

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SCHENECTADY

NEW YORK BUSINESS DEVELOPMENT
CORPORATION, D/B/A PURSUIT BDC,

Plaintiff,

TERMS OF SALE

- against -

Index No.: 2022-263

PARK BUILDING AND MILLWORK,
LLC, DANIEL W. FISK and KRISTEN L.
FISK, PARKSITE INC, ACPI WOODS
PRODUCTS LLC SUCCESSOR IN
INTEREST TO ELKAY WOODS
PRODUCTS COMPANY, NEW YORK
STATE DEPARTMENT OF TAXATION
AND FINANCE, and JOHN and JANE DOE
(such designation intending to refer to any and
all other individuals occupying the subject
premises and/or claiming any interest
whatsoever in such premises),

Property Addresses:

707 Kings Road,
Schenectady, NY
(SBL #: 60.69-1-22.121)

707A Kings Road,
Schenectady, NY
(SBL #: 60.69-1-22.2)

Defendants.

The premises described in the Notice of Pendency in the above-referenced action filed in the Schenectady County Clerk’s Office on February 22, 2022, respectively, will be sold under the direction of the Referee, James Craig, Esq., upon the following terms:

1. Ten percent (10%) of the purchase price of said premises will be required to be paid in cash or by certified check or a cashier’s check drawn on a local bank to the said Referee at the time and place of the foreclosure sale for which the Referee’s receipt will be given. If New York Business Development Corporation (“Plaintiff”) is the successful bidder, the ten percent deposit will be waived and it shall not be required to make any deposit. The Referee or the Plaintiff reserve the right to verify consideration at any time before, during, and after bidding and to resume or recommence the bidding in the event that proof of such consideration is not provided to the satisfaction of the Plaintiff.

2. Where a deposit of ten percent (10%) of the purchase price is required to be paid at the time of said sale, the residue of the said purchase price will be required to be paid in cash or by certified check or a cashier's check drawn on a local bank at the time and place of the closing, which shall be held on or before thirty (30) days from the date of the foreclosure sale (the "Closing Date") at the offices of the Referee, unless otherwise mutually agreed to by the Plaintiff and the parties to the sale. In the event Plaintiff is the Purchaser, the delivery of the Deed by the Referee may occur at any convenient time subsequent to the foreclosure sale, to the Plaintiff or its assignee.

3. The premises will be sold to the highest bidder. Prior to bidding each bidder must give the Referee evidence of the ability to comply with the deposit requirements of paragraph "2" above and his name and address at the time the bid is made.

4. If, for any reason or for no reason at all, the Purchaser neglects to call or fails to appear, ready, willing, and able to complete the purchase on the Closing Date, Purchaser forfeits the 10% deposit, and the Referee/Plaintiff shall, without necessity of court order, declare the Purchaser to be in default, the bid deposit shall be delivered forthwith by the Referee to the Plaintiff as liquidated damages for failing to complete the purchase of the premises as provided herein, and the Plaintiff shall be entitled to immediately schedule a new auction.

5. In the event that the Plaintiff shall in its sole and absolute discretion, agree to extend the Closing Date to a date not more than thirty (30) calendar days after the Closing Date (the "Extended Date"), such extension shall be granted only on the following terms and conditions: (a) Purchaser shall pay to the Plaintiff or its assignees in cash, bank or certified check interest at the rate of nine percent (9%) *per annum* on the total Purchase Price during the period of such extension from the original Closing Date set forth herein (in no event shall the rate of interest charged hereunder be in excess of the maximum rate provided by applicable law); (b) Purchaser shall pay all costs and expenses incurred by the Plaintiff in connection with the granting of said extension, including the Plaintiff's reasonable attorneys' fees; (c) Purchaser shall assume all responsibility for the common charges, taxes, insurance,

and other costs or payments of any kind required to be paid by the Referee herein and the risk of loss or damage from any cause whatsoever during the period of such extension shall be borne by Purchaser and Purchaser shall accept the Premises as is, subject to such damage, vandalism, or devaluation, without any adjustment to the Purchase Price; and (d) TIME SHALL BE OF THE ESSENCE with respect to the obligation of the Purchaser (and only the Purchaser) to close on the Extended Date.

6. The Referee makes no representations as to the amount of taxes, assessments and/or water rents which are due. The cost of the real estate transfer tax stamps to be attached to the Referee's deed shall be added to the purchase price of the premises and be paid for by the Purchaser. The payment of any and all taxes, water rates or other assessments that accrue after the sale date, are the obligation and responsibility of the Purchaser.

