

February 5, 2002

**Re:** Request for Ruling  
Real Property Transfer Tax  
Commercial Rent or Occupancy Tax  
FLR-014789-721

Dear \_\_\_\_\_ :

This is in response to your request for a ruling, dated \_\_\_\_\_, regarding the application of the New York City Real Property Transfer Tax (“RPTT”) and the New York City Commercial Rent and Occupancy Tax (“CRT”) to the transactions described below, involving \_\_\_\_\_ (“the Corporate Lessee”) and real property located at (the “Property”).

#### FACTS

The facts presented are as follows:

#### Background and the Old Purchase Option

Prior to the closing of the transactions described below, \_\_\_\_\_ (the “Vendor”) had owned the Property for many years. The Corporate Lessee originally entered into a conventional lease arrangement (the “Old Lease”) with the Vendor for the Property in \_\_\_\_\_. The Old Lease contained a purchase option (the “Old Purchase Option”) granting the Corporate Lessee the right to purchase the Property on certain terms including the payment of \$ \_\_\_\_\_ million. Subsequently, the Corporate Lessee assigned its rights under the Old Lease, including the Old Purchase Option, to its wholly-owned subsidiary, \_\_\_\_\_ (the “Subsidiary”). Just prior to the closing of the transactions described below on \_\_\_\_\_, the Subsidiary filed a certificate of dissolution and adopted a plan of complete liquidation. Pursuant to that plan, the Subsidiary transferred the Old Option back to the Corporate Lessee.

#### The Synthetic Lease Transactions

On \_\_\_\_\_, the Corporate Lessee and various other parties engaged in a series of transactions (the "Transactions" or the "Synthetic Lease Transactions") that created a "synthetic lease" arrangement. The synthetic lease is a financing structure in which the Corporate Lessee is intended to be treated as the owner of the Property for income tax purposes, but as a lessee of the Property under an "operating lease" (the "Lease") for financial statement purposes. As the initial part of the Transactions, the Corporate Lessee assigned the Old Purchase Option to \_\_\_\_\_ (the "Trust"). The Trust was established with \_\_\_\_\_ serving as trustee. Following the assignment, the Trust exercised the Old Purchase Option and purchased the Property from the Vendor for the option price of \$ \_\_\_\_\_ million.

The Trust accepted delivery of the Property from the Vendor and simultaneously leased it to the Corporate Lessee as of \_\_\_\_\_ (the "Lease"). The Lease has a "Base Term" of \_\_\_\_\_ years. Subject to the approval of the Participants (defined below), the Corporate Lessee has a "Renewal Option" giving it the right to renew the Lease for up to \_\_\_\_\_ -year periods.

To fund its obligations under the Transactions, the Trust borrowed approximately \$ \_\_\_\_\_ million from a bank (the "Loans"). The bank lender is permitted to assign its rights in the Loans and the Loan agreement, and to delegate its duties under the Loan agreement, to other financial institutions (collectively, with the bank lender, referred to as the "Lenders"). One or more financial institutions (the "Certificate Holders") have contributed equity investments of approximately \$ \_\_\_\_\_ million in the Trust in exchange for certificates of beneficial interest in the Trust (the "Certificates"), and are the Trust's beneficiaries. The Certificates provide for the payment of an interest-like return to the Certificate Holders. You have represented the Certificates have payment terms that are similar to the terms of the Loans and pay a rate of return that is higher than the rate of interest on the Loans. However, payments to the Certificate Holders are subordinate to payments on the Loans. (The Lenders and the Certificate Holders will be collectively referred to herein as "Participants" and the amounts loaned to or invested with the Trust will be collectively referred to herein as "Advances".)

In addition to purchasing the Property, the Trust made an additional loan to the Corporate Lessee in the amount of \$ \_\_\_\_\_ million, which represents the difference between the Property's present fair market value of \$ \_\_\_\_\_ million and the Old Purchase Option price of \$ \_\_\_\_\_ million. This additional loan is included in the amount that the Corporate Lessee must pay as part of its Lease obligations. The Trust used the remainder of the Advances (approximately \$ \_\_\_\_\_ million) to pay the costs and expenses of the Transactions.

