



# IDA Annual Compliance Report State Sales Tax Recapture

For IDA fiscal year ending 12 31 19  
(mmdyy)

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

### IDA information

Name of IDA Herkimer County IDA		
Street address 420 E. German Street, Suite 101A, Box 1		Telephone number ( 315 ) 866-3000
City Herkimer	State NY	ZIP code 13350

### 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 John J. Piseck, Jr.	Print title of person signing on behalf of the IDA Executive Director
Signature 	Date 03-16-2020
	Telephone number ( 315 ) 866-3000

### 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.

## Instructions

### Filing requirements

Every IDA must file this compliance report every year. The report must include:

- the terms and conditions for the recapture of state sales tax exemption benefits (as described in General Municipal Law (GML) section 875(3)) within all of the IDA's resolutions and project documents. This applies to:
  - projects established and agents or project operators appointed, and any financial assistance or agreement for payments in lieu of taxes provided, on or after March 28, 2013; and
  - any amendment or revision for additional funds or benefits made on or after March 28, 2013, to projects established, agents or project operators appointed, financial assistance provided, or payments in lieu of taxes provided, prior to March 28, 2013.
- information about efforts the IDA has made to recover, recapture, receive, or obtain any state sales tax exemption benefits and payments in lieu of state sales taxes from an agent/project operator, or other person or entity.

Every IDA must file Form ST-62 within 90 days of the end of each fiscal year.

The term *state sales tax* as used in this form includes both state sales tax and the state use tax.

For more information, see TSB-M-14(1.1)S, *Sales Tax Reporting and Recordkeeping Requirements for Industrial Development Agencies and Authorities*.

Any IDA that fails to file or substantially complete this report may lose its authority to provide state sales tax exemption benefits.

### Terms and conditions for the recapture of state sales tax exemption benefits

**Line 2** – If the IDA:

- **used the same** standard terms and conditions for the recapture of state sales tax exemption benefits in the project documents for all projects covered by this report, attach a copy of the terms and conditions used. You are **not** required to attach the entire document. Attach only the sections describing the state sales tax recapture requirements described in GML section 875(3).
- **used different** terms and conditions for the recapture of state sales tax exemption benefits in the project documents for the projects covered by this report, attach a copy of the terms and conditions used and identify the project(s) to which they relate. Be sure to include the project name and address, and the legal name and EIN of the agent or project operator for each project identified.
- provided state sales tax exemption benefits **but did not include** terms and conditions for the recapture of those benefits, attach a list of these projects. Include the project name and address, the legal name and EIN of the agent or project operator, and the reason why terms and conditions regarding recapture were not included.

### Activities and efforts to recapture state sales tax exemption benefits

The GML requires that each IDA recapture state sales tax exemption benefits that were claimed by a project operator or agent, or other person or entity, whenever the benefits were:

- not entitled or authorized to be taken,
- in excess of the amounts authorized,
- for unauthorized property or services, or
- for property or services not used according to the terms of the agreement with the IDA.

See Form ST-65, *IDA Report of Recaptured Sales and Use Tax Benefits*, for more information.

IDAs must remit recaptured state sales tax benefit amounts to the Tax Department within 30 calendar days, using Form ST-65.

**Line 4:** If the IDA made efforts to recapture sales tax exemption benefits during the fiscal year covered by this report and **has not filed** Form ST-65, attach an explanation.

The attachment must include:

- name and address of the project and project number;
- legal name, EIN, and address of the agent/project operator, or other person or entity;
- project beginning and end dates;
- the basis for recapture, as described above;
- date of recapture efforts;
- amounts identified as required to be recaptured; and
- amount recaptured, if different.

When identifying recapture amounts, be sure to break down the total dollar amount into the categories below:

- state tax,
- local tax,
- MCTD tax (if applicable),
- penalties, and
- interest.

If the amount recaptured was not paid in full, also include copies of correspondence exchanged between the IDA and the agent/project operator, or other entity or person regarding the recapture efforts.

### Need help?

Visit our website at [www.tax.ny.gov](http://www.tax.ny.gov).

