-Up Fee, and all other provisions of Article 8 of the Purchase Agreement are hereby approved and fully incorporated into this Order.
5. Subject to the conditions and limitations set forth in the Purchase Agreement, in the event that the Purchase Agreement is terminated, the Debtor shall pay the Expense Reimbursement and the Break-Up Fee to the Stalking Horse Bidder without further order of this Court. The Debtor's obligation to pay the Expense Reimbursement shall constitute a superpriority administrative expense priority obligation under section 364(c)(1) of the Bankruptcy Code with priority over any and all expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code. The Stalking Horse Bidder shall not be entitled to the Expense Reimbursement or the Break-Up Fee if the Purchase Agreement is terminated pursuant to Article 5 of the Purchase Agreement.

6. The Expense Reimbursement and the Break-Up Fee shall be paid in Cash (as defined in the Purchase Agreement), without further order of the Court only upon and contemporaneous with the Closing (as defined in the Purchase Agreement) of an Alternate Transaction (as defined in the Purchase Agreement).

7. A Potential Bidder that desires to make a Bid shall deliver written copies of its bid to the Movant's counsel, Olshan Grundman Frome Rosenzweig & Wolosky LLP (Attn: Adam H. Friedman, Esq.) not later than 9:00 a.m. (Eastern Time) on [March 14], 2012 (the "Bid Deadline") and shall comply with the requirements set forth in the Bidding Procedures for making such bid.

8. The Movant shall have the right to reject any and all bids that it believes in its reasonable discretion do not comply with the Bidding Procedures. The Stalking Horse Bidder's Bid as embodied in the Purchase Agreement is deemed to be a Qualified Bid.

9. As further described in the Bidding Procedures, if a Qualified Bid other than Stalking Horse Bidder's Bid is timely received, the Auction will be held on [March 21], 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.

10. Not later than three (3) business days after entry of this Order, the Movant 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 Movant or 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 Movant and 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.

11. 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.

12. 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.

13. Pursuant to the terms set forth in the Purchase Agreement, 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.

14. The Movant'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.

15. Except to the extent otherwise provided in the Purchase Agreement or 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.

16. 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 [March 20], 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, to the extent that the Stalking Horse Bidder is not the Successful Bidder and an alternative Successful Bidder is seeking to have certain Assumed Contracts assumed and assigned as part of an alternative transaction, the non-Debtor parties to such Assumed Contracts shall have until the Sale Hearing to raise objections to the sale to the alternative 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.

17. The Sale Hearing shall be held before this Court on [March 27], 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.

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

19. As provided by Bankruptcy Rules 6004(g) and 6006(d), this Order shall not be stayed for ten (10) days after the entry thereof and shall be effective and enforceable immediately upon its entry on this Court's docket.

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

21. 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 on _____, 2012, Robert Gladstone (the “Movant”), as the Co-Managing Member of 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 [Docket No. _____] (the “Bid Procedures Motion”)¹ with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”). The Movant has received a Qualified Bid from the Stalking Horse Bidder. 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 Movant’s 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 to Movant, 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

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

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. If however, no such Qualified Bid is received by the Bid Deadline, then the Auction will not be held, the Stalking Horse Bidder will be deemed the Successful Bidder, the Purchase Agreement will be the Successful Bid, and, at the Sale Hearing scheduled for _____, 2012t, the Movant will seek approval of and authority to consummate the transaction contemplated by the Purchase Agreement.

Only a Potential Bidder which has submitted a Qualified Bid of at least \$87,100,000 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: 212. 451.2216
Facsimile: 212. 451.2222
Counsel to Movant

EXHIBIT 2 TO SALE PROCEDURES ORDER

Bid Procedures

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

1. **Stalking Horse Bidder**: On December 14, 2011, Robert Gladstone (“Movant”), as Co-Managing Member of the Debtor, and the Stalking Horse Bidder entered into the Purchase Agreement for the acquisition of the Sale Assets pursuant to which, among other things, the Stalking Horse Bidder has agreed to purchase the Hotel, subject to (i) the outcome of the Auction and (ii) the entry of an Order of the Bankruptcy Court ("Sale Order") approving the sale of the Sale Assets.

2. **Participation Requirements**: To participate in the bidding process or otherwise be considered for any purpose hereunder, a party (other than the Stalking Horse Bidder) interested in purchasing the Hotel (a "Potential Bidder") must, in the time set by the Court, deliver to counsel for the Movant, 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 Movant, 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

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

3. **Obtaining Due Diligence Access:** After receipt of an executed Confidentiality Agreement and notification of Acceptable Bidder status, Movant shall provide each Acceptable Bidder reasonable due diligence information, as requested, as soon as reasonably practicable after such request, which information shall be commensurate with that information given to the Stalking Horse Bidder. 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 to coordinate all reasonable requests for additional information and due diligence access.

4. **Bid Requirements:** To be entitled to participate in the Auction, an

Acceptable Bidder must deliver to the Movant'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. include (i) an initial cash overbid amount of at least \$87,100,000 plus (ii) a cash payment equal to any required executory contract cure costs, if any (the "Initial Overbid");
- iii. 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");
- iv. be accompanied by an executed purchase agreement (the "Overbid Contract") substantially in the form of the 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 from the Purchase Agreement executed with the Stalking Horse Bidder;
- v. identify with particularity each and every condition to closing, including any regulatory conditions and a timeline for satisfying such conditions;
- vi. identify with particularity the executory contracts and unexpired leases for which assumption and assignment is required;
- vii. 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, and/or (d) the outcome or completion of a due diligence review by the Acceptable Bidder;
- viii. remain open and irrevocable until the closing of the sale;
- ix. provide the Movant with sufficient and adequate information to demonstrate, to the satisfaction of the Movant, 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

- x. 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.
- xi. 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 Movant, in consultation with Cushman, shall determine which bids are deemed to be "Qualified Bids" and which Acceptable Bidders are "Qualified Bidders". The Movant will notify the Acceptable Bidders and the Stalking Horse Bidder 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. The Stalking Horse Bidder is deemed to be a Qualified Bidder. By participating at the Auction, each bidder agrees to the terms of these Bidding Procedures, including without limitation the requirement to be a Back-Up Bidder.

5. **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 [March 14], 2012 (the "Bid Deadline").

6. **Evaluation of Qualified Bids**: Prior to the Auction, the Movant, 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.

7. **No Qualified Bids**: If no Qualified Bids are received by the Bid Deadline, then the Auction will not occur, the Purchase Agreement will be deemed the Successful Bid (as defined below) and the Debtor will immediately pursue entry of a Sale Order by the Court approving the Stalking Horse Agreement and authorizing the sale of the Sale Assets to the Stalking Horse Bidder.

8. **Auction**: If one or more Qualified Bids are received by the Bid Deadline, then the Movant shall conduct the Auction. The Auction shall commence on [March 21, 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 Stalking Horse Bidder and all other Qualified Bidders; provided, however, that the Auction shall not be continued to a date later than the Sale Hearing (as defined below) without the consent of the Stalking Horse Bidder.

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. the bidding will be transcribed to ensure an accurate recording of the bidding at the Auction; and
- vi. 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.

9. **Acceptance of the Successful Bid:** Upon the conclusion of the Auction (if such Auction is conducted), Movant, in the exercise of reasonable, good-faith business judgment, and after consulting with his 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 Movant 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.

10. **Sale Hearing:** A hearing to consider approval of the sale of the Sale Assets to the Successful Bidder (or to approve the Stalking Horse Agreement if no Auction is held) (the "Sale Hearing") and seek entry of a Sale Order on or about [March 27, 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.

11. **Designation of Back-Up Bidder:** Upon the conclusion of the Auction and the selection of the Successful Bidder, the Movant 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 Movant 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 Movant.

12. **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. If the Stalking Horse Bidder is not the Successful Bidder or a Back-Up Bidder it may, at its election, terminate the Stalking Horse Agreement in which case the Escrow Agent shall immediately return the

Deposit, together with interest accrued thereon, to the Stalking Horse Bidder marked cancelled and undrawn or return any amounts drawn thereunder.

13. **Reservation of Rights to Modify Bidding Procedures:** The Movant reserves rights, following consultation with advisors to modify these Bidding Procedures in any manner that is not inconsistent with the Stalking Horse Agreement or 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 Movant's business judgment, following consultation with its advisors the Movant 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 Movant 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, which shall serve as protection and security for the Stalking Horse Bidder as outlined herein or (y) does not equal or exceed the Initial Overbid.

EXHIBIT B

Purchase Agreement

CONTRACT OF SALE

Dated December 14, 2011

Between

MADISON 92nd STREET ASSOCIATES, LLC

Seller

And

CIM GROUP ACQUISITIONS, LLC

Buyer

Premises: Hotel Unit

At The 410 East 92nd Street Condominium

CONTRACT OF SALE made as of December 14th , 2011 (now and as the same may hereafter be amended, extended or modified, this “Contract”) between MADISON 92nd STREET ASSOCIATES, LLC, a Delaware limited liability company, having an office at c/o Madison Equities, 555 Fifth Avenue, 9th Floor, New York, N.Y. 10017 (“Seller”), and CIM Group Acquisitions, LLC, a California limited liability company, having an office c/o 6922 Hollywood Blvd., 9th Floor, Los Angeles, CA 90028 (“Buyer”);

W I T N E S S E T H

WHEREAS, Seller is the fee owner of the Hotel Unit (the “Hotel Unit”) in The 410 East 92nd Street Condominium (the “Condominium”) situate on a parcel of land more particularly described on Exhibit “A” attached hereto (the “Land”) in the building (the “Building”) known as 410 East 92nd Street, New York, N.Y. and by the Manhattan Tax Map designation: Block 1571, Lot 1006;

WHEREAS, the Hotel Unit consists of the cellar, portions of the first floor, and the fifth through fifteenth floors of the Building and has a 76.79% interest (“Pro-Rata Share”) in the Common Elements (as such term is defined in the Declaration (hereinafter defined)) of the Condominium (collectively called the “Premises”);

WHEREAS, 92nd Street Leasing Company LLC (“Master Lease Tenant”), an affiliate of Seller, holds the tenant’s interest in that certain Lease Agreement between 92nd & First Residential Tower LLC, as landlord, and Master Lease Tenant, as tenant, dated as of August 3, 2005, as amended by an agreement dated September 20, 2006, by the Consent to December 3, 2008, and by those certain agreements dated, September 25, 2006, January 31, 2007, and March 17, 2009 pertaining to the restaurant and retail store presently used by the Hotel at 408 East 92nd Street (the “Restaurant and Retail Store Lease”);

WHEREAS, a portion of the premises leased by Master Lease Tenant pursuant to the Restaurant and Retail Store Lease is subleased to New Istanbul Fruit & Products Co., Inc., pursuant to that certain Agreement of Lease dated as of September ___, 2008 which is guaranteed by that certain Agreement dated as of September ___, 2008 made by Levent Ali Yildiz for the benefit of Master Lease Tenant (collectively, the "Retail Sublease").

WHEREAS, the Premises are presently operated as a Courtyard by Marriott Hotel (the "Hotel") pursuant to the terms of a Management Agreement dated October 7, 2002, as amended by agreements dated June 23, 2003, May 4, 2004, July 20, 2004 and July 7, 2006, (collectively the "Management Agreement") between Seller and Courtyard Management Corporation ("CMC");

WHEREAS, Seller has commenced that certain action in the Supreme Court of the State of New York, New York County, titled *Madison 92nd Street Associates, LLC v. Courtyard Marriott Corporation*, Index No. 602762/2009;

WHEREAS, on August 16, 2011 (the "Petition Date") Seller filed a Bankruptcy proceeding in the United States Bankruptcy Court for the Southern District of New York, Case No. 11-13917 (SMB);

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Premises and certain interests in its related tangible assets (including, without limitation the tenant interest in the Restaurant and Retail Store Lease and the sublandlord interest in (and beneficiary of the guaranty constituting a part of) the Retail Sublease), but only in the event the Premises may be conveyed free and clear of the Management Agreement, upon the terms and conditions hereinafter set forth;

WHEREAS, General Electric Credit Corporation (“Mortgagee”) holds a first mortgage (“Mortgage”) on the Premises dated May 12, 2008 in the original principal amount of Sixty Two Million Dollars (\$62,000,000.00), various defaults and events of default thereunder have occurred and/or are expected to occur and a Consensual Judgment of Foreclosure and Sale has been entered by the Supreme Court of the State of New York, County of New York, on May 26, 2011; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1

ASSETS PURCHASED AND SOLD

Upon and subject to the terms and conditions set forth in this Contract, Seller agrees to sell, and Buyer agrees to purchase, Seller’s right, title and interest (whether owned, leased or licensed) in all of the following (hereinafter collectively called the “Property”), actual and exclusive physical possession of which Seller shall deliver to Buyer at the Closing (hereinafter defined):

- (a) The Premises;
- (b) All fixtures, furniture, furnishings, operating equipment, linens, tools and all other tangible property, placed on, attached to or used in connection with the maintenance or operation of the Hotel, located on the Premises as of the date hereof, including, but not limited to, any and all partitions, vaults, safes, cash registers and/or point of sale processing equipment, fire extinguishing equipment, fitness equipment, pool equipment, works of art, chairs, tables, beds, bed springs, mattresses, couches, lamps, waste baskets, desks, towels, blankets, silver, silverware, barware, china, dishes, cutlery, kitchen equipment of any type or sort, glassware, cabinets, curtains, draperies, pictures, radios, televisions and other furniture and furnishings for

the lobby, halls, lavatories and other public rooms and places and for the guestrooms and the furniture, printers, computers, furnishings, and equipment for the offices, security cameras, alarms and other equipment, and any and all replacements and substitutions thereof and additions thereto which may occur in the ordinary course, but specifically excluding any Consumable Supplies (collectively, the "Personal Property");