You have represented that none of the Trust, the Trustee nor any of the Participants is affiliated with the Corporate Lessee. The Trust, the Participants and the Corporate Lessee are, however, parties to the participation agreement and various other agreements (collectively with the Lease, the "Operative Documents") that govern the Transactions and the Advances. An affiliate of the Corporate Lessee will act as guarantor (the "Guarantor") of the Corporate Lessee's obligations under the Operative Documents.

The payments that the Corporate Lessee must make under the Lease are referred to as “base rent” and “supplemental rent”, and are equivalent to the amount needed to pay the interest and return on the Advances as well as additional amounts owed under the Operative Documents. The Corporate Lessee’s obligation to pay such rent is absolute and unconditional, without regard to the condition of the Property. The Lease is a triple net lease, and provides that the Corporate Lessee is responsible for all costs associated with possession and ownership of the Property, including property taxes, utility charges, repairs and insurance. In addition, subject to certain limitations, the Operative Documents require the Corporate Lessee to indemnify the Trust and the Participants against any losses or liabilities associated with the Property. Further, the Corporate Lessee may make any alterations, renovations, improvements or additions to the Property, without the Trustee’s consent, provided that such modifications do not impair the Property’s value or its useful economic life. In addition, the Corporate Lessee may sublease or assign all or any part of the Property, or assign some or all of its rights under the Lease without the Trustee’s consent. However, any such sublease or assignment will not relieve the Corporate Lessee of its obligations under the Lease or other Agreements.

Under the Operative Documents, The Trust has assigned all of its rights and interests under the Lease to an administrative agent (the "Administrative Agent") for the benefit of the Participants. The Corporate Lessee is required to make its rental payments directly to the Administrative Agent, and the Administrative Agent must use the rental payments made under the Lease to pay interest and return on the Advances. The Corporate Lessee’s rental payments will be directly applied to pay the obligations to the Participants under the participation agreement. In this connection, The Lenders will file a UCC financing statement to perfect their first priority security interest in the Trust’s right to receive rent and other personal property constituting part of the collateral. In addition, a mortgage and a memorandum of lease evidencing a security interest in the Property on behalf of the Participants was executed at the closing. However, these documents will not be recorded unless the Guarantor’s credit rating falls below a certain minimum rating from rating services, or upon the occurrence of certain events of default.

Under the Lease, the Corporate Lessee must maintain insurance covering any loss or liability of the Trust. Moreover, in the event of a casualty or condemnation, the Corporate Lessee must either (i) purchase the Property for the Outstanding Financing Amount (described below), or (ii) restore the Property to substantially the same condition and value as existed prior to the casualty or condemnation. If the Corporate Lessee elects to restore the Property, its obligation to pay rent under the Lease will be unaffected and any insurance proceeds or condemnation awards will be payable to the Corporate Lessee, unless there is a default under the Lease. If a default has occurred, the insurance or award amounts shall be payable to the Administrative Agent and may be applied in satisfaction of the Corporate Lessee’s obligations under the Operative Documents. In the event of a substantial taking or condemnation of the Property, such that its use is uneconomic or impractical for the Corporate Lessee, the Corporate Lessee is required purchase the Property. Similarly, if the Corporate Lessee is unable to restore the Property by the end of the Lease Term (*i.e.*, the Base Term or any applicable renewal period), it must purchase the Property. Where the Corporate Lessee elects or is required to purchase

the Property, the Administrative Agent shall hold any insurance or award amounts for application thereof towards the Corporate Lessee's payment of the purchase price. Moreover, the Corporate Lessee's obligation pay rent under the Lease will continue until the Property is conveyed to it.

