

TERMS AND CONDITIONS OF SALE

1. These Terms and Conditions of Sale (these “Terms of Sale”) are promulgated in connection with the court authorized Public Auction Sale (the “Auction”) of the real property owned by the Nicole Cumberbatch a/k/a Nicole Cumberbatch-Cox d/b/a Gloria’s In & Out III d/b/a Gloria’s In & Out 3 (the “Debtor”) located at 1553 Eastern Parkway, Brooklyn, New York 11233 (the “Real Property”). The Auction shall be conducted by MYC & Associates, Inc. (“MYC”), the Trustee's duly retained real estate broker for the sale contemplated herein.

2. The seller of the Real Property is Debra Kramer, solely in her capacity as the Chapter 7 Trustee (the “Trustee”) of the Debtor’s bankruptcy estate, which chapter 7 case is pending before the United States Bankruptcy Court for the Eastern District of New York (the “Bankruptcy Court”), assigned case number 21-40360 (ESS) before the Honorable Elizabeth S. Stong, United States Bankruptcy Judge. The sale of the Real Property is being conducted pursuant to Sections 363(b), (d), (f), (k) and (m) of the Bankruptcy Code and is subject to approval by the Bankruptcy Court.

3. The Trustee is represented by Rimon P.C. (“Rimon”) with offices at 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753.

4. The Auction will be held on **February 8, 2024 at 11:00 a.m.** (the “Sale Date”), at an online auction to be held by Zoom, subject to any adjournments that the Trustee deems necessary in her sole and absolute discretion. All Qualified Bidders, as defined in paragraph 6 below, must login to the auction by Zoom at that date and time. Announcements will take place by posting on MYC's web site at least thirty (30) days prior to the scheduled Sale Date.

5. The Trustee, in her sole discretion and under her business judgment authority, has accepted an offer from Sarah Lieberman, or an entity to be formed by Sarah Lieberman, who offered a purchase price for the Real Property, under these Terms of Sale, in the amount of \$750,000.00 (the “Stalking Horse Offer”). The Trustee deems the Stalking Horse Offer to be a reasonable and valid purchase offer for the Real Property and shall use the Stalking Horse Offer as the reserve sale price at the Auction, such that the Stalking Horse Offer will be the opening bid at the Auction. At the Auction, any bids to be submitted by a Qualified Bidder (as defined below) other than the Stalking Horse Offer, shall start at \$775,000.00.

6. The Successful Purchaser (as hereinafter defined) of the Real Property will, no later than one (1) hour after the conclusion of the Auction, sign a memorandum of sale (the “Memorandum of Sale”) in accordance with these Terms of Sale.

7. In order to be permitted to bid on the Real Property, **no later than 5:00 p.m. (EST) on February 7, 2024**, each prospective bidder must sign and return these Terms of Sale and deliver it to MYC, together with a certified check or bank check made payable to “Debra Kramer, as Chapter 7 Trustee” in the amount of \$77,500.00 (the “Qualifying Deposit”), which amount shall serve as a partial good faith deposit against payment of the purchase price by such competing prospective bidder (a “Qualified Bidder”) as the Trustee determines to have made the highest and/or best bid for the Real Property (the “Successful Purchaser”).

8. On or before Monday, February 12, 2024, at 11:00 a.m., the Successful Purchaser shall deliver to the Trustee by certified check or bank check made payable to "Debra Kramer, as Chapter 7 Trustee" or by wire in immediately available federal funds, an amount equal to 10% of the high bid (hereinafter the "Purchase Price") realized at Auction, less the Qualifying Deposit (together with the Qualifying Deposit, the "Deposit"). Failure of the Successful Purchaser to tender the Deposit on or before Monday, February 12, 2024, at 11:00 a.m. shall result in an immediate default under the terms of these Terms of Sale and the Memorandum of Sale and shall result in the forfeiture of all earnest monies paid. The Successful Purchaser must execute, and **thereby agree to be bound by these Terms of Sale and the Memorandum of Sale. Promptly after the conclusion of the Auction, MYC will return the Qualifying Deposits to all Qualified Bidders, except for the Successful Purchaser.**

