

**FOLLOWING DISCLOSURE STATEMENT HAS NOT BEEN APPROVED BY THE  
BANKRUPTCY COURT OR ANY OTHER GOVERNMENTAL AUTHORITY.**

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

In re:

Chapter 11

MADISON 92ND STREET ASSOCIATES,  
LLC,

Case No. 11-13917 (SMB)

Debtor.

**DISCLOSURE STATEMENT FOR  
FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION<sup>1</sup>**

**NEIGER LLP**

Edward E. Neiger  
151 West 46<sup>th</sup> Street  
New York, New York 10036  
*Proposed General Counsel for the Debtor*

**OLSHAN GRUNDMAN FROME  
ROSENZWEIG & WOLOSKY LLP**

Adam Friedman  
Eric Goldberg  
Fredrick Levy  
65 East 55th Street  
New York, New York 10022  
*Proposed Special Counsel for the Debtor and Counsel for Robert Gladstone, Co-Managing  
Member of Madison 92nd Street Associates, LLC*

**GOLDBERG WEPRIN FINKEL  
GOLDSTEIN LLP**

Kevin J. Nash  
1501 Broadway  
22nd Floor  
New York, New York 10036  
*Proposed Counsel for the Debtor and Counsel for the Hotel Associates Group,  
Co-Managing Member of Madison 92nd Street Associates, LLC*

Dated: ~~March 8,~~ April 3, 2012

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<sup>1</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the First Amended Chapter 11 Plan of Reorganization.

**THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL BUT HAS NOT BEEN APPROVED BY THE COURT.**

**THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN IS 4:00 P.M. \_\_\_\_\_, 2012.**

**PREVAILING EASTERN TIME, UNLESS THE DEBTOR EXTENDS THE VOTING DEADLINE. TO BE COUNTED, THE VOTING AND CLAIMS AGENT MUST ACTUALLY RECEIVE YOUR BALLOT ON OR BEFORE THE VOTING DEADLINE.**

MADISON 92<sup>ND</sup> STREET ASSOCIATES LLC (THE “DEBTOR”) IS PROVIDING THE INFORMATION IN THE DISCLOSURE STATEMENT FOR THE CHAPTER 11 PLAN OF THE DEBTOR TO HOLDERS OF CLAIMS AND INTERESTS FOR PURPOSES OF SOLICITING VOTES TO ACCEPT OR REJECT THE PLAN. YOU SHOULD NOT RELY UPON OR USE THE INFORMATION IN THE DISCLOSURE STATEMENT FOR ANY OTHER PURPOSE OTHER THAN TO DETERMINE HOW TO VOTE ON THE PLAN.

THE VOTING DEADLINE TO ACCEPT OR REJECT THE PLAN IS 4:00 P.M. (PREVAILING EASTERN TIME) ON \_\_\_\_\_, 2012 UNLESS EXTENDED BY THE DEBTOR (THE “VOTING DEADLINE”). TO BE COUNTED, BALLOTS MUST BE RECEIVED BY THE DEBTOR ON OR BEFORE THE VOTING DEADLINE.

THE DISCLOSURE STATEMENT HAS BEEN PREPARED PURSUANT TO SECTION 1125 OF THE BANKRUPTCY CODE AND RULE 3016(B) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND IS NOT NECESSARILY IN ACCORDANCE WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER SIMILAR LAWS. THE DEBTOR BELIEVES THAT THE SOLICITATION OF VOTES ON THE PLAN MADE BY THE DISCLOSURE STATEMENT.

THE DEBTOR WILL BE FILING A PLAN SUPPLEMENT ON OR BEFORE FIVE (5) DAYS PRIOR TO THE VOTING DEADLINE, UNLESS OTHERWISE ORDERED BY THE BANKRUPTCY COURT.

IF THE PLAN IS CONFIRMED BY THE BANKRUPTCY COURT AND THE EFFECTIVE DATE OCCURS, ALL HOLDERS OF CLAIMS AGAINST, AND HOLDERS OF INTERESTS IN, THE DEBTOR (INCLUDING, WITHOUT LIMITATION, THOSE HOLDERS OF CLAIMS OR INTERESTS WHO DO NOT SUBMIT BALLOTS TO ACCEPT OR REJECT THE PLAN OR WHO ARE NOT ENTITLED TO VOTE ON THE PLAN) WILL BE BOUND BY THE TERMS OF THE PLAN AND THE TRANSACTIONS CONTEMPLATED THEREBY.

THE DISCLOSURE STATEMENT MAY CONTAIN “FORWARD-LOOKING STATEMENTS” WITHIN THE MEANING OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995. SUCH STATEMENTS CONSIST OF ANY STATEMENT OTHER THAN A RECITATION OF HISTORICAL FACT AND CAN BE IDENTIFIED BY THE USE OF FORWARD-LOOKING TERMINOLOGY SUCH AS “MAY,” “EXPECT,” “ANTICIPATE,” “ESTIMATE” OR “CONTINUE” OR THE NEGATIVE THEREOF OR OTHER VARIATIONS THEREON OR COMPARABLE TERMINOLOGY. THE READER IS CAUTIONED THAT ALL FORWARD-LOOKING STATEMENTS ARE NECESSARILY SPECULATIVE AND THERE ARE CERTAIN RISKS AND UNCERTAINTIES THAT COULD CAUSE ACTUAL EVENTS OR RESULTS TO DIFFER MATERIALLY FROM

THOSE REFERRED TO IN SUCH FORWARD-LOOKING STATEMENTS. THE DISTRIBUTION PROJECTIONS AND OTHER INFORMATION CONTAINED HEREIN AND ATTACHED HERETO ARE ESTIMATES ONLY, AND THE TIMING AND AMOUNT OF ACTUAL DISTRIBUTIONS TO HOLDERS OF ALLOWED CLAIMS MAY BE AFFECTED BY MANY FACTORS THAT CANNOT BE PREDICTED. THEREFORE, ANY ANALYSES, ESTIMATES OR RECOVERY PROJECTIONS MAY OR MAY NOT TURN OUT TO BE ACCURATE. DUE TO THESE UNCERTAINTIES, READERS CANNOT BE ASSURED THAT ANY FORWARD-LOOKING STATEMENTS WILL PROVE TO BE CORRECT. NEITHER THE DEBTOR NOR THE DEBTOR IS UNDER AN OBLIGATION TO (AND EXPRESSLY DISCLAIM ANY OBLIGATION TO) UPDATE OR ALTER ANY FORWARD-LOOKING STATEMENTS WHETHER AS A RESULT OF NEW INFORMATION, FUTURE EVENTS, OR OTHERWISE, UNLESS INSTRUCTED TO DO SO BY THE BANKRUPTCY COURT.

NO LEGAL OR TAX ADVICE IS PROVIDED TO YOU BY THE DISCLOSURE STATEMENT. EACH HOLDER OF A CLAIM OR AN INTEREST IS URGED TO CONSULT WITH ITS OWN ADVISORS WITH RESPECT TO ANY LEGAL, FINANCIAL, SECURITIES, TAX OR BUSINESS ADVICE IN REVIEWING THE DISCLOSURE STATEMENT, THE PLAN AND EACH OF THE PROPOSED TRANSACTIONS CONTEMPLATED THEREBY. FURTHERMORE, THE BANKRUPTCY COURT'S APPROVAL OF THE ADEQUACY OF DISCLOSURE CONTAINED IN THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE THE BANKRUPTCY COURT'S APPROVAL OF THE MERITS OF THE PLAN.

IT IS THE DEBTOR'S POSITION THAT THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE, AND MAY NOT BE CONSTRUED AS, AN ADMISSION OF FACT, LIABILITY, STIPULATION OR WAIVER. RATHER, HOLDERS OF CLAIMS AND INTERESTS AND OTHER ENTITIES SHOULD CONSTRUE THE DISCLOSURE STATEMENT AS A STATEMENT MADE IN SETTLEMENT NEGOTIATIONS RELATED TO CONTESTED MATTERS, ADVERSARY PROCEEDINGS AND OTHER PENDING OR THREATENED LITIGATION OR ACTIONS.

NO RELIANCE SHOULD BE PLACED ON THE FACT THAT A PARTICULAR CAUSE OF ACTION, CLAIM OR PROJECTED OBJECTION TO A PARTICULAR CLAIM IS, OR IS NOT, IDENTIFIED IN THE DISCLOSURE STATEMENT. THE DEBTOR MAY SEEK TO INVESTIGATE, FILE AND PROSECUTE CLAIMS AND MAY OBJECT TO CLAIMS AFTER THE CONFIRMATION OR EFFECTIVE DATE OF THE PLAN IRRESPECTIVE OF WHETHER THE DISCLOSURE STATEMENT IDENTIFIES ANY SUCH CLAIMS OR OBJECTIONS TO CLAIMS. THE PLAN RESERVES FOR THE DEBTOR THE RIGHT TO BRING CAUSES OF ACTION (DEFINED IN THE PLAN) AGAINST ANY ENTITY OR PARTY IN INTEREST EXCEPT THOSE SPECIFICALLY RELEASED.

THE DISCLOSURE STATEMENT CONTAINS, AMONG OTHER THINGS, SUMMARIES OF THE PLAN, CERTAIN STATUTORY PROVISIONS, CERTAIN EVENTS IN THE DEBTOR'S' CHAPTER 11 CASE AND CERTAIN DOCUMENTS RELATED TO THE PLAN THAT ARE ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE. ALTHOUGH THE DEBTOR BELIEVES THAT THESE SUMMARIES ARE

FAIR AND ACCURATE, THESE SUMMARIES ARE QUALIFIED IN THEIR ENTIRETY TO THE EXTENT THAT THE SUMMARIES DO NOT SET FORTH THE ENTIRE TEXT OF SUCH DOCUMENTS OR STATUTORY PROVISIONS OR EVERY DETAIL OF SUCH EVENTS. IN THE EVENT OF ANY INCONSISTENCY OR DISCREPANCY BETWEEN A DESCRIPTION IN THE DISCLOSURE STATEMENT AND THE TERMS AND PROVISIONS OF THE PLAN OR ANY OTHER DOCUMENTS INCORPORATED HEREIN BY REFERENCE, THE PLAN OR SUCH OTHER DOCUMENTS WILL GOVERN FOR ALL PURPOSES. FACTUAL INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT HAS BEEN PROVIDED BY THE DEBTOR'S MANAGEMENT EXCEPT WHERE OTHERWISE SPECIFICALLY NOTED.

THE DEBTOR HAS REVIEWED THE FINANCIAL INFORMATION PROVIDED IN THE DISCLOSURE STATEMENT. ALTHOUGH THE DEBTOR HAS USED REASONABLE BUSINESS JUDGMENT TO ENSURE THE ACCURACY OF THIS FINANCIAL INFORMATION, NO ENTITY HAS AUDITED THE FINANCIAL INFORMATION CONTAINED IN, OR INCORPORATED BY REFERENCE INTO, THE DISCLOSURE STATEMENT.

THE DEBTOR IS MAKING THE STATEMENTS AND PROVIDING THE FINANCIAL INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT AS OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFICALLY NOTED. ALTHOUGH THE DEBTOR MAY SUBSEQUENTLY UPDATE THE INFORMATION IN THE DISCLOSURE STATEMENT, THE DEBTOR HAS NO AFFIRMATIVE DUTY TO DO SO. HOLDERS OF CLAIMS AND INTERESTS REVIEWING THE DISCLOSURE STATEMENT SHOULD NOT INFER THAT, AT THE TIME OF THEIR REVIEW, THE FACTS SET FORTH HEREIN HAVE NOT CHANGED SINCE THE DEBTOR FILED THE DISCLOSURE STATEMENT. HOLDERS OF CLAIMS AND INTERESTS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN MUST RELY ON THEIR OWN EVALUATION OF THE DEBTOR AND THEIR OWN ANALYSIS OF THE TERMS OF THE PLAN, INCLUDING, WITHOUT LIMITATION, ANY RISK FACTORS CITED HEREIN, IN DECIDING WHETHER TO VOTE TO ACCEPT OR REJECT THE PLAN.

PRIOR TO DECIDING WHETHER AND HOW TO VOTE ON THE PLAN, EACH HOLDER OF A CLAIM OR INTEREST IN A VOTING CLASS SHOULD CONSIDER CAREFULLY ALL OF THE INFORMATION IN THE DISCLOSURE STATEMENT, INCLUDING THE RISK FACTORS DESCRIBED IN GREATER DETAIL HEREIN.

ALL CAPITALIZED TERMS IN THE DISCLOSURE STATEMENT NOT OTHERWISE DEFINED HEREIN HAVE THE MEANINGS GIVEN TO THEM IN THE PLAN, ATTACHED TO THE DISCLOSURE STATEMENT AS EXHIBIT A.

**ALL HOLDERS OF CLAIMS WHOSE VOTES ARE BEING SOLICITED ARE URGED TO ACCEPT THE PLAN. THE DEBTOR BELIEVES THAT THE PLAN PROVIDES THE HIGHEST AND BEST RECOVERY FOR THE DEBTOR'S CREDITORS.**

**IRS CIRCULAR 230 NOTICE: TO ENSURE COMPLIANCE WITH IRS CIRCULAR 230, HOLDERS OF CLAIMS AND INTERESTS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THE DISCLOSURE STATEMENT IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY HOLDERS OF CLAIMS OR INTERESTS FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE INTERNAL REVENUE CODE; (B) SUCH DISCUSSION IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING BY THE DEBTORS OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) HOLDERS OF CLAIMS AND INTERESTS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.**

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**EXHIBITS**

EXHIBIT A: Proposed Plan

EXHIBIT B: Liquidation Analysis

**THE DEBTOR HEREBY ADOPTS AND INCORPORATES EACH EXHIBIT  
ATTACHED TO THIS DISCLOSURE STATEMENT BY REFERENCE AS THOUGH  
FULLY SET FORTH HEREIN.<sup>2</sup>**

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<sup>2</sup> Including all other agreements, documents and instruments at any time executed and/or delivered in connection with or related thereto, ancillary or otherwise, and all exhibits, attachments and schedules referred to therein, all of which are incorporated by reference into, and are an integral part of, this Disclosure Statement, as all of the same may be amended, restated, amended and restated, modified, replaced and/or supplemented from time to time prior to the Effective Date, including, without limitation, by the Plan Supplement, and following the Effective Date, in accordance with each Debtor's applicable constituent documents.

## ARTICLE I.

### SUMMARY

#### A. General

The Debtor, as the Plan proponent, acting through all of its members, hereby transmits the Disclosure Statement (as may be amended, supplemented or otherwise modified from time to time, the "Disclosure Statement") pursuant to section 1125 of title 11 of the United States Code, 11 U.S.C. §§ 101- 1532, as amended (the "Bankruptcy Code"), in connection with the Debtor's solicitation of votes (the "Solicitation") to confirm the First Amended Chapter 11 Plan of Reorganization dated as of March \_\_, 2012, a copy of which is attached hereto as Exhibit A (as may be amended, the "Plan").

The purpose of the Disclosure Statement is to set forth information concerning: (i) the history of the Debtor and the Debtor's business; (ii) the Chapter 11 Case; and (iii) the Plan and alternatives to the Plan. The Disclosure Statement also provides advice to Holders of Claims and Interests of their rights under the Plan, and assistance to Holders of Claims and Interests entitled to vote on the Plan, so they may make an informed judgment regarding whether they should vote to accept or reject the Plan.

Following careful consideration of all alternatives, the Debtor has determined that the commencement of the Chapter 11 Case was a prudent and necessary step to maximize the going concern value of the Debtor's business.

At this juncture, it is the belief of all of the Debtor's members that a Sale of the Hotel is in the best interests of the Debtor, the Debtor's estate, and the Debtor's creditors. The sale will be subject to competitive bidding and auction rules to be approved by the Court. The closing of the sale shall occur under the Plan, and is scheduled to close on the later of June 1, 2012 or twenty-one (21) days after the entry of the Sale Order or entry of the Confirmation Order.

On \_\_\_\_\_, 2012, after notice and a hearing, the Bankruptcy Court entered an order: (i) approving the Disclosure Statement (the "Disclosure Statement Order") as containing "adequate information" to enable a hypothetical, reasonable investor typical of Holders of Claims against or Interests in the Debtor to make an informed judgment as to whether to accept or reject the Plan; and (ii) authorizing the Debtor to use the Disclosure Statement in connection with the solicitation of votes to accept or reject the Plan. **The Disclosure Statement Order establishes \_\_\_\_\_ at 4:00 p.m. (prevailing Eastern Time) as the deadline for the return of Ballots accepting or rejecting the Plan (the "Voting Deadline"). APPROVAL OF THE DISCLOSURE STATEMENT DOES NOT, HOWEVER, CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR MERITS OF THE PLAN.**

The Disclosure Statement Order sets forth in detail the deadlines, procedures and instructions for voting to accept or reject the Plan, and for filing objections to confirmation of the Plan, the record date for voting purposes and the applicable standards for tabulating Ballots. In addition, detailed voting instructions accompany each Ballot. Each Holder of a Claim entitled to vote on the Plan should read the Disclosure Statement and the Exhibits hereto, including the Plan

and the Disclosure Statement Order, as well as the instructions accompanying the Ballot in their entirety before voting on the Plan. These documents contain important information concerning the classification of Claims and Interests for voting purposes and the tabulation of votes. No solicitation of votes may be made except pursuant to the Disclosure Statement and section 1125 of the Bankruptcy Code. In voting on the Plan, Holders of Claims entitled to vote should not rely on any information relating to the Debtor and its business other than the information contained in the Disclosure Statement, the Plan and all Exhibits hereto and thereto.

THE DISCLOSURE STATEMENT IS NOT INTENDED TO REPLACE A CAREFUL AND DETAILED REVIEW AND ANALYSIS OF THE PLAN. THE DISCLOSURE STATEMENT IS INTENDED TO AID AND SUPPLEMENT THAT REVIEW. THE DESCRIPTION OF THE PLAN HEREIN IS ONLY A SUMMARY. HOLDERS OF CLAIMS AND INTERESTS AND OTHER PARTIES-IN-INTEREST ARE CAUTIONED TO REVIEW THE PLAN AND ANY RELATED EXHIBITS AND ATTACHMENTS FOR A FULL UNDERSTANDING OF THE PLAN'S PROVISIONS. THE DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE PLAN.

Additional copies of the Disclosure Statement (including the Exhibits hereto) are available upon written request made to the office of the Debtor's proposed special counsel, NEIGER LLP, Attention: Edward E. Neiger, 151 West 46<sup>th</sup> Street, New York, New York 10036, (212) 267-7342. In addition, a Ballot for voting to accept or reject the Plan is enclosed with the Disclosure Statement for the Holders of Claims that are entitled to vote to accept or reject the Plan. If you are a Holder of a Claim entitled to vote on the Plan and did not receive a Ballot, received a damaged Ballot or lost your Ballot, or if you have any questions concerning the procedures for voting on the Plan, you may contact the Debtor's special counsel at the address and phone number listed above.

Each Holder of a Claim entitled to vote on the Plan should read the Disclosure Statement, the Plan, the other Exhibits attached hereto and the instructions accompanying the Ballots in their entirety before voting on the Plan. These documents contain important information concerning the classification of Claims and Interests for voting purposes and the tabulation of votes.