The Lease also grants a purchase option (the "New Purchase Option") to the Corporate Lessee, which permits the Corporate Lessee to purchase the Property for the Outstanding Financing Amount at any time during the term of the Lease or upon the expiration of the Lease Term. The Outstanding Financing Amount is equal to the sum of: 1) the total Advances; 2) any accrued, unpaid interest on the Loans; 3) any accrued, unpaid return on the Certificates; and 4) any other amounts due or owing under the Operative Documents.

As an alternative to the New Purchase Option and the Renewal Option, the Corporate Lessee can exercise a "Remarketing Option". Under the Remarketing Option, the Corporate Lessee may cause the sale of the Property to a third party purchaser upon the expiration of the Lease Term. Unless the Property has been sold for a price equal to or greater than the Outstanding Financing Amount, the Corporate Lessee is required to pay the residual value guaranty amount (the "RVGA") on or before the expiration of the Lease Term. The RVGA is a sum equal to approximately percent of the Outstanding Finance Amount (about \$ million). Accordingly, regardless of the value of the Property, the Trust will receive no less than the RVGA at the expiration of the Lease Term.

Upon the sale of the Property, the Trust will be entitled to receive an amount of the net sales proceeds, which, when combined with the RVGA would be equal to the Outstanding Financing Amount – *i.e.*, an amount equal to the difference between the Outstanding Financing Amount and the RVGA. The Corporate Lessee will be entitled to the net sales proceeds to the extent they exceed this difference. Hence, if the net sales proceeds exceed the Outstanding Finance Amount, the Corporate Lessee would be fully reimbursed for its RVGA payment, and would be entitled to the amount by which the net sales proceeds exceed the Outstanding Financing Amount. If the net proceeds of the sale are less than the Outstanding Financing Amount, but exceed the difference between the Outstanding Financing Amount and the RVGA – such difference being approximately percent of the Property's current value - the Trust would still receive the Outstanding Financing Amount. The Corporate Lessee would bear the resulting loss. Only in the unlikely event that the Property loses nearly percent of its value would the Trust receive less than the Outstanding Financing Amount and suffer any loss.

If the Corporate Lessee has not exercised either the Renewal Option or the Remarketing Option at least 180 days prior to the expiration of the Lease Term, the Corporate Lessee will be deemed to have exercised the New Purchase Option.

You have represented that the Corporate Lessee's tax reporting and actions will be consistent with its characterization as the owner of the Property for tax purposes. For example, the Corporate Lessee, rather than the Trust, will claim the depreciation deductions for the Property on income tax returns, and the Corporate Lessee will not treat

its payments under the Lease as rent. Rather, the Corporate Lessee will deduct the interest costs and other expenses associated with the Synthetic Lease Transactions.

## ISSUES

You have requested rulings as to whether:

1. the Subsidiary's transfer of the Old Purchase Option to the Corporate Lessee is exempt from the RPTT;
2. the Corporate Lessee's transfer of the Old Purchase Option to the Trust pursuant to the Synthetic Lease Transactions is exempt from RPTT;
3. the Corporate Lessee's payments to the Trust under the Lease are exempt from the CRT;
4. the creation of the Lease as part of the Synthetic Lease Transactions, is exempt from the RPTT; and
5. the Trust's grant of the New Purchase Option to the Corporate Lessee under the Lease, and the anticipated conveyance of the Property to the Corporate Lessee (either during, or at the end of, the Lease term) pursuant to the New Purchase Option are exempt from the RPTT.

## CONCLUSIONS

Based on the facts presented and representations submitted, we have determined that the Subsidiary's transfer of the Old Purchase Option to the Corporate Lessee is exempt from the RPTT under section 11-2106(b)(8) of the Administrative Code of the City of New York (the "Code"). We have also determined, based on the facts presented and representations made, that the Corporate Lessee's rental payments made pursuant to the Lease are exempt from the CRT because the substance of the transaction is a financing arrangement. We have similarly determined that the Trust's leasing of the Property to the Corporate Lessee pursuant to the Synthetic Lease Transactions is exempt from the RPTT under Code section 2106(b)(6). Finally, we have determined that the Corporate Lessee's transfer of the Old Purchase Option to the Trust and the Trust's grant of the New Purchase Option to the Corporate Lessee, and the anticipated conveyance of the Property thereunder, are exempt from the RPTT under to section 11-2106(b)(6).

## DISCUSSION

### I. The Subsidiary's Transfer of the Old Purchase Option to the Corporate Lessee

Code section 11-2102 imposes a tax on the transfer of real property or an economic interest therein when the consideration exceeds \$25,000. Moreover, the transfer of a option to purchase real property will be subject to RPTT if the benefits and burdens of

ownership are shifted to the holder of the option. *See*, Title 19 Rules of the City of New York (“RCNY”) § 23-03(j)(3). However, Code section 2106(b)(8) exempts transfers of real property interests “that [effect] a mere change of identity or form of ownership or organization to the extent the beneficial ownership of such [real property interests remain] the same....”

Here, the Subsidiary transferred the Old Purchase Option to its parent, the Corporate Lessee. Following the transfer, the Corporate Lessee owned directly what it used to own indirectly through its Subsidiary. The beneficial ownership of the option remained the same. Such a transfer falls squarely within the Code’s section 2106(8) exemption. Hence, the Transfer of the Old Purchase Option from Subsidiary to the Corporate Lessee is exempt from the RPTT.

## II. The Synthetic Lease Transactions

### A. The Synthetic Lease Transactions and the CRT

The CRT is imposed on a tenant who occupies, uses, or intends to occupy or use premises in New York City for “carrying on or exercising any trade, business, profession, vocation or commercial activity....” Code §§ 11-701(5), 11-701(7) and 11-702(a). A “tenant” is defined as a “person paying or required to pay rent for premises as a lessee, sublessee, licensee, or concessionaire.” Code § 11-701(3). The owner of a building who occupies space in the building is not considered a “tenant” for purposes of the CRT. *See*, 19 RCNY § 7.01.

Given the form of the Lease of the Property between the Trust and the Corporate Lessee, the Corporate Lessee would be subject to the CRT. However, the Corporate Lessee seeks to disavow the form of the transaction and contends that the Lease is, in reality, a financing program in which the Corporate Lessee will act as the owner of the Property.

In general, a taxpayer may not disavow the form of a transaction. *See*, Commissioner v. National Alfalfa Dehydrating and Milling Co., 417 U.S. 134, 148-149 (1974); Sverdlow v. Bates, 283 App. Div. 487, 491 (3<sup>rd</sup> Dept. 1954). However, a taxpayer may assert a transaction’s economic substance if (1) its tax reporting and actions are consistent with the substance of the transaction, Comdisco, Inc. v. United States, 756 F.2d 569, 578 (7<sup>th</sup> Cir. 1985); and (2) the taxpayer offers strong proof that the transaction is a financing arrangement, Illinois Power v. Commissioner, 87 T.C. 1417, 1434 (1986); Coleman v. Commissioner, 87 T.C. 178, 201-202 (1986), *aff’d per curiam* 833 F.2d 303 (3<sup>rd</sup> Cir. 1987).

You have represented that the Corporate Lessee’s tax reporting and actions will be consistent with its characterization as the owner of the Property for tax purposes. For example, the Corporate Lessee, rather than the Trust, will claim the depreciation deductions for the Property on income tax returns. Further, the Corporate Lessee will treat the payments due under the Lease as the payment of interest on and the repayment of principal of a debt obligation, and not as a rental payment.

For federal income tax and New York State tax purposes, a leasing transaction, including a “synthetic lease,” will be treated as a financing arrangement if the lessee has the benefits and burdens of ownership despite not having title to the property. *See, Frank Lyon Co. v. United States*, 435 U.S. 561 (1978); *Helvering v. F & R Lazarus & Co.*, 308 U.S. 252 (1939); Rev. Rul. 68-590, 1968-2 C. B. 66; FSA Memo 199920003 (May 21, 1999) (Synthetic Lease situation); *Matter of Sherwood Diversified Services., Inc.*, 382 F. Supp. 1359 (interpreting New York State sales tax law); *General Electric Co., Inc.*, TSB-A-96(5)R (June 25, 1996) (Synthetic Lease situation); *Eastman Kodak Co.*, TSB-A-90(8)S (March 12, 1990). *See also, Matter of Erie County Industrial Development Agency v. Roberts*, 63 N.Y.2d 810 (1984) *aff’d for reasons stated at* 94 A.D.2d 532 (4<sup>th</sup> Dept. 1983) (applying “benefits and burdens” analysis to lease transaction to determine if project financed by Industrial Development agency is a “public works” project for purposes of the Labor Law). In our opinion, it is appropriate to apply the above “benefits and burdens of ownership” analysis for purposes of the CRT.

The factors relevant to determining whether a lease transaction is a financing arrangement include: (1) which party exercises control over the property during the lease term, including the right to make improvements; (2) who bears the risk of loss from a casualty or condemnation, and the liability for repayment of a loan; and (3) which party has the potential to obtain profit or incur loss from the holding of the property. *See, Sun Oil Co. v. Commissioner*, 562 F.2d 258, 268-269 (3<sup>rd</sup> Cir. 1977); *Illinois Power*, 87 T.C. 1417, 1437-1440; *Pacific Gamble Robinson and Affiliated Companies v. Commissioner*, T.C. Memo 1987-533; *Eastman Kodak*, TSB-A-90(8)S; FLR-93-110. *See also, Levy v. Commissioner*, 91 T.C. 838, 860 (1988); *Larsen v. Commissioner*, 89 T.C. 1229, 1267 (1987), *aff’d in part and reversed in part sub nom. Casebeer v. Commissioner*, 909 F.2d 1360 (9<sup>th</sup> Cir. 1990); *Torres v. Commissioner*, 88 T.C. 702, 720-722 (1987); *Coleman*, 87 T.C. 178, 205; *Grodt & McKay Realty Inc. v. Commissioner*, 77 T.C. 1221 (1981).

Applying the above factors to the facts presented here, we conclude that the Corporate Lessee will have the benefits and burdens of ownership of the Property. Under the Lease and the other Operative Documents, the Corporate Lessee’s control over the Property is more like that of an owner rather than that of a lessee. *See, Illinois Power*, 87 T.C. 1417, 1439-1440; *Pacific Gamble Robinson*, T.C. Memo 1987-533; *Eastman Kodak*, TSB-A-90(8)S. The Corporate Lessee will have the right to possession and use of the Property and will have the right to sublease or assign all or any part of the Property without the consent of the Trustee. In addition, the Corporate Lessee has the right to make additional improvements, renovations and alterations, without the consent of the Trustee, provided they do not impair the value or useful life of the Property.

The Corporate Lessee will also bear the risk of casualty or condemnation loss for the Property. *See, Sun Oil*, 562 F.2d 258, 269; *Illinois Power*, 87 T.C. 1417, 1439-1440; *Pacific Gamble Robinson*, T.C. Memo 1987-533. *See also, Hilton v. Commissioner*, 74 T.C. 305, 357-358 (1980) *aff’d* 671 F.2d 316 (9<sup>th</sup> Cir. 1982). The Corporate Lessee is required to maintain insurance covering any loss or liability concerning the Property. Moreover, in the event of a casualty or condemnation, the Corporate Lessee generally

must either: 1) restore the Property to substantially the same condition and value as existed prior to the casualty or condemnation, or 2) purchase the Property. If the Corporate Lessee elects to restore, its obligation to pay rent under the Lease will be unaffected, and any insurance proceeds or condemnation awards will be payable to the Corporate Lessee provided it is not in default under the Lease. If a default has occurred, the insurance or award amounts will be payable to the Administrative Agent and may be applied in satisfaction of the Corporate Lessee's obligations under the Operative Documents.

