

AGREEMENT FOR PAYMENTS IN LIEU OF TAXES

AGREEMENT FOR PAYMENTS IN LIEU OF TAXES (the "PILOT Agreement"), dated as of April 15, 2016, by and between the COUNTIES OF WARREN AND WASHINGTON INDUSTRIAL DEVELOPMENT 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 12801 (the "Agency") and 354 BROADWAY, LLC, a New York limited liability company having an office for the transaction of business at 170 West 74th Street, New York, New York, 10023 (the "Developer").

RECITALS

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "State"), as amended, and Section 890-c of the General Municipal Law of the State (collectively, the "Act"), the Agency was created and granted the authority to enter into agreements for the purpose of acquiring, constructing and equipping certain commercial facilities; and

WHEREAS, to advance the public purposes for which it was created, the Agency, upon application of the Developer, has agreed to undertake a project (the "Project") consisting of (i) the acquisition of an interest in a certain commercial parcel of land located at 354 Broadway in the Town of Fort Edward, County of Washington, State of New York (Tax Map Parcel No.: 163.10-1-46.3) (the "Land"); (ii) the construction and equipping of a 40,315 +/- square foot supermarket located on the Land (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 Developer, 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 Developer has agreed to lease and the Agency has agreed to rent the Project Facility pursuant to an underlying lease agreement dated as of April 15, 2016 (the "Underlying Lease Agreement"); and

WHEREAS, the Agency has agreed to lease and the Developer has agreed to rent the Project Facility pursuant to a lease agreement dated as of April 15, 2016 (the "Lease Agreement"); and

WHEREAS, the Agency will hold a leasehold interest to the Land and all improvements thereon until such time as it may convey its leasehold interest to the Project Facility pursuant to the Lease Agreement; and

WHEREAS, on August 17, 2015, the Town Board of the Town of Fort Edward duly adopted a resolution approving of the enhanced PILOT Agreement by and between

the Developer and the Agency for a period of fifteen (15) years at the terms approved by the Agency and as more specifically set forth in Schedule B herein; and

WHEREAS, under Section 412-a of the Real Property Tax Law of the State and Section 874 of the General Municipal Law of the State, the Agency is exempt from the payment of taxes and assessments on any real property acquired by it or taken under its jurisdiction, supervision or control; and

WHEREAS, Section 6.3 of the Lease Agreement provides that the Developer will make certain payments in lieu of town, county, school district and other governmental taxes and charges; and

WHEREAS, in accordance with Section 874(4)(a) of the General Municipal Law of the State, the Agency has established a uniform tax exemption policy (the "Uniform Tax Exemption Policy").

NOW, THEREFORE, in partial consideration of the Agency undertaking the Project, the Developer and Agency agree as follows:

AGREEMENT

SECTION 1. Definitions. Unless the context or use unambiguously indicate otherwise, all capitalized terms used herein shall have the meanings given to them in the Lease Agreement.

SECTION 2. Description of Property. This PILOT Agreement shall apply to the Land, as more particularly described within Schedule A hereto.

SECTION 3. Developer Obligations.

(A) Throughout the period, a leasehold interest to the Land and the Facility is in the Agency, the Developer shall pay or cause to be paid to the Agency, in accordance with the terms of this agreement, certain taxes, assessments, rents and other governmental charges levied upon or against the Land and the improvements thereon (the "PILOT Payments"). In determining the amount of any PILOT Payment, such payment shall be calculated (1) as if title and interest to the Land is in the Developer and not the Agency, (2) as if the improvements contemplated by the Plans and Specifications are completed on or before the Completion Date and (3) in accordance with the PILOT Payment Schedule as set forth in Schedule B hereto. Payments hereunder shall be made at such times and in such amounts as would be due were title to the Land and the improvements in the Developer and not the Agency.

