



Empowering Businesses. Inspiring Growth.

Jeffrey Crist, Chairman • **Dean Tamburri**, Vice Chairman • **Vincent Odock**, Secretary
Susan Walski, Board Member • **Marc Greene**, Board Member • **Giovanni Palladino**, Board Member • **Linda Muller**, Board Member
William Fioravanti, Chief Executive Officer • **Susan R. Katzoff**, General Counsel • **Christopher C. Canada**, Bond Counsel

Special Board Meeting Agenda

PLEASE TAKE NOTICE, The Orange County Industrial Development Agency will hold a Special Board meeting on June 10th, 2024 immediately following the OCFC & OCIDA Governance Committee Meeting that starts at 4:30pm at Orange County IDA Headquarters, 4 Crotty Lane, Suite 100, New Windsor, NY 12553 to consider and/or act upon the following:

Order of Business

- **Call Meeting to Order**
- **Roll Call**
- **Proof of Notice**
- **New Business**
 - Newburgh 139 LLC (Cross Roads Court Real Estate, LLC) – Sue Katzoff / Jean Everett
 - Estoppel and Agreement
- **Adjournment**

To watch the livestream, please visit our website: www.ocnyida.com

Dated: June 05, 2024

By: William Fioravanti – Chief Executive Officer

4 Crotty Lane, Suite 100 • New Windsor, NY 12553
Phone: (845) 234-4192 • Fax : (845) 220-2228 • Email :
business@ocnyida.com



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Date: June 05, 2024
From: Jeffrey D. Crist
RE: Next Meeting Date

IDA Special Board Meeting Notice

The next Special Board of Directors meeting
of the Orange County Industrial Development
Agency is:

**Monday June 10, 2024
immediately following the
4:30pm OCFC & OCIDA
Governance Committee Meeting**

**OC IDA Headquarters
4 Crotty Lane, Suite 100
New Windsor, NY 12553**

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ESTOPPEL AND AGREEMENT

BANK OF MONTREAL, a Canadian Chartered bank acting through its Chicago Branch, having an address at c/o BMO Capital Markets Corp., 151 West 42nd Street, New York, New York 10036, and **ARGENTIC REAL ESTATE FINANCE 2 LLC**, a Delaware limited liability company, having an address at 31 West 27th Street, 12th Floor, New York, New York 10001 (individually or collectively as the context requires, and together with their respective successors and assigns, “**Lender**”) is making a loan in the original principal amount not to exceed EIGHTEEN MILLION and 00/100 dollars (\$18,000,000) (the “**Loan**”) to **NEWBURGH 139 LLC**, a Delaware limited liability company, having its principal place of business at 34 Shadow Lane, Great Neck, New York 11021 (together with its permitted successors and assigns, “**Owner**”), secured by, among other things, a mortgage encumbering certain property located at One Crossroads Court, Newburgh, New York (the “**Property**”).

The Owner has requested that the Agency execute and deliver this Estoppel and advised the Agency that as a condition to the Loan, Lender has required the execution of this Estoppel and Agreement (this “**Estoppel**”).

The Orange County Industrial Development Agency, a public benefit corporation duly existing under the laws of the State of New York (the “**Agency**”) is a party to that certain (i) Tax Agreement, dated November 1, 2015 between Owner, as assignee of Cross Roads Court Real Estate, LLC, a New York limited liability company (“**Original Owner**”), and the Agency (the “**Tax Agreement**”), (ii) Lease Agreement, dated November 1, 2015 between Owner, as assignee of Original Owner, and the Agency (the “**Lease Agreement**”), and (iii) Leaseback Agreement, dated November 1, 2015 between Owner, as assignee of Original Owner, and the Agency (the “**Leaseback Agreement**”). The Tax Agreement, the Lease Agreement and the Leaseback Agreement were previously assigned by Original Owner to Owner pursuant to that certain Assignment and Assumption of Agreements, dated December 31, 2021 (the “**Assignment Agreement**”; the Tax Agreement, the Leaseback Agreement and the Lease Agreement, as assigned pursuant to the Assignment Agreement, shall herein be referred to as the “**Agreements**”), between Original Owner and Owner with acknowledgment of the Agency (the “**Acknowledgment**”). The Agreement are governed by, and set forth certain payments in lieu of taxes pursuant to, Chapter 390 of the Laws of 1972 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the state of New York (the “**Act**”).

The undersigned hereby certifies, represents, warrants, covenants and agrees to Lender as follows:

1. Attached hereto as Exhibit A is a true and complete copy of the Tax Agreement. Except the Acknowledgment, the Agency has not entered into amendments, modifications and/or supplements to the Tax Agreement.

2. Attached hereto as Exhibit B is a true and complete copy of the Lease Agreement. Except the Acknowledgment, the Agency has not entered into any amendments, modifications and/or supplements to the Lease Agreement.

3. Attached hereto as Exhibit C is a true and complete copy of the Leaseback Agreement. . Except the Acknowledgment, the Agency has not entered into any amendments, modifications and/or supplements to the Leaseback Agreement.

