

## **PAYMENT IN LIEU OF TAXES AGREEMENT**

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (the “Agreement”), dated as of November 20, 2017, by and among 100 SAVEAROUND PARKWAY, LLC, a limited liability company organized and existing under the laws of the State of New York, having an office located at 31 Front Street, Binghamton, New York 13905 (the “Company”), the CITY OF BINGHAMTON, a municipal corporation located within the County of Broome and the State of New York with offices at 38 Hawley Street, Binghamton, New York 13901 (the “City”), and the BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the “Agency”), a public-benefit corporation organized and existing under the laws of the State of New York with offices at Five South College Drive, Binghamton, New York 13905 (collectively, the “Parties”).

### **WITNESSETH:**

1. The Company has requested that the Agency assist in the financing of the acquisition, renovation and equipping of a 38,000+/- square foot building, adjacent parking lots and associated utilities (the “Facility”) on approximately 5.13 acres of land situate at 100 Emerson Parkway in the City of Binghamton, Broome County, New York, more particularly described as Broome County Tax Map Parcel No. 144.78-2-55 (the “Land”). The Facility and the Land are hereinafter collectively referred to as the “Project”.
2. The Agency was created as a public benefit corporation pursuant to and for the purposes specified in Title 1 of Article 18-A of the General Municipal Law.
3. The Company has agreed to lease the Project to the Agency and has agreed to renovate, equip and operate the Project thereon.
4. The Agency will lease the Project to the Company for a term commencing

November 20, 2017 through February 1, 2038 with the Company agreeing herein to pay the 2018 City and County real estate taxes and the 2017/18 School taxes at the current assessment with no benefit under this Agreement. The benefits under this Agreement will commence with the 2018/19 School taxes and end with the 2038 City and County real estate taxes.

5. In that the Agency is exempt from the payment of real estate taxes and certain assessments imposed upon real property, the Company has agreed that, notwithstanding such exemption, the Company will nevertheless make payments to the City, the Binghamton City School District (the "School"), and the County of Broome (the "County") (collectively, the "Taxing Entities") during the term of the lease in lieu of general tax levies as provided herein.

6. The Parties to this Agreement acknowledge and agree that the Taxing Entities, although not all parties to this Agreement, are third party beneficiaries to this Agreement; having all the rights hereunder; including the ability and rights under law and under contract to enforce this Agreement. The Parties to this Agreement also acknowledge and agree that the Taxing Entities, collectively and individually, have all the rights and remedies available to them under New York State Law to enforce this Agreement; including but not limited, to the conversion of a delinquent PILOT payment to unpaid taxes; filing of a tax levy and tax lien; and collection of unpaid taxes using various methods under New York State Law.

NOW, THEREFORE, in consideration of the covenants herein contained, it is mutually agreed as follows:

SECTION 1. TAX-EXEMPT STATUS OF THE PROJECT

A. GENERAL ASSESSMENT OF THE PROJECT: Pursuant to General Municipal Law §874 and Real Property Tax Law §412-a, the Parties hereto understand that, upon the Company leasing the Project to the Agency in 2017, and provided the Project continues to be

leased by the Agency, the Project shall be assessed by the Taxing Entities as exempt upon the assessment rolls of the respective Taxing Entities for the term as provided below.

B. WATER AND SEWER CHARGES AND SPECIAL ASSESSMENTS:

The Parties hereto understand that the tax exemption extended to the Agency by General Municipal Law §874 and Real Property Tax Law §412-a does not entitle the Agency to exemption from water and sewer charges, fire district charges, if any, or special assessments and special ad valorem levies. Commencing on the date hereof and continuing during the term of the lease, the Company will be required to pay all water and sewer charges, fire district charges, if any, special assessments and special ad valorem levies lawfully levied and/or assessed against the Project.

