

# **BEN ROTTENSTEIN ASSOCIATES INC.**

## ***REAL ESTATE TAX CONSULTANTS***

Hello Livingston Extended LLC  
1110 42<sup>nd</sup> Street  
Brooklyn, NY 11219  
Attention: Mr. Abraham Leifer

September 17, 2018

RE: ICAP Tax Abatement – Application #21122  
291 Livingston Street, Brooklyn  
Block 161 Lot(s) 61

Dear Mr. Leifer,

This letter is in response to your request for an opinion concerning the eligibility of a newly built commercial building being constructed that when completed would be entitled to receive a partial abatement for real property taxes for a twenty five (25) year period, pursuant to the Industrial and Commercial Abatement Program (“ICAP”). We have been advised that this building is being constructed and developed for office and storage space. Unless stated otherwise, all information contained in this letter have been derived from information given to us by Hello Livingston Extended LLC (the “Borrower”), its agents and representatives and information contained on publicly available web sites maintained by the New York City Department of Buildings and Department of Finance. There has been no independent verification of this information.

Based upon the information furnished to us, we believe that the commercial building when completed as contemplated would be entitled to receive a partial abatement of real property taxes for a twenty five year (25) year period, pursuant to the Industrial and Commercial Abatement Program. The ICAP program is a tax abatement program covering nonresidential projects located in the City of New York. It is designed as a tax incentive to encourage construction and rehabilitation of these properties. Buildings such as parking garages, retail buildings, shopping centers, office buildings, factories and warehouses are among the eligible types of properties, although they each receive different benefit amounts depending upon location and use. The ICAP has replaced the previous nonresidential tax incentive program known as the Industrial and Commercial Incentive Program (ICIP). ICIP granted tax exemptions based on increase in assessed value resulting from new construction or renovation, the ICAP program grants tax abatements based on the increase in real estate taxes resulting from new construction or renovation.

In order to be eligible for the Industrial Commercial Abatement Program, a preliminary application for such tax benefits must be filed prior to commencement of construction. The preliminary application was filed on August 9, 2017. A review of the Department of buildings web sites indicates that the first building permit has not been issued. Applicants for the ICAP program must make a minimum required expenditure equal to at least 30% of the taxable assessed value of the property in the year the building permit will be issued. The assessed value for the lot in this project is extremely low for the 18/19 fiscal year (the year the permit will likely be issued). Therefore, the allocated construction cost will easily exceed the 30% of the allocated taxable assessed value and meet the threshold.

In Addition to timely filing a preliminary application and meeting the minimum required expenditure, the law also requires that the annual real property income and expense statement be filed with the New York Department of Finance, a report of all current construction be filed with the Department of Finance on a semiannual basis and final application for ICAP benefits be filed within one year after the date the first building permit was issued for construction work. Failure to file the final application prior to the one year anniversary date of the initial permit will render the applicant ineligible for ICAP benefits. Furthermore to maintain ICAP benefits, recipients of ICAP benefits must file and annual certificate of continuing use (“CCU”) with the New York City Department of Finance providing updated information on the property and certify that the property remains eligible to receive ICAP tax benefits.

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In addition to the filings with the Department of Finance, there are also additional filing requirements with the New York City Department of Small Business Services. The filings with the Department of Small Business Services is predominately a paperwork requirement but also requires and outreach of solicitation of bids from minority and women contractors. The Borrower has advised us that they have complied with these requirements. Failure to meet the requirements of the New York City of Small Business Services shall render an applicant ineligible for ICAP benefits. Since this is a continuing obligation of the Borrower during the construction period, we assume no liability for the obligation of the borrower to meet these requirements.

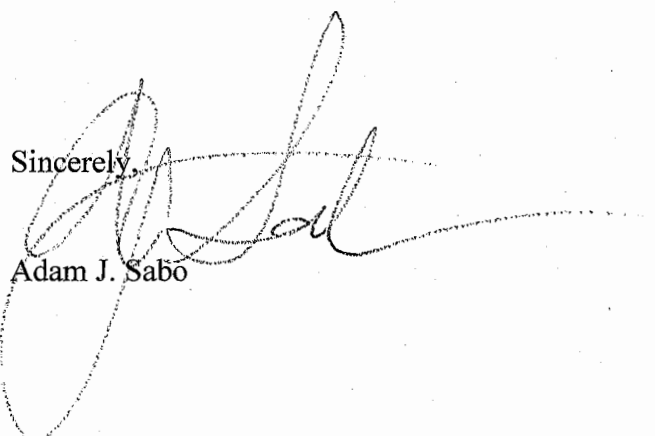
This project will be taking place in an area of Brooklyn that is denominated a regular commercial area. Commercial projects which meet the requirement of the program and are located in a regular area are eligible for a 25 year real estate tax abatement. The tax abatement is based upon where the increase in real estate taxes in excess of 115% the preconstruction tax. The amount of the abatement is measured from the period of commencement of work to (1) the tax year following completion of work or (2) four years after construction of the project, whichever is earlier. The abatement runs in full 16 years and in the 17<sup>th</sup> through 25<sup>th</sup> years it declines on a basis of 90%-80%-70%-60%-50%-40%-30%-20%-10%. After 25 years there is no longer an ICAP abatement. Thus for illustrative purposes only, 115% of the base taxes were \$115,000 and the post construction tax is \$200,000, an ICAP abatement would be granted to qualified applicants in the amount of \$85,000 for 100% benefit years and would be phased out as set forth previously.

\*\*If the commercial portion will be used for Retail – the commercial portion will receive 25 years with inflation protection for 10% of the building and 15 years with inflation protection for 90% retail space.

We make no representation or guaranties that the assessed value, taxes or the amount of the ICAP abatement will be fixed at any amount. We point out that we have not been retained at this time to process the ICAP application and we assume no responsibility for the processing of this application. Neither we nor any person can guarantee what the real estate taxes will be at any future date. Changes in law or policies of government agencies may radically change the opinions expressed herein.

Based upon our previous experience with such proceedings, we have issued within the letter with the specific understanding that although we believe the commercial building will be eligible for ICAP real estate tax benefits, our opinion is not a guarantee that such benefits will be available. In no event will we, as Borrower's representative, be liable if there are changes in the assessed values, taxes, or facts on which we have relied in issuing this opinion, or if there are changes in the application statutes, rules and regulations of the City of New York, decisional laws or administrative agency rulings, fraudulent conduct on the part of any parties, interpretations and policies on which we have relied which cause this opinion to be inaccurate.

Sincerely,



Adam J. Sabo