

TOWN OF CLARENCE, ERIE COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY

MINUTES  
June 22, 2023

Chairman Chris Kempton called the meeting to order at 8:15 a.m.

Present were Peter DiBiase, Robert Dixon, Elaine Wolfe, Mary Powell, Clayt Ertel and Chairman Kempton. Lauren Fix was out of town and unable to attend the meeting. Paul Leone, Jennifer Strong, Larry Meckler, Steven Bengart, Peter DiCostanzo, Councilman/Liaison, Kimberly Ignatowski and Cynthia Rosel were also present. Mark Dean from Quintessence, LLC/Dean Architect, Eric Jefferson, CFO, MJ Peterson & Harris Hill Development and Alan Randaccio with Harris Hill Development/Harris Hill Commons. Also attending were Kevin Lemaster from the Lancaster IDA and Robert Leary, Lancaster Town Board and Lancaster IDA.

**Minutes of May 18, 2023 Meeting.**

Chris Kempton asked if everyone had any questions or comments on the minutes of the May 18, 2023 meeting. There were none. There was a motion by Clayt Ertel with a second by Elaine Wolfe to approve the May 18, 2023 meeting minutes. There was nothing on the question. The vote was as follows:

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

**Treasurer's Report.**

Treasurer, Peter DiBiase reviewed the financial report. Mr. DiBiase reported the balances in the cash-checking with interest and CD accounts Fees received for the period were \$1,000.00. Interest earned to date is a total of \$2,727.37. The Total assets include Cash-Checking with interest account and three CD's. Interest earnings have increased due to the CD's. Total expenses for the period of May 19-June 22, 2023 were \$2,251.00 and to date are 39,518.46. There is a net income of -35,291.09. Mr. DiBiase asked if there were any other questions. There was a motion made by Robert Dixon to accept the Treasurer's Report as submitted with a second by Elaine Wolfe. There was nothing on the question.

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

**Correspondence.**

None.

Mr. Leone asked the guests attending the meeting if they would introduce themselves to the Board Members. Present for the 8450 Sheridan Drive Project are Alan Randaccio and Eric Jefferson. Mark Dean, principal of Dean Architects for the Quintessence, LLC/Dean Architects PLC Project, 8385 Main Street Project. Also, in attendance were Kevin Lemaster from the Lancaster IDA and Robert Leary, Lancaster Town Board and Lancaster IDA.

**New Business.**

C. Consider request for Extension of Sales Tax - 8615 Roll road Project (2021)

The applicant,

The project applicant is asking for a six-month sales tax extension for the 8615 Roll Road project. The project has been delayed due to availability of construction materials and equipment needed to complete the project. Mr. McNamara is asking for a 6 month sales tax extension for the warehouse and light manufacturing facility. Ms. Strong has prepared a resolution for the Board to approve the extension if they choose to do so. There was a motion by Mary Powell to approve the sales tax extension for the 8615 Roll Road project from June 16, 2023 to December 16, 2023 and adopt the resolution. There was a second by Clay Ertel. There was nothing further on the question.

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

(Resolution as adopted)

**RESOLUTION OF THE TOWN OF CLARENCE, ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") EXTENDING THE SALES TAX PERIOD FOR 8615 ROLL ROAD LLC (THE "LESSEE") UNTIL JUNE 16, 2023**

WHEREAS, **8615 ROLL ROAD 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 a 27,000 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, for a warehouse and light manufacturing Facility, as agent for the Agency for lease to the Agency and subsequent leaseback to the Lessee for sub-sublease to **RE McNamara Inc.** (the "Project"); and

WHEREAS, there has been delay in constructing and equipping of the Project and has requested a second extension of its sales tax abatements, from June 16, 2023 until December 16, 2023; and

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

- 1. The Agency does hereby extend the sales tax period for the Lessee from June 16, 2023 to December 16, 2023.**
2. This resolution shall take effect immediately.

ADOPTED: June 22, 2023

**Old Business.**

Sexual Harassment Policy – Updated.

The Chairman had Ms. Ignatowski explain that the policy has been updated by NYS. She is going to e-mail the new model policy for the members to review. The training is still a requirement. The Board needs to review the new policy to consider adopting the updated policy at the July meeting. Ms. Rosel added that if the members or staff takes the training at the company they work at, they can submit proof that the training was completed and that will satisfy the training requirement. Ms. Ignatowski will be in touch with everyone regarding the training. This will be on the July agenda to consider adoption.

**Fee Schedule – Update.**

Mr. Kempton also reminded the Board that there was discussion a few months ago regarding the Fee

Policy and consideration of amending the policy. Mr. Kempton prepared a draft model of the fee schedule policy that is clearer and less complicated. There is a hand out for the Board to review. The Chairman would like the Executive Committee to go into the policy in more detail and create on or two options for consideration by the Board. Mr. Kempton took the existing policy and came up with a sample. The Executive Committee will meet to discuss.

### **Public Hearings.**

#### **A. Quintessence, LLC/Dean Architects, PLLC Project**

Quintessence, LLC/Dean Architects, PLLC Project public hearing was called to order at 8:25 a.m. Mr. Leone presented the project to the Board. The applicant is requesting Agency assistance in the form of a lease only or lease with mortgage transaction in an amount not to exceed \$1,105,000.00. The assistance contemplated by the Agency will include mortgage tax abatement up to \$6,000.00, sales tax exemption up to \$37,187.00 on any materials and/or equipment purchased for incorporation into the Project and real property tax abatement pursuant to a five-year PILOT in accordance with the Agency's Uniform Tax Exemption Policy and Guidelines. Quintessence, LLC (the "Company") requests assistance in connection with the construction of 4,000 square foot architectural services back-office building for Dean Architect, PLLC (the "Tenant") located at 8353 Main Street, in the Town of Clarence, New York and the Clarence Central School District (the "Project"). The Project will allow the Company and the Tenant to expand its current business and increase their level of employment, making the project affordable with a competitive lease rate and keeping the Tenant in the Town of Clarence.

(The Board received the application, public hearing notice and the cost benefit analysis before the meeting to review.)

Mr. Leone introduced Mark Dean, the applicant and asked if there were any questions for Mr. Leone or Mr. Dean. Steve Bengart asked, that for the record, that Mr. Dean give a description of the project that is moving from Lancaster. Mr. Dean explained that his company was in the village of Depew. Ms. Strong added that the intermunicipal letters did go out. Ms. Strong also received the SEQR/Neg Dec documents. They were operating there since 1998. The company has grown and they need more space and need to increase the staff up to approximately 20 from the present 13. They need to expand the space to accommodate additional staff. He has been in the business since 1994. The applicant has been involved with projects and is licensed in several states. The business does a large contingency of work in WNY and Clarence in both the residential and commercial side as well. Mr. Bengart added that all Town of Clarence approvals have been met. Mr. Bengart asked the applicant that is it fair to say that without receiving the incentives, that the project would not be able to go forward? Mr. Dean answered that is fair to say and in addition, approval would allow the business to expand in the FF & E area make a lot of technology improvements that the business needs for the staff for a number of years. Ms. Strong also added that the Cost Benefit Analysis was also sent to the Board and the attorneys.

Mr. Leone asked if there were any other questions of the Board or the public. There being none, Ms. Powell moved to close the public hearing at 8:29 a.m. with a second by Robert Dixon. There was nothing further on the question.

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

## B. 8450 Sheridan Drive LLC Project

The Chairman opened the public hearing for the 8450 Sheridan Drive LLC Project at 8:30 a.m. . Mr. Leone introduced the applicants Alan Randaccio with Harris Hill Development. Mr. Randaccio added that the project is a mixed use project at the corner of Sheridan Drive and Harris Hill Road with apartments and different styles of town houses and retail along the front of Sheridan Drive. The other partners are MJ Peterson and Elliot Lasky.