(c) To the extent the same are transferable, all licenses, permits, authorizations, consents, approvals (collectively, "Licenses and Permits"), warranties and guarantees, which relate to the ownership, construction or operation of the Premises that are held by Seller, including, without limitation, those licenses and permits held by Seller and identified on Exhibit "B" hereto;

(d) All (v) equipment leases, (w) service, maintenance and other similar contracts, (x) leases and other occupancy agreements, (y) documents governing the Condominium (including, without limitation, the Declaration) and (z) other contracts, agreements or arrangement, in each case with respect to ownership, maintenance, occupancy, operation, provisioning or equipping of the Premises to which Seller is a party and which are in effect as of the date hereof (including, without limitation, the Access and Membership Agreement (as hereinafter defined) or entered into from and after the date hereof in accordance with the terms of this Contract (collectively, and together with the Restaurant and Retail Store Lease and the Retail Sublease, the "Seller Contracts"), together with any deposits related to any of the same posted by or with Seller or Master Lease Tenant, but specifically excluding (i) the Management Agreement and any other agreements with CMC and any affiliates thereof, (ii) the Desired Rejected Contracts (hereinafter defined), (iii) any contracts or reservations for the use or occupancy of any guest rooms and/or meeting or conference facilities of the Hotel from and after

the Closing Date (as hereinafter defined), (iv) any employment agreements or collective bargaining agreements which relate to the employment of any individuals at the Premises or in connection with the Hotel, including any benefit, pension, health or multi-employer benefit plans, (v) any and all insurance policies and (vi) any and all claims against CMC (including parties related to CMC) or to the Management Agreement (the Seller Contracts, exclusive of items (i) through (vi) above, the "Assumed Contracts");

(e) All packages or containers of inventory, goods and operating supplies which are consumable (collectively, "Consumable Supplies") which are owned by Seller (excluding in all cases any items bearing the logo of identifying marks of the former management company) and are located on the Premises as of the date hereof and used in connection with the maintenance or operation of the Hotel, including, but not limited to, the following inventory and operating supplies, whether or not such inventory or supplies are in storage or in use at the Hotel (in each case whether new, used, opened or unopened), and any and all replacements and substitutions thereof and additions thereto which may occur in the ordinary course:

(i) all laundry, cleaning and paper supplies and all printing and stationery, such as menu stock, bill heads and advertising matter;

(ii) all engineers' and painters' supplies;

(iii) all fuel actually delivered to the Premises;

(iv) all pool chemicals and other pool supplies; and

(v) all food and beverage (alcoholic and non-alcoholic);

(f) All improvements and facilities located on the Premises, including, without limitation, all furnished and rentable guest rooms, lounges, banquet, conference or meeting rooms, and recreational facilities;

(g) Any unpaid award for any taking by condemnation or any damage to the Premises or the improvements located thereon;

(h) All of the easements, rights, privileges and appurtenances belonging or in any way pertaining to the Premises or the improvements located thereon, including, without limitation, the Restaurant Easement (as hereinafter defined);

(i) All plans and specifications, surveys, site plans blue prints, architectural plans, engineering diagrams and similar items which relate to the Premises and which are in the possession of or readily available to Seller; and

(j) All items of intangible property relating to the ownership, use, occupancy or operation of the Premises and which are owned by Seller, if any, including, without limitation, any and all trademarks, service marks, copyrights, security codes, E-mail and internet addresses and telephone/facsimile numbers and listings (so long as none bear the logo or identifying name or marks of the former management company);

PROVIDED, HOWEVER, THAT SPECIFICALLY EXCLUDED FROM THE PROPERTY ARE (I) ALL RESERVES HELD BY CMC UNDER THE MANAGEMENT AGREEMENT, (II) ANY AND ALL ESCROWED RESERVES UNDER THE MORTGAGE, (III) ANY PROPERTY OWNED BY CMC OR WHICH BEARS CMC'S LOGO OR IDENTIFYING INFORMATION (IV) ANY OBLIGATIONS OR LIABILITIES ARISING FROM THE EMPLOYMENT OF EMPLOYEES AT THE PREMISES OR IN CONNECTION WITH THE HOTEL PRIOR TO THE CLOSING AND (V) ALL CLAIMS AGAINST CMC RELATING

TO THE MANAGEMENT AGREEMENT OR THE PREMISES, AND ANY OTHER PARTIES ARISING OUT OF THE OWNERSHIP OF OPERATION OF THE HOTEL OR THE MANAGEMENT AGREEMENT AND ALL CLAIMS AGAINST ANY OTHER THIRD PARTIES RELATING TO SELLER CONTRACTS THAT ARE NOT ASSUMED CONTRACTS, INCLUDING BUT NOT LIMITED TO AVOIDANCE ACTION RECOVERIES UNDER CHAPTER 5 OF THE BANKRUPTCY CODE.

ARTICLE 2

“SUBJECT TO” PROVISION

The Premises shall be transferred subject only to the following (“Permitted Encumbrances”):

(a) State of facts as shown on survey dated July 30, 2009 prepared by Earl B. Lovell – S.P. Belcher, Inc.

(b) Consents of record for the erection of any structures on, under or above any streets on which the Premises abut.

(c) Any building or zoning ordinances or any other applicable laws and governmental regulations that affect the use and maintenance of the Premises, provided that same do not prohibit the use and operation of the Premises as a hotel.

(d) Subject to Section 3.1(g) hereof, all notes or notices of violations of law or municipal ordinances, orders or requirements noted in or issued by the Departments of Housing and Buildings, Fire, Labor, Health or other State or municipal departments having jurisdiction against or affecting the Premises or the Building (“Violations”), including, without limitation, the following Notices of Sidewalk Violation:

(i) NO. 77459 FILED: 5/22/2000, against LOT 41

(ii) NO. 3213 FILED: 7/9/1973 against LOT 41

(iii) NO. 12024 FILED: 5/8/1970 against LOT 41

(e) Possible lack of right to maintain vaults, coal vault covers, coal chutes, fuel tanks, fill pipes, transformers and other installations, if any, beyond the building lines.

(f) All leases or tenancies set forth on Exhibit "C" and any new leases or tenancies entered into from and after the date hereof in accordance with this Contract.

(g) All financing statements, chattel mortgages and liens on personalty filed more than five (5) years prior to the Closing Date and not renewed, or filed against property or equipment no longer located on the Premises or owned by tenants, provided the Title Company (as hereinafter defined) shall omit same from Buyer's title insurance policy.

(h) Such other matters that the Title Company may raise as an exception to title, provided that Title Company will either omit or affirmatively insure against collection or enforcement of same out of the Premises at no additional cost or expense to Buyer and that no prohibition of present use or maintenance of the Premises will result therefrom, as may be applicable.

(i) The lien of real estate taxes, assessments, vault charges and water and sewer charges, if any, not yet due and payable (it being agreed by Buyer and Seller that if any such tax, assessment or charge is levied or assessed with respect to the Premises after the date hereof and the owner of the Premises has the election to pay such tax, assessment or charge either immediately or under a payment plan, Seller may not elect to pay under a payment plan unless (x) such payment plan does not require the payment of any interest, or (y) Seller first obtains Buyer's written consent).

(j) Any exceptions caused by Buyer, its agents, representatives or employees.

(k) That certain Access and Membership Agreement dated as of August 3, 2005 and recorded 1/16/06 in CRFN 2006000030921, as amended by that certain Amendment to Access and Membership Agreement dated as of June 1, 2006 and recorded 1/3/08 in CRFN 2008000002801 (as amended, the "Access and Membership Agreement"), including the rights of Health Club Members (as defined in the Access and Membership Agreement) to use the Health Club Facility (as defined in the Access and Membership Agreement) located in the Premises for so long as the Premises are operated as a hotel and to have the interior right of passage for ingress and egress between the building located at 408 East 92nd Street, New York, N.Y. and the Health Club Facility in the Premises.

(l) Declaration of Zoning Lot Restrictions made by Wincaf Properties, Inc. and GWEC Corp. dated 2/25/00 and recorded 3/10/00 in Reel 3063 page 582.

(m) Declaration of Zoning Lot Restrictions made by among 92nd & First Residential Tower LLC, Madison 92nd Street Associates, LLC, 1545 LLC, Morgan Reed First, LLC, Joseph Cvek, 1762-64 First Avenue Realty Co. and PPI New York, LLC dated 10/25/02 and recorded 12/24/02 in Reel 3696 page 490.

(n) Terms, covenants, restrictions, provisions and easement for light and air set forth in Zoning Lot and Development Agreement made by and among PPI New York, LLC, 92nd & First Residential Tower LLC and Madison 92nd Street Associates, LLC dated as of 10/25/02 and recorded 12/24/02 in Reel 3696 page 624.

(o) Easement Agreement made by and between 92nd & First Residential Tower LLC and Madison 92nd Street Associates, LLC dated 10/25/02 and recorded 12/24/02 in Reel 3696 page 703, as modified by Modification of Easement Agreement made between 92nd & First Residential Tower LLC and Madison 92nd Street Associates, LLC dated 8/3/05 and

recorded 1/19/06 as CRFN 2006000030920 and as further modified by Agreement made between Rivereast Apartments Investors LLC and Madison 92nd Street Associates, LLC dated 9/28/06 and recorded 1/3/08 as CRFN 2008000002802 (the "Restaurant Easement").

(p) The terms and conditions set forth in the Declaration of Condominium and By-Laws dated 7/13/05 and recorded 8/3/05 in the Office of the City Register, New York County and CRFN 2005000433708 (the "Declaration").

(q) The sewer of premises adjoining on the south runs through the Land.

ARTICLE 3

TITLE COMPANY

Section 3.1. Title Company.

(a) At the Closing, Seller shall deliver, and Buyer shall accept fee simple title to the Premises as the Title Company will be willing to approve and insure at regular rates, subject only to the Permitted Encumbrances. If the Title Company is unwilling to so insure, then Buyer shall accept such title as any reputable, licensed title insurance company shall be willing to so insure in accordance with the terms hereof and all references to the Title Company shall be deemed to refer to such other title insurer.

(b) Buyer shall furnish a commitment for title insurance (the "Title Commitment") with respect to the Premises from the Title Company dated no earlier than the day after this Agreement and shall furnish counsel for Seller with a copy of same. Buyer shall have the right at its expense, to order and deliver to the Title Company and to Seller an update of the survey of the Premises attached hereto an Exhibit "F", and Seller shall cooperate with Buyer in connection therewith and provide Buyer access to the Premises. Buyer shall notify Seller of its objection to any items or statements of fact shown on the Title Commitment no later than three (3) Business Days after Buyer's receipt of such Title Commitment (the last day of such

three business day period referred to as the “Title Objection Date”), and Buyer shall notify Seller of its objection to any items or statements of fact shown on any updates to the Title Commitment and/or the survey, which shall not be a Permitted Encumbrance under Article 2 hereof (“Title Defects”). As used in this Contract, “Business Day” shall mean any Monday, Tuesday, Wednesday, Thursday or Friday, other than any federal holiday, State of New York holiday or other day on which banks are required or permitted to close for business in the State of New York. Seller shall undertake to cure said Title Defects in accordance with the terms of this Contract.

(c) In the event Seller receives written notice of a Title Defect, as set forth in Section 3.1(b) above, Seller shall use commercially reasonable efforts to cause such Title Defect to be cured and/or removed in accordance with the provisions set forth below. If the Title Defect is one which can be cured by the payment of a liquidated sum of money, Seller shall be required to use commercially reasonable efforts to cure said Title Defect; provided, however, that Seller, in using commercially reasonable efforts to cure same, shall not be required to expend in excess of One Hundred Fifty Thousand Dollars (\$150,000.00) in the aggregate (“Title Defect Cure Limitation”), exclusive of amounts expended to cure Title Defects pursuant to the immediately following sentence, to cure any such Title Defect(s). Notwithstanding the above, Seller shall, on or prior to the Closing Date, discharge or cause to be discharged, under the Sale Order (as defined below) or otherwise, and cause the Title Company to remove of record, at Seller’s sole cost and expense, and without regard to the Title Defect Cure Limitation, (i) any mortgage or deed of trust or other similar monetary lien encumbering the Premises or any portion thereof (provided, however, that Seller, at no cost or liability to Seller, shall request the Mortgage lender to assign the Mortgage to Buyer’s lender at Closing and shall allow Buyer and Buyer’s

prospective lenders to talk with the Mortgage lender regarding the same, so long as Buyer shall be solely responsible for (and Seller shall not be obligated to incur) any out-of-pocket expenses of the Mortgage lender in connection with such assignment of the Mortgage, and if the Mortgage lender agrees to assign the Mortgage, then Seller shall reasonably cooperate with Buyer including, without limitation, by signing all customary documents reasonably requested by Buyer, in order to effect such assignment, provided that the same shall not create any additional liability on the part of Seller), except for amounts that Buyer and such Mortgage lender agree prior to Closing may continue to be secured by the Mortgage following Closing, without reduction of the cash consideration payable to Seller, (ii) any and all mechanic's or supplier's liens encumbering the Premises or any portion thereof arising from work performed or materials furnished at the Premises by or on behalf of Seller or its agents, representatives or employees (but specifically excluding work performed or materials furnished at the Premises by or on behalf of agents, representatives or employees of CMC without the approval of Seller), (iii) liens related to past due real estate taxes, assessments or charges with respect to the Premises, and (iv) Title Defects that Seller (or its agents, representatives or employees, but specifically excluding agents, representatives or employees of CMC) has caused to be placed on the Premises after the date hereof or arise out of acts of Seller (or its agents, representatives or employees, but specifically excluding agents, representatives or employees of CMC) after the date hereof (collectively, "Seller Liens").

