

Intro. Res. No. 1491-2009
Introduced by Presiding Officer, on request of the County Executive

Laid on Table 6/9/2009

**RESOLUTION NO. 614 -2009, APPROVAL OF AUCTION
RULES FOR THE DISPOSITION OF SURPLUS PROPERTY
ACQUIRED UNDER THE SUFFOLK COUNTY TAX ACT**

WHEREAS, the disposition of property acquired through the Suffolk County Tax Act is regulated pursuant to Article A14 of the Administrative Code, Laws of Suffolk County, Part II (herein the "Code"); and

WHEREAS, §14-30(L) and §712-6 of Code pertain to the formulation and adoption of auction rules and procedures; and

WHEREAS, §712-6 requires the approval by the Suffolk County Legislature of auction rules and regulations formulated by the Department of Environment and Energy, Division of Real Property Acquisition and Management; and

WHEREAS, the Department of Environment and Energy, Division of Real Property Acquisition and Management, has previously filed a copy of the proposed rules for the auction of surplus County real estate with the County Executive and the Clerk of the Legislature and a copy of said proposed rules is annexed as Exhibit "A"; now, therefore be it

1st RESOLVED, that the auction rules annexed as Exhibit "A" are approved for use immediately on filing of this approved resolution with the Clerk of the Legislature.

DATED: **JUN 23 2009**

APPROVED BY:



County Executive of Suffolk County

Date: **7-6-09**

Exhibit "A"

Auction Terms and Conditions - Definitions

Affiliate: A Business Entity in which the Purchaser has, directly or indirectly, a voting, controlling or ownership interest of twenty percent (20%) or more, or which has such an interest in Purchaser.

Assignment: The transfer or conveyance of a right or contract from one person or Business Entity to another.

Business Entity: A legal being, other than an individual, natural person, e.g., a corporation, limited liability company, partnership, joint venture or syndication. A Business Entity must be duly formed in accordance with all applicable provisions of law and have the legal capacity, among other things, to be sued and to own property in the State of New York.

County: The County of Suffolk.

Deed: An instrument in writing, duly executed and delivered, that conveys title to real property.

Default: A failure by the Purchaser to comply with any provision of the Terms and Conditions.

Director: The Director of the Division of Real Property Acquisition and Management.

Immediate Family: A spouse, issue, including adopted children, sibling or parent.

Lien: A claim or encumbrance of property, e.g., for the payment of a debt.

Landlocked: A parcel of land that has no routes ingress and egress (by deed, easement or filed map roadways). Note a parcel located on an unopen roadway, a/k/a paper street, is NOT landlocked but is considered inaccessible at present.

Memorandum of Sale: The contract between the County and the Purchaser for the purchase of the Property, which incorporates, by reference, the Terms and Conditions of Sale and any special terms and conditions.

Principal: Any individual or Business Entity who participates at the auction through a duly authorized agent.

Property: The particular parcel of County-owned real property and any improvements thereon, sold at public auction to the Purchaser.

Purchase Price: The highest bid made and accepted for the Property at the auction.

Purchaser: The successful bidder(s) at the auction sale and, where the Purchaser is a Business Entity, then each partner or any director(s), officer(s), or shareholder(s) having a total of twenty percent (20%) or more of the Purchaser's voting stock, ownership interest or control.

Third party bidder: An individual who bids solely as a duly authorized agent of another individual or Business Entity.

Third party bidding: Bidding on behalf of a Purchaser/Principal through a duly authorized agent.

Title Closing: The transfer of title to or ownership of the Property to the Purchaser; the date upon which such transfer is made.

Upset Price: The amount at which bidding starts on the Property.

AUCTION TERMS AND CONDITIONS

The public auction of surplus land by the County of Suffolk will be conducted by the Division of Real Property Acquisition and Management pursuant to auction terms and conditions approved by the Suffolk County Legislature. This document contains the terms and conditions which might pertain to such auctions. It may be supplemented by the subsequent approval by the Suffolk County legislature of additional or different terms and conditions.

Each separate auction will be governed by those particular terms and conditions included herein that are determined by the Director of the Division of Real Property Acquisition and Management to be applicable to said auction. The terms and conditions that pertain to an auction will be published in the Auction Brochure published for that auction.