Mr. Leone presented the project to the Board. The applicant is requesting Agency assistance in the form of a lease only or lease with mortgage transaction in an amount not to exceed \$12,908,000.00. The assistance contemplated by the Agency will include mortgage tax abatement up to \$72,000.00, sales tax exemption up to \$433,125.00 on any materials and/or equipment purchased for incorporation into the Project and real property tax abatement pursuant to a five-year PILOT in accordance with the Agency's Uniform Tax Exemption Policy and Guidelines. 8450 Sheridan Drive, LLC (the "Company") requests assistance in connection with the construction of 52,000 square foot mixed use building located at 8450 Sheridan Drive, in the Town of Clarence, New York and the Clarence Central School District (the "Project"). The Project will allow the Company to expand its current business and increase their level of employment, making the project affordable with a competitive lease rate.

(The Board received the application, public hearing notice and the cost benefit analysis before the meeting to review.)

Mr. Leone asked if there were any questions from the Board. Ms. Strong added that she has the application with her today if there are any questions. They are promising the creation of 2 jobs. The Board has also received the Cost Benefit Analysis and it is also in the package. She also received the SEQR/Neg Dec documents. Mr. Leone asked if there were any questions. Ms. Powell wanted to clarify with the Board that the project is eligible because of the commercial component. Mr. Leone answered that it is and it meets the 1/3 requirement regarding retail. Ms. Strong also noted that in the legal notice there was a typo. The Project is in the amount of \$12,908,000.00. That was corrected and put on the website and the posted notice.

Mr. Kempton asked the applicant to give a description of the project. Eric Jefferson, CFO-MJ Peterson, explained that the project is mixed use, apartment complex very similar to the project on Main Street across from the Clarence High School. The frontage consists of commercial in the front with apartments on the second floor of the commercial and townhouse style units in the back. This will be Phase 1. Mr. Jefferson said that there will be 3 phases.

Mr. Ertel asked about the timing of the other phases, do you have a projection yet? Mr. Randaccio said that will be market driven but the plan is to complete the first phase, lease it out and move right to the next phase. Hopefully in one year increments...that would be ideal. Mary Powell asked if the Board is approving the first phase and then they will have to come back for the other Phases? Mr. Kempton answered that it is for Phase 1. They would have to come back for Phase 2 if they choose to do that. Mr. Kempton asked if there are any other questions from the Board or the public. There were none. Mr. Kempton asked for a motion to close the public hearing. Elaine Wolfe moved to close the public hearing at 8:34 a.m. There was a second by Mary Powell. There was nothing on the question.

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





There will be two projects. DIMAR will be the sole occupant of 4280 Research Parkway. Mr. Kempton added that the Research Parkway LLC project is a manufacturing project and qualifies for a 10 year PILOT. Mr. Bengart added they have all the municipal approvals and SEQR has been completed.

**Public Comments.**

None.

There being nothing further, the Chairman made a motion to adjourn the meeting with a second by Elaine Wolfe.

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

Meeting was adjourned at 9:01 a.m.

Respectfully submitted,  
Cynthia Rosel

EXHIBIT "A"

Resolution on the Quintessence, LLC/Dean Architects PLLC Project

RESOLUTION OF THE TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING QUINTESSENCE, LLC (THE "LESSEE") TO CONSTRUCT AND EQUIP A 4,000 SQUARE FOOT ARCHITECTURAL SERVICES BACK-OFFICE BUILDING LOCATED AT 8353 MAIN STREET, IN THE TOWN OF CLARENCE, NEW YORK ON A .52 ACRE PARCEL AS AGENT FOR THE AGENCY FOR LEASE TO THE AGENCY AND SUBSEQUENT LEASEBACK TO THE LESSEE AND FURTHER SUBLEASE TO DEAN ARCHITECTS, PLLC (THE "SUBLESSEE").

WHEREAS, QUINTESSENCE, 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 a 4,000 square foot architectural services back-office building located at 8353 Main Street, in the Town of Clarence, New York on a .52 acre parcel as agent for the Agency for lease to the Agency and subsequent leaseback to the Lessee and further sublease to Dean Architects, PLLC (the "Sublessee") (the "Project"); and

WHEREAS, the Lessee and Sublessee have 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 and Sublessee, including the following: that the Lessee desires Agency assistance to construct and equip a 4,000 square foot architectural services back-office building located at 8353 Main Street, in the Town of Clarence, New York on a .52 acre parcel, as agent for the Agency for lease to the Agency and subsequent leaseback to the Lessee and further sublease to the Sublessee to allow for the expansion of the Sublessee which is necessary to support the growth of the Sublessee and the expansion of its operations in Clarence, New York; that if the assistance is granted, the Sublessee anticipates hiring 8 FTE 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 and Sublessee 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 has given the required Intermunicipal move notices; and

WHEREAS, the Agency desires to further encourage the Lessee and Sublessee with respect to the construction and equipping of the Project, if by so doing it is able to induce the Lessee and Sublessee 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 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 and Sublessee, 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 and Sublessee 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 Sublessee 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 Lessee's and Sublessee's plans to proceed with the Project in the Town of Clarence.

Section 2. The Agency hereby authorizes the Lessee and Sublessee 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, 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 and Sublessee to assist in the construction and equipping of the Project.

Section 5. The Lessee and Sublessee are authorized to with regard to the .52 acre parcel of land located at 8353 Main Street, Clarence, commence with the construction and equipping of a 4,000 square foot architectural services back-office building and authorizes the Lessee and Sublessee to proceed with the acquisition and installation of machinery, equipment, furnishings and fixtures required in connection therewith at combined cost not to exceed \$ 1,105,000.00, 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 agreement

s with the Lessee and Sublessee, as the Chairman, Vice Chairman, Secretary or Assistant Secretary or other officer may deem necessary in order to accomplish the above.

Section 6. The Lessee and Sublessee are 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 \$425,000.00 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 \$37,187.00. The Agency may consider any requests by the Lessee and/or Sublessee 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 or Sublessee. By acceptance hereof, the Lessee and Sublessee agree 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 five-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 and Sublessee 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 and Installment Sale Agreement between the Agency and the Lessee and/or the Sublessee, each being 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 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, Secretary or Assistant Secretary in an amount not to exceed \$800,000.00 (with a mortgage tax abatement of \$6,000.00) 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, 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 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 and/or Sublessee's purposes or needs. The Lessee and Sublessee 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 Lessee and Sublessee 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/Sublessee, 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 15. Should the Agency's participation in this Project be challenged by any party, in the courts or otherwise, the Lessee and Sublessee 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 and/or Sublessee 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 March 15, 2023 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: June 22, 2023

EXHIBIT "B":  
8450 Sheridan Drive Project Resolution

RESOLUTION OF THE TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING 8450 SHERIDAN DRIVE, LLC (THE "LESSEE") TO ACQUIRE, CONSTRUCT AND EQUIP A 52,000 SQUARE FOOT MIXED USE BUILDING LOCATED AT 8450 SHERIDAN DRIVE, IN THE TOWN OF CLARENCE, NEW YORK ON A 14 +/- ACRE PARCEL AS AGENT FOR THE AGENCY FOR LEASE TO THE AGENCY AND SUBSEQUENT LEASEBACK TO THE LESSEE.

WHEREAS, 8450 SHERIDAN DRIVE, 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 acquisition, construction and equipping of a 52,000 square foot mixed use building located at 8450 Sheridan Drive, in the Town of Clarence, New York on a 14 +/- acre parcel 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 assistance to acquire, construct and equip a 52,000 square foot mixed use building located at 8450 Sheridan Drive, in the Town of Clarence, New York on a 14 +/- acre parcel, as agent for the Agency for lease to the Agency and subsequent leaseback to the Lessee 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 2 FTE 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, construction and equipping 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, 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, construction and equipping of the Project.

Section 5. The Lessee is authorized to with regard to the 14 +/- acre parcel of land located at 8450 Sheridan Drive, Clarence, commence with the acquisition, construction and equipping of a 52,000 square foot mixed use building 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 \$12,908,000.00, 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, Secretary or Assistant Secretary 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 \$4,950,000.00 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 \$433,125.00. 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 five 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, 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 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, Secretary or Assistant Secretary in an amount not to exceed \$9,600,000.00 (with a mortgage tax abatement of \$72,000.00) 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, 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 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 December 16, 2020 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: June 22, 2023