

City of Utica Industrial Development Agency

Policy for Recapture, Modification or Termination of Financial Assistance

The Agency shall determine, on a case by case basis, the number of employees a Company must retain and/or create as a condition for financial assistance (the "Employment Obligation"). The below provisions will be incorporated into every Leaseback Agreement, and deviations from this policy shall be infrequent.

(a) If the Company shifts production to a facility outside of the City of Utica and, as a result, fails to achieve the Employment Obligation, then the Agency will require the value of the incentives utilized to date to be repaid, with interest (determined as the New York State legal interest rate).

(b) If the Company fails to meet the Employment Obligation for reasons other than described above, then the Agency staff will meet with the Company, and the Company will have the opportunity to present its case as to relevant issues. The following criteria will be used to determine if a valid exemption exists for failure to achieve the Employment Obligation:

(i) Natural Disaster: if a natural disaster such as fire, flood or tornado disrupts the business.

(ii) Industry Trends: an evaluation of industry trends will be made relevant to the Company, and a determination reached as to whether the Company is in a market that is declining. International and national data will be used in the evaluation. An industry is considered in decline when, measure by the appropriate SIC code, it experiences employment or revenue declines – beyond its control – of 10% or more over 3 years.

(iii) Loss of Major Supplier or Customer: if the loss of a customer or supplier represents 15% or more of the sales of the Company.

(iv) Productivity Improvements: if new technology, equipment or general productivity improvements result in the need for less than projected employees or investment.

(v) Unfair Competition: if an international competitor utilizes an unfair competitive advantage to acquire market share.

(vi) Temporary Condition: if the failure to meet the Employment Obligation is temporary in nature.

(c) If the Agency based on criteria outlined in paragraph (a) determines that the Company's reasons for failing to meet the Employment Obligation are invalid, the Agency will notify the Company in writing of its intention to recapture benefits. If the

Agency based on criteria outlined in paragraph (b) determines that the Company's reasons for failing to meet the Employment Obligation are invalid, the Agency will notify the Company in writing of its intention recapture benefits and the Company will have thirty (30) days to respond to the default letter citing the reason or reasons the Company failed to achieve its Employment Obligation, including any request to appear before the Agency board of directors. If the Agency then determines that the Company's reasons for failing to achieve the Employment Obligation are invalid, the Agency, at its sole discretion, may:

(i) Take no action if it is determined that the reason or reasons for failing to achieve the Employment Obligation are temporary or, in the sole opinion of the Agency, it is in the best interest of economic development of the City of Utica;

(ii) Reduce the benefits granted to the Company in an amount proportionate to the percentage of Employment Obligation that was achieved (i.e., if the Company meets 75% of its projections, benefits are reduced by 25% in the next applicable tax year);

(iii) Require the Company to repay a percentage of the benefits received to date in an amount proportionate to the percentage of Employment Obligation achieved and apply that percentage to future benefits until such time the original projections are met or until the expiration of the Lease Term, whichever is soonest; or

(iv) Terminate this Leaseback Agreement and the PILOT Agreement and require the Company to repay 100% of the benefits received to date.

(d) The Agency in granting benefits retains all rights to impose, delay or waive penalties and the right to deviate from these recapture provisions.

(e) No violation of these provisions will, in and of itself, constitute a default of any financing debt instrument.