7. The Referee will not be required to send any notice to Purchaser. The bidding will be kept open after said property is struck down. In case the Purchaser who is the highest bidder to whom the property is struck down shall fail to comply with any of these terms of sale, or in the event Purchaser shall fail to appear and deliver to the Referee the balance of the purchase money on the designated date for any reason, the Referee shall sell the property to the second highest bidder. The sale to the second highest bidder shall take place ten (10) days after written notice is mailed to the second highest bidder at the address designated by the second highest bidder. If the second highest bidder fails to deliver to the Referee the total amount of the second highest bidder's bid within said ten (10) day period measured from the date of mailing by the Referee or Plaintiff of such notice, the second highest bidder shall cease to have any rights to the bid; and if the third highest bidder was the Plaintiff, the sale shall close as set forth in paragraph "2" above; and in case any Purchaser shall fail to comply with any of the above conditions of sale, the premises so struck down to him will be again put up for sale and readvertised under the direction of said Referee under the same Terms of Sale, without application to the Court, unless Plaintiff's attorneys shall elect to make such application. The Referee shall have the discretion to accept payment from the applicable bidder, after the time periods stated above, upon the payment

of interest for each day that payment is late calculated on an annual rate of interest of nine percent (9%) on the purchase price.

8. In the event that the Purchaser hereunder shall fail to comply with any of the conditions of sale, in addition to any other liability of the Purchaser hereunder, such Purchaser will be held liable for any deficiency there may be between the Purchase Price on the sale and the Purchase Price on the resale, and also for any costs or expenses occurring on such resale, including but not limited to the Plaintiff's reasonable attorneys' fees, disbursements and advertising costs. Pursuant to Paragraph 4 above, upon Purchaser's default, the bid deposit shall automatically be forfeited as liquidated damages. Such forfeiture shall not be a waiver of any rights of the Lien Holder to seek and obtain additional damages from the defaulting bidder.

9. The Purchaser of said premises will at the time and place of sale sign a memorandum of purchase and an agreement to comply with the terms and conditions of sale herein contained. Purchaser must indicate in the memorandum of purchase an address at which notice can be mailed to him and an address at which any notice may be personally delivered to him.

10. The Referee may adjourn the date for delivery of the Referee's Deed in the event the Referee has been unable to obtain clearance, if same be required, from the New York State Tax Commission, or for other reasons, provided that the Plaintiff's attorney consents to such adjournment.

11. Should the Plaintiff become the Purchaser of the said mortgaged premises at said sale or in the event that the rights of the Purchaser at said sale under the Judgment shall be assigned to or be acquired by the Plaintiff in a valid assignment thereof, which assignment has been filed with the Referee, the said Referee shall not require the Plaintiff to pay in cash the entire amount bid at such sale, but shall execute and deliver to the Plaintiff or its assignee a Deed or Deeds of the premises sold upon the Judgment in such case. Any assignee of Plaintiff's bid shall comply with and be subject to these Terms of Sale.

12. The Referee and/or the Plaintiff have not made and do not make any representations as to the physical condition, rents, leases, expenses, operation, or any other matter or thing affecting or relating to the Premises, except as herein specifically set forth, and the Purchaser hereby expressly acknowledges that no representations have been made.

13. The property will be sold in "as is" condition and subject to the following:
- a. all enforceable restrictive covenants, easements, and zoning ordinances of record of the county, city, town or village in which the premises lie affecting said premises;
 - b. all restrictive covenants, easements and zoning ordinances apparent from physical examination of the premises;
 - c. any state of facts an accurate survey may show, including encroachments of stoops, areas, cellar steps, trim and cornices, if any, upon any street or highway;
 - d. rights of the public and others in and to any part of the mortgaged premises that lies within the bounds of any street, alley or highway;
 - e. any and all tenancies, possessory interests and/or leases affecting said premises not made party defendants;
 - f. any violations against the premises heretofore or hereafter issued by any governmental or municipal authority;
 - g. any rights of others with respect to any streams or waterways running through the premises;
 - h. taxes, assessments, water and sewer rents which are due at the date of sale or are liens upon the premises to the extent cash proceeds of sale are insufficient to satisfy the foregoing;
 - i. the Right of Redemption of the United State of America pursuant to 28 U.S.C. § 2410(c); and

j. liens of any person or entity not made a party to the foreclosure action.

14. In the event the New York State Department of Taxation and Finance requires any forms signed by the Purchaser relating to the Transfer Tax imposed by the State of New York, Purchaser shall execute such forms within two (2) days after receipt thereof and return same to Plaintiff's attorney. Failure of the Purchaser to comply with this provision shall result in a forfeiture of Purchaser's bid, as if purchaser had not appeared on the designated date for delivery of the Referee's Deed.

15. Any errors or omissions in computing apportionments and/or allocation of closing costs at closing shall be corrected. This provision shall survive closing and delivery of the Referee's Deed.

Purchaser's Name

Purchaser's Signature

James Craig, Esq., Referee