

Project Applicant: Michael Curran
Project Name: APEX Acquisition Associates LLC
Project Address: 8600 Sheridan Drive
Project Amount: \$1,360,000
Incentives Requested: Property Tax Abatement, Mortgage Tax Abatement
Sales Tax Exemption
Type of Industry/Business:
Type of Transaction: Lease
Public Hearing Date (if required): January 16, 2020

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 public hearing January 16, 2020, at 8:15 a.m. at the Clarence Town Hall, One Town Place, Clarence, New York, to consider the following proposed financial assistance requested of the Agency.

1. **APEX DENTAL SOLUTIONS LLC PROJECT** - Request for Agency assistance in the form of a lease only or lease with mortgage transaction in an amount not to exceed \$1,360,000.00. The assistance contemplated by the Agency will include mortgage tax abatement, sales tax exemption on any materials and/or equipment purchased for incorporation into the Project and real property tax abatement in accordance with existing Agency Uniform Tax Exemption Policy and Guidelines, as amended. Apex Dental Solutions, LLC (the "Lessee") requests assistance in connection with the renovations to an existing 9,000 square foot building located at 8600 Sheridan Drive, in the Town of Clarence, New York, to expand their existing business, which is currently out of space and the acquisition and installation of machinery, equipment, furnishings and fixtures required in connection therewith, all for a dental lab manufacturing/distribution facility (the "Project"). The Project will allow the Lessee to expand its current business and maintain their level of sales and employment, making the project affordable with competitive rates and keeping the Lessee in the Town of Clarence. The Project will be leased to the Lessee for leaseback to the Agency which will be the sole occupant of the Project.

The Agency will present information relative 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.

Additional information can be obtained from and written comments may be addressed to:
Paul Leone
Consultant to Town of Clarence, Erie County, Industrial Development Agency
One Town Place
Clarence, New York 14031

Inducement Resolution

RESOLUTION OF THE TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING APEX DENTAL SOLUTIONS, LLC (THE "LESSEE") FOR THE ACQUISITION AND RENOVATION OF AN EXISTING APPROXIMATELY 9,000 SQUARE FOOT BUILDING LOCATED AT 8600 SHERIDAN DRIVE AND TO ACQUIRE AND INSTALL MACHINERY, EQUIPMENT, FURNISHINGS AND FIXTURES REQUIRED IN CONNECTION THEREWITH, AS AGENT FOR THE AGENCY, FOR LEASE TO THE AGENCY AND SUBSEQUENT LEASEBACK TO THE

LESSEE, ALL FOR A DENTAL LAB MANUFACTURING/DISTRIBUTION FACILITY, AND TO TAKE OTHER PRELIMINARY ACTION.

WHEREAS, APEX Dental Solutions, 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 and equipping by the Agency with the proceeds of a lease with mortgage transaction consisting of the acquisition and renovation of an approximately 9,000 square foot building located at 8600 Sheridan Drive in the Town of Clarence and the acquisition and installation of machinery, equipment, furnishings and fixtures required in connection therewith, by the Lessee as agent for the Agency, for lease to the Agency and subsequent leaseback to the Lessee, all for a Dental Lab Manufacturing/Distribution Facility who will be the occupant of the Project (the "Project"); and

WHEREAS, the Lessee has submitted an Eligibility Questionnaire and other materials and information to the Agency (collectively hereinafter the "Eligibility Questionnaire") to initiate the accomplishment of the above; and

WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Lessee, including the following: that the Lessee desires Agency assistance in the acquisition, renovation and installation of the Project; that the Project is necessary to provide manufacturing jobs in the Town of Clarence; that there will be no substantial adverse disruption of existing employment at facilities of a similar nature in the Town of Clarence; there are currently 30 FTE and 7 PTE at the Project location but Lessee anticipates that the Lessee will employ 45+ FTE and 10+ FTE employees at the Project location within 2 years following completion of the Project; that Agency financing or other assistance is necessary because the Lessee is out of space and this will allow them to expand their current business and maintain their level of sales and employment, the renovation cost would be prohibitive without Agency assistance, and is necessary for the Project to proceed; and that, therefore, Agency financing or other assistance is reasonably necessary to encourage the Lessee to proceed with the Project in the Town of Clarence; if Agency financing or other assistance is disapproved, the Lessee would likely not proceed with the Project; and that, therefore, Agency financing or other assistance is reasonably 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 and construction 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 transaction, which cannot be immediately accomplished, and the Lessee has 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, renovation 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 Lessee to construct the Project in the Town of Clarence; (b) that Agency financing or other assistance for the Project is reasonably necessary to promote economic development in the Town of Clarence; (c) the Project will create at least 15 new full time and 3 part time employees; (d) the Project will provide substantial capital investment. The Agency further determines, on the basis of the Lessee's Eligibility Questionnaire that; (e) 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 Agency entering into a lease with mortgage transaction; and (f) 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 at a cost estimated at \$1,360,000, which Project will be constructed through a lease with mortgage transaction with the Lessee.

