

QOSINA CORP.

to

TOWN OF ISLIP INDUSTRIAL DEVELOPMENT AGENCY
(TOWN OF ISLIP, NEW YORK)

RECAPTURE AGREEMENT

Dated as of August 1, 2015

Town of Islip Industrial Development Agency
(Qosina Corp. 2015 Facility)

Premises Address: 2002 Orville Drive North, Ronkonkoma, New York*

Tax Map Number: 0500-106.00-01.00-07.005

* This Recapture Agreement applies to the benefits granted covering 46.18% of the occupied space of the above referenced property, to be more particularly described by an item number assigned by the Town of Islip.

RECAPTURE AGREEMENT

THIS RECAPTURE AGREEMENT, made and entered into as of August 1, 2015 (this "**Recapture Agreement**"), is from QOSINA CORP., a business corporation organized and existing under the laws of the State of New York, having an office at 150-Q Executive Drive, Edgewood, New York 11717 (the "**Company**"), to the TOWN OF ISLIP INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 40 Nassau Avenue, Islip, New York 11751 (the "**Agency**").

WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York:

WHEREAS, the aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State of New York (the "**State**");

WHEREAS, the aforesaid act further 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, reconstruct, renovate, refurbish, equip, lease, sell and dispose of land and any building or other improvement, and all real and personal property, including but not limited to, machinery and equipment deemed necessary in connection therewith, whether now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial 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:

WHEREAS, pursuant to and in accordance with the provisions of the aforesaid act, as amended, together with Chapter 47 of the Laws of 1974 of the State, as amended (collectively, the "**Act**"), the Agency was created and is empowered under the Act to undertake the providing, financing and leasing of the Facility defined below:

WHEREAS, the Agency has agreed to assist in the acquisition of a leasehold interest of an approximately 95,141 square foot portion of an approximately 206,005 square foot building (the "**Demised Premises**") located on an approximately 15.84 acre parcel of land located at 2002 Orville Drive North, Ronkonkoma, New York 11779 (the "**Land**"), the renovation of the Demised Premises (the "**Improvements**") and the acquisition and installation therein of certain equipment and personal property (the "**Equipment**"; and, together with the Land, the Demised Premises and the Improvements, the "**Facility**"), which Facility is to be leased and sub-subleased by the Agency to the Company and used by the Company as office and warehouse space in its business as a distributor of medical components and cosmetic disposables; and

WHEREAS, the Land, the Demises Premises and the Improvements (the "**Ground Leased Facility**") is currently leased by REP A-2027 LLC, a Delaware limited liability company (the "**Owner**"), to the Company pursuant to an Agreement of Lease, dated as of

May 8, 2015 (the "**Ground Lease**"). by and between the Owner and the Company; and

WHEREAS, the Company has agreed to sublease the Ground Leased Facility to the Agency pursuant to and in accordance with a certain Company Lease Agreement, dated as of August 1, 2015 (the "**Company Lease**"), by and between the Company and the Agency;

WHEREAS, the Company has agreed to transfer to the Agency title to the Equipment pursuant to a Bill of Sale, dated the Closing Date (the "**Bill of Sale**"); and

WHEREAS, the Agency has agreed to sub-sublease and lease the Facility to the Company pursuant to a certain Lease Agreement, dated as of August 1, 2015 (the "**Lease Agreement**"), by and between the Agency and the Company;

WHEREAS, in order to define the Company's obligations regarding payments-in-lieu-of taxes with respect to the Facility, the Agency and the Company have agreed to enter into a Payment-in-Lieu-of-Tax Agreement, dated as of August 1, 2015 (the "**PILOT Agreement**"), by and between the Agency and the Company;

WHEREAS, the Agency has conferred on the Company in connection with the acquisition, renovation, equipping, financing and leasing of the Facility certain benefits, tax exemptions and other financial assistance more particularly described in Section 1(c) hereof, consisting of, among other things, sales and use tax exemptions on the acquisition, renovation and equipping of the Facility and real property tax abatements (pursuant to the PILOT Agreement), and, if requested, mortgage recording tax exemptions; and

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

AGREEMENT

1. Recapture of Agency Benefits.

(a) It is understood and agreed by the parties hereto that the Agency is entering into the Lease Agreement and the PILOT 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 as follows:

- (i) If there shall occur a Recapture Event after the Closing Date, 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, one hundred percent (100%) of the Recaptured Benefits (as defined below):