- (d) The operation of the Facility will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (d).
  - (e) There is no litigation pending or, to the knowledge of the Company, threatened, in any court, either state or federal, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the ability of the Company to fulfill its obligations under this Agreement.
2. Project and Investment Obligations. The financial assistance granted by the Agency is conditioned upon the Applicant constructing its Project as represented in its Application within two years of the date of this Agreement (the "Project Obligation"). If, after two years or upon completion of the Project, the Project is not completed in accordance with the Project Obligation, it may subject the Applicant to recapture of Financial Assistance. After acceptance by the Agency of the Company's Final Project Report (more particularly described below) confirming compliance with the Project Obligation, the Company shall have no further obligation with respect to the Project Obligation and shall not be liable for any of the payments described below. The Company further acknowledges that the Financial Assistance was granted based upon the representation that Higby Gold, Inc. would create 40 full time jobs over 3 years (the "Employment Obligation"). The Company shall file with the Agency, on or before January 31 of each calendar year, an annual employment report setting forth the number of full time jobs created and maintained during the preceding year.
  3. Final Project Review. The Company will be required to submit to the Agency a certificate attesting to completion of the Project Obligation, together with copies of all Certificates of Occupancy (the "Final Project Report") within ten days of receiving a Certificate of Occupancy for all units, or at least ten days before the end of the Lease Term, whichever is soonest. The Agency reserves the right to inspect the Facility, with reasonable notice to the Company. Upon receipt of the Final Project Report, the Agency will evaluate the Project again using the same criteria considered at the time of the initial project application.
  4. Remedies. If the Employment Obligation is not met on or before the second (2<sup>nd</sup>) anniversary of the date of this Agreement, or maintained in any year thereafter, the Agency may notify the Company in writing of its intention to recapture Financial Assistance and the Company will have thirty (30) days to respond to the letter citing the reason or reasons Higby Gold failed to achieve its Project Obligation, including any request to appear before the Agency. If the Agency then determines that Higby Gold's reasons for failing to achieve the Project Obligation are not acceptable to the Agency, the Agency, at its sole discretion, may:

- a. Take no action if it is determined that the reason or reasons for failing to achieve the Project Obligation are temporary or, in the sole opinion of the Agency, it is in the best interest of economic development of Herkimer County; or
  - b. Reduce the benefits granted to the Company in an amount proportionate to the percentage for the Project Obligation that was achieved (i.e., if the Company meets 75% of its projections, 25% of benefits are recaptured); or
  - c. Such other remedies as permitted under the Agencies Tax Exempt Policy which is incorporated herein by reference.
5. The Agency retains all rights to impose, delay or waive penalties and the right to deviate from these recapture provisions. Notwithstanding this right, the Agency is obligated to recapture New York State sales tax benefits where:
- a) The Project is not entitled to receive those benefits; or
  - b) The exemptions exceed the amount authorized, or are claimed for unauthorized property or services; or
  - c) The Company fails to use property or services in the manner required by the Leaseback Agreement.
  - d) The Company acknowledges the value of the sale's tax exemption currently authorized by the Agency is limited to \$230,835.00.
6. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

To the Agency: Herkimer County Industrial Development Agency  
420 E. German Street – Suite 101A  
Herkimer, New York 13350  
Attention: Vincent J. Bono, Chairman

With a Copy to: Felt Evans, LLP  
4-6 North Park Road  
Clinton, New York 13323  
Attention: Anthony G. Hallak, Esq.

To the Company: Higby Gold, Inc.  
2128 State Route 5  
Utica, New York 13502  
Attn: John Dillon, President

other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.

- (d) The operation of the Facility will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (d).
  - (e) There is no litigation pending or, to the knowledge of the Company, threatened, in any court, either state or federal, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the ability of the Company to fulfill its obligations under this Agreement.
2. Project and Investment Obligations. The financial assistance granted by the Agency is conditioned upon the Applicant reconstructing, renovating and equipping its Project as represented in its Application within two years of the date of this Agreement (the "Project Obligation"). If, after two years or upon completion of the Project, the Project is not completed in accordance with the Project Obligation, it may subject the Applicant to recapture of Financial Assistance. After acceptance by the Agency of the Company's Final Project Report (more particularly described below) confirming compliance with the Project Obligation, the Company shall have no further obligation with respect to the Project Obligation and shall not be liable for any of the payments described below. The Company further acknowledges that the Financial Assistance was granted based upon the representation that Mohawk Hospital Equipment, Inc. would retain 21 full time jobs at the Little Falls Project location and create 6 full time jobs in the first year (the "Employment Obligation"). The Company shall file with the Agency, on or before January 31 of each calendar year, an annual employment report setting forth the number of full time jobs created and maintained during the preceding year.
  3. Final Project Review. The Company will be required to submit to the Agency a certificate attesting to completion of the Project Obligation, together with copies of all Certificates of Occupancy (the "Final Project Report") within ten days of receiving a Certificate of Occupancy for all units, or at least ten days before the end of the Lease Term, whichever is soonest. The Agency reserves the right to inspect the Facility, with reasonable notice to the Company. Upon receipt of the Final Project Report, the Agency will evaluate the Project again using the same criteria considered at the time of the initial project application.
  4. Remedies. If the Employment Obligation is not met on or before the first (1<sup>st</sup>) anniversary of the date of this Agreement, or maintained in any year thereafter, the Agency may notify the Company in writing of its intention to recapture Financial Assistance and the Company will have thirty (30) days to respond to the letter citing the reason or reasons Mohawk Hospital Equipment, Inc. failed to achieve its Project Obligation, including any request to appear before the Agency. If the Agency then determines that Mohawk Hospital Equipment, Inc.'s

