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ORDERED in the Southern District of Florida on AUG 22 2007



A Jay Cristol

A. Jay Cristol, Chief Judge Emeritus
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

In re:	§	CASE NOS. 07-12013-BKC-AJC
	§	through 07-12018-BKC-AJC
SBBR 1, LLC, et al.,	§	
	§	CHAPTER 11
Debtors.	§	Jointly Administered

ORDER (A) APPROVING BIDDING PROCEDURES AND BREAKUP FEE IN CONNECTION WITH SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS; (B) SCHEDULING AUCTION DATE AND SALE HEARING DATE; (C) APPROVING FORM AND NOTICE OF BIDDING PROCEDURES; AND (D) AUTHORIZING TRUSTEE TO EXECUTE AN ASSET PURCHASE AGREEMENT

THIS CAUSE came before the Court on August 17, 2007 at 12:30 p.m. on the Motion for Order (A) Approving Bidding Procedures and Breakup Fee in Connection with Sale of Substantially All of the Debtors' Assets; (B) Scheduling Auction Date and Sale Hearing Date; (C) Approving Form and Notice of Bidding Procedures; and (D) Authorizing Trustee to Execute an Asset Purchase Agreement (the "Bidding Procedures Motion") filed by Barry E. Mukamal as Chapter 11 Trustee (the "Trustee") for the estates of South Beach Hotel Investors, LLC, South

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Beach Breakwater Restaurant, LLC, SBHI 1, LLC, SBHI 2, LLC, SBBR 1, LLC, and SBBR 2, LLC (collectively the "Debtors") [DE 229].

Prior to the hearing, on July 12, 2007, the Court entered an Order on Motion for the Appointment of a Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104(a) [DE 167] ("July 12 Order"). In the July 12 Order, the Court directed the Debtors to file a motion to approve a sale of substantially all of the Debtors' assets by August 8, 2007, and pursuant to certain designated bid procedures and bid protections. The Debtors did not file such a motion.

Thereafter, on August 10, 2007, the Court entered its Order Directing Appointment of Chapter 11 Trustee [DE 215] ("August 10 Order"). The August 10 Order directed the trustee to "endeavour to forthwith file a [m]otion to [s]ell the Debtors' [a]ssets [p]ursuant to 11 U.S.C §363 and/or to [e]stablish [b]id [p]rocedures as stated on the record, which Motion shall be heard by the Court on August 17, 2007 at 12:30 p.m., at the Claude Pepper Federal Building, 51 S.W. 1st Avenue, Courtroom 1410, 14th Floor, Miami, FL 33131."

On August 16, 2007, the Trustee filed the Bidding Procedures Motion which was the subject of the August 17, 2007 hearing. At the hearing on the Bidding Procedures Motion, the Trustee announced certain minor modifications to the Bidding Procedures¹ attached as Exhibit "A" to the Bidding Procedures Motion.

The Court, having reviewed and considered the Bidding Procedures Motion; the Bidding Procedures, as modified, including the proposed Breakup Fee to be provided to a stalking horse bidder; the July 12 Order; the August 10 Order; argument of counsel at the hearing; applicable case law; and the record herein, finds that the Bidding Procedures are consistent with the bid

¹ All capitalized terms not defined herein shall have the meanings given to them in the Bidding Procedures Motion and the Bidding Procedures attached as Exhibit "A" hereto.

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procedures recommended by the Court in its July 12 Order; that the Bidding Procedures, including without limitation, the proposed Breakup Fee, are fair and reasonable and within the Trustee's sound business judgment; that notice of the Bidding Procedures Motion and hearing thereon was reasonable and sufficient under the circumstances; and that it is in the best interests of the estates to grant the Bidding Procedures Motion and to approve the Bidding Procedures. Accordingly, it is

ORDERED:

