

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 the 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 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 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 Lease Assignment and Assumption Agreement, dated June 15, 2007; and

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

WHEREAS, Tops Markets, LLC further expanded 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 current Eligibility Questionnaire sets forth certain information with respect to the Lessee, including the following: Tops Markets, LLC is merging with another grocery chain and will be refinancing the Facility so that the same may remain competitive and retain the **699 full time and 44 part time jobs and add four new full time jobs** within two years following completion of the Project and therefore the Lessee approached the Agency about providing additional assistance to Tops Markets, LLC to allow them to continue operating the warehousing operation at 5873 Genesee Street in the form of an extension of the existing payment in lieu of taxes for an additional five year period and providing mortgage tax abatement

cost not to exceed **\$40,000,000.00**, 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.

Adopted: September 14, 2021

TOPS MARKETS, LLC

ACCEPTED _____

By _____
Frank Curci,
President and CEO