

## **TERMS OF SALE**

### **IN REM NO. 169 AUCTION**

«Property\_Address», «City»  
«Serial»

All properties upon which judgment has been obtained by the County of Erie (hereinafter "County") in the proceeding known as In Rem 169 will be sold under the direction of the Erie County Director of Real Property Tax Services, the Referee, pursuant to the following terms:

1. The minimum bid may not be less than \$500. However, the Referee does reserve the right to set the minimum bid for a specific property at an amount in excess of \$500. The greater of twenty percent (20%) of the purchase money of said premises or \$500 will be required to be paid in cash or certified check to the said Referee at the time and place of sale, for which the Referee's receipt will be given. The Referee will give full credit for any deposit in excess of the amount paid. In the event that the property reverts back to the County, the Referee is not required to collect the deposit.
2. The remainder of said purchase price will be required to be paid in cash or certified check payable to: Scott A. Bylewski, Esq., Referee, and deliverable to the offices of Lippes Mathias LLP, 50 Fountain Plaza, Suite 1700, Buffalo, New York or at such other place designated by the Referee or his attorney no later than November 7, 2022 (the "Settlement Date").
3. The Referee is not required to send any notice to the purchaser; and if purchaser neglects to call at the time and place above specified to receive his deed, he will be deemed to be in default under these Terms of Sale and all monies will be forfeited. Purchaser will be charged with interest at nine per cent (9%) per annum on the balance due from the date of sale to the ultimate date of delivery of the Referee's Deed, plus any additional costs and fees, including attorneys' fees, unless the Referee shall deem it proper to extend the time for completion of said purchase.
4. The Referee conducting the sale shall pay out of the proceeds of sale, if any, as follows:
  - (a) expense of the sale;
  - (b) costs awarded in the foreclosure judgment;
  - (c) all taxes, assessments and water and sewer rates which are liens upon the real estate, but which have become such subsequent to the filing of the Notice of Pendency (5/10/21), or for the non payment of which no tax sale has been had prior thereto, shall be paid in the inverse order of the time at which such taxes and assessments became liens;
  - (d) all tax sale certificates against the property which may have been issued subsequent to the filing of the Notice of Pendency and shall be paid in the inverse order of the date of issuance of such certificates;
  - (e) so far as such proceeds shall suffice to pay the same, the several amounts due to the plaintiffs and defendants in such action, including the County of Erie, on the tax sale certificates held by them against the property, with all interest, penalties, additions and expenses allowed by law, in the inverse order of the date of issuance of such tax sale certificates.

**Any and all taxes arising after the date of the filing of the Notice of Pendency survive the foreclosure sale to the extent not paid by the proceeds of sale and are the responsibility of the purchaser.**

The Referee will exercise due diligence in ascertaining the taxes, assessments, water, sewer and other municipal liens against the property as of the date of the sale, but makes no guarantees or warranties as to that information.

Any liens or other encumbrances which are not disclosed to the Referee or the County's closing attorney prior to the closing date or are discovered after the closing date become the sole responsibility of the purchaser. Further details are provided on Exhibit A attached.

The aforesaid terms of this paragraph 4 do not apply if the County shall, previous to the delivery of the deed, produce to the Referee proof of the payment thereof.

5. The purchaser of said premises will, at the time and place of sale, sign a memorandum of his purchase, and an agreement to comply with the terms and conditions of sale herein contained.

6. In case any purchaser shall fail to comply with any of the terms conditions of sale, including without limitation not paying the required deposit, the bidder and/or purchaser shall be deemed to be in default and the premises so struck down to him may again be put up for sale under the direction of said Referee, without application to the Court, unless the County's attorney shall elect to make such application.

The bidding will be kept open after the property is struck down and in any case where a bidder and/or purchaser failed to comply with any of the terms and conditions.

The Referee reserves the right to sell the premises to the second highest bidder and/or an alternate bidder.

