

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In re:

ORECK CORPORATION, et al,

Debtors.

)
) Case No. 13-4006
) Judge Lundin
) (Jointly Administered)
) **Related to: Docket No. 93**
) **Hearing Date: July 16, 2013**
) **Hearing Time: 9:00 a.m. (CT)**
) **Objection Due: July 15, 2013, 12:00 p.m. (CT)**

**JOINDER OF GWINNETT PRADO, L.P. TO THE OBJECTIONS OF OTHER
LANDLORDS TO THE MOTION BY DEBTORS, PURSUANT TO 11 U.S.C. §§ 363(B),
(F), (K), AND (M), AND 365 AND FED. R. BANKR. P. 2002, 6004, AND 6006, TO
(I)APPROVE (A) THE SALE TRANSACTION PURSUANT TO THE ASSET
PURCHASE AGREEMENT WITH ORECK ACQUISITION HOLDINGS LLC, FREE
AND CLEAR OF CLAIMS, LIENS, ENCUMBRANCES, AND OTHER INTERESTS; (B)
THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS
AND UNEXPIRED LEASES; AND (II) (A) ESTABLISH SALE AND BIDDING
PROCEDURES; AND (B) SCHEDULE A SALE APPROVAL HEARING**

Gwinnett Prado, L.P. (“Gwinnett Prado”), submits this joinder to the objections of other landlords, including but not limited to, (i) Brixmor Property Group, Inc. and Novi Town Center Investors, LLC [Doc. 535], (ii) The Macerich Company, Passco Companies LLC, UCR Asset Services, and Deutsche Asset & Wealth Management [Doc. 544], and (iii) PFP Columbus II, LLC [Doc. 554] (collectively, the “Landlord Objections”), to the Motion By Debtors Pursuant to 11 U.S.C. §§ 363(b), (f), (k), and (m), and 365 and Fed. R. Bankr. P. 2002, 6004, and 6006, to (I) Approve (A) the Sale Transaction Pursuant to the Asset Purchase Agreement with Oreck Acquisitions Holdings LLC, Free and Clear of Claims, Liens, Encumbrances, and Other Interests; (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (II) (A) Establish Sale and Bidding Procedures; and (B) Schedule a Sale Approval

Hearing (the “Sale Motion”) [Doc. 93]. In support of this joinder, Gwinnett Prado states as follows:

1. On May 6, 2013 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Middle District of Tennessee. Upon information and belief, the Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. Gwinnett Prado is the owner of Satellite Shops I a/k/a The Satellite Shops at Gwinnett Place Mall, located in Duluth, Georgia, in which the Debtor Oreck Homecare, LLC leases retail space known as Suite 4 consisting of approximately One Thousand Four Hundred square feet (the “Premises”) pursuant to a certain written lease dated January 11, 1996, as amended March 12, 2001, as amended December 1, 2005, as amended July 20, 2011 and as last amended April 4, 2012 (the “Lease”).¹

3. The Premises is located in a “shopping center” as that term is used in section 365(b)(3) of the Bankruptcy Code. *See In re Joshua Slocum, Ltd.*, 922 F.2d 1081, 1086-87 (3d Cir. 1990).

4. On May 16, 2013, the Debtors filed the Sale Motion seeking approval of the sale of substantially all of the Debtors’ assets and authority to assume and assign certain of the Debtors’ non-residential real property leases.

5. On June 20, 2013, this Court entered an order (the “Sale Procedures Order”) [Doc. 361] approving, among other things, procedures with respect to the potential sale of certain of the Debtors’ assets (the “Sale Procedures”) and the procedures in connection with the

¹ A complete copy of the Lease is not attached but is available upon request.

potential assumption and assignment of certain of the Debtors' leases (the "Assumption and Assignment Procedures").

6. On July 8, 2013, pursuant to the Sale Procedures Order, the Debtors held an auction pursuant to the Sale Procedures (the "Auction").

7. On July 9, 2013, the Debtors filed a Notice of Completion of Auction (the "First Auction Notice") [Doc. 508] providing, that the winding bidder at the Auction was Royal Appliance Manufacturing Company (the "Winning Bidder") and that Oreck Acquisition Holdings LLC was declared the back-up bidder (the "Back-up Bidder"). The First Auction Notice also references a list of nonresidential real property leases that the Debtors seek to assume and assign to the Winning Bidder. The Lease is identified on the referenced list.

