

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

RICHMOND HOSPITALITY LLC,

Debtor.

Chapter 11

Case No. 22-40507-JMM

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TERMS AND CONDITIONS OF SALE

1. These Terms and Conditions of Sale are promulgated in connection with the public auction sale under Sections 363 and 365 of the Bankruptcy Code (collectively, the “363 Sale”) of the debtor’s interest in the ground lease (the “Lease”) and hotel development project located at 100-110 South Bridge Street, Staten Island, New York, and related assets (collectively, the “Purchased Assets”) as set forth in an Asset Purchase Agreement (the “APA”) approved by the Bankruptcy Court for the purchase price of \$4,000,000.00. The APA and these Terms and Conditions of Sale are subject to a Final Order of the Bankruptcy Court (or any other court of competent jurisdiction) finding and/or holding that the Lease is in effect, or as otherwise may be agreed in writing between the Landlord and the Highest Bidder (as defined herein).

2. The seller of the Purchased Assets is Richmond Hospitality LLC, the Chapter 11 Debtor and Debtor in Possession (“Debtor”). The Debtor’s Chapter 11 bankruptcy case is pending in the United States Bankruptcy Court for the Eastern District of New York (“Bankruptcy Court”) under case no. 22-40507 (JMM).

3. The 363 Sale will be conducted by the Debtor’s Court authorized real estate broker, MYC & Associates, Inc. (“Broker”). The Broker will conduct the 363 Sale via Zoom on a date and time to be announced on the Broker’s website at myccorp.com., to be held not later than 50 days¹ from the date of the Order of the Court approving these Terms and Conditions, and on not less than 21 days’ notice by regular mail to be sent to all creditors and notice of appearance parties.

4. The 363 Sale is being conducted pursuant to Orders of the Bankruptcy Court and sections 363 (b), (d), (f) and (m), and section 365, of title 11 of the United States Code (“Bankruptcy Code”), subject to higher or better offers as set forth herein.

5. To register and be permitted to bid on the Purchased Assets at the 363 Sale: (a) each prospective bidder must deliver to the Broker **by 5:00 p.m. (Eastern) on the date that is 2 business days prior to the scheduled 363 Sale (in accordance with section 3 above)**, a certified check, bank check or wire transfer in the amount of \$200,000.00 (representing 5% of the APA purchase price) (“Qualifying Deposit”) drawn on an account of the bidder, payable to “MYC & Associates, Inc.” and delivered to MYC & Associates, Inc., 1110 South Avenue, Suite 22, Staten Island, NY 10314, which Qualifying Deposit shall serve as a good faith deposit against payment of the purchase price for the Purchased Assets; and (b) each prospective bidder must execute, and thereby agree to be bound by, these Terms and Conditions of Sale. The highest or best bidder (“Highest Bidder”) and the second highest or best bidder (“Second Highest Bidder”) must also execute, and thereby agree to

¹ If any date or deadline set forth herein falls on a weekend or holiday, then such date or deadline shall be amended to mean the next business day.

be bound by, a Memorandum of Sale. The Highest Bidder and Second Highest Bidder also agree to be bound by the terms and conditions of the APA. Within two business days after the conclusion of the 363 Sale, the Debtor or its representative will return the Qualifying Deposits to all bidders except the Highest Bidder and the Second Highest Bidder. At the 363 Sale, the first overbid must be for a purchase price for the Purchased Assets of not less than \$4,100,000.00 (a \$100,000.00 first overbid increment). Subsequent bid increments shall be for a purchase price for the Purchased Assets of at least \$50,000.00 in excess of the prior bid, except as in the sole discretion of the Broker.

6. Within two business days after the conclusion of the 363 Sale, the Highest Bidder shall: (a) deliver to the Debtor, by certified check, bank check, federal funds or wire transfer, an amount equal to 5% of its successful bid minus the amount of the Qualifying Deposit as and for a good faith deposit (such amount, plus the Qualifying Deposit, hereinafter "Deposit").

7. Within four business days after the conclusion of the 363 Sale, the Debtor will either: (a) return the Second Highest Bidder's Qualifying Deposit; or (b) notify the Second Highest Bidder of the Highest Bidder's default and, in that event, the Second Highest Bidder shall thereafter be deemed the Highest Bidder under these Terms and Conditions of Sale and shall, within two business days after such notice by the Debtor: (i) deliver to the Debtor, by certified check, bank check, federal funds or wire transfer, an amount equal to 5% of its bid minus the amount of its Qualifying Deposit as and for a good faith deposit.

