

**RECAPTURE AND TERMINATION POLICY
RIVERHEAD
INDUSTRIAL DEVELOPMENT AGENCY
EFFECTIVE June 15, 2016**

Pursuant to Sections 874(10) and (11) of Title 1 of Article 18-A of the New York State General Municipal Law (the “Act”), the Riverhead Industrial Development Agency (the “Agency”) is required to adopt policies (i) for the discontinuance or suspension of any financial assistance provided by the Agency to a project or the modification of any payment in lieu of tax agreement and (ii) for the return of all or part of the financial assistance provided by the Agency to a project. This Recapture and Termination Policy was adopted pursuant to a resolution ratified and enacted by the members of the Agency on July 11, 2016.

I. Termination or Suspension of Financial Assistance

The Agency, in its sole discretion and on a case-by-case basis, may determine (but shall not be required to do so) to terminate or suspend the Financial Assistance (defined below) provided to a project upon the occurrence of an Event of Default, as such term is defined and described in the Lease Agreement entered into by the Agency and a project applicant (the “Applicant”) or any other document entered into by such parties in connection with a project (the “Project Documents”). Such Events of Default may include, but shall not be limited to, the following:

- 1) Sale or closure of the Facility (as such term is defined in the Project Documents);
- 2) Failure by the Applicant to pay or cause to be paid amounts specified to be paid pursuant to the Project Documents on the dates specified therein;
- 3) Failure by the Applicant to create and/or maintain the FTEs as provided in the Project Documents;
- 4) A material violation of the terms and conditions of the Project Documents; and
- 5) A material misrepresentation contained in the application for Financial Assistance, any Project Documents or any other materials delivered pursuant to the Project Documents.

The decision of whether to terminate or suspend Financial Assistance and the timing of such termination or suspension of Financial Assistance shall be determined by the Agency, in its sole discretion, on a case-by-case basis, and shall be subject to the notice and cure periods provided for in the Project Documents.

For the purposes of this policy, the term “Financial Assistance” shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency’s participation in the transaction contemplated by the Project Documents including, but not limited to:

- (i) any exemption from any applicable mortgage recording tax with respect to the Facility on mortgages granted by the Agency on the Facility at the request of the Applicant;

- (ii) sales tax exemption savings realized by or for the benefit of the Applicant, including the savings realized by any agent of the Applicant pursuant to the Project Documents in connection with the Facility; and
- (iii) real property tax abatements granted under the Project Documents.

II. Recapture of Financial Assistance

The Agency, in its sole discretion and on a case-by-case basis, may determine (but shall not be required to do so) to recapture all or part of the Financial Assistance provided to a project upon the occurrence of a Recapture Event, as such term is defined and described in the Project Documents at least as stringent as stated in the attached Exhibit A and Exhibit B. Such Recapture Events may include, but shall not be limited to the following:

- 1) Sale or closure of the Facility (as such term is defined in the Project Documents);
- 2) Failure by the Applicant to pay or cause to be paid amounts specified to be paid pursuant to the Project Documents on the dates specified therein;
- 3) Failure by the Applicant to create and/or maintain the FTEs as provided in the Project Documents;
- 4) A material violation of the terms and conditions of the Project Documents; and
- 5) A material misrepresentation contained in the application for Financial Assistance, any Project Documents or any other materials delivered pursuant to the Project Documents.

The timing of the recapture of the Financial Assistance shall be determined by the Agency, in its sole discretion, on a case-by-case basis, and is subject to the notice and cure periods provided for in the Project Documents. The percentage of such Financial Assistance to be recaptured shall be determined by the provisions of the Project Documents along with statutory interest as provided by law.

All fees and costs including reasonable attorney fees shall be paid by the Applicant.

All recaptured amounts of Financial Assistance shall be redistributed to the appropriate affected taxing jurisdiction, unless agreed to otherwise by any local taxing jurisdiction.

The Agency may determine to terminate, suspend and/or recapture Financial Assistance in its sole discretion. Such actions may be exercised simultaneously or separately and are not mutually exclusive of one another.

III. Modification of Payment In Lieu of Tax Agreement

In the case of any Event of Default or Recapture Event, in lieu of terminating, suspending or recapturing the Financial Assistance, the Agency may, in its sole discretion, adjust the payments in lieu of taxes due under the Project Documents, so that the payments in lieu of taxes payable under the Project Documents are adjusted upward retroactively and/or prospectively for each tax year until such time as the Applicant has complied with the provisions of the Project Documents. The amount of such adjustments shall be determined by the provisions of the Project Documents.

EXHIBIT A
PROJECT AGREEMENT RECAPTURE PROVISIONS
RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY

Termination, Modification and/or Recapture of Agency Financial Assistance. It is understood and agreed by the Parties hereto that the Agency is entering into the Ground Lease Agreement, the Lease Agreement, the PILOT Agreement, the Sales Tax Authorization Letter and the Project Agreement in order to provide Financial Assistance to the Company for the Facility and to accomplish the public purposes of the Act. The Company hereby makes the following representations and covenants in order to induce the Agency to proceed with the Project/Facility:

(a) In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, and the Resolutions, the Company covenants and agrees that it may be subject to a Recapture Event (as hereinafter defined) resulting in the potential recapture of any and all Financial Assistance, as described below, if the Company receives, or its Subagents receives any Financial Assistance from the Agency, and it is determined by the Agency that:

(1) the Project shall be placed in service no later than five (5) years from the date hereof and shall have received a valid and subsisting Certificate of Occupancy for all structures and uses; or

(2) the Company or its Subagents, if any, authorized to make purchases for the benefit of the Project is not entitled to the sales and use tax exemption benefits; or

(3) the sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the Company or its Subagents, if any; or

(4) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or

(5) the Company has made a material false or misleading statement, or omitted any information which, if included, would have rendered any information in the application or supporting documentation false or misleading in any material respect, on its application for Financial Assistance; or

(6) the Company fails to meet and maintain the thresholds and requirements representing certain material terms and conditions, said Investment Commitment, Employment Commitment, and Local Labor Commitment, all as further defined below, being additional purposes to be achieved by the Agency with respect to its determination to provide Financial Assistance to the Project and required by the Agency to be complied with and adhered to, as evidenced by submission, as so required by the Agency, of written confirmation certifying and confirming on an annual basis beginning in the first year in which Financial Assistance is so claimed, through the conclusion of the later of either two (2) years following the (i) construction completion date or (ii) the calendar year of the termination of the PILOT Agreement or final bond payment whichever is later (said date hereinafter referred to as the "Project Completion Date" and the time period so referenced

being hereinafter defined as the “Material Terms and Conditions Monitoring Period”) confirming the following:

(a) Investment Commitment - that the total investment actually made with respect to the Project at the Project’s construction completion date equals or exceeds (insert amount) (which represents the product of 85% multiplied by (insert amount) being the total project cost as stated in the Company’s application for Financial Assistance); and

(b) Employment Commitment - that there are at least (insert number) existing full time equivalent (“FTE”) employees located at, or to be located at, the Facility as stated in the Company’s application for Financial Assistance (the “Baseline FTE”); and

- the number of current FTE employees in the then current year at the Facility; and

that the Company has maintained and created FTE employment at the Facility equal to (insert number) FTE employees (representing the sum of (insert number) Baseline FTE plus the product of 85% multiplied by (insert number) (being the total number of new FTE employee positions as proposed to be created by the Company as stated in the Company’s application for Financial Assistance); and

(c) Local Labor Commitment - that the Company adheres to and undertakes or has undertaken construction activities in compliance with the Agency’s Local Labor Workforce Policy on an annual reporting basis during the construction period; and

(d) Project Assessment Reporting Commitment – that the Company shall provide, annually, to the Agency, certain information to confirm that the Project is achieving the investment, job retention, job creation, and other objectives of the Project.

In order to accomplish the foregoing, the Company shall provide annually, to the Agency, a certified statement and documentation: i) enumerating the full time equivalent jobs retained and the full time equivalent jobs created as a result of the Financial Assistance, by category, including full time equivalent independent contractors or employees of independent contractors that work at the Project location, and (ii) indicating that the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created in form as supplied by the Agency and as may be amended from time to time by the Agency.

The findings made by the Agency with respect to Section 3(a)(1), (2), (3) and/or (4) and/or failure to provide the written confirmation as required by Section 3(a)(5) with respect to the thresholds and requirements as identified in Section 3(a)(5), above, and/or failure to meet the thresholds and requirements as identified in Section 3(a)(5) above, may potentially be determined by the Agency, in accordance with the Sales Tax Authorization Letter and Section 6.15 Recapture of Agency Benefits contained in the Lease Agreement and/or a failure to comply with the Agency’s policies and Resolutions (collectively, findings and determinations made as described herein with respect to Section 3(a)(1), (2), (3) and/or (4) and/or the failure under Section 3(a)(5) to submit the required certification and/or the failure to meet the required thresholds and requirements as specified in Section 3(a)(5) are hereby defined as a “Recapture Event”). If the Agency declares a Recapture Event, the Company agrees and covenants that it

will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s). The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the New York State and local sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

(b) In accordance with the Resolutions the Company further: (i) covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to (insert amount), and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 3(a) of this Agent Agreement, cannot exceed (insert amount).