reasons for failing to achieve the Project Obligation are not acceptable to the Agency, the Agency, at its sole discretion, may:

- a. Take no action if it is determined that the reason or reasons for failing to achieve the Project Obligation are temporary or, in the sole opinion of the Agency, it is in the best interest of economic development of Herkimer County; or
  - b. Reduce the benefits granted to the Company in an amount proportionate to the percentage for the Project Obligation that was achieved (i.e., if the Company meets 75% of its projections, 25% of benefits are recaptured); or
  - c. Such other remedies as permitted under the Agencies Tax Exempt Policy which is incorporated herein by reference.
5. The Agency retains all rights to impose, delay or waive penalties and the right to deviate from these recapture provisions. Notwithstanding this right, the Agency is obligated to recapture New York State sales tax benefits where:
- a) The Project is not entitled to receive those benefits; or
  - b) The exemptions exceed the amount authorized, or are claimed for unauthorized property or services; or
  - c) The Company fails to use property or services in the manner required by the Leaseback Agreement.
  - d) The Company acknowledges the value of the sale's tax exemption currently authorized by the Agency is limited to \$230,835.00.
6. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

To the Agency: Herkimer County Industrial Development Agency  
420 E. German Street – Suite 101A  
Herkimer, New York 13350  
Attention: Vincent J. Bono, Chairman

With a Copy to: Felt Evans, LLP  
4-6 North Park Road  
Clinton, New York 13323  
Attention: Anthony G. Hallak, Esq.

lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

- (c) The providing of the Facility by the Agency and the leasing thereof by the Agency to the Company will not result in the removal of an industrial or manufacturing plant, facility or other commercial activity of the Company from one area of the State to another area of the State, nor result in the abandonment of one or more commercial or manufacturing plants or facilities of the Company located within the State; and the Agency has found that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.
  - (d) The operation of the Facility will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (d).
  - (e) There is no litigation pending or, to the knowledge of the Company, threatened, in any court, either state or federal, to which the Company is a party, and in which an adverse result would in any material way diminish or adversely impact on the ability of the Company to fulfill its obligations under this Agreement.
2. Project and Investment Obligations. The financial assistance granted by the Agency is conditioned upon the Applicant constructing and equipping its Project as represented in its Application within two years of the date of this Agreement (the "Project Obligation"). If, after two years or upon completion of the Project, the Project is not completed in accordance with the Project Obligation, it may subject the Applicant to recapture of Financial Assistance. After acceptance by the Agency of the Company's Final Project Report (more particularly described below) confirming compliance with the Project Obligation, the Company shall have no further obligation with respect to the Project Obligation and shall not be liable for any of the payments described below. The Company further acknowledges that the Financial Assistance was granted based upon the representation that Little Falls Solar I, LLC would create 45 full time jobs at the Little Falls Project location only during construction of the project (the "Employment Obligation"). The Company shall file with the Agency, on or before January 31 of each calendar year, an annual employment report setting forth the number of full time jobs created and maintained during the preceding year.
3. Final Project Review. The Company will be required to submit to the Agency a certificate attesting to completion of the Project Obligation, together with copies of all Certificates of Occupancy or other analogous certificate, if any, issued by the applicable municipal authority evidencing completion of construction of the Project (the "Final Project Report") within ten days after receiving such certificate, or at least ten days before the end of the

Lease Term, whichever is soonest. The Agency reserves the right to inspect the Facility, with reasonable notice to the Company. Upon receipt of the Final Project Report, the Agency will evaluate the Project again using the same criteria considered at the time of the initial project application.