1. **AUCTION INVENTORY** - Properties that will be auctioned by the County include parcels forfeited by the prior owners as a result of failure to pay taxes. The County's rights thereto are pursuant to Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law are believed to have been extinguished by the tax sale proceedings, and/or as a result of forfeiture. Auction parcels may also include parcels acquired by condemnation, but no longer needed as part of the public project. The County reserves the right, in its sole discretion, to withdraw from the auction at any time, any of the properties listed in the Auction Brochure or in any other listing of surplus real property available for auction.
2. **OFFICIAL IDENTIFICATION** - For purposes of the auction, each parcel is identified by a section, block and lot number as shown on the Suffolk County Tax Map. No other identification is guaranteed. Descriptions in the auction materials pertaining to any auctioned property, such as the size, exact location, street requirements and information as to existing structures, are approximate only. Purchasers should verify all information relative to each property.
3. **NOTIFICATION OF AUCTION** - The Notice of Auction will be published in the official newspapers as required by the Suffolk County Code. In addition to said publication, not less than one month prior to each auction, an Auction Brochure which includes both a list of the properties expected to be offered by auction and a document entitled "Terms and Conditions of Sale – October 2009 Auction" will be published on the internet at www.co.suffolk.ny.us. *Copies of the Auction Brochure will be available at the Division of Real Property Acquisition and Management Offices and at the Riverhead

County Center, the Offices of the Suffolk County Legislature, each Town Hall and various County offices.

* Internet address will be relocated to Dept. of Environment and Energy, Div. of Real Property Acquisition and Management.

4. **TERMS AND CONDITIONS OF SALE** - The "Terms and Conditions of Sale - October 2009 Auction" document will specify the rules applicable to the auction for which it is prepared and dated. Failure of the purchaser to comply with the published auction rules, terms and conditions shall constitute a default and may result in cancellation of a sale and forfeiture of both the down payment and the auction fee.
5. ~~**AUCTION RULES**~~ - In addition to those rules and conditions that are set forth in the "Terms and Conditions of Sale - October 2009 Auction" all sales of surplus County property will be subject to the following:
 - a) Approval of the deed and proposed conveyance by the Suffolk County Legislature, which approval may precede the sale or follow it;
 - b) Any state of facts an accurate survey or personal inspection of the premises would disclose;
 - c) Applicable zoning/land use/building/health and environmental regulations;
 - d) Easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale;
 - e) For the immediate tax year, pro rata real estate taxes; and
 - f) For assessment purposes, the purchaser shall be deemed to be the owner prior to the next taxable status date following the closing;
 - g) The rights, if any, of tenants and persons in possession, and;
 - h) Outstanding water and sewer assessments and other unpaid liens or charges (including, but not limited to, demolition charges, interest and penalties, condominium fees) whether they have been billed or not as of the date of the auction, all as specified in the Auction Brochure;
 - i) Any covenants, easements or conditions imposed by the County Planning or any other Department and listed in the Auction Brochure, or by the Legislature as part of its approval of the sale.
 - j) Purchaser's signing a Certification as part of the bid finalization that he or she has read and understood the Terms and Conditions as set forth in the pertinent Auction Brochure;
 - k) Such additional contract terms and conditions as may be set forth in the Auction Brochure or Memorandum of Sale.
6. **NO WARRANTIES** - All real property in the auction, including any building thereon, is sold "AS IS" and without any representation or warranty whatsoever as to the physical condition or as to title.

7. **REFUNDS** - In the event that a sale is cancelled or the bid is rejected by the Suffolk County Legislature, the down payment and other monies paid when the Memorandum of Sale was executed will be refunded without interest.
8. **AUCTION PROCEDURES** - As determined by the Director to be appropriate or necessary, the following rules or conditions shall be included in the "Terms and Conditions of Sale - October 2009 Auction"
- a) County **general auctions** are Public Auctions at which a person must be present to participate as a bidder. Third party bidding may be accepted provided the bidder identifies the purchaser/principal for whom he or she is acting as an agent and provided the purchaser/principal pre-registers pursuant to paragraph 11 herein. **No absentee bids** are accepted.
- b) The County may conduct **special auctions**, that is, auctions limited to certain properties, based on their type or condition, for example, Brownfield sites; or their potential use, for example, affordable housing sites and commercial properties; or based on any other special circumstance relating to the properties to be auctioned. At special auctions, sealed bids from bidders who are not physically present and third party bidding may be accepted provided the bidder identifies the purchaser/ principal for whom he or she is acting as an agent and provided the purchaser/principal pre-registers pursuant to paragraph 11 herein.
- c) **Pre-registration** shall be required prior to any auction. Prior to the auction, each registered bidder will be assigned a bidding number that must be displayed in order to bid.
- d) **The auction may be divided into Sessions.** The auctioneer will accept bids in increments, as described below, until such time as no further bids are entered. Thereupon the parcel is declared, "Sold" to the highest bidder. All successful bids in one Session must be finalized (see the next subsection regarding finalization) before commencement of the next Session, or the underlying sales will be deemed cancelled.
- e) Directly after the sale of a parcel, the **purchaser or third party bidder, in purchaser's absence, must finalize** the sale by signing the Terms and Conditions of Sale, or Memorandum of Sale, as applicable, and depositing the down payment and the auction fee with the auction cashier. Delay in finalizing the sale may be cause for cancellation. *If a purchaser fails to finalize the purchase of any parcel, he, she or it shall not be permitted to bid on any further parcels and the Director may immediately cancel all other sales that took place at the same auction to the same purchaser.* In the event of cancellation due to failure to finalize a purchase, the subject parcel(s) may be returned to the auction block or withdrawn from the auction.
9. **PRE-AUCTION INFORMATION** - Collecting and verifying any information in regard to auctioned parcels, including, for example, address, location, zoning and land use restrictions, building or health code requirements, taxes or assessed value is the responsibility of the buyer. Much of this information may be obtained from the Town or Village in which the property is located. The County is not responsible to provide real property information, other than the Suffolk County Tax Map number. Purchaser's misunderstanding or failure to verify property information is not grounds for rescinding or canceling an auction sale. **THE COUNTY MAKES NO WARRANTY EXPRESSED OR IMPLIED IN CONNECTION WITH ANY AUCTION SALE.**

