Niagara County Industrial Development Agency
6311 Inducon Corporate Dr. - Sanborn, New York 14132
(716) 278-8760 Fax (716) 278-8769

Application for Assistance

Please answer all questions on the **Niagara County Industrial Development Agency Application** and **Environmental Assessment Form**. Information submitted as part of this application will not be made public prior to the passage of an Official Action Resolution by the Agency. After such action, this information may be subject to disclosure under the New York State Freedom of Information Act.

Prior to application submission, this project was reviewed with **Lawrence Witul** of the Niagara County Industrial Development Agency and assigned Project Number _____.

I. Company Data

A. Company Name: DRC Development LLC 2010
Address: 10 Kingston Circle
Lockport, NY 14094

Telephone: 716-434-8717 Fax: 716-438-1153
Email: lowbid4@aol.com Website: n/a
IRS Identification No.: 03-3161912

Company official completing this application and authorized to respond on behalf of the company:

Name: David R. Chamberlain Title: President

B. Company Owners, Officers, Directors and Partners: List name and home address, title and other principal business affiliations.

C. Legal Counsel: Gerald Sacca
Address: 781 Davison Rd., Lockport, NY 14094
Telephone: 716-434-5518 Fax: ____
Email: ____

D. Accountant (Firm): Wittlin, Cain & Dry LLP
Address: Ulrich City Center, Suite 6, Lockport, NY 14094
Telephone: 716-438-2190 Fax: 716-438-2450
Email: ____

E. Principal Bank of Account: First Niagara Bank

F. Type of Business ☒ Corporation ☐ Sub Chapter S ☐ Partnership ☐ Sole Proprietorship ☐ Other ____

G. Is Company authorized to do business in New York State? Yes☒ No☐

H. Principal Stockholders with 5% or more of stock outstanding in the company:

Name	**Address**	**% of Holding**
David R. Chamberlain	10 Kingston Cir., Lockport, NY	***100***
____	____	____
____	____	____

I. List subsidiary, associate, and/or affiliated companies of applicant.

None

J. Is the Company or management of the Company now a plaintiff or a defendant in any civil or criminal litigation? Yes☐ No☒

Has any person listed above ever been convicted of a criminal offense (other than a minor traffic violation)? Yes☐ No☒

Has any person listed above or any concern with whom such person has been connected ever been in receivership or been adjudicated a bankrupt? Yes☐ No☒

If the answer to any of the above questions is yes, please, furnish details in a separate attachment.

K. Identify the assistance being requested of the Agency:

(1) ☐ Bond financing for new project; estimated amount $____
(2) ☐ Bond/project refinancing; estimated amount $____
(3) ☒ Lease/sale back
(4) ☐ Assignment of lease
(5) ☒ Exemption from Sales Tax; estimated benefit $111,000.00
(6) ☒ Exemption from Mortgage Tax; estimated benefit $27,850.00
(7) ☒ Exemption from Real Property Tax; estimated benefit $1,020,000.00

If you have selected (5),(6) or (7), indicate whether you are seeking a deviation from the Agency's uniform tax exemption policy: Yes☐; No☒. If the answer is yes, please furnish details in a separate attachment.

(8) ☐ Other (please furnish details in a separate attachment)

II. Business Data

A. Company Background

1. Describe when and where was the company established?
2003 - NYS

2. Describe the type of business

Develop industrial, commercial and residential properties

3. Description of Present Facilities:

Lot size: 16 acres Number of buildings: ***1***

Square footage of facilities: 80,000 sq. ft.

☒ Owns OR ☐ Rents present facilities

4. What is the present employment of the company?

Full Time____ # Part Time ***1***

Estimated annual payroll: n/a

5. Approximate annual sales: n/a

6. Describe primary markets.
Western New York

7. Provide a brief description of the company and its history.
The company was founded in 2003 by David Chamberlain, who has a long history in the construction industry in Niagara County. The company's first project in Vantage International point was construction of an 80,000 sq. ft. multitenant building.

B. Provide types of business activity and approximate square feet of each for company's present facility:

	Square Feet
Manufacturing/Processing	*6,000*
Warehousing	*13,000*
Research & Development	
Commercial	
Retail*	*0*
Office	*10,000*
Other (specify) available	*51,000*

* A retail business activity shall mean (i) sales by a registered vendor under article twenty-eight of the New York tax law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the tax law; or (ii) sales of a service to such customers.

C. Describe principal goods, products and/or services of the company:
construction and development services

III. Project Data

A. Location of Proposed Project:

1. Physical Address of proposed Project Site:

Address: 6400 Inducon Drive
City, Town, Village: Town of Wheatfield
County: Niagara

2. New York State Empire Zone Tax Incentives.

In addition to financial incentives that the Niagara County Industrial Development Agency can provide with respect to the proposed Project, the Project may also be eligible for New York State tax benefits (sales tax, income tax, and real property tax benefits and credits) under the New York State Empire Zone Program. Empire Zone tax benefits can be utilized concurrently with Niagara County Industrial Development Agency benefits and incentives.

Is the proposed Project Site located in an Empire Zone?

☐ Yes ☒ No ☐ Unsure

3. **New York State Brownfield Cleanup Program Tax Incentives**

New York State provides for significant refundable New York State tax credits with respect to cleanup and construction (buildings and equipment) costs, real property tax expenses, and insurance costs related to remediating and developing a Brownfield/contaminated property. In addition, New York State provides for a release of liability with respect to such contamination located in, on or emanating from the Brownfield Site. New York State Brownfield Cleanup Program tax credits can be utilized concurrently with Niagara County Industrial Development Agency benefits and incentives.

Under the New York Brownfield Cleanup Program, a Brownfield or a Brownfield Site is any real property, the redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous waste, petroleum, pollutant, or contaminant (collectively, "contaminants").

Is the proposed Project Site located on a site where the known or potential presence of a contaminant(s) is complicating the development/use of the property?

☐ Yes ☒ No ☐ Unsure

Has a Phase I Environmental Assessment been prepared or will one be prepared with respect to the proposed Project Site?

☒ Yes ☐ No ☐ Unsure

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 ☐ Unsure

B. Existing Project Facilities:

1. Parcel Size: **8.33** Acres **OR** _____ ft. x _____ ft.

2. Are there existing buildings on the Project site? Yes☐; No☒.

a. If yes, indicate the number of buildings on the site: _____. Also, please briefly identify each existing building and indicate the approximate size (in square feet) of each such existing building:

Building Description	**Size**

b. Are the existing buildings in operation? Yes☐; No☐. If yes, describe present use of present buildings:

Building	**Use**

c. Are the existing buildings abandoned? Yes☐; No☒. About to be abandoned? Yes☐; No☒. If yes, describe:

———

d. Attach photograph of present buildings.

3. Identify present landowner. DRC Development

4. Present zoning of site: M-1

Are there any variances or special permits affecting the Project site?
Yes☐ No☒.

If yes, list below and attach copies of all such variances or special permits.

———

5. Provide Tax Map (section/block/lot) number(s):
294000 147.00-1-101

6. List current assessed value: $90,860.00
List current annual property tax payment: $2,711.00

7. Identify school district pertaining to Proposed Project location:
Niagara Wheatfield

C. Proposed Project Facility and Equipment

1. Does part of the Project consist of the acquisition or construction of a new building or buildings? Yes☒; No☐.

If yes, indicate number and size of new buildings:

57,000 building

2. Does part of the Project consist of additions and/or renovations to existing buildings located on the Project site? Yes☐; No☒.

If yes, indicate the buildings to be expanded or renovated, the size of any expansions and the nature of expansion and/or renovation:

____

3. Describe the principal uses to be made by the Company of the building or buildings to be acquired, constructed or expanded:

Light manufacturing, assembly and distribution of vacuum pumps

4. Will machinery and equipment be acquired and installed?

New: ☐ No ☒ Yes Type general machinery

Used: ☒ No ☐ Yes Type ____

Describe the principal uses to be made by the Company of the Equipment to be acquired or installed:

assembly of machinery

5. Project Use

a. What are the principal products to be produced at the Project?
vacuum pumps for medical and industrial uses

6. Project Use

b. What are the principal activities to be conducted at the Project?

	%		%
Warehousing	***50***	Manufacturing	***35***
Processing		Pollution control	
Office	***15***	Research & Development	
Retail*		Commercial	
Recreational		Other:	

* A retail business activity shall mean (i) sales by a registered vendor under article twenty-eight of the New York tax law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the tax law; or (ii) sales of a service to such customers.

c. Does the Project include facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities? Yes☐; No☒.

If yes, please see Addendum A attached hereto.

d. Will the completion of the Project result in the removal of a plant or facility of the Company or another proposed occupant of the Project (a "Project Occupant") from one area of the State of New York to another area of the State of New York? Yes☒ No☐ If yes, please explain:
25,000 sf building on Grand Island is too small for company's operations. Project will result in consolidation of Niagara Falls and out of state operations

e. Will the completion of the Project result in the abandonment of one or more plants or facilities of the Company located in the State of New York? Yes☐ No☐

If yes, please provide detail:

i. If the answer to either question (d) or question (e) is yes, indicate whether any of the following apply to the Project:

(1) Is the Project reasonably necessary to preserve the competitive position of the Company or such Project Occupant in its industry? Yes☒ No☐

If yes, please provide detail: The company has outgrown its existing facility and is bringing other operations in from out of state

(2) Is the Project reasonably necessary to discourage the Company or such Project Occupant from removing such other plant or facility to a location outside the State of New York? Yes☒ No☐

If yes, please provide detail: the company is considering out of state location for consolidation

7. Is this a single phase or multi-phase project? ☐ Single ☒ Multi

Phase I Activities: construct 57,000 sq. ft. building

Phase II Activities: addition up to total of 100,000 sq. ft.

Phase III Activities: ____

D. Utilities and services presently serving site. Provide name of utility provider.

Gas:	National Fuel	Size:	
Electric:	National Grid	Power:	400 volt
Water:	Niagara County	Size:	12 in.
Sewer:	Niagara County	Size:	15 in.
Other (specify):			

E. What is your project timetable? (Provide dates)

1. Start date: acquisition or construction of facilities: ***1/1/11***
2. Completion of project facilities: ***8/1/11***
3. Project occupancy – starting date of operations: ***8/1/11***

F. Have any contracts or purchases been made, committed and/or executed toward the project? ☒ No ☐ Yes,

If yes, please provide detail: _____

G. Has any work toward the completion of the project been initiated? ☒No ☐Yes,

If yes, please provide detail: _____

H. Will the project require any government actions, permits or clearances (other than IDA requirements)? If yes, please provide the following details:

Action	Issuing Agency	Date of Issuance
Site Plan Review	Town of Wheatfield	
Building permit	Town of Wheatfield	

I. Include any site plans, drawings or blueprints that have been developed.

J. Does the Company intend to lease or sublease more than 10% (by area or fair market value) of the Project? Yes☒; No☐. If yes, please complete the following for each existing or proposed tenant or subtenant:

Sublessee name: Edwards Vacuum Inc.
Present Address: 3279 Grand Island Blvd.
Address: Grand Island, NY 14072
Employer's ID No.: _____

Sublessee is: ☒ Corporation ☐ Partnership ☐ Sole Proprietorship

Relationship to Company: None

Percentage of Project to be leased or subleased: 100%

Use of Project intended by Sublessee: Manufacturing, assembly and distribution of vacuum pumps worldwide

Date of lease or sublease to Sublessee: on or about 11/5/10

Term of lease or sublease to Sublessee: 15 years

Will any portion of the space leased by this sublessee be primarily used in making retail sales of goods or services to customers who personally visit the Project?
Yes☐ No☒.

If yes, please provide on a separate attachment: (a) details, and (b) the answers to questions III(D)(6)(c) through (f) with respect to each such sublessee.

K. Describe the reasons why this project is necessary and what effect it will have on your company: Project will keep provide leased manufacturing space for WNY company and retain them in New York State

IV. Employment Impact

A) Will Niagara County contractors and / or sub contractors be utilized for the construction project? Yes☒ No☐.

B) What is the estimated number of construction jobs to be created at the project site from Niagara County: 30, Erie County 10, Other Areas _____,

C) Indicate below the number of people presently employed at the Project site and the number that will be employed at the Project site at end of the first and second years after the Project has been completed (Do not include construction workers). Also indicate below the number of workers employed at the Project site representing newly created positions as opposed to positions relocated from other project sites of the applicant.

TYPE OF EMPLOYMENT *				
	PROFESSIONAL OR MANAGERIAL	**SKILLED OR SEMI-SKILLED**	**UNSKILLED**	**TOTALS**
Present Full Time				
Present Part Time				
Present Seasonal				
First Year Full Time				
First Year Part Time				
First Year Seasonal				
Second Year Full Time				
Second Year Part Time				
Second Year Seasonal				

* see application of Edwards Vacuum, Inc.

V. Project Cost Data

A. Give breakdown of project costs:

Land	$50,000.00
Buildings: Acquisition	$
Renovation	$
New Construction	$2,350,000.00
Demolition	$
Utilities and Road	$275,000.00
Site work and preparation	$160,000.00
Acquisition of machinery & equipment	$
Installation	$
Architectural and engineering fees	$40,000.00
Legal fees	$10,000.00
Interest during construction	$65,000.00
Other	$350,000.00
TOTAL	$3,300,000.00

Have any of these expenditures been incurred to date? ☒No ☐ Yes If yes, identify:

B. Summary of Financing

Total Project Costs	**$**
Amount of Bond or Leaseback financing	$3,300,000.00
Amount of Conventional financing	$2,640,000.00
Equity	$660,000.00

C. Will any part of the project be financed with funds of the company? ☐No ☒Yes, If yes, please provide detail:

Item	**$**
20% equity by owner	660,000

D. Will other forms of government financing be used to undertake the project: ☒No ☐Yes If yes, please provide detail:

Program	**Amount**	**Status**

E. Have financial institutions or potential bond purchasers been approached? ☐No ☒Yes

If yes, please provide detail: verbal commitment from First Niagara Bank for construction funding & 15 year mortgage

F. List capital expenditures of the company:

	Past 3 years	**Next 3 years**
Real Property	**$**	**$**
Buildings	$2,200,000.00	$3,300,000.00
Equipment	**$**	**$**

VI. Financial and Feasibility Data

A. Describe the need or demand for the product or services to be provided as a result of the project: Tenant needs additional space to expand operations

B. Has the company utilized bond financing before? ☒No ☐Yes.
If yes, describe when, where and amount: ____

C. Provide any marketing, economic and/or feasibility studies that have been developed, particularly for tourist destination facilities. n/a

D. The following information will be required by the Agency and returned once an action of the Agency has been taken:

1. Financial statements for the last three (3) years;
2. Projections for the next three (3) years including Balance Sheets, Profit and Loss Statements, Cash Flow Statements by quarters, etc.

VII. Financial Assistance Expected From The Agency

A. Tax Benefits.

1. Is the applicant requesting any real property tax exemption in connection with the Project that would not be available to a project that did not involve the Agency?
Yes☒ No☐

If yes, is the real property tax exemption being sought consistent with the Agency's Uniform Tax Exemption Policy? Yes☒ No☐

2. Is the applicant expecting that the financing of the Project will be secured by one or more mortgages? Yes☒ No☐

If yes, what is the approximate amount of financing to be secured by mortgages?
$2,640,000.00

3. Is the applicant expecting to be appointed agent of the Agency for purposes of avoiding payment of N.Y.S. Sales Tax or Compensating Use Tax? Yes☒ No☐.

If yes, what is the approximate amount of purchases which the applicant expects to be exempt from the N.Y.S. Sales and Compensating Use Taxes? $____.

4. What is the estimated value of each type of tax-exemption being sought in connection with the Project? Please detail the type of tax-exemption and value of each exemption.
   a. N.Y.S. Sales and Compensating Use Taxes: $111,000.00
   b. Mortgage Recording Taxes: $27,850.00
   c. Real Property Tax Exemptions: $1,020,000.00
   d. Other (please specify):
   ____ $____
   ____ $____

5. Are any of the tax-exemptions being sought in connection with the Project inconsistent with the Agency's Uniform Tax-exemption Policy?
Yes☐ No☒.

If yes, please explain how the request of the applicant differs from the Agency's Uniform Tax-Exemption Policy: _____

VIII. Representations By The Applicant

The applicant understands and agrees with the Agency as follows:

A. Job Listings. 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 Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the Project will be listed with the New York State Department of Labor Community Services Division (the "DOL") and with the administrative entity (collectively with the DOL, the "JTPA Entities") of the service delivery area created by the federal job training partnership act (Public Law 97-300) ("JTPA") in which the Project is located.

B. First Consideration for Employment: 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 Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, where practicable, the applicant will first consider persons eligible to participate in JTPA programs who shall be referred by the JTPA Entities for new employment opportunities created as a result of the Project.

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.

D. 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.

E. Absence of Conflicts of Interest: The applicant has received from the Agency a list of the 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 hereinafter described: ***none***

CERTIFICATION

(to be executed by the principal of the applicant and acknowledged by a notary public)

I. David R. Chamberlain (name of chief executive officer or other authorized representative of applicant) deposes and says that he/she is the DRC Development LLC (title) of President (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 that the same is true to his/her knowledge.

II. The grounds for deponent's belief relative to all matters in the Application which are not stated upon his/her own personal knowledge, are investigations which deponent has caused to be made concerning the subject matter of the Application, as well as information acquired by deponent in the course of his/her duties as an officer of and from the books and papers of said corporation or other entity.

III. As an officer of the Applicant deponent acknowledges and agrees that the Applicant shall be and is responsible for all costs incurred by the Agency and all legal counsel for the Agency, including its general counsel and/or 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 (A) 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 described herein or the tax exemptions and other assistance requested herein are favorably acted upon by the Agency, (B) the Agency's acquisition, construction and/or installation of the proposed project described herein and (C) 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.

IV. By executing and submitting 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) The sum of $ 1,000 as a non-refundable processing fee, plus the sum of _____ if Agency assistance in retaining professionals is requested, to be paid upon submission of the Application;

(b) Unless otherwise agreed to by the Agency, an amount equal to 1 % of the total project costs to be paid at transaction closing;

(c) 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.

V. By executing and submitting this Application, and in the event the closing does not occur, the Applicant further 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:

(a) 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, the Applicant shall pay to the Agency, its agents, or assigns, upon presentation of an invoice, a sum of one and one quarter percent (1.25%) of (i) the amount of bond financing requested; or (ii) the amount on which the financial assistance for the proposed project was determined, and upon presentation of an invoice, all actual costs involved with respect to the Application, including but not necessarily limited to fees of the Agency's general counsel and/or the Agency's bond/transaction counsel; or

(b) 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 transaction, then upon presentation of an invoice, all actual costs involved with respect to the Application, up to that date and time, incurred by the Agency including but not necessarily limited to fees of the Agency's general counsel and/or the Agency's bond/transaction counsel.

VI. 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 IV and V are obligations that are not dependent on final documentation of the transaction contemplated by this Application.

VI. The cost incurred by the Agency and paid by the Applicant, including bond/transaction counsel fees and the Agency's general counsel's fees and the processing fees, may be considered as a costs 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.

VI. The Applicant is aware and acknowledges that according to the New York Public Officer's Law, Article 6, Freedom of Information, the public has the right to request information about the project and the Applicant, and that in accordance with Public Officer's Law Article 7, all meetings of the Agency are open to the public.

The Applicant and the individual executing this Application on behalf of Applicant acknowledge that the Agency and its counsel will rely on the representations made in this Application and, if applicable, made in Addendum A, when acting hereon and hereby represents

The Applicant and the individual executing this Application on behalf of Applicant acknowledge that the Agency and its counsel will rely on the representations made in this Application and, if applicable, made in Addendum A, when acting hereon and hereby represents that the statements made herein and therein 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 or therein not misleading.