SECTION 2. DEFAULT, LOSS OF EXEMPTION STATUS AND TERMINATION OF LEASES

In addition to the expiration of the term of this Agreement, any of the following specified events shall constitute a default hereunder, any default shall terminate any leases between the Company and the Agency relating to the Project, and the tax exemption herein shall terminate and be of no further force or effect:

A. The failure of the Company to diligently and consistently undertake the renovation of the Project once commenced and, subject to force majeure, pursue the Project to completion with all due speed.

B. The failure of the Company to make timely payments of the sums due and payable hereunder.

C. In the event of a failure of the Company to comply with the terms of Section 2(A) or 2(B) above or the Broome County Industrial Development Agency Policy for

Termination, Modification and/or Recapture of Agency Benefits as set forth in Exhibit "B" attached hereto, the Agency, or one or more of the Taxing Entities, may deliver written notice of such failure to the Company and any Mortgagee or Lender of record and the Company (or the Mortgagee or Lender of record), shall have sixty (60) days to cure any monetary failure and, in the event of a non-monetary failure, sixty (60) days to cure or commence to diligently proceed to cure such failure, if it cannot be reasonably cured within such sixty (60) day period, subject to force majeure. Only upon the passage of such sixty (60) day period, if the Company or any Mortgagee or Lender of record has not cured such failure or default, shall the Agency or any of the Taxing Entities be entitled to the remedies described herein.

D. The Taxing Entities, collectively and individually, have all the rights and remedies available to them at law, under this Agreement and under New York State Real Property Tax Law and any other relevant laws, statutes and codes to enforce payment of any unpaid monies due under this Agreement. As this Agreement is not meant to be a complete substitution for real property taxes and assessments, the act of a default and/or nonpayment under this Agreement allows the Taxing Entities to convert any nonpayment into a tax levy or tax lien and shall entitle the Taxing Entities to employ the remedies and procedures enumerated in the New York State Real Property Tax Law and any other relevant laws, statutes and codes to enforce payment of the monies due and owing. In addition, the Company agrees to pay all costs of collection, including reasonable attorney fees.

E. Any nonpayment shall survive bankruptcy, as the Parties agree that a default converts those unpaid monies into unpaid taxes and, as such, protects and empowers the Taxing Entities to proceed as such.

### SECTION 3. AMOUNT OF PAYMENTS IN LIEU OF TAXES

A. Commencing with the September 2018/19 School tax bill, the Company agrees to pay to the Taxing Entities the amounts set forth in Exhibit "A" annexed hereto and made a part hereof. The amounts to be paid in Exhibit "A" provide a total to be paid and the amount to be paid to each of the Taxing Entities. Each year of the PILOT schedule shall begin on March 1<sup>st</sup> and end on February 28<sup>th</sup> of the following year. The final payment under this Agreement will be in lieu of the 2038 City and County real estate taxes. Thereafter, the Project shall be returned to the taxable roll.

B. The payments in lieu of taxes set forth in Exhibit "A" are based upon an agreed assessment of \$1,450,000.00 for the Project during the entire term of this Agreement. The payment schedule is not subject to challenge or adjustment by the Company, the Agency, or the Taxing Entities, even if the City or County conducts a City wide reassessment of all commercial properties.

C. The County, acting as collecting agent for all the Taxing Entities, shall bill the Company on or about January 1 of each year for the payment due hereunder for the City and County payments and on September 1 of each year for the payment due hereunder for the School payment. The Company shall pay the City and County payments on or before January 31 of each year and shall pay the School payment on or before September 30 of each year.

D. The County will pay the City and School their respective payments within the same time allowed to pay over taxes collected during the same time period, i.e., the City will be paid on or before February 10 of each year.

E. Pursuant to Section 874(5) of the General Municipal Law, if the Company shall fail to make any payment required by this PILOT Agreement when due, the Company shall

pay the same, together with a late payment penalty equal to five percent (5%) of the amount due. If the Company shall remain in default beyond the first month after such payment is due, the Company shall hereafter pay a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month plus interest thereon to the extent permitted by law at the greater of (1) one percent (1%) per month, or, (2) the rate per annum which would have been payable if such amount were delinquent taxes, until so paid in full.

