

TOWN OF CLARENCE, ERIE COUNTY
INDUSTRIAL DEVELOPMENT AGENCY

MINUTES

May 20, 2021 (Via ZOOM)

Chris Kempton called the meeting to order at 8:19 a.m.

Present were Lauren Fix, Peter DiBiase, Robert Dixon, Elaine Wolfe, Clayt Ertel, and Chris Kempton. Mary Powell was not able to attend. Also present were Paul Leone, Lawrence Meckler, Steven Bengart, Jennifer Strong, Peter DiCostanzo, Councilman-Town Board Liaison; Kimberly Ignatowski and Cynthia Rosel. There were additional persons signing on during the course of the meeting.

Public Hearings.

The Chairman asked Paul Leone to present the Public Hearings.

(A) A public hearing was held on the **8615 Roll Road Project**. Paul Leone presented the project. The applicant is requesting Agency assistance in the form of a lease only or lease with a mortgage transaction in an amount not to exceed \$2,320,000.00. The assistance the Agency will include mortgage tax abatement, sales tax exemption on any materials and/or equipment purchased for incorporation into the Project and real property tax abatement in accordance with existing Agency Uniform Tax Exemption Policy with a 7 year PILOT. 8615 Roll Road LLC requests assistance in connection with the construction of a 27,0000 square foot addition to an existing 12,000 square foot building which will be renovated on a 2.54 acre parcel of land located at 8615 Roll Road, in the Town of Clarence, New York, to expand RE McNamara Inc. which is currently out of space and the acquisition and installation of machinery, equipment, furnishings and fixtures required in connection therewith, all for a warehouse and light manufacturing facility he Project will allow the Sublessee to expand its current business and maintain their level of sales and employment, making the project affordable with a competitive lease rate and keeping the Sublessee in the Town of Clarence. The Project will be subleased to the Lessee for sub-sublease to the Sublessee and other future sub-tenants.

Mr. Bengart reported that the project is still in the planning process and has not been through the Town of Clarence Planning Board. The applicant will be put on the Planning Board Agenda and then the SEQR and a Neg. Dec. will be issued if appropriate. Therefore, an incentive resolution will not be adopted today. It may be ready for Clarence IDA approval at the June meeting if everything is in order.

Mr. Leone asked if there were any questions. Mr. Leone added that only the Public Hearing is being held today. Mr. Kempton asked if the IMPLAN study was done on this project. Mr. Leone said that there was and it was e-mailed to everyone prior to the public hearing today. The Chairman also asked if the project meets all the eligibility requirements and Mr. Leone answered that it does. Mr. Kempton added that there will be no vote taken on the project today. After the planning process is completed and the SEQR has been completed, then the project can be induced at a future meeting. Mr. Kempton asked if there were any questions on the project and if anyone one would like to speak on the project. There being none, a motion was made to close the public hearing by Clayt Ertel with a second by Elaine Wolfe. There was nothing further on the question. The vote was as follows:

Vote: Ayes: Fix, DiBiase, Dixon, Wolfe, Ertel, Kempton. Noes: None Recuse: None.
Absent: Mary Powell.

(B) A second public hearing was held on the **JR Products Project** and was opened by Paul Leone. Clayt Ertel recused himself for this portion of the meeting as he has had dealings with the company in the past.

The applicant is requesting Agency assistance in the form of a lease only or lease with mortgage transaction in an amount not to exceed \$1,600,000.00. The assistance contemplated by the Agency will include mortgage tax abatement, sales tax exemption on any materials and/or equipment purchased for incorporation into the Project and real property tax abatement in accordance with existing Agency Uniform Tax Exemption Policy, with a 10 year PILOT. 9680 County Road LLC (the "Lessee") requests assistance in connection with the construction of an approximately 15,000 square foot addition to an existing distribution facility on a 3.09 acre parcel of land located at 9680 County Road, in the Town of Clarence, New York, to expand John D. Roba Co. Inc. d/b/a JR Products (the "Sublessee") which is currently out of space and the acquisition and installation of machinery, equipment, furnishings and fixtures required in connection therewith, all for a distribution facility (the "Project"). The Project will allow the Sublessee to expand its current business and maintain their level of sales and employment, making the project affordable with a competitive lease rate and keeping the Sublessee in the Town of Clarence. The Project will be subleased to the Lessee for sub-sublease to the Sublessee which will be the sole occupant of the Project.

