

Project Applicant: 4280 Research Parkway LLC (2nd Application)
 Project Name: 4280 Research Parkway LLC Project (2nd Application for increase in project cost)
 Project Address: 4280 Research Parkway, Clarence, NY 14031
 (Present Owner: Shisler Road Associates LLC)
 (SBL No. 83.00-3-3.1)
 Project Amount: \$6,410,757.00 (Increase of \$1,435,757 in project cost from 1st application amt. of \$4,975,000.00)
 Incentives Requested: Real Property Tax Abatement, Mortgage Tax Abatement, Sales Tax Exemption (10 year PILOT)
 Type of Industry/Busine Manufacturing (Currently zoned and present use as) Industrial Business Park
 Type of Transaction: Lease To Agency (subsequent leaseback to the Lessee DIMAR LLC (the Project))
 Public Hearing Date (if required): September 21, 2023
 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 second public hearing September 21, 2023, at 8:20 a.m. at the Clarence Town Hall, One Town Place, Clarence, New York, to consider the following proposed increased financial assistance requested of the Agency.

4280 Research Parkway, LLC – Whereas the original application to the Agency for assistance has been replaced by the Company with an application for an increased project cost and Agency assistance in the form of a lease only or lease with mortgage transaction in an amount not to exceed **\$6,410,757.00**. The assistance contemplated by the Agency will include mortgage tax abatement up to **\$36,000.00**, sales tax exemption up to **\$185,063.00** on any materials and/or equipment purchased for incorporation into the Project and real property tax abatement pursuant to a ten-year PILOT in accordance with the Agency’s Uniform Tax Exemption Policy and Guidelines. 4280 Research Parkway, LLC (the "Company") requests assistance in connection with the construction of 55,000 square foot manufacturing facility located at 4280 Research Parkway, in the Town of Clarence, New York and the Clarence Central School District for lease to a single tenant (the "Project"). The Project will allow the tenant to expand its current business and increase their level of employment, making the project affordable with a competitive lease rate.

The Agency will present information related 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.

A copy of the Lessee’s application is posted on the Agency website at: www.clarenceida.com. Additional information can be obtained from, and written comments may be addressed to: Paul Leone, IDA Consultant; One Town Pl. Clarence, NY 14031 (716) 867-5988.

September 21, 2023 Resolution:

AMENDED RESOLUTION OF THE TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY (THE “AGENCY”) AUTHORIZING 4280 RESEARCH PARKWAY, LLC (THE “LESSEE”) TO ACQUIRE, CONSTRUCT AND EQUIP A 55,000 SQUARE FOOT MANUFACTURING BUILDING LOCATED AT 4280 RESEARCH PARKWAY, IN THE TOWN OF CLARENCE, NEW YORK AS AGENT FOR THE AGENCY FOR LEASE TO THE AGENCY AND SUBSEQUENT LEASEBACK TO THE LESSEE.

WHEREAS, **4280 RESEARCH PARKWAY, 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 55,000 square foot manufacturing building located at 4280 Research Parkway, in the Town of Clarence, New York 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 an Amended Eligibility Questionnaire (induced by the Agency on July 20, 2023) for an increased Project amount 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 55,000 square foot manufacturing building located at 4280 Research Parkway, in the Town of Clarence, New York for sublease to a single tenant, 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 **0 FTE** at the Project location in the Town of Clarence within two years following

the completion of the Project (the future tenant is expected to hire 16 FTE) 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 original Project and on the increased 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 parcel of land located at 4280 Research Parkway, Clarence, commence with the acquisition, construction and equipping of a 55,000 square foot manufacturing 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 **\$6,410,757.00**, 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 **\$2,115,000.00** 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 **\$185,063.00**. 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 **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, 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 **\$4,800,000.00 (with a mortgage tax abatement of \$36,000.00)** 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 May 3, 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: September 21, 2023

ACCEPTED: September ____, 2023