1. The Bidding Procedures Motion is **GRANTED** as set forth herein.
2. The Bidding Procedures as modified and attached hereto as **Exhibit "A"** are approved in their entirety.
3. The Trustee is authorized to enter into a Purchase Agreement with a Stalking Horse as described in the Bidding Procedures, as modified.
4. The Trustee may agree to pay a Breakup Fee to a Stalking Horse bidder in an amount, and upon terms and conditions agreed to by the Trustee with the consent of the Lenders, not to exceed \$400,000, which Breakup Fee shall be payable without further order of the Court.
5. Upon the execution by the Trustee of the Purchase Agreement with a Stalking Horse, and subject to consultation with the Lenders, the Trustee will file a motion to approve the sale of the Assets ("Sale Motion") pursuant to such Purchase Agreement and subject to the Bidding Procedures.
6. Thereafter, the Court will enter an Order to Show Cause Why the Sale Motion Should Not Be Approved ("Show Cause Order"). The Court will hold a hearing on the Show Cause Order on **October 24, 2007, at 3:00 p.m.** at the Claude Pepper Federal Building, 51 S.W. 1st Avenue, Courtroom 1410, 14th Floor, Miami, FL 33131 to determine if there is any basis for

denying the Sale Motion, subject to the rights of the Trustee to seek higher and better offers for the sale of the Assets as set forth in the Bidding Procedures.

7. **The deadline to file and serve a written response to the Show Cause Order shall be October 17, 2007.** Any party filing such a written response shall serve a copy of same on counsel for the Trustee, counsel for the Lenders, counsel for the Stalking Horse bidder, and the Office of the U.S. Trustee. Any party that fails to timely file and serve a written response to the Show Cause Order shall be deemed to have consented to the relief sought by the Sale Motion.

8. In the event an auction is required under the terms of the Bidding Procedures, such auction shall be held in accordance with the terms and conditions of the Bidding Procedures on **November 19, 2007 at 10:00 a.m.** at the Claude Pepper Federal Building, 51 S.W. 1st Avenue, Courtroom 1410, 14th Floor, Miami, FL 33131.

9. Immediately following the auction, the Court will hold a hearing to consider the entry of a final order approving the Sale Motion (the "Sale Hearing"), at the Claude Pepper Federal Building, 51 S.W. 1st Avenue, Courtroom 1410, 14th Floor, Miami, FL 33131. In the event an auction is unnecessary under the Bidding Procedures, the Court will conduct the Sale Hearing on **November 19, 2007 at 10:00 a.m.** at the Claude Pepper Federal Building, 51 S.W. 1st Avenue, Courtroom 1410, 14th Floor, Miami, FL 33131.

10. Within five (5) business days after the entry of this Order, the Trustee shall: (a) publish a press release announcing the Bidding Procedures; and (b) serve (i) the Bidding Procedures, (ii) this order, and (iii) a cover letter summarizing the Bidding Procedures and the Sale Transaction, and providing contact information for the Trustee and his advisors, upon the Debtors, the Office of the U.S. Trustee, all parties who have filed a proof of claim in these cases,

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all parties who have filed a notice of appearance in these cases and the twenty (20) largest creditors set forth on the Schedules filed by the Debtors in these cases. Such notice of the Bidding Procedures is fair and adequate in all respects.

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Submitted by:
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Copies furnished to:
Andrew D. Zaron, Esq.

(Attorney Zaron is directed, pursuant to Local Rule 5005-1, to serve conformed copies of this Order upon the Master Service List attached to the original Motion, immediately upon receipt hereof, and to file a Certificate of Service with the Court confirming such service.)

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BIDDING PROCEDURES AND BID PROTECTIONS

The following procedures and bid protections (the "Bidding Procedures") have been approved and authorized by order dated August __, 2007 of the United States Bankruptcy Court for the Southern District of Florida (the "Bankruptcy Court") in the Chapter 11 cases of South Beach Hotels Investors, LLC; South Beach Breakwater Restaurant, LLC, SBBR 1, LLC, SBBR 2, LLC, SBHI 1, LLC, SBHI 2, LLC (collectively, the "Debtors"), jointly administered under Case Number 07-12013-BKC-AJC, in connection with the proposed sale of substantially all of the assets of the Debtors, which include the Edison Hotel, the Breakwater Hotel and the restaurant condominium located in the Breakwater Hotel, all located between 940 and 960 Ocean Drive in Miami Beach, FL (the "Assets").

1. **Stalking Horse Bid/Purchase Agreement.** The Trustee intends to enter into a purchase and sale agreement ("Purchase Agreement") with a stalking horse bidder ("Stalking Horse"), pursuant to §§ 363(b), (f) and (m), and 365 of title 11 of the U.S. Code ("Bankruptcy Code"), free and clear of liens, claims and encumbrances, on an AS-IS, WHERE-IS basis, without representations or warranties. The minimum cash component for the sale of the Assets will be \$29,000,000. As described below, the Stalking Horse will be entitled to a breakup fee not to exceed \$400,000, without further order of the Court. As also described below, the Purchase Agreement will be subject to competing bids, and if appropriate, the Trustee will conduct an auction for the sale of the Assets, as described below (the "Sale Transaction").