4. Remedies. If the Company does not fulfill the Project Obligation, the Agency may notify the Company in writing of its intention to recapture Financial Assistance and the Company will have thirty (30) days to respond to the letter citing the reason or reasons the Company failed to achieve its Project Obligation, including any request to appear before the Agency. If the Agency then determines that the Company's reasons for failing to achieve the Project Obligation are not acceptable to the Agency, the Agency, at its sole discretion, may:
  - a. Take no action if it is determined that the reason or reasons for failing to achieve the Project Obligation are temporary or, in the sole opinion of the Agency, it is in the best interest of economic development of Herkimer County; or
  - b. Reduce the benefits granted to the Company in an amount proportionate to the percentage for the Project Obligation that was achieved (i.e., if the Company meets 75% of its projections, 25% of benefits are recaptured); or
  - c. Such other remedies as permitted under the Agencies Tax Exempt Policy which is incorporated herein by reference.
5. The Agency retains all rights to impose, delay or waive penalties and the right to deviate from these recapture provisions. Notwithstanding this right, the Agency is obligated to recapture New York State sales tax benefits where:
  - a) The Project is not entitled to receive those benefits; or
  - b) The exemptions exceed the amount authorized, or are claimed for unauthorized property or services; or
  - c) The Company fails to use property or services in the manner required by the Leaseback Agreement.
  - d) The Company acknowledges the value of the sale's tax exemption currently authorized by the Agency is limited to \$79,371.43.
6. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:



of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

- (c) The providing of the Facility by the Agency and the leasing thereof by the Agency to the Company will not result in the removal of an industrial or manufacturing plant, facility or other commercial activity of the Company from one area of the State to another area of the State, nor result in the abandonment of one or more commercial or manufacturing plants or facilities of the Company located within the State; and the Agency has found that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.
  - (d) The operation of the Facility will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (d).
  - (e) There is no litigation pending or, to the knowledge of the Company, threatened, in any court, either state or federal, to which the Company is a party, and in which an adverse result would in any material way diminish or adversely impact on the ability of the Company to fulfill its obligations under this Agreement.
2. Project and Investment Obligations. The financial assistance granted by the Agency is conditioned upon the Applicant constructing and equipping its Project as represented in its Application within two years of the date of this Agreement (the "Project Obligation"). If, after two years or upon completion of the Project, the Project is not completed in accordance with the Project Obligation, it may subject the Applicant to recapture of Financial Assistance. After acceptance by the Agency of the Company's Final Project Report (more particularly described below) confirming compliance with the Project Obligation, the Company shall have no further obligation with respect to the Project Obligation and shall not be liable for any of the payments described below. The Company further acknowledges that the Financial Assistance was granted based upon the representation that Little Falls Solar, LLC would create 45 full time jobs at the Little Falls Project location only during construction of the project (the "Employment Obligation"). The Company shall file with the Agency, on or before January 31 of each calendar year, an annual employment report setting forth the number of full time jobs created and maintained during the preceding year.
3. Final Project Review. The Company will be required to submit to the Agency a certificate attesting to completion of the Project Obligation, together with copies of all Certificates of Occupancy or other analogous certificate, if any, issued by the applicable municipal authority evidencing completion of construction of the Project (the "Final Project Report") within ten days after receiving such certificate, or at least ten days before the end of the

Lease Term, whichever is soonest. The Agency reserves the right to inspect the Facility, with reasonable notice to the Company. Upon receipt of the Final Project Report, the Agency will evaluate the Project again using the same criteria considered at the time of the initial project application.

4. Remedies. If the Company does not fulfill the Project Obligation, the Agency may notify the Company in writing of its intention to recapture Financial Assistance and the Company will have thirty (30) days to respond to the letter citing the reason or reasons the Company failed to achieve its Project Obligation, including any request to appear before the Agency. If the Agency then determines that the Company's reasons for failing to achieve the Project Obligation are not acceptable to the Agency, the Agency, at its sole discretion, may:
  - a. Take no action if it is determined that the reason or reasons for failing to achieve the Project Obligation are temporary or, in the sole opinion of the Agency, it is in the best interest of economic development of Herkimer County; or
  - b. Reduce the benefits granted to the Company in an amount proportionate to the percentage for the Project Obligation that was achieved (i.e., if the Company meets 75% of its projections, 25% of benefits are recaptured); or
  - c. Such other remedies as permitted under the Agencies Tax Exempt Policy which is incorporated herein by reference.
5. The Agency retains all rights to impose, delay or waive penalties and the right to deviate from these recapture provisions. Notwithstanding this right, the Agency is obligated to recapture New York State sales tax benefits where:
  - a) The Project is not entitled to receive those benefits; or
  - b) The exemptions exceed the amount authorized, or are claimed for unauthorized property or services; or
  - c) The Company fails to use property or services in the manner required by the Leaseback Agreement.
  - d) The Company acknowledges the value of the sale's tax exemption currently authorized by the Agency is limited to \$85,000.00.
6. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