_____

(name of corporation or entity)

Daryl R Chamberlain

(name of officer)

_____

(title)

NOTARY

Sworn to before me this 3rd day of Nov., 2010

Barbara A. Gill

(Signature)

BARBARA A GILL
Notary Public, State of New York
Qualified in Niagara County
Commission #01GI6072710
My Commission Expires 4/8/2014

ADDENDUM A

Niagara County Industrial Development Agency Application for Assistance

Retail Project Certification

The undersigned, hereby certifies the following:

1. An application for financial assistance from the Niagara County Industrial Development Agency (the "Agency") has been submitted by DRC Development, (the "Applicant") with respect to a certain Project, as described in the Application for Assistance, (the "Application") to which this Addendum is heretofore attached.

2. The Applicant, by its undersigned Authorized Representative, understands and agrees that Section 862 of the New York General Municipal Law provides for a prohibition on the types of projects that can benefit from the assistance of an Industrial Development Agency with respect to *a project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost*. The Applicant, by its undersigned Authorized Representative, understands and acknowledges the following:

a. Less than One-third Project costs. Financial assistance of the agency may be provided in respect of any *project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute less than one-third of the total project cost.*

b. Destination project. Financial assistance may be provided to a project that is a tourism destination project (defined as a location or facility which is likely to attract a significant number of visitors from outside the economic development region as defined under New York economic development law, in which the project is located) *even if the project or facilities that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost.*

c. Not-for-profit operations. Financial assistance may be provided to a project that is operated by not-for-profit corporation *even if the project or facilities that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost.*

d. Retaining jobs within the state. Financial assistance may be provided to a project where *facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services constitute more than one-third of the total project cost*, where the project occupant would, but for the assistance provided by the agency, locate the related jobs outside the state.

e. Unique services. Financial assistance may be provided to a project where *facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services constitute more than one-third of the total project cost* where the predominant purpose of the project would be to make available goods or services which would not, but for the project, be reasonably accessible to the residents of the city, town, or village within which the proposed project would be located because of a lack of reasonably accessible retail trade facilities offering such goods or services.

f. Highly distressed area. Financial assistance may be provided to a project where *facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services constitute more than one-third of the total project cost*, where the project is located in a highly distressed area. A "Highly distressed area" shall mean (a) a census tract or tracts or block numbering areas or areas or such census tract or block numbering area contiguous thereto which, according to the most recent census data available, has (i) *a poverty rate* of at least twenty percent for the year to which the data relates or at least twenty percent of households receiving public assistance; and (ii) *an unemployment rate* of at least 1.25 times the statewide unemployment rate for the year to which the data relates; or (b) a city, town, village or county within a city with a population of one million or more for which: (i) the ratio of the full value property wealth, as determined by the comptroller for the year nineteen hundred ninety, per resident to the statewide average full value property wealth per resident; and (ii) the ratio of the income per resident; as shown in the nineteen hundred ninety census to the statewide average income per resident; are each fifty-five percent or less of the statewide average; or (c) an area which was designated an Empire Zone.

3. The Applicant, by its undersigned Authorized Representative, understands and agrees that projects authorized pursuant to Section 2(d),(e), and (f), above, *shall not be approved unless the Agency shall find, after the public hearing* required by New York General Municipal Law, that undertaking the Project will serve the public purposes of the New York General Municipal Law by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the state. Where the Agency makes such a finding, *prior to providing financial assistance to the Project by the Agency, the chief executive officer of the municipality for whose benefit the agency was created shall confirm the proposed action of the agency.*

4. The Applicant, by its undersigned Authorized Representative, hereby represents that the project as described in the Application meets the following retail sale exceptions, as noted below and as described in Section 2, above, and further, acknowledges and understand that the approval of the chief executive officer of the municipality for whose benefit the agency was created may be necessary in order for the Agency to provide financial assistance to the Project:

☐ Less than one-third project costs ☐ Destination Project ☐ Retaining jobs within the state
☐ Unique Services ☐ Highly distressed area

5. The Applicant, by its undersigned Authorized Representative, hereby acknowledges that it has provided the

[redacted]