10. INSPECTION OF PROPERTY - The Auction Brochure will indicate whether the property may be inspected and how arrangements for inspection can be made. Inspection or entry onto the property may be prohibited by the County due to safety or any other reason. Where inspection is permitted, persons intending to participate at the auction should inspect and investigate the property in which they are interested prior to the auction sale. Inspection of commercial and industrial properties must not interfere with businesses operating thereon. Parcels that are improved by occupied homes may only be inspected on the dates and at the times set by the County in its publications, or on the dates and at the times confirmed in writing by the Division of Real Property Acquisition and Management. Entering onto any auction parcel at any other time will be grounds for disqualification from the auction and may amount to a trespass subject to prosecution.

11. REGISTRATION OF BIDDERS - All bidders, except third party bidders, shall be required to register prior to all auctions. In the event of third party bidding, the purchaser/principal shall be required to register prior to the auction. Such registration will be a condition of participation in said auction and shall consist of the execution of a registration form designated for use by the Director and may further require providing an official photographic identification, address, social security number or tax identification number, disclosure statement or other personal or financial documentation that would verify the identity and financial ability of the person or business entity to participate in the auction. As designated by the Director, pre-registration may require filing a bond, deposit or other evidence (as may be required) of financial ability to complete the terms and conditions of the sale at the estimated fair market value.

When third party bidding is permitted, individuals acting on behalf of others, not in attendance at the auction, must produce a "Power of Attorney" or other appropriate authorizing documentation, duly executed and notarized. Incorporated entities (Inc., Corp., LLC.) are required to provide a corporate resolution prior to the auction authorizing the entity's participation in said auction and a corporate resolution authorizing the purchase of real property prior to the transfer of title.

12. FORM OF BIDDING - Each bidder is responsible to signal his or her bid to the auctioneer. Bids may be signaled either by raising the paddle bearing the unique number issued to him or her for purposes of bidding at the auction or, in auctions not requiring individual bidder paddles, by securing a floor usher to signal the desired bid.

13. MEMORANDUM OF SALE - The purchaser's offer and agreement to purchase will be formalized in a "Terms and Conditions of Sale" or "Memorandum of Sale", referred to hereafter jointly as the "Memorandum of Sale", as may be utilized at the particular auction. Purchaser or third party bidder in purchaser's absence is obligated to execute the Memorandum of Sale and pay the down payment and auction fee before the end of the auction session at which the property was sold. As a material condition of the Memorandum of Sale:

a. Purchaser waives any claim to special, consequential or punitive damages, attorney's fees, reimbursement for any expenses incurred in reliance on completion of the sale, improvements of property, or for license fees already paid should the sale subsequently not be approved or closing not occur; and

b. Purchaser acknowledges that no property interest, either real or personal, is acquired by purchaser and any and all claims for specific performance and/or any right to file a Notice of Pendency against any property offered for bidding and/or sale should the sale subsequently not be approved or closing not occur are hereby waived.