The Plan organizes the Debtor's creditor and equity constituencies into groups called "Classes." For each Class, the Plan describes (a) the underlying "Claim" or "Interest," (b) the recovery available to the Holders of Claims or Interests in that Class under the Plan, (c) whether the Class is "Impaired" under the Plan, meaning that each holder will receive less than the full value on account of its Claim or Interest or that the rights of Holders under law will be altered in some way (such as receiving stock instead of holding a Claim) and (d) the form of consideration (e.g., cash, stock or a combination thereof), if any, that such Holders will receive on account of their respective Claims or Interests.

The Debtor believes that the Plan provides the best recoveries possible for Holders of Allowed Claims and Interests and strongly recommend that, if such Holders are entitled to vote, they vote to accept the Plan.

**B. Classification of Claims and Interests<sup>3</sup>**

<b>Class</b>	<b>Treatment of Claims and Interests</b>	<b>Entitlement to Vote</b>	<b>Estimated Aggregate Amount of Allowed Claims or Equity Interests</b>	<b>Estimated Percentage Recovery of Allowed Claims<sup>4</sup></b>
<b><u>Unclassified Claims</u></b>	Each Holder of an Allowed Administrative Expense Claim, Professional Fee Claim, and Priority Tax Claim shall receive, in full and final satisfaction of such Claim, the amount of such Allowed Claim, in Cash, on or as soon as practicable following the Effective Date, plus interest from the Petition Date until the date of repayment at the lesser of (i) the rate established by the Bankruptcy Court or (ii) the rate set forth in any agreement between the Holder of the Claim and Madison unless such Holder consents to other treatment.	No - deemed to accept	\$3 million	100%
<b><u>Class 1: Priority Non-Tax Claims</u></b>	Each Holder of an Allowed Priority Non-Tax Claim shall receive, in full and final satisfaction of such Priority Non-Tax Claim, the amount of such Allowed Priority Non-Tax Claim, in Cash, on or as soon as practicable following the Effective Date, plus interest from the Petition Date until the date of repayment at the lesser of (i) the rate established by the Bankruptcy Court or (ii) the rate set forth in any agreement between the Holder of the Claim and Madison unless such Holder consents to other treatment.	No - deemed to accept	None	100%

<sup>3</sup> Premised upon a minimum sale price of \$82 million. However, this is a “pot plan” designed to distribute the proceeds of the Sale of the Hotel pro rata to the Holders of Claims and Interests according to the priorities of the Bankruptcy Code.

<sup>4</sup> For purposes of Classes 3, 4, and 5, the lower range of recovery cannot be determined at this time, because the Courtyard Rejection Claim has not yet been filed or liquidated. While the Debtor believes such claim will be less than \$500,000 and that the Debtor will have affirmative claims against the Marriott Parties, no guarantees or assurances can be provided at this time. In the event such claim is allowed, for illustrative purposes only, in the amount of \$15 million, Class 3 General Unsecured Creditors will not be paid in full. Similarly, in the event the reduced GECC Secured Claim is not accepted or approved by the Court, such a fact could materially impact recoveries to Classes 3, 4, and 5.

Class	Treatment of Claims and Interests	Entitlement to Vote	Estimated Aggregate Amount of Allowed Claims or Equity Interests	Estimated Percentage Recovery of Allowed Claims <sup>4</sup>
<b><u>Class 2:</u> GECC Secured Claim</b>	<p>The Holder of the GECC Secured Claim shall receive, in full and final satisfaction of such GECC Secured Claim the net proceeds from the Sale of the Hotel up to the amount of the Reduced GECC Secured Claim, in Cash, on or as soon as practicable following the Effective Date, plus interest from the Petition Date until the date of repayment at the lesser of (i) the rate established by the Bankruptcy Court or (ii) the rate of interest rate set forth in the Cash Collateral Order, unless such Holder consents to other treatment.</p> <p>In the event Class 2 votes to reject the Plan, to the extent it has cash on hand, the Debtor shall fund the Pre-Payment Premium Reduction Amount in a Disputed Claim reserve account pursuant to Article VIII hereof and, if ultimately allowed by Final Order or agreement of the parties, shall be paid to Class 2.</p> <p>In the event Class 2 credit bids its secured claim at the auction in accordance with Bankruptcy Code section 363(k), and becomes the winning bidder under the Sale Order, the amount of its claim shall be offset by the amount of its credit bid, in accordance with the Bankruptcy Code.</p>	Yes	<del>\$74,007,716<sup>5</sup></del> <u>74,007,710.71<sup>5</sup></u>	Undetermined, but as high as 100%
<b><u>Class 3:</u> General Unsecured</b>	Each Holder of an Allowed General Unsecured Claim shall receive, in full and final satisfaction of such General	Yes	\$1,390,862.85	Undetermined, but as high as 100%

~~<sup>5</sup> The Debtor and GECC are in the process of reconciling the exact amount of the GECC Secured Claim. The Debtor reserves the right to challenge various aspects of the GECC Secured Claim.~~

<sup>5</sup> The Debtor and GECC are in the process of reconciling the exact amount of the GECC Secured Claim. The Debtor reserves the right to challenge various aspects of the GECC Secured Claim.

<b>Class</b>	<b>Treatment of Claims and Interests</b>	<b>Entitlement to Vote</b>	<b>Estimated Aggregate Amount of Allowed Claims or Equity Interests</b>	<b>Estimated Percentage Recovery of Allowed Claims<sup>4</sup></b>
<b>Claims</b>	Unsecured Claims, each Holder's Pro-Rata share, together with Class 4 Other Unsecured Claims, of the net excess Sale proceeds and Causes of Action, if any, after payment of Administrative Expense Claims, Priority Tax Claims, Priority Non-Tax Claims and the Reduced GECC Allowed Secured Claim, unless such Holder consents to other treatment. In the event all senior creditors are paid in full and there is sufficient cash on hand, Class 3 General Unsecured Claims shall be entitled to post-petition interest at the Federal Judgment Rate, unless such Holder consents to other treatment. For avoidance of doubt, Class 3 and Class 4 creditors have the same priority.			
<b><u>Class 4:</u> Other Unsecured Claims</b>	Each Holder of an Allowed Other Unsecured Claim (which includes the Courtyard Rejection Claim) shall receive, in full and final satisfaction of such Other Unsecured Claims, each Holder's Pro-Rata share, together with Class 3 General Unsecured Claims, of the net excess Sale proceeds and Causes of Action, if any, after payment of Administrative Expense Claims, Priority Tax Claims, Priority Non-Tax Claims and the Reduced GECC Allowed Secured Claim, unless such Holder consents to other treatment. In the event all senior creditors are paid in full and there is sufficient cash on hand, Class 4 Other Unsecured Claims shall be entitled to post-petition interest at the Federal Judgment Rate, unless such Holder consents to other treatment. For avoidance of doubt, Class 3 and Class 4 creditors have the same priority.	Yes	Undetermined	Undetermined, but as high as 100%
<b><u>Class 5:</u> Equity Interests</b>	Unless otherwise agreed to by the members of the Debtor, each Holder of an Equity Interest shall receive, in	Yes	n/a	Undetermined

Class	Treatment of Claims and Interests	Entitlement to Vote	Estimated Aggregate Amount of Allowed Claims or Equity Interests	Estimated Percentage Recovery of Allowed Claims <sup>4</sup>
	full and final satisfaction of such interests, each Holder's Pro-Rata Share of the net excess Sale proceeds and Causes of Action after payment in full of Administrative Expense Claims, Priority Tax Claims, Priority Non-Tax Claims, Reduced GECC Allowed Secured Claim, General Unsecured Claims, and Other Unsecured Claims, unless such Holder consents to other treatment.			

### **C. Voting; Holders of Claims Entitled to Vote**

Pursuant to the provisions of the Bankruptcy Code, only holders of allowed claims or equity interests in classes of claims or equity interests that are impaired and that are not deemed to have rejected a plan of reorganization are entitled to vote to accept or reject such proposed plan. Generally, a claim or interest is impaired under a plan if the holder's legal, equitable or contractual rights are altered under such plan. Classes of claims or equity interests under a chapter 11 plan in which the holders of claims or equity interests are unimpaired are deemed to have accepted such plan and are not entitled to vote to accept or reject the proposed plan. In addition, classes of claims or equity interests in which the holders of claims or equity interests will not receive or retain any property on account of their claims or equity interests are deemed to have rejected the plan and are not entitled to vote to accept or reject the plan.

In connection with the Plan:

- Claims in Classes 2, 3, 4 and 5 are Impaired, and as a result, the Holders of such Claims are entitled to vote to accept or reject the Plan; and
- Claims in Class 1 are Unimpaired. As a result, Holders of Claims in Class 1 are deemed to have accepted the Plan and are not entitled to vote to accept or reject the Plan.

The Bankruptcy Code defines "acceptance" of a plan by a class of claims as acceptance by creditors in that class that hold at least two-thirds in dollar amount and more than one-half in number of the claims that cast ballots for acceptance or rejection of the plan. **Your vote on the Plan is important.** The Bankruptcy Code requires as a condition to confirmation of a plan of reorganization that each class that is impaired and entitled to vote under a plan vote to accept such plan, unless the provisions of section 1129(b) of the Bankruptcy Code are met.

The Debtor will be seeking confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code. Section 1129(b) of the Bankruptcy Code permits the confirmation of a plan of reorganization notwithstanding the non-acceptance of a plan by one or more impaired classes of claims or equity interests, so long as at least one non-insider impaired class of claims or interests votes to accept the plan. Under that section, a plan may be confirmed by a bankruptcy court if it does not “discriminate unfairly” and is “fair and equitable” with respect to each non-accepting class.

If you are entitled to vote to accept or reject the Plan, a Ballot is enclosed for the purpose of voting on the Plan. The Disclosure Statement, the Exhibits attached hereto, the Plan and the related documents are the only materials the Debtor is providing to creditors for their use in determining whether to vote to accept or reject the Plan, and such materials may not be relied upon or used for any purpose other than to vote to accept or reject the Plan.

Please complete, execute and return your Ballot(s) to:

NEIGER LLP  
Attention: Edward E. Neiger  
151 West 46<sup>th</sup> Street  
New York, New York 10036  
Tel. (212) 267-7342

TO BE COUNTED, YOUR ORIGINAL BALLOT INDICATING ACCEPTANCE OR REJECTION OF THE PLAN MUST BE ACTUALLY RECEIVED BY THE DEBTOR’S COUNSEL NEIGER LLP NO LATER THAN **4:00 P.M., PREVAILING EASTERN TIME, ON \_\_\_\_\_**, UNLESS EXTENDED BY THE DEBTOR. YOUR BALLOT MAY BE SENT VIA MAIL, OVERNIGHT COURIER OR MESSENGER. ALL BALLOTS MUST BE SIGNED.

The Ballots have been specifically designed for the purpose of soliciting votes on the Plan from the Classes entitled to vote with respect thereto. Accordingly, in voting on the Plan, please use only the Ballots sent to you with the Disclosure Statement or provided by the Debtor.

The Debtor has fixed **4:00 p.m. (prevailing Eastern Time) on \_\_\_\_\_, 2012** (the “Voting Record Date”), as the time and date for the determination of Persons who are entitled to receive a copy of the Disclosure Statement and all of the related materials and to vote whether to accept or reject the Plan. Accordingly, only Holders of record of Claims as of the Voting Record Date that are entitled to vote on the Plan, will receive a Ballot and may vote on the Plan.

All properly completed Ballots received prior to the Voting Deadline will be counted for purposes of determining whether a voting Class of impaired Claims has accepted the Plan. The Debtor will prepare and file with the Bankruptcy Court a certification of the results of the balloting with respect to the Class entitled to vote.

THE DEBTOR BELIEVES THAT CONFIRMATION OF THE PLAN IS IN THE BEST INTERESTS OF ALL HOLDERS OF CLAIMS AND INTERESTS AND RECOMMENDS

THAT ALL HOLDERS OF CLAIMS AND INTERESTS ENTITLED TO VOTE ON THE PLAN VOTE TO ACCEPT THE PLAN.

The Debtor's legal advisors are:

Neiger LLP  
151 West 46<sup>th</sup> Street  
New York, New York 0036  
Attention: Edward Neiger

Olshan Grundman Frome  
Rosenzweig & Wolosky LLP  
65 East 55<sup>th</sup> Street  
New York, NY 10022  
Attention: Adam H. Friedman

Goldberg Weprin Finkel Goldstein LLP  
1501 Broadway  
22nd Floor  
New York, New York 10036  
Attention: Kevin J. Nash

**D. Solicitation Process**

The following documents and materials will constitute the Debtor's solicitation package (the "Solicitation Package"):

- Plan;
- Disclosure Statement;
- the Disclosure Statement Order;
- Notice of the hearing at which confirmation of the Plan will be considered ("Confirmation Hearing Notice");
- Appropriate ballot and voting instructions; and
- Pre-addressed, postage prepaid return envelope.

The Debtor intends to distribute the Solicitation Packages within five calendar days after approval of the Disclosure Statement Order, or on such other schedule as is approved by the Bankruptcy Court. The Debtor submits that distribution of the Solicitation Packages at least five calendar days prior to the Voting Deadline or on such other schedule as is approved by the Bankruptcy Court will provide the requisite materials to Holders of Claims entitled to vote on the Plan in compliance with Bankruptcy Rules 3017(d) and 2002(b).

The Solicitation Package will be distributed to Holders of Claims in Classes 2, 3, 4 and 5 as of the Voting Record Date and in accordance with the procedures described in the Disclosure Statement Order. The Solicitation Package (except the Ballots) may also be obtained by writing (sent via first class mail) to Edward E. Neiger at the above address.

Other parties entitled to receive the Solicitation Packages, including the IRS, will be served paper copies of the Disclosure Statement Order, the Disclosure Statement and all exhibits to the Disclosure Statement, including the Plan, and the Confirmation Hearing Notice.

**E. Confirmation Hearing**

Section 1128(a) of the Bankruptcy Code requires the Bankruptcy Court, after notice, to hold a hearing on confirmation of the Plan. Section 1128(b) of the Bankruptcy Code provides that any party-in-interest may object to confirmation of the Plan.

**The Confirmation Hearing will commence on \_\_\_\_\_ at : 0 .m. prevailing Eastern Time**, before The Honorable Stuart M. Bernstein, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Southern District of New York. The Confirmation Hearing may be adjourned from time to time without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any adjournment thereof.

**The Plan Objection Deadline is 4:00 p.m. prevailing Eastern Time on \_\_\_\_\_**. All objections to the Plan must be filed with the Bankruptcy Court and served on the Debtor's special counsel and certain other parties in accordance with the Disclosure Statement Order on or before the Plan Objection Deadline. In accordance with the Confirmation Hearing Notice filed with the Bankruptcy Court, objections to the Plan or requests for modifications to the Plan, if any, must:

- Be in writing;
- Conform to the Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of New York;
- State the name and address of the objecting Creditor and the amount and nature of the Claim or Interest of such Creditor;
- State with particularity the basis and nature of the objection to the Plan and, if practicable, a proposed modification to the Plan that would resolve such objection; and
- Be filed, contemporaneously with proof of service, with the Bankruptcy Court and served so that it is **actually received** by the notice parties identified in the Confirmation Hearing Notice on or prior to the Plan Objection Deadline.

**THE BANKRUPTCY COURT MAY NOT CONSIDER OBJECTIONS TO THE PLAN UNLESS THEY ARE TIMELY SERVED AND FILED IN COMPLIANCE WITH THE PROCEDURES SET FORTH IN THE DISCLOSURE STATEMENT ORDER.**

**F. Important Matters**

The Disclosure Statement contains projected financial information and certain other forward-looking statements, all of which are based on various estimates and assumptions and will not be updated to reflect events occurring after the date hereof. Such information and statements are subject to inherent uncertainties and to a wide variety of significant business, economic and competitive risks, including, among others, those described herein. Consequently, actual events, circumstances, effects and results may vary significantly from those included in or contemplated by such projected financial information and such other forward-looking statements. The projected financial information contained herein and in the Exhibits annexed hereto is, therefore, not necessarily indicative of the future financial condition or results of operations of the Debtor, which in each case may vary significantly from those set forth in such projected financial information. Consequently, the projected financial information and other forward-looking statements contained herein should not be regarded as representations by any of the Debtor, the Debtor's advisors, or any other Person that the projected financial conditions or results of operations can or will be achieved.

**ARTICLE II.**

**BACKGROUND TO THIS CHAPTER 11 CASE**

**A. The Debtor's Business**

**1. The Debtor's Operations**

On August 16, 2011, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

The Debtor is a limited liability company formed on April 24, 2002 and organized under the laws of the State of Delaware. The Debtor owns the Courtyard New York Manhattan/Upper East Side (the "Hotel"). The Debtor's primary assets are the Hotel and its litigation claims against the Marriott Parties.

The Hotel operations are currently conducted pursuant to the terms of a certain Management Agreement, dated October 7, 2002, as amended by agreements dated June 23, 2003, May 4, 2004, July 20, 2004 and July 7, 2006 (the "Management Agreement") between the Debtor and Courtyard Management Corporation ("Courtyard"). Under the Management Agreement, Courtyard is to have exclusive supervision and control as operator of the Hotel and to be, or cause one of its affiliates to be, the employer of all of the individuals working in the Hotel. Courtyard has responsibility for compliance with most legal requirements arising in the operation of the Hotel. As a result, the Debtor does not itself operate the Hotel, has no employees, is excluded from aspects of the Hotel's operation, and must look to Courtyard to maintain books and records for the Hotel. Courtyard is responsible for collecting all revenues, maintaining books and records for the Hotel, and paying all expenses of the Hotel. ~~In all of its roles~~In accordance with the Management Agreement, Courtyard has a duty to act as a reasonable, prudent operator in all of its roles. ~~In practice, Courtyard has abdicated~~alleges that ~~duty and acted in regard to the Debtor at the direction and control of its ultimate parent, Marriott International, Inc., for the benefit of Marriott~~

~~International, Inc. and its affiliates. This conflict of interest and abdication of duty is at the center of the Debtor's insolvency~~the Debtor has a duty to cooperate with Courtyard's operation of the Hotel.

## 2. The Debtor's Members

Robert Gladstone ("Gladstone") was the co-founder of the Debtor, and is one of the co-Managing Members. Gladstone currently owns a 32.176% interest in the Debtor's profits. Gladstone is the single largest individual member interest.

92<sup>nd</sup> St. Hotel Associates LLC ("Hotel Associates"), controlled by Louis Taic ("Taic") is the other co-Managing Member. Hotel Associates currently owns a 50% interest in the profits of the Debtor, which interest is split in half: 50% by a Trust for Taic's children and 50% by 92<sup>nd</sup> Street Equities Corp.

John Leshner ("Leshner") is a co-founder of the Debtor. Leshner currently owns an 8.569% interest in the Debtor's profits.

Lucille Gladstone ("L. Gladstone") is a member of the Debtor and currently owns a 5% interest in the Debtor's profits.

JKNY, LLC ("JKNY"), owned by Jeffrey Kosow is a member of the Debtor and currently owns a 3.255% interest in the Debtor's profits.

Andrew Harris ("Harris") is a member of the Debtor and currently owns a 1% interest in the Debtor's profits.

