

TOWN OF CLIFTON PARK INDUSTRIAL DEVELOPMENT AGENCY REDUCTION OF BENEFITS
AND RECAPTURE POLICY

1. Definitions:

“Affected Taxing Jurisdiction” shall have the meaning ascribed to such term in Section 854(16) of Article 18-A of the New York State General Municipal Law..

“AER” is the Applicant’s Annual Status Report.

“Application” means the application submitted by the Applicant to the Agency with respect to the Project, a copy of which is attached as Schedule A, in which the Applicant (A) described the Project, (B) requested that the Agency grant certain Financial Assistance with respect to the Project, and (C) indicated the Public Benefits that would result from approval of the Project by the Agency.

“Benefit” shall mean the amount the Applicant saved by making payments in lieu of real property taxes pursuant to the Payment in Lieu of Tax Agreement in a particular year. For example, if the Applicant’s payment is equal to 75% of normal real property taxes, then the Applicant’s benefit for that year would be an amount equal to 25% of normal real property taxes.

“Cure Period” shall mean the period ending June 30th of the year following the Shortfall.

“Employment Obligation” shall mean the number of FTEs specified in Section 3.02 (D) hereof for the applicable year.

“Employment Obligation Term” shall mean the period during which the Applicant is receiving a Benefit.

“Equipment” shall have the meaning set forth in the Lease Agreement.

“Facility” shall have the meaning set forth in the Lease Agreement.

“Financial Assistance” means exemptions from certain sales and use taxes, real property taxes, and mortgage recording taxes.

“FTE” shall mean a full time employee that has a minimum of thirty-five (35) scheduled hours per week, or such other number of hours per week (but not less than twenty-five (25) hours) as established by existing written policies of the Applicant, and whose workplace location is the Project Facility.

“Lease Agreement” means the lease agreement entered into by the Agency, as lessor, and the Applicant, as Lessee.

“Reduction Event” either (i) a closure of the Facility, (ii) a significant change in the use of the Facility and/or the business operations of the Applicant or (iii) significant employment reductions at the Facility which are (a) not representative of (i) such Applicant’s normal business cycles and/or (ii) local and natural economic conditions and (b) inconsistent with employment projections set forth in the Application.

“Recapture Payment” means for the applicable year, an amount equal to the Per Employee Amount multiplied by the difference between the Employment Obligation and the number of FTEs shown on the AER.

“Shortfall” shall mean the difference between the Employment Obligation and the actual number of FTEs per the AER for the applicable year.

2. REDUCTION OF REAL PROPERTY TAX ABATEMENT. Upon the occurrence of a Reduction Event at any time during the term of the Lease Agreement, the real property tax abatements described in the PILOT Agreement are subject to reduction as set forth below at the discretion of the Agency:

<u>PILOT YEAR</u>	<u>PERCENTAGE REDUCTION</u>
Year(s) 1 – 5	50% to 100%
Year 6	50%
Year 7	40%
Year 8	30%
Year 9	20%
Year 10	10%

3. RECAPTURE OF FINANCIAL ASSISTANCE. (A) General. The failure of the Applicant to satisfy the Employment Obligation in a particular year shall subject the Applicant to the obligation to make a Recapture Payment to the Agency, provided that the Applicant has not satisfied the Employment Obligation during the Cure Period. The Applicant shall be deemed to have failed to satisfy its Employment Obligation as of the beginning of the year subsequent to the year for which the Applicant files an AER if the total number of FTEs shown on such report for the applicable year is less than 80% of the applicable Employment Obligation for said year (Recapture Payments are only required if the Shortfall is more than 20% of the Employment Obligation).

(B) Shortfall Recapture Payments.

(i) If the Applicant shall be subject to a Recapture Payment, as contemplated in subsection (1) (A) above, then the Applicant shall pay to the Agency an amount equal to the Per Employee Amount multiplied by the difference between the Employment Obligation and the number of FTEs shown on the AER, in each instance for the applicable year. Any Recapture Payment shall be due and owing within thirty (30) days of the receipt by the Applicant of an invoice therefore from the Agency.

(ii) Notwithstanding any of the foregoing, a Shortfall shall not apply where the Shortfall is a result of a major casualty to or condemnation of the Project Facility. In the event of such major casualty or condemnation, the Applicant shall have no obligation to pay the Shortfall Payment.

(iii) The Agency shall have the right to reduce any payments required, under this policy, in extraordinary circumstances, in its sole discretion. After the expiration of the Employment Obligation Term, the Applicant shall have no further Obligation with respect to the Employment Obligation and shall not be liable for any of the Recapture Payments described above.

(C) Redistribution of Project Financial Assistance to be Recaptured. Upon the receipt by the Agency of any amount of any Recapture Payments pursuant to this Section 4.04, the Agency shall redistribute such amount within thirty (30) days of such receipt to the Affected Taxing Jurisdictions in proportion to the amounts which said Affected Taxing Jurisdictions would have received had not the Project Facility been acquired and owned by the Agency.

(D) Survival of Obligations. The Applicant acknowledges that the obligations of the Applicant in this Section 4.04 shall survive the conveyance of the Project Facility to the Applicant and the termination of the Lease Agreement.

(E) Agency Review of Recapture Determination. If the Agency preliminarily determines that a Recapture Payment is due and owing, it shall give written notice of such determination to the Applicant. The Applicant shall have thirty (30) days from the date the written notice is deemed given to submit a written response to the Agency's determination and to request a written and/or oral presentation to the Agency as to why the Applicant should not be obligated to remit the proposed Recapture Payment to the Agency. The Applicant may make its presentation at a meeting of the Agency. The Agency shall then vote on a resolution confirming whether a Recapture Payment is due and owing.