8. On July 12, 2013, the Debtors filed a Supplemental Notice Regarding Completion of Auction and Clarification of Matters Going Forward at Sale Hearing Scheduled for July 16, 2013 at 9:00 a.m. (CT) (the "Supplemental Auction Notice") [Doc. 546].

9. The Supplemental Auction Notice provides, among other things, that (1) the list of non-residential real property leases to be assumed and assigned referred to in the First Auction Notice is incorrect; (2) the Winning Bidder has not determined the nonresidential real property leases that it will seek to have assumed and assigned and that the Winning Bidder has sixty (60) days under the asset purchase agreement with the Debtors to decide whether it will seek the assumption and assignment or rejection of non-residential real property leases, including the right to designate third party assignees; (3) no objections to cure amounts will be going forward at the hearing to approve the proposed sale, scheduled for July 16, 2013 at 9:00 a.m. (CT) (the "Sale Hearing"); (4) at the Sale Hearing, the Debtors will not be seeking the assumption and assignment to the Winning Bidder of any non-residential real property leases for the Debtors'

retail stores (the “Store Leases”) and landlords need not file objections to the Winning Bidder as a proposed assignee of the Store Leases; and (5) the Debtors will incorporate into the proposed Sale Order certain procedures with respect to any proposed assumption and assignment of the Store Leases in the future following the Sale Hearing, including procedures for assignments with the consent of the landlord (if applicable), and providing landlords with adequate assurance information for a proposed assignee and the opportunity to object prior to a hearing on the proposed assignment.

10. Notice of the proposed asset purchase agreement between the Debtors, Oreck Acquisition Company, LLC, and the Winning Bidder, as guarantor (the “APA”) and the proposed order authorizing the sale of assets (“Sale Order”) was filed at 12:54 a.m. (CT) on July 15, 2013. The APA is not in its final form as footnote 1 of the Memorandum in Support of Motion of the Debtor for an Order Authorizing and Approving the Sale of Assets Free and Clear of Liens and Other Interests [Doc. 556] provides that “[b]racketed provisions within the OAC APA are still being negotiated.” Further, many exhibits and schedules of the APA have not been filed. Gwinnet Prado has not had sufficient time to review the APA or the proposed Sale Order, and a final APA has not been filed.

11. Gwinnett Prado files this joinder to the Landlord Objections in an abundance of caution and to preserve its rights and interests in all matters relating to the assumption and assignment of the Lease to the Winning Bidder, the Back-up Bidder or any designated third party. Gwinnett Prado recognizes that the Supplemental Auction Notice provides that the Debtors will not move forward with the proposed assumption and assignment of any of the Store Leases at the Sale Hearing and that landlords do not need to file objections to the Winning Bidder as a proposed assignee of the Store Leases by the pending objection deadline of noon

(CT) on July 15, 2013. Regardless, Gwinnett Prado seeks to protect and preserve its rights regarding the assumption and assignment of the Lease.

12. Gwinnett Prado adopts and incorporates the arguments raised in the Landlord Objections. Gwinnett Prado joins in the Landlord Objections and any consistent requests that have been or may be filed by other landlords.

13. Gwinnett Prado expressly reserves the right to assert any additional objections with respect to the Sale Motion or such other relief as may be requested at the Sale Hearing or otherwise, and to: (i) raise any additional objections at the Sale Hearing or any further hearing; (ii) object to any proposed assumption and assignment of the Lease (including, without limitation, to the Winning Bidder, the Back-Up Bidder and/or any other third party), on any and all grounds under section 365 of the Bankruptcy Code or as otherwise may be available to Gwinnett Prado; (iii) object to the form of any proposed Sale Order; (iv) object to any lease designation rights and/or any procedures with respect to the future proposed assumption and assignment of the Lease; and (v) otherwise object to any relief requested in the Sale Motion or such relief that may subsequently be sought by the Debtors to be granted pursuant to any proposed Sale Order or otherwise, as such requested relief relates to the Lease and/or the interests of Gwinnett Prado.

WHEREFORE, Gwinnett Prado respectfully requests that this Court enter an Order consistent with this joinder and the Landlord Objections and grant Gwinnett Prado such other and further relief as this Court deems just and proper.

Dated: July 15, 2013

Respectfully submitted,

FROST BROWN TODD LLC

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via ECF Noticing to all parties receiving ECF Notice in these chapter 11 cases and to the parties listed below via first class, U.S. mail, postage prepaid on this 15th day of July, 2013:

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