(d) If any Title Defect, other than any Seller Liens, cannot be or is not cured by Seller prior to the scheduled Closing Date, notwithstanding Seller's commercially reasonable efforts, then at Seller's option, Seller may elect by written notice (given at least two business days prior to the scheduled Closing Date) to Buyer to adjourn the Closing for one or more

periods of time to any Business Day no more than thirty (30) days after the scheduled Closing Date, to continue its commercially reasonable efforts to cure such Title Defects; provided, that the foregoing adjournment right shall not be deemed to modify or extend the termination provisions set forth in Article 16 of this Contract. If any Title Defect (including, without limitation, any Seller Liens) cannot be or is not cured by Seller prior to the scheduled Closing Date (or, to the extent applicable and provided that Seller shall have exercised the same, within the extension period described above), Seller's commercially reasonable efforts notwithstanding, Buyer shall be entitled, at its option, within ten (10) days after the scheduled Closing Date (or, if applicable, after the end of such extension period), without limiting Buyer's remedies in respect of Seller's failure to remove any Seller Liens, either: (i) to terminate this Contract and receive a refund or return of the Deposit (hereinafter defined), in which case this Contract shall be considered canceled, and no party hereto shall thereafter have any further rights against or obligations or liabilities to any other party to this Contract arising out of this Contract, except as expressly provided in this Contract; or (ii) to purchase the Property subject to such Title Defects, in which event a credit for the cost to cure such Title Defects shall be given to Buyer as part of the prorations at the Closing (not to exceed the Title Defect Cure Limitation, except to with respect to any Title Defects that are Seller Liens). In the absence of any action by Buyer within such ten (10) day period, as set forth above, Buyer shall be deemed to have elected the course of action set forth in (i) above. Notwithstanding anything contained herein to the contrary, Seller shall not be required to bring any quiet title action or institute or participate in any other litigation to cure any Title Defect that is not a Seller Lien.

(e) Notwithstanding the foregoing provisions of this Article 3, in the event that Title Company shall raise an exception to title which is not a Permitted Encumbrance, Seller

shall have no obligation to eliminate such exception and Buyer shall have no right to terminate this Contract by reason of such exception (and such exception shall be deemed a Permitted Encumbrance) if Title Company or another national title company, as applicable, shall be prepared to insure title to the Premises at regular rates without such exception or insure against collection out of the Premises.

(f) Buyer's acceptance of the Closing Documents (as hereinafter defined) shall be deemed to be full performance and discharge of any and all agreements and obligations on the part of the Seller to be performed pursuant to the provisions of this Contract except those, if any, which are herein specifically stated to survive Closing.

(g) Notwithstanding anything to the contrary contained in Section 2(d) hereof, Seller shall be required to pay, on or before Closing, any fine or penalty arising out of a Violation which has been filed against the Premises on or prior to the Closing Date, subject to the Title Defect Cure Limitation set forth in Section 3.1(c) hereof (if applicable), and provided such Violation is not the result of any acts or omissions of Buyer.

ARTICLE 4

PURCHASE PRICE

Section 4.1. Purchase Price. The purchase price ("Purchase Price") shall be an amount equal to Eighty Four Million One Hundred Thousand Dollars (\$84,100,000.00), subject to subsection (c) below, payable as follows:

(a) Upon the signing of this Contract Buyer shall deposit with the Title Company as escrow agent (the "Escrow Agent"), by federal funds wire transfer the sum of Two Million Dollars (\$2,000,000) (the "Deposit").

(i) At Closing, (i) an amount, by federal funds wire transfer, equal to Eighty Four Million One Hundred Thousand Dollars (\$84,100,000) (the

“Purchase Price”) minus the Deposit (subject to adjustment pursuant to the terms of this Contract)

(b) The parties agree that the allocation of the Purchase Price between the Premises and all other property constituting the Property shall be as set forth on Schedule “4.1(d)” hereto. All filings made by the parties hereto, and all taxes to be paid in connection with the transfer contemplated by this Contract, shall be based such allocation, and the parties hereto shall consistently reflect these allocations on their respective Federal, State and local tax returns.

(c) The provisions of this Article 4 shall survive the Closing.

Section 4.2. Acceptable Funds.

All money payable under this Contract unless otherwise specified, shall be either:

(a) Good unendorsed certified check of Buyer, or official check of any New York Clearing House member bank, or federal funds wire transfer in accordance with Seller’s written instructions;

(b) Money payable at Closing other than the Purchase Price may be by check of Buyer up to the amount of One Thousand Dollars (\$1,000.00); or

(c) As otherwise agreed to in writing by Seller’s attorney.

ARTICLE 5

BUYER LIMITED TERMINATION RIGHT

Buyer shall have the right to terminate this Agreement by giving written notice to Seller on or before the date Seller files its Disclosure Statement with the Bankruptcy Court, or 4:00 p.m., Eastern Time, on the date ten (10) Business Days after the Title Objection Date,

whichever is later. In such event, Buyer shall be entitled to the return of the Deposit and all interest earned thereon.

ARTICLE 6

PRORATIONS

Section 6.1. Effective Time. It is understood that, unless otherwise agreed herein, the time for determining the proration of all matters to be prorated under this Contract shall be as of 11:59 P.M. (EST) on the day immediately preceding the Closing Date (the "Cut-Off Time").

Section 6.2. Taxes and Common Charges. Real estate and personal property taxes and assessments, if any, for the tax year in which the Closing Date occurs, and occupancy taxes and common charges and assessments payable to the Condominium, shall be prorated as of the Cut-Off Time. Real estate taxes and assessments shall be apportioned based on the fiscal period for which such taxes or assessments are assessed. If any such amounts are not known as of the Closing, prorations shall be made on the basis of last known rates and assessments, and Seller and Buyer shall arrange for a final adjustment when actual rates are available.

Section 6.3. Insurance. All insurance policies maintained by Seller, including, without limitation, fire and any additional hazard insurance, shall be maintained in full force and effect until the Closing and shall be canceled as of the Closing, and any refunded premiums shall be retained by Seller.

Section 6.4. Utilities. Prior to the Closing, Seller shall notify all utility companies servicing the Premises of the prospective change in ownership as of the Closing and shall direct that all meters be read during the daylight hours on or immediately prior to the Closing and that all billings for services after the Closing be made to Buyer at the Premises without interruption of service. Seller shall be responsible to pay all charges for utilities up to the Cut-Off Time. In the event that meter readings as of or immediately prior to the Closing cannot be obtained in time

for the Closing, then charges for utilities shall be prorated on the basis of the most recent bills that are available. If the apportionment is not based on actual current readings, then, upon the taking of a subsequent actual reading, such apportionment shall be readjusted and Seller or Buyer, as the case may be, promptly shall deliver to the other the amount determined to be due upon such readjustment. All other utility bills received by Seller after the Closing shall be promptly forwarded to Buyer together with the amount, if any, owed by Seller therefore pursuant to the provisions hereof. Provided same are assignable or transferable, the parties agree to fill out the customary forms required by the telephone company to assign the existing phone and fax numbers at the Hotel to Buyer and to take such other action as is necessary to transfer the Hotel's E-Mail and internet addresses (other than any that are the property of CMC) to Buyer. Any charges for utilities which are paid on a monthly basis and are not metered will be prorated as of the Cut-Off Time. Sewer rent, if any, shall be prorated on the basis of the fiscal period for which such sewer rents are assessed. At the Closing, Buyer shall pay to Seller the amount of all deposits on account with the suppliers of such utilities for the Premises made by Seller, if the same are transferable and assigned to Buyer at Closing, to the extent Seller provides evidence thereof; otherwise, all such deposits shall remain the property of Seller and Buyer shall be responsible for paying any deposit required of Buyer by the suppliers of such utilities. Buyer shall cooperate to facilitate the prompt release of utility deposits not assigned to Buyer at Closing, if any, to Seller at or immediately following the Closing.

Section 6.5. Contracts. All income, expenses and obligations with respect to any Assumed Contracts, the Restaurant and Retail Store Lease and the Retail Sublease shall be prorated between the parties as of the Cut-Off Time. Buyer shall not be responsible for the repayment of any prepaid expense associated with any Seller Contracts that are not Assumed

Contracts. Any prepaid amounts or security deposits previously paid by Seller under any Assumed Contracts or by the Master Lease Tenant under the Restaurant and Retail Store Lease shall be transferred and assigned to Buyer, and shall be a credit to Seller, at Closing. At Closing, Seller shall transfer to Buyer control of accounts holding any deposits held by Seller, or letters or credit or other forms of deposits held by Seller, with respect to any Assumed Contracts and the Retail Sublease. All amounts under any Assumed Contracts, the Restaurant and Retail Store Lease and the Retail Sublease which are transferred to Buyer, if any, will be prorated between the parties at the Closing.

Section 6.6. Vending Machines. Buyer acknowledges that the vending machines (including, without limitation, postage meters and pay telephones) may be emptied and receipts therefrom recorded by the owner thereof on or before the Cut-Off Time, it being understood that Seller is entitled to all net receipts with respect to the vending machines up to the Cut-Off Time and Buyer shall be entitled to all net receipts thereafter.

Section 6.7. Miscellaneous Adjustments. All other items that are normally prorated and adjusted in the sale of real property shall be prorated as of the Cut-Off Time in accordance with local custom in the jurisdiction in which the Premises is located.

Section 6.8. Post-Closing Adjustments. Prorations and adjustments under this Article 7 shall, insofar as feasible, be determined and paid on the day of Closing. If any proration or adjustment provided for herein cannot be made with absolute accuracy as of the Closing, the parties will estimate such proration or adjustment as accurately as possible, and will correct same and pay or receive any correction as soon thereafter as accurate information becomes available. To the extent that any dispute with respect to such proration and adjustment is not resolved within fifteen (15) days after the delivery by either party hereto of its objections

to a post-Closing schedule of prorations and adjustments prepared by the other party hereto, such differences shall be submitted as soon as practicable thereafter to such any "Big Four" accounting firm, Reznick, or any accounting firm that is part of the PKF network of firms (each, an "Eligible Accounting Firm") upon which Seller and Buyer shall agree for final determination thereof. If Seller and Buyer are not able to agree within thirty (30) days upon an accounting firm, each shall, within ten (10) days following expiration of such thirty (30)-day period, designate an Eligible Accounting Firm and give written notice to the other of the name and address of the firm so designated. The two firms shall consult with each other and, if possible, determine the exceptions in questions by mutual agreement, and their determination so agreed upon shall be final and conclusive. If the two firms are not able, within thirty (30) days, to agree upon the exceptions in question, they jointly shall designate, within ten (10) days following expiration of such thirty (30)-day period, a third Eligible Accounting Firm which shall not be affiliated with, nor have represented or been retained for any reason, within the prior two (2) year period, by Seller or Buyer or their respective affiliates, whose determination concerning the exceptions shall be final and conclusive. Any determination by such accounting firm(s) as to the proper determination of any such item submitted to it (them) for determination shall be conclusive and binding upon Buyer and Seller for purposes of this Contract. Each of Buyer and Seller shall pay all of the fees charged by any accounting firm selected exclusively by it, and one-half of such fees charged by any jointly selected accounting firm, in connection with any matter submitted to any accounting firm hereunder.

Section 6.9. Computation. All prorations shall be computed by the parties, or their respective representatives, in a manner consistent with good accounting practices. Five (5) Business Days prior to the Closing, Seller shall furnish to Buyer a tentative statement of

proposed prorations. If the computation of prorations under this Article 6 shows that a net amount is owed by Buyer to Seller, such amount shall be paid in cash to Seller by Buyer on the date of Closing. If the computation of prorations under this Article 6 shows that a net amount is owed by Seller to Buyer, such amount shall be credited against the Purchase Price due at Closing. Any errors or omissions in computing apportionments at Closing shall be promptly corrected as soon as they are discovered.

Section 6.10. Survival. The terms and provisions of this Article 6 shall survive the Closing.

ARTICLE 7

REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER

Section 7.1. Seller hereby represents, warrants and covenants to Buyer as of the date hereof and as of the Closing Date as follows:

(a) Existence and Good Standing. Seller is duly organized and validly existing as a limited liability company under the laws of the State of Delaware, and is in good standing under the laws of the State of Delaware and the State of New York.

(b) Authorization and Binding Obligation. Seller has all requisite power and authority to carry on its business as it is now being conducted and subject to an order entered in connection with the Bankruptcy Proceeding, to execute and deliver the Closing Documents to which it is a party and to consummate the transactions contemplated hereby pursuant to the terms and conditions of this Contract. Subject to Bankruptcy Court approval, the execution, delivery and performance of this Contract and the Closing Documents to which it is a party by Seller have either been duly and validly authorized by all necessary limited liability company action or by an order entered in connection with the Bankruptcy Proceeding. The Closing Documents, when so

executed and delivered, will be the valid and binding obligations of Seller, enforceable in accordance with their respective terms.

(c) No Conflict. Subject to receipt of the consents set forth on Schedule “7.1(c)” hereto, the execution and delivery of this Contract by Seller and the consummation by Seller of the transactions contemplated hereby (i) will not require the consent of any other person or entity; (ii) will not violate any provisions of its limited liability company operating agreement; (iii) will not, either alone or with the giving of notice or the passage of time or both, conflict with, constitute grounds for termination of, or result in a breach of the terms, conditions, or provisions of, or constitute a default under any contract, instrument, license or permit to which it is now subject, (iv) will not result in the creation of any lien, charge or encumbrance on any part of the Premises or the balance of the Property; and (v) will not violate any injunction, decree, statute, rule or regulation applicable to Seller or the Property.

(d) Warranty of Title. Seller warrants that it owns the Property, subject only to the Permitted Encumbrances, and subject to receipt of the consents referenced in Section 7.1(c) above, has the requisite power and authority to convey such Property in accordance with the terms of this Contract.

