

PAYMENT IN LIEU OF TAXES AGREEMENT

This Payment in Lieu of Taxes Agreement (this "Agreement"), made as of the _____ day of _____, 20__, by and between [AVALONBAY GLEN COVE II, LLC], a limited liability company organized and existing under the laws of the State of [Delaware] and authorized to do business in the State of New York (hereinafter, together with its successors and assigns, referred to as the "Company"), and GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York (hereinafter referred to as the "Agency").

W I T N E S S E T H

WHEREAS, the New York State Industrial Development Agency Act, Chapter 1030 of the Laws of 1969 of the State of New York, constituting Title I of Article 18-A of the General Municipal Law of the State of New York, Chapter 24 of the Consolidated Laws of the State of New York, as amended ("Enabling Act") authorizes and provides for the creation of industrial development agencies in the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, expand, construct, reconstruct, lease, improve, maintain, equip, furnish, and dispose of one or more projects for the purpose of promoting, developing, encouraging, and assisting in the acquisition, expansion, construction, reconstruction, improvement, maintaining, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities, and thereby advance the job opportunities, general prosperity, and economic welfare of the people of the State of New York and improve their standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the Enabling Act and Chapter 374 of the 1974 Laws of the State of New York (together with the Enabling Act, hereinafter referred to as the "Act"), the Agency, which has been created and established pursuant thereto for the benefit of the City of Glen Cove, proposes to undertake the Project described below; and

WHEREAS, the Agency on behalf of the Company intends to (i) acquire fee simple title to certain land more particularly described on Schedule A hereto ("Land"); (ii) construct certain renovations and improvements on the Land ("Improvements"); and (iii) acquire the equipment more particularly described in Schedule B to the Lease as hereafter defined ("Equipment") (the Land, Improvements and Equipment are collectively hereinafter referred to as the "Project"); and

WHEREAS, the Agency is or will be the owner of a fee simple interest in the Land and the Improvements (collectively, "Facility"); and

WHEREAS, the Agency proposes to undertake the Project as an authorized project under the Act and to lease the interest of the Agency to the Company pursuant to a Lease dated as of the date hereof entered into between the Agency, as lessor, and the Company, as lessee (as amended, modified, restated or replaced from time to time, the "Lease"); and

WHEREAS, under the present provisions of the Act and under the present Section 412-a of the Real Property Tax Law of the State of New York, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or under its control; and

NOW, THEREFORE, in consideration of the premises and the payments, agreements, and covenants hereinafter contained, the Company and the Agency formally covenant and agree as follows:

Section 1. Tax-Exempt Status of Facility.

A. Application. The Company shall complete, and the Agency shall file, an application for tax exemption pursuant to Section 412-a of the Real Property Tax Law. Such application shall be filed with the assessor of each of the various taxing entities having jurisdiction over the Facility, including, without limitation, the County of Nassau, the City of Glen Cove, and the Glen Cove City School District (such taxing entities, and any successors thereto, being hereinafter collectively referred to as the "Taxing Entities" and each individually as a "Taxing Entity"). The Facility shall not be entitled to exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the taxable status date of such Taxing Entity occurring subsequent to the Agency becoming the owner of record of the Facility, the filing by the Agency of the appropriate applications for tax exemption, and the acceptance of such applications by the appropriate tax assessors.

B. Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease, the Company will be required to pay all special assessments and special ad valorem levies levied and/or assessed against the Facility.

C. Other Charges. If any taxes, assessments, service charges or other governmental charges become payable by the Company or the Agency on the Project or the rents paid pursuant to the Lease or the occupancy of or any interest of the Company or the Agency in the Facility or any part thereof or any personal property used in connection with the business conducted and located therein,

the amount of any tax, assessment or charges shall be paid by the Company. Furthermore, water charges, sewer rentals, sewage treatment charges, solid waste charges and any other charges in the nature of utility charges shall be paid directly by the Company and shall not be credited against nor affect in any manner by any payment in lieu of general real estate taxes in any year and shall be computed pursuant to the formula adopted by the relevant Taxing Entity.

Section 2. Payments.

A. Tax Payments. Prior to the Facility becoming entitled to exempt status as set forth in Section 1.A., the applicable real estate tax levies on the Facility shall be payable in full by the Company to the applicable Taxing Entity.

B. Non-Abated Pilot Payments until Completion. After the Facility becomes entitled to exempt status until the beginning of the tax year of a Taxing Entity which starts after the Completion Date occurs, the Company shall make Non-Abated Pilot Payments. Completion Date means the date that the first temporary or final certificate of occupancy is issued for the Facility. Non-Abated Pilot Payment(s) means payments in lieu of the general real estate tax levies on the Facility in an amount equal to the amount of such tax levies which would be payable if the Facility were listed on the assessment rolls as fully taxable. The Non-Abated Pilot Payments shall be computed on the basis of the assessment applicable to the Facility (after application of any applicable equalization rate) in effect on the tax status date immediately preceding the tax fiscal year for which the Non-Abated Pilot Payment is being computed.