F. Pursuant to Section 874(6) of the General Municipal Law, if the Company should default in performing any of its obligations, covenants or agreements under this PILOT Agreement, beyond any applicable notice and cure period, and the Agency or any taxing jurisdiction should employ attorneys or incur other expense for the collection of any amounts payable hereunder, or for the enforcement or performance or observation of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefore, pay to the Agency or such taxing jurisdiction, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also reasonable fees and disbursements of such attorneys and all other reasonable expenses, costs and disbursements so incurred whether or not an action is commenced.

G. Notwithstanding the foregoing, the Agency reserves the right to terminate, modify, or recapture any benefits provided to the Company pursuant to this PILOT Agreement, as well as any other benefit provided to the Company, in accordance with the policy of the Agency set forth in Exhibit "B" attached hereto.

H. No remedy herein conferred upon or reserved to the Agency or any taxing jurisdiction is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this PILOT Agreement or now and hereafter existing at law or in equity or by statute. No delay or admission in exercising any such right or power accruing upon a default hereunder shall impair any such right or power or be construed as a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

#### SECTION 4. ADDITIONS TO PROJECT

Should the Company, during the term of this Agreement, cause to be constructed on the Land any addition to the Project, then such addition shall be assessed and real estate taxes imposed in the same manner as all other non-tax-exempt real property is then being assessed and taxed by the City, County, and School, unless otherwise agreed by all of the Parties hereto.

#### SECTION 5. TERM OF AGREEMENT

This Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon (A) the execution of this Agreement by the Agency and the Company, and (B) the execution and filing of Real Property Tax Form RP-412-a with the Assessor of the City of Binghamton, and (C) the delivery of a copy of this Agreement and the Real Property Tax Form RP-412-a to the City, the School and the County. This Agreement shall continue to remain in effect through February 1, 2038, or the date upon which the leasehold interest to the Project is no longer held by the Agency, including a change of title due to foreclosure, whichever shall be sooner, with the Company agreeing herein to pay the September 2038/39 School tax at the then current assessment with no benefit under this Agreement. In addition, the City, School and County shall have the same rights afforded by the New York State

Real Property Tax Law regarding the collection and enforcement of unpaid taxes.

SECTION 6. PRIORITY

The Parties agree that payments due hereunder shall be accorded a lien priority equivalent to the lien of unpaid real property taxes as provided in the Real Property Tax Law of the State of New York and, as such, shall have priority over any mortgages or other liens filed against the Project. The Parties do hereby further agree that a Memorandum of this Agreement shall be recorded in the office of the Broome County Clerk.

SECTION 7. REPRESENTATIONS OF THE COMPANY

The Company warrants that:

- A. It is duly organized as a limited liability company in good standing in accordance with the laws of the State of New York and is authorized to do business in the State of New York.
- B. It has full power and authority to execute and deliver this Agreement and to perform its obligations.
- C. This Agreement constitutes a legal, valid, and binding obligation of it enforceable in accordance with its terms.
- D. To the best of its knowledge, the execution and delivery of this Agreement does not, and the performance of this Agreement will not, violate any law, regulation, ordinance, judicial order, judicial decree, or any agreement, indenture, note, or other instrument to which it is a party.
- E. To the best of its knowledge, there is no claim, action, arbitration, or administrative proceeding pending, threatened against, or involving the Company which if adversely determined, would question the validity of this Agreement or would have a material



adverse effect on its financial condition.

SECTION 8. AMENDMENT OF AGREEMENT

This Agreement may not be amended, changed, modified, altered or terminated unless such amendment, change, modification, alteration or termination is in writing intended for such purpose and executed and delivered by each of the Parties hereto.

SECTION 9. BINDING EFFECT

This Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns, regardless of the tax exempt status of any successor or assign.

SECTION 10. NOTICES

All notices, demands or communications required to be given under this Agreement shall be forwarded simultaneously by certified mail or Federal Express or other similar overnight delivery service, to the respective addresses of the Parties hereinafter set forth or to such other place(s) as any of the Parties hereto may, from time to time, designate by written notice to the other.