(c) The Company acknowledges and understands that a Recapture Event made with respect to Section 3(a)(4) of this Project Agreement will, in addition, immediately result in the loss and forfeiture of the Company's right and ability to obtain any and all future Financial Assistance with respect to the Project.

EXHIBIT B
LEASE AGREEMENT RECAPTURE PROVISIONS
RIVERHEAD INDUSTRIAL DEVELOPMENT AGENCY

Recapture of Agency Benefits.

(a) It is understood and agreed by the parties to this Lease Agreement that the Agency is entering into this Lease Agreement in order to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

(i) If there shall occur a Recapture Event (as defined below) prior to the completion of the construction and equipping of the Project and the Company thereafter sells all or substantially all of the Project or causes all or substantially all of the Project to be sold within two years of the exercise of such option to terminate this Lease Agreement, the Company shall pay to the Agency, as a return of public benefits conferred by the Agency, all Benefits as defined below.

(ii) If there shall occur a Recapture Event after the earlier of (i) the date on which the Project shall have been substantially completed, or (ii) twenty-four months from the date of execution of this Lease Agreement (the earlier of said dates hereinafter the "Operations Commencement Date"), the Company shall pay to the Agency as a return of public benefits conferred by the Agency, the amounts set forth in this paragraph (a)(ii) of Section 6.15.

1. one hundred percent (100%) of the Benefits if the Recapture Event occurs within the first six (6) years after the Operations Commencement Date;
2. eighty percent (80%) of the Benefits if the Recapture Event occurs during the seventh (7th) year after the Operations Commencement Date;
3. sixty percent (60%) of the Benefits if the Recapture Event occurs during the eighth (8th) year after the Operations Commencement Date;
4. forty percent (40%) of the Benefits if the Recapture Event occurs during the ninth (9th) year after the Operations Commencement Date;
5. twenty percent (20%) of the Benefits if the Recapture Event occurs during the tenth (10th) year after the Operations Commencement Date.

The term "Benefits" shall mean, collectively, all Financial Assistance realized by the Company including, but not limited to, exemption from real property tax, mortgage recording tax, transfer tax, sales or use tax, and filing and recording fees.

The term "Recapture Event" shall mean any of the following events:

1. The Company shall have liquidated its operations and/or assets or shall have ceased all or substantially all of its operations at the Project (whether by relocation to another facility or otherwise, or whether to another facility either within or outside of the Town);
2. The Company shall have leased all or any portion of the Project in violation of the limitations imposed by Section 7.1 hereof, without the prior written consent of the Agency;
3. The Company shall have effected substantial changes in the scope and nature of the Company's operations at the Project;
4. The Company shall have transferred all or substantially all of its employees to a location outside of the Town; or
5. The Company shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Project.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct immediate result of (i) a taking or condemnation by governmental authority of all or substantially all of the Project, (ii) the inability at law of the Company to rebuild, repair, restore or replace the Project after the damage or destruction of the project, in whole or in part, to substantially its condition prior to such event, which inability shall have arisen in good faith through no fault on the part of the Company, or (iii) a matter to which the Agency shall have given its express prior written consent.

6. The submission of any knowingly materially false or knowingly materially misleading information in the Application or proceedings held by the Agency on the Application. This is a continuing obligation of the Company.

7. Failure to comply with the requirements of General Municipal Law Section 875.

(b) The Company covenants and agrees to furnish the Agency with written notification upon any Recapture Event occurring within ten (10) years of the Operations Commencement Date, which notification shall set forth the terms thereof. The provisions of this Section 6.15 shall survive the termination of this Lease Agreement for any reason whatsoever, notwithstanding any provision of this Lease Agreement to the contrary.

(c) In the event any payment owing by the Company under this Section 6.15 shall not be paid on demand by the Company, such payment shall bear interest from the date of such demand at the rate of nine percent (9%) per annum until the Company shall have paid such payment in full, together with such accrued interest to the date of payment, to the Agency.

(d) The Agency, in its sole discretion, may waive all or any portion of any payment owing by the Company under this Section 6.15.

(e) The Company covenants and agrees to furnish the Agency with written notification upon any such disposition of the Project or any portion thereof made within ten (10) years of its completion, which notification shall set forth the terms of such sale. The provisions of this

Section 6.15 shall survive the termination of this Lease Agreement for any reason whatsoever, notwithstanding any provision of this Lease Agreement to the contrary.

(f) In the event of a conflict between this section 6.15 “Recapture of Agency Benefits” and the General Municipal Law Section 875, Section 875 shall control.