

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

PETER J. ROCCHIO,
Plaintiff

vs

PARK AVENUE GASOLINE
STATION, INC.,
Defendant

:
:
:
:
:
:
:
:

C.A. No.: PC-2017-2349

CONSOLIDATED WITH

PETER J. ROCCHIO,
Plaintiff

vs

PMR PARK AVENUE, LLC,
Defendant

:
:
:
:
:
:
:

C.A. No: PC-2017-2348

ORDER

This matter having come before the Court upon the Receiver’s Request for Authority to establish and circulate Bid Procedures, it is hereby:

ORDERED, ADJUDGED, DECREED

The Receiver and the Receiver’s Broker shall notify potential bidders of the following:

1. The Electronic Bid Package is open and available to potential bidders;
2. Instructions for access to the Electronic Bid Package are as follows:
 - a. Potential bidders shall contact the Receiver by e-mail at jdorsey@frlawri.com to request a copy of the Electronic Bid Package;
 - b. The Electronic Bid Package is also available at www.frlawri.com;
3. The Receiver shall be available to answer any questions from potential bidders and conduct site visits;

4. Qualifying Bids must be submitted to the Receiver via e-mail at jdorsey@frlawri.com or by overnight mail sent to Ferrucci Russo P.C., 55 Pine Street #4, Providence, Rhode Island 02903 and delivered **on or before December 15, 2017 at 5 p.m.** (the “Bid Deadline”);

- a. “Qualifying Bid” is defined as a bid accompanied by a Purchase and Sale Agreement/Offer to Purchase, in the form and substance similar to the agreements attached hereto as Exhibit A, together with a “red-lined” version and a “clean” version marked “Copy”, showing all changes to the format including the identification of all contingencies to closing submitted by the Bid Deadline.
- b. Qualifying Bid shall be accompanied by a cashier’s check made payable to “John A. Dorsey, Receiver” in an amount equal to five (5%) percent of the purchase price set forth in the Agreement. The Qualifying Bid shall demonstrate to the Receiver, who shall determine based on his sole and absolute discretion, the potential purchaser’s sufficient cash on hand, or binding financial commitment from a financial institution, as would be needed to demonstrate the potential purchaser’s ability to meet its commitments and otherwise fully perform.

5. The Receiver shall schedule a hearing date thereafter, to submit a recommendation on the Qualifying Bids received (the “Bid Hearing”);

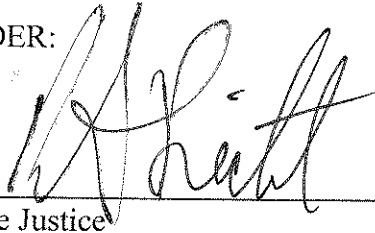
6. The highest and best Qualifying Bid received by the Receiver prior to the Bid Deadline shall continue to be subject to higher and better competing bids which may be made by any Qualified Bidders at the Bid Hearing. Competing bids shall not be allowed by parties other than Qualified Bidders having submitted a Qualified Bid on or before the Bid Deadline;

7. Commencing at the Bid Hearing, the Receiver shall announce any and all Qualifying Bids and then, all Qualified Bidders shall have an opportunity to submit higher and better bids in open competition against the Highest and Best Qualifying Bid; and

8. Upon the conclusion of bidding, the Receiver shall make a recommendation to the Court with regard to any Qualified Bids received.

ENTERED, as an Order of this Court this 28 day of November 2017.

BY ORDER:



Associate Justice

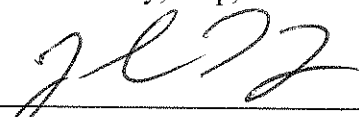
ENTER:



Clerk

11/28/17

Submitted by,
John A. Dorsey, Esq.,



John A. Dorsey, Esq. (#8373), as and only as
Permanent Receiver for Park Avenue Gas
Station, Inc. and PMR Park Avenue, LLC

FERRUCCI RUSSO, P.C.