(e) Licenses and Permits. All Licenses and Permits maintained by Seller are listed on Exhibit “B” (including any and all amendments and other modifications thereto), true, correct and complete copies of which have been delivered to Buyer. To Seller’s knowledge, all such Licenses and Permits are in full force and effect. Except as otherwise disclosed on Exhibit “B”, as of the date hereof, Seller has not received written notice of any violations, revocations, suspensions or non-renewals of any of such Licenses and Permits. To Seller’s Knowledge, all Licenses and Permits maintained by CMC with respect to the Property and the Hotel also are

listed on Exhibit "B" (and are identified thereon as "CMC Licenses and Permits"). Buyer acknowledges that Seller is operating the Premises under a temporary certificate of occupancy, and Seller shall have no obligation to obtain a permanent certificate of occupancy as a condition or prerequisite to Closing.

(f) Assumed Contracts. All Assumed Contracts are listed in Exhibit "C" (including any and all amendments and other modifications thereto), true, correct and complete copies of which have been delivered to Buyer. To Seller's knowledge, all such Assumed Contracts are in full force and effect. To Seller's knowledge, there are no contracts that will affect the Property following the Closing Date (other than contracts to which CMC and not Seller is a party), except as set forth on such Exhibit "C". Each Assumed Contract is a legal, valid and binding obligation of Seller and is enforceable against Seller, and, to the knowledge of Seller, the other parties thereto. Except as set forth on Exhibit "C", to Seller's knowledge there are no defaults or events that with notice or lapse of time or both would constitute a default by any party to any Assumed Contract.

(g) Rights of Use and Occupancy. Except as set forth on Exhibit "C", there are no parties in possession of any portion of the Premises as lessees and there are no other leases, licenses, concessions or any other agreements giving anyone other than Seller, CMC and transient hotel guests a right to use or occupy the Property or any part thereof.

(h) Restaurant and Retail Store Lease and Retail Sublease. True, correct and complete copies of the Restaurant and Retail Store Lease and the Retail Sublease have been delivered to Buyer. To Seller's knowledge, each of the Restaurant and Retail Store Lease and the Retail Sublease is in full force and effect. Each of the Restaurant and Retail Store Lease and the Retail Sublease is the legal, valid and binding obligation of Master Lease Tenant and is

enforceable against Master Lease Tenant, and, to the knowledge of Seller, the other parties thereto. Except as set forth on Exhibit "C", there are no defaults or events that with notice or lapse of time or both which constitute a default by any party to the Restaurant and Retail Store Lease or the Retail Sublease. On the Closing Date, other than pursuant to the Retail Sublease, or other subtenants thereunder (and Seller represents and warrants that to Seller's knowledge there are no such other subtenants), there will be no parties in possession of all or any portion of the premises demised pursuant to the Restaurant and Retail Store Lease.

(i) Litigation. To Seller's knowledge, there is no litigation, governmental or administrative proceedings or arbitrations presently pending or threatened in writing with respect to the Property or Seller (which pertain to the Property), except as set forth on Exhibit "D" attached hereto and made a part hereof.

(j) Personal Property. All Personal Property owned by Seller as of the date hereof is identified on Exhibit "E" hereto. Except with respect to certain Personal Property owned by parties other than Seller under title retention contracts or personal property leases more particularly set forth on Exhibit "E", all of such Personal Property has been fully paid for and is owned by Seller free and clear of all liens and encumbrances, except for the lien of the Mortgage. Seller shall have the right to amend and supplement such Exhibit "E" without Buyer's consent (and in no event shall such an update by a Seller constitute a default under this Contract by Seller) to reflect any and all replacements and substitutions thereof and additions thereto which may occur in the ordinary course from and after the date hereof until the Closing Date.

(k) Employees. All employees working at the Premises are employees of CMC and not the Seller. Seller has no employees and has not entered into any employment

contracts, collective bargaining agreements or labor union contracts and has not established any retirement, health insurance, vacation, pension, profit sharing, multi-employer or other benefit plans relating to the Property

(l) Condemnation Proceedings. There is not pending, nor to Seller's knowledge is there threatened in writing, any condemnation or eminent domain proceedings affecting the Premises or any part thereof.

(m) All Work Paid For. All work being performed at the Hotel or on the Premises has been completed or will be completed and fully paid for on or before the Closing Date.

(n) Right of First Refusal. There are no rights of first refusal to acquire any part of the Property, other than as may be set forth in the Management Agreement and the Declaration.

(o) Property Tax Appeals. Except as set forth on Schedule "7.1(o)" hereto, there are no pending property tax appeals that have been filed by Seller or on Seller's behalf with respect to the Property.

(p) Taxes. Except as set forth on Schedule 7.1 (p), Seller has not received any written notice of any audit of any taxes payable or tax delinquency with respect to the Property which has not been resolved or completed. Seller makes no representation or warranty as to whether CMC has received any such notice or a similar notice.

(q) Environmental and Building Condition. Other than the reports identified on Schedule "7.1(q)" hereto, there are no environmental reports or property condition reports in Seller's possession with respect to the Premises. True, correct and complete copies of the reports identified on such Schedule "7.1(q)" have been delivered to Buyer. Other than as set forth in the

reports identified on such Schedule “7.1(q)” hereto, Seller has received no written notice of any actual or potential violation of or failure to comply with any Environmental Laws with respect to the Premises which remains uncorrected, or of any actual or threatened obligation to undertake or bear the cost of an clean-up, removal, containment or other remediation under any Environmental Law with respect to the Premises which remains unperformed. As used herein, “Environmental Laws” means any applicable laws, statutes, regulations, ordinances, orders, codes or other legal requirements which regulate the manufacture, generation, formulation, processing, use, treatment, handling, storage, disposal, distribution or transportation, or an actual or potential spill, leak, emission, discharge or release of any hazardous or toxic substances, materials or waste, pollution, contamination or radiation into any water, soil, sediment, air or other environmental media, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act, (ii) the Resource Conservation and Recovery Act, (iii) the Federal Water Pollution Control Act, (iv) the Toxic Substances Control Act, (v) the Clean Water Act, (vi) the Clean Air Act, and (vii) the Hazardous Materials Transportation Act, and similar state and local laws, as amended as of the time in question.

(r) Scope of Due Diligence Materials. Seller has not withheld any due diligence materials from Buyer because such materials are subject to the attorney-client or attorney work products privileges, or are confidential internal assessments, reports, studies, memoranda, notes or other correspondence prepared by or on behalf of any officer or employee of Seller, which would result in the available due diligence materials inaccurately representing in any material respect the condition of the Property.

(s) No Violation of Anti-Terrorism Laws. None of Seller’s property or interests is subject to being “blocked” under any Anti-Terrorism Laws, and neither Seller nor any

person or entity holding any direct or indirect interest in Seller is in violation of any Anti-Terrorism Laws. As used in herein, "Anti-Terrorism Laws" means Executive Order 13224 issued by the President of the United States, the USA PATRIOT Act, and all other laws, statutes, regulations, ordinances, orders, codes or other legal requirements which address or in any way relate to terrorist acts and acts of war.

Section 7.2. Breach of Representation. Until Closing, Seller shall endeavor to update any representation or warranty in this Contract to correct any mistake and/or to reflect any matter which arises subsequent to the date of this Contract. If Buyer has actual knowledge of any matter or matters which would constitute a material breach of Seller's representations and warranties, Buyer shall notify Seller of such material breach. Failure of Buyer to notify Seller of such material breach at or prior to the Closing shall be deemed a waiver thereof from and after the Closing. As used in this Section 7.2, "material" shall mean any state of facts, taken alone or together with all other untruths or inaccuracies, the restoration of which to the condition represented or warranted by Seller under this Contract, would cost at least One Hundred Thousand Dollars (\$100,000) in the aggregate. Seller shall use commercially reasonable efforts to cure or correct the underlying circumstances as necessary to eliminate the adverse effect on Buyer of any breaches or inaccuracies of such representations and warranties, including, without limitation, any material breaches, provided that unless caused by a subsequent act of Seller, Seller shall have no obligation to expend any monies to make any representation true. Buyer shall not be obligated to close the transactions contemplated hereunder prior to the cure by Seller or waiver by Buyer of any such material breaches; provided, however, that Seller shall not have any obligation to cure or correct any breaches or inaccuracies the restoration of which, individually or in the aggregate, to the condition represented or warranted by Seller under this

Contract, would cost One Hundred Fifty Thousand Dollars (\$150,000) or more or which were true when made but became untrue other than as a result of an act of Seller or an omission of Seller where Seller had a duty to act. If Seller (to the extent required hereunder) fails to cure any such material breaches of Seller's representations and warranties on or prior to the scheduled Closing Date, then Buyer, as its sole and exclusive remedies (but subject to Article 16 of this Contract) shall have the option to (i) terminate this Contract by written notice to Seller, in which case Seller shall within one (1) Business Day cause Title Company to return the Deposit to Buyer, and Seller shall reimburse Buyer for Buyer's reasonable direct out-of-pocket costs and expenses incurred in connection with the negotiation of this Contract not to exceed One Hundred Thousand Dollars (\$100,000) in the aggregate (such amount, the "Expense Reimbursement Cap"), and neither party to this Contract shall thereafter have any further right or obligation hereunder, except for any obligation or liability which is expressly intended to survive the termination of this Contract, or (ii) waive such material breaches and consummate the transactions contemplated by this Contract without any credit against or reduction of the Purchase Price. In the event that Buyer obtains actual knowledge prior to the Closing that any of Seller's representations set forth herein are untrue in any material respect and nonetheless proceeds to Closing without exercising its right to terminate this Contract, then the same shall be deemed to be a waiver by Buyer of any further right to make a claim arising out of such breach or inaccuracy. In all events, the representations of Seller herein shall not survive the Closing.

ARTICLE 8

OTHER MATTERS

Section 8.1. Bankruptcy Proceeding. In connection with the Bankruptcy Proceeding (hereinafter defined), the following provisions shall apply:

(a) Competitive Bidding Procedures. Buyer acknowledges that the Agreement is subject to a competitive bid process pursuant to Bankruptcy Code § 363. Buyer acknowledges that in conjunction with the sale of the Premises, Seller shall have sought, in a commercially reasonable manner as required by the Bankruptcy Code and as shall be directed by the Bankruptcy Court in the Sale Procedures Order (as defined below), higher and better offers for the Property. Buyer shall be permitted to submit further bids for the Property in conformity with the Sale Procedures Order.

(b) Sale Motion. Seller shall file the Plan and Disclosure Statement on or before December 16, 2011 and the Sale Motion and the Motion for Approval of Sale and Bid Procedures within twelve (12) Business Days after the Title Objection Date, seeking approval of the transactions contemplated by this Asset Purchase Agreement between Seller and Buyer, as the “Stalking Horse Buyer”, subject to higher and better offers, and authority to transfer to Buyer the Property free and clear of Liens, Claims, and encumbrances, pursuant to, *inter alia*, 11 U.S. C. §§ 105, 363, and 365 (the “Sale Motion”).

(c) Assumption and Cure Motion. Within five (5) days of the filing of the Plan, the Disclosure Statement, or as part of the Sale Motion, the Seller shall file a motion with the Bankruptcy Court seeking entry of an order approving a process for counterparties to the Contracts to be assumed by Buyer (the “Designated Contracts”) to contest the assumption and assignment of the Designated Contracts and/or the amount cure payments owing on account of Seller’s assumption of such contracts and assignment to Buyer (“Assumption and Cure Motion”)

(d) Sale Procedures Order. Within five (5) days of the filing of the Plan and the Disclosure Statement, or as part of the Sale Motion the Seller shall also file a

motion (the “Sale Procedures Motion) with the Bankruptcy Court seeking entry of an order approving sale and bidding procedures for the Property (the “Sale Procedures Order”). The Sale Procedure Order shall contain, among other things, the following material terms:

- (i) Any initial overbid or counter bid for the Property must:
 - (ii) Be received by the Bid Deadline (as defined in the Bid Procedures Order)
 - (iii) Be in all cash with no financing contingency
 - (iv) Be no less than \$87,100,000
 - (v) Be irrevocable until the closing of the sale
 - (vi) Be accompanied by a deposit equal to at least the amount of the Deposit
 - (vii) Be accompanied by documentary evidence demonstrating to the Seller’s reasonable satisfaction that the bidder is financially able to consummate the transaction contemplated by such bid,
 - (viii) Identify all parties involved in the making of the Counter Offer, and their relationship, if any, to the Debtor,
 - (ix) Be accompanied by an executed Purchase Agreement and a redline of the Purchase Agreement marked to show changes, if any, from this Purchase Agreement, and
 - (x) Contain terms and conditions that, in the aggregate, are not materially more burdensome to Seller than the terms and conditions herein.

(Collectively, a “Qualified Counteroffer”)

(e) Proceeding Without Auction. If Seller does not receive a Qualified Counteroffer within the time period set forth in the Sale Procedures Order, it may proceed

immediately to approval of the transactions contemplated by this Contract pursuant to the terms hereof;

(f) Proceeding With Auction. If Seller receives at least one Qualified Counteroffer, the Stalking Horse Buyer and all parties submitting Qualified Counteroffers shall be entitled to participate in an auction for the Property, with minimum subsequent bid increments of \$250,000;

(g) Break-up Fee. In the event that the Bankruptcy Court fails to approve the sale of the Property to the Buyer and instead approves a sale of all or a significant portion of the Property to a person or entity other than the Buyer (an "Other Buyer"), Seller shall pay the Buyer, without further order of the Court, a break-up fee of \$2,500,000 (the "Break-up Fee"), which Break-up Fee shall have a first priority in and be paid out of the proceeds paid by an Other Buyer; and

(h) Return of Deposit. The Deposit shall be returned to the Buyer immediately upon consummation of a transaction with an Other Buyer.