- (ii) If there shall occur a Recapture Event on or after January 1, 2019 but on or before December 31, 2020, 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-five percent (75%) of the Recaptured Benefits;
- (iii) If there shall occur a Recapture Event on or after January 1, 2021 but 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, fifty percent (50%) of the Recaptured Benefits;
- (iv) If there shall occur a Recapture Event on or after January 1, 2023 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, twenty-five percent (25%) of the Recaptured Benefits; and
- (v) If there shall occur a Recapture Event on or after January 1, 2025, 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 and 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 and savings realized by any Agent pursuant to the Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility (the "**Sales Tax Savings**"); and
- (iii) real property tax abatements granted under the PILOT Agreement (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) A default by the Company under the PILOT Agreement (other than as described in clauses (d) or (e) below) which remains uncured beyond any applicable notice and/or grace period, if any, provided thereunder; or
 - (2) The occurrence and continuation of an Event of Default under the Lease Agreement (other than as described in clauses (d) or (e) below) which remains uncured beyond any applicable notice and/or grace period, if any, provided thereunder; or
 - (3) 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
 - (4) The sale of the Facility (excluding any sale provided for in Section 9.3 of the Lease Agreement) or closure of the Facility and/or departure of the Company from the Town of Islip, except as due to casualty, condemnation or force majeure as provided below; or
 - (5) Failure of the Company to create or cause to be maintained the number of full time equivalent ("FTE") jobs at the Facility as defined in Section 8.13 of the Lease Agreement, which failure is not reflective of the business conditions of the Company or the subtenants 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; or
 - (6) Any significant deviations from the information and data provided to the Agency in the Company's application for assistance which would constitute a significant diminution of the Company's activities in, or commitment to, the Town of Islip, Suffolk County, New York; or
 - (7) Failure to comply with the Agency's Construction Wage Policy attached to the Lease Agreement; or
 - (8) The Company receives Sales Tax Savings in connection with the acquisition, renovation and equipping of the Facility in excess of the Maximum Sales Tax Savings Amount; provided, however, that the foregoing shall constitute a Recapture Event with respect to the Sales Tax Savings in excess of the Maximum Company Sales Tax Savings Amount only. It is further provided that failure to repay the Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recapture Benefits.
- (d) Provided, however, except as provided in clause 1(c)(5) 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 8.13 of the Lease Agreement in any Tax Year but the Company has created or caused to be maintained at least 90% of such required number of FTEs for such Tax Year, then in lieu of recovering the Recaptured Benefits provided above, the Agency may, in its sole discretion, 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.

(e) Furthermore, notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a result of (i) a "force majeure" event (as more particularly defined in the Lease Agreement), (ii) a taking or condemnation by governmental authority of all or part of the Facility, or (iii) the inability or failure 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 or failure shall have arisen in good faith on the part of the Company or any of its affiliates so long as the Company or any of its affiliates have diligently and in good faith using commercially reasonable efforts pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof.

(f) The Company covenants and agrees to furnish the Agency with written notification (i) within sixty (60) days of the end of each Tax Year of 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 of the occurrence of a Recapture Event hereunder, which notification shall set forth the terms of such Recapture Event.

(g) In the event any payment owing by the Company under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to one percent (1%) plus the Prime Rate, but in no event at a 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).

(h) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred in connection 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 the PILOT Agreement and the Lease Agreement have expired or been terminated or the Lease Agreement has been assigned with the consent of the Agency, and such obligations shall not be affected, modified or impaired by any state of facts or the happening from time to time of any event, whether or not with notice to or the consent of the Company.

(b) It is hereby expressly agreed that the Company's obligations under this Recapture Agreement are not limited in any manner, and the Company shall be liable for the payment of all recapture amounts with respect to the entire Facility.

(c) Reserved.

(d) 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 subleasehold interest in the Facility to the Company pursuant to the Lease Agreement until all payments to the Agency and the Taxing Authorities 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. Reserved.

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, 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:

To the Agency:

Town of Islip Industrial Development Agency
40 Nassau Avenue
Islip, New York 11751
Attention: Executive Director

With a copy to:

Islip Town Attorney's Office
Town Hall
655 Main Street
Islip, New York 11751
Attention: John R. Dicioccio, Esq.

The Company:

Qosina Corp.
2002-Q Orville Drive North
Ronkonkoma, New York 11779
Attention: Stuart Herskovitz

With a copy to:

Germano & Cahill, P.C.
4250 Veterans Memorial Highway, Suite 275
Holbrook, New York 11741
Attention: Guy Germano, Esq.

Notice by mail shall be effective when delivered but if not yet delivered shall be deemed effective at 12:00 p.m. on the third Business Day after mailing with respect to certified mail and one Business Day after mailing with respect to overnight mail.

10. Entire Understanding; Counterparts. This Recapture Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11. Amendments. No amendment, change, modification, alteration or termination of this Recapture Agreement shall be made except in writing upon the written consent of the Company and the Agency.

12. Severability. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Recapture Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Recapture Agreement or any part thereof.