Section 3. The Agency will undertake, as soon as it is furnished with sufficient information undertake to enter into a lease with mortgage 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 and construction of the Project.

Section 5. The Lessee is authorized to initiate the acquisition and renovation of an approximately 9,000 square foot building and the acquisition and installation of machinery, equipment, furnishings and fixtures required in connection therewith, as agent for the Agency and is authorized 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, Assistant Secretary or other authorized 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 \$320,000.00 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 \$28,000.00. 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 acquisition 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. The Agency has determined that this Project is eligible for the 485-b equivalent 7 year payment in lieu of taxes (PILOT).

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 only transaction or (c) the Lessee shall continue to take affirmative steps to construct the Project.

Section 11. This resolution is also subject to the construction of space suitable for the purpose authorized herein.

Section 12. The execution and delivery of a Project and Agent Agreement, a Lease to Agency and Leaseback Agreement, between the Agency and the Lessee being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman or Vice Chairman 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 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 \$1,360,000 and together other ancillary documents is hereby authorized 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. 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 14. 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 or the extent to which proceeds derived from the sale of the bonds will be sufficient to pay the cost of the acquisition, construction, renovation and installation of the Project. 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 agrees to indemnify and hold the Agency harmless from any such loss, damage or expense.

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 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, 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 18. The provisions of the Town of Clarence, Erie County, Industrial Development Agency Policy for Recapture and/or Termination or Modification of Financial Assistance adopted by the Agency on June 16, 2016 shall be applicable to this Project.

Section 19. This resolution shall take effect immediately.

ADOPTED: January 16, 2020

ACCEPTED:

APEX DENTAL SOLUTIONS, LLC

By: _____

Michael P. Curran, Jr.
President

Amended Induecemnt Resolution.

RESOLUTION OF THE TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AMENDING IT'S INDUCMENT RESOLUTION ADOPTED JANUARY 16, 2020 AUTHORIZING APEX DENTAL SOLUTIONS, LLC FOR THE ACQUISITION AND RENOVATION OF AN EXISTING APPROXIMATELY 9,000 SQUARE FOOT BUILDING LOCATED AT 8600 SHERIDAN DRIVE TO SUBSTITUTE APEX ACQUISITION ASSOCIATES, LLC (THE "LESSEE") AND TO ACQUIRE AND INSTALL MACHINERY, EQUIPMENT, FURNISHINGS AND FIXTURES REQUIRED IN CONNECTION THEREWITH, AS AGENT FOR THE AGENCY, FOR LEASE TO THE AGENCY AND SUBSEQUENT LEASEBACK TO THE LESSEE, ALL FOR A DENTAL LAB MANUFACTURING/DISTRIBUTION FACILITY, AND TO TAKE OTHER PRELIMINARY ACTION.

WHEREAS, APEX Dental Solutions, 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 and equipping by the Agency through a lease with mortgage or lease only transaction of the acquisition and renovation of an existing approximately 9,000 square foot building located at 8600 Sheridan Drive, in the Town of Clarence and to acquire and install machinery, equipment, furnishings and fixtures required in connection therewith, as agent for the Agency, for lease to the Agency and subsequent leaseback to the Lessee, all for a dental lab manufacturing/distribution facility (the "Project"); and

WHEREAS, a Public Hearing was held on January 16, 2020 and a resolution was adopted on January 16, 2020 by the Agency authorizing the Project; and

WHEREAS, APEX Dental Solutions, LLC has requested that the Agency allow for the substitution of APEX Acquisition Associates, LLC (the "Lessee") who will be purchasing the real property at 8600 Sheridan Drive in the Town of Clarence.

NOW, THEREFORE, THE TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency does hereby amend the prior Inducement Resolution adopted on January 16, 2020 to substitute APEX Acquisition Associates, LLC in place of APEX Dental Solutions, LLC and authorizing the Agency to enter into an Agent Agreement, a Lease to Agency and a Leaseback Agreement with the new Lessee.

Section 2. The prior resolutions adopted on January 16, 2020, with all its terms and conditions shall continue in full force and effect except as specifically modified by this resolution and any actions taken in reliance on the prior resolution are hereby expressly ratified and confirmed.

Section 3. This resolution shall take effect immediately.

ADOPTED: February 20, 2020.

ACCEPTED:

APEX ACQUISITION ASSOCIATES, LLC

By: _____

Michael P. Curran, Jr.
President