14. **DOWNPAYMENT** - Following acceptance of the winning bid, and prior to the start of the next auction Session, the purchaser or third party bidder in purchaser's absence shall deposit a down payment in the amount of twenty percent (20%) of the sale price, or as otherwise specified. **ONLY cash, certified checks, bank checks, money orders or traveler's checks are acceptable for the down payment.** If the purchaser fails to produce the acceptable payment, as described, the parcel may be resold at the same auction or withdrawn from the auction, in the sole discretion of the County. Additionally, closing costs which consist of the following will be paid with the down payment on the day of the auction for each parcel: (a) New York State Transfer Tax (\$2.00 for each \$500.00 of the purchase/bid price); (b) Filing Fee for the Real Property Transfer Report (\$25.00); (c) Filing Fee for combined Gains Transfer Tax Affidavit (\$5.00); (d) all fees required by the Suffolk County Clerk for recording of the deed (\$28.00 to record a, one page deed; \$3.00 for each additional page); and (e) a \$20.00 surcharge. Closing costs may be subjected to an increase if said fees increase prior to closing.
15. **RESTRICTIVE COVENANT ON RESIDENTIALLY-IMPROVED PARCELS** - A parcel offered at auction which is improved by a residential structure, may be offered subject to a restrictive covenant that will be noted in the Auction Brochure and included in the deed conveying the parcel. The covenant requires the owner of the parcel, or his or her natural children and/or natural parents to occupy said premises. Said restriction requiring owner occupancy shall run with the land for a period of ten (10) years subsequent to the transfer of title from the County of Suffolk. The owner of the parcel shall provide to the County written notice of any subsequent transfer of the parcel within said ten (10) year period. The Commissioner shall reserve to the County a right of reverter should this restriction be violated. It is the responsibility of the purchaser to note which parcels are sold subject to the said restrictive covenant.
16. **SPECIFICALLY DESIGNATED SMALL LOT PARCELS** – Parcels which may not meet minimum zoning code requirements of the municipal zoning district in which the parcel is located in order to promote the development of residential dwellings for first time home buyers and/or in order to promote the development of residential dwellings for first time home buyers and/or occupants, shall be offered to convey such parcel to the highest bidder at a special auction who: (i) agrees, in writing, within sixty (60) days of the date of such auction, to apply for and diligently pursue, using best efforts and at such bidder's sole cost and expense, a building permit, to allow the construction of a single family residential dwelling on such parcel that substantially conforms in size and appearance to the residential dwellings located within the immediately surrounding residential community; (ii) agrees, in writing, within one hundred eighty (180) days of the date of such auction, to apply for and diligently pursue, using best efforts and at such bidder's sole cost and expense, any and all variances and/or other relief from such minimum zoning requirements; and (iii)

agrees, in writing, to accept title to such parcel subject to the covenants contained in this section.

1.) Upon the granting of any required variance or other relief from the minimum zoning requirements of the municipal zoning district in which the parcel is located, and the issuance of a building permit to construct such single family residential dwelling on such parcel, fee title shall be promptly conveyed to such highest bidder by deed containing the following covenants, which covenants shall run with the land:

a.) “The use of the parcel herein described by the grantee is hereby restricted solely to the development of a single family residential dwelling unit for first time home owners or buyers; with all right, title, and interest reverting back to the County of Suffolk, at the sole option of the County of Suffolk, in the event the grantee, at any time, uses or attempts to use the parcel herein described for any other use or purpose, including, without limitation, no use or purpose. This reverter clause shall also apply to any transferee from the grantee who is not a first time home owner or buyer.”

b.) “All right, title, and interest to the parcel herein described shall revert back to the County of Suffolk should any one or more of the following events occur:

[1.] If the grantee, or any transferee from the grantee who is not a first time home owner or buyer, fails to substantially complete the construction of a single family residential dwelling upon the parcel described herein within three (3) years from the date of transfer to the grantee, unless one or more extensions of time is granted, in writing, for good cause shown, by the Suffolk County Director of Affordable Housing or any successor thereto. Notwithstanding the foregoing, such extensions shall not exceed, in the aggregate, a period of four (4) years from the date of transfer to the grantee, unless approved by a duly enacted resolution of the County of Suffolk;

[2.] If the income of the first time home owner or buyer, at the time of occupancy of the single family dwelling constructed on the parcel described herein, should exceed 80% of the HUD established median income for the Nassau-Suffolk Primary Metropolitan Statistical Area adjusted by family size;

[3.] If the sale price of the single family dwelling constructed on the parcel described herein exceeds 60% of the median sales price for Suffolk County single family dwellings, based upon the State of New York Mortgage Agency Guidelines;

[4.] If the first time home owner or buyer of the single family dwelling constructed on the parcel described herein fails to occupy such single family dwelling as his and/or her primary residence for a period of ten (10) consecutive years from the

time of occupancy of such single family dwelling; provided, however, that the right, title and interest to the parcel herein described shall not revert to the County of Suffolk if:

- [a.] the first time home owner or buyer sells to a first time home owner or buyer meeting the income qualifications set forth in paragraph (1.)(b.)[2.], or as amended; and
- [b.] any gain realized from such sale up to and including the fifth anniversary of ownership, and declining ratably thereafter to fifty (50%) percent of any realized gain during the sixth year of ownership up to and including the tenth anniversary of ownership, shall be paid to the County of Suffolk; and
- [c.] the income qualifications and the formula for recapture of realized gain set forth in this paragraph shall apply to each and every subsequent sale;

[5.] If all or any portion of the single family residential dwelling is rented or leased to any other person, whether or not by written agreement;