In the event of a substantial taking or condemnation of the Property such that its use is uneconomic or impractical for the Corporate Lessee, the Corporate Lessee is required to purchase the Property. Similarly, if the Corporate Lessee is unable to restore the property by the end of the Lease Term (*i.e.*, the Base Term or any applicable renewal period), it must purchase the Property. Where the Corporate Lessee elects or is required to purchase the Property, the Administrative Agent will hold any insurance or award amounts for application towards the Corporate Lessee's payment of the purchase price, *i.e.*, the Outstanding Financing Amount. Moreover, the Corporate Lessee's obligation to pay rent under the Lease will continue until the Property is conveyed to it. Consequently, whether the Corporate Lessee restores or purchases the Property on casualty or condemnation, it will bear the risk of the loss.

The third factor is whether the Corporate Lessee or the Trust has the potential for profit or loss from holding the Property. *See, Frank Lyon*, 435 U.S. 561, 579; *Sun Oil*, 562 F.2d 258, 268; *Illinois Power*, 87 T.C. 1417, 1437-1438; *Hilton*, 74 T.C. 305, 357-359; *Pacific Gamble Robinson*, T.C. Memo 1987-533; Rev Rul. 83-47, 1983-1 C.B. 63. Here, the Corporate Lessee will have the significant profit or loss potential. Under the Lease, the Corporate Lessee must exercise either the Renewal Option (which is limited to four seven-year periods) or the Remarketing Option within 180 days of the end of the Lease Term, or it will be deemed to have exercised the Purchase Option. Ultimately, the Corporate Lessee must choose either the New Purchase Option or the Renewal Option, or default under the Operative Documents. In the event that the Corporate Lessee exercises the New Purchase Option, the Corporate Lessee will be required to pay the Outstanding Financing Amount, which is the functional equivalent of repaying the amount of the outstanding loan plus accrued interest. Should the Corporate Lessee default, it also will be required to pay the Outstanding Financing Amount. In either case, if the Corporate Lessee is required to pay the Outstanding Financing Amount, it will be the beneficiary of any increase in the value of the Property, and it will bear the entire risk of any decrease in the value of the Property. Similarly, if the Corporate Lessee pays the Outstanding Financing Amount, the Trust will not be able to benefit from any gain, and will be protected from any loss, in the Property's value.

Should the Corporate Lessee chose to exercise the Remarketing Option, it will be required to cause the sale of the Property to a third party. Unless the Property has been sold for a price equal to or greater than the Outstanding Financing Amount as of the expiration of the Lease Term, the Corporate Lessee is required to pay the residual value guaranty amount (the "RVGA"). The RVGA is a sum equal to approximately      percent

of the Outstanding Finance Amount (about \$ million). Accordingly, regardless of the value of the Property, the Trust will receive no less than the RVGA at the expiration of the Lease Term.

Upon the sale of the Property, the Trust will be entitled to receive an amount of the net sales proceeds, which, when combined with the RVGA, would be equal to the Outstanding Financing Amount – *i.e.*, an amount equal to the difference between the Outstanding Financing Amount and the RVGA. The Corporate Lessee will be entitled to the net sales proceeds to the extent they exceed this difference. Hence, if the net sales proceeds exceed the Outstanding Finance Amount, the Corporate Lessee would be fully reimbursed for its RVGA payment, and would be entitled to the amount by which the net sales proceeds exceed the Outstanding Financing Amount. Given that the Outstanding Financing Amount is equal to the Property's appraised value as of the date of the Transactions plus the costs and expenses of the Transactions, any excess received over the Outstanding Financing Amount would be the gain or profit from holding the Property.

