

**FOR CONSIDERATION**

October 22, 2009

**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 \$620,000 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.

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**SUMMARY**

The Directors are asked to approve an allocation of up to \$555,000 from Corporate funds for the payment of delinquent real estate taxes 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”). The Directors are also asked to approve an additional allocation of up to \$65,000 from Corporate funds to pay real estate taxes on the Property due on or before January 1, 2010 for the period through June 30, 2010.

**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 total 30,900 rentable square feet and is situated in the historic district of Stuyvesant Heights in Bedford Stuyvesant, Brooklyn.

The Borrower defaulted on its obligations, and in June 2002, ESDC entered into a Note Modification Agreement (the "Agreement") with the Borrower. 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. The Court-appointed receiver for the property has informed ESDC that the income from the building is insufficient to pay the past due and current real estate taxes on the Property.

According to the court appointed referee's expense report, which covers April 2009 through August 2009, the Building has three tenants paying a total of \$18,109 a month in rent and average monthly expenses of \$11,144. Another tenant ceased remitting its monthly rent of \$6,967, and is being evicted. As of August 2009, the expense report shows a balance of \$24,428, before the referee's fee, which will be paid when his work has been completed.

### **CURRENT STATUS AND TAX LIENS**

Nostrand is now delinquent on its real estate taxes, potentially jeopardizing ESDC's interest in the mortgaged Premises. The largest tax lien holder, Mooring Tax Asset Group, LLC ("MTAG") which purchased the City of New York's (the "City") tax lien for 2008 taxes owed, commenced a foreclosure action in 2009, and as of September 9, 2009, is owed approximately \$317,029. This amount is accruing interest at a rate of 18% per annum. MTAG also purchased another tax lien, for non-payment of 2009 taxes, and as of the same date, \$212,670 is owed, with interest accruing at the same rate. The second lien is not subject to a tax foreclosure at this time, but the lien holder is entitled to file such an action in the coming months. Additional taxes of approximately \$62,985, for the period through June 30, 2010, are due by January 1, 2010.

If ESDC fails to pay the taxes owed to the foreclosing lien holder, its interest in the mortgaged premises will be extinguished via the tax foreclosure process. According to counsel, a sale of the mortgaged premises could occur by December 2009. 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 Brooklyn property, both liens held by MTAG must be satisfied at this time and the real estate taxes due January 1, 2010, 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 the delinquent taxes and the real estate taxes due on January 1, 2010, subject to the Board of Directors approval of same.

## **ENVIRONMENTAL REVIEW**

ESD staff has determined that the authorization of 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 \$620,000 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

October 22, 2009

New York (Kings County) - Authorization to (i) Allocate Corporate Funds in an Amount Not to Exceed \$620,000 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.

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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 \$620,000 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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