In the event of a resale, purchaser shall be held liable for the difference between the amount received upon resale and the amount of purchaser's original bid, interest on the original bid at 9 per cent per annum from the date of the first sale to the ultimate delivery of the Referee's deed, plus costs, expenses and fees (including attorneys' fees) occurring as a result of said resale. Purchaser's deposit shall be applied to said deficiency, with any overage refunded to said purchaser. Purchaser shall be liable for any remaining deficiency.

Should the County be the successful bidder at said resale or if the premises is not resold, the purchaser's deposit shall be forfeited. Such forfeiture shall not be a waiver of any rights of the County to seek and obtain other damages as allowed for by law.

7. The premises are being sold in "AS IS" condition defined as the condition of the premises as of the date of the sale and continuing through the date of the closing. And subject to: any zoning restrictions and any amendments thereto, according to law, and now in force; subject to the state of facts an accurate survey may show; rights of the public and others in and to any part of the premises that lies within the bounds of any street, alley, or highway; covenants, restrictions, agreements, reservations and easements of record, if any, and to any and all violations thereof; any and all building and zoning regulations, restrictions and ordinances of the municipality in which said premises are located, and violations and/or liens of same, including, but not limited to, reapportionment of lot lines, and vault charges, if any; any and all orders or requirements issued by any governmental body having jurisdiction against or affecting said premises and violations of the same; the physical condition of any buildings or structure on the premises as the date of sale hereunder; the rights of the United States of America to redeem, if any; rights of tenants, occupants or squatters, if any. It shall be the responsibility of the purchaser to evict or remove any parties in possession of the premises being foreclosed herein. There shall be no adjustment on a pro-rata basis in favor of the purchaser for any rents that are paid for a period after the date of this sale.

8. The risk of loss or damage by fire, vandalism or other cause between the time of sale and delivery of the deed is assumed by the Purchaser.

9. As to any information from whatever source provided on behalf of the County concerning the premises, the County makes no guarantee regarding the accuracy or completeness of such information. Purchaser is responsible for performing his own independent investigation.

10. The County makes no representations or warranties with respect to the marketability or insurability of the title to the premises being sold and in the event that the Referee is unable to convey title to the subject premises as set forth herein and/or in the Judgment of Foreclosure and Sale, or the Referee's Deed is found to be defective subsequent to the delivery of the deed, purchaser's remedy shall be limited to the return of those sums actually

paid on account of the purchase price, and neither the Referee nor the County nor the County's attorneys herein shall be liable to the purchaser for any sum whatsoever, including consequential or other damages, or for any monies advanced for any purpose whatsoever by purchaser.

11. The County shall prepare and provide a Referee's Deed to the purchaser. All other expenses of closing, including but not limited to, costs of Recording the Referee's Deed, including Real Property Transfer Tax and Transfer Stamps, if any, and title continuation charges and title insurance costs shall be borne by the purchaser. Referee will not furnish an abstract of title or survey.

12. If there is a conflict between these terms of sale and any pleading filed in the foreclosure action, then the provisions of these Terms of Sale shall control.

13. The bidder and/or purchaser and/or assignee has no legal authority to enter the property or to remove belongings of prior owner(s) or tenant(s) or to alter or modify the property in any way, to charge rents or to evict until the closing is finalized and the deed is recorded.

14. The bidder and/or purchaser and/or assignee represents that he is not the presumptive owner of the foreclosed premises.

15. The bidder and/or purchaser and/or assignee represents that he is current with any and all financial obligations to municipalities throughout the County of Erie within which he/she owns property (i.e. taxes, water, sewer, user fees, violations, etc.).

16. The County shall refuse to transfer title to any person, including without limitation to an individual, corporation, partnership, association, Individual Retirement Account (IRA) Owner, Limited Liability Company or vendor (and each of such person's principals, partners, associates, members, etc.), who is not current on all obligations owed to municipalities throughout the County of Erie, its authorities and agencies, as of the Settlement Date. The County shall also refuse to transfer title to a delinquent homeowner who purchases his own property (regardless of how title is held) or another property at auction and such person will forfeit his deposit and/or final payments. If a person (bidder, purchaser and/or assignee) is not current on all such obligations as of the Settlement Date, all monies tendered by the bidder, purchaser and/or assignee shall be forfeited or be applied towards the outstanding obligations owed to the County of Erie and its authorities and agencies.