If the net proceeds of the sale end up being less than the Outstanding Financing Amount but exceed the difference between the Outstanding Financing Amount and the RVGA – such difference being approximately percent of the Property's current value - the Trust would still receive amounts totaling the Outstanding Financing Amount. In this situation, the Corporate Lessee alone would bear the loss due to the depreciation of the value of the Property.

Only in the unlikely event that the Property loses nearly percent of its value would the Trust receive less than the Outstanding Financing Amount as a result of the sale and, hence, suffer a loss. This potential depreciation risk is no different than the depreciation risk borne by any non-recourse lender. It does not spring from a genuine equity interest in the Property. Moreover, the Trust's depreciation risk is quite small relative to the risk borne by the Corporate Lessee. The Property would have to lose nearly percent of its value for the Trust to suffer any loss. By contrast, the Corporate Lessee would be required to pay, at a minimum, almost percent of the outstanding Advances, regardless of the future value of the Property, and lose all of its interest therein. Clearly, the Corporate Lessee bears the greatest risk of loss due to depreciation.

In sum, the Corporate Lessee will have all of the potential to profit from an increase in the value of the Property and will clearly bear the greatest risk of depreciation in the value of the Property. In addition, the Corporate Lessee will bear the risk of casualty and/or condemnation loss to the Property, and will exercise a level of control over the Property that is more like that of an owner than a lessee.

Accordingly, we conclude that the Corporate Lessee owns the Property for CRT purposes, and is not a tenant under Code section 11-701(3), and the CRT is inapplicable to the payments that the Corporate Lessee must make pursuant to the Lease.

B. The Lease and the RPTT

The transfer of a real property interest includes the grant, assignment or surrender of a leasehold interest in real property. Code § 11-2102(a)(10).<sup>1</sup> However, the RPTT does not apply to “[a] deed or instrument which was given solely as security for, or a transaction the sole purpose of which is to secure, a debt or obligation, or a deed or instrument given, or a transaction entered into, solely for the purpose of returning such security.” Code §11-2106(b)(6).

Inasmuch as we have concluded that the Lease is part of a synthetic lease financing arrangement, it does not create a leasehold interest. *See*, Part II(A), above. Accordingly, the RPTT will not apply to the creation or termination of the Lease.

C. The Transfer of the Old Purchase Option to the Trust and the Trust’s Grant of the New Purchase Option

The grant and/or transfer of a purchase option to purchase real property will be subject to the RPTT if the benefits and burdens of ownership are shifted to the holder of the option. *See*, 19 RCNY § 23-03(j)(3). However, if the substance of the transaction is a financing arrangement, neither the grant and/or transfer of the option, nor the subsequent transfer of the real property pursuant the exercise of the option, will be subject to the RPTT. *See*, Code § 11-2106(b)(6).

Here, we have already concluded that the Lease between the Corporate Lessee is part of a financing arrangement, and that the Corporate Lessee is the owner of the Property for purposes of the CRT. *See*, Part II(A), above. The analysis is the same for the RPTT as it is for the CRT. The Corporate Lessee’s transfer of the Old Purchase Option to the Trust so that the Trust could exercise it and acquire record title to the Property was part of that same synthetic lease financing arrangement. Similarly, the Trust’s grant of the New Purchase Option to the Corporate Lessee was also part of the financing arrangement, and merely represents the Corporate Lessee’s right to redeem collateral. In addition, any conveyance to the Corporate Lessee pursuant to the New Purchase Option would be the equivalent of a return of that collateral. Accordingly, the RPTT will not apply to the transfer of the Old Purchase Option, the granting of the New Purchase Option, or the transfer of title pursuant to the New Purchase Option.

The Department reserves the right to verify the information submitted.

Sincerely,

Devora B. Cohn  
Associate Commissioner  
For Legal Affairs

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<sup>1</sup> With regard to leaseholds, the RPTT is imposed only to the extent the consideration for the leasehold is not considered rent for purposes of the CRT. Code § 11-2102(a)(10)(iii).