

## **TERMS AND CONDITIONS OF SALE**

DOM Partners, LLC (“Secured Party”), by Public Auction Conducted by David R. Maltz & Co., Inc. (“Maltz”), will sell all right, title and interest in an undivided one hundred percent (100%) interest in the internet domain name and related INTERNIC registration of the URL www.sex.com (the “Domain”) and Collateral (as defined in the Notice of Foreclosure Sale issued on February 12, 2010 (the “Notice”)).

These Terms and Conditions of Sale are promulgated in connection with the Public Auction Sale (the “Auction”) of the Domain.

The Successful Bidder and the Second Place Bidder (as herein defined) will, at the time and place of sale, sign a Memorandum of Sale in accordance with the Terms and Conditions of Sale herein contained.

The Auction will be held on March 18, 2010 at 11:00 a.m. at the offices of Windels Marx Lane & Mittendorf, LLP, 156 West 56<sup>th</sup> Street, New York, New York 10019 (“Escrow Agent”). Only those persons or representatives of entities who have paid the Qualifying Deposit (as defined herein) and executed the Escrow Agreement, together with the within acknowledgement agreeing to be bound by these Terms and Conditions of Sale, shall be permitted to be present at or participate in the Auction. The Auction will be open to credentialed press representatives to the extent space permits on a “first-come, first-serve” basis.

The Auction may include bidding via internet communications and protocols established by Maltz (“Internet Bids”) by a prospective bidder (an “Internet Bidder”) which has tendered the Qualifying Deposit by 5:00 p.m. EST on March 17, 2010 and executed and delivered the written acknowledgment to be bound by these Terms and Conditions of Sale, together with the Escrow Agreement. Any bid received via an Internet Bid shall only be deemed valid and eligible to become the highest or best bid if: (i) it is received by Maltz at the Auction simultaneous with the offers by other active participants at the Auction; and (ii) it is recognized and announced by Maltz to all qualified participating bidders. Any unannounced, unrecognized or delayed Internet Bid will not be considered by Maltz and neither Maltz nor Secured Party shall have any liability to any Internet Bidder or other party for any unrecognized bid.

In order to be permitted to bid on the Domain, prior to the commencement of the Auction, each prospective bidder must (i) deliver One Million Dollars (\$1,000,000.00) by wire transfer or certified or bank check made payable to “Windels Marx Lane & Mittendorf, LLP, as Escrow Agent for DOM Partners LLC” (the “Qualifying Deposit”); (ii) execute the Escrow Agreement; and (iii) execute the within acknowledgement agreeing to be bound by these Terms and Conditions of Sale. The Qualifying Deposit shall serve as a partial good faith deposit against payment of the Purchase Price (as herein defined) by such competing bidder as Maltz and Secured Party determine, in their sole discretion, to have made the highest or best bid for the Domain (the “Successful Bidder”). The “Purchase Price” shall be defined as the Successful Bidder’s bid, as determined by Maltz in its sole discretion. Bidding increments at the Auction will be made in amounts of no less than \$100,000, or as determined by Maltz.

On or before the close of business at 5:00 p.m. EST on March 22, 2010, the Successful Bidder shall deliver to Escrow Agent by wire transfer or certified or bank check in an amount equal to twenty-five percent (25%) of the Successful Bidder's bid minus the Qualifying Deposit (together with the Qualifying Deposit, the "Deposit"). Failure of the Successful Bidder to tender the entire Deposit on or before the close of business at 5:00 p.m. EST on March 22, 2010 shall be deemed an immediate and incurable default by the Successful Bidder and Successful Bidder shall forfeit all amounts tendered in connection with the Auction, including the Qualifying Deposit as liquidated damages. The Successful Bidder must execute, and thereby agree to be bound by, (i) these Terms and Conditions of Sale, (ii) the Memorandum of Sale, and (iii) the Escrow Agreement. At the conclusion of the Auction as announced by Maltz following its acceptance of the Successful Bid at the Auction, Escrow Agent will return the Qualifying Deposits to all unsuccessful bidders, except the Second Place Bidder which may elect to continue to pursue the purchase on a contingent basis set forth herein.