2. **Sale Motion/Show Cause Hearing/Objection Deadline.** The Trustee will file a motion to approve the sale of the Assets, pursuant to the terms of the Purchase Agreement, and subject to the Bidding Procedures and Auction described herein (the "Sale Motion"). Thereafter, the Court will enter an Order to Show Cause Why the Sale Motion Should Not Be Approved ("Show Cause Order"). The Court will conduct a hearing on the Show Cause Order on **October 24, 2007 at 3:00 p.m.** at the Claude Pepper Federal Building, 51 S.W. 1st Avenue, Courtroom 1410, 14th Floor, Miami, FL 33131 to determine if there is any basis for denying the Sale Motion, subject to the rights of the Trustee to seek higher and better offers for the sale of the Assets as set forth in these Bidding Procedures. **The deadline to file and serve a written response to the Show Cause Order shall be October 17, 2007.** Any party filing such a written response shall serve a copy of same on counsel for the Trustee, counsel for the Lenders, counsel for the Stalking Horse bidder, and the Office of the U.S. Trustee (the "Limited Notice Parties"). Any party that fails to timely file and serve a written response to the Show Cause Order shall be deemed to have consented to the relief sought by the Sale Motion.

3. **Auction/Final Hearing.** If appropriate, the Trustee will conduct an auction for the sale of the Assets on **November 19, 2007 at 10:00 a.m.** at the Claude Pepper Federal Building, 51 S.W. 1st Avenue, Courtroom 1410, 14th Floor, Miami, FL 33131. Immediately following the auction, the Court will hold a hearing to consider the entry of a final order approving the Sale Motion (the "Sale Hearing"), at the Claude Pepper Federal Building, 51 S.W. 1st Avenue, Courtroom 1410, 14th Floor, Miami, FL 33131. In the event an auction is unnecessary under these Bidding Procedures, the Court

will conduct the Sale Hearing on **November 19, 2007 at 10:00 a.m.**, at the Claude Pepper Federal Building, 51 S.W. 1st Avenue, Courtroom 1410, 14th Floor, Miami, FL 33131.

4. **Diligence by Prospective Overbidders.** The Trustee intends to conduct a marketing effort to fully and fairly expose the Assets for sale to potential interested parties, including providing a bid package concerning and notice of the Sale Transaction and the Auction to prospective overbidders, receive and consider unsolicited offers for the Assets, provide information to any such prospective offeror, and allow any such prospective offeror to conduct due diligence in connection with consideration of a potential bid for the Assets; provided, however, that any such prospective offeror desiring to conduct due diligence shall: (a) demonstrate the financial ability, as determined by the Trustee, in consultation with Sobe Senior Lender, LLC and Sobe Mezz Lender, LLC (collectively, the "Lenders"), to consummate the Sale Transaction in accordance with the Purchase Agreement; and (b) execute a confidentiality agreement in a form acceptable to the Trustee and the Lenders in their sole discretion.

5. **Overbid Deadline.** Any competing "Initial Overbid" (as described below) must be served on the Limited Notice Parties, in a manner such that the Initial Overbid is actually received by no later than 4:30 p.m. (EST) on November 13, 2007, four (4) business days prior to the Sale Hearing (the "Overbid Deadline").

6. **Consent to Transactions.** Any entity that fails to timely submit an overbid shall be barred from participating in the Auction.

7. **Overbid Requirements.** Any entity (other than the Stalking Horse) (an "Overbidder") that is interested in consummating the Transactions (an "Overbid") must submit an "Initial Overbid" in conformance with this paragraph by no later than the Overbid Deadline. Any such Initial Overbid must:

(a) be served on the Limited Notice Parties, in a manner such that the Initial Overbid actually is received by no later than the Overbid Deadline;

(b) include (i) an executed copy of a definitive purchase and sale agreement having substantially the same terms as the Purchase Agreement (subject only to modifications as to the identity of the Stalking Horse and the consideration to be paid, all of which shall be payable only in cash), and (ii) a version of the Overbidder's definitive sale agreement redlined or otherwise marked to show any and all deviations from the Purchase Agreement;

