Department of Taxation and Finance

IDA Annual Compliance Report State Sales Tax Recapture

ST-62
(1/18)

For IDA fiscal year ending 12 31 25
(mmddyy)

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

IDA information

Name of IDA		
Ulster County Industrial Development Agency		
Street address	Telephone number	
P.O. Box 4265	(845)585-1230	
City	State	ZIP code
Kingston	NY	12402

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	Print title of person signing on behalf of the IDA	
Michael J Ham	Chairman	
Signature	Date	Telephone number
Michael J Ham	2·6·2026	(845)585-1230

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.*

SECTION 875 GML RECAPTURE AGREEMENT
[Sales and Use Taxes]

THIS SECTION 875 GML RECAPTURE AGREEMENT (the "Recapture Agreement") dated as of _____ 1, 2022 is made by and between _____, a _____ duly organized and validly existing under the laws of the State of _____ having an office for the transaction of business located at _____ (the "Company"), for the benefit of ULSTER COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having an office for the transaction of business located at P.O. Box 4265, Kingston, New York (the "Agency").

WITNESSETH:

WHEREAS, Title I of Article 18 A of the General Municipal Law of the State of New York, as amended (the "Act"), was initially enacted into law by Chapter 1030 of the Laws of 1969 of the State of New York (the "State") and has been amended and supplemented from time to time by various laws enacted subsequent thereto; 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 has proposed that the Agency undertake a multi-phase project for the benefit of the Company, said project (the "Project") to consist of following: (1) acquisition of an interest in an approximately ____ acre parcel of land located at _____ (Tax Map #_____) in _____, Ulster County, New York (the "Land"), (2) the [construction][reconstruction] on the Land of _____, including, but not limited to, _____ (collectively, the "Facility") and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to be owned by the Company and operated as a _____ and other directly and indirectly related activities; and

WHEREAS, the Company desires to obtain certain "financial assistance" as defined in the Act (the "Financial Assistance") from the Agency in connection with the Facility, said Financial Assistance to include but not be limited to exemption from certain state and local sales and use taxes; and

WHEREAS, in order to provide such financial assistance to the Company under the Act, the Agency requires, among other things, that the Company and the Agency enter into certain lease/leaseback documents and other associated agreements and certificates (collectively, the "Basic Documents"); and

WHEREAS, Section 875 of the Act, as added by the provisions of Chapter 59 of the Laws of 2013 of the State, requires, among other things, that (A) the Agency recover, recapture, receive, or otherwise obtain from an agent, project operator or other person or entity state sales and use exemptions benefits taken or purported to be taken by any such person to which the person is not entitled or which are in excess of the amounts authorized by the Act, (B) the Agency include within its resolutions and basic documents establishing any project or appointing an agent or project operator for any project the terms and conditions in Section 875 of the Act, and (C) every agent, project operator or other person or entity that shall enjoy state sales and use tax exemption benefits provided by the Agency agree to such terms as a condition precedent to receiving or benefiting from such state sales and use exemptions benefits; and

WHEREAS, in order to comply with the provisions of Section 875 of the Act and thus gain the benefits of such Financial Assistance from the Agency to the Company under the Act, the Company is willing to enter into this Recapture Agreement and to grant to the Agency certain security therefor as described herein;

NOW THEREFORE, in consideration of the grant of the Financial Assistance by the Agency with respect to the Project and for other good and valuable consideration, the receipt of which is hereby acknowledged by the Company, the Company hereby represents, warrants, covenants and agrees with the Agency, as follows:

SECTION 1. DEFINITIONS. The following words and terms used in this Recapture Agreement shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent:

"Commissioner" means the Commissioner of Taxation and Finance of the State.

"Completion Date" shall have the meaning assigned to such term in the Basic Documents.

"State Sales and Use Tax" means any sales and compensating use taxes and fees imposed by Article 28 or Article 28-A of the Tax Law of the State, but excluding such taxes imposed in a city by Section 1107 or Section 1107 of such Article 28.

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to them in the Basic Documents.

SECTION 2. REPRESENTATIONS AND WARRANTIES. (A) The Company is a [limited liability company][corporation] duly organized and validly existing under the laws of the State of _____, is qualified and authorized to do business in the State of New York and all other jurisdictions in which its operations or ownership of Properties so require, and has the power to enter into this Recapture Agreement and the other Basic Documents to which the Company is a party and to carry out its obligations hereunder and thereunder. By proper action of its [members][board of directors], the Company has been duly authorized to execute, deliver and perform this Recapture Agreement and the other Basic Documents to which the Company is a party.

(B) Except as has been heretofore disclosed to the Agency, neither the execution and delivery of this Recapture Agreement or the other Basic Documents to which the Company is a party, the

consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the provisions of this Recapture Agreement or the other Basic Documents to which the Company is a party will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the [articles or organization][certificate of incorporation] or [operating agreement][bylaws] of the Company or any other restriction, order, judgment, agreement or instrument to which the Company is a party or by which the Company or any of its Property is bound, or constitute a default by the Company under any of the foregoing, or (2) result in the creation or imposition of any Lien of any nature upon any Property of the Company under the terms of any such instrument or agreement, other than pursuant to the Basic Documents and "Permitted Encumbrances" (as defined in the Basic Documents), or (3) require consent (which has not been heretofore received) under any restriction, agreement or instrument to which the Company is a party or by which the Company or any of its property may be bound or affected, or (4) require consent (which has not been heretofore obtained) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company.

(C) The completion of the Project by the Agency, providing of the Project Facility by the Agency and the leasing thereof by the Agency to the Company will not result in the removal of a plant or facility of the Company or any other proposed occupant of the Project Facility 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 Company or any other proposed occupant of the Project Facility located in the State.

(D) This Recapture Agreement and the other Basic Documents to which the Company is a party constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Company, enforceable in accordance with their respective terms.

(E) To the best of the Company's knowledge, there is no action or proceeding pending or threatened by or against the Company by or before any court or administrative agency that would materially adversely affect the ability of the Company to perform its obligations under this Recapture Agreement, and all authorizations, consents and approvals of governmental bodies or agencies, if any, required to be obtained by the Company as of the date hereof in connection with the execution and delivery of this Recapture Agreement or in connection with the performance of the obligations of the Company hereunder have been obtained.

(F) The Company acknowledges receipt of notice of Section 874(8) of the Act, which requires that, if the Company claims any sales tax exemption by virtue of the Agency's involvement in the Project, the Company as agent of the Agency must annually file a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner, of the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency.

(G) The Company understands that:

(1) Pursuant to Section 874 of the Act, the Agency is exempt from certain sales taxes and use taxes imposed by the State and local governments in the State.

(2) Pursuant to Section 874 of the Act, the Project may be exempted from certain of those taxes due to the involvement of the Agency in the Project.

(3) The Agency makes no representations or warranties that any property is exempt from the payment of New York sales or use taxes.

(4) Any exemption from the payment of certain sales taxes and use taxes imposed by the State and local governments in the State resulting from the involvement of the Agency with the Project shall be limited to purchases of services and tangible personal property conveyed to the Agency or utilized by the Agency or by the Company as agent of the Agency as a part of the Project prior to the Completion Date, or incorporated within the Project Facility prior to the Completion Date.

(5) No operating expenses of the Project Facility, and no other purchases of services or property shall be subject to an exemption from the payment of New York sales or use tax.

(6) Pursuant to Section 874(9) of the Act, if the Company claims any sales tax exemption by virtue of the Agency's involvement in the Project, the Agency must file, within thirty days of any appointment of the Company as agent of the Agency for purposes of claiming any sales tax or use tax exemption, with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Thirty-Day Sales Tax Report"), a statement identifying the Company as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