(B) In addition to the payments set forth in paragraph (A) of this Section 3, the Developer shall be responsible for the payment to the Agency of all assessments, water/sewer rents and other governmental charges not included in Schedule B that would

be levied upon or against the Land and the improvements thereon were title to them in the Developer and not the Agency.

(C) If the Lease of the Facility to the Agency remains in effect beyond the term allowed herein, the Developer shall pay or cause to be paid to the Agency all taxes that would have been levied on or against the Facility were title to it in the Developer and not the Agency. Payments hereunder shall be made at such times and in such amounts as would be due were title to the Facility in the Developer and not the Agency.

(D) If any payments under paragraph (A) and (B) of this Section 3 are untimely, such payments shall be subject to late charges, costs, expenses and penalties in accordance with Section 874(5) and Section 874(6) of the General Municipal Law of the State, as amended.

SECTION 4. Sales Tax Exemption.

(A) The initial construction and equipping of the Facility shall be exempt from sales tax. The initial sales tax exemption period for the Facility shall expire at the end of the Construction Period, subject to extension by approval of the Agency. No sales tax exemption shall be granted to the Developer for the operations of the Facility.

(B) The Agency and the Developer agree that the sales tax exemption shall be provided in accordance with Section 875 of the General Municipal Law, as amended. The Agency shall keep records of the amount of State and local sales and use tax exemption benefits provided to this Project and Developer and its subagents shall make such records available to the Commissioner of Tax & Finance upon request.

SECTION 5. Mortgage Tax Exemption. All mortgages placed against the Facility shall be exempt from the payment of mortgage recording tax, as would otherwise be charged pursuant to the Tax Law of the State, as amended.

SECTION 6. Recapture of Benefits. All benefits derived hereunder shall be subject to the Uniform Recapture of Benefits Policy of the Agency as set forth on Schedule C hereto.

SECTION 7. Distribution of Payments. The Agency shall distribute each payment hereunder among the tax districts within which the Facility is located in accordance with Section 858 (15) of the General Municipal Law of the State, as amended.

SECTION 8. Event of Default. Failure of the Developer to make any payment required hereunder shall constitute an Event of Default under the Lease Agreement.

SECTION 9. Remedies on Default.

(A) General. Whenever an Event of Default shall have occurred with respect to this Payment in Lieu of Tax Agreement, the Agency (or if such Event of Default concerns a

payment required to be made hereunder to any Taxing Entity, then with respect to such Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreement and covenants of the Developer under this Payment in Lieu Agreement.

(B) Cross-Default. In addition, Default hereunder shall constitute an Event of Default under Article X of the Lease Agreement. Upon occurrence of Event of Default hereunder resulting from a failure of the Developer to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

SECTION 10. Term of Agreement. The term of the PILOT Agreement shall be from the date of the leasehold interest to the Land is leased to the Agency by the Developer by the Underlying Lease to the date the leasehold interest to the Land is conveyed by assignment to the Developer (or any other Person) by the Agency pursuant to the provisions of the Lease Agreement. Until the leasehold interest in the Land and improvements is transferred into the Agency on the next ensuing taxable status date, the Developer shall be liable for all real property taxes levied on, or which could be levied on, the Land and improvements based on the assessment roll in effect on the date of the Underlying Lease from the Developer to the Agency. The Developer shall be liable for all real property taxes levied on, or which could be levied on, the Land and improvements from the date of conveyance from the Agency to the Developer pursuant to the provisions of Section 520 of the Real Property Tax Law of the State.

SECTION 11. Grievance Procedure.

(A) The Agency hereby assigns to the Developer all of the Agency's rights under the Real Property Tax Law of the State to contest any assessment on or real property tax levied against the Land and the Facility. Should the Developer commence any real property assessment review proceeding under this Section 10, the Developer shall have the right to prosecute such action or administrative adjudication in the name of the Agency. If the Developer shall prevail in such proceeding, the Agency shall pass through to the Developer any refunds of payments in lieu of taxes the Agency receives from the taxing jurisdictions based upon the final order or judgment of the court or Governmental Authority reviewing the assessment or tax.

