

## **BIDDING PROCEDURES**

1. These Bidding Procedures are promulgated in connection with the public auction sale (the "Auction Sale") of certain real properties, and improvements, located at 109 Dune Road, East Quogue, New York 11942 (the "109 Property") and 111 Dune Road, East Quogue, New York 11942 (the "111 Property") (collectively the 109 Property and the 111 Property shall be referred to as the "Properties").

2. The Auction Sale for the Properties shall be held on June 17, 2009, at 1:00 p.m. (the "Sale Date") at 111 Dune Road, East Quogue, New York 11942.

3. The seller of the Properties is Salvatore LaMonica, Esq., as the Chapter 7 Trustee (the "Trustee") of the estate (the "Estate") of Marc S. Dreier (the "Debtor"), which Chapter 7 case is pending before the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") under Case No. 09-10371, before the Honorable Stuart M. Bernstein, Chief Judge for the Southern District of New York. The sale of the Properties is being conducted pursuant to Bankruptcy Code sections 363(b), (d) and (f), free and clear of liens claims and encumbrances and in accordance with the Order of the Bankruptcy Court.

4. The Trustee seeks to solicit bids for the sale of the Estate's right, title and interest in the Properties. As set forth more fully below, the Properties will be offered for sale jointly or separately. After the Auction Sale, the Trustee will determine in his sole and absolute discretion which bid(s) is(are) the highest or best bid(s) for the Properties.

5. The Trustee may, in his sole and absolute discretion, also include the personal property located at the Properties as part of the Auction Sale. If the Trustee decides **not** to include the personal property located at one or both of the Properties as part of the Auction Sale, the Trustee will announce such determination on the website of the Estate's auctioneer, David R. Maltz & Co., Inc. (the "Auctioneer"), located at <http://www.maltzauctions.com/>, at least **five days** prior to the Sale Date. In that event, the Trustee will schedule a separate sale of the personal property located at one or both of the Properties, as necessary.

6. In order for prospective bidders to attend the inspections for both Properties they must provide the Auctioneer with proof that they have the required Qualifying Deposit (as defined below), to attend the inspections for the 109 Property they must provide the Auctioneer with a proof that they have the required 109 Qualifying Deposit (as defined below) and to inspect the 111 Property they must provide the Auctioneer with a proof that they have the required 111 Qualifying Deposit (as defined below).

### 7. **The Auction Sale Requirements**

#### **a. The Properties Jointly**

Prior to the Auction Sale, each prospective bidder must deliver a certified check or bank check in the amount of five hundred thousand dollars (\$500,000.00) (the "Qualifying Deposit")

payable to “Salvatore LaMonica, Esq., as Trustee” in order to be permitted to bid on the Properties, the Qualifying Deposit shall serve as a partial good faith deposit against payment of the purchase price by such competing bidder as the Trustee determines to have made the highest or best bid for the Properties. By June 19, 2009, at 1:00 p.m., the Successful Bidder shall deliver to the Trustee, by certified check or bank check an amount equal to ten percent (10%) of its successful bid, minus the Qualifying Deposit (together with the Qualifying Deposit, the “Deposit”). At the conclusion of the Auction Sale the Successful Bidder must execute, and thereby agree to be bound by (i) these Bidding Procedures, and (ii) the Memorandum of Sale, a copy of which is annexed to these Bidding Procedures.

**b. The Properties Separately**

**i. The 109 Property**

Prior to the Auction Sale, each prospective bidder must deliver a certified check or bank check in the amount of one hundred thousand dollars (\$100,000.00) (the “109 Qualifying Deposit”) payable to “Salvatore LaMonica, Esq., as Trustee” in order to be permitted to bid on the 109 Property, the 109 Qualifying Deposit shall serve as a partial good faith deposit against payment of the purchase price by such competing bidder as the Trustee determines to have made the highest or best bid for the 109 Property. By June 19, 2009, at 1:00 p.m., the Successful Bidder shall deliver to the Trustee, by certified check or bank check, an amount equal to ten percent (10%) of its successful bid, minus the 109 Qualifying Deposit (together with the 109 Qualifying Deposit, the “109 Deposit”). At the conclusion of the Auction Sale the Successful Bidder must execute, and thereby agree to be bound by (i) these Bidding Procedures, and (ii) the Memorandum of Sale, a copy of which is annexed to these Bidding Procedures.