## B. Summary of Prepetition Indebtedness

GECC holds a first mortgage ("Mortgage") on the Hotel, dated May 12, 2008, securing a promissory note in the original principal amount of sixty two million dollars (\$62,000,000.00). The Mortgage and GECC loan were part of a refinancing transaction that increased the mortgage debt on the Hotel from \$46.5 million to \$62 million

Following an event of default under the Mortgage ~~(which default the Debtor believes was directly caused by improper actions of the Marriott Parties as described below)~~, in October 2009, GECC commenced a foreclosure proceeding against the Debtor. A final judgment of foreclosure and sale was entered on consent of the parties on June 8, 2011 in the amount of ~~\$74,077,716.71~~ 74,007,710.71 plus interest thereon at the judgment rate (9% per annum), which interest has been accruing since entry of such judgment, plus fees and costs. The impending foreclosure sale necessitated this bankruptcy filing.

The Debtor believes that its mortgage default was directly caused by improper actions of the Marriott Parties. Courtyard denies the allegation and further asserts that the Debtor's insolvency was caused in large part by the refinancing and increase in the mortgage debt. Courtyard has further asserted that there may be causes of action, including for fraudulent transfer, against the Debtor's members, who received a portion of the cash proceeds of the refinancing

transaction. The Debtor disputes both of Courtyard's assertions. The Plan proposes to release any such claims.

Prepetition and since the opening of the Hotel, pursuant to the Management Agreement, all of the cash receipts from the operation of the Debtor's Hotel were to go into approved accounts maintained by Courtyard. In practice, the Debtor believes that Courtyard maintained only a few local or petty cash accounts. The Debtor further believes that the majority of the cash management and accounting were surrendered to the control of other Marriott Parties operating most recently under the name "Marriott Business Services." The accounts apparently controlled by this entity or division are collectively referred to as the "Marriott Operating Accounts." Marriott Business Services directs payment of all fees, payments to Marriott, and expenses of third parties charged to the Hotel from the Marriott Operating Accounts. The Management Agreement further provides that certain residual funds left after these payments are to be deposited into an account maintained by the Debtor (the "Proceeds Account").

According to the Schedules filed by the Debtor, the Debtor has twenty-two (22) unsecured creditors with approximately \$1.39 million in claims. In addition, Courtyard has asserted that if the Management Agreement is rejected, it will have a significant rejection claim, in the millions. New York State has alleged a \$691,856.71 priority tax claim, which the Debtor ~~is disputing, and the~~ objected to. Since the filing of the Debtor's objection, this claim was amended and reduced to the amount of \$66,429.90. The City of New York has filed a tax claim in the amount of \$211,989.00, which the Debtor is in the process of reviewing.

### ARTICLE III.

#### EVENTS LEADING TO THIS CHAPTER 11 CASE

##### A. Prepetition Events

The immediate cause of the Debtor's bankruptcy filing was the impending sale of the Hotel pursuant to the Foreclosure Judgment entered in the GECC foreclosure proceeding. However, the Debtor believes that the foreclosure was itself caused by a lack of profitability directly due to the malfeasance and self-dealing of Marriot Parties ~~as described in greater detail herein.~~ The Marriott Parties deny these ~~and many of the below~~ allegations: and assert that the Hotel would probably have generated sufficient cash flow to service its mortgage debt if the mortgage debt had not been increased by \$15.5 million in 2008.

~~From 2002, the Debtor developed the Hotel and entered into the Management Agreement believing that its terms provided that the Debtor would own, and Courtyard would operate, a profitable hotel. The Debtor believed that paying a material share of net operating profits to Courtyard as an incentive management fee would act to align the Debtor's interests with those of Courtyard in that goal. Unbeknownst to the Debtor, however, the Marriott Parties' own goals were to use the position of their affiliate Courtyard to control and exploit the Debtor's Hotel for Marriott Parties' own greater benefit.~~

~~As the Debtor learned much later, Marriott International Inc.'s first goal in 2002 was to obtain protection from certain union obligations for hotels Marriott International Inc. considered to~~

~~be more valuable to it than was the Debtor's Hotel. Within a month after signing the Management Agreement, certain representatives of Marriott International Inc. proposed a letter agreement with the New York Hotel & Motel Trades Council, AFC-CIO, the "Union", and within four months signed the agreement, which provided that Marriott International, Inc. would facilitate the unionization of the Debtor's Hotel, the Brooklyn Marriott Hotel, and certain other hotels in New York City. In return, Marriott International, Inc. requested that the Union grandfather from card check neutrality the LaGuardia Marriott, the New York Marriott Marquis, the New York Marriott Financial Center (now the Marriott Downtown) and the New York Midtown East Courtyard.~~

~~The proposed agreement was in fact accepted and signed by the Union and Marriott International, Inc. in April 2003. The first draft proposed and *actually signed* by Marriott International, Inc. was dated November 5, 2002 (less than thirty days after the Debtor signed the Management Agreement). It remained hidden from the Debtor by Marriott for six years and was revealed only by a subpoena to the Union in late 2009.~~

~~The Hotel was finally opened in 2006. As agreed between Marriott and the Union but kept secret by Marriott from the Debtor, the work force was unionized almost immediately upon the opening pursuant to card check procedures authorized under Federal labor law.~~

~~Even after the Debtor learned of that unionization, the Debtor was not told of additional agreements signed between the Union and Marriott Parties ("Additional Marriott Labor Agreements"). These Additional Marriott Labor Agreements dealt with special staffing, work rules which in the Debtor's view were designed to produce overtime and other excessive labor costs and other obligations to which Marriott Parties had, again secretly, subjected the Hotel. To the contrary, the Debtor was repeatedly told by Marriott that no such additional agreements existed.~~

~~In its efforts to develop the Hotel, the Debtor had been encouraged by, and had relied upon, the Marriott Parties' repeated deliveries of projections and budgets which omitted the costs of the unionization to which Marriott had been already committed the Hotel and the additional costs brought on by the Additional Marriott Labor Agreements. Unknown to the Debtor, the Marriott Parties maintained a different set of projections for their own use, which they did not show to the Debtor until years later, and which anticipated unionization and these additional operating costs.~~

~~The negative impact of the agreements kept secret by Marriott became much more obvious as the recession approached. Seeing the coming downturn, the Debtor sought to know Courtyard's plans for reducing and containing costs in the face of an accelerating drop in revenues. The Debtor, however, found Courtyard and other Marriott Parties indifferent. In fact, operating costs increased in absolute terms through the recession. Cash flow to the Debtor was repeatedly disrupted and often inadequate, leading inevitably to fewer and smaller distributions to the Proceeds Account. That left the Debtor with cash insufficient to pay even the moderate debt service the Debtor had taken on.~~

~~At the heart of the Debtor's cash problems was gross overstaffing of the Hotel. The staffing projection in a 2002 Pro Forma used in the development of the Hotel had shown 47.5 employees. Despite plunging revenues, Courtyard was operating the Hotel in the depth of the recession with more than 70 union and management employees on the payroll. The Union~~

~~agreement in the form then known to the Debtor stated that the Hotel was permitted to make layoffs, yet none were made. The Debtor was referred by Courtyard to other Marriott Parties to address this, and those parties refused to approach the Union to discuss such prudent concessions as staffing reductions. Eventually it was admitted by those Marriott Parties that there were secret agreements with the Union kept secret from the Debtor by Marriott, and that these undisclosed arrangements effectively barred layoffs.~~

~~Desperate to control costs and maintain cash flow, the Debtor began to look as closely as it could at other areas of possible costs savings. On subjects as varied as the charges to the Hotel from a captive insurance program, to the terms on which the Hotel subsidized the Marriott Rewards frequent guest program, Courtyard refused to account and failed to make other Marriott Parties account to the Debtor for what was happening at and to the Hotel. Most particularly, Marriott Parties refused to provide information about their own potentially self-dealing transactions and programs.<sup>6</sup>~~

~~In the first half of 2009, the financial situation had become dire. The Debtor had used its cash reserves and raised substantial additional amounts from its investors, but the cash flow continued to deteriorate and Marriott continued to obstruct the Debtor's efforts to deal with the deterioration. The Debtor realized that Courtyard budgets showing more cash flow were at best fantasy. The impact on the cash flow of the staffing arrangements and the abusive Marriott Parties' programs, even to the limited extent then known, was millions of dollars per year. The Debtor thus began to consider litigation to seek an accounting, access to its own information, and remedies for the already visible breaches of the Management Agreement.~~

~~In July 2009, the Debtor was shocked to find that its bank account had been liened by the New York State tax authority for sales tax assessments. The lien prevented debt service payments to GECC, as the Debtor's lender. The tax liens were shocking because the Debtor had never owed or filed sales tax returns, nor had it any role in handling the trust funds involved in collection of sales taxes. Under the terms of the Management Agreement, this was exclusively Courtyard's responsibility. The taxpayer address on the notice of liens was a location of Marriott Business Services; however, it bore the Debtor's tax identification number. While the liens on the account were eventually released, Courtyard and other Marriott Parties refused to answer questions about or provide copies of what they had signed using the Debtor's name or tax identification number.~~

## **1. The Courtyard Action.**

~~In September 2009, the Debtor commenced suit against Courtyard in *Madison 92<sup>nd</sup> Street Associates, LLC v. Courtyard Management Corporation*, New York Supreme Court, Index No. 602762/2009 (as may be amended, the "Courtyard Action"). The Courtyard Action ~~alleges in greater detail what is described above to the extent the Debtor then knew the details. It alleged how Courtyard abused its management position under the Management Agreement, engaged in self-dealing with affiliates, signed tax returns and purported to be the Debtor's agent without authority, and otherwise failed to manage the Hotel to the promised standard of a reasonable prudent operator. The complaint sought, inter alia, an accounting and findings of breaches of the~~~~

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<sup>6</sup> ~~Unfortunately Debtor's discovery of Marriott's self-dealing occurred after the Debtor had completed the refinancing with GECC.~~

~~contract and the covenant~~sought relief for Courtyard's breach of contract, misrepresentation, breach of duty of good faith and fair dealing. ~~The complaint further sought an accounting and damages, but did not seek termination.~~ breach of fiduciary duty, a declaratory judgment that a breach had occurred, and an accounting. The Debtor's claims rested on three primary factual allegations, namely that Courtyard had (1) as an accommodation to the Union lowered the barriers to unionization at the Hotel and accepted work rules and overstaffing that significantly increased operating costs over what had been budgeted, (2) directed a disproportionate percentage of low paying Marriott Rewards redemption nights to the Hotel, and (3) had implemented a self-insured Workers Compensation program at the Hotel that benefitted its parent Marriott to the detriment of the Hotel's cash flow.

~~Courtyard moved to dismiss. The motion was decided in July 2010, and affirmed the Debtor's right to proceed on the accounting and pursue the breaches described above, and dismissed certain other claims. Courtyard was required to answer, and discovery was scheduled.~~

Courtyard moved to dismiss the complaint in its entirety. On July 13, 2010, the Court issued a decision that dismissed the misrepresentation, breach of fiduciary duty and declarative relief claims, but maintained the Debtor's claims of breach of contract, breach of duty of good faith and accounting, specifically finding that there was a question of fact whether Courtyard had met its contractual obligation to manage the Hotel to a "reasonable prudent" standard.

On or about April 28, 2011, Courtyard moved for partial summary judgment on the grounds, amongst others, that an estoppel certificate the Debtor executed in connection with a 2008 refinancing, which stated that the Debtor was at the time unaware of any breaches by Courtyard of the Management Agreement, effectively precluded any claims for breach occurring prior to that date and that the Judge rejected the Debtor's claim that the unionization of the Hotel's workforce caused the Debtor to default. The Debtor has opposed this motion on a number of grounds, including that the estoppel certificate was neither given to nor inured to the benefit of Courtyard, and that the Debtor was in fact unaware of Courtyard's breaches at the time of the execution of the certificate. This motion has not been argued or decided.

On January 9, 2012, the Debtor removed the Courtyard Action to the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1452 and Rule 9027 of the Federal Rules of Bankruptcy Procedure. By Motion dated January 20, 2012 (the "Remand Motion"), Courtyard moved to for abstention, remand ~~the Courtyard Action to the state court and costs~~. On January 31, 2012, U.S. District Judge Scheindlin caused the Courtyard Action to be transferred to the Bankruptcy Court pursuant to a standing order of district court referring all matters related to a bankruptcy case to the bankruptcy court. The Debtor has opposed the Remand Motion. A status conference on the Remand Motion is scheduled before the Bankruptcy Court for April 23, 2012.

## **~~2. Further Labor Related Revelations.~~**

~~As set out above, Marriott International Inc. had entered into contracts with the Union in and after 2003 which the Marriott Parties never disclosed to the Debtor, and which were clearly deliberately concealed by Marriott. In connection with the Courtyard Action, the Debtor served a subpoena on the Union requesting, among other items, the agreements under which the Hotel had~~

~~been unionized by card check. The Union then produced the April 2003 letter agreement signed by both Marriott International, Inc. and the Union and the November 2002 draft signed only by a representative of Marriott International Inc., as well as numerous drafts and transmittals showing other exchanges of information between the Union and Marriott Parties.~~

~~Some of these documents referred to arrangements made between Marriott and the Union prior to 2002, raising a strong suggestion of misrepresentation to the Debtor by the Marriott Parties in the original inducement of the Management Agreement. The Debtor believes that Marriott International Inc. sacrificed the Debtor's Hotel to protect its more important hotels from unionization, as set forth in the letter agreement. The protected hotels are The Marriott Marquis, the Midtown East Courtyard Marriott, the LaGuardia Marriott Hotel and the New York Marriott Financial Center Hotel. As mentioned above, the Marriott Parties and the Union have disputed many of the foregoing allegations.~~

### ~~3. Further State Tax Revelations.~~

~~Another area in which the Debtor alleges that Courtyard's and other Marriott Parties' involvement and malfeasance has become apparent is their ongoing dealings with the New York State Department of Taxation and Finance (the "NYS Tax Department") over hotel room, use, and sales taxes. From the opening of the Hotel, Marriott Parties (acting primarily through Marriott Business Services) has been misrepresenting to the NYS Tax Department that various Marriott Parties and their representatives had the Debtor's power of attorney to deal with the hotel, use, and sales tax filings, audits, assessment, and refund applications. Marriott Business Services and its representatives delivered to the NYS Tax Department dozens of instruments and reports falsely signed, attested, and notarized. In these, the Debtor purportedly gave Marriott Parties' employees and outside professionals such powers of attorney. Not only did the Debtor not provide Marriott Parties, Marriott Business Services, or such professionals with any such powers of attorney, the Debtor has repeatedly refused the Marriott Parties many requests for such powers, and had instructed Courtyard and the Marriott Parties never to sign as the Debtor. The Debtor also issued a notice of default to Courtyard regarding this misconduct. The period for cure of that default has expired without cure by Courtyard.~~

~~When the Debtor began to suspect misrepresentations by Courtyard and other Marriott Parties, the Debtor was refused information by such parties. The Debtor finally initiated its own contact with the NYS Tax Department. The Debtor was initially blocked from information by the Marriott Parties. Finally, the Debtor formally appointed its own representative and attorney in fact. The Debtor discovered and revoked the false Marriott Parties' powers of attorney. Nonetheless, an assessment addressed to the Debtor and sent to a Marriott Parties address was issued in the amount of \$679,581 dated May 26, 2011. The Debtor then learned that Marriott Parties had been dealing with a series of audits by the NYS Tax Department for several years. Marriott Parties had also made an application in the Debtor's name for a refund, intended to be paid to a Marriott Party, hiding the application from the Debtor. In the face of the Debtor's refusals to grant a power of attorney or to provide waivers of the statute of limitations, it appears Marriott Parties had simply made up and signed a power of attorney and signed the waivers, both in the Debtor's name. Documents turned over by the NYS Tax Department also showed evidence of substantial accounting irregularities and material differences from information contained in those documents and information provided to the Debtor by Courtyard. On June 9, 2011, Marriott sent to~~

~~the Debtor the May 26, 2011 tax assessment notice, for the first time addressing it to the Debtor itself. To date, Marriott Parties continue to refuse to disclose and turnover all of the documents which Marriott Parties, Marriott Business Services, and Courtyard have signed or delivered using the Debtor's name and/or tax identification number.~~

~~The NYS Tax Department has filed an unsecured priority proof of claim against the Debtor in the total amount of \$692,761.97. The Debtor believes that, under the circumstances, particularly considering the alleged above mentioned bad acts which underlie the assessment, Courtyard is solely liable for the assessment. The Debtor intends to object to the claim of the NYS Tax Department.~~

~~On February 24, 2011, the Debtor discovered that similar false tax filing had been made by Marriott Business Services and/or Courtyard with the tax authorities of New York City. The Debtor is currently working with the New York City Department of Finance in investigating those filings and to determine the scope of the misrepresentations.~~

#### 2. ~~4.~~ The Foreclosure Action.

~~Courtyard's conduct in regard to the Hotel has burdened Debtor with substantial unnecessary expenses which caused the Debtor to be unable to remain current with GECC on its mortgage. Thereby, Courtyard's misconduct underlies the GECC's foreclosure action.~~

As discussed above, GECC is the Debtor's prepetition lender pursuant to a May 2008 promissory note in the principal amount of \$62 million, secured by all of the assets of the Hotel (the "Promissory Note"). Based upon the Debtor's inability to make payments due under the Promissory Note, on June 8, 2011, a Foreclosure Judgment in the amount of ~~\$74,007,716 was entered~~ \$74,007,710.71 plus interest thereon at the judgment rate (9% per annum), which interest has been accruing since entry of such judgment, plus fees and costs which interest has been accruing since entry of such judgment, plus fees and costs, was entered on consent of the parties in the New York State Supreme Court permitting the auction sale of the Hotel condominium property upon proper public notice (*General Electric Capital Corp. v. Madison 92<sup>nd</sup> Street Associates, LLC; 92<sup>nd</sup> Street Hotel Associates LLC, et al;* Index No. 603324/2009). Under the Foreclosure Judgment, the Debtor had agreed to sell the Hotel and satisfy the Foreclosure Judgment from the net sale proceeds.

#### 3. ~~5.~~ Attempted Sale of the Hotel

At the time of the entry of the Foreclosure Judgment, the Debtor, was actively seeking to sell the Hotel. However, the members were deadlocked on a sale contract which they had obtained from a credible buyer and no sale was consummated.

## ARTICLE IV.

### ADMINISTRATION OF THE CHAPTER 11 CASE

#### A. **Overview of Chapter 11**

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under chapter 11, a debtor is authorized to reorganize its business for the benefit of itself, its creditors and its equity interest holders. In addition to permitting the rehabilitation of a debtor, another goal of chapter 11 is to promote equality of treatment for similarly situated creditors and similarly situated equity interest holders with respect to the distribution of a debtor's assets.

The commencement of a chapter 11 case creates an estate that is comprised of all of the legal and equitable interests of the debtor as of the Petition Date. The Bankruptcy Code provides that the debtor may continue to operate its business and remain in possession of its property as a "debtor in possession."