(B) The rights assigned in paragraph (A) of this Section 11 are subject to those rights and obligations created by the Lease Agreement.

SECTION 12. Assignment of Developer Obligations. The obligations of the Developer under the PILOT Agreement may not be assigned in whole or in part to any other Person without the prior written consent of the Agency, which consent will not be unreasonably withheld so long as the Project Facility remains an eligible project 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, as it may be amended from time to time.

SECTION 13. Merger of Agency.

(A) Nothing contained in the PILOT Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into or assignment by the Agency of its rights and interests hereunder to any other body corporate and politic and public instrumentality of the State or political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all the agreements and conditions of the PILOT Agreement and the Lease Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(B) As of the date of any such consolidation, merger or assignment, the Agency shall give notice thereof in reasonable detail to the Developer. Pursuant to Section 9.2 of the Lease Agreement, the Agency shall promptly furnish to the Developer such additional information with respect to any such consolidation, merger or assignment as the Developer reasonably may request.

SECTION 14. Uniform Tax Exemption Policy. This PILOT Agreement and its provisions are in compliance with the Agency's Uniform Tax Exemption Policy and the procedures required for providing assistance under an "enhanced" agreement.

SECTION 15. Counterparts. This PILOT Agreement may be executed in several counterparts each of which shall be an original and all of which shall constitute but one instrument.

SECTION 16. Applicable Law. This PILOT Agreement shall be governed exclusively by the applicable laws of the State of New York.

SECTION 17. Section Headings. The section headings of this PILOT Agreement have been prepared for convenience only and shall not affect the meaning of any provision of this PILOT Agreement.

SECTION 18. Reporting Requirements.

(A) Job Listings. In accordance with Section 858-b(2) of the General Municipal Law of the State of New York ("GML"), the Developer understands and agrees that, except as otherwise provided by collective bargaining agreement, new employment opportunities created as a result of the Project, as defined within the Agency Lease Agreement, will be listed with the New York State Department of Labor Community Services Division (the "DOL") and the administrative entity (collectively with the DOL, the "JTPA Entities") of

the service delivery area created by the federal Job Training Partnership Act (Public Law 97-300) in which the project is located.

(B) First Consideration for Employment. In accordance with GML Section 858-b(2), the Developer understands and agrees that, except as otherwise provided by collective bargaining agreements, where practicable, the Developer will first consider persons eligible to participate in WIB programs who shall be referred by the WIB entities for new employment opportunities created as a result of the Project.

(C) New York State Department of Taxation and Finance Form ST-60. In accordance with GML Section 874(9), the Developer understands that the Developer and each agent, subagent, contractor and/or subcontractor appointed by the Developer and claiming a sales tax exemption in connection with the Project must complete a New York State Department of Taxation and Finance Form ST-60. Original copies of each completed Form St-60 must be delivered to the Agency within five (5) days of the appointment of the Developer or any such agent, subagent, contractor and/or subcontractor as agent of the Agency for purposes of completing the Project. Failure to comply with these requirements may result in loss of sales tax exemptions for the Project.

(D) Annual Sales Tax Filings. In accordance with GML Section 874(8), the Developer understands and agrees that it will file, or cause to be filed by February 15 of each year, with the New York State Department of Taxation and Finance, the annual form prescribed by the Department of Taxation and Finance (Form ST-340) describing the value of the sales tax exemptions claimed by the Developer, as applicable, along with all consultants or sub contractors retained.

E. Annual Employment Filings. The Developer understands and agrees that it will file, or cause to be filed, with the Agency, on an annual basis, reports regarding the number of people employed at the Project site. The Developer understands and agrees that it must file with the Agency an annual report regarding the number of full, part-time and seasonal employees at the Project site including a copy of the 4th quarter filing with the New York State Department of Labor Form NYS-45-MN.

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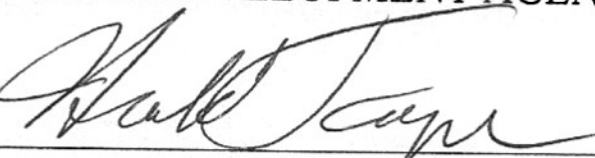
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Agency and the Developer have caused this PILOT Agreement to be executed and sealed by their Authorized Representatives as of the date first above written.

COUNTIES OF WARREN AND WASHINGTON
INDUSTRIAL DEVELOPMENT AGENCY

[SEAL]

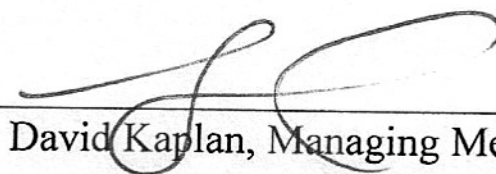
By: _____



Harold G. Taylor, Chairman

354 BROADWAY, LLC

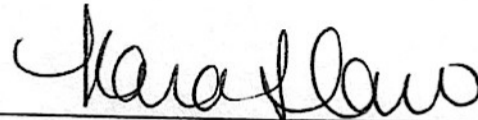
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David Kaplan, Managing Member

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

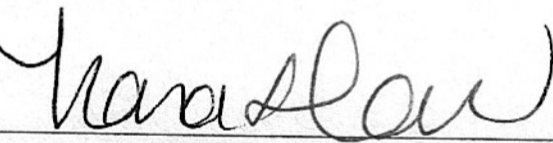
On the 7th day of April in the year 2016, before me, the undersigned, personally appeared **Harold G. Taylor**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the 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 Washington)

On the 15th day of April in the year 2016, before me, the undersigned, personally appeared **David Kaplan**, 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

KARA I. LAIS
Notary Public, State of New York
Saratoga Co. #02LA6105701
Commission Expires Feb. 17, 2020

SCHEDULE A

DESCRIPTION OF THE LAND

SCHEDULE A DESCRIPTION

ALL that certain plot, piece or parcel of land situated in the TOWN OF FORT EDWARD County of Washington, State of New York, and being more particularly bounded and described as follows:

INDEX # 17864

NAME: DVL, INC

DESCRIPTION: 354 Broadway 454 Supermarket Grand Union Sub Lot B acres 5.94

TAX MAP NO: 533089; 163.10-1-46.3

SAID PREMISES ARE ALSO DESCRIBED AS FOLLOWS:

ALL THAT CERTAIN piece or parcel of land, situate lying and being in the Town of Fort Edward, County of Washington and State of New York, more particularly bounded and described as follows:

BEGINNING at an iron pipe in the ground on the Easterly line of U.S. Route 4 (Upper Broadway) at the Southwest corner of lands of Franchise Realty Interstate Corp. said point of beginning being also 325.01 feet South of the South line of Orsola Avenue as measured along the Easterly line of U.S. Route 4 and runs thence South 76 degrees 49 minutes East along the South line of Franchise Realty Interstate Corp. a distance of 200.0 feet, thence North 12 degrees 37 minutes East along the East line of said lands a distance of 200.0 feet to the Southerly bounds of a lot sub-division, thence South 76 degrees 49 minutes East along said south line a distance of 293.80 feet, thence South 21 degrees 20 minutes West a distance of 18.44 feet, thence South 68 degrees 48 minutes East a distance of 125.50 feet, thence South 52 degrees 00 minutes 30 seconds East across the Southerly bounds of Caputo Avenue, a distance of 52.33 feet, thence South 68 degrees 56 minutes East a distance of 125.0 feet to the Westerly line of lands of School District 9, thence South 21 degrees 06 minutes 30 seconds West along said Westerly line a distance of 94.64 feet to a stone monument, thence South 21 degrees 19 minutes West continuing along said Westerly line a distance of 443.26 feet to the Southerly line of lands of the Grantor herein, thence North 83 degrees 44 minutes West along said Southerly line a distance of 105.65 feet to the Southeast corner of lands of Agway Inc., thence North 12 degrees 37 minutes 30 seconds East along the East line of Agway Inc. lands a distance of 186.65 feet to the Northeast corner thereof, thence North 76 degrees 49 minutes West along the Northerly line of lands of Agway Inc. a distance of 600.0 feet to the Easterly line of U.S. Route 4 (Upper Broadway), thence North 12 degrees 37 minutes East along the Easterly line of U.S. Route 4 a distance of 233.47 feet to the point and place of beginning. Containing 6.8 acres +/- of land, all as shown on a survey and map prepared by Richard Danskin P.C.

EXCEPTING THEREFROM that parcel conveyed to Pizzagates, Inc. by deed dated November 7, 2003 and recorded November 12, 2003 in Liber 951 page 319, described as follows:

All that certain piece or parcel of land situate, lying and being in the Town of Fort Edward, County of Washington and the State of New York, more particularly bounded and described as follows:

BEGINNING at a point in the easterly bounds of Upper Broadway at the southwest corner of the lands conveyed to Franchise Realty Interstate Corporation by deed dated August 13, 1976 and recorded in book 455 of deeds at page 767; running from thence South 75 degrees, 25 minutes and 21 seconds East, along the southerly bounds thereof, a distance of 197.78 feet to the southeast corner thereof; thence running through the lands of the grantor herein the following three courses and distances:

1. South 75 degrees, 25 minutes and 21 seconds East, a distance of 31.22 feet;
2. South 13 degrees, 59 minutes and 17 seconds West, a distance of 172.04 feet;
3. North 75 degrees, 24 minutes and 46 seconds West, a distance of 229.00 feet to the easterly bounds of Upper Broadway; thence running along the same, North 13 degrees, 59 minutes and 17 seconds East, a distance of 172.00 feet to the point and place of beginning, containing 0.90 acres of land to be the same more or less.

Said premises are more modernly described as follows:

All that piece or parcel of land situate in the Town of Fort Edward, County of Washington and the State of New York, bounded and described as follows:

Beginning at a point located along the easterly line of Upper Broadway (N.Y.S. Route 4), said point being the intersection formed by said east line of Upper Broadway with the division line between the lands now or formerly of MHW Properties, LLC (Book 861, Page 186) on the south and the lands now or formerly of the County of Washington (Book 3178, Page 318) on the north; thence in a northerly direction and along the aforesaid Upper Broadway, North 12° 45' 00" East, 61.03 feet to a point; thence in an easterly, northerly and westerly direction and along the lands now or formerly of J. Larry Fugate, Trustee (Book 3062, Page 181), the following three courses: 1) South 76° 49' 25" East, 227.20 feet to a point; 2) North 12° 34' 38" East, 172.04 feet to a point and 3) North 76° 50' 00" West 31.22 feet to a point; thence in a northerly direction and along the lands now or formerly of Franchise Realty Interstate Corporation (Book 455, Page 767), North 12° 37' 00" East, 199.73 feet to a point; thence in an easterly direction and along the lands now or formerly of Maynard (Book 509, Page 16), lands of Mylott (Book 931, Page 258), lands of Melucci (Book 3131, Page 170), lands of Winter (Book 920, Page 89), lands of Miner (Book 653, Page 96), lands of Derby (Book 353, Page 461), lands of Aiken (Book 800, Page 25), lands of Trombley (Book 852, Page 350), the southerly end of Caputo Avenue and the lands now or formerly of Porier (Book 3232, Page 3), the following five courses: 1) South 76° 50' 00" East, 294.55 feet to a point; 2) South 21° 09' 00" West, 18.46 feet to a point; 3) South 68° 51' 28" East, 125.10 feet to a point; 4) South 51° 31' 34" East, 62.15 feet to a point and 5) South 68° 54' 48" East, 125.00 feet to a point; thence in a southerly direction and along the westerly line of the lands now or formerly of the Trustees of Union Free School District No. 9, the following two courses: 1) South 21° 06' 30" West, 93.83 feet to a point and 2) South 21° 19' 00" West, 443.26 feet to a point; thence in a westerly direction and along the aforesaid lands of School District No. 9 and also along the lands now or formerly of Wilmer McKinney (Book 2784, Page 158), North 83° 44' 00" West, 105.65 feet to a point; thence in a northerly and westerly direction and along the aforesaid lands of MHW Properties, LLC, the following two courses: 1) North 12° 37' 30" East, 186.65 feet to a point and 2) North 76° 49' 00" West, 596.23 feet to the point or place of beginning. Containing in all 5.93 acres of land being more or less.

SCHEDULE B

PILOT PAYMENT SCHEDULE

During the term of this PILOT Agreement, the Developer shall make payments equal to a percentage of the taxes which would have been due to the relevant taxing entities based on the total assessed value of the Land and the Facility, as follows:

- (a) One hundred percent (100%) of the taxes due on the land and existing structures and improvements;
- (b) 75% exemption on new construction for a period of five (5) years; 50% exemption for the next five (5) years; 25% exemption for the next five (5) years then payment of 100% of the taxes due beginning in year 16.

ABATEMENT SCHEDULE

Pilot Year	Assessment Year	Percentage of Abatement on New Facility
Year 1	2017	75% abatement on new construction
Year 2	2018	75% abatement on new construction
Year 3	2019	75% abatement on new construction
Year 4	2020	75% abatement on new construction
Year 5	2021	75% abatement on new construction
Year 6	2022	50% abatement on new construction
Year 7	2023	50% abatement on new construction
Year 8	2024	50% abatement on new construction
Year 9	2025	50% abatement on new construction
Year 10	2026	50% abatement on new construction
Year 11	2027	25% abatement on new construction
Year 12	2028	25% abatement on new construction
Year 13	2029	25% abatement on new construction
Year 14	2030	25% abatement on new construction
Year 15	2031	25% abatement on new construction
Year 16	2032	100% taxation

SCHEDULE C

UNIFORM RECAPTURE OF BENEFITS POLICY

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

Within 1 year	100%
Within 2 years	100%
Within 3 years	100%
Within 4 years	50%
Within 5 years	25%
After 5 years	0%

The time period above is from the effective date of the PILOT Agreement. Imposition of any recapture is at the sole discretion of the Agency and is reviewed/considered on a case by case basis. Reasons for the recapture of benefits include the following:

1. Sale or closure of the facility and departure of the Developer from the counties of Warren and Washington.
2. Significant change in the use of the facility and/or the business activities of the Developer.
3. Significant employment reductions not reflective of the Developer's (normal) business cycle and/or local and national economic conditions.
4. Failure to comply with annual reporting requirements, after thirty (30) days from date of written notice provided by the Agency.
5. Failure to achieve the minimum number of net new jobs specified in the application within 3 years. (Jobs of thirty (30) or more hours per week will be considered as one full time job. Part time permanent jobs of less than thirty (30) hours per week will be converted to full time equivalent jobs by dividing the total number of part time hours by 30.)

NOTE: The Agency, at its discretion, reserves the right to deviate from its Recapture of Benefits Policy, and to impose more severe penalties and restrictions.

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

1. In excess of the amounts authorized; or

2. For property or services not authorized; or
3. For a project that failed to comply with a material term or condition to use property or services in the manner required by any and all provisions of the agreements that the Developer has entered into with the Agency.

For purposes of this Recapture of Benefits Policy, the Developer 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 Developer 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 Developer 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.