[6.] If the grantee fails to certify to the Suffolk County Director of Affordable Housing, (or his or her designee), prior to closing of the title by a first time home buyer, or occupancy by a first time home owner, as the case may be:

- [a.] the dates of completion and occupancy of the single family dwelling constructed on the parcel described herein; and
- [b.] the total income, from all sources, of all occupants of the single family dwelling constructed on the parcel described herein; and
- [c.] in the case of a first time home buyer, the sales price of the single family dwelling constructed on the parcel described herein; and
- [d.] the single family dwelling constructed on the parcel described herein meets all applicable building and zoning codes, rules and regulations;

[7.] If the grantee fails to provide the Suffolk County Director of Affordable Housing, (or his or her designee), with a detailed, annual written report no later than December 31 of each year commencing in the year immediately subsequent to the date of this deed, which report shall include any and all information as may be required by the said Director, including, but not limited to, the status of the development and/or sale of the parcel described herein, and an accounting of all sums directly or indirectly attributable to the use of the parcel described herein.”

17. **PURCHASER IDENTIFICATION** - Prior to closing, the purchaser shall provide information necessary to complete forms and documents required for recording the deed in the Suffolk County Clerk's Office, including, among others as may be requested, the NYS Department of Taxation and Finance TP-584 form.

18. **FORMER OWNER BIDDING RESTRICTED** - The former owner of the property, or his agent, shall not be permitted to bid on the property or purchase same at the public auction, unless his or her bid amount exceeds the total of tax arrears, penalties and interest or surcharges that would have been due as of the day of the auction, without regard to limits on the time to redeem. If the former owner or his agent is the successful bidder at auction all liens existing prior to the foreclosure will be reinstated and added to the auction price.
19. **ASSIGNMENT RESTRICTED** - A Memorandum of Sale executed at the auction cannot be assigned unless the Director agrees thereto in writing. Assignments shall only be approved upon good cause shown. In the event that an assignment is approved, a fee of no less than \$300 can be charged.

20. **BROKERS** - The County of Suffolk will not pay any broker's commissions or fees. If a broker or attorney acting in the capacity of a broker is authorized to bid as the designee or agent of the actual purchaser, it is the sole responsibility of the purchaser to pay any brokerage fees or commissions earned thereby.
21. **PARTICIPATION BY SUFFOLK COUNTY EMPLOYEES PROHIBITED** - County employees and/or their immediate families, whether or not residing with the employees, are not permitted to participate as a purchaser or bidder at a County auction. Purchasers will be required to furnish an affidavit at the closing to the effect that the Purchasers are not employees or immediate family members of any Suffolk County Employee.
22. **SALE SUBJECT TO APPROVAL BY LEGISLATURE** - The Suffolk County Code requires that the disposition of surplus property must be approved by the County Legislature. A list of proposed auction sales will be presented to the Legislature for review and approval. All offers to sell are conditioned on approval from the County Legislature which in its sole discretion, can decline to approve.
23. **SALE SUBJECT TO CANCELLATION BY COUNTY** - At the County's discretion, sales remain subject to cancellation even after legislative approval, but prior to the title closing in the event that insurable title cannot be conveyed, or for other good cause as determined to exist by the Director. In the event that a sale is cancelled due to the purchaser's violation of any of the conditions set forth herein, any monies paid by or on behalf of the purchaser to the County shall be forfeited by purchaser and shall be retained by the County.
24. **RISK OF LOSS** - Damage by fire or other casualty loss that occurs between the sale and the title closing, the repair of which exceeds 10% of the purchase price as determined by the Director in his or her sole discretion, may permit the purchaser to cancel the sale. If the damage is less than 10% of the purchase price, the Division of Real Property Acquisition and Management may cancel the sale, or may reduce the purchase price, after verifying the amount and value of damage by an appraisal by up to 10% in order to induce the purchaser to close.
25. **TITLE CLOSINGS** - Closings can be scheduled only after the legislative resolution approving the sale is filed with the County Clerk. The County will use its best efforts to close within six months of this approval. Closing dates for the sale of properties purchased at auction will be determined by the Director. Notice of a closing date will be

sent to the purchaser, at least ten (10) calendar days in advance. The County reserves the right, in its sole discretion, to extend the time for closing or to compel the completion of the sale by an action for specific performance. If an adjournment is requested by the purchaser, then the Director may declare the adjourned date, or any subsequent adjourned date to be the final law date set for closing of title. On purchaser's failure to accept delivery of the deed on the final law date the sale may be cancelled and all monies paid to date may be retained by the County. In such event, purchaser will have no further rights or any claim regarding the sale or the parcel.

