

IN THE MATTER OF
1st Hospitality, LLC
Case No. BK 22-41002
Motion to Sell

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEBRASKA**

In re:) Chapter 11
)
1st Hospitality, LLC,) Case No. BK 22-41002-TLS
)
Debtor.)
)
Tax I.D. No. 20-5583031)

**EXHIBIT B TO MOTION FOR INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363,
FED. R. BANK P. 6004, AND LOCAL R. BANK. P. 6004-1: (I) AUTHORIZING AND
APPROVING THE SALE OF CERTAIN ASSETS OF DEBTOR FREE AND CLEAR OF LIENS,
CLAIMS, INTERESTS, AND ENCUMBRANCES; (II) APPROVE AUCTION AND BID
PROCEDURES AND (II) GRANTING RELATED RELIEF**

Assets to be Sold

All assets of Debtor are being offered for sale (the “Assets”), including:

- (1) all assets identified in the Debtor’s bankruptcy schedules;
- (2) all inventory, whether finished, work in process or raw materials;
- (3) all intellectual property rights;
- (4) all contractual or leasehold rights to be assumed and assigned by Debtor; and
- (5) all assets acquired by the Debtor after the filing of this bankruptcy case.

Provided however, that Debtor, unless otherwise agreed to in writing, will not be offering for sale its cash, accounts receivable, causes of action possessed or owned by Debtor (including any recoveries related thereto), causes of action existing under the bankruptcy code, including Title 5 thereof (including any recoveries related thereto); and any assets that have been sold by Debtor during the pendency of this bankruptcy case.

Auction, Generally

Debtor will conduct a public auction of Debtor’s assets located at 117 Cody Avenue, Alliance, NE 69301 (the “Property”) through Scott Moore and Lee and Associates (“Auctioneer”), which shall direct and preside over the auction in a commercially reasonable manner. The auction shall be open to the general public.

Auction Date

The Property will be sold at public auction to be conducted on May 15, 2023, with bidding open through closing of the Auction or an alternate date agreed upon in writing, and at a time and location to be reasonably agreed upon by the Debtor and Auctioneer.

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Qualification of Bidders

Unless otherwise ordered by the Bankruptcy Court, for cause shown, or as otherwise determined by Debtor in consultation with Unity Bank and Auctioneer, in order to participate in the Bidding Process, each interested person or entity must meet the below requirements to be considered a Qualified Bidder:

- a. At the time of the Auction, any Qualified Bidder, in order to receive a bid number, must:
 - i. Provide written evidence of the bidder's proof of funds, which may be in the form of a pre-qualification letter without any financing contingencies, current bank statements, sworn financial statements, and the like.
 - ii. deliver to an enforceable Auctioneer a Purchase and Sale Agreement ("Sale Agreement") executed by such bidder, which does not contain any financing contingencies, a copy of which is attached hereto as Exhibit A.
 - iii. A deposit (a "Deposit") in the amount of \$5,000.00 immediately available funds payable to Debtor, which shall be: (i) if by certified check, retained by the Auctioneer and/or Debtor's attorneys; or (ii) if by wire transfer, held in escrow by an escrow company designated prior to the Auction Date by Debtor, not subject to the claims, liens, security interests or encumbrances of any party, except as specified herein. Deposits shall be returned to all Qualified Bidders other than the Successful Bidder(s) and the Back-up Bidder(s): (i) if by certified check, at the time the Auction closes; or (ii) if held by the escrow company, within three (3) business days after the close of the Auction. If the sale of the Assets to the Successful Bidder closes, the Successful Bidder's Deposit shall be applied to the purchase price at closing in accordance with the purchase agreement between Debtor and such Successful Bidder, and, within three (3) business days after the closing of the Sale to the Successful Bidder, the Back-up Bidder's Deposit shall be returned. If a Successful Bidder fails to consummate an approved Sale because of a breach or failure to perform on the part of such Successful Bidder and Debtor is not then in material breach of the purchase agreement, Debtor will not have any obligation to return the Deposit deposited by such Successful Bidder and such Deposit will irrevocably become the property of Debtor and shall not be credited against the purchase price of the subsequent buyer (in addition to Debtor reserving all other rights and remedies against the Successful Bidder). In such instance, the Back-up Bidder's deposit shall be applied to the purchase price at closing of the Sale with the Back-up Bidder.
- b. Debtor may modify waive, or impose additional Participation Requirements for certain Participants in its sole and absolute discretion or at the request of the seller, here the Debtor.

