

Section I: Applicant Information

Please answer all questions. Use "none" or "not applicable" where necessary.

A) Applicant Information – company receiving benefit:

Applicant Name: Erie Wind, LLC*

Applicant Address: 4910 Camp Road, Suite 500, Hamburg, NY 14075

Phone: 585-384-9550 Fax: _____

Website: www.terraform.com Email: bwolcott@terraform.com

Federal ID #: ~~14-1000000~~ - NAICS: 221115

State and Year or Incorporation/Organization: Delaware 2007

List all stockholders, members, partners with % of ownership greater than 20%:

Name	% of ownership
<u>Huron Holdings LLC</u>	<u>100%</u>
_____	_____
_____	_____

Will a Real Estate Holding Company be utilized to own the Project property/facility? Yes No

Name of the Real Estate Holding Company: _____

Federal ID #: _____

State and Year or Incorporation/Organization: _____

List all stockholders, members, partners with % of ownership greater than 20%:

Name	% of ownership
_____	_____
_____	_____
_____	_____

Will a Real Estate Holding Company be purchasing equipment? Yes No

If no, who: _____

*Erie Wind, LLC has triple net leases with the owners of the fee title upon which the Steel Winds II project is located (SBL 150.00-1-1.111 and 150-1-18 for the underlying parcels, with SBL 50.00-1-1.111/A and 150-1-18/A for the turbines themselves). Pursuant to those leases, Erie Wind, LLC pays all taxes to the appropriate taxing jurisdictions related to the improvements.

B) Individual Completing Application:

Name: Benjamin Wolcott

Title: Director, Operations Project Management

Address: 10535 Rynders Road, Cohocton, NY 14826

Phone: 585-384-9550 Fax: _____

Email: bwolcott@terraform.com

C) Company Contact (if different from individual completing application)

Name: _____

Title: _____

Address: _____

Phone: _____ Fax: _____

Email: _____

D) Company Counsel:

Name of Attorney: Kevin McAuliffe

Firm Name: Barclay Damon LLP

Address: Barclay Damon Tower, 125 E. Jefferson St., Syracuse, NY 13202

Phone: 315-425-2875 Fax: _____

Email: _____

E) Assistance being requested of the Agency (select all that apply):

- 1. Exemption from Sales Tax
- 2. Exemption from Mortgage Tax
- 3. Exemption from Real Property Tax
- 4. Tax Exempt Financing *

*typically for not-for-profits & small qualified manufacturers

F) Business Organization (check appropriate category)

- | | | | |
|---------------------|--------------------------|---------------------------|-------------------------------------|
| Corporation | <input type="checkbox"/> | Partnership | <input type="checkbox"/> |
| Public Corporation | <input type="checkbox"/> | Joint Venture | <input type="checkbox"/> |
| Sole Proprietorship | <input type="checkbox"/> | Limited Liability Company | <input checked="" type="checkbox"/> |

G) Applicant Business Description

Describe in detail company background, products, customers, good and services. Description is critical in determining eligibility: Erie Wind, LLC ("Applicant") is the owner and operator of the existing Steel Winds II, six turbine wind facility located partially in the City of Lackawanna (two turbines) and partially in the Town of Hamburg (four turbines). Applicant sells energy generated at the Facility into the New York Independent System Operator ("NYISO") market. Applicant proposes to extend the useful life of the Facility by engaging in a replacement project that would replace equipment and in turn retain jobs, continue to make use of the DEC designated brownfield site and continue investment in the local community.

****If necessary, please attach sheet to expand**

Estimated % of sales within County: 100

Estimated % of sales outside County but within New York State 0

Estimated % of sales outside New York State but within the U.S. 0

Estimated % of sales outside of U.S. 0

(Percentage to equal 100%)

H) What percentage of your total annual supplies, raw materials and vendor services are purchased from firms in the "Local Labor Area"? Include list of vendors, raw material suppliers and percentages for each. Provide supporting documentation including estimated percentage of local purchases.

*the Local Labor Area is defined in the Local Labor Policy attachment

Sixty-five percent

Section II: Project Description and Details

A) Project Location:

Municipality or Municipalities of current operations: City of Lackawanna, Town of Hamburg

Will the Proposed Project be located within the Municipality, or Municipalities, identified above?

Yes No

Provide the property address of the proposed project:

Actual location of the existing turbines does not have a street address within the Bethlehem Steel brownfield site.

Will the completion of the Project 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?

Yes No

If the proposed project is located in a different Municipality than the Municipality in which current operations are being undertaken, is it expected that any of the facilities in any other Municipality will be closed or be subject to reduced activity?

Yes No

If Yes, you will need to complete **Section II (Q)** and **Section IV** of this Application.

SBL Number for Property upon which proposed project will be located: 150.00-1-1.111, 150-1-18, 150.00-1-1.111/A, 150-1-18/A

Current real estate taxes on the proposed project site: 2019 Special assessments - \$20,105; PILOT - \$109,445

If amount of current taxes is not available, provide assessed value for each:

Land: \$ _____ Building: \$ _____

**If available, please include a copy of current tax bill.

Are Real Property Taxes current? Yes No. If no, please explain _____

Town/City/Village: Township of Hamburg School District: Frontier Central School District

Does the applicant or any related entity currently hold fee title to the Project site? Yes No

If no, indicate name of present owner of the project site: Tecumseh Redevelopment Inc and Buffalo Crushed Stone

Does applicant or related entity have an option/contract to purchase the Project site: Yes No

Describe the present use of the proposed project site: Wind turbines

B) Please provide narrative of project and the purpose of the project (new build, renovations, and/or equipment purchases). Identify specific uses occurring within the project. Describe any and all tenants and any/all end users (this information is critical in determining project eligibility): _____

Due to persistent maintenance issues with the existing turbines, which are no longer being manufactured, Applicant proposes to replace the existing nacelle, rotor, hub and blades for each turbine with new equipment from a different manufacturer without changing the existing tower, foundation and electrical equipment (the "Replacement Project").

Describe the reasons why the Agency's Financial Assistance is necessary, and the effect the Project will have on the Applicant's business or operations. Focus on competitiveness issues, project shortfalls, etc...your eligibility determination will be based in part on your answer (attach additional pages if necessary): Unless the Replacement Project is approved and receives the Agency's Financial Assistance, Applicant will not be able to complete the Replacement Project and will be faced with an extremely short useful life (significantly less than anticipated) for the existing equipment and therefore the Facility. This will reduce Applicant's revenues, but also decrease the amount of renewable energy in New York State and result in a significant tax revenue reduction for the local community and loss of local jobs. Because the Facility is located on a New York State Department of Environmental Conservation Brownfield site, another suitable project would be difficult to place on the site.

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 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: _____

If the Applicant is unable to obtain Financial Assistance for the Project, what will be the impact on the Applicant and the County/City/Town/Village: Significantly reduced tax revenue and loss of local jobs,
Reduced renewable energy in the local area and New York State.

C) Will Project include leasing any equipment: Yes No

If yes, please describe: _____

D) Site Characteristics:

Will the project meet zoning/land use requirements at the proposed location? Yes No

Describe the present zoning/land use: Industrial

Describe required zoning/land use, if different: _____

If a change in zoning/land use is required, please provide details/status of any request for change of zoning/land use requirements: _____

Is the proposed project located on a site where the known or potential presence of contaminants is complicating the development/use of the property? If yes, please explain: Yes, Former New York State Department of Environmental Conservation Brownfield site.

E) Has a Phase 1 Environmental Assessment been prepared or will one be prepared with respect to the proposed project site? Yes No. If yes, please provide a copy.

F) Have any other studies or assessments been undertaken with respect to the proposed project site that indicate the known or suspected presence of contamination that would complicate the site's development? Yes No. If yes, please provide copies of the study.

G) Provide any additional information or details: _____

H) Select Project Type for all end users at project site (you may check more than one):

*please check any and all end users as identified below.

*will customers personally visit the Project site for either of the following economic activities? If you yes with respect to either economic activity indicated below, complete the Retail Questionnaire contained in Section IV of the application.

Retail Sales: Yes No

Services: Yes No

For purposes of this question, the term "retail sales" means (i) sales by a registered vendor under Article 28 of the Tax Law of the State of New York (the "Tax Law") primarily engaged in the retail sale of tangible personal property (as defined in Section 1101 (b)(4)(i) of the Tax Law), or (ii) sales of a service to customers who personally visit the Project.

- | | | | |
|----------------------------------|-------------------------------------|---------------------------------|--------------------------|
| Industrial | <input checked="" type="checkbox"/> | Back Office | <input type="checkbox"/> |
| Acquisition of Existing Facility | <input type="checkbox"/> | Retail | <input type="checkbox"/> |
| Housing | <input type="checkbox"/> | Mixed Use | <input type="checkbox"/> |
| Equipment Purchase | <input type="checkbox"/> | Facility for Aging | <input type="checkbox"/> |
| Multi-Tenant | <input type="checkbox"/> | Civic Facility (not for profit) | <input type="checkbox"/> |
| Commercial | <input type="checkbox"/> | Other _____ | <input type="checkbox"/> |

I) Project Information:

Estimated costs in connection with Project:

- | | |
|---|--------------|
| 1. Land and/or Building Acquisition: | \$ _____ |
| _____ acres _____ square feet | |
| 2. New Building Construction: _____ square feet | \$ _____ |
| 3. New Building Addition(s): _____ square feet | \$ _____ |
| 4. Infrastructure Work | \$ _____ |
| 5. Reconstruction/Renovation: _____ square feet | \$ _____ |
| 6. Manufacturing Equipment: | \$ 6,900,000 |
| 7. Non-Manufacturing Equipment (furniture, fixtures, etc.): | \$ _____ |
| 8. Soft Costs: (professional services, etc.): | \$ 500,000 |
| 9. Other, Specify: <u>Equipment installation</u> | \$ 1,200,000 |
| Total Capital Costs: | \$ 8,600,000 |

Project refinancing, estimated amount: \$ _____
(for refinancing of existing debt only)

Sources of Funds for Project Costs:

- | | |
|---|--------------|
| Bank Financing: | \$ _____ |
| Equity (excluding equity that is attributed to grants/tax credits): | \$ 8,600,000 |
| Tax Exempt Bond Issuance (if applicable): | \$ _____ |
| Taxable Bond Issuance (if applicable): | \$ _____ |
| Public Sources (include sum total of all state and federal grants and tax credits): | \$ _____ |

Identify each state and federal grant/credit:

- | | |
|-------|----------|
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |

Total Sources of Funds for Project Costs: \$ 8,600,000

Have any of the above costs been paid or incurred as of the date of the Application? Yes No

If yes, describe particulars: Legal fees and fees to consulting firms for studies.

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): \$ _____

Estimated Mortgage Recording Tax Exemption Benefit (product of mortgage amount as indicated above multiplied by __%): \$ _____

Construction Cost Breakdown:

Total Cost of Construction: \$ 6,900,000 (sum of 2,3,4,5 and/or 7 in Question 1 above)

Cost for materials:	\$ <u>6,900,000</u>
% sourced in "Local Labor Area":	<u><5</u> %
% sourced in State	<u><5</u> %
Cost for labor:	\$ <u>1,200,000</u>

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:

\$ 0

Estimated State and Local Sales Tax Benefit (product of ____% multiplied by the figure above):

\$ 0

**Note that the estimate provided above will be provided to the New York State Department of Taxation and Finance. The Applicant acknowledges that the transaction documents may include a covenant by the Applicant to undertake the total amount of investment as proposed within this Application, and that the estimate above represents the maximum amount of sales and use tax benefit that the Agency may authorize with respect to this Application. The Agency may utilize the estimate above as well as the proposed total Project Costs as contained within this Application, to determine the Financial Assistance that will be offered.*

Real Property Tax Benefit:

Identify and describe if the Project will utilize a real property tax exemption benefit OTHER THAN the Agency's PILOT benefit: N/A

IDA PILOT Benefit: Agency staff will indicate the amount of PILOT benefit based on estimated Project Costs as contained herein and anticipated tax rates and assessed valuation, including the annual PILOT benefit abatement amount for each year of the PILOT benefit year and the sum total of PILOT benefit abatement amount for the term of the PILOT as depicted in Section II(I) of the Application.

Percentage of Project Costs financed from Public Sector Sources: Agency staff will calculate the percentage of Project Costs financed from Public Sector sources based upon Sources of Funds for Project Costs as depicted above in Section II(I) of the Application.

- J)** For the proposed facility, please indicate the square footage for each of the uses outlined below:
*If company is paying for Furniture, Fixtures, and Equipment (FFE) for tenants, please include in cost breakdown

	Square Footage	Cost	% of Total Cost of Project
Manufacturing		0	
Warehouse		0	
Research and Development		0	
Commercial		0	
Retail (see section K)		0	
Office		0	
Specify Other		0	

- K)** What is your project timetable (provide dates):

1. Start Date: acquisition of equipment or construction of facilities: October 1, 2020
2. Estimated completion date of project: December 31, 2021
3. Project Occupancy – estimated starting date of operations: January 1, 2022
4. Have construction contracts been signed? Yes No
5. Has financing been finalized? Yes No

- L)** Have site plans been submitted to the appropriate planning department?
 Yes No

*If yes, please provide the Agency with a copy of the related State Environmental Quality Review Act ("SEQR") Environmental Assessment Form that may have been required to be submitted along with the site plan application to the appropriate planning department. Please provide the Agency with the status with respect to any required planning department approval: _____

Has the Project received site plan approval from the planning department? Yes No

If yes, please provide the Agency with a copy of the planning department approval along with the related SEQR determination.

- M)** Is the project necessary to expand project employment: Yes No
Is the project necessary to retain existing employment: Yes No

N) Employment Plan (Specific to the proposed project location):

	Current # of jobs at proposed location or to be relocated at project location	IF FINANCIAL ASSISTANCE IS GRANTED – project the number of FTE and PTE jobs to be RETAINED	IF FINANCIAL ASSISTANCE IS GRANTED – project the number of FTE and PTE jobs to be CREATED two years after Project completion	Estimate number of residents of the Labor Market Area in which the Project is located that will fill the FTE and PTE jobs to be created two years after Project completion
Full Time (FTE)	3	3	0	0
Part Time (PTE)	0	0	0	0
Total	3	3	0	0

*For purpose of this question, please estimate the number of FTE and PTE jobs that will be filled, as indicated in the third column, by residents of the Labor Market Area, in the fourth column. The Labor Market Area includes the Town of Hamburg and balance of Erie County as well as the following areas:

**By statute, Agency staff must project the number of FTE jobs that would be retained and created if the request for Financial Assistance is granted. Agency staff will project such jobs over the two year time period following Project completion. Agency staff converts PTE jobs into FTE jobs by dividing the number of PTE jobs by two (2).

Salary and Fringe Benefits for Jobs to be Retained and Created:

Category of Jobs to be Retained and Created	Average Salary or Range of Salary	Average Fringe Benefits or Range of Fringe Benefits
Management	\$0	\$0
Professional	\$100,000	\$25,000
Administrative	\$0	\$0
Production	\$70,000	\$17,500
Other	\$0	\$0

Employment at other locations in the County/City/Town/Village (provide address and number of employees at each location):

	Address	Address	Address
Full Time	0	0	0
Part Time	0	0	0
Total	0	0	0

O) Will any of the facilities described above be closed or subject to reduced activity? Yes No

***If any of the facilities described above are located within the State of New York, and you answered Yes to the question above, you must complete Section IV of this Application.*

***Please note that the Agency may utilize the foregoing employment projections, among other items, to determine the Financial Assistance that will be offered by the Agency to the Applicant. The Applicant acknowledges that the transaction documents may include a covenant by the Applicant to retain the number of jobs and create the number of jobs with respect to the Project as set forth in this Application.*

P) Is this project reasonably necessary to prevent the project occupant from moving out of New York State? Yes No

If yes, please explain and identify out-of-state locations investigated:

Investment in other projects owned by TerraForm Power in the United States, Canada, and/or internationally.
Similar assistance (PILOTs and other tax relief) are sought in these locations, as applicable.

Q) What competitive factors led you to inquire about sites outside of New York State? Better tax treatment, including a reduced tax burden, as well as an easier regulatory process.

R) Have you contacted or been contacted by other Local, State and/or Federal Economic Development Agencies? Yes No

If yes, please identify which agencies and what other Local, State and/or Federal assistance and the assistance sought and dollar amount that is anticipated to be received:

Section III: Retail Questionnaire

To ensure compliance with Section 862 of the New York General Municipal Law, the Agency requires additional information if the proposed Project is one where customers personally visit the Project site to undertake either a retail sale transaction or to purchase services.

Please answer the following:

- A)** Will any portion of the project (including that portion of the cost to be financed from equity or other sources) consist of facilities or property that are or will be primarily used in making sales of goods or services to customers who personally visit the project site? Yes No

***If yes, please continue. If no, proceed to Section V**

For purposes of Question A, the term "retail sales" means (i) sales by registered vendor under Article 28 of the Tax law of the State of New York (the "Tax Law") primarily engaged in the retail sale of tangible personal property (as defined in Section 1101(b)(4)(i) of the Tax Law), or (ii) sales of a service to customers who personally visit the Project.

- B)** What percentage of the cost of the Project will be expended on such facilities or property primarily used in making sales of goods or services to customers who personally visit the project? _____% **If the answer is less than 33% do not complete the remainder of the retail determination and proceed to section V.**

If the answer to Question A is yes AND the answer to Question B is greater than 33.33%, indicate which of the following questions below apply to the project:

1. Will the project be operated by a not-for-profit corporation Yes No
2. Is this Project location or facility likely to attract a significant number of visitors from outside the economic development region (list specific County or ED region) in which the project will be located? Yes No

*if yes, please provide a third party market analysis or other documentation supporting your response.

3. Is the predominant purpose of the project to make available goods or services which would not, but for the project, be reasonably accessible to the residents of the municipality within which the proposed project would be located because of a lack of reasonably accessible retail trade facilities offering such goods or services? Yes No

*if yes, please provide a third party market analysis or other documentation supporting your response.

- 4. Will the project preserve permanent, private sector jobs or increase the overall number of permanent, private sector jobs in the State of New York? Yes No
- 5. Is the project located in a Highly Distressed Area? Yes No

Section IV: Inter-Municipal Move Determination

The Agency is required by state law to make a determination that, if completion of a Project benefiting from Agency Financial Assistance results 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, Agency Financial Assistance is required to prevent the project occupant from relocating out of the state, or is reasonably necessary to preserve the project occupant's competitive position in its respective industry.

Will the Project 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? Yes No

Will the Project result in the abandonment of one or more plants or facilities of the Project occupant located within the state? Yes No

*If yes to either question explain how, notwithstanding the aforementioned closing or activity reduction the Agency's Financial Assistance is required to prevent the Project from relocating out of the State, or is reasonably necessary to preserve the Project occupant's competitive position in its respective industry:

Does the Project involve relocation or consolidation of a project occupant from another municipality?

Within New York State: Yes No

Within County/City/Town/Village: Yes No

*If yes to either question, please explain: _____

**Section V: Estimate of Real Property Tax Abatement Benefits and Percentage of Project Costs
Financed from Public Sector Sources**

Section V of this Application will be (i) completed by IDA Staff based upon information contained with the Application, and (ii) provided to the Applicant for ultimate inclusion as part of this completed Application.

PILOT Estimate Table Worksheet:

Dollar Value of New Construction and Renovation Costs	Estimated New Assessed Value of Property Subject to IDA*	County Tax Rate/1000	Local Tax Rate (Town/City/Village)/1000	School Tax Rate/1000

*Apply equalization rate to value

PILOT year	% Payment	County PILOT Amount	Local PILOT Amount	School PILOT Amount	Total PILOT	Full Tax Payment w/o PILOT	Net Exemption
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
Total:							

*Estimates provided are based on current property tax rates and assessment values

Percentage of Project Costs Financed from Public Sector Table Worksheet:

Total Project Cost	Estimated Value of PILOT	Estimated Value of Sales Tax Incentive	Estimated Value of Mortgage Tax Incentive	Total of Other Public Incentives (Tax Credits, Grants, ESD Incentives, etc)

Calculate %

(Est. PILOT + Est. Sales Tax + Est. Mortgage Tax + Other)/Total Project Costs: _____%

Section VI: Representations, Certifications and Indemnification

*This Section of the Application can only be completed upon the Applicant receiving, and must be completed after the Applicant receives, IDA Staff confirmation that Section I through Section V of the Application are complete.

_____ (name of CEO or other authorized representative of Applicant)
confirms and says that he/she is the _____ (title) of
_____ (name of corporation or other entity) named in the attached
Application (the "Applicant"), that he/she has read the foregoing Application and knows the contents
thereof, and hereby represents, understands, and otherwise agrees with the Agency and as follows:

- A. Job Listings: In accordance with Section 858-b(2) of the New York General Municipal Law.
- B. First Consideration for Employment: In accordance with Section 858-b(2) of the New York General Municipal Law.
- C. Annual Sales Tax Filings: In accordance with Section 874(8) 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. Copies of all filings shall be provided to the Agency.
- D. 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, at least annually or as otherwise required by the Agency, reports regarding the number of people employed at the project site, salary levels, contractor utilization, and such other information (collectively, "Employment Reports") that may be required from time to time on such appropriate forms as designated by the Agency. Failure to provide Employment Reports within 30 days of an Agency request shall be an Event of Default under the PILOT Agreement between the Agency and the Applicant and, if applicable, an Event of Default under the Agent 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.
- E. The Applicant acknowledges that certain environmental representations will be required at closing. The Applicant shall provide with this Representation, Certification and Indemnification Form copies of any known environmental reports, including any existing Phase I Environmental Investigations. The Agency may require the Company and/or owner of the premises to prepare and submit an environmental assessment and audit report, including but not necessarily limited

to, a Phase I Environmental Site Assessment Report and a Phase II Environmental Investigation, with respect to the Premises at the sole cost and expense of the owner and/or the Applicant. All environmental assessment and audit reports shall be completed in accordance with ASTM Standard Practice E1527-05, and shall be conformed over to the Agency so that the Agency is authorized to use and rely on the reports. The Agency, however, does not adopt, ratify, confirm or assume any representation made within reports required herein.

- F. The Applicant and/or the owner, and their successors and assigns, hereby release, defend and indemnify the Agency from any and all suits, causes of action, litigations, damages, losses, liabilities, obligations, penalties, claims, demands, judgments, costs, disbursements, fees or expenses of any kind or nature whatsoever (including, without limitation, attorneys', consultants', and experts' fees) which may at any time be imposed upon, incurred by or asserted or awarded against the Agency, resulting from or arising out of any inquiries and/or environmental assessment, audit, inspection or investigation report completed hereunder and/or the selection of the environmental consultant, engineer or other qualified person to perform such assessments, investigations, and audits.
- G. Hold Harmless Provision: The Applicant acknowledges and agrees that the Applicant shall be and is responsible for all costs of the Agency incurred in connection with any actions required to be taken by the Agency in furtherance of the Application including the Agency's costs of general counsel and/or the Agency's bond/transaction counsel whether or not the Application, the proposed Project it describes, the attendant negotiations, or the issue of bonds or other transaction or agreement are ultimately ever carried to successful conclusion and 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: (i) the Agency's examination and processing of, and action pursuant to or upon, the Application, regardless of whether or not the Application or the proposed Project describes herein or the tax exemptions and other assistance requires herein are favorably acted upon by the Agency; (ii) the Agency's acquisition, construction, and/or installation of the proposed Project described herein; and (iii) any further action taken by the Agency with respect to the proposed Project including, without limiting the generality of the foregoing, all causes of action and attorney's fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. Applicant hereby understands and agrees, in accordance with Section 875(3) of the New York General Municipal Law and the policies of the Agency that any New York State and local sales and use tax exemption claimed by the Applicant and approved by the Agency, any mortgage recording tax exemption claimed by the Applicant and approved by the Agency, and/or any real property tax abatement claimed by the Applicant and approved by the Agency, in connection with the Project, may be subject to recapture and/or termination by the Agency under such terms and conditions as will be established by the Agency and the Applicant. The Applicant further represents and warrants that the information contained in this Application, including without limitation information regarding the amount of the New York State and local sales and use tax exemption benefit, the amount of the mortgage recording tax exemption

benefit, and the amount of the real property tax abatement, if and as applicable, to the best of the Applicant's knowledge, is true, accurate and correct.