4. To the actual knowledge of the Agency, the Agreements are in full force and effect and are valid and enforceable against the Agency in accordance with their terms.

5. To the actual knowledge of the Agency, no Event of Default has occurred and is continuing under the Agreements.

6. The Agency has not transferred, assigned, hypothecated or pledged any of its interests in or to the Agreements or any of its rights thereunder to any third party.

7. There are no outstanding liens, claims or charges by the Agency against Owner. Currently Owner is obligated to to make Total Tax Payments to the Affected Tax Jurisdictions (as defined in the Tax Agreement) as set forth on Schedule A of the Tax Agreement.

8. The term of the Leaseback Agreement commenced on November 1, 2015, and terminates on December 31, 2027 unless sooner terminated in accordance therewith. The term of the Tax Agreement terminates on December 31, 2027 unless sooner terminated in accordance therewith.

9. Notwithstanding any provision of the Lease Agreement and the Leaseback Agreement to the contrary, with respect to that certain Amended, Restated and Consolidated Mortgage and Security Agreement between Owner and Lender as mortgagee, to be recorded in the Orange County Clerk's Office (the "Mortgage"), in the event that the Lender forecloses on the Facility pursuant to the Mortgage (or acquires title by a deed-in-lieu of foreclosure or otherwise), (i) the Agency's consent shall not be required with respect to the transfer of the Facility, the Lease Agreement and Leaseback Agreement, to (A) the Mortgagor, provided that the Mortgagor is not a Prohibited Person, (B) a single-purpose entity that is a wholly-owned subsidiary of the Lender

(provided that such subsidiary is not a Prohibited Person); and (ii) the Agency shall not unreasonably withhold, condition or delay its consent to a transfer of the Facility, the Lease Agreement, Leaseback Agreement and the Tax Agreement, to an Unaffiliated Transferee (as defined below). In the event of any of the foregoing transfers, Lender shall provide the Agency with at least sixty (60) days' prior written notice.

10. The term "Prohibited Person" means (i) any Person (A) that is in default or in breach, beyond any applicable grace or cure period, of its obligations under any written agreement with the Agency or Orange County, New York, or (B) that directly or indirectly controls, is controlled by or is under common control with a Person that is in default or in breach, beyond any applicable grace or cure period, of its obligations under any written agreement with the Agency or Orange County, New York, unless such default or breach has been waived in writing by the Agency or Orange County, New York, as the case may be, and (ii) any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or (B) that directly or indirectly controls, is controlled by or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

11. As used herein, an "Unaffiliated Transferee" means a transferee in which the Lender owns fifty percent (50%) or less of the membership interest in such transferee, provided that (i) such transferee makes such disclosures relating to background information, character and reputation to the Agency as are set forth in the Agency's then current Application for Financial Assistance, (ii) such transferee has at least ten (10) years of experience in managing multi-family commercial real estate assets in the United States of America with a total number of units under management of at least 500 units, (iii) pursuant to written documents prepared by and reasonably satisfactory to Lender, the transferee assumes the Company's obligations under the Transaction Documents whether accruing prior to or subsequent to the date of the transfer, (iv) is not the Company, a principal of the Company, an affiliate of the Company or a principal of any such affiliate.

12. The undersigned hereby acknowledges that (i) the Agreements and (ii) its leasehold interest in the Property evidenced by the Lease Agreement, are subject and subordinate to (except

for the Agency's Unassigned Rights as set forth in the Leaseback Agreement) the Mortgage.

13. The undersigned has the authority to execute this Estoppel, and Lender shall be entitled to rely upon the certifications, representations, warranties, covenants, agreements and other matters set forth herein.

14. The obligations and agreements of the Agency contained herein and in Agreements and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent or employee of the Agency in his individual capacity; and the members, officers, agents and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. Such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived, and to be derived from, the lease, sale, or other disposition of the Project (as defined in the Agreements), other than revenues derived from or constituting Unassigned Rights. No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or thereunder shall be sought or enforced against the Agency unless:

A. The party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

B. If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party

seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses; and

C. If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request.

D. Any failure to provide notice, indemnity, or security to the Agency pursuant to this Section shall not alter the full force and effect of any Event of Default under any of the Agreements.

15. This Estoppel may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed Estoppel even though all signatures do not appear on the same document.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned hereby executes this Estoppel as of _____, 2024.

AGENCY:

**ORANGE COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____

Name: _____

Title: _____

LENDER:

BANK OF MONTREAL

By: _____

Name: Michael S. Birajiclian

Title: Authorized Signatory

ARGENTIC REAL ESTATE FINANCE 2 LLC,
a Delaware limited liability company

By: Argentic Investment Management LLC, a
Delaware limited liability company, its
Investment Manager

By: _____

Name: Ryan Supple

Title: Authorized Signatory

EXHIBIT A

Tax Agreement

(attached hereto)

EXHIBIT B

Lease Agreement

(attached hereto)

EXHIBIT C

Leaseback Agreement

(attached hereto)