Section 8.2. Conditions to Obligations of Buyer. The obligation of Buyer to consummate the transactions to be performed by it in connection with the Closing is subject to the satisfaction of the following conditions:

(a) The Bankruptcy Court will have entered an order (either independently or as part of the Confirmation Order) in form and substance satisfactory to Buyer in its sole discretion approving this Agreement and all of the terms and conditions hereof, or on such other terms as the parties may agree in writing, authorizing Seller to consummate the transactions contemplated herein, providing that the transfers of assets shall be free of Liens ("Lien" means any lien (statutory or otherwise), encumbrance, pledge, mortgage, hypothecation, deed of trust,

security interest, claim, lease, charge, option, right of first refusal, contract (but excluding any Assumed Contract), obligation, easement, right of way, servitude, proxy, voting trust or agreement, transfer restriction under any shareholder or other similar restriction, limitation, agreement or encumbrance of any kind whatsoever), claims, encumbrances and other interests in and to the Property, except as expressly provided by this Contract, with any and all valid Liens attaching to the Purchase Price at Closing, and containing findings that all applicable notice and hearing requirements for the transactions contemplated herein under the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and any local rules of the Bankruptcy Court have been satisfied, the transactions contemplated hereby are in the best interests of the debtor's estate and its creditors, and Buyer is a good faith purchaser pursuant to 11 U S C 363(m) (the "Sale Order"), which order shall be issued in conjunction with and become a part of the Order confirming the Plan.

(b) The Bankruptcy Court will have entered an order in form and substance satisfactory to Buyer (either independently or as part of the Sale Order or the Confirmation Order) approving the Debtor's assumption of the Assumed Contracts in accordance with section 365(b) of the Bankruptcy Code and the assignment thereof to Buyer as of the Closing, which order shall provide that all defaults under the Assumed Contracts have been cured or will be cured by Debtor prior to or as part of the Closing, that such Cure Costs include any and all performance guarantees accrued or attributable to the period prior to Closing (whether or not such guarantees are then presently due and owing) and further provides that the payment of any and all Cure Costs are the obligation of the Debtor (the "Assumption Order"). The Confirmation Order also shall,

(c) find that, as of the Closing Date, the transactions contemplated by this Contract effect a legal, valid, enforceable and effective sale and transfer of the Property to Buyer, and vest Buyer with title to the Property, free and clear of all Liens, claims, encumbrances and other interests in and to the Property, except as expressly provided by this Contract;

(d) find that the consideration provided by Buyer pursuant to this Contract constitutes reasonably equivalent value and fair consideration for the Property and that this Contract constitutes the highest or best offer for the Property;

(e) approve any other agreement or documentation to the extent related to, or required by, this Agreement; and

(f) find that Seller gave due and proper notice of the sale of the Property.

(g) The Sale Order either will become a final and non-appealable or the Sale order will contain a waiver of the stay set forth in Rule 6004(h) of the Bankruptcy Rules, and the Assumption Order will have become final and non-appealable or the Assumption Order will contain a waiver of the stay set forth in Rule 6006(d) of the Bankruptcy Rules (collectively, the "Approval Conditions").

(h) Each of the Contracts to be assumed by Buyer shall be in full force and effect and each Designated Contract shall have been approved by the Bankruptcy Court as an Assumed Contract.

(i) Other Pleadings. If a written objection, motion, action or other pleading is filed in connection with any Bankruptcy Proceeding that would be reasonably expected to delay, prohibit, prevent or otherwise impede Seller from taking any action contemplated by, or in furtherance of, this Contract or would be reasonably expected to delay, prohibit, prevent or otherwise impede the Closing from occurring pursuant to the terms of this Contract, Seller shall

immediately notify Buyer in writing of such filing and take commercially reasonable efforts to have such objection overruled, motion denied, action or pleading dismissed or otherwise adjudicated.

Section 8.3. Bankruptcy Filings. Seller shall confer with Buyer as to the form and content of all motions and other pleadings set forth in Sections 8.1 and 8.2 hereof to be filed by Seller in the Bankruptcy Case prior to filing such pleadings.

Section 8.4. Additional Defined Terms. For the purposes of this Contract, a “Final Order” means an order issued and entered by the Bankruptcy Court or by any other court of competent jurisdiction which has not been reversed, stayed, modified or amended, and as to which (i) the time to appeal or petition for review, rehearing or certiorari has expired and no appeal or petition for review, rehearing or certiorari has been timely filed, or (ii) any appeal or petition for review, rehearing or certiorari has been finally decided and no further appeal or petition for review, rehearing or certiorari can be taken or granted; provided, however, that the possibility that a motion may be filed, pursuant to the Rules 9023 and 9024 of the Bankruptcy Rules or Rules 59 or 60(b) of the Federal Rules of Civil Procedure shall not mean that an order is not a Final Order; and (d) “Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York.

ARTICLE 9

REPRESENTATIONS AND WARRANTIES OF BUYER

Section 9.1. Buyer represents and warrants to Seller as of the date hereof and as of the Closing Date as follows:

(a) Existence, Ownership and Good Standing. Buyer is duly organized and validly existing as a limited liability company under the laws of the State of Delaware, and is in good standing under the law of the State of Delaware.

(b) Authority. Buyer has all requisite power and authority to execute and deliver this Contract and the Closing Documents to which it is a party and to consummate the transactions contemplated hereby pursuant to the terms and conditions of this Contract. The execution, delivery and performance of this Contract and the Closing Documents to which it is a party by Buyer have been duly and validly authorized by all necessary action. This Contract has been duly executed and delivered by Buyer and constitutes its valid and binding obligation enforceable in accordance with its terms, and the Closing Documents, when so executed and delivered, will be the valid and binding obligation of Buyer, enforceable in accordance with their respective terms.

(c) No Conflict. The execution and delivery of this Contract by Buyer and the consummation by Buyer of the transactions contemplated hereby (i) will not require the consent of any other person or entity; (ii) will not violate any provisions of its organizational documents; and (iii) will not, either alone or with the giving of notice or the passage of time or both, conflict with, constitute grounds for termination of, or result in a breach of the terms, conditions, or provisions of, or constitute a default under any contract, instrument, license or permit to which it is now subject.

(d) No Violation of Anti-Terrorism Laws. None of Buyer's property or interests is subject to being "blocked" under any Anti-Terrorism Laws, and neither Buyer nor any person or entity holding any direct or indirect interest in Buyer is in violation of any Anti-Terrorism Laws.

(e) No Other Payments or Consideration. The sums payable to Seller under Article 4 of this Contract (subject to the adjustments provided for in this Contract) constitute the total consideration being paid by Buyer for the Property.

Section 9.2. Survival. All representations and warranties made by Buyer in this Contract shall be deemed renewed by Buyer on the Closing Date as if made at such time and shall survive the Closing.

ARTICLE 10

INDEMNITIES; REMEDIES

Section 10.1. (a) Buyer's Indemnity. Buyer shall fully indemnify and hold harmless Seller and every entity affiliated with Seller, and all of their officers, directors, partners, shareholders, employees, agents, attorneys and independent contractors, and the successor of each and every one of them, from any third-party claim, demand, loss, liability, damage or expense (including reasonable attorneys' fees) arising out of or in connection with the Hotel or any other portion of the Property and relating to matters first arising after the Closing Date and not related to the ownership or operation of the Property prior to the Closing Date.

(b) Sellers Indemnity. Seller shall fully indemnify and hold harmless Buyer and every entity affiliated with Buyer and all of their officers, directors, partners, shareholders, employees, agents, attorneys and independent contractors, and the successor of each and every one of them, from any third-party claim, demand, loss, liability, damage or expense (including reasonable attorney's fees) arising out of or in connection with the Hotel or any other portion of the Property prior to the Closing (including, without limitation, any wages, vacation and sick time, retirement benefits, pension obligations or multi-employer plan liability and all other employment-related costs with respect to individuals who shall have worked at the Premises prior to the Closing, any employment related obligations or liabilities triggered as a result of the consummation of the Closing and any liabilities or obligations to CMC or pursuant to the Management Agreement); provided, however, that Seller's liability to indemnify Buyer shall not exceed One Million Dollars (\$1,000,000).

Section 10.2. Seller's Remedies. If Buyer shall default in the payment of the Purchase Price or if Buyer shall default in the performance of any of its other material obligations to be performed on the Closing Date, which breach or default is not caused by a default by Seller of its obligations under this Contract, then Buyer and Seller agree that the damages that Seller will sustain as a result thereof will be substantial, but will be difficult, if not impossible, to ascertain. Accordingly, Buyer and Seller agree that, in the event of such a default by Buyer, Seller, at its sole and exclusive remedy, shall have the right to terminate this Contract and to retain as liquidated damages the amount of the Deposit. In such event, Seller is authorized to instruct the Escrow Agent to deliver the Deposit to Seller as provided in the Deposit Escrow Agreement, and this Contract shall be considered canceled, and no party hereto shall thereafter have any further rights against or obligations or liabilities to any other party hereto, arising out of this Contract, except as expressly provided in this Contract.

Section 10.3. Buyer's Remedies. Subject to any other provision of this Contract that provides for automatic termination hereof and the other provisions of Article 16, if Seller shall default in any of its material obligations under this Contract at or prior to Closing, which breach or default is not caused by a default by Buyer of its obligations under this Contract, then Buyer shall have the following remedies: (i) to terminate this Contract and receive the Deposit or (ii) to obtain specific performance of this Contract, together with reimbursement of Buyer's direct out-of-pocket costs and expenses incurred in enforcing this Contract. In the event that Buyer elects to terminate this Contract, Seller hereby agrees to cause Escrow Agent to return the full amount of the Deposit in cash, to Buyer within one (1) Business Day after notice of termination is delivered and this Contract shall be considered canceled, and no party hereto shall thereafter

have any further rights against or obligations or liabilities to any other party hereto, arising out of this Contract, except as expressly provided in this Contract.

Section 10.4. Survival. Subject to Section 7.2, the terms and provisions of this Article 10 shall survive the Closing or earlier termination of this Contract.

ARTICLE 11

CONDITIONS OF CLOSING

Section 11.1. Conditions to Seller's Obligation. Unless waived in writing by Seller, the obligation of Seller to close the transactions contemplated by this Contract is subject to Buyer having performed all obligations required to be performed by it under this Contract (including, without limitation, payment of the Purchase Price) and all other conditions to Seller's obligations, as set forth in this Contract, having been substantially complied with.

Section 11.2. Conditions to Buyer's Obligation. The obligation of Buyer to close the transactions contemplated by this Contract is subject to the satisfaction of all conditions set forth in this Contract, including, without limitation, all of the following conditions, unless waived in writing by Buyer:

(a) The representation and warranties of Seller in this Contract shall be true and correct in all material respects at the Closing as if made on and as of the Closing.

(b) Seller shall have performed all obligations required to be performed by it under this Contract, there shall be no default or failure by Seller to comply with any term of this Contract, and all other conditions to Buyer's obligations, as set forth in this Contract, shall have been complied with.

(c) Seller shall have completed all of the deliveries required of Seller under Article 13 hereof.

(d) Designees of Borrower shall have been appointed members of the Board of Managers of the Condominium Association.

(e) Seller shall have satisfied all cure amounts necessary to permit assumption and assignment of Assumed Contracts.

(f) Seller shall have cured all defaults under the Restaurant and Retail Store Lease and the same shall be in full force and effect.

(g) The Bankruptcy Court shall have approved the termination or rejection of the Management Agreement effective at least one (but not more than two) day(s) prior to the Closing Date.

Section 11.3. Condition to Both Parties Performance of their Respective Obligations Under this Contract.

(a) The obligation of each party to close under this Contract is subject to the Premises being conveyed free and clear of any Liens as described in Section 11.3(b), other than the Permitted Encumbrances, and the discontinuance of the operation of the Hotel at Seller's sole cost and expense. Seller alone shall have the right to determine the means Seller shall employ to cause such delivery of the Hotel and the cost Seller shall bear to achieve such goal, so long as Seller shall abide by its representations, warranties, covenants and agreements to or with Buyer under this Contract.

(b) If Seller shall be unable, despite its commercially reasonable efforts, to satisfy the conditions set forth in Section 11.3(a) above on or prior to April 16, 2012 then either Seller or Buyer may at any time thereafter terminate this Contract by giving five (5) days prior written notice to the other party, and upon the expiration of such five (5) days this Contract shall be terminated (unless the party receiving such notice sends a written notice to the other

scheduling the Closing to occur within said five (5) days and is ready, willing and able to Close on such specified date and all conditions to the obligation of the parties have theretofore been satisfied, and/or unless the Closing has taken place before the end of such five (5) day period, in either event the Contract shall not be deemed terminated), the Deposit shall be returned to Buyer and neither party hereunder shall have any further obligation or liability to the other, except as provided in Article 16 and except for any obligation or liability which is expressly intended to survive the termination of this Contract. Time shall be of the essence with respect to all dates provided for in this Section 11.3(b).

(c) There shall not be in effect any order by a governmental body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby or any pending or threatened legal proceeding attempting to restrain, enjoin or otherwise prohibit the consummation of the transactions contemplated hereby; provided, that in the event of any such legal proceeding, the parties shall use their best efforts to terminate such legal proceeding.

(d) The Bankruptcy Court shall have entered the Sale Order, and any stay period applicable to the Sale Order shall have expired or shall have been waived by the Bankruptcy Court, and the Sale Order shall have become a Final Order.

Section 11.4. Liquor License. If all licenses and approvals required for the continued sale of alcoholic beverages at the Premises from and after the Closing Date (the "Liquor License") have not been issued as of the date that Closing is otherwise required to occur under this Contract, then at Closing, and as a condition precedent to Buyer's obligation to close, Seller shall (or shall cause its affiliate that currently holds the licenses and approval required for the sale of alcoholic beverages at the Premises to) enter into an interim liquor agreement, in form

and substance reasonably satisfactory to Seller and Buyer, or such other arrangements are shall be mutually agreed upon by Buyer and Seller, that will permit Buyer to continue the sale of alcoholic beverages at the Premises from and after the Closing Date consistent with the practices and procedures in effect as of the date hereof.

Section 11.5. Estoppel Certificates. Prior to Closing, Seller shall obtain an estoppel certificate from the landlord under the Restaurant and Retail Store Lease and shall use commercially efforts to obtain an estoppel from the subtenant under the Retail Sublease (collectively, the “Estoppels”) in substantially the same form as the form estoppel attached as Exhibits “M” and “I” hereto, respectively.