55 Pine Street – 4th Floor

Providence, RI 02903

Tel: (401) 455-1000

Fax: (401) 455-7778

Email: jdorsey@firlawri.com

Dated: November 21, 2017

EXHIBIT A

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

PETER J. ROCCHIO,
Plaintiff

:

:

:

vs

:

C.A. No.: PC-2017-2349

:

PARK AVENUE GASOLINE
STATION, INC.,
Defendant

:

:

:

CONSOLIDATED WITH

PETER J. ROCCHIO,
Plaintiff

:

:

:

vs

:

C.A. No: PC-2017-2348

:

PMR PARK AVENUE, LLC,
Defendant

:

:

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made and entered into by and between John A. Dorsey, Esq., in his capacity as Permanent Receiver for **Park Avenue Gas Station, Inc. and PMR Park Avenue, LLC** (hereinafter referred to as "Receiver") with a mailing address for purposes of this Agreement c/o Ferrucci Russo PC, 55 Pine Street, Providence, Rhode Island 02903 and

_____ with a mailing address for purposes of this agreement of _____ (hereinafter referred to as "Buyer").

WITNESSETH THAT

1. PREMISES:

Receiver agrees to sell and convey to Buyer or Buyer's Nominee, and Buyer or Buyer's Nominee agrees to purchase, upon the terms and conditions hereinafter set forth herein all of Receiver's right, title and interests as said Receiver of **Park Avenue Gas Station, Inc. and PMR Park Avenue, LLC** in and to that certain real estate with buildings and improvements thereon located at 1025 Park Avenue, Cranston, Rhode Island and all business assets tangible or intangible associated therewith, including, without limitation, all machinery, equipment, lighting fixtures, refrigerators, fuel pumps, fuel in ground on the Closing date, tools, parts and inventory as well as all of the improvements thereon and all associated rights, including rights of way, of passage, easements and similar rights and entitlements in regard to the specified lots, and as such property may be more particularly described in the legal description attached hereto as Exhibit A (collectively, the "Premises"), free and clear of liens, mortgages, encumbrances, claims and interest. Notwithstanding anything to the contrary contained herein, the Receiver's conveyance of the Premises does not include any leased equipment, machinery, or other leased assets or any assets not owned by Defendant, and the proceeds of any of the foregoing (collectively, the "Excluded Assets"). The Buyer acknowledges that the transfer and conveyance of the Premises

does not and shall not constitute a transfer or conveyance of any right, title or interest in the Excluded Assets.

2. DATE OF THIS AGREEMENT:

The Date of this Agreement shall be the date on which the Receiver signs this Agreement, as set forth immediately under the Receiver's signature below.

3. TITLE AND COURT APPROVAL:

Conveyance of the Receiver's interest as aforesaid in the Premises shall be made by a Receiver's Deed ("Deed") in customary form, without covenants, warranties or representations of any kind whatsoever, conveying to the Buyer all of the Receiver's right, title and interest as said Receiver in and to the Premises, free and clear of all liens, mortgages, security interests, claims, encumbrances and interests specifically including, but not limited to, any and all statutory liens, judgment liens, claims for municipal real estate or tangible property taxes. The conveyance and transfer of the Premises is expressly made subject to approval of the Providence County Superior Court for the State of Rhode Island (the "Court") in the receivership proceeding pending before that Court as docket number PC-2017-2348 and PC-2017-2349 after hearing with notice to all interested parties, authorizing and ordering the sale free and clear of all liens, mortgages, security interests, claims, encumbrances and interests. The conveyance of the Premises shall be subject to all restrictions, easements and conditions of record, and subject to all applicable zoning and other federal, state and municipal laws and regulations.

Buyer acknowledges and understands that the consummation of this Agreement is subject to Court approval and that Receiver will be obligated to submit to the Court for its review and consideration any other offers for the Premises received by the Receiver subsequent to this Agreement for a purchase price higher than or on more advantageous terms than that set forth herein for the Court's review and consideration.

4. POSSESSION:

Upon conveyance of title to the Premises, full possession of the Premises shall be delivered to the Buyer free of any and all tenants and in substantially the same condition as exists upon execution of this Agreement.

5. PURCHASE PRICE:

The agreed total Purchase Price for the Premises is _____ of which _____, representing five percent (5%) of the Purchase Price, has been paid herewith to Receiver as a deposit by cashier's or bank check (the "Deposit"), which Deposit shall be held by the Receiver, pending consummation of this conveyance; and the balance of the Purchase Price shall be paid by Buyer to Receiver at the Closing (See Below).

6. THE CLOSING:

The Closing of the Premises is to be held at 10:00 am on the second business day following the date on which the time for all appeals of the Court Order approving this Real Estate Purchase and Sale Agreement has expired (no appeal having been perfected). At the Closing, Buyer shall

pay the remainder of the Purchase Price set forth in section 5 hereof by certified check or wire transfer.

It is agreed and understood that **TIME IS OF THE ESSENCE** of this Agreement.

