**OFFICIAL STATEMENT DATED DECEMBER 10, 2020**

**NEW ISSUE – BOOK-ENTRY ONLY**

**NOT RATED**
**(See " NO RATING" herein)**

*In the opinion of Hawkins Delafield & Wood LLP, Bond Counsel to the Issuer, under existing statutes and court decisions and assuming compliance with certain tax covenants described herein, (i) interest on the Series 2020A Bonds is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) interest on the Series 2020A Bonds is not treated as a preference item in calculating the alternative minimum tax under the Code. Bond Counsel to the Issuer is further of the opinion that, under existing statutes, interest on the Series 2020A Bonds is exempt from personal income taxation imposed by the State of New York or any political subdivision thereof, including The City of New York. In addition, interest on the Series 2020B Bonds is included in gross income for federal income tax purposes under the Code and is not exempt from personal income taxes imposed by the State of New York or any political subdivision thereof, including The City of New York. See "TAX MATTERS" herein.*

# $6,515,000
# BUILD NYC RESOURCE CORPORATION
## Revenue Bonds (Young Adult Institute, Inc. Project)
## $5,490,000 Series 2020A
## $1,025,000 Series 2020B (Taxable)

**Dated: Date of Issuance** **Due: July 1, as shown on the inside cover**

The Build NYC Resource Corporation Revenue Bonds (Young Adult Institute, Inc. Project), Series 2020A (the "Series 2020A Bonds") and Revenue Bonds (Young Adult Institute, Inc. Project), Series 2020B (Taxable) (the "Series 2020B Bonds" and, together with the Series 2020A Bonds, the "Series 2020 Bonds") are being issued by Build NYC Resource Corporation (the "Issuer") to (i) finance and reimburse YAI for a portion of the cost of the renovation of two condominium units located at 220 East 42nd Street, New York, New York (the "42nd Street Facility") and the acquisition of certain equipment and other personal property therein for Young Adult Institute, Inc., a New York not-for-profit corporation ("YAI"), to provide administrative and clinical services, (ii) reimburse YAI for the costs of redeeming certain outstanding bonds in the approximate amount of $680,000 issued by the Dormitory Authority of the State of New York, the proceeds of which were used to finance and/or refinance the cost of the renovation of a residential facility located at 314 East 35th Street, New York, New York, (iii) fund a debt service reserve fund for the Series 2020A Bonds and (iv) pay certain costs of issuance of the Series 2020 Bonds. The clinic space located at the 42nd Street Facility is operated by Premier Healthcare, Inc., a New York not-for-profit corporation ("Premier Healthcare"), whose sole corporate member is YAI, in providing primary care and specialty outpatient services to individuals with developmental and other disabilities and their families.

The Series 2020 Bonds are special limited obligations of the Issuer, payable as to principal, Sinking Fund Installments, Redemption Price (as each term is hereinafter defined), and interest, from and secured by loan payments made by YAI under the Loan Agreement to be entered into between the Issuer and YAI (the "Loan Agreement") and from the amounts on deposit in certain funds and accounts established therefor under the Indenture (as hereinafter defined). The Issuer's right to receive payments and other rights under the Loan Agreement (except for the Issuer's Reserved Rights as defined herein) will be pledged to the Trustee under the Indenture to secure the payment of the Series 2020 Bonds.

The Series 2020 Bonds will be issued pursuant to an Indenture of Trust (the "Indenture") to be entered into between the Issuer and The Bank of New York Mellon, as trustee for the Series 2020 Bonds (the "Trustee"), and will be issued as fully registered bonds in the name of Cede & Co., as nominee for The Depository Trust Company ("DTC"). DTC will act as securities depository for the Series 2020 Bonds. Purchases of the Series 2020 Bonds will be made in book-entry only form. See "BOOK-ENTRY ONLY SYSTEM" herein. Purchases of beneficial ownership interests in the Series 2020 may be made only in the denomination of $100,000 and any integral multiple of $5,000 in excess thereof. Beneficial owners (as hereinafter defined) of the Series 2020 Bonds will not receive certificates representing their interests in the Series 2020 Bonds.

Interest on the Series 2020 Bonds will be payable on each January 1 and July 1, commencing July 1, 2021 (or if any such day is not a Business Day, on the immediately succeeding Business Day). So long as DTC or its nominee is the registered owner of the Series 2020 Bonds, references herein to Bondholders or holders of the Series 2020 Bonds shall mean Cede & Co., and payments of the principal, Sinking Fund Installments or Redemption Price, if any, of and interest on the Series 2020 Bonds will be made directly to DTC by the Trustee as paying agent.

The Series 2020 Bonds are subject to optional and mandatory redemption as described herein.

Neither the State of New York (the "State") nor any political subdivision thereof, including The City of New York, New York (the "City"), shall be obligated to pay the principal, Sinking Fund Installments, Redemption Price of, or the interest on, the Series 2020 Bonds. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, including the City, is pledged to the payment of the Series 2020 Bonds. The Series 2020 Bonds will not be payable out of any funds of the Issuer other than those pledged therefor pursuant to the Indenture. The Series 2020 Bonds will not give rise to a pecuniary liability or charge against the credit or taxing powers of the State or any political subdivision thereof, including the City. No recourse will be had for the payment of the principal, Sinking Fund Installments or Redemption Price of or the interest on the Series 2020 Bonds against any member, officer, director, employee or agent of the Issuer. The Issuer has no taxing power.

Investors must read this entire Official Statement to obtain information essential to the making of an informed investment decision. This cover page contains information for quick reference only. It is <u>not</u> a summary of this issue.

The Series 2020 Bonds are offered when, as and if issued by the Issuer, subject to prior sale, withdrawal or modification of the offer without notice, and subject to the approval of legality by Hawkins Delafield & Wood LLP, New York, New York, Bond Counsel to the Issuer. Certain legal matters will be passed upon for the Issuer by its General Counsel, for YAI and Premier Healthcare by Cullen and Dykman LLP, Albany, New York and for the Underwriter by McCarter & English, LLP, Newark, New Jersey and New York, New York. It is expected that delivery of the Series 2020 Bonds will take place through the facilities of DTC on or about December 17, 2020.

# MUNICIPAL CAPITAL MARKETS GROUP, INC.

Dated: December 10, 2020

**$6,515,000**
**BUILD NYC RESOURCE CORPORATION**
**REVENUE BONDS (YOUNG ADULT INSTITUTE, INC. PROJECT)**

**Consisting of:**

**$5,490,000 Series 2020A**

$1,095,000 5.00% Term Bond due July 1, 2030 to Yield 3.35% CUSIP[(1)] 12008E QU3

$4,395,000 5.00% Term Bond due July 1,2045 to Yield 4.10%[(2)] CUSIP[(1)] 12008E QW9

**$1,025,000**
**Series 2020B (Taxable)**

$1,025,000 4.00% Term Bond due July 1, 2030 to Yield 4.10% CUSIP[(1)] 12008E QX7

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(1) Copyright, American Bankers Association (the "ABA"). CUSIP data herein are provided by CUSIP Global Services, operated on behalf of the ABA by S&P Global Market Intelligence, a division of S&P Global Inc. CUSIP numbers have been assigned by an independent company not affiliated with the Issuer and are included solely for the convenience of the holders of the Series 2020 Bonds. Neither the Issuer nor the Underwriter is responsible for the selection or uses of the CUSIP numbers, and no representation is made as to their correctness on the Series 2020 Bonds or as indicated above. CUSIP numbers are subject to being changed after the issuance of the Series 2020 Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part of the Series 2020 Bonds or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of the Series 2020 Bonds.

(2) Priced to July 1, 2030 call date.

No dealer, broker, salesman or other person has been authorized by the Issuer, YAI or the Underwriter to give any information or to make any representations with respect to the Series 2020 Bonds, other than the information and representations contained in this Official Statement. If given or made, any such information or representation must not be relied upon as having been authorized by the Issuer, YAI or the Underwriter.

This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Series 2020 Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.

The Issuer has provided the information set forth under the captions "THE ISSUER" and "ABSENCE OF LITIGATION – The Issuer." All other information has been obtained from YAI and other sources that are believed to be reliable, but it is not guaranteed as to accuracy or completeness by, and it is not to be construed as a representation or warranty of, either of the Issuer or the Underwriter. The information and expressions of opinion set forth herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the parties referred to above since the date hereof.

The Underwriter has provided the following sentence for inclusion in this Official Statement. The Underwriter has reviewed the information in this Official Statement pursuant to its responsibility to investors under the federal securities law, but the Underwriter does not guarantee the accuracy or completeness of such information.

Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21E of the United States Securities Exchange Act of 1934, as amended, and Section 27A of the Securities Act of 1933, as amended. Such statements are generally identifiable by the terminology used such as "plan," "expect," "estimate," "anticipate," "budget," "intend," "projection" or other similar words. Such forward-looking statements include, but are not limited to, certain statements contained in the information in "APPENDIX A – DESCRIPTION OF YAI." Such forward-looking statements speak only as of the date of this Official Statement.

Forward-looking statements inherently are subject to a variety of risks and uncertainties that could cause actual results to differ materially from those projected. Such risks and uncertainties include, among others, general economic and business conditions, changes in political, social and economic conditions, regulatory initiatives and compliance with governmental regulations, litigation and various other events, conditions and circumstances, many of which are beyond the control of YAI. YAI DISCLAIMS ANY OBLIGATION OR UNDERTAKING TO RELEASE PUBLICLY ANY UPDATES OR REVISIONS TO ANY FORWARD-LOOKING STATEMENT CONTAINED HEREIN TO REFLECT ANY CHANGE IN ITS EXPECTATIONS WITH REGARD THERETO OR ANY CHANGE IN EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH ANY SUCH STATEMENT IS BASED. SEE "PART 9 - BONDHOLDERS' RISKS."

The contents of this Official Statement are not to be construed as legal, business or tax advice. Prospective investors should consult their own attorneys and business and tax advisors as to legal, business and tax advice. In making an investment decision, prospective investors must rely on their own examination of the terms of the offering of the Series 2020 Bonds, including the merits and risks involved. This Official Statement is not to be construed as a contract or agreement between the Issuer and the purchasers or holders of any Series 2020 Bonds.

THE SERIES 2020 BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE INDENTURE HAS NOT BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS. THE REGISTRATION OR QUALIFICATION OF THE SERIES 2020 BONDS IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF LAWS OF THE STATES IN WHICH SERIES 2020 BONDS HAVE BEEN REGISTERED OR QUALIFIED AND THE EXEMPTION FROM REGISTRATION OR QUALIFICATION IN OTHER STATES CANNOT BE REGARDED AS A RECOMMENDATION THEREOF. NEITHER THESE STATES NOR ANY OF THEIR AGENCIES HAVE PASSED UPON THE MERITS OF THE SERIES 2020 BONDS OR THE ACCURACY OR COMPLETENESS OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.

References in this Official Statement to the Indenture, the Loan Agreement, the Pledge and Security Agreement (as hereinafter defined) and the Mortgage (as hereinafter defined) do not purport to be complete. Refer to the Indenture, the Loan Agreement, the Pledge and Security Agreement and the Mortgage for full and complete details of their provisions. Copies of drafts of the Indenture, the Loan Agreement, the Pledge and Security Agreement and the Mortgage are available from the Underwriter during the offering period.

The order and placement of material in this Official Statement, including its appendices, are not to be deemed a determination of relevance, materiality or importance, and all material in this Official Statement, including its appendices, must be considered in its entirety.

Under no circumstances shall the delivery of this Official Statement or any sale made after its delivery create any implication that the affairs of the Issuer or YAI have remained unchanged after the date of this Official Statement.

IN CONNECTION WITH THE OFFERING OF THE SERIES 2020 BONDS, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2020 BONDS AT LEVELS ABOVE THOSE THAT MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

**THE SERIES 2020 BONDS HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION, NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY MAY BE A CRIMINAL OFFENSE.**

**THE SERIES 2020 BONDS MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (1) TO A PERSON CONSTITUTING A "QUALIFIED INSTITUTIONAL BUYER" WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT OF 1933, AS AMENDED OR (2) TO AN "ACCREDITED INVESTOR" WITHIN THE MEANING OF RULE 501 OF REGULATION D UNDER THE SECURITIES ACT OF 1933, AS AMENDED.**

**EACH HOLDER OF THE SERIES 2020 BONDS, BY THE PURCHASE AND ACCEPTANCE OF THE SERIES 2020 BONDS, IS DEEMED TO HAVE REPRESENTED AND AGREED AS FOLLOWS:**

**(A) (I) IT IS A QUALIFIED INSTITUTIONAL BUYER AS DEFINED IN RULE 144A ("RULE 144A") OF THE SECURITIES ACT OF 1933, AS AMENDED, IT HAS**

**ACQUIRED THIS BOND FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER; OR (II) IT IS AN "ACCREDITED INVESTOR" AS DEFINED IN RULE 501 UNDER THE SECURITIES ACT OF 1933, AS AMENDED; AND**

**(B) IT UNDERSTANDS THAT THE SERIES 2020 BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THAT, IF IN THE FUTURE IT DECIDES TO OFFER, RESELL, PLEDGE OR OTHERWISE TRANSFER THE SERIES 2020 BOND, THE SERIES 2020 BONDS MAY BE OFFERED, RESOLD, PLEDGED OR TRANSFERRED ONLY IN ACCORDANCE WITH APPLICABLE SECURITIES LAW OR AN EXEMPTION THEREFROM.**

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**OFFICIAL STATEMENT**
relating to
**$6,515,000**
**BUILD NYC RESOURCE CORPORATION**
**REVENUE BONDS (YOUNG ADULT INSTITUTE, INC. PROJECT)**
*Consisting of:*

**$5,490,000 Series 2020A** **$1,025,000 Series 2020B (Taxable)**

## PART 1 - INTRODUCTION

### Purpose of Official Statement

The purpose of this Official Statement, which includes the cover page, the inside cover page and the appendices hereto, is to provide information about Build NYC Resource Corporation (the "Issuer") and Young Adult Institute, Inc. ("YAI") in connection with the offering by the Issuer of its $6,515,000 aggregate principal amount of Revenue Bonds (Young Adult Institute, Inc. Project), consisting of $5,490,000 Series 2020A Bonds (the "Series 2020A Bonds") and $1,025,000 Series 2020B Bonds (Taxable) (the "Series 2020B Bonds" and, together with the Series 2020A Bonds, the "Series 2020 Bonds").

The following is a brief description of certain information concerning the Series 2020 Bonds, the Issuer and YAI. A more complete description of such information and additional information that may affect decisions to invest in the Series 2020 Bonds is contained throughout this Official Statement, which should be read in its entirety. Certain capitalized terms used in this Official Statement are defined in Appendix D hereto.

### Purpose of the Issue

The Series 2020 Bonds are being issued for the purpose of (i) financing and reimbursing YAI for a portion of the cost of the renovation, furnishing and equipping of the condominium units designated as Unit 7NW and Unit 8 (the "42nd Street Facility") in that certain Declaration Establishing a Plan for Condominium Ownership dated as of December 15, 2015, as amended, in the building located at 220 East 42nd Street, New York, New York for the provision of administrative and clinical services by YAI to people with developmental disabilities or other special needs, (ii) reimbursing YAI for the costs of redeeming certain outstanding bonds in the approximate amount of $680,000 issued by the Dormitory Authority of the State of New York (the "Prior Bonds"), the proceeds of which were used to finance and/or refinance the costs of the renovation of a residential facility located at 314 East 35th Street, New York, New York (the "35th Street Facility" and together with the 42nd Street Facility, the "Facilities"), (iii) making a deposit to the Debt Service Reserve Fund (Tax-Exempt) securing the Series 2020A Bonds (the "Debt Service Reserve Fund (Tax-Exempt)") in an amount equal to the Debt Service Reserve Fund Requirement (Tax-Exempt), and (iv) paying certain costs of issuance of the Series 2020 Bonds. The Loan Agreement to be entered into between the Issuer and YAI (the "Loan Agreement"), requires the payment of amounts sufficient to provide for the payment of the principal or Redemption Price, if any, of, Sinking Fund Installments with respect to, and interest on, the Series 2020 Bonds as the same become due. See "PART 6 – ESTIMATED SOURCES AND USES OF FUNDS." For a further description of the Facilities, see "APPENDIX A – DESCRIPTION OF YAI – Description of Facilities and Financing Plan" and "APPENDIX I – COPIES OF THE CONDOMINIUM DECLARATION AND SUMMARIES OF CERTAIN PROVISIONS OF THE GROUND LEASE, OMNIBUS AGREEMENT AND SALE AND PURCHASE AGREEMENT."

**Authorization of Issuance**

The Issuer authorized the issuance of the Series 2020 Bonds by a resolution adopted by its Board of Directors on May 12, 2020, as amended on September 22, 2020 and November 17, 2020. The Series 2020 Bonds are being issued pursuant to an Indenture of Trust (the "Indenture") to be entered into between the Issuer and The Bank of New York Mellon, as trustee (the "Trustee"). The Trustee will also serve as Paying Agent and Bond Registrar for the Series 2020 Bonds. See "PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2020 BONDS."

**The Issuer**

The Issuer is a not-for-profit local development corporation created pursuant to the Not-for-Profit Law of the State of New York (the "State"). See "PART 7 - THE ISSUER."

**The Facilitator**

The InterAgency Council of Developmental Disabilities Agencies, Inc. (the "Facilitator") will act as the facilitator for the Series 2020 Bonds. The Facilitator is a not-for-profit membership organization voluntarily supported by approximately 150 not-for-profit service provider members (including YAI) that conduct business throughout the State, but primarily in The City of New York metropolitan area. See "PART 4 - YAI."

**YAI**

YAI is a not-for-profit corporation organized and existing under the laws of the State. See "PART 4 - YAI," "PART 5 - SOURCES OF REVENUE," "APPENDIX A - DESCRIPTION OF YAI," "APPENDIX B - AUDITED FINANCIAL STATEMENTS OF YAI," "APPENDIX C - UNAUDITED FINANCIAL INFORMATION OF YAI" and "APPENDIX I – COPIES OF THE CONDOMINIUM DECLARATION AND SUMMARIES OF CERTAIN PROVISIONS OF THE GROUND LEASE, OMNIBUS AGREEMENT AND SALE AND PURCHASE AGREEMENT."

Upon delivery of the Series 2020 Bonds, YAI will receive a loan from the Issuer from the proceeds thereof in the aggregate principal amounts thereof.

**The Series 2020 Bonds**

The Series 2020 Bonds are dated their date of delivery and bear interest from such date (payable July 1, 2021, and on each January 1 and July 1 thereafter (or, if any such day is not a Business Day, the immediately succeeding Business Day)) at the rates and will mature at the times set forth on the inside cover page of this Official Statement. See "PART 3 - THE SERIES 2020 BONDS - Description of the Series 2020 Bonds."

**Payment of and Security for the Series 2020 Bonds**

The Series 2020 Bonds are special, limited obligations of the Issuer payable from (i) certain payments required to be made by YAI pursuant to the Loan Agreement on account of the principal, Sinking Fund Installments and Redemption Price, if any, of and interest due on the Outstanding Series 2020 Bonds, (ii) upon a default by YAI, by amounts realized pursuant to its filing under the New York Uniform Commercial Code granting a security interest in the Pledged Revenues (as described herein), (iii) upon a default by YAI, by amounts realized pursuant to foreclosure of the 35th Street Facility (as described herein) under the Mortgage (as defined herein), (iv) certain funds and accounts established under the Indenture (other than the Rebate Fund) and investment income thereon and (v) in certain

instances from certain proceeds of insurance. See "PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2020 BONDS - Security for the Series 2020 Bonds."

Pursuant to the Loan Agreement, YAI will be required to pay, among other things, the principal, Sinking Fund Installments and Redemption Price of and interest due on the Outstanding Series 2020 Bonds. The obligation of YAI to make payments under the Loan Agreement constitutes a general obligation of YAI. For a listing of the principal and Sinking Fund Installments of and interest on the Series 2020 Bonds, see "PART 3 – THE SERIES 2020 BONDS – Principal, Sinking Fund Installment and Interest Requirements for the Series 2020 Bonds."

**The Series 2020 Bonds will not be a debt of the City or the State nor will the City or the State be liable thereon. The Issuer has no taxing power.**

**Additional Security - Pledged Revenues**

The Series 2020 Bonds will also be secured by the pledge to the Trustee of the Pledged Revenues granted by YAI pursuant to the Pledge and Security Agreement to be entered into by YAI to the Trustee (the "Pledge and Security Agreement"), subject to Prior Pledges and other Permitted Encumbrances. YAI has previously pledged its Public Funds (a portion of which consists of the Pledged Revenues) to The Dormitory Authority of the State of New York ("DASNY"), an industrial development agency or a bank or another financial institution as security for the respective obligations of YAI in connection with bonds previously issued by DASNY or such industrial development agency or lines of credit or other borrowings from financial institutions. The pledge of the Pledged Revenues granted by YAI pursuant to the Pledge and Security Agreement is subject and subordinate to such Prior Pledges in all respects. See "PART 4 - YAI" and "APPENDIX A - DESCRIPTION OF YAI" for a description of YAI, including its Prior Pledges of its Pledged Revenues.

Pledged Revenues are all of YAI's Public Funds attributable to (a) the Facilities or (b) the administration, management, supervision or support at or from the Facilities of programs or activities at other locations. In the case of YAI, Public Funds include amounts payable by the State Office for People with Developmental Disabilities ("OPWDD") or another State agency in connection with all or a portion of the Facilities. In addition, in the case of the portion of the 42nd Street Facility that is utilized for clinic purposes (the "Clinic Space"), Public Funds also include amounts payable by the State Department of Health ("DOH") or another State agency in connection with services provided by or on behalf of YAI at the 42nd Street Facility which is an Article 28 public health clinic ("Article 28 Clinic") and an Article 16 clinic certified by OPWDD to provide clinical services to individuals with developmental disabilities, as well as to those caregivers and other support staff whose participation in the service is deemed necessary to maintain the effectiveness of the treatment, enable the individual to remain in his/her current residential setting and enhance the individual's quality of life ("Article 16 Clinic").

OPWDD has pre-approved pursuant to a Prior Property Approval ("PPA") the 35th Street Facility for reimbursement of amounts calculated to be approximately sufficient to pay the principal and interest costs incurred by YAI in connection with the 35th Street Facility, subject to annual appropriation by the State Legislature and so long as YAI operates the 35th Street Facility in accordance with certain defined standards. Assuming annual appropriation of sufficient funds and continued compliance with operational standards by YAI, it is expected that the amounts received by YAI pursuant to the PPA will be sufficient to pay the annual principal of and interest on the portion of the Series 2020 Bonds attributable to the 35th Street Facility; any difference between the two amounts is expected to be covered by the Pledged Revenues of YAI expected to be received for operating and administrative expenses associated with the 35th Street Facility. With respect to the 42nd Street Facility, YAI expects to pay the principal of and interest of the portion of the Series 2020 Bonds from Public Funds paid by OPWDD and DOH and from its general operating revenues.

The ability of YAI to satisfy its payment obligations under the Loan Agreement with the Series 2020 Bonds and the Trustee's ability to realize upon its security interests in the Pledged Revenues of YAI are largely dependent upon the continued operation by YAI of the Facilities. Such operation may be adversely affected by a number of risk factors, including, but not limited to, (i) the financial condition of YAI and its ability to continue to generate sufficient revenues to support all of its facilities, including the Facilities, (ii) the continued compliance by YAI with State and local operational standards with respect to the Facilities, and (iii) the continued commitment of Public Funds to support the programs and facilities operated by YAI, particularly with respect to the Facilities, including continued appropriations by the State in amounts sufficient for (a) OPWDD or other State agencies to make payments to YAI for its administrative purposes and (b) DOH or other State agencies to pay fees for services to YAI for services provided at the Clinic Space. For a more detailed discussion of risk factors affecting the ability of YAI to pay amounts owed under the Loan Agreement and the Pledged Revenues, as well as other risk factors affecting payment on the Series 2020 Bonds, see "PART 9 - BONDHOLDERS' RISKS." See also, "PART 5 - SOURCES OF REVENUE."

**The Mortgage**

YAI's obligations under the Loan Agreement will be additionally secured by the Mortgage and Security Agreement to be entered into from YAI to the Issuer and the Trustee (the "Mortgage"), pursuant to which YAI will grant a mortgage lien on and security interest in its fee interest in the 35th Street Facility and the mortgaged personal property located therein (as further described in the Mortgage, collectively, the "Mortgaged Property"), such lien and security interest subject to applicable Permitted Encumbrances. The Issuer will assign its right, title and interest under the Mortgage to the Trustee pursuant to the Assignment of Mortgage and Security Agreement from the Issuer to the Trustee (the "Assignment of Mortgage"). See "PART 2 SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2020 BONDS."

See "Appendix A - Description of YAI" for a description of YAI and (a) the Facilities, (b) the Mortgaged Property and (c) the nature of the Mortgage.

## PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2020 BONDS

*Set forth below is a narrative description of certain contractual provisions relating to the source of payment of and security for the Series 2020 Bonds and certain related covenants. These provisions have been summarized, and this description does not purport to be complete. Reference should be made to the Indenture and the Loan Agreement, copies of drafts of which are available from the Underwriter during the offering period, for a more complete description of such documents. See also "APPENDIX E-SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT" and "APPENDIX F - SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE" for a summary of certain provisions of the Loan Agreement and the Indenture, respectively.*

**Payment of the Series 2020 Bonds**

The Series 2020 Bonds are special, limited obligations of the Issuer. The principal, Sinking Fund Installments, and Redemption Price of and interest on the Series 2020 Bonds are payable solely by YAI. Pursuant to the Pledge and Security Agreement, YAI will pledge the Pledged Revenues, subject to Prior Pledges and other Permitted Encumbrances, to the Trustee for the benefit of the Holders of the Series 2020 Bonds.

The Loan Agreement is a general obligation of YAI, pursuant to which YAI will be required to make payments in amounts sufficient to satisfy the principal, Sinking Fund Installments, and Redemption Price of and interest due on the Series 2020 Bonds as reflected in the debt service table set forth in

"PART 3 – THE SERIES 2020 BONDS – Principal, Sinking Fund Installment and Interest Requirements for the Series 2020 Bonds."

Payments under the Loan Agreement are to be made monthly on the 20th day of each month. The payments under the Loan Agreement are to include the amount of the interest coming due on the next succeeding interest payment date and the amount of the principal and Sinking Fund Installments coming due on the next succeeding July l. See "PART 3 – THE SERIES 2020 BONDS – Principal, Sinking Fund Installment and Interest Requirements for the Series 2020 Bonds."

**Security for the Series 2020 Bonds**

General

The Series 2020 Bonds will be secured by the pledge to the Trustee by YAI of the Pledged Revenues, subject to Prior Pledges and other Permitted Encumbrances. See "APPENDIX A - DESCRIPTION OF YAI" for a description of YAI, including its Prior Pledge of its Pledged Revenues.

The Series 2020 Bonds will also be secured by the proceeds from the sale of such Series 2020 Bonds (until disbursed as provided in the Indenture) and all funds and accounts established by the Indenture (with the exception of the Rebate Fund), including, with respect to the Series 2020A Bonds, the Debt Service Reserve Fund (Tax-Exempt).

Pledged Revenues

Pursuant to the Pledge and Security Agreement, YAI has pledged to the Trustee its Pledged Revenues in an amount sufficient to satisfy its payment obligations under the Security Documents, subject to any Prior Pledges and other Permitted Encumbrances. The Pledged Revenues include all accounts, investment property income, payment intangibles, monies, receipts, earnings (inclusive of any investment income), revenues, including Public Funds, rentals, income, insurance proceeds, fees, gifts, donations, contributions, charges and other moneys received or receivable by or on behalf of YAI. Public Funds include all moneys payable to YAI by any agency of the State or federal government, a State political subdivision, social services district in the State or any other governmental entity. See "PART 5 - SOURCES OF REVENUE - New York State Office for People with Developmental Disabilities" and "- New York State Department of Health."

The 35th Street Facility is supported by an OPWDD PPA which YAI has received. The PPA represents OPWDD's pre-approval of the 35th Street Facility for reimbursement of certain amounts approximately sufficient to pay the annual principal and interest costs incurred by YAI in connection with the 35th Street Facility, subject to annual appropriation by the State Legislature and so long as YAI operates the 35th Street Facility in accordance with certain defined standards. Assuming annual appropriation of sufficient funds and continued compliance with such standards by YAI, it is expected that the amounts received by YAI pursuant to the PPA will be approximately sufficient to pay the annual principal of and interest on the portion of the Series 2020 Bonds attributable to the 35th Street Facility; any difference between the two amounts is expected to be covered by the Pledged Revenues of YAI expected to be received for operating and administrative expenses associated with the 35th Street Facility. With respect to the 42nd Street Facility, which is not expected to be reimbursed by OPWDD through a PPA, YAI expects to pay such Non-PPA supported portions of the principal of and interest of the Series 2020 Bonds from Public Funds paid by OPWDD and DOH and from its general operating revenues. See "PART 5 - SOURCES OF REVENUE - New York State Office for People with Developmental Disabilities" and "- New York State Department of Health."

Mortgage

YAI's obligations under the Loan Agreement will be additionally secured by the Mortgage, pursuant to which YAI will grant to the Issuer and the Trustee a mortgage lien on and security interest in the Mortgaged Property, such mortgage lien and security interest subject to Permitted Encumbrances. The Issuer will assign its right, title and interest under the Mortgage to the Trustee pursuant to the Assignment of Mortgage. See "Appendix A – Description of YAI" for a description of YAI and (a) the Facilities, (b) the Mortgaged Property and (c) the nature of the Mortgage.

MB Appraisal, Inc. (the "Appraiser") in its report dated September 22, 2020 (the "Appraisal") with the valuation date of September 22, 2020, set the market value of the fee simple interest in the 35th Street Facility on as "as is" basis. The Appraiser indicated that the Appraisal was intended to conform with the Uniform Standards of Professional Appraisal Practice ("USPAP"), the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Code of Professional Ethics and Standard of Professional Appraisal Practice of the Appraisal Institute and applicable State appraisal regulations. The Appraisal indicated that the valuation analysis in the Appraisal was subject to the definitions, assumptions and limiting conditions set forth in the Appraisal. According to the Appraisal, the market value of the fee simple interest in the 35th Street Facility was $13,500,000. All references to the Appraisal herein are qualified in their entirety by reference to the Appraisal, a copy of which is available for review and will be provided upon written request to the Facilitator and should be read in its entirety. No attempt has been made to summarize the Appraisal. None of the Issuer, YAI, the Facilitator or the Underwriter makes any representation or warranty as to the correctness of the Appraisal or the conditions or conclusions set forth therein. See "PART 9 - BONDHOLDERS' RISKS – Mortgage."

The liens and security interests granted by the Mortgage are subject to Permitted Encumbrances. The lien of and security interests in the Mortgaged Property may also be limited by certain other factors. See "PART 9 – BONDHOLDERS' RISKS" and "Appendix A – Description of YAI."

Debt Service Reserve Fund (Tax-Exempt)

Pursuant to the Indenture, a Debt Service Reserve Fund (Tax-Exempt) is to be established as security for the Series 2020A Bonds, which is required to be maintained in an amount equal to, as of any particular date of computation, an amount (which amount may take the form of cash, Qualified Investments or any combination thereof) equal to the lesser of: (i) 10% of the Net Proceeds (as defined in the Tax Regulatory Agreement) of the Outstanding Series 2020A Bonds; (ii) 100% of the greatest amount required in the then current or any future calendar year to pay the sum of the scheduled principal and interest payable on Outstanding Series 2020A Bonds; or (iii) 125% of the average annual amount required in the then current or any future calendar year to pay the sum of scheduled principal and interest on the Outstanding Series 2020A Bonds (the "Debt Service Reserve Fund Requirement (Tax-Exempt)").

A portion of the proceeds of the Series 2020A Bonds will be deposited into the Debt Service Reserve Fund (Tax-Exempt) in an amount equal to the Debt Service Reserve Fund Requirement (Tax-Exempt). See "PART 6 – ESTIMATED SOURCES AND USES OF FUNDS" for the initial deposit to the Debt Service Reserve Fund (Tax-Exempt). If on any Interest Payment Date or redemption date for the Series 2020A Bonds the amount on deposit in the Interest Account of the Bond Fund (Tax-Exempt) available to pay interest on the Series 2020A Bonds is less than the amount necessary to pay such interest then due and payable on the Outstanding Series 2020A Bonds or if on any principal or Sinking Fund Installment payment date for the Series 2020A Bonds the amount on deposit in the Principal Account or the Sinking Fund Installment Account, respectively, of the Bond Fund (Tax-Exempt) available to pay principal or Sinking Fund Installments on the Series 2020A Bonds is less than the amount necessary to pay such principal or Sinking Fund Installment then due and payable, the Trustee is required to transfer moneys from the Debt Service Reserve Fund (Tax-Exempt) first to the Interest Account, second to the

Principal Account and third to the Sinking Fund Installment Account of the Bond Fund (Tax-Exempt), all to the extent necessary to make good such deficiency; provided however that any such moneys so transferred shall only be applied to the payment of the Series 2020A Bonds. YAI is obligated pursuant to the Loan Agreement, commencing on the first day of the month immediately following receipt by YAI of notice of any such deficiency, until the amount of such deficiency has been satisfied, either (i) one-twelfth (1/12) of the amount of such deficiency if such deficiency is due to a withdrawal from the Debt Service Reserve Fund (Tax-Exempt) on account of YAI's failure to make timely payments or (ii) one-quarter (1/4) of the deficiency if such deficiency is due to a decrease in the value of the Qualified Investments held in the Debt Service Reserve Fund (Tax-Exempt). Any money in the Debt Service Reserve Fund (Tax-Exempt) in excess of the required amounts shall be applied in accordance with the Indenture.

**Financial Covenants of YAI**

Grant of Security Interest to Other Parties

Pursuant to the Pledge and Security Agreement, YAI may grant security interests in its Accounts Receivable, and the proceeds thereof, in favor of banks or other financial institutions in order to secure a line of credit for working capital purposes, whether by entering into a new credit facility or amending, modifying or extending an existing credit facility; provided, however, that the amount of Indebtedness which may be secured by a security interest granted pursuant to the Pledge and Security Agreement as described in this paragraph shall not exceed, in the aggregate, an amount equal to ninety percent (90%) of YAI's Accounts Receivable. YAI shall deliver a certificate of an Authorized Representative to the Trustee and the Facilitator on each January 1, April 1, July 1 and October 1, commencing with the first such date to occur after the date of issuance of the Series 2020 Bonds, demonstrating compliance with said limitation. To the extent that such a certificate shall demonstrate that YAI is not in compliance with said limitation, YAI shall use its best efforts to repay such outstanding Indebtedness in an amount which will allow it to be in compliance with the Pledge and Security Agreement as described in this paragraph.

Additional Indebtedness

Pursuant to the Pledge and Security Agreement, YAI may not incur any additional Indebtedness (including, but not limited to, guarantees or derivatives in the form of credit default swaps or total-rate-of-return swaps or similar instruments), whether or not issued under the Indenture, without the prior written consent of the Trustee, except for the following:

(a) Indebtedness evidenced by Additional Bonds issued in accordance with the Loan Agreement and the Indenture,

(b) Indebtedness (other than for working capital, other than loan payments payable under loan agreements with the Issuer or other payments under installment sale agreements and other than rents payable under lease agreements) incurred in the ordinary course of YAI's business for its current operations including the maintenance and repair of its property, advances from third party payors and obligations under reasonably necessary employment contracts,

(c) Indebtedness in the form of rentals under leases which are not required to be capitalized in accordance with GAAP in effect on the date of issuance of the Series 2020 Bonds,

(d) Indebtedness secured by the mortgage of any tangible property of YAI other than the Facilities,

(e) Indebtedness secured by the Accounts Receivable of YAI, subject to the limitations of the Pledge and Security Agreement as described under the subheading "— Grant of Security Interest to Other Parties," and

(f) Indebtedness the proceeds of which will be applied to a purpose consistent with YAI's corporate purposes; provided, however, that prior to incurring any Non-PPA Indebtedness pursuant to this clause (f), YAI shall deliver to the Trustee either (I) a certificate signed by YAI's chief executive officer or chief financial officer demonstrating a Total Debt Service Coverage Ratio of 1.1x for the most recent Fiscal Year for which audited financial statements exist or (II) a certificate of an independent certified public accountant not unacceptable to the Trustee demonstrating that the estimated Total Net Revenues Available for Debt Service for the first full Fiscal Year following the estimated completion of the capital additions or repairs financed with the proceeds of such additional Non-PPA Indebtedness, or following the incurrence of Non-PPA Indebtedness for other purposes, will support a Total Debt Service Coverage Ratio of not less than 1.1x. In preparing its calculations of the required ratios, YAI's representative or the independent certified public accountant, as applicable, shall include the proposed debt service requirements with respect to the Non-PPA Indebtedness to be issued.

**Events of Default**

Events of Default

The following are "Events of Default" under the Indenture:

(i) the failure in the payment of the principal, Sinking Fund Installments or Redemption Price of or interest on the Series 2020 Bonds and any Additional Bonds (collectively, the "Bonds");

(ii) the failure of the Issuer to observe or perform any covenant, condition or agreement in the Bonds or under the Indenture on its part to be performed and (A) continuance of such failure for more than 30 days after written notice of such failure has been given to the Issuer and YAI specifying the nature of same from the Trustee or the Holders of more than 25% in aggregate principal amount of the Bonds Outstanding, or (B) if by reason of the nature of such failure the same can be remedied, but not within the said 30 days, the Issuer or YAI fails to commence and thereafter proceed with reasonable diligence after receipt of said notice to cure such failure or fails to continue with reasonable diligence its efforts to cure such failure or fails to cure such failure within 60 days of delivery of said notice; or

(iii) the occurrence of an event of default under the Loan Agreement or any other Security Document.

Acceleration

If an Event of Default occurs and is continuing, either the Trustee (by notice in writing to the Issuer and YAI) or the Holders of over 25% in aggregate principal amount of the Bonds Outstanding (by notice in writing to the Issuer, YAI and the Trustee) may declare the principal or Redemption Price, if any, of all the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon such declaration the same shall become and be immediately due and payable.

If an Event of Default occurs under the Loan Agreement as a result of YAI's seeking relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, the unpaid principal of all the Bonds (and all principal installments of loan payments payable under the Loan Agreement), together with accrued interest thereon, shall immediately become due and payable without any further action. All moneys received by the Trustee upon an acceleration of the Bonds or pursuant to any right given or action taken under the provisions of the Indenture under any other Security

Document, and all moneys held in all Funds and Accounts (other than the Rebate Fund) shall, after payment of any unpaid rebate amount and after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, be deposited in the applicable Bond Fund and applied to the prepayment of interest, unpaid principal or Redemption Price, if any, of the Bonds as provided in the Indenture. In addition to or lieu of acceleration of payment of principal installments of loan payments payable under the Loan Agreement, the Trustee may take other remedial steps. See "APPENDIX E - SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT -- Remedies on Default" and "-- Bankruptcy Proceedings" and "APPENDIX F - SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE -- Enforcement of Remedies."

## PART 3 - THE SERIES 2020 BONDS

*Set forth below is a narrative description of certain provisions relating to the Series 2020 Bonds. These provisions have been summarized, and this description does not purport to be complete. Reference should be made to the Indenture and the Loan Agreement, copies of drafts of which are available from the Underwriter during the offering period. See also "APPENDIX E - SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT" and "APPENDIX F - SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE" for a summary of certain provisions of the Loan Agreement and the Indenture, respectively.*

### General

The Series 2020 Bonds will be issued pursuant to the Indenture. The Series 2020 Bonds will be registered in the name of Cede & Co., as nominee for The Depository Trust Company ("DTC"), pursuant to DTC's Book-Entry-Only System. Purchases of beneficial interests in the Series 2020 Bonds will be made in book-entry form, without certificates. So long as DTC or its nominee, Cede & Co., is the registered owner of the Series 2020 Bonds, payments of principal, Sinking Fund Installments, Redemption Price and interest on the Series 2020 Bonds will be made by the Trustee directly to Cede & Co. Disbursement of such payments to the Direct Participants (as hereinafter defined) is the responsibility of DTC and disbursement of those payments to the Beneficial Owners of the Series 2020 Bonds is the responsibility of the Direct Participants and the Indirect Participants (as hereinafter defined). If at any time the Book-Entry-Only System is discontinued for the Series 2020 Bonds, the Series 2020 Bonds will be exchangeable for fully registered Series 2020 Bonds in any Authorized Denominations of the same Series and maturity, without charge, except the payment of any tax, fee or other governmental charge required to be paid with respect to such exchange, subject to the conditions and restrictions set for in the Indenture. See " - Book-Entry-Only System."