17. The Referee shall have the right to set aside a bid by any person deemed by him not to be a responsible bidder and/or purchaser and immediately put up the premises for sale again.

18. The County reserves the right to rescind the sale for reasons including but not limited to the filing of Bankruptcy and/or inadequate notice to the prior owner and/or any other party in interest/lienholder. The County reserves the right to negotiate settlement of any contested sale prior to the tender of the Referee's Deed. In the event the judgment is satisfied, the bidder and/or purchaser and/or assignee shall have no further rights or recourse against the County and/or the Referee other than the return of the deposit.

19. The County of Erie reserves the right to withdraw any parcel of real property from this sale and to reject any and all bids and sales.

20. Pursuant to the Amended 8<sup>th</sup> Judicial District Foreclosure Auction Plan, the Foreclosure Auction Rules—Eighth Judicial District and the COVID-19 Health Emergency Rules are set forth at Exhibit B, attached, and specifically incorporated herein.

Dated: October 6, 2022

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SCOTT A. BYLEWSKI, ESQ.  
Erie County Director of Real Property Tax Services, as Referee

## Exhibit A

Bidders at the tax foreclosure sale are advised that if winning bid amounts are not sufficient to satisfy certain real estate tax liens, these liens remain open, valid and enforceable.

At the beginning of this foreclosure proceeding, the List of Delinquent Properties was filed in the Erie County Clerk's Office on May 10, 2021. This document served as a Notice of Pendency relative to the property at issue herein. The Notice of Pendency confirms the filing of the foreclosure against the premises involved. By law, tax liens arising after the date of the filing of the Notice of Pendency survive the foreclosure sale. If the funds paid by the winning bidder to acquire the premises are not sufficient to pay these taxes, they continue to attach to the premises and are the responsibility of the new owner.

For each parcel in this In Rem 169 auction, the Notice of Pendency date is May 10, 2021. Tax liens arising subsequent to that date survive the sale to the extent not paid by the bid proceeds. Tax liens arising prior to May 10, 2021 are eliminated by the sale if not fully paid by the bid proceeds.

Any and all taxes that arise after the Notice of Pendency filing on May 10, 2021 survive the sale to the extent not paid by the bid proceeds.

The Referee shall not be responsible for any liens, assessments or other encumbrances not discovered until after the closing. In such a circumstance, the purchaser shall be responsible for paying or otherwise resolving such liens, assessments or encumbrances and shall have no recourse against the Referee, the County of Erie, its agents, servants or employees.

## Exhibit B

1. Pursuant to the Amended 8<sup>th</sup> Judicial District Foreclosure Auction Plan, the following Foreclosure Auction Rules– Eighth Judicial District (as modified by the In Rem 169 Judgment of Foreclosure and Sale to reflect a 20% deposit) apply:
  - (a) A successful bidder must have in his/her possession at the time of the bid the full 20% of the sum bid, in cash or certified or bank check to be made payable to the Referee.
  - (b) No sale will be deemed final until the full 20% deposit has been paid to the Referee and a Memorandum of Sale has been signed, which must be completed immediately following the sale.
  - (c) If a successful bidder fails to immediately pay the deposit and sign the Memorandum of Sale, the Referee will strike the bid and the second-highest bidder shall be permitted to tender the 20% deposit and sign the Memorandum of Sale.
  - (d) Bidders are cautioned that the failure to pay the full purchase price bid and appropriate closing costs at a closing to be scheduled no later than thirty (30) days following the auction (unless otherwise stipulated by all parties to the sale) may result in the forfeiture of the 20% deposit.
  - (e) If the successful bidder defaults in concluding the transaction at the purchase price, he/she may be liable for the difference if the property is subsequently sold at auction for a lower price in a subsequent sale.
  - (f) It is the responsibility of the bidder to acquaint him/herself with the property, any encumbrances thereon, and the Terms of Sale before placing a bid and to be certain that adequate funds are available to make good the bid.
2. Pursuant to the Amended 8<sup>th</sup> Judicial District Foreclosure Auction Plan, the following COVID-19 Health Emergency Rules apply:
  - (a) All participants in the foreclosure auction (including bidders and prospective bidders, the Referee, and the Plaintiff's agent) must comply with any face covering rule, regulation, or order in effect at the time of the foreclosure auction. The Referee shall refuse to accept any bid placed by a bidder not complying with this requirement. Should the Plaintiff's agent fail to comply with this requirement, the Referee shall cancel the auction and advise Plaintiff's counsel the reason for the cancellation. Should the Referee cancel the auction due to Plaintiff's agent's failure to comply with this requirement, Plaintiff shall not recover any costs associated with rescheduling the sale.
  - (b) All participants shall maintain appropriate social distancing during the auction. The Referee, the successful bidder, and the Plaintiff's agent shall maintain appropriate distancing while executing the Memorandum of Sale and the tendering of the deposit.
  - (c) All participants in the closing must comply with any face covering rule, regulation, or order in effect at the time of the closing. Should a bidder fail to comply, the Referee may cancel the closing and hold the bidder in default.

## **MEMORANDUM OF SALE**

«Property\_Address», «City»  
«Serial»

I, \_\_\_\_\_ have this 6<sup>th</sup> day of October, 2022, purchased the premises described in the annexed Notice of Sale for the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) and hereby promise to comply with the terms and conditions of the sale of said premises as set forth in the attached Terms of Sale and in this Memorandum of Sale.

1. The County will prepare a Referee's Deed in the name of the person or entity set forth below. Any requests for assignments, name changes, additional descriptions or other changes made after the date of the sale will not be processed unless a fee of \$75.00 is paid by the party requesting the same.

Name on Deed: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

2. All property is sold "AS IS". Purchaser is responsible for all liens for taxes, water, sewer and other municipal charges arising after May 10, 2021 to the extent that the bid price does not cover those liens.

3. The balance of the bid price shall be paid in **cash or certified funds** payable to: **Scott A. Bylewski, Referee** on or before **November 7, 2022** or the deposit will be forfeited. Funds must be delivered to Referee's agent 50 Fountain Plaza, Suite 1700, Buffalo, New York 14202. The Referee, at his sole discretion, may extend the deadline, but is in no way obligated to do so.

4. The County shall prepare and provide a Referee's Deed to the purchaser. All other expenses of closing, including but not limited to costs of Recording the Referee's Deed, including Real Property

Transfer Tax and Transfer Stamps, if any, and title continuation charges and title insurance costs shall be borne by the purchaser.

Dated: October 6, 2022

\_\_\_\_\_  
Purchaser

Received from the said purchaser the sum of \_\_\_\_\_  
\_\_\_\_\_ dollars (\$ \_\_\_\_\_), being at least  
twenty percent (20%) of the amount bid (or a sum of \$500.00 whichever is greater) by said purchaser for  
the property sold by me pursuant to the Judgment of Foreclosure and Sale relative to the property  
described in the Notice of Sale.

\_\_\_\_\_  
Scott A. Bylewski, Esq.  
Erie County Director of Real Property Tax Services  
Referee

**Closing Contact Information**

Lippes Mathias, LLP  
Margaret A. Hurley, Esq.  
50 Fountain Plaza, Suite 1700  
Buffalo, New York 14202  
716 884-3135 phone  
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**PURCHASER RESPONSIBILITY**  
**IN REM 169**

***Property:***  
***Serial:***

I, the undersigned, fully understand and am aware that I am responsible for the Town and County Taxes and any municipal assessments and/or liabilities that have arisen since the date of the filing of the List of Delinquent Taxes, May 10, 2021, to the extent not paid by bid proceeds. By my signature below, it is agreed that I will be responsible to pay said taxes, assessments and/or liabilities.

Date: October 6, 2022

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(print)