

RESOLUTION OF THE TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT AMENDMENT OR A THIRD AMENDED AND RESTATED LEASE AGREEMENT AND MORTGAGE DOCUMENTS REQUIRED IN CONNECTION WITH THE REFINANCE OF THE PROJECT

WHEREAS, the Town of Lancaster Industrial Development Agency (the "Agency") previously approved Tops Markets, Inc.'s application for Agency assistance in the construction of an approximately 906,739 square foot warehouse distribution facility on an approximately 136 acre parcel of land located at 5873 Genesee Street in the Town of Lancaster, New York and the acquisition and installation of machinery and equipment, furniture and fixtures required in connection therewith, all for a warehouse distribution facility, to be owned by the Agency and leased to Tops Markets, Inc. (the "Project") and on November 29, 1995, the Agency held a public hearing on the proposed project and adopted its Inducement Resolution authorizing Tops Markets, Inc. to acquire and construct the Project as agent for the Agency and the Agency accepted title to the Project on May 23, 1997 and leased the Project to Tops Markets, Inc. pursuant to a Lease Agreement, dated as of May 1, 1997, between the Agency and Tops Markets, Inc. as the Lessee; and

WHEREAS, Tops Markets, Inc. subsequently merged into and with Tops Markets, LLC, with Tops Markets, LLC being the surviving entity and thereafter Tops Markets, LLC, with the consent of the Agency, assigned its leasehold interest in the Project to Buffalo Logistics LLC pursuant to a Lease Assignment and Assumption Agreement, dated August 4, 2002; and

WHEREAS, Buffalo Logistics, with the consent of the Agency pursuant to resolution adopted on May 10, 2007, assigned its leasehold interest in the Project back to Tops Markets, LLC pursuant to a Lease Assignment and Assumption Agreement, dated June 15, 2007; and

WHEREAS, Tops Markets, LLC (the "Lessee") made investments and improvements at the warehouse facility located at 5873 Genesee Street in the Town of Lancaster (the "Facility") in 2011, with the consent of the Agency pursuant to a Lease Agreement Amendment, dated January 1, 2012;

WHEREAS, Tops Markets, LLC made further investments and improvements at the Facility in 2017, with the consent of the Agency pursuant to a Second Lease Agreement Amendment, dated February 1, 2017, as corrected by a Memorandum of Correction of Second Lease Agreement Amendment on March 22, 2017;

WHEREAS, the Lessee submitted to the Agency a new/current Eligibility Questionnaire which sets forth certain information with respect to the Lessee, including the following: Tops Markets, LLC has announced that it is merging with another grocery chain (the "Merger") and that it will be refinancing a mortgage placed on the Facility in connection with the closing for the Merger. In the new Eligibility Questionnaire, the Lessee indicates that it is seeking Agency assistance so that the Facility may remain competitive and retain the **699 full time and 44 part time jobs** and **add four new full time jobs** within the next two years and therefore the Lessee

approached the Agency about providing additional assistance to Tops Markets, LLC to allow it to continue operating the Facility in the form of an extension of the existing payment in lieu of taxes (or "PILOT") agreement for an additional five year period and providing mortgage tax abatement on the refinance of a mortgage that serves as security for new financing that is being provided to the Lessee in connection with the Merger, each of which will assist the Lessee in leasing a new fleet of compressed natural gas (or CNG) trucks as well as making modifications to the existing truck facility to allow on-site maintenance of said new CNG trucks; all of which is necessary to support the growth of the Lessee and the continuation of its operations in Lancaster, New York; 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 Lancaster; if Agency financing or other assistance is disapproved, the Facility will become more costly to run and therefore less competitive in the Merger thus negatively impacting future growth in Lancaster New York; and that, therefore, Agency financing or other assistance is necessary to keep the Facility competitive and to encourage the Lessee to proceed with the Project in the Town of Lancaster; and

WHEREAS, in November, 2021 Tops Markets, LLC asked the Agency for an additional mortgage tax abatement; and

WHEREAS, in return for extending the term of the Lease Agreement and the PILOT agreement, the Agency will require that during the five year extension of the term of the Lease Agreement, that neither Tops Markets, LLC nor its successors or assigns will challenge the current assessment for the property at 5873 Genesee Street, which assessment shall remain at \$45,155,000 for the duration of the PILOT Agreement.

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

NOW, THEREFORE, BE IT RESOLVED BY THE AGENCY AS FOLLOWS:

Section 1. The Agency does hereby approve the execution and delivery of a Lease Agreement Amendment or a Third Amended and Restated Lease Agreement, to extend the PILOT agreement for an additional five year period at 50% abatement on the taxes due thereon, with the estimated value of the real property tax abatement being \$2,992,000.00.

Section 2. That in return for the extension of the PILOT agreement for an additional five year term, Tops Markets, LLC and its successors and assigns will waive its right to challenge the current assessment for the balance of the term of the Lease Agreement as extended by the Lease Agreement Amendment which provisions will be incorporated into the Third Amended and Restated Lease Agreement Amendment and/or the PILOT agreement.

Section 3. The Agency does hereby approve the execution and delivery of mortgages and related documents 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 a total amount not to exceed **\$80,000,000.00 (with mortgage tax abatement of \$600,000.00)** 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 4. The Lessee is authorized to proceed with making continued investments and improvements at the Facility and with the acquisition and installation of machinery, equipment, furnishings and fixtures required in connection therewith at combined cost not to exceed **\$80,000,000.00**, subject to the obtaining of all required approvals from the Town of Lancaster 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 5. The Chairman, Vice Chairman, Treasurer, Secretary or Assistant Secretary are hereby authorized to execute, acknowledge and deliver each such agreement and the Secretary, Assistant Secretary or other officer or member of the Agency are hereby authorized to affix the seal of the Agency on each such agreement, as applicable, and attest the same. The execution and delivery of each such agreement by said officer shall be conclusive evidence of due authorization and approval.

Section 6. All covenants, stipulations, obligations and agreements of the Agency contained in this resolution and contained in the Lease Agreement Amendment or the Amended and Restated Lease Agreement and any and other documents required to be executed in connection therewith shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution and the Lease Agreement Amendment or the Amended and Restated Lease Agreement and other documents required in connection therewith shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

Section 7. No covenant, stipulation, obligation or agreement herein contained or contained in the Lease Agreement Amendment or the Amended and Restated Lease Agreement or other documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his individual capacity and neither the members of the Agency nor any officer executing any such instrument shall be liable personally thereon.

Section 8. The Chairman, Vice Chairman, Treasurer, Secretary, Assistant Secretary and any member or officer of the Agency are hereby designated the authorized representatives of the Agency and each of them is hereby authorized and directed to execute and deliver 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 or the Lease Agreement Amendment or the Amended and Restated Lease Agreement and other documents.

Section 9. The Project is a Type II action under SEQRA and no review is required.

Section 10. This Resolution is subject to compliance with all local building and zoning requirements.

Section 11. This Resolution shall take effect immediately and shall continue in full force and effect for one year from the date hereof and supplements the Agency resolution of September 14, 2021.

Section 12. The Agency Fee shall be \$75,000.00.

Adopted: December 21, 2021

TOPS MARKETS, LLC

ACCEPTED _____

By _____
(name) _____
(title) _____