(c) be a bid to purchase all of the Assets as provided in the Purchase Agreement for cash;

(d) disclose all of the parties participating in the Overbid and their relationships, if any, with the Debtors, Lenders, or any other interested parties that have appeared in these bankruptcy cases;

(e) disclose any discussions, negotiations, and/or agreements each Overbidder has had or now has with any other bidders;

(f) conform to the Purchase Agreement and contain terms and conditions no less favorable to the Debtors' estates than the terms and conditions of the Purchase Agreement;

(g) provide for aggregate consideration to the Debtors of at least \$500,000 more than the aggregate consideration to be provided by the Stalking Horse;

(h) be accompanied by evidence, satisfactory to the Trustee, of the Overbidder's good faith, within the meaning of section 363(m) of the Bankruptcy Code;

(i) be accompanied by: (i) financial statements or evidence satisfactory to the Trustee after consultation with the Lenders that the Overbidder is willing, authorized, capable, and qualified, financially, legally, and otherwise, of unconditionally performing all obligations under the Purchase Agreement (or its equivalent) in the event that it submits the prevailing overbid at the Sale Hearing; and (ii) evidence that it is duly authorized and entitled to engage in the transactions contemplated by the Initial Overbid without the consent of any entity that has not been obtained as of the Sale Hearing by the Overbidder; and

(j) be accompanied by a deposit in the sum of five (5%) percent of the purchase price under the competing Overbid (the "Deposit Amount") in the form of a wire transfer or cashier's check payable to Hunton & Williams LLP, Escrow Agent and to be held in an interest bearing escrow account by the Trustee's counsel pending completion of the Auction.

8. **Firm Offers.** All bids shall be "firm offers" and shall not contain any contingencies to the validity, effectiveness, and/or binding nature of the offer, including, without limitation, contingencies for financing, due diligence or inspection except for the conditions to closing provided for in the Purchase Agreement.

9. **Requirement for Overbidders to Appear at Auction.** All Overbidders shall appear in person at the Auction, or through a duly authorized representative.

10. **Non-Conforming Bids Disqualified from Auction.** Any entity that fails to submit a timely, conforming Initial Overbid, as set forth above, shall be disqualified from bidding at the Auction.

11. **No Conforming Overbids.** If no timely, conforming Initial Overbids are submitted, the Trustee shall request at the Sale Hearing that the Court approve the proposed Sale Transaction with the Stalking Horse under the Purchase Agreement. Any party in interest may contest the Trustee's determination as to whether an Initial Overbid is conforming, but any such contest must be made in a writing filed with the Bankruptcy Court and served on the Limited Notice Parties no later than three (3) business days before the Sale Hearing.

12. **Auction Procedures.** In the event that one or more timely, conforming Initial Overbids are submitted (each person who has submitted such a timely, conforming

initial overbid shall be referred to herein as a "Qualified Overbidder"), the Auction shall be conducted at the Bankruptcy Court, and the Stalking Horse and all Qualified Overbidders may participate. The Auction shall be governed by the following procedures:

(a) all bidders shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and to have waived any right to jury trial in connection with any disputes relating to the Auction and/or the Sale Transaction;

(b) bidding will commence at an amount of the highest bid or otherwise best offer submitted by a Qualified Overbidder, as determined by the Trustee, with the consultation of the Lenders after consideration of the Break Up Fee, as hereinafter defined;

(c) each subsequent bid by a Qualified Overbidder or the Stalking Horse shall be in increments of at least \$50,000 in aggregate consideration above the previous bid after taking into consideration the Break Up Fee and any brokerage or similar fees that may be payable in connection with a sale transaction;

(d) if, upon the conclusion of the Auction, and consistent with the terms of these bidding procedures, the Stalking Horse has failed to make a bid that the Trustee, in consultation with the Lenders, determines to be the highest or otherwise best bid after taking into consideration the Break Up Fee and any brokerage or similar fees that may be payable in connection with a sale transaction, the Trustee, in consultation with the Lenders, will recommend that the Bankruptcy Court authorize and approve a sale of the Assets to the prevailing Qualified Overbidder and may recommend that the Stalking Horse or another Qualified Bidder be designated the Back-up Bidder as hereinafter defined;