ARTICLE 12

CONVEYANCE OF ASSETS

Seller will convey the Property to Buyer at the Closing pursuant to the following instruments (“Closing Documents”) and shall deliver the following instruments at Closing:

(a) Deed. A Bargain and Sale Deed without covenants in proper statutory form for recording, including the covenant of Seller required by Section 13 of the Lien Law, so as to convey fee simple title to the Premises, free and clear of any liens, claims and encumbrances other than the Permitted Encumbrances.

(b) Bill of Sale for Personal Property. A bill of sale in the form attached hereto as Exhibit “H”, conveying to Buyer all the Personal Property and Consumable Supplies, free and clear of all liens and encumbrances.

(c) Assignment and Assumption of Assumed Contracts. Seller and Buyer shall execute and deliver counterparts of an Assignment and Assumption of Contracts with respect to the Assumed Contracts. Seller shall deliver evidence to Buyer of the rejection or termination of all Seller Contracts that are not Assumed Contracts.

(d) General Assignment. Seller and Buyer shall execute and deliver counterparts of an Assignment and Assumption Agreement with respect to such elements of the Property that are not otherwise transferred pursuant to any of the other Closing Documents.

(e) Affidavit of Title. Affidavit of title in customary form reciting necessary facts and such other documents reasonably required by the Title Company, certifying that there is no lien against the Premises for work done or supplies delivered to the Premises or the Hotel and certifying that reported judgments do not constitute liens against the Premises or the Personal Property, and otherwise in form and substance sufficient to enable the Title Company to insure Buyer against any such liens and otherwise to insure Buyer's fee simple title to the Premises, subject only to the Permitted Encumbrances. Seller shall deliver copies of any resolutions, partnership agreements, trust indentures, agency agreements, powers of attorney, consents and other documentation, and shall execute such affidavits and indemnities, as may be reasonably required by the Title Company with respect to the authority of Seller or any of the person(s) signing any of the Closing Documents on behalf of Seller.

(f) FIRPTA Certification. A FIRPTA certification as required by Section 15.16 hereof.

(g) Transfer Tax Forms. N.Y. State and N.Y.C. real property transfer tax forms, together with an NYC Real Property Transfer Report (Form R5217) and a non-multiple dwelling affidavit, duly executed by Seller (and Buyer, if applicable) .

(h) Safe Deposit Boxes. All keys to each safe deposit box and safe at the Hotel, and all safe combinations, shall be delivered to Buyer.

(i) Plans. Plans and specifications, technical manuals and similar material, for the Hotel and all other improvements on the Premises, if any, in the possession or control of (or reasonably obtainable by) Seller, as long as the same are not proprietary to CMC.

(j) Assumed Contracts. All Assumed Contracts.

(k) Consumable Supplies and Personal Property. All Consumable Supplies and Personal Property.

(l) Licenses and Permits. All Licenses and Permits.

(m) Estoppel Certificates. The Estoppels executed by the tenant under the Retail Sublease, and the lessor under the Restaurant and Retail Store Lease, and dated not more than thirty (30) days prior to the Closing Date certified to Buyer and its prospective lender, and which Estoppel is consistent with the representations and warranties made by Seller under this Contract and confirms that the Retail Sublease and the Restaurant and Retail Store Lease is in full force and effect and that there are no defaults thereunder by Master Lease Tenant (other than defaults which can be cured by the payment of a liquidated sum identified in the estoppel on or prior to the Closing). If Seller is unable to deliver an estoppel from the tenant under the Retail Sublease, Seller shall deliver a landlord estoppel certifying such matters. Seller's liability under such estoppel shall be subject to, and part of the \$100,000 threshold set forth in Section 7.2 above. Together with the Estoppel from the lessor under the Restaurant and Retail Store Lease, Seller shall deliver the consent of such lessor to the assignment of the Restaurant and Retail Store Lease pursuant to this Agreement.

(n) Condominium-Related Deliveries. (1) A resignation by each of Anthony Labozzetta , Louis Taic, Robert Gladstone, Jeffrey Kosow and Andrew Harris of their seats on the Board of Managers of the Condominium Association (as defined in the Declaration) and by

each of such persons as officers of the Condominium Association; (2) a common charges letter from the Board of Managers of the Association stating that the common charges (and any assessments) payable in respect of the Premises are up to date, and (3) a duly executed and acknowledged waiver of all rights to exercise any rights of first refusal provided for in the Declaration.

(o) Sales Tax Compliance Any and all documents and filings required pursuant to Section 15.26 of this Contract.

(p) Warranties. If assignable, any and all unexpired warranties and guarantees, or copies thereof, with respect to the Property, together with individual or omnibus assignments thereof to Buyer. If any such warranties or guarantees are not assignable, Seller agrees to cooperate with Buyer after the Closing to the extent required to enforce any rights under such warranties or guarantees, at Buyer's expense.

(q) Authorizing Documents. A secretary's certificate certifying that the members of Seller have duly adopted resolutions authorizing the transactions contemplated by this Contract and an executed and acknowledged Incumbency Certificate certifying to the authority of the officers of Seller executing the documents to be delivered by Seller.

(r) Notices. A notice to the counter-parties to the Assumed Contracts and to all parties required under the documents that are Permitted Encumbrances, in accordance with the terms of such documents and agreements, advising of that the Closing has occurred and directing all future communications be sent to Buyer,

(s) Keys. All keys and master keys to all locks located on the Hotel or the Premises.

(t) All Required Instruments and Items. All other instruments, documents, personalty or items required to be delivered by Seller to Buyer in accordance with the terms of this Contract or as reasonably necessary in order for Seller to consummate the transactions contemplated by this Contract.

(u) Assignment and Assumption of Restaurant and Retail Store Lease and Retail Sublease. Master Lease Tenant and Buyer shall execute and deliver counterparts of an Assignment and Assumption of the Restaurant and Retail Store Lease and of the Retail Sublease.

ARTICLE 13

THE CLOSING

Section 13.1. Closing Defined. “Closing” means the settlement of the obligations under this Contract including the payment of the Purchase Price (as adjusted), and the delivery to Buyer of the Closing Documents.

ARTICLE 14

Section 14.1. Closing Date. The Closing shall take place, if pursuant to a Bankruptcy Proceeding, on the first (1st) Business Day after a Sales Order becomes a Final Order, unless the period provided in Bankruptcy Rule 6004(h) is waived by the Bankruptcy Court (which requirement may be waived by the Seller in writing and in its sole discretion), time being of the essence, (the “Closing Date”) at the offices of the Escrow Agent or at such offices as may be designated within the City of New York by Buyer’s lender, if any. Time shall be of the essence with respect to Buyer’s obligation to consummate the Closing under this Contract on or before April 16, 2012, subject to the adjournment rights set forth below.

ARTICLE 15

MISCELLANEOUS COVENANTS AND PROVISIONS

Section 15.1. [INTENTIONALLY OMITTED].

Section 15.2. Operation of Business.

(a) From the date hereof, Seller shall afford Buyer, its prospective investors and lenders, and their respective authorized representatives, attorneys, accountants and engineers reasonable access during normal business hours to all properties, files, books, records, agreements, contracts and other documents in Seller's possession relating to the Property, permit the reasonable copying of any of the foregoing at Buyer's expense and furnish or cause to be furnished to such parties and their respective authorized representatives all financial, commercial, operating and other information in Seller's possession with respect to the business of the Hotel as Buyer may reasonably request.

(b) From the date hereof, Seller shall not grant, or suffer or permit the creation of, any mortgage, conditional sale agreement, lease, lien, hypothecation, pledge, encumbrance, charge, security interest, easement, right of way, covenant, restriction or other claim of, on or with respect to all or any portion of the Property. Between the date hereof and the Closing, Seller will not enter into any new, or modify, renew, terminate or extend any Seller Contract, the Restaurant and Retail Store Lease and/or the Retail Sublease, without the prior written consent of Buyer.

(c) Attached hereto as Exhibit "J" is a schedule of the coverages afforded by all insurance policies applicable to the Premises carried by Seller. Seller covenants and agrees not to take any action to reduce the coverage now afforded by such policies and shall keep such insurance policies in full force and effect until Closing.

(d) Prior to Closing Seller shall cooperate with Buyer and Buyer's representatives, at Buyer's expense, to enable and assist Buyer to procure and maintain all Licenses and Permits held by Seller and necessary for Buyer's ownership and operation of the

Premises as a hotel. Seller shall remain obligated to maintain and renew, at Seller's sole cost and expense (subject to proration in accordance with Article 7 hereof), any and all Licenses and Permits necessary for its continued ownership and operation of the Premises pending the Closing.

Section 15.3. Condemnation or Casualty.

(a) If prior to the Closing, the Premises or a material portion thereof are threatened in writing to be or actually condemned (i.e., if the estimated value of the portion taken exceeds Three Million Dollars (\$3,000,000) or will otherwise materially interfere with the value or operation of, or with reasonable access to, the Property) (a "Material Condemnation"), or any portion of the Premises is damaged by fire or other casualty to the extent that the estimated cost of repairing such damage, excluding business interruption, shall amount to at least Three Million Dollars (\$3,000,000), as determined by the casualty insurer or insurers insuring the Premises or the repair will take more than sixty (60) days (each, a "Material Casualty"), then, in any such event, Buyer shall have the right to elect not to purchase the Property. Seller shall notify Buyer within five (5) days (or the Closing Date, if earlier) after first learning of any threatened or actual condemnation or fire or other casualty. Buyer shall notify Seller of its election by notice to Seller in writing delivered within thirty (30) days after the receipt by Buyer of the notice from Seller regarding such threatened or actual condemnation or casualty and if Buyer elects not to purchase the Property, the Deposit shall be returned to Buyer and all parties hereto shall each be released and discharged from any further obligation to each other hereunder with respect to the Property and this Contract shall be deemed terminated and of no further force or effect, except with respect to those provisions which expressly survive any termination of this Contract. If Buyer elects to purchase the Property, the purchase contemplated herein shall be consummated

without reduction of the Purchase Price, on the later of thirty (30) days after the expiration of the thirty (30)-day period during which Buyer could have elected not to purchase or on the Closing Date provided in Section 14.2, but Buyer shall be entitled to all proceeds of fire or other casualty insurance or condemnation awards and receive a credit at Closing against the Purchase Price in the amount of any loss deductible payable by Seller in connection with its casualty insurance coverage, and Seller shall have no responsibility for the restoration or repair of the Property.

(b) If, prior to the Closing, any portion of the Premises is damaged by fire or other casualty that is not a Material Casualty, or a condemnation of a portion of the Premises that is not a Material Condemnation is threatened in writing or occurs, the Closing shall proceed as scheduled herein and Seller shall assign to Buyer the proceeds of any casualty insurance or condemnation award, Buyer shall receive a credit at Closing against the Purchase Price in the amount of any loss deductible payable by Seller in connection with its casualty insurance coverage and Seller shall not have any responsibility for the restoration or repair of the Premises.

(c) If Buyer does not elect to terminate this Contract in accordance with the terms hereof, then Seller shall not adjust or settle any insurance claims or condemnation awards with the insurers or the condemning authority without the prior written consent of Buyer. To the extent that any such insurance proceeds or condemnation awards have not been collected by Seller by Closing, then at Closing Seller shall assign to Buyer the right to receive and settle same.

Section 15.4. Brokers. Seller and Buyer hereby covenant and represent to each other that they have not dealt with any brokers in connection with this sale. Buyer shall indemnify and hold Seller harmless from and against the claims or alleged claims of any other brokers or finders with whom Buyer has dealt (and with whom Seller has not dealt) in connection with this

transaction (together with any and all loss, cost, damage or expense, including reasonable attorneys' fees, which the Seller may sustain or incur by reason of such claims or alleged claims). Seller shall indemnify and hold Buyer harmless from and against the claims or alleged claims of any brokers or finders with whom Seller has dealt in connection with this transaction (together with any and all loss, cost, damage or expense, including reasonable attorneys' fees, which the Buyer may sustain or incur by reason of such claims or alleged claims). Seller shall pay the commission due to any broker, if any, pursuant to a separate agreement. The provisions of this Section 15.4 shall survive the Closing.

Section 15.5. Intentionally Deleted.

Section 15.6. Use of Purchase Price to Pay Encumbrances. If there is any lien or other obligation affecting the sale which Seller is obligated to pay and discharge at Closing, Seller may cause Buyer to use any portion of the Purchase Price to discharge such obligation. Buyer agrees to provide separate certified or official checks payable to the order of each such obligee, if requested by Seller no less than three (3) Business Days prior to Closing, to assist Seller in causing these obligations to be discharged.

Section 15.7. Judgments, Bankruptcies, etc. If a search of the title discloses judgments, bankruptcies (other than a Bankruptcy Proceeding) or other returns against other persons having names the same as or similar to that of Seller, then Seller will on request deliver to Buyer and Title Company an affidavit showing that such judgments, bankruptcies or other returns are not against Seller and will take all other action and deliver all other documents requested by Title Company to enable Title Company to omit such judgments, bankruptcies or other returns from Buyer's title insurance policy.

Section 15.8. Transfer and Recording Taxes. Seller shall use reasonable efforts to obtain an order from the Bankruptcy Court which provides, in accordance with Section 1146(a) of the Bankruptcy Code, for an exemption under any law imposing a sales, use, stamp, documentary stamp, filing, recording, transfer or similar fee or tax or governmental charge including, in each case, any interest or penalty thereon on the transactions contemplated by this Contract. Both Seller and Buyer agree to execute and deliver all tax returns required to accompany the exemption of any of the foregoing taxes.

Section 15.9. Franchise Taxes. Unpaid franchise taxes affecting title to the Premises shall not be an objection to title provided that the Seller deposits amounts sufficient to cover the same with the Title Company at the time of Closing, said deposit is to be applied toward the payment of said franchise taxes, and the Title Company is willing to insure against collection of same out of the Premises. Seller agrees to prepare, execute and deliver to the Title Company the necessary franchise tax returns (or certified copies thereof if previously filed with the appropriate taxing authority).

