

AGREEMENT REGARDING  
MUNICIPAL REAL ESTATE TAXES

AGREEMENT made this            day of August, 1982 by and between the City of Cambridge, a body corporate and politic organized under the laws of The Commonwealth of Massachusetts, whose municipal offices are located at 795 Massachusetts Avenue, Cambridge, MA 02138 (hereinafter referred to as the "City"), the Board of Assessors of the City of Cambridge, a body politic organized pursuant to M.G.L.A. Chapter 40, Section 24 et. seq. (hereinafter referred to as the "Assessors") and The Whitehead Institute for Biomedical Research, a Delaware corporation with offices at 66 Valley Drive, Greenwich, Connecticut 06830 (hereinafter referred to as "Whitehead").

W I T N E S S E T H :

WHEREAS, Whitehead has agreed with Cambridge Center Associates (the "Developer"), subject to the approval of the Cambridge Redevelopment Authority, to lease a parcel of land (the "Land") in Cambridge, Massachusetts located approximately as shown on the plan annexed hereto as Exhibit A and made a part hereof, being a portion of Parcel 3 of the Kendall Square Urban Renewal Project Area (the exact dimensions of the Land to be determined at a later date by agreement of the Developer and Whitehead, subject to the approval of the Cambridge Redevelopment Authority); and

WHEREAS, subject to the approval of the Cambridge Redevelopment

Authority, Whitehead shall construct on the Land a building to be owned by Whitehead (the "Building"), which Building will be utilized for non-profit scientific research in the life sciences and not for application of such research for commercial purposes (the Building, together with all equipment to be utilized therein and the Land being hereinafter collectively referred to as the "Project"); and

WHEREAS, while the Building, as presently designed, will have an actual net usable space of approximately 80,000 square feet (the "Net Programmable Space"), it will contain approximately 140,000 square feet of gross building area, due to the necessity of adding additional energy, air handling and other systems to enable the Building to be utilized for its research purposes and to fully comply with all governmental environmental regulations, including the requirements of the Ordinance for the Use of Recombinant DNA Technology in the City of Cambridge (City of Cambridge Ordinance No. 955).

WHEREAS, the Building, as owned and utilized by Whitehead, and the Land when and if acquired by Whitehead from the Developer, shall, subject to the terms of M.G.L.A. Chapter 59, Section 5, Paragraph Third, be exempt from taxation by the City of Cambridge; and

WHEREAS, Whitehead has agreed, notwithstanding such an exemption from taxation, to voluntarily pay to the City certain sums as a substitute for real estate taxes which otherwise would be payable but for the aforementioned exemption, such payment to be calculated on the basis of full and fair assessment and taxation commensurate with current taxation and the size and nature of the Project (hereinafter such payments shall be referred to as

the "Voluntary Payments"); and

WHEREAS, the City and the Assessors have determined that the customary and comparable basis of annual real estate taxation of office buildings in the City of Cambridge is at present approximately \$1.75 per square foot of net rentable space (hereinafter said amount shall be referred to as the "Comparable Rate"); and

WHEREAS, Whitehead, the City and the Assessors desire to set forth their agreements concerning the Voluntary Payments;

NOW THEREFORE, in consideration of the mutual agreements contained herein and other valuable consideration, the receipt whereof is hereby acknowledged, the parties hereto hereby agree as follows:

1. Annual Payment of Taxes. Subject to the conditions set forth in Section 6 below, and except as otherwise set forth herein, Whitehead agrees to pay to the City annually on account of the Project, and the City agrees to accept as a substitute for real estate taxes which otherwise would be payable but for the aforementioned exemption, the Voluntary Payments as determined pursuant to this Agreement.

2. Calculation of Voluntary Payments. The amount of the Voluntary Payments shall be determined as follows:

(a) Payments During Construction. Prior to the receipt of a Certificate of Completion from the Cambridge Redevelopment Authority and a Certificate of Occupancy from the City of Cambridge Building Department (the date as of which both of said certificates have been received by Whitehead shall be hereinafter referred to as the

"Completion Date"), the Voluntary Payments shall be \$20,000 for Fiscal Year 1983 and \$40,000 for each fiscal year thereafter until the Completion Date.

(b) Payments After Completion. Except as otherwise provided in Paragraph 3 hereof, from and after the Completion Date, the Voluntary Payments shall be \$140,000 per year\*, subject however to increase as provided in subsection (d) below.

(c) If the Completion Date occurs other than on the first day of any fiscal year, both the payments under subsection (a) and subsection (b) hereof shall be prorated for that portion of the fiscal year for which each calculation method is applicable.

(d) The Voluntary Payments to be made after the Completion Date shall be increased for any fiscal year in part or entirely subsequent to the Completion Date in which there is an increase in the property tax rate for the City of Cambridge. The increase in the Voluntary Payment shall be calculated by multiplying the Voluntary Payment for the fiscal year immediately prior to such increase by the quotient determined by dividing the property tax rate in the year of such increase by the property tax rate assessed for the immediately prior fiscal year; provided, however, that any such increases in the Voluntary Payments shall be limited to no more than 2½% in any fiscal year.

\* The Voluntary Payment after the Completion Date was calculated by multiplying the Net Programmable space times the Comparable Rate. This calculation is intended to show how the Voluntary Payment was initially determined, however, said determination shall be final and shall not vary due to any changes in either the Net Programmable Space or the Comparable Rate.

3. Proration Prior to Completion Occupancy. Notwithstanding the calculation of the Voluntary Payment as of the Completion Date, as set forth in Section 2(b) and (c) above, during the period of time following the Completion Date until the Building is fully occupied by Whitehead, the Voluntary Payment shall also be prorated based upon the actual occupancy of Net Programmable Space of the Building by Whitehead. This proration shall be based on the percentage of such occupancy on the first day of each July and January after the Completion Date. Whitehead shall notify the Assessors in writing of the occupancy of the building at such dates, which calculation shall then be subject to the reasonable satisfaction of the Assessors. For purposes of such calculation (i) the first two floors of the Building, which floors shall be used for non-laboratory functions, shall be deemed occupied as of the Completion Date, (ii) the remainder of the Net Programmable Space shall be deemed to consist of approximately 56 laboratories which shall each be deemed occupied based on any use thereof for research purposes in whole or in part, and (iii) the Building shall be deemed completely occupied when more than 50 of the 56 laboratories have each been so used in whole or in part.

4. Time for Payment of Voluntary Payments. Except for fiscal years to which the various prorations set forth in Sections 2 and 3 apply, the Voluntary Payments for each fiscal year shall be paid one-half on October 1 and one-half on May 1 of such fiscal year. Overdue payments shall bear interest until paid at the same interest rate as is then payable on overdue

real estate taxes in the City.

5. Offsets to Voluntary Payments. The following offsets shall be made against the Voluntary Payments:

(a) Payments During Construction. In any fiscal year in which the Land is not owned by Whitehead and is not otherwise exempt from taxation, the Voluntary Payments required to be made during construction, pursuant to Section 2(a) hereof, shall be reduced by any real estate taxes assessed against the Land and paid for such fiscal year.

(b) Payments After Completion. In any fiscal year in which the Land is not owned by Whitehead and is not otherwise exempt from taxation, the Voluntary Payments required to be made after the Completion Date, pursuant to Section 2(b) hereof, shall be reduced by the amount that any real estate taxes assessed against the Land and paid for such fiscal year exceed \$12,000 (being the present estimate of the real estate taxes which would be payable on the Land, excluding the public plaza portion thereof, assuming an assessment thereof and a tax rate determined on the basis of 100% valuation and utilizing the classification system as to non-residential tax rates). The \$12,000 amount attributable to the real estate taxes on the Land (hereinafter the "Offset Amount") shall be increased in any fiscal year in which there is an increase in the property tax rate in the City of Cambridge. The

amount of such increase shall be calculated in the same manner as are increases in Voluntary Payments under Section 2(d) hereof and shall be subject to the same limitation contained therein of no more than 2½% increase in any fiscal year.

(c) Payments if and when Whitehead owns the Land.

In the fiscal year following the date that Whitehead becomes the owner of the Land and the Land becomes exempt from taxation, the Voluntary Payments then required to be made pursuant to Section 2(b) hereof, shall be increased by the lesser of (i) the real estate taxes assessed against the Land and paid for the immediately prior fiscal year or (ii) the Offset Amount as determined for such immediately prior fiscal year pursuant to Section 5(b) above. Such Voluntary Payments, as so increased, shall also be subject to an increase as provided in Section 2(d) hereof. Thereafter, the Voluntary Payments to be made pursuant to Section 2(b) shall include such an increase on account of the real estate taxes on the Land or such Offset Amount, as provided herein, and such Voluntary Payments, as so increased, shall continue to be subject to increases as set forth under Section 2(d) hereof.