Again, Mr. Bengart added that the project has not been through the planning process with the Town of Clarence Planning and Zoning Department and has not been approved by the Planning Board. SEQR still needs to be done. Therefore, a resolution to approve the inducement of the benefits cannot be adopted today. It will have to be done once the process is completed. This company has come before the CIDA before and this is the third project they have done in the Town and they projects were approved. Mr. Bengart added that there are members of the public present and they wish to speak.

Mr. Kempton will call on them but wanted to ask Mr. Leone if there was an IMPLAN study done on this project and if the project meets all the eligibility requirements. Mr. Leone said that the IMPLAN study was done and e-mailed to the members to review and the project meets the eligibility requirements.

Mr. Kempton said that he believes that the applicant is present and here to speak on and give an update of the project. Brian Roba spoke on behalf of the project. Mr. Roba stated the environmental study has been done and there were no environmental issues. Mr. Bengart added that the SEQR needs to be voted on and approved by the Planning Board when it goes through the planning process. Mr. Roba said that they have been invested in the Buffalo community for 51 years. The CIDA PILOT program brought them out of Amherst and into the Clarence Community 20 years ago. The company has continued to expand with a previous addition through the CIDA PILOT program in 2009. JR Products is currently leasing about 5,000 sq. ft. of warehouse space in Niagara County. This new addition is not only to grow its business of worldwide distribution but to move out of Niagara County and into Erie County to the main corporate facility in Clarence. Mr. Kempton asked Mr. Roba to remind the Board what type of company is. Mr. Roba explained that it is an RV and Marine aftermarket Distribution Company. They supply replacement parts for travel trailers, RV's, motor homes, boats, things of that nature. They supply small parts. By and large...a green facility...not doing heavy manufacturing. There are about 40 employees, give or take coming, into the season and are in need of more employees. Mr. Leone added the CIDA does need not need to do an Intermunicipal Move Policy because of the Niagara County Move. This will be a 10 year PILOT. Ms. Fix asked Peter DiCostanzo, Town Board Councilman and liaison to the CIDA asked Mr. Roba about the article that was in the Buffalo News wherein Mr. Roba was quoted as saying the project would not be pursued without the tax breaks and that the company would consider a move to Lancaster or Indianapolis and selling the Clarence facility due to certain circumstances. Mr. Roba said that sometime things are taken out of context in these articles and he was referring to New York State...not the Town of Clarence. The PILOT program has kept the company in the Town of Clarence and there is no plan to move the company out of Clarence. They just acquired a California company and moved all the inventory to the Clarence facility. Mr. Kempton asked if there were any other questions. Mr. Kempton thanked Mr. Roba for being part of the discussion today. There being nothing further and no questions, a motion was made to close the Public Hearing by Elaine Wolfe with a second by Robert Dixon. There was nothing further on the question.

Vote: Ayes: Fix, DiBiase, Dixon, Wolfe, Kempton. Noes: None Recuse: Ertel,
Absent: Mary Powell.

(C.) A public hearing was held on the **Burke Homes LLC Project** and Mr. Leone presented the project. The applicant, Burke Homes LLC, is requesting Agency assistance in the form of a lease only or lease with mortgage transaction in an amount not to exceed \$3,535,000. The assistance contemplated by the Agency will include mortgage tax abatement, sales tax exemption on any materials and/or equipment purchased for incorporation into the Project and real property tax abatement in accordance with existing Agency Uniform Tax Exemption Policy and Guidelines, as amended. Burke Homes, LLC (the "Lessee") requests assistance in connection with the construction of two approximately 9,000 square foot mixed use buildings on a 2 acre parcel of land located at 6855 Transit Road, in the Town of Clarence, New York (the "Project"). The Project will allow the Lessee to expand its current business and maintain their level of employment, making the project affordable with a competitive lease rate and keeping the Lessee in the Town of Clarence. This PILOT would be the equivalent to the 485-b. The 485-b is a 10 year PILOT.

