

At the Supreme Court of the State of New York held in and for the County of Greene, at the Courthouse thereof, at 320 Main Street, Catskill, NY 12414, on the _____ day of _____, 20____.

HON. ADAM W. SILVERMAN, J.S.C.

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ISANTHES, LLC,

Index No. EF2016-9

Plaintiff

**JUDGMENT OF FORECLOSURE
AND SALE**

-against-

BURTON GUTNICK, JR., AS ADMINISTRATOR OF THE ESTATE OF EDWARD J. NIHILL; KATHLEEN NIHILL; THOMAS NIHILL; BRANDON NIHILL; MICHAEL NIHILL; KATHLEEN MCGARRITY; CITIBANK, N.A.; PEOPLE OF THE STATE OF NEW YORK BY THE DEPARTMENT OF TAXATION AND FINANCE; UNITED STATES OF AMERICA BY THE INTERNAL REVENUE SERVICE,

Mortgaged Premises
6244 Main Street
Tannersville, NY 12485

Section: 165.20
Block: 1
Lot: 11.111

Defendants

Mortgage Servicer: Land Home Financial Services, Inc.
Mortgage Servicer Phone #: 949-247-7400

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ON the Summons, Verified Complaint and Notice of Pendency duly filed in the Greene County Clerk’s Office on January 6, 2016, the Successive Notice of Pendency filed on October 24, 2018, the Supplemental Summons, Amended Complaint, and Amended Notice of Pendency filed on August 6, 2019, and all proceedings thereon; and on reading and filing the Notice of Motion dated April 28, 2021, Affirmation of Regularity of Juliana Thibaut, Esq. dated April 28, 2021, with exhibits annexed thereto, showing that all of the Defendant(s) herein have been duly served within this State with a copy of the Summons in this action, or have voluntarily appeared pro se or by their respective attorneys, or after due diligent efforts to effectuate service having been unsuccessful and a determination made that such service upon certain Defendant(s) cannot be effected; and on proof of service upon and appearance, if any, by the Defendant(s) herein heretofore filed in this action; and stating that more than the legally required number

of days have elapsed since said Defendant(s) were so served; and that all Defendant(s) herein have defaulted in pleading by failing to serve an answer to said Complaint except United States of America by the Internal Revenue Services, nor has their time to do so been extended; and

ON the Order of Reference granted September 21, 2020 and entered in the Greene County Clerk's Office on September 29, 2020, appointing Ralph C. Lewis, Jr., Esq. as Referee in this action to ascertain and compute the amount due Plaintiff for principal, interest and advances made pursuant to the Note and Mortgage, and to examine the Plaintiff or its agent on oath as to allegations of the complaint, and to examine and report whether the Mortgaged Premises should be sold in one or more parcels;

AND on reading and filing the oath and report of the aforesaid Referee sworn to and dated April 22, 2021, it appears that the sum of \$86,432.15 was due the Plaintiff for principal, interest and advances made pursuant to the Note and Mortgage, as of April 15, 2021, plus interest for every day thereafter, on the date of said Report and that the Mortgaged Premises should be sold in one parcel;

AND this Court having initiated and held status conference(s) in accordance with the provisions of Administrative Order 157/20 prior to the issuance of this Order,

NOW, on motion of **Friedman Vartolo LLP**, the attorneys for the Plaintiff, it is:

ORDERED, that the instant motion is granted; and it is further

ORDERED, ADJUDGED AND DECREED that the report of Ralph C. Lewis, Jr., Esq. dated April 22, 2021, be, and the same is hereby, in all respects, ratified and confirmed; and it is further

ORDERED, ADJUDGED AND DECREED that by accepting this appointment the Referee certifies that they are in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to, section 36.2(c) ("Disqualification from appointment"), and section 36.2(d) ("Limitations on appointments based upon compensation"); and it is further

ORDERED, ADJUDGED AND DECREED that the Mortgaged Premises 62-44 Main Street, Tannersville, NY 12485; a description of said Mortgaged Premises is annexed hereto and made a part hereof as Schedule A (hereinafter "Mortgaged Premises") as further described in the complaint in this action, or such part thereof as may be sufficient to discharge the mortgage debt under the Note and Mortgage, the expenses of the sale and the costs of this action as provided by the Real Property Actions Proceeding Law be sold, in one parcel, at public auction at