To the Company:      100 SaveAround Parkway, LLC  
                                 31 Front Street  
                                 Binghamton, New York 13905

Attn: Raymond H. Stanton, III

To the City:            City of Binghamton  
                                 38 Hawley Street  
                                 Binghamton, New York 13901

Attn: Mayor

To the School: Binghamton City School District  
164 Hawley Street  
Binghamton, New York 13901

Attn: District Superintendent

To the County: Broome County  
60 Hawley Street  
Binghamton, New York 13901

Attn: County Executive

To the Agency: Broome County Industrial Development Agency  
Five South College Drive  
Binghamton, New York 13905

Attn: Executive Director

A duplicate copy of each notice, certificate or other communication given hereunder shall be given to each party. Any person entitled to notice may, by written notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent. Notices shall be deemed delivered upon actual receipt or refusal of delivery.

#### SECTION 11. SEVERABILITY

If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Agreement shall, for any reason, be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent, and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 12. COUNTERPARTS

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

SECTION 13. APPLICABLE LAW

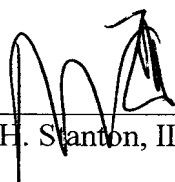
This Agreement shall be construed in accordance with the laws of the State of New York. Venue for any action or proceeding shall be in Broome County, New York.

SECTION 14. ENTIRE AGREEMENT


This Agreement constitutes the entire agreement of the Parties and shall not be modified unless in writing and signed by all of the Parties hereto in the same manner as this Agreement is executed.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be duly executed the date set forth herein.

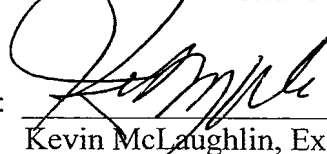
100 SAVEAROUND PARKWAY, LLC

By:   
Raymond H. Stanton, III, Member

CITY OF BINGHAMTON

By:   
Richard C. David, Mayor

BROOME COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY


By:   
Kevin McLaughlin, Executive Director

STATE OF NEW YORK:

: ss.

COUNTY OF BROOME:

On this 20<sup>th</sup> day of November, in the year 2017, before me, the undersigned, a notary public in and for said state, personally appeared RAYMOND H. STANTON, III, 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 on behalf of which the individual acted, executed the instrument.

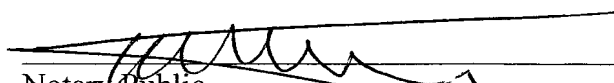
  
\_\_\_\_\_  
Notary Public  
LAWRENCE C. ANDERSON  
Notary Public, State of New York  
Reg. No. 3028690  
Residing in Broome County  
My Commission Expires Feb. 28, 2019

STATE OF NEW YORK:

: ss.

COUNTY OF BROOME:

On this 20<sup>th</sup> day of November, in the year 2017, before me, the undersigned, a notary public in and for said state, personally appeared RICHARD C. DAVID, 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 on behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public  
KENNETH J. FRANK  
Notary Public, State of New York  
Reg. No. 3028690  
Residing in Broome County  
My Commission Expires April 09, 2019

STATE OF NEW YORK:

: ss.

COUNTY OF BROOME:

On this 20<sup>th</sup> day of November, in the year 2017, before me, the undersigned, a notary public in and for said state, personally appeared KEVIN McLAUGHLIN, 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 on behalf of which the individual acted, executed the instrument.

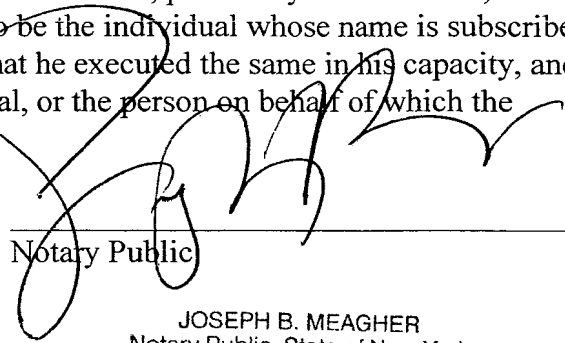
  
\_\_\_\_\_  
Notary Public  
JOSEPH B. MEAGHER  
Notary Public, State of New York  
Broome County 02ME4974837  
Commission Expires Nov. 26, 2019