Mr. Kempton asked Mr. Leone to explain the 485-b PILOT. The PILOT schedule of a 485-b begins with 50% of the taxes immediately and does abate the Town, County and the School tax.

This projects meets the criteria of a commercial project with a retail component. An IMPLAN study has been completed and forwarded to the Board with the application. The project has gone through the entire planning process and can be considered to induce after the public hearing today. The SEQR and Neg. Dec. have been completed.

There was a motion to close the public hearing made by Clayt Ertel with a second by Elaine Wolfe. There was nothing on the question.

Vote: Ayes: Fix, DiBiase, Dixon, Wolfe, Ertel, Kempton. Noes: None Recuse: None.
Absent: Mary Powell.

Burke Homes LLC Project.

Mr. Leone briefly went over the project. The project is located at 6855 Transit Rd. in the Town of Clarence. The applicant is Burke Homes LLC and is requesting Agency assistance in the form of mortgage tax abatement, sales tax exemption and a PILOT (property tax abatement for Town, County and School. The project is in an amount not to exceed \$3,535.000. Burke Homes will be constructing two 9,000+/- sq. ft. mixed used buildings on a 2 acre parcel of vacant land. There will be a 10 year 485-b equivalent PILOT. There were no other questions on the project which was the topic of the public hearing that was held today. Based on the public hearing and the information that was presented and discussed at the public hearing, there was a motion by Clayt Ertel with a second by Elaine Wolfe to adopt the resolution that was prepared by Jennifer Strong and is attached hereto in its entirety as Exhibit "A".

Vote: Ayes: Fix, DiBiase, Dixon, Wolfe, Ertel, Kempton. Noes: None Recuse: None.
Absent: Mary Powell. Motion carried.

Minutes of April 15, 2021.

Mr. Kempton asked if everyone had a chance to read the minutes from the April meeting that were e-mailed to previously. There was a motion by Robert Dixon to approve the minutes of the April 15. 2021 meeting. There was a second by Peter DiBiase. There was nothing on the question.

Vote: Ayes: Fix, DiBiase, Dixon, Wolfe, Ertel, Kempton. Noes: None Recuse: None.
Absent: Mary Powell.

Treasurer's Report.

Peter DiBiase went over the financial report. Mr. DiBiase reported on the balances in the checking and money market accounts. There was a fee of \$500 received this period from the 8615 Roll Rd. Project for the application and public hearing fees. Interest earned to date is \$115.92. Total expenses through May 20, 2021 are in the amount

of \$17,447.70. There is a net income of -11,371.78. Mr. Kempton asked Mr. Leone if he could estimate the fee from the Burke project. Mr. Leone said we will get ¼ of 1% for a down payment and the rest will be received at closing. Burke Homes needs to submit the \$500 fee for the application and public hearing. Paul will follow up on that with them. The Chairman asked if there were any questions. There being none, a motion was made by Clayt Ertel to accept the financial report as presented with a second by Robert Dixon. On the question. Ms. Ignatowski added that there is a transfer to the checking account from the money market account that does not show on this statement because it was processed at the end of business yesterday after the report was closed out. It will be reflected in June meetings financial report. .

Vote: Ayes: Fix, DiBiase, Dixon, Wolfe, Ertel, Kempton. Noes: None Recuse: None.
Absent: Powell. Motion carried.

Correspondence.

There was a public hearing notice received from the Amherst IDA and two from the Lancaster IDA that were e-mailed.

New Business.

(A). Niagara Produce Refinance.