(7) Pursuant to Section 875(5) of the Act, the Company acknowledges that (a) the Thirty-Day Sales Tax Report shall not be considered an exemption or other certificate or document under Article 28 or Article 29 of the Tax Law, (b) the Agency does not represent to the Company or any other agent, consultant, contractor, subcontractor or other person or entity taking or enjoying any amount of State Sales and Use Tax exemption benefits relating to the Project that a copy of such Thirty-Day Sales Tax Report may serve as a sales or use tax exemption certificate or document, (c) no agent or project operator may tender a copy of such statement to any person required to collect sales or use taxes as the basis to make any purchase exempt from tax, (d) no such person required to collect sales or use taxes may accept such a statement in lieu of collecting any tax required to be collected, (e) the civil and criminal penalties for misuse of a copy of such statement as an exemption certificate or document or for failure to pay or collect tax shall be as provided in the Tax Law, and (f) the use of such Thirty-Day Sales Tax Report, or the recommendation of the use or tendering of such Thirty-Day Sales Tax Report, as such an exemption certificate or document shall be deemed to be, under Article 28 and Article 37 of the Tax Law, the issuance of a false or fraudulent exemption certificate or document with intent to evade tax.

(8) Pursuant to Section 875(2) of the Act, the Agency must further, within thirty days of providing Financial Assistance to a project that includes any amount of State Sales and Use Tax exemption benefits, report to the Commissioner the amount of such benefits for such project, the project to which they are being provided, together with such other information and such specificity and detail as the Commissioner may prescribe. This additional report (the "Additional Thirty-Day Project Report") may be made in conjunction with the Thirty-Day Sales Tax Report or it may be made as a separate report, at the discretion of the commissioner.

(9) Pursuant to Section 874(8) of the Act, if the Company claims any sales tax exemption by virtue of the Agency's involvement in the Project, the Company agrees to annually file and cause any sublessee or other operator of the Project Facility to file annually, with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Annual Sales Tax Report"), a statement of the value of all sales and use tax exemptions claimed by the Company and all contractors, subcontractors, consultants and other agents of the Company under the authority granted to the Company pursuant to Section 4.1(E) of the Lease Agreement.

(10) Pursuant to Section 874(8) of the Act, the penalty for failure to file the Annual Sales Tax Report shall be removal of authority to act as agent of the Agency. Additionally, if the Company shall fail to comply with the requirements of this Section 2, the Company shall immediately cease to be the agent of the Agency in connection with the Project.

(11) Pursuant to Section 875(6) of the Act, (a) the Commissioner is authorized to audit the records, actions, and proceedings of the Agency and of its agents and project operators to ensure that the Agency and its agents and project operators comply with all the requirements of Section 875 of the Act, and (b) any information that the Commissioner finds in the course of such audit may be used by the Commissioner to assess and determine state and local taxes of the Agency's agents or project operators.

(12) Pursuant to Section 875(6) of the Act, (a) the Agency is required to report and make available on the internet copies of its resolutions and agreements appointing an agent or project operator or otherwise related to any project it establishes and (b) the Agency is further required to provide, without charge, copies of all such reports and information to a person who asks for it in writing or in person.

SECTION 3. TERM. This Recapture Agreement shall commence as of the dated date hereof and shall remain in full force and effect until terminated by the Agency.

SECTION 4. FURNISHING OF INFORMATION TO THE AGENCY. (A) If the Company desires to claim any sales tax exemption by virtue of the Agency's involvement in the Project, the Company shall notify the Agency in writing of such desire, and shall furnish to the Agency a completed Thirty Day Sales Tax Report relating to such request. If the Agency determines to grant such request by the Company, the Company agrees to assist the Agency in filing such Thirty-Day Sales Tax Report with the State.

(B) If the request by the Company includes any amount of State Sales and Use Tax exemption benefits, the Company shall notify the Agency in writing of such fact, and shall furnish to the Agency a completed Additional Thirty-Day Project Report relating to the Project. If the Agency determines to grant such State Sales and Use Tax exemption benefits with respect to the Project, the Company agrees to assist the Agency in filing such Additional Thirty-Day Project Report with the State.

(C) Pursuant to the requirements of Section 874(8) of the Act, the Company agrees to file an Annual Sales Tax Report with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner, regarding the value of sales tax exemptions the Company, its agents, consultants, contractors or subcontractors have claimed pursuant to, or as part of, the Financial Assistance provided by the Agency in connection with the Project or otherwise relating to the Project Facility.

(D) The Company agrees to furnish to the Agency a copy of each such Annual Sales Tax Report submitted to the New York State Department of Taxation and Finance by the Company pursuant to Section 874(8) of the Act.

SECTION 5. COMPLIANCE WITH THE PROVISIONS OF SECTION 875 OF THE ACT; RECAPTURE. (A) If the Project includes any amount of State Sales and Use Tax exemption benefits, the Company agrees (1) to comply with the requirements of Section 875 of the Act applicable to the Project and (2) to cause any other agent, consultant, contractor, subcontractor or other person or entity enjoying any amount of State Sales and Use Tax exemption benefits relating to the Project to agree to such terms as a condition precedent to receiving or benefiting from such State Sales and Use Tax exemption benefits.

(B) If the Company or any other agent, consultant, contractor, subcontractor or other person or entity taking or enjoying any amount of State Sales and Use Tax exemption benefits relating to the Project shall have taken or enjoyed any benefits (1) to which such person or entity is not entitled or (2) which are in excess of the amounts authorized by both the Act and the Agency or (3) which are for property or services not authorized by both the Act and the Agency or (4) taken in cases where such person or entity failed to comply with a material term or condition to use property or services in the manner required by this Recapture Agreement and the other Project Agreements and any agreement between the Agency and such person or entity, the Company shall (a) pay, or cause such person or entity to pay, to the Agency the amounts requested by the Agency pursuant to Section 875 of the Act (the "Recapture Amounts") and (b) cooperate, and cause such person or entity to cooperate, with the Agency in the Agency's efforts to recover, recapture, receive, or otherwise obtain such Recapture Amounts.

(C) In connection with the Project, the Company agrees to (1) comply with any rules, regulations, publications or other guidance issued by the Commissioner or the commissioner of economic development implementing the provisions of Section 875 of the Act and of the other sections of the Act relating to any state or local tax or fee, or exemption or exclusion therefrom, that the Commissioner administers and that may be affected by any provision of the Act (the "Required Provisions") and (2) provide to the Agency any information reasonably requested by the Agency to enable the Agency to comply with the Required Provisions.

(D) In the event that the Company or any other agent, consultant, contractor, subcontractor or other person or entity taking or enjoying any amount of State Sales and Use Tax exemption benefits relating to the Project shall be determined by the Agency or the Commissioner to have violated the requirements of the Act, the Tax Law or the Required Provisions, and, as a result of such failure, the Agency (1) determines that Section 875 of the Act and the provisions of this Recapture Agreement authorize the Agency to seek Recapture Amounts relating thereto from the Company, and (2) demands that the Company pay a Recapture Amounts, the Company shall promptly pay such Recapture Amounts to the Agency, together with interest thereon at the rate of twelve percent (12%) per annum from the date and with respect to the dollar amount for which each such event which precipitated the need to make such Recapture Amount.

SECTION 6. EVENTS OF DEFAULT. Any one or more of the following events shall constitute an event of default under this Recapture Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Recapture Agreement, any one or more of the following events:

(A) Failure of the Company to pay when due any Recapture Amount due and payable by the Company pursuant to the provisions of Section 5(D) of this Recapture Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to pay when due any other amount due and payable by the Company pursuant to the provisions of this Recapture Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

(C) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in paragraph (A) or paragraph (B) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default; or

(D) Any warranty, representation or other statement by or on behalf of the Company contained in this Recapture Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Recapture Agreement and (1) shall be materially adverse to the Agency at the time when the notice referred to below shall have been given to the Company and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of the Company, provided that if such incorrectness cannot reasonably be cured within said thirty-day period and the Company shall have commenced action to cure the incorrectness within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as the Company shall require, in the exercise of due diligence, to cure such default.

SECTION 7. REMEDIES ON DEFAULT. (A) General. Whenever any Event of Default shall have occurred with respect to this Recapture Agreement, the Agency may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Recapture Agreement.

(B) Cross-Default. In addition, an Event of Default hereunder shall constitute an event of default under the Basic Documents. Upon the occurrence of an Event of Default hereunder resulting from a failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Basic Documents, among other remedies, the right to terminate the Basic Documents and convey the Agency's interest in the Project Facility to the Company, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

(C) Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

(D) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Recapture Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 8. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. If the Company should default in performing any of its obligations, covenants or agreements under this Recapture Agreement and the Agency or the Commissioner should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or the Commissioner, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 9. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or the Commissioner is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Recapture Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Recapture Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Recapture Agreement.

(D) No Waiver. In the event any provision contained in this Recapture Agreement should be breached by the Company and thereafter duly waived by the Agency, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Recapture Agreement shall be established by conduct, custom or course of dealing.

SECTION 10. RESERVED.

SECTION 11. SECURITY. For value received and in order to induce the Agency to enter into the Basic Documents, the Company unconditionally guarantees to the Agency the due and prompt payment of rent and the performance of all obligations of the Company under the terms and provisions of the Basic Documents (the "Company's Obligations"). The Company agrees that no act or thing, except for payment and performance in full or written release of this Recapture Agreement, shall in any way affect or impair the Company's Obligations.

SECTION 12. NOTICES. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

IF TO THE COMPANY:

[ ]
[ ]
[ ]
Attention: [ ]

WITH A COPY TO:

[ ]
[ ]
[ ]
Attention: [ ], Esq.

IF TO THE AGENCY:

Ulster County Industrial Development Agency
P.O. Box 4265
Kingston, New York 12402
Attention: Chair

WITH A COPY TO:

Hodgson Russ LLP
677 Broadway, Suite 301
Albany, New York 12207
Attention: A. Joseph Scott, III, Esq.

SECTION 13. BINDING EFFECT. This Recapture Agreement shall inure to the benefit of and shall be binding upon the Agency and the Company and their respective successors and permitted assigns.

SECTION 14. SEVERABILITY. In the event any provision of this Recapture 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.

SECTION 15. AMENDMENTS. CHANGES AND MODIFICATIONS. This Recapture Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

SECTION 16. EXECUTION OF COUNTERPARTS. This Recapture 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.

SECTION 17. APPLICABLE LAW. This Recapture Agreement shall be governed exclusively by the applicable laws of the State of New York.

SECTION 18. SURVIVAL OF OBLIGATIONS. This Recapture Agreement shall survive the performance of the obligations of the Company to make payments required by the other Basic Documents and all indemnities shall survive any termination or expiration of the Basic Documents as to matters occurring during the period of the Company's occupancy of the Project Facility.

SECTION 19. SECTION HEADINGS NOT CONTROLLING. The headings of the several sections in this Recapture Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Recapture Agreement.

SECTION 20. MERGER OF THE AGENCY. (A) Nothing contained in this Recapture Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to, any other body corporate and politic and public instrumentality of the State of New York or political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all the agreements and conditions of this Recapture Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall he assigned.

(B) As of the date of any such consolidation, merger or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger or assignment as the Company reasonably may request.

SECTION 21. NO ASSIGNMENT. This Recapture Agreement may not be assigned by the Company except as permitted by Article IX of the Lease Agreement.

SECTION 22. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 23. SUCCESSORS AND ASSIGNS. The rights and obligations of the Company hereunder shall be binding upon and inure to the benefit of its respective successors and assigns.

[signature page follows]

IN WITNESS WHEREOF, the Company and the Agency have caused this Recapture Agreement to be executed and delivered in their respective names by their respective duly authorized officers as of the day and year first above written.

ULSTER COUNTY INDUSTRIAL DEVELOPMENT AGENCY

BY: _____
(Vice) Chair

[ ]

BY: _____
Authorized Officer

STATE OF NEW YORK)
)ss:
COUNTY OF ULSTER)

On the _____ day of _____, in the year 2022, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

STATE OF [ ])
)ss:
COUNTY OF [ ])

On the _____ day of _____, in the year 2022, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION