

**City of Utica  
Industrial Development Agency  
Application**

The information required by this form is necessary to determine the eligibility of your project for IDA benefits. Please answer all questions; insert "NONE", or "NOT APPLICABLE", where necessary. If an estimate is given, put "EST." after the figure. Attach additional sheets if more space is needed for a response than is provided. Return three copies of this application to the City of Utica Industrial Development Agency.

All information contained in this form will be treated confidentially, to the extent permitted by law.

A project financed through this Agency involves the preparation and execution of significant legal documents. Please consult with an attorney before signing any documents in connection with the proposed project.

**PART I**

**Applicant**

Applicant's legal Name: LIVINGSTON STREET ACQUISITIONS, LLC

Principal Address: 555 East Lancaster Avenue, Suite 620  
Radnor, PA 19087

Project Address: 1776 Independence Square, Utica, New York

Telephone Number(s): (646) 804-6044

Federal Identification Number: xx-xxxxxxx Will provide separately

provide \_\_\_\_\_ Company IRS Filing Office Location:

Company Officer completing this application:

Name: Pietro V. Scola

Title: Manager

Phone: (xxx) xxx-xxx Will provide separately \_\_\_\_\_ cell: \_\_\_\_\_ office

Email: pscola@livstreetcap.com

1. A. **Is the applicant a:**

( ) Corporation: If YES, Public ( ) Private ( )  
If a PUBLIC Corporation, on which exchange is it listed?

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- ( ) Sole Proprietorship
- ( ) Partnership
- ( ) Subchapter S
- ( ) DISC
- (X) Other (specify) LLC

B. State of incorporation, if applicable: DE

2. **Stockholders, Directors, Officers, Partners or Members**

A. Provide the following information in regard to principal stockholders or parties:

<u>Name</u>	<u>Home Address</u>	<u>Social Security No.</u>	<u>Percentage of Ownership</u>
Livingston Street Capital, LLC 555 E. Lancaster Avenue, Suite 620, Radnor, PA 19087		<del>81-4030482</del> Will provide Separately	100%

B. Provide the following information in regard to officers and directors:

<u>Company Officer</u>	<u>Name and Home Address</u>	<u>Social Security Number</u>	<u>Other Principal Business Affiliation</u>
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Pietro V. Scola - See attached Bio

Joseph L. Fox - See attached Bio

All please find more information at: <http://livingstonstreetcapital.com>

**Pietro Scola** is a leading executive in the commercial real estate and finance industry in the United States. He has completed more than \$20 billion in real estate transactions over the course of his career to date. His experience includes direct equity investment, mergers and acquisitions, joint venture structuring, capital raising and asset repositioning. Additionally, Peter has significant financial services and equity and debt capital markets experience. This experience affords Peter a unique perspective on the total lifecycle of an investment as well as its capitalization.

Most recently a senior executive of Cantor Fitzgerald & Co and co-founder of Cantor Commercial Real Estate L.P., Peter has held executive positions with Bank of America, Fitch Ratings, Merrill Lynch, and Wells Fargo Securities, and has worked with major clients such as The Blackstone Group as well as several public and private real estate investment trusts. Peter has also built a personal portfolio of real estate investments that are predominantly value-add acquisitions.

Peter holds a degree in international business and finance from American University in Washington, D.C., where he received several academic awards and scholarships. He has also served as a guest speaker for Master's level real estate programs at Columbia University, NYU and UNC-Chapel Hill.

**Joe Fox** is a successful real estate investor with more than 30 years of real estate experience including acquisition, asset management, disposition and structured finance, and complex joint venture structuring experience.

Joe is the co-founder of Shelbourne Capital LLC, an opportunistic real estate investment firm that focuses on thematic investment in the commercial real estate sector. Joe successfully focused the firm on several opportunistic investments and accumulated more than \$700 million in assets since its inception. These strategies include housing, healthcare and hospitality. Recently, Joe has helped facilitate the disposition of more than \$250 million in assets, achieving internal rates of return to date in excess of 30%.

Joe began his career with CBRE focusing on highly complex and large-scale transactions. He served in senior leadership roles at Pitcairn Properties, where he led capital raising and joint venture structures. After Pitcairn, Joe was named head of global real estate at a Dublin-based private equity firm that managed more than €1 billion in investments. Throughout his career, Joe has led more than \$2 billion of real estate investments.