At Closing, Buyer shall provide Receiver with a copy of the Municipal Lien Certificate or other evidence of payment of taxes reasonably satisfactory to Receiver, and the basis for the computation of all adjustments and other entries on the Settlement Statement. At the Closing the Buyer's net proceeds check shall be delivered to the Receiver and held in escrow pending recording of the Deed, at which time such funds shall be released from escrow. Buyer agrees to record the Deed in the appropriate recording office forthwith after delivery of same. This provision shall be deemed to survive the Closing. Buyer shall notify Receiver forthwith of the recording of the Deed.

7. **ADJUSTMENTS:**

Rents, fuels, water charges, and sewer use charges, if any, shall be apportioned as of the date of delivery of the Deed as estimated on the basis of the best information available at the time, and the net amounts thereof shall be added to or deducted from the Purchase Price, as the case may be.

Any assessments constituting a lien on the Premises which are payable over a period of more than one (1) year shall be apportioned in such manner that Receiver shall pay installments due during the appropriate calendar or municipal fiscal years prior to the year said Deed is delivered, the installment due in that year shall be apportioned in the same manner as provided for taxes, and the Buyer shall pay or assume the balance of such assessment. Buyer hereby agrees to assume and pay when due all taxes and assessments which are allowed as a credit against the Purchase Price. Buyer shall be responsible for payment of all documentary transfer stamps and statutory recordings, fees and costs.

Real Estate taxes, tangible property taxes, and fire district taxes assessed upon the Premises as of December 31 of the year immediately preceding the year in which the delivery of the Deed occurs, applicable to the following year, shall be apportioned, in accordance with the manner such taxes are customarily prorated in the municipality where the Premises is located, in such a manner that Receiver shall pay, or, at Receiver's election, allow to Buyer as a credit against the Purchase Price, that portion thereof which corresponds to the portion of said year which has expired on the date of delivery of the Deed, and Buyer shall pay or assume the balance. Receiver shall pay or, at Receiver's election, allow to Buyer as a credit against the Purchase Price, all other taxes which are a lien upon the Premises. In the event that at the time of delivery of said Deed the amount of such taxes shall not be definitely fixed and ascertainable, it shall, for the purposes of making such apportionment, be conclusively assumed that the amount of such taxes will be identical with those of the next prior assessment.

The Receiver shall be entitled, at the Receiver's discretion, to use any portion or all of the Purchase Price to pay any of the foregoing or any other liens or encumbrances against the Premises. In the event that a portion or all of the Purchase Price is used to pay any of the foregoing, the Settlement Agent shall provide copies of receipts or other evidence of payment satisfactory to the Receiver within forty-eight (48) hours of the recording of the Deed.

8. EXTENSION OF CLOSING:

If the Receiver shall be unable to give title to Buyer, or to make conveyance, or to deliver possession of the Premises, all as in accordance with this Agreement, or if at the time of the Closing, the Premises does not conform with the provisions of this Agreement, then the Receiver, shall use reasonable efforts to remove any defects in title, or to deliver possession as provided herein, or to make the Premises conform to the provisions hereof, as the case may be, in which event the Closing hereunder shall be extended by thirty (30) days. It is understood and agreed that Receiver shall not be under any obligation to attempt to cure by litigation or otherwise any defect which may be found to exist in the title to the Premises or to remove any encumbrances upon the title to the Premises not voluntarily placed thereon by the Receiver subsequent to the date hereof or to correct any violations of subdivision, plat, zoning, building, minimum housing standard regulations or other similar restrictions or regulations. This paragraph is also not intended to apply to any damage to the Premises caused by fire or other casualty, as to which the provision of a Paragraph hereof entitled "10. INSURANCE:" shall apply. The Buyer may, however, with the Receiver's consent, elect to waive any such defects and accept such title to the Premises as the Receiver is able to convey, without any warranty as to such conditions and without a reduction of the Purchase Price, and an acceptance of the Deed by the Buyer shall be deemed full performance and discharge of all the obligations of the Receiver under this Agreement.

9. RECEIVER'S TENDER OF DEED:

Except as otherwise set forth herein, the tender of the Deed by the Receiver and acceptance by Buyer shall be deemed full performance and discharge of every agreement and obligation of the Receiver contained or expressed in this Agreement.

10. INSURANCE:

Until delivery of the Deed to Buyer, the buildings on the Premises shall be insured by Receiver against loss by fire under the same policy as exists at present, and in case of any loss or other casualty in an amount less than Twenty-Five Thousand (\$25,000.00) Dollars occurring between the date of this Agreement and the delivery of the Deed, Buyer shall remain bound to purchase the Premises and Receiver agrees to pay over or assign to Buyer upon payment of the remainder of the Purchase Price all sums recovered or recoverable on account of said insurance, plus the deductible amount, if any, unless the Receiver shall have restored the premises to their former condition in which event the proceeds shall be retained by Receiver.

In the event of any loss or casualty occurring after Court approval of this Agreement and prior to delivery of the Deed in an amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars, the Receiver shall have the option of, but shall have no obligation of (a) restoring the Premises to the same condition in which they were on the date of this Agreement, reasonable wear and tear excepted; or (b) reducing the Purchase Price by the amount of such damage, as said amount may be agreed to by the parties; or (c) failing such agreement, seek a determination from the Court as to the treatment of such loss or casualty.

11. DEFAULT:

If the Buyer shall default in the performance of Buyer's obligations hereunder, the Receiver shall have the right to retain the deposit and resell the Premises without notice to the Buyer, or require specific performance without prejudice to any of Receiver's other rights or remedies at law and in equity.

12. BROKERS AND AGENTS:

Seller and Buyer warrant and represent each to the other that no real estate broker-initiated or otherwise brought about this transaction.

Buyer and Seller agree to indemnify the other party against, and to hold the other party harmless from any and all cost, expense or liability based upon or related to a claim for a brokerage commission or finder's fees in connection with the transaction contemplated hereby to the extent such liability shall be based upon arrangements or agreements made or claimed by third parties to have been made by or on behalf of the Buyer or the Seller, as the case may be, and not disclosed in this Agreement.

13. NOTICES:

All notices as required in this Agreement must be in writing. All notices shall be by certified mail or by personal delivery. Notice by certified mail will be effective upon sending. Notice by personal delivery will be effective upon delivery to the other party. Notices to the Receiver and the Buyer must be addressed to the addresses that appear in the first paragraph of this Agreement.

14. BUYER REQUIRED TO COMPLY WITH ZONING:

Buyer is obligated to comply with any and all state and local real estate ordinances, statutes and/or regulations, commercial or otherwise.

15. RADON GAS:

Radon gas has been determined to exist in the State of Rhode Island. The Premises contains no residential dwelling units. The Buyer acknowledges that the Receiver has no obligation whatsoever to perform any tests for radon, and that such testing, if any, shall be solely at Buyer's expense. The Receiver makes no representation whatsoever concerning the existence or absence of radon in the Premises. The discovery of radon shall in no way relieve the Buyer from its performance and/or obligations under this Agreement.

16. LEAD POISONING DISCLOSURE:

The Premises contain no residential dwelling units.

The Buyer acknowledges that the Receiver shall have no obligation whatsoever to perform any risk assessments or inspections for lead-based paint hazards within the Premises. Any such inspections or risk assessments shall be done solely at the Buyer's election and expense. Buyer acknowledges that Buyer has been advised that Receiver has no reports or information

concerning lead-based hazards within the Premises, and that Receiver makes no representations concerning the existence or absence of lead-based paint within the Premises. The discovery of any lead-based paint hazards shall in no way relieve the Buyer from its performance and/or obligations under this Agreement.

17. NO ENVIRONMENTAL CONDITION:

Buyer acknowledges that Buyer may conduct any environmental site assessments or studies of any kind, which Buyer deems advisable and/or necessary, at Buyer's sole expense, subject to Receiver's approval. However, Buyer expressly acknowledges and agrees that the conveyance contemplated hereunder is not conditioned in any way whatsoever upon the Receiver's conducting or performing any cleanup or remedial action of any kind or nature on the Premises.

18. CLOSING/CONVEYANCE NOT SUBJECT TO ANY CONTINGENCIES:

Buyer expressly acknowledges and agrees that neither the closing nor the conveyance contemplated hereunder are conditioned in any way whatsoever upon the Buyer or the Receiver complying with any contingencies, including, but not limited to Buyer financing, structural or environmental inspections, zoning, licensing and/or any other contingency of any kind or nature relative to the Premises and associated business assets.

19. WETLANDS DISCLOSURE:

All or part of the Premises may have been previously determined by the Rhode Island Department of Environmental Protection to be a wetland, bank, bog, salt marsh, swamp, meadow, or flat as these terms are defined in Chapter 1, Section 20 of Title 2 of the Rhode Island General Laws. The parties hereto acknowledge that it shall be Buyer's sole responsibility to conduct any independent examination to determine whether the Premises are in an area determined to be a Wetlands pursuant to such statutory provisions.

20. RESTRICTIONS OR LEGISLATIVE/GOVERNMENTAL ACTION:

Buyer is responsible for investigating whether there are any restrictions or legislative/governmental actions, present or proposed, which affect or would affect the use of the Premises and Buyer acknowledges that it has not relied on any advice or any representations by Receiver, his employees, attorneys, consultants, agents, or any other representatives of Receiver in this transaction with regard to same.