Niagara Produce is requesting the CIDA to consent to the Refinance of their existing mortgage for 8555 Transit Road. This project was originally induced in 2013. Mr. Bengart reported that Niagara Produce is refinancing to move around a collateral mortgage so they can refinance some of their loans. Mr. Kempton asked if what correct that the Board needs to There is a resolution that was e-mailed regarding this transaction. The Board needs to consent and authorize the executing and delivery of a collateral mortgage. This does not change any of the terms in the PILOT. There were no questions. Mr. Kempton asked for a motion to approve the resolution as presented. There was a motion made by Elaine Wolfe with a second by Lauren Fix to adopt the resolution as prepared by Attorney Jennifer Strong and attached hereto in its entirety as Exhibit "B". There was nothing on the question.

Vote: Ayes: Fix, DiBiase, Dixon, Wolfe, Ertel, Kempton. Noes: None Recuse: None.
Absent: Powell. Motion carried.

(B) 9074 Main Street-Giovinazzo Group 1951, LLC Project.

Paul Leone was contacted by Dominic Cortese requesting a 6 month extension on the Giovinazzo Group, 1951Project for sales tax only. This project has closed but the construction has not been completed because of COVID. There is still some construction to be completed. There was a motion to approve a 6 month extension for sales tax only benefit on the Giovinazzo Group 1951 Project at 9074 Main Street made by Robert Dixon with a second by Lauren Fix.

Vote: Ayes: Fix, DiBiase, Dixon, Wolfe, Ertel, Kempton. Noes: None Recuse: None.
Absent: Powell. Motion carried.

© Mr. Leone added that he is waiting for the application from Alden State Bank that would be moving into a vacant building on Transit Road that was the former Citizens Bank. This has been vacant for 5 years. Mr. Leone met with the Bank President with Jennifer Strong.

Records Access Policy.

Mr. Kempton said that the next agenda item is the Records Access Policy that needs to be adopted. A copy was forwarded via e-mail to the members and attorneys as well as Paul Leone for review. This was prepared by Jennifer

Strong. There was a motion to adopt the Records Access Policy as proposed by Lauren Fix with a second by Clayt Ertel. There was nothing on the question.

Vote: Ayes: Fix, DiBiase, Dixon, Wolfe, Ertel, Kempton. Noes: None Recuse: None.
Absent: Powell. Motion carried.

Old Business.

Mr. Leone has met with different people on some potential projects but nothing definite at this time

Items not on the Agenda.

Mr. Kempton asked Peter DiCostanzo if he would have an update on the Sewer Study project. Mr. DiCostanzo replied that Jonathan Bleuer would be a better source on the sewer study. Mr. DiCostanzo added that he does not have an update on the sewer study but if any monies would flow from the upper levels of government that would be one place that the Town could put it. The Town may apply funds to the Sewer Study. Mr. DiCostanzo added that Mr. Meckler or Mr. Bengart may have more on the sewers. Mr. Meckler added that nothing has come to the Town Board as yet from Jonathan Bleuer as to recommendation but Mr. Meckler knows Mr. Bleuer is working on it. It is slow but steady. Mr. Kempton added that the Town Board may ask the Clarence IDA to help fund the Study. Mr. Kempton asked if Clayt Ertel has been talking to Jonathan on the Sheridan Drive proposed study. Mr. Ertel replied that he has but that has been put on the back-burner for right now due to the Sewer Study.

Mr. Ertel asked when the Board will be able to start meeting in person again. Mr. Kempton asked the attorneys if they could answer that and if there would be a chance to meet here in person in June. Mr. Bengart answered that he does not have an answer on that at this time. It is a day to day task and the CIDA Board will learn as things happen almost daily. He would think that it would happen when all Boards can start meeting in person again at the same time. Mr. Kempton will know as soon as that happens.

Public Comments

None.

Adjournment.

There was a friendly motion by Clayt Ertel with a second by Lauren Fix to adjourn the meeting. All the members present voted Aye. (Absent were DiBiase and Powell.)

The meeting was adjourned at 9:09 a.m.

