

## TERMS AND CONDITIONS OF SALE

**D and D Management (“Seller”), by Public Auction, Conducted by David R. Maltz & Co., Inc. & Related Entities (“Maltz”), will Sell the Real Property at Public Auction on June 24, 2010.**

1. These Terms and Conditions of Sale are promulgated in connection with the Public Auction Sale (the “Auction”) of certain real property and improvements thereon, located at 2455-2457 Hylan Boulevard, Staten Island, New York 10306 a/k/a Borough: Staten Island Block: 3648 Lot: 59 (the “Property”).

2. The purchaser of said real property, will, at the time and place of sale, sign a memorandum of his purchase in accordance with the terms and conditions of sale herein contained.

3. The Auction Sale will be held on June 24, 2010 at 1:00 p.m. (the “Sale Date”) on location at 2455-2457 Hylan Boulevard, Staten Island, New York..

4. In order to be permitted to bid on the Property, prior to the commencement of the Auction Sale, each prospective bidder must deliver to Maltz a certified check or bank check made payable to “David R. Maltz & Co., Inc.” and in the amount of One Hundred Fifteen Thousand Dollars (\$115,000.00) (the “Qualifying Deposit”), which amount shall serve as a partial good faith deposit against payment of the purchase price by such competing bidder as Maltz determines to have made the highest or best bid for the Property (the “Successful Bidder”). Within 48 hours after conclusion of the Auction, the Successful Bidder shall deliver to Maltz by certified check or bank check an amount equal to 10% of the high bid realized at auction minus the Qualifying Deposit (together with the Qualifying Deposit, the “Deposit”) plus the 6% Buyer’s Premium. The six percent (6%) buyer’s premium shall be deemed to have been earned immediately upon the fall of the hammer and is due within 48 hours after conclusion of the Auction. Failure of the Successful Bidder to tender the total minimum deposit of 10% of the high bid at auction and the 6% Buyer’s Premium within 48 hours after conclusion of the auction shall result in the immediate default on the purchase and forfeiture of all earnest monies including the buyer’s premium. The Successful Bidder must execute, and thereby agree to be bound by (i) these Terms and Conditions of Sale, and (ii) a Memorandum of Sale. **At the conclusion of the Auction, Maltz will return the Qualifying Deposits to all unsuccessful bidders.**

5. Purchaser is solely responsible to pay Maltz the buyer’s premium in the amount of six percent (6%) of the gross sale proceeds. The sum of the high bid at auction and the buyer’s premium is defined as the “Purchase Price”.

6. The Successful Bidder must pay the balance of the Purchase Price for the Property (the difference between the Purchase Price and the Deposit) to the Seller, by certified check, bank check, federal funds or wire transfer. The Successful Bidder must close title to the Property at a date that is no more than forty-five (45) days after the conclusion of the Auction, or August 9, 2010 (The “closing”), **TIME BEING OF THE ESSENCE as to the purchaser or Successful Bidder**, although such date may be extended solely by the Seller. Seller shall grant the Successful Bidder one thirty (30) day extension, at Successful Bidder’s sole option, if Successful Bidder posts an additional, non-refundable 10% deposit prior to August 2, 2010.

7. The Closing shall take place at the offices of the Attorneys for the Seller.

8. The Successful Bidder shall pay any New York City, New York State, or other real property transfer taxes incurred by the transfer of the Property from the Seller at closing. Purchaser acknowledges that they will be responsible for the completion of any ACRIS forms, if required. In connection with the Closing and Closing Date, the Successful Bidder is hereby given notice that **Time is of the Essence Against the Successful Bidder and the failure of the Successful Bidder to close for any reason whatsoever (except as otherwise provided below) including its failure to pay the balance of the Purchase Price on the Closing Date, will result in the forfeiture of the Deposit and Buyer’s Premium and the termination of the Successful Bidder’s right to acquire the Property under these Terms and Conditions of Sale.** The

Successful Bidder shall be obligated to close title to the Property 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 of and Conditions of Sale other than the Seller's inability to deliver insurable title to the Property. Further, the Successful Bidder shall have demonstrated, to the satisfaction of Maltz & Seller, evidence of its ability to conclude the transaction upon these Terms and Conditions of Sale, without delay. Maltz & Seller reserve the right to reject any offeror, who Maltz or Seller believes is not financially capable of consummating the purchase of the Property. Expenses incurred by the Successful Bidder, or any competing bidder concerning any due diligence, such as obtaining title reports or environmental inspections, shall be the sole responsibility of such bidder, and under no circumstances shall Maltz or Seller be responsible for, or pay, such expenses.

9. Maltz, Seller, or 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 Property or this Auction Sale, which might be pertinent to the purchase of the Property, including, without limitation, (i) the current or future real estate tax liability, assessment or valuation of the Property; (ii) the potential qualification of the 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 non-compliance of the 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 Property; (iv) the availability of any financing for the purchase, alteration, rehabilitation or operation of the 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 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 or other hazardous materials anywhere on the 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 bidder hereby expressly agrees and acknowledges that no such representations or warranties have been made. Maltz & Seller are not liable or bound in any manner by expressed or implied warranties, guarantees, promises, statements, representations or information pertaining to the Property, made or furnished by Maltz or Seller or any real estate broker, agent, employee, servant or other person or professional representing or purporting to represent Maltz or Seller unless such warranties, guarantees, promises, statements, representations or information are expressly and specifically set forth in writing by Maltz or Seller. **The Property will be delivered vacant of tenancies at closing.**

10. The Property 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, such liens, claims, and interests, if any, to attach to the proceeds of sale in such order and priority as they existed immediately prior to the Sale Date, and 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. By delivering their respective Qualifying Deposits, all bidders acknowledge that they have had the opportunity to review and inspect the Property, the state of title thereof and laws, rules and regulations applicable thereto, and the form of the Bargain & Sale Deed that Seller will execute to convey the Property, and will rely solely thereon and on their own independent investigations and inspections of the Property in making their bids. Neither Maltz, Seller nor any of their representatives make any representations or warranties with respect to the permissible uses of the Property, including, but not limited to, the

zoning of the Property. All bidders acknowledge that they have conducted their own due diligence in connection with the Property, and are not relying on any information provided by Maltz, Seller, or their professionals.

11. The Seller shall convey the Property by delivery of a Bargain & Sale 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 purchaser is unable to obtain title insurance, the Seller may at its option arrange for the issuance of a title insurance policy by such a company at the sole cost and expense of the Successful Bidder.

12. The only commission that will be paid is to the Licensed Real Estate Broker, who registers the successful bidder in accordance with the Broker Participation Agreement and has received confirmation of receipt and acknowledgement of valid registration by Maltz.

13. These Terms and Conditions of Sale will be read into the record, or specifically incorporated by reference, at the Auction Sale of the Property. By making a bid for the Property, 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 them.

14. The Auction of the Property is subject to confirmation by Seller.

15. Maltz shall notify the Successful Bidder whether the Seller confirms the successful bid within 48 hours of the conclusion of the Auction.

16. If the Seller is unable to deliver title to the Property in accordance with these Terms and Conditions of Sale for any reason whatsoever, his and Maltz's only obligation will be to refund the Deposit and Buyer's Premium, respectively, without any interest, to the Successful Bidder and upon such refund, the Successful Bidder will have no claim or recourse against the Seller, Maltz, or their professionals.

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

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

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

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