9. The Successful Purchaser must pay the balance of the Purchase Price for the Real Property to the Trustee by certified check or bank check or by wire in immediately available federal funds. The Successful Purchaser must close title to the Real Property at a date that is no more than thirty (30) days after Bankruptcy Court approval of such sale (the "Approval Date"), **TIME BEING OF THE ESSENCE as to the Successful Purchaser**, although such date may be extended solely by the Trustee. Notwithstanding the foregoing, the Trustee shall grant the Successful Purchaser a single thirty (30) day extension (the "Extension"), at the request of the Successful Purchaser, provided the Successful Purchaser posts, in addition to the Deposit, a non-refundable deposit equal to ten (10%) percent of the Purchase Price prior to the thirtieth (30th) day following the Approval Date (the "Additional Deposit"). The Additional Deposit shall be made by certified check or bank check made payable to "Debra Kramer, as Chapter 7 Trustee" or by wire in immediately available federal funds and together with the original deposit shall be deemed the "Deposit". If Successful Purchaser elects for an extension, the Closing shall take place on or before the sixtieth (60th) day following the Approval Date, **TIME BEING OF THE ESSENCE as to the Successful Bidder**. If Successful Purchaser elects to exercise the Extension, the Successful Purchaser shall be responsible for all real estate taxes incurred from the 30th day after the Approval Date through closing and shall pay interest on the Purchase Price at a nine (9%) percent annual rate from the 30th day after the Approval Date through to the actual day of closing.

10. If the Successful Purchaser fails to post the total required ten (10%) percent Deposit on or before Monday, February 12, 2024, at 11:00 a.m., or otherwise perform its obligations under these Terms of Sale ("Successful Purchaser's Default"), the Trustee, at her sole and absolute option, shall be authorized to contact the second highest bidder (the "Second Bidder") to sell the Real Property to the Second Bidder, without any further notice or approval of the Bankruptcy Court and without giving credit for the Deposit forfeited by the Successful Purchaser, and upon such other terms and conditions as the Trustee deems appropriate. Thereafter, the Second Bidder shall be deemed for all benefits and obligations to be the Successful Purchaser.

11. The closing of the transaction contemplated by these Terms of Sale (the "Closing") shall take place at the offices of Rimon, attorneys for the Trustee, at 100 Jericho Quadrangle, Suite 300, Jericho, New York 11753, commencing at 11:00 a.m. (EST) on a date to be determined.

12. The Successful Purchaser shall pay any and all costs and expenses in connection with the Closing related to obtaining a survey; fee title or mortgage insurance; title company endorsement, search and escrow charges; environmental, engineering or other Real Property inspections; appraisals, reports and other costs of property due diligence; and County, State, New York City, or other real property transfer, deed or documentary tax, flip tax, or other taxes imposed upon the sale due in connection with the transfer of the Real Property from the Debtor at Closing. The Successful Purchaser acknowledges that they will be responsible for the completion of any ACRIS forms, if required. The Trustee shall not be required to execute any form of title affidavit (but may in her sole and absolute discretion) and all title exceptions customarily omitted from a title policy on account of such title affidavit shall be deemed permitted exceptions. The Successful Purchaser acknowledges that it will be responsible for the preparation of all Closing documents required including, but not limited to, transfer tax forms.

13. In connection with the Closing and Closing date, the Successful Purchaser is hereby given notice that **TIME IS OF THE ESSENCE against the Successful Purchaser and the failure of the Successful Purchaser to close for any reason whatsoever (except as otherwise provided herein) including its failure to pay the balance of the Purchase Price on the Closing date, will result in an immediate forfeiture of the Deposit and the termination of the Successful Purchaser's right to acquire the Real Property under these Terms of Sale and the Memorandum of Sale.**

14. The Successful Purchaser shall be obligated to close title to the Real Property and, except as expressly set forth herein, there is no contingency of any kind or nature that will permit the Successful Purchaser to cancel or avoid its obligation under these Terms of Sale and the Memorandum of Sale other than the Trustee's inability to deliver insurable title to the Property. Further, the Successful Purchaser shall have demonstrated, to the satisfaction of MYC and the Trustee, evidence of its ability to conclude the transaction upon these Terms of Sale and the Memorandum of Sale, without delay. The Trustee reserves the right to reject any Purchaser or Qualified Bidder who the Trustee believes, in her sole discretion, is not financially capable of consummating the purchase of the Real Property. Expenses incurred by the Successful Purchaser, or any other Qualified Bidder, concerning any due diligence shall be the sole responsibility of such party and, under no circumstances shall MYC or the Trustee be responsible for, or pay, such expenses.