ATTACHMENT

EXHIBIT "A"

RESOLUTION OF THE TOWN OF CLARENCE, ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING BURKE HOMES LLC (THE "LESSEE") TO CONSTRUCT AND EQUIP TWO 9,000 SQUARE FOOT MIXED USE BUILDINGS AT 6855 TRANSIT ROAD, CLARENCE ON 2.0 ACRES OWNED BY THE LESSEE, AS AGENT FOR THE AGENCY FOR LEASE TO THE AGENCY AND SUBSEQUENT LEASEBACK TO THE LESSEE.

WHEREAS, **BURKE HOMES LLC** (the "Lessee") has entered into negotiations with the officials of the Town of Clarence, Erie County Industrial Development Agency (the "Agency") with respect to the construction and equipping of two 9,000 square foot mixed use buildings on approximately 2.0 acres owned by the Lessee located at 6855 Transit Road, Clarence, as agent for the agency for lease to the agency and subsequent leaseback to the Lessee (the "Project"); and

WHEREAS, the Lessee has submitted an Eligibility Questionnaire and other materials and information to the Agency to initiate the accomplishment of the above (collectively hereinafter the "Eligibility Questionnaire"); and

WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Lessee, including the following: that the Lessee desires Agency to construct buildings to allow for the expansion of the Lessee which is necessary to support the growth of the Lessee and the expansion of its operations in Clarence, New York; that if the assistance is granted, the Lessee anticipates hiring **12 FTE and 20 PTE** at the Project location in the Town of Clarence within two years following the completion of the Project; that the Project will result in substantial capital investment; that there will be no adverse disruption of existing employment at facilities of a similar nature in the Town of Clarence; if Agency financing or other assistance is disapproved, the Lessee would have to scale back the Project negatively impacting future growth in New York; and that, therefore, Agency financing or other assistance is necessary to encourage the Lessee to proceed with the Project in the Town of Clarence; and

WHEREAS, the Agency has held a public hearing on the Project pursuant to Section 859-A of the General Municipal Law; and

WHEREAS, the Agency desires to further encourage the Lessee with respect to the acquisition and construction of the Project, if by so doing it is able to induce the Lessee to proceed with the Project in the Town of Clarence; and

WHEREAS, the Project should not be delayed by the requirement of determining the details of a lease with mortgage if financing is utilized, which cannot be immediately accomplished, and the Lessee have agreed to extend its own funds with respect to the Project, subject to reimbursement from the proceeds of the notes, if applicable.

NOW, THEREFORE, THE TOWN OF CLARENCE, ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the acquisition, construction and installation of the Project and the financing or other assistance thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act. The Agency further hereby determines, on the basis of the Eligibility Questionnaire and supplemental information furnished by the Lessee, as follows: (a) it would not have financed or otherwise assisted the Project except to induce the location of the Project in the area to be served by the Project as there is a demonstrable need for the Project; (b) that Agency financing and/or other assistance is reasonably necessary to promote economic development and to induce the Lessee to proceed with the Project; (c) there will be no substantial adverse disruption of existing employment or facilities of a similar nature to the Project in such area; (d) the Project will allow the Lessee to expand into the Town of Clarence; (e) the Project will create additional employment and provide substantial capital investment; The Agency further determines, on the basis of the Lessee's Eligibility Questionnaire that: (f) the Project as represented is reasonably necessary to provide the purposes of the Act, subject to verification and confirmation of such representations prior to the into a lease with mortgage or lease only transaction and (g) the Project is an integral part of the Lessee's plan to proceed with the Project in the Town of Clarence.

Section 2. The Agency hereby authorizes the Lessee to proceed with the Project as herein authorized, which Project will be financed through a lease with mortgage or without financing with a lease only transaction.

Section 3. The Agency will undertake, as soon as it is furnished with sufficient information as to the details of a mortgage enter into a lease with mortgage or if it is determined that financing is not necessary a lease only transaction.

Section 4. The Chairman, Vice Chairman, Executive Director, Secretary and Assistant Secretary of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Lessee to assist in the acquisition and construction of the Project.