Due Diligence

Debtor shall afford each interested party due diligence access to the Assets and Debtor' business. Due diligence access may include management presentations as may be scheduled by Debtor, access to data rooms, on-site inspections and such other matters that an interested party may reasonably request. Requests for due diligence materials/inspections must be directed to the Auctioneer and/or Debtor. The Auctioneer may conduct one or more open houses at the Property as well.

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Right to Credit Bid

Unity Bank may make one or more credit bids for some or all of the Assets securing their allowed claims to the fullest extent permitted by §363(k) of the Bankruptcy Code. Unity Bank shall be permitted to credit bid all or a portion of their respective debts as part of their respective or collective credit bid at or prior to the Auction (defined below), subject to §363(k) of the Bankruptcy Code, and shall not be required to post a Deposit in any case. A credit bid by Unity Bank (as to any portion(s) of the Assets or all of the Assets) and all higher credit bids made by Unity Bank during the Auction shall be deemed in all respects equal in value, and in its economic effect on Debtor's estate, to an all-cash bid in an amount equal to the face value of such credit bid on a dollar-for-dollar basis. Provided however that the total accepted credit bid or bids of the Lenders can never exceed the amount Unity Bank is owed, plus any recoverable fees as of the auction date and any assessments of costs and expenses allowed by order of the Bankruptcy Court under 11 U.S.C. §506(c).

Subject to §363(k) of the Bankruptcy Code, Unity Bank may credit bid notwithstanding that a final order allowing such Unity Bank's claims against Debtor may not be entered prior to the Auction. To the extent necessary, the Bankruptcy Court may estimate the amount of Unity Bank's claim(s) pursuant to 11 U.S.C. §502(c) for purposes of determining the maximum amount of credit bid(s).

Other than as set forth in this section, notwithstanding anything contained in the Bidding Procedures to the contrary, nothing herein will in any way impair, alter or otherwise affect the right of the Lenders to "credit bid" pursuant to §363(k) of the Bankruptcy Code.

"As Is, Where Is"

The sale of the Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by Debtor, its agents or its estate, other than a warranty of title. By submitting a bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures.

Free and Clear of Any and All Interests

Except as otherwise provided in the Successful Bidder's purchase agreement, all of Debtor's right, title and interest in and to the Assets subject thereto shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon other than any implied restrictive covenants that run with land (collectively, the "Interests") to the maximum extent permitted by §363 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Assets with the same validity and priority as such Interests applied against the Assets, which proceeds shall be paid directly to Unity Bank, to the extent of Unity Bank's secured prepetition indebtedness and any post-petition indebtedness allowed by order of the Bankruptcy Court, and any remaining proceeds shall be paid to the Debtor.

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The Auction and Auction Procedures

An auction (the "Auction") shall be conducted at a time and place to be identified and beginning at 10:00 a.m. (Central Standard Time) on May 15, 2023, or such other place and time as Debtor shall notify all interested parties.

At the Auction, bidding will begin at the purchase price stated in the highest or otherwise best Qualified Bid (the identity of which shall be announced by the Auctioneer and/or Debtor at the commencement of the Auction), and will subsequently continue in minimum increments to be determined at the discretion of Debtor in consultation with Auctioneer. The bidding shall be continuous and competitive and shall not end until all bidders have submitted their last and best offers. Qualified Bidders will be permitted to increase their bids at the Auction, in accordance with the terms hereof, as many times as they wish.

As soon as practicable after the conclusion of the Auction, Debtor shall, with the consultation with Unity Bank and the Auctioneer identify the highest or otherwise best offer(s) for the Assets (to the extent any such bid is acceptable to Debtor each a "Successful Bid" and each bidder making such bid, a "Successful Bidder") and the second highest and best offer for the purchase of the Assets (the "Back-up Bid" and the bidder making such bid, the "Back-up Bidder"); provided however, that the selection of a Successful Bid that is for less than the amount of any credit bid or bids offered by Unity Bank or that could be offered by Unity Bank for the Assets or any portion thereof is subject to the Lenders' consent.

Acceptance of Qualified Bids

Debtor shall sell the Assets to any Successful Bidder only upon the approval of a Successful Bid by the Bankruptcy Court after the Sale Hearing. Debtor' presentation of a particular Qualified Bid to the Bankruptcy Court for approval does not constitute Debtor' acceptance of the bid. Debtor will be deemed to have accepted a bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing.

