

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of _____, 2023 (the "Effective Date"), by and between 1st Hospitality, LLC (the "Seller") and _____ ("Purchaser") with reference to the following.

RECITALS

A. Seller has commenced cases (lead case number 22-41002-TLS) (the "Bankruptcy Case") under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, as amended (the "Bankruptcy Code") by filing a voluntary petition in the United States Bankruptcy Court for the District of Nebraska (the "Bankruptcy Court"). The date of commencement of the Bankruptcy Case is referred to in this Agreement as the "Petition Date."

NOW, THEREFORE, in consideration of the foregoing and the agreements of the parties set forth herein, Seller and Purchaser agree as follows.

1. PURCHASE AND SALE OF ASSETS. On and subject to the terms and conditions stated in this Agreement, Seller shall sell to Purchaser the Assets identified in Exhibit A (the "Assets") to Purchaser and Purchaser shall purchase the Assets from Seller

2. ---RESERVED---.

3. PURCHASE PRICE AND DEPOSIT AND PRORATIONS.

3.1 Payment. The purchase price (the "Purchase Price") for the Assets will be the sum of \$ _____ times 3% (Buyer's Premium). Total Purchase Price \$ _____. The Purchase Price will be payable by wire transfer of immediately available funds at the Closing described below. The Buyer's Premium of 3% will be paid by Buyer at closing and be referenced on the Buyer's Settlement Statement.

3.2 Deposit. Purchaser has delivered by certified check or deposited by wire transfer to DRI Title and Escrow, 13057 W Center Rd #1, Omaha, NE 68144 (the "Escrow Company"), the sum of \$5,000, in the form of cash or other immediately available funds payable to Seller (together with all interest thereon, the "Deposit") to be held in escrow. At Closing, the Deposit shall be delivered to the Seller and credit it against the Purchase Price or shall return the Deposit before then as set forth herein.

3.3 Real Estate Taxes. Real estate taxes for 2022, due and payable in 2023 payable prior to the Closing Date and shall be paid by the Purchase at the Closing Date, and real estate taxes thereafter shall be the responsibility of the Purchaser.

3.4 Recording Fees. It is contemplated that this sale is governed by a court order entered pursuant to the United States Bankruptcy Code and the sale of Seller's real property is not subject to the Nebraska Documentary Stamp Tax fees pursuant to Neb. Rev. Stat. §76-902.

4. REPRESENTATIONS AND WARRANTIES.

4.1 Seller's Representations and Warranties.

4.1.1 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 Seller, its agents or its bankruptcy estate, other than a warranty of title. By submitting this contract, Purchaser 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, 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. After execution of this Agreement, there will no further right of inspection of the Property until after the Closing contemplated hereby; provided however, that Purchaser may be entitled to a final walkthrough of the property to ensure that no material damage to the Property has occurred between the execution of this Agreement and the Closing.

4.2 Purchaser’s Representations and Warranties. Purchaser represents to Seller that, as of the Effective Date:

4.2.1 Organization. Purchaser is duly formed, validly existing and in good standing under the laws of the state of its organization.

4.2.2 Authority/Consent. Purchaser possesses all requisite power and authority, has taken or will by Closing have taken all actions required by its organizational documents and applicable law, and has obtained all necessary consents, to execute and deliver this Agreement and to consummate the transactions contemplated in this Agreement.

4.2.3 Nature of Transaction. The purchase of the Assets is not contingent upon financing of any nature or kind.

5. COVENANTS PRIOR TO CLOSING.

5.1 Insurance. Any risk of loss to the Assets shall be borne by the Seller until the Closing Date. In the event, prior to closing, the structures on the Property are materially damaged by fire, explosion or any other cause, Purchaser shall have the right to rescind this agreement, and Seller shall refund the Deposit to Purchaser. Purchaser agrees to provide his own hazard insurance.

6. CONDITIONS PRECEDENT TO CLOSING.

6.1 Conditions Precedent to Purchaser’s Obligations to Close. Purchaser’s obligation to purchase the Assets is subject to satisfaction on or before the Closing Date (as such date may be extended as provided herein) of the following conditions, any of which may be waived in writing by Purchaser in Purchaser’s sole and absolute discretion:

6.1.1 Covenants. Seller shall have performed and observed in all material respects all covenants of Seller under this Agreement.

6.2 Conditions Precedent to Seller’s Obligation to Close. Seller’s obligation to sell the Assets is subject to satisfaction, on or before the Closing Date (as such date may be extended as provided herein) of the following conditions, any of which may be waived in writing by Seller in Seller’s sole and absolute discretion:

6.2.1 Covenants. Purchaser shall have performed and observed, in all material respects, all covenants of Purchaser under this Agreement.

6.2.2 Representations and Warranties. All representations and warranties of Purchaser set forth in this Agreement shall be true and correct in all material respects as if made on the Closing Date.

6.3 Bankruptcy Conditions. The obligations of each Party to consummate the transactions contemplated by this Agreement shall be subject to:

6.3.1 Entry of Order Approving Sale. The entry the Bankruptcy Court shall have entered a final non-appealable order authorizing the free-and-clear sale of the Assets to Purchaser pursuant to this Agreement (the "Sale Order"), which among other things, pursuant to sections 105, 363 and 365 of the Bankruptcy Code that:

6.3.1.1 approves this Agreement and authorizes the sale of the Assets by Seller to Purchaser on the terms set forth herein free and clear of liens pursuant to 11 U.S.C. §363(f);

6.3.1.2 provides that the sale of the Assets vests Purchaser with all right, title and interest of Seller in, to and under the Assets free and clear of all encumbrances and on an "AS IS" and "WHERE IS" basis, without any representations or warranties of any kind (including no representations or warranties as to merchantability, fitness or use) other than those specifically set forth in this Agreement;

6.3.1.3 finds that Purchaser is a good faith purchaser under section 363(m) of the Bankruptcy Code and is entitled to the protections thereof;

6.3.1.4 finds that the sale of the Assets to Purchaser pursuant to the terms of this Agreement constitutes a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and the laws of the states in which Seller is incorporated and any other applicable non-bankruptcy laws;

6.3.1.5 provides that the provisions of the Sale Order are non-severable and mutually dependent; and

6.3.1.6 authorizes Seller to execute such other documents and instruments and take such other actions as may be reasonably necessary or appropriate to allow the consummation of the transactions contemplated hereby.

6.4 Failure of a Condition.

6.4.1 In the event that any condition precedent to Closing in this Section 6 has not been satisfied on or before the Closing Date, then the party whose conditions to Closing have not been satisfied (the "Unsatisfied Party") shall give notice to the other of the condition or conditions which the Unsatisfied Party asserts are not satisfied. In such notice the Unsatisfied Party shall also elect either (i) to extend the Closing Date for a reasonable period of time (not to exceed twenty (20) days) to allow the satisfaction of the applicable condition, or (ii) to terminate this Agreement, whereupon neither party shall have any further rights or obligations hereunder (other than any obligations of either party that expressly survive termination), except if such failure of a condition is due to a default by one of the parties, in which event the non-defaulting party shall have those rights and remedies set forth in Article 9.

6.4.2 If the transaction contemplated by this Agreement closes, then the parties shall be deemed to have waived any and all unmet or unsatisfied conditions, other than any unmet or unsatisfied conditions arising out of a breach by either party of any of its representations and warranties hereunder of which the other party has no knowledge as of Closing.

7. CLOSING.

7.1 Closing Date. The consummation of the transaction contemplated hereby (the "Closing") will take place at the office of Escrow Company, within three business days on or before June 18, 2023 (the "Closing Date"); provided however, that the Closing Date may be extended by Seller as necessary to obtain approval of the sale and entry of the Sale Order by the Bankruptcy Court. The Closing may be performed "by mail" so as not to require the physical presence of the parties at the applicable location.

7.2 Seller's Obligations at the Closing. At the Closing, Seller will do, or cause to be done, the following:

7.2.1 Closing Documents. Seller shall execute, acknowledge (if necessary) and deliver originals of the following documents:

7.2.1.1 A Debtor-in-Possession deed

7.2.1.2 A Bill of Sale; and

7.2.1.3 A certified, recordable copy of the Sale Order

7.2.1.4 Such other documents as may reasonably be required by the Escrow Company to facilitate the Closing.

7.2.2 Possession. Seller will deliver possession of the Assets.

7.3 Purchaser's Obligations at the Closing. At the Closing, Purchaser will do, or cause to be done, the following:

7.3.1 Payment of Purchase Price. At Closing, Purchaser will pay to Seller the Purchase Price, less the Deposit, in immediately available funds.

7.3.2 Closing Documents. Seller shall execute, acknowledge (if necessary) and deliver originals such other documents as may reasonably be required by the Escrow Company to facilitate the Closing.