### Description of the Series 2020 Bonds

The Series 2020 Bonds will be dated their date of delivery and will bear interest from such date (payable on January 1, 2021, and on each July 1 and January 1 thereafter, or, if any such day is not a Business Day, the immediately succeeding Business Day) at the rates per annum, and will mature on July 1 in each of the years set forth on the inside cover page of this Official Statement. Interest on the Series 2020 Bonds will be calculated on the basis of a 360-day year comprised of twelve 30-day months. The Series 2020 Bonds will be issuable in fully registered book-entry-only form, without coupons, in denominations of $100,000 or any integral multiple of $5,000 in excess thereof.

Each Series 2020 Bond may be exchanged for other Series 2020 Bonds of the same Series in any other Authorized Denominations upon payment of a charge sufficient to reimburse the Issuer or the Trustee for any tax, fee or other governmental charge required to be paid with respect to such exchange and for the cost of preparing the new bond, and otherwise as provided in the Indenture.

**Redemption Provisions**

Optional Redemption

The Series 2020A Bonds maturing on July 1, 2045 are subject to redemption, on or after July 1, 2030, as a whole or in part on any Business Day (but if in part in integral multiples of $5,000 and in the minimum principal amount of $100,000) at the option of the Issuer (which option shall be exercised only upon the giving of notice by YAI of its intention to prepay loan payments due under the Loan Agreement), at the Redemption Price of 100% of the unpaid principal amount of the Series 2020A Bonds to be redeemed, plus accrued interest to the redemption date.

The Series 2020A Bonds maturing on July 1, 2030 and the Series 2020B Bonds are not subject to optional redemption.

Mandatory Sinking Fund Redemption

The Series 2020A Bonds maturing on July 1, 2030 and July 1, 2045 are subject to mandatory redemption by the Issuer prior to maturity, in part by lot, at a Redemption Price equal to 100% of the principal amount thereof, together with accrued interest to the date of redemption, from mandatory Sinking Fund Installments on July 1 of the years and in the principal amounts set forth below (provided that the amounts of such Sinking Fund Installments shall be reduced by the credits provided for in the Indenture):

| **Series 2020A Bonds Maturing July 1, 2030** | | **Series 2020A Bonds Maturing July 1, 2045** | |
|---|---|---|---|
| Year | Sinking Fund Installment | Year | Sinking Fund Installment |
| 2023 | $ 30,000 | 2031 | $205,000 |
| 2024 | 85,000 | 2032 | 215,000 |
| 2025 | 95,000 | 2033 | 225,000 |
| 2026 | 160,000 | 2034 | 235,000 |
| 2027 | 170,000 | 2035 | 250,000 |
| 2028 | 175,000 | 2036 | 260,000 |
| 2029 | 185,000 | 2037 | 275,000 |
| 2030† | 195,000 | 2038 | 285,000 |
| | | 2039 | 300,000 |
| | | 2040 | 315,000 |
| | | 2041 | 330,000 |
| | | 2042 | 350,000 |
| | | 2043 | 365,000 |
| | | 2044 | 385,000 |
| | | 2045† | 400,000 |

†Final maturity.

The Series 2020B Bonds are subject to mandatory redemption by the Issuer prior to maturity, in part by lot, at a Redemption Price equal to 100% of the principal amount thereof, together with accrued interest to the date of redemption, from mandatory Sinking Fund Installments on July 1 of the years and in the principal amounts set forth below (provided that the amounts of such Sinking Fund Installments shall be reduced by the credits provided for in the Indenture):

**Series 2020B Bonds**
**Maturing**
**July 1, 2030**

| Year | Sinking Fund Installment |
|---|---|
| 2021 | $ 55,000 |
| 2022 | 195,000 |
| 2023 | 170,000 |
| 2024 | 125,000 |
| 2025 | 125,000 |
| 2026 | 65,000 |
| 2027 | 70,000 |
| 2028 | 70,000 |
| 2029 | 75,000 |
| 2030[†] | 75,000 |

[†]Final maturity.

Extraordinary Redemption

The Series 2020 Bonds are subject to redemption prior to maturity, in whole or in part, at the option of the Issuer exercised at the direction of YAI, on any Business Day, if one or more of the following events shall have occurred:

(i) a Facility shall have been damaged or destroyed to such extent that, as evidenced by a certificate of an Independent Engineer filed with the Issuer and the Trustee, (A) such Facility cannot be reasonably restored within a period of one year from the date of such damage or destruction to the condition thereof immediately preceding such damage or destruction, (B) YAI is thereby prevented or likely to be prevented from carrying on its normal operation at such Facility for a period of one year from the date of such damage or destruction, or (C) the restoration cost of such Facility would exceed the total amount of all insurance proceeds, including any deductible amount, in respect of such damage or destruction; or

(ii) title to, or the temporary use of, all or substantially all of a Facility shall have been taken or condemned by a competent authority which taking or condemnation results, or is likely to result, in YAI being thereby prevented or likely to be prevented from carrying on its normal operation at such Facility for a period of one year from the date of such taking or condemnation, as evidenced by a certificate of an Independent Engineer filed with the Issuer and the Trustee; or

(iii) as a result of changes in the Constitution of the United States of America or of the State or of legislative or executive action of the State or any political subdivision thereof or of the United States of America or by final decree or judgment of any court after the contest thereof by YAI, the Loan Agreement becomes void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as

expressed therein or unreasonable burdens or excessive liabilities are imposed upon YAI by reason of the operation of the Facilities.

In the event a circumstance of the type described in paragraph (i) or (ii) above shall occur shall occur with respect to the 42nd Street Facility, the Outstanding principal amount of the Series 2020A Bonds shall be redeemed in whole. In the event a circumstance of the type described in paragraph (i) or (ii) above shall occur with respect to the 35th Street Facility, the Outstanding principal amount of all Series 2020 Bonds shall be redeemed in whole. In the event a circumstance of the type described in paragraph (iii) above shall occur, the Outstanding principal amount of all Series 2020 Bonds shall be redeemed in whole. Any such redemption shall be made upon notice or waiver of notice to the Bondholders as provided in the Indenture, at the Redemption Price of 100% of the unpaid principal amount of such Bonds Outstanding to be redeemed, together with interest accrued thereon to the redemption date.

If the Series 2020 Bonds are to be redeemed as a result of the occurrence of any of the events described above, YAI shall deliver to the Issuer and the Trustee a certificate of an Authorized Representative of YAI stating that, as a result of the occurrence of the event giving rise to such redemption, YAI has discontinued, or at the earliest practicable date will discontinue, its operation of the affected Facility or Facilities for its or their intended purposes.

Mandatory Redemption from Excess Proceeds and Certain Other Amounts

The Series 2020A Bonds are to be redeemed on any Business Day in whole or in part by lot prior to maturity in the event and to the extent:

(i) excess Series 2020A Bond proceeds shall remain in the Project Fund (Tax-Exempt) after the completion of the Project,

(ii) excess title insurance or property insurance proceeds or condemnation awards shall remain after the application thereof pursuant to the Loan Agreement and the Indenture,

(iii) excess proceeds shall remain after the release or substitution of Facility Realty or Facility Personalty, or

(iv) certain funds received by YAI pursuant to any capital campaign which are earmarked for specific Project Costs (Tax-Exempt) shall remain with YAI and shall not be required for completion of the Project or related Project Costs (Tax-Exempt),

in each case at a Redemption Price equal to 100% of the principal amount of the Series 2020A Bonds to be redeemed, together with interest accrued thereon to the redemption date.

Mandatory Redemption Upon Failure to Operate a Facility for the Approved Project Operations, Material Violation of Material Legal Requirements, False Representation or Failure to Maintain Liability Insurance

The Series 2020 Bonds are also subject to mandatory redemption prior to maturity, at the option of the Issuer, in whole or in part on any Business Day, in the event (i) the Issuer shall determine that (w) YAI is operating a Facility or any portion thereof, or is allowing such Facility or any portion thereof to be operated, not for the Approved Project Operations, (x) YAI, any Principal of YAI or any Person that

directly or indirectly Controls, is Controlled by or is under common Control with YAI has committed a material violation of a material Legal Requirement, (y) any Conduct Representation is false, misleading or incorrect in any material respect at any date, as if made on such date, or (z) a Required Disclosure Statement delivered to the Issuer under any Project Document is not acceptable to the Issuer acting in its sole discretion, or (ii) YAI shall fail to obtain or maintain the liability insurance with respect to a Facility required under the Loan Agreement, and, in the case of clause (i) or (ii) above, YAI shall fail to cure any such default or failure within the applicable time periods set forth in the Loan Agreement following the receipt by YAI of written notice of such default or failure from the Issuer and a demand by the Issuer on YAI to cure the same.

In the event a circumstance of the type described in clause (i)(w) or (ii) in the immediately preceding paragraph shall occur with respect to the 42nd Street Facility, the Outstanding principal amount of the Series 2020A Bonds shall be redeemed in whole. In the event a circumstance of the type described in clause (i)(w) or (ii) in the immediately preceding paragraph shall occur with respect to the 35th Street Facility, the Outstanding principal amount of the Series 2020B Bonds shall be redeemed in whole. In the event a circumstance of the type described in clause (i)(x), (y) or (z) in the immediately preceding paragraph shall occur, the Outstanding principal amount of all Series 2020 Bonds shall be redeemed in whole. Any such redemption shall be made upon notice or waiver of notice to the Bondholders as provided in the Indenture, at the Redemption Price of 100% of the unpaid principal amount of such Bonds Outstanding to be redeemed, together with interest accrued thereon to the redemption date.

Mandatory Redemption Pursuant to Loss of Interest in Facility Unit

In the event YAI's fee or leasehold interest in the Facility Unit shall terminate or expire pursuant to the terms of the Facility Lease Agreement or a foreclosure of any mortgage on the Facility Unit, the Series 2020A Bonds shall be subject to mandatory redemption in whole prior to maturity on any Business Day at a Redemption Price equal to 100% of the unpaid principal amount thereof plus interest accrued thereon to the redemption date. If the Series 2020A Bonds are to be redeemed in whole as a result of the occurrence of any event described above, YAI is required to deliver to the Issuer and the Trustee a certificate of an Authorized Representative of YAI stating that YAI's interest in the Facility Unit has expired or terminated.

Mandatory Taxability Redemption

Upon the occurrence of a Determination of Taxability, the Series 2020A Bonds shall be redeemed prior to maturity on any Business Day within one hundred twenty (120) days following such Determination of Taxability, at a Redemption Price equal to 100% of the principal amount thereof, together with accrued interest to the redemption date. The Series 2020A Bonds shall be redeemed in whole unless redemption of a portion of the Series 2020A Bonds Outstanding would have the result that interest payable on the Series 2020A Bonds remaining Outstanding after such redemption would not be includable in the gross income of any Holder of a Series 2020A Bond. In such event, the Series 2020A Bonds shall be redeemed in such amount as is deemed necessary in the opinion of Nationally Recognized Bond Counsel to accomplish that result.

Notice of Redemption

When redemption of any Series 2020 Bond is requested or required pursuant to the Indenture, the Trustee shall give notice of such redemption in the name of the Issuer, specifying the name of the Series, CUSIP number, Bond numbers, the date of original issue of such Series, the date of mailing of the notice of redemption, maturities, interest rates and principal amounts of the Series 2020 Bonds or portions thereof to be redeemed, the Redemption Date, the Redemption Price, and the place or places where

amounts due upon such redemption will be payable (including the name, address and telephone number of a contact person at the Trustee) and specifying the principal amounts of the Series 2020 Bonds or portions thereof to be payable and, if less than all of the Series 2020 Bonds of any maturity are to be redeemed, the numbers of such Series 2020 Bonds or portions thereof to be so redeemed. Such notice shall further state that on such date there shall become due and payable upon each Series 2020 Bond or portion thereof to be redeemed the Redemption Price thereof together with interest accrued to the Redemption Date, and that from and after such date interest thereon shall cease to accrue and be payable. Such notice may set forth any additional information relating to such redemption. The Trustee, in the name and on behalf of the Issuer, (i) shall mail a copy of such notice by first class mail, postage prepaid, not more than 60 nor less than 30 days prior to the Redemption Date, to the registered owners of any Series 2020 Bonds which are to be redeemed, at their last addresses, if any, appearing upon the registration books, but any defect in such notice shall not affect the validity of the proceedings for the redemption of such Series of Bonds with respect to which proper mailing was effected; and (ii) cause notice of such redemption to be sent to the national information service that disseminates redemption notices. Any notice mailed as provided above shall be conclusively presumed to have been duly given, whether or not the registered owner receives the notice. In the event of a postal strike, the Trustee shall give notice by other appropriate means selected by the Trustee in its discretion. If any Series 2020 Bond shall not be presented for payment of the Redemption Price within 60 days of the Redemption Date, the Trustee shall mail a second notice of redemption to such Holder by first class mail, postage prepaid. Any amounts held by the Trustee due to non-presentment of Series 2020 Bonds for payments on or after any Redemption Date shall be retained by the Trustee for a period of at least one year after the final maturity date of such Series 2020 Bonds. Further, if any Holders of Series 2020 Bonds shall constitute registered depositories, the notice of redemption described in the first sentence of paragraph shall be mailed to such Holders at least two (2) days prior to the mailing of such notice to all Holders.

If notice of redemption shall have been given as aforesaid, the Bonds of such Series called for redemption shall become due and payable on the Redemption Date, provided, however, that with respect to any optional redemption of the Bonds of a Series, such notice shall state that such redemption shall be conditional upon the receipt by the Trustee on or prior to the date fixed for such redemption of moneys sufficient to pay the principal of, redemption premium, if any, and interest on the Bonds of such Series to be redeemed, and that if such moneys shall not have been so received said notice shall be of no force and effect and the Issuer shall not be required to redeem the Bonds of such Series. In the event that such notice of optional redemption contains such a condition and such moneys are not so received, the redemption shall not be made and the Trustee shall within a reasonable time thereafter give notice, in the manner in which the notice of redemption was given, that such moneys were not so received. If a notice of optional redemption shall be unconditional, or if the conditions of a conditional notice of optional redemption shall have been satisfied, then upon presentation and surrender of the Bonds of such Series so called for redemption at the place or places of payment, such Series of Bonds shall be redeemed.

So long as DTC is effecting book-entry transfers of the Series 2020 Bonds, the Trustee shall provide the notices specified above only to DTC. It is expected that DTC shall, in turn, notify the Participants and that the Participants, in turn, will notify or cause to be notified the Beneficial Owners. Any failure on the part of DTC or a Participant, or failure on the part of a nominee of a Beneficial Owner of a Series 2020 Bond (having been mailed notice from the Trustee, DTC, a Participant or otherwise) to notify the Beneficial Owner of the Series 2020 Bond so affected, shall not affect the validity of the redemption of such Series 2020 Bond. See "—"Book-Entry-Only System."

Selection of Bonds to be Redeemed

In the event of redemption of less than all the Outstanding Bonds of the same Series and maturity, the particular Bonds or portions thereof to be redeemed shall be selected by the Trustee in such manner as

the Trustee in its discretion may deem fair, except that (i) Bonds of a Series to be redeemed from Sinking Fund Installments shall be redeemed by lot, and (ii) to the extent practicable, the Trustee shall select Bonds of a Series for redemption such that no Bond of such Series shall be of a denomination of less than the Authorized Denomination for such Series of Bonds. In the event of redemption of less than all the Outstanding Bonds of the same Series stated to mature on different dates, the principal amount of such Series of Bonds to be redeemed shall be applied in inverse order of maturity of the Outstanding Series of Bonds to be redeemed and by lot within a maturity. The portion of Bonds of any Series to be redeemed in part shall be in the principal amount of the minimum Authorized Denomination thereof or some integral multiple thereof and, in selecting Bonds of a particular Series for redemption, the Trustee shall treat each such Bond as representing that number of Bonds of such Series which is obtained by dividing the principal amount of such registered Bond by the minimum Authorized Denomination thereof (referred to below as a "unit") then issuable rounded down to the integral multiple of such minimum Authorized Denomination. If it is determined that one or more, but not all, of the units of principal amount represented by any such Bond is to be called for redemption, then, upon notice of intention to redeem such unit or units, the Holder of such Bond shall forthwith surrender such Bond to the Trustee for (a) payment to such Holder of the Redemption Price of the unit or units of principal amount called for redemption and (b) delivery to such Holder of a new Bond or Bonds of such Series in the aggregate unpaid principal amount of the unredeemed balance of the principal amount of such Bond. New Bonds of the same Series and maturity representing the unredeemed balance of the principal amount of such Bond shall be issued to the registered Holder thereof, without charge therefor. If the Holder of any such Bond of a denomination greater than a unit shall fail to present such Bond to the Trustee for payment and exchange as aforesaid, such Bond shall, nevertheless, become due and payable on the Redemption Date to the extent of the unit or units of principal amount called for redemption (and to that extent only). See "— "Book-Entry-Only System."

Notwithstanding anything in the Indenture to the contrary, with respect to a partial redemption of Series 2020A Bonds, an optional redemption that occurs pursuant to the remedial action rules of applicable Treasury Regulations will either be in inverse order of maturity or generally pro-rata in a manner that does not result in the weighted average maturity of the Series 2020A Bonds remaining after the optional redemption has taken place exceeding the weighted average maturity of the Series 2020A Bonds immediately prior to the optional redemption having taken place.

**Book-Entry-Only System**

DTC will act as securities depository for the Series 2020 Bonds. The Series 2020 Bonds will be issued as fully-registered securities in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Series 2020 Bond certificate will be issued for each maturity of the respective Series of Series 2020 Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues and money market instruments from over 100 countries that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers,

banks, trust companies, clearing corporations and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). The DTC rules applicable to its Direct Participants and Indirect Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com.

Purchases of Series 2020 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2020 Bonds on DTC's records. The ownership interest of each actual purchaser of each Series 2020 Bond ("Beneficial Owner") is in turn to be recorded on the Direct Participants' and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct Participant or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2020 Bonds are to be accomplished by entries made on the books of Direct Participants and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Series 2020 Bonds, except in the event that use of the book-entry system for the Series 2020 Bonds is discontinued.

To facilitate subsequent transfers, all Series 2020 Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. or such other name as may be requested by an authorized representative of DTC. The deposit of the Series 2020 Bonds with DTC and their registration in the name of Cede & Co. or such other nominee effect no change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2020 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Series 2020 Bonds are credited, which may or may not be the Beneficial Owners. The Direct Participants and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to Cede & Co. If less than all of the Series 2020 Bonds within an issue are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Series 2020 Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an omnibus proxy (the "Omnibus Proxy") to the Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Series 2020 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payment of principal, redemption proceeds and interest on the Series 2020 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Issuer or the Trustee on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Direct Participants and Indirect Participants to

Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Direct Participant or Indirect Participant and not of DTC, the Trustee or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, principal and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct Participants and Indirect Participants.

The Issuer and the Trustee may treat DTC (or its nominee) as the sole and exclusive registered owner of the Series 2020 Bonds registered in its name for the purposes of payment of the principal and Sinking Fund Installments of, or interest on, the Series 2020 Bonds, giving any notice permitted or required to be given to registered owners under the Indenture, registering the transfer of the Series 2020 Bonds, or other action to be taken by registered owners and for all other purposes whatsoever. The Issuer and the Trustee shall not have any responsibility or obligation to any Direct Participant or Indirect Participant or any person claiming a beneficial ownership interest in the Series 2020 Bonds under or through DTC or any Direct Participant or Indirect Participant, or any other person which is not shown on the registration books maintained by the Trustee as being a registered owner, with respect to the accuracy of any records maintained by DTC or any Direct Participant or Indirect Participant; the payment by DTC or any Direct Participant or Indirect Participant of any amount in respect of the principal, redemption proceeds or interest on the Series 2020 Bonds; any notice which is permitted or required to be given to registered owners thereunder or under the conditions to transfers or exchanges adopted by the Issuer; or other action taken by DTC as a registered owner.

For every transfer and exchange of beneficial ownership of the Series 2020 Bonds, a Beneficial Owner may be charged a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto.

DTC may discontinue providing its services as depository with respect to the Series 2020 Bonds at any time by giving notice to the Issuer or the Trustee and discharging its responsibilities with respect thereto under applicable law, or the Issuer may terminate its participation in the system of book-entry transfer through DTC at any time by giving notice to DTC. In either event, the Issuer may retain another securities depository for the Series 2020 Bonds or may direct the Trustee to deliver bond certificates in accordance with instructions from DTC or its successor. If the Issuer directs the Trustee to deliver such bond certificates, such Series 2020 Bonds may thereafter be exchanged for an equal aggregate principal amount of Series 2020 Bonds in any other Authorized Denominations and of the same Series and maturity as set forth in the Indenture, upon surrender thereof at the principal corporate trust office of the Trustee, who will then be responsible for maintaining the registration books of the Trustee.

Unless otherwise noted, certain of the information contained in the preceding paragraphs of this Section " - Book-Entry-Only System" has been extracted from information given by DTC. None of the Issuer, the Trustee or the Underwriter make any representation as to the completeness or the accuracy of such information or as to the absence of material adverse changes in such information subsequent to the date hereof.

**Deemed Representation by Holders**

Each Holder of a Series 2020 Bond, by the purchase and acceptance of such Series 2020 Bond, is deemed to have represented and agreed as follows: (A) (i) it is a qualified institutional buyer as defined in Rule 144A ("Rule 144A") of the Securities Act of 1933, as amended (the "Securities Act"); it has acquired such Series 2020 Bond for its own account or for the account of a qualified institutional buyer; or (ii) it is an "accredited investor" as defined in Rule 501 under the Securities Act; and (B) it understands

that such Series 2020 Bond has not been registered under the Securities Act, and that, if in the future it decides to offer, resell, pledge or otherwise transfer such Series 2020 Bond, such Series 2020 Bond may be offered, resold, pledged or transferred only in accordance with the applicable securities law or an exemption therefrom and the transfer restrictions set forth in the Indenture.

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**Principal, Sinking Fund Installment and Interest Requirements for the Series 2020 Bonds**

The following table sets forth the amounts required to be paid by YAI during each twelve-month period ending June 30 of the Bond Years shown for the payment of the interest on the Series 2020 Bonds payable on January 1 of such year and the principal and Sinking Fund Installments of and interest on the Series 2020 Bonds payable on the succeeding July 1.

**Total Debt Service**

| FY Ending | Principal & Sinking Fund Installments | Interest |
|---|---|---|
| 6/30/2021 | $ 55,000 | $170,019.44 |
| 6/30/2022 | 195,000 | 313,300.00 |
| 6/30/2023 | 200,000 | 305,500.00 |
| 6/30/2024 | 210,000 | 297,200.00 |
| 6/30/2025 | 220,000 | 287,950.00 |
| 6/30/2026 | 225,000 | 278,200.00 |
| 6/30/2027 | 240,000 | 267,600.00 |
| 6/30/2028 | 245,000 | 256,300.00 |
| 6/30/2029 | 260,000 | 244,750.00 |
| 6/30/2030 | 270,000 | 232,500.00 |
| 6/30/2031 | 205,000 | 219,750.00 |
| 6/30/2032 | 215,000 | 209,500.00 |
| 6/30/2033 | 225,000 | 198,750.00 |
| 6/30/2034 | 235,000 | 187,500.00 |
| 6/30/2035 | 250,000 | 175,750.00 |
| 6/30/2036 | 260,000 | 163,250.00 |
| 6/30/2037 | 275,000 | 150,250.00 |
| 6/30/2038 | 285,000 | 136,500.00 |
| 6/30/2039 | 300,000 | 122,250.00 |
| 6/30/2040 | 315,000 | 107,250.00 |
| 6/30/2041 | 330,000 | 91,500.00 |
| 6/30/2042 | 350,000 | 75,000.00 |
| 6/30/2043 | 365,000 | 57,500.00 |
| 6/30/2044 | 385,000 | 39,250.00 |
| 6/30/2045 | 400,000 | 20,000.00 |

## PART 4 - YAI

A portion of the proceeds of the Series 2020 Bonds will be used to finance and reimburse YAI for a portion of the costs of the renovation, equipping and furnishing of the 42nd Street Facility, which consists of two condominium units, an approximately 70,000 square foot facility located in a 37-story building located at 220 East 42nd Street, Units 7NW and 8, New York, New York. YAI operates the 42nd Street Facility as its headquarters with offices and the Clinic Space. The Clinic Space is operated by Premier Healthcare, Inc., a New York not-for-profit corporation ("Premier Healthcare"), whose sole

corporate member is YAI, in providing primary care and specialty outpatient services to individuals with developmental and other disabilities and their families.

A portion of the proceeds of the Series 2020 Bonds will be used to reimburse YAI for the costs of redeeming the Prior Bonds, the proceeds of which were used to finance and/or refinance a portion of the costs of the renovation of the 35th Street Facility.

Descriptions of YAI, Premiere Healthcare, YAI's operations and the Facilities to be financed, and for which YAI will be reimbursed, with the proceeds of the Series 2020 Bonds are set forth in Appendix A hereto. Copies of the most recent audited financial statements for YAI are set forth in Appendix B hereto, and copies of recent unaudited financial information for YAI are set forth in Appendix C hereto. Copies of certain of the condominium documents related to the 42nd Street Facility, as well as summaries of certain of the provisions of other condominium documents related to the 42nd Street Facility, are set forth in Appendix I hereto. Prospective purchasers of the Series 2020 Bonds should carefully review Appendix A, Appendix B, Appendix C and Appendix I.

YAI is a not-for-profit corporation, organized and existing under the laws of the State. YAI has received a Section 501(c)(3) designation from the Internal Revenue Service and as such qualifies for exemption from certain federal income taxes. Management of YAI has as an operational goal of acquiring sufficient revenues to cover programmatic expenses, including debt service and the provision for capital improvements. When revenues exceed expenses, the excess revenues are reflected in a fund balance (or net assets) category and may be used for any lawful purpose consistent with YAI's charitable purposes. When revenues are not sufficient to cover expenses, YAI must cover the deficit from fund reserves or other assets or reduce its services and expenses to match its income. Trustees or members of the Board of Directors of YAI serve without remuneration, though expenses associated with attendance at board meetings or other official board functions may be reimbursed.

YAI owns or leases and operates one or more facilities, including the Facilities as described in Appendix A, in the State, to provide services to individuals who are developmentally disabled or have other special needs. YAI has represented that it has the appropriate licenses and authority to provide its services under State statutes. YAI currently has one or more contracts or approved reimbursement arrangements with one or more departments of the State, The City of New York or a county in the State. The reimbursement rates for YAI for such contracts or arrangements are adjusted annually according to a standardized formula set by the State and are subject to annual appropriation by the State Legislature. *No independent investigation or verification has been made of the status of compliance with State, City, county or federal agency standards of licensing and operations of YAI in order to continue to receive payments of State, City, county, and/or federal funds under such contracts or arrangements, which provide a substantial portion of the total revenues of YAI.* **A careful review should be made of Appendix A, Appendix B and Appendix C to this Official Statement to determine the creditworthiness of YAI**. See "PART 5 - SOURCES OF REVENUE."

YAI has engaged the Facilitator to act as the facilitator for the loan from the Issuer. For its services, YAI will pay the Facilitator a fee of .25% of the principal amount of the Series 2020 Bonds at closing and an annual fee of .125% of the outstanding Series 2020 Bonds. The Facilitator fee will not exceed $15,000 per year. YAI is a member of the Facilitator.

YAI expects that the principal of and interest on the Series 2020 Bonds will be paid from Public Funds paid by OPWDD and other operating revenues of YAI and from fees for services paid by DOH or other State agencies for services provided at the Clinic Space.

YAI has over 60 years of experience providing services. See "PART 5 - SOURCES OF REVENUE." Also see "APPENDIX A - DESCRIPTION OF YAI – Liquidity and Capital Resources," "– Long-Term Debt" and "– Prior Pledges" for descriptions of YAI's Prior Pledges of Pledged Revenues.

## PART 5 - SOURCES OF REVENUE

### General

OPWDD and other State agencies provide a portion of the revenues of YAI through contracts and reimbursement arrangements for the provision of their services. YAI's funding sources for its 2019 Fiscal Year were OPWDD (approximately 99.5%) and miscellaneous other sources (approximately 0.5%), including DOH. See "APPENDIX A - DESCRIPTION OF YAI."

### New York State Office for People with Developmental Disabilities

*The following information concerning OPWDD and the PPA process included in this Part 5 has been provided by the Facilitator and is subject to change. The Facilitator obtained the information from publicly available information, including the New York State Annual Information Statement dated June 12, 2019 (the "2019 AIS"), the Update to New York State Annual Information dated December 11, 2019 (the "2019 AIS Update"), the New York State Statement of Updated Annual Information Pursuant To Continuing Disclosure Agreements For FY 2019 (Ended March 31, 2019) dated July 29, 2019 (the "2019 Updated CDA Information"), and the Enacted Budget Financial Plans of the State for State fiscal years 2016 through 2020 ("Enacted Budget Plans"), as well as OPWDD's website.*

*Neither OPWDD nor any other State office, division, department, agency or officer, including the State Division of Budget, has authorized the Facilitator to provide the information concerning OPWDD and its operations for inclusion in this Official Statement or otherwise consented to such inclusion or agreed to execute a continuing disclosure agreement with respect to the Series 2020 Bonds described in this Official Statement. According to the State website on which the 2019 AIS, the 2019 AIS Update and the 2019 Updated CDA Information are posted, (a) no portion of any of such documents may be included in or incorporated by reference in any official statement unless (i) the State Division of Budget ("DOB") has expressly consented and (ii) DOB has agreed to execute a continuing disclosure agreement relating to the bonds or notes described in the official statement, (b) any inclusion or incorporation by reference in an official statement without such consent and agreement by DOB is unauthorized and (c) the State expressly disclaims any responsibility with respect to the inclusion, intended use, and updating of the information so included or referenced.*

*The information included in this Part 5 which was obtained from the 2019 Updated CDA Information relates to obligations issued by the Dormitory Authority of the State of New York under statutory authority and resolutions unrelated to the statutory authority and the Indenture pursuant to which the Series 2020 Bonds are being issued. While the Facilitator believes the information obtained from the 2019 Updated CDA Information provides material information for prospective investors in the Series 2020 Bonds, prospective investors should carefully review such information with an awareness that it was developed and posted to discharge disclosure undertakings regarding bonds related to a different issuer and different service providers and payable through a payment structure that is different from the payment structure made in connection with the Series 2020 Bonds. Furthermore, none of the State, the Dormitory Authority of the State of New York or any other State agency or official has any obligation to continue updating the information in the 2019 Updated CDA Information when the bonds for which the 2019 Updated CDA Information is provided are no longer outstanding.*

General

OPWDD is one of three autonomous offices within the State Department of Mental Hygiene ("DMH"), the other autonomous offices being the Office of Mental Health ("OMH") and the Office of Addiction Services and Supports ("OASAS"). These three offices function independently within DMH, each with complete responsibilities for planning and administration of their respective programs. Each office is headed by a commissioner appointed by the State Governor with the advice and consent of the State Senate. Also within DMH are the Developmental Disabilities Planning Council and the Justice Center for the Protection of People with Special Needs. OPWDD, OMH and OASAS all provide services directly to their clients through State-operated facilities and indirectly through community service providers.

OPWDD is charged with developing a comprehensive, cost-effective, and integrated system to serve the full range of needs of individuals with developmental disabilities. OPWDD operates five regional offices, which oversee the provision of not-for-profit services, and six State operations offices, which are responsible for State-delivered programs and services. The 13 service districts within the State operations offices administer community-based and, where applicable, institutionally-based service programs for persons with developmental disabilities within regional catchment areas. Institutional programs offer residential care and habilitative services in campus settings, informally known as developmental centers, and at special population units located throughout the State. The community-based service programs, funded and regulated by OPWDD, reflect the cooperative efforts of local governments, not-for-profit service providers, including YAI, and OPWDD as a provider of services. Community programs include State- and not-for-profit-operated residential and day services, as well as a variety of support services to families and individuals living in their own homes, including respite and crisis intervention, which help prevent unnecessary and costly out-of-home placement. OPWDD is responsible for the regulation and licensing of residential facilities such as the 35th Street Facility. Such regulation and licensing includes determining the need for the facility, review of plans and specifications for construction, inspections and audits and the establishment of a reimbursement rate for services.

OPWDD coordinates both residential and non-residential services for nearly 140,000 New Yorkers with developmental disabilities, including intellectual disabilities, cerebral palsy, down syndrome, autism spectrum disorders, and other disabilities. It provides services directly (referred to above as "State-operated services") and through a network of approximately 650 not-for-profit service providing agencies, with about 80% of services provided by the not-for-profit service provider agencies and 20% provided directly by the State.

OPWDD's community services system using private not-for-profit agencies continues to grow, which reflects the needs of the State's residents, subject to the funds available in the OPWDD budget. The 2019-20 budget for OPWDD increased by 6.6% over the 2018-19 budget, including investments to leverage up to $120 million in additional OPWDD funding which will allow for the development of new certified housing supports in the community, support more independent living, provide more day program and employment options, and increase respite availability. Spending also reflects a 4% total increase over the next two years for direct care workers, and a 2% pay raise for clinical workers serving the mental hygiene community. Both are aimed at assisting not-for-profits in the recruitment and retention of employees. These investments, when fully annualized, will increase State share support for workers by $107 million ($188 million on an all funds basis). Offsetting these cost increases is the deferral of the statutory COLA for mental hygiene agencies through fiscal year 2021.

**Funding for OPWDD is subject to appropriation by the State legislature, and there is no assurance that there will be continued appropriations by the State legislature in amounts sufficient for OPWDD to make payments to YAI.**

Population Statistics for Residential Programs

The following are actual population statistics for the State and residential programs funded by OPWDD:

| Year As of 3/31 | State Operated Developmental Center | OPWDD Funded Community Based Residences |
|---|---|---|
| 2015 | 468 | 41,966 |
| 2016 | 297 | 42,314 |
| 2017 | 233 | 42,737 |
| 2018 | 196 | 43,080 |
| 2019 | 189 | 43,193 |

Source: 2019 *Updated CDA Information*

Historical State Funding

The actual expenditures made for the operations and costs of OPWDD for State Fiscal Years 2016-2017 through 2020-2021 are as follows:

| Year | State Operations | Aid to Localities | Total Operations | Capital |
|---|---|---|---|---|
| 2016-2017 | 2,153,901,000 | 2,248,926,500 | 4,402,827,500 | 28,000,000 |
| 2017-2018 | 2,149,400,000 | 2,272,796,500 | 4,422,196,000 | 86,000,000 |
| 2018-2019 | 2,197,639,000 | 2,405,835,000 | 4,603,474,000 | 96,400,000 |
| 2019-2020 | 2,244,027,000 | 2,487,307,000 | 4,731,334,000 | 99,400,000 |
| 2020-2021 | 2,244,149,000 | 2,649,282,000 | 4,893,431,000 | 108,600,000 |

The funding received by YAI from OPWDD is appropriated through Aid to Localities appropriations.

Source: *https://www/budget.ny.gov/pubs/archive*

State Fiscal Year 2019-20 Enacted Budget

The State Fiscal Year 2019-20 Enacted Budget (the "Enacted Budget") provides approximately $229 million in increased local assistance funding for DMH agencies. Roughly $63 million will be used to support the incremental pay standards and related fringe benefit increases associated with the transition to a $15 per hour minimum wage. Other increases include investments to leverage up to $120 million in additional OPWDD funding, which will allow for the development of new certified housing supports in the community, support more independent living, provide more day program and employment options, and increase respite availability. The Enacted Budget also includes additional OMH funding to support enhanced funding to existing residential programs. The spending increase is related to, among other things, support direct care professionals and clinical staff employed by not-for-profit organizations delivering services on behalf of OPWDD, OMH and OASAS. Mental hygiene activities funded under the Medicaid Global Cap will increase by $440 million. This has no impact on mental hygiene service delivery or operations.

State Fiscal Year 2020-21 Executive Budget

The State Fiscal Year 2020-2021 Executive Budget (the "Executive Budget") provides approximately $308 million in increased local assistance funding for DMH agencies. The main factors driving the increase are new or increased funding for not-for-profit providers for growth in employee wages related to minimum wage and salary increases for direct care and clinical workers, and enhancements in community-based employment and residential opportunities for individuals with disabilities. This additional funding increase will allow for the development of new certified housing supports in the community, support more independently living, provide more day program and employment options, and increase respite availability.

Prior Property Approval Process

Prior to initiating the development of a capital project to serve intellectually and developmentally disabled individuals, a not-for-profit provider is required under Title 14, New York State Codes, Rules and Regulations Part 620 to complete a Certificate of Need ("CON") process. The CON application is reviewed by the OPWDD Developmental Disabilities Services Office in the provider's region for compliance with local government and general State plans for needed development as to the type of individuals to be served and the program to be provided.

If CON approval is received and an appropriate program site is identified, a PPA proposal that details the capital costs associated with the development of the site is prepared by the provider and regional Developmental Disabilities Services Office. The PPA process was developed to satisfy the regulatory requirement for OPWDD and the approval process of capital costs for program sites for the New York State Division of the Budget and to facilitate the capital financing of such sites. The PPA identifies funding and financing sources for capital costs and the level and method of reimbursement for such costs.

Securing PPA approval establishes commitments of the voluntary provider, as well as OPWDD. The provider commits to develop the program to serve a specific number of individuals in a specific type of facility and program. OPWDD commits to support the development and operation of the project if it is completed within the approved budget in conformance with the PPA, subject to annual appropriation of sufficient moneys by the State Legislature. As long as the provider continues to meet the requirements of the operating certificate, the provider is eligible for such reimbursement. Certain capital costs are not subject to the PPA process.

PPA Regulatory Compliance Process

OPWDD imposes additional restrictions on certain projects under applicable regulations. These projects (the "New PPA Lien Projects") are fee-owned sites for which OPWDD funding is sought for (a) new acquisition, renovation and development, or (b) "substantial renovation" of an existing OPWDD-regulated site, with "substantial renovation" defined as renovation expenses that exceed 75% of the fair market value of the site as determined from the applicable municipal assessment rolls. The 35th Street Facility is not a New PPA Lien Project.

For New PPA Lien Projects, OPWDD requires that the provider applicant execute a Regulatory Compliance Contract and a Capital Component Security and Lien Agreement. The Regulatory Compliance Contract requires that the provider operate an OPWDD-regulated program at the site for 40 years, and that the provider otherwise comply with all applicable OPWDD regulations.

In order to secure performance of the Regulatory Compliance Contract, the Capital Component Security and Lien Agreement grants OPWDD a first lien on the facility to which the PPA relates and the furniture, fixtures and equipment thereon, which lien also secures any amounts in the future paid by OPWDD to satisfy any mortgage, capital expenditures or operating and maintenance expenses, and professional services and other expenses, incurred by OPWDD.

The Capital Component Security and Lien Agreement also requires the provider to covenant to operate its program, comply with all laws, maintain insurance, construct, renovate and maintain the facility, and comply with certain other covenants and conditions. The Capital Component Security and Lien Agreement restricts transfer and mortgaging of the facility in question, and contains a purchase option, exercisable by OPWDD, in the amount of the greater of (i) the fair market value of the property less OPWDD capital contributions or (ii) the principal balance of any Approved Mortgage (as defined therein).

Finally, for New PPA Lien Projects, OPWDD has approved a form of Subordination Agreement in which the rights of OPWDD under the Regulatory Compliance Contract and the Capital Component Security and Lien Agreement are subordinate to the lien of any Approved Mortgage. The Mortgage granted on the 35th Street Facility is not an Approved Mortgage.

Commissioner's Ability to Appoint a Temporary Operating Receiver for a Facility; Security Interests

Pursuant to the State's Mental Hygiene Law, the State Commissioner of OPWDD (the "Commissioner") has the authority to appoint a Temporary Operating Receiver ("TOR") when OPWDD determines that a temporary operator is necessary to ensure continuity of services at a facility, such as the 35th Street Facility. The Commissioner may appoint a TOR to assume sole responsibility for the operations of the facility for a limited period of time in the event that (i) the established operator is seeking extraordinary financial assistance; (ii) OPWDD demonstrates that the established operator is experiencing serious financial instability issues; (iii) OPWDD demonstrates that the established operator's board of directors or administration is unable or unwilling to ensure the proper operation of the program; or (iv) OPWDD indicates there are conditions that seriously endanger or jeopardize continued access to necessary services within the community. In addition, the established operator may at any time request the Commissioner to appoint a TOR.

The TOR is a provider of services that has been established and issued an operating certificate (an "Operating Certificate") for a facility, such as the 35th Street Facility, that (a) agrees to provide services on a temporary basis in the best interests of the individuals served by the program operating in the facility, (b) has a history of compliance with applicable laws, rules and regulations and a record of providing care of good quality, as determined by the Commissioner and (c) prior to appointment as a TOR, develops a plan determined to be satisfactory by the Commissioner to address the program's deficiencies. The TOR shall use its best efforts to implement the plan deemed satisfactory by the Commissioner to correct or eliminate any deficiencies in the program and to promote the quality and accessibility of services in the community served by the provider of services. During the term of appointment, the TOR shall have the authority to direct the staff of the established operator as necessary to appropriately provide services for individuals. The initial term of the appointment of the TOR shall not exceed ninety days. After ninety days, if the Commissioner determines that termination of the TOR would cause significant deterioration of the quality of, or access to, care in the community or that reappointment is necessary to correct the deficiencies that required the appointment of the TOR, the Commissioner may authorize an additional ninety-day term. However, such authorization shall include the Commissioner's requirements for conclusion of the temporary operatorship to be satisfied within the

additional term. Notwithstanding the appointment of a TOR, the established operator shall remain obligated for the continued provision of services.

The Mental Hygiene Law provides that no security interest in any real or personal property comprising the facility, contained within the facility or in any fixture of the facility, shall be impaired or diminished in priority by the TOR.

OPWDD Rights With Respect to the 35th Street Facility

In addition to the statutory receivership remedy described above, the Loan Agreement provides for a contractual remedy upon the failure of YAI to operate the 35th Street Facility in accordance with regulatory standards. YAI has covenanted and agreed in the Loan Agreement that in the event that it fails to operate a certified program for the developmentally disabled at the 35th Street Facility in accordance with the valid operating certificate issued by OPWDD for such Facility, in addition to any other legal remedies OPWDD may have, the Issuer or the Trustee may request OPWDD, in accordance with applicable statutes and regulations, to enter the 35th Street Facility, or replace YAI with another operator, subject to the Loan Agreement, take possession without judicial action of all real property contained in the 35th Street Facility and all personal property located in or on or used in connection with the 35th Street Facility, including furnishings and equipment thereon, and cause to be operated thereon a certified program for the developmentally disabled or other persons with special needs within the 35th Street Facility in accordance with a valid operating certificate duly issued by OPWDD. In such event, OPWDD or any assignee will be required to make the payments owed by YAI under the Loan Agreement with respect to the Series 2020 Bonds as they become due and owing.

**New York State Department of Health**

The DOH has over a 100-year history of providing public health services. DOH administers a wide range of public health programs directly or through contracts that address disease prevention and control, environmental health protection, promotion of healthy lifestyles and emergency preparedness and response. The DOH works with a multitude of community health partners to identify and address public health issues. Partners include hospitals, health care providers, local government agencies, community based organizations, insurer, local community leaders and academic institutions. The mission of the DOH is to protect, improve and promote the health, productivity and well-being of all New Yorkers.

The Division of Hospitals and Diagnostic and Treatment Centers (the "Division") in the DOH is under the statutory authority of Article 28 of the Public Health Law and Title 10 of the New York Codes, Rules and Regulations ("NYCRR"), Chapter V, Subchapter C, Article 6, Part 751. In this capacity, the Division is charged with the regulatory oversight of all hospitals and their off-campus sites (hospital extension clinics). The Division is also responsible for oversight of free-standing clinics, known as diagnostic and treatment centers ("D&TCs"). The following federally defined facility types are also considered D&TCs: (i) end-stage renal disease dialysis clinics, (ii) ambulatory surgery centers, (iii) federally qualified health centers, (iv) rural health centers, (v) comprehensive outpatient rehabilitation facilities, and (vi) outpatient physical therapy speech pathology centers. The Clinic Space serves as both an Article 28 Clinic and an Article 16 Clinic.

A provider of services is required to obtain a D&TC (Clinic) operating certificate (license) issued by DOH prior to the operation of such facility and programs that are subject to the regulatory jurisdiction of the DOH. The D&TC (Clinic) operating certificate attests that the facility meets all code requirements that ensure quality and safety of service. In order to obtain this operating certificate, a business must first obtain a Certificate of Need ("CON") approval. The CON review process determines whether a proposed facility or service meets a public need, is financially feasible, and will be offered by owners and operators

who are of sound character and professional competence. YAI has an operating certificate issued by DOH for the Clinic Space.

The DOH Commissioner is authorized to suspend, revoke or limit any operating certificate or to impose a fine on the holder of an operating certificate if the provider of services fails, within the specified or an otherwise reasonable time, to correct any reported deficiencies at such D&TC or fails to maintain satisfactory compliance with applicable laws, rules and regulations.

D&TCs licensed under Article 28 of the Public Health Law are paid by the State and State agencies for services provided to patients at the clinic. This reimbursement system was implemented in order to incentivize access to care, integration of care, elimination of unnecessary trips by consumers by encouraging delivery of medically necessary procedures on the same day, comprehensive attention to consumers clinical conditions and needs, delivery of appropriate services to individuals, responsiveness to crises, consumer friendly hours and service locations and services provided in languages other than English.

## PART 6 – ESTIMATED SOURCES AND USES OF FUNDS

The following table sets forth the estimated sources and uses of proceeds of the Series 2020 Bonds:

| | **Series 2020A Bonds** | **Series 2020B Bonds** |
|---|---|---|
| Estimated Sources of Funds | | |
| Proceeds of Series 2020 Bonds | $5,490,000.00 | $1,025,000.00 |
| Net Original Issue Premium (Discount) | 456,040.05 | (8,046.25) |
| Total Sources of Funds | $5,946,040.05 | 1,016,953.75 |
| Estimated Uses of Funds | | |
| Deposit to Project Fund (Tax-Exempt)* | $5,378,399.45 | $ 0.00 |
| Deposit to Project Fund (Taxable)* | 0.00 | 638,218.97 |
| Deposit to Debt Service Reserve Fund (Tax-Exempt) | 426,000.00 | 0.00 |
| Underwriter's Discount | 89,190.60 | 102,639.88 |
| Costs of Issuance | 52,450.00 | 276,094.90 |
| Total Uses of Funds | $5,946,040.05 | $1,016,953.75 |

* Excludes amounts used for Cost of Issuance

## PART 7 – THE ISSUER

The Issuer is a not-for-profit local development corporation created pursuant to the Not-for-Profit Corporation Law of the State of New York (the "State"), as amended, at the direction of the Mayor of The City of New York (the "City"). The Issuer is not an agency of State or City government. The Issuer is authorized by the Not-for-Profit Corporation Law of the State and the Issuer's Certificate of Incorporation and By-Laws (i) to promote community and economic development and the creation of jobs in the non-profit and for-profit sectors for the citizens of the City by developing and providing programs for not-for-profit institutions, manufacturing and industrial businesses and other entities to access tax-exempt and

taxable financing for their eligible projects; (ii) to issue and sell one or more series or classes of bonds, notes and other obligations through private placement, negotiated underwriting or competitive underwriting to finance such activities above, on a secured or unsecured basis; and (iii) to undertake other eligible projects that are appropriate functions for a non-profit local development corporation for the purpose of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, carrying on scientific research for the purpose of aiding the City by attracting new industry to the City or by encouraging the development of or retention of an industry in the City, and lessening the burdens of government and acting in the public interest.

The Issuer has offered and plans to offer other obligations from time to time to finance eligible projects for other eligible entities. Such obligations have been and will be issued pursuant to and secured by instruments separate and apart from the Indenture.

**The Series 2020 Bonds are special, limited revenue obligations of the Issuer payable solely out of certain funds pledged therefor. Nothing in the Series 2020 Bonds or the Indenture shall be considered as pledging or committing any other funds or assets of the Issuer to the payment of the Series 2020 Bonds or the satisfaction of any other obligation of the Issuer under the Series 2020 Bonds or the Indenture. Neither the Issuer nor its members, directors, officers, agents, servants or employees, nor any person executing the Series 2020 Bonds, shall be liable personally with respect to the Series 2020 Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. Accordingly, no financial information regarding the Issuer or its members, directors, officers, employees, servants or agents has been included herein.**

**Neither the State of New York nor any political subdivision of the State including, without limitation, The City of New York, is or shall be obligated to pay the principal, Sinking Fund Installments, Redemption Price of, or interest on, the Series 2020 Bonds, and neither the faith and credit nor the taxing power of the State of New York or The City of New York is pledged to such payment. The Issuer has no taxing power.**

The Issuer has not prepared or assisted in the preparation of this Official Statement, except solely for those statements under the sections captioned "THE ISSUER" and "ABSENCE OF LITIGATION – The Issuer," and except as aforesaid, the Issuer is not responsible for any statements made in this Official Statement. Except for the execution and delivery of documents required to effect the issuance of the Series 2020 Bonds, the Issuer has not otherwise assisted in the offer, sale or distribution of the Series 2020 Bonds. Accordingly, except as aforesaid, the Issuer disclaims responsibility for the disclosures set forth in this Official Statement or otherwise made in connection with the offer, sale or distribution of the Series 2020 Bonds. YAI has agreed to indemnify the Issuer against certain liabilities relating to this Official Statement.

## PART 8 - TAX MATTERS

### Series 2020A Bonds

Opinion of Bond Counsel

In the opinion of Hawkins Delafield & Wood LLP, Bond Counsel to the Issuer ("Bond Counsel"), under existing statutes and court decisions and assuming continuing compliance with certain tax covenants described herein, (i) interest on the Series 2020A Bonds is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) interest on the Series 2020A Bonds is not treated as a preference item in calculating the alternative minimum tax under the Code. In rendering its opinion, Bond Counsel has relied on certain representations, certifications of fact, and statements of reasonable expectations made by the Issuer, the

Facilitator, YAI, Premier Healthcare and others, in connection with the Series 2020A Bonds, and Bond Counsel has assumed compliance by the Issuer, the Facilitator, YAI and Premier Healthcare with certain ongoing covenants to comply with applicable requirements of the Code to assure the exclusion of interest on the Series 2020A Bonds from gross income under Section 103 of the Code. In addition, in rendering its opinion, Bond Counsel has relied on the opinion of counsel to YAI and Premier Healthcare regarding, among other matters, the current qualifications of YAI and Premier Healthcare as organizations described in Section 501(c)(3) of the Code.

In addition, in the opinion of Bond Counsel to the Issuer, under existing statutes, interest on the Series 2020A Bonds is exempt from personal income taxation imposed by the State of New York or any political subdivision thereof.

Bond Counsel expresses no opinion as to any other federal, state or local tax consequences arising with respect to the Series 2020A Bonds, or the ownership or disposition thereof, except as stated above. Bond Counsel renders its opinion under existing statutes and court decisions as of the issue date, and assumes no obligation to update, revise or supplement its opinion to reflect any action thereafter taken or not taken, any fact or circumstance that may thereafter come to its attention, any change in law or interpretation thereof that may thereafter occur, or for any other reason. Bond Counsel expresses no opinion as to the consequence of any of the events described in the preceding sentence or the likelihood of their occurrence. In addition, Bond Counsel expresses no opinion on the effect of any action taken or not taken in reliance upon an opinion of other counsel regarding federal, state or local tax matters, including, without limitation, exclusion from gross income for federal income tax purposes of interest on the Series 2020A Bonds.

Certain Ongoing Federal Tax Requirements and Covenants

The Code establishes certain ongoing requirements that must be met subsequent to the issuance and delivery of the Series 2020A Bonds in order that interest on the Series 2020A Bonds be and remain excluded from gross income under Section 103 of the Code. These requirements include, but are not limited to, requirements relating to use and expenditure of gross proceeds of the Series 2020A Bonds, yield and other restrictions on investments of gross proceeds, and the arbitrage rebate requirement that certain excess earnings on gross proceeds be rebated to the federal government. Noncompliance with such requirements may cause interest on the Series 2020A Bonds to become included in gross income for federal income tax purposes retroactive to their issue date, irrespective of the date on which such noncompliance occurs or is discovered. The Issuer, the Facilitator, YAI and Premier Healthcare have covenanted to comply with certain applicable requirements of the Code to assure the exclusion of interest on the Series 2020A Bonds from gross income under Section 103 of the Code.

Certain Collateral Federal Tax Consequences

The following is a brief discussion of certain collateral federal income tax matters with respect to the Series 2020A Bonds. It does not purport to address all aspects of federal taxation that may be relevant to a particular owner of a Series 2020A Bond. Prospective investors, particularly those who may be subject to special rules, are advised to consult their own tax advisors regarding the federal tax consequences of owning and disposing of the Series 2020A Bonds.

Prospective owners of the Series 2020A Bonds should be aware that the ownership of such obligations may result in collateral federal income tax consequences to various categories of persons, such as corporations (including S corporations and foreign corporations), financial institutions, property and casualty and life insurance companies, individual recipients of Social Security and railroad retirement benefits, individuals otherwise eligible for the earned income tax credit, and taxpayers deemed to have incurred or continued indebtedness to purchase or carry obligations the interest on which is excluded from

gross income for federal income tax purposes. Interest on the Series 2020A Bonds may be taken into account in determining the tax liability of foreign corporations subject to the branch profits tax imposed by Section 884 of the Code.

Bond Premium

In general, if an owner acquires a bond for a purchase price (excluding accrued interest) or otherwise at a tax basis that reflects a premium over the sum of all amounts payable on the bond after the acquisition date (excluding certain "qualified stated interest" that is unconditionally payable at least annually at prescribed rates), that premium constitutes "bond premium" on that bond (a "Premium Bond"). In general, under Section 171 of the Code, an owner of a Premium Bond must amortize the bond premium over the remaining term of the Premium Bond, based on the owner's yield over the remaining term of the Premium Bond determined based on constant-yield principles (in certain cases involving a Premium Bond callable prior to its stated maturity date, the amortization period and yield may be required to be determined on the basis of an earlier call date that results in the lowest yield on such bond). An owner of a Premium Bond must amortize the bond premium by offsetting the qualified stated interest allocable to each interest accrual period under the owner's regular method of accounting against the bond premium allocable to that period. In the case of a tax-exempt Premium Bond, if the bond premium allocable to an accrual period exceeds the qualified stated interest allocable to that accrual period, the excess is a nondeductible loss. Under certain circumstances, the owner of a Premium Bond may realize a taxable gain upon disposition of the Premium Bond even though it is sold or redeemed for an amount less than or equal to the owner's original acquisition cost. Owners of any Premium Bonds should consult their own tax advisors regarding the treatment of bond premium for federal income tax purposes, including various special rules relating thereto, and state and local tax consequences, in connection with the acquisition, ownership, amortization of bond premium on, sale, exchange, or other disposition of Premium Bonds.

Information Reporting and Backup Withholding

Information reporting requirements apply to interest paid on tax-exempt obligations, including the Series 2020A Bonds. In general, such requirements are satisfied if the interest recipient completes, and provides the payor with, a Form W-9, "Request for Taxpayer Identification Number and Certification," or if the recipient is one of a limited class of exempt recipients. A recipient not otherwise exempt from information reporting who fails to satisfy the information reporting requirements will be subject to "backup withholding," which means that the payor is required to deduct and withhold a tax from the interest payment, calculated in the manner set forth in the Code. For the foregoing purpose, a "payor" generally refers to the person or entity from whom a recipient receives its payments of interest or who collects such payments on behalf of the recipient.

If an owner purchasing a Series 2020A Bond through a brokerage account has executed a Form W-9 in connection with the establishment of such account, as generally can be expected, no backup withholding should occur. In any event, backup withholding does not affect the excludability of the interest on the Series 2020A Bonds from gross income for federal income tax purposes. Any amounts withheld pursuant to backup withholding would be allowed as a refund or a credit against the owner's federal income tax once the required information is furnished to the Internal Revenue Service.

Miscellaneous

Tax legislation, administrative actions taken by tax authorities, or court decisions, whether at the federal or state level, may adversely affect the tax-exempt status of interest on the Series 2020A Bonds under federal or state law or otherwise prevent beneficial owners of the Series 2020A Bonds from realizing the full current benefit of the tax status of such interest. In addition, such legislation or actions

(whether currently proposed, proposed in the future, or enacted) and such decisions could affect the market price or marketability of the Series 2020A Bonds.

Prospective purchasers of the Series 2020A Bonds should consult their own tax advisors regarding the foregoing matters.

**Series 2020B Bonds**

In the opinion of Bond Counsel to the Issuer, interest on the Series 2020B Bonds (the "Taxable Bonds") (i) is included in gross income for federal income tax purposes pursuant to the Code, and (ii) is not exempt, under existing statutes, from personal income taxes imposed by the State of New York or any political subdivision thereof, including The City of New York.

The following discussion is a brief summary of the principal United States federal income tax consequences of the acquisition, ownership and disposition of Taxable Bonds by original purchasers of the Taxable Bonds who are "U.S. Holders," as defined herein. This summary (i) is based on the Code, Treasury Regulations, revenue rulings and court decisions, all as currently in effect and all subject to change at any time, possibly with retroactive effect; (ii) assumes that the Taxable Bonds will be held as "capital assets;" and (iii) does not discuss all of the United States federal income tax consequences that may be relevant to a U.S. Holder in light of its particular circumstances or to U.S. Holders subject to special rules, such as insurance companies, financial institutions, tax-exempt organizations, dealers in securities or foreign currencies, persons holding the Taxable Bonds as a position in a "hedge" or "straddle," U.S. Holders whose functional currency (as defined in Section 985 of the Code) is not the United States dollar, U.S. Holders who acquire Taxable Bonds in the secondary market, or individuals, estates and trusts subject to the tax on unearned income imposed by Section 1411 of the Code.

Certain taxpayers that are required to prepare certified financial statements and file financial statements with certain regulatory or governmental agencies may be required to recognize income, gain and loss with respect to the Taxable Bonds at the time that such income, gain or loss is taken into account on such financial statements instead of under the rules described below.

U.S. Holders of Taxable Bonds should consult with their own tax advisors concerning the United States federal income tax and other consequences with respect to the acquisition, ownership and disposition of the Taxable Bonds as well as any tax consequences that may arise under the laws of any state, local or foreign tax jurisdiction.

Original Issue Discount

In general, if original issue discount ("OID") is greater than a statutorily defined *de minimis* amount, a U.S. Holder of a Taxable Bond must include in federal gross income (for each day of the taxable year, or portion of the taxable year, in which such U.S. Holder holds such Taxable Bond) the daily portion of OID, as it accrues (generally on a constant-yield method) and regardless of the U.S. Holder's method of accounting. "OID" is the excess of (i) the "stated redemption price at maturity" over (ii) the "issue price." For purposes of the foregoing: "issue price" means the first price at which a substantial amount of the Taxable Bond is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers); "stated redemption price at maturity" means the sum of all payments, other than "qualified stated interest," provided by such Taxable Bond; "qualified stated interest" is stated interest that is unconditionally payable in cash or property (other than debt instruments of the issuer) at least annually at a single fixed rate; and "*de minimis* amount" is an amount equal to 0.25 percent of the Taxable Bond's stated redemption price at maturity multiplied by the number of complete years to its maturity. A U.S. Holder

may irrevocably elect to include in gross income all interest that accrues on a Taxable Bond using the constant-yield method, subject to certain modifications.

Disposition and Defeasance

Generally, upon the sale, exchange, redemption, or other disposition (which would include a legal defeasance) of a Taxable Bond, a U.S. Holder generally will recognize taxable gain or loss in an amount equal to the difference between the amount realized (other than amounts attributable to accrued interest not previously includable in income) and such U.S. Holder's adjusted tax basis in the Taxable Bond.

YAI may cause the deposit of moneys or securities in escrow in such amount and manner as to cause the Taxable Bonds to be deemed to be no longer Outstanding under the Indenture (a "defeasance"). For federal income tax purposes, such defeasance could result in a deemed exchange under Section 1001 of the Code and a recognition by such owner of taxable income or loss, without any corresponding receipt of moneys. In addition, the character and timing of receipt of payments on the Taxable Bonds subsequent to any such defeasance could also be affected.

Information Reporting and Backup Withholding

In general, information reporting requirements will apply to non-corporate U.S. Holders of the Taxable Bonds with respect to payments of principal, payments of interest, and the accrual of OID on a Taxable Bond and the proceeds of the sale of a Taxable Bond before maturity within the United States. Backup withholding may apply to U.S. Holders of Taxable Bonds under Section 3406 of the Code. Any amounts withheld under the backup withholding rules from a payment to a beneficial owner, and which constitutes over-withholding, would be allowed as a refund or a credit against such beneficial owner's United States federal income tax provided the required information is furnished to the Internal Revenue Service.

U.S. Holders

The term "U.S. Holder" means a beneficial owner of a Taxable Bond that is: (i) a citizen or resident of the United States, (ii) a corporation, partnership or other entity created or organized in or under the laws of the United States or of any political subdivision thereof, (iii) an estate the income of which is subject to United States federal income taxation regardless of its source or (iv) a trust whose administration is subject to the primary jurisdiction of a United States court and which has one or more United States fiduciaries who have the authority to control all substantial decisions of the trust.

Miscellaneous

Tax legislation, administrative actions taken by tax authorities, or court decisions, whether at the federal or state level, could affect the market price or marketability of the Taxable Bonds.

Prospective purchasers of the Taxable Bonds should consult their own tax advisors regarding the foregoing matters.

The form of the approving opinion of Bond Counsel for the Series 2020 Bonds is attached to this Official Statement as "APPENDIX H – FORM OF APPROVING OPINION OF BOND COUNSEL."

## PART 9 - BONDHOLDERS' RISKS

### General

The Series 2020 Bonds involve a certain degree of risk. Prospective investors in the Series 2020 Bonds should carefully review all of the information in this Official Statement, including the Appendices, as well as information incorporated herein by reference, prior to purchasing any of the Series 2020 Bonds. This Official Statement contains only summaries of the Indenture, the Loan Agreement and the related documents. Prospective investors are urged to read such documents in their entirety prior to investing in the Series 2020 Bonds. Copies of drafts of such documents may be obtained from the Underwriter prior to the issuance of the Series 2020 Bonds. See Appendix A for a discussion of the financial condition and results of operations of YAI, Appendix B for copies of the audited financial statements of YAI, and Appendix C for copies of recent unaudited financial information for YAI.

Set forth below are certain risk factors affecting an investment in the Series 2020 Bonds, including, among others, risk factors that could adversely affect YAI's operations, revenues and expenses, including those relating to the Facilities, to an extent which cannot be determined at this time. Such risk factors should be considered before any investment in the Series 2020 Bonds is made. These risk factors should not be considered definitive or exhaustive.

### Special, Limited Obligations of the Issuer

The Series 2020 Bonds are special, limited obligations of the Issuer payable solely from the payments made by YAI pursuant to the Loan Agreement and from the Trust Estate, as described in the Indenture. Neither the State nor any political subdivision thereof, including the City, shall be obligated to pay the principal, Sinking Fund Installments, Redemption Price, if any, of or interest on the Series 2020 Bonds. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, including the City, is pledged to such payment of the Series 2020 Bonds. The Series 2020 Bonds will not be payable out of any funds of the Issuer other than those pledged therefor pursuant to the Indenture. The Series 2020 Bonds will not give rise to a pecuniary liability or charge against the credit or taxing powers of the State or any political subdivision thereof, including the City. No recourse will be had for the payment of the principal, Sinking Fund Installments, Redemption Price, if any, of or interest on the Series 2020 Bonds against any member, officer, director, employee or agent of the Issuer. The Issuer has no taxing power.

### Reliance on Credit of YAI

The Series 2020 Bonds are being issued without credit enhancement in the form of a letter of credit or bond insurance. While the amounts payable to YAI pursuant to its PPA for the 35th Street Facility are expected to provide moneys approximately sufficient to pay annual debt service on its loan for the 35th Street Facility supported by such PPA, there is no PPA for the 42nd Street Facility and any difference between the two amounts is expected to be covered by Pledged Revenues received for operating and administrative expenses associated with the 42nd Street Facility. In addition, there can be no assurance that the funds received by YAI pursuant to such PPA will be sufficient for the repayment of the portion of the Series 2020 Bonds attributable to the 35th Street Facility (whether because of non-appropriation of funds by the State, failure of YAI to operate the 35th Street Facility in accordance with operational standards, a prior pledge of such PPA or otherwise). Additionally, in connection with the 42nd Street Facility which will not be reimbursed by OPWDD through a PPA, there can be no assurance that YAI's operating revenues will be sufficient for the repayment of the portion of the Series 2020 Bonds attributable to the 42nd Street Facility.

YAI expects that the principal, Sinking Fund Installments and Redemption Price, if any, of and interest on the Series 2020 Bonds will be paid from Public Funds paid by OPWDD, from its general operating revenues and from fees for services paid by DOH or other State agencies for services provided at the Clinic Space. See "PART 5 - SOURCES OF REVENUE - New York State Office for People with Developmental Disabilities" and "- New York State Department of Health." There can be no assurance that YAI's operating revenues or fees for services paid by OPWDD, DOH or other State agencies will be sufficient for the repayment of the Series 2020 Bonds. See "PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2020 BONDS - Security for the Series 2020 Bonds," and "PART 5 - SOURCES OF REVENUE - New York State Office for People with Developmental Disabilities" and – "New York State Department of Health."

**Revenues of YAI**

Future revenues of YAI are dependent upon, among other things, legislative appropriations, federal and State policy, the outcome of current and potential litigation and other conditions that are unpredictable, some of which are discussed below. The ability to pay principal of and interest on the Series 2020 Bonds depends upon the receipt by the Trustee of the loan payments under the Loan Agreement. Some of the risks that could affect the ability of YAI to pay such amounts are failure of (i) the legislature of the State, or any of the counties or cities in which YAI operates, to approve sufficient appropriations for the purchase of services from YAI; (ii) the State or various county and city departments to make timely payments to YAI of appropriated amounts caused by revenue short falls or other State or local fiscal considerations; (iii) YAI to fulfill its obligations which entitle it to receive payments, including payments under the PPA for the 35th Street Facility; (iv) YAI to maintain the appropriate certifications from the required licensing or certifying entity(ies) to provide services as required; (v) YAI to obtain the renewal of its contracts to provide services; and (vi) YAI to provide services at the Clinic Space or to appropriately bill such services to the appropriate State agency.

In addition, YAI's license and/or certification may be revoked for failure to comply with standards of operation applicable to YAI, or YAI may cease operations of one or both of the Facilities due to insolvency.

Further, the enactment of additional legislation imposing new regulatory challenges, increasing costs of operation or reducing reimbursement rates could adversely affect the financial condition of YAI. Any one of such adverse events may result in insufficient revenues to pay the principal and interest on the Series 2020 Bonds.

**Enforceability of Remedies; Effect of Bankruptcy**

The Series 2020 Bonds are payable from the sources and are secured as described in this Official Statement. The practical realization of value from the collateral for the Series 2020 Bonds described herein upon any default will depend upon the exercise of various remedies specified by the Indenture, the Loan Agreement or other Security Documents, if applicable, and the then-value of the collateral and other regulatory approvals. These and other remedies may, in many respects, require judicial actions which are often subject to discretion and delay.

Under existing law, the remedies specified by the Indenture, the Loan Agreement, the Mortgage and the Pledge and Security Agreement may not be readily available or may be limited. A court may decide not to order the performance of the covenants contained in those documents. The legal opinions to be delivered concurrently with the delivery of the Series 2020 Bonds will be qualified as to the enforceability of the various agreements and other instruments by limitations imposed by State and federal laws, rulings and decisions affecting remedies and by bankruptcy, reorganization or other laws affecting the enforcement of creditors' rights generally.

The rights and remedies of the Holders of the Series 2020 Bonds are subject to various provisions of Title 11 of the United States Code (the "Bankruptcy Code"). If YAI were to file a petition for relief under the Bankruptcy Code, the filing would automatically stay the commencement or continuation of any judicial or other proceedings against YAI and its property, including the commencement of foreclosure proceedings under the Mortgage. YAI would not be permitted or required to make payments of principal or interest under the Loan Agreement unless an order of the United States Bankruptcy Court were issued for such purpose. In addition, without an order of the United States Bankruptcy Court, the automatic stay may serve to prevent the Trustee from applying amounts on deposit in the accounts established under the Indenture from being applied in accordance with the provisions of the Indenture and the application of such amounts to the payment of principal of, and interest on the Series 2020 Bonds. Moreover, any motion for an order terminating the automatic stay and permitting such accounts to be applied in accordance with the provisions of the Indenture would be subject to the discretion of the United States Bankruptcy Court, and may be subject to objection and/or comment by other creditors of YAI, which could affect the likelihood or timing of obtaining such relief. In addition, if the value of the Mortgaged Property is less than the principal amount of YAI's total loan repayment obligation at the time of a bankruptcy proceeding, the security interest of the Trustee in such Mortgaged Property is subject to the claims of creditors that the mortgaged indebtedness in excess of the then fair market value of the Mortgaged Property is unsecured and, therefore, such excess is not entitled to a secured priority position in the administration of the bankruptcy estate.

YAI could file a plan for the adjustment of its debts in a proceeding under the Bankruptcy Code, which plan could include provisions modifying or altering the rights of creditors generally, or any class of them, whether secured or unsecured. The plan, when confirmed by the United States Bankruptcy Court, would bind all creditors who have notice or knowledge of the plan and would discharge all claims against YAI provided for in the plan. No plan may be confirmed unless certain conditions are met, among which are that the plan is in the best interests of creditors, is feasible and has been accepted by each class of claims impaired thereunder. Each class of claims has accepted the plan if at least two-thirds in dollar amount and more than one-half in number of the allowed claims of the class that are voted with respect to the plan are cast in its favor. Even if the plan is not so accepted, it may be confirmed if the court finds that the plan is fair and equitable with respect to each class of non-accepting creditors impaired thereunder and does not discriminate unfairly.

**Mortgage**

Pledge of Property Under Mortgage

The security interest in the Mortgaged Property granted under the Mortgage may be affected by various matters, including, (i) rights arising in favor of the United States of America or any agency thereof, (ii) present or future prohibitions against assignment in any applicable federal or state statutes or regulations, (iii) constructive trusts, equitable liens or other rights imposed or conferred by any state or federal court in the exercise of its equitable jurisdiction and rights of donors of property, (iv) claims that might obtain priority if continuation statements are not filed in accordance with applicable laws, (v) the rights of holders of prior perfected security interests in equipment and other goods owned by YAI and included in the Mortgaged Property and the proceeds of sale of such property, (vi) statutory liens and other liens arising as a matter of law, (vii) the rights of parties secured by other liens or encumbrances permitted by the Loan Agreement or the Mortgage and (viii) claims by creditors that the mortgaged indebtedness in excess of the then-fair market value of the Mortgaged Property is unsecured to the extent of such excess.

Insufficiency of Mortgage Foreclosure; Environmental Impairment of Property

One of the options under the Loan Agreement, and one of the options under the Indenture, is to institute foreclosure proceedings to enforce the lien on and sell the 35th Street Facility in the event of a default under the Loan Agreement, the Mortgage or the Indenture. However, due to the limited uses for which the 35th Street Facility may be utilized, none of Issuer, the Facilitator, the Trustee, YAI or the Underwriter makes any assurance or representation that the Trustee will be able to effect a sale of the 35th Street Facility or, if such 35th Street Facility is sold, that the proceeds received upon a foreclosure or other sale, along with all moneys of YAI on deposit in the various funds established under the Indenture, will be sufficient to pay in full the principal of, or interest on, the Series 2020 Bonds.

In exercising the rights of foreclosure under the Mortgage, the Trustee, in accordance with current commercial lending practices, may perform a Phase I Environmental Audit to determine the presence or likely presence of a release or a substantial threat of a release of any hazardous materials at, on, to, or from the 35th Street Facility. If the audit indicates the existence of hazardous materials with respect to the 35th Street Facility, the Trustee may conclude that it is not in the best interests of the Bondholders to foreclose on such property due to liability for removal of hazardous materials. In such an event, the Trustee may decline to exercise foreclosure with respect to the 35th Street Facility under the Mortgage without specific instructions from Bondholders and receipt of funds, security and/or indemnity from the Bondholders reasonably satisfactory to the Trustee to pay the costs, expenses, and liabilities which might be incurred by its compliance with such instructions. Consequently, the existence, post-acquisition, of hazardous materials with respect to the 35th Street Facility could severely limit the ability, due to the economic liability associated with removal of such materials, to foreclose on such property and/or obtain the market value for such property in security for the Series 2020 Bonds that would otherwise have been available absent the existence of such hazardous materials.

Another option under the Loan Agreement is to institute proceedings to enforce the lien on and sell the Mortgaged Property in the event of a default under the Loan Agreement, the Mortgage or the Indenture. However, due to the limited uses for which the Mortgaged Property may be utilized, none of the Issuer, the Facilitator, the Trustee, YAI or the Underwriter makes any assurances or representations that the Trustee will be able to sell the Mortgaged Property or, if such Mortgaged Property is sold, that the proceeds received upon a sale, along with all moneys on deposit in the various funds established under the Indenture, would be sufficient to pay in full the principal of, or interest on, the Series 2020 Bonds.

YAI received the Appraisal on the 35th Street Facility as described in "PART 2- SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2020 BONDS – Security for the Series 2020 Bonds – Mortgage" stating that the aggregate market value of the fee simple interest in the 35th Street Facility was $13,500,000. However, the value of the 35th Street Facility to Bondholders could be diluted by the issuance of additional parity indebtedness. Furthermore, the value of the 35th Street Facility may fluctuate over time. The value of the 35th Street Facility at any given time will be directly affected by market and financial conditions which are not in the control of YAI. These conditions include the risk of adverse changes in general economic and local conditions; uninsured losses; lack of attractiveness of the property; cyclical nature of the real estate market; limited alternative use; suitability of the property; adverse changes in neighborhood values; and adverse changes in zoning and other laws and regulations. There is nothing associated with the 35th Street Facility that would suggest that its value would remain stable or would increase if the general values of property in the community were to decline. There is no requirement that the value of the 35th Street Facility be equal to or greater than the principal amount of the Series 2020 Bonds. Thus, upon any default, it may not be possible to realize the outstanding principal of and interest on the Series 2020 Bonds from a sale or lease of the 35th Street Facility.

No Approval by New York State Supreme Court

Section 510 of the New York Not-For-Profit Corporation Law ("NFPCL") requires State Supreme Court approval of any "sale, lease, exchange or other disposition" of "all, or substantially all, the assets" of a not-for-profit corporation such as YAI. Such approval was not sought in connection with the execution, delivery and performance by YAI of the Mortgage or the pledge of assets and revenues that are contemplated by the Pledge and Security Agreement. It is the opinion of counsel to YAI that such actions do not require approval pursuant to NFPCL §510. However, absent court decisions definitively resolving this issue, it cannot be ruled out that a defendant in a foreclosure action may raise as an affirmative defense the failure to obtain NFPCL §510 court approval.

In view of the foregoing, investors should rely on their own examination of the creditworthiness and financial condition of YAI and the terms of this offering, including, without limitation, the merits and risks involved and the uncertainties associated with the possible limitations or inability to enforce the remedies set forth in the Mortgage.

**Non-Appropriation of State, County and City Departments' Funds**

YAI is subject to Federal, State and local actions, including, among others, actions by the various State, county and city departments. The Series 2020 Bonds are payable from operating revenues of YAI, which depend in large measure upon the appropriations of the State for the funds of the various State, county and city departments that have contracts with YAI. HOWEVER, THE OBLIGATION OF THE VARIOUS STATE, COUNTY AND CITY DEPARTMENTS TO RENEW SUCH CONTRACTS IS SUBJECT TO ANNUAL REEVALUATION BY THE DEPARTMENT OBTAINING THE CONTRACT AS PART OF ITS ANNUAL BUDGET APPROPRIATION PROCESS. EACH YEAR THE STATE LEGISLATURE, WHICH HAS THE RESPONSIBILITY OF APPROPRIATING AND ALLOCATING STATE RESOURCES AMONG THE STATE'S VARIOUS DEPARTMENTS, HAS THE RIGHT, IN ITS SOLE DISCRETION, EITHER (I) TO APPROPRIATE SUFFICIENT FUNDS, FROM WHATEVER SOURCE, TO FUND IN WHOLE OR IN PART THE VARIOUS DEPARTMENTS' BUDGETS FROM WHICH THE CONTRACTS PROCURED FOR THE NEXT FISCAL YEAR ARE TO BE PAID, OR (II) TO APPROPRIATE INSUFFICIENT FUNDS TO MAKE SUCH PAYMENTS OR (III) NOT TO APPROPRIATE ANY FUNDS FOR THE VARIOUS DEPARTMENTS' BUDGETS FROM WHICH CONTRACTS ARE TO BE PROCURED AND PAID.

In particular, the ability of the State, county, and city departments to disburse Medicaid reimbursements, and other State, county and city departments to fund contracts of YAI, is limited in part by the amount of revenues collected, as well as the amount of appropriations authorized, by the State for such fiscal year. Failure of the State to receive sufficient revenues to fund appropriations for such fiscal year and/or the failure of YAI to generate sufficient revenues from other sources (or have access to sufficient fund balances) to make the scheduled loan payments that are to be used by the Trustee to repay the Series 2020 Bonds, will materially adversely affect YAI's ability to make its loan payments and, consequently, the repayment of the Series 2020 Bonds.

**Federal Medicaid Reform**

A majority of the Public Funds are received from Medicaid. Future Medicaid reform may materially adversely affect the Public Funds received by YAI. Various federal legislative proposals have recently been made in connection with health care reform that could, among other things, reduce or unfavorably restructure Medicaid funding. Management of YAI cannot predict whether any such proposals will become law. If enacted into law, such proposals could adversely affect the Public Funds received by, and the revenues available to, YAI and therefore its ability to pay debt service on the Series 2020 Bonds.

**Zoning; Certificate of Occupancy**

The Ground Lessor (as hereinafter defined) obtained a temporary certificate of occupancy for the 42nd Street Facility from the Department of Buildings of The City of New York which expires on January 28, 2021. Prior to the expiration of the current temporary certificate of occupancy, YAI expects the Ground Lessor to receive either another temporary certificate of occupancy or the final certificate of occupancy for the 42nd Street Facility in due course. Failure of the Ground Lessor to provide to YAI the temporary certificate of occupancy or the final certificate of occupancy for the 42nd Street Facility upon the expiration of the current temporary certificate of occupancy could materially adversely affect the financial position of YAI and the operations at the 42nd Street Facility.

A Facility may require special use permits or certificates of compliance or other zoning approval (each, a "Certificate") from the applicable municipality. Failure of YAI to obtain an appropriate Certificate where the same is required could materially adversely affect the financial position of YAI. Moreover, the failure of a Facility to receive a Certificate when required could materially adversely impact either YAI's, the Trustee's or another party's right to use or occupy such Facility, before or after the exercise of default remedies.

The DOH operating certificate, which permits Premier Healthcare to operate the 42nd Street Facility for its intended purpose, has been issued by DOH for such Facility.

**Additional Indebtedness**

Under the Pledge and Security Agreement, YAI has the ability to incur additional debt. See "PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2020 BONDS -- Financial Covenants of YAI -- Additional Indebtedness." Pursuant to the terms of the Indenture, Additional Bonds may be issued by the Issuer at the request of YAI upon the satisfactions of various requirement set forth in the Indenture. See "APPENDIX F – SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Additional Bonds."

**Prior Pledges of Pledged Revenues**

The Series 2020 Bonds are secured by the pledge to the Trustee by YAI of the Pledged Revenues granted by YAI pursuant to the Pledge and Security Agreement, subject to Prior Pledges and other Permitted Encumbrances. YAI has previously pledged its Public Funds (a portion of which consists of the Pledged Revenues) to the Dormitory Authority of the State of New York or an industrial development agency to secure other obligations. YAI has also pledged its accounts receivable, including Public Funds, to banks or other financial institutions as security for its obligations in connection with lines of credit. The pledge of the Pledged Revenues securing the Series 2020 Bonds is subject, and subordinate, to such Prior Pledges in all respects. See "APPENDIX A - DESCRIPTION OF YAI" for a description of YAI, including a description of outstanding indebtedness and credit facilities secured by security interests which include Prior Pledges of its Pledged Revenues.

**Grant of Additional Security Interests**

Subject to the limitations set forth in the Pledge and Security Agreement, YAI may grant security interests in its Accounts Receivable, and the proceeds thereof, in favor of banks or other financial institutions in order to secure a line of credit for working capital purposes, whether by entering into a new credit facility or amending, modifying or extending an existing credit facility. See "PART 2 - SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2020 BONDS -- Financial Covenants of YAI – Grant of Security Interest to Other Parties." The incurrence of such indebtedness and the granting of such

security interests could materially adversely affect the financial position of YAI and its ability to satisfy its loan payment obligations.

**Effect of Changes in Tax-Exempt Status; Continued Legal Requirements of Tax-Exempt Status**

As an entity qualified under Section 501(c)(3) of the Code, YAI is subject to various requirements affecting its operation. The failure of YAI to maintain its tax-exempt status may affect its ability to receive funds from State and federal sources, which could adversely affect its ability to pay its loan payments under the Loan Agreement. Further, a loss of YAI's status as a Section 501(c)(3) organization, failure of YAI to comply with certain legal requirements of the Code, or adoption of amendments to the Code applicable to YAI that restrict the use of tax-exempt bonds for facilities, such as the Facilities, could cause interest on the Series 2020A Bonds to be included in the gross income of the Bondholders or former Bondholders for federal income tax purposes, and such inclusion could be retroactive to the date of issuance of the Series 2020A Bonds. The opinion of Bond Counsel to the Issuer and the description of the tax law contained in this Official Statement are based on statutes, judicial decisions, regulations, rulings, and other official interpretations of law in existence on the date the Series 2020A Bonds are issued. No assurance can be given that such laws or the interpretation thereof will not change or that new provisions of law will not be enacted or promulgated at any time while the Series 2020A Bonds are outstanding in a manner that would adversely affect the value or the tax treatment of ownership of the Series 2020A Bonds. See "PART 8 - TAX MATTERS." The interest rate on the Series 2020A Bonds will not change if the interest on the Series 2020A Bonds is included in the gross income of the Bondholders or former Bondholders although the Series 2020A Bonds are subject to mandatory redemption at one hundred percent (100%) of the principal amount thereof plus accrued interest to the redemption date. See "PART 3 – THE SERIES 2020 BONDS – Mandatory Taxability Redemption."

**Risk of Audit by Internal Revenue Service**

The Internal Revenue Service has an ongoing program of auditing tax-exempt obligations to determine whether, in the view of the Internal Revenue Service, interest on such tax-exempt obligations is includable in the gross income of the owners thereof for federal income tax purposes. No assurances can be given as to whether or not the Internal Revenue Service will commence an audit of the Series 2020A Bonds.

**Risk of Review by State and Federal Agencies**

Various State and federal agencies, including without limitation, OPWDD, the Office of Medicaid Inspector General, the Office of State Controller, the Department of Health, the State Attorney General, the United States Attorney's Office, the United States Office of Inspector General, and the State Commission on Quality of Care, have ongoing programs of reviewing the services provided by, and the claims for payment submitted by, service provider agencies, such as YAI, to determine compliance with State and/or federal laws and regulations. Such reviews, if adversely determined, may affect the ability of the service provider agency to provide its services and receive payments therefor. No assurances can be given as to whether or not any State or federal agency will commence a review of YAI and the effect of any such review on YAI's ability to make its payments under the Loan Agreement.

**Specific Risks Related to 42nd Street Facility**

The Clinic Space in the 42nd Street Facility is licensed by DOH as an Article 28 clinic and is certified by OPWDD as an Article 16 clinic. The Clinic Space is entirely dependent upon the amount of health services provided by the Premier Healthcare staff at the 42nd Street Facility and the amount of the fees for such services billed by Premier Healthcare to Medicaid and Medicare for payment through the applicable State agency. The Pledged Revenues relating to the 42nd Street Facility do not include any

amount based on the debt service on the Series 2020 Bonds. In addition, the 42nd Street Facility is a leased facility, so the obligations of YAI under the Loan Agreement are not secured by a mortgage on the 42nd Street Facility although such obligations are secured by the Mortgage. In addition, pursuant to the State law, facilities such as the 42nd Street Facility are required to have an operating certificate issued by the Commissioner of the DOH. The Commissioner of the DOH may revoke or suspend an operating certificate or disapprove an application for a renewal of such certificate, in which case YAI will be unable to operate the 42nd Street Facility.

YAI does not have fee title to the land upon which the building in which the 42nd Street Facility is located (the "Land"). The Land and the then-existing building and improvements on the Land (collectively, the "Premises") have been leased to SLG 220 News Lessee LLC (the "Ground Lessee") by SLG 220 News Owner LLC (the "Ground Lessor") pursuant to that certain Agreement of Lease (the "Ground Lease") dated as of December 15, 2015. The Ground Lessee subjected the Premises to a condominium form of ownership pursuant to that certain Declaration Establishing a Plan for Condominium Ownership dated as of December 15, 2015, as amended (the "Declaration"). YAI owns a leasehold interest in the condominium unit designated as Unit 7NW and Unit 8 in the Declaration. In addition YAI has mortgaged its interest in the 42nd Street Facility to the Ground Lessee (the "Ground Lessee Mortgage"). The Ground Lessee Mortgage does not secure the Series 2020 Bonds. YAI's failure to comply with its obligations in the Ground Lease, the Declaration and the other transaction documents as described in that certain Sale and Purchase Agreement dated as of January 8, 2019 between the Ground Lessee and YAI may permit the Ground Lessee to foreclose on the Ground Lessee Mortgage and may require YAI to relinquish any claim to the 42nd Street Facility, either of which may adversely affect YAI's ability to pay its loan payments required under the Loan Agreement and cause a mandatory redemption of the Series 2020A Bonds. See "PART 3 – THE SERIES 2020 BONDS – Mandatory Redemption Pursuant to Loss of Interest in Facility Unit." See also "APPENDIX I – COPIES OF THE CONDOMINIUM DECLARATION AND SUMMARIES OF CERTAIN PROVISIONS OF THE GROUND LEASE, OMNIBUS AGREEMENT AND SALE AND PURCHASE AGREEMENT."

**Potential Impact of Coronavirus**

The outbreak of the novel coronavirus (COVID-19), referred to herein as "COVID-19," has been declared a pandemic by the World Health Organization. The Governor declared a state of emergency in the State on March 7, 2020, followed by the Mayor's declaration of a state of emergency in the City on March 12, 2020, each of which is still in effect. The Governor issued the "New York State on PAUSE" executive order, effective 8 p.m. on March 22, 2020, that directed all non-essential businesses statewide to close in-office personnel functions and banned all non-essential travel and gatherings. All PAUSE restrictions and closures were extended until May 15, 2020. The State has reopened on a regional basis in phases as each region has been meeting the criteria outlined by the Governor to protect public health as businesses reopen, and restrictions began to be lifted in New York City on June 8, 2020. Certain businesses and activities have been permitted to reopen with limitations on some activities, such as large indoor gatherings and indoor service at bars and restaurants. Recently, the Governor ordered the re-closing of non-essential businesses and new restrictions on mass gatherings in certain areas of the State with a high density of positive COVID-19 tests, including certain parts of Brooklyn and Queens. COVID-19 infections and positive test rates will likely fluctuate in the future and there can be no assurance that COVID-19 cases and deaths in the City will not increase above current levels or that additional business closures will not be reinstated during the course of the pandemic. The pandemic and such restrictions and closures have altered the behavior of businesses and people in a manner that has had, and is expected to continue to have, negative effects on the State, the City, State and local economies, the services they currently fund and the financial and business operations of YAI. The potential impact that the pandemic may have on the finances and operations of YAI cannot be predicted at this time. No

assurance can be provided that the pandemic and resulting economic disruption will not result in loss of revenues for YAI in spite of YAI continuing to provide essential healthcare and residential services.

Pursuant to New York Executive Order No. 202 issued March 7, 2020, certain services provided by YAI, including day habilitation, community habilitation and respite, were discontinued to meet social distancing mandates. Employment programs also have been closed and clinics have experienced limited utilization. Residential and Crisis Intervention programs are deemed essential and are still operating in accordance with OPWDD and social distancing guidelines. Some YAI day habilitation, community habilitation, respite, and employment programs have slowly resumed service provision, both in person and through the use of technology, as allowed by State regulations.

The State applied for and was approved by the Center for Medicaid Services for an Emergency Preparedness and Response for Home and Community Based 1915(c) Waiver (the "1915(c) Waiver"). During emergency situations, states are permitted to request amendments to approved 1915(c) Waivers through a standalone appendix to Section 1915(c) ("Appendix K"). The 1915(c) Waiver permits billing and certain supplemental payments to be made to agencies, including YAI, for approved alternate services and additional staffing costs and is effective from March 7, 2020 through September 7, 2020. Effectively this is authorization for intellectual and/or developmental disability ("I/DD") service providers like YAI to bill and receive payments that otherwise would not occur due to the fact, for example, that the services were provided at an alternate location. Certain of these authorizations like day habilitation services may only be billed up to 80% of the rates received during the period of July – December 2019.

The full financial effect of Appendix K 1915(c) Waivers is not yet known. YAI has maintained fiscal surpluses in each of the last 9 years, despite revenue decreases from the State in 2012, 2014 and 2017. It is too early to confirm whether YAI will experience revenue decreases in 2020 or beyond, and YAI cannot predict the full impact to its financial health as it continues to provide essential services to individuals with I/DD. YAI expects to continue to provide services set forth in the guidance provided by OPWDD.

**Cautionary Statements Regarding Forward-Looking Statements in this Official Statement**

Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements." Such statements are generally identifiable by the terminology used such as "plan," "expect," "estimate," "anticipate," "budget," "intend," "projection" or other similar words. Such statements are subject to certain risks and uncertainties that could cause actual results to differ materially from those presently anticipated or projected. Readers are cautioned not to place undue reliance on any such forward-looking statements. SUCH RISKS AND UNCERTAINTIES INCLUDE, AMONG OTHERS, GENERAL ECONOMIC AND BUSINESS CONDITIONS, CHANGES IN POLITICAL, SOCIAL AND ECONOMIC CONDITIONS, REGULATORY INITIATIVES AND COMPLIANCE WITH GOVERNMENTAL REGULATIONS, LITIGATION AND VARIOUS OTHER EVENTS, CONDITIONS AND CIRCUMSTANCES, MANY OF WHICH ARE BEYOND THE CONTROL OF YAI. PURCHASERS SHOULD NOT EXPECT TO RECEIVE ANY UPDATES OR REVISIONS TO ANY FORWARD-LOOKING STATEMENTS IF OR WHEN EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS ARE BASED OCCUR.

**Absence of Credit Rating**

No rating of the creditworthiness of the Series 2020 Bonds has been requested. Typically, unrated bonds lack liquidity in the secondary market in comparison with rated bonds. As a result of the foregoing, the Series 2020 Bonds are believed to bear interest at higher rates than would normally prevail for bonds with comparable maturities and redemption provisions that have investment grade credit

ratings. Nevertheless, the Series 2020 Bonds should not be purchased by any investor who, because of financial condition, investment policies or otherwise, does not desire to assume or have the ability to bear the risks inherent in an investment of the Series 2020 Bonds with no likely ability to dispose of such investment.

**Early Redemption Without Premium or Penalty**

The Series 2020 Bonds are subject to certain optional and mandatory redemption provisions, all of which are at a Redemption Price equal to one hundred percent (100%) of the unpaid principal amount of Series 2020 Bonds to be redeemed, together with interest accrued thereon to the date of redemption. See "PART 2 - SECURITY FOR THE SERIES 2020 BONDS" and "PART 3 - THE SERIES 2020 BONDS - Redemption Provisions."

**Non-Asset Bonds**

It is expected that the proceeds of the Series 2020 Bonds will be disbursed on the date of issuance of the Series 2020 Bonds (i) to finance and to reimburse YAI for certain costs of the Project; (ii) to fund the Debt Service Reserve Fund (Tax-Exempt); and (iii) to pay the costs of issuance of the Series 2020 Bonds. Consequently, immediately following the issuance of the Series 2020 Bonds, the value of the assets in the Trust Estate will be less than the principal amount of the Series 2020 Bonds. The proceeds of the Series 2020 Bonds held for the account of YAI, plus investment earnings thereon, will not be sufficient to pay the obligations of YAI under the Loan Agreement.

## PART 10 – ABSENCE OF LITIGATION

**Issuer**

There is no action, suit or proceeding or investigation at law or in equity by or before any court, public board or body pending against the Issuer of which the Issuer has written notice, or, to the Issuer's knowledge, overtly threatened against the Issuer, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Indenture or the Loan Agreement..

**YAI**

See "Appendix A - Description of YAI – Contingencies; Pending or Potential Litigation" for a description of any litigation which may have a material adverse effect on YAI.

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## PART 11 - LEGAL MATTERS

Certain legal matters incidental to the authorization and issuance of the Series 2020 Bonds by the Issuer are subject to the approval of Hawkins Delafield & Wood LLP, New York, New York, Bond Counsel to the Issuer, whose approving opinion will be delivered with the Series 2020 Bonds. The proposed form of Bond Counsel's opinion is set forth in Appendix H hereto.

Certain legal matters will be passed upon for the Issuer by its General Counsel, for YAI and Premier Healthcare by Cullen and Dykman LLP, Albany, New York and for the Underwriter by McCarter & English, LLP, New York, New York and Newark, New Jersey.

## PART 12 - CONTINUING DISCLOSURE

In order to assist the Underwriter in complying with Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended ("Rule 15c2-12"), YAI will enter into a written agreement (the "Continuing Disclosure Agreement") for the benefit of the Holders of the Series 2020 Bonds with Digital Assurance Certification L.L.C. ("DAC"), as disclosure dissemination agent, and the Trustee. The proposed form of the Continuing Disclosure Agreement is attached as Appendix G hereto.

For information about YAI's compliance with its continuing disclosure undertakings made pursuant to Rule 15c2-12, see "APPENDIX A - DESCRIPTION OF YAI – Continuing Disclosure."

## PART 13 - UNDERWRITING

The Series 2020 Bonds are being purchased by Municipal Capital Markets Group, Inc. (the "Underwriter"). The Underwriter has agreed, subject to certain conditions, to purchase the Series 2020 Bonds from the Issuer at an aggregate purchase price of $6,771,163.32 and to make a public offering of the Series 2020 Bonds at prices not in excess public offering prices set forth on the inside cover page of this Official Statement. The Underwriter will be obligated to purchase all Series 2020 Bonds if any Series 2020 Bonds are purchased. The Series 2020 Bonds may be offered and sold to certain dealers (including dealers depositing such Series 2020 Bonds into investment trusts) at prices lower than such public offering prices, and such public offering prices may be changed, from time to time, by the Underwriter.

YAI has agreed to indemnify the Underwriter and the Issuer with respect to certain liabilities, including certain liabilities under the federal securities laws.

## PART 14 – NO RATING

No ratings have been applied for with respect to the Series 2020 Bonds. No representation can be made that ratings with respect to the Series 2020 Bonds, if applied for, could be obtained. SEE "PART 9 - BONDHOLDERS' RISKS – Absence of Credit Rating."

## PART 15 - INDEPENDENT PUBLIC ACCOUNTANTS

YAI has provided its financial statements as of and for the years ended June 30, 2019, June 30, 2018 and June 30, 2017. The financial statements included in Appendix B to this Official Statement have been audited by independent certified public accounting firms as stated in their reports appearing therein. Notwithstanding the receipt of the consent to append the financial statements to this Official Statement,

the auditor has not performed any procedures relating to any of the information contained in this Official Statement.

## PART 16 - MISCELLANEOUS

References in this Official Statement to the Indenture, the Loan Agreement, the Mortgage and the Pledge and Security Agreement do not purport to be complete. Refer to the Indenture, the Loan Agreement, the Mortgage and the Pledge and Security Agreement for full and complete details of their provisions. Copies of drafts of the Indenture, the Loan Agreement, the Mortgage and the Pledge and Security Agreement are available from the Underwriter during the offering period.

The agreements of the Issuer with Holders of the Series 2020 Bonds are fully set forth in the Indenture. Neither any advertisement of the Series 2020 Bonds nor this Official Statement is to be construed as a contract with purchasers of the Series 2020 Bonds. Any statements made in this Official Statement involving matters of opinion or estimates, whether or not expressly stated, are intended as such, and not as representations of facts. No representation is made that any of the opinions or estimates will be realized.

The information regarding YAI, Premier Healthcare and the Facilities contained in this Official Statement has, in each case, been furnished by YAI. The Issuer believes that this information is reliable, but the Issuer makes no representations or warranties as to the accuracy or completeness of such information.

The information regarding the Facilitator and OPWDD and DOH contained in this Official Statement has, in each case, been furnished by the Facilitator. The Issuer believes that this information is reliable, but the Issuer makes no representations or warranties as to the accuracy or completeness of such information.

The information regarding DTC and DTC's book-entry-only system has been furnished by DTC. The Issuer believes that this information is reliable, but makes no representations or warranties whatsoever as to the accuracy or completeness of this information.

"APPENDIX A - DESCRIPTION OF YAI," "APPENDIX B - AUDITED FINANCIAL STATEMENTS OF YAI" and "APPENDIX C - UNAUDITED FINANCIAL INFORMATION OF YAI" were supplied by YAI.

"APPENDIX D - CERTAIN DEFINITIONS," "APPENDIX E - SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT," "APPENDIX F - SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE," and "APPENDIX H - FORM OF APPROVING OPINION OF BOND COUNSEL" have been prepared by Hawkins Delafield & Wood LLP, New York, New York, Bond Counsel to the Issuer.

"APPENDIX G – FORM OF CONTINUING DISCLOSURE AGREEMENT" has been prepared by McCarter & English, LLP, New York, New York and Newark, New Jersey, counsel to the Underwriter.

"APPENDIX I – COPIES OF THE CONDOMINIUM DECLARATION AND SUMMARIES OF CERTAIN PROVISIONS OF THE GROUND LEASE, OMNIBUS AGREEMENT AND SALE AND PURCHASE AGREEMENT" has been prepared by Cullen and Dykman LLP, Albany, New York, counsel to YAI and Premier Healthcare.

YAI has reviewed the parts of this Official Statement describing it, the Facilities and the Mortgage, including, without limitation, "PART 1 – INTRODUCTION" (but solely with respect to the heading "YAI" and "The Mortgage"), "PART 2 – SOURCE OF PAYMENT AND SECURITY FOR THE SERIES 2020 BONDS," "PART 3 – THE SERIES 2020 BONDS – Principal, Sinking Fund Installment and Interest Requirements for the Series 2020 Bonds," "PART 4 - YAI," "PART 5 - SOURCES OF REVENUE," "PART 6 – ESTIMATED SOURCES AND USES OF FUNDS," "PART 9 - BONDHOLDERS' RISKS," "PART 10 – ABSENCE OF LITIGATION" (but solely with respect to the heading "YAI"), "PART 12 – CONTINUING DISCLOSURE," and "PART 15 – INDEPENDENT PUBLIC ACCOUNTANTS," and the information contained in Appendices A, B, C and I. It is a condition to the sale and delivery of the Series 2020 Bonds that YAI certify as of the dates of sale and delivery of the Series 2020 Bonds that such parts and such information do not contain any untrue statement of a material fact and do not omit any material fact necessary to make the statements made therein, in light of the circumstances under which the statements are made, not misleading.

YAI has agreed to indemnify the Issuer and certain others against losses, claims, damages and liabilities arising out of any untrue statements or omissions of statements of any material fact as described in the preceding paragraph with respect to it.

The Facilitator has reviewed the parts of this Official Statement describing itself and the information contained in "PART 5 - SOURCES OF REVENUE," and "PART 9 - BONDHOLDERS' RISKS." It is a condition to the sale and delivery of the Series 2020 Bonds that the Facilitator certify as of the dates of sale and delivery of the Series 2020 Bonds that such parts and such information do not contain any untrue statement of a material fact and do not omit to state any material fact necessary to make the statements made therein, in light of the circumstances under which the statements were made, not misleading.

YAI and the Issuer have authorized and approved the use and distribution of this Official Statement.

**YOUNG ADULT INSTITUTE, INC.**

**By:** /s/ Kevin Carey
Authorized Representative

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# APPENDIX A

# DESCRIPTION OF YAI

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## YOUNG ADULT INSTITUTE, INC.

**General Operations.** Young Adult Institute, Inc. ("YAI") was founded in 1957. Today, YAI provides a wide range of in-home, residential, vocational training, educational and early intervention services to the developmentally disabled community of the State of New York**.** YAI's mission is to provide support and assistance to individuals with developmental and related disabilities and their families. To achieve its mission, YAI provides services whose goals are: (i) to assist individuals to develop to their fullest level of independence; (ii) to allow individuals choice in determining what their lives will be like; (iii) to help families stay together by providing relief, training and support of care givers which enhance the family's quality of life; and (iv) to provide excellent services as defined by the consumers of service. YAI is a New York not-for-profit organization, exempt from income tax under Section 501(c)(3) of the Internal Revenue Code and comparable New York State Law.

The financial statements of YAI are prepared on a consolidated basis among YAI and its affiliates. However, the financial information in this Appendix is limited to the operations of YAI, as the affiliates of YAI will not have any obligation to make payments under the Loan Agreement**.**

YAI's funding sources for its 2019 Fiscal Year were: OPWDD (approximately 99.5%) and miscellaneous other sources (approximately 0.5%), including DOH. YAI's funding sources for the first quarter of its 2020 Fiscal Year were: OPWDD (approximately 99.5%) and miscellaneous other sources (approximately 0.5%), including DOH.

**Description of Facilities and Financing Plan.** The Issuer will lend YAI the proceeds of the Series 2020 Bonds pursuant to the terms of the Loan Agreement. Such amount will be used to: (i) finance and reimburse YAI for certain costs of the 42nd Street Facility and the 42nd Street Project (as such terms are defined below), (ii) reimburse YAI for certain costs incurred in connection with the 35th Street Facility and the 35th Street Project (as such terms are defined below), (iii) pay the costs of issuance of the Series 2020 Bonds and (iv) fund the Debt Service Reserve Fund (Tax Exempt).

- The "42nd Street Facility" consists of approximately 70,000 square feet in Units 7NW and 8 of the approximately 1.9 million square foot, 37-story building located at 220 East 42nd Street, New York, New York. Approximately $5,419,278 of the proceeds of the Series 2020 Bonds will be used to finance and reimburse YAI for a portion of the costs of the "42nd Street Project", which consists of the renovation, furnishing and equipping of the 42nd Street Facility for use as an Article 28 Clinic, an Article 16 Clinic, YAI's headquarters and administrative space.

- The "35th Street Facility" consists of an approximately 11,070 square foot, 3-story building located at 314 East 35th Street, New York, New York. Approximately $597,340 of the proceeds of the Series 2020 Bonds will be used to reimburse YAI for the costs of redeeming certain outstanding bonds in the approximate amount of $635,000 issued by DASNY, the proceeds of which were used to finance and/or refinance a portion of the costs of the "35th Street Project", which consists of the renovation of the 35th Facility for use as a residence for adults with developmental disabilities.

The remainder of Series 2020 Bonds proceeds in the amount of approximately $946,375 will be used to pay costs of issuance and to fund the Debt Service Reserve Fund (Tax Exempt).

**42nd Street Facility.** The source of Public Funds for the 42nd Street Facility includes amounts payable by OPWDD. In the case of the portion of the 42nd Street Facility that is utilized for clinic purposes (the "Clinic Space"), Public Funds also include amounts payable by the State Department of Health ("DOH") or another State agency in connection with services provided by or on behalf of YAI at the 42nd Street Facility attributable to: (i) the Article 28 public health clinic ("Article 28 Clinic") and (ii) the Article 16 clinic ("Article 16 Clinic") certified by OPWDD to provide clinical services to individuals with developmental disabilities, as well as to those caregivers and other support staff whose participation in the service is deemed necessary to maintain the effectiveness of the treatment, enable the individual to remain in his/her current residential setting and enhance the individual's quality of life. YAI expects that the principal of and interest on the portion of the Series 2020A Bonds attributable to the 42nd Street Facility will be paid from Public Funds paid by OPWDD, from its general operating revenues and from fees for services paid by DOH or other State agencies for services provided at the Clinic Space. See "PART 5 - SOURCES OF REVENUE - New York State Office for People with Developmental Disabilities" and "- New York State Department of Health."

The Clinic Space is being operated by Premier Healthcare, Inc., a New York not-for-profit corporation ("PHC"), whose sole corporate member is YAI. PHC is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and has an equivalent exemption at the state and local levels. PHC is an outpatient diagnostic and treatment center offering health care services to the general public with a specialty in medical services for people with developmental and learning disabilities and their families in many sites throughout the New York area. PHC is a quality health care practice providing outpatient clinic services which include: primary health, pediatrics, internal medicine, dentistry (including desensitization), nutrition, gynecology, neurology, podiatry, psychiatry, physical therapy, occupational therapy, ophthalmology, speech pathology and psychology. PHC's primary source of revenue is patient service fees received from Medicaid, Medicare and other third-party payors. PHC occupies the Clinic Space pursuant to a lease agreement with YAI that extends for a lease term that terminates upon the maturity of the Ground Lease (as hereinafter defined).

YAI has been occupying and operating, along with PHC, the 42nd Street Facility since September 2019. A portion of the 42nd Street Project has not yet been completed, including: painting touch up; replacement of certain ceiling tiles; replacement of certain carpet tiles; replacement of a malfunctioning door; fixing a building duct that has insufficient air flow in one office; replacement of wallpaper in one area; delivery and installation of two conference room tables; delivery and installation of several missing workstation dividers; replacement of a broken workstation motor; and delivery and installation of three stools and two chairs. YAI expects to complete the 42nd Street Project by calendar year end, but no later than the Completion Deadline.

The Ground Lessor (as hereinafter defined) obtained a temporary certificate of occupancy for the 42nd Street Facility from the Department of Buildings of The City of New York which expired on November 9, 2020. YAI expects the Ground Lessor to receive either another temporary certificate of occupancy or the final certificate of occupancy for the 42nd Street Facility in due course. YAI has received an Operating Certificate from OPWDD for the Clinic Space attributable to the Article 16 Clinic, and PHC has received an Operating Certificate from DOH for the Clinic Space attributable to the Article 28 Clinic. See the information in the Official Statement entitled "PART 9 - BONDHOLDERS' RISKS - Zoning; Certificate of Occupancy."

YAI does not have fee title to the land upon which the building in which the 42nd Street Facility is located (the "Land"). The Land and the then-existing building and improvements on the Land (collectively, the "Premises") have been leased to SLG 220 News Lessee LLC (the "Ground Lessee") by SLG 220 News Owner LLC (the "Ground Lessor") pursuant to that certain Agreement of Lease (the "Ground Lease") dated as of December 15, 2015. The Ground Lessee subjected the Premises to a

condominium form of ownership pursuant to that certain Declaration Establishing a Plan for Condominium Ownership dated as of December 15, 2015, as amended (the "Declaration"). YAI owns the condominium units designated as Unit 7NW and Unit 8 in the Declaration. In addition YAI has mortgaged its interest in the 42nd Street Facility to the Ground Lessee (the "Ground Lessee Mortgage"). The Ground Lessee Mortgage does not secure the Series 2020 Bonds. See Appendix I - "Copies of the Condominium Declaration and Summaries of Certain Provisions of the Ground Lease, Omnibus Agreement and Sale and Purchase Agreement."

**35th Street Facility.** OPWDD has pre-approved pursuant to a Prior Property Approval ("PPA") the 35th Street Facility for reimbursement of amounts calculated to be approximately sufficient to pay the principal and interest costs incurred by YAI in connection with the 35th Street Facility, subject to annual appropriation by the State Legislature and so long as YAI operates the 35th Street Facility in accordance with certain defined standards. Assuming annual appropriation of sufficient funds and continued compliance with operational standards by YAI, it is expected that the amounts received by YAI pursuant to the PPA will be sufficient to pay the annual principal of and interest on the portion of the Series 2020B Bonds attributable to the 35th Street Facility; any difference between the two amounts is expected to be covered by the Pledged Revenues of YAI expected to be received for operating and administrative expenses associated with the 35th Street Facility.

**The Mortgage.** YAI's obligations under the Loan Agreement will be additionally secured by the Mortgage and Security Agreement to be entered into by YAI in favor of the Issuer and the Trustee (the "Mortgage"), pursuant to which YAI will grant a first mortgage lien on and security interest in its fee and other interests in the 35th Street Facility and the mortgaged personal property located therein (as further described in the Mortgage, collectively, the "Mortgaged Property"), such lien and security interest subject to applicable Permitted Encumbrances (as defined in the Indenture). The Mortgage will not constitute a lien on the 42nd Street Facility. The Issuer will assign its right, title and interest under the Mortgage to the Trustee pursuant to the Assignment of Mortgage and Security Agreement from the Issuer to the Trustee.

**Other Properties.** In addition to the 42nd Street Facility and the 35th Street Facility, YAI also owns approximately 81 and leases approximately 102 other properties in the Boroughs of New York City and in the Counties of Nassau, Rockland, Suffolk and Westchester.

**Employees.** YAI employs approximately 1,990 full-time and 1,468 part-time employees in the State of New York, including approximately 362 full-time and 62 part-time employees at the 42nd Street Facility and 42 full-time and 12 part-time employees at the 35th Street Facility. YAI does not expect that the operations of the 42nd Street Facility and the 35th Street Facility will require it to employ additional personnel.

**Debt Service Coverage.**

Calculated in accordance with the definition set forth in the Pledge and Security Agreement, the actual Total Debt Service Coverage Ratio of YAI for Fiscal Year 2019 and the pro forma Total Debt Service Coverage Ratio (which includes the debt service on the Series 2020 Bonds) are as follows:

| | 2019 Actual | 2019 Pro Forma |
|---|---|---|
| Revenues | $209,726,759 | $209,726,759 |
| Expenses | 209,485,120 | 209,485,120 |
| Net Income (after adj.) | 241,639 | 241,639 |
| | | |
| Less Nonoperating Revenue Items | 0 | 0 |
| Plus Nonoperating Expense Items | 106,933 | 106,933 |
| | | |
| Plus Depreciation and Amortization | 4,948,525 | 4,948,525 |
| Plus Current Interest Expense | 1,934,729 | 1,934,729 |
| | | |
| Cash Flow for Debt Service | 7,231,826 | 7,231,826 |
| Maximum Annual Debt Service (unaudited) | 4,478,370 | 4,904,520 |
| | | |
| Debt Service Coverage Ratio (DSCR) | 1.6148 | 1.4745 |

**Financials.** Audited financial statements for YAI and its affiliates for the fiscal years ended June 30, 2017, June 30, 2018 and June 30, 2019 were audited by Marks Paneth, LLP and are attached as Appendix B. Interim unaudited financial information for YAI only prepared by YAI's Management covering the period from July 1, 2019 through September 30, 2020 is attached as Appendix C. Significant accounting policies are contained in the notes to the audited financial statements, as well as Consolidating Statements for YAI and its affiliates.

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**Management's Summary of Financial Information and Results of Operations.**

*Summary of Financial information for Prior Five Fiscal Years — All Funds.*

The following is a summary of financial information for YAI for the most recently ended five (5) fiscal years for which audited financial statements were available and has been prepared by YAI's Management and derived from YAI's audited financial statements**.** The data contained in the following table should be read in conjunction with the audited financial statements and related notes presented in Appendix B; audited financial statements for the fiscal years ended June 30, 2016 and June 30, 2015 are available upon request**.** Note that only the operations of YAI are presented below, which results may differ from the reported figures in the audited financial statements respecting YAI and all its affiliates.

| | Fiscal Year Ended June 30, | | | | |
|---|---|---|---|---|---|
| | **2015** | **2016** | **2017** | **2018** | **2019** |
| Current Assets | $64,475,266 | $62,999,968 | $65,618,161 | $58,845,012 | $70,255,198 |
| Net Fixed | 32,833,234 | 34,535,025 | 34,881,726 | 35,493,589 | 41,829,121 |
| Assets Other | 8,694,842 | 4,624,395 | 2,352,081 | 2,651,718 | 2,632,962 |
| Total | 106,003,342 | 102,159,388 | 102,851,968 | 96,990,319 | 114,717,281 |
| Current Liabilities | 54,232,523 | 30,876,496 | 37,201,430 | 32,461,954 | 40,124,908 |
| Other Liabilities | 26,773,320 | 38,605,423 | 31,217,703 | 30,083,752 | 40,067,255 |
| Net Assets | 24,997,499 | 32,677,469 | 34,432,835 | 34,444,613 | 34,525,118 |
| Total | 106,003,342 | 102,159,388 | 102,851,968 | 96,990,319 | 114,717,281 |
| Operating Revenue: | | | | | |
| Program Revenue | 183,823,593 | 176,976,779 | 172,888,534 | 176,651,218 | 186,377,766 |
| Nonprogram Revenue | 0 | 2,112,526 | 1,272687 | 1,577,624 | 2,113,759 |
| Total | 183,823,593 | 179,089,305 | 174,161,221 | 178,228,842 | 188,491,525 |
| Operating Expenses | 180,928,721 | 171,409,335 | 172,405,855 | 178,217,064 | 188,304,087 |
| Change in Net Assets from Operations | 2,903,361 | 7,679,970 | 1,755,366 | 11,778 | 187,438 |
| Non-Operating Changes | 359,048 | 0 | 0 | 0 | (106,933) |
| Net Assets, Beginning of Year | 21,735,090 | 24,997,499 | 32,677,469 | 34,432,835 | 34,444,613 |
| Net Assets, End of Year | 24,997,499 | 32,677,469 | 34,432,835 | 34,444,613 | 34,525,118 |
| Cash & Equivalents | 17,109,932 | 13,100,241 | 18,585,550 | 14,315,782 | 9,068,076 |

*Management Discussion of Results of Operations.*

(1) Known Trends or Uncertainties Likely to Have an Impact on Liquidity: YAI is not aware of any trends or uncertainties that have had or are reasonably likely to have a material impact on YAI's short-term or long-term liquidity.

(2) Sources of Liquidity: (a) Internal - YAI had current assets of $70,255,198 and $58,845,012 at the end of fiscal years 2019 and 2018, respectively, (b) External - YAI has available an $28 million working capital line of credit with Bank of America, N.A. and Israel Discount Bank of New York for operating expenses and a $14 million line of credit with Bank of America, N.A. and Israel Discount Bank of New York for acquisition and renovation of program sites.

(3) Known Trends or Uncertainties Likely to have an Impact on Revenue or Income: The effects of the COVID-19 virus pandemic on the State of New York's fiscal health are unknown but expected to be negative. Cuts to State funding may be expected in the future.

(4) Income or Loss from Sources Other than Continuing Operations: Income from contributions, fund-raising, and interest for fiscal years 2019 and 2018 were $1,332,438 and $1,510,498, respectively. See Appendix C for interim unaudited financial information through September 30, 2020.

(5) Causes for Changes in Financial Statements: Changes in the number of persons served in a particular program normally affect the revenues of the program. The number of persons served by YAI's total operations have not materially increased or decreased in recent years.

**Liquidity and Capital Resources.** As of June 30, 2019 and June 30, 2018, YAI had $9,068,076 and $14,315,782 in unrestricted cash and cash equivalents and $26,537,970 and $23,330,764 in net accounts receivable, respectively.

As of June 30, 2020, YAI has available an $28 million working capital line of credit with Bank of America, N.A. and Israel Discount Bank of New York for operating expenses (the "Opex Line of Credit"). The Opex Line of Credit is secured by a lien on YAI's accounts receivable and all of its assets, which include Public Funds, and thus constitutes a Prior Pledge as to such funds**.** There was an outstanding balance of $25,232,996 as of September 30, 2020.

As of June 30, 2020, YAI has available a $14 million line of credit with Bank of America, N.A. and Israel Discount Bank of New York for the acquisition and renovation of program sites (the "Capex Line of Credit"). The funds drawn down on the Capex Line of Credit are converted into notes secured by related real property and accounts (the "Notes"), which include Public Funds, and thus constitutes a Prior Pledge as to such funds. There was a combined balance of $9,546,359 on the Capex Line and the Notes as of September 30, 2020. On October 30, 2020, YAI repaid $4 million of that balance with its available cash, and YAI intends to reimburse itself for that amount with proceeds of the Series 2020 Bonds.

**Long-Term Debt.** As of June 30, 2019 and June 30, 2018, YAI had $39,108,803 and $30,083,752, respectively, in outstanding long-term indebtedness including mortgages, bonds and capital leases payable (collectively, "YAI's Outstanding Long-Term Debt"), some of which debt is secured by a security interest in YAI's Public Funds, and thus constitutes a Prior Pledge as to such funds**.** See Note 7 of YAI's Audited Financial Statement for fiscal year ending June 30, 2019 under the title "Notes and Mortgages Payable." On April 28, 2020, YAI incurred bond debt in the amount of $8,465,000 pursuant to a loan from DASNY, which debt is secured by a security interest in YAI's Public Funds, and constitutes a Prior Pledge as to such funds.

**Prior Pledges.** The Opex Line of Credit and the Capex Line of Credit are secured by a lien on YAI's investment accounts, accounts receivable and real property, which include Public Funds, and thus constitutes a Prior Pledge as to such funds. A portion of YAI's Outstanding Long-Term Debt is secured by a security interest in certain receivables of and real properties owned by YAI, which may include YAI's Public Funds, and thus constitutes a Prior Pledge as to such funds. YAI's total Prior Pledges (including short term and long term debt) as of September 30, 2020 amount to $65,064,355.

**Contingencies; Pending or Potential Litigation.** According to YAI Management, there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending or threatened to challenge the authority or ability of YAI to continue to operate its facilities or to challenge title to its properties or seeking damages in excess of applicable insurance coverage or wherein an adverse determination might, in the opinion of YAI Management, materially adversely affect the ability of YAI to carry out the transactions contemplated in the Loan Agreement.

**Management.**

Directors and Officers: The affairs of YAI are governed by a Board of Trustees of not less than five and up to fifty persons. The officers are comprised of: Jeffery Mordos, Chairman, David Stafford, Vice Chairman, and Kevin Hogan, Treasurer. Other members of the Board are Jeffrey Lieberman, Lee Alexander, Eliot Green, Richard Rosenbaum, John Rufer and Lewis Lindenberg. A presence of at least seven members of the Board constitutes a quorum. The members of the Board serve without compensation.

Executive and Administrative Officers: George Contos is the Chief Executive Officer of YAI. Having served as YAI's Chairman of the Board of Trustees (2014), Co-Vice Chairman (2013), and Trustee (2012), Mr. Contos brings to the role an extensive knowledge of the organization's inner workings and infrastructure. Prior to becoming CEO, Mr. Contos was a wealth manager and registered investment advisor with New York-based Wealth Advisory Group and Park Avenue Securities. Formerly, as an attorney, Mr. Contos specialized in elder law, trust-based asset protection and Medicaid planning. Mr. Contos received his J.D. from Georgetown University Law Center, his B.A. from Tufts University and his Chartered Advisor in Philanthropy designation from The American College. YAI has several other key employees including Kevin Carey, Chief Financial Officer, and Ravi Dahiya, Chief Program Officer.

**Continuing Disclosure.**

During the past five years, YAI failed to provide certain secondary market disclosure pursuant to Rule 15c2-12 in connection with its previous continuing disclosure undertakings. Such failures include (i) late filings of its audited financial statements with respect to its fiscal year ended December 31, 2018 and (ii) late filing of its Annual Information with respect to its fiscal year ended December 31, 2018. YAI has adopted procedures to ensure the timely filing of required information pursuant to its continuing disclosure undertakings in the future.

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**APPENDIX B**

**YOUNG ADULT INSTITUTE, INC.**

**AUDITED FINANCIAL STATEMENTS**

**(FOR THE YEARS ENDED JUNE 30, 2019, JUNE 30, 2018 AND JUNE 30, 2017)**

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# YOUNG ADULT INSTITUTE, INC. AND AFFILIATES


## CONSOLIDATED FINANCIAL STATEMENTS WITH SUPPLEMENTARY INFORMATION
## (Together with Independent Auditors' Report)

## YEARS ENDED JUNE 30, 2019 AND 2018

MARKS PANETH

ACCOUNTANTS & ADVISORS

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**

**CONSOLIDATED FINANCIAL STATEMENTS**
**with Supplementary Information**
**(Together with Independent Auditors' Report)**

**YEARS ENDED JUNE 30, 2019 and 2018**

**CONTENTS**

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MARKS PANETH
ACCOUNTANTS & ADVISORS

# INDEPENDENT AUDITORS' REPORT

The Board of Trustees of the
Young Adult Institute, Inc. and Affiliates

**Report on the Financial Statements**

We have audited the accompanying consolidated financial statements of the Young Adult Institute, Inc. ("YAI") and its Affiliates: YAI/Rockland County Association for People with Disabilities ("YAI/RCAPD"), Premier HealthCare, Inc. ("PHC") and the International Institute for People with Disabilities of Puerto Rico, Inc. ("IIPD-PR") (YAI and its Affiliates are collectively referred to as the "Agency"), which comprise the consolidated statements of financial position as of June 30, 2019 and 2018, and the related consolidated statements of activities, functional expenses and cash flows for the years then ended, and the related notes to the consolidated financial statements.

***Management's Responsibility for the Financial Statements***

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

***Auditors' Responsibility***

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

***Opinion***

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of the Agency as of June 30, 2019 and 2018, and the changes in its net assets and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

***Emphasis of Matter***

As discussed in Note 2 to the consolidated financial statements, during the year ended June 30, 2019, the Agency has adopted Accounting Standards Update 2016-14, *Not-for-Profit Entities (Topic 958) – Presentation of Financial Statements of Not-for-Profit Entities*. Our opinion is not modified with respect to this matter.

Morison KSi
Independent member

***Other Matter - Supplementary Information***

Our audits were conducted for the purpose of forming an opinion on the consolidated financial statements as a whole. The consolidating schedules (shown on pages 18-19) are presented for the purposes of additional analysis of the consolidated financial statements, rather than to present the financial position, change in net assets and cash flows of the individual affiliates, and are not a required part of the consolidated financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the consolidated financial statements. The information has been subjected to the auditing procedures applied in the audits of the consolidated financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the consolidated financial statements or to the consolidated financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the consolidated financial statements as a whole.

New York, NY
November 27, 2019

MARKS PANETH
ACCOUNTANTS & ADVISORS

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**
**CONSOLIDATED STATEMENTS OF FINANCIAL POSITION**
**AS OF JUNE 30, 2019 AND 2018**

| | 2019 | 2018 |
|---|---|---|
| **ASSETS** | | |
| Cash and cash equivalents (Notes 2D and 10) | $ 9,783,009 | $ 15,036,602 |
| Short-term investments (Notes 2E and 5) | 13,263,816 | 16,952,115 |
| Accounts receivable, net (Notes 2F and 4) | 30,832,434 | 26,216,748 |
| Other receivables, net (Notes 2F and 8A) | 12,931,833 | 780,353 |
| Prepaid expenses and other assets | 6,920,266 | 3,704,682 |
| Property and equipment, net (Notes 2H, 6, 7 and 8B) | 44,396,252 | 37,704,820 |
| Debt service reserve (Note 2N) | 2,632,962 | 2,651,718 |
| **TOTAL ASSETS** | $ 120,760,572 | $ 103,047,038 |
| **LIABILITIES** | | |
| Accounts payable and accrued expenses | $ 11,431,654 | $ 9,217,691 |
| Accrued salary | 8,312,579 | 6,227,526 |
| Accrued vacation | 4,265,477 | 4,178,538 |
| Accrued pension (Note 11) | 2,139,603 | 2,205,311 |
| Other liabilities (Note 8F) | 10,199,143 | 1,525,022 |
| Due to funding sources (Note 8D) | 6,786,784 | 9,970,057 |
| Notes and mortgages payable (Notes 2M and 7) | 41,826,974 | 32,711,031 |
| Capital lease obligations (Note 8B) | 958,452 | 19,389 |
| Deferred rent (Note 2L) | 1,117,010 | 3,511,216 |
| **TOTAL LIABILITIES** | 87,037,676 | 69,565,781 |
| **COMMITMENTS AND CONTINGENCIES** (Note 8) | | |
| **NET ASSETS** (Note 2C) | | |
| Net assets without donor restrictions | | |
| Net invested in property and equipment | 17,804,870 | 17,402,225 |
| Available for operations | 15,215,817 | 15,316,838 |
| Total without donor restrictions | 33,020,687 | 32,719,063 |
| Net assets with donor restrictions (Note 9) | 702,209 | 762,194 |
| **TOTAL NET ASSETS** | 33,722,896 | 33,481,257 |
| **TOTAL LIABILITIES AND NET ASSETS** | $ 120,760,572 | $ 103,047,038 |

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**
**CONSOLIDATED STATEMENTS OF ACTIVITIES**
**FOR THE YEARS ENDED JUNE 30, 2019 AND 2018**

| | Without Donor Restrictions | With Donor Restrictions | Total 2019 | Total 2018 | Without Donor Restrictions | With Donor Restrictions |
|---|---|---|---|---|---|---|
| **Operating Revenue and Support** | | | | | | |
| Medicaid (Notes 2G, 2K and 12) | $ 171,807,267 | $ - | $ 171,807,267 | $ 167,293,418 | $ 167,293,418 | $ - |
| Government Grants (Note 2G) | 21,156,094 | - | 21,156,094 | 20,594,384 | 20,594,384 | - |
| Medicare and Client Fees (Notes 2G and 12) | 10,804,314 | - | 10,804,314 | 10,451,114 | 10,451,114 | - |
| Other Revenues | 3,819,973 | - | 3,819,973 | 1,750,139 | 1,750,139 | - |
| Contributions (Note 2I) | 888,124 | 58,645 | 946,769 | 1,240,849 | 735,681 | 505,168 |
| Special Events (net of direct costs of $587,972 and $354,100 for 2019 and 2018) | 190,351 | 203,049 | 393,400 | 300,875 | 194,185 | 106,690 |
| Investment Activity (Note 5) | 798,942 | - | 798,942 | 69,797 | 69,797 | - |
| Net Assets Released from Restrictions (Note 2C) | 321,679 | (321,679) | - | - | 560,270 | (560,270) |
| **Total Operating Revenue and Support** | 209,786,744 | (59,985) | 209,726,759 | 201,700,576 | 201,648,988 | 51,588 |
| **Operating Expenses:** | | | | | | |
| **Program Services:** | | | | | | |
| Residential Services | 99,074,748 | - | 99,074,748 | 89,830,985 | 89,830,985 | - |
| Day and Community Services | 61,083,324 | - | 61,083,324 | 62,457,601 | 62,457,601 | - |
| Clinical Services | 21,444,941 | - | 21,444,941 | 21,554,624 | 21,554,624 | - |
| Employment Services | 1,900,321 | - | 1,900,321 | 1,921,949 | 1,921,949 | - |
| **Total Program Services** | 183,503,334 | - | 183,503,334 | 175,765,159 | 175,765,159 | - |
| **Supporting Services:** | | | | | | |
| Management and General (Note 2J) | 25,354,153 | - | 25,354,153 | 23,598,986 | 23,598,986 | - |
| Fundraising | 520,700 | - | 520,700 | 600,604 | 600,604 | - |
| **Total Supporting Services** | 25,874,853 | - | 25,874,853 | 24,199,590 | 24,199,590 | - |
| **Total Operating Expenses** | 209,378,187 | - | 209,378,187 | 199,964,749 | 199,964,749 | - |
| **Change In Net Assets From Operations** | 408,557 | (59,985) | 348,572 | 1,735,827 | 1,684,239 | 51,588 |
| **Non-Operating Activities** | | | | | | |
| Gain from lease buyout (Note 8A) | 8,407,333 | - | 8,407,333 | - | - | - |
| Benefit obligation in excess of plan assets (Note 8F) | (8,514,266) | - | (8,514,266) | - | - | - |
| **Total Non-Operating Activities** | (106,933) | - | (106,933) | - | - | - |
| **CHANGE IN NET ASSETS** | 301,624 | (59,985) | 241,639 | 1,735,827 | 1,684,239 | 51,588 |
| Net Assets - Beginning of Year | 32,719,063 | 762,194 | 33,481,257 | 31,745,430 | 31,034,824 | 710,606 |
| **NET ASSETS - END OF YEAR** | $ 33,020,687 | $ 702,209 | $ 33,722,896 | $ 33,481,257 | $ 32,719,063 | $ 762,194 |

The accompanying notes are an integral part of these consolidated financial statements.

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**
**CONSOLIDATED STATEMENT OF FUNCTIONAL EXPENSES**
**FOR THE YEAR ENDED JUNE 30, 2019**
**(With Comparative Totals for the Year Ended June 30, 2018)**

| | For the Year Ended June 30, 2019 | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Program Services | | | | | Supporting Services | | | | |
| | Residential Services | Day and Community Services | Clinical Services | Employment Services | Total Program Services | Management and General | Fundraising | Total Supporting Services | Total 2019 | Total 2018 |
| Salaries | $ 61,349,078 | $ 29,259,389 | $ 12,004,916 | $ 1,304,469 | $ 103,917,852 | $ 11,942,353 | $ 260,734 | $ 12,203,087 | $ 116,120,939 | $ 111,058,158 |
| Payroll taxes and benefits (Note 11) | 16,231,735 | 7,787,160 | 2,655,618 | 339,325 | 27,013,838 | 3,177,557 | 68,010 | 3,245,567 | 30,259,405 | 31,077,666 |
| **Total Personnel Costs** | 77,580,813 | 37,046,549 | 14,660,534 | 1,643,794 | 130,931,690 | 15,119,910 | 328,744 | 15,448,654 | 146,380,344 | 142,135,824 |
| Contracted services | 1,379,360 | 329,008 | 1,695,454 | 139 | 3,403,961 | 1,318,610 | 2,966 | 1,321,576 | 4,725,537 | 2,406,698 |
| Professional fees | 445,900 | 212,038 | 39,807 | 5,736 | 703,481 | 1,842,946 | 13,686 | 1,856,632 | 2,560,113 | 2,299,551 |
| Program supplies | 2,931,842 | 1,762,073 | 462,167 | 1,629 | 5,157,711 | 55,039 | 17,326 | 72,365 | 5,230,076 | 4,815,900 |
| Food | 2,557,864 | 250,831 | 457 | 283 | 2,809,435 | 197 | 971 | 1,168 | 2,810,603 | 2,120,713 |
| Transportation (Note 8) | 1,628,056 | 12,586,218 | 229,608 | 40,264 | 14,484,146 | 99,090 | 7,327 | 106,417 | 14,590,563 | 13,650,049 |
| Office and equipment expense | 808,440 | 294,434 | 139,142 | 8,081 | 1,250,097 | 696,513 | 46,288 | 742,801 | 1,992,898 | 1,960,257 |
| Staff development and expenses | 305,071 | 209,199 | 115,370 | 3,672 | 633,312 | 506,235 | 9,699 | 515,934 | 1,149,246 | 952,908 |
| Occupancy (Note 8) | 2,329,549 | 5,135,702 | 1,979,257 | 132,005 | 9,576,513 | 160,931 | - | 160,931 | 9,737,444 | 10,867,739 |
| Repairs and maintenance | 1,741,038 | 863,600 | 355,146 | 10,001 | 2,969,785 | 307,510 | - | 307,510 | 3,277,295 | 3,018,230 |
| Insurance | 1,016,975 | 405,581 | 13,703 | 9,414 | 1,445,673 | 1,239,420 | - | 1,239,420 | 2,685,093 | 2,412,232 |
| Utilities | 1,290,660 | 518,122 | 130,734 | 5,996 | 1,945,512 | 200,889 | - | 200,889 | 2,146,401 | 2,182,264 |
| Telephone | 573,827 | 323,060 | 143,887 | 16,034 | 1,056,808 | 288,851 | 1,081 | 289,932 | 1,346,740 | 1,516,723 |
| Information technology | 456,771 | 388,520 | 675,760 | 15,946 | 1,536,997 | 1,702,666 | 29,206 | 1,731,872 | 3,268,869 | 2,913,746 |
| Depreciation and amortization (Notes 2H and 6) | 2,697,926 | 483,400 | 759,424 | 6,054 | 3,946,804 | 947,025 | 54,696 | 1,001,721 | 4,948,525 | 4,345,011 |
| Interest | 1,167,323 | 138,741 | - | 90 | 1,306,154 | 628,575 | - | 628,575 | 1,934,729 | 1,571,012 |
| Bad debt | 9,341 | 6,532 | 40,274 | 1,135 | 57,282 | - | - | - | 57,282 | 514,853 |
| Miscellaneous | 153,992 | 129,716 | 4,217 | 48 | 287,973 | 239,746 | 8,710 | 248,456 | 536,429 | 281,039 |
| **TOTAL EXPENSES** | $ 99,074,748 | $ 61,083,324 | $ 21,444,941 | $ 1,900,321 | $ 183,503,334 | $ 25,354,153 | $ 520,700 | $ 25,874,853 | $ 209,378,187 | $ 199,964,749 |

The accompanying notes are an integral part of these consolidated financial statements.

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**
**CONSOLIDATED STATEMENT OF FUNCTIONAL EXPENSES**
**FOR THE YEAR ENDED JUNE 30, 2018**

| | Program Services | | | | | Supporting Services | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Residential Services | Day and Community Services | Clinical Services | Employment Services | Total Program Services | Management and General | Fundraising | Total Supporting Services | Total 2018 |
| Salaries | $ 54,987,225 | $ 30,415,414 | $ 12,870,399 | $ 1,297,861 | $ 99,570,899 | $ 11,125,290 | $ 361,969 | $ 11,487,259 | $ 111,058,158 |
| Payroll taxes and benefits (Note 11) | 15,653,907 | 8,721,029 | 2,925,411 | 348,365 | 27,648,712 | 3,329,087 | 99,867 | 3,428,954 | 31,077,666 |
| **Total Personnel Costs** | 70,641,132 | 39,136,443 | 15,795,810 | 1,646,226 | 127,219,611 | 14,454,377 | 461,836 | 14,916,213 | 142,135,824 |
| Contracted services | 672,149 | 164,207 | 960,018 | 7,838 | 1,804,212 | 601,280 | 1,206 | 602,486 | 2,406,698 |
| Professional fees | 379,507 | 200,782 | 33,159 | 5,054 | 618,502 | 1,641,365 | 39,684 | 1,681,049 | 2,299,551 |
| Program supplies | 2,710,676 | 1,654,233 | 397,293 | 2,686 | 4,764,888 | 51,012 | - | 51,012 | 4,815,900 |
| Food | 1,912,176 | 203,168 | 425 | 117 | 2,115,886 | - | 4,827 | 4,827 | 2,120,713 |
| Transportation (Note 8) | 1,434,537 | 11,837,887 | 227,135 | 39,247 | 13,538,806 | 105,906 | 5,337 | 111,243 | 13,650,049 |
| Office and equipment expense | 788,628 | 332,419 | 163,001 | 15,050 | 1,299,098 | 606,066 | 55,093 | 661,159 | 1,960,257 |
| Staff development and expenses | 291,903 | 236,220 | 60,580 | 5,815 | 594,518 | 347,729 | 10,661 | 358,390 | 952,908 |
| Occupancy (Note 8) | 2,196,211 | 5,014,097 | 1,746,712 | 106,711 | 9,063,731 | 1,804,008 | - | 1,804,008 | 10,867,739 |
| Utilities | 1,292,321 | 522,739 | 145,072 | 14,727 | 1,974,859 | 207,405 | - | 207,405 | 2,182,264 |
| Repairs and maintenance | 1,684,320 | 719,980 | 316,060 | 13,688 | 2,734,048 | 284,182 | - | 284,182 | 3,018,230 |
| Insurance | 906,703 | 428,097 | 219,790 | 10,264 | 1,564,854 | 847,299 | 79 | 847,378 | 2,412,232 |
| Telephone | 593,934 | 320,589 | 129,618 | 27,991 | 1,072,132 | 443,408 | 1,183 | 444,591 | 1,516,723 |
| Information technology | 518,129 | 682,306 | 299,794 | 16,743 | 1,516,972 | 1,381,475 | 15,299 | 1,396,774 | 2,913,746 |
| Depreciation and amortization (Notes 2H and 6) | 2,686,291 | 466,000 | 921,948 | 5,750 | 4,079,989 | 263,418 | 1,604 | 265,022 | 4,345,011 |
| Interest | 1,035,464 | 110,762 | - | - | 1,146,226 | 424,786 | - | 424,786 | 1,571,012 |
| Bad debt | - | 378,029 | 133,290 | 3,534 | 514,853 | - | - | - | 514,853 |
| Miscellaneous | 86,904 | 49,643 | 4,919 | 508 | 141,974 | 135,270 | 3,795 | 139,065 | 281,039 |
| **TOTAL EXPENSES** | $ 89,830,985 | $ 62,457,601 | $ 21,554,624 | $ 1,921,949 | $ 175,765,159 | $ 23,598,986 | $ 600,604 | $ 24,199,590 | $ 199,964,749 |

The accompanying notes are an integral part of these consolidated financial statements.

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**
**CONSOLIDATED STATEMENTS OF CASH FLOWS**
**FOR THE YEARS ENDED JUNE 30, 2019 AND 2018**

| | 2019 | 2018 |
|---|---|---|
| **CASH FLOWS FROM OPERATING ACTIVITIES:** | | |
| Change in net assets | $ 241,639 | $ 1,735,827 |
| Adjustments to reconcile change in net assets to net cash used in operating activities: | | |
| Depreciation and amortization | 4,221,804 | 4,345,011 |
| Accelerated Depreciation due to move | 726,721 | - |
| Non-cash interest expense | 276,449 | 222,386 |
| Unrealized loss (gain) on short-term investments | (291,132) | 32,665 |
| Realized gain on short-term investments | (144,776) | (1,279) |
| Bad debt | 57,282 | 514,853 |
| Loss on disposal of property and equipment | 99,919 | - |
| Subtotal | 5,187,906 | 6,849,463 |
| Changes in operating assets and liabilities: | | |
| (Increase) decrease in assets: | | |
| Accounts receivable | (4,672,968) | 33,311 |
| Prepaid expenses and other assets | (3,215,584) | 784,800 |
| Other receivables | (12,151,480) | 216,857 |
| Increase (decrease) in liabilities: | | |
| Accounts payable and accrued expenses | 2,213,963 | (94,365) |
| Accrued salary | 2,085,053 | (188,986) |
| Accrued vacation | 86,939 | 1,112,768 |
| Accrued pension | (65,708) | (809,070) |
| Due to funding sources | (3,183,273) | (6,555,980) |
| Deferred rent | (2,394,206) | (261,196) |
| Other liabilities | 8,674,121 | (2,293,700) |
| **Net Cash Used in Operating Activities** | (7,435,237) | (1,206,098) |
| **CASH FLOWS FROM INVESTING ACTIVITIES:** | | |
| Purchases of property and equipment | (11,739,876) | (4,367,415) |
| Purchases of short-term investments | (8,342,665) | (10,778,138) |
| Proceeds from sale of short-term investments | 12,470,175 | 12,373,753 |
| Decrease in debt service reserve | 15,453 | 13,742 |
| **Net Cash Used in Investing Activities** | (7,596,913) | (2,758,058) |
| **CASH FLOWS FROM FINANCING ACTIVITIES:** | | |
| Proceeds from notes and mortgages | 21,322,845 | 3,921,982 |
| Principal repayments of notes and mortgages | (11,917,187) | (5,298,542) |
| Bond issuance Cost | (566,163) | - |
| Principal capital lease obligations | 1,043,369 | - |
| Principal repayments of capital lease obligations | (104,307) | (112,748) |
| **Net Cash Provided by (Used in) Financing Activities** | 9,778,557 | (1,489,308) |
| **NET DECREASE IN CASH AND CASH EQUIVALENTS** | (5,253,593) | (5,453,464) |
| Cash and Cash Equivalents - Beginning of Year | 15,036,602 | 20,490,066 |
| **CASH AND CASH EQUIVALENTS - END OF YEAR** | $ 9,783,009 | $ 15,036,602 |
| **Supplemental Disclosure of Cash Flow Information:** | | |
| Cash paid for interest | $ 1,658,280 | $ 1,348,626 |

The accompanying notes are an integral part of these consolidated financial statements.

## NOTE 1 – ORGANIZATION AND NATURE OF ACTIVITIES

The Young Adult Institute, Inc. ("YAI") is organized under the Not-for-Profit Corporation Law of New York State and was incorporated in 1964. YAI has been granted exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code. YAI has an equivalent exemption at the state and local levels.

YAI serves people of all ages with developmental and learning disabilities, from infants through the elderly, in a variety of community settings and at home through state-of-the-art programs that help to build skills, expand opportunities, and support community living. YAI's many programs and direct services benefit thousands of individuals and their families daily throughout the New York metropolitan area. YAI is funded primarily by Medicaid. YAI's has over 300 programs and direct services that benefit over 21,000 individuals and their families daily in ten counties throughout the New York metropolitan area. YAI is funded primarily by Medicaid.

YAI is part of a network of independent agencies, collectively known as the YAI Network. The network provides programs and support for people with intellectual and developmental disabilities throughout New York City, Westchester County, Rockland County, Long Island, New Jersey, and Puerto Rico. YAI is the sole corporate member of three of these agencies which have been included in the consolidated financial statements (collectively, the "Agency"). Further descriptions follow:

- YAI is the sole corporate member of Premier Healthcare, Inc. ("PHC"). PHC is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. PHC has an equivalent exemption at the state and local levels. PHC is an outpatient diagnostic and treatment center offering health care services to the general public with a specialty in medical services for people with developmental and learning disabilities and their families in many sites throughout the New York area. PHC is a quality health care practice providing outpatient clinic services which include: primary health, pediatrics, internal medicine, dentistry (including desensitization), nutrition, gynecology, neurology, podiatry, psychiatry, physical therapy, occupational therapy, ophthalmology, speech pathology and psychology. PHC's primary source of revenue is patient service fees received from Medicaid, Medicare and other third-party payors.

- YAI is the sole corporate member of the YAI/Rockland County Association for People with Disabilities ("YAI/RCAPD"). YAI/RCAPD has been granted exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code. YAI/RCAPD has an equivalent exemption at the state and local levels. YAI/RCAPD provides a wide variety of employment, residential, family support and social/recreational programs which promote essential social and vocational skills that enable people with learning and other developmental disabilities to lead independent, productive and dignified lives. YAI/RCAPD provides extensive support and education to families and guidance and training to professionals who are assisting people with developmental and learning disabilities. YAI/RCAPD is funded primarily by service fees paid by various New York State agencies and government grants. Effective July 1, 2019, YAI/RCAPD merged into YAI.

- YAI is the sole corporate member of the International Institute for People with Disabilities of Puerto Rico, Inc. ("IIPD-PR"), which was incorporated in 1998 under the Not-for-Profit Corporation Law of the Commonwealth of Puerto Rico. IIPD-PR has been granted exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code and has a similar exemption at the state and local levels. IIPD-PR's mission is to create employment opportunities for people with disabilities. By providing competitive employment opportunities for persons with disabilities, IIPD-PR demonstrated a commitment to independence, community inclusion and productivity for people with special needs. IIPD-PR did not have any programmatic operations during the fiscal years ending June 30, 2019 and 2018.

## NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**A.** ***Basis of Accounting and Use of Estimates -*** The Agency's consolidated financial statements have been prepared on the accrual basis of accounting. The Agency adheres to accounting principles generally accepted in the United States of America ("U.S. GAAP"). The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reported period. Actual results could differ from those estimates.

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

**B.** ***Basis of Consolidation*** **-** The Agency's accompanying consolidated financial statements include the activities of: YAI; PHC; YAI/RCAPD and IIPD-PR. YAI has consolidated these entities pursuant to U.S. GAAP due to its financial interest and control over them. All material intercompany transactions and balances have been eliminated upon consolidation.

**C.** ***Basis of Net Asset Presentation*** **-** The Agency maintains its net assets under the following three classes:

Without donor restrictions – represents resources available for support of the Agency's operations over which the Board of Trustees has discretionary control as well as investment in property, plant and equipment.

With donor restrictions – represents assets resulting from contributions and other inflows of assets whose use by the Agency is limited by donor-imposed stipulations that either expire by the passage of time or can be fulfilled and removed by actions of the Agency pursuant to those stipulations. When a restriction expires (that is, when a stipulated time restriction ends or purpose restriction is accomplished), net assets with donor restrictions are reclassified to net assets without donor restrictions and reported in the consolidated statements of activities as net assets released from restrictions.

**D.** ***Cash and Cash Equivalents*** **-** The Agency considers highly liquid debt instruments with maturities of three months or less, when acquired, to be cash and cash equivalents. Program participant funds included in cash and cash equivalents amounted to approximately $758,000 and $1,226,000, respectively, for the years ended June 30, 2019 and 2018. Such amounts are also included as a liability in the accompanying consolidated financial statements.

**E.** ***Short-term Investments and Fair Value Measurements*** **-** Short-term investments are carried at fair value. Fair value measurements are based on the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. In order to increase consistency and comparability in fair value measurements, a fair value hierarchy prioritizes observable and unobservable inputs used to measure fair value into three levels, as described in Note 5.

**F.** ***Allowance for Uncollectible Receivables*** **-** The Agency determines whether an allowance for uncollectible receivables should be provided for accounts receivable. Such estimate is based on management's assessment of the aged basis of its receivables, current economic conditions, historical experience, and collections subsequent to year end. As of June 30, 2019 and 2018, the Agency determined an allowance of $2,184,609 and $2,203,462, respectively, for accounts receivable was necessary. In addition, the Agency has established an allowance for doubtful accounts for other receivables due from network agencies of $1,223,376 and $1,182,988 as of June 30, 2019 and 2018, which representing nearly the entire balance due.

**G.** ***Revenue Recognition*** **-** The Agency records Medicaid revenue based on established rates multiplied by the number of units of service provided. Government grants are recorded as revenues to the extent that expenses have been incurred for the purposes specified by the grantors. To the extent amounts received exceed amounts spent, the Agency records a liability due to funding sources. Other revenue includes management programmatic services provided to other network agencies. Such revenue is recorded based on the support service agreement. Medicaid is accounted for under Accounting Standards Codification Topic 606. Government grants are accounted for under Accounting Standard Update ("ASU") 2018-08. Multi-year governmental contracts included under government grants are cancellable by the funder upon its sole discretion.

**H.** ***Property and Equipment*** **-** Property and equipment is stated at cost less accumulated depreciation or amortization. These amounts do not purport to represent replacement or realizable values. Depreciation is provided on a straight-line basis over the estimated useful lives of the assets. Leasehold improvements are amortized over the lesser of the useful lives of the improvements or the term of the applicable lease. Property and equipment is capitalized by the Agency provided its cost is $5,000 or more and its useful life is greater than one year.

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

**I.** ***Contributions -*** Unconditional contributions, including promises to give cash and other assets, are reported at their fair value on the date the contribution is received. The Agency reports gifts of cash and other assets as restricted support if they are received with donor stipulations that limit the use of donated assets. When a donor restriction expires, that is when a stipulated time restriction ends or purpose of restriction is accomplished, net assets with donor restrictions are reclassified as net assets without donor restrictions and reported in the consolidated statements of activities as net assets released from restrictions. Contributions are accounted for under ASU 2018-08.

**J.** ***Functional Expenses -*** The costs of providing program and supporting services of the Agency have been summarized on a functional basis in the consolidated statements of functional expenses. Accordingly, expenses that are not directly charged to programs and supporting services are allocated among programs and supporting services. The expenses that are allocated include occupancy and maintenance which is allocated on a square footage basis, as well as payroll taxes and benefits, which are allocated on the basis of estimates of time and effort.

**K.** ***Prior Period Revenue -*** There are occasions when funding source reimbursements for prior years are adjusted in the current year. Such adjustments may be due to retroactive rate adjustments, funding source audit findings, additional monies available over and above original contract amounts, rate appeal results, etc. Included in Medicaid revenue for the years ended June 30, 2019 and 2018 is an increase of $2,040,224 and $7,182,865, respectively, of prior year revenues relating to such adjustments.

**L.** ***Deferred Rent -*** The Agency leases real property under various operating leases. The leases include rent escalations. Since the rent increases over time, the Agency records an adjustment to rent expense each year to reflect its straight-lining policy. Straight-lining of rent gives rise to a timing difference that is reflected as deferred rent in the accompanying consolidated statements of financial position.

**M.** ***Bond Issuance Costs -*** Bond issuance costs consist of financing costs which are amortized over the life of the bond. The amortization is on the straight-line method which does not differ materially from the effective interest rate method.

**N.** ***Debt Service Reserves -*** Under the terms of the Industrial Development Agency ("IDA"), and Dormitory Authority of State of New York ("DASNY"), the Agency is required to deposit with the bond trustee an amount to be held in a debt service reserve fund, which will be utilized to satisfy the last payment required on the mortgage, or can be used prior to that point under the direction of IDA or DASNY to make any loan payments due by reason of default or other causes spelled out in the loan agreement. The debt service reserve is carried at market value in the accompanying consolidated statements of financial position.

**O.** ***Recent Accounting Pronouncements*** - Financial Accounting Standards Board ("FASB") ASU 2016-14, "Not-for-Profit Entities" was adopted by or the year ended June 30, 2019. ASU 2016-14 provides for a number of changes, including the presentation of two classes of net assets and enhanced disclosure on liquid resources and expense allocation. This change has no impact on the change in net assets for the year ended June 30, 2019. Net assets as of June 30, 2018 were renamed to conform to the new presentation.

FASB ASU 2014-09, "Revenue from Contracts with Customers" (Topic 606) was also adopted by the Agency for the year ended June 30, 2019. The core guidance in ASU 2014-09 is to recognize revenue to depict the transfer of services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those services as described in Note 12.

FASB ASU 2018-08, "Clarifying the Scope and Accounting Guidance for Contributions Received and Contributions Made" (Topic 958) was also adopted by the Agency for the year ended June 30, 2019. The core guidance is to assist entities in evaluating whether transactions should be accounted for as contributions (nonreciprocal transactions) or as exchange (reciprocal) transactions and determining whether a contribution is conditional as further descried in Note 2I.

## NOTE 3 – LIQUIDITY AND AVAILABILITY

As of June 30, 2019, financial assets available for general expenditures, that is, without donor or other restrictions limiting their use, within one year of the statement financial position date, include the following:

| | |
|---|---|
| Cash and cash equivalents | $ 9,783,009 |
| Short-term investments | 13,263,816 |
| Accounts receivable, net | 30,832,434 |
| Other receivables | 12,931,833 |
| Total Financial Assets | 66,811,092 |
| Less: Other receivables due in more than one year | (5,684,202) |
| Less: Program participant funds | (758,000) |
| Less: Net assets with donor restrictions | (702,209) |
| | $ 59,666,681 |

The Agency strives to maintain liquid financial assets sufficient to cover expenditures. Revenue from funders are expected to cover most expenses. Financial assets are available to fund any programs or supporting services with unanticipated shortfalls. In addition, as noted in Note 7, the Agency has multiple lines of credit totaling a maximum drawdown of $36 million.

## NOTE 4 – ACCOUNTS RECEIVABLE

Accounts receivable consists of the following as of June 30*:*

| | 2019 | 2018 |
|---|---|---|
| Due from Medicaid | $ 21,474,728 | $ 19,244,669 |
| Due from the State of New York | 7,634,546 | 6,297,129 |
| Due from the City of New York | 1,272,255 | 1,435,359 |
| Due from other sources | 2,635,514 | 1,443,053 |
| | 33,017,043 | 28,420,210 |
| Less: allowance for doubtful accounts | (2,184,609) | (2,203,462) |
| | $ 30,832,434 | $ 26,216,748 |

## NOTE 5 – SHORT-TERM INVESTMENTS AND FAIR VALUE MEASUREMENTS

Short-term investments consist of the following as of June 30:

| | 2019 | 2018 |
|---|---|---|
| Money market funds | $ 2,021,911 | $ 8,322,485 |
| Mutual funds | 2,134,739 | 1,009,606 |
| Corporate bonds | 3,797,753 | 3,016,319 |
| Government bonds | 4,770,442 | 4,089,585 |
| Alternative investments | 538,971 | 514,120 |
| | $ 13,263,816 | $ 16,952,115 |

Investment activity consists of the following for the years ended June 30:

| | 2019 | 2018 |
|---|---|---|
| Interest | $ 363,034 | $ 101,183 |
| Realized gain | 144,776 | 1,279 |
| Unrealized gain (loss) | 291,132 | (32,665) |
| | $ 798,942 | $ 69,797 |

**NOTE 5 – SHORT-TERM INVESTMENTS AND FAIR VALUE MEASUREMENTS (Continued)**

The fair value hierarchy defines three levels as follows:

Level 1: Valuations based on quoted prices (unadjusted) in an active market that are accessible at the measurement date for identical assets or liabilities. The fair value hierarchy gives the highest priority to Level 1 inputs.

Level 2: Valuations based on observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities; quoted prices in inactive markets; or model-derived valuations in which all significant inputs are observable or can be derived principally from or corroborated with observable market data.

Level 3: Valuations based on unobservable inputs are used when little or no market data is available. The fair value hierarchy gives the lowest priority to Level 3 inputs. The Agency has no level 3 investments.

In determining fair value, the Agency utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible in its assessment of fair value. Investments in money markets and U.S. Treasury bills are valued using market prices in active markets (Level 1). Fair value of these investments is determined by management through the investment managers. Level 1 instrument valuations are obtained from real-time quotes in active exchange markets involving identical assets. Corporate bonds, U.S. Government bonds and alternative investments are designated as Level 2 instruments and valuations are obtained from similar market or model derived valuations in which all significant inputs are observable or can be derived primarily from or corroborated with observable market data (credit risk/grade, maturities, etc.).

Financial assets carried at fair value as of June 30, 2019 are classified in the table as follows:

| | Level 1 | Level 2 | Total |
|---|---|---|---|
| Short-term Investments: | | | |
| Money market funds | $ 2,021,911 | $ - | $ 2,021,911 |
| Mutual funds | 2,134,739 | - | 2,134,739 |
| Corporate bonds | - | 3,797,753 | 3,797,753 |
| Government bonds | - | 4,770,442 | 4,770,442 |
| Alternative investments | - | 538,971 | 538,971 |
| Total Short-Term Investments | 4,156,650 | 9,107,166 | 13,263,816 |
| Debt Service Reserve Fund: | | | |
| U.S. Treasury bills | 2,632,962 | - | 2,632,962 |
| | $ 6,789,612 | $ 9,107,166 | $ 15,896,778 |

Financial assets carried at fair value as of June 30, 2018 are classified in the table as follows:

| | Level 1 | Level 2 | Total |
|---|---|---|---|
| Short-term Investments: | | | |
| Money market funds | $ 8,322,485 | $ - | $ 8,322,485 |
| Mutual funds | 1,009,606 | - | 1,009,606 |
| Corporate bonds | - | 3,016,319 | 3,016,319 |
| Government bonds | - | 4,089,585 | 4,089,585 |
| Alternative investments | - | 514,120 | 514,120 |
| Total Short-Term Investments | 9,297,154 | 7,654,961 | 16,952,115 |
| Debt Service Reserve Fund: | | | |
| U.S. Treasury bills | 2,651,718 | - | 2,651,718 |
| | $ 11,948,872 | $ 7,654,961 | $ 19,603,833 |

## NOTE 6 – PROPERTY AND EQUIPMENT

Property and equipment consists of the following as of June 30:

| | 2019 | 2018 | Estimated Useful Lives |
|---|---|---|---|
| Land | $ 11,772,584 | $ 10,812,584 | |
| Buildings and building improvements | 64,447,640 | 59,354,338 | 15-25 years |
| Leasehold improvements | 24,768,160 | 25,595,251 | 5-25 years |
| Furniture and equipment | 17,069,390 | 17,530,447 | 3-10 years |
| Construction in progress | 6,974,001 | 3,571,544 | |
| | 125,031,775 | 116,864,164 | |
| Less: accumulated depreciation | (80,635,523) | (79,159,344) | |
| | $ 44,396,252 | $ 37,704,820 | |

Depreciation and amortization expenses amounted to $4,948,525 and $4,345,011 for the years ended June 30, 2019 and 2018, respectively. During 2019, YAI accelerated the depreciation for leasehold improvements and furniture and equipment related to the central office move amounted to $726,721 of the depreciation and amortization expense. For the year ended June 30, 2019, fixed assets with a total cost of $3,572,265 and total accumulated depreciation of $3,472,346 were disposed. This resulted in a loss of $99,919 on disposal of property and equipment.

Construction in progress consists of construction at new locations and various renovations with a combined additional estimated cost to complete of approximately $12 million and estimated completion dates in fiscal year 2020.

## NOTE 7 – NOTES AND MORTGAGES PAYABLE

| | 2019 | 2018 |
|---|---|---|
| A. YAI has available an $18 million working capital line of credit with a bank carrying an interest rate of prime or 30-day London Inter-bank Offered Rate (“LIBOR”) (at YAI's election) plus 2% per annum, which at June 30, 2019 interest rates were between 4.68% and 4.72%. The loan is collateralized by YAI's accounts receivable and matures in December 2019. YAI is in the process of renewing the line of credit. The outstanding balance as of November 27, 2019 amounted to $15,793,606. | $ 10,842,911 | $ 7,842,911 |
| B. YAI has available a $14 million line of credit with a bank for the acquisition and renovation of program sites. Upon receipt of New York State prior property approvals, the funds drawn down on this line of credit are subsequently converted into notes. As of June 30, 2019, there were ten notes executed. The notes bear an interest rate of prime or 30-day LIBOR (at YAI's election) plus 2% per annum, resulting in a rate of between 4.68% and 4.72% at June 30, 2019. The notes are collateralized by related property and mature in December 2020. YAI is in the process of renewing the line of credit. The outstanding balance as of November 27, 2019 amounted to $10,324,023. | 5,132,305 | 4,928,613 |
| C. YAI has entered into various loan agreements with the Dormitory Authority of the State of New York. The loans carry interest rates ranging from 1.57% to 4.52% per annum, payable in semi-annual installments and have maturity dates ranging from August 2018 through July 2044. The loans are collateralized by YAI’s underlying real property. | 24,668,963 | 18,486,967 |

## NOTE 7 – NOTES AND MORTGAGES PAYABLE (Continued)

| | 2019 | 2018 |
|---|---|---|
| D. PHC has a $3 million revolving line of credit with a bank. The line has an interest rate equal to the prime rate plus 0.50% per annum. The line of credit is guaranteed by YAI. The outstanding balance as of November 27, 2019 amounted to $2,452,330. | $ 2,042,330 | $ 1,282,331 |
| E. YAI/RCAPD had a line of credit with a bank in the amount of $1 million. The line of credit had an interest rate at the lender's prime rate. The line of credit was guaranteed by YAI. The line of credit was paid off and closed in July 2019. | 675,841 | 650,870 |
| F. YAI/RCAPD financed the purchase and renovation of certain properties through the issuance of Civic Facility Revenue Bonds Series 2006J by the County of Rockland Industrial Development Agency (Special Needs Facilities Pooled Program) carrying average interest rates of: 4.75%, 4.74%, 4.78% and 4.75% per annum maturing in July 2020. The proceeds of the loan were used to finance the purchase and renovation of collateralized properties located in Rockland County, New York. | - | 765,001 |
| | 43,362,350 | 33,956,693 |
| Less: unamortized debt issuance costs | (1,535,376) | (1,245,662) |
| Notes and mortgages payable, net | $ 41,826,974 | $ 32,711,031 |

Most of the loans have provisions for loan covenants. The Agency was in compliance with these covenants as of and during the years ended June 30, 2019 and 2018. The unamortized debt issuance costs increased due to an addition of closing costs of $512,100 for new loans less non-cash interest expense of $222,386.

Required future annual principal payments are payable as follows for the years ending June 30:

| | |
|---|---|
| 2020 | $ 16,113,019 |
| 2021 | 7,144,125 |
| 2022 | 1,951,878 |
| 2023 | 2,543,641 |
| 2024 | 1,599,667 |
| Thereafter | 14,010,020 |
| | $ 43,362,350 |

## NOTE 8 – COMMITMENTS AND CONTINGENCIES

A. The Agency has a number of operating lease agreements. Annual future minimum rentals payable for real and personal property principally under long-term operating leases expiring at varying dates through 2038 follows:

| | Real Property | Vehicles and Equipment | Total |
|---|---|---|---|
| 2020 | $ 7,294,906 | $ 1,548,746 | $ 8,843,652 |
| 2021 | 3,144,170 | 1,352,579 | 4,496,749 |
| 2023 | 2,678,774 | 895,121 | 3,573,895 |
| 2024 | 2,481,601 | 494,248 | 2,975,849 |
| 2025 | 2,317,244 | - | 2,317,244 |
| Thereafter | 8,949,941 | - | 8,949,941 |
| | $ 26,866,636 | $ 4,290,694 | $ 31,157,330 |

YAI's 460 West 34th Street lease was due to expire in 2027. During 2019 fiscal year, the landlord bought out YAI's lease with a surrender agreement for approximately $8.4 million which, is included in other receivables as of June 30, 2019.

**NOTE 8 – COMMITMENTS AND CONTINGENCIES (Continued)**

YAI's 460 West 34th Street lease was due to expire in 2027. During 2019 fiscal year, the landlord bought out YAI's lease with a surrender agreement for approximately $8.4 million which, is included in other receivables as of June 30, 2019.

Rent expense (shown as occupancy and transportation in the accompanying consolidated statements of functional expenses) amounted to the following for the years ended June 30:

| | 2019 | 2018 |
|---|---|---|
| Real property | $ 8,312,242 | $ 9,732,662 |
| Vehicles and equipment | 1,507,656 | 938,977 |
| | $ 9,819,898 | $ 10,671,639 |

B. YAI has capital leases for computer and electronic equipment with maturities in 2024, and with the following annual payments:

| | |
|---|---|
| 2020 | $ 185,360 |
| 2021 | 197,872 |
| 2022 | 211,229 |
| 2023 | 225,489 |
| 2024 | 138,500 |
| | $ 958,450 |

C. The Agency believes it has no uncertain tax positions as of June 30, 2019 and 2018 in accordance with Accounting Standards Codification ("ASC") Topic 740, "Income Taxes," which provides standards for establishing and classifying any tax provisions for uncertain tax positions.

D. The Agency receives a significant portion of its revenue for services provided from third-party reimbursement through government agencies and Medicaid. These revenues are based on predetermined rates based on cost reimbursement principles and are subject to audit and retroactive adjustment by the government. The Agency, when appropriate, records an estimated liability to governmental agencies for any excess reimbursement over allowable costs and underspending of interim rates. As of June 30, 2019 and 2018, due to funding source represents overpayments from the 2012-2019 fiscal years for the Agency's programs. Such amounts are expected to be recouped by the funding sources.

E. The Agency is subject to legal proceedings and claims which have arisen in the ordinary course of its business and which have not been fully adjudicated. Management does not believe there will be a material adverse effect upon the financial position of the Agency.

F. During 2019 YAI recorded the benefit obligation for a Supplemental Pension Plan and Trust and Life Insurance Plan and Trust in excess of the assets of the plan for certain previous employees. The liability amounted to approximately $8.5 million and is included in other liabilities in the consolidated statements of financial position. The liability represents the present value of the future obligation calculated with a discount rate of 5.5% and social security life expectancy table.

G. Subsequent to year end, YAI has entered into a sale and purchase agreement of a condominium to relocate its central office. The purchase price for the unit is approximately $26 million, which shall be paid with interest calculated at the rate of 8% per annum and payable in monthly installments, commencing one hundred eighty days following the closing date of September 3, 2019.

## NOTE 8 – COMMITMENTS AND CONTINGENCIES (Continued)

Installment purchase payments are as follows:

| | |
|---|---|
| 2020 | $ 705,615 |
| 2021 | 2,116,844 |
| 2022 | 2,116,844 |
| 2023 | 2,116,844 |
| 2024 | 2,116,844 |
| Thereafter | 76,938,218 |
| | $ 86,111,209 |

## NOTE 9 – NET ASSETS WITH DONOR RESTRICTIONS

The Agency's net assets with donor restrictions subject to expenditure for the specified purpose of the passage of time consist of the following as of June 30:

| | 2019 | 2018 |
|---|---|---|
| Community of Learners and Linking Individuals to Necessary Knowledge | $ 692,209 | $ 752,194 |
| Endowment fund held in perpetuity | 10,000 | 10,000 |
| | $ 702,209 | $ 762,194 |

During the years ended June 30, 2019 and 2018, the Agency released net assets with donor restriction of $321,679 and $560,270, respectively, by satisfying donor-imposed purpose, passage of time restrictions and appropriation of endowment earnings by the Board of Trustees. Endowment net assets amounted to $10,000 as of both June 30, 2019 and 2018. As of June 30, 2019, and 2018, there were no underwater funds.

## NOTE 10 – CONCENTRATION

Cash and cash equivalents that potentially subject the Agency to a concentration of credit risk include cash and short-term investment accounts with banks that exceed the Federal Deposit Insurance Corporation ("FDIC") insurance limits. Cash and short-term investment accounts are insured up to $250,000 per depositor. As of June 30, 2019 and 2018, there was approximately $9 million and $15 million of cash and cash equivalents and $12 million and $13 million, respectively, of short-term investments held by one bank that exceeded FDIC limits.

## NOTE 11 – RETIREMENT PLANS

On July 1, 2015, the Agency adopted the YAI Network Affiliates 401(a) Plan. Employees are eligible to participate in the plan upon completion of one year of service after July 1, 2015 and when the employee worked at least 1,000 hours. Contributions to this plan are based on amounts determined in accordance with the Internal Revenue Code Section 415. The liability for the Agency amounted to approximately $2,140,000 and $2,205,000 as of June 30, 2019 and 2018, respectively. The expense for the Agency amounted to $2,115,000 and $2,185,000 for the years ended June 30, 2019 and 2018, respectively. In December 2018 the Agency adopted changes to both the YAI Network Affiliates 401(a) Plan and the YAI Network Affiliates 403(b) Plan. The changes included ending employer contributions into the 401(a) plan effective after the year ending June 30, 2019 and replacing that benefit with a 403(b) match effective July 1, 2019.

## NOTE 12 – REVENUE FROM CONTRACTS WITH CUSTOMERS

***Service Contracts*** **-** The Agency receives Medicaid revenue from contracts with the New York State Office for People with Developmental Disabilities (OPWDD) to provide support and services to individuals with developmental and learning disabilities, from infants through the elderly, in a variety of community settings and at home through state-of-the-art programs that help to build skills, expand opportunities, and support community living.. Revenue is reported at the amount that reflects the consideration to which the Agency expects to be entitled in exchange for providing the contracted services. These amounts are due from OPWDD, third-party payors (Medicare), individuals (Client Fees) and others, and include variable consideration for retroactive revenue adjustments due to settlement of audits, reviews and investigations.

## NOTE 12 – REVENUE FROM CONTRACTS WITH CUSTOMERS (Continued)

Generally, the Agency bills OPWDD, third-party payors and individuals after the services are performed or has completed their portion of the contract. Receivables are due in full when billed and revenue is recognized as performance obligations are satisfied.

***Performance Obligations*** **-** Performance obligations are determined based on the nature of the services provided by the Agency in accordance with the contract. Revenue for performance obligations satisfied over time is recognized as the services are provided. This method depicts the transfer of services over the term of the performance obligation based on the inputs needed to satisfy the obligation. The Agency measures the performance obligation from the beginning of the next month or day to the point when it is no longer required to provide services under the contract or has met the requirements to bill for the services provided, which is generally at the end of each month or period of time allowed based on the OPWDD stipulations.

All performance obligations relate to contracts with a duration of less than one year, therefore, there are no performance obligations or contract balances that are unsatisfied as of June 30, 2019. The performance obligations for these contracts are completed when the service is completed and upon submission of required documentation. The Agency determines the transaction price based on established rates and contracts for services provided.

Program service fees consist of revenues for the following programs:

| | Medicaid | Medicare and Client Fees | Total |
|---|---|---|---|
| Residential Services | $ 86,933,165 | $ 8,081,980 | $ 95,015,145 |
| Day and Community Services | 60,157,357 | 97,910 | 60,255,267 |
| Clinical Services | 21,800,952 | 2,622,924 | 24,423,876 |
| Employment Services | 826,139 | 1,500 | 827,639 |
| Other | 2,089,654 | - | 2,089,654 |
| | $ 171,807,267 | $ 10,804,314 | $ 182,611,581 |

## NOTE 13 – SUBSEQUENT EVENTS

Management has evaluated, for potential recognition or disclosure, events subsequent to the date of the consolidated statement of financial position through November 27, 2019, the date the consolidated financial statements were available to be issued.

Effective July 1, 2019, YAI became the sole corporate member of The STAR Program d/b/a Manhattan Star Academy (“MSA”). MSA is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. MSA offers a continuum of care for school-age children with a diverse range of diagnoses, including developmental delays, autism spectrum disorders and speech language disorders.

Effective July 1, 2019, YAI became the sole corporate member of The International Academy of Hope (“iHOPE”). iHOPE is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. iHOPE provides educational and related services to children, adolescents, and young adults from ages 5 years to 21 years old, who have sustained acquired brain injuries or other brain-based disorders who cannot be served in their local school systems.

After receiving approval from the YAI and YAI/RCAPD Board of Trustees, OPWDD, and the New York State Attorney General’s Office YAI and YAI/RCAPD entered into a transaction whereby all of YAI/RCAPD’s program contracts, assets and liabilities were transferred to YAI. Effective July 1, 2019, YAI/RCAPD ceased operations with the Certificate of Incorporation of YAI being the Certificate of Incorporation of the surviving entity without any amendments or changes. Subsequent to the effective date of the transfer, the business of the combined corporations is conducted through YAI as the surviving organization.

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**
**CONSOLIDATING SCHEDULE OF FINANCIAL POSITION**
**AS OF JUNE 30, 2019**

| | YAI | YAI/RCAPD | PHC | IIPD-PR | Consolidating Eliminations | Total 2019 |
|---|---|---|---|---|---|---|
| **ASSETS** | | | | | | |
| Cash and cash equivalents | $ 9,068,076 | $ 275,769 | $ 437,415 | $ 1,749 | $ - | $ 9,783,009 |
| Short-term investments | 13,263,816 | - | - | - | - | 13,263,816 |
| Accounts receivable, net | 26,537,970 | 1,362,240 | 2,932,224 | - | - | 30,832,434 |
| Other receivables, net | 14,924,775 | - | - | - | (1,992,942) | 12,931,833 |
| Prepaid expenses and other assets | 6,460,561 | 147,003 | 307,163 | 5,539 | - | 6,920,266 |
| Property and equipment, net | 41,829,121 | 2,125,179 | 441,952 | - | - | 44,396,252 |
| Debt service reserve | 2,632,962 | - | - | - | - | 2,632,962 |
| **TOTAL ASSETS** | $ 114,717,281 | $ 3,910,191 | $ 4,118,754 | $ 7,288 | $ (1,992,942) | $ 120,760,572 |
| **LIABILITIES** | | | | | | |
| Accounts payable and accrued expenses | $ 9,930,975 | $ 714,134 | $ 786,545 | $ - | $ - | $ 11,431,654 |
| Accrued salary | 7,730,406 | 157,341 | 424,832 | - | - | 8,312,579 |
| Accrued vacation | 3,790,515 | 90,906 | 384,056 | - | - | 4,265,477 |
| Accrued pension | 2,000,915 | 44,057 | 94,631 | - | - | 2,139,603 |
| Other liabilities | 10,199,143 | - | - | - | - | 10,199,143 |
| Due to funding sources | 5,480,034 | 195,273 | 1,111,477 | - | - | 6,786,784 |
| Notes and mortgages payable | 39,108,803 | 675,841 | 2,042,330 | - | - | 41,826,974 |
| Capital lease obligations | 958,452 | - | - | - | - | 958,452 |
| Due to related party | - | 1,035,128 | 6,797,878 | 603,524 | (8,436,530) | - |
| Deferred rent | 992,920 | 34,067 | 90,023 | - | - | 1,117,010 |
| **TOTAL LIABILITIES** | 80,192,163 | 2,946,747 | 11,731,772 | 603,524 | (8,436,530) | 87,037,676 |
| **COMMITMENTS AND CONTINGENCIES** | | | | | | |
| **NET ASSETS (DEFICIT)** | | | | | | |
| Net assets without donor restrictions | | | | | | |
| Net invested in property and equipment | 15,237,739 | 2,125,179 | 441,952 | - | - | 17,804,870 |
| Available for operations | 18,595,170 | (1,171,735) | (8,054,970) | (596,236) | 6,443,588 | 15,215,817 |
| Total net assets without donor restrictions | 33,832,909 | 953,444 | (7,613,018) | (596,236) | 6,443,588 | 33,020,687 |
| Net Assets with donor restrictions | 692,209 | 10,000 | - | - | - | 702,209 |
| **TOTAL NET ASSETS (DEFICIT)** | 34,525,118 | 963,444 | (7,613,018) | (596,236) | 6,443,588 | 33,722,896 |
| **TOTAL LIABILITIES AND NET ASSETS (DEFICIT)** | $ 114,717,281 | $ 3,910,191 | $ 4,118,754 | $ 7,288 | $ (1,992,942) | $ 120,760,572 |

See independent auditors' report.

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**
**CONSOLIDATING SCHEDULE OF ACTIVITIES**
**FOR THE YEAR ENDED JUNE 30, 2019**

| | Young Adult Institute, Inc. | | | YAI/Rockland County Association for People with Disabilities | | | Premier Healthcare, Inc. | | International Institute for People with Disabilities of Puerto Rico, Inc. | | | Consolidated Total | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Without Donor Restrictions | With Donor Restrictions | Total | Without Donor Restrictions | With Donor Restrictions | Total | Without Donor Restrictions | Total | Unrestricted | Total | Consolidating Eliminations | Without Donor Restrictions | With Donor Restrictions | Total 2019 |
| **Operating Revenue and Support** | | | | | | | | | | | | | | |
| Medicaid | $ 153,844,277 | $ - | $ 153,844,277 | $ 4,551,789 | $ - | $ 4,551,789 | 13,411,201 | $ 13,411,201 | $ - | $ - | $ - | $ 171,807,267 | $ - | $ 171,807,267 |
| Government Grants | 18,957,757 | - | 18,957,757 | 2,198,337 | - | 2,198,337 | - | - | - | - | - | 21,156,094 | - | 21,156,094 |
| Medicare and Client fees | 7,732,305 | - | 7,732,305 | 449,085 | - | 449,085 | 2,622,924 | 2,622,924 | - | - | - | 10,804,314 | - | 10,804,314 |
| Other Revenues | 5,843,427 | - | 5,843,427 | - | - | - | - | - | - | - | (2,023,454) | 3,819,973 | - | 3,819,973 |
| Contributions | 880,393 | 58,645 | 939,038 | 7,328 | - | 7,328 | 403 | 403 | - | - | - | 888,124 | 58,645 | 946,769 |
| Special Events (net of direct costs of $587,972 and $354,100 for 2019 and 2018, respectively) | 190,351 | 203,049 | 393,400 | - | - | - | - | - | - | - | - | 190,351 | 203,049.00 | 393,400 |
| Investment Activity | 781,321 | - | 781,321 | 14,614 | - | 14,614 | 3,007 | 3,007 | - | - | - | 798,942 | - | 798,942 |
| Net Assets Released from Restrictions | 321,679 | (321,679) | - | - | - | - | - | - | - | - | - | 321,679.00 | (321,679.00) | - |
| **Total Operating Revenue and Support** | 188,551,510 | (59,985) | 188,491,525 | 7,221,153 | - | 7,221,153 | 16,037,535 | 16,037,535 | - | - | (2,023,454) | 209,786,744 | (59,985) | 209,726,759 |
| **Operating Expenses:** | | | | | | | | | | | | | | |
| **Program Services:** | | | | | | | | | | | | | | |
| Residential Services | 94,598,475 | - | 94,598,475 | 4,476,273 | - | 4,476,273 | - | - | - | - | | 99,074,748 | - | 99,074,748 |
| Day and Community Services | 60,586,699 | - | 60,586,699 | 496,625 | - | 496,625 | - | - | - | - | - | 61,083,324 | - | 61,083,324 |
| Clinical Services | 8,064,462 | - | 8,064,462 | - | - | - | 13,380,479 | 13,380,479 | - | - | - | 21,444,941 | - | 21,444,941 |
| Employment Services | 1,194,977 | - | 1,194,977 | 705,344 | - | 705,344 | - | - | - | - | - | 1,900,321 | - | 1,900,321 |
| **Total Program Services** | 164,444,613 | - | 164,444,613 | 5,678,242 | - | 5,678,242 | 13,380,479 | 13,380,479 | - | - | - | 183,503,334 | - | 183,503,334 |
| **Supporting Services:** | | | | | | | | | | | | | | |
| Management and General | 23,338,774 | - | 23,338,774 | 1,069,668 | - | 1,069,668 | 2,965,371 | 2,965,371 | 3,794 | 3,794 | (2,023,454) | 25,354,153 | - | 25,354,153 |
| Fundraising | 520,700 | - | 520,700 | - | - | - | - | - | - | - | - | 520,700 | - | 520,700 |
| **Total Supporting Services** | 23,859,474 | - | 23,859,474 | 1,069,668 | - | 1,069,668 | 2,965,371 | 2,965,371 | 3,794 | 3,794 | (2,023,454) | 25,874,853 | - | 25,874,853 |
| **Total Operating Expenses** | 188,304,087 | - | 188,304,087 | 6,747,910 | - | 6,747,910 | 16,345,850 | 16,345,850 | 3,794 | 3,794 | (2,023,454) | 209,378,187 | - | 209,378,187 |
| **Change In Net Assets From Operations** | 247,423 | (59,985) | 187,438 | 473,243 | - | 473,243 | (308,315) | (308,315) | (3,794) | (3,794) | - | 408,557 | (59,985) | 348,572 |
| **Non-Operating:** | | | | | | | | | | | | | | |
| Gain from lease buyout | 8,407,333 | | 8,407,333 | - | - | - | - | - | - | - | - | 8,407,333 | | 8,407,333 |
| Benefit obligation in excess of plan assets | (8,514,266) | - | (8,514,266) | - | - | - | - | - | - | - | - | (8,514,266) | - | (8,514,266) |
| **Total Non-Operating** | (106,933) | - | (106,933) | - | - | - | - | - | - | - | - | (106,933) | - | (106,933) |
| **CHANGE IN NET ASSETS** | 140,490 | (59,985) | 80,505 | 473,243 | - | 473,243 | (308,315) | (308,315) | (3,794) | (3,794) | - | 301,624 | (59,985) | 241,639 |
| Net Assets - Beginning of Year | 33,692,419 | 752,194 | 34,444,613 | 480,201 | 10,000 | 490,201 | (7,304,703) | (7,304,703) | (592,442) | (592,442) | 6,443,588 | 32,719,063 | 762,194 | 33,481,257 |
| **NET ASSETS - END OF YEAR** | $ 33,832,909 | $ 692,209 | $ 34,525,118 | $ 953,444 | $ 10,000 | $ 963,444 | $ (7,613,018) | $ (7,613,018) | $ (596,236) | $ (596,236) | $ 6,443,588 | $ 33,020,687 | $ 702,209 | $ 33,722,896 |

See independent auditors' report.

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# Young Adult Institute, Inc. and Affiliates


## Consolidated Financial Statements with Supplementary Information

(Together with Independent Auditors' Report)

## Years Ended June 30, 2018 and 2017

MARKS PANETH

ACCOUNTANTS & ADVISORS

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**

**CONSOLIDATED FINANCIAL STATEMENTS**
**with Supplementary Information**
**(Together with Independent Auditors' Report)**

**YEARS ENDED JUNE 30, 2018 and 2017**

**CONTENTS**

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MARKS PANETH
ACCOUNTANTS & ADVISORS

# INDEPENDENT AUDITORS' REPORT

The Board of Directors of the
Young Adult Institute, Inc. and Affiliates

**Report on the Consolidated Financial Statements**

We have audited the accompanying consolidated financial statements of the Young Adult Institute, Inc. ("YAI") and its Affiliates: Rockland County Association for People with Disabilities ("RCAPD"), Premier HealthCare, Inc. ("PHC") and the International Institute for People with Disabilities of Puerto Rico, Inc. ("IIPD-PR") (YAI and its Affiliates are collectively referred to as the "Agency") which comprise the consolidated statements of financial position as of June 30, 2018 and 2017, and the related consolidated statements of activities, functional expenses and cash flows for the years then ended, and the related notes to the consolidated financial statements.

***Management's Responsibility for the Financial Statements***

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

***Auditors' Responsibility***

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

***Opinion***

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of the Agency as of June 30, 2018 and 2017, and the changes in its net assets and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Morison KSi
Independent member

***Other Matter - Supplementary Information***

Our audits were conducted for the purpose of forming an opinion on the consolidated financial statements as a whole. The consolidating schedules (shown on pages 18-19) are presented for the purposes of additional analysis of the consolidated financial statements, rather than to present the financial position, change in net assets and cash flows of the individual affiliates, and are not a required part of the consolidated financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the consolidated financial statements. The information has been subjected to the auditing procedures applied in the audits of the consolidated financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the consolidated financial statements or to the consolidated financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the consolidated financial statements as a whole.

New York, NY
November 30, 2018

MARKS PANETH

ACCOUNTANTS & ADVISORS

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**
**CONSOLIDATED STATEMENTS OF FINANCIAL POSITION**
**AS OF JUNE 30, 2018 AND 2017**

| | 2018 | 2017 |
|---|---|---|
| **ASSETS** | | |
| Cash and cash equivalents (Notes 2D and 11) | $ 15,036,602 | $ 20,490,066 |
| Short-term Investments (Notes 2E and 4) | 16,952,115 | 18,579,116 |
| Accounts receivable, net (Notes 2F and 3) | 26,216,748 | 26,764,912 |
| Other receivables, net (Note 2F) | 780,353 | 997,210 |
| Prepaid expenses and other assets | 3,704,682 | 4,489,482 |
| Property and equipment, net (Notes 2H, 5, 6 and 7) | 37,704,820 | 37,682,416 |
| Debt service reserve (Notes 2N and 4) | 2,651,718 | 2,665,460 |
| **TOTAL ASSETS** | $ 103,047,038 | $ 111,668,662 |
| **LIABILITIES** | | |
| Accounts payable and accrued expenses | $ 9,217,691 | $ 9,312,056 |
| Accrued salary | 6,227,526 | 6,416,512 |
| Accrued vacation | 4,178,538 | 3,065,770 |
| Accrued pension (Note 12) | 2,205,311 | 3,014,381 |
| Other liabilities | 1,525,022 | 3,818,722 |
| Due to funding sources (Note 8C) | 9,970,057 | 16,526,037 |
| Notes and mortgages payable (Notes 2M and 7) | 32,711,031 | 33,865,205 |
| Capital lease obligations (Note 6) | 19,389 | 132,137 |
| Deferred rent (Note 2L) | 3,511,216 | 3,772,412 |
| **TOTAL LIABILITIES** | 69,565,781 | 79,923,232 |
| **COMMITMENTS AND CONTINGENCIES** (Note 8) | | |
| **NET ASSETS** (Note 2C) | | |
| Unrestricted | | |
| Invested in property and equipment | 17,402,225 | 15,193,445 |
| Available for operations | 15,316,838 | 15,841,379 |
| Total Unrestricted | 32,719,063 | 31,034,824 |
| Temporarily restricted (Note 9) | 752,194 | 700,606 |
| Permanently restricted (Note 10) | 10,000 | 10,000 |
| **TOTAL NET ASSETS** | 33,481,257 | 31,745,430 |
| **TOTAL LIABILITIES AND NET ASSETS** | $ 103,047,038 | $ 111,668,662 |

The accompanying notes are an integral part of these consolidated financial statements.

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**
**CONSOLIDATED STATEMENTS OF ACTIVITIES**
**FOR THE YEARS ENDED JUNE 30, 2018 AND 2017**

| | Unrestricted | Temporarily Restricted | Permanently Restricted | Total 2018 | Total 2017 | Unrestricted | Temporarily Restricted | Permanently Restricted |
|---|---|---|---|---|---|---|---|---|
| **REVENUE AND SUPPORT** | | | | | | | | |
| Medicaid (Notes 2G and 2K) | $ 167,293,418 | $ - | $ - | $ 167,293,418 | $ 162,511,388 | $ 162,511,388 | $ - | $ - |
| Government Contracts (Note 2G) | 20,594,384 | - | - | 20,594,384 | 19,985,946 | 19,985,946 | - | - |
| Medicare and Client Fees (Note 2G) | 10,451,114 | - | - | 10,451,114 | 9,830,514 | 9,830,514 | - | - |
| Vocational Rehabilitation | - | - | - | - | 34,200 | 34,200 | - | - |
| Other Revenues | 1,750,139 | - | - | 1,750,139 | 1,736,671 | 1,736,671 | - | - |
| Contributions (Note 2I) | 735,681 | 505,168 | - | 1,240,849 | 760,780 | 590,761 | 170,019 | - |
| Special Events (net of direct costs of $354,100 and $280,751 for 2018 and 2017) | 194,185 | 106,690 | - | 300,875 | 439,296 | 325,532 | 113,764 | - |
| Investment Activity (Note 4) | 69,797 | - | - | 69,797 | 101,097 | 101,097 | - | - |
| Net Assets Released from Restrictions (Note 2C) | 560,270 | (560,270) | - | - | - | 679,862 | (679,862) | - |
| **TOTAL REVENUE AND SUPPORT** | 201,648,988 | 51,588 | - | 201,700,576 | 195,399,892 | 195,795,971 | (396,079) | - |
| **EXPENSES:** | | | | | | | | |
| **Program Services:** | | | | | | | | |
| Residential Services | 89,830,985 | - | - | 89,830,985 | 86,188,459 | 86,188,459 | - | - |
| Day and Community Services | 62,457,601 | - | - | 62,457,601 | 61,528,924 | 61,528,924 | - | - |
| Clinical Services | 21,554,624 | - | - | 21,554,624 | 21,006,826 | 21,006,826 | - | - |
| Employment Services | 1,921,949 | - | - | 1,921,949 | 1,741,892 | 1,741,892 | - | - |
| **Total Program Services** | 175,765,159 | - | - | 175,765,159 | 170,466,101 | 170,466,101 | - | - |
| **Supporting Services:** | | | | | | | | |
| Management and General (Note 2J) | 23,598,986 | - | - | 23,598,986 | 23,538,859 | 23,538,859 | - | - |
| Fundraising | 600,604 | - | - | 600,604 | 537,870 | 537,870 | - | - |
| **Total Supporting Services** | 24,199,590 | - | - | 24,199,590 | 24,076,729 | 24,076,729 | - | - |
| **TOTAL EXPENSES** | 199,964,749 | - | - | 199,964,749 | 194,542,830 | 194,542,830 | - | - |
| **CHANGE IN NET ASSETS** | 1,684,239 | 51,588 | - | 1,735,827 | 857,062 | 1,253,141 | (396,079) | - |
| Net Assets - Beginning of Year | 31,034,824 | 700,606 | 10,000 | 31,745,430 | 30,888,368 | 29,781,683 | 1,096,685 | 10,000 |
| **NET ASSETS - END OF YEAR** | $ 32,719,063 | $ 752,194 | $ 10,000 | $ 33,481,257 | $ 31,745,430 | $ 31,034,824 | $ 700,606 | $ 10,000 |

The accompanying notes are an integral part of these consolidated financial statements.

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**
**CONSOLIDATED STATEMENT OF FUNCTIONAL EXPENSES**
**FOR THE YEAR ENDED JUNE 30, 2018**
**(With Comparative Totals for the Year Ended June 30, 2017)**

| | For the Year Ended June 30, 2018 | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Program Services | | | | | Supporting Services | | | | |
| | Residential Services | Day and Community Services | Clinical Services | Employment Services | Total Program Services | Management and General | Fundraising | Total Supporting Services | Total 2018 | Total 2017 |
| Salaries | $ 54,987,225 | $ 30,415,414 | $ 12,870,399 | $ 1,297,861 | $ 99,570,899 | $ 11,125,290 | $ 361,969 | $ 11,487,259 | $ 111,058,158 | $ 105,391,424 |
| Payroll taxes and benefits (Note 12) | 15,653,907 | 8,721,029 | 2,925,411 | 348,365 | 27,648,712 | 3,329,087 | 99,867 | 3,428,954 | 31,077,666 | 29,778,661 |
| **Total Personnel Costs** | 70,641,132 | 39,136,443 | 15,795,810 | 1,646,226 | 127,219,611 | 14,454,377 | 461,836 | 14,916,213 | 142,135,824 | 135,170,085 |
| Contracted services | 672,149 | 164,207 | 960,018 | 7,838 | 1,804,212 | 601,280 | 1,206 | 602,486 | 2,406,698 | 3,289,918 |
| Professional fees | 379,507 | 200,782 | 33,159 | 5,054 | 618,502 | 1,641,365 | 39,684 | 1,681,049 | 2,299,551 | 3,633,731 |
| Program supplies | 2,710,676 | 1,654,233 | 397,293 | 2,686 | 4,764,888 | 51,012 | - | 51,012 | 4,815,900 | 4,266,426 |
| Food | 1,912,176 | 203,168 | 425 | 117 | 2,115,886 | - | 4,827 | 4,827 | 2,120,713 | 1,986,027 |
| Transportation (Note 8) | 1,434,537 | 11,837,887 | 227,135 | 39,247 | 13,538,806 | 105,906 | 5,337 | 111,243 | 13,650,049 | 12,177,705 |
| Office and equipment expense | 788,628 | 332,419 | 163,001 | 15,050 | 1,299,098 | 606,066 | 55,093 | 661,159 | 1,960,257 | 1,981,835 |
| Staff development and expenses | 291,903 | 236,220 | 60,580 | 5,815 | 594,518 | 347,729 | 10,661 | 358,390 | 952,908 | 795,470 |
| Occupancy (Note 8) | 2,196,211 | 5,014,097 | 1,746,712 | 106,711 | 9,063,731 | 1,804,008 | - | 1,804,008 | 10,867,739 | 11,205,547 |
| Repairs and maintenance | 1,684,320 | 719,980 | 316,060 | 13,688 | 2,734,048 | 284,182 | - | 284,182 | 3,018,230 | 3,450,300 |
| Insurance | 906,703 | 428,097 | 219,790 | 10,264 | 1,564,854 | 847,299 | 79 | 847,378 | 2,412,232 | 1,556,022 |
| Utilities | 1,292,321 | 522,739 | 145,072 | 14,727 | 1,974,859 | 207,405 | - | 207,405 | 2,182,264 | 2,437,425 |
| Telephone | 593,934 | 320,589 | 129,618 | 27,991 | 1,072,132 | 443,408 | 1,183 | 444,591 | 1,516,723 | 1,537,189 |
| Information technology | 518,129 | 682,306 | 299,794 | 16,743 | 1,516,972 | 1,381,475 | 15,299 | 1,396,774 | 2,913,746 | 2,510,897 |
| Depreciation and amortization (Notes 2H and 5) | 2,686,291 | 466,000 | 921,948 | 5,750 | 4,079,989 | 263,418 | 1,604 | 265,022 | 4,345,011 | 4,396,432 |
| Interest | 1,035,464 | 110,762 | - | - | 1,146,226 | 424,786 | - | 424,786 | 1,571,012 | 1,720,071 |
| Bad debts | - | 378,029 | 133,290 | 3,534 | 514,853 | - | - | - | 514,853 | 2,292,452 |
| Miscellaneous | 86,904 | 49,643 | 4,919 | 508 | 141,974 | 135,270 | 3,795 | 139,065 | 281,039 | 135,298 |
| **TOTAL EXPENSES** | $ 89,830,985 | $ 62,457,601 | $ 21,554,624 | $ 1,921,949 | $ 175,765,159 | $ 23,598,986 | $ 600,604 | $ 24,199,590 | $ 199,964,749 | $ 194,542,830 |

The accompanying notes are an integral part of these consolidated financial statements.

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**
**CONSOLIDATED STATEMENT OF FUNCTIONAL EXPENSES**
**FOR THE YEAR ENDED JUNE 30, 2017**

| | Program Services | | | | | Supporting Services | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Residential Services | Day and Community Services | Clinical Services | Employment Services | Total Program Services | Management and General | Fundraising | Total Supporting Services | Total 2017 |
| Salaries | $ 51,540,412 | $ 30,094,058 | $ 12,305,504 | $ 1,114,031 | $ 95,054,005 | $ 10,187,053 | $ 150,366 | $ 10,337,419 | $ 105,391,424 |
| Payroll taxes and benefits (Note 12) | 14,968,642 | 8,750,341 | 2,826,656 | 299,853 | 26,845,492 | 2,886,340 | 46,829 | 2,933,169 | 29,778,661 |
| **Total Personnel Costs** | 66,509,054 | 38,844,399 | 15,132,160 | 1,413,884 | 121,899,497 | 13,073,393 | 197,195 | 13,270,588 | 135,170,085 |
| Contracted services | 1,205,625 | 393,719 | 1,135,112 | 10,904 | 2,745,360 | 544,558 | - | 544,558 | 3,289,918 |
| Professional fees | 351,697 | 124,503 | 34,318 | 4,758 | 515,276 | 3,037,490 | 80,965 | 3,118,455 | 3,633,731 |
| Program supplies | 2,500,612 | 1,353,485 | 357,245 | 6,276 | 4,217,618 | 48,808 | - | 48,808 | 4,266,426 |
| Food | 1,754,925 | 200,839 | 962 | 194 | 1,956,920 | - | 29,107 | 29,107 | 1,986,027 |
| Transportation (Note 8) | 1,344,544 | 10,495,751 | 222,124 | 33,810 | 12,096,229 | 78,415 | 3,061 | 81,476 | 12,177,705 |
| Office and equipment expense | 829,949 | 334,227 | 215,598 | 11,757 | 1,391,531 | 541,349 | 48,955 | 590,304 | 1,981,835 |
| Staff development and expenses | 207,701 | 232,185 | 44,835 | 9,340 | 494,061 | 298,739 | 2,670 | 301,409 | 795,470 |
| Occupancy (Note 8) | 2,348,329 | 5,049,623 | 1,765,651 | 118,064 | 9,281,667 | 1,923,880 | - | 1,923,880 | 11,205,547 |
| Utilities | 1,261,355 | 536,879 | 342,260 | 29,541 | 2,170,035 | 267,390 | - | 267,390 | 2,437,425 |
| Repairs and maintenance | 1,727,812 | 712,926 | 153,028 | 13,751 | 2,607,517 | 840,925 | 1,858 | 842,783 | 3,450,300 |
| Insurance | 782,960 | 431,080 | 110,087 | 14,331 | 1,338,458 | 217,564 | - | 217,564 | 1,556,022 |
| Telephone | 582,794 | 310,254 | 112,212 | 27,101 | 1,032,361 | 504,828 | - | 504,828 | 1,537,189 |
| Information technology | 378,181 | 530,109 | 310,771 | 21,000 | 1,240,061 | 1,163,313 | 107,523 | 1,270,836 | 2,510,897 |
| Depreciation and amortization (Notes 2H and 5) | 2,643,074 | 425,759 | 856,126 | 8,607 | 3,933,566 | 405,799 | 57,067 | 462,866 | 4,396,432 |
| Interest | 1,055,160 | 144,645 | 5,790 | - | 1,205,595 | 514,476 | - | 514,476 | 1,720,071 |
| Bad debts | 672,555 | 1,400,762 | 200,745 | 18,390 | 2,292,452 | - | - | - | 2,292,452 |
| Miscellaneous | 32,132 | 7,779 | 7,802 | 184 | 47,897 | 77,932 | 9,469 | 87,401 | 135,298 |
| **TOTAL EXPENSES** | $ 86,188,459 | $ 61,528,924 | $ 21,006,826 | $ 1,741,892 | $ 170,466,101 | $ 23,538,859 | $ 537,870 | $ 24,076,729 | $ 194,542,830 |

The accompanying notes are an integral part of these consolidated financial statements.

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**
**CONSOLIDATED STATEMENTS OF CASH FLOWS**
**FOR THE YEARS ENDED JUNE 30, 2018 AND 2017**

| | 2018 | 2017 |
|---|---|---|
| **CASH FLOWS FROM OPERATING ACTIVITIES:** | | |
| Change in net assets | $ 1,735,827 | $ 857,062 |
| Adjustments to reconcile change in net assets to net cash (used in) provided by operating activities: | | |
| Depreciation and amortization | 4,345,011 | 4,396,432 |
| Non-cash interest expense | 222,386 | 244,334 |
| Unrealized loss on short-term investments | 32,665 | 29,049 |
| Realized gain on short-term investments | (1,279) | (1,169) |
| Bad debts | 514,853 | 2,292,452 |
| Loss on disposal of property and equipment | - | 4,725 |
| Subtotal | 6,849,463 | 7,822,885 |
| Changes in operating assets and liabilities: | | |
| (Increase) or decrease in assets: | | |
| Accounts receivable | 33,311 | 724,958 |
| Prepaid expenses and other assets | 784,800 | 331,649 |
| Other receivables | 216,857 | 740,463 |
| Increase or (decrease) in liabilities: | | |
| Accounts payable and accrued expenses | (94,365) | 1,122,457 |
| Accrued salary | (188,986) | 688,852 |
| Accrued vacation | 1,112,768 | 26,121 |
| Accrued pension | (809,070) | 708,980 |
| Due to funding sources | (6,555,980) | 2,190,485 |
| Deferred rent | (261,196) | 202,517 |
| Other liabilities | (2,293,700) | 1,206,430 |
| **Net Cash (Used in) Provided by Operating Activities** | (1,206,098) | 15,765,797 |
| **CASH FLOWS FROM INVESTING ACTIVITIES:** | | |
| Purchases of property and equipment | (4,367,415) | (4,169,868) |
| Purchases of short-term investments | (10,778,138) | (1,335,172) |
| Proceeds from sale of short-term investments | 12,373,753 | 279,000 |
| Decrease in debt service reserve | 13,742 | 448,120 |
| **Net Cash Used in Investing Activities** | (2,758,058) | (4,777,920) |
| **CASH FLOWS FROM FINANCING ACTIVITIES:** | | |
| Proceeds from notes and mortgages | 3,921,982 | 1,689,000 |
| Principal repayments of notes and mortgages | (5,298,542) | (7,511,607) |
| Principal repayments of capital lease obligations | (112,748) | (903,799) |
| **Net Cash Used in Financing Activities** | (1,489,308) | (6,726,406) |
| **NET (DECREASE) INCREASE IN CASH AND CASH EQUIVALENTS** | (5,453,464) | 4,261,471 |
| Cash and Cash Equivalents - Beginning of Year | 20,490,066 | 16,228,595 |
| **CASH AND CASH EQUIVALENTS- END OF YEAR** | $ 15,036,602 | $ 20,490,066 |
| **Supplemental Disclosure of Cash Flow Information:** | | |
| Cash paid for interest | $ 1,348,626 | $ 1,720,071 |

The accompanying notes are an integral part of these consolidated financial statements.

## NOTE 1 – ORGANIZATION AND NATURE OF ACTIVITIES

The Young Adult Institute, Inc. ("YAI") is organized under the Not-for-Profit Corporation Law of New York State and was incorporated in 1964. YAI has been granted exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code. YAI has an equivalent exemption at the state and local levels.

YAI serves people of all ages with developmental and learning disabilities, from infants through the elderly, in a variety of community settings and at home through state-of-the-art programs that help to build skills, expand opportunities, and support community living. YAI's many programs and direct services benefit thousands of individuals and their families daily throughout the New York metropolitan area. YAI is funded primarily by Medicaid. YAI's has over 300 programs and direct services that benefit over 21,000 individuals and their families daily in ten counties throughout the New York metropolitan area. YAI is funded primarily by Medicaid.

YAI is part of a network of independent agencies, collectively known as the YAI Network. The network provides programs and support for people with intellectual and developmental disabilities throughout New York City, Westchester County, Rockland County, Long Island, New Jersey, and Puerto Rico. YAI is the sole corporate member of three of these agencies which have been included in the consolidated financial statements. Further descriptions follow:

- YAI is the sole corporate member of Premier Healthcare, Inc. (“PHC”). PHC is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. PHC has an equivalent exemption at the state and local levels. PHC is an outpatient diagnostic and treatment center offering health care services to the general public with a specialty in medical services for people with developmental and learning disabilities and their families in many sites throughout the New York area. PHC is a quality health care practice providing outpatient clinic services which include: primary health, pediatrics, internal medicine, dentistry (including desensitization), nutrition, gynecology, neurology, podiatry, psychiatry, physical therapy, occupational therapy, ophthalmology, speech pathology and psychology. PHC’s primary source of revenue is patient service fees received from Medicaid, Medicare and other third-party payors.

- YAI is the sole corporate member of the Rockland County Association for People with Disabilities (“RCAPD”). RCAPD has been granted exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code. RCAPD has an equivalent exemption at the state and local levels. RCAPD provides a wide variety of employment, residential, family support and social/recreational programs which promote essential social and vocational skills that enable people with learning and other developmental disabilities to lead independent, productive and dignified lives. RCAPD provides extensive support and education to families and guidance and training to professionals who are assisting people with developmental and learning disabilities. RCAPD is funded primarily by service fees paid by various New York State agencies and government grants.

- YAI is the sole corporate member of the International Institute for People with Disabilities of Puerto Rico, Inc. (“IIPD-PR”), which was incorporated in 1998 under the Not-for-Profit Corporation Law of the Commonwealth of Puerto Rico. IIPD-PR has been granted exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code and has a similar exemption at the state and local levels. IIPD-PR’s mission is to create employment opportunities for people with disabilities. By providing competitive employment opportunities for persons with disabilities, IIPD-PR demonstrated a commitment to independence, community inclusion and productivity for people with special needs. IIPD-PR did not have any programmatic operations during fiscal year ending June 30, 2018.

## NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**A.** ***Basis of Accounting and Use of Estimates -*** The Agency’s consolidated financial statements have been prepared on the accrual basis of accounting. The Agency adheres to accounting principles generally accepted in the United States of America (“U.S. GAAP”). The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reported period. Actual results could differ from those estimates.

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

**B. Basis of Consolidation -** The Agency's accompanying consolidated financial statements include the activities of: YAI; PHC; RCAPD and IIPD-PR. YAI has consolidated these entities pursuant to U.S. GAAP due to its financial interest and control over them. All material intercompany transactions and balances have been eliminated upon consolidation.

**C. *Basis of Net Asset Presentation -*** The Agency maintains its net assets under the following three classes:

Unrestricted - This represents net assets not subject to donor-imposed stipulations and that have no time restrictions. Such resources are available for support of the Agency's operations over which the Board of Directors has discretionary control.

Temporarily Restricted - This represents net assets subject to donor-imposed stipulations that will be met by actions of the Agency or by the passage of time. When a stipulated time restriction ends or purpose restriction is accomplished, such temporarily restricted net assets are reclassified to unrestricted net assets and reported in the consolidated statements of activities as net assets released from restrictions.

Permanently Restricted - This represents net assets subject to donor-imposed stipulations that they be maintained permanently by the Agency. Generally, the donors of these assets permit the Agency to use all or part of the income earned for unrestricted or donor-specified purposes.