The consummation of a plan of reorganization is the principal objective of a chapter 11 reorganization case. A plan of reorganization sets forth the means for satisfying claims against and interests in a debtor. Confirmation of a plan of reorganization by the bankruptcy court makes the plan binding upon the debtor, any issuer of securities under the plan, any person acquiring property under the plan and any creditor or equity interest holder of a debtor. Subject to certain limited exceptions, the order approving confirmation of a plan discharges a debtor from any debt that arose prior to the date of confirmation of the plan and substitutes the obligations specified under the confirmed plan.

In general, a chapter 11 plan of reorganization (a) divides claims and equity interests into separate classes, (b) specifies the property, if any, that each class is to receive under the plan, and (c) contains other provisions necessary to the reorganization of the debtor and that are required or permitted by the Bankruptcy Code.

Pursuant to section 1125 of the Bankruptcy Code, acceptance or rejection of a plan may not be solicited after the commencement of a chapter 11 case until such time as the court has approved the Disclosure Statement as containing adequate information. Pursuant to section 1125(a) of the Bankruptcy Code, "adequate information" is information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment regarding the plan. To satisfy applicable disclosure requirements, the Debtor submits the Disclosure Statement to Holders of Claims that are Impaired and not deemed to have rejected the Plan.

#### B. **Relevant Case Background**

On August 16, 2011, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Honorable Stuart M. Bernstein is presiding over the Chapter 11 Case. The Debtor continues to operate its business as debtor and debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

The following is a brief description of certain significant events that have occurred during the pendency of the Chapter 11 Case.

### 1. Initial Dispute Between the Members of the Debtor

At the outset of the Chapter 11 Case, there was a dispute between the Co-Managing Members of the Debtor and a split in the members as to the corporate governance of the Debtor and the appropriate reorganization strategy -- essentially whether a sale or a refinancing was the most beneficial to the Debtor and the Debtor's estate. These disputes have now been resolved with the two Co-Managing Members and all of the members of the Debtor allied behind a sale of the Hotel. The members of the Debtor are committed to continue to act together in the best interests of the estate and have agreed to the Debtor's retention of Neiger LLP as independent counsel.

The agreement of the Debtor's members to proceed with the sale of the Hotel followed the appointment of an examiner, Thomas J. Sloam (the "Examiner") and the issuance of his reports as the end product of the equity parties entering into the *Stipulation Resolving Motion for Dismissal, Appointment of a Chapter 11 Trustee or Appointment of a Chapter 11 Examiner by the Appointment of an Examiner* on September 20, 2011 (Docket No. 45) which resolved the Gladstone allied members' *Motion For Dismissal, Appointment Of A Chapter 11 Trustee Or Appointment Of A Chapter 11 Examiner* (Docket No. 14).

### 2. The Examiner's Reports

After appointment of the Examiner, each member group of the Debtor met with the Examiner to provide rationales and business justification for their plan strategies for the Debtor. The Examiner issued Part I of his report (the "Examiner's Report") (Docket No. 87) on December 12, 2011. The Examiner suggested a hybrid auction or either the Hotel assets or the equity of the Debtor and urged the parties to settle their differences for mutual benefit. The equity holders took the opportunity to negotiate their settlement and to develop a working relationship to achieve a sale of the Hotel, as described in detail below.

On January 12, 2012, the Examiner filed Part II of the Examiner's Report (Docket No. 124) regarding the retention of professionals by the Debtor, specifically, with respect to the retention of Goldberg Weprin Finkel Goldstein LLP ("GWFG") as general counsel for the Debtor and Olshan Grundman Frome Rosenzweig & Wolosky ("Olshan") as special counsel for the Debtor. ~~In light of this report~~ The Examiner concluded that, based upon the then-existing impasse between the members, neither GWFG nor Olshan was disinterested. In light of the Examiner's Report, to deal with any potential conflict of either GWFG or Olshan acting as the Debtor's general counsel, the Debtor is retaining Neiger LLP as independent general counsel.

### 3. Retention of Professionals

On September 9, 2011, the Debtor filed with the Bankruptcy Court an application seeking entry of orders authorizing the Debtor to retain Goldberg Weprin Finkel Goldstein LLP as their counsel (Docket No. 37). Pursuant to the terms of the Fourth Stipulation, the hearing on the motion to retain Goldberg Weprin Finkel Goldstein LLP has been adjourned to December 31, 2011.

On September 20, 2011, the Debtor filed with the Bankruptcy Court an application seeking entry of an order authorizing the Debtor to retain Katten Muchin Rosenman LLP and KC

McDaniel PLLC as special counsel to the Debtor (Docket No. 43). The Bankruptcy Court entered an order (Docket No. 67) approving the application on October 21, 2011. These counsel had been involved in the Courtyard Action and related investigations.

On September 29, 2011, the Debtor filed with the Bankruptcy Court an application seeking entry of an order authorizing the Debtor to retain RSR Consulting, LLC as financial consultant to the ~~Debtor~~ Examiner (Docket No. 50). The Bankruptcy Court entered an order (Docket No. 57) approving the application on October 6, 2011.

On September 29, 2011, the Examiner, filed with the Bankruptcy Court an application seeking entry of an order authorizing the Examiner to retain Meyer, Suozzi, English & Klein, P.C. as counsel to the Examiner (Docket No. 51). The Bankruptcy Court entered an order (Docket No. 56) approving the application on October 6, 2011.

On October 20, 2011, the Debtor filed with the Bankruptcy Court an application seeking entry of an order authorizing the Debtor to retain Olshan Grundman Frome Rosenzweig & Wolosky LLP as special counsel to the Debtor (Docket No. 66). Pursuant to the terms of the Fourth Stipulation, the hearing on the motion to retain Olshan Grundman Frome Rosenzweig & Wolosky LLP has been adjourned to December 31, 2011. The hearing has since been further adjourned to February 28, 2012 at 10:00 a.m.

On February 17, 2012, the Debtor filed with the Bankruptcy Court an application seeking entry of an order authorizing the Debtor to retain Cushman & Wakefield Sonnenblick Goldman, LLC as its exclusive financial advisor to assist in connection with the sale of the Hotel, to market the Hotel and to generally assist in the auction process (Docket No. 164). ~~The application is noticed for presentment to~~ On March 7, 2012, the Bankruptcy Court ~~for approval on March 6, 2012,~~ entered the retention order (Docket No. 185).

On February 24, 2012, the Debtor filed with the Bankruptcy Court an application seeking entry of an order authorizing the Debtor to retain Tuchman, Korngold, Weiss, Lippman & Gelles LLP as special counsel in connection with a tax certiorari claim against the New York City Tax Commission (Docket No. 174). On March 14, 2012, the Bankruptcy Court entered the retention order (Docket No. 203).

On March 5, 2012, the Debtor filed an application to retain Neiger LLP as its substitute general counsel (Docket No. 183). On March \_\_\_\_\_, 2012, the Bankruptcy Court entered the retention order (Docket No. \_\_\_\_\_).

#### **4. Rejection of the Courtyard Management Agreement and Courtyard's Potential Rejection Damages**

On November 10, 2011, the Debtor filed a motion to reject the Management Agreement (the "Rejection Motion") (Docket No. 71). As set forth in the Rejection Motion, ~~and for the reasons described above,~~ the Debtor determined to reject the Management Agreement because the Debtor believes it was highly burdensome ~~to the Debtor and its estate in the fees charged, and also in costs and burdens which Courtyard had imposed or allowed its affiliates to impose on the Hotel. These actions, however characterized, severely damaged the Debtor and dramatically reduced the value of the Hotel in the eyes of prospective lenders and investors.~~ The Debtor determined that

removal of Courtyard and rejection of the burdens the Management Agreement imposed on the Hotel was in the best interests of the estate and will enhance the saleability of the Hotel.

Courtyard has filed an objection to the Rejection Motion (Docket No 107), arguing, *inter alia*, that (i) it is premature to reject the Management Agreement before the auction because a bidder may wish to assume the Management Agreement (ii) because rejection contemplates a closure of the Hotel, the Debtor should be required to file a separate motion to close the hotel (iii) rejection of the Management Agreement will result in "significant harm to the estate" because many actions that need to occur, such as ceasing to take reservations and rebooking reservations, have irreversible consequences and (iv) the only way to ensure an orderly shutdown and transition of the Hotel is to set a date certain for rejection - a date that is subsequent to the auction. The Bankruptcy Court has informally indicated that the rejection itself is subject to the Debtor's business judgment. The Debtor fully expects that Rejection Motion will be granted.

The Debtor believes that Courtyard's rejection damages, if any, can be anticipated to be inconsequential to the estate, particularly given offsets the Debtor intends to claim such as for Marriott's failure to meet its Performance Threshold. Courtyard disputes this allegation and has asserted that rejection will result in a damage claim of "millions of dollars". Courtyard has not yet provided the Debtor with any detail with regard to its assertion that its rejection damages will indeed equal "millions of dollars" other than to note that its Base Management Fee in 2011 was approximately \$900,000 and that there are approximately 15 years remaining on the Initial Term of the Management Agreement.

The Union has also filed an objection to the Rejection Motion (Docket No. 108), arguing some of the same points that were raised in the Courtyard objection, as well as arguing (i) the Debtor is attempting to do an "end run" around Bankruptcy Code § 1113, (ii) rejection of the Management Agreement is not supported by the business judgment test, (iii) the Courtyard rejection claims will be "very material" relative to the amount of the Debtor's assets (iv) a rejection of the Management Agreement would effect a rejection of the collective bargaining agreement known as the Industry Wide Agreement ("IWA") which allegedly binds the hotel successors to its terms and requires any transferee of the Debtor to assume the IWA. The Debtor has asserted that section 1113 is inapplicable, it has no contract with the Union and is not bound by any agreement Marriott has with the Union; accordingly, the Union has no standing to object to the rejection of the Management Agreement. The Debtor ~~has~~ filed a motion to strike the Union's objection to both the Rejection Motion and the motion for approval of this Disclosure Statement, contesting the Union's standing and the application of section 1113 herein. ~~The Union intends to oppose the motion to strike the Union's objections.~~

~~A document request has been served on Courtyard. At a status conference on the Rejection Motion on February 2, 2012, the parties advised the Court that they would "meet and confer" regarding disputes over the scope of the document request on or before February 10, 2012. The Court asked that it thereafter be advised as to remaining disputes and indicated it would schedule a chambers conference in an attempt to resolve them. The Debtor is now pursuing such a dispute.~~

~~The Debtor believes that rejection damages, if any, can be anticipated to be inconsequential to the estate. Courtyard disputes this allegation and has claimed that rejection will result in a damage claim of "millions of dollars". The Debtor believes that any Courtyard Rejection Claim~~

~~which might be asserted by Courtyard will be more than fully offset by the recoveries of the Debtor for its claims against Courtyard. Courtyard alleges that the Debtor's claims against Courtyard have no merit. However, even if there is an allowed Courtyard Rejection Claim, the Debtor reserves the right to seek to equitably subordinate any claim of a Marriott Party. Additional claims against Marriott Parties discovered or newly arisen since that Courtyard Action and indeed since the filing of this case may also add to recoveries in favor of the Debtor's estate against Courtyard specifically and others of the Marriott Parties.~~

~~Courtyard will have the burden of proof in establishing its loss of profits from rejection of the Management Agreement. The Debtor considers Courtyard unlikely to carry this burden. Since the commencement of this case in August, 2011, Courtyard has performed approximately \$1 million below its own projection of cash flow performance at this Hotel. In the strong New York City hotel market, the projections for this Hotel have been cut repeatedly through the year. The Hotel is underperforming similar properties not tied to Marriott and operating at a rate significantly lower than other Courtyards in Manhattan. Courtyard now projects that it will have failed for two years at the end of 2011 to reach the minimum required cash flow levels specified for this Hotel in the Management Agreement. Over 1000 new Courtyard rooms were reported to be in planning or permitting in Manhattan in early 2011, and a further large Courtyard project in Manhattan was announced just prior to the commencement of this proceeding. These will compete within the central Marriott reservation system with hundreds of other Marriott-affiliated rooms also announced as being added in New York City, in some of which Marriott has a substantial financial stake. As mentioned above, Courtyard has or may dispute some of these allegations and has alleged it will have a rejection claim for "millions of dollars".~~

The Debtor and the Union have resolved these matters as between them. The Union is withdrawing its objection to the Rejection Motion as well as to the adequacy of this Disclosure Statement and is not pursuing the applicability of section 1113 of the Bankruptcy Code to the Debtor. The Stipulation and Order Resolving Motion to Strike Pleadings has been noticed for presentment to the Court for April 5, 2012 (Docket No. 209).

## **5. Cash Collateral**

On October 13, 2011, the Bankruptcy Court entered the interim Cash Collateral Order agreed to by the Debtor, GECC and Courtyard. The Cash Collateral Order, *inter alia*, provides for payment to GECC of 98% of the funds deposited by Courtyard into the Debtor's account pursuant to the Management Agreement. Pursuant to the terms of the Cash Collateral Order, the Debtor has reserved the right to challenge the application of these payments.

## **6. The Sale Process**

After extensive efforts, Gladstone, on behalf of the Debtor, and CIM Group Acquisitions, LLC ( "CIM") executed the CIM Purchase Agreement. A copy of the CIM Purchase Agreement was attached to the previous version of the Disclosure Statement as Exhibit "D" (Docket No. 92). The CIM Purchase Agreement required the Bankruptcy Court to reject the Management Agreement, approve sale procedures such that the Hotel can be sold free and clear of all liens, claims, encumbrances and other interests and to approve other sale/bid procedures.

The Debtor then filed a motion (A) Scheduling Hearing to Approve Sale Procedures, Break-up Fee and Notice Requirements; (B) Scheduling a Hearing Authorizing Sale of Substantially All of the Debtor's Real Estate Assets Free and Clear of Liens, Claims and Interests; (C) Approving Procedures for the Assumption and Assignment of Executory Contracts and Payment of Senior Secured Claims; and (D) Granting Other Relief Related to the Foregoing (the "Sale Procedures Motion") (Docket No. 111).

Following the filing of the Sale Procedures Motion, CIM engaged in discussions with various constituencies in the estate to resolve possible objections to the CIM purchase. As a result, CIM requested, and the Debtor agreed, to extend the CIM diligence period to February 14, 2012. As allowed by the CIM Purchase Agreement, during these extension periods, the Debtor continued to negotiate alternative transactions with other interested buyers. One such buyer made an all cash offer that exceeded the purchase price offered by CIM by \$650,000. A letter of intent was signed on February 1, 2012 and the parties worked diligently to execute a contract.

On February 14, 2012 CIM advised the Debtor that it was terminating its purchase agreement with the Debtor. On or around the same date, the interested back up stalking horse also advised the Debtor that it would not proceed to execute a firm, "no outs" contract.

The Debtor, through all of its members, filed an Amendment to the Sale Motion on February 16, 2012 (Docket No. 160), which sought to modify the sale and auction procedures set forth in the Sale Motion, to provide for a sale process without a stalking horse bidder. On February 23, 2012, the Bankruptcy Court entered the Sale Procedures Order (Docket No. 169) by which the Debtor will conduct an auction sale without a stalking horse bidder. However, the Debtor, with the assistance of Cushman, is continuing its efforts to obtain a stalking horse contract.

## **7. Recent Events Involving the Union**

~~In early January 2012 the Debtor received a letter from counsel for Marriott International, Inc. referring to an arbitration proceeding that had been pending for weeks or months between Marriott International, Inc. and the Union. The letter indicated that the Union was seeking an order against Marriott International, Inc. and Courtyard Management Corporation based on an alleged failure by Marriott International, Inc. to secure the contractual agreement of the Debtor to assume a collective bargaining agreement that was agreed to (and intentionally hidden by the Marriott Parties from the Debtor) by Marriott, International, Inc. regarding the Hotel. The Debtor has not entered into any collective bargaining agreement, or any other agreement, with the Union and has consistently maintained, without dispute by Courtyard, that the "employer" under the collective bargaining agreement and the Management Agreement is Courtyard, not the Debtor. The Debtor contends that all of the "employees" who are represented by the Union, are employees of Courtyard, not the Debtor, and that the Union has no agreements, written or otherwise, with the Debtor.~~

~~The next notice received from the Debtor was on February 13, 2012, when it received notice (the "Notice") from counsel for Marriott attaching a partial order in the arbitration proceeding to which the Debtor was not a party. The order indicated that the arbitrator had previously held that Marriott International, Inc., and Courtyard, as the "Employer", were in breach as alleged by the Union for a failure to obtain an agreement from the Debtor to be bound by the~~

~~collective bargaining agreement at issue. The Notice also stated that that a strike or picketing against Marriott International, Inc. and Courtyard would soon be permissible at the Debtor's Hotel.~~

The union commenced arbitrations against Marriott and Courtyard in 2011 for failing to cause the Debtor to assume the IWA. Marriott and Courtyard assert that the Debtor was obligated to assume the IWA and will be liable for damages they incur because the Debtor has not assumed it. The Debtor replies that it is not so obligated and will not be liable.

The Union, in its objection to the Debtor's initial Disclosure Statement and Sale Procedures Motion argued that additional disclosure should be made in the Disclosure Statement regarding:

[T]he detrimental effects that will accompany an absence of labor peace at the Hotel, such as disruptions in operations and profitability in the face of a picket line and public boycott campaign, as well as unfair labor practice charges and court actions against any purchaser which violates the rights of the current workforce following the acquisition of the Hotel.

See, *Combined Objection of the New York Hotel & Motel Trades Council, AFL-CIO To The Debtor's Motions Seeking Approval of (A) Disclosure Statement and (B) Sales Procedures* (Docket No. 151) , pp 2-3.<sup>76</sup>

As stated described above, ~~the Debtor has made a Motion to Strike~~ the Union's objection to the Disclosure Statement ~~which the Union intends to oppose.~~ has been resolved. The Stipulation and Order Resolving Motion to Strike Pleadings has been noticed for presentment to the Court for April 5, 2012 (Docket No. 209).

#### **8. Debtor's Motion to Extend Exclusivity**

On December 12, 2011, the Debtor, filed the *Motion for an Order Extending the Debtor's Exclusive Periods to File a Plan of Reorganization and to Solicit Acceptances Thereto Pursuant to 11 U.S.C. § 1121(d)(1)* (Docket No. 86) (the "Exclusivity Motion"), requesting that the date by which a plan of reorganization must be filed be extended to March 14, 2012, and the date by which the Debtor may solicit acceptances or rejections be extended to May 14, 2012.

On December 21, 2011, GECC filed the *Reservation Of Rights Of General Electric Capital Corporation Regarding The Debtor's Request For An Extension Of The Exclusive Periods* (Docket No. 98) preserving its right to file a motion seeking to terminate the Debtor's exclusive periods at some later time. On January 5, 2012, Courtyard filed an Objection to the Exclusivity Motion (Docket No. 105), arguing that because the Plan and this Disclosure Statement were filed within the 120 day period set forth in Bankruptcy Code § 1121(b), there is no need to extend the exclusivity period. The hearing on the Exclusivity Motion has been adjourned- and is presently scheduled for April 5, 2012.

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<sup>76</sup> The Union withdrew its objection to the Sale Procedures Motion at the hearing thereon.