Sale Hearing

A hearing to approve the Sale (the "Sale Hearing") will be scheduled and noticed by separate order of the Bankruptcy Court. At the Sale Hearing, Debtor, in consultation with Unity Bank, may present any Successful Bids to the Bankruptcy Court for approval or, in the event of any default by any such Successful Bidder, the Back-up Bid. Debtor reserves all rights not to submit any bid that is not acceptable to Debtor for approval to the Bankruptcy Court. Following the approval of the Sale of all or a portion of the Assets to any Successful Bidder at the Sale Hearing, if such Successful Bidder fails to consummate an approved Sale, Debtor shall be authorized, but not required, to deem the Back-up Bid (including a credit bid by Unity Bank), as disclosed at the Sale Hearing, the Successful Bid, and Debtor shall be authorized, but not required, to consummate the sale with the Back-up Bidder without further order of the Bankruptcy Court. Debtor, in the exercise of its business judgment, in consultation with Unity Bank, reserve its rights to change the date of the Sale Hearing in order to achieve the maximum value for the Assets without notice other than by announcement of the adjournment at the Sale Hearing.

Objections, if any, to the Sale shall be filed on the docket of the Bankruptcy Court and shall be served such that each objection is actually received by Debtor and any other parties so ordered by the Bankruptcy Court on or before any date established by the Bankruptcy Court.

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Modifications

If necessary to satisfy fiduciary duties, Debtor, in consultation with Unity Bank, may amend or supplement these Bidding Procedures at any time in any manner that is consistent with these Bidding Procedures and will best promote the goals of the auction.

Terms & Conditions of Sale:

In order to participate at the auction, online or in person, any bidder must provide:

- Written evidence of the bidder's proof of funds, which may be in the form of a pre-qualification letter signed by a bank officer, without any financing contingencies, current bank statements, sworn financial statements, and the like.
- Deliver to Auctioneer an executed Purchase and Sale Agreement ("Sale Agreement") signed by such bidder, which does not contain any financing contingencies, a copy of which is available upon request and delivered: (i) if from an on-line bidder, executed upon conclusion of sale via DocuSign; or (ii) if from in-person bidder, executed at the conclusion of the auction.
- A deposit (a "Deposit") in the amount of \$5,000.00 immediately available funds payable to Seller, which shall be: (i) if by certified check, retained by the Auctioneer and/or Seller's attorneys; or (ii) if by wire transfer, held in escrow by a DRI Title and Escrow, 13057 W Center Rd #1, Omaha, NE 68144, not subject to the claims, liens, security interests or encumbrances of any party. Deposits shall be returned to all bidders other than the Successful Bidder(s) and the Back-up Bidder(s): (i) if by certified check, at the time the Auction closes; or (ii) if held by the escrow company, within three (3) business days after the close of the Auction. If the sale of the Assets to the Successful Bidder closes, the Successful Bidder's Deposit shall be applied to the purchase price at closing in accordance with the purchase agreement between Seller and such Successful Bidder, and, within three (3) business days after the closing of the Sale to the Successful Bidder, the Back-up Bidder's Deposit shall be returned. If a Successful Bidder fails to consummate an approved Sale because of a breach or failure to perform on the part of such Successful Bidder and Seller is not then in material breach of the purchase agreement, Seller will not have any obligation to return the Deposit deposited by such Successful Bidder and such Deposit will irrevocably become the property of Seller and shall not be credited against the purchase price of the subsequent buyer (in addition to Seller reserving all other rights and remedies against the Successful Bidder). In such instance, the Back-up Bidder's deposit shall be applied to the purchase price at closing of the Sale with the Back-up Bidder.

The consummation of the transaction contemplated hereby (the "Closing") will take place at the office of Seller's counsel in Omaha, Nebraska, within three business days after entry of the Sale Order by the Bankruptcy Court (the "Closing Date") as described in the Purchase Agreement. Seller's obligations under the Purchase Agreement shall not be enforceable and are subject to approval by the United States Bankruptcy Court for the District of Nebraska.

A Buyer's Premium of 3% will be added to the sale price established at the auction to determine the overall purchase price. Registration to bid and bidding will take place at www.partnersbid.com. All on-line / internet bidders must register prior to bidding on the Property.

The sale of the Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by Seller, its agents or its estate, including the Auctioneer, other than a warranty of title. By submitting a bid, each bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction.

All interested parties are encouraged to inspect the property prior to the real estate auction. Buyer shall rely entirely on their own information and inspection of the property.

Announcements made day of sale take precedence over all written material.

Additional information is available in the Bidding and Auction procedures approved by the United States Bankruptcy Court for the District of Nebraska.

For a Full Diligence Package, contact Auctioneer, S. Scott Moore, at 402 677 3004