**D. *Cash and Cash Equivalents -*** The Agency considers highly liquid debt instruments with maturities of three months or less, when acquired, to be cash and cash equivalents. Program participant funds included in cash and cash equivalents amounted to approximately $1,226,000 and $1,489,000, respectively, for the years ended June 30, 2018 and 2017. Such amounts are also included as a liability in the accompanying consolidated financial statements.

**E. *Short-term Investments and Fair Value Measurements -*** Short-term investments are carried at fair value. Fair value measurements are based on the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. In order to increase consistency and comparability in fair value measurements, a fair value hierarchy prioritizes observable and unobservable inputs used to measure fair value into three levels, as described in Note 4.

**F. *Allowance for Uncollectible Receivables -*** The Agency determines whether an allowance for uncollectible receivables should be provided for accounts receivable. Such estimate is based on management's assessment of the aged basis of its receivables, current economic conditions, historical experience, and collections subsequent to year end. As of June 30, 2018 and 2017, the Agency determined an allowance of $2,203,462 and $2,103,290, respectively, for accounts receivable were necessary. In addition, the Agency has established an allowance for doubtful accounts for other receivables due from network agencies of $1,182,988 as of both June 30 ,2018 and 2017 representing nearly the entire balance due.

**G. *Revenue Recognition -*** The Agency records Medicaid revenue based on established rates multiplied by the number of units of service provided. Government grants are recorded as revenues to the extent that expenses have been incurred for the purposes specified by the grantors. To the extent amounts received exceed amounts spent, the Agency records a liability due to funding sources. Other revenue includes management programmatic services provided to other network agencies. Such revenue is recorded based on the support service agreement.

**H. *Property and Equipment -*** Property and equipment is stated at cost less accumulated depreciation or amortization. These amounts do not purport to represent replacement or realizable values. Depreciation is provided on a straight-line basis over the estimated useful lives of the assets. Leasehold improvements are amortized over the lesser of the useful lives of the improvements or the term of the applicable lease. Property and equipment is capitalized by the Agency provided its cost is $5,000 or more and its useful life is greater than one year.

## NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

**I.** ***Contributions -*** Unconditional contributions, including promises to give cash and other assets, are reported at their fair value on the date the contribution is received. The Agency reports gifts of cash and other assets as restricted support if they are received with donor stipulations that limit the use of donated assets. When a donor restriction expires, that is when a stipulated time restriction ends or purpose of restriction is accomplished, temporarily restricted net assets are reclassified as unrestricted net assets and reported in the consolidated statements of activities as net assets released from restrictions.

**J.** ***Functional Expenses -*** The costs of providing program and supporting services of the Agency have been summarized on a functional basis in the consolidated statements of functional expenses. Accordingly, certain costs have been allocated among the programs and general supporting services benefited. Included in management and general are costs associated with providing management services for other agencies which reimburse YAI for services provided.

**K.** ***Prior Period Revenue -*** There are occasions when funding source reimbursements for prior years are adjusted in the current year. Such adjustments may be due to retroactive rate adjustments, funding source audit findings, additional monies available over and above original contract amounts, rate appeal results, etc. Included in Medicaid revenue for the years ended June 30, 2018 and 2017 is an increase of $7,182,865 and $1,302,840, respectively, of prior year revenues relating to such adjustments.

**L.** ***Deferred Rent -*** The Agency leases real property under various operating leases. The leases include rent escalations. Since the rent increases over time, the Agency records an adjustment to rent expense each year to reflect its straight-lining policy. Straight-lining of rent gives rise to a timing difference that is reflected as deferred rent in the accompanying consolidated statements of financial position.

**M.** ***Bond Issuance Costs -*** Bond issuance costs consist of financing costs which are amortized over the life of the bond. The amortization is on the straight line method which does not differ materially from the effective interest rate method.

**N.** ***Debt Service Reserves -*** Under the terms of the Industrial Development Agency ("IDA"), and Dormitory Authority State of New York ("DASNY"), the Agency is required to deposit with the bond trustee an amount to be held in a debt service reserve fund, which will be utilized to satisfy the last payment required on the mortgage, or can be used prior to that point under the direction of IDA or DASNY to make any loan payments due by reason of default or other causes spelled out in the loan agreement. The debt service reserve is carried at market value in the accompanying consolidated statements of financial position.

## NOTE 3 – ACCOUNTS RECEIVABLE

Accounts receivable consists of the following as of June 30*:*

| | 2018 | 2017 |
|---|---|---|
| Due from Medicaid | $ 19,244,669 | $ 19,613,256 |
| Due from the State of New York | 6,297,129 | 6,275,293 |
| Due from the City of New York | 1,435,359 | 1,136,994 |
| Due from other sources | 1,456,610 | 1,842,659 |
| | 28,433,767 | 28,868,202 |
| Less: allowance for doubtful accounts | (2,203,462) | (2,103,290) |
| | $ 26,230,305 | $ 26,764,912 |

## NOTE 4 – SHORT-TERM INVESTMENTS AND FAIR VALUE MEASUREMENTS

Short-term investments consist of the following as of June 30:

| | 2018 | 2017 |
|---|---|---|
| Money market funds | $ 8,287,548 | $ 17,833,528 |
| Mutual funds | 1,009,606 | - |
| Corporate bonds | 3,016,319 | 745,588 |
| Government bonds | 4,089,585 | - |
| Blackstone alternative multi-strategy fund | 549,057 | - |
| | $ 16,952,115 | $ 18,579,116 |

Investment activity consists of the following for the years ended June 30:

| | 2018 | 2017 |
|---|---|---|
| Interest | $ 99,183 | $ 128,977 |
| Realized gain | 1,279 | 1,169 |
| Unrealized loss | (32,665) | (29,049) |
| | $ 67,797 | $ 101,097 |

The fair value hierarchy defines three levels as follows:

Level 1: Valuations based on quoted prices (unadjusted) in an active market that are accessible at the measurement date for identical assets or liabilities. The fair value hierarchy gives the highest priority to Level 1 inputs.

Level 2: Valuations based on observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities; quoted prices in inactive markets; or model-derived valuations in which all significant inputs are observable or can be derived principally from or corroborated with observable market data.

Level 3: Valuations based on unobservable inputs are used when little or no market data is available. The fair value hierarchy gives lowest priority to Level 3 inputs. The Agency has no level 3 investments.

In determining fair value, the Agency utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible in its assessment of fair value. Investments in money markets and U.S. Treasury bills are valued using market prices in active markets (Level 1). Fair value of these investments are determined by management through the investment managers. Level 1 instrument valuations are obtained from real-time quotes in active exchange markets involving identical assets. Corporate bonds, U.S. Government bonds and Blackstone alternative multi-strategy fund are designated as Level 2 instruments and valuations are obtained from similar market or model derived valuations in which all significant inputs are observable or can be derived primarily from or corroborated with observable market data (credit risk/grade, maturities, etc.).

## NOTE 4 – SHORT-TERM INVESTMENTS AND FAIR VALUE MEASUREMENTS (Continued)

Financial assets carried at fair value as of June 30, 2018 are classified in the table as follows:

| | Level 1 | Level 2 | Total |
|---|---|---|---|
| Short-term Investments: | | | |
| Money market funds | $ 8,287,548 | $ - | $ 8,287,548 |
| Mutual funds | 1,009,606 | - | 1,009,606 |
| Corporate bonds | - | 3,016,319 | 3,016,319 |
| Government bonds | - | 4,089,585 | 4,089,585 |
| Blackstone alternative multi-strategy fund | - | 549,057 | 549,057 |
| Total Short-Term Investments | 9,347,154 | 7,604,961 | 16,952,115 |
| Debt Service Reserve Fund: | | | |
| U.S. Treasury bills | 2,651,718 | - | 2,651,718 |
| | $ 11,998,872 | $ 7,604,961 | $ 19,603,833 |

Financial assets carried at fair value as of June 30, 2017 are classified in the table as follows:

| | Level 1 | Level 2 | Total |
|---|---|---|---|
| Short-term Investments: | | | |
| Money market funds | $ 17,833,528 | $ - | $ 17,833,528 |
| Corporate bonds | - | 745,588 | 745,588 |
| Total Short-Term Investments | 17,833,528 | 745,588 | 18,579,116 |
| Debt Service Reserve Fund: | | | |
| U.S. Treasury bills | 2,665,460 | - | 2,665,460 |
| | $ 20,498,988 | $ 745,588 | $ 21,244,576 |

## NOTE 5 – PROPERTY AND EQUIPMENT

Property and equipment consists of the following as of June 30:

| | 2018 | 2017 | Estimated Useful Lives |
|---|---|---|---|
| Land | $ 10,812,584 | $ 10,522,584 | |
| Buildings and building improvements | 59,354,338 | 56,271,803 | 15-25 years |
| Leasehold improvements | 25,595,251 | 25,460,977 | 5-25 years |
| Furniture and equipment | 17,530,447 | 16,875,672 | 3-10 years |
| Construction in progress (see below) | 3,571,544 | 3,365,713 | |
| | 116,864,164 | 112,496,749 | |
| Less: accumulated depreciation | (79,159,344) | (74,814,333) | |
| | $ 37,704,820 | $ 37,682,416 | |

Depreciation and amortization expenses amounted to $4,345,011 and $4,396,432 for the years ended June 30, 2018 and 2017. respectively. For the year ended June 30, 2017, fixed assets with a total cost of $939,532 and total accumulated depreciation of $934,807 were disposed. This resulted in a loss of $4,725 on disposal of property and equipment.

Construction in progress consists of construction at new locations and various renovations with a combined additional estimated cost to complete of approximately $7.2 million and estimated completion dates in fiscal years 2019 and 2020.

## NOTE 6 – CAPITAL LEASE OBLIGATIONS

YAI has capital lease agreements to fund the purchase of buildings, building improvements and equipment through two issuances in 2001 and 2002.

The New York City Industrial Development Agency ("NYCIDA"), a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, issued and sold revenue bonds (Special Needs Pooled Program) carrying interest rates ranging from 6.26% to 6.30% per annum payable in semi-annual installments with maturities in 2017. The proceeds of the loans were used to finance the purchase and renovation of various collateralized properties in New York. As part of the agreement with NYCIDA, YAI transferred the titles to all the facilities. NYCIDA has leased the facilities back to YAI for a term and at an amount concurrent with the bond repayment schedules. At the conclusion of the lease terms, YAI has the option to purchase each of the leased properties for $1.

The capital lease agreements require YAI to comply with certain terms and conditions. YAI was in compliance with all applicable financial covenants as of June 30, 2018 and 2017.

Pursuant to the capital lease agreement, the debt service reserve fund was established with a balance of $0 and $28,973 as of June 30, 2018 and 2017, respectively, and included in the consolidated statements of financial position under debt service reserves. In addition, YAI has capital leases for computer and electronic equipment with maturities in 2019. The expected payment for 2019 is $19,390.

## NOTE 7 – NOTES AND MORTGAGES PAYABLE

| | 2018 | 2017 |
|---|---|---|
| A. YAI has available an $18 million working capital line of credit with a bank carrying an interest rate of prime or 30-day LIBOR (at YAI's election) plus 2% per annum, which at June 30, 2018 was 4.23%. The loan is collateralized by YAI's accounts receivable and matures in December 2019. YAI is in the process of renewing the line of credit. The outstanding balance as of November 30, 2018 amounted to $7,842,911. | $ 7,842,911 | $ 8,842,911 |
| B. YAI has available an $8 million line of credit with a bank for the acquisition and renovation of program sites. Upon receipt of New York State prior property approvals, the funds drawn down on this line of credit are subsequently converted into notes. As of June 30, 2018, there were nine notes executed. The notes bear an interest rate of prime or 30-day LIBOR (at YAI's election) plus 2% per annum, resulting in a rate of between 4.21 and 4.23% at June 30, 2018. The notes are collateralized by related property and mature in December 2019. YAI is in the process of renewing the line of credit. The outstanding balance as of November 30, 2018 amounted to $6,188,350. | 4,928,613 | 2,434,393 |
| C. YAI has entered into various loan agreements with the Dormitory Authority of the State of New York. The loans carry interest rates ranging from 1.5% to 7.82% per annum, payable in semi-annual installments and have maturity dates ranging from August 2018 through July 2040. The loans are collateralized by YAI's underlying real property. | 18,486,967 | 21,198,460 |
| D. PHC has a $3 million revolving line of credit with a bank. The line has an interest rate equal to prime rate plus 0.50% per annum. The line of credit is guaranteed by YAI. The outstanding balance as of November 30, 2018 amounted to $1,282,330. | 1,282,331 | 1,267,734 |

## NOTE 7 – NOTES AND MORTGAGES PAYABLE (Continued)

| | 2018 | 2017 |
|---|---|---|
| E. RCAPD has a line of credit with a bank in the amount of $1 million that will expire in March 2019. The line of credit bears an interest rate at the lender's prime rate. The line of credit is guaranteed by YAI. The outstanding balance as of November 30, 2018 amounted to $636,359. | $ 650,870 | $ 609,754 |
| F. RCAPD financed the purchase and renovation of certain properties through the issuance of Civic Facility Revenue Bonds Series 2006J by the County of Rockland Industrial Development Agency (Special Needs Facilities Pooled Program) carrying average interest rates of: 4.75%, 4.74%, 4.78% and 4.75% per annum maturing in July 2020. The proceeds of the loan were used to finance the purchase and renovation of collateralized properties located in Rockland County, New York. | 765,001 | 980,001 |
| | 33,956,693 | 35,333,253 |
| Less unamortized debt issuance costs | (1,245,662) | (1,468,048) |
| Notes and mortgages payable, net | $ 32,711,031 | $ 33,865,205 |

Most of the loans have provisions for loan covenants. The Agency was in compliance with these covenants as of and during the years ended June 30, 2018 and 2017.

Required future annual principal payments are payable as follows for the years ending June 30:

| | |
|---|---|
| 2019 | $ 3,448,891 |
| 2020 | 16,905,790 |
| 2021 | 1,761,820 |
| 2022 | 1,686,878 |
| 2023 | 2,258,641 |
| Thereafter | 7,894,673 |
| | $ 33,956,693 |

## NOTE 8 – COMMITMENTS AND CONTINGENCIES

A. The Agency has a number of operating lease agreements. Annual future minimum rentals payable for real and personal property principally under long-term noncancellable operating leases expiring at varying dates through 2038 follows:

| | Real Property | Vehicles and Equipment | Total |
|---|---|---|---|
| 2019 | $ 8,376,755 | $ 1,120,914 | $ 9,497,669 |
| 2020 | 6,803,572 | 808,834 | 7,612,406 |
| 2021 | 4,871,105 | 449,271 | 5,320,376 |
| 2022 | 4,800,316 | 57,254 | 4,857,570 |
| 2023 | 4,711,331 | - | 4,711,331 |
| Thereafter | 18,042,088 | - | 18,042,088 |
| | $ 47,605,167 | $ 2,436,273 | $ 50,041,440 |

**NOTE 8 – COMMITMENTS AND CONTINGENCIES (Continued)**

Rent expense (shown as occupancy and transportation in the accompanying consolidated statements of functional expenses) amounted to the following for the years ended June 30:

| | 2018 | 2017 |
|---|---|---|
| Real property | $ 9,732,662 | $ 9,896,347 |
| Vehicles and equipment | 938,977 | 1,149,422 |
| | $ 10,671,639 | $ 11,045,769 |

B. The Agency believes it has no uncertain tax positions as of June 30, 2018 and 2017 in accordance with Accounting Standard Codification ("ASC") Topic 740, "Income Taxes," which provides standards for establishing and classifying any tax provisions for uncertain tax positions.

C. The Agency receives a significant portion of its revenue for services provided from third-party reimbursement through government agencies and Medicaid. These revenues are based on predetermined rates based on cost reimbursement principles and are subject to audit and retroactive adjustment by the government. The Agency, when appropriate, records an estimated liability to governmental agencies for any excess reimbursement over allowable costs and underspending of interim rates. As of June 30, 2018 and 2017, due to funding source represents overpayments from the 2012-2018 fiscal years for the Agency's programs. Such amounts are expected to be recouped by the funding sources.

D. The Agency is subject to legal proceedings and claims which have arisen in the ordinary course of its business and which have not been fully adjudicated. Management does not believe there will be a material adverse effect upon the financial position of the Agency.

E. In 2013, a former senior management employee and his spouse (collectively, "Plaintiffs") filed a complaint against YAI and the trustees of the Supplemental Pension Plan and Trust for Certain Management Employees of YAI (the "SERP"). On June 1, 2017, the District Court entered a Judgment providing a lump sum of about $3.4 million for past-due payments under the SERP, and a monthly lifetime benefit with survivor benefit to his spouse of approximately $44,000, a survivor benefit to his spouse in, and benefit under the Life Insurance Plan and Trust ("LIPT") of about $3.2 million. Plaintiffs also submitted a motion for an award of over $3.2 million in attorney's fees and $330,000 in costs.

YAI appealed the District Court's June 1, 2017 judgment to the United States Court of Appeals for the Second Circuit. As part of the appeal process, YAI obtained a letter of credit from a bank for the amount of approximately $1.8 million. On August 9, 2018, the Second Circuit affirmed the District Court's decision. Following the appellate loss, YAI filed a motion for rehearing en banc, which was denied on October 4, 2018. On October 23, 2018, YAI successfully obtained a stay of the mandate from the Second Circuit. As such, Plaintiffs were barred from collecting on the judgment against YAI until the United States Supreme Court issues final disposition. In response, Plaintiffs filed a motion for reconsideration, and to enlarge the amount required for YAI to post in the bond, which was rejected by the Second Circuit on November 15, 2018.

The next step is for YAI to file a petition for a writ of certiorari to the United States Supreme Court. If the Supreme Court declines to hear the case, the parties may hear by early February of 2019, and the decision of the Second Circuit will therefore remain intact. If the Supreme Court grants certiorari (thus agreeing to hear the case), then the case will continue for many months.

Management has taken the position that due to the uncertainty of the outcome and YAI's intent to appeal the Second Circuit's decision to the Supreme Court, as of June 30, 2018, no liability should be recorded related to this matter. Once all appeals have been exhausted, YAI's ultimate financial liability shall be limited to the difference, if any, between the final judgment and the then available funds in the SERP and LIPT.

## NOTE 9 –TEMPORARILY RESTRICTED NET ASSETS

As of June 30, 2018 and 2017, temporarily restricted net assets consist of $752,194 and $700,606 restricted to programs including the Community of Learners and Linking Individuals to Necessary Knowledge ("LINK") program.

## NOTE 10 – PERMANENTLY RESTRICTED NET ASSETS

Permanently restricted net assets consist of a $10,000 permanently restricted endowment fund maintained by RCAPD for each of the years ended June 30, 2018 and 2017.

From time to time, the fair value of assets associated with individual donor-restricted endowment funds may fall below the value of the initial and subsequent donor gift amounts (referred as "underwater"). When underwater endowment funds exist, the amount that is below the initial value is classified as a reduction of unrestricted net assets. As of June 30, 2018, and 2017, there were no underwater funds.

## NOTE 11 – CONCENTRATION

Cash and cash equivalents that potentially subject the Agency to a concentration of credit risk include cash and short-term investment accounts with banks that exceed the Federal Deposit Insurance Corporation ("FDIC") insurance limits. Cash and short-term investment accounts are insured up to $250,000 per depositor. As of June 30, 2018 and 2017, there was approximately $15 and $19 million of cash and cash equivalents and $13 and $17 million, respectively, of short-term investments held by one bank that exceeded FDIC limits.

## NOTE 12 – RETIREMENT PLANS

On July 1, 2015, the Agency adopted the YAI Network Affiliates 401(a) Plan. Employees are eligible to participate in the plan upon completion of one year of service after July 1, 2015 and when the employee worked at least 1,000 hours. Contributions to this plan are based on amounts determined in accordance with the Internal Revenue Service Code Section 415. The liability for the Agency amounted to approximately $2,205,000 and $3,014,000 as of June 30, 2018 and 2017, respectively. The expense for the Agency amounted to $2,185,000 and $2,555,000 for the years ended June 30, 2018 and 2017, respectively.

## NOTE 13 – DUE TO MEDICAID

As required by statute, the New York State Department of Health ("DOH") has begun transitioning Medicaid payments to diagnostic and treatment centers licensed under Article 28 of the New York Public Health Law ("D&TCs") to the Ambulatory Patient Group ("APG") payment methodology. On February 25, 2013, PHC along with other D&TCs, received notice from DOH that the capital component of PHC's Medicaid payment rate for the period September 1, 2009 through December 31, 2012 had been retroactively rebased, purportedly in accordance with annual D&TC cost reports submitted by PHC for successive years. In the same notice, DOH advised PHC that it intended to commence a take-back equal to 15 percent of PHC's Medicaid remittances to recoup payments received during that period in excess of PHC's recalculated rate. During 2017, DOH agreed to reduce the amount due resulting in a decrease of the liability of approximately $4.1 million. The amount outstanding as of June 30 2018 and 2017 was $2,012,236 and $6,202,261, respectively.

## NOTE 14 – SUBSEQUENT EVENTS

Management has evaluated, for potential recognition or disclosure, events subsequent to the date of the statement of financial position through November 30, 2018, the date the consolidated financial statements were issued.

In August 2018, YAI was issued Interagency Council Pooled Loan Program Series 2018 A-1 & A-2 bonds by the DASNY for par value of approximately $2.25 million. The bonds are used for 134-19 157$^{th}$ Street and 186 Southaven Avenue.

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATE**
**CONSOLIDATING SCHEDULE OF FINANCIAL POSITION**
**AS OF JUNE 30, 2018**

| | YAI | RCAPD | PHC | IIPD-PR | Consolidating Eliminations | Total 2018 |
|---|---|---|---|---|---|---|
| **ASSETS** | | | | | | |
| Cash and cash equivalents | $ 14,315,782 | $ 251,675 | $ 466,442 | $ 2,703 | $ - | $ 15,036,602 |
| Short-term Investments | 16,952,115 | - | - | - | - | 16,952,115 |
| Accounts receivable, net | 23,330,764 | 872,575 | 2,013,409 | - | - | 26,216,748 |
| Other receivables, net | 1,376,552 | - | - | - | (596,199) | 780,353 |
| Prepaid expenses and other assets | 3,178,158 | 112,610 | 405,199 | 8,715 | - | 3,704,682 |
| Property and equipment, net | 35,493,589 | 1,340,065 | 871,166 | - | - | 37,704,820 |
| Debt service reserve | 2,343,359 | 308,359 | - | - | - | 2,651,718 |
| **TOTAL ASSETS** | $ 96,990,319 | $ 2,885,284 | $ 3,756,216 | $ 11,418 | $ (596,199) | $ 103,047,038 |
| **LIABILITIES** | | | | | | |
| Accounts payable and accrued expenses | 8,312,138 | $ 365,577 | $ 539,526 | $ 450 | $ - | $ 9,217,691 |
| Accrued salary | 5,656,747 | 165,632 | 405,147 | - | - | 6,227,526 |
| Accrued vacation | 3,732,071 | 114,047 | 332,420 | - | - | 4,178,538 |
| Accrued pension | 2,075,344 | 45,924 | 84,043 | - | - | 2,205,311 |
| Other liabilities | 1,525,022 | - | - | - | - | 1,525,022 |
| Due to funding sources | 7,817,420 | 140,401 | 2,012,236 | - | - | 9,970,057 |
| Notes and mortgages payable | 30,064,363 | 1,364,337 | 1,282,331 | - | - | 32,711,031 |
| Capital lease obligations | 19,389 | - | - | - | - | 19,389 |
| Due to related party | - | 167,053 | 6,269,324 | 603,410 | (7,039,787) | - |
| Deferred rent | 3,343,212 | 32,112 | 135,892 | - | - | 3,511,216 |
| **TOTAL LIABILITIES** | 62,545,706 | 2,395,083 | 11,060,919 | 603,860 | (7,039,787) | 69,565,781 |
| **COMMITMENTS AND CONTINGENCIES** | | | | | | |
| **NET ASSETS (DEFICIT)** | | | | | | |
| Unrestricted | | | | | | |
| Invested in property and equipment | 15,596,102 | 934,957 | 871,166 | - | - | 17,402,225 |
| Available for operations | 18,096,317 | (454,756) | (8,175,869) | (592,442) | 6,443,588 | 15,316,838 |
| Total Unrestricted | 33,692,419 | 480,201 | (7,304,703) | (592,442) | 6,443,588 | 32,719,063 |
| Temporarily restricted | 752,194 | - | - | - | - | 752,194 |
| Permanently restricted | - | 10,000 | - | - | - | 10,000 |
| **TOTAL NET ASSETS** | 34,444,613 | 490,201 | (7,304,703) | (592,442) | 6,443,588 | 33,481,257 |
| **TOTAL LIABILITIES AND NET ASSETS (DEFICIT)** | $ 96,990,319 | $ 2,885,284 | $ 3,756,216 | $ 11,418 | $ (596,199) | $ 103,047,038 |

See independent auditors' report.

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**
**CONSOLIDATING SCHEDULE OF ACTIVITIES**
**FOR THE YEAR ENDED JUNE 30, 2018**

| | Young Adult Institute, Inc. | | | Rockland County Association for People with Disabilities | | | Premier Healthcare, Inc. | | International Institute for People with Disabilities of Puerto Rico, Inc. | | | Consolidated Total | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Unrestricted | Temporarily Restricted | Total | Unrestricted | Permanently Restricted | Total | Unrestricted | Total | Unrestricted | Total | Consolidating Eliminations | Unrestricted | Temporarily Restricted | Permanently Restricted | Total 2018 |
| **REVENUE AND SUPPORT** | | | | | | | | | | | | | | | |
| Medicaid | $145,726,224 | $ - | $145,726,224 | 4,628,222 | $ - | $ 4,628,222 | 16,938,972 | $ 16,938,972 | $ - | $ - | $ - | $167,293,418 | $ - | $ - | $167,293,418 |
| Government Contracts | 19,186,176 | - | 19,186,176 | 1,408,208 | - | 1,408,208 | - | - | - | - | - | 20,594,384 | - | - | 20,594,384 |
| Medicare and Client fees | 7,833,767 | - | 7,833,767 | 480,859 | - | 480,859 | 2,136,488 | 2,136,488 | - | - | - | 10,451,114 | - | - | 10,451,114 |
| Other Revenues | 3,905,051 | - | 3,905,051 | - | - | - | 12,339 | 12,339 | - | - | (2,167,251) | 1,750,139 | - | - | 1,750,139 |
| Contributions | 712,592 | 505,168 | 1,217,760 | 20,498 | - | 20,498 | 2,591 | 2,591 | - | - | - | 735,681 | 505,168 | - | 1,240,849 |
| Special Events (net of direct costs of $354,100 and $280,751 for 2018 and 2017) | 186,048 | 106,690 | 292,738 | 8,137 | - | 8,137 | - | - | - | - | - | 194,185 | 106,690.00 | - | 300,875 |
| Investment Activity | 67,126 | - | 67,126 | 799 | - | 799 | 1,872 | 1,872 | - | - | - | 69,797 | - | - | 69,797 |
| Net Assets Released from Restrictions | 560,270 | (560,270) | - | - | - | - | - | - | - | - | - | 560,270.00 | (560,270.00) | - | - |
| **TOTAL REVENUE AND SUPPORT** | 178,177,254 | 51,588 | 178,228,842 | 6,546,723 | - | 6,546,723 | 19,092,262 | 19,092,262 | - | - | (2,167,251) | 201,648,988 | 51,588 | - | 201,700,576 |
| **EXPENSES:** | | | | | | | | | | | | | | | |
| **Program Services:** | | | | | | | | | | | | | | | |
| Residential Services | 85,583,868 | - | 85,583,868 | 4,247,117 | - | 4,247,117 | - | - | - | - | | 89,830,985 | - | - | 89,830,985 |
| Day and Community Services | 61,729,499 | - | 61,729,499 | 728,102 | - | 728,102 | - | - | - | - | - | 62,457,601 | - | - | 62,457,601 |
| Clinical Services | 7,335,343 | - | 7,335,343 | - | - | - | 14,219,281 | 14,219,281 | - | - | - | 21,554,624 | - | - | 21,554,624 |
| Employment Initative Services | 1,106,237 | - | 1,106,237 | 815,712 | - | 815,712 | - | - | - | - | - | 1,921,949 | - | - | 1,921,949 |
| **Total Program Services** | 155,754,947 | - | 155,754,947 | 5,790,931 | - | 5,790,931 | 14,219,281 | 14,219,281 | - | - | - | 175,765,159 | - | - | 175,765,159 |
| **Supporting Services:** | | | | | | | | | | | | | | | |
| Management and General | 21,861,513 | - | 21,861,513 | 1,242,054 | - | 1,242,054 | 2,658,605 | 2,658,605 | 4,065 | 4,065 | (2,167,251) | 23,598,986 | - | - | 23,598,986 |
| Fundraising | 600,604 | - | 600,604 | - | - | - | - | - | - | - | - | 600,604 | - | - | 600,604 |
| **Total Supporting Services** | 22,462,117 | - | 22,462,117 | 1,242,054 | - | 1,242,054 | 2,658,605 | 2,658,605 | 4,065 | 4,065 | (2,167,251) | 24,199,590 | - | - | 24,199,590 |
| **TOTAL EXPENSES** | 178,217,064 | - | 178,217,064 | 7,032,985 | - | 7,032,985 | 16,877,886 | 16,877,886 | 4,065 | 4,065 | (2,167,251) | 199,964,749 | - | - | 199,964,749 |
| **CHANGE IN NET ASSETS** | (39,810) | 51,588 | 11,778 | (486,262) | - | (486,262) | 2,214,376 | 2,214,376 | (4,065) | (4,065) | - | 1,684,239 | 51,588 | - | 1,735,827 |
| Net Assets - Beginning of Year | 33,732,229 | 700,606 | 34,432,835 | 966,463 | 10,000 | 976,463 | (9,519,079) | (9,519,079) | (588,377) | (588,377) | 6,443,588 | 31,034,824 | 700,606 | 10,000 | 31,745,430 |
| **NET ASSETS - END OF YEAR** | $ 33,692,419 | $ 752,194 | $ 34,444,613 | $ 480,201 | $ 10,000 | $ 490,201 | $ (7,304,703) | $ (7,304,703) | $ (592,442) | $ (592,442) | $ 6,443,588 | $ 32,719,063 | $ 752,194 | $ 10,000 | $ 33,481,257 |

See independent auditors' report.

# Young Adult Institute, Inc. and Affiliates


Consolidated Financial Statements
(Together with Independent Auditors' Report)

Years Ended June 30, 2017 and 2016

MARKS PANETH

ACCOUNTANTS & ADVISORS

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**

**CONSOLIDATED FINANCIAL STATEMENTS**
**(Together with Independent Auditors' Report)**

**YEARS ENDED JUNE 30, 2017 and 2016**

**CONTENTS**

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MARKS PANETH
ACCOUNTANTS & ADVISORS

# INDEPENDENT AUDITORS' REPORT

The Board of Directors of the
Young Adult Institute, Inc. and Affiliates

## Report on the Consolidated Financial Statements

We have audited the accompanying consolidated financial statements of the Young Adult Institute, Inc. ("YAI") ("YAI") and its Affiliates: Rockland County Association for People with Disabilities ("RCAPD"), Premier HealthCare, Inc. ("PHC") and the International Institute for People with Disabilities of Puerto Rico, Inc. ("IIPD-PR") (YAI and its Affiliates are collectively referred to as the "Agency") which comprise the consolidated statements of financial position as of June 30, 2017 and 2016, and the related consolidated statements of activities, functional expenses and cash flows for the years then ended, and the related notes to the consolidated financial statements.

### *Management's Responsibility for the Financial Statements*

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

### *Auditors' Responsibility*

Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### *Opinion*

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of the Agency as of June 30, 2017 and 2016, and the changes in its net assets and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Morison KSi
Independent member

***Other Matter- Supplementary Information***

Our audits were conducted for the purpose of forming an opinion on the consolidated financial statements as a whole. The consolidating schedules (shown on pages 18-19) are presented for the purposes of additional analysis of the consolidated financial statements, rather than to present the financial position, change in net assets and cash flows of the individual affiliates, and are not a required part of the consolidated financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the consolidated financial statements. The information has been subjected to the auditing procedures applied in the audits of the consolidated financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the consolidated financial statements or to the consolidated financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated in all material respects in relation to the consolidated financial statements as a whole.

New York, NY
November 30, 2017

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ACCOUNTANTS & ADVISORS

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**
**CONSOLIDATED STATEMENTS OF FINANCIAL POSITION**
**AS OF JUNE 30, 2017 AND 2016**

| | 2017 | 2016 |
|---|---|---|
| **ASSETS** | | |
| Cash and cash equivalents (Notes 2D and 11) | 20,490,066 | $ 16,228,595 |
| Short-term Investments (Notes 2E and 4) | 18,579,116 | 17,550,824 |
| Accounts receivable, net (Notes 2F and 3) | 26,764,912 | 29,782,322 |
| Other receivables, net (Note 2F) | 997,210 | 1,737,673 |
| Prepaid expenses and other assets | 4,489,482 | 4,821,131 |
| Property and equipment, net (Notes 2H, 5, 6 and 7) | 37,682,416 | 37,913,705 |
| Debt service reserve (Notes 2N and 4) | 2,665,460 | 3,113,580 |
| **TOTAL ASSETS** | $ 111,668,662 | $ 111,147,830 |
| **LIABILITIES** | | |
| Accounts payable and accrued expenses | $ 9,312,056 | $ 8,189,599 |
| Accrued salary | 6,416,512 | 5,727,660 |
| Accrued vacation | 3,065,770 | 3,039,649 |
| Accrued pension (Note 12) | 3,014,381 | 2,305,401 |
| Other liabilities | 3,818,722 | 2,612,292 |
| Due to funding sources (Note 8C) | 16,526,037 | 14,335,552 |
| Notes and mortgages payable (Note 7) | 33,865,205 | 39,443,478 |
| Capital lease obligations (Note 6) | 132,137 | 1,035,936 |
| Deferred rent (Note 2L) | 3,772,412 | 3,569,895 |
| **TOTAL LIABILITIES** | 79,923,232 | 80,259,462 |
| **COMMITMENTS AND CONTINGENCIES** (Note 8) | | |
| **NET ASSETS** (Note 2C) | | |
| Unrestricted | | |
| Invested in property and equipment | 15,193,445 | 13,390,782 |
| Available for operations | 15,841,379 | 16,390,901 |
| Total Unrestricted | 31,034,824 | 29,781,683 |
| Temporarily restricted (Note 9) | 700,606 | 1,096,685 |
| Permanently restricted (Note 10) | 10,000 | 10,000 |
| **TOTAL NET ASSETS** | 31,745,430 | 30,888,368 |
| **TOTAL LIABILITIES AND NET ASSETS** | $ 111,668,662 | $ 111,147,830 |

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**
**CONSOLIDATED STATEMENTS OF ACTIVITIES**
**FOR THE YEARS ENDED JUNE 30, 2017 AND 2016**

| | Unrestricted | Temporarily Restricted | Permanently Restricted | Total 2017 | Total 2016 | Unrestricted | Temporarily Restricted | Permanently Restricted |
|---|---|---|---|---|---|---|---|---|
| **REVENUE AND SUPPORT** | | | | | | | | |
| Medicaid (Notes 2G and 2K) | $ 162,511,388 | $ - | $ - | $ 162,511,388 | $ 162,975,440 | $ 162,975,440 | $ - | $ - |
| Government Contracts (Note 2G) | 19,985,946 | - | - | 19,985,946 | 20,203,646 | 20,203,646 | - | - |
| Medicare and Client Fees (Note 2G) | 9,830,514 | - | - | 9,830,514 | 10,586,148 | 10,586,148 | - | - |
| Vocational Rehabilitation | 34,200 | - | - | 34,200 | 204,867 | 204,867 | - | - |
| Other Revenues | 1,736,671 | - | - | 1,736,671 | 4,170,978 | 4,170,978 | - | - |
| Contributions (Note 2I) | 590,761 | 170,019 | - | 760,780 | 1,689,422 | 489,422 | 1,200,000 | - |
| Special Events (net of direct costs of $283,894 and $350,063 for 2017 and 2016) | 325,532 | 113,764 | - | 439,296 | 383,877 | 383,877 | - | - |
| Investment Activity (Note 4) | 101,097 | - | - | 101,097 | 108,896 | 108,896 | - | - |
| Net Assets Released from Restrictions (Note 2C) | 679,862 | (679,862) | - | - | - | 491,127 | (491,127) | - |
| **TOTAL REVENUE AND SUPPORT** | 195,795,971 | (396,079) | - | 195,399,892 | 200,323,274 | 199,614,401 | 708,873 | - |
| **EXPENSES:** | | | | | | | | |
| **Program Services:** | | | | | | | | |
| Residential Services | 86,188,459 | - | - | 86,188,459 | 80,907,533 | 80,907,533 | - | - |
| Day and Community Services | 61,528,924 | - | - | 61,528,924 | 59,174,405 | 59,174,405 | - | - |
| Clinical Services | 21,006,826 | - | - | 21,006,826 | 21,797,061 | 21,797,061 | - | - |
| Employment Services | 1,741,892 | - | - | 1,741,892 | 2,141,639 | 2,141,639 | - | - |
| **Total Program Services** | 170,466,101 | - | - | 170,466,101 | 164,020,638 | 164,020,638 | - | - |
| **Supporting Services:** | | | | | | | | |
| Management and General (Note 2J) | 23,538,859 | - | - | 23,538,859 | 29,336,921 | 29,336,921 | - | - |
| Fundraising | 537,870 | - | - | 537,870 | 441,828 | 441,828 | - | - |
| **Total Supporting Services** | 24,076,729 | - | - | 24,076,729 | 29,778,749 | 29,778,749 | - | - |
| **TOTAL EXPENSES** | 194,542,830 | - | - | 194,542,830 | 193,799,387 | 193,799,387 | - | - |
| **CHANGE IN NET ASSETS** | 1,253,141 | (396,079) | - | 857,062 | 6,523,887 | 5,815,014 | 708,873 | - |
| Net Assets - Beginning of Year | 29,781,683 | 1,096,685 | 10,000 | 30,888,368 | 24,364,481 | 23,966,669 | 387,812 | 10,000 |
| **NET ASSETS - END OF YEAR** | $ 31,034,824 | $ 700,606 | $ 10,000 | $ 31,745,430 | $ 30,888,368 | $ 29,781,683 | $ 1,096,685 | $ 10,000 |

The accompanying notes are an integral part of these consolidated financial statements.

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**
**CONSOLIDATED STATEMENTS OF FUNCTIONAL EXPENSES**
**FOR THE YEAR ENDED JUNE 30, 2017**
**(With Comparative Totals for the Year Ended June 30, 2016)**

| | For the Year Ended June 30, 2017 | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Program Services | | | | | Supporting Services | | | | |
| | Residential | Day and Community Services | Clinical Services | Employment Services | Total Program Services | Management and General | Fundraising | Total Supporting Services | Total 2017 | Total 2016 |
| Salaries | $ 51,540,412 | $ 30,094,058 | $ 12,305,504 | $ 1,114,031 | $ 95,054,005 | $ 10,187,053 | $ 150,366 | $ 10,337,419 | $ 105,391,424 | $ 100,887,833 |
| Payroll taxes and benefits (Note 12) | 14,968,642 | 8,750,341 | 2,826,656 | 299,853 | 26,845,492 | 2,886,340 | 46,829 | 2,933,169 | 29,778,661 | 30,519,055 |
| **Total Personnel Costs** | 66,509,054 | 38,844,399 | 15,132,160 | 1,413,884 | 121,899,497 | 13,073,393 | 197,195 | 13,270,588 | 135,170,085 | 131,406,888 |
| Contracted services | 1,205,625 | 393,719 | 1,135,112 | 10,904 | 2,745,360 | 544,558 | - | 544,558 | 3,289,918 | 3,227,563 |
| Professional fees | 351,697 | 124,503 | 34,318 | 4,758 | 515,276 | 3,037,490 | 80,965 | 3,118,455 | 3,633,731 | 6,200,109 |
| Program supplies | 2,500,612 | 1,353,485 | 357,245 | 6,276 | 4,217,618 | 48,808 | - | 48,808 | 4,266,426 | 3,887,073 |
| Food | 1,754,925 | 200,839 | 962 | 194 | 1,956,920 | 0 | 29,107 | 29,107 | 1,986,027 | 2,064,462 |
| Transportation (Note 8) | 1,344,544 | 10,495,751 | 222,124 | 33,810 | 12,096,229 | 78,415 | 3,061 | 81,476 | 12,177,705 | 11,265,135 |
| Office and equipment expense | 829,949 | 334,227 | 215,598 | 11,757 | 1,391,531 | 541,349 | 48,955 | 590,304 | 1,981,835 | 2,067,989 |
| Staff development and expenses | 207,701 | 232,185 | 44,835 | 9,340 | 494,061 | 298,739 | 2,670 | 301,409 | 795,470 | 893,195 |
| Occupancy (Note 8) | 2,348,329 | 5,049,624 | 1,765,651 | 118,064 | 9,281,668 | 1,923,880 | - | 1,923,880 | 11,205,548 | 10,571,757 |
| Repairs and maintenance | 1,727,812 | 712,926 | 342,260 | 29,541 | 2,812,539 | 267,390 | - | 267,390 | 3,079,929 | 3,486,414 |
| Insurance | 782,960 | 431,080 | 153,028 | 13,751 | 1,380,819 | 840,925 | 1,858 | 842,783 | 2,223,602 | 2,215,836 |
| Utilities | 1,261,355 | 536,879 | 110,087 | 14,331 | 1,922,652 | 217,564 | - | 217,564 | 2,140,216 | 2,206,041 |
| Telephone | 582,794 | 310,254 | 112,212 | 27,101 | 1,032,361 | 504,828 | - | 504,828 | 1,537,189 | 1,557,309 |
| Information technology | 378,181 | 530,109 | 310,771 | 21,000 | 1,240,061 | 1,163,313 | 107,523 | 1,270,836 | 2,510,897 | 2,307,007 |
| Depreciation and amortization (Notes 2H and 5) | 2,643,074 | 425,759 | 856,126 | 8,607 | 3,933,566 | 405,799 | 57,067 | 462,866 | 4,396,432 | 4,846,212 |
| Interest | 1,055,160 | 144,645 | 5,790 | - | 1,205,595 | 514,476 | - | 514,476 | 1,720,071 | 1,813,760 |
| Bad debts | 672,555 | 1,400,762 | 200,745 | 18,390 | 2,292,452 | - | - | - | 2,292,452 | 3,502,365 |
| Miscellaneous | 32,132 | 7,778 | 7,802 | 184 | 47,896 | 77,932 | 9,469 | 87,401 | 135,297 | 280,273 |
| **TOTAL EXPENSES** | $ 86,188,459 | $ 61,528,924 | $ 21,006,826 | $ 1,741,892 | $ 170,466,101 | $ 23,538,859 | $ 537,870 | $ 24,076,729 | $ 194,542,830 | $ 193,799,387 |

The accompanying notes are an integral part of these consolidated financial statements.

