

**STATE OF NEW YORK
SUPREME COURT : COUNTY OF BROOME**

**NEWTEK SMALL BUSINESS FINANCE, INC., as
successor in interest to Commercial Capital**

Plaintiff,

**TRI-CITIES MUFFLER & BRAKE, INC.,
CINDY KENYON, PEOPLE OF THE STATE OF
NEW YORK/, STATE TAX COMMISSION,
and "JOHN DOE", said name being fictitious
and intended to include any and all parties having
an interest in the Mortgaged Premises and not otherwise
identified above,**

Defendants.

**TERMS OF SALE
NON-JUDICIAL
FORECLOSURE ACTION**

Index No.: 2005-875

The premises described in the Notice of Sale (the "Premises") annexed hereto as Exhibit "A" will be sold under the direction of John T. Reynolds, CAI Auctioneer, pursuant to the following terms:

FIRST - Unless the successful bidder is the Plaintiff or its assignee, ten percent (10%) of the amount of the bid accepted will be required to be paid, in certified funds, official bank draft or cash, to the Auctioneer at the time and place of sale in form acceptable to the Auctioneer for which the Auctioneer's receipt will be given. Plaintiff shall not be required to pay any deposit.

SECOND - The residue of said purchase money will be required to be paid to the said Auctioneer at his offices, on or before November 28, 2005. If acceptable to the Auctioneer a "paper-closing" may take place when the Auctioneer's Deed will be ready. The Auctioneer may, in his sole discretion adjourn the closing upon the Auctioneer's deed to a later date. Interest

of 9% per annum on the balance due may be charged by the Auctioneer if the closing does not take place as scheduled.

THIRD - The Auctioneer is not required to send any notice to the purchaser(s); and if the purchaser(s) neglects to call at the time and place above specified, to receive his/her/its Deed and the Auctioneer deems it proper to extend the time for the completion of said purchase, the purchaser(s) will be charged with interest thereafter on the whole amount of his/her/its purchase.

FOURTH - The Premises are being sold in "as is" condition and subject to:

- (a) All covenants, restrictions and easements of record and zoning regulations and ordinances of the City, Town and Village in which said premises lie;
- (b) The 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;
- (c) Any state of facts that an accurate survey, currently dated, might disclose;
- (d) Any state of facts an inspection would disclose it being understood that the property is sold in an "as is" and "where is" condition;
- (e) Any and all tenancies, possessory interests or leases affecting the Mortgaged Premises, which have not been extinguished by this foreclosure action.
- (f) The right of redemption of the United States of America, if any, within 120 days from the date of sale; and
- (g) All mortgages, liens and encumbrances not affected by this foreclosure.

FIFTH - All taxes, assessments, water rates and other encumbrances which, at the time of sale, are liens or encumbrances upon said premises, will be paid by the Auctioneer or will be allowed by the Auctioneer out of the purchase money, provided the purchaser(s) shall

previous to the delivery of the deed, produce to the Auctioneer and Plaintiff proof of such liens, and duplicate receipts for the payment thereof. Any of the above such liens, for which duplicate receipt for payment were not produced by the purchaser(s) prior to or at closing, will become the responsibility of the purchaser(s).

SIXTH - Title Insurance, if any, shall be paid by the purchaser(s).

SEVENTH - The purchaser(s) of said Premises, or any portion thereof, will, at the time and place of sale, sign a memorandum of this purchase, and an agreement to comply with the terms and conditions herein contained.

EIGHTH - The bidding will be opened at \$130,000.00.

NINTH - Bidding shall be in increments of \$100.00 after the initial bid.

TENTH - In case any purchaser(s) shall fail to comply with any of the above conditions of sale, the Premises so struck down to him may be again put up for sale under the direction of said Auctioneer under these same terms of sale, without application to the Court, unless the Plaintiff's attorneys shall elect to make such application; and such purchaser(s) shall be held liable for any deficiency there may be between the sum for which they may be purchased on resale, and also for costs and expenses occurring on such resale. In no event will the ten percent (10%) deposit be returned to the purchaser(s). Auctioneer reserves the right to, and may, sell the Premises to the second highest bidder if purchaser(s) defaults or fails to close within the time period provided herein.

ELEVENTH - In addition to the amount bid, the purchaser(s) shall be required to pay the following charges:

(a) the cost of the New York State revenue stamps to be attached to the Auctioneer's deed; and

(b) New York State and local transfer taxes, if any, due on the transfer of the Premises, and all other applicable transfer taxes, if any, due on the transfer of the Premises.

Dated: October 27, 2005

John T. Reynolds, CAI
Auctioneer