26. **METHOD OF PAYMENT** - Except for the auction fee (see below) **cash, certified checks, bank checks, money orders or traveler's checks are the only forms of payment acceptable** for amounts due at auction or closing. At the discretion of the Director, such certified or bank checks, money orders or traveler's checks, if payable to the order of the Purchaser, may be endorsed over to the Division of Real Property Acquisition and Management. The balance of the purchase price together with the pro rata share of taxes for a parcel sold at auction shall be due and payable at the time of the closing of title.

27. **AUCTION FEES** - In addition to the amount of the accepted winning bid, the purchaser of each parcel must pay an auction administrative fee (generally 1%, or up to 3% of the sales price), but not less than \$25, if auction fees are required for the subject auction. The auction fee is separate and apart from the purchase price and must be paid by separate check or cash. Payment of the auction fee may be made by any of the methods mentioned in the immediately prior section or by personal check. There will be a \$25 fee imposed as an additional closing cost for checks that are not collectible after one presentation to the bank. Auction fees offset the costs of advertising, printing and other expenses of this auction and may be increased or decreased as appropriate to the auction, but may not exceed 3% of the winning bid without approval of the County Legislature.

Additionally in accordance with Local Law No. 40-2007, a local law to offset the cost of maintaining surplus County Property, there shall be imposed on the purchase of all surplus County property sold at public auction a surcharge for each parcel purchased, in addition to any other fees and/or surcharges imposed, which surcharge shall be collected at closing and in accordance with the Auction Terms and Conditions promulgated by the County Division of Real Property Acquisition and Management, and which surcharge shall be deposited with the Suffolk County Sheriff for the sole purpose of funding the Sheriff's Labor Assistance Program (SLAP) or any successor program thereto. This surcharge shall be collected according to the following schedule:

- A) a .5% surcharge on winning bids between \$0 and \$50,000;
- B) a .75% surcharge on winning bids between \$50,001 and \$100,000; an
- C) a 1% surcharge on winning bids between \$100,001 and \$250,000, said surcharge to be applied only to the first \$250,000 for winning bids exceeding that amount.

28. **DEFAULT BY THE PURCHASER** - If, due to failure on the part of the purchaser, title does not close on any auctioned parcel, the down payment and auction fee are subject to forfeiture as liquidated damages for the County's auction costs, overhead expenses and loss of the transaction. *In the event of a default on one parcel, the Defaulting Purchaser may not be permitted to close on any other parcels for which he or she is the successful bidder.* If the purchaser fails to pay the balance of the purchase price as herein required, the deposit and auction fee shall be forfeited.
29. **UPSET PRICE** - Bidding will begin at the upset price as specified in the Auction Brochure.
30. **BIDDING INCREMENTS** - During the auction, the auctioneer will announce the minimum increments required to advance bidding. A bid will not be accepted unless it meets or exceeds the increment then in effect. The Director may modify the Bidding Increments at any time without notice. Generally, increments will increase as a multiple of each \$20,000 that the sale price increases.

Typical increments are as follows:

<i>Bid Amount (Range)</i>	<i>Minimum Increment of Subsequent Bid</i>
\$ 5,000 to \$ 25,000	\$ 500
\$25,000 to \$ 50,000	\$1,000
\$50,000 to \$100,000	\$2,000

31. **OCCUPANCY PRIOR TO CLOSING** - After the close of the Auction, the purchaser of any parcel may contact the Division of Real Property Acquisition and Management to attempt to arrange for a license agreement that would permit inspection or use and occupancy of the auctioned parcel prior to closing. A license agreement may be approved at the discretion of the Director, on such terms as the Director may deem reasonable. No entry onto the auctioned property is permitted without a license agreement.
32. **PERSONAL PROPERTY** - No personal property is included in the sale of any of the parcels auctioned by Suffolk County, except as may remain on the premises after the closing. The disposition of any personal property, located on any parcel following the closing shall be the responsibility of the purchaser.
33. **DEED FORMAT** - The Auction Brochure will set forth the type of deed approved by the legislature for conveyance of each parcel to the winning bidder. One of three types of deeds may be employed:
- a) Bargain and Sale Deed without Covenants, or with Covenants against Grantor's Acts;
 - b) Quitclaim Deed;
 - c) Directed Deed (from the Treasurer to the Purchaser.)

34. **QUITCLAIM DEED** - A quitclaim deed issued to convey a parcel sold at auction may contain the following provisions:

"Nothing contained in any description herein is intended to convey more than the assessed owner owned at the time of the levy of the tax, the non-payment of which resulted in the tax sale. There is no representation as to the extent of the acreage conveyed herein";

"Excepting and reserving all the right, title and interest of the County of Suffolk in and to any portion or interest of the lands herein conveyed, which interest was heretofore acquired other than pursuant to the provisions of the Real Property Tax Law of the State of New York".