(e) if, however, upon the conclusion of the Auction, and consistent with the terms of these bidding procedures, the Stalking Horse makes a bid that the Trustee, in consultation with the Lenders, determines to be the highest or otherwise best bid made by a Qualified Overbidder after taking into consideration the Break Up Fee and any brokerage or similar fees that may be payable in connection with a sale transaction, the Trustee, in consultation with the Lenders, will recommend that the Bankruptcy Court approve the Purchase Agreement and authorize the Trustee to sell the Assets to the Stalking Horse and enter into the Sale Transaction contemplated by the Purchase Agreement;

and

(f) upon conclusion of the Auction, the Bankruptcy Court shall make the ultimate determination of whether the bid that the Trustee proposes to accept constitutes the highest and best offer which may be accepted by the Trustee on behalf of the Debtors' estates (the "Prevailing Bidder").

13. **The Trustee's Business Judgment.** To the extent not inconsistent with these Bidding Procedures, the Trustee: (a) may exercise his business judgment to recommend a sale of the Assets to any Qualified Overbidder whose bid the Trustee, in

consultation with the Lenders, determines to be highest or best and in the best interests of these Chapter 11 bankruptcy estates; and (b) shall consult with any significant constituent that he deems necessary in connection with the bidding process and the selection of the highest or otherwise best bid. In exercising his business judgment as to which bid constitutes the highest or otherwise best bid, the Trustee may consider all factors which he deems relevant, including but not limited to, the terms and conditions of the proposed purchase agreement, the bidder's ability to close the proposed transaction, the Break Up Fee and any brokerage or other similar fees that may be payable in connection with a sale transaction. Each Qualified Overbidder should be prepared to make its best and final offer at the Auction on the date of the Sale Hearing, and the Trustee shall object to and oppose any request for a continuance or recess of the Auction or Sale Hearing.

14. **Break Up Fee.** The Trustee may provide the Stalking Horse the protection of a breakup fee in an amount not to exceed \$400,000, on terms acceptable to the Trustee, in consultation with the Lenders, and without further order of the Court (the "Breakup Fee").

15. **Back-up Bidder.** Upon the conclusion of the Auction, the Trustee, with the consent of the Lenders, shall have the right (but not the obligation) to select a bidder other than the Prevailing Bidder and to designate such bidder the "Back-up Bidder". If, for any reason, the Prevailing Bidder is unable or unwilling to timely perform its obligations under the Prevailing Bidder's definitive sale agreement, the Trustee, upon consultation with the Lenders, may consummate the Transactions with the Back-up Bidder without further notice or a hearing.

16. **Disposition of Deposits.** The deposits submitted by any Overbidders shall be refunded to each unsuccessful bidder other than the Back-up Bidder, if any. The deposits of the Prevailing Bidder and the Backup Bidder shall be retained by the Trustee as earnest money to be used in the following ways: (A) the deposit of the Prevailing Bidder shall either be: (i) applied at closing as a credit toward the purchase price of the Prevailing Bidder, (ii) if the sale to the Prevailing Bidder shall fail to timely close by reason of a breach or default of the Prevailing Bidder, the deposit shall be retained by the Debtors' estates as liquidated damages; or (iii) in the event that the sale to the Prevailing Bidder shall fail to timely close by reason of a breach or default of the Debtors' estates, then the deposit shall be returned to the Prevailing Bidder; and (B) the deposit of the Back-up Bidder shall either be: (i) returned to the Back-up Bidder upon the closing of the transaction with the Prevailing Bidder; or (ii) if the sale to the Prevailing Bidder shall fail to close for any reason, the deposit of the Backup Bidder shall (a) be applied at closing as a credit toward the purchase price of the Backup Bidder; (b) if the sale to the Prevailing Bidder shall fail to timely close by reason of a breach or default of the Backup Bidder, the deposit shall be retained by the Debtors' estates as liquidated damages; or (c) in the event that the sale to the Backup Bidder shall fail to timely close by reason of a breach or default of the Debtors' estates, then the deposit shall be returned to the Backup Bidder

17. **Overbidder's Obligation to Provide Evidence Regarding Overbidder's Good Faith.** Each Overbidder shall provide the Trustee with evidence in the form satisfactory to the Trustee, in consultation with the Lenders, of such Overbidder's good faith, within the meaning of Section 363(m) of the Bankruptcy Code.

18. **Headings.** The headings of all sections of these Bidding Procedures are inserted solely for the convenience of reference and are not a part of and are not intended to govern, limit or aid in the construction or interpretation of any term or provision hereof.

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