The Successful Bidder must pay the balance of the Purchase Price for the Domain (the difference between the Purchase Price and the Deposit) to the Escrow Agent by wire transfer, certified or bank check. The Successful Bidder must close title to the Domain (the "Closing") on or before April 2, 2010, **TIME BEING OF THE ESSENCE** as to the Successful Bidder's obligation to close on the Domain by such date (the "Closing Date"), although such Closing Date may be delayed by the Secured Party at its sole discretion. If Secured Party delays the Closing, Secured Party shall notify the Successful Bidder in writing and such notice shall set a new closing date. Such new closing date shall be a date not less than ten (10) days from such notice and shall be deemed to be the Closing Date for the purposes under these Terms and Conditions of Sale, **TIME BEING OF THE ESSENCE** as to the Successful Bidder's obligation to close on the Domain by such new Closing Date. Notwithstanding anything to the contrary contained in these Terms and Conditions of Sale, Secured Party shall allow the Successful Bidder to delay the closing of title if Successful Bidder pays to Seller, by certified check, bank check, federal funds or wire transfer, an additional, non-refundable deposit in an amount equal to ten percent (10%) of the Successful Bidder's bid prior to April 2, 2010, such amount, when paid, shall be deemed part of the Deposit. Upon such extension, the Closing Date shall be deemed to be April 12, 2010, **TIME BEING OF THE ESSENCE** as to the Successful Bidder's obligation to close on the Domain by such date.

The Closing shall take place at the offices of Windels Marx Lane & Mittendorf, LLP, 156 West 56<sup>th</sup> Street, New York, New York 10019.

In connection with the Closing and Closing Date, the Successful Bidder is hereby given notice that **Time is of the Essence with regard to the Successful Bidder's obligation to close on the Closing Date (as same may be extended pursuant to the terms of these Terms and Conditions of Sale) and the failure of the Successful Bidder to close for any reason whatsoever will result in (i) the forfeiture of the Deposit as liquidated damages representing an approximation of its actual damages because the Secured Party's actual damages will be difficult to measure with precision and may be more or less than its actual damages as the result of successful Bidder's breach or default and (ii) the termination of the Successful Bidder's right to acquire the Domain under these Terms and Conditions of Sale.** The Successful Bidder shall be obligated to close on the subject transaction and there is no

contingency of any kind or nature that will permit the Successful Bidder to cancel or avoid its obligation under these Terms and Conditions of Sale other than the Seller's legal prohibition to transfer access to the Domain. Further, the Successful Bidder is required to demonstrate, to the satisfaction of Maltz and Seller, in their sole discretion, evidence of the Successful Bidder's ability to close upon these Terms and Conditions of Sale. Maltz and Secured Party reserve the right to reject any offeror, who Maltz or Secured Party believe, in their sole discretion, is not financially capable of closing on the Domain in accordance with these Terms and Conditions of Sale. Expenses incurred by the Successful Bidder, or any competing bidder, concerning any due diligence shall be the sole responsibility of the Successful Bidder or any competing bidder, and under no circumstances shall Maltz or Secured Party be responsible for, or pay, such expenses.

The party with the next highest or best bid for the Domain relative to the Successful Bidder (the "Second Place Bidder") may, at its option and in its sole discretion, deliver to Escrow Agent, by wire transfer or certified or bank check in an amount equal to twenty five percent (25%) of the Second Place Bidder's bid minus the Qualifying Deposit (together with the Qualifying Deposit, the "Second Place Bidder Deposit") on or before 3:00 p.m. EST on March 22, 2010. The tender by the Second Place Bidder of the Second Place Bidder Deposit sums shall unconditionally obligate the Second Place Bidder to Close title to the Domain within five (5) business days after the Secured party has notified the Second Place Bidder that it has declared that the Successful Bidder has breached its obligations to close and perform under these Terms and Conditions of Sale. The Second Place Bidder must comply with and agree to be bound by (i) these Terms and Conditions of the Sale, (ii) the Memorandum of Sale, and (iii) the Escrow Agreement. Second Place bidder further agrees that it shall not receive a credit or reduction in the Purchase Price for any sums retained by the Secured Party or paid by the Successful Bidder. In the event the Successful Bidder closes, the Second Place Bidder shall receive a full refund of the Second Place Bidder Deposit, together with any accrued interest thereon.

Notwithstanding the foregoing, Secured Party may credit bid at the Auction by bidding all or part of the amounts owed to the Secured Party by the debtor and any such sums may be used to satisfy Secured Party's obligations as a Successful Bidder or the Second Place Bidder. Under these Terms of Sale, Secured Party may credit bid any amount it deems appropriate and may further bid amounts in excess of the debt owed to it, in its sole and absolute discretion. In the event the Secured Party credit bids any portion of the amounts owed to it by debtor, it shall not be obligated to make payment in cash of Qualifying Deposit or Deposit and may utilize any amounts owed to it as a credit toward the purchase price at closing.

Maltz, Seller, Escrow Agent and/or their representatives have not made and do not make any representations or warranties as to the physical condition, expenses, operations, value of the Domain, or any other matter or thing affecting or related to the Domain or this Auction, which might be pertinent to the purchase of the Domain, including, without limitation, (i) to the extent applicable, the current or future tax liability, assessment or valuation of the Domain; (ii) the potential qualification of the Domain for any and all benefits conferred by ICAAN, or available under federal, state or municipal laws; (iii) the compliance or non-compliance of the Domain, in its current or any future state, with applicable present or future federal, state or municipal laws, regulations, or ordinances; (iv) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Domain from any source; (v) the current or future use of the

Domain; (vi) the presence or absence of any violation of any laws, ordinances, rules or regulations issued by any governmental authority, agency or board; or (vi) the compliance or non-compliance with adult and/or child pornography laws. Each bidder hereby expressly agrees and acknowledges that no such representations or warranties have been made. Maltz, Secured Party and Escrow Agent are not and will not be liable or bound in any manner by expressed or implied warranties, guarantees, promises, statements, representations or information pertaining to the Domain, made or furnished by Maltz, Secured Party or Escrow Agent or any broker, agent, employee, servant or other person or professional representing or purporting to represent Maltz, Secured Party or Escrow Agent unless such warranties, guaranties, promises, statements, representations or information are expressly and specifically set forth in writing by Maltz, Secured Party or Escrow Agent.

The Domain is 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 liens, claims and interests of whatever kind or nature. By delivering the respective Qualifying Deposits, all bidders acknowledge that they have had the opportunity to review and inspect the Domain and laws, rules and regulations applicable thereto, and the form of the Memorandum of Sale pursuant to which the Domain will be conveyed to the Successful Bidder, and will rely solely thereon and on their own independent investigations and inspections of the Domain in making their bids and proceeding to closing. Neither Maltz, Seller, or Escrow Agent, nor any of their representatives, make any representations or warranties with respect to the permissible uses of the Domain. All bidders acknowledge that they have conducted their own due diligence in connection with the Domain and are not relying on any information provided by Maltz, Seller, Escrow Agent or their representatives.

Upon Escrow Agent’s receipt of the Purchase Price and any and all Closing Documents (as defined herein) and written notice to Secured Party and Successful Bidder thereof, Secured Party will perform the appropriate steps with the Network Solutions Registrar to transfer the Domain to Escrow Agent’s registrar account at Network Solutions. Once Escrow Agent confirms to Secured Party and Successful Bidder in writing that it has received the Purchase Price, the Domain and all duly executed Closing Documents, Escrow Agent shall provide Successful Bidder with the applicable Network Solutions registrar account log in and password information (the “Account Information”). The parties intend to transfer the Domain electronically with the Network Solutions Registrar. Secured Party and Successful Bidder agree to cooperate fully with each other and execute such documents as are reasonable required to effectuate the transaction. The Successful Bidder will be responsible for all fees charged by the Network Solutions Registrar, if any, to transfer registration of the Domain. Upon the completion of the actions set forth herein, Successful Bidder shall immediately send Secured Party and Escrow Agent written confirmation that it has changed the Account Information and that the WHOIS information reflects the Successful Bidder as the registrant of the Domain, not Secured Party or Escrow Agent. Immediately upon written confirmation of same, the Escrow Agent is authorized to release and transfer the Purchase Price by wire transfer of immediately available funds to Secured Party and the transaction shall be considered complete.

With the exception and disclosure herein of Maltz, Secured Party and Successful Bidder represent and warrant to one another that they have not dealt with any broker or finder in connection with this transaction. The only commission that will be paid is to Maltz.

These Terms and Conditions of Sale will be read into the record or specifically incorporated by reference at the Auction of the Domain. Maltz or Secured Creditor may, but are not obligated to make an electronic stenographic, photographic or other videotaped recording of the Auction as they deem appropriate in their sole and absolute discretion. By making a bid for the Domain, all bidders will be deemed to have acknowledged having read and understood these Terms and Conditions of Sale and have agreed to be bound by the terms contained herein.

If the Secured Party is unable to deliver legal title to the Domain in accordance with these Terms and Conditions of Sale for any reason whatsoever, Seller, Maltz, and Escrow Agent's only obligation will be to refund the Qualifying Deposit and Deposit, to the extent paid, together with any interest earned thereon, to the Successful Bidder and, upon such refund, the Successful Bidder releases all claims or recourse against the Seller, Maltz, Escrow Agent or their agents, employees and representatives.

