CORTLAND COUNTY INDUSTRIAL DEVELOPMENT AGENCY
FINANCIAL ASSISTANCE RECAPTURE POLICY
DECEMBER 2019

Pursuant to and in accordance with Sections 874(10) and (11) of Article 18-A of the General Municipal Law (the "Act"), the Cortland County Industrial Development Agency (the "Agency") hereby establishes a Financial Assistance Recapture Policy. Financial Assistance is defined under §854(14) of the Act as the proceeds of bonds issued by the Agency, straight-leases, or exemptions from taxation claimed by a project occupant as a result of the Agency taking title, possession or control (by lease, license or otherwise) to the property or equipment of such project occupant or of such project occupant acting as an agent of the Agency.

1. **Sales and Use Tax Benefits - Mandatory Recapture.** In accordance with Section 875(3) of the Act, if the Agency grants any sales and use tax exemptions to a Project and it is determined that: (i) the Project is not entitled to the sales and use tax exemptions; (ii) the sales and use tax exemptions are excess of the amounts authorized by the Agency; (iii) the sales and use tax exemptions are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemptions are taken in cases where the Company 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 Project, then the Agency shall recapture the sales and use taxes which would have been paid had the Agency not been involved in the Project. The Project operator shall (i) cooperate with the Agency in its efforts to recover or recapture any sales and use taxes, and (ii) promptly pay over any such amounts to the Agency that the Agency demands in connection therewith. The Agency shall cooperate with the New York State Tax Commissioner in connection with any efforts by the State of New York to assess and determine New York State and local sales and use taxes due from the Project, together with any relevant penalties and interest due on such amounts. Upon receipt, the Agency shall remit any recaptured sales and use taxes to the New York State Tax Commissioner.

2. **Increase to Payments in Lieu of Real Property Tax.** When Agency approval of a Project is predicated upon achievement by the Project of certain minimum goals (such as creating and maintaining certain minimum employment levels), the Agency's Uniform Tax Exemption Policy provides for the reduction or elimination of the real property tax exemption to the Project, on a sliding scale, if the Project fails to fulfill such minimum goals. The terms and conditions by which the real property tax exemption shall be reduced or eliminated are incorporated into the Agency's Payment in Lieu of Tax Agreements and have proven to be extremely effective in both holding Projects accountable for their success and protecting the interests of tax payers. The Agency hereby reaffirms those terms and conditions as set forth in the Uniform Tax Exemption Policy and incorporates them into this Policy.

3. **Recapture of Financial Assistance**

Recapture of Financial Assistance: The Agency reserves the right to undertake and enforce the recapture of Financial Assistance previously conferred to a Project where it is determined that:

i. Financial Assistance was obtained as a result of a knowing, misstatement of a material fact where such misstatement occurred in the Application for Financial Assistance, in

any written submission, or in any on the record verbal statement made to the Agency or Agency staff.

ii. When Agency approval of a Project is predicated upon achievement by the Project of certain minimum goals (such as creating and maintaining certain minimum employment levels), the Project's failure to attain 20% or more of such minimum goals.

iii. If the Project occupant shifts business activity to a facility outside of Cortland County and, as a result, fails to achieve the economic benefits originally projected for the Project.

If a determination is made to recapture that portion of the Financial Assistance constituting New York State sales and use tax and/or mortgage recording tax, the amount the Agency shall recapture shall be equal to 100% of the New York State sales and use tax and/or mortgage recording tax which would have been due on the Project without the Agency's involvement.

If a determination is made to recapture that portion of the Financial Assistance constituting real property tax, the maximum amount that may be recaptured is equal to the real property taxes which would have been due on the Project without the Agency's involvement less any payments in lieu of real property tax actually made.

4. **Due Process for Recapture of Financial Assistance**

If the Agency determines that recapturing Financial Assistance in accordance with this policy is warranted for a Project, then the Agency shall provide written notice to the Project applicant and/or occupant and will afford the Project applicant and/or occupant a hearing on the issue. The Agency shall consider the following criteria when determining whether or not to exercise its right to recapture Financial Assistance:

i. Whether the Project applicant and/or occupant has proceeded in good faith in accordance with Agency's Project Agreements.

ii. Whether the Project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the Project applicant and/or occupant.

iii. Whether enforcement by the Agency of recapture rights would create a more adverse situation for the Project or the community, such as the Project applicant or occupant going out of business or declaring bankruptcy, which would not occur if recapture was not exercised.

iv. Whether there is an adverse or negative effect on the community by the Agency's exercise of its rights to recapture.

v. Such other pertinent criteria as the Agency shall recognize as a relevant factor in connection with any decision to recapture Financial Assistance.

The Agency encourages the continuation of Projects which have performed or intended to perform in good faith. In many instances, the mere discontinuance of Financial Assistance by reason of default or failure to adequately perform as required under the Agency's Project Agreements is enough of a penalty so that additional recapture provisions would be excessive. On the other hand, a Project applicant or occupant that has made false representations to the Agency, has elected to relocate outside of Cortland County or has improperly transferred assets or jobs outside of Cortland County should be required to repay the Financial Assistance provided by the Agency.

Whether or not the Agency shall proceed to exercise its right to recapture Financial Assistance shall be on a case by case basis based upon the above criteria. Nothing set forth herein shall in any manner affect the continuing rights of the Agency to take any and all action it deems necessary in connection with any default with respect to any of the Agency's Project Agreements.