§ 460. Lease and other agreements. 1. Any agreement entered into between the fund and the owner or developer of a proposed combined occupancy structure pursuant to section four hundred fifty-four of this chapter shall provide for (i) the construction, acquisition, reconstruction, rehabilitation or improvement of one or more combined occupancy structures, and the purchase or acquisition of the original furnishings, equipment, machinery and apparatus to be used in the school portion of a combined occupancy structure upon completion of the work, (ii) the reconveyance, retransfer or leasing of all or any portion thereof and of the real property or interest therein related thereto, including real property originally acquired by the board of education in the name of the city of New York, upon the completion of construction, acquisition, reconstruction, rehabilitation or improvement upon such terms and conditions as may be agreed upon in those instances where there has been a prior conveyance, transfer or lease by the Fund to the owner or developer, (iii) the leasing or subleasing of such combined occupancy structures and property, or separately of the school and non-school portions thereof, by the fund upon completion for a term not exceeding ninety-nine years and upon such terms and conditions including annual rental as may be agreed upon, and (iv) the conveyance to the board of education in the name of the city of New York of title to the school portion of any such combined occupancy structures at the expiration of the term of the lease, or any renewal or extension thereof, or upon earlier payment in full of the total amount specified therein, without additional charge therefore. The board of education shall approve any such agreement.

2. a. Any lease, sublease or other agreement entered into between the fund and the owner or developer of a proposed combined occupancy structure shall provide for payment to the fund of the fair market value of such easements, space rights, air rights or other fee or leasehold interests as are to be held or retained by such owner or developer or his successor in interest under the terms of such agreement; provided that where subsidized housing, as hereinafter defined, is intended to be built in or on said easements, space rights, air rights or other fee or leasehold interests, the appropriate document may provide, in the discretion of the fund, for payment to the fund of less than the fair

market value of such easements, space rights, air rights, or other fee or leasehold interests. As used in this paragraph, subsidized housing shall mean dwelling units aided by one or more federal, state or municipal programs designed to provide low or moderate income housing.

b. Whenever the easements, space rights, air rights or other fee or leasehold interests held or retained by such owner or developer, if other than the New York city housing authority, and/or the non-school improvements constructed or erected therein or thereon, shall be exempt from real property taxes pursuant to the provisions of section four hundred sixty-eight of this article, such lease, sublease or other agreement shall also provide for the payment to the fund of annual or other periodic amounts equal to the amount of real property taxes that would otherwise have been paid or payable with respect to such easements, space rights, air rights or other fee or leasehold interests, and with respect to the non-school improvements constructed or erected therein or thereon, over the term of such lease, sublease or other agreement. Where such lease, sublease, or other agreement provides for the annual or other periodic payment of a fixed sum or sums as a tax equivalency payment during the term of such a lease, sublease, or other agreement, or any part thereof, the sum or sums to be paid may be either greater or less than the actual amount of real property taxes that would otherwise have been paid or payable with respect to the said property rights affected, if said property rights were not exempt, provided the city shall approve such provision. In the event provision is made for the annual or other periodic payment of a fixed sum or sums as a tax equivalency payment, such lease, sublease, or other agreement may further provide, upon approval by the city of such provision, that (i) such lessee, sublessee or vendee shall be required to pay such fixed sum or sums to the fund during the term of such lease, sublease, or other agreement regardless of whether the said property rights are exempt from real property taxes, (ii) if for any year during such term an ad valorem tax shall be levied and paid by such lessee, sublessee or vendee on the said property rights, such lessee, sublessee or vendee shall receive a credit against any taxes thereafter payable by it to the city the amount of such ad valorem tax paid by it, and (iii) in the event during such term a substitute tax, in place either in whole or in part of a real

property tax on said property rights, is levied and paid by such lessee, sublessee or vendee, such lessee, sublessee, or vendee shall receive a credit against any taxes thereafter payable by it to the city for the amount of such substitute tax paid by it.

c. (1) Notwithstanding the provisions of section fifty-two of the public housing law, whenever the New York city housing authority is such owner or developer, such lease, sublease or other agreement shall also provide for the payment by such authority to the fund or the city of such amount, for any year or years, as payment in lieu of real property taxes on the non-school portion constituting a project, as defined by the public housing law, as may be agreed upon among the fund, the city and the authority, and as may be approved by the commissioner of the state division of housing and community renewal if such project is a state project as defined in the public housing law, and by the federal government if such project is a federal project as defined in the public housing law.

(2) For any of the purposes of the public housing law, including, specifically, section seventy-three thereof, and notwithstanding any other provision in the public housing law for establishing the amount of taxes paid or payable with respect to a project for such year and the resulting amount of tax exemption, in computing the amount of tax exemption granted to such non-school portion constituting a project, as defined by the public housing law, the amount of such payment in lieu of taxes paid or payable with respect thereto for any year shall be deemed to be the amount of taxes paid or payable for such year.

3. Any lease, sublease or other agreement entered into between the fund and the city of New York or the board of education pursuant to section four hundred fifty-four of this chapter shall provide for (i) the construction, acquisition, reconstruction, rehabilitation or improvement of one or more combined occupancy structures and (ii) the leasing or subleasing of the school portion of such structures to the city or the board for a term not exceeding ninety-nine years, upon such terms and conditions as may be agreed upon.

4. Every lease, sublease or other agreement executed pursuant to this

article shall be subject to the approval of the commissioner of general services and the director of management and budget with respect to all rentals or other payments to be made thereunder by the city of New York, the board of education or by the owner or developer of a combined occupancy structure and shall contain a clause that any agreement of the city of New York thereunder shall be deemed executory to the extent of the moneys available to the city therefor and no liability on account thereof shall be incurred by the city beyond the moneys available for the purpose thereof.