13. Governing Law. This Recapture Agreement shall be governed by, and construed in accordance with, the laws of the State, without regard or reference to its conflict of laws principles.

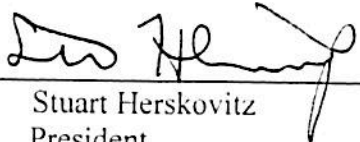
14. Section Headings. The headings of the several Sections in this Recapture Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Recapture Agreement.

15. Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of the Recapture Agreement or any matters whatsoever arising out of or in any way connected with the Recapture Agreement.

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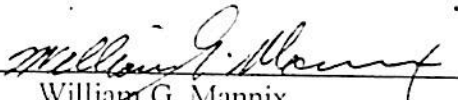
IN WITNESS WHEREOF, the Company has caused this Recapture Agreement to be duly executed and delivered as of the day and year first above written.

QOSINA CORP.

By: 
Name: Stuart Herskovitz
Title: President

ACCEPTED:

**TOWN OF ISLIP INDUSTRIAL
DEVELOPMENT AGENCY**

By: 
Name: William G. Mannix
Title: Executive Director

Recapture Agreement
Signature Page 1 of 2

STATE OF NEW YORK)
 : SS:
COUNTY OF NASSAU)

On the 11th day of August in the year 2015 before me, the undersigned, personally appeared **Stuart Herskovitz**, 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 within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

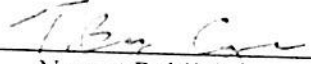


Notary Public

MEGHAN HEALY
Notary Public - State of New York
No. 02HE6115030
Qualified in Suffolk County
Commission Expires August 30, 2016

STATE OF NEW YORK)
 : SS:
COUNTY OF NASSAU)

On the 11th day of August in the year 2015, before me, the undersigned, personally appeared **William G. Mannix**, 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 within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.



Notary Public

T. BARRY CARRIGAN
Notary Public, State of New York
Registration # 020A6240690
Qualified in Monroe County
Certificate Filed in Monroe County
Commission Expires: 6/20/2017

Recapture Agreement
Signature page 2 of 2

EXHIBIT A
LAND DESCRIPTION

SCHEDULE A

All that certain plot, piece or parcel of land, situate, lying and being at Bohemia, in the Town of Islip County of Suffolk and State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the Northeasterly side of Veterans Memorial Highway (S.R.454) at the extreme Southwesterly end of the curve which connects the Westerly side of Orville Drive North and the Northeasterly side of Veterans Memorial Highway (S.R. 454);

RUNNING THENCE along said Northeasterly side of Veterans Memorial Highway (S.R.454) the following two (2) courses and distances:

1. Northwesterly along an arc of a curve bearing to the right having a radius of 6429.77 feet, a distance of 77.50 feet (per deed), 71.50 feet (per survey);
2. North 63 degrees 46 minutes 44 seconds West, 1238.32 feet to land now or formerly of Town of Islip Resource Recovery Agency;

THENCE North 02 degrees 50 minutes 31 seconds East along said last mentioned land, 318.68 feet (per deed), 318.63 feet (per survey);

THENCE South 86 degrees 42 minutes 00 seconds East still along said land, 840.00 feet to land of Reckson Operating Partnership, L.P.;

THENCE along land of Reckson Operating Partnership, L.P., the following three (3) courses and distances:

1. South 84 degrees 02 minutes 50 seconds East, 290.00 feet;
2. South 05 degrees 57 minutes 10 seconds west, 113.00 feet;
3. South 44 degrees 44 minutes 55 seconds East, 79.54 feet to the Westerly side of Orville Drive North;

THENCE Southerly along the Westerly side of Orville Drive North, the following seven (7) courses and distances:

1. along an arc of a curve bearing to the left having a radius of 60.00 feet, a distance of 29.28 feet (per deed), 29.05 feet (per survey);
2. along an arc of a curve bearing to the right having a radius of 25.00 feet, a distance of 21.68 feet;
3. South 05 degrees 57 minutes 10 seconds West, 116.96 feet;

4. along an arc of a curve bearing to the left having a radius of 33.00 feet, a distance of 87.17 feet;
5. South 09 degrees 10 minutes 58 seconds East, 227.53 feet;
6. along an arc of a curve bearing to the right having a radius of 265.00 feet; a distance of 157.58 feet;
7. South 24 degrees 53 minutes 12 seconds West, 11.90 feet to the Northerly end of the curve first mentioned above.

THENCE Southwesterly along said curve bearing to the right having a radius of 25.00 feet, a distance of 39.54 feet to the Northeasterly side of Veterans Memorial Highway (S.R.454) and the point or place of BEGINNING

For Information Only: District: 0500 Section: 106.00 Block: 01.00 Lot: 007.005