



IDA Annual Compliance Report State Sales Tax Recapture

For IDA fiscal year ending 12/31/2018
(mmdyy)

Due within 90 days of the end of each fiscal year.

IDA information

| | | |
|--|-------------|--------------------------------------|
| Name of IDA SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY | | |
| Street address ONE DIPRONIO DRIVE | | Telephone number (315) 539-1725 |
| City WATERLOO | State NY | ZIP code 13165 |

Terms and conditions for the recapture of state sales tax exemption benefits for projects established, amended, or extended on or after March 28, 2013

- 1 Did the IDA provide state sales tax exemption benefits to any project established, amended, or extended during the fiscal year entered above? 1 Yes No
If Yes, continue below.
If No, skip to question 3.
- 2 When an IDA establishes a project, appoints an agent/project operator, or amends or extends a project established in a prior year, the IDA must include terms and conditions for the recapture of state sales tax exemption benefits in its resolutions and project documents. This applies to all projects established, amended, or extended on or after March 28, 2013 (see instructions).
Did the IDA use the same terms and conditions regarding the recapture of state sales tax exemption benefits in the project documents for each of its projects (as described above)? 2 Yes No
If Yes, attach a copy of the terms and conditions used.
If No, attach a copy of each version used. Be sure to identify the projects to which each version of the terms and conditions relate.
If the IDA did not include terms and conditions for the recapture of state sales tax exemption benefits in the project documents, attach a list of these projects (see instructions).

Activities and efforts to recapture state sales tax exemption benefits for projects established, amended, or extended on or after March 28, 2013

- 3 Did the IDA make efforts to recapture any state sales and use tax exemption benefits from an agent, project operator, or other person or entity (see instructions)? 3 Yes No
If Yes, continue below.
If No, skip question 4 and complete the Certification below.
- 4 Did the IDA file Form ST-65, IDA Report of Recaptured Sales and Use Tax Benefits, for each recapture, and remit the funds to the Tax Department? 4 Yes No
If Yes, you must keep a copy of Form ST-65 and supporting documentation related to the recapture activities.
If No, attach an explanation of the IDA's recapture efforts (see instructions).

Certification

I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

| | | | |
|---|--------------------|--|--|
| Print name of person signing on behalf of the IDA ROBERT J ARONSON | | Print title of person signing on behalf of the IDA EXECUTIVE DIRECTOR | |
| Signature | Date 03-31-2019 | Telephone number (315) 539-1725 | |

Mailing instructions

Mail completed form and attachments to:

**NYS TAX DEPARTMENT
IDA UNIT
W A HARRIMAN CAMPUS
ALBANY NY 12227-0866**

If not using U.S. Mail, see Publication 55, Designated Private Delivery Services.

BENEFIT RECAPTURE AGREEMENT

THIS BENEFIT RECAPTURE AGREEMENT is made this day of , , by and between **SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at One DiPronio Drive, Waterloo, New York 13165 (the "Agency") and **[COMPANY]**, a limited liability company having offices at [ADDRESS OF COMPANY] (the "Company").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 63 of the Laws of 1972 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Act further authorizes each such industrial development agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable, to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds so issued and any agreements made in connection therewith, to mortgage any or all of its facilities and to pledge the revenues and receipts from the leasing of its facilities; and

WHEREAS, the Company submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") generally consisting of: (i) the acquisition by the Agency of a leasehold interest in property situated at 3-11 West Main Street, Village of Waterloo, New York, and the buildings and improvements thereon (collectively, the "Property"), (ii) the renovation of the Property to create four commercial units and eight residential units, and related amenities (collectively, the "Improvements"), and (iii) the acquisition and installation by the Company in the Improvements of certain items of equipment and other tangible personal property (the "Equipment" and, collectively with the Property, and the Improvements, the "Facility"); and

WHEREAS, pursuant to the Application the Company has requested financial assistance in the form of (i) a sales and use tax exemption for purchases and rentals related to the undertaking of the Project, subject to the terms and conditions of the Agent Agreement entered into between the Agency and the Company on or about the date hereof (the "Agent Agreement"), the total value of the exemption not to exceed \$100,000, (ii) a partial real property tax abatement, subject to the terms and conditions of the Payment In Lieu of Tax Agreement to be entered into by the Agency and the Company ("PILOT Agreement"), and (iii) a mortgage recording tax exemption for financing related to the Project (collectively, the "Financial Assistance"); and

WHEREAS, to facilitate the Financial Assistance, the Agency and the Company contemplate entering into the Agent Agreement, the PILOT Agreement and certain other agreements (the Agent Agreement, the PILOT Agreement and all other agreements entered into in connection therewith, including without limitation this Agreement, are collectively referred to herein as the "Transaction Documents"); and

WHEREAS, it is the desire of the Company and the Agency that the Financial Assistance may be conditioned upon the Company fulfilling certain obligations with respect to the Project and/or the Facility, as further set forth herein.

NOW THEREFORE, for good and valuable consideration and in consideration of the Agency entering into the Agent Agreement and the PILOT Agreement, the Company hereby covenants and agrees as follows:

1. In addition to any other defined terms provided for herein, the following terms shall have the following definitions. Capitalized terms not otherwise defined in this Agreement shall have the meaning provided for in the Transaction Documents.

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|------------------------------|--|
| “Agency” | shall mean the Seneca County Industrial Development Agency. |
| “AER” | shall mean the annual report of employment required to be provided to the Agency by each Employer. |
| “Company” | shall mean [COMPANY], and its successors and/or assigns. |
| “Employer” | shall mean any party employing Employees. |
| “Employees” | shall mean Full Time Employees and/or Part Time Employees. |
| “Employment Obligation Term” | shall mean that period commencing on the Employment Obligation Date and ending on that date which is the date of termination of the PILOT Agreement. |
| “Employment Obligation Date” | means that date which is the first anniversary of the date of completion of the Project. |
| “Full Time Employee” | means any person directly employed at the Facility as of the last day of any fiscal quarter who worked an average of not less than thirty-five hours per week during said quarter. |
| “FTE” | means a combination of two or more Part Time Employees whose cumulative average hours of work per week during a fiscal quarter equals or exceeds thirty-five. |
| “Part Time Employee” | means any person directly employed at the Facility as of the last day of any fiscal quarter who worked an average of less than thirty-five hours per week during said quarter during the weeks employed. |
| “Minimum Employment” | shall mean the cumulative combination of at least NA (NA) Full Time Employees and/or FTE. |

2. Representations and Covenants. The Company makes the following representations and covenants as the basis for the undertakings on their respective parts herein contained:

(a) It has power to enter into and to execute and deliver this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

(c) The Project will not result in the removal of a plant facility or another commercial activity of the Company from one area of the State to another area of the State nor result in the abandonment of one or more plants or facilities of the Company located within the State.

(d) The Improvements and the Facility will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (d).

(e) There is no litigation pending or, to the knowledge of the Company, threatened, in any court, either state or federal, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the ability of the Company to fulfill its obligations under this Agreement.

(f) (i) The Company shall, for so long as any of the Transaction Documents remain in effect, submit to the Agency, according to such schedule as the Agency shall determine, its AER, NYS-45 reports, and any other reports or documentation required by the Agency to adequately document the number of Employees employed by the Company.

(ii) The Company shall, for the duration of the Employment Obligation Term, cause all other Employers to submit to the Agency, according to such schedule as the Agency shall determine, said Employers’ AER, NYS-45 reports, and any other reports or documentation required by the Agency to adequately document the number of Employees employed by said

Employers (including but not limited such certifications as the Agency may require to document the fact that individuals listed as employees in such documentation satisfy the definition of Employees for purposes of this Agreement).

(iii) The Company agrees that if any Employer (including the Company) should fail to submit the documentation required by clauses (i) and (ii) above, the Agency shall have the right not to count the Employees purportedly employed by said Employer in calculating whether Minimum Employment has been achieved.

(iv) The Company shall, for so long as any of the Transaction Documents remain in effect, submit to the Agency, according to such schedule as the Agency shall determine, such additional documentation that is required to be collected by the Agency by applicable authorities.

3. Job Creation Obligations. Commencing on the Employment Obligation Date, and continuing thereafter for the balance of the Employment Obligation Term, Minimum Employment shall be maintained at the Facility during each calendar year (or part thereof) of the Employment Obligation Term. After the expiration of the Employment Obligation Term, the Company shall have no further obligation to maintain the Minimum Employment and shall not be liable for any of the payments described below, except to the extent payments already due as of the termination of the Employment Obligation Term remain outstanding.