8. The Highest Bidder must pay the balance of the purchase price ("Purchase Price") for the Purchased Assets (the difference between the amount of the successful bid and the Deposit) to the Debtor, by certified check, bank check, federal funds or wire transfer from an account of the Highest Bidder at the closing of title to the Purchased Assets ("Closing"). The Highest Bidder must close title to the Purchased Assets on or before thirty (30) days from the date of a final Order confirming the results of the 363 Sale ("Closing Date"), **TIME BEING OF THE ESSENCE as to the Highest Bidder**. Notwithstanding any language to the contrary, the Purchaser shall be permitted a one-time 30 day extension of the Closing Date so long as such extension is exercised in writing to Debtor's counsel at least ten (10) days before the Closing Date. Notwithstanding any language to the contrary, the Debtor may adjourn the Closing Date, or any authorized extension thereof as set forth in an order of the Court or herein, for a period not to exceed thirty (30) days, for the purpose of paying the balance of the cure amount due to the Landlord in accordance with such separate stipulation and Order of the Court.

9. The Closing shall take place on or before the Closing Date at the offices of the attorneys for the Debtor, LaMonica Herbst & Maniscalco LLP, 3305 Jerusalem Avenue, Wantagh, New York 11793, in person, virtually or by mail, as elected by the Debtor.

10. Real estate taxes, water and sewer charges, utilities for common areas and income from the operation of the Purchased Assets will be apportioned as of 12:00 a.m. (Eastern) on the Closing Date. There will be no other apportionments pertaining to the Purchased Assets. Upon Closing, the Purchaser shall deposit with the Landlord the sum of \$50,000.00 as and for the security deposit under the Lease.

11. The Highest Bidder shall: (a) unless waived by an Order of the Bankruptcy Court under section 1146 of the Bankruptcy Code, pay, if applicable, any village, city, county, state or other real property transfer taxes incurred by the transfer of the Purchased Assets by the estate at the Closing; and (b) be responsible for the preparation of any transfer forms.

12. In connection with the Closing and Closing Date, the Highest Bidder is hereby given notice that **TIME IS OF THE ESSENCE against the Highest Bidder and the failure of the Highest Bidder to timely close for any reason whatsoever (except as otherwise provided below), including its failure to pay the balance of the Purchase Price on the Closing Date, will result in the Debtor retaining the Deposit and the termination of the Highest Bidder's right to acquire the Purchased Assets under these Terms and Conditions of Sale.** The Highest Bidder shall be obligated to close title to the Purchased Assets and there is no contingency of any kind or nature, including any financing contingency, that will permit the Highest Bidder to cancel or avoid its obligation under these Terms and Conditions of Sale other than the Debtor's inability to deliver title to the Purchased Assets free and clear of all Interests (as defined in paragraph 16). Further, the Highest Bidder shall have demonstrated, to the sole satisfaction of the Debtor, evidence of its ability to conclude the transaction upon these Terms and Conditions of Sale without delay. The Debtor reserves the right to reject any bidder who, in the sole discretion of the Debtor, the Debtor believes is not financially capable of consummating the purchase of the Purchased Assets. **Expenses incurred by the Highest Bidder, or any competing bidder, including concerning any due diligence, such as obtaining title reports, shall be the sole responsibility of such bidder and under no circumstances shall the Debtor's estate or the Debtor's professionals be responsible for, or pay, such expenses.**

13. In the event that the Highest Bidder for the Purchased Assets fails to tender the payment of the balance of the Purchase Price on the Closing Date, or otherwise perform any of its material obligations under these Terms and Conditions of Sale, the Debtor, in its reasonable discretion, shall be authorized to sell the Purchased Assets to the Second Highest Bidder without any further notice to any party and without giving credit for the Deposit forfeited by the Highest Bidder. The Second Highest Bidder shall close on the Purchased Assets within such time as the parties may agree but not to exceed 20 days after notice from the Debtor to the Second Highest Bidder. The Second Highest Bidder shall not be entitled to any extension of the Closing Date and such 20 day period is time of the essence. The Second Highest Bidder shall be deemed to be "Highest Bidder" under these Terms and Conditions of Sale and shall be bound by these Terms and Conditions of Sale.

14. The Debtor and its professionals, including the Broker, have not made, and do not make, any representations or warranties of any kind, including, but not limited to, as to the physical condition, occupancies, tenancies, rents, leases, expenses, income, operations, value of the land or buildings thereon, or any other matter or thing affecting or related to the Purchased Assets that might be pertinent to the purchase of the Purchased Assets, and including, without limitation: (a) the current or future real estate tax liability, assessment or valuation of the Purchased Assets; (b) the potential qualification of the real property or the Purchased Assets for any and all benefits conferred by or available under federal, state or municipal laws, whether for subsidies, special real estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated; (c) the compliance or non-compliance of the real property or the Purchased Assets, in its current or any future state, with applicable present or future zoning ordinances or other land use law or regulation, or the ability to obtain a change in the zoning or use, or a variance in respect to the real property or the Purchased Assets; (d) the availability of any financing for the purchase, alteration, rehabilitation or operation of the real property or the Purchased Assets from any source, including, but not limited to, any state, city or federal government or institutional lender; (e) the current or future use of the real property or the Purchased Assets; (f) the present and future condition and operating state of any and all machinery, equipment or fixtures on the real property or the Purchased Assets and the present or future structural and physical condition of any building thereon or its suitability for rehabilitation or renovation or the costs to complete construction concerning the Purchased Assets; (g) the ownership or state of title of any personal property on the real property or the Purchased Assets; (h) the presence or absence of any laws,

ordinances, rules or regulations issued by any governmental authority, agency or board and any violations thereof; (i) any present or future issues concerning subdivision or non-subdivision of the real property or the Purchased Assets; or (j) the compliance or non-compliance with environmental laws and the presence or absence of underground fuel storage tanks, any asbestos or other hazardous materials anywhere on the real property or the Purchased Assets. Each bidder hereby expressly agrees and acknowledges that no such representations or warranties have been made. The Debtor and its professionals, including the Broker, are not liable or bound in any manner by expressed or implied warranties, guaranties, promises, statements, representations or information pertaining to the real property or the Purchased Assets, or any real estate broker, agent, employee, servant or other person or professional representing or purporting to represent the Debtor unless such warranties, guaranties, promises, statements, representations or information are expressly and specifically set forth in writing by the Debtor.

15. The Purchased Assets are being sold **“AS IS” “WHERE IS”, “WITH ALL FAULTS,”** without any representations, covenants, guarantees or warranties of any kind or nature whatsoever, and free and clear of any and all interests including, but not limited to, liens, claims, encumbrances, interests, judgments and/or mortgages, or adverse claims to title, of whatever kind or nature (collectively, “Interests”), with such Interests, if any, to attach to the proceeds of sale in such order and priority as they existed immediately prior to the commencement of the Debtor’s Chapter 11 case and subject to, among other things: (a) any and all occupancies; (b) any state of facts that an accurate survey may show; (c) any covenants, restrictions and easements of record; (d) any state of facts a physical inspection may show; (e) any building or zoning ordinances or other applicable municipal regulations and violations thereof; and (f) environmental conditions.

16. By delivering Qualifying Deposits, each bidder acknowledges that it has had the opportunity to review and inspect the state of title and/or the condition of the real property and/or the Purchased Assets, and laws, rules and regulations applicable thereto, and will rely solely thereon and on its own independent investigation of the Purchased Assets in making its bids. Neither the Debtor nor any of its representatives make any representations or warranties with respect to the permissible uses of the Purchased Assets, including, but not limited to, the zoning of the real property or the Purchased Assets. Each bidder acknowledges that it has conducted its own due diligence in connection with the real property and the Purchased Assets, and is not relying on any information provided by the Debtor and/or its professionals.

17. The Debtor shall convey the Purchased Assets by delivery of an assignment of lease (which may be effectuated as embodied in an Order of the Court approving the assignment) and/or bill of sale, as applicable.

18. Neither the Debtor nor the Debtor’s professionals, including the Broker, are liable or responsible for the payment of fees of any broker. The Highest Bidder is the sole party responsible to pay the Buyer’s Premium to the Broker in accordance with a separate Court order approving the Broker’s employment by the Debtor.

19. Nothing contained in these Terms and Conditions of Sale is intended to supersede or alter any provisions of the Bankruptcy Code or otherwise interfere with the jurisdiction of the Bankruptcy Court. All the terms and conditions set forth in these Terms and Conditions of Sale are subject to modification as may be directed by the Debtor or by the Bankruptcy Court. The Debtor reserves the right to modify these Terms and Conditions of Sale at the 363 Sale or thereafter to maintain consistency with the provisions of the Bankruptcy Code and/or prior orders of the Bankruptcy Court.

20. These Terms and Conditions of Sale will be read into the record, or specifically

incorporated by reference, at the 363 Sale of the Purchased Assets. By making a bid for the Purchased Assets, each bidder will be deemed to have acknowledged having read these Terms and Conditions of Sale and agreed to be bound by them.

21. If the Debtor is unable to deliver title to the Purchased Assets in accordance with these Terms and Conditions of Sale for any reason whatsoever, its only obligation will be to refund the Deposit to the Highest Bidder and the Second Highest Bidder, and upon such refund, neither the Highest Bidder nor any other bidder shall have any claim or recourse against the Debtor, the Debtor's estate or the Debtor's professionals.

22. The Debtor reserves its right to withdraw the Purchased Assets from the 363 Sale, either prior or subsequent to the 363 Sale, in its sole discretion, for any reason whatsoever, as it deems necessary or appropriate.

