

**RESOLUTION OF THE TOWN OF CLARENCE, ERIE COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE  
ASSIGNMENT TO AND ASSUMPTION BY TRANSIT STATION LLC OF  
THE LEASEHOLD INTEREST OF BURKE HOMES LLC IN THE 2021  
BURKE HOMES LLC PROJECT AND THE EXECUTION AND  
DELIVERY BY THE AGENCY OF A LEASE ASSIGNMENT AND  
ASSUMPTION AGREEMENT, AND AN AMENDED AND RESTATED  
LEASEBACK AGREEMENT ALONG WITH MORTGAGE TAX  
ABATEMENT IN RELATION TO A REFINANCE OF THE PROJECT**

WHEREAS, the Town of Clarence Erie County Industrial Development Agency (the "Agency") by resolution adopted on May 20, 2021 (the "Inducement Resolution") approved the construction and equipping of two 9,000 square foot mixed use buildings on approximately 2.0 acres now owned by BURKE HOMES LLC located at 6855 Transit Road, Clarence ("Facility"), as agent for the agency for lease to the agency and subsequent leaseback to the BURKE HOMES LLC (the "Project"); and

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 December 1, 2021, between BURKE HOMES, LLC, as lessor, and the Agency, as lessee, (the "Lease to Agency") and leased the Facility back to BURKE HOMES LLC pursuant to a certain Leaseback Agreement, dated as of December 1, 2021, between the Agency, as lessor, and BURKE HOMES LLC, as lessee, (the "Leaseback Agreement"); and

WHEREAS, TRANSIT STATION LLC ("New Lessee") has submitted an Eligibility Questionnaire and other materials and information to the Agency to further the accomplishment of the above Project and to request the Agency's consent to (i) the assignment of BURKE HOMES LLC'S leasehold interest in the Facility Realty as defined in the Leaseback Agreement, to the New Lessee; (ii) the assumption by the New Lessee of the obligations of BURKE HOMES LLC under the Leaseback Agreement; and (iii) to refinance the Project;

WHEREAS, the Facility will remain as two 9,000 square foot mixed use buildings; accordingly, 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 Eligibility Questionnaire sets forth certain information with respect to the New Lessee, including the following: that the New Lessee desires Agency assistance to assume and refinance the Project which is almost fully constructed to allow for the expansion of the New Lessee which is necessary to support the growth of the New Lessee's and the expansion of its operations in Clarence, New York; that if the assistance is granted, the New 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 New 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 New Lessee to continue the Project in the Town of Clarence; and

WHEREAS, a public hearing on the Project is not required.

NOW, THEREFORE BE IT RESOLVED AS FOLLOWS:

Section 1. The Agency hereby determines that the assignment and assumption and refinance 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 New 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 New 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 New 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 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 New Lessee's plans to continue with the Project in the Town of Clarence.

Section 2. The Agency approves the execution and delivery of an Amended and Restated Lease to Agency between TRANSIT STATION LLC and the Agency and an Amended and Restated Leaseback Agreement, between the Agency and TRANSIT STATION LLC.

Section 3. The Agency hereby consents and authorizes the execution and delivery of a Lease Assignment and Assumption Agreement between BURKE HOMES LLC and TRANSIT STATION LLC with respect to the Leaseback Agreement.

Section 4. 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 5. The Agency agrees to release BURKE HOMES LLC with respect to obligations arising under the Leaseback Agreement arising after the date of the assignment and assumption by TRANSIT STATION LLC, provided that BURKE HOMES LLC shall remain obligated with respect to obligations arising during the time period it was the lessee under the Leaseback Agreement.

Section 6. The Chairman, Vice Chairman, Secretary, Assistant Secretary or other officer of the Agency are hereby authorized to execute and deliver the Lease Assignment and Assumption Agreement, an Amended and Restated Lease to Agency, an Amended and Restated Leaseback Agreement, and such other agreements as may be desirable or

required in connection with the assignment to and assumption by TRANSIT STATION LLC of the leasehold interest of BURKE HOMES LLC in the Facility Realty and the financing of such transaction and the Secretary and the Assistant Secretary are hereby authorized to affix the seal of the Agency on each such agreement, as applicable, and attest to the same. The execution and delivery of each such agreement by said officer shall be conclusive evidence of due authorization and approval.

Section 7. The execution and delivery of a mortgage from the Agency and the New Lessee to a lender selected by the New Lessee and approved by the Chairman, Vice Chairman, Secretary or Assistant Secretary in an estimated amount of **\$2,300,000.00 (with a mortgage tax abatement not to exceed \$17,250.00)** 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, Secretary 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 8. 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 New Lessee's purposes or needs. The New Lessee are satisfied that the Project is suitable and fit for their 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 New Lessee hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 9. The provisions of the new Section 875 of the General Municipal Law 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 New Lessee, their 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 10. Should the Agency's participation in this Project be challenged by any party, in the courts or otherwise, the New Lessee shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from such

By: \_\_\_\_\_  
Name: David Burke  
Title: Managing Member