**ii. The 111 Property**

Prior to the Auction Sale, each prospective bidder must deliver a certified check or bank check in the amount of four hundred thousand dollars (\$400,000.00) (the “111 Qualifying Deposit”) payable to “Salvatore LaMonica, Esq., as Trustee” in order to be permitted to bid on the 111 Property, the 111 Qualifying Deposit shall serve as a partial good faith deposit against payment of the purchase price by such competing bidder as the Trustee determines to have made the highest or best bid for the 111 Property. By June 19, 2009, at 1:00 p.m., the Successful Bidder shall deliver to the Trustee, by certified check or bank check, an amount equal to ten percent (10%) of its successful bid, minus the 111 Qualifying Deposit (together with the 111 Qualifying Deposit, the “111 Deposit”). At the conclusion of the Auction Sale the Successful Bidder must execute, and thereby agree to be bound by (i) these Bidding Procedures, and (ii) the Memorandum of Sale, a copy of which is annexed to these Bidding Procedures.

8. At the conclusion of the Auction Sale, after the Trustee has determined which bidder(s) is(are) the Successful Bidder(s), the Trustee, or his representative, will return the Qualifying Deposit, the 109 Qualifying Deposit and the 111 Qualifying Deposit to all other bidders, except for the second highest bidder(s). The second highest bidder(s) Qualifying Deposit, the 109

Qualifying Deposit and the 111 Qualifying Deposit shall be returned once the Successful Bidder(s) post the required (10%) of its successful bid as provided in these Bidding Procedures.

9. Whether the Properties are sold jointly or separately, the Successful Bidder(s) must pay the balance of the Purchase Price (the difference between the amount of the successful bid and the Deposit) to the Trustee, by certified check, bank check, federal funds or wire transfer at the closing of title to the Properties. The Successful Bidder(s) must close title to the Properties on or before **July 31, 2009, at 11:00 a.m.** (the "Closing") at the offices of the attorneys for the Trustee, LaMonica Herbst & Maniscalco LLP, 3305 Jerusalem Avenue, Wantagh, New York 11793, **TIME BEING OF THE ESSENCE AS TO THE PURCHASER(S)**, although such date may be extended solely by the Trustee.

10. Prior to the Closing, the Trustee shall file with the Bankruptcy Court an Affirmation seeking an Order confirming the sale of the Properties, either jointly or separately, whichever may be applicable, to the Successful Bidder(s).

11. The Successful Bidder(s) shall pay any County, State, City or Town, Village or other real property transfer taxes incurred by the transfer of the Properties by the Estate at the Closing. In connection with the Closing, the Successful Bidder(s) are hereby given notice that **TIME BEING OF THE ESSENCE AS TO THE SUCCESSFUL BIDDER(S), to close for any reason whatsoever (except as otherwise provided below) including the failure to pay the balance of the Purchase Price(s) on the date of the Closing, will result in the Trustee retaining the Deposit as liquidating damages and the termination of the respective Successful Bidder's right to acquire the Properties, either jointly or separately, whichever may be applicable under these Bidding Procedures.** The Successful Bidder(s) shall be obligated to close title to the Properties and there is no contingency of any kind or nature that will permit the Successful Bidder(s) to cancel or avoid its obligation under these Bidding Procedures other than the Trustee's inability to deliver insurable title to the Properties, jointly or separately, whichever may be applicable. Further, the Successful Bidder(s) shall have demonstrated, to the sole satisfaction of the Trustee, evidence of its ability to conclude the transaction upon these Bidding Procedures without delay. The Trustee reserves the right to reject any offeror, who in the sole and absolute discretion of the Trustee, the Trustee believes is not financially capable of consummating the purchase of the Properties. **Expenses incurred by the Successful Bidder(s), or any other 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 the Trustee or the Estate or the Trustee's professionals be responsible for, or pay, such expenses.**

12. In the event that the Successful Bidder(s) for both or either of the Properties, whichever may be applicable, fails to (a) tender by June 19, 2009, at 1:00 p.m., by certified check or bank check, an amount equal to ten percent (10%) of its successful bid, (b) tender the payment of the balance of the Purchase Price(s) on the Closing Date, or (c) otherwise perform any of their obligations under these Bidding Procedures, the Trustee, at his sole option, shall be authorized to sell the Properties, jointly or separately, whichever may be applicable, to the Second Highest Bidder(s) without any further notice and without giving credit for the Deposit(s) forfeited by the Successful Bidder(s), and upon such other terms and conditions as the Trustee deems appropriate. Should the

Second Highest Bidder(s) fail to close on the Properties within such time as the parties may agree, but not to exceed thirty (30) days after notice from the Trustee to the Second Highest Bidder(s), the Trustee shall be authorized to sell the Properties, jointly or separately, whichever may be applicable, to the next highest or best bidder(s), without the necessity of any further notice. All bidders will be bound by these Bidding Procedures.