23. The 363 Sale of the Purchased Assets is subject to confirmation by the Debtor and the entry of an order of the Bankruptcy Court confirming and approving the 363 Sale free and clear of all Interests. Prior to the Closing, the Bankruptcy Court may enter an Order confirming the results of the 363 Sale. No transaction is final until approval has been obtained by the Bankruptcy Court.

24. Each bidder represents and warrants that it has full power and authority to enter into, execute and deliver these Terms and Conditions of Sale to the Broker.

25. Each bidder represents and warrants that it is capable of performing its obligations under these Terms and Conditions of Sale and has the financial wherewithal to perform its obligations under these Terms and Conditions of Sale.

26. Except as disclosed below, each bidder represents and warrants that it has no connections to the Debtor and/or the Debtor's professionals and that it has never been affiliated in any manner whatsoever, or held any interest in, the Debtor:

27. The Bankruptcy Court shall determine any disputes concerning the 363 Sale of the Purchased Assets. By participating in the 363 Sale, all bidders consent to the exclusive jurisdiction of the Bankruptcy Court to determine such disputes.

I have read these Terms and Conditions of Sale and agree to be bound by them.

BIDDER SIGNATURE

BIDDER NAME

Name and Title of Individual Executing for bidder that is a company:

NAME

TITLE

Bidder contact information:

Attorney name and contact information (if any):

ADDRESS

NAME

EMAIL

FIRM

TELEPHONE

EMAIL

TELEPHONE

MEMORANDUM OF SALE -- HIGHEST BIDDER

The undersigned has this __ day of _____ 2023, agreed to purchase the Debtor's interest in the ground lease and project for the development of a hotel located at 100-110 South Bridge Street, Staten Island, New York, New York 10309, and related assets (collectively, "Purchased Assets"), from the bankruptcy estate of Richmond Hospitality LLP, and being sold by Richmond Hospitality LLC, Chapter 11 Debtor and Debtor in Possession for the sum of \$ _____, and hereby promises and agrees to comply with the terms and conditions of the sale of said Purchased Assets, as set forth in the annexed Terms and Conditions of Sale.

PRINT NAME OF PURCHASER

PRINT NAME OF PURCHASER

SIGNATURE OF PURCHASER

SIGNATURE OF PURCHASER

Name, title of individual executing for company: NAME: _____
TITLE: _____

ADDRESS

ADDRESS

E-MAIL

E-MAIL

TELEPHONE NUMBER

TELEPHONE NUMBER

FAX NUMBER

FAX NUMBER

Received from _____ the sum of \$ __,000,000, as a non-refundable deposit for the purchase of the Purchased Assets pursuant to the Terms and Conditions of Sale.

Richmond Hospitality LLC
c/o LaMonica Herbst & Maniscalco LLP
3305 Jerusalem Avenue, Suite 201
Wantagh, New York 11793
Telephone: (516) 826-6500
Facsimile: (516) 826-0222

This is to verify that the successful bid in the above sale was for the sum of \$ _____.

Victor M. Money Penny
MYC & Associates, Inc.

ATTORNEY INFORMATION

Name: _____
Address: _____
E-Mail: _____
Phone: _____

MEMORANDUM OF SALE -- SECOND HIGHEST BIDDER

The undersigned has this __ day of _____ 2023, agreed to purchase the Debtor’s interest in the ground lease and project for the development of a hotel located at 100-110 South Bridge Street, Staten Island, New York, New York 10309, and related assets (collectively, “Purchased Assets”), from the bankruptcy estate of Richmond Hospitality LLP, and being sold by Richmond Hospitality LLC, Chapter 11 Debtor and Debtor in Possession for the sum of \$ _____, and hereby promises and agrees to comply with the terms and conditions of the sale of said Purchased Assets, as set forth in the annexed Terms and Conditions of Sale.

PRINT NAME OF PURCHASER

PRINT NAME OF PURCHASER

SIGNATURE OF PURCHASER

SIGNATURE OF PURCHASER

Name, title of individual executing for company: NAME: _____
TITLE: _____

ADDRESS

ADDRESS

E-MAIL

E-MAIL

TELEPHONE NUMBER

TELEPHONE NUMBER

FAX NUMBER

FAX NUMBER

Received from _____ the sum of \$ __,000,000, as a non-refundable deposit for the purchase of the Purchased Assets pursuant to the Terms and Conditions of Sale.

Richmond Hospitality LLC
c/o LaMonica Herbst & Maniscalco LLP
3305 Jerusalem Avenue, Suite 201
Wantagh, New York 11793
Telephone: (516) 826-6500
Facsimile: (516) 826-0222

This is to verify that the successful bid in the above sale was for the sum of \$ _____.

Victor M. Moneypenny
MYC & Associates, Inc.

ATTORNEY INFORMATION

Name: _____
Address: _____
E-Mail: _____
Phone: _____