Joe is a graduate of St. Joseph's University in Philadelphia, PA. He also Chairs the Board of St. Malachy School in North Philadelphia.

- C. Is the applicant or any of the persons listed in 2(A) above related, directly or indirectly, to any other entity by more than 50% common ownership? If also, indicate name of such entity and the relationship.

No.

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- D. Is the applicant affiliated with any other entity, directly or indirectly, other than as indicated in response to paragraph C above? If YES, please indicate name and relationship of such other entity and the address thereof:

No.

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3. **Applicant's accountant**

Name and Title: Michael D. Corvino CPA

Name of Firm: Abraham, Borda, Corvino, Butz, LaValva & Co. PC

Address: 2857 Nazareth Road  
Easton, PA 18045-2749

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Telephone Number: (610) 258-5666 Ext 238 Email: mcorvino@abrahamborda.com

4. **Applicant's attorney**

Name and Title: Andrew M. Pearlstein

Name of Firm: Seyfarth Shaw LLP

Address: Seaport East, Two Seaport Lane, Suite 300, Boston, Massachusetts 02210-2028

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Telephone: 617-946-4965 Email: apearlstein@seyfarth.com

5. **References** (Individuals and institutions in this section may be contacted)

A. Banking/Financial Institution:

<u>Name of Institution</u>	<u>Address and Phone Number</u>	<u>Account Officer/ Contact Person</u>
Peoples Security Bank and Trust Company		Will provide Separately

B. Business suppliers (list three largest accounts)

<u>Name of Supplier</u>	<u>Address and Phone Number</u>	<u>Account Officer/ Contact Person</u>	<u>Terms of Sale</u>	<u>Annual Dollar % Volume</u>
N/A.				

C. Major customers (list three largest and show percentage of gross business obtained from each):

<u>Name of Customer</u>	<u>Address and Phone Number</u>	<u>Account Officer/ Contact Person</u>	<u>Terms of Sale</u>	<u>Annual Dollar % Volume</u>
N/A.				

6. **Business Description**

A. Describe nature of business and principal products and/or services:

Livingston Street Capital, LLC is a fully integrated boutique real estate-focused investment firm led by a highly experienced team of professionals. Collectively our leadership team has led more than \$20 billion of commercial real estate transactions and bring more than 75 years of experience to each investment.

We focus on what we consider essential versus discretionary investing, and therefore we currently acquire multifamily, healthcare and mission critical properties. We believe our investment philosophy is the best approach to protecting and enhancing invested capital.

B. Describe the geographical market(s) served:

Utah, Idaho, and Massachusetts

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7. **Present location(s) of business operations**

A. List present location(s):

1. See above.

2.

3.

B. For what purpose is each of these used?

1. We currently focus on three macro-investment sectors: healthcare, mission critical/strategic and housing (multifamily and senior)

2.

3.

C. For each of your present locations which are RENTED, provide the following information:

<u>Name of Landlord</u>	<u>Landlord's Address</u>	<u>Landlord's Telephone Number</u>
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1. N/A.

2.

3.

<u>Amount of Space</u>	<u>Annual Rental</u>	<u>Lease Termination Date</u>
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1. N/A.

2.

3.

D. For each of your present locations which you OWN, provide the following information:

	<u>Location</u>	<u>Annual Mortgage Payment</u>	<u>Termination Date</u>
1.	N/A (applicant will be a to be formed single purpose entity with no other assets but for the Project)		
2.			
3.			

E. List which of your present locations, if any, will be vacated if IDA approval for your project is given:

None.

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If any of these locations will be sublet or sold, provide information concerning your ability to do so:

None.

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How will the applicant's plans be affected if IDA approval is not granted?

Applicant will not acquire the Project.

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Please confirm by checking the box, below, if there is likelihood that the Project would not be undertaken but for the Financial Assistance provided by the Agency?

Yes or  No

If the Project could be undertaken without Financial Assistance provided by the Agency, then provide a statement in the space provided below indicating why the Project should be undertaken by the Agency:

See above, Project would not be undertaken.

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Identify the assistance being requested of the Agency (select all that apply):

1. Exemption from Sales Tax                    \_\_\_ Yes or  X  No
2. Exemption from Mortgage Tax             X  Yes or \_\_\_ No
3. Exemption from Real Property Tax        X  Yes or \_\_\_ No
4. Tax Exempt Financing \*                    \_\_\_ Yes or  X  No  
\* (typically for not-for-profits & small qualified manufacturers)

**A. Type of Project**

Check category or categories best describing your project (O - Owner) and all end-users (T – Tenant(s)) and the square footage of each:

	Manufacturing		sf
	Industrial (Assembly or Service)		sf
	Research and Development		sf
	Warehousing		sf
	Commercial		sf
	Pollution Control		sf
X	Housing	136,519	sf
	Back Office		sf
	Facility for Aging		sf
	Multi-Tenant		sf
	Retail		sf
X	Recreational	8,897	sf
	Other (specify)		sf
		Total	sf

**B. Description of Proposed Project**

Check all appropriate categories which apply to the proposed project:

- |  |        |       |
|--|--------|-------|
| 1. Acquisition of land                           | YES(x) | NO( ) |
| 2. Acquisition of existing building              | YES(x) | NO( ) |
| 3. Renovations to existing building              | YES( ) | NO(x) |
| 4. Construction of addition to existing building | YES( ) | NO(x) |
| 5. Demolition                                    | YES( ) | NO(x) |
| 6. Construction of a new building                | YES( ) | NO(x) |
| 7. Acquisition of machinery and/or equipment     | YES(x) | NO( ) |
| 8. Installation of machinery and/or equipment    | YES( ) | NO(x) |
| 9. Other (specify) _____                         | YES( ) | NO(x) |

**C. What is the zoning classification of the proposed site?**

Planned Development Residential (PDR)

D. For what purpose was the site most recently used (e.g. light manufacturing, heavy manufacturing, assembly, etc.)?

Senior multi-family housing

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E.	<u>Location(s)</u>	<u>Street Address</u>	<u>Number of Floors</u>	<u>Square Footage per Floor</u>
	N/A. Project is complete.			

F. Is the site in an Empire Zone? ( ) Yes (X) No

Is the business Empire Zone certified at this location: ( ) Yes (X) No

Attach a copy of the last Business Annual Report filed.

Is the proposed project located within the boundary of a Central New York Regional Transportation (Centro) District? (X) Yes ( ) No

G. 1. Please describe in detail the facility to be acquired, constructed or renovated (including number of buildings and other existing structures or facilities) and attach plot plans, photos or renderings, if available.

144 units, located at 1776 Independence Square, Utica, New York, containing approximately  
136,519 rentable square feet and known as Schuyler Commons at Colonial Square.

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2. If construction or renovation work on this project has already begun, please describe the work in detail.

N/A.

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3. What is the estimated useful life of the:

a. Facility: TBD, subject to receipt of property condition report.

b. Equipment: TBD, subject to receipt of property condition report.

H. List the principal items or categories of equipment to be acquired as part of the project.

Minor maintenance equipment

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I. If any of this equipment has already been purchased or ordered, please attach all invoices and purchase orders and list amounts paid and dates of expected delivery as well as a brief description:

N/A.

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J. If the construction or operation of the proposed project will require any local ordinance or variance to be obtained or requires a permit or prior approval of any state or federal agency or body (other than normal occupancy/construction permits), please specify:

N/A.

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K. Will the project have a significant effect on the environment, YES ( ) NO (x). If so, please describe the effect. **Important: please attach Environmental Assessment Form to this Application**

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L. Will a related real estate holding company, partnership or other entity be involved in the ownership structure of the Transaction? YES(x) NO( ) If YES, please explain:

Yes, the contract will be assigned to a be formed single purpose entity.

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M. 1. With regard to the present owner of the project site, please give:

Name: COLONIAL SQUARE ASSOCIATES, LLC

Address: 300 Jordan Road  
Troy, NY 12180  
Attention: Michael J. Uccellini

Telephone Number: 518-687-7305

2. If the applicant already owns the project site, indicate:

a. date of purchase: N/A.

b. purchase price: N/A.

3. If the project site is mortgaged, please indicate:

a. balance of mortgage: N/A.

b. holder of mortgage: N/A.

N. Is there a relationship, legally, by virtue of common control, or through related persons, directly or indirectly, between the applicant and the present owner of the project site? YES  
( ) NO (x) If YES, please explain:

\_\_\_\_\_  
\_\_\_\_\_

O. Is the company currently a tenant in the building to be occupied?

YES ( ) NO (x)

P. Are you planning to use/develop the entire proposed facility?

YES (x) NO ( )

If NO, give the following information with respect to present tenants:

1. Present Tenant Information

a.      Name of Business      Floors Occupied      Square Feet Occupied      Nature of Tenant's Business

N/A.

b.      Which of the above tenants will be vacating upon your initial use of the facility? How many jobs will be affected?

Name of Firm                      Jobs                      Square Footage Now Occupied

N/A.

c.      For those tenants who will remain after your initial occupancy of the site, provide the following transaction:

Name of Tenant                      Term of Lease                      Renewal Options                      Square Footage Now Occupied

Will be provided separately.

Are any of the above tenants related to the owner of the facility?    YES ( )    NO (x)

d.      If the applicant will be occupying the premises of any of the tenants listed in (c) when their lease expires, please list.

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e.      Please provide copies of all present lease(s) at the proposed project site.

Will be provided separately

- f. Do you propose to lease part of the project facility to firms not presently tenants?  
YES ( ) NO (x)

If YES, provide details of your proposals:

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- g. Will financing by the Agency for the Project result in the removal or abandonment of a plant or other facility of the applicant or any related entity presently located in another area in the State of New York? YES ( ) NO (x)

If the answer is yes, please explain briefly the reasons for the move.

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Is the proposed project reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the State of New York?  
YES ( ) NO (x)

Is the proposed project reasonably necessary to preserve the competitive position of the project occupant in its respective industry? YES (x) NO ( )

- h. If any of the parties who will be tenants in this project are related to or affiliated with the applicant, please identify them:

N/A.

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1. Please attach any written agreements (e.g., options, purchase contracts, invoices, etc.) concerning the acquisition of the real property or equipment for this proposed facility.

Purchase and Sale Agreement will be provided separately.

2. Employment \*

- a. List your present employment in the City of Utica, if any, and an estimate of the employment at the proposed facility at the end of two years. NOTE: New York State considers Full Time employment as 35 hours or more. In order to calculate Part Time into Full Time Equivalents (FTE), divide the total typical and consistent number of hours worked per week by 35.

Employment	Current # of applicant's jobs at/or to be located at proposed project location	Number of FTE jobs to be RETAINED	Number of FTE jobs to be CREATED two years after project completion	Estimate number of residents in Labor Market Area that will fill projected jobs two years after project completion
Full Time (FTE)	5	5	0	0
Total				

The Labor Market Area consists of the following counties: Oneida, Lewis, Herkimer, Otsego, Madison and Oswego

- b. Characterize the labor force to be associated with this project location according to the following categories:

Category	Current	Avg Salary or Salary Range	Avg Fringe Benefits or Range
Officers	NONE		
Sales/Supervisory			
Clerical	3	\$111,480.00	
Plant/Production			
Other (specify) Maintenance	2	\$58,240.00	

- c. Estimate the Annual Payroll for the employees associated with the project location.

Currently	End of Year One	End of Year Two
\$ NONE	\$	\$

**\* Company/Applicant will be required to submit Annual Project Monitoring Reports (attached) along with a copy of the NYS 45ATT (four quarters) for a minimum of five (5) years for any commercial project and ten (10) years for any industrial/manufacturing project, or for the length of UIDA involvement in the project. Annual Project Monitoring Reports will be compared to employment counts as stated above and companies whose reported counts fall below those levels above will be subject to the Agency's Recapture Provisions Policy.**

**Sources of Funds for Project Costs:**

**% of Total  
project costs**

Bank Financing:	\$ <u>approx. \$16,800,000</u>	_____
Equity (excluding equity attributed to grants/tax credits)	\$ <u>approx. \$9,000,000</u>	_____
Tax Exempt Bond Issuance (if applicable)	\$ <u>N/A</u>	_____
Taxable Bond Issuance (if applicable)	\$ <u>N/A</u>	_____
Public Sources (Include sum total of all state and federal grants and tax credits)	\$ <u>N/A</u>	_____

Identify each state and federal grant/credit:

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Total Sources of Funds for Project Costs: \$ \_\_\_\_\_

Have any of the above costs been paid or incurred as of the date of this Application?

Yes or  No. If Yes, describe particulars: \_\_\_\_\_

**Mortgage Recording Tax Exemption Benefit:** Amount of mortgage that would be subject to mortgage recording tax:

Mortgage Amount (include sum total of construction/permanent/bridge financing): \$ approx. \$16,800,000

Estimated Mortgage Recording Tax Exemption Benefit (product of mortgage Amount as indicated above multiplied by 0.75%): \$ approx. \$126,000

Please Note: The New York State General Municipal Law was recently amended to reflect that industrial development agencies are not exempt from the additional mortgage recording tax of .25% that is assessed to properties that are located within a regional transportation district. Oneida County is located within the Central New York Regional Transportation District; as such, all UIDA projects will be exempt from .75% of mortgage recording tax, but must pay .25% of mortgage recording tax, which will be directed to the Transportation District.

**3. Estimated Project Cost**

Listed the costs necessary for the construction, acquisition or renovation of the project (this should NOT include working capital needs, moving expenses, work in progress, stock in trade, applicant's debt repayment, real estate broker fees or your legal fees):

Acquisition of Land	\$25,800,000
Acquisition of Building(s)	\$(included in purchase of land)
Renovation Costs	\$
New Construction of Buildings	\$
Machinery and Equipment (other than furniture costs)	\$
Furniture and Fixtures	\$
Installation Costs	\$
Architectural/Engineering Fees	\$
Fees (other than your own counsel and brokerage fees)	\$
Interest on Interim Financings	\$
Other (specify) _____ _____	\$
Total Project Cost	\$25,800,000

Sales and Use Tax: Gross amount of costs for goods and services that are subject to State and local Sales and Use tax - said amount to benefit from the Agency's Sales and Use Tax exemption benefit:

\$ N/A. \_\_\_\_\_

Estimated State and local Sales and Use Tax Benefit (product of 8.75% multiplied by the figure, above):

\$ \_\_\_\_\_

**4. Real Estate Taxes**

List separately the proposed project's Real Estate Taxes and/or Assessed Value as it applies to land and building: Project is currently subject to a PILOT program, and the current owner is such assigning agreement to applicant

Project's	Real Estate Taxes	Assessed Value
Land(s)	\$	\$
Building(s)	\$	\$
Total	\$	\$

Calculate the value of the PILOT exemption anticipated for the project described:

\$ See above

**5. Project Schedule**

Indicate the estimated dates for the following:

- a. Construction commencement: N/A.
- b. Construction completion: N/A.
- c. Project financing: List the dates and in what amounts the estimated funds will be required:

Closing Date under the Purchase and Sale Agreement

\_\_\_\_\_  
\_\_\_\_\_

- d. Indicate the name of the incorporated municipality in which the facility will be located and the applicant's (or any related entity's) estimated capital expenditures in such municipality during the past three years:

City of Utica

- e. What do you expect the applicant's (or any related entities) capital expenditures to be in the above municipality during the next three years (including this project):

None, subject to review of property condition report.

- f. If the applicant or any related entity has previously secured the benefit of tax exempt financing in the City of Utica, whether through IDA, the New York Job Development Authority or any other entity, please explain (indicate date, location of financed facility, and outstanding balance):

N/A.

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- g. Has the applicant or any related entity received the benefit of tax exempt financing anywhere within the United States within the past 90 days or is the applicant or any related entity contemplating the receipt of such financing assistance within the next 90 days? YES ( ) NO (x) if yes, please explain.

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## 6. Project Financing Efforts

IT IS THE APPLICANT'S RESPONSIBILITY TO SECURE A PURCHASER FOR IDA BONDS ISSUED IN CONJUNCTION WITH THIS PROJECT. Below are a series of questions relating to your efforts to secure financing for your project if IDA approval is granted.

- A. Has the applicant contacted any bank, financial/lending institution or private investor in regard to the financing for this project? YES (x) NO ( ) If YES, please give details:

Term sheet to be provided separately.

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B. Have you obtained a financial commitment for this project? YES (x) NO ( )

1. If Yes, please briefly describe this commitment and attach related correspondence:

See attached Term Sheet. To be provided separately \_\_\_\_\_

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2. If No, please explain how you will be able to finance this project:

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C. Are there any other governmental agencies that you have contacted concerning financial assistance in regard to your proposed project? YES ( ) NO (x) If YES, please explain:

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D. 1. Will the applicant's obligations be guaranteed, and if so, by whom?

Yes, to be provided separately. \_\_\_\_\_

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2. Is the guarantor related to or affiliated with the applicant?

Yes. \_\_\_\_\_

- E. Financial Information (Attach the Following). To be provided separately
1. Financial Statements for the last three fiscal years.
  2. Pro forma Balance Sheet as at start of operations at project site.
  3. Projected Profit and Loss Statements for first two years of operation at project site.
  4. Projected "Cash Flow" Statement, by quarters, for first year of operation at project site.

## **REPRESENTATIONS AND CERTIFICATION BY APPLICANT**

The undersigned requests that this Application be submitted for review to the City of Utica Industrial Development Agency (the "Agency") and its Board of Directors.

Approval of the Application can be granted solely by this Agency's Board of Directors. The undersigned acknowledges that Applicant shall be responsible for all costs incurred by the Agency and its counsel in connection with the attendant negotiations whether or not the transaction is carried to a successful conclusion.

The Applicant further understands and agrees with the Agency as follows:

1. **Annual Sales Tax Filings.** In accordance with Section 858-b(2) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any sales tax exemptions as part of the Financial Assistance from the Agency, in accordance with Section 874(8) of the General Municipal Law, the Applicant agrees to file, or cause to be filed, with the New York State Department of Taxation and Finance, the annual form prescribed by the Department of Taxation and Finance, describing the value of all sales tax exemptions claimed by the Applicant and all consultants or subcontractors retained by the Applicant.
2. **Annual Employment Reports.** The Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, the Applicant agrees to file, or cause to be filed, with the Agency, on an annual basis, reports regarding the number of people employed at the project site as well as tax benefits received with the action of the Agency. Failure to provide such reports as provided in the transaction documents will be an Event of Default under the Lease (or Leaseback) Agreement between the Agency and Applicant. In addition, a Notice of Failure to provide the Agency with an Employment Report may be reported to Agency board members, said report being an agenda item subject to the Open Meetings Law.
3. **Absence of Conflict of Interest.** The Applicant has consulted the Agency website of the list of the Agency members, officers and employees of the Agency. No member, officer, or employee of the Agency has an interest, whether direct or indirect, in any transaction contemplated by this Application, except as herein after described (if none, state "none"):
4. **Hold Harmless.** Applicant hereby releases the Agency and its members, officers, servants, agents and employees from, agrees that the Agency shall not be liable for and agrees to indemnify, defend and hold the Agency harmless from and against any and all liability arising from or expense incurred by (A) the Agency's examination and processing of, and action pursuant to or upon, the attached Application, regardless of whether or not the Application or the Project described therein or the tax

exemptions and other assistance requested therein are favorably acted upon by the Agency, (B) the Agency's acquisition, construction and/or installation of the Project described therein and (C) any further action taken by the Agency with respect to the Project; including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. If, for any reason, the Applicant fails to conclude or consummate necessary negotiations, or fails, within a reasonable or specified period of time, to take reasonable, proper or requested action, or withdraws, abandons, cancels or neglects the Application, or if the Agency or the Applicant are unable to reach final agreement with respect to the Project, then, and in the event, upon presentation of an invoice itemizing the same, the Applicant shall pay to the Agency, its agents or assigns, all costs incurred by the Agency in the processing of the Application, including attorneys' fees, if any.

5. The Applicant acknowledges that the Agency has disclosed that the actions and activities of the Agency are subject to the Public Authorities Accountability Act signed into law January 13, 2006 as Chapter 766 of the 2005 Laws of the State of New York.
6. The Applicant acknowledges that the Agency is subject to New York State's Freedom of Information Law (FOIL). **Applicant understands that all Project information and records related to this application are potentially subject to disclosure under FOIL subject to limited statutory exclusions.**
7. The Applicant acknowledges that it has been provided with a copy of the Agency's recapture policy (the "Recapture Policy"). The Applicant covenants and agrees that it fully understands that the Recapture Policy is applicable to the Project that is the subject of this Application, and that the Agency will implement the Recapture Policy if and when it is so required to do so. The Applicant further covenants and agrees that its Project is potentially subject to termination of Agency financial assistance and/or recapture of Agency financial assistance so provided and/or previously granted.
8. The Applicant understands and agrees that the provisions of Section 862(1) of the New York General Municipal Law, as provided below, will not be violated if Financial Assistance is provided for the proposed Project:

§ 862. Restrictions on funds of the agency. (1) No funds of the agency shall be used in respect of any project if the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, provided, however, that neither restriction shall apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.

9. The Applicant confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the proposed Project is in substantial compliance with applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.
10. The Applicant confirms and acknowledges that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any Financial Assistance and the reimbursement of an amount equal to all or part of any tax exemption claimed by reason of the Agency's involvement the Project.

