

HIGBY GOLD, INC.

and

HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

**Herkimer County Industrial Development Agency
Real Estate Lease**

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT, dated as of this 1st day of May, 2019 is by and between **HIGBY GOLD, INC.**, New York Corporation having an address of 2128 State Route 5, Utica, New York 13502 (the “Company”) and **HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 420 E. German Street, Suite 101A, Herkimer, New York 13350 (the “Agency”).

W I T N E S S E T H:

WHEREAS, the Agency is authorized and empowered by the provisions of Title 1 of Article 18-A of the General Municipal Law, Chapter 99 of the Consolidated Laws of New York, as amended, (the “Enabling Act”), and Chapter 372 of the Laws of 1970 of the State of New York, as amended, constituting Section 901 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of, among others, industrial facilities for the purpose of promoting, attracting and developing economically sound commerce and industry in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, in order to induce the Company to develop the Facility, the Agency is willing to accept a leasehold interest in the Facility pursuant to the terms and conditions contained in the Lease Agreement dated of even date herewith; to acquire a leasehold interest in certain real property located in the Town of Frankfort, County of Herkimer, State of New York, more particularly described on Exhibit A thereof; and

WHEREAS, the Company has executed and delivered a Leaseback Agreement, dated of even date herewith, with the Agency to acquire a leasehold interest in the same real property located in the Town of Frankfort, County of Herkimer, New York, more particularly described in Exhibit “A” attached to the Leaseback Agreement, and to construct and equip a facility thereon (the “Facility”); and

WHEREAS, the Agency has agreed to accept a leasehold interest in the Facility in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Facility is exempt from real property taxes, general property taxes, general school district taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Facility or the interest therein of the Company or the occupancy thereof by the Company commencing May 1, 2019, the taxable status date, (the “Exempt Taxes”), because the Agency has a leasehold interest in the Facility and the Facility is used for a purpose within the meaning of the applicable Constitutional and

statutory provisions, including the Enabling Act, provided, however, such exemption does not extend to special assessments or ad valorem levies; and

WHEREAS, the Company understands that it, as lessee of the Facility leased by the Agency, will, in fact, have Exempt Taxes to pay under the provisions of the Leaseback Agreement commencing May 1, 2019 through the term of the Leaseback Agreement (the “Exemption Term”) (each year measured by the twelve month period commencing with the first day of June, herein referred to as an “Exemption Year”); and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provision for payments-in-lieu-of-taxes and such assessments by the Company to the Town of Frankfort, or any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be, wholly or partially located, Herkimer County, the Frankfort School District and appropriate special districts (hereinafter each a “Taxing Authority” and collectively the “Taxing Authorities”) in which any part of the Facility is or is to be located; and

WHEREAS, all defined terms herein as indicated by the capitalization of the first letter thereof and not otherwise defined herein shall have the meanings ascribed to such terms as set forth in the Leaseback Agreement.

NOW, THEREFORE, to provide for certain payments to the Taxing Authorities, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Company shall pay to each Taxing Authority:
 - (a) all taxes that are due with respect to the Facility prior to the Exemption Term, no later than the last day during which such payments may be made without penalty; and
 - (b) all special assessments and ad valorem taxes coming due and payable during the term of the Lease Agreement and the Leaseback Agreement for which the Facility is not exempt, no later than the last day during which such payments may be made without penalty.

2. The Company shall pay to each Taxing Authority:
 - (a) in lieu of general real property taxes for the Facility, the Company shall pay the following percentages of the actual real property taxes which would be due if the Facility were fully taxable on the tax rolls of the Taxing Jurisdictions:

Year	
1	50
2	55
3	60
4	65
5	70
6	75
7	80
8	85
9	90
10	95
11 (and each successive year of the term of the lease pursuant to the Lease Agreement)	100

- (b) Upon receipt of a bill from the Agency, Company shall make payments in lieu of taxes through the Agency based upon calculations of payments due furnished in writing by the Agency to the Company. Payments shall be made to coincide with each individual Taxing Jurisdiction's schedule due dates for payment of taxes. The Agency shall accept payment from the Subtenant.
- (c) Anything herein to the contrary, notwithstanding, upon the failure of the Company in making any payment when due hereunder and upon failure to cure such default within thirty (30) days of receipt of notice as herein provided, the Company shall henceforth pay as PILOT Payments on hundred (100%) percent of the Exempt Taxes together with interest at the rate of nine (9%) percent per annum on any delinquent PILOT Payments together with expenses of collection, including but not limited to, payment of attorneys' fees; provided, however, nothing herein contained shall be deemed to limit any other rights and remedies the Agency may have hereunder or under any other Transaction Document.
3. The Company will make PILOT Payments to each Taxing Authority hereunder for each exemption Year by making the required payment to such Taxing Authority no later than the last day during which such Exempt Taxes could otherwise be made without penalty as if the Agency did not have a leasehold or other interest in the Facility.
4. The PILOT Payments to be made by the Company pursuant to this Agreement are intended to be in lieu of all Exempt Taxes that would have to be paid on the Facility leased to the Company by the Leaseback

Agreement if the Agency did not have a leasehold or other interest in the Facility.

5. If by reason of a change in the Constitution or laws of the State of New York, or an interpretation of the Constitution or the laws of the State of New York by the Court of Appeals (or such lower court from which the time to appeal has expired) of the State of New York, or for any other reason, the Company is required to pay any tax which the payments specified herein are intended to be in lieu of, the Company may deduct the aggregate of any such payments made by it from the amount herein agreed to be paid in lieu of such taxes and need only pay the difference. Furthermore, inasmuch as the PILOT Payments herein agreed to be made by the Company are intended to be in lieu of all Exempt Taxes, it is agreed that said payments shall not, as to any Exemption Year, be in an amount greater than would be payable for such year for such Exempt Taxes, in the aggregate, by a private corporation on account of its ownership of the Facility.
6. This Agreement shall be binding upon the successors and assigns of the parties.
7. It is the intent of the parties that the Company will have all the rights and remedies of a taxpayer with respect to any real property or other tax, service charge, special benefit, ad valorem levy, assessment or special assessment or service charge because of which, or in lieu of which, the Company is obligated to make a payment hereunder, as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility. It is the further intent of the parties that the Company will have all of the rights and remedies of a taxpayer as if and to the same extent as if the Agency did not have a leasehold or other interest in the Facility with respect to any proposed assessment or change in assessment concerning the property, or any portion thereof, whether through an assessor, board of assessment review, court of law, or otherwise and likewise will be entitled to protest before and be heard by such assessor, board of assessment review, court of law or otherwise and will be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any taxes that would have been payable but for the provisions hereof. In the event, however, that a court of competent jurisdiction shall enter an order or judgment determining or declaring that, by reason of the Agency's interest in the Facility, the Company does not have the right to bring a proceeding to review such assessment under the Real Property Tax Law or any other law, then the Company shall have the right to contest such assessment in the name and as the agent of the Agency, and the Agency agrees to cooperate with the Company in all respects in any such proceeding at the sole cost and expense of the Company.

8. All amounts payable by the Company hereunder will be paid to the respective Taxing Authority and will be payable in such lawful money of the United States of America as at the time of payment is legal tender for the payment of public and private debts, including a check payable in such money.
9. (a) If any term or provision hereof should be for any reason held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such term or provision will be deemed separate and independent and the remainder hereof will remain in full force and effect and will not be invalidated, impaired or otherwise affected by such holding or adjudication.
- (b) This agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.
- (c) All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, to the Agency or the Company, as the case may be, addressed as follows:

To the Agency: Herkimer County Industrial Development Agency
420 E. German Street – Suite 101A
Herkimer, New York 13350
Attn: John J. Piseck, Jr., Executive Director

With a Copy to: Felt Evans, LLP
4-6 North Park Row
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

With a Copy to: Saunders Kahler, L.L.P.
185 Genesee Street, Suite 1400
Utica, New York 13501-2194
Attn: Samuel D. Hester, Esq.


Provided, that the Agency or the Company may, by notice given hereunder to the other, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

- (e) This Agreement shall be governed by and constructed in accordance with the laws of the State of New York.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this **PILOT Agreement** as of the date first above written.

HERKIMER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

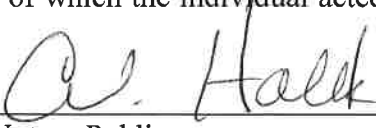
By: 
Vincent J. Bono, Chairman

HIGBY GOLD, INC.

By: 
John Dillon, President

STATE OF NEW YORK)
COUNTY OF HERKIMER) ss.:

On this 15th day of May, 2019, before me, a notary public in and for said State, did personally appear **Vincent J. Bono**, to me personally known 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 instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

ANTHONY G. HALLAK
Notary Public - State of New York
#4234403
Qualified in Oneida County
Commission Expires May 23, 2022

STATE OF NEW YORK)
COUNTY OF) ss.:

On this 1st day of May, 2019, before me, a notary public in and for said State, did personally appear **John Dillon**, to me personally known 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 instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

SAMUEL D. HESTER
Notary Public, State of New York
No. 02HE6383576
Qualified in Oneida County
Commission Expires November 19, 2022

Exhibit A

ALL THAT TRACT OR PARCEL OF LAND SITUATE IN THE TOWN OF FRANKFORT, COUNTY OF HERKIMER AND STATE OF NEW YORK, DESCRIBED AS LOTS 19 AND 20 AND AS SET FORTH ON A MAP PREPARED BY FERGUSON & FOSS PROFESSIONAL LAND SURVEYORS PC, CHRISTOPHER FOSS LS DATED APRIL 11, 2017, REVISED APRIL 13, 2017, MAY 3, 2017, JUNE 30, 2017 AND AUGUST 3, 2017, WHICH MAP WAS APPROVED BY THE TOWN PLANNING BOARD FOR THE TOWN OF FRANKFORT ON SEPTEMBER 6, 2017 AND THEREAFTER FILED IN THE HERKIMER COUNTY CLERK'S OFFICE ON OCTOBER 4, 2017 AS INSTRUMENT NO. M2017-1983.

The premises are more particularly described as:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Frankfort, County of Herkimer and State of New York, bounded and described as follows:

BEGINNING at a metal survey marker standing on the southerly highway boundary of Higby Road (County Route 96) (Coop Hill Road) said point of beginning standing at the intersection of the southerly highway boundary of Higby Road with the easterly highway boundary of Ring Road (Private Roadway) as described in an easement granted to the Town of Frankfort dated August 1, 2017 and filed in the Herkimer County Clerk's Office as Instrument No. RP2018-228; thence N 89° 16' 11" E 13.38 feet along the southerly highway boundary of Higby Road to a point; thence S 89° 00' 38" E 118.97 feet continuing along the southerly highway boundary of Higby Road to an iron rod standing on the westerly highway boundary of Higby Road; thence S 05° 05' 20" E 20.90 feet along the westerly highway boundary of Higby Road to a point standing on the southerly highway boundary of Higby Road; thence N 89° 02' 10" E 272.88 feet along the southerly highway boundary of Higby Road to an iron rod standing on the westerly highway boundary of New York State Route 5S (State Highway No. 5219); thence S 29° 28' 50" E 230.13 feet along the westerly highway boundary of New York State Route 5S to an iron rod; thence S 48° 00' 10" E 222.13 feet continuing along the westerly highway boundary of New York State Route 5S to an iron rod; thence S 07° 09' 30" E 29.97 feet still along the westerly highway boundary of New York State Route 5S to an iron rod standing on the northerly boundary of 4905 East Lake Road, LLC (now or formerly); thence S 52° 09' 18" W 535.29 feet along the northerly boundary of 4905 East Lake Road, LLC to an iron rod standing on the northeasterly highway boundary of Ring Road; thence N 50° 35' 25" W 86.27 feet along the northeasterly highway boundary of Ring Road to a point; thence northwesterly 269.08 feet along a curve to the right having a radius of 580.00 feet delta angle of 26° 34' 53" chord bearing and distance of N 37° 17' 59" W 266.68 feet and continuing along the northeasterly highway boundary of Ring Road to a point standing on the easterly highway boundary of Ring Road; thence northwesterly 41.83

feet along a curve to the right having a radius of 235.00 feet delta angle of 10° 11' 59" chord bearing and distance of N 18° 54' 32" W 41.78 feet and along the easterly highway boundary of Ring Road to a point; thence northerly 162.72 feet along a curve to the right having a radius of 720.00 feet delta angle of 12° 56' 56" chord bearing and distance of N 07° 20' 05" W 162.37 feet continuing along the easterly highway boundary of Ring Road to a point; thence N 00° 51' 37" W 257.78 feet still along the easterly highway boundary of Ring Road to the point and place of beginning.

THE above described parcel containing 7.410± acres (322,762.7± sq. ft.) of land, more or less.

THE above described premises also being Lot #19 and Lot #20 as shown on a map entitled "Proposed 30-Lot Subdivision – Lands of Herkimer County Industrial Development Agency, New York State Route 5S and Coop Hill Road, Town of Frankfort, Herkimer County, New York" by Delta Engineers, Architects & Land Surveyors, dated May 4, 2015 and filed in the Herkimer County Clerk's Office on May 7, 2015 as Map #2015-1579.

SUBJECT TO an easement granted to Niagara Mohawk Power Corporation, dated May 11, 2011 and recorded in the Herkimer County Clerk's Office on January 26, 2017 as Instrument No. RP2017-458 to which deed reference is made for certainty of terms and conditions.

FURTHER SUBJECT TO an easement granted to the Town of Frankfort, dated August 1, 2017 and recorded in the Herkimer County Clerk's Office on January 12, 2018 as Instrument No. RP2018-228 to which deed reference is made for certainty of terms and conditions.

EVEN FURTHER SUBJECT TO any other enforceable easements, covenants or restrictions of record.

Together with an easement for ingress and egress to Cross Country Mile (formerly ring road) as laid out on the above identified map. This easement shall automatically terminate upon the dedication and acceptance of said roadway by the Town of Frankfort or such appropriate municipality of said easement area as a public roadway.