(d) Offset if no separate assessment. The foregoing subsections (a), (b) and (c) are based on the assumption that pursuant to M.G.L.A. c. 59 Section 2A, the tax on the Land and on the Building may be separately assessed

where the owner of the Building and the use thereof is exempt from taxation pursuant to M.G.L.A. c. 59 Section 5, Paragraph Third. If for any reason this assumption is challenged and a combined assessment is made of both Land and Buildings at a time when Whitehead does not own the Land (and is required to pay all such taxes as lessee under the lease of the Land), then the Voluntary Payments required to be made shall be offset by the total amount of taxes so paid. Any taxes paid in excess of the Voluntary Payments required to be made shall be credited against and reduce the requirement to make future Voluntary Payments.

6. Conditions for Effectiveness. This Agreement shall not be effective, and no payments shall be due hereunder, unless and until the Land is purchased from the Cambridge Redevelopment Authority by the Developer pursuant to a Supplemental Land Disposition Agreement acceptable to Whitehead and the Developer and a lease of the Land from the Developer to Whitehead is entered into. Further, the payment due under Section 2(a) hereof for Fiscal Year 1983 shall not be payable unless this Agreement becomes effective under the terms of this Section 6 on or before December 31, 1982.

7. Termination of the Agreement. This Agreement shall terminate on the earliest to occur of the following:

(a) The date (on or before December 31, 1983) on which the lease referred to in Section hereof is terminated

at Whitehead's option in the event that the construction of the Building or use thereof for purposes of a biomedical research facility is prohibited, limited or restricted;  
or

(b) the day on which the Project is sold by Whitehead to any entity not affiliated with Whitehead; or

(c) the date on which Whitehead or any future assignee of the Land and Buildings no longer qualifies for exemption from real estate taxes on the Project.

Whitehead further agrees that if it desires to sell the Land and the Building to another entity which is not affiliated with Whitehead and such entity would qualify for tax exemption under M.G.L.A. c.59 Section 5, Paragraph Third, then as a condition to such sale, the purchasing entity shall assume Whitehead's obligations herein to the reasonable satisfaction of the City.

8. Miscellaneous. This Agreement sets forth the entire agreement of the parties hereto and may be changed only by written agreement signed by all of the parties hereto. This Agreement shall be governed by, and construed and enforced in accordance with the laws of, The Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed, as a sealed instrument, by

persons hereunto duly authorized, as of the day and year first above written.

Attest: (SEAL)

THE WHITEHEAD INSTITUTE FOR BIOMEDICAL RESEARCH

\_\_\_\_\_  
Secretary

By \_\_\_\_\_  
David Baltimore, President

Attest: (SEAL)

THE CITY OF CAMBRIDGE

\_\_\_\_\_  
City Solicitor

By \_\_\_\_\_  
City Manager

THE BOARD OF ASSESSORS OF THE CITY OF CAMBRIDGE

By \_\_\_\_\_  
Assessor

By \_\_\_\_\_  
Assessor

By \_\_\_\_\_  
Assessor

By \_\_\_\_\_  
Assessor



# CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139  
Tel. 498-9011

EXECUTIVE DEPARTMENT  
ROBERT W. HEALY  
City Manager

August 2, 1982

To the Honorable, the City Council:

Enclosed per your request is the copy of the agreement for tax payment that the Board of Assessors and I have reached with the Whitehead Institute, a tax-exempt non-profit corporation.

Basically, the agreement calls for the payment of \$140,000 of Voluntary Payments per year on the 80,000 square feet of program-mable space in the building at \$1.75 per square foot. Additionally, \$12,000 per year will be paid for taxes on the land. An escalator clause of 2½% per year is also included.

As further protection for the City, the Cambridge Redevelopment Authority, at my request, will make these conditions a part of the deed in the event of a transfer of ownership of the land. Thus the City is protected in the unlikely event that Whitehead should cease use of the facility and wish to sell it to another non-profit, tax-exempt corporation.

I believe that these negotiations have produced a fair and equitable revenue source for the City of Cambridge which is not affected by the limitation of Proposition 2½.

Very truly yours,

Robert W. Healy  
City Manager

RWH/mbf  
Enc.

Agenda Item Number Nineteen

Re: an agreement for tax payment with the  
Whitehead Institute

206

In City Council,

August 2, 1982

8/2/1982

Motion to Place  
on File this COM -

- Place on File -  
- NO OTHER ACTION TAKEN