**9. GECC Motion for Relief from the Automatic Stay**

On January 11, 2012, GECC filed the *Motion of General Electric Capital Corporation for Relief from the Automatic Stay* (Docket No. 119) (the “Stay Relief Motion”), pursuant to which GECC sought relief from the automatic stay under Bankruptcy Code section 362(d)(1) in order to continue the foreclosure action against the Debtor (as discussed in Article III(A)(4) *supra*). On January 27, 2012, the Debtor filed an Objection to the Stay Relief Motion (Docket No. 137), arguing that the Debtor didn’t file the case in bad faith and was making progress. Thus, the Stay Relief Motion should be denied. Further, the Debtor argued, GECC was more than adequately protected by the value of the Hotel. A hearing with respect to the Stay Relief Motion was held on January 31, 2012, and on February 1, 2012, the Court entered an order denying the relief requested in the Stay Relief Motion without prejudice (Docket No. 143).

**10. U.S. Trustee Motion to Appoint a Trustee, Convert or Dismiss**

On February 10, 2012, the United States Trustee filed a motion seeking the appointment of a chapter 11 trustee or dismissal/conversion of the Chapter 11 Case (the “Trustee Motion”) (Docket No. 148). The Trustee Motion is based primarily based upon the strife between the Debtor’s members and the accompanying lack of retained, unconflicted general counsel for the Debtor. With the agreement among the Debtor’s equity holders to progress to a Sale and the proposed retention of Neiger LLP, the Debtor believes that the Trustee Motion will be withdrawn, and if not withdrawn, that it will be denied.

**11. New York City Hotel Occupancy Tax Audit**

By notice dated February 10, 2012 ~~sent to~~addressed to Madison 92<sup>nd</sup> Street Associates LLC at a location of Marriott Business Services, the New York City Department of Finance ~~has sought~~requested documents and extensions of certain statutes of limitation ~~from the Debtor in furtherance of~~by that limited liability company in connection with a hotel occupancy tax audit for the period March 1, 2009 ~~through March 31, 2011. Counsel for the Marriott Parties has stated to the Debtor that they are compiling the information required and will forward same to the Debtor for production to~~through March 31, 2011. The notice was forwarded to the Debtor. The Debtor was subsequently informed by the Department that the Department may have erroneously concluded that the entity which as associated with the Hotel was a different entity than the Debtor based on their addresses. The Debtor is awaiting further response and explanation from the Department of Finance. ~~The Debtor considers this a further instance of misconduct by Marriott by the unauthorized use of the Debtor’s name and tax identification and does not intend to participate in the audit. Compliance with tax matters of this type are a matter of Legal Requirements and obligations of Courtyard under the Management Agreement. See Section 14 below. Courtyard and the Marriott Parties believe that the Debtor’s failure to consent to the extension of certain statutes of limitation may cause additional claims against the estate for which the Debtor is responsible.~~

**12. Claims Bar Date**

By Order dated January 24, 2012, the Bankruptcy Court set March 5, 2012 as the last date by which claims must be filed (Docket No. 131). This bar date order does not apply to claims arising out of the rejection of executor contracts, such as the Management Agreement.

13. New York State Tax Claim Objection

The NYS Tax Department filed an unsecured priority proof of claim against the Debtor in the total amount of \$692,761.97. The NYS Tax Department subsequently informed the Debtor that it is withdrawing the proof of claim and may refile a proof of claim for approximately 10% of the original amount. The Debtor objected to the original proof of claim (Docket No. 199). The Debtor believes that Courtyard is solely liable for any assessment. Courtyard disputes any liability for the assessment. On April 2, 2012, the NYS Tax Department filed an amended claim in the amount of \$66,429.90.

14. New York City Tax Claim Objection

The NYC Department of Finance has filed an unsecured claim for incorporated business tax (UBT) in the amount of \$211,989. The Department advises that the claim is based on its inability to locate UBT filings for Madison 92<sup>nd</sup> Street Associates LLC for three tax years. The Debtor has provided copies of its UBT filings for the years in question, which are the same years as are in question in the proposed NYC hotel occupancy tax audit. See Section 11 above. The Debtor has filed an objection to this claim also (Docket No. 195).

ARTICLE V.

SUMMARY OF THE PLAN

THE FOLLOWING IS A SUMMARY OF SOME OF THE SIGNIFICANT ELEMENTS OF THE PLAN. THE DISCLOSURE STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE MORE DETAILED INFORMATION SET FORTH IN THE PLAN AND THE EXHIBITS AND SCHEDULES THERETO.

A. Summary

The cornerstone of the Plan is the Sale of the Hotel and pursuit of Causes of Action against Courtyard and other Marriott Parties. It is expected, but not guaranteed, that the net sale proceeds will be sufficient to pay all creditors in full. ~~However, upon information and belief, Courtyard may assert a large~~In the event that the Sale results in the rejection of the Management Agreement, Courtyard intends to assert a rejection claim in the many millions of dollars. While the Debtor believes that no such claim should be allowed, it believes that any such claim will be below \$500,000, and possibly zero. ~~Moreover, the Debtor believes that Courtyard and the other Marriott Parties will owe money to the Debtor for damages resulting from their malfeasance, described above, in the Courtyard Action, and in the Rejection Motion.~~ However, in the event that the Bankruptcy Court approves a larger rejection claim than the Debtor expects, that the confirmation of the Plan will not be ~~held up and can still confirm~~delayed, as the Plan is essentially a “pot plan”, whereby the net proceeds of the Sale of the Hotel shall be distributed to creditors in order of priority in accordance with the terms of the Plan. However, the existence of a large Courtyard rejection claim may affect the amount and timing of creditor distributions.

The Plan classifies Claims and Interests separately in accordance with the Bankruptcy Code and provides different treatment for different Classes of Claims and Interests. Claims and Interests shall be included in a particular Class only to the extent such Claims or Interests qualify for inclusion within such Class. The Plan separates the various Claims and Interests (other than those that do not need to be classified) into five (5) separate Classes. These Classes take into account the differing nature and priority of Claims against, and Interests in, the Debtor. Unless otherwise indicated, the characteristics and amounts of the Claims or Interests in the following Classes are based on the books and records of the Debtor. The Plan is intended to enable the Debtor to conduct the Sale without the likelihood of a subsequent liquidation or the need for further financial reorganization. The Debtor believes that the Debtor will be able to perform its obligations under the Plan and meet its expenses after the Effective Date without further financial reorganization. Also, the Debtor believes that the Plan permits fair and equitable recoveries, while expediting the closing of the Chapter 11 Case.

The Confirmation Date will be the date that the Confirmation Order is entered by the Clerk of the Bankruptcy Court. The Effective Date will be the first Business Day on or after the Confirmation Date on which all of the conditions to the Effective Date specified in Article XII(B) herein have been satisfied or waived and the parties have consummated the transactions contemplated by the Plan.

The Debtor anticipates that the Effective Date will occur ~~in or before June 2012~~ on or after the closing, which is set to occur on the later of (a) June 1, 2012 (b) the first day that is at least 21 days after the approval of the sale and (c) the first Friday that is at least 21 days after entry of the confirmation order. Resolution of any challenges to the Plan may take time and, therefore, the actual Effective Date cannot be predicted with certainty.

Other than as specifically provided in the Plan, the treatment under the Plan of each Claim and Interest will be in full satisfaction, settlement, release and discharge of all Claims or Interests. The Debtor will make all payments and other distributions to be made under the Plan unless otherwise specified.

All Claims and Interests, except Administrative Expense Claims, Fee Claims, United States Trustee Fees and Priority Tax Claims, are placed in the Classes set forth in Article III of the Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims, Fee Claims, U. S. Trustee Fees and Priority Tax Claims have not been classified, and the Holders thereof are not entitled to vote on the Plan. A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Interest falls within the description of such other Classes.

## **B. Provisions for Treatment of Unclassified Claims**

### **1. Administrative Expenses**

#### **(a) Administrative Expense Bar Dates; Treatment of Administrative Expense Claims**

All Administrative Expense Claims (other than Professional Fee Claims) accruing through the Effective Date and not otherwise paid in the ordinary course of business shall be filed with the Bankruptcy Court by no later than the Administrative Expense Bar Date, and objections (if any) to such Administrative Expense Claims will be filed no later than forty-five (45) days after the Administrative Expense Bar Date. Any Holder of a Administrative Expense Claim (other than Professional Fee Claims) who fails to file a timely request for the payment of a Administrative Expense Claim that is required to be filed on or before the Administrative Expense Bar Date: (a) shall be forever barred, estopped and enjoined from asserting such Administrative Expense Claim against the Debtor, any Purchaser (or filing a request for the allowance thereof), and the Debtor, the Debtor's property, shall be forever discharged from any and all indebtedness or liability with respect to such Administrative Expense Claim; and (b) such Holder shall not be permitted to participate in any distribution under the Plan on account of such Administrative Expense Claim.

On the later to occur of (a) the Effective Date and (b) the date on which a Administrative Expense Claim shall become Allowed, the Debtor will (i) pay to each Holder of an Allowed Administrative Expense Claim, in cash, the full amount of such Allowed Administrative Expense Claim, or (ii) satisfy and discharge such Allowed Administrative Expense Claim on such other terms and conditions as may be agreed between the Holder of such Administrative Expense Claim, on the one hand, and the Debtor on the other hand.

Notwithstanding anything herein or in the Plan to the contrary, all Entities seeking awards by the Bankruptcy Court of Professional Fee Claims for compensation for services rendered or reimbursement of expenses incurred prior to the Effective Date will (a) file, on or before the date that is thirty (30) days after the Effective Date their respective applications for final allowances of compensation for services rendered and reimbursement of expenses incurred and (b) be paid in full by the Debtor, in Cash, in such amounts as are Allowed by the Bankruptcy Court, within five (5) Business Days of entry of such order. The Debtor is authorized to pay compensation for services rendered or reimbursement of expenses incurred after the Effective Date in the ordinary course of business and without the need for Bankruptcy Court approval.

**(b) Professional Fee Applications; Treatment of Professional Fees**

Notwithstanding anything herein or in any prior order of the Bankruptcy Court to the contrary, all Professional Fee Applications for Professional Fees through (i) the end of the immediately preceding month prior to the Effective Date shall be Filed at least two (2) business days before the Effective Date and (ii) the Effective Date, for Allowance on a final basis, shall be Filed on or before the date that is thirty (30) days after the Effective Date.

Within five (5) Business Days of entry of an order allowing and approving Professional Fees on a final basis, the Debtor shall pay to such Professional, in Cash, in such amounts as may be Allowed by the Bankruptcy Court.

The Debtor is authorized to pay compensation for services rendered and reimbursement of expenses incurred after the Effective Date in the ordinary course of business and without the need for Bankruptcy Court approval.

The payment of Professional Fees from the Estate shall be subject to and in accordance with the terms of the Examiner Order.

## 2. **Priority Tax Claims**

Each Holder of an Allowed Priority Tax Claim will, in full and final satisfaction of such Allowed Priority Tax Claim, be paid in full, in Cash, on the Effective Date, unless the Holder consents to other treatment.

### C. **Provisions for Treatment of Classified Claims**

#### 1. **Summary**

The categories listed below classify Claims against and Equity Interests in each of the Debtor for all purposes, including voting, confirmation and distribution pursuant hereto and pursuant to sections 1122 and 1123(a)(1) of the Bankruptcy Code. A Claim or Equity Interest shall be deemed classified in a particular Class only to the extent that the Claim or Equity Interest qualifies within the description of that Class and shall be deemed classified in a different Class to the extent that any remainder of such Claim or Equity Interest qualifies within the description of such different Class. A Claim or Equity Interest is in a particular Class only to the extent that such Claim or Equity Interest is Allowed in that Class and has not been paid or otherwise satisfied prior to the Effective Date. [The Debtor reserves the right to amend the Plan, including without limitation the treatment and voting status of a class of claims under Bankruptcy Code section 1126, after the results of the auction are known.](#)

#### **Summary of Classification and Treatment of Claims and Equity Interests**

<u>Class</u>	<u>Designation</u>	<u>Impaired</u>	<u>Entitled to Vote</u>
Class 1	Priority Non-Tax Claims	No	No (Deemed to accept)
Class 2	GECC Secured Claim	Yes	Yes
Class 3	General Unsecured Claims	Yes	Yes
Class 4	Other Unsecured Claims	Yes	Yes
Class 5	Equity Interests	Yes	Yes

## 2. **Classification, Treatment and Voting**

### (a) **Class 1 –Priority Non-Tax Claims**

Classification: Class 1 is composed of the Priority Non-Tax Claims.

Treatment: The Plan will not alter any of the legal, equitable and contractual rights of the Holders of Allowed Priority Non-Tax Claims. Each Holder of an Allowed Priority Non-Tax Claim shall receive, in full and final satisfaction of such Priority Non-Tax Claim, the amount of such Allowed Priority Non-Tax Claim, in Cash, on or as soon as practicable following the Effective Date, plus interest from the Petition Date until the date of repayment at the lesser of (i)

the rate established by the Bankruptcy Court or (ii) the rate set forth in any agreement between the Holder of the Claim and Madison unless such Holder consents to other treatment.

Voting: Class 1 is Unimpaired, and Class 1 Creditors are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Therefore, Class 1 Creditors are not entitled to vote to accept or reject the Plan.

**(b) Class 2 – GECC Secured Claim.**

Classification: Class 2 is composed of the GECC Secured Claim.

Treatment: The Holder of the Class 2 Secured Claim shall receive, in full and final satisfaction of such GECC Secured Claim, the net proceeds from the Sale of the Hotel up to the amount of the Reduced GECC Secured Claim, in Cash, on or as soon as practicable following the Effective Date, plus interest from the Petition Date until the date of repayment at the lesser of (i) the rate established by the Bankruptcy Court or (ii) the rate of interest rate set forth in the Cash Collateral Order, unless such Holder consents to other treatment. The Debtor intends on filing a motion to quantify the Allowed Claim of GECC on or prior to the hearing on the Disclosure Statement. The Debtor intends on arguing that the Federal Judgment Rate applies to all post-petition interest. All of GECC rights and defenses are reserved to object to the motion.

The Debtor intends to challenge the application of payments made by the Debtor under the cash collateral order and object to the Pre-Payment Premium Reduction portion of the GECC Secured Claim to the extent that same is unenforceable in this Chapter 11 Case under the Bankruptcy Code and applicable non-bankruptcy law, including but not limited to, by reason of such premium constituting a penalty and by reason of the acceleration of the Mortgage debt. The Court will determine the ultimate Allowed Claim of GECC, with the Debtor and GECC reserving all of their respective rights relating to any such challenge.

In the event Class 2 votes to reject the Plan, to the extent it has cash on hand, the Debtor shall fund the Pre-Payment Premium Reduction Amount in a Disputed Claim reserve account pursuant to Article VIII of the Plan and, if ultimately allowed by Final Order or agreement of the parties, shall be paid to Class 2.

In the event Class 2 or its assignee or designee credit bids its allowed secured claim at the auction in accordance with Bankruptcy Code § 363(k), and becomes the winning bidder under the Sale Order, the amount of its claim shall be offset by the amount of its credit bid, in accordance with the Bankruptcy Code.

Voting: Class 2 is Impaired, and the Class 2 Creditor is entitled to vote to accept or reject the Plan.

**(c) Class 3 –General Unsecured Claims**

Classification: Class 3 is composed of General Unsecured Claims.

Treatment: Each Holder of an Allowed General Unsecured Claim shall receive, in full and final satisfaction of such General Unsecured Claims, each Holder's Pro-Rata share, together with

Class 4 Other Unsecured Claims, of the net excess Sale proceeds and Causes of Action, if any, after payment of Administrative Expense Claims, Priority Tax Claims, Priority Non-Tax Claims and the Reduced GECC Secured Claim, unless such Holder consents to other treatment. In the event all senior creditors are paid in full and there is sufficient cash on hand, Class 3 General Unsecured Claims shall be entitled to post-petition interest at the Federal Judgment Rate, unless such Holder consents to other treatment. For avoidance of doubt, Class 3 and Class 4 creditors have the same priority.

Voting: Class 3 is Impaired, and Class 3 Creditors are entitled to vote to accept or reject the Plan.

**(d) Class 4 –Other Unsecured Claims**

Classification: Class 4 is composed of Other Unsecured Claims. Other Unsecured Claims is defined as “any Unsecured Claim which is a lease or executory contract rejection claim, including without limitation the Courtyard Rejection Claim, and any other unliquidated claim as of the Voting Deadline.”

Treatment: Each Holder of an Allowed Other Unsecured Claim shall receive, in full and final satisfaction of such Other Unsecured Claims, each Holder’s Pro-Rata share, together with Class 3 General Unsecured Claims, of the net excess Sale proceeds and Causes of Action, if any, after payment of Administrative Expense Claims, Priority Tax Claims, Priority Non-Tax Claims and the Reduced GECC Allowed Secured Claim, unless such Holder consents to other treatment. In the event all senior creditors are paid in full and there is sufficient cash on hand, Class 4 Other Unsecured Claims shall be entitled to post-petition interest at the Federal Judgment Rate, unless such Holder consents to other treatment. For avoidance of doubt, Class 3 and Class 4 creditors have the same priority.

Voting: Class 4 is Impaired, and Class 4 Creditors are entitled to vote to accept or reject the Plan.

**(e) Class 5 –Equity Interests**

Classification: Class 5 is composed of the Equity Interests.

Treatment: Each Holder of an Equity Interest shall receive, in full and final satisfaction of such interests, each Holder’s Pro-Rata Share of the net excess Sale proceeds and Causes of Action after payment in full of Administrative Expense Claims, Priority Tax Claims, Priority Non-Tax Claims, Reduced GECC Secured Claim, General Unsecured Claims, and Other Unsecured Claims, unless such Holder consents to other treatment.

Voting: Class 5 is Impaired, and Class 5 Equity Interest Holders are entitled to vote to accept or reject the Plan.

**D. Acceptance or Rejection of the Plan**

**1. Each Impaired Class Entitled to Vote Separately**

Each Impaired Class of Claims that is to receive a Distribution under the Plan will be entitled to vote separately to accept or reject the Plan. Except as provided herein, each Person that, as of the Voting Record Date, holds a Claim in an Impaired Class will receive a Ballot that will be used to cast its vote to accept or reject the Plan. In the event of a controversy as to whether any Class of Claims or Interests is Impaired under the Plan, the Bankruptcy Court shall, after notice and a hearing, determine such controversy.

**2. Acceptance by a Class of Claims**

An Impaired Class of Claims shall be deemed to have accepted the Plan if, not counting any Creditor designated pursuant to section 1126(e) of the Bankruptcy Code, (a) Creditors holding at least two-thirds in amount of the Allowed Claims held by Creditors actually voting in such Class have voted to accept the Plan and (b) Creditors holding more than one-half in number of the Allowed Claims held by Creditors actually voting in such Class have voted to accept the Plan.

An Impaired Class of Equity Interests shall be deemed to have accepted the Plan if Holders of such interests, other than any entity designated under Bankruptcy Code section 1126(e), that hold at least two-thirds in amount of the allowed interests of such Class held by Holders of such interests that have accepted or rejected the Plan.

**3. Voting Classes; Presumed Acceptance and Rejection of Plan**

Holders of Claims in Classes 2, 3, 4 and 5 are entitled to vote as a Class to accept or reject the Plan. Class 1 is Unimpaired and is deemed to accept the Plan and therefore, not entitled to vote on the Plan.