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**
**CONSOLIDATED STATEMENT OF FUNCTIONAL EXPENSES**
**FOR THE YEAR ENDED JUNE 30, 2016**

| | Program Services | | | | | Supporting Services | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Residential | Day and Community Services | Clinical Services | Employment Services | Total Program Services | Management and General | Fundraising | Total Supporting Services | Total 2016 |
| Salaries | $ 47,353,829 | $ 27,768,917 | $ 13,371,956 | $ 1,280,606 | $ 89,775,308 | $ 11,077,236 | $ 35,289 | $ 11,112,525 | $ 100,887,833 |
| Payroll taxes and benefits (Note 12) | 14,960,108 | 8,823,554 | 3,112,626 | 361,944 | 27,258,232 | 3,249,728 | 11,095 | 3,260,823 | 30,519,055 |
| **Total Personnel Costs** | 62,313,937 | 36,592,470 | 16,484,582 | 1,642,550 | 117,033,540 | 14,326,964 | 46,384 | 14,373,348 | 131,406,888 |
| Contracted services | 607,737 | 455,671 | 1,350,591 | 15,581 | 2,429,580 | 797,983 | - | 797,983 | 3,227,563 |
| Professional fees | 356,419 | 199,984 | 57,737 | 12,046 | 626,187 | 5,449,188 | 124,734 | 5,573,922 | 6,200,109 |
| Program supplies | 2,228,229 | 1,371,470 | 279,852 | 7,522 | 3,887,073 | - | - | - | 3,887,073 |
| Food | 1,806,145 | 182,753 | 971 | 881 | 1,990,750 | - | 73,712 | 73,712 | 2,064,462 |
| Transportation (Note 8) | 1,141,389 | 9,933,833 | 7,712 | 63,425 | 11,146,359 | 107,790 | 10,986 | 118,776 | 11,265,135 |
| Office and equipment expense | 769,904 | 378,774 | 212,714 | 17,177 | 1,378,569 | 651,770 | 37,650 | 689,420 | 2,067,989 |
| Staff development and expenses | 153,122 | 130,593 | 48,533 | 18,970 | 351,217 | 541,978 | - | 541,978 | 893,195 |
| Occupancy (Note 8) | 2,029,158 | 4,844,860 | 1,756,395 | 124,630 | 8,755,043 | 1,816,714 | - | 1,816,714 | 10,571,757 |
| Utilities | 1,225,657 | 582,521 | 118,469 | 35,184 | 1,961,831 | 244,210 | - | 244,210 | 2,206,041 |
| Repairs and maintenance | 1,720,713 | 1,060,808 | 340,433 | 10,548 | 3,132,503 | 353,911 | - | 353,911 | 3,486,414 |
| Insurance | 829,382 | 407,177 | 237,433 | 20,533 | 1,494,525 | 719,747 | 1,564 | 721,311 | 2,215,836 |
| Telephone | 575,539 | 303,398 | 98,787 | 37,050 | 1,014,774 | 542,535 | - | 542,535 | 1,557,309 |
| Information technology | 243,917 | 501,275 | 23,737 | 30,048 | 798,977 | 1,391,578 | 116,452 | 1,508,030 | 2,307,007 |
| Depreciation and amortization (Notes 2H and 5) | 2,787,268 | 593,545 | 547,423 | 33,759 | 3,961,996 | 884,216 | - | 884,216 | 4,846,212 |
| Interest | 1,163,275 | 153,088 | 21,793 | 12,537 | 1,350,693 | 463,067 | - | 463,067 | 1,813,760 |
| Bad debts | 856,481 | 1,473,456 | 200,028 | 58,849 | 2,588,814 | 913,551 | - | 913,551 | 3,502,365 |
| Miscellaneous | 99,261 | 8,727 | 9,871 | 349 | 118,208 | 131,719 | 30,346 | 162,065 | 280,273 |
| **TOTAL EXPENSES** | $ 80,907,533 | $ 59,174,405 | $ 21,797,061 | $ 2,141,639 | $ 164,020,638 | $ 29,336,921 | $ 441,828 | $ 29,778,749 | $ 193,799,387 |

The accompanying notes are an integral part of these consolidated financial statements.

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**
**CONSOLIDATED STATEMENTS OF CASH FLOWS**
**FOR THE YEARS ENDED JUNE 30, 2017 AND 2016**

| | 2017 | 2016 |
|---|---|---|
| **CASH FLOWS FROM OPERATING ACTIVITIES:** | | |
| Change in net assets | $ 857,062 | $ 6,523,887 |
| Adjustments to reconcile change in net assets to net cash provided by (used in) operating activities: | | |
| Depreciation and amortization | 4,396,432 | 4,846,214 |
| Non-cash interest expense | 244,334 | 178,561 |
| Unrealized loss (gains) on short-term investments | 29,049 | (31,720) |
| Realized (gains) on short-term investments | (1,169) | - |
| Bad debts | 2,292,452 | 3,502,366 |
| Loss on disposal of property and equipment | 4,725 | - |
| Subtotal | 7,822,885 | 15,019,308 |
| Changes in operating assets and liabilities: | | |
| (Increase) or decrease in assets: | | |
| Accounts receivable | 724,958 | (6,047,801) |
| Prepaid expenses and other assets | 331,649 | 2,304,216 |
| Other receivables | 740,463 | 1,661,056 |
| Increase or (decrease) in liabilities: | | |
| Accounts payable and accrued expenses | 1,122,457 | (1,316,137) |
| Accrued salary | 688,852 | 1,271,393 |
| Accrued vacation | 26,121 | (678,011) |
| Accrued pension | 708,980 | (558,914) |
| Due to funding sources | 2,190,485 | (9,596,697) |
| Deferred rent | 202,517 | 335,540 |
| Other liabilities | 1,206,430 | (2,502,427) |
| **Net Cash Provided by (Used) in Operating Activities** | 15,765,797 | (108,474) |
| **CASH FLOWS FROM INVESTING ACTIVITIES:** | | |
| Purchases of property and equipment | (4,169,868) | (5,945,615) |
| Purchases of short-term investments | (1,335,172) | - |
| Proceeds from sale of short-term investments | 279,000 | 989,220 |
| Decrease (Increase) in debt service reserve | 448,120 | (118,672) |
| **Net Cash Used in Investing Activities** | (4,777,920) | (5,075,067) |
| **CASH FLOWS FROM FINANCING ACTIVITIES:** | | |
| Proceeds from notes and mortgages | 1,689,000 | 13,651,824 |
| Principal repayments of notes and mortgages | (7,511,607) | (12,185,311) |
| Principal repayments of capital lease obligations | (903,799) | (728,703) |
| **Net Cash (Used in) Provided by Financing Activities** | (6,726,406) | 737,810 |
| **NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS** | 4,261,471 | (4,445,731) |
| Cash and Cash Equivalents - Beginning of Year | 16,228,595 | 20,674,326 |
| **CASH AND CASH EQUIVALENTS- END OF YEAR** | $ 20,490,066 | $ 16,228,595 |
| **Supplemental Disclosure of Cash Flow Information:** | | |
| Cash paid for interest | $ 1,720,071 | $ 1,813,761 |

The accompanying notes are an integral part of these consolidated financial statements.

## NOTE 1 – ORGANIZATION AND NATURE OF ACTIVITIES

The Young Adult Institute, Inc. ("YAI") is organized under the Not-for-Profit Corporation Law of New York State and was incorporated in 1964. YAI has been granted exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code. YAI has an equivalent exemption at the state and local levels.

YAI serves people of all ages with developmental and learning disabilities, from infants through the elderly, in a variety of community settings and at home through state-of-the-art programs that help to build skills, expand opportunities, and support community living. YAI's many programs and direct services benefit thousands of individuals and their families daily throughout the New York metropolitan area. YAI is funded primarily by Medicaid. YAI's 334 programs and direct services benefit over 10,521 individuals and their families daily in 10 counties throughout the New York metropolitan area. YAI is funded primarily by Medicaid.

YAI is part of a network of independent agencies, collectively known as the YAI Network. The network provides programs and support for people with intellectual and developmental disabilities throughout New York City, Westchester County, Rockland County, Long Island, New Jersey, and Puerto Rico. YAI is the sole corporate member of three of these agencies which have been included in the consolidated financial statements. Further descriptions follow:

- YAI is the sole corporate member of Premier Healthcare, Inc. (“PHC”). PHC is a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code. PHC has an equivalent exemption at the state and local levels. PHC is an outpatient diagnostic and treatment center offering health care services to the general public with a specialty in medical services for people with developmental and learning disabilities and their families in many sites throughout the New York area. PHC is a quality health care practice providing outpatient clinic services which include: primary health, pediatrics, internal medicine, dentistry (including desensitization), nutrition, gynecology, neurology, podiatry, psychiatry, physical therapy, occupational therapy, ophthalmology, speech pathology and psychology. PHC’s primary source of revenue is patient service fees received from Medicaid, Medicare and other third-party payors.

- YAI is the sole corporate member of the Rockland County Association for People with Disabilities (“RCAPD”). RCAPD has been granted exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code. RCAPD has an equivalent exemption at the state and local levels. RCAPD provides a wide variety of employment, residential, family support and social/recreational programs which promote essential social and vocational skills that enable people with learning and other developmental disabilities to lead independent, productive and dignified lives. RCAPD provides extensive support and education to families and guidance and training to professionals who are assisting people with developmental and learning disabilities. RCAPD is funded primarily by service fees paid by various New York State agencies and government grants.

- YAI is the sole corporate member of the International Institute for People with Disabilities of Puerto Rico, Inc. (“IIPD-PR”), which was incorporated in 1998 under the Not-for-Profit Corporation Law of the Commonwealth of Puerto Rico. IIPD-PR has been granted exemption from federal income tax under Section 501(c)(3) of the Internal Revenue Code and has a similar exemption at the state and local levels. IIPD-PR creates employment opportunities for people with disabilities. The primary source of support is facilitated through long-term contracts with government and private industry and the development of affirmative businesses. By providing competitive employment opportunities for persons with disabilities, IIPD-PR demonstrates a commitment to independence, community inclusion and productivity for people with special needs. IIPD-PR is supported primarily by a government contract.

## NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**A.** ***Basis of Accounting and Use of Estimates -*** The Agency’s consolidated financial statements have been prepared on the accrual basis of accounting. The Agency adheres to accounting principles generally accepted in the United States of America (“U.S. GAAP”). The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reported period. Actual results could differ from those estimates.

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

**B. Basis of Consolidation** – The Agency's accompanying consolidated financial statements include the activities of: YAI; PHC; RCAPD and IIPD-PR. YAI has consolidated these entities pursuant to U.S. GAAP due to its financial interest and control over them. All material intercompany transactions and balances have been eliminated upon consolidation.

**C. *Basis of Net Asset Presentation -*** The Agency maintains its net assets under the following three classes:

Unrestricted - This represents net assets not subject to donor-imposed stipulations and that have no time restrictions. Such resources are available for support of the Agency's operations over which the Board of Directors has discretionary control.

Temporarily Restricted - This represents net assets subject to donor-imposed stipulations that will be met by actions of the Agency or by the passage of time. When a stipulated time restriction ends or purpose restriction is accomplished, such temporarily restricted net assets are reclassified to unrestricted net assets and reported in the consolidated statements of activities as net assets released from restrictions.

Permanently Restricted - This represents net assets subject to donor-imposed stipulations that they be maintained permanently by the Agency. Generally, the donors of these assets permit the Agency to use all or part of the income earned for unrestricted or donor-specified purposes.

**D. *Cash and Cash Equivalents -*** The Agency considers highly liquid debt instruments with maturities of three months or less, when acquired, to be cash and cash equivalents. Program participant funds included in cash and cash equivalents amounted to approximately $1,489,000 and $1,190,000 for the years ended June 30, 2017 and 2016. Such amounts are also included as a liability in the accompanying consolidated financial statements.

**E. *Short-term Investments and Fair Value Measurements –*** Short-term investments are carried at fair value. Fair value measurements are based on the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. In order to increase consistency and comparability in fair value measurements, a fair value hierarchy prioritizes observable and unobservable inputs used to measure fair value into three levels, as described in Note 4.

**F. *Allowance for Uncollectible Receivables -*** The Agency determines whether an allowance for uncollectible receivables should be provided for accounts receivable. Such estimate is based on management's assessment of the aged basis of its receivables, current economic conditions, historical experience, and collections subsequent to year end. As of June 30, 2017 and 2016, the Agency determined an allowance of $2,103,290 and $2,629,043, respectively for accounts receivable were necessary. In addition, the Agency has established an allowance for doubtful accounts for other receivables due from network agencies of $1,182,988 and $1,244,800, representing nearly the entire balance due as of June 30, 2017 and 2016.

**G. *Revenue Recognition -*** The Agency records Medicaid revenue based on established rates multiplied by the number of units of service provided. Government grants are recorded as revenues to the extent that expenses have been incurred for the purposes specified by the grantors. To the extent amounts received exceed amounts spent, the Agency records a liability due to funding sources. Other revenue includes management programmatic services provided to other network agencies. Such revenue is recorded based on the support service agreement.

**H. *Property and Equipment -*** Property and equipment is stated at cost less accumulated depreciation or amortization. These amounts do not purport to represent replacement or realizable values. Depreciation is provided on a straight-line basis over the estimated useful lives of the assets. Leasehold improvements are amortized over the lesser of the useful lives of the improvements or the term of the applicable lease. Property and equipment is capitalized by the Agency provided its cost is $5,000 or more and its useful life is greater than one year.

**NOTE 2 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

**I.** ***Contributions -*** Unconditional contributions, including promises to give cash and other assets, are reported at their fair value on the date the contribution is received. The Agency reports gifts of cash and other assets as restricted support if they are received with donor stipulations that limit the use of donated assets. When a donor restriction expires, that is when a stipulated time restriction ends or purpose of restriction is accomplished, temporarily restricted net assets are reclassified as unrestricted net assets and reported in the consolidated statements of activities as net assets released from restrictions.

***J.*** ***Functional Expenses -*** The costs of providing program and supporting services of the Agency have been summarized on a functional basis in the consolidated statement of functional expenses. Accordingly, certain costs have been allocated among the programs and general supporting services benefited. Included in management and general are costs associated with providing management services for other agencies which reimburse YAI for services provided.

***K.*** ***Prior Period Revenue -*** There are occasions when funding source reimbursements for prior years are adjusted in the current year. Such adjustments may be due to retroactive rate adjustments, funding source audit findings, additional monies available over and above original contract amounts, rate appeal results, etc. Included in Medicaid revenue for the years ended June 30, 2017 and 2016 is an increase of $1,302,840 and $600,000 of prior year revenues relating to such adjustments.

**L.** ***Deferred Rent -*** The Agency leases real property under various operating leases. The leases include rent escalations. Since the rent increases over time, the Agency records an adjustment to rent expense each year to reflect its straight-lining policy. Straight-lining of rent gives rise to a timing difference that is reflected as deferred rent in the accompanying consolidated statements of financial position.

**M.** ***Bond Issuance Costs -*** Bond issuance costs consist of financing costs which are amortized over the life of the bond. The amortization is on the straight line method which does not differ materially from the effective interest rate method.

**N.** ***Debt Service Reserves -*** Under the terms of the Industrial Development Agency ("IDA"), and Dormitory Authority State of New York ("DASNY"), the Agency is required to deposit with the bond trustee an amount to be held in a debt service reserve fund, which will be utilized to satisfy the last payment required on the mortgage, or can be used prior to that point under the direction of IDA or DASNY to make any loan payments due by reason of default or other causes spelled out in the loan agreement. The debt service reserve is carried at market value in the accompanying consolidated statements of financial position.

**O.** ***Recent Accounting Pronouncement –*** In 2016, the Association retrospectively adopted the Financial Accounting Standards Board ("FASB") Accounting Standards Update ("ASU") 2015-03, *Interest – Imputation of Interest, Simplifying the Presentation of Debt Issuance Costs*. This update requires that debt issuance costs related to a liability be reported as a deduction from that liability on the statement of financial position. Accordingly, the Association has presented long term debt net of debt issuance costs on the accompanying statements of financial position. Notes and mortgages payable as of June 30, 2016 were previously reported on the Consolidated Statements of Financial Position as $41,155,860, with the associated $1,712,382 of bond issuance cost. Amortization of the debt issuance costs of $175,932 is reported as interest expense and was previously reported as amortization expense. This change had no impact on the change in net assets for the year ended June 30, 2016.

**P.** ***Reclassification*** – Certain line items in the June 30, 2016 consolidated financial statements have been reclassified to conform to the June 30, 2017 presentation.

## NOTE 3 – ACCOUNTS RECEIVABLE

Accounts receivable consists of the following as of June 30, 2017 and 2016:

| | 2017 | 2016 |
|---|---|---|
| Due from Medicaid | $ 19,613,256 | $ 22,391,873 |
| Due from the State of New York | 6,275,293 | 7,077,504 |
| Due from the City of New York | 1,136,994 | 552,640 |
| Due from other sources | 1,842,659 | 2,389,348 |
| | 28,868,202 | 32,411,365 |
| Less: allowance for doubtful accounts | (2,103,290) | (2,629,043) |
| | $ 26,764,912 | $ 29,782,322 |

## NOTE 4 – SHORT-TERM INVESTMENTS AND FAIR VALUE MEASUREMENTS

Short-term investments consist of the following as of June 30, 2017 and 2016:

| | 2017 | 2016 |
|---|---|---|
| Money market funds | $ 17,833,528 | $ 16,498,354 |
| Corporate bonds | 745,588 | 817,375 |
| Government bonds | - | 235,095 |
| | $ 18,579,116 | $ 17,550,824 |

Investment activity consists of the following for the years ended June 30, 2017 and 2016:

| | 2017 | 2016 |
|---|---|---|
| Interest | $ 128,977 | $ 77,176 |
| Realized gains | 1,169 | - |
| Unrealized (loss) gains | (29,049) | 31,720 |
| | $ 101,097 | $ 108,896 |

The fair value hierarchy defines three levels as follows:

Level 1: Valuations based on quoted prices (unadjusted) in an active market that are accessible at the measurement date for identical assets or liabilities. The fair value hierarchy gives the highest priority to Level 1 inputs.

Level 2: Valuations based on observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities; quoted prices in inactive markets; or model-derived valuations in which all significant inputs are observable or can be derived principally from or corroborated with observable market data.

Level 3: Valuations based on unobservable inputs are used when little or no market data is available. The fair value hierarchy gives lowest priority to Level 3 inputs. The Agency has no level 3 investments.

## NOTE 4 – SHORT-TERM INVESTMENTS AND FAIR VALUE MEASUREMENTS (Continued)

In determining fair value, the Agency utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible in its assessment of fair value. Investments in money markets and U.S. Treasury bills are valued using market prices in active markets (Level 1). Fair value of these investments are determined by management through the investment managers. Level 1 instrument valuations are obtained from real-time quotes in active exchange markets involving identical assets. Corporate bonds and U.S. Government bonds are designated as Level 2 instruments and valuations are obtained from similar market or model derived valuations in which all significant inputs are observable or can be derived primarily from or corroborated with observable market data (credit risk/grade, maturities, etc.).

Financial assets carried at fair value as of June 30, 2017 are classified in the table as follows:

| | Level 1 | Level 2 | 2017 Total |
|---|---|---|---|
| Short-term Investments: | | | |
| Money market funds | $ 17,833,528 | $ - | $ 17,833,528 |
| Corporate bonds | - | 745,588 | 745,588 |
| Total Short-Term Investments | 17,833,528 | 745,588 | 18,579,116 |
| Debt Service Reserve Fund: | | | |
| U.S. Treasury bills | 2,665,460 | - | 2,665,460 |
| | $ 20,498,988 | $ 745,588 | $ 21,244,576 |

Financial assets carried at fair value as of June 30, 2016 are classified in the table as follows:

| | Level 1 | Level 2 | 2016 Total |
|---|---|---|---|
| Short-term Investments: | | | |
| Money market funds | $ 16,498,354 | $ - | $ 16,498,354 |
| Corporate bonds | - | 817,375 | 817,375 |
| Government bonds | - | 235,095 | 235,095 |
| Total Short-Term Investments | 16,498,354 | 1,052,470 | 17,550,824 |
| Debt Service Reserve Fund: | | | |
| U.S. Treasury bills | 3,113,580 | - | 3,113,580 |
| | $ 19,611,934 | $ 1,052,470 | $ 20,664,404 |

## NOTE 5 – PROPERTY AND EQUIPMENT

Property and equipment consists of the following as of June 30, 2017 and 2016:

| | 2017 | 2016 | Estimated Useful Lives |
|---|---|---|---|
| Land | $ 10,522,584 | $ 10,522,584 | |
| Buildings and building improvements | 56,271,803 | 55,639,346 | 15-25 years |
| Leasehold improvements | 25,460,977 | 24,219,385 | 5-25 years |
| Furniture and equipment | 16,875,672 | 15,813,187 | 3-10 years |
| Construction in progress (see below) | 3,365,713 | 3,071,909 | |
| | 112,496,749 | 109,266,411 | |
| Less: accumulated depreciation | (74,814,333) | (71,352,708) | |
| | $ 37,682,416 | $ 37,913,703 | |

## NOTE 5 – PROPERTY AND EQUIPMENT (Continued)

Depreciation expenses amounted to $4,396,432 and $4,846,214 for the years ended June 30, 2017 and 2016. For the year ended June 30, 2017, fixed assets with total cost of $939,532 and total accumulated depreciation of $934,807 were disposed. This resulted in a loss of $4,725 on disposal of property and equipment.

Construction in progress consists of construction at new locations and various renovations with a combined additional estimated cost to complete of approximately $1.8 million and estimated completion dates in fiscal years 2018 and 2019.

## NOTE 6 – CAPITAL LEASE OBLIGATIONS

YAI has capital lease agreements to fund the purchase of buildings, building improvements and equipment through two issuances in 2001 and 2002.

The New York City Industrial Development Agency ("NYCIDA"), a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, issued and sold revenue bonds (Special Needs Pooled Program) carrying interest rates ranging from 6.26% to 6.30% per annum payable in semiannual installments with maturities in 2017. The proceeds of the loans were used to finance the purchase and renovation of various collateralized properties in New York. As part of the agreement with NYCIDA, YAI transferred the titles to all the facilities. NYCIDA has leased the facilities back to YAI for a term and at an amount concurrent with the bond repayment schedules. At the conclusion of the lease terms, YAI has the option to purchase each of the leased properties for $1.

The capital lease agreements require YAI to comply with certain terms and conditions. YAI was in compliance with all applicable financial covenants as of June 30, 2017 and 2016.

Pursuant to the capital lease agreement, the debt service reserve fund was established with a balance of $28,973 and $482,116 as of June 30, 2017 and 2016, included in the consolidated statement of financial position under debt service reserves. In addition, YAI has capital leases for computer and electronic equipment with maturities in 2019.

As of June 30, 2017, future minimum principal lease payments are as follows:

| | |
|---|---|
| 2018 | $ 112,747 |
| 2019 | 19,390 |
| | $ 132,137 |

## NOTE 7 – NOTES AND MORTGAGES PAYABLE

| | 2017 | 2016 |
|---|---|---|
| A. YAI has available an $18 million working capital line of credit with a bank and carrying an interest rate of prime or 30-day LIBOR (at YAI's election) plus 2% per annum, which at June 30, 2016 was 2.75%. The loan is collateralized by YAI's accounts receivable and matures in December 2017. The outstanding balance as of November 30, 2017 amounted to $6,342,911. YAI is in the process or renewing the line of credit. | $ 8,842,911 | $ 12,842,911 |
| B. YAI has available an $8 million line of credit with a bank for the acquisition and renovation of program sites. Upon receipt of New York State prior property approvals, the funds drawn down on this line of credit are subsequently converted into notes. As of June 30, 2017, there were four notes executed. The notes bear an interest rate of prime or 30-day LIBOR (at YAI's election) plus 2% per annum, resulting in a rate of 2.75% at June 30, 2017. The notes are collateralized by related property and mature in December 2017. The outstanding balance as of November 30, 2017 amounted to $2,979,393. YAI is in the process of renewing the line of credit. | 2,434,393 | 745,393 |

**NOTE 7 – NOTES AND MORTGAGES PAYABLE (Continued)**

| | 2017 | 2016 |
|---|---|---|
| C. YAI has entered into various loan agreements with the Dormitory Authority of the State of New York. The loans carry interest rates ranging from 1.5% to 7.82% per annum, payable in semi-annual installments and have maturity dates ranging from August 2018 through July 2040. The loans are collateralized by YAI's underlying real property. | 21,198,460 | 23,981,184 |
| D. PHC has a $3 million revolving line of credit with a bank. The line has an interest rate of one half percent above prime rate (amounting to an interest rate of 4.00% as of June 30, 2017). Borrowings are secured by PHC's accounts receivable. The outstanding balance as of November 30, 2017 amounted to $0. | 1,267,734 | 1,497,527 |
| E. PHC has a self-liquidating mortgage with a bank bearing an interest rate of 4.541% per annum that is secured by property. Monthly payments of principal and interest amount to $20,910. In January 2017, the loan was paid off. | - | 241,964 |
| F. RCAPD has a line of credit with a bank in the amount of $1 million that will expire in March 2018. The line of credit bears an interest rate at the lender's prime rate. The line of credit is guaranteed by YAI. The outstanding balance as of November 30, 2017 amounted to $505,439. | 609,754 | 651,881 |
| G. RCAPD financed the purchase and renovation of certain properties through the issuance of Civic Facility Revenue Bonds Series 2006J by the County of Rockland Industrial Development Agency (Special Needs Facilities Pooled Program) carrying average interest rates of: 4.75%, 4.74%, 4.78% and 4.75% per annum maturing in July 2020. The proceeds of the loan were used to finance the purchase and renovation of collateralized properties located in Rockland County, New York. | 980,001 | 1,195,000 |
| | 35,333,253 | 41,155,860 |
| Less unamortized debt issuance costs | (1,468,048) | (1,712,382) |
| Notes and mortgages payable, net | $ 33,865,205 | $ 39,443,478 |

Most of the loans have provisions for loan covenants. The Agency was in compliance with these covenants as of and during the years ended June 30, 2017 and 2016.

Required future annual principal payments are payable as follows for the years ending June 30:

| | |
|---|---|
| 2018 | $ 16,081,292 |
| 2019 | 2,798,015 |
| 2020 | 2,851,937 |
| 2021 | 1,761,820 |
| 2022 | 1,686,878 |
| Thereafter | 10,153,309 |
| | $ 35,333,251 |

## NOTE 8 – COMMITMENTS AND CONTINGENCIES

A. The Agency has a number of operating lease agreements. Annual future minimum rentals payable for real and personal property principally under long-term noncancellable operating leases expiring at varying dates through 2038 follows:

| | Real Property | Vehicles and Equipment | Total |
|---|---|---|---|
| 2018 | $ 6,511,604 | $ 786,693 | $ 7,298,297 |
| 2019 | 7,205,553 | 852,676 | 8,058,229 |
| 2020 | 6,145,310 | 506,699 | 6,652,009 |
| 2021 | 4,576,823 | 172,023 | 4,748,846 |
| 2022 | 4,384,236 | - | 4,384,236 |
| Thereafter | 21,287,533 | - | 21,287,533 |
| | $ 50,111,059 | $ 2,318,091 | $ 52,429,150 |

Rent expense (shown as occupancy and transportation in the accompanying consolidated statements of functional expenses) amounted to the following for the years ended June 30, 2017 and 2016:

| | 2017 | 2016 |
|---|---|---|
| Real property | $ 9,896,347 | $ 9,573,596 |
| Vehicles and equipment | 1,149,422 | 1,196,679 |
| | $ 11,045,769 | $ 10,770,275 |

B. The Agency believes it has no uncertain tax positions as of June 30, 2017 and 2016 in accordance with Accounting Standard Codification ("ASC") Topic 740, "Income Taxes," which provides standards for establishing and classifying any tax provisions for uncertain tax positions.

C. The Agency receives a significant portion of its revenue for services provided from third-party reimbursement through government agencies and Medicaid. These revenues are based on predetermined rates based on cost reimbursement principles and are subject to audit and retroactive adjustment by the government. The Agency, when appropriate, records an estimated liability to governmental agencies for any excess reimbursement over allowable costs and underspending of interim rates. As of June 30, 2017 and 2016, due to funding source represents overpayments from the 2010-2017 fiscal years for the Agency's programs. Such amounts are expected to be recouped by the funding sources.

D. The Agency is subject to legal proceedings and claims which have arisen in the ordinary course of its business and which have not been fully adjudicated. Management does not believe there will be a material adverse effect upon the financial position of the Agency.

E. In 2013, a former senior management employee and his spouse filed a complaint against YAI and the trustees of the Supplemental Pension Plan and Trust for Certain Management Employees of YAI (the "SERP"). On June 1, 2017, the District Court entered a Judgment providing a lump sum of about $3.4 million for past-due payments under the SERP, and a monthly lifetime benefit with survivor benefit to his spouse of approximately $44,000, a survivor benefit to his spouse in, and benefit under the Life Insurance Plan and Trust ("LIPT") of about $3.2 million. The plaintiff also submitted a motion for an award of over $3.2 million in attorney's fees and $330,000 in costs.

## NOTE 8 – COMMITMENTS AND CONTINGENCIES (Continued)

YAI has appealed the district court's June 1, 2017 judgment. As part of the appeal process, YAI obtained a letter of credit from a bank for the amount of approximately $1.8 million. YAI, with consultation with its outside legal counsel believes there to be a reasonable basis for concluding in light of various specific arguments that the judgment will be vacated or the damages significantly reduced. YAI, with consultation with its legal counsel, has taken the position that due to the uncertainty of the outcome and YAI's position to appeal any future judgments, as of June 30, 2017, no liability should be recorded related to this matter. Once all appeals have been exhausted, YAI's ultimate financial liability shall be limited to the difference, if any, between the final judgment and the then available funds in the SERP and LIPT.

## NOTE 9 –TEMPORARILY RESTRICTED NET ASSETS

As of June 30, 2017 and 2016, temporarily restricted net assets consist of $700,606 and $1,096,685 restricted to programs including the Community of Learners and Linking Individuals to Necessary Knowledge ("LINK") program.

## NOTE 10 – PERMANENTLY RESTRICTED NET ASSETS

Permanently restricted net assets consist of a $10,000 permanently restricted endowment fund maintained by RCAPD for the years ended June 30, 2017 and 2016, respectively.

From time to time, the fair value of assets associated with individual donor-restricted endowment funds may fall below the value of the initial and subsequent donor gift amounts (referred as "underwater"). When underwater endowment funds exist, the amount that is below the initial value is classified as a reduction of unrestricted net assets. As of June 30, 2017 and 2016, there were no underwater funds.

## NOTE 11 – CONCENTRATION

Cash and cash equivalents that potentially subject the Agency to a concentration of credit risk include cash and short-term investment accounts with banks that exceed the Federal Deposit Insurance Corporation ("FDIC") insurance limits. Cash and short-term investment accounts are insured up to $250,000 per depositor. As of June 30, 2017 and 2016, there was approximately $21.0 and $18.8 million of cash and cash equivalents and $17.8 and $16.5 million of short-term investments held by banks that exceeded FDIC limits.

## NOTE 12 – RETIREMENT PLANS

On July 1, 2015, the Agency adopted the YAI Network Affiliates 401(a) Plan. Employees are eligible to participate in the plan upon completion of one year of service after July 1, 2015 and when the employee worked at least 1,000 hours. Contributions to this plan are based on amounts determined in accordance with the Internal Revenue Service Code Section 415. The liability for the Agency amounted to approximately $3,014,000 and $2,305,000 as of June 30, 2017 and 2016, respectively. The expense for the Agency amounted to $2,555,000 and $2,121,000 for the years ended June 30, 2017 and 2016, respectively.

## NOTE 13 – DUE TO MEDICAID

As required by statute, the New York State Department of Health ("DOH") transitioned Medicaid payments to diagnostic and treatment centers licensed under Article 28 of the New York Public Health Law ("D&TCs") to the Ambulatory Patient Group ("APG") payment methodology. On February 25, 2013, PHC, along with other D&TCs, received notice from DOH that the capital component of PHC's Medicaid payment rate for the period September 1, 2009 through December 31, 2012 had been retroactively rebased, purportedly in accordance with annual D&TC cost reports submitted by PHC for successive years. In the same notice, DOH advised PHC that it intended to commence a take-back equal to 15 percent of PHC's Medicaid remittances to recoup payments received during that period in excess of PHC's recalculated rate.

PHC immediately contested DOH's interpretation of applicable statutes and resulting retroactive reduction of PHC's Medicaid payments. DOH agreed to suspend the imposition of a Medicaid withhold while it considered PHC's position that the take-back violated these statutes.

**NOTE 13 – DUE TO MEDICAID (Continued)**

PHC initiated negotiations with DOH seeking to invalidate the retroactive take-back in its entirety. During 2014, DOH began recoupments at 15% of cash receipts from February 2013 until May 2013, which amounted to $551,000. DOH returned approximately $409,000 of the recouped amount to PHC based on the negotiations.

The amounts outstanding as of June 30, 2017 and 2016 were $6,185,014 and $6,051,279, respectively. PHC has begun monthly payments of $31,658 towards the $761,298 of this liability. Payments made as of June 30, 2017 amounted to $63,316. The start of the recoupment for the remaining liability is still pending.

**NOTE 14 – SUBSEQUENT EVENTS**

A. Management has evaluated, for potential recognition or disclosure, events subsequent to the date of the statement of financial position through November 30, 2017, the date the financial statements were issued.

B. On November 3, 2017, PHC signed a line of credit agreement with a bank in the amount of $3,000,000 that will expire on November 3, 2019. The line of credit has an interest rate equal to prime rate plus 0.50% per annum. The line of credit is guaranteed by YAI. As of November 30, 2017, there was an outstanding balance of $1,282,330.

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATE**
**CONSOLIDATING SCHEDULE OF FINANCIAL POSITION**
**AS OF JUNE 30, 2017**

| | YAI | RCAPD | PHC | IIPD-PR | Consolidating Eliminations | Total 2017 |
|---|---|---|---|---|---|---|
| **ASSETS** | | | | | | |
| Cash and cash equivalents | $ 18,585,550 | $ 301,112 | $ 1,599,601 | $ 3,803 | $ - | $ 20,490,066 |
| Short-term Investments | 18,579,116 | - | - | - | - | 18,579,116 |
| Accounts receivable, net | 23,686,406 | 964,263 | 2,114,243 | - | - | 26,764,912 |
| Other receivables, net | 997,210 | - | - | - | - | 997,210 |
| Prepaid expenses and other assets | 3,769,879 | 268,379 | 480,983 | 5,568 | (35,327) | 4,489,482 |
| Property and equipment, net | 34,881,726 | 1,398,443 | 1,402,247 | - | - | 37,682,416 |
| Debt service reserve | 2,352,081 | 313,379 | - | - | - | 2,665,460 |
| **TOTAL ASSETS** | $ 102,851,968 | $ 3,245,576 | $ 5,597,074 | $ 9,371 | $ (35,327) | $ 111,668,662 |
| **LIABILITIES** | | | | | | |
| Accounts payable and accrued expenses | $ 8,368,856 | $ 215,551 | $ 722,932 | $ 4,717 | $ - | $ 9,312,056 |
| Accrued salary | 5,808,738 | 166,311 | 441,463 | - | - | 6,416,512 |
| Accrued vacation | 2,666,714 | 123,982 | 275,074 | - | - | 3,065,770 |
| Accrued pension | 2,884,414 | 45,924 | 84,043 | - | - | 3,014,381 |
| Other liabilities | 3,818,722 | - | - | - | - | 3,818,722 |
| Due to funding sources | 10,165,846 | 175,177 | 6,185,014 | - | - | 16,526,037 |
| Notes and mortgages payable | 31,085,566 | 1,511,905 | 1,267,734 | - | - | 33,865,205 |
| Capital lease obligations | 132,137 | - | - | - | - | 132,137 |
| Due to Related Party | - | 2,576 | 5,883,308 | 593,031 | (6,478,915) | - |
| Deferred rent | 3,488,140 | 27,687 | 256,585 | - | - | 3,772,412 |
| **TOTAL LIABILITIES** | 68,419,133 | 2,269,113 | 15,116,153 | 597,748 | (6,478,915) | 79,923,232 |
| **COMMITMENTS AND CONTINGENCIES** | | | | | | |
| **NET ASSETS (DEFICIT)** | | | | | | |
| Unrestricted | | | | | | |
| Invested in property and equipment | 14,859,015 | 199,917 | 134,513 | - | - | 15,193,445 |
| Available for operations | 18,873,214 | 766,546 | (9,653,592) | (588,377) | 6,443,588 | 15,841,379 |
| Total Unrestricted | 33,732,229 | 966,463 | (9,519,079) | (588,377) | 6,443,588 | 31,034,824 |
| Temporarily restricted | 700,606 | - | - | - | - | 700,606 |
| Permanently restricted | - | 10,000 | - | - | - | 10,000 |
| **TOTAL NET ASSETS** | 34,432,835 | 976,463 | (9,519,079) | (588,377) | 6,443,588 | 31,745,430 |
| **TOTAL LIABILITIES AND NET ASSETS (DEFICIT)** | $ 102,851,968 | $ 3,245,576 | $ 5,597,074 | $ 9,371 | $ (35,327) | $ 111,668,662 |

See independent auditors' report.

**YOUNG ADULT INSTITUTE, INC. AND AFFILIATES**
**CONSOLIDATING SCHEDULE OF ACTIVITIES**
**FOR THE YEAR ENDED JUNE 30, 2017**

| | Young Adult Institute, Inc. | | | Rockland County Association for People with Disabilities | | | Premier Healthcare, Inc. | | International Intitute for People With Disabilities of Puerto Rico, Inc | | | Consolidated Total | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Unrestricted | Temporarily Restricted | Total | Unrestricted | Permanent Restricted | Total | Unrestricted | Total | Unrestricted | Total | Consolidating Eliminations | Unrestricted | Temporarily Restricted | Permanently Restricted | Total 2017 |
| **REVENUE AND SUPPORT** | | | | | | | | | | | | | | | |
| Medicaid | $ 143,510,666 | $ - | $ 143,510,666 | 4,948,379 | $ - | $ 4,948,379 | 14,052,343 | $ 14,052,343 | $ - | $ - | $ - | $ 162,511,388 | $ - | $ - | $ 162,511,388 |
| Government Contracts | 18,626,558 | - | 18,626,558 | 1,359,388 | - | 1,359,388 | - | - | - | - | - | 19,985,946 | - | - | 19,985,946 |
| Medicare and Client fees | 7,704,996 | - | 7,704,996 | 488,400 | - | 488,400 | 1,637,