Without delay, and in no instance more than five (5) days from the conclusion of the Auction, Successful Bidder shall provide any and all information requested by Secured Party and/or Maltz and execute any and all documents reasonably requested by them. Failure to deliver any such documents in a timely fashion shall be deemed an incurable default by Successful Bidder.

The Successful Bidder is not permitted to assign its rights to purchase the Domain under these Terms and Conditions of Sale. Any purported assignment shall be deemed null and void.

These Terms and Conditions of Sale may be amended or modified by Secured Party and Maltz. Secured Party reserves the right to bid at the Auction and may credit against the Purchase Price bid all sums due to Secured Party from Borrower, Escrow LLC, including but not limited to all costs, fees and expenses of the Auction, all attorneys' fees and all other expenses incurred in connection with the protection of Seller's interest in the Collateral.

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

By: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MEMORANDUM OF SALE**

Successful Bidder's Bid and Purchase Price: \$\_\_\_\_\_ (\_\_\_\_\_ U.S. dollars).

The undersigned has this 18<sup>th</sup> day of March, 2010, agreed to purchase all right, title and interest in an undivided one hundred percent (100%) interest in the internet domain name and related INTERNIC registration of the URL www.sex.com (the "Domain") and Collateral (as defined in the Notice of Foreclosure Sale issued on February 12, 2010), being sold by DOM Partners, LLC, for the sum of \$\_\_\_\_\_ DOLLARS and hereby promises and agrees to comply with the terms and conditions of sale of said Domain and Collateral, as set forth in the annexed Terms and Conditions of Sale.

\_\_\_\_\_  
SUCCESSFUL BIDDER (Signature)

\_\_\_\_\_  
PRINT NAME OF SUCCESSFUL BIDDER

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
FAX NUMBER

\_\_\_\_\_  
EMAIL ADDRESS

Received from \_\_\_\_\_ the sum of \$\_\_\_\_\_ U.S. DOLLARS, as a non-refundable deposit for the purchase of the Domain and Collateral pursuant to the Terms and Conditions of Sale.

Secured Party:

DOM PARTNERS LLC

Secured Party

Signature: \_\_\_\_\_

This is to verify that the final selling price in the above sale was for the sum of  
\$\_\_\_\_\_.

\_\_\_\_\_  
RICHARD B. MALTZ, AUCTIONEER

**SUCCESSFUL BIDDER ATTORNEY INFORMATION**

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

**MEMORANDUM OF SALE FOR SECOND PLACE BIDDER'S CONTINGENT  
PURCHASE**

Second Place Bidder's Bid and Purchase Price: \$ \_\_\_\_\_  
(\_\_\_\_\_ U.S. dollars).

Upon receipt of Secured Notice from Party of the failure of the Successful Bidder to consummate the transactions set forth in the Terms of Sale by reason of Successful Bidder's breach and default, the undersigned, as the Second Place Bidder has this 18<sup>th</sup> day of March, 2010, agreed to purchase all right, title and interest in an undivided one hundred percent (100%) interest in the internet domain name and related INTERNIC registration of the URL www.sex.com (the "Domain") and Collateral (as defined in the Notice of Foreclosure Sale issued on February 12, 2010), being sold by DOM Partners, LLC, for the sum of \$ \_\_\_\_\_ DOLLARS and hereby promises and agrees to comply with the terms and conditions of sale of said Domain and Collateral, as set forth in the annexed Terms and Conditions of Sale.

\_\_\_\_\_  
SECOND PLACE BIDDER (Signature)

\_\_\_\_\_  
PRINT NAME OF SECOND PLACE BIDDER

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
TELEPHONE NUMBER

\_\_\_\_\_  
FAX NUMBER

\_\_\_\_\_  
EMAIL ADDRESS

Received from \_\_\_\_\_ the sum of  
\$ \_\_\_\_\_ U.S. DOLLARS, as a non-refundable deposit for the purchase of the Domain  
and Collateral pursuant to the Terms and Conditions of Sale to be refunded only upon the closing  
with the Successful Bidder in accordance with the Terms of Sale.

Secured Party:

DOM PARTNERS LLC

Secured Party

Signature: \_\_\_\_\_

This is to verify that the final selling price in the above sale was for the sum of  
\$\_\_\_\_\_.

\_\_\_\_\_  
RICHARD B. MALTZ, AUCTIONEER

**SECOND PLACE BIDDER ATTORNEY INFORMATION**

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_