Section 15.10. Assignment. The terms and provisions of this Contract shall be binding upon and inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and permitted assigns. Neither Buyer's interest under this Contract nor any portion thereof may be assigned by Buyer, except in connection with a Subsequent Sale or otherwise with Seller's prior written consent, which consent Seller may arbitrarily or unreasonably withhold or delay. Any attempt at such assignment without first obtaining such consent shall be null and void and of no force and effect and shall be deemed to be a material breach of this Contract by Buyer. The transfer of more than a forty-nine percent (49%) equity interest in Buyer shall be deemed an assignment for purposes of this Section 15.10.

Notwithstanding the foregoing, (x) Buyer shall have the right to assign its interest (including by way of the transfer or issuance of equity interests) in this Contract without Seller's consent to any entity which Controls, is Controlled by or is under common Control with Buyer, provided that (i) Buyer shall provide written notice of such assignment to Seller prior to the Closing Date, (ii) if applicable, the assignee assumes Buyer's obligations under this Contract in writing and delivers a copy of the executed assignment and assumption instrument to Seller, (iii) Buyer is not released from its obligations under this Contract by virtue of such assignment, and (iv) such assignment shall not result in a delay of the Closing and (y) Buyer shall be entitled to designate any entity to take title to the Property at Closing in connection with any Subsequent Sale. "Control" for purposes of this Section 15.10 shall mean the ability to manage the day to day operations of such entity, subject to consent rights held by others concerning certain enumerated major decisions. Seller shall be entitled to request and receive from Buyer a written explanation detailing such information as Seller shall reasonably request to verify that Buyer has not assigned this Contract in violation of this Section 15.10.

Section 15.11. "AS-IS" PURCHASE:

(a) Buyer has completed all such due diligence as it deems necessary with respect with respect to the Premises.

(b) Except as expressly set forth in this Contract, Seller makes no representations or warranties with respect to the physical condition or any other aspect of the Premises, any other Property, the Building, the Land or the Condominium, including, without limitation, (1) the structural integrity of any improvements on the Land, (2) the conformity of the improvements to any plans or specifications for the Premises or the Building, including but not limited to, any plans and specifications that may have been or which may be provided to Buyer,

(3) the conformity of the Premises to past, current or future applicable zoning or building code requirements, (4) the existence of soil instability, (5) the sufficiency of any undershoring, (6) the sufficiency of any drainage, (7) whether the Building is located wholly or partially in a flood plain or a flood hazard boundary or similar area, (8) the present or prior existence or nonexistence of underground storage tanks, (9) any other matter affecting stability or integrity of the Land, the Building or the Premises, (10) the continued availability of public utilities and services for the Premises, (11) the fitness or suitability of the Premises for Buyer's intended use, (12) the ability to continue operating the Premises as a hotel, (13) revenues or projected revenues from the operation of the Hotel, (14) the on-going economic viability of the Hotel, (15) the potential for further development of the Premises or the Hotel, (16) the existence of vested land use, zoning or building entitlements affecting the Premises, or (17) the presence of toxic wastes, hazardous materials or asbestos on, in or about the Premises, the Building or the Land (collectively, the "Property Conditions").

(c) Buyer further acknowledges that except as expressly set forth in this Contract, any information, whether written or oral, or in the form of maps, surveys, plats, title reports, soil reports, engineering studies, environmental studies or reports, inspection reports, plans, specifications or any other information whatsoever, without exception, pertaining to the Premises, the Land, the Building or the Condominium or a part thereof, any and all records, rent rolls, leases and other documents pertaining to the use and occupancy of the Premises or the Hotel, the income thereof, the cost and expenses of maintenance thereof, and any and all other matters concerning the Property Conditions, or other attributes or aspects of the Premises, the Hotel, the Land, the Building or the Condominium, is furnished to Buyer solely as a courtesy, and Seller has not verified the accuracy of any statements or other information therein contained

nor the qualifications of the persons preparing such information. Except as expressly set forth in this Contract, Seller does not warrant the accuracy of any information contained therein in any way.

(d) The items and their contents made available to Buyer pursuant to this Section 15.11 of this Contract, other than maps, surveys, plats, title reports and other documents and instruments which are a matter of public record, are sometimes referred to herein as the "Confidential Information" irrespective of whether such items and their contents are so specifically identified by Seller. Without Seller's prior written consent, prior to the Closing, Buyer: (a) shall not divulge to any third party any of the Confidential Information and shall not use the Confidential Information in Buyer's business, except in connection with the evaluation of and preparation for the acquisition of the Property; (b) shall ensure that the Confidential Information is disclosed only to such of Buyer's officers, directors, employees, consultants, attorneys, accountants, engineers, architects, potential and existing investors and lenders, as have actual need for the Confidential Information; (c) shall act diligently to prevent any further disclosure of the Confidential Information; and (d) shall, if the Closing does not occur, promptly return to Seller (without keeping copies) all Confidential Information delivered to Buyer.

(e) Intentionally Deleted.

(f) Buyer expressly acknowledges that the Property is being sold and accepted "AS-IS" and is being accepted without any representation or warranty except as otherwise provided in this Contract. Buyer agrees to make such investigation of the condition of the Property as Buyer deems adequate and shall rely solely upon its own investigation of such condition and not upon any statement or opinion by Seller (except as set forth in this Contract) or any agent of Seller. Buyer acknowledges that Buyer is experienced in the hotel business and is

relying solely upon Buyer's own investigation in regard to each and all such matters, and undertakes the risk that the Premises may or may not be suitable or feasible for any intended use by Buyer.

(g) As part of Buyer's agreement to purchase and accept the Hotel "AS-IS", and not as a limitation on such agreement, except as otherwise expressly set forth herein, Buyer hereby unconditionally and irrevocably waives and quitclaims to Seller any and all actual or potential rights Buyer might have regarding any form of warranty, express or implied, of any kind or type, relating to the Property or the Condominium or the Property Conditions. Such waiver is absolute, complete, total and unlimited in any way. Such waiver includes, but is not limited to, a waiver of express warranties, implied warranties, warranties of fitness for a particular use, warranties of merchantability, warranties of habitability, strict liability rights, and claims of every kind and type, including, but not limited to, claims regarding defects which might have been discoverable, claims regarding defects which were not or are not discoverable, product liability claims, product liability type claims, and all other extant or later created or conceived of strict liability or strict liability type claims and rights. Notwithstanding the foregoing, to the extent same are in Seller's possession, Seller will assign to Buyer all existing assignable manufacturers' warranties affecting the Personal Property, if any, and any other warranties which Seller shall have the right to assert against third parties, if such warranties are assignable, but Seller shall not have any independent duties with regard to same. If any such warranties or guarantees are not assignable, Seller agrees to cooperate with Buyer after the Closing to the extent required to enforce, at Buyer's direction, any rights under such warranties or guarantees, at Buyer's expense.

(h) Effective upon Closing, to the fullest extent permitted by law, Buyer hereby releases, discharges and forever acquits Seller and every entity affiliated with Seller and all of their officers, directors, members, managers, partners, shareholders, employees, agents, attorneys and independent contractors as well as the spouse of each and every one of them and the successor of each and every one of them from all demands, claims, liabilities, obligations, costs and expenses which Buyer may suffer or incur relating to the Property Conditions or any defect related thereto.

(i) As part of the provisions of this Section 15.11, but not as a limitation thereon, Buyer hereby agrees, represents and warrants that the matters released herein are not limited to matters which are known or disclosed, and Buyer hereby waives any and all rights and benefits which it now has, or in the future may have conferred upon it, by virtue of the provisions of federal, state or local law, rules or regulations relating to warranties by Seller. In this connection and to the extent permitted by law, Buyer hereby agrees, represents and warrants that Buyer realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and Buyer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Buyer nevertheless hereby intends to release, discharge and acquit Seller from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which might in any way be included in the waivers and matters released as set forth in Section 15.11(h). The provisions of this Section 15.11 are material and included as a material portion of the consideration given by Buyer in exchange for Seller's performance hereunder.

(j) Notwithstanding anything contained in this Contract to the contrary, including, without limitation, the provisions of this Section 15.11, nothing contained in this Section 15.11 is intended to or shall limit (i) any of the representations or warranties contained in this Contract or the scope thereof (including, without limitation, the provisions of Articles 8 and 10 hereof), (ii) any liability for any breach of any of such representations or warranties prior to Closing, (iii) the obligation of each party hereto to perform all of its obligations and covenants set forth in this Contract, (iv) any of the indemnity obligations set forth in this Contract, (v) any obligations under this Contract which survive the Closing or (vi) any of the rights and remedies that either party hereto may have hereunder or at law or in equity as a result of a default under this Contract or as a result of a breach of a representation or warranty expressly set forth in this Contract.

(k) The provisions of this Section 15.11 shall survive the Closing.

Section 15.12. Notices. All notices required hereunder shall be in writing, signed by an authorized representative of the party giving such notice and sent by certified mail, return receipt requested; overnight national courier; or by hand delivery with written receipt, and shall be directed as follows:

To Buyer:

CIM Group Acquisitions, LLC
6922 Hollywood Blvd., Ninth Floor
Los Angeles California 90028
Attn: Sondra Wenger
Fax: (323) 860-4901
Email: SWenger@cimgroup.com

With a copy to:

General Counsel
CIM Group, LP
6922 Hollywood Blvd., Ninth Floor
Los Angeles California 90028

With a copy to:

Matthew C. Fragner, Esq.
Fragner Seifert Pace & Winograd, LLP
601 South Figueroa Street, Suite 2320
Los Angeles, California 90017
Telephone: (310) 779-7284
Fax: (310) 496-2887
Email: <mailto:mfragner@fspwlaw.com>

To Seller:

Madison 92nd Street Associates, LLC
c/o Madison Equities
555 Fifth Avenue, 9th Floor
New York, New York 10017
Attn: Anthony Labozzetta

With copies to:

Olshan Grundman Frome Rosenzweig & Wolosky LLP
65 East 55th Street
New York, NY 10022
Attn: Eric L. Goldberg, Esq.

A party may change the address for notice to be given to it and designate additional notice parties by notice given in accordance with this Section. Notices to the parties may be delivered by the attorney listed above for the notifying party. Notice shall be deemed received on the date of actual receipt or on the date such receipt is refused by the party to whom the same is directed.

Section 15.13. Buyer's Inspection.

(a) Until Closing or sooner termination of this Contract, Buyer and its attorneys, accountants, engineers, consultants, prospective and current lenders and investors, representatives, agents and employees shall have the right to enter upon the Premises during normal business hours for reasonable inspection purposes subject to the Management Agreement. In furtherance of the foregoing (and not in limitation thereof), Seller shall give to Buyer, its attorneys, accountants, engineers, consultants prospective and current lenders and

investors and other representatives, during normal business hours and on reasonable advance notice to Seller, full access to any and all parts of the Premises (other than guest rooms, if occupied) and prior to the execution of this Contract, Seller has delivered to Buyer all books, records and files relating to the Property in the possession of Seller. Buyer may, at Buyer's sole cost and expense, during normal business hours (unless otherwise agreed to by Buyer and Seller), upon reasonable advance notice to Seller and with Seller's prior written consent which will not be unreasonably withheld or delayed, cause the Property and any part thereof to be inspected by engineers, architects and others acting on behalf of Buyer, as Buyer may designate. Buyer hereby indemnifies, agrees to defend, and holds Seller and each of Seller's members, employees, agents and attorneys harmless from any claims, demands, liabilities, damages, costs and expenses, including reasonable attorneys' fees, costs (including those incurred in proceedings brought under Title 11 of the United States Code), for personal injury or property damage, or any mechanic's or materialmen's liens, caused by such entry upon, or examinations or inspection of, the Premises; provided, however, that Buyer shall not be obligated to indemnify and hold harmless from and against any of the same to the extent arising from a pre-existing condition at the Property (unless caused by Buyer's gross negligence or willful misconduct). All such activities shall be conducted in such a fashion so as not to unreasonably interfere with the rights or property of any tenants or others with any possessory interest in any part of the Premises. Buyer shall maintain, and shall assure that its agents and contractors maintain, public liability and property damage insurance in amounts and in form and substance adequate to insure against liability of Seller arising out of any entry or inspections of the Premises pursuant to the provisions hereof, and Buyer shall provide Seller with evidence of such insurance coverage upon request by Seller. Notwithstanding the foregoing, Buyer and any of its agents, contractors or

employees inspecting the Premises or otherwise working on the transactions contemplated by this Contract shall not talk with principals, agents or employees of CMC concerning the Premises up to and including the Closing Date without Seller's prior written consent, not to be unreasonably withheld.

Section 15.14. Deed Provisions. Reference to any and all of the Permitted Encumbrances may be omitted by Seller in the Deed, but all such Permitted Encumbrances so omitted shall survive delivery of the Deed.

Section 15.15. No Offer. This document is not an offer by Buyer or Seller, and under no circumstances should this document have any binding effect upon Buyer or Seller unless and until Buyer and Seller shall each have executed the same and have delivered counterparts hereof to each other.

Section 15.16. FIRPTA Certification. Seller represents and warrants to Buyer, such representation and warranty to survive the Closing, that Seller is not a "foreign person" as such term is used in Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code"); and no assignment or transfer of Seller's interest or direction to distribute the proceeds of this transaction will result in Buyer making distribution to a foreign person. At Closing, Seller will execute and deliver to Buyer a certification, properly completed in the form required to satisfy Internal Revenue Service requirements, to relieve Buyer of any withholding requirement.

Section 15.17. Purposely Omitted.