15. MYC, the Trustee, and their professionals have not made and do not make any representations or warranties as to the physical condition, expenses, operations, value of the land or buildings thereon, or any other matter or thing affecting or related to the Real Property or this Auction, which might be pertinent to the purchase of the Real Property, including, without limitation, (i) the current or future real estate tax liability, assessment or valuation of the Real Property; (ii) the potential qualification of the Real Property 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; (iii) the compliance or noncompliance of the Real Property, 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; (iv) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Real Property from any source, including, but not limited to,

any state, city or federal government or institutional lender; (v) the current or future use of the Real Property; (vi) the current or future rents, other operating incomes or expenses; (vii) the presence or absence of any laws, ordinances, rules or regulations issued by any governmental authority, agency or board and any violations thereof; (viii) the compliance or non-compliance with environmental laws and the presence or absence of underground fuel storage tanks, any asbestos, any lead paint or other hazardous materials anywhere on the Real Property, or notes or notices of violations of law or municipal ordinances, orders or requirements noted or issued by any governmental department, agency or bureau having authority as to but not limited to lands, housing, buildings, fire, health, environment and labor conditions affecting the property. Each Qualified Bidder hereby expressly agrees and acknowledges that no such representations or warranties have been made.

16. MYC, the Trustee, and their professionals shall not be liable or bound in any manner by expressed or implied warranties, guarantees, promises, statements, representations or information pertaining to the Real Property, made or furnished by MYC or the Trustee or any real estate broker, agent, employee, servant or other person or professional representing or purporting to represent MYC or Trustee unless such warranties, guaranties, promises, statements, representations or information are expressly and specifically set forth in writing within these Terms of Sale and the Memorandum of Sale.

17. The Real Property is being sold "**AS IS**" "**WHERE IS**", "**WITH ALL FAULTS**", and vacant, without any representations, covenants, guarantees or warranties of any kind or nature, and free and clear of any liens, claims, or encumbrances of whatever kind or nature, with such liens, if any, to attach to the proceeds of sale in such order and priority as they existed immediately prior to the Closing, and sale of the Real Property is subject to, among other things (a) any state of facts that an accurate survey may show; (b) any covenants, restrictions and easements of record; (c) any state of facts a physical inspection may show; (d) any building or zoning ordinances or other applicable municipal regulations and violations thereof; and (e) environmental conditions; provided, however, **the Real Property shall be delivered free and clear of any and all monetary liens**. By delivering their respective Qualifying Deposits, all Qualified Bidders acknowledge that they have had the opportunity to review and inspect the Real Property, the state of title thereof and laws, rules and regulations applicable thereto, and will rely solely thereon and on their own independent investigations and inspections of the Property in making their bids. Neither MYC, the Trustee, nor any of their collective representatives make any representations or warranties with respect to the permissible uses of the Real Property including, but not limited to, the zoning of the Real Property. All Qualified Bidders acknowledge that they have conducted their own due diligence in connection with the Real Property and are not relying on any information provided by MYC, the Trustee, or their professionals. The Real Property will be sold subject to any and all violations requiring corrective action.

18. The Successful Purchaser has five (5) days from the Approval Date to order title, copy of which shall promptly be provided to RIMON. The Successful Purchaser has twenty (20) days from the Approval Date to advise RIMON (by electronic mail to haley.trust@rimonlaw.com) of any and all title issues or defects that would in any way be an impediment to the Closing on the sale of the Real Property. Failure of the Successful Purchaser to advise RIMON within twenty (20) days from the Approval Date of any such title issues or defects shall be deemed a waiver of any and all rights to raise any such title issues or defects,

with the Trustee reserving the right to specify a particular title company to insure title, provided said company is licensed in the State of New York.