C. Pilot Payments upon Completion. Commencing with the beginning of the first tax year of a Taxing Entity which starts after the Date of Completion, the Company shall make payments in lieu of the general real estate tax levies on the Facility ("Pilot Payments") in an amount equal to the product of (x) the Base Amount and (y) the Number of Apartments. The Base Amount shall be \$1,300 for the first tax year and \$2,808 for the second tax year. After the second tax year, the Base Amount shall be increased by both (i) eight (8%) percent per annum for each of the third, fourth and fifth tax years, and (ii) the average tax rate assessment increase, if any (but not any decrease) for commercial property in the City of Glen Cove as determined by the Controller of the City of Glen Cove in good faith, for each year after the second tax year, with the effect of such increases to be cumulative. The Number of Apartments shall be the

greater of 108 or the actual number of rentable apartments constructed at the Facility.

D. Payments to Controller for City of Glen Cove. The Company shall pay all Non-Abated Pilot Payments and all Pilot Payments to the relevant Taxing Entity promptly upon the due dates thereof. All payments should be mailed or delivered to the address set forth below:

Controller of the City of Glen Cove
9 Glen Street
Glen Cove, NY 11542

All Pilot Payments hereunder shall be allocated among the affected tax jurisdictions in proportion to the amount of real property and other taxes which would have been received by each affected tax jurisdiction had the Project not been tax exempt due to the status of the Agency.

E. Due Dates; Interest; and Penalties. The Company will be billed for all Non-Abated Pilot Payments and all Pilot Payments as if the Facility were on the tax rolls at the time when taxes for each Taxing Entity are due. All payments are net if paid on or before the due dates listed below. If any Non-Abated Pilot Payment or any Pilot Payment is not made on or before the due date, such payment shall be delinquent and the Company shall pay a late charge equal to the greater of (a) five (5%) percent of the payment, and for each month, or part thereof, that the payment is delinquent beyond the first month, the Company shall pay an additional late charge equal to one (1%) percent per month of the total amount payable; and (b) the late charge applicable from time to time to general real estate tax levies that are not paid when due.

As of the date of this Agreement, the due dates for the Non-Abated Pilot Payments and the Pilot Payments are as follows:

County Taxes: February 10 and August 10

City Taxes: January 10 and July 10

School Taxes: September 1 and March 1

F. Partial Sale; Transferee's Obligation; Apportionment of Reduction to Local Taxing Entities. During the term of this Agreement, in the event that the Land or the Improvements located thereon, or any portion thereof, is sold, transferred, assigned or otherwise disposed of by the Agency, the transferees thereof will thereafter pay the real property taxes on such Land and the Improvements located on the Land, or on such portion of the Land, that was sold, transferred, assigned or otherwise disposed of, as may be required by applicable law.

G. Sale; Company's Obligation. In the event that the Agency sells, transfers, assigns or otherwise disposes of the Facility to any party other than the Company, the Company's obligation for Pilot Payments shall be prorated to the date of the closing of the transaction and thereupon all obligations of the Company for Pilot Payments shall cease, but the Agency shall take such steps with the purchaser other than the Company to assure that each of the Taxing Entities shall suffer no loss of revenue until such Facility can be placed back on the tax rolls and taxes levied and billed therefor.

Section 3. Jobs . The Company covenants to use its best efforts to create and thereafter maintain the number of permanent, private sector jobs at the site of the Project as set forth in its application to the Agency. The Company agrees to deliver to the Agency on each annual anniversary of this Agreement a written report describing its compliance or non-compliance with the provisions of this Section 3 and to permit the Agency to audit the books and records of the Company supporting such report.

Section 4. Effective Date; Duration of Agreement. This Agreement shall become effective upon the execution and delivery of the Lease by both the Company and the Agency and the execution and delivery of the deed from the Company to the Agency and shall continue in effect until the earlier of (i) the expiration of the last tax year with respect to a Taxing Entity in which a Pilot Payment is payable pursuant to Section 2(C) or (ii) the date on which title to the Facility is conveyed to the Company by the Agency pursuant to the Lease or this Agreement.

Section 5. Events of Default. The following shall constitute an "Event of Default" under this Agreement:

A. Failure by the Company to make any payment specified herein and the continuance of such failure for a period of ten (10) days after receipt by the Company of written notice from the Agency, the Department and/or any Taxing Entity.

B. Failure by the Company to comply with or perform any provision of this Agreement other than the payment provisions hereof and the continuance of such failure for a period of thirty (30) days after receipt by the Company of written notice thereof from the Agency.

C. Default in the terms of the Lease or any other agreement between the Agency and the Company (beyond any applicable grace or notice period).

Upon the occurrence and continuance of an Event of Default hereunder, the Company shall be required to make payments in lieu of general real estate taxes levied by the Taxing Entities on the Facility [as if it were owned by the Company], such amounts to commence to be paid for the period subsequent to the date it is determined by the Agency that there is an Event of Default hereunder. In such event, the tax rate, interest and penalties shall be those then in effect in the tax jurisdiction(s) in which the Facility is located.

Upon the occurrence and continuance of an Event of Default hereunder, the Agency shall be entitled to sue to enforce any provision of this Agreement and to recover the payments in default from the Company, together with all the costs and expenses of the Agency, its successors or assigns, paid or incurred in such recovery (including court costs and attorneys' fees) and interest at the rate charged by the respective Taxing Entities on overdue payments of taxes. In addition, the Agency shall have the right to terminate the Lease at any time, and the Company shall accept such termination and any tender of reconveyance from the Agency of title to the Facility.

The Agency, in enforcing payment by the Company of said amounts, may take whatever action and exercise any or all of the rights and remedies specified in this Agreement or any other remedy provided by law.

Each and every Event of Default shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises. The Company irrevocably agrees that any suit, action, or other legal proceeding arising out of this Agreement may be brought in the courts of the State of New York, or the courts of the United States located within the State of New York, consents to the jurisdiction of each such court in any such suit, action, or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action, or proceeding in any of such courts.

No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

In no event shall the Agency be liable to any of the Taxing Entities for the payments specified herein, whether or not the Company makes such payments. The Company hereby agrees to indemnify the Agency against any such liability for such payments and against all penalties, interest, and other charges resulting from the delinquency of such payments.

Section 7. Limited Obligation. The obligations, covenants and agreements of the Agency hereunder shall not constitute or give rise to an obligation of the State of New York, Nassau County or the City of Glen Cove and neither the State of New York, nor Nassau County, nor the City of Glen Cove shall be liable thereon, and further, such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Agency.

Section 8. Notices. Any notice or other written communications required or permitted hereunder shall be determined to be duly and properly given, made, or delivered when delivered or three (3) business days after being mailed by certified mail, return receipt requested (a) if to the Agency, to Administrative Director, Glen Cove Industrial Development Agency, City Hall, 9 Glen Street, Glen Cove, New York 11542, with a copy to Phillips, Lytle, Hitchcock, Blaine & Huber LLP, 437 Madison Avenue, New York, New York 10022, Attention: Milan K. Tyler, Esq., and (b) if to the Company, c/o AvalonBay Communities, Inc., 100 Avalon Court Drive, Melville, New York 11747 with a copy to Collier, Halpern, Newberg, Nolletti & Bock, LLP, 1 North Lexington Avenue, White Plains, NY 10601, Attention: David A. Newberg, Esq.

Section 9. Change of Address. The Agency or the Company may, by notice given hereunder to each other, designate any further or different addresses to which subsequent notices, certificates or other communications to them shall be sent.

Section 10. Assignment of Agreement. This Agreement shall be binding upon the successors and assigns of the Company but no assignment shall be effective to relieve the Company of any of its obligations hereunder unless expressly authorized and approved in writing by the Agency.

Section 11. Independent Agreement. Notwithstanding any other provision of this Agreement, including the recitals thereof, the parties agree that the Lease executed between the parties thereto shall be a separate and independent documents from this Agreement, and irrespective of whether any provision of this Agreement or the entirety hereof shall be held invalid or unenforceable by any court of competent jurisdiction, the Lease shall be construed, interpreted, and otherwise regarded separate and apart from this Agreement. The parties hereto specifically note that the considerations and terms provided for in this Agreement and provided for in the Lease are the only considerations and terms for which the parties thereto have executed this Agreement.

Section 12. Invalidity. If any one or more phrases, sentences, clauses or provisions of this Agreement or the entirety hereof shall be declared invalid or unenforceable by any order, decree or judgment of any court of competent jurisdiction, then such phrase, sentence, clause or provision or the entirety of this Agreement shall be deemed to be reformed in such manner as shall be determined by such court, or in the absence of such a determination then in the reasonable judgment of the Agency, to render such phrase, sentence, clause or provision of this Agreement valid and enforceable under applicable law. The parties hereto agree to enter into such documents, agreements and instruments as the Agency reasonably determines are necessary to effect any such reformation. In the event that any one more of the phrases, sentences, clauses or provisions of this Agreement cannot be reformed to comply with applicable law, then this Agreement shall be construed as if such phrase, sentence, clause or paragraph had not appeared in this Agreement.

Section 13. Amendments. This Agreement may not be modified, amended, supplemented, or changed without the written consent of the Agency and the Company.

Section 14. Prior Agreements. This Agreement constitutes the entire agreement, and supersedes all prior agreements and understandings, whether written or oral, among the parties with respect to the subject matter hereof.

Section 15. Delivery of Agreement. The Agency covenants to use its best efforts to deliver to each Taxing Entity a copy of this Agreement within fifteen (15) days after its execution.

Section 16. Counterparts. This 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 17. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Agency and the Company have made this Agreement to be executed in their respective names by their duly authorized officers, all on the date first above written.

GLEN COVE INDUSTRIAL DEVELOPMENT
AGENCY

By: _____

AVALONBAY GLEN COVE II, LLC

By: AVALONBAY COMMUNITIES, INC., its
sole member

By: _____

STATE OF _____)
)SS.:
COUNTY OF _____)

On the ____ day of _____, 20__ before me, the undersigned, personally appeared _____, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF _____)
)SS.:
COUNTY OF _____)

On the ____ day of _____, 20__ before me, the undersigned, personally appeared _____, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public