EXHIBIT "A"

(SEE ATTACHED PILOT PAYMENT SCHEDULE)

PILOT year	100 Emerson PILOT assessment	PILOT Assessment percentage to be paid	Annual PILOT PAYMENT TOTAL plus 1.5% annually	Annual PILOT PAID TO CITY		Annual PILOT PAID TO COUNTY		Annual PILOT PAID TO SCHOOL	
				PAID TO CITY	PAID TO COUNTY	PAID TO COUNTY	PAID TO SCHOOL		
1: (2018/2019 School and 2019 City/County)	\$1,450,000.00	0.200	\$27,103.75	\$12,386.41	\$2,601.96	\$12,115.38	\$2,601.96	\$12,115.38	\$12,115.38
2: (2019/2020 School and 2020 City/County)	\$1,450,000.00	0.225	\$30,491.72	\$13,934.71	\$2,927.20	\$13,629.80	\$2,927.20	\$13,629.80	\$13,629.80
3: (2020/2021 School and 2021 City/County)	\$1,450,000.00	0.250	\$33,879.69	\$15,483.02	\$3,252.45	\$15,144.22	\$3,252.45	\$15,144.22	\$15,144.22
4: (2021/2022 School and 2022 City/County)	\$1,450,000.00	0.275	\$37,267.65	\$17,031.32	\$3,577.69	\$16,658.64	\$3,577.69	\$16,658.64	\$16,658.64
5: (2022/2023 School and 2023 City/County)	\$1,450,000.00	0.300	\$40,655.62	\$18,579.62	\$3,902.94	\$18,173.06	\$3,902.94	\$18,173.06	\$18,173.06
6: (2023/2024 School and 2024 City/County)	\$1,450,000.00	0.325	\$44,043.59	\$20,127.92	\$4,228.18	\$19,687.48	\$4,228.18	\$19,687.48	\$19,687.48
7: (2024/2025 School and 2025 City/County)	\$1,450,000.00	0.375	\$50,819.53	\$23,224.52	\$4,878.67	\$22,716.33	\$4,878.67	\$22,716.33	\$22,716.33
8: (2025/2026 School and 2026 City/County)	\$1,450,000.00	0.500	\$67,759.37	\$30,966.03	\$6,504.90	\$30,288.44	\$6,504.90	\$30,288.44	\$30,288.44
9: (2026/2027 School and 2027 City/County)	\$1,450,000.00	0.550	\$74,535.31	\$34,062.64	\$7,155.39	\$33,317.28	\$7,155.39	\$33,317.28	\$33,317.28
10: (2027/2028 School and 2028 City/County)	\$1,450,000.00	0.650	\$88,087.18	\$40,255.84	\$8,456.37	\$39,374.97	\$8,456.37	\$39,374.97	\$39,374.97
11: (2028/2029 School and 2029 City/County)	\$1,450,000.00	0.700	\$94,863.12	\$43,352.44	\$9,106.86	\$42,403.81	\$9,106.86	\$42,403.81	\$42,403.81
12: (2029/2030 School and 2030 City/County)	\$1,450,000.00	0.700	\$94,863.12	\$43,352.44	\$9,106.86	\$42,403.81	\$9,106.86	\$42,403.81	\$42,403.81
13: (2030/2031 School and 2031 City/County)	\$1,450,000.00	0.725	\$98,251.09	\$44,900.75	\$9,432.10	\$43,918.24	\$9,432.10	\$43,918.24	\$43,918.24
14: (2031/2032 School and 2032 City/County)	\$1,450,000.00	0.750	\$101,639.06	\$46,449.05	\$9,757.35	\$45,432.66	\$9,757.35	\$45,432.66	\$45,432.66
15: (2032/2033 School and 2033 City/County)	\$1,450,000.00	0.750	\$101,639.06	\$46,449.05	\$9,757.35	\$45,432.66	\$9,757.35	\$45,432.66	\$45,432.66
16: (2033/2034 School and 2034 City/County)	\$1,450,000.00	0.775	\$105,027.02	\$47,997.35	\$10,082.59	\$46,947.08	\$10,082.59	\$46,947.08	\$46,947.08
17: (2034/2035 School and 2035 City/County)	\$1,450,000.00	0.775	\$105,027.02	\$47,997.35	\$10,082.59	\$46,947.08	\$10,082.59	\$46,947.08	\$46,947.08
18: (2035/2036 School and 2036 City/County)	\$1,450,000.00	0.800	\$108,414.99	\$49,545.65	\$10,407.84	\$48,461.50	\$10,407.84	\$48,461.50	\$48,461.50
19: (2036/2037 School and 2037 City/County)	\$1,450,000.00	0.825	\$111,802.96	\$51,093.95	\$10,733.08	\$49,975.92	\$10,733.08	\$49,975.92	\$49,975.92
20: (2037/2038 School and 2038 City/County)	\$1,450,000.00	0.825	\$111,802.96	\$51,093.95	\$10,733.08	\$49,975.92	\$10,733.08	\$49,975.92	\$49,975.92
<b>TOTALS</b>			<b>\$1,527,973.79</b>	<b>\$698,284.02</b>	<b>\$146,685.48</b>	<b>\$683,004.29</b>	<b>\$146,685.48</b>	<b>\$683,004.29</b>	<b>\$683,004.29</b>