**4. Confirmation Pursuant to Section 1129(b) of the Bankruptcy Code or “Cramdown”**

To the extent that any Impaired Class rejects the Plan or is deemed to have rejected the Plan, the Debtor may request confirmation of the Plan pursuant to section 1129(b) of the Bankruptcy Code. The Debtor reserves the right to alter, amend, modify, revoke or withdraw the Plan or any document in the Plan Supplement, including to amend or modify it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary.

**ARTICLE VI.**

**PROVISIONS FOR IMPLEMENTATION OF PLAN**

**A. Sale of the Hotel**

The Confirmation Order shall constitute an order of the Bankruptcy Court authorizing and directing the Debtor, without the need for any approval by the Debtor’s members, on the occurrence of the Effective Date, to consummate the terms of the Hotel Purchase Agreement and sell the Hotel to the Purchaser for the Purchase Price, with all proceeds of the Sale and Residual Causes of Action to be paid to creditors in order of priority in accordance with the Plan and, after all creditors are paid under the Plan, to Equity Holders. The Sale shall occur pursuant to the sale procedures approved by the Court.

Notwithstanding any Order of the Bankruptcy Court approving the sale or transfer of the Debtor's interest in the Hotel, the Union will not be precluded from exercising against any purchaser or transferee of the Hotel all legal and economic rights under all applicable law, including, but not limited to, Federal labor law.

The Confirmation Order shall authorize the Debtor to:

- (i) convey title prior to the Effective Date to the Hotel pursuant sections 363(f), 1123(a)(5)(D) and 1141(a) and (c) of the Bankruptcy Code, free and clear of all Liens, Claims, Encumbrances or interests (other than permitted Liens or Encumbrances and the Assumed Liabilities, if any, specified in the Hotel Purchase Agreement), to the Purchaser pursuant to the Plan and the Hotel Purchase Agreement;
- (ii) if applicable, on the Closing Date, assign any or all of the Hotel Mortgage to the Purchaser's lender; and
- (iii) pay all amounts required to Creditors and, as applicable Equity Holders, in accordance with the terms of the Plan.

**B. Sources of Cash for Plan Distributions**

All Cash necessary to make payments required pursuant to the Plan will be obtained from the proceeds of the Sale of the Hotel, Residual Causes of Action, and all assets not being sold to the Purchaser, including without limitation any reserves held by Courtyard or other third parties which are turned over to the Debtor. Cash payments to be made pursuant to the Plan will be made by the ~~Disbursing Agent.~~

~~C. Cancellation of Agreements and Discharge of Obligations~~

~~Except as otherwise expressly provided for and preserved herein, upon the occurrence of the Closing Date, as the case may be, any mortgages, notes, bonds, agreements, instruments or documents, or otherwise, evidencing or creating any indebtedness, guaranties or other obligations of the Debtor that relate to Claims or Interests Impaired under the Plan and relating to the Hotel, shall be cancelled, and the obligations of the Debtor under each of the foregoing shall be discharged; provided, however, that the preceding proviso shall not affect the discharge of Claims or Interests pursuant to the Bankruptcy Code or the Plan or result in any expense or liability to the Debtor; provided further that, to the extent applicable, the Hotel Mortgage shall not be cancelled and shall instead be treated as set forth in the Hotel Purchase Agreement.~~

**D. Release of Liens, Claims and Interests** ~~Except as otherwise expressly provided for and preserved herein, upon the occurrence of the Closing Date, any Lien securing any secured Claim relating thereto shall be deemed released, and the Holder of such Claim shall be authorized and directed to release any collateral or other property of any Debtor held by such Holder and to take such actions as may be requested by the Debtor to evidence the release of such Lien, including the execution, delivery and filing or recording of such releases as may be requested by the Debtor.~~

**C. ~~F.~~ Post-Closing Date Transactions**

On or after the Closing Date, and prior to the Effective Date, the ~~Disbursing Agent, on behalf of the~~ Debtor, is hereby authorized to take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by or necessary to effectuate the transfer of the Hotel, including the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, debt or obligation on, terms consistent with the terms of the Plan and having other terms for which the applicable parties agree. On or after the Closing Date the Purchaser is authorized but not required to incur financing in connection with the acquisition of the Hotel, including financing secured by a mortgage or other security instrument in the Hotel.

**D. ~~F.~~ Post-Effective Date Transactions**

Without in any way limiting Section VI(E) above, on or after the Effective Date, the ~~Disbursing Agent, on behalf of the~~ Debtor is hereby authorized to take all actions as may be necessary or appropriate to effect any transaction described in, approved by, contemplated by or necessary to effectuate the Plan. The Post-Effective Date Transactions may include such dissolutions, transfers or liquidations as may be determined by the Debtor, in its sole discretion, to be necessary or appropriate. The actions to effect the Post-Effective Date Transactions may include:

- (i) the execution and delivery of appropriate agreements or other documents of transfer, dissolution or liquidation containing terms that are consistent with the terms of the Plan and that satisfy the applicable requirements of applicable state law and any other terms to which the applicable Entities may agree;
- (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption or delegation of any asset, property, right, liability, debt or obligation on terms consistent with the terms of the Plan and having other terms for which the applicable parties agree;
- (iii) the filing of appropriate certificates of dissolution on terms consistent with the terms of the Plan pursuant to applicable state law;
- (iv) all actions necessary to pursue and resolve the Residual Causes of Action; and
- (v) all other actions that are necessary or appropriate, including making filings or recordings that may be required by applicable state law in connection with a Post-Effective Date Transaction.

**E.** ~~**G.**~~ **Retention of Assets**

Except as otherwise provided herein or in any agreement, instrument or other document relating thereto, on or after the Effective Date, all property of the Estate (including, without limitation, Causes of Action and Marriott Causes of Action) and any property acquired pursuant hereto shall remain with, and be preserved and reserved in, the Estate for distribution in accordance with the Plan or abandoned in the discretion of the Debtor pursuant to the Confirmation Order.

All books and records of the Debtor shall be secured, maintained, and under the control of the ~~Disbursing Agent~~Debtor.

**E.** ~~**H.**~~ **Corporate Governance**

The Debtor shall continue in existence post-Confirmation subject to the following: upon the Confirmation Date or Effective Date, as applicable, all actions contemplated by the Plan (including all matters that would otherwise require approval of the members of the Debtor) shall be deemed to have been so authorized and approved in all respects pursuant to applicable law and without any requirement of further action by the members of the Debtor, or the need for any approvals, authorizations, actions or consents, whether such actions are to occur before, on or after the Confirmation Date or Effective Date, as applicable. All matters provided for in the Plan involving the corporate structure of the Debtor and any corporate action required by the Debtor in connection with the Plan shall be deemed to have occurred and shall be in effect, without any requirement of further action by the members of the Debtor.

The ~~Disbursing Agent shall be~~Debtor is authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such actions as may

be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan as it relates to the Debtor, without the need for any approvals, authorizations, actions or consents except for those expressly required pursuant hereto. To be clear, this includes making sale distributions to Holders of Allowed Claims and Equity Interests and pursuing all Residual Causes of Action.

**G.** ~~**I.**~~ **General Settlement of Claims and Interests**

As ~~discussed in this Disclosure Statement and as~~ provided for herein, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases and other benefits provided under the Plan, and as a result of arm's-length negotiations, upon the Effective Date, the provisions of the Plan shall constitute a good-faith compromise and settlement of all Claims, Equity Interests, controversies and issues resolved pursuant to the Plan arising from or based on the Chapter 11 Case.

**ARTICLE VII.**

**RETENTION AND PRESERVATION OF CAUSES OF ACTION**

**A. Retention of Residual Causes of Action**

Except as otherwise provided in the Plan, Residual Causes of Action shall, on the Effective Date, automatically and irrevocably vest in the ~~Estate and the post-confirmation Debtor free and clear of Liens, Claims, Encumbrances and interests; provided, however, that, the automatic vesting in the post-confirmation Debtor of any Residual Cause of Action pursuant to the provisions hereof shall only occur to the extent that the vesting of such Residual Cause of Action in the post-confirmation Debtor will not materially impair the post-confirmation Debtor's ability under applicable law (notwithstanding the operation of section 1141 of the Bankruptcy Code) to assert such Residual Cause of Action for the benefit of the post-confirmation Debtor; provided further that, in the event any Residual Cause of Action does not automatically vest in the post-confirmation Debtor in accordance with the foregoing proviso, such Residual Cause of Action shall be liquidated, monetized or otherwise disposed of by the Disbursing Agent. The Disbursing Agent, on behalf of the Estate, shall have the exclusive right, authority, and discretion to institute, commence, pursue, prosecute, abandon, settle, or compromise any and all such Residual Causes of Action (under any theory of law, including, without limitation, the Bankruptcy Code, and in any court or other tribunal) without the consent or approval of any third party and without any further order of the Bankruptcy Court, except as otherwise provided herein~~ Debtor.

~~From and after the Effective Date, the Disbursing Agent, in accordance with section 1123(b)(3) of the Bankruptcy Code, and on behalf of the post-confirmation Debtor, shall serve as a representative of the post-confirmation Debtor and shall retain and possess the sole and exclusive right to commence, pursue, settle, compromise or abandon, as appropriate, any and all Residual Causes of Action, whether arising before or after the Petition Date, in any court or other tribunal in accordance with the terms of the Plan.~~

**B. Preservation of Residual Causes of Action**

Except as otherwise provided in the Plan, the Debtor ~~and, after the Effective Date, the Disbursing Agent on behalf of the post-confirmation Debtor,~~ reserves all rights to pursue any and all Residual Causes of Action. Pursuant to the Plan, the ~~Disbursing Agent~~ Debtor has the sole right to pursue, administer, settle, litigate, enforce and liquidate consistent with the terms and conditions of the Plan:

- (i) Any Residual Causes of Action, whether legal, equitable or statutory in nature, including without limitation the actions identified in a schedule to be filed with the Plan Supplement, if any, and
- (ii) Any Unknown Causes of Action. The failure to list or describe any such Unknown Cause of Action herein is not intended to limit the rights of the Estate to pursue any Unknown Causes of Action.

Except as otherwise provided in the Plan, the Debtor ~~(before the Effective Date) and the Disbursing Agent (upon and following the Effective Date),~~ expressly reserve all Residual Causes of Action (including Unknown Causes of Action) for later adjudication, and, therefore, no preclusion doctrine or other rule of law, including, without limitation, any statute of limitations or the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise) or laches, shall apply to such Residual Causes of Action upon, after or as a result of the confirmation or Effective Date of the Plan, or the Confirmation Order. In addition, the Debtor ~~and the Disbursing Agent~~ and any successors-in-interest thereto, expressly reserve the right to pursue or adopt any Residual Causes of Action not so waived, relinquished, released, compromised or settled that are alleged in any lawsuit in which the Debtor is a defendant or an interested party, against any Entity including, without limitation, the plaintiffs and co-defendants in such lawsuits.

**ARTICLE VIII.**

**PROCEDURES FOR RESOLUTION OF DISPUTED, CONTINGENT, AND  
UNLIQUIDATED CLAIMS**

**A. Prosecution of Objections to Disputed Claims**

Upon the Effective Date, the Debtor, ~~by the Disbursing Agent,~~ shall (i) be responsible for pursuing any objection to the allowance of all Disputed Claims and (ii) receive all rights of setoff and recoupment and other defenses that any of the Debtor or the Estate may have with respect to any Disputed Claim.

Upon the Effective Date, the Debtor shall also have the authority to file, settle, compromise or withdraw any objections to any Disputed Claims without approval of the Bankruptcy Court.

All objections to Disputed Claims shall be served and filed not later than one-hundred-eighty (180) days after the Effective Date.

**B. Estimation of Claims**

The Debtor shall have the right, but not the obligation, at any time to seek an order of the Bankruptcy Court, after notice and a hearing (which notice may be limited to the Holder of a Disputed Claim and the United States Trustee, and which hearing may be held on an expedited basis), estimating for final Distribution purposes any contingent, unliquidated, or Disputed Claim pursuant to section 502(c) of the Bankruptcy Code, regardless of whether the Debtor previously objected to such Claim. If the Bankruptcy Court estimates any contingent, Disputed or unliquidated Claim, the estimated amount shall constitute either the Allowed Amount of such Claim or a maximum limitation on such Claim, as determined by the Bankruptcy Court, including for purposes of the Disputed Claims Reserve; provided, however, that if the estimate constitutes the maximum limitation on such Claim, the Debtor may elect to pursue supplemental proceedings to object to any ultimate allowance of such Claim. On or after the Confirmation Date, Claims that have been estimated may be compromised, settled, withdrawn, or otherwise resolved subsequently, without further order of the Bankruptcy Court

**C. Payments and Distributions on Disputed Claims**

Notwithstanding any provision hereof to the contrary, any issuer of a distribution hereunder may, in its discretion, pay the undisputed portion of a Disputed Claim.

**D. Distributions Relating to Disputed Claims.**

At such time as a Disputed Claim becomes an Allowed Claim, the ~~Disbursing Agent~~Debtor shall distribute to the Holder of such Claim, such Holder's Pro Rata share of the property distributable with respect to the Class in which such Claim belongs. To the extent that all or a portion of a Disputed Claim is disallowed, the Holder of such Claim shall not receive any Distribution on account of the portion of such Claim that is disallowed and ~~any property withheld pending the resolution of such Claims~~such disallowed amount shall be reallocated Pro Rata to the Holders of Allowed Claims in the same Class.

**E. Distributions after Allowance.**

To the extent that a Disputed Claim becomes an Allowed Claim after the Effective Date, a Distribution shall be made to the Holder of such Allowed Claim in accordance with the provisions of the Plan. As soon as practicable after the date that the order or judgment of the Bankruptcy Court allowing any Disputed Claim becomes a Final Order, the ~~Disbursing Agent~~Debtor shall provide to the Holder of such Claim the Distribution to which such Holder is entitled hereunder.

**ARTICLE IX.**

**PROVISIONS REGARDING DISTRIBUTIONS**

**A. Administrative Expense Reserve**

From and after the Effective Date, the Debtor will establish and maintain the Administrative Expense Reserve, a reserve account for the payment of, among other things, Administrative Expenses Allowed after the Effective Date.

The amount established in the Administrative Expense Reserve shall be sufficient for the payment of (i) Administrative Expenses and (ii) Administrative Expenses incurred after the Effective Date, including any Disputed Administrative Expenses and shall be disclosed at the Confirmation Hearing based upon estimates available at that time.

Following the payment, satisfaction or resolution of all (i) Allowed Administrative Expenses and (ii) Administrative Expenses incurred after the Effective Date any amounts remaining in the Administrative Expense Reserve shall be transferred to the Debtor for payment to Holders of Administrative Expense Claims.

**B. Time and Method of Distributions**

**1. Cash Distributions to Holders of Allowed Claims**

Except as otherwise provided herein, any Distributions and deliveries to be made hereunder with respect to Claims that are Allowed as of the Effective Date shall be made on the Effective Date or as soon thereafter as is reasonably practicable. Except as otherwise provided herein, any Distributions and deliveries to be made hereunder with respect to Claims that are Allowed after the Effective Date shall be made as soon as is reasonably practicable after the date on which such Claim becomes Allowed. Distributions made after the Effective Date to holders of Allowed Claims shall be deemed to have been made on the Effective Date and, except as otherwise provided in the Plan, no interest shall accrue or be payable with respect to such Claims or any distribution related thereto. In the event that any payment or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on or as soon as reasonably practicable after the next succeeding Business Day, but shall be deemed to have been completed as of the required date.

**2. Distributions**

The Distribution Agent or such other Entity as may be designated by the ~~Disbursing Agent~~Debtor shall make the distributions under the Plan in accordance with the Plan. Whenever any distribution to be made under the Plan is due on a day other than a Business Day, such distribution shall be made, without interest, on the immediately succeeding Business Day, but any such distribution will have been deemed to have been made on the date due. The ~~Disbursing Agent~~Debtor shall have the authority to make distributions as provided for under the Plan and administer and liquidate any of the assets of the Debtor remaining as of the Effective Date

**C. Disputed Claims Reserve**

From and after the Effective Date, and until such time as all Disputed Claims have been compromised, settled or determined by Final Order, the Debtor shall establish and maintain a reserve account (the "Unsecured Claims Reserve") necessary to ensure that each Holder of a Disputed Claim shall receive, payment in full in accordance with the provisions of the Plan in the event such Claim is Allowed in the maximum amount claimed.

At such time as, and to the extent that, any Disputed Claim becomes Allowed by Final Order, in whole or in part, the Debtor shall utilize amounts held by the Debtor to make payment to the Holder of such Claim as provided for herein.

Following the payment, satisfaction or resolution of all Disputed Claims any amounts remaining in the Unsecured Claim Reserve shall be transferred to the ~~Disbursing Agent~~Debtor for distribution under the Plan.

**D. Tax Treatment of Disputed Claims Reserves**

Subject to the receipt of contrary guidance from the IRS or a court of competent jurisdiction, the Debtor shall (i) treat the Unsecured Claims Reserve as one or more disputed ownership funds for federal income tax purposes within the meaning of 26 C.F.R. § 1.468B-9(b)(1) and (ii) to the extent permitted by applicable law, report consistent with the foregoing for state and local income tax purposes. All Holders of Allowed Claims shall report for tax purposes, consistent with the foregoing.

**E. Manner of Distribution under Plan**

Any distribution in Cash to be issued under the Plan or any shall be made by check drawn on a domestic bank.

**F. Delivery of Distributions**

Subject to the provisions of Bankruptcy Rule 2002(g), and except as otherwise provided herein, distributions and deliveries to Holders of record of Allowed Claims and Equity Interests shall be made at the address of each such Holder set forth on the Debtor's books and records unless superseded by the address set forth on Proofs of Claim filed by any such Holders.

**G. Application of Distributions**

Any distributions under the Plan shall be applied first to repayment in full of principal and second to interest, if any.

**H. Undeliverable Distributions**

**1. Holding of Undeliverable Distributions**

If any distribution to the Holder of an Allowed Claim under the Plan is returned as undeliverable, no further distributions shall be made to such Holder unless and until the issuer of the distribution is notified in writing of such Holder's then-current address. Any Holder ultimately receiving a distribution that was returned as undeliverable shall not be entitled to any interest or other accruals of any kind on such distribution. Nothing contained in the Plan shall require the issuer of any distribution to attempt to locate any Holder of an Allowed Claim.

**2. Failure to Claim Undeliverable Distributions**

Any Holder of an Allowed Claim or Equity Interest that does not assert its rights pursuant to the Plan to receive a distribution within three (3) months from and after the date such distribution is returned as undeliverable shall have such Claim or Equity Interest for such undeliverable distribution discharged and shall be forever barred from asserting any such Claim against or Equity Interests in the Debtor, its professionals or the Claims Reserve. In such case, any

consideration held for distribution on account of such Claim or Equity Interest shall belong to the estate for distribution in accordance with the terms of the Plan.

**I. Compliance with Tax Requirements/Allocation**

The issuer of any distribution under the Plan shall comply with all applicable tax withholding and reporting requirements imposed by any Governmental Unit, and all distributions pursuant to the Plan shall be subject to any such applicable withholding and reporting requirements. For tax purposes, distributions received in respect of Allowed Claims will be allocated first to the principal amount of such Claims, with any excess allocated to unpaid accrued interest, if any.

**J. Time Bar to Cash Payments**

Checks issued on account of Allowed Claims or Equity Interests shall be null and void if not negotiated within ninety (90) days from and after the date of issuance thereof. Requests for reissuance of any check shall be made directly to the issuer of the check by the Holder of the Allowed Claim or Equity Interests with respect to which such check originally was issued. Any Claim or Equity Interest in respect of such a voided check shall be made within six (6) months from and after the date of issuance of such check. After such date, all Claims or Equity Interests in respect of voided checks shall be discharged and forever barred, and the estate shall be entitled to retain all monies related thereto for distribution in accordance with the terms of the Plan.

**K. Distributions After Effective Date**

Distributions made after the Effective Date to Holders of Claims or Equity Interests that are not Allowed as of the Effective Date, but which later become Allowed, shall be deemed to have been made on the Effective Date.

**L. Fractional Dollars; De Minimis Distributions**

Notwithstanding anything contained herein to the contrary, payments of fractions of dollars will not be made. Whenever any payment of a fraction of a dollar under the Plan would otherwise be called for, the actual payment made will reflect a rounding of such fraction to the nearest dollar (up or down), with half dollars being rounded down. No payment shall be made on account of any distribution less than twenty-five dollars (\$25) with respect to any Allowed Claim unless a request therefor is made in writing to the issuer of such payment on or before ninety (90) days after the Effective Date.

**M. Setoffs/Recoupment**

Except as stated in the last sentence of this subparagraph, notwithstanding anything contained herein to the contrary, the Debtor may, pursuant to sections 502(d) or 553 of the Bankruptcy Code or applicable non-bankruptcy law, setoff or exercise recoupment against any Allowed Claim, Allowed Equity Interest or Allowed Administrative Expense and the distributions to be made pursuant to the Plan on account thereof (before any distribution is made) on account of the claims, rights and Causes of Action of any nature that the Debtor may hold against such Holder; provided, however, that neither the failure to effect such a setoff or recoupment nor the

allowance of any Claim hereunder shall constitute a waiver or release of any such claims, rights and Causes of Action that the Debtor may possess against such Holder.

**N. Preservation of Subordination Rights**

Except as otherwise provided herein, all subordination rights and claims relating to the subordination by the Debtor or their successors of any Allowed Claim or Equity Interest shall remain valid, enforceable and unimpaired in accordance with section 510 of the Bankruptcy Code or otherwise.

**O. Waiver by Creditors of All Subordination Rights**

Except as otherwise ordered by the Bankruptcy Court, each Holder shall be deemed to have waived all contractual, legal and equitable subordination rights that they may have, whether arising under general principles of equitable subordination, section 510(c) of the Bankruptcy Code or otherwise, with respect to any and all distributions to be made under the Plan, and all such contractual, legal or equitable subordination rights that each Holder has individually and collectively with respect to any such distribution made pursuant to the Plan shall be discharged and terminated, and all actions related to the enforcement of such subordination rights will be permanently enjoined unless such rights have been asserted prior to the Effective Date.

**ARTICLE X.**

**EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Prior to the Effective Date, the Debtor ~~has~~will have rejected or will have filed a motion to reject all executory contracts or unexpired leases of the Debtor not previously (a) assumed and assigned, or (b) terminated or expired by their terms. Any executory contracts that were not expressly assumed and assigned, terminated or expired by their terms or rejected shall be deemed rejected upon entry of the Confirmation Order. To the extent not rejected by separate order of the Court, the Management Agreement shall be deemed rejected on the Effective Date of the Plan.

**ARTICLE XI.**

**RELEASE, EXCULPATION, INJUNCTIVE AND RELATED PROVISIONS**

**A. Release by the Debtor**

*The term "Releasees" is defined in the Plan as ~~"the Debtor's members and the Debtor's employees and consultants (and each of the Debtor's attorneys, financial advisors, investment bankers, accountants, and other professionals). In no event shall the term 'Releasees' be deemed to include any Marriott Party or any Entity claiming a right against or relationship with the Debtor by, through or under any Marriott Party or any instrument executed by a Marriott Party."~~*

~~As of the Effective Date, the Debtor and its estate hereby waive, release and discharge the (i) Releasees, (ii) GECC and, (iii) upon satisfaction of the Purchaser's obligations under the Hotel Purchase Agreement, the Purchaser, from any Claim, obligation, right, Cause of Action or liability, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, based in whole or in part on any act or omission, transaction or occurrence from the beginning of time through the Effective Date in any way relating to the Debtor, the Chapter 11 Case or the Plan. Notwithstanding anything to the contrary herein, in the event any Releasee opposes the sale of the Hotel or the transactions set forth in the Plan, such party shall not be entitled to the releases set forth in this paragraph. The releases herein shall be binding on any Chapter 7 Trustee in the event the case is converted to chapter 7. For purposes of this section, the term "Purchaser" shall specifically exclude any Marriott Party. Debtor will not be releasing any claims of the estate.~~

Courtyard has asserted that the Debtor's refinancing of its Mortgage in 2008, described in Article II herein, may have resulted in fraudulent transfers to the Debtor's members who received certain payments as a result of the refinancing because, inter alia, the Debtor subsequently defaulted on the Mortgage and filed for bankruptcy protection. The Debtor and its members dispute this assertion for many reasons including that the Hotel was solvent and had an appraised fair market value at in excess of \$100 million at the time of the refinancing, Marriott consented to the refinancing and, as described in Article III herein, that Courtyard's actions caused the Debtor to default on the Mortgage.

The Debtor does not intend on pursuing claims, including avoidance actions, against its insiders. Any creditor of the estate may file an appropriate motion with the court by no later than thirty (30) days after the Effective Date to seek standing and authority to pursue any avoidance actions on behalf of the estate. The Debtor reserves its rights in connection with such a motion.

**B. Releases by Holders of Claims**

~~On~~ Notwithstanding anything to the contrary herein, the releases described herein shall only become operative against a creditor if such creditor receives 100% payment on such creditor's Allowed Claim. Whereupon, in such instance, on and after the Effective Date for good and valuable consideration, including the services of the Releasees to facilitate the expeditious sale of the Hotel and the implementation of the Plan, each Holder of a Claim ~~or who receives 100% payment of such creditor's Allowed Claim, and each~~ Equity Interest holder shall be deemed to have unconditionally released the Releasees from any and all claims, obligations, rights, suits, damages, remedies and liabilities whatsoever, including any claims that could be asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such holder of a Claim or Equity Interest would have been legally entitled to assert in its own right (whether individually or collectively), based in whole or in part upon any act or omission, transaction, agreement, event or other occurrence taking place on or before the Effective Date, in any way relating or pertaining to (w) the purchase or sale, or the rescission of a purchase or sale, of any security of the Debtor, (x) the Debtor, (y) the Chapter 11 Case or (z) the negotiation, formulation and preparation of the Plan,

*or any related agreements, instruments or other document including, without limitation, the Hotel Purchase Agreement; provided, however, that these releases will have no effect on the liability of any Releasee arising from any act constituting fraud, gross negligence or willful misconduct. The Releases set forth in this paragraph shall be binding upon and shall inure to the benefit of any chapter 7 trustee in the event the Chapter 11 Case is converted to chapter 7. Notwithstanding anything to the contrary herein, in the event any Releasee opposes the sale of the Hotel or the transactions set forth in the Plan, such party shall not be entitled to the releases set forth in this paragraph.*

**C. Injunction**

*Except as otherwise expressly provided in the Plan, all Holders of Claims who receive payment of 100% of such creditor's Allowed Claim and Equity Interests shall be permanently enjoined, from and after the Effective Date, from (i) commencing or continuing in any manner any action or other proceeding of any kind on any such Claim or Equity Interest against the Debtor, the Releasees or the Estate, unless a previous order modifying the stay provided under section 362 of the Bankruptcy Code was entered by the Court; (ii) enforcing, attaching, collecting or recovering by any manner or means of any judgment, award, decree or order against the Debtor, the Releasees or the Estate; and (iii) creating, perfecting, or enforcing any encumbrance of any kind against the property or interests in property of the Debtor, the Releasees or the Estate, in each case in respect of any Claims or Equity Interests arising prior to the Petition Date; provided, however, that nothing herein shall release any entity from any claims, obligations, rights, causes of action or liabilities arising out of such entity's fraud, gross negligence or willful misconduct. Notwithstanding anything to the contrary herein, in the event any Releasee opposes the sale of the Hotel or the transactions set forth in the Plan, such party shall not be entitled to the injunctions set forth in this paragraph.*

**D. Exculpation**

*The Debtor, the Estate, and the Releasees shall neither have nor incur any liability to any Entity (including any Holder of a Claim or Equity Interest) for any prepetition or postpetition act taken or omitted to be taken in connection with or related to the formulation, negotiation, preparation, dissemination, implementation, administration, confirmation or occurrence of the Effective Date of the Plan, the Disclosure Statement or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other prepetition or postpetition act taken or omitted to be taken in connection with, or in contemplation of, restructuring of the Debtor. Notwithstanding the foregoing, such exculpations shall not extend to any damages, losses or claims arising from acts of fraud, gross negligence or willful misconduct. Notwithstanding anything to the contrary herein, in the event any Releasee opposes the sale of the Hotel or the transactions set forth in the Plan, such party shall not be entitled to the exculpations set forth in this paragraph.*

**E. Non-Discharge**

Notwithstanding anything to the contrary herein, pursuant to Bankruptcy Code § 1141(d)(3), the Debtor will not obtain a discharge of its debts upon confirmation. The

Debtor shall otherwise obtain all benefits under Bankruptcy Code § 1141 to the fullest extent allowable under law.

## ARTICLE XII.

### CONDITIONS PRECEDENT TO CONFIRMATION AND EFFECTIVE DATE OF THE PLAN

#### A. Conditions Precedent to Confirmation

The following are conditions precedent to Confirmation of the Plan that must be (i) satisfied or (ii) waived in accordance with Section XII(C) below:

1. The Sale Order shall have been entered by the Bankruptcy Court, the Hotel Purchase Agreement approved in all material respects, and the Debtor shall have designated the Purchaser for the purchase of the Hotel; and
2. An Order finding that the Disclosure Statement contains adequate information pursuant to section 1125 of the Bankruptcy Code shall have been entered by the Bankruptcy Court; ~~and~~
- ~~3. The entry of the Confirmation Order in form and substance reasonably satisfactory to the Debtor.~~

#### B. Conditions Precedent to Effective Date of Plan

The following are conditions precedent to the Effective Date of the Plan that must be (i) satisfied or (ii) waived in accordance with Section XII(C) below:

1. Confirmation shall have occurred and the Confirmation Order shall have been entered by the Bankruptcy Court;
2. The Confirmation Order shall have become a Final Order, unless the Bankruptcy Court waives the period set forth in Bankruptcy Rule 6004(h);
3. The Closing Date shall have occurred, the Purchase Price received by the Debtor, and title to the Hotel shall have been conveyed to the Purchaser in accordance with the Plan and the Confirmation Order free of all Liens, Claims, Encumbrances or interests (other than permitted Liens or Encumbrances and the Assumed Liabilities specified in the Hotel Purchase Agreement);
4. There shall not be in effect on the Effective Date any (i) Order entered by a U.S. court, (ii) order, opinion, ruling or other decision entered by any other court or governmental entity or (iii) United States or other applicable law staying, restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by the Plan; and

5. All other actions and documents necessary to implement the Plan shall have been effected or executed in form and substance satisfactory to the Debtor.

**C. Waiver of Conditions Precedent**

Each of the conditions listed in Sections XII(A) or (B) may be waived by the Debtor.

**D. Effect of Non-Occurrence of Effective Date**

If the conditions listed in Sections XII(A) or (B) are not satisfied or waived, the Plan shall be null and void in all respects and nothing contained in the Plan or the Disclosure Statement shall: (1) constitute a waiver or release of any Claims by or against or any Equity Interests in the Debtor; (2) prejudice in any manner the rights of the Debtor or any other party or (3) constitute an admission, acknowledgment, offer or undertaking by the Debtor.

**ARTICLE XIII.**

**RETENTION OF JURISDICTION**

**A. Bankruptcy Court**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, and to the extent permitted by applicable law, the Bankruptcy Court shall retain such jurisdiction over any matter arising under the Bankruptcy Code, or arising in or related to the Chapter 11 Case or the Plan after the Effective Date, and any other matter or proceeding that is within the Bankruptcy Court's jurisdiction pursuant to 28 U.S.C. § 1334 or 28 U.S.C. § 157 including, without limitation, jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate or establish the priority or secured or unsecured status of any Claim, including the resolution of any request for payment of any Administrative Expense and the resolution of any and all objections to the allowance or priority of Claims;
2. Grant or deny any applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan, for periods ending on or before the Effective Date;
3. Ensure that distributions to Holders of Allowed Claims and Equity Interests are accomplished pursuant to the provisions hereof;
4. Resolve any issues related to the Hotel Purchase Agreement and the conveyance of title to the Hotel;
5. Decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters, including all Causes of Action and objections or estimations to Claims or Equity Interests, and grant or deny any applications involving the Debtor that may be pending on the Effective Date or that, pursuant to

the Plan, may be instituted by (i) the Debtor ~~(ii) Disbursing Agent~~ or ~~(iii)~~(ii) any other Entity after the Effective Date;

6. Enter such orders as may be necessary or appropriate to implement or consummate the provisions hereof and of all contracts, instruments, releases, indentures and other agreements or documents created in connection with the Plan, Disclosure Statement, or Hotel Purchase Agreement;
7. Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or any Entity's obligations incurred in connection with the Plan;
8. Issue injunctions, enter and implement other orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with consummation or enforcement of the Plan, except as otherwise provided herein;
9. Resolve any cases, controversies, suits or disputes with respect to the releases, injunctions and other provisions contained in Article X hereof and enter any orders that may be necessary or appropriate to implement such releases, injunctions and other provisions;
10. Enter and implement any orders that are necessary or appropriate if the Confirmation Order is for any reason modified, stayed, reversed, revoked or vacated;
11. Determine any other matters that may arise in connection with or related to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture or other agreement or document created in connection with the Plan, the Disclosure Statement or the Confirmation Order;
12. Resolve any issues that arise in connection with the administration of and distributions from the Estate; and
13. Enter an order and/or Final Decree concluding the Chapter 11 Case.

Notwithstanding any other provision in this article to the contrary, nothing herein shall prevent the Debtor ~~or Disbursing Agent~~ from commencing and prosecuting any Residual Causes of Action (including Unknown Causes of Action) before any other court or judicial body which would otherwise have appropriate jurisdiction over the matter and parties thereto, and nothing herein shall restrict any such courts or judicial bodies from hearing and resolving such matters.

#### **ARTICLE XIV.**

##### **CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES OF CONFIRMATION**

Confirmation may have federal income tax consequences for the Debtor and Holders of Claims and Interests. The Debtor has not obtained and does not intend to request a ruling from the Internal Revenue Service (the "IRS"), nor has the Debtor obtained an opinion of counsel with

respect to any tax matters. Any federal income tax matters raised by confirmation of the Plan are governed by the Internal Revenue Code and the regulations promulgated thereunder. Creditors and Holders of Interests are urged to consult their own counsel and tax advisors as to the consequences to them, under federal and applicable state, local and foreign tax laws, of the Plan. The following is intended to be a summary only and not a substitute for careful tax planning with a tax professional. The federal, state and local tax consequences of the Plan may be complex in some circumstances and, in some cases, uncertain. Accordingly, each Holder of a Claim or Interest is strongly urged to consult with his or her own tax advisor regarding the federal, state and local tax consequences of the Plan, including but not limited to the receipt of cash under the Plan.

**A. Tax Consequences to the Debtor.**

The Debtor may not recognize income as a result of the discharge of debt pursuant to the Plan because Section 108 of the Internal Revenue Code provides that taxpayers in bankruptcy proceedings do not recognize income from discharge of indebtedness. However, a taxpayer is required to reduce its "tax attributes" by the amount of the debt discharged. Tax attributes are reduced in the following order: (i) net operating losses; (ii) general business credits; (iii) capital loss carryovers; (iv) basis in assets; (v) passive activity loss and credit carryovers; and (vi) foreign tax credit carryovers.

**B. Tax Consequences to Unsecured Creditors.**

An unsecured Creditor that receives Cash in satisfaction of its Claim may recognize gain or loss, with respect to the principal amount of its Claim, equal to the difference between (i) the Creditor's basis in the Claim (other than the portion of the Claim, if any, attributable to accrued interest), and (ii) the balance of the Cash received after any allocation to accrued interest. The character of the gain or loss as capital gain or loss, or ordinary income or loss, will generally be determined by whether the Claim is a capital asset in the Creditor's hands. A Creditor may also recognize income or loss in respect of consideration received for accrued interest on the Claim. The income or loss will generally be ordinary, regardless of whether the Creditor's Claim is a capital asset in its hands.

**ARTICLE XV.**

**SUMMARY OF VOTING PROCEDURES**

The Disclosure Statement, including all Exhibits hereto and the related materials included herewith, is being furnished to the Holders of Claims in Classes 2, 3, 4 and 5, which are the only Classes entitled to vote on the Plan.

All votes to accept or reject the Plan must be cast by using the ballot (the "Ballot") enclosed with the Disclosure Statement. No other votes will be counted. Consistent with the provisions of Bankruptcy Rule 3018, the Debtor has fixed \_\_\_\_\_, 2012 at 4:00 p.m. (prevailing Eastern Time) as the Voting Record Date. Ballots must be RECEIVED by the Debtor's counsel Neiger LLP at the address set forth below (or as otherwise directed) no later than 4:00 p.m. (prevailing Eastern Time) on \_\_\_\_\_, 2012, unless the Debtor, at any time, in its sole discretion,

extends such date by oral or written notice, in which event the period during which Ballots will be accepted will terminate at 4:00 p.m. (prevailing Eastern Time) on such extended date.

If the Ballot is damaged or lost, you may contact the Debtor's counsel at the number set forth below.

Ballots received by facsimile, telecopy or other means of electronic transmission will not be accepted.

Ballots previously delivered may be withdrawn or revoked at any time prior to the Voting Deadline by the beneficial owner on the Voting Record Date who completed the original Ballot. Only the person or nominee who submits a Ballot can withdraw or revoke that Ballot. A Ballot may be revoked or withdrawn either by submitting a superseding Ballot or by providing written notice to the Debtor's counsel.

Acceptances or rejections may be withdrawn or revoked prior to the Voting Deadline by delivering a written notice of withdrawal or revocation to the Debtor's special counsel. To be effective, notice of revocation or withdrawal must: (a) be received on or before the Voting Deadline by the Debtor's counsel at its address specified below; (b) specify the name of the Holder of the Claim whose vote on the Plan is being withdrawn or revoked; (c) contain the description of the Claim as to which a vote on the Plan is withdrawn or revoked; and (d) be signed by the Holder of the Claim who executed the Ballot reflecting the vote being withdrawn or revoked, in the same manner as the original signature on the Ballot. The foregoing procedures should also be followed with respect to a person entitled to vote on the Plan who wishes to change (rather than revoke or withdraw) its vote.