Section 15.18. Waiver of Trial by Jury. EACH PARTY HERETO HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION PROCEEDING OR COUNTERCLAIM BASED ON THIS CONTRACT, OR ARISING OUT

OF, UNDER, OR IN CONNECTION WITH THIS CONTRACT OR THE TRANSACTIONS CONTEMPLATED HEREIN. THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ACCEPT THIS CONTRACT. THE PROVISIONS OF THIS SECTION 15.18 SHALL SURVIVE THE TERMINATION OF THIS CONTRACT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS CONTRACT, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS CONTRACT, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THIS CONTRACT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 15.19. Governing Law and Bankruptcy Court Jurisdiction. This Contract, being drawn, negotiated and executed in the State of New York, and pertaining solely to property situated in the State of New York, shall be interpreted and governed by the laws of the State of New York without regard to the choice of law provisions of such State. This Contract shall be construed without regard to or aid of canons requiring construction against the party drawing this

Contract. The parties consent to the jurisdiction of the Bankruptcy Court to determine any claim, dispute or issues arising under or related to this Agreement, which jurisdiction shall be exclusive for so long as the Seller is a debtor-in-possession pursuing or effectuating a reorganization under chapter 11 of the Bankruptcy Code. In all other cases, the parties consent to the jurisdiction of any federal or state court located in the City, County and State of New York.

Section 15.20. Press Releases. Until after the Closing, all press releases or other dissemination of information to the media or responses to requests from the media for information relating to the transaction contemplated hereby shall be subject to the prior written approval of Buyer and Seller. Except as required by law, including without limitation as may be required under the Bankruptcy Proceeding, in no event shall Seller (either before or after Closing) disclose any details of this transaction without Buyer's prior written consent, except as required by law.

Section 15.21. Singular/Plural. Any singular word or term herein shall also be read as in the plural and vice versa, whenever the sense of this Contract may require it.

Section 15.22. Headings. Headings herein are inserted only for convenience and are in no way to be construed as a limitation on the scope of the particular Sections or Articles to which they refer.

Section 15.23. Amendments. Except as otherwise expressly set forth in this Contract, this Contract may be modified, amended, waived or canceled only by the written agreement of all of the parties hereto.

Section 15.24. Further Agreements; Mutual Cooperation. In addition to the obligations required to be performed hereunder by Seller and Buyer, each party hereto (the "requested party") agrees to perform such other acts, and to execute, acknowledge and deliver such other

instruments, documents and other materials as the other party hereto (the “requesting party”) may reasonably request in order to effect the consummation of the transactions contemplated hereby provided that such acts (including, without limitation, the execution, acknowledgment and delivery of such instruments, documents and materials) do not increase the obligations, liabilities, risks, costs or expenses of the requested party beyond that expressly set forth in this Contract. The provisions of this Section 15.24 shall survive the Closing.

Section 15.25. Attorneys’ Fees. If any party is required to retain the services of any attorney to enforce or otherwise litigate or defend any matter or claim arising out of or in connection with this Contract, the Deposit Escrow Agreement then the substantially prevailing party shall be entitled to recover its reasonable attorneys’ fees from the party against whom it substantially prevailed.

Section 15.26. Expenses; Taxes. Except as otherwise provided in this Contract, each party hereto shall pay its own expenses incident to this Contract and the transactions evidenced hereby, including all fees of its counsel and accountants, whether or not such transactions shall be consummated. Nothing in this Section 15.26 shall, however, prevent any party hereto from claiming, as damages for the breach of this Contract, its expenses incident to this Contract, subject to Section 11.3 hereof. Seller shall make all necessary sales tax filings with the Tax Department in respect of this transaction within the time required and Seller shall pay the New York sales tax in connection with the transfer of Personal Property pursuant to this Contract. Such payment shall be made at Closing by check made payable to the New York State Tax Department and delivered to counsel to Seller for transmittal to said department. The provisions of this Section 15.26 shall survive the Closing.

Section 15.27. Entire Agreement. This Contract sets forth all the promises, representations, agreements, conditions and understandings relative to the transactions set forth herein, and no party is relying upon any representations, agreements, conditions or understandings, either oral or written, other than those expressed in this Contract.

Section 15.28. Indemnity. Whenever in this Contract it is provided that any party shall indemnify and hold harmless another party, then, the party indemnified shall promptly give written notice to the indemnitor of any claim or demand made upon it, which is or may be indemnified against; provided, however, that failure to so notify shall not affect the indemnitor's obligations hereunder except to the extent materially prejudiced by such failure. The indemnitor shall have the right to defend against such claims or demand by counsel of its own choice, provided that such counsel is reasonably acceptable to the party being indemnified. The indemnified party, at its cost and expense, may participate in, but shall not control, the defense of such indemnified claim (provided that if a conflict of interest exists such that separate counsel must be engaged by the indemnified party and the indemnitor, the indemnitor shall be responsible for the reasonable fees and costs for such counsel for the indemnified party). The indemnitor shall not enter into any settlement or other agreement which requires any performance by the indemnified party, other than the payment of money which shall be paid by the indemnitor, provided that such settlement or agreement does not contain an admission of liability on behalf of the indemnified party. If the indemnified party elects not to assume the defense of such indemnified claim, the indemnified party shall have the right to retain the defense of such claim, and shall be entitled to settle or agree such claim as the indemnified party determines in its sole and absolute discretion. The provisions of this Section 15.29 shall survive the Closing.

Section 15.29. Partial Invalidity. If any provision of this Contract shall be declared invalid or illegal for any reason whatsoever, then, notwithstanding such invalidity or illegality, the remaining terms and provisions of this Contract shall remain in full force and effect in the same manner as if the invalid or illegal provision had not been contained herein.

Section 15.30. Waiver. No failure of any party hereto to exercise any right or power under this Contract, or to insist upon strict compliance with the provisions of this Contract, and no custom or practice of any party at variance with the terms and conditions of this Contract, shall constitute a waiver of such party's right to demand exact and strict compliance by the other party with the terms and conditions of this Contract.

Section 15.31. Schedule and Exhibits. All schedules and exhibits attached to this Contract are incorporated into this Contract by reference as if fully set forth herein.

Section 15.32. No Third Party Beneficiaries. The provisions of this Contract are intended to be solely for the benefit of the parties hereto, and the execution and delivery of this Contract shall not be deemed to confer any rights upon, nor obligate any of the parties hereunder, to any person or entity other than the parties hereto and any party entitled to indemnification or to a release pursuant to the express terms of this Contract.

Section 15.33. Counterparts. This Contract may be executed in any number of counterparts, each of which shall be identical and all of which, when taken together, shall constitute one and the same instrument, and any of the parties hereto may execute this Contract by signing such counterpart.

Section 15.34. Notice and Cure Rights Upon Default. Written notice shall be given with respect to any default claimed hereunder and, thereafter, the party receiving such notice shall have a period of three (3) Business Days from the date of receipt of such notice to cure the

claimed default, but nothing contained herein shall be deemed an extension of the Closing Date set forth in Section 14.2 hereof.

Section 15.35. No Recordation. Neither Buyer nor Seller shall record this Contract and any attempt to record the same shall be a material default by the recording party hereunder and thereupon, at the option of the non-recording party, this Contract shall be deemed cancelled and the non-recording party shall have any and all remedies for a default by the recording party as provided herein or by law.

Section 15.36. Buyer's Entry. Whenever Buyer shall seek entry onto the Premises or the Hotel under this Contract, it shall do so by giving Seller not less than twenty-four (24) hours prior written notice (which may be by e-mail) of the date it seeks entry to the Premises.

Section 15.37. Like Kind Exchange. Each party reserves the right to include this transaction as part of a tax-deferred exchange under Section 1031 of the Code, at no cost, expense or liability to the other party. Seller expressly reserves the right to assign, on or before the Closing Date, its rights (but not its obligations) hereunder to a "Qualified Intermediary" as defined in, and provided for, in IRC Reg. 1.1031(k)-1(g)(4). Each party agrees to execute any and all documents (subject to the reasonable approval of such party's legal counsel) as are reasonably necessary in connection with such exchange, provided that the closing of this transaction for the conveyance of the Premises shall not be contingent upon or subject to the completion of such exchange and that the same shall not in any way alter or modify the obligations or costs of the other party hereunder. In connection herewith, and for the purpose of engaging in such an exchange, Seller may make such transfers prior to the Closing of its interest in the Premises or in Seller to its shareholders, partners (general or limited), members and/or principals in their individual capacities as may be required by Seller for the purpose of holding

title to the Premises, provided that any such transfer shall be subject to the terms of this Contract and shall not in any way alter or modify the obligations or costs of Seller hereunder. In the event of any such transfer, Buyer acknowledges that the shareholders, partners (general or limited), members, and principals of Seller shall not, by virtue of such transfer, accept or consent to any personal liability under the terms of this Contract and that the Seller shall remain solely liable for any obligations contained herein regardless of any such transfer. Buyer shall not be obligated to acquire or convey any other property as part of any such exchange. Nothing permitted under this Section 15.37 shall extend the Closing Date.

Section 15.38. Confidentiality. Unless and until a motion seeking entry of the Bid Procedures Order is filed with the Bankruptcy Court, the terms and conditions of this Contract shall remain confidential. The terms and conditions shall not be disclosed to any third party other than (a) as may be required by law, court order or regulation, to comply with filing requirements or any applicable rule or in connection with any proceeding to enforce this Contract, (b) any consultant, agent, prospective or current lender or investor or any attorney assisting a party with this transaction, (c) any other party where the prior written consent or approval of the other party to this Contract is obtained or (d) CMC. Without the prior written consent of the other party, neither party hereto nor any of their respective agents employees and representatives will disclose to any other person the existence of this Contract and any other possible transactions involving the parties, or any of the terms, conditions or other facts with respect to this Contract or any such other possible transactions, including the status thereof except pursuant to the immediately preceding sentence. The term "person" as used in this Contract shall be broadly interpreted to include without limitation any individual, corporation,

company, group, partnership or other entity. The terms and conditions of this Section 15.38 shall survive the Closing or termination of this Contract.

Section 15.39. Tax Certiorari Proceedings. If any tax reduction proceedings in respect of the Premises relating to any fiscal year ending prior to the fiscal year in which the Closing occurs are pending at the time of the Closing, Seller reserves and shall have the right to continue to prosecute and/or settle the same. Seller shall not withdraw, settle or otherwise compromise any tax reduction proceedings in respect of the Premises relating to the fiscal year in which the Closing occurs without Buyer's consent. If any tax reduction proceedings in respect of the Premises relating to the fiscal year in which the Closing occurs are pending at the time of the Closing, then Buyer shall have the right to assume and continue to prosecute and/or settle the same, provided, however, that Seller shall be entitled to that portion of any refund relating to the period prior to the Closing. Buyer shall have the sole right to prosecute any tax proceedings in respect of the Premises relating to any fiscal year ending after the fiscal year in which the Closing occurs. Seller shall reasonably cooperate with Buyer, and shall instruct its tax certiorari counsel to cooperate with Buyer, in connection with the prosecution of all tax proceedings. Without limiting the foregoing, from and after the Closing Date, Seller shall make its books and records relating to the Premises available to Buyer and Buyer's tax certiorari counsel in connection with any such tax proceedings. The provisions of this Section 15.39 shall survive the Closing.

Section 15.40. Delivery of Personalty. Notwithstanding any obligation herein for Seller to deliver personalty including, without limitation, Consumables Supplies or other supplies, Personal Property, keys or lock combinations, etc., the same shall be delivered only if it is in

Seller's possession or available to Seller on request. Seller shall cooperate with Buyer at no out-of-pocket cost to Seller to obtain any items unlawfully held by CMC.

ARTICLE 16

TERMINATION EVENTS

Section 16.1. Termination Events. This Contract shall immediately terminate upon the following (each a "Termination Event") (it being understood that this Section 16.1 shall not be deemed to limit any other express termination rights set forth in this Contract):

- (a) Mutual written consent of Seller and Buyer.
- (b) At the election of Buyer or Seller, as the case may be, if the timely satisfaction of the conditions precedent set forth in Article 11 fail to occur.
- (c) This Contract is terminated by Buyer due to a willful default by Seller or due to the termination of the Restaurant and Retail Store Lease prior to Closing.
- (d) The Premises is transferred to Mortgagee or its designee pursuant to a foreclosure of the Mortgage or deed-in-lieu thereof.

Section 16.2. Effects of Termination.

(a) In the event that this Contract is validly terminated as provided herein then all parties to this Contract shall be relieved of their respective duties and obligations arising under this Agreement after the date of such termination and such termination shall be without liability to Buyer or Seller; provided, however, that the obligations of the parties set forth in this Section 16, and any other obligations under this Agreement that expressly survive termination hereof shall survive any such termination and shall be enforceable hereunder. Notwithstanding the preceding sentence, if the termination occurs pursuant to Section 16.1 (c), Buyer may sue Seller for specific performance.

IN WITNESS WHEREOF, the parties hereto have duly executed this Contract as of the
date first above written.

SELLER:

MADISON 92nd STREET ASSOCIATES, LLC

By: 

Name:
Title:

BUYER:

CIM GROUP ACQUISITIONS, LLC

By: _____

Name:
Title:

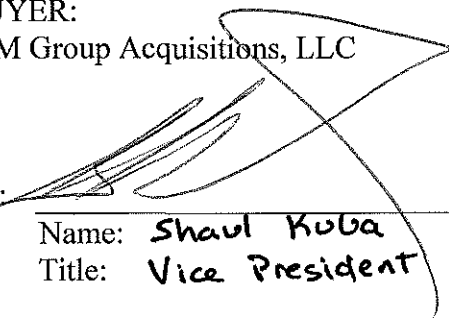
IN WITNESS WHEREOF, the parties hereto have duly executed this Contract as of the
date first above written.

SELLER:

MADISON 92nd STREET ASSOCIATES, LLC

By: _____
Name:
Title:

BUYER:
CIM Group Acquisitions, LLC

By:  _____ *SKC*
Name: *Shaul Kuba*
Title: *Vice President*