Regular payments resume with the 2038/2039 School tax and 2039 City/County tax

EXHIBIT "B"

(SEE ATTACHED POLICY FOR TERMINATION, MODIFICATION AND/OR  
RECAPTURE OF AGENCY BENEFITS)

**BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
POLICY FOR TERMINATION, MODIFICATION  
AND/OR RECAPTURE OF AGENCY BENEFITS**

The goal of this Policy is to establish and provide a procedure as required by Section 875 of the New York State General Municipal Law for the termination, modification and/or recapture of Broome County Industrial Development Agency (the “Agency”) benefits provided to an applicant in order to induce such applicant to undertake a project in Broome County. For purposes of this policy, Agency benefits shall include any or all of the following:

- (i) exemptions from New York State and local sales and use tax;
- (ii) an exemption from the New York State mortgage recording tax; and/or
- (iii) an abatement from real property taxes provided through a payment-in-lieu-of-tax (“PILOT”) Agreement.

The Agency reserves the right to terminate, modify, or recapture Agency benefits if :

- (i) an applicant or its sub-agency (if any) authorized to make purchases for the benefit of the project is not entitled to the sales and use tax exemption benefits;
- (ii) sales and use tax exemption benefits are in excess of the amounts authorized by the Agency to be taken by the applicant or its sub-agents;
- (iii) sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the project;
- (iv) the applicant has made material, false, or misleading statements in its application for financial assistance;
- (v) the applicant has committed a material violation of the terms and conditions of a Project Agreement; and/or
- (vi) there is a material shortfall in job creation and retention projections as set forth in its application.

Upon the occurrence of any of the above conditions, the Agency Board may, upon



recommendation of the Executive Director, terminate, modify and/or recapture the Agency benefits provided to a specific project. Prior to undertaking such action, the Agency shall give written notice of its intention to terminate, modify and/or recapture Agency benefits to the applicant specifying the reasons why the Agency is considering such action. The applicant shall have twenty (20) days to respond to the Agency, either in writing or in person, providing such information and documentation as it deems appropriate for the Board to consider prior to making its decision. All such recaptured Agency benefits shall be redistributed to the appropriately affected taxing jurisdictions unless agreed to otherwise by such jurisdictions.

Notwithstanding the foregoing, the Agency retains the right to terminate Agency benefits as otherwise provided in project transaction documents including, but not limited to, failure of the applicant to make timely PILOT payments, to provide required reports, or to cooperate with Agency personnel in providing data regarding project progress.