If you have any questions concerning voting procedures, you may contact:

NEIGER LLP  
Attention: Edward E. Neiger  
151 West 46<sup>th</sup> Street  
New York, New York 10036  
Tel. (212) 267-7342

## **ARTICLE XVI.**

### **CERTAIN FACTORS TO BE CONSIDERED REGARDING THE PLAN**

Holders of Claims and Interests against the Debtor should read and consider carefully the factors set forth below, as well as the other information set forth in the Disclosure Statement (and the documents delivered together herewith and/or incorporated by reference), prior to voting to accept or reject the Plan. These risk factors should not, however, be regarded as constituting the only risks involved in connection with the Plan and its implementation.

#### **A. Certain Bankruptcy Considerations.**

##### **1. General.**

Although the Plan is designed to minimize the length of time remaining in the Chapter 11 Case, it is impossible to predict with certainty the amount of time that the Debtor may spend in bankruptcy or to assure parties-in-interest that the Plan will be confirmed.

If the Debtor is unable to obtain confirmation of the Plan on a timely basis because of a challenge to confirmation of the Plan or a failure to satisfy the conditions to consummation of the Plan, the Debtor may be forced to continue the Chapter 11 Case for an extended period while the Debtor tries to develop a different reorganization plan that can be confirmed. That would increase both the probability and the magnitude of the potentially adverse effects described herein.

## **2. Failure to Close the Sale**

As set forth above, implementation of the Plan is based principally on the successful Sale of the Hotel.

While the Debtor will use its best efforts to achieve a closing of the Sale, any distributions based thereon will be conditioned on the closing occurring within the time frame set forth in the Hotel Purchase Agreement.

## **3. The Courtyard Rejection Claim**

Distribution may be materially impacted by the size of the rejection damages claim asserted by Courtyard on account of the Rejection Motion. While the Debtor believes that no such claim should be allowed, it believes that any such claim will be below \$500,000. However, because Courtyard has not yet filed a rejection damages claim, no assurances as to timing and/or size of the potential rejection damages claim can be given.

Moreover, while the Debtor believes that it has significant offsets to any rejection claims and will obtain affirmative recoveries from the Marriott Causes of Action, no assurances or guarantees on the timing of such recoveries, or the size thereof, can be given. To the extent the Plan relies on the proceeds of the Courtyard Action to fund any distributions under the Plan, no guarantees or assurances as to the timing or size of such proceeds can be given.

## **4. Failure to Receive Requisite Acceptances.**

Classes 2, 3, 4 and 5 are the only Classes that are entitled to vote to accept or reject the Plan. If the requisite acceptances are not received, the Debtor will not be able to seek confirmation of the Plan under section 1129(b) of the Bankruptcy Code, because at least one Impaired Class will not have voted in favor of the Plan as required by section 1129(a)(10) of the Bankruptcy Code. Further, if the requisite acceptances are not received, the Debtor may seek to accomplish an alternative restructuring of their capitalization and obligations to creditors and obtain acceptances to an alternative plan of reorganization for the Debtor, or otherwise, the Debtor may be required to liquidate its Estate under chapter 7 or 11 of the Bankruptcy Code. There can be no assurance that the terms of any such alternative restructuring arrangement or plan would be similar to or as favorable to the Debtor's Creditors as those proposed in the Plan.

## **5. Failure to Confirm the Plan.**

Even if the requisite acceptances are received, the Bankruptcy Court, which, as a court of equity may exercise substantial discretion, may decide not to confirm the Plan. Section 1129 of the Bankruptcy Code requires, among other things, a showing that confirmation of the Plan will not be followed by liquidation or the need for further financial reorganization of the Debtor, and that the value of distributions to dissenting Holders of Claims and Interests may not be less than the value such Holders would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. Although the Debtor believes that the Plan meets such test, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

Additionally, the contemplated solicitation must comply with the requirements of section 1125 of the Bankruptcy Code and the applicable Bankruptcy Rules with respect to the length of the solicitation period and the adequacy of the information contained in the Disclosure Statement.

**6. Failure to Consummate the Plan.**

One condition to consummation of the Plan is the entry of the Confirmation Order that will approve, among other things, the assumption of a substantial number of the majority of the Debtor's Executory Contracts and unexpired leases. As of the date of the Disclosure Statement, there can be no assurance that these or the other conditions to consummation will be satisfied or waived. Accordingly, even if the Plan is confirmed by the Bankruptcy Court, there can be no assurance that the Plan will be consummated and the restructuring completed.

**7. Objections to Classification of Claims.**

Section 1122 of the Bankruptcy Code provides that a plan of reorganization may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class. The Debtor believes that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code. However, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

**B. Certain Tax Consequences of the Plan Raise Unsettled and Complex Legal Issues and Involve Factual Determinations.**

The federal income tax consequences of the Plan are complex and are subject to significant uncertainties. The Debtor currently does not intend to seek any ruling from the IRS on the tax consequences of the Plan. Even if the Debtor decides to request a ruling, there would be no assurance that the IRS would rule favorably or that any ruling would be issued before the Effective Date. In addition, in such case, there would still be issues with significant uncertainties, which would not be the subject of any ruling request. *Thus, there can be no assurance that the IRS will not challenge the various positions the Debtor has taken, or intends to take, with respect to the tax treatment in the Plan, or that a court would not sustain such a challenge.*

In addition, the contents of the Disclosure Statement should **not** be construed as legal, business or tax advice. Each Holder of a Claim or Interest should consult his, her, or its own legal counsel and accountant as to legal, tax and other matters concerning his, her, or its Claim or Interest.

The Disclosure Statement is **not** legal advice to you. The Disclosure Statement may **not** be relied upon for any purpose other than to determine how to vote on the Plan or object to confirmation of the Plan.

## **ARTICLE XVII.**

### **MISCELLANEOUS PROVISIONS**

#### **A. Plan Supplement**

The Plan Supplement may be inspected in the office of the Clerk of the Bankruptcy Court or its designee during normal business hours. Holders of Claims and Equity Interests may obtain a copy of the Plan Supplement by contacting in writing either Olshan Grundman Frome Rosenzweig & Wolosky LLP, 65 East 55<sup>th</sup> Street, New York, NY 10022, Attn: Adam H. Friedman, (afriedman@olshanlaw.com) or Neiger LLP, 151 West 46<sup>th</sup> Street, New York, New York 10036, Attn: Edward E. Neiger, (eneiger@neigerllp.com). The documents contained in the Plan Supplement are an integral part of the Plan and shall be approved by the Bankruptcy Court pursuant to the Confirmation Order.

#### **B. Payment of Statutory Fees**

All fees payable pursuant to section 1930(a) of title 28 of the United States Code shall be paid on the earlier of when due or the Effective Date, or as soon thereafter as practicable. From and after the Effective Date, the Debtor shall be liable for and shall pay the fees under 28 U.S.C. § 1930 until entry of an order converting, dismissing or closing the Chapter 11 Case, whichever occurs first. In addition, the Debtor shall file post-confirmation quarterly reports in conformity with U.S. Trustee guidelines, until entry of an order closing or converting the Chapter 11 Case, whichever comes first.

#### **C. Modification of Plan**

Subject to the limitations contained in the Plan:

1. The Plan may be amended or modified by the Debtor (a) before the Confirmation Date, to the extent permitted by section 1127 of the Bankruptcy Code; (b) after the Confirmation Date and prior to substantial consummation of the Plan, as defined in section 1101(2) of the Bankruptcy Code, to the extent the Debtor institute proceedings in the Bankruptcy Court, pursuant to section 1127(b) of the Bankruptcy Code, to remedy any defect or omission or reconcile any inconsistencies in the Plan or the Confirmation Order or to accomplish such matters as may be necessary or appropriate to carry out the purposes and effects of the Plan; provided, however, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or orders of the Bankruptcy Court; or (c) after the entry of the Confirmation Order, upon order of the Bankruptcy Court in accordance with section 1127(b) of the Bankruptcy Code.
2. The Debtor reserves the right to modify or amend the Plan upon a determination by the Bankruptcy Court that the Plan is not confirmable pursuant to section 1129 of

the Bankruptcy Code to the extent permissible under section 1127 of the Bankruptcy Code without the need to re-solicit acceptances.

3. After the Effective Date, the Debtor may amend or modify, upon order of the Bankruptcy Court, the Plan in accordance with section 1127(b) of the Bankruptcy Code or remedy any defect or omission or reconcile any inconsistency in the Plan in such manner as may be necessary to carry out the purpose and intent of the Plan.

**D. Revocation of Plan**

The Debtor reserves the right to revoke or withdraw the Plan prior to the Confirmation Date and to file subsequent plans of reorganization or liquidation. If the Debtor revokes or withdraws the Plan, or if Confirmation or the Effective Date does not occur, then (i) the Plan shall be null and void in all respects, (ii) any settlement or compromise embodied in the Plan (including the fixing or limiting to an amount certain any Claim or Equity Interest or Class of Claims or Equity Interests), assumption or rejection of executory contracts or leases effected by the Plan, and any document or agreement executed pursuant hereto, shall be deemed null and void, and without prejudice to any party, and (iii) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims by or against, or any Equity Interests in, the Debtor or any other Entity, (b) prejudice in any manner the rights of the Debtor or any other Entity, or (c) constitute an admission of any sort by the Debtor or any other Entity.

**E. Successors and Assigns**

The rights, benefits and obligations of any Entity named or referred to herein shall be binding on, and shall inure to the benefit of, any heir, executor, administrator, successor or assign of such Entity.

**F. Reservation of Rights**

Except as expressly set forth herein, the Plan shall have no force or effect unless the Bankruptcy Court shall enter the Confirmation Order and the Effective Date shall occur. None of the filing of the Plan, any statement or provision contained herein, or the taking of any action by any Debtor entity with respect to the Plan, the Disclosure Statement or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor entity with respect to the Holders of Claims or Equity Interests prior to the Effective Date.

**G. Section 1146 Exemption**

Pursuant to section 1146(a) of the Bankruptcy Code, under the Plan, (i) the issuance, distribution, transfer or exchange of any debt, equity security or other interest in the Debtor; (ii) the creation, modification, consolidation or recording of any mortgage, deed of trust, or other security interest, or the securing of additional indebtedness by such or other means; (iii) the making, assignment or recording of any lease or sublease or (iv) the making, delivery or recording of any deed or other instrument of transfer under, in furtherance of or in connection with, the Plan, including any deeds, bills of sale, assignments or other instrument of transfer executed in connection with any transaction arising out of, contemplated by or in any way related to the Plan or the Sale shall not be subject to any document recording tax, mortgage recording tax, stamp tax or

similar government assessment, and the appropriate state or local government official or agent shall forego the collection of any such tax or government assessment and accept for filing and recording any of the foregoing instruments or other documents without the payment of any such tax or government assessment, including without limitation the New York City Real Property Transfer Tax and New York State Documentary Tax.

All subsequent issuances, transfers or exchanges of securities, or the making or delivery of any instrument of transfer by the Debtor in the Chapter 11 Case, whether in connection with a sale pursuant to section 363 of the Bankruptcy Code, including the Sale, or otherwise, shall be deemed to be or have been done in furtherance of the Plan.

#### **H. Further Assurances**

The Creditors and Equity Interest Holders receiving distributions hereunder and all other parties in interest shall, from time to time, prepare, execute and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

#### **I. Service of Documents**

Any pleading, notice or other document required by the Plan to be served on or delivered shall be sent by first class U.S. mail, postage prepaid, as follows:

To the Debtor:

c/o Robert Gladstone  
Madison Equities LLC  
555 Fifth Avenue  
New York, New York 10017

c/o Louis Taic  
92<sup>nd</sup> St Hotel Associates, LLC  
58 East 79<sup>th</sup> Street  
New York, New York 10075

With a copy to:

Neiger LLP  
151 West 46<sup>th</sup> Street  
New York, New York 10036  
Attn: Edward E. Neiger

Olshan Grundman Frome Rosenzweig & Wolosky LLP  
65 East 55<sup>th</sup> Street  
New York, New York 10022  
Attn.: Adam H. Friedman, Esq.

Goldberg Weprin Finkel  
Goldstein LLP  
1501 Broadway  
22nd Floor  
New York, New York 10036  
Attn: Kevin J. Nash

**J. Transactions on Business Days**

If the date on which a transaction may occur under the Plan shall occur on a day that is not a Business Day, then such transaction shall instead occur on the next succeeding Business Day.

**K. Filing of Additional Documents**

On or before the Effective Date, the Debtor may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and provisions hereof.

**L. Post-Effective Date Fees and Expenses**

From and after the Effective Date, the Debtor shall, in the ordinary course of business and without the necessity for any approval by the Bankruptcy Court, pay the reasonable and necessary fees and expenses incurred to implement the Plan in accordance with and from the funds provided for such use in the Plan.

**M. Severability**

The provisions of the Plan shall not be severable unless such severance would constitute a permissible modification of the Plan pursuant to section 1127 of the Bankruptcy Code.

**N. Conflicts**

To the extent any provision of the Plan, the Disclosure Statement or any document executed in connection therewith or any documents executed in connection with the Plan or Confirmation Order (or any exhibits, schedules, appendices, supplements or amendments to any of the foregoing) conflicts with, or is in any way inconsistent with, the terms of the Confirmation Order, the terms and provisions of the Confirmation Order shall govern and control.

To the extent any provision of the Disclosure Statement or any document executed in connection therewith or any documents executed in connection with the Plan (or any exhibits, schedules, appendices, supplements or amendments to any of the foregoing) conflicts with, or is in any way inconsistent with, the terms of the Plan, the terms and provisions of the Plan and the Confirmation Order shall govern and control.

**O. Term of Injunctions or Stays**

Unless otherwise provided herein or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Case pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court and still extant on the Confirmation Date (excluding any injunctions or stays contained in the Plan or the Confirmation Order), shall remain in full force and effect until the closing of the Chapter 11 Case. All injunctions or stays contained in the Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

**P. Entire Agreement**

The Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings and representations on such subjects, all of which have become merged and integrated into the Plan.

**Q. Closing of the Chapter 11 Case**

The Debtor shall promptly, upon the full administration of the Chapter 11 Case, file with the Bankruptcy Court all documents required by the Bankruptcy Rules and any applicable orders of the Bankruptcy Court to close the Chapter 11 Case.

**R. Change of Control Provisions**

Any acceleration, vesting or similar change of control rights under any employment, benefit or other arrangements triggered by the consummation of the Plan shall be waived or otherwise cancelled under the Plan.

**ARTICLE XVIII.**

**ALTERNATIVES TO CONFIRMATION UNDER THE PLAN**

If the Plan is not consummated, the Debtor's capital structure will remain over-leveraged and the Debtor will remain unable to service its debt obligations. Accordingly, if the Plan is not confirmed and consummated, the alternatives include:

**1. Liquidation Under the Bankruptcy Code.**

The Debtor could be liquidated under chapter 7 of the Bankruptcy Code. The Debtor believes that liquidation would result in lower aggregate distributions being made to Creditors than those provided for in the Plan. A liquidation analysis comparing the Plan with a chapter 7 liquidation is attached hereto as Exhibit "B"

**2. Alternative Plan(s) of Reorganization.**

The Debtor believes that failure to confirm the Plan will lead inevitably to an expensive and protracted Chapter 11 Case. In formulating and developing the Plan, the Debtor has explored numerous other alternatives and engaged in an extensive negotiating process with GECC.

The Debtor believes that not only does the Plan fairly adjust the rights of various Classes of Claims, but also that the Plan provides superior recoveries to each of the Classes over any alternative capable of rational consideration (such as a chapter 7 liquidation), thus enabling many stakeholders to maximize their returns. Rejection of the Plan in favor of some alternative method of reconciling the Claims and Interests will require, at the very least, an extensive and time consuming process (including the possibility of protracted and costly litigation) and will not result in a better recovery for any Class of Claims or Interests.

**THE DEBTOR BELIEVES THAT CONFIRMATION OF THE PLAN IS PREFERABLE TO ANY ALTERNATIVE BECAUSE THE PLAN MAXIMIZES THE AMOUNT OF DISTRIBUTIONS TO ALL HOLDERS OF CLAIMS AND INTERESTS AND ANY ALTERNATIVE TO CONFIRMATION OF THE PLAN WILL RESULT IN SUBSTANTIAL DELAYS IN THE DISTRIBUTION OF ANY RECOVERIES. THEREFORE, IT IS RECOMMENDED THAT ALL HOLDERS OF IMPAIRED CLAIMS ENTITLED TO VOTE ON THE PLAN VOTE TO ACCEPT THE PLAN.**

**3. Dismissal of the Debtor's Chapter 11 Case.**

Dismissal of the Debtor's Chapter 11 Case would have the effect of restoring (or attempting to restore) all parties to the status quo ante. Upon dismissal of the Debtor's Chapter 11 Case, the Debtor would lose the protection of the Bankruptcy Code, thereby requiring, at the very least, an extensive and time consuming process of negotiation with the creditors of the Debtor, and possibly resulting in costly and protracted litigation in various jurisdictions. The Debtor believes that these actions would seriously undermine its ability to obtain financing and could lead ultimately to the liquidation of the Debtor under chapter 7 of the Bankruptcy Code. Therefore, the Debtor believes that dismissal of the Debtor's Chapter 11 Case is not a viable alternative to the Plan.

**ARTICLE XIX.**

**CONCLUSION**

**DEBTOR'S RECOMMENDATION**

The Debtor believes that confirmation and implementation of the Plan is preferable because it will provide the greatest recovery to Holders of Claims. Other alternatives could involve significant delay, uncertainty and substantial administrative costs and are likely to reduce any return to Creditors who hold Claims. All Holders of Impaired Claims in Classes 2, 3, 4 and 5 are urged to vote to accept the Plan and to evidence such acceptance by returning their Ballots

to Neiger LLP the Debtor's general counsel so that they will be received not later than 4:00 p.m. (prevailing Eastern Time) on \_\_\_\_\_, 2012.

Dated: New York New York

~~March~~, April 3, 2012

Respectfully submitted,

**MADISON 92<sup>ND</sup> STREET ASSOCIATES,  
LLC**

as Debtor and Debtor-in-possession

By: \_\_\_\_\_

Robert Gladstone, Co-Managing  
Member

Madison 92<sup>nd</sup> Hotel Associates LLC  
Co-Managing Member

By: \_\_\_\_\_

Louis Taic, Managing Member

Counsel:

**NEIGER LLP**

Edward E. Neiger  
151 West 46<sup>th</sup> Street  
New York, New York 10036  
*Proposed General Counsel for the Debtor*

**OLSHAN GRUNDMAN FROME  
ROSENZWEIG & WOLOSKY LLP**

Park Avenue Tower  
65 East 55<sup>th</sup> Street  
New York, New York 10022  
Telephone: (212) 451-2300  
Facsimile: (212) 451-2222  
*Proposed Special Counsel for the Debtor and Counsel for Robert Gladstone, Co-Managing  
Member of Madison 92nd Street Associates, LLC*

**GOLDBERG WEPRIN FINKEL  
GOLDSTEIN LLP**

Kevin J. Nash

1501 Broadway

22nd Floor

New York, New York 10036

*Proposed Counsel for the Debtor and Counsel for the Hotel Associates Group, Co-Managing  
Member of Madison 92nd Street Associates, LLC*