35. **OTHER DEED/CLOSING CONDITIONS** - If an auctioned parcel is contiguous with other real property owned by the Purchaser, the County may require as a condition of closing that Purchaser request the Town Assessor in writing to combine the two parcels; Purchaser shall not convey either parcel(s) without also conveying the adjoining parcel to the same grantee, unless approved by the local planning board. These restrictions shall run with the land.
36. **CLOSING COSTS** - The Purchaser is responsible to pay all closing costs, unless specific provision was otherwise made in advance and approved by the County Legislature. All closings will take place at the Division of Real Property Acquisition and Management, or the Department of Law, unless otherwise agreed to in writing no less than one week in advance of the closing. If the Purchaser demands a closing in Suffolk County other than at County offices, an attendance fee will be charged at the rate of \$250 Base Fee for the first two hours, excluding travel time, plus \$150 for every hour, or fraction thereof, thereafter. For closings in Nassau County, the Base Fee will be \$350; in New York City or the boroughs thereof, the Base Fee is \$450.
37. **TITLE INSURANCE** - All objections to title (including survey objections) must be submitted to the Director within 45 days after the date the sale is approved by the County Legislature or the objections are deemed to be waived. In the instance of a Bargain and Sale Deed without Covenants against Grantor's Acts, or a Bargain and Sale Deed with Covenants against Grantor's Acts, the County may , but is not obligated to, deliver such title as a title company licensed in the State of New York and approved to do business with the County will insure. The County may pre-qualify certain parcels for title insurance. Where it is noted in the brochure that certain parcels have already been examined by a named title company; the Purchaser may choose to use that title company or a different qualifying company.
38. **TITLE OBJECTIONS** - If the purchaser's title company refuses to insure without exceptions, the County may select a different, equally-qualified title company. Purchaser agrees to accept insurance from the alternative insurer, provided no additional cost results thereby, over and above the cost of insurance from the first company. If the purchaser's title company will not insure title without exceptions, [if title is not uninsurable or], and if the Director chooses not to pursue insurance from an alternative title insurer, the Director may cancel the transaction and return the down payment and auction fee. In such event, the parties will have no further rights one against the other.

39. **DISPUTE RESOLUTION FINAL** - The decision of the Director regarding any dispute related to the auction or the conveyance of auctioned property is final. The Director reserves the right to reject any bid for failure to comply with auction procedures, or for any other reason related to the conduct of the auction, or to cancel an approved sale if the County elects not to proceed or if the purchaser fails to complete his or her obligations in timely fashion.
40. **FORM OF COMMUNICATION** - In connection with a "limited auction", that is, an auction among persons owning property adjacent to the parcel to be sold pursuant to §A14-30(H), the County will send an "Initial Inquiry Response" to solicit the interest of each such owner in participating in an auction. The form is sent to the owner at the address listed with the County Treasurer by certified mail, return receipt requested. All subsequent communications or notices may be sent by regular mail. For publicly advertised auctions, all communications with prospective participants or with purchasers will be sent by regular mail to the address that they provide.
41. **NO WARRANTY OF VACANCY** - The County makes no warranty that the premises will be delivered vacant. If an auctioned property becomes occupied following the sale, then following closing and recording of the deed, an eviction, if necessary, will be the responsibility of the Purchaser. The County expects not to place a licensee, other than the prospective purchaser, in any auctioned premises after the auction. However, it will do so in order to safeguard the premises or for other property management reasons.
42. **PERMISSION TO REMOVE SIGN** - The purchaser on each auction parcel may remove the auction sign after signing the Memorandum of Sale and tendering the down payment.
43. **INELIGIBILITY TO PURCHASE** No bidder, or purchaser/principal in the event of third party bidding, including, without limitation, any business entity or subsidiary, parent or affiliate thereof, or any trustee(s), director(s), officer(s) or shareholder(s) with voting interests or owning a total of twenty percent (20%) or more of any of the foregoing, who or which is or has been in default in or on any contract, obligation or agreement of any kind or nature whatsoever entered into with the County, or any of its agencies, within a period of five (5) years prior to the date of the auction sale, will be accepted as an eligible bidder for any property. Such obligations include, among other things, the obligation to pay in full all Suffolk County property taxes and charges when due. If the purchaser owns, alone or with others, any other property for which outstanding and delinquent taxes are owed to Suffolk County, those delinquent taxes must be paid in full prior to closing on any parcels purchased at auction.