8. RISK OF LOSS, DAMAGE, CONDEMNATION.

8.1 Risk of Loss. Risk of loss for damage to the Assets, or any part thereof, by fire or other casualty from the Effective Date through the Closing Date will be on Seller, except for any damage or liabilities caused by Purchaser, its agents, representatives, invitees, employees or contractors.

8.2 Damage. If, prior to the Closing, all or a material portion of the Assets is damaged by fire or any other cause whatsoever, Seller shall promptly give Purchaser written notice of such damage.

9. REMEDIES AND ADDITIONAL COVENANTS.

9.1 Seller Default. In the event Seller fails to perform any of its covenants in any material respect, and such breach or failure shall continue for a period of ten (10) Business Days after notice thereof from Purchaser, then Purchaser's sole and exclusive remedies shall to terminate this Agreement by giving written notice thereof to Seller prior to or at the Closing, in which event the Deposit shall be returned to Purchaser, and, after the return to Purchaser of the Deposit, neither Seller nor Purchaser will have any further rights or obligations under this Agreement, except for any obligations that expressly survive termination. In no event whatsoever shall Purchaser be entitled to any damages, rights or remedies against Seller as a result of any default of Seller hereunder, other than as specifically set forth in this Agreement.

9.2 Purchaser Default. The parties acknowledge and agree that Seller should be entitled to compensation for any detriment suffered if Purchaser breaches any of its representations or warranties or fails to perform any of its covenants in any material respect but agree that it would be extremely difficult to ascertain the extent of the actual detriment Seller would suffer as a result of such breach and/or failure. Consequently, if Purchaser breaches any of its representations or warranties (other than breaches of representations or warranties resulting from (i) changes in Purchaser's knowledge and/or (ii) conditions or events outside of Purchaser's reasonable control), fails to perform any of its covenants in any material respect, or otherwise defaults in its obligations hereunder, and such breach, failure or other default shall continue for a period of ten (10) Business Days after notice thereof from Seller (it being agreed, however, that such notice and cure period shall not be applicable to (a) Purchaser's failure timely to deliver the Deposit the Bank or (b) Purchaser's failure timely to consummate this Agreement), then Seller shall be entitled to terminate this Agreement by giving written notice thereof to Purchaser prior to or at the Closing, in which event the Deposit shall be irrevocably retained by Seller. Nothing herein shall be construed as a waiver of any other any of Seller's rights and remedies afforded by law or equity, and may be exercised concurrently, independently or successively.

10. BROKERAGE COMMISSION.

10.1 ---Excluded---

11. NOTICES.

11.1 Written Notice. All notices, demands and requests which may be given or which are required to be given by either party to the other party under this Agreement must be in writing.

11.2 Method of Transmittal. All notices, demands, requests or other communications required or permitted to be given hereunder must be sent (i) by United States certified mail, postage fully prepaid, return receipt requested, (ii) by hand delivery, (iii) by Federal Express or a similar nationally recognized overnight courier service, (iv) by facsimile with both telephonic confirmation and a confirmation copy delivered by another method set forth in this Section, or (v) by electronic mail, with receipt confirmed by the receiving party. All such notices, demands, requests or other communications shall be deemed to have been given for all purposes of this Agreement upon the date of receipt or refusal, except that whenever under this Agreement a notice is either received on a day which is not a Business Day or is required to be delivered on or before a specific day which is not a Business Day, the day of receipt or required delivery shall automatically be extended to the next Business Day.

11.3 Addresses. The addresses for proper notice under this Agreement are as follows:

If to Seller:

With a copy to:

If to Purchaser:

With a copy to:

Either party may from time to time by written notice to the other party designate a different address for notices within the United States of America.

12. ASSIGNMENT. Neither party shall have the right to assign this Agreement without the prior written consent of the other, which consent may be granted or withheld in the sole and absolute discretion of the party whose consent has been requested; provided, however, that at Closing Purchaser shall have the right to assign this Agreement to any entity that controls, is controlled by or is under common control with, Purchaser. Any attempted assignment of this Agreement in violation of the foregoing sentence shall, at the option of the non-assigning party, be void and without force or effect.

13. MISCELLANEOUS.

13.1 Entire Agreement. This Agreement embodies the entire agreement between the parties and cannot be varied except by the written agreement of the parties and supersedes all prior agreements and undertakings.

13.2 Modifications. This Agreement may not be modified except by the written agreement of the parties.

13.3 Gender and Number. Words of any gender used in this Agreement will be construed to include any other gender and words in the singular number will be construed to include the plural, and vice versa, unless the context requires otherwise.

