

FOR CONSIDERATION

December 16, 2010

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: New York (Kings County) – Payment of Outstanding Real Estate Taxes

RE: Authorization to (i) Allocate Corporate Funds in an Amount Not to Exceed \$250,000 for Payment of Real Estate Taxes Associated with a Mortgage on 601-619 Throop Avenue, Brooklyn, (ii) Make Payment of Real Estate Taxes, and (iii) Take All Related Actions.

SUMMARY

The Directors are asked to approve an allocation of up to \$250,000 from Corporate funds for the payment of delinquent real estate taxes that are or may be owed on 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 Corporation (“ESDC” or the “Corporation”). This allocation and authorization will allow ESDC to pay shortfalls in real estate taxes.

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 ESDC subordinate its mortgage to additional financing. After reviewing the Borrower's request and financial information, ESDC staff determined that the Borrower's plan would not have supported the new mortgage payments and would have seriously compromised ESDC's mortgage position. ESDC subsequently accelerated the loan in April 2008 and commenced a foreclosure proceeding in September 2008.

In September & October 2009, the Workout Committee and ESDC's Board of Directors, 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, ESDC 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, ESDC 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. ESDC has thus far paid \$649,583.62 in real estate taxes on the Property.

CURRENT STATUS AND TAX LIENS

By January 1, 2011, a sum of \$69,660.89 will be due for property taxes. Approximately the same amount will be due on July 1, 2011 and January 1, 2012.

The Receiver has informed ESDC that due to operating costs that exceed monthly rental income, primarily because of one tenant, currently being evicted, that has not paid his monthly rent of \$6,967 since July, he is unable to contribute to the payment of real estate taxes that will come due on January 1, 2011. According to the Referee's report, the average monthly expenses are approximately \$19,400, while the monthly rents currently being collected average \$18,500. The Referee also states that the tenant currently being evicted has accrued arrears of \$38,769.

If ESDC fails to pay the taxes owed by the due date, interest will accrue on that amount at the rate of 18%. Further, if taxes are not paid within a year, the Property could be sold to a third party as a tax lien. The purchaser of the lien could then proceed with a tax foreclosure sale, which could potentially extinguish our interest in the property.

According to counsel, a sale of the mortgaged premises is expected to occur by May 2011, unless the Borrower files for bankruptcy protection, in which case this foreclosure will take much longer. ESDC is owed in excess of \$4,400,000, in addition to applicable fees and additional interest. An appraisal conducted for ESDC in May 2008 placed the "as stabilized in use" value of the mortgaged premises at \$5,200,000, with a liquidation value of \$4,500,000. Therefore, in

order to preserve its significant financial interest in the Property and avoid paying excessive interest, shortfalls in real estate taxes due from January 2011 through January 2012 must be paid when due, so that ESDC can, upon its successful acquisition of title in the foreclosure proceedings, sell the property at public auction free and clear of all superior liens.

ESDC's Workout Committee has approved the payment of shortfalls in real estate taxes due on January 2011, July 2011, and January 2012, subject to the Board of Directors approval of same.

ENVIRONMENTAL REVIEW

ESD staff has determined that the authorization for payment of outstanding real estate taxes does not constitute an action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with the authorization. Any ultimate acquisition or disposition of the property will be subject to the necessary and appropriate SEQRA review.

REQUESTED ACTION

The Directors are requested to adopt the attached resolution authorizing (i) an allocation of corporate funds in an amount not to exceed \$250,000 for payment of real estate taxes associated with a mortgage on 601-619 Throop Avenue, Brooklyn (the "Property"), (ii) payment of real estate taxes on the Property and (iii) the taking of all related actions.

RECOMMENDATION

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

ATTACHMENT

Resolution

December 16, 2010

New York (Kings County) - Authorization to (i) Allocate Corporate Funds in an Amount Not to Exceed \$150,000 for Payment of Real Estate Taxes Associated with a Mortgage on 601-619 Throop Avenue, Brooklyn, (ii) Make Payment of Real Estate Taxes, and (iii) Take All Related Actions.

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 payment of real estate taxes owed on 601-619 Throop Avenue, Brooklyn New York (the "Property" or "Mortgaged Premises"), with said Mortgaged Premises being mortgaged to the New York State Development Corporation d/b/a Empire State Development Corporation ("ESDC") as security for a loan made by ESDC, the Corporation be, and is hereby authorized to allocate an amount not to exceed \$250,000 from Corporate funds, for payment of real estate taxes on due or to become due on the Property, and be it further

RESOLVED, that the Chairman 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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