21. NO WARRANTIES AND REPRESENTATIONS AND NO RELIANCE ON OTHERS:

Buyer has entered into this Agreement based on Buyer's independent review and investigation of the Premises and not on any representation made by the Receiver or any of Receiver's agents or representatives. THIS MEANS THAT THE PREMISES IS BEING SOLD "AS IS", "WHERE IS", AND "WITH ALL FAULTS".

Buyer specifically acknowledges that the property shall be sold to Buyer "as is", "where is", and "with all faults" and that no warranties or representations or covenants of any kind, expressed or implied, have been or will be made by Receiver or any other party with respect to the physical,

operating or any other condition of the Premises, or repair of the Premises, or utilities or sewer systems servicing the same or the use or operation to which the Premises may be put by Buyer, or the applicability of or compliance with applicable federal, state, county, city or other public authorities having or claiming jurisdiction over the Premises or any laws, statutes, codes, ordinances or regulations of any government authority, including without limitation, zoning, land use, building and fire safety, and environmental laws, including, without limitation, all laws, ordinances and regulations concerning hazardous waste and toxic substances, odors, noise, air emissions, discharge of water, chemicals and/or air pollution, or otherwise.

Buyer acknowledges that there have been no representations or warranties as to quality, quantity, durability, condition, merchantability, fitness for any particular purpose, or any other aspects of the Premises. Buyer acknowledges that it has not been influenced to enter into this transaction by the Receiver or his attorney, or their employees, agents, consultants or representatives, and that Buyer has not received nor relied upon any statements or representations made by the Receiver or his attorney, or their employees, agents, consultants or representatives.

Receiver specifically disclaims all warranties imposed by statute or otherwise and makes no warranty of habitability, merchantability or fitness of the Premises for a particular purpose. The terms and provisions of this section shall survive the Closing.

22. AMENDMENTS:

This Agreement may not be amended or modified except pursuant to a written instrument executed by both Buyer and Receiver.

23. CONSTRUCTION OF AGREEMENT:

This Agreement may be executed in one or more counterparts and each shall be deemed to be an original, and shall be binding upon and inure to the benefit of the respective heirs, executors and/or administrators, successors, and/or assigns, of the respective parties hereto, subject to the express conditions stated herein. This Agreement and the interpretation hereof shall be governed by the laws of the State of Rhode Island and the parties expressly agree that the Court shall have jurisdiction to resolve any and all disputes arising under this Agreement, to interpret any terms hereof, and to enforce any and all provisions of this Agreement.

24. ENTIRE AGREEMENT:

The parties hereto, each declare that this Agreement and any other agreements entered into in connection herewith contain the entire agreement between the parties, and that it is subject to no understandings, conditions or representations other than those expressly stated herein or therein. All understandings and agreements heretofore had between the parties, if any, are extinguished and are of no force and effect whatsoever except as the same may be expressly set forth in this Agreement or any other agreement entered into between the Parties in connection herewith. This Agreement is entered into by the Buyer after full investigation of the Premises, and no reliance is made by the Buyer upon any statements or representations not made in this Agreement.

25. PROHIBITION AGAINST RECORDING:

This Agreement may not be recorded in the Records of Land Evidence of the municipality in which the Premises is located. IN THE EVENT OF ANY RECORDING OF THIS AGREEMENT, AT THE OPTION OF THE RECEIVER, THE BUYER WILL CONCLUSIVELY BE DEEMED IN DEFAULT HEREUNDER ENTITLING THE RECEIVER TO EXERCISE ALL RIGHTS AND REMEDIES HEREUNDER FOR BUYER'S DEFAULT. In addition, any third party may conclusively rely upon an affidavit executed and recorded by the Receiver in said Land Evidence records stating the Receiver has elected to hold the Buyer in default, as conclusively establishing that the Buyer has no further right, title, or interest under this agreement or to the Premises, all of which will be deemed released and conveyed to Receiver.

26. NO PERSONAL LIABILITY:

Notwithstanding anything herein to the contrary, the Receiver's execution of this Agreement is solely in his capacity as Receiver and shall not render the Receiver personally liable in any way whatsoever.

WITNESS the signatures of the above parties on the date set forth below.

BUYER:

RECEIVER:

By: _____

By: _____

John A. Dorsey, Esq., Permanent Receiver for Park Avenue Gas Station, Inc. and PMR Park Avenue, LLC and not individually

Date

Date

Witness to Above Signature

Witness to Above Signature