Section 5. The Lessee is authorized to on the already owned 2.0 acre parcel of land located at 6855 Transit Road, Clarence, commence with the construction of two approximately 9000 square foot mixed use buildings thereon and authorizes the Lessee to proceed with the acquisition and installation of machinery, equipment, furnishings and fixtures required in connection therewith at combined cost not to exceed **\$3,535,000.00**, subject to the obtaining of all required approvals from the Town of Clarence and other involved governmental agencies, and to advance such funds as may be necessary to accomplish such purposes. The Agency is hereby authorized to enter into such agreements with the Lessee, as the Chairman, Vice Chairman, Executive Director or other officer may deem necessary in order to accomplish the above.

Section 6. The Lessee is authorized to make purchases of goods and services relating to the Project that would otherwise be subject to New York State and local sales and use tax in a combined amount up to **\$1,560,000.00** which may result in a New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$137,000.00.00**. The Agency may consider any requests by the Lessee for increases in the amount of sales and use tax benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services necessary for the completion of the Project.

Section 7. Any such action heretofore taken by the Lessee in initiating the construction and renovation of the Project is hereby ratified, confirmed and approved.

Section 8. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Lessee. By acceptance hereof, the Lessee agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, officers, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project and the financing thereof.

Section 9. This resolution is subject to a **485(b) equivalent ten year payment in lieu of tax agreement** for municipal services policy of the Agency on the building and thereafter make a full payment in lieu of taxes. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 6 hereof)

unless prior to the expiration of such one year (a) the Agency shall by subsequent resolution extend the effective date of this resolution, or (b) the Agency shall enter into a lease with mortgage or lease only transaction with the Lessee.

Section 10. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 7 hereof) unless prior to the expiration of such period (a) the Agency shall by subsequent resolution extend the effective date of this resolution or (b) the Agency enters into a lease with mortgage or lease only transaction or (c) the Lessee shall continue to take affirmative steps to secure financing for the Project.

Section 11. The execution and delivery of a Project Agreement, Lease to Agency and a Leaseback Agreement between the Agency and the Lessee, each being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman, Executive Director or Assistant Secretary is hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 12. The execution and delivery of a mortgage from the Agency and the Lessee to a lender selected by the Lessee and approved by the Chairman, Vice Chairman, Executive Director or Assistant Secretary in an amount not to exceed **\$2,680,000.00 (with a mortgage tax abatement of \$20,100.00)** and other ancillary documents, if required, which mortgage and ancillary documents shall be substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman, Executive Director or Assistant Secretary is hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 13. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Lessee's purposes or needs. The Lessee is satisfied that the Project is suitable and fit for Lessee's purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Lessee hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 14. The provisions of the new Section 875 of the General Municipal Law which became effective on March 28, 2013 shall apply to this Project. In the event it is determined that an agent, project operator or other person or entity obtained state sales and use exemptions benefits for which they were not entitled or which were in excess of the amount authorized or which are for property or services not authorized or taken in cases where such Lessee, its agents, project operators or other person or entity failed to comply with a material term or condition to use property or services in the manner required by Agreements entered into between the Agency and the applicant with respect to the Project, the agent, project operator or other person or entity shall comply with all the provisions of Section 875 and pay back to the Agency the amount of the state sales and use tax exemptions benefits that they obtained but were not entitled to.

Section 15. Should the Agency's participation in this Project be challenged by any party, in the courts or otherwise, the Lessee shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from such challenge, including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Lessee hereunder or otherwise.

Section 16. This resolution is subject to compliance with all local building and zoning requirements.

Section 17. The Agency has reviewed the negative declaration adopted by the Planning Board of the Town of Clarence on August 19, 2016 determining that the proposed action will not have a significant impact on the environment and that a draft environmental impact statement will not be required to be prepared and the Agency hereby determines, based upon information furnished to the Agency by the Town of Clarence and such other information as the Agency has deemed necessary to make this determination, that the Project does not require the preparation of an environmental impact statement under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation law, as the contemplated actions will not have a significant effect on the environment and the Agency hereby confirms the negative declaration previously adopted by the Town of Clarence attached hereto and made a part hereof.

