

Project Applicant: Burke Homes, LLC
Project Name: Burke Homes LLC
Project Address: 6855 Transit Road, Clarence, NY
Project Amount: \$3,535,000
Incentives Requested: Real Property Tax Abatement, Mortgage Tax Abatement, Sales Tax Exemption
Type of Industry/Business: Mixed Use, Commercial, Back Office, Retail, Apartments
Type of Transaction: Lease
Public Hearing Date (if required): May 20, 2021
Inducement Resolution Adopted: May 20, 2021
Public Hearing Notice:

**NOTICE OF PUBLIC HEARING
TOWN OF CLARENCE, ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

PLEASE TAKE NOTICE that the Town of Clarence, Erie County, Industrial Development Agency will hold a public hearing May 20, 2021, at 8:25 a.m. VIA ZOOM to consider the following proposed financial assistance requested of the Agency.

PLEASE NOTE the special hearing logistics and instructions included at the end of this notice.

1. **BURKE HOMES LLC** - Request for 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.

The Agency will present information relative to this project and application at the hearing. Persons interested may attend and will be given an opportunity during the hearing to make statements. Also written comments may be submitted to the Agency at or before the hearing.

Additional information can be obtained from and written comments may be addressed to:

Paul Leone
Consultant to Town of Clarence, Erie County, Industrial Development Agency
One Town Place
Clarence, New York 14031

PLEASE NOTE SPECIAL PUBLIC HEARING CONDUCT INSTRUCTIONS AND INFORMATION:

In accordance with Section 859-a of the NYS General Municipal Law, a representative of the Agency will present a copy of the Company's project Application which is also available for viewing on the Agency's website at www.HamburgIDA.com However, given the ongoing COVID-19 public health crisis and related Executive Orders issued by Governor Andrew M. Cuomo, the Agency accommodate in-person public attendance and participation at this hearing as well as electronic attendance, as per the information below. In furtherance of the provisions of Section 859-a of the NYS General Municipal Law requiring interested parties be provided a reasonable opportunity, both orally and in writing, to present their views with respect to the Project, and pursuant to Governor

Cuomo's Executive Order 202.15 issued on April 9, 2020, as amended from time to time, authorizing the conduct of public hearings through use of telephone conference, videoconference and/or other similar service, the Agency will livestream the Public Hearing. The Agency will provide public access to provide oral comments during the Public Hearing at:
VIA ZOOM Meeting Link <https://zoom.us/j/95772858111?pwd=aVY4a2xoZnMzQ01lTldsdlJMbFdnZz09&from=addon>

Meeting ID: 957 7285 8111

Passcode: 637817 One tap mobile

+16465588656, 95772858111#, *637817# US (New York) Dial by your location

+1 646 558 8656 US (New York)

Meeting ID: 957 7285 8111

Passcode: 637817 Find your local number: <https://zoom.us/u/app8kp6AS>

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:
Title: