

EXHIBIT D

[Insert Financial Assistance Suspension Discontinuance, Return and Recapture Policy]

**FINANCIAL ASSISTANCE SUSPENSION, DISCONTINUANCE,
RETURN AND RECAPTURE POLICY
OF THE TOWN OF BABYLON
INDUSTRIAL DEVELOPMENT AGENCY
EFFECTIVE AS OF JUNE 15, 2016 RELATING TO
ALL PROJECTS APPROVED OF ON OR AFTER JUNE 15, 2016**

Pursuant to Sections 874(10) and (11) of Title 1 of Article 18-A of the New York State General Municipal Law (the "Act"), the Town of Babylon Industrial Development Agency (the "Agency") is required to adopt policies (i) for the suspension or discontinuance of financial assistance provided by the Agency to a project or for the modification of any payment in lieu of tax agreement to require increased payments under circumstances as described herein and (ii) for the return of all or part of the financial assistance provided by the Agency to a project under the circumstances as described herein.

I. Termination or Suspension of Financial Assistance

The Agency, in its sole discretion and on a case-by-case basis, may determine (but shall not be required to do so) to terminate or suspend the Financial Assistance (defined below) provided to a project upon the occurrence of an Event of Default, as such term is defined and described in the Lease Agreement and/or Lease and Project Agreement entered into by the Agency and a project applicant (the "Applicant") or any other document entered into by such parties in connection with a project (the "Project Documents"). Such Events of Default may include, but shall not be limited to, the following:

- 1) failure by the Applicant to pay or cause to be paid amounts specified to be paid pursuant to the Project Documents on the dates specified therein;
- 2) failure of the Applicant to observe and perform any material covenant or agreement on its part to be performed in the Project Documents;
- 3) the occurrence of a bankruptcy event with respect to the Applicant or obligor under the Project Documents;
- 4) a material misrepresentation contained in the application for financial assistance, any Project Documents or any other materials delivered pursuant to the Project Documents.
- 5) the commencement of a proceeding to Foreclose the lien on any mortgage or lien on the Facility Realty or Facility (as defined in the Project Documents); and
- 6) failure of the Applicant, affiliates of the Applicant or users of the Facility as the case may be to create and/or maintain levels of employment at or above specified thresholds.

The decision of whether or not to terminate or suspend all or a part of the Financial Assistance and the timing of such termination or suspension of Financial Assistance shall be determined by the Agency (in consultation with counsel to the Agency), in its sole discretion, on

a case-by-case basis, and shall be subject to the notice and cure periods provided for in the Project Documents.

For the purposes of this policy, the term “**Financial Assistance**” 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 Project Agreements including, but not limited to:

- (i) any exemption from any applicable mortgage recording tax with respect to the Facility on mortgages on the Facility entered into by the Agency at the request of the Applicant;
- (ii) sales tax exemption savings accrued or realized by or for the benefit of the Applicant, including and savings realized by any agent of the Applicant pursuant to the Project Agreements in connection with the Facility; and
- (iii) real property tax abatements granted with respect to the Facility or Facility Realty under the Project Agreements.

II. Recapture of Financial Assistance

The Agency, in its sole discretion and on a case-by-case basis, may determine (but shall not be required to do so) to recapture all or part of the Financial Assistance provided to a project upon the occurrence of a Recapture Event, as such term is defined and described in the Project Documents. Such Recapture Events may include, but shall not be limited to the following:

- 1) sale or closure of the Facility (as such term is defined in the Project Documents);
- 2) a material violation of the terms and conditions of the Project Agreements;
- 3) a material misrepresentation contained in the application for Financial Assistance, any Project Agreements or any other materials delivered pursuant to the Project Agreements;
- 4) the Applicant or Obligor under the Project Documents shall have liquidated its operations and/or assets at the Facility (absent a showing of extreme hardship);
- 5) the Applicant or Obligor under the Project Documents shall have ceased all or substantially all of its operations at the Facility (whether by relocation to another facility or otherwise, or whether to another facility either within or outside of the Town) through no force majeure event;
- 6) the Applicant or Obligor under the Project Documents shall have transferred all or substantially all of its employees within the Town to a location outside of the Town through no force majeure event;

- 7) the Applicant or Obligor under the Project Documents shall have subleased all or any portion of the Facility in violation of the limitations imposed by the Project Documents, without the prior written consent of the Agency;
- 8) the Applicant or Obligor under the Project Documents shall have sold, leased, transferred or otherwise disposed of all or substantially all of its interest in the Facility without the prior written consent of the Agency; and
- 9) the Applicant, affiliates of the Applicant or obligors under the Project Documents shall have failed to maintain levels of employment at or above specific thresholds as described in the Project Documents absent a showing of hardship.

Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a direct, immediate result of (i) a taking or condemnation by governmental authority of all or substantially all of the Facility, or (ii) the inability at law of the Applicant or Obligor to rebuild, repair, restore or replace the Facility after the occurrence of a loss event to substantially its condition prior to such loss event, which inability shall have arisen in good faith through no fault on the part of the Applicant or Obligor.

The timing of the recapture of the Financial Assistance shall be determined by the Agency, in its sole discretion, on a case-by-case basis, and is subject to the notice and cure periods provided for in the Project Documents. The percentage of such Financial Assistance to be recaptured shall be determined by the provisions of the Project Documents.

All recaptured amounts of Financial Assistance shall be redistributed to the appropriate affected taxing jurisdiction, unless agreed to otherwise by any local taxing jurisdiction.

For the avoidance of doubt, the Agency may determine (but shall not be required) to terminate, suspend and/or recapture Financial Assistance in its sole discretion. Such actions may be exercised simultaneously or separately and are not mutually exclusive of one another.

III. Modification of Payment In Lieu of Tax Agreement

In the case of any Event of Default or Recapture Event, in lieu of terminating, suspending or recapturing the Financial Assistance, the Agency may, in its sole discretion, adjust the payments in lieu of taxes due under the Project Documents, so that the payments in lieu of taxes payable under the Project Documents are adjusted upward retroactively and/or prospectively for each tax year until such time as the Applicant has complied with the provisions of the Project Documents. The amount of such adjustments shall be determined by the provisions of the Project Documents.