19. The Trustee shall convey the Real Property by delivery of a Trustee's Deed. The quality of title shall be that which any reputable title insurance company authorized to do business in the State of New York is willing to approve and insure. If the Successful Purchaser is unable to obtain title insurance, subject to the permissible exceptions contained herein, the Trustee may, at her option, arrange for the issuance of a title insurance policy by such a company at the sole cost and expense of the Successful Purchaser.

20. Nothing contained in these Terms 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 of the terms and conditions set forth in these Terms of Sale are subject to modification as may be directed by the Trustee or by the Court. The Trustee reserves the right to modify these Terms of Sale at the Auction or thereafter to maintain consistency with the provisions of the Bankruptcy Code and/or prior orders of the Court.

21. These Terms of Sale will be read into the record, or specifically incorporated by reference, at the Auction of the Real Property. By making a bid for the Real Property, all Qualified Bidders will be deemed to have acknowledged having read and understood these Terms of Sale and have agreed to be bound by them.

22. If the Trustee is unable to deliver the Real Property in accordance with these Terms of Sale for any reason whatsoever, the Trustee's only obligation will be to refund the Deposit, without interest, to the Successful Purchaser and upon such refund, the Successful Purchaser will have no claim or recourse against the Trustee, MYC, or their professionals, and shall have no further rights under these Terms of Sale or Memorandum of Sale.

23. The Trustee reserves her right to withdraw the Real Property from the Auction, either prior, or subsequent to the Auction, for any reason whatsoever, as she deems necessary or appropriate.

24. The Auction of the Real Property is subject to confirmation by the Trustee and pursuant to a further order of the Bankruptcy Court confirming the Auction.

25. Rimon shall notify the Successful Purchaser whether the Auction is confirmed.

26. The Bankruptcy Court shall determine any disputes concerning the Auction of the Property. By participating in the Auction, all Purchasers consent to the jurisdiction of the Bankruptcy Court to determine such disputes under the Debtor's pending case.

27. Pursuant to E.D.N.Y. L.B.R. 6004-1 no appraiser, auctioneer or officer, director, stockholder, agent, employee, or insider of any appraiser, or relative of any of the foregoing, shall purchase directly or indirectly, or have a financial interest in the purchase of, any Real Property of the estate that the appraiser has been employed to appraise or sell, including, but not limited to the Property.

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

By: _____

Date: _____

MEMORANDUM OF SALE – SUCCESSFUL BIDDER

The undersigned purchaser has this 8th day of February, 2024, agreed to purchase the Debtor’s right, title, and interest in and to the real property known as and located at 1553 Eastern Parkway, Brooklyn, New York 11233 (the "Real Property") pursuant to the Terms and Conditions of Sale (the "Terms of Sale"), to which this Memorandum is attached and made a part thereof, from Debra Kramer, (the "Trustee") in her capacity as the chapter 7 Trustee of the estate of Nicole Cumberbatch a/k/a Nicole Cumberbatch-Cox d/b/a Gloria’s In & Out III d/b/a Gloria’s In & Out 3 (the "Debtor"), 21-40360 (ESS), pending in the United States Bankruptcy Court for the Eastern District of New York, and being sold by the Trustee for the highest and/or best offer as the Trustee in her sole discretion determines, subject to Bankruptcy Court approval, and hereby promises and agrees to comply with the terms and conditions of the Auction for the Real Property, as set forth in the annexed Terms of Sale.

PURCHASER (Signature)

PURCHASER (Signature)

PRINT NAME OF PURCHASER

PRINT NAME OF PURCHASER

ADDRESS

ADDRESS

TELEPHONE NUMBER

TELEPHONE NUMBER

EMAIL

EMAIL

Received from _____ the sum of \$_____ as a non-refundable deposit for the purchase of the Real Property pursuant to the Terms of Sale, except to the extent as provided in the Terms of Sale.

Debra Kramer, Chapter 7 Trustee
Rimon P.C., Counsel to the Trustee
100 Jericho Quadrangle, Suite 300
Jericho, NY 11753
(516) 479-6300

This is to verify that the offer for the above captioned real property is for the sum of \$_____.

MYC & Associates, Inc.

ATTORNEY INFORMATION

Name _____

Address _____

Phone _____