13. The Trustee or the Trustee's professionals have not made, and do not make, any representations as to the physical condition, rents, leases, expenses, operations, value of the land or buildings thereon, or any other matter or thing affecting or related to the Properties or this Auction Sale, which might be pertinent to the purchase of the Properties, including, without limitation, (i) the current or future real estate tax liability, assessment or valuation of the Properties; (ii) the potential qualification of the Properties 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 Properties, 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 Properties; (iv) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Properties 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 Properties; (vi) the present and future condition and operating state of any and all machinery or equipment on the Properties and the present or future structural and physical condition of any building thereon or its suitability for rehabilitation or renovation; (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) any present or future issues concerning subdivision or non-subdivision of the Properties; or (ix) 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 Properties. Each bidder hereby expressly agrees and acknowledges that no such representations have been made. The Trustee is not liable or bound in any manner by expressed or implied warranties, guaranties, promises, statements, representations or information pertaining to the Properties, made or furnished by the Trustee or any real estate broker, agent, employee, servant or other person or professional representing or purporting to represent the Trustee unless such warranties, guaranties, promises, statements, representations or information are expressly and specifically set forth in writing by the Trustee.

14. The Properties are 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, judgment or mortgage, or adverse claims to title, of whatever kind or nature, such liens, 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; (e) all leases and occupancies, if any, as may exist or encumber the Properties or any portion(s) thereof; and (f) environmental conditions. By delivering their respective Qualifying Deposits, 109 Qualifying Deposits or 111 Qualifying Deposits, whichever is applicable, all bidders acknowledge that they have had the opportunity to review and

inspect the Properties, the state of title thereof and laws, rules and regulations applicable thereto, and the form of the Trustee's Deed that the Trustee will execute to convey the Properties, and will rely solely thereon and on their own independent investigations and inspections of the Properties in making their bids. Neither the Trustee nor any of his representatives make any representations or warranties with respect to the permissible uses of the Properties, including, but not limited to, the zoning of the Properties. All bidders acknowledge that they have conducted their own due diligence in connection with the Properties, and are not relying on any information provided by the Trustee, the Auctioneer or the Trustee's professionals.

15. The Trustee shall convey the Properties by delivery of a Quitclaim 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. The Trustee may at his option arrange for the issuance of a title insurance policy by such a company at the sole cost and expense of the Successful Bidder(s).

16. Neither the Trustee, Trustee's counsel, the Auctioneer, nor the Estate is liable or responsible for the payment of fees of any broker. The only broker or auctioneer commissions that the estate may be liable for are those of the Auctioneer, which was retained pursuant to an Order of the Bankruptcy Court.

17. Nothing contained in these Bidding Procedures is intended to supersede or alter any provisions of Title 11 of the United States Code (the "Bankruptcy Code") or otherwise interfere with the jurisdiction of the Bankruptcy Court. All of the terms and conditions set forth in these Bidding Procedures are subject to modification as may be directed by the Trustee or by the Court. The Trustee reserves the right to modify these Bidding Procedures at the Auction Sale or thereafter to maintain consistency with the provisions of the Bankruptcy Code and/or prior orders of the Court.

18. These Bidding Procedures will be read into the record, or specifically incorporated by reference, at the Auction Sale of the Properties. By making a bid for the Properties, all bidders will be deemed to have acknowledged having read these Terms and Conditions of Sale and have agreed to be bound by them.

19. If the Trustee is unable to deliver title to the Properties, jointly or separately, whichever may be applicable, in accordance with these Bidding Procedures for any reason whatsoever, his only obligation will be to refund the Deposit or, as applicable the 109 Deposit or the 111 Deposit, together with any interest earned thereon, if any, to the Successful Bidder(s), and upon such refund, the Successful Bidder(s) will have no claim or recourse against the Trustee, the Trustee's professionals or the Auctioneer for the Estate.

20. The Trustee reserves his right to withdraw the Properties from the Auction Sale, either prior to or subsequent to the Auction Sale, for any reason whatsoever, as he deems necessary or appropriate.

21. The Auction Sale of the Properties is subject to confirmation by the Trustee and the Bankruptcy Court.

22. The Trustee or the Trustee's attorney shall notify the Successful Bidder(s) whether the Auction Sale is confirmed. The Trustee may reject any offer that he determines in his business judgment should not be confirmed. The Bankruptcy Court shall determine any disputes concerning the Auction Sale of the Properties. By participating in the Auction Sale, all bidders consent to the jurisdiction of the Bankruptcy Court to determine such disputes under the Debtor's pending case.

23. The Properties shall be delivered vacant of tenancies, but AS IS, and not broom clean upon closing.

I have read these Bidding Procedures and agree to be bound by them.

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

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

**MEMORANDUM OF SALE**  
**(109 Property and 111 Property Jointly)**

The undersigned has this \_\_\_\_\_ day of \_\_\_\_\_, 2009, agreed to purchase the real properties located at 109 Dune Road, East Quogue, New York 11942 and 111 Dune Road, East Quogue, New York 11942, of the estate of Marc S. Dreier being sold by Salvatore LaMonica Esq., as the Chapter 7 Trustee for the Estate of Marc S. Dreier, for the sum of \$ \_\_\_\_\_ DOLLARS and hereby promise and agree to comply with the terms and conditions of the sale of the Properties, as set forth in the annexed Bidding Procedures.

PURCHASER (Signature)	PURCHASER (Signature)
PRINT NAME OF PURCHASER	PRINT NAME OF PURCHASER
ADDRESS	ADDRESS
TELEPHONE NUMBER	TELEPHONE NUMBER
FAX NUMBER	FAX NUMBER

Received from \_\_\_\_\_ the sum of \$ \_\_\_\_\_ 00,000.00 DOLLARS, as a non-refundable deposit for the purchase of the Properties pursuant to the Bidding Procedures.

Salvatore LaMonica, Esq. Chapter 7 Trustee  
c/o LaMonica Herbst & Maniscalco LLP  
Attorney for the Trustee, Attn: Gary F. Herbst, Esq.  
3305 Jerusalem Avenue  
Wantagh, NY 11793  
Telephone: (516) 826-6500; Facsimile: (516) 826-0222

This is to verify that the successful bid in the above sale was for the sum of \$ \_\_\_\_\_.

\_\_\_\_\_  
RICHARD B. MALTZ, AUCTIONEER  
DCA # 1240836

**ATTORNEY INFORMATION**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_

**MEMORANDUM OF SALE**  
**(109 Property Separately)**

The undersigned has this \_\_\_\_\_ day of \_\_\_\_\_, 2009, agreed to purchase the real property located at 109 Dune Road, East Quogue, New York 11942 of the estate of Marc S. Dreier being sold by Salvatore LaMonica Esq., as the Chapter 7 Trustee for the Estate of Marc S. Dreier, for the sum of \$ \_\_\_\_\_ DOLLARS and hereby promise and agree to comply with the terms and conditions of the sale of the 109 Property, as set forth in the annexed Bidding Procedures.

PURCHASER (Signature)	PURCHASER (Signature)
PRINT NAME OF PURCHASER	PRINT NAME OF PURCHASER
ADDRESS	ADDRESS
TELEPHONE NUMBER	TELEPHONE NUMBER
FAX NUMBER	FAX NUMBER

Received from \_\_\_\_\_ the sum of \$ \_\_\_\_\_ 00,000.00 DOLLARS, as a non-refundable deposit for the purchase of the 109 Property pursuant to the Bidding Procedures.

Salvatore LaMonica, Esq. Chapter 7 Trustee  
c/o LaMonica Herbst & Maniscalco LLP  
Attorney for the Trustee, Attn: Gary F. Herbst, Esq.  
3305 Jerusalem Avenue  
Wantagh, NY 11793  
Telephone: (516) 826-6500; Facsimile: (516) 826-0222

This is to verify that the successful bid in the above sale was for the sum of \$ \_\_\_\_\_.

\_\_\_\_\_  
RICHARD B. MALTZ, AUCTIONEER  
DCA # 1240836

**ATTORNEY INFORMATION**

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Phone \_\_\_\_\_

**MEMORANDUM OF SALE**  
**(111 Property Separately)**

The undersigned has this \_\_\_\_\_ day of \_\_\_\_\_, 2009, agreed to purchase the real property located at 111 Dune Road, East Quogue, New York 11942 of the estate of Marc S. Dreier being sold by Salvatore LaMonica, Esq. as the Chapter 7 Trustee for the Estate of Marc S. Dreier, for the sum of \$ \_\_\_\_\_ DOLLARS and hereby promise and agree to comply with the terms and conditions of the sale of the 111 Property, as set forth in the annexed Bidding Procedures.

\_\_\_\_\_  
PURCHASER (Signature)

\_\_\_\_\_  
PURCHASER (Signature)

\_\_\_\_\_  
PRINT NAME OF PURCHASER

\_\_\_\_\_  
PRINT NAME OF PURCHASER

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
ADDRESS

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

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

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

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

Received from \_\_\_\_\_ the sum of \$ \_\_\_\_\_00,000.00 DOLLARS, as a non-refundable deposit for the purchase of the 111 Property pursuant to the Bidding Procedures.

Salvatore LaMonica, Esq. Chapter 7 Trustee  
c/o LaMonica Herbst & Maniscalco LLP  
Attorney for the Trustee, Attn: Gary F. Herbst, Esq.  
3305 Jerusalem Avenue  
Wantagh, NY 11793  
Telephone: (516) 826-6500; Facsimile: (516) 826-0222

This is to verify that the successful bid in the above sale was for the sum of \$ \_\_\_\_\_.

\_\_\_\_\_  
RICHARD B. MALTZ, AUCTIONEER  
DCA # 1240836

**ATTORNEY INFORMATION**

Name \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_