13.4 Captions. The captions used in connection with the Articles, Sections and Subsections of this Agreement are for convenience only and will not be deemed to expand or limit the meaning of the language of this Agreement.

13.5 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties hereto and, subject to Article 122, their respective legal representatives, successors and assigns.

13.6 Controlling Law. This Agreement will be construed under, governed by and enforced in accordance with the laws of the State of Nebraska.

13.7 Exhibits. All exhibits, attachments, annexed instruments and addenda referred to herein will be considered a part hereof for all purposes with the same force and effect as if copied verbatim herein.

13.8 No Rule of Construction. Seller and Purchaser have each been represented by counsel in the negotiations and preparation of this Agreement; therefore, this Agreement will be deemed to be drafted by both Seller and Purchaser, and no rule of construction will be invoked respecting the authorship of this Agreement.

13.9 Severability. In the event any one or more of the provisions contained in this Agreement (except the provisions relating to Seller's obligations to convey the Assets and Purchaser's obligation to pay the Purchase Price, the invalidity of either of which shall cause this Agreement to be null and void) are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein, provided, however, that the parties hereto shall endeavor in good faith to rewrite the affected provision to make it (i) valid and (ii) consistent with the intent of the original provision.

13.10 Time of Essence. Time is important to both Seller and Purchaser in the performance of this Agreement, and both parties have agreed that TIME IS OF THE ESSENCE with respect to any date set out in this Agreement.

13.11 Business Days. "Business Day" means any day on which business is generally transacted by banks in the jurisdiction in which the Assets are situated. If the final date of any period which is set out in any paragraph of this Agreement falls upon a day which is not a Business Day, then, and in such event, the time of such period will be extended to the next Business Day.

13.12 No Memorandum; Confidentiality. Purchaser and Seller agree not to record this Agreement or any memorandum hereof. Purchaser agrees to hold the Property Information in strict confidence, and will not disclose such information to any person other than directors, officers, employees and agents of each, as well as to consultants, banks or other third parties working with Purchaser in connection with the transaction, in each case who need to know such information for the purpose of consummating this transaction. This prohibition will not be applicable to disclosure of information required by applicable law, rule or regulation and will survive the termination of this Agreement for one (1) year, but will not survive a Closing to Purchaser.

13.13 Attorneys' Fees and Costs. In the event either party is required to resort to litigation to enforce its rights under this Agreement, the prevailing party in such litigation will be entitled to collect from the other party all costs, expenses and attorneys' fees incurred in connection with such action.

13.14 Counterparts and Expiration of Offer. This Agreement may be executed in multiple counterparts which shall together constitute a single document. However, this Agreement shall not be effective unless and until all counterpart signatures have been obtained. An unsigned draft of this Agreement shall not be considered an offer by either party.

13.15 Waiver of Jury Trial. EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER PARTY IN CONNECTION WITH ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE RELATIONSHIP OF SELLER AND PURCHASER HEREUNDER, PURCHASER'S OWNERSHIP OR USE OF THE PROPERTY, AND/OR ANY CLAIMS OF INJURY OR DAMAGE.

13.16 Anti-Money Laundering. Purchaser hereby represents its compliance with all applicable anti-money laundering laws, including, without limitation, the USA Patriot Act, and the laws administered by the United States Treasury Department's Office of Foreign Assets Control, including, without limitation, Executive Order 13224 (the "Executive Order"). Purchaser further represents (a) that it is not, and it is not owned or controlled directly or indirectly by any person or entity, on the SDN List published by the United States Treasury Department's Office of Foreign Assets Control and (b) that it is not a person otherwise identified by government or legal authority as a person with whom a U.S. Person is prohibited from transacting business. As of the date hereof, a list of such designations and the text of the Executive Order are published under the internet website address www.ustreas.gov/offices/enforcement/ofac. Purchaser covenants and agrees to deliver to Seller any certification or other evidence requested from time to time by Seller in its reasonable discretion confirming Purchaser's compliance with this Section. Notwithstanding any other provision of this Agreement, the provisions of this Section shall survive Closing.

[signatures follow on next page]

IN WITNESS WHEREOF, the parties have executed this Purchase and Sale Agreement as of the date first written above.

SELLER:

By: _____
Name: _____
Title: _____

PURCHASER:

By: _____
Name: _____
Title: _____

FORM OF SALE ORDER

[to be attached]