Section 18. The provisions of the Town of Clarence, Erie County Industrial Development Agency Policy for Recapture and/or Termination or Modification of Financial Assistance are applicable to this Project.

Section 19. This resolution shall take effect immediately.

ADOPTED: May 20, 2021

ACCEPTED:

BURKE HOMES LLC as Lessee

By _____

Name: _____

ATTACHMENT

EXHIBIT "B"

**RESOLUTION OF THE TOWN OF CLARENCE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
AUTHORIZING THE EXECUTION AND DELIVERY OF A COLLATERAL MORTGAGE, ASSIGNMENT OF
LEASES IN A PRINCIPAL AMOUNT NOT TO EXCEED \$10,500,000.00 AND A GENERAL ASSIGNMENT OF
RENTS AND OTHER ANCILLARY DOCUMENTS REQUIRED IN CONNECTION WITH IN THE
REFINANCING OF 2013 8555 TRANSIT ROAD PROJECT**

WHEREAS, Richard J. Dorr and Jody Chesko (the "Lessee") and Niagara Produce Inc. LLC (the "Sublessee") in 2013 entered into negotiations with the officials of the Town of Clarence, Erie County Industrial Development Agency (the "Agency") with respect to the acquisition and equipping by the Agency through a lease with mortgage transaction for a produce market at 8555-8615 Transit Road (the "Project")

WHEREAS, pursuant to such Inducement Resolution, the Agency acquired a leasehold interest in the Facility pursuant to a certain Lease to Agency, dated as of June 1, 2013, between Richard J. Dorr and Jody Chesko as Lessors, and the Agency, as Lessee, (the "Lease to Agency") and leased the Facility back to Richard J. Dorr and Jody Chesko pursuant to a certain Leaseback Agreement, dated as of June 1, 2013, between the Agency, as Lessor, and Richard J. Dorr and Jody Chesko, as Lessees, (the "Leaseback Agreement"); and

WHEREAS, the Agency has now received a request for the Agency's consent to the execution and delivery by the Agency of a Collateral Mortgage, Assignment Of Leases in a principal amount not to exceed \$10,500,000 and an Assignment of Rents and Leases and other ancillary documents to M&T Bank, by Richard J. Dorr and Jody Chesko (the "Mortgages"); and

WHEREAS, the Facility will remain a produce market and there will be no change in the Payment in Lieu of Taxes ("PILOT") Provisions attached as Exhibit C to the Leaseback Agreement; and

WHEREAS, the Lessees are not requesting any additional benefits from the Agency.

NOW, THEREFORE BE IT RESOLVED AS FOLLOWS:

Section 1. The Agency hereby consents to and authorizes the execution and delivery of a Collateral Mortgage, Assignment Of Leases And Rents And Security Agreement in a principal amount not to exceed \$10,500.00 and an Assignment of Rents and Leases and other ancillary documents M&T Bank and Richard J. Dorr and Jody Chesko with respect to the Lease to Agency and the Leaseback Agreement.

Section 2. The Agency determines that the PILOT provisions shall remain unchanged as there is no change in use or in the occupancy of the Facility.

Section 3. The Chairman, Vice Chairman, Treasurer, Secretary, Assistant Secretary, Executive Director or other officer of the Agency are hereby authorized to execute and deliver the Mortgages, and such other agreements as may be desirable or required in connection with the re-financing of such transaction. The execution and delivery of each such agreement by said officer shall be conclusive evidence of due authorization and approval.

Section 4. The Chairman, Vice Chairman, Treasurer, Secretary, Assistant Secretary, Executive Director or other officer of the Agency are hereby designated the authorized representative of the Agency, and each of them is hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits or other documents to do and cause to be done any and all acts and things necessary or proper for the carrying out of this resolution.

Section 5. Richard J. Dorr and Jody Chesko agree that they will pay all Agency Administrative Fees and legal fees due at closing.

Section 6. This resolution shall take effect immediately.

Adopted: May 20, 2021
Accepted: _____\nRichard J. Dorr

Jody Chesko