_____ by and _____ under the direction of Ralph C. Lewis, Esq., who is hereby appointed Referee for that purpose; that said Referee give public notice of the time and place of such sale in accordance with the law, practice of this Court and RPAPL §231 in _____ and that the Plaintiff or any other party to this action may become the purchaser at such sale; that in case the Plaintiff or its assignee shall become the purchaser at the said sale, they shall not be required to make any deposit thereon; that said Referee execute to the purchaser or purchasers on such sale a deed of the premises sold; that in the event a party other than the Plaintiff or its assignee becomes the purchaser or purchasers at such sale they shall be required to tender a deposit of 10% of the purchase price in certified funds and the closing of title shall be had thirty days after such sale unless otherwise stipulated by all parties to the sale and if such closing is required, and the Referee seeks and is awarded additional fees for said closing, those fees shall be paid by purchaser; and it is further

ORDERED, ADJUDGED AND DECREED, that Plaintiff may assign its interests and rights under the instant Judgment to a third party of its choosing by filing an Assignment of Cause of Action with the County Clerk and providing a copy to the Referee appointed within the instant order; and it is further

ORDERED, ADJUDGED AND DECREED, that if the Referee does not conduct the sale within 90 days of the date of the judgment, in accordance with CPLR 2004, the time fixed by RPAPL §1351(1) is extended for the Referee to conduct the sale as soon as reasonably practicable; and it is further

ORDERED, ADJUDGED AND DECREED, that said Referee on receiving the proceeds of the sale, shall forthwith pay therefrom, in accordance with their priority according to law, the taxes, assessments, sewer rents or water rates which are or may become liens on the premises at the time of sale with such interest or penalties which may have lawfully accrued thereon to the date of payment; and it is further,

ORDERED, ADJUDGED AND DECREED, that Plaintiff or any other party that may become the purchaser or purchasers at such sale shall pay all transfer taxes and recording expenses, any and all maintenance fees and assessments, taxes, water rates, and any fees associated with the transfer of title for the Mortgaged Premises accrued from the sale date forward are the obligation of the purchaser, and that in the event a party, other than Plaintiff, becomes the purchaser or purchasers at such sale, the closing of title shall be had thirty days after such sale unless otherwise stipulated by all parties to the sale, including Plaintiff and that failure of the purchaser(s) to close within thirty days may result in forfeiture of any deposit tendered by purchaser(s), in lieu of closing, and that Plaintiff reserves the right to sell to the next highest bidder at said sale; that any purchaser, other than Plaintiff, shall pay interest on the purchase price from the date of sale to the date of delivery of the deed; that in case Plaintiff shall become the purchaser at the said sale, it shall not be required to make any deposit thereon; and it is further

ORDERED, ADJUDGED AND DECREED, that said Referee then deposit the balance of said proceeds of sale in his/her own name as Referee in _____, and shall thereafter make the following payments and his/her checks drawn for that purpose shall be paid by said depository;

FIRST: That statutory fees of the Referee pursuant to CPLR §8003(b) which shall not exceed the sum of \$750.00 unless the sale price (the amount of the accepted bid) exceeds \$50,000.00 In the event the sale price exceeds fifty thousand dollars and additional compensation (including commissions) in excess of \$750.00 is sought pursuant to CPLR §8003(b) and if no surplus monies are produced by the sale, the parties may present a stipulation, signed by the Referee and all parties appearing, agreeing to a stated sum, to be so-ordered by the Court. Where surplus monies will be available following the distribution of sums as provided herein, or where the parties are unable to agree to the Referee's proper compensation under CPLR §8003(b), application shall be made to this Court on notice to all parties known to be entitled to claim against any surplus monies, including the defaulting owner of equity of redemption. Such application shall be promptly submitted to the Court within five days of the transfer of deed and prior to filing the Report of Sale. The five-day period for payment of surplus money into Court as set forth in RPAPL §1354(4), and the thirty-day period set forth in RPAPL §1355 for the filing of the Report of Sale shall be deemed extended pending the decision of the Court regarding such application.

In the event the scheduled sale is cancelled or postponed, pursuant to CPLR §8003(a), Plaintiff shall compensate the Referee the sum of \$250.00 for each adjournment or cancellation unless the Referee has requested the delay. Such compensation may be recouped from the proceeds of sale as a cost to Plaintiff. This order shall constitute the necessary prior authorization for compensation as set forth herein.

No compensation in excess of \$750.00, including compensation authorized pursuant to CPLR §8003(a) for computation of the sum due to Plaintiff, may be accepted by the Referee without Court approval and compliance with the filing provision of Section 36.4 of the Rules of the Chief Judge.

SECOND: The expenses of sale and the advertising expenses as shown on the bills presented and certified by said Referee to be correct, copies of which shall be annexed to the Report of Sale and the NYC Transfer Tax, pursuant to 19 RCNY 23-03(d)(2), if applicable, payable within 30 days

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