The County reserves the right to deny access to the auction, cancel a sale or exercise its right of reversion herein, if an investigation reveals to the Director's satisfaction that the registration form is not adequately, properly and/or truthfully completed; if the identification supplied is not sufficient, if the purchaser or bidder is deemed to be financially unqualified; if the purchaser or bidder has been found guilty of any housing code or building code violation which violation resulted in death or personal injury or has been found guilty of any crime or violation under any Federal, State, County, including but not limited to Articles 7 and 12 of the Suffolk County Sanitary Code, Local Law or permit involving the treatment, handling, storage and/or disposal of any toxic and/or

hazardous substance, material or waste; or has been found guilty of any predatory and/ or discriminatory lending practices involving, but not limited to, violations of the Racketeer Influenced and Corrupt Organization Act, the Equal Credit Opportunity Act, the Federal Fair Housing Act, the Real Estate Settlement Procedures Act ,the Federal Truth in Lending Act, the N.Y. General Business Law or the Suffolk County Human Rights Law or if the taking of title and/or occupancy by purchaser will result in a violation of any Federal, State, County or Local Law.

44. **FINAL SALE** – Except as provided in paragraph 45 hereinafter, all sales shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall Suffolk County be or become liable for any defects in title for any cause whatsoever; no claim, demand or suit of any nature shall exist against Suffolk County in favor of the purchaser, its heirs, success or assigns, arising from this sale.
45. **MATERIAL MISREPRESENTATION** – If any material misrepresentation, omission or false statement relating to any representation required herein is discovered after the title closing, the County may avail itself of all remedies available to it at law, it being acknowledged that these representations are being relied upon by the County and are material to this transaction. If such misrepresentation, omission or false statement occurs, the purchaser understands that he/she/it may be charged with fraud, and/or intent to defraud. In addition, in such event, the County reserves the right to pursue the purchaser and others for cancellation of the transaction. This clause shall survive the title closing. The verified registration statement is a sworn statement and the making of a false representation or intentional omission in it may be punishable as a crime.
46. **CERTIFICATION OF NON-AGENCY** – The purchaser shall be required to certify that he/she is not representing the former owner(s) of the property and has no intent to defraud Suffolk County of the unpaid taxes, assessment, penalties and charges, which have been levied against the property. The purchaser agrees that neither he/she nor his/her assigns shall convey the property to the former owner(s) against whom Suffolk County foreclosed. If such conveyance occurs, the purchaser understands that he/she may be charged with fraud, and/or intent to defraud. In addition, in such event, the County reserves the right to pursue the purchaser, the former owner and others for cancellation of the transaction, and/or any deficiency between the purchase price at auction and such sums as may be owed to Suffolk County as related to the property.
47. **JURISDICTION** – Bidder and/or purchaser at this auction agrees that the sole forum for any dispute or cause of action arising out of this auction shall be the Supreme Court of the State of New York, County of Suffolk and related Appellate Courts.

SUFFOLK COUNTY
County Legislature
RIVERHEAD, NY



This is to Certify That I, TIM LAUBE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on June 23, 2009 and that the same is a true and correct transcript of said resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.

A handwritten signature in cursive script that reads "Tim Laube".

Clerk of the Legislature

Intro. Res. 1491 Res. No. 614

June 23, 2009

Motion:
 Romaine, Schneiderman, Browning, Beedenbender, Losquadro
 Eddington, Montano, Alden, Lindsay, Viloría-Fisher, Barraga,
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Co-Sponsors:
 Romaine, Schneiderman, Browning, Beedenbender, Losquadro
 Eddington, Montano, Alden, Lindsay, Viloría-Fisher, Barraga,
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Second:
 Romaine, Schneiderman, Browning, Beedenbender, Losquadro
 Eddington, Montano, Alden, Lindsay, Viloría-Fisher, Barraga,
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE					
2	Jay H. SCHNEIDERMAN					
3	Kate M. BROWNING					
4	Brian BEEDENBENDER				/	
6	Daniel P. LOSQUADRO					
7	Jack EDDINGTON					
9	Ricardo MONTANO					
10	Cameron ALDEN					
11	Thomas F. BARRAGA					
12	John M. KENNEDY, JR.					
13	Lynne C. NOWICK					
14	Wayne R. HORSLEY					
15	DuWayne GREGORY					
16	Steven H. STERN				/	
17	Lou D'AMARO					
18	Jon COOPER					
5	Vivian VILORIA-FISHER, D.P.O.					
8	William J. LINDSAY, P.O.					
Totals		16	4	2	-	

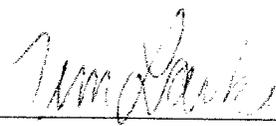
MOTION

Approve
 Table: _____
 Send To Committee
 Table Subject To Call
 Lay On The Table
 Discharge
 Take Out of Order
 Reconsider
 Waive Rule _____
 Override Veto
 Close
 Recess

APPROVED FAILED _____
 No Motion _____ No Second _____

RESOLUTION DECLARED

ADOPTED
 NOT ADOPTED



 Tim Laube, Clerk of the Legislature

Roll Call _____ Voice Vote