State; and the Agency has found that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries.

- (d) The operation of the Facility will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company shall defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company to comply with the provisions of this subsection (d).
  - (e) There is no litigation pending or, to the knowledge of the Company, threatened, in any court, either state or federal, to which the Company is a party, and in which an adverse result would in any way diminish or adversely impact on the ability of the Company to fulfill its obligations under this Agreement.
2. Project and Investment Obligations. The financial assistance granted by the Agency is conditioned upon the Applicant reconstructing, renovating and equipping its Project as represented in its Application within two years of the date of this Agreement (the "Project Obligation"). If, after two years or upon completion of the Project, the Project is not completed in accordance with the Project Obligation, it may subject the Applicant to recapture of Financial Assistance. After acceptance by the Agency of the Company's Final Project Report (more particularly described below) confirming compliance with the Project Obligation, the Company shall have no further obligation with respect to the Project Obligation and shall not be liable for any of the payments described below. The Company further acknowledges that the Financial Assistance was granted based upon the representation that Old Forge Properties, Inc. would retain 36 full time jobs at the Enchanted Forest Water Safari Project location and create 3 full time jobs in the first year (the "Employment Obligation"). The Company shall file with the Agency, on or before January 31 of each calendar year, an annual employment report setting forth the number of full time jobs created and maintained during the preceding year.
  3. Final Project Review. The Company will be required to submit to the Agency a certificate attesting to completion of the Project Obligation, together with copies of all Certificates of Occupancy (the "Final Project Report") within ten days of receiving a Certificate of Occupancy for all units, or at least ten days before the end of the Lease Term, whichever is soonest. The Agency reserves the right to inspect the Facility, with reasonable notice to the Company. Upon receipt of the Final Project Report, the Agency will evaluate the Project again using the same criteria considered at the time of the initial project application.
  4. Remedies. If the Employment Obligation is not met on or before the first (1<sup>st</sup>) anniversary of the date of this Agreement, or maintained in any year thereafter, the Agency may notify the Company in writing of its intention to recapture Financial Assistance and the Company will have thirty (30) days to respond to the letter citing the reason or reasons Old Forge

Properties, Inc. failed to achieve its Project Obligation, including any request to appear before the Agency. If the Agency then determines that Old Forge Properties, Inc.'s reasons for failing to achieve the Project Obligation are not acceptable to the Agency, the Agency, at its sole discretion, may:

- a. Take no action if it is determined that the reason or reasons for failing to achieve the Project Obligation are temporary or, in the sole opinion of the Agency, it is in the best interest of economic development of Herkimer County; or
  - b. Reduce the benefits granted to the Company in an amount proportionate to the percentage for the Project Obligation that was achieved (i.e., if the Company meets 75% of its projections, 25% of benefits are recaptured); or
  - c. Such other remedies as permitted under the Agencies Tax Exempt Policy which is incorporated herein by reference.
5. The Agency retains all rights to impose, delay or waive penalties and the right to deviate from these recapture provisions. Notwithstanding this right, the Agency is obligated to recapture New York State sales tax benefits where:
- a) The Project is not entitled to receive those benefits; or
  - b) The exemptions exceed the amount authorized, or are claimed for unauthorized property or services; or
  - c) The Company fails to use property or services in the manner required by the Leaseback Agreement.
  - d) The Company acknowledges the value of the sale's tax exemption currently authorized by the Agency is limited to \$235,125.00.
6. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

To the Agency: Herkimer County Industrial Development Agency  
420 E. German Street – Suite 101A  
Herkimer, New York 13350  
Attention: Vincent J. Bono, Chairman

With a Copy to: Felt Evans, LLP  
4-6 North Park Road  
Clinton, New York 13323  
Attention: Anthony G. Hallak, Esq.