4. Employment Calculation. For so long as the employment obligations in section 3 above are in effect, the Agency shall annually determine whether Minimum Employment has been maintained at the Facility by averaging the actual number of Full Time Employees and FTEs at the end of each calendar quarter (the "Actual Employment"), and the difference (if any) between the Minimum Employment and the Actual Employment for the year (the "Employment Shortfall"). The Agency's determination with respect to an Employment Shortfall shall be conclusively presumed to be correct in the absence of manifest error. A calendar year in which an Employment Shortfall occurs is herein referred to as a "Shortfall Year."

5. Shortfall Review; Remedies/Recapture. If, following any annual review, the Agency determines that there has been an Employment Shortfall, the Agency shall proceed as set forth below.

(a) The Agency shall notify the Company writing that the Agency has determined that an Employment Shortfall has occurred. The Company shall be given an opportunity, subject to such terms and conditions as the Agency shall determine in its sole discretion, to remedy the Employment Shortfall. If the Company is unable or unwilling to remedy the Employment Shortfall in accordance with the conditions imposed by the Agency, the Agency shall seek additional information/explanation from the Company as to why the Employment Shortfall occurred and why it was not remedied. Explanatory factors that may be considered may include, without limitation, items such as natural disaster, industry dynamics, unfair competition or economic events that were outside the control of the Company. The Company shall be provided the opportunity to present to the Agency any such information regarding why the Employment Shortfall occurred and was not remedied.

(b) Following completion of the process described in subsection (a) above, the Agency shall consider the following options:

(i) Upon a review of the facts the Agency may determine that the Employment Shortfall was justified and/or adequately explained and may consider the matter closed without further action, or set a specific time period for the Company to achieve Minimum Employment. This may also be accompanied by a period of increased reporting or such other conditions as the Agency may reasonably impose.

(ii) In the event the Employment Shortfall is not, in the Agency's determination, justified by factors outside the Company's control and/or otherwise adequately explained, the Agency may, at the Agency's discretion, determine that the Employment Shortfall will result in the reduction, suspension, termination and/or recapture of financial assistance, singly or in combination, as provided below.

Reduction of Financial Assistance: The Agency may determine that a reduction in financial assistance is appropriate, which reduction may include, without limitation, increased required payments under an agreement for payments in lieu of taxes (if applicable).

Termination of Financial Assistance: The Agency may elect to terminate any ongoing financial assistance to a Company.

Recapture of Financial Assistance: The Agency may require that all or part of the financial assistance for a Project be returned, including all or part of the amount of any tax exemptions. Events justifying recapture may include, without limitation, the Company knowingly providing false information to the Agency; a finding that the Company did not make a good faith effort or have any intention of meeting Minimum Employment; the Company ceases operations and/or relocates; material non-compliance with state and/or local laws or regulations; and material Employment Shortfalls. In

the event the Agency is successful in recapturing financial assistance, such funds shall be returned to the appropriate affected taxing jurisdictions (if applicable) on a pro rata basis unless otherwise agreed upon by the local taxing jurisdiction.

6. Waiver. The Agency retains all rights to impose, delay or waive enforcement of the remedies herein provided, and/or deviate from said remedies, except where otherwise required by law. Any one waiver, delay or deviation shall not constitute a waiver, delay or deviation with respect to any subsequent Employment Shortfall.

7. Notices. All notices, certificates and other communications hereunder shall be given in the manner and to the parties set forth in the Agent Agreement.

8. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Agency and the Company and their respective successors and permitted assigns.

9. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

10. Amendments, Changes and Modifications. This Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

11. Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

12. Applicable Law. This Agreement shall be governed exclusively by the applicable laws of the State of New York.

13. Survival of Obligations. The right of the Agency to collect the Shortfall Payment shall survive the termination and/or expiration of the Transaction Documents.

14. No Assignment. Without the prior written consent of the Agency, which shall not be unreasonably withheld but may be subject to such conditions as the Agency shall reasonably impose, (i) no portion of any interest in this Agreement may be assigned by the Company, (ii) no party other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder, (iii) there shall be no direct or indirect transfers of ownership interests in the Facility, including but not limited to transfers of direct or indirect ownership interests in the Company.

15. Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

16. Successors and Assigns. The rights and obligations of the Company hereunder shall be binding upon and inure to the benefit of its successors and assigns.

IN WITNESS WHEREOF, the parties have executed and delivered this **BENEFIT RECAPTURE AGREEMENT** as of the day and year first above written.

SENECA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

By: _____

Name:

Title

[COMPANY]

By: _____

Name:

Title: