

## **Bank of America – Benefit Detail and Recapture Terms**

The \$32.5 million in growth benefits is available to be earned on a per-employee basis. BoA will earn sales tax exemptions of \$5,500 per job per year for five years for each employee added through organic growth or relocation into the City through 2008 (provided BoA creates at least 500 new jobs during that period) and \$4,250 per job per year for five years for each employee added thereafter (this per-job amount will also apply, through a repayment, if necessary, to jobs created by 2008 if BoA fails to create at least 500 jobs during that period). All employment from BoA's acquisition of FleetBoston Financial Corporation is excluded under this deal and will not be eligible for any growth benefits. BoA, as the successor entity to Quick & Reilly/Fleet Securities Inc, will assume all obligations of the existing IDA transaction with regard to the employment and operations of Quick & Reilly/Fleet Securities Inc. Subsequent acquisitions of NYC-based employees will also not be eligible for growth benefits.

In exchange for these benefits, BoA has agreed to certain employment and operations commitments, including the headquarters of its Global Corporate and Investment Banking operations. The company's required job base ("Base Employment Number") will be increased by each growth job for which the company earns a five-year growth sales tax benefit. Benefits will be subject to termination and/or forfeiture in the case of failure to maintain required employment without relocation out of NYC (i.e., attrition), and recapture with penalties in the case of failure to maintain required employment and/or maintain designated operations through relocation. If BoA fails to maintain 95% of its initial employment number (2,995) as a result of a non-relocation reduction in any year, it will be subject to a pro rata forfeiture of the retention benefits associated with that year, with a repayment due if those benefits have already been used. If it fails to maintain 70 percent of its Base Employment number in any year, the deal will be suspended, energy benefits will be terminated, and it will permanently forfeit all retention benefits associated with that year, with a repayment due if those benefits have already been used. If the company has relocated at least 2 percent but less than 12 percent of its Base Employment Number (up to a maximum of 600 employees), it must repay the product of a pro rata share of realized benefits and a penalty multiplier and must forfeit the product of the pro rata share of benefits associated with each year that the relocation reduction continues and the penalty multiplier. If it relocates more than the lesser of 12 percent of its Base Employment Number or 600 jobs, or relocates its designated operations and facilities, the deal will be terminated and it must repay the product of all realized benefits and a penalty multiplier. This penalty multiplier results in a two-times recapture through 2016, with a phase-out over the remaining term.

In addition to the tenancy- and employment-derived sales tax and energy benefits described above, which will be provided by the IDA, the project will also receive construction benefits in the form of a PILOT schedule with respect to real property taxes (worth approximately \$26.2 million NPV) and a waiver of mortgage recording tax with regard to the Liberty Bond financing (worth approximately \$14.4 million NPV), both delivered through the building's ground lease with the Empire State Development Corporation. The share of the benefits associated with the BoA portion of the facility will be allocated across the term of BoA's occupancy of the facility, and BoA will be obligated to repay some or all of the benefits allocated to a year if it fails to achieve the required employment growth threshold for that year.

The employee growth thresholds for BoA are listed below. Each year's share of the benefits will be repaid in part for employment that is below that year's threshold but exceeds 50 percent of the growth above the original employment base (2,995) necessary to achieve the threshold. Benefits will be repaid in full if the employment is below the 50 percent level.

July 1, 2008 - June 30, 2010 – 4,000 jobs (3,498 minimum for partial benefits)

July 1, 2010 - June 30, 2011 – 4,100 jobs (3,548 minimum for partial benefits)

July 1, 2011 - June 30, 2013 – 4,200 jobs (3,598 minimum for partial benefits)

July 1, 2013 - June 30, 2028 – 4,400 jobs (3,698 minimum for partial benefits)