



# IDA Annual Compliance Report State Sales Tax Recapture

For IDA fiscal year ending 12/31/17  
(mm/dd/yy)

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

### IDA information

Name of IDA DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY		
Street address 3 NEPTUNE ROAD		Telephone number ( 845 ) 463-5400
City POUGHKEEPSIE	State NY	ZIP code 12601

### 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 SARAH LEE		Print title of person signing on behalf of the IDA EXECUTIVE DIRECTOR	
Signature 	Date 9/20/2018	Telephone number ( 845 ) 463-5400	

### 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.

**WHEREAS**, in order to define the obligations of the Company regarding payments-in-lieu-of-taxes for the Facility, the Agency and the Company are entering into a Payment-in-Lieu-of-Tax Agreement dated as of January 1, 2017 (the "**PILOT Agreement**"), by and between the Agency and the Company; and

**WHEREAS**, as an inducement for the Agency to enter into and perform the transactions contemplated by this Lease Agreement, the Agency will require the Company to enter into an Environmental Compliance and Indemnification Agreement, dated as of January 1, 2017 (the "**Environmental Compliance and Indemnification Agreement**"), by and between the Company and the Agency; and

**WHEREAS**, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Lease Agreement, that the Company provide assurances with respect to the recapture of certain benefits granted under the Lease Agreement and the other Agency agreements on the terms herein set forth.

## **A G R E E M E N T**

### **1. Recapture of Agency Benefits.**

(a) It is understood and agreed by the parties hereto that the Agency is entering into the Lease Agreement, the Company Lease, the PILOT Agreement, the Project Agreement, and the other Agency Agreements in order to provide financial assistance to the Company for the Facility and 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 after the date hereof, but on or before December 31, 2021, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency and utilized by the Company, one hundred percent (100%) of the Recaptured Benefits (as defined below);
- (ii) If there shall occur a Recapture Event on or after January 1, 2022 and on or before December 31, 2022, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, ninety percent (90%) of the Recaptured Benefits;
- (iii) If there shall occur a Recapture Event on or after January 1, 2023 but on or before December 31, 2023, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits

conferred by the Agency, eighty percent (80%) of the Recaptured Benefits;

- (iv) If there shall occur a Recapture Event on or after January 1, 2024 but on or before December 31, 2024, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, seventy percent (70%) of the Recaptured Benefits;
- (v) If there shall occur a Recapture Event on or after January 1, 2025 but on or before December 31, 2025, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, sixty percent (60%) of the Recaptured Benefits;
- (vi) If there shall occur a Recapture Event on or after January 1, 2026 but on or before December 31, 2026, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, fifty percent (50%) of the Recaptured Benefits;
- (vii) If there shall occur a Recapture Event on or after January 1, 2027 but on or before December 31, 2027, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, forty percent (40%) of the Recaptured Benefits;
- (viii) If there shall occur a Recapture Event on or after January 1, 2028 but on or before December 31, 2028, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, thirty percent (30%) of the Recaptured Benefits;
- (ix) If there shall occur a Recapture Event on or after January 1, 2029 but on or before December 31, 2029, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, twenty percent (20%) of the Recaptured Benefits;

- (x) If there shall occur a Recapture Event on or after January 1, 2030 but on or before December 31, 2030, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, ten percent (10%) of the Recaptured Benefits;
- (xi) If there shall occur a Recapture Event on or after January 1, 2031, the Company shall not be obligated to pay to the Agency, or to the State of New York, any of the Recaptured Benefits; and

(b) The term "Recaptured Benefits" 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 PILOT Agreement, the Sales Tax Letter, dated January 12, 2017 delivered by the Agency to the Company (the "Sales Tax Letter"), and the Lease Agreement and actually used to the benefit of the Company, including, but not limited to, the amount equal to 100% of:

- (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 Company (the "Mortgage Recording Tax Exemption"); and
- (ii) sales or use tax exemptions with respect to the Facility by reason of the Sales Tax Letter to the extent such benefits are actually utilized by the Company (the "Sales Tax Benefits"); and
- (iii) real property tax abatements granted under the PILOT Agreement relating to any PILOT payments actually made by the Company calculated based upon an assumed assessment of the Facility as reasonably determined by the assessor of the Town of Dover had the real property not been exempt from real property taxes and excluding any interest or penalty and a determination of the impact that such assessment would have had on the applicable tax rates used by the taxing jurisdictions in establishing such taxes with the calculation of real property tax abatements taking such tax rate impact into account (the "Real Property Tax Abatements");

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of Section 1(c) below and the declaration of a Recapture Event by notice from the Agency to the Company be payable directly to the Agency or the State of New York if so directed by the Agency.

- (c) The term "Recapture Event" shall mean any of the following events:

- (1) the Company, its respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Facility, is not entitled to the Sales Tax Benefits;
- (2) the Sales Tax Benefits exceed the amounts authorized to be taken by the Company, its respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Facility in which event the amount in excess of the amounts authorized are subject to recapture;
- (3) the Sales Tax Benefits are for property or services not part of the Facility or the Project, in which event the portion thereof not authorized are subject to recapture;
- (4) the Sales Tax Benefits are taken in cases where the Company, its respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Facility fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Facility in the manner approved by the Agency in connection with the Facility in which event the portion thereof not in compliance are subject to recapture;
- (5) a termination of the Lease Agreement at any time prior to January 1, 2031 by the Company without authorization by the Agency; or
- (6) A payment default by the Company under the PILOT Agreement at any time prior to January 1, 2031 which remains uncured beyond any applicable notice and/or grace period, if any, provided thereunder; or
- (7) A termination of the Lease Agreement and the PILOT Agreement as a result of the occurrence and continuation of an Event of Default under the Lease Agreement at any time prior to January 1, 2031 which remains uncured beyond any applicable notice and/or grace period, if any, provided thereunder; or
- (8) The Facility shall cease to be a "project" within the meaning of the Act, as in effect on the Closing Date through the act or omission of the Company (but excluding any change of law that results in such determination through no fault of the Company) at any time prior to January 1, 2031; or
- (9) The sale of the Facility (excluding any sale provided for in Section 9.3 of the Lease Agreement or any permitted sale via foreclosure) or closure of the Facility and/or departure of the Company from the Town of Dover, except as due to casualty, condemnation or force majeure as provided below at any time prior to January 1, 2031; or
- (10) Except as provided in subsections (12) and (13) below, failure of the Company to create or cause to be maintained at least twenty-three (23) full time equivalent ("FTE") jobs at the Facility as outlined in Section 3 of the Project Agreement at any time prior to January 1, 2031, which failure is not reflective of the business conditions of the Company, including without limitation loss of major sales, revenues, distribution or other adverse business

developments and/or local, national or international economic conditions, trade issues or industry wide conditions. It is further provided that the Company may not actually provide the FTE jobs at the Facility, but rather may sublease the Facility to a Sublessee, and that the Company's obligation with regard to creating or causing to be maintained FTE jobs includes (a) using all reasonable efforts to lease up the Facility, and (b) including provisions in all subleases requiring any tenants to comply with the provisions of the Project Agreement applicable to them; or

(11) Any significant deviations at any time prior to January 1, 2031 from the projected use and size data provided to the Agency in the Company's application for assistance or subsequently approved modifications thereof which would constitute a significant diminution of the Company's activities in, or commitment to, the Town of Dover, Dutchess County, New York; or

(12) Provided, however, except as provided in clause 1(c)(10) above, if a Recapture Event has occurred due solely to the failure of the Company to create or cause to be maintained the number of FTEs at the Facility as provided in Section 3 of the Project Agreement in any Tax Year but the Company has created or caused to be maintained at least ninety percent (90%) of such required number of FTEs for such Tax Year, then in lieu of recovering the Recaptured Benefits provided above, the Agency shall adjust the payments due under the PILOT Agreement on a pro rata basis so that the amount payable under the PILOT Agreement will be adjusted upward retroactively for such Tax Year by the same percentage as the percentage of FTEs that are below the required FTE level for such Tax Year. Such adjustments to the payments due under the PILOT Agreement may be made each Tax Year until such time as the Company has complied with the required number of FTEs pursuant to Section 8.13 of the Lease Agreement (it being expressly understood that in the event that the Company is in compliance with the required number of FTEs at the end of any such Tax Year there shall be no adjustment for such Tax Year).

(13) Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if it shall have arisen as a direct result of (i) a taking or condemnation by governmental authority of all or part of the Facility, or (ii) the inability of the Company after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a "Loss Event") to rebuild, repair, restore or replace the Facility to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith on the part of the Company or any of their respective affiliates so long as the Company or any of its affiliates has diligently and in good faith using commercially reasonable efforts and after prudent decision making pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof, or (iii) the period of any rebuilding, restoration or replacement after the occurrence of a Loss Event.

Notwithstanding the foregoing, the Board of Directors of the Agency in their sole and reasonable judgment may waive the provisions of Section 1(c)(10) above if the Board determines that a valid explanation exists for the Company's failure to meet the employment objections for any of the following reasons:

i. Natural Disaster: if a natural disaster such as a fire, flood, or tornado disrupts the business.

ii. Industry Trends: An evaluation of industry trends will be made relevant to the Company and its business operations, and a determination reached as to whether the Company is in a market that is declining. International and national data will be used in the evaluation. An industry is considered in decline when, measured by the appropriate SIC code, it experiences employment or revenue declines—beyond its control—of Ten Percent (10%) or more over three (3) years.

iii. Loss of Major Supplier or Customer: if the loss of a customer or supplier represents Fifteen Percent (15%) or more of the sales of the Company.

iv. Productivity Improvements: if new technology, equipment or general productivity improvements result in the need for less than projected employees or investment.

v. Unfair Competition: if an international competitor utilizes an unfair competitive advantage to acquire market share.

vi. Other economic reversals.

(d) The Company covenants and agrees to furnish the Agency with written notification (i) within sixty (60) days of the end of each Tax Year the number of FTEs located at the Facility for such Tax Year, and (ii) within thirty (30) days of actual notice of any facts or circumstances which would likely lead to a Recapture Event or constitute a Recapture Event hereunder. The Agency shall notify the Company within thirty (30) days of the occurrence of a Recapture Event hereunder, which notification shall set forth the terms of such Recapture Event.

(e) In the event any payment owing by the Company under this Section shall not be paid within sixty (60) days after written demand by the Agency, such payment shall bear interest from such date at an annualized rate equal to one percent (1%) plus the Prime Rate, but in no event at an annualized rate higher than the maximum lawful prevailing rate, until the Company shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above). Notwithstanding the foregoing, provided that the Company is reasonably appealing such determination, no interest shall accrue until all administrative and/or judicial remedies are finally exhausted.

(f) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Recapture Agreement, from amounts received by the Agency pursuant to this Recapture Agreement.

2. Obligations Unconditional.

(a) The obligations of the Company under this Recapture Agreement shall be absolute and unconditional and shall remain in full force and effect until January 1, 2031..

(b) The Company and the Agency hereby agree that the obligations and liabilities of the Company hereunder are the absolute and unconditional obligations and liabilities of the Company.

3. Condition to Reconveyance of Facility. The parties hereto agree that the Agency shall have no obligation to surrender its leasehold interest in the Facility to the Company pursuant to the Lease Agreement until all payments to the Agency under Sections 5.3, 11.2 and 11.3 of the Lease Agreement, under the PILOT Agreement and hereunder have been paid in full.

4. Recordation of Recapture Agreement. The parties hereto agree that this Recapture Agreement shall be recorded as a lien against the Facility subordinate to the lien of any Mortgage until the first to occur of January 1, 2031, the date this Recapture Agreement is discharged, or the date the Facility is re-conveyed to the Company.

5. Terms Defined. All of the capitalized terms used in this Recapture Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Lease Agreement as Schedule A.

6. Directly or Indirectly. Where any provision in this Recapture Agreement refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

7. Survival. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Recapture Agreement to the Agency regardless of any investigation made by the Agency.

8. Binding Effect. This Recapture Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties.

9. Notices. All notices, certificates and other communications under this Recapture Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, return receipt requested, or delivered by any national overnight express delivery service (in each case, postage or delivery charges paid by the party giving such communication) addressed as follows or to such other address as any party may specify in writing to the other:



the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Company or any Agent (as applicable).

(j) Upon request by the Agency with reasonable notice to the Company, the Company shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company and any Agent, and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency and/or the Independent Accountant, as shall be necessary (y) to indicate in reasonable detail those costs for which the Company or any Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Company under this Section 4.6.

#### Section 4.7 Recapture of Agency Benefits.

(a) It is understood and agreed by the parties hereto that the Agency is entering into the Lease Agreement in order to provide financial assistance to the Company for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees that if there shall occur a Recapture Event after August 1, 2017 but on or before December 31, 2018 the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, the Recaptured Benefits.

(b) The term "Recaptured Benefits" 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 Lease Agreement including, but not limited to, the amount equal to 100% of:

(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 Company (the "**Mortgage Recording Tax Exemption**"); and

(ii) Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent pursuant to the Lease Agreement any Sales Tax Agent Authorization Letter issued in connection with the Facility (the "**Company Sales Tax Savings**").

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

(i) the Company, its respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Facility, is not entitled to the sales and use tax exemption benefits;

- (ii) the sales and use tax exemption benefits are in excess of amounts authorized to be taken by the Company, its respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Facility;
- (iii) the sales and use tax exemption benefits are for property services not authorized by the Agency as part of the Facility;
- (iv) the sales and use tax exemption benefits are taken in cases where the Company, its respective agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Facility fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Facility in the manner approved by the Agency in connection with the Facility;
- (v) a termination of the Lease Agreement at any time prior to the expiration of the sales tax exemption by the Company without authorization by the Agency;
- (vi) the Facility shall cease to be a "project" within the meaning of the Act, as in effect on the Closing Date, through the act or omission of the Company; or
- (vii) the sale (other than pursuant to an assignment of this Lease Agreement as approved by the Agency pursuant to Section 9.3 herein) or closure of the Facility and/or departure of the Company from Dutchess County, except as due to casualty, condemnation or force majeure as provided below at any time prior to the expiration of the sales tax exemption and except a sale of the Facility to a business or entity that operates in compliance with the Lease Agreement.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if it shall have arisen as a direct, immediate result of (i) a taking or condemnation by governmental authority of all or part of the Facility, or (ii) the inability of the Company after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a "Loss Event") to rebuild, repair, restore or replace the Facility to substantially its condition prior to such Loss Event, which inability shall have arisen in good faith on the part of the Company or any of their respective affiliates so long as the Company or any of its affiliates has diligently and in good faith using commercially reasonable efforts and after prudent decision making pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof, or (iii) the period of any rebuilding, restoration or replacement after the occurrence of a Loss Event.

Notwithstanding the foregoing, the Board of Directors of the Agency may waive the provisions of this Section in its sole discretion based upon its review of the circumstances of the Company.