- H. This obligation includes an obligation to submit an Agency Fee Payment to the Agency in accordance with the Agency Fee policy effective as of the date of this Application
- I. By executing and submitted this Application, the Applicant covenants and agrees to pay the following fees to the Agency and the Agency's general counsel and/or the Agency's bond/transaction counsel, the same to be paid at the times indicated:
 - a. A non-refundable \$500 application and publication fee (the "Application Fee");
 - b. A \$500 expense deposit for the Agency's Counsel Fee Deposit
 - c. Unless otherwise agreed to by the Agency, an amount equal to one percent (1%) of the total project costs.
 - d. All fees, costs and expenses incurred by the Agency for (1) legal services, including but not limited to those provided by the Agency's general counsel and/or the Agency's bond/transaction counsel, thus note that the Applicant is entitled to receive a written estimate of fees and costs of the Agency's general counsel and the Agency's bond/transaction counsel; and (2) other consultants retained by the Agency in connection with the proposed project, with all such charges to be paid by the Applicant at the closing.
- J. If the Applicant fails to conclude or consummate the 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 Applicant is unable to find buyers willing to purchase the bond issue requested, or if the Applicant is unable to facilitate the sale/leaseback or lease/leaseback transaction, then, upon the presentation of an invoice, Applicant shall pay to the Agency, its agents, or assigns all actual costs incurred by the Agency in furtherance of the Application, up to that date and time, including but not necessarily limited to, fees of the Agency's general counsel and/or the Agency's bond/transaction counsel.
- K. The Applicant acknowledges and agrees that all payment liabilities to the Agency and the Agency's general counsel and/or the Agency's bond and/or transaction counsel as expressed in Sections H and I are obligations that are not dependent on final documentation of the transaction contemplated by this Application.
- L. The cost incurred by the Agency and paid by the Applicant, the Agency's general counsel and/or bond/transaction counsel fees and the processing fees, may be considered as a cost of the Project and included in the financing of costs of the proposed Project, except as limited by the applicable provisions of the Internal Revenue Code with respect to tax-exempt bond financing.
- M. 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.

- N. The Applicant acknowledges that it has been provided with a copy of the Agency's Policy for Termination of Agency Benefits and Recapture of Agency Benefits Previously Granted (the "Termination and Recapture Policy"). The Applicant covenants and agrees that it fully understands that the Termination and Recapture Policy is applicable to the Project that is the subject of this Application and that the Agency will implement the Termination and 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.
- O. 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. Restriction 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.
- P. 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.
- Q. 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 any amount equal to all or part of any tax exemption claimed by reason of the Agency's involvement in the Project.
- R. The Applicant confirms and hereby acknowledges that as of the date of this Application, the Applicant is in substantial compliance with all provisions of Article 18-A of the New York General Municipal Law, including, but not limited to, the provision of Section 859-a and Section 862(1) of the New York General Municipal Law.
- S. The Applicant and the individual executing this Application on behalf of Applicant acknowledge that the Agency and its counsel will rely on the representations and covenants made in this Application when acting hereon and hereby represents that the statements made herein do not

contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein not misleading.

STATE OF NEW YORK)

COUNTY OF ERIE) ss.:

_____, being first duly sworn, deposes and says:

1. That I am the _____ (Corporate Office) of _____ (Applicant) and that I am duly authorized on behalf of the Applicant to bind the Applicant.
2. That I have read the attached Application, I know the contents thereof, and that to the best of my knowledge and belief, this Application and the contents of this Application are true, accurate and complete.

(Signature of Officer)