

FOR CONSIDERATION

January 20, 2012

TO: The Directors

FROM: Kenneth Adams

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

RE: Authorization to (i) Place a Bid of up to \$350,000 at a Foreclosure Auction for a Property Located at 2570 Bouck Avenue, Bronx, (ii) Initiate procurement of a Real Estate Broker, (iii) Pay Off the Balance of the Senior Mortgage; (iv) Pay Outstanding Real Estate Taxes, (v) Take all Related Actions, (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 \$350,000, at a foreclosure auction for the property located at 2570 Bouck Avenue, Bronx (the “Property”) which is encumbered by a second 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 procure a real estate broker, to satisfy the senior mortgage on the property and to pay the outstanding real estate taxes on the Property. These actions will ensure that ESD’s interest in the Property is protected and that the recovery from the asset is maximized.

BACKGROUND

Reliable Catering Services, Inc. (the “Company” or “Reliable”) was a New York State certified minority owned business enterprise (African-American owned) established in the early 60’s. The firm operated as a restaurant, catering service, and cafeteria under the name of Copeland’s on 145th Street in Harlem. Copeland’s was well known for its style of Southern Cuisine. Copeland’s operated successfully over the years, growing from \$12,000 in 1961 to \$2.0 million in 1991. However in the early 90’s Copeland’s growth was slowing down because its current location had experienced a change in culture and demographic. Copeland’s was no longer attracting the traffic from the

immediate area which was now mainly of Hispanic origin. Reliable decided to move their business to a new location in order to regain its momentum. The new project was to be known as Copeland's Country Kitchen ("CCK"), and was located on 125th Street in Harlem. It was an ideal location because the population was 97% African American. In addition to the area residents, the Harlem State Office building and the recently built Motor Vehicle Bureau office were estimated to bring another 4,500 office workers to the area daily. The total project cost was \$1,126,680 funded by ESD, \$500,000; Chase Manhattan, \$350,000; and owner's equity, \$276,680.

On December 28, 1995, ESD entered into a loan agreement with Reliable. The purpose of the loan was to fund leasehold improvements and working capital to purchase kitchen equipments, and fixtures for the establishment of a cafeteria, bakery, and catering service at the new project site. The amount of the loan was \$500,000 and it had a term of 7-years at an annual interest rate of 4%. (the "Loan"). A principal payment moratorium was in effect for the first six months of the first year to be followed by seventy-eight (78) consecutive monthly installments of principal and interest each in the amount of Seven Thousand Two Hundred Ninety and Twenty-Eight Cents (\$7,290.28). The loan was secured by the personal guarantees of Mr. and Mrs. Calvin and Rita Copeland (the "Guarantors"), and a second mortgage on the Property.

The Loan was disbursed on January 16th, 1996, which was, around the time CCK was destroyed in a blaze. Reliable has never made a single payment and has been in default since March 1st, 1996. The Company filed for Chapter 11 bankruptcy protection soon thereafter.

ESD hired an outside counsel and initiated an action against Reliable and its Guarantors and successfully challenged Reliable's bankruptcy plan. ESD ultimately received a judgment in the sum of \$584,047 against Reliable and the Guarantors. Unfortunately, during litigation, one of the Guarantors, Mrs. Rita Copeland passed away and the only remaining Guarantor is Mr. Calvin Copeland, who has limited discernable assets.

CURRENT STATUS AND FORECLOSURE SALE

In fall of 2010, ESD decided, in conjunction with the action against the Guarantors, to also initiate a foreclosure proceeding against the Property. On July 27th, 2011, the Bronx County Supreme Court entered an order appointing a referee to compute the indebtedness that is owing to ESD under the mortgage. The referee has now completed her report and ESD is moving for the entry of an order confirming that report and entering a formal judgment of foreclosure and sale. The total upset price is approximately \$675,000 plus interest. Once that judgment of foreclosure and sale is entered, ESD can arrange for a sale of the property, subject, however, to a first mortgage lien, in the sum of approximately \$42,000, plus interest. It should be noted that JP Morgan Chase, the holder of the first mortgage has itself commenced a

foreclosure action and ESD will eventually have to pay off the senior debt. Foreclosure sale is expected to occur in the first quarter of 2012.

ESD hired the firm of KTR Real Estate Advisors to have the Property appraised. According to the appraisal report, dated November 8, 2011, it places the Property's market value at \$420,000. It should be noted, however, that the appraiser did not have access to the interior of the building. Serious damages to the interior could significantly reduce the market value. Accordingly, ESD should limit its bid to no more than \$350,000. Recovery would be maximized without additional expenses. Lastly, the next payment of the real estate taxes on the Property, of \$1,110.16, is due on January 1, 2012.

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 \$350,000 at a foreclosure auction for the Property, (ii) initiate procurement of a real estate broker, (iii) pay off the balance of the senior mortgage (iv) pay outstanding real estate taxes, (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

January 20, 2012

New York (Kings County) - Authorization to (i) Place a Bid of up to \$350,000 at a Foreclosure Auction for the Property Located at 2570 Bouck Avenue, Bronx New York (the "Property"), (ii) Initiate Procurement of a Real Estate Broker, (iii) Pay Off the Balance of the First Mortgage, (iv) Pay Outstanding Real Estate Taxes, (v) Take all related actions, and (vi) Make a 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 2570 Bouck Avenue, Bronx New York (the "Property") and other related actions, ESD staff is hereby authorized to place a bid of up to \$350,000 at the foreclosure auction for the Property, procure a real estate broker, pay off the balance of the first mortgage, pay outstanding real estate taxes, 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 of the Corporation or his designee(s) are, 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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