

FOR CONSIDERATION

August 18, 2011

TO: The Directors

FROM: Kenneth Adams

SUBJECT: New York (Kings County) – Foreclosure Auction and Bid

RE: Authorization to (i) Place a Bid of up to \$5.6 million at a Foreclosure Auction For a Property Located at 601-619 Throop Avenue, Brooklyn, (ii) Obtain an Appraisal, (iii) Hire a Real Estate Broker, (iv) Retain the Services of a Property Management Agent, (v) Take All Related Actions, and (vi) Determination of No Significant Effect on the Environment.

SUMMARY

The Directors are asked to approve the authorization for ESD staff to place a bid, of up to \$5.6 million, at a foreclosure auction for a property located at 601-619 Throop Avenue, Brooklyn (the “Property” or “Mortgaged Premises”), which is encumbered by a mortgage held by the New York State Urban Development Corporation (“UDC”) d/b/a Empire State Development (“ESD”). The Directors are also asked to authorize ESD staff to obtain an appraisal on the Property, hire a real estate broker and retain services of a property management agent. These actions will ensure that ESD’s interest in the Property is protected and that the recovery from the asset is maximized.

BACKGROUND

In August 1987, the New York State Urban Development Corporation (“UDC”) closed on a \$4,387,000 real estate loan with Nostrand Industrial Systems, Inc. (“Nostrand” or the “Borrower”), a subsidiary of Vannguard Urban Improvement Association, Inc. The loan was used to rehabilitate the Property for multi-office use. UDC holds a first mortgage lien on the Mortgaged Premises, which consists of two interconnecting buildings – a two-story and a five-story building. The Mortgaged Premises totals 30,900 rentable square feet and is situated in the historic district of Stuyvesant Heights in Bedford Stuyvesant, Brooklyn.

When the Borrower defaulted on its obligations in June 2002, ESDC and the Borrower entered into a Note Modification Agreement (the "Agreement"). Under the terms of the Agreement, the interest rate on the loan was decreased to 0%, the term of the loan was extended, and \$1,035,918 in accrued interest was conditionally forgiven.

The Borrower failed to abide by the terms of the Agreement and ceased making payments in 2007. Nostrand then requested that ESD subordinate its mortgage to additional financing. After reviewing the Borrower's request and financial information, ESD staff determined that the Borrower's plan would not have supported the new mortgage payments and would have seriously compromised ESD's mortgage position. ESD subsequently accelerated the loan in April 2008 and commenced a foreclosure proceeding in September 2008.

In September & October 2009, the Workout Committee and ESD's Board of Directors (the "Board"), respectively, approved the payment of back property taxes of up to \$620,000. On November 16 2009, \$547,622.41 was wired to Mooring Tax Asset Group, LLC. ("Mooring"), who had purchased and held the tax liens from the City of New York ("NYC"), to avert a tax foreclosure and avoid continued accrual of 18% interest. On January 12, 2010, ESD paid NYC Dept. of Finance \$60,881.97 for property taxes covering a period from January 1, 2010 to June 30, 2010. On June 22, 2010, ESD paid NYC Dept. of Finance \$41,079.24 for property taxes covering a period from July 1, 2010 to December 31, 2010. The tax due was \$71,079.24, but the Property generated surplus income that allowed the court appointed receiver (the "Receiver") to pay \$30,000 directly to NYC. In December 2010, the Board approved the allocation of up to \$250,000 from corporate funds for the payment of future real estate taxes due on the Mortgaged Premises. Pursuant to that authority, ESD paid NYC Dept. of Finance \$69,660.89 on December 31, 2010 and \$59,318.26 (additional \$15,000 was paid by the Receiver directly) on June 30, 2011. The total taxes and insurance premiums paid by ESD to date is approximately \$800,000, bringing the total amount due to ESD, including outstanding principal balance of \$3,335,823 and accrued interest of \$1,461,235, to approximately \$5.6 million.

CURRENT STATUS AND FORECLOSURE SALE

On July 22, 2011, ESD received notice that the judgment of foreclosure sale has been both signed by the Kings County Supreme Court and entered in the office of the Kings County Clerk. Under the terms of the judgment of foreclosure and sale, ESD is now authorized to bring about a foreclosure auction sale of the Mortgaged Premises. The date of the foreclosure auction sale has been set for September 8, 2011. In accordance

to the statutes and rules, ESD is advertising the foreclosure sale once per week, for four consecutive weeks, in the Brooklyn Eagle.

At the foreclosure sale, ESD staff intends to bid up to \$5.6 million, which represents the foreclosure judgment amount, plus accrued interest and subsequent costs (“Upset Price”), to ensure ESD obtains a fair price for the Property. If ESD does not bid the Upset Price, there is a significant chance that a low bidder will acquire the property at below fair market value and ESD will also lose the opportunity to seek a deficiency judgment against the Borrower. It should be noted that, under the terms of the judgment of foreclosure and sale that was entered by the Court, ESD, as the foreclosing mortgagee, has the absolute right to “credit bid” the amount of the adjudicated indebtedness (\$5.6 million) without disbursing any “new” or “out of pocket” money.

Because the Upset Price is high, it is expected that ESD will take title to the Property. Once ESD takes title, ESD will need to market the Property for sale and manage the operations of it until it is sold. In that effort, ESD will need to get an updated appraisal on the Property to gauge its current value, seek a real estate broker to properly market the Property and retain a management agent to manage the building while it is being marketed. Accordingly, ESD staff will request bids to hire a certified commercial appraiser and a real estate broker. With respect to the management agent, ESD staff hopes to retain the services of the current management agent, Marshall Management, because they had been hired by the court-appointed receiver, the Honorable William Thompson, Sr., nearly two years ago. Marshall Management is competent, relatively inexpensive and will provide continuity, which is critical to the building’s operations.

ENVIRONMENTAL REVIEW

Pursuant to the requirements of the State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation, ESD staff performed an uncoordinated review. This review determined the project to be an Unlisted Action, which would not have a significant effect on the environment. It is recommended that the Directors make a Determination of No Significant Effect on the Environment.

REQUESTED ACTION

The Directors are requested to adopt the attached resolution authorizing ESD staff to (i) place a bid of up to \$5.6 million at a foreclosure auction for the Property, (ii) obtain an appraisal on the Property, (iii) hire a real estate broker, (iv) retain the services of a property management agent, (v) take all related actions, and (vi) make a Determination of No Significant Effect on the Environment.

RECOMMENDATION

Based on the foregoing, I recommend approval of the attached resolution.

ATTACHMENT

Resolution

August 18, 2011

New York (Kings County) - Authorization to (i) place a bid of up to \$5.6 million at a foreclosure auction for the property located at 601-619 Throop Avenue, Brooklyn New York (the "Property"), (ii) obtain an appraisal on the Property, (iii) hire a real estate broker, (iv) retain the services of a property management agent, (v) take all related actions, and (vi) Determination of No Significant Effect on the Environment.

RESOLVED, that on the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, relating to the placement of a bid at the foreclosure auction of a property located at 601-619 Throop Avenue, Brooklyn New York (the "Property") and other related actions, ESD staff is hereby authorized to place a bid of up to \$5.6 million foreclosure auction for the Property, obtain an appraisal, hire a real estate broker and retain the services of a property management agent, and be it further

RESOLVED, that based on the materials submitted to the Directors, the Corporation hereby determines that the proposed action will not have a significant effect on the environment, and be it further

RESOLVED, that the President and Chief Executive Officer-Designate of the Corporation or his designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolution.

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