

**City of Buffalo Urban Renewal Agency
Supplemental Loan Committee Meeting Agenda
901 City Hall
August 8, 2019
11:30 a.m.**

1. ROLL CALL

Brendan Mehaffy, Vice Chairman
Council President Pridgen
Commissioner Donna Estrich
Timothy Ball, Corporation Counsel

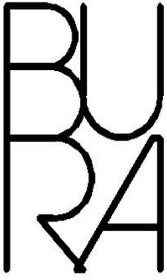
2. NYBDC ITEM

Justin Nadeau

a. ACE RANGERS II, Inc./Empire Grill

- Settlement discussion.

3. Adjournment



Buffalo Urban Renewal Agency

920 City Hall, 65 Niagara Square
Buffalo, New York 14202-3376
716-851-5035
Byron W. Brown, Chairman

LOAN COMMITTEE ITEM

TO: BURA Loan Committee

LOAN COMMITTEE MEETING DATE: August 8, 2019

FROM: Justin Nadeau, New York Business Development Corp.

LOAN COMMITTEE ITEM LOG NO.: 5356-30

ITEM NAME: Ace Ranger II, Inc. /Empire Grill
Settlement Offer of \$75,000 From New Tenants

DESCRIPTION:

Borrower:	Ace Ranger II, Inc./Empire Grill
Operating Company:	Ace Ranger II, Inc./Empire Grill
Property Address:	1435 Hertel Avenue Buffalo, NY 14216
Business Description:	Restaurant
Owner Name:	Nick Kotrides
Owner Address:	6625 Westminster Dr East Amherst 14051
Loan Number:	5356-30
Loan Type:	BERC
Loan/Subsidy :	\$193,971.26
Balance Outstanding:	<u>\$103,709.02</u> (\$149,192.18 with interest and fees)
Balance Subsequent to Settlement:	\$28,709.02
Payments Status:	Delinquent (non-accrual)
Note date:	6/18/2009
Maturity Date:	9/1/2015
Taxes Status:	N/A
Purchased Value:	\$20,000 (Land Acquisition)
Date Acquired:	3/2004

This item seeks to (Accept a Settlement) on a loan currently held by Buffalo Economic Renaissance Corporation ("BERC") n/k/a Buffalo Urban Renewal Agency ("BURA"). Pertinent Loan details are as follows:

RECOMMENDATION:

Borrower obtained a loan from BURA in May 2006 in the amount of \$50,000. The Borrower then obtained another Note refinancing the 2006 Note with new monies in the amount of \$300,000 in order

to purchase the property and ground up construction of the 1435 Hertel Ave property. Borrower defaulted a long time ago on the Note with their last payment being in August 2012. NYBDC discovered that the property and business was sold to a non-guaranteeing third party. Neither BURA nor NYBDC knew about this transaction until a title search was completed. BURA received no money from the sale therefore BURA still had their 2nd lien on the commercial property subject to a 1st held by M&T Bank.

BURA did not have an intercreditor agreement with M&T which resulted in M&T not providing BURA/NYBDC with any information about their mortgage or their underlying Note. Due to this, NYBDC/BURA elected against foreclosing its 2nd mortgage. Instead BURA commenced money judgment actions against the Borrower and Guarantors, which included the new owners of the property. The Summons and Complaint was filed in the Erie County Supreme Court on 6/28/17 (Case No. 808542/2017). Defendants responded however we were unable to come to agreeable settlement terms.

NYBDC discovered that the M&T Note and Mortgage had been satisfied and discharged on 8/1/18. BURA is now in a 1st lien position on the property. We are in receipt of Brokers Opinion dated 12/10/16 valuing the property between \$1.4 million - \$1.55 million. BURA/NYBDC filed the Foreclosure Summons and Complaint in the Erie County Supreme Court (Case NO. 813723/2018).

There has been a lot of back and forth between all parties involved (un-related tenants/owners of property, Nick Kotrides who is the principal, and their respective attorneys). The tenants have been operating MAC's restaurant for several years while our due diligence show that Nick Kotrides has opened a new business venture, Uncle Jumbo's Distillery located at 8510 Roll Rd, Clarence Center, NY 14032. The location of the restaurant (1435 Hertel Ave) is a very popular area for restaurants, bars and stores. The tenants have made it very clear they just want this to be over so they can continue to focus on the success of their business. The tenants came to Lemery Greisler and offered \$50,000 for the release of the property and Ace Rangers II. Without getting an official approval from the BURA Committee, NYBDC countered at \$85,000. The tenants attorney came back and said \$65,000. As seen from the numbers on the pervious page, this is more than 50% of the outstanding principal balance. By accepting this offer, this does not eliminate the judgments that have been filed against the obligor, Nick Kotrides. It should be noted that despite many attempts, Nick Kotrides has not provided updated financial information.

BURA has responded to the \$65,000 counter by stating they would accept \$75,000 but go back to tenants attorney and say \$85,000. NYBDC was not optimistic about the \$85,000 but has informed Lemery to go to back to the negotiating table with \$85,000 and have the authority to accept \$75,000. The tenants attorney has accepted the \$75,000 settlement. If we do not agree on a settlement with the tenants by 8/29 at 9:30am, the court has ordered all parties (NYBDC, Lemery and BURA) to appear in court.

It is NYBDC's recommendation to accept the \$75,000 as the tenants in the 1435 Hertel Ave property had nothing to do with BURA's original loan. They simply purchased a property/business however unfortunately their attorney did not do their due diligence with the title work. According to the New York State Statue of Limitation for malpractice, that only lasts 3 years. They have been communicating with Lemery since the foreclosure action was filed. They have made an offer in order to allow their business to continue to operate. Although the Broker Opinion of Value dated 12/10/2016 estimated a total fair market value range of \$1,400,000 to \$1,550,000, NYBDC does not feel as though closing and foreclosing on a successful business in downtown Buffalo aligns with what BURA's mission. If we settle with the tenants, we would discontinue the foreclosure action and start up into the judgement Note action against Nick Kotrides, again.

It should be noted Nick Kotrides has been unreachable for some time but will continue to be pursued after the settlement is accepted. We will need to inform the current appointed judge of the settlement and that we want to place our current Summary Judgement motion on hold. We will then either need the two parties to stipulate to discontinuance or we will need to make a short motion to discontinue the action (without prejudice to continue the Note action). We will need to release 1435 Hertel and Ace Rangers II from the mortgage lien. In the Note action, we'll need to discontinue that action as against 1435 Hertel and Ace Rangers II. The current Summary Judgement motion can be amended so it is just against Kotrides and Ace Rangers I and we will file that in the Note action.

1. Approvals

NYBDC has performed a thorough evaluation and analysis of the above loan and recommends approval of this request.

Justin Nadeau, SVP

Date