

## AGENT AGREEMENT

**THIS AGREEMENT**, having an effective date of as of July 26, 2017 (the "Agent Agreement"), is given by **AVIATION HOSPITALITY, LLC**, a limited liability company organized and existing under the laws of the State of New York, with an address of 906 State Route 9, Queensbury, New York 12804 (the "Company" or the "Owner") and the **COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York with offices at 5 Warren Street, Glens Falls, New York 12801 (the "Agency").

### RECITALS

WHEREAS, the Company is the owner of, or is acquiring title to or other interest in, certain real property located at 524 Aviation Road, in the Town of Queensbury, County of Warren, State of New York; and

WHEREAS, the Company is requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: (i) the acquisition of an interest in a certain commercial parcel or parcels of land located at 524 Aviation Road, Town of Queensbury, County of Warren, State of New York (the "Land"); (ii) the construction and equipping of a 15,665+/- square foot 92 room hotel (the "Facility"); (iii) the acquisition and installation therein of certain furnishings and fixtures (the "Equipment" together with the Land and the Facility, collectively the "Project Facility") to be used in connection with the contemplated uses; and (iv) the lease of the Project Facility to the Company, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 862 of the Laws of 1971 of the State of New York (collectively, the "Act"), as amended; and

WHEREAS, the Company has requested that the Agency provide financial assistance (the "Financial Assistance") to the Company to undertake the Project in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, renovation and equipping of the Project, (b) a partial real property tax abatement through the PILOT Agreement, and (c) a mortgage recording tax exemption for the financing related to the Project; and

WHEREAS, pursuant to Resolution No. 17-\_\_\_ adopted on July 26, 2017 (the "Inducement and Closing Resolution"), the Agency appointed the Company the true and lawful agent of the Agency to undertake the Project; and

WHEREAS, this appointment includes exemptions from the sales and use taxes for purchases and rentals related to the undertaking of the Project.

**NOW, THEREFORE**, in consideration of the foregoing and to induce the Agency to appoint the Company as agent, and to consummate the Financial Assistance with respect to the sales tax exemption, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company hereby covenants and agrees with the Agency as follows:

Section 1. (a) The Company is hereby appointed the true and lawful agent of the Agency (i) to acquire, construct and equip the Project Facility, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the agent of the Agency, (iii) to enter into agreements with third-parties to act as agents and to undertake the Project on the Company's and the Agency's behalf for the purpose of constructing and completing the project, and in general to do all things which may be requisite or proper for completing the Project Facility, all with the same powers and the same validity as the Agency could do if acting in its own behalf. This provision is subject to the Company entering into an Agent Agreement with the Agency. In addition, the Company is hereby authorized to proceed with the acquisition, construction and equipping of the Project Facility subject to receiving appropriate municipal approvals needed prior to commencement of construction, and to advance such funds as may be necessary to accomplish such purposes and, to the extent permitted by law.

(b) The Company hereby agrees to comply with all the provisions of the New York General Municipal Law, including Sections 874 and 875 thereof as they relate to Sales Tax Exemptions conferred by Industrial Development Agencies.

(c) Upon request by the Company, the Agency will enter into an agreement to lease the Project Facility from the Company (the "Underlying Lease Agreement") and lease same back to the Company for purposes of providing the Financial Assistance pursuant to a Lease Agreement (the "Lease Agreement"). The Lease Agreement, along with this Agreement, shall obligate the Company to undertake the Project on behalf of the Agency. The Lease Agreement shall contain all provisions required by law and such other provisions as shall be mutually acceptable to the Agency and the Company.

Section 2. The Company also acknowledges and agrees as follows:

(a) Complete the "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60). Within thirty (30) days from the Agency's appointment of the Owner, as agent of the Agency, the Agency shall file NYS Form ST-60 with the NYS Department of Taxation and Finance.

(b) If desired, the Owner shall enter into a sub-agent indirect appointment agreement(s) with its contractors and subcontractors or other third party agents, as the case may be, in substantially the form attached hereto (the "Indirect Appointment Agreement"). Said Indirect Appointment Agreement shall be submitted by the Owner to the Agency with a copy of the contract between the Owner and the contractor/subcontractor shall also provide the Agency with proof of insurance as required within said Indirect Appointment Agreement. The Indirect Appointment Agreement shall also require the contractor/subcontractor to provide the Owner with the information concerning the sales tax exemptions claimed on an annual basis. The Owner must promptly provide the Agency with the appointment agreement and the NYS Form ST-60 so that it may be filed with the NYS Department of Taxation and Finance within thirty (30) days of appointment.

- (c) The Owner and all duly appointed subagents shall claim the sales tax exemption for all authorized purchases by providing each vendor with NYS Form ST-123. NYS Form ST123 shall be provided by the Agency to the Owner and each duly appointed subagent.
- (d) Contractors and subcontractors that have been duly appointed as Agency subagents shall claim the sales tax exemption for all authorized construction material purchases by providing each vendor with NYS Form ST-120.1.
- (e) The Owner must file Form ST-340 with the NYS Department of Taxation and Finance, on or before the last day of February each year, reporting the amount of Agency sales tax exemptions claimed for the prior calendar year.
- (f) This Agent Agreement shall be subject to the Recapture Policy of the Agency, as it may be amended from time to time, a copy of said Recapture Policy is attached hereto and incorporated herein by reference
- (g) The Company will, to the extent deemed by it to be necessary or desirable, enter into a contract or contracts for the construction and installation of the Project Facility.
- (h) The Company shall include the following or substantially similar exculpatory language in each contract entered into in connection with the Project Facility:

“THIS AGREEMENT IS EXECUTED BY AVIATION HOSPITALITY, LLC (THE “COMPANY”), THE DULY APPOINTED AGENT OF THE COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT AGENCY (THE “AGENCY”), A PUBLIC BENEFIT CORPORATION OF THE STATE OF NEW YORK HAVING ITS PRINCIPAL PLACE OF BUSINESS AT 5 WARREN STREET, GLENS FALLS, NEW YORK. IN THE EVENT OF A DEFAULT BY THE COMPANY IN THE PAYMENT OF ANY MONIES DUE FOR WORK, LABOR, GOODS, SERVICES, MATERIALS OR EQUIPMENT FURNISHED IN ACCORDANCE WITH THIS AGREEMENT, SHOULD THE CONTRACTOR (OR VENDOR) SEEK PAYMENT FROM THE AGENCY, IT SHALL BE LIMITED TO A CLAIM AGAINST THOSE FUNDS REMAINING IN PROJECT ACCOUNTS THAT HAVE BEEN ESTABLISHED BY OR ON BEHALF OF THE AGENCY TO FINANCE THE PROJECT FACILITY. THE CONTRACTOR (OR VENDOR) AGREES THAT IT SHALL HAVE NO RIGHTS IN OR CLAIM TO ANY PROPERTY OR ANY FUNDS IN ANY ACCOUNT OF THE AGENCY OTHER THAN THOSE FUNDS OR ACCOUNTS SPECIFICALLY ESTABLISHED BY OR ON BEHALF OF THE AGENCY FOR THE PROJECT FACILITY. THE CONTRACTOR (OR VENDOR) FURTHER AGREES THAT IT MAY NOT MAKE A CLAIM OR OBTAIN A JUDGMENT AGAINST THE AGENCY, ITS MEMBERS, OFFICERS OR EMPLOYEES FOR ANY MONIES OTHER THAN THOSE MONIES REMAINING IN ACCOUNTS ESTABLISHED BY OR ON BEHALF OF THE AGENCY FOR THE PROJECT FACILITY.”

- (i) Each contract the Company shall assign to the Agency in connection with the Project Facility shall contain an exculpatory provision substantially similar to or identical to the model provision set forth in Section 2(h), hereof.
- (j) The Company shall file with the Agency copies of all contracts (and all modifications and amendments thereto) entered into for the construction and installation of the Project Facility.

Section 3. The agent status created as a result of this Agreement is limited to the eligible Project costs. The approved sales tax exemption is in an amount not to exceed Two Hundred Sixty Three Thousand Dollars (\$263,000.00), based on eligible project costs of Three Million Seven Hundred Fifty Seven Thousand One Hundred Thirty Six Dollars (\$3,757,136.00), which exemption will expire on January 31, 2019, unless terminated earlier upon the termination or suspension of the agent authorization by the Agency. Any and all exemptions in excess of the aforementioned amounts must be immediately reported to the Agency and to New York State. The Company may apply to the Agency to extend this agent authority by showing good cause and the Agency may extend such agent authority at its sole discretion. Any such extension may be subject to administrative fees or legal costs that may be incurred.

Section 4. (A) The Company hereby releases the Agency and its members, officers, agents (other than the Company) and employees from, agrees that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for and agrees to indemnify, defend and hold the Agency and its members, officers, agents (other than the Company) and employees harmless from and against any and all (1) liability for loss or damage to Property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Project Facility, (2) liability arising from or expense incurred by the Agency's financing, acquiring, renovating, reconstructing, equipping, owning or selling of the Project Facility, including without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility and all liabilities or claims arising as a result of the Agency's obligations under this Agent Agreement, (3) claims arising from the exercise by third party agents of the authority contemplated pursuant to this Agent Agreement, and (4) causes of action and reasonable attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the intentional or willful wrongdoing of the Agency or any of its members, agents (other than the Company and the third party agents) or employees.

(B) In the event of any claim against the Agency or its officers, members, employees, servants or agents by any employee of the Company or any contractor of the Company or anyone directly or indirectly employed by any of them or any one for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Company or such contractor under Worker's Compensation acts, disability benefits or other

employee benefit acts.

(C) Any other provisions of this Agent Agreement to the contrary notwithstanding, the obligations of the Company shall remain in full force and effect after the termination of this Agent Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Agency, or its officers, members, employees, servants or agents, relating thereto.

(D) The Company will pay all costs incurred by the Agency, including but not limited to attorney's fees, which arise out of Company's application for Financial Assistance, whether or not such assistance is ultimately issued. Agency's attorney's fees will be calculated at a time rate of \$275.00 per hour for attorney's time and \$105.00 per hour for senior legal assistant's time, plus disbursements. Upon closing of all of the Project documents, the Company will pay to the Agency an administrative fee (the "Administrative Fee") of \$86,991.00 based upon an estimated Project cost of \$12,398,215.00 pursuant to the schedule set forth below and contained within the Company's Application for Financial Assistance:

First \$10 Million of Project Costs:	¾ of 1%
Next \$10 Million of Project Costs:	½ of 1%
Next \$10 Million of Project Costs:	¼ of 1 %
Above \$30 Million of Project Costs:	1/8 of 1%.

Following the completion of the Project Facility, the Company shall confirm, in writing, the actual Project cost. In the event that the total Project cost exceeds the estimate provided herein, the Agency may require the payment of the difference that would otherwise be due pursuant to the above-schedule.

Section 5. Insurance. This Agreement shall not be effective unless the Company has delivered to the Agency a certificate of insurance, complying with the requirements as required by the Agency, and indicating that:

(a) The Company maintains insurance with respect to the Facility providing the coverage against the risks and for such amounts as are customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, and mandated by the Agency, including, but not necessarily limited to the following:

(i) Insurance protecting the interests of the Company and the Agency against loss or damage to the Project Facility by fire, lightning and other casualties normally insured against with a uniform standard extended coverage endorsement, such insurance at all times to be in an amount not less than the total cash replacement value of the Project Facility, as determined by a recognized appraiser or insurer selected by the Company; provided, however, that Company may, insure all or a portion of the Project Facility under a blanket insurance

policy or policies covering not only the Project Facility or portions thereof but other property. The parties agree that for purposes of this Project the Company will be responsible for providing builders risk insurance.

(ii) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of Company who are located at or assigned to the Project Facility and for all contractors and subcontracts.

(iii) Insurance protecting the Company and the Agency against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the Property of others caused by any accident or occurrence, with a single combined limit of not less than \$2,000,000.00 per accident or occurrence on account of personal injury, including death resulting therefrom, and damage to the Property of others, excluding liability imposed upon the Company by any applicable workers' compensation law; and a blanket excess liability policy in the amount not less than \$5,000,000.00 protecting the Company and the Agency against any loss or liability or damage for personal injury, death or Property damage.

(iv) If applicable and if it is determined that the Project Facility is located within an area identified by the Secretary of Housing and Urban Development as having special flood hazards, insurance against loss by floods in an amount not less than \$1,000,000.00 or to the maximum limit of coverage made available, whichever is less.

(v) Other insurance coverage required by any Governmental Authority in connection with any Requirement.

(b) all policies evidencing such insurance,

(i) name the Company and the Agency as additional insureds, as their interests may appear, and

(ii) provide for at least thirty (30) days' written notice to the Agency prior to cancellation, lapse, reduction in policy limits or material change in coverage thereof.

Section 6. In the event the Company should default under any of the provisions of this Agent Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred, whether an action is commenced or not.

Section 7. NO RECOURSE; SPECIAL OBLIGATION. Notwithstanding any statement or representation to the contrary contained herein or in any of the other documents executed by the Agency, the obligations and agreements of the Agency contained herein and in said documents and in any other instrument or document executed by the Agency in connection therewith and any instrument or document executed by the Agency supplemental thereto shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State, or the Counties of Warren and Washington, New York and neither the State, nor the Counties of Warren and Washington, New York shall be liable hereon or thereon, and further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Project Facility (except for revenues derived by the issuer with respect to the Unassigned Rights). No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (A) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and (ten) 10 days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than (ten) 10 days shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, and (B) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (C) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand and (2) if requested by the Agency shall furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

Section 8. The obligations of the Company to provide the indemnity required by this Agent Agreement shall survive the termination of this Agent Agreement, and all such payments after such termination shall be made upon demand of the party to whom such payment is due.

Section 9. This Agent Agreement shall inure to the benefit of the Agency and the Company and shall be binding upon the Agency, the Company and, as permitted by this Agent Agreement, their respective successors and assigns.

Section 10. This Agent Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11. This Agent Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State of New York.

Section 12. All notices, or other communications shall be in writing and shall be sufficiently given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, returned receipt requested, addressed as follows:

To the Agency:

Counties of Warren and Washington  
Industrial Development Agency  
5 Warren Street  
Glens Falls, New York 12801  
Attention: Chairman

With Copy to:

FitzGerald Morris Baker Firth P.C.  
P.O. Box 2017  
16 Pearl Street  
Glens Falls, NY 12801-2017  
Attention: Robert C. Morris, Esq.  
Kara I. Lais, Esq.

To the Company:

Aviation Hospitality, LLC  
906 State Route 9  
Queensbury, New York 12804  
Attention: Bhavik Jariwala

With Copy to:

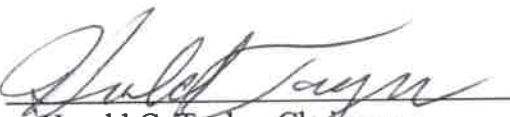
Lemery Greisler LLC  
50 Beaver Street  
2<sup>nd</sup> Floor  
Albany, New York 12207  
Attention: Charles B. Dumas, Esq.

{Signature Page to Follow}



**IN WITNESS WHEREOF**, the Agency and the Company have caused this Agent Agreement to be executed as of the date first above written.

COUNTIES OF WARREN AND WASHINGTON  
INDUSTRIAL DEVELOPMENT AGENCY

BY:   
Harold G. Taylor, Chairman

AVIATION HOSPITALITY, LLC

BY: \_\_\_\_\_  
Bhavik Jariwala, Managing Member

ACKNOWLEDGEMENTS

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

On the 4<sup>th</sup> day of <sup>August</sup> ~~July~~ in the year 2017, before me, the undersigned, personally appeared **Harold G. Taylor**, 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 instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

DONNA L. DERWAY  
Notary Public, State of New York  
Warren County #4647371  
Commission Expires Aug. 31, 2021

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of July in the year 2017, before me, the undersigned, personally appeared **Bhavik Jariwala**, 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 instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


\_\_\_\_\_  
Notary Public

IN WITNESS WHEREOF, the Agency and the Company have caused this Agent Agreement to be executed as of the date first above written.

COUNTIES OF WARREN AND WASHINGTON  
INDUSTRIAL DEVELOPMENT AGENCY

BY: \_\_\_\_\_  
Harold G. Taylor, Chairman

AVIATION HOSPITALITY, LLC

BY:  \_\_\_\_\_  
Bhavik Jariwala, Managing Member

ACKNOWLEDGEMENTS

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

On the \_\_\_\_\_ day of July in the year 2017, before me, the undersigned, personally appeared **Harold G. Taylor**, 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 instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

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

On the 9th day of August in the year 2017, before me, the undersigned, personally appeared **Bhavik Jariwala**, 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 instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

JARED P. YAFFEE  
Notary Public, State of New York  
Qualified in Albany County  
Reg. No. 02YA6221726  
Commission Expires June 7, 2018

  
\_\_\_\_\_  
Notary Public

**RECAPTURE POLICY**  
**(Adopted July 18, 2016)**

Section 1.     Reasons for the recapture of benefits (Financial Assistance) include the following:

- a. Sale or closure of the facility and departure of the company from the Counties of Warren or Washington (Notwithstanding any of the terms set forth herein, this occurrence shall result in the immediate termination of Financial Assistance).
- b. Significant change in the use of the facility and/or the business activities of the company.
- c. Significant employment reductions not reflective of the company's (normal) business cycle and/or local and national economic conditions.
- d. Failure to comply with any periodic and/or annual reporting requirements of the Agency, State or Federal governmental agency.
- e. Failure to meet or comply with the Material Terms, as determined by the Agency at the time of the acceptance of the project for Financial Assistance and as set forth in the Inducement Resolution, Amended and Restated Preliminary Agreement.

These “Material Terms” as defined for the particular project will be utilized by the Agency in setting and monitoring project benchmarks during the term of the incentives for the purposes of administering the Agency’s recapture policy.

For certain numerical “Material Terms” such as job creation/retention or investment amount an achievement factor of 80% will constitute compliance. For non-numeric “Material Terms” such as redevelopment of an old structure for a new purpose or location on a Brown Field site, a determination of compliance will be made upon completion of the project.

It is understood that these “Material Terms” may vary depending on project type and project specifics, and may be selected from the criteria set forth in the foregoing Section A, 2 Impact on Local Economy in the Policy Manual of the Agency.

- f. For a project that failed to comply with a significant term or condition to use property or services in the manner required by any and all provisions of the agreements that the company has entered into with the Agency.

Section 2. For companies receiving real property tax abatements the recapture of benefits schedule (applicable to the real property tax abatements) is as follows:

Years 1-5 100% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Years 6-7 75% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Years 8-9 50% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Year 10 25% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions, unless agreed to otherwise, in writing, by the applicable taxing jurisdiction

Years 11+ 0% of the tax exemptions granted shall be repaid to the affected taxing jurisdictions.

The time period above is from the effective date of the PILOT Agreement.

In the case of real property taxes, any amounts recovered, recaptured, received or otherwise obtained shall be payable to the appropriate taxing jurisdictions, unless otherwise agreed to in writing by the taxing jurisdiction.

Section 3. In addition to the above reasons for recapture, the Agency shall recover, recapture, receive or otherwise obtain from the company, or its subagents, sales tax benefits that were taken or purported to be taken which are:

- a. In excess of the amounts authorized; or
- b. For property or services not authorized; or
- c. For a project that failed to comply with a significant term or condition to use property or services in the manner required by any and all provisions of the agreements that the company has entered into with the Agency.

For purposes of this Recapture Policy, the Company and its subagents shall cooperate with the Agency in its efforts to recover, recapture, receive or otherwise obtain such State sales and use benefit exemptions and shall promptly pay over such amount to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of Taxation and Finance to assess and determine State sales and use taxes due from the Company under Article 28 of the New York State Tax Law, together with any penalties and interest due on such amounts.

In the event that the Agency recovers, recaptures, receives or otherwise obtains any amount of State sales and use tax exemption benefits from the Company or its agents, the Agency shall, within thirty (30) days of coming into possession of such amount, remit it to the Commissioner

of Taxation and Finance, together with such other information and report that the Commissioner deems necessary to administer payment over such amount.

Section 4.

In the event that the Agency determines that there exists a basis for recapture as set forth in Section 1 herein, the Agency shall notify the company, in writing, that the Agency has determined that a basis for recapture exists. The company shall be given a reasonable timeframe within which to remedy the violation, such timeframe being commensurate to the violation, and the company shall provide additional information and/or an explanation as to why the violation has occurred or the Material Term has not been achieved, as the case may be. If requested by the Agency, the company shall make a presentation to the Agency concerning this default.

Thereafter the Agency may determination pursuant to this Recapture Policy. Imposition of any recapture is at the sole discretion of the Agency and is reviewed/considered on a case by case basis. In lieu of imposing the above recapture penalties and for good cause shown by the company, the Agency, at its sole discretion, may make a determination to discontinue the Financial Assistance in its entirety, per the provisions set forth the in the Lease Agreement; or suspend the Financial Assistance for a specific stated period of time in order for the company to correct or comply with the Material Term being breached; or, in the case of real property taxes exemptions, modify the PILOT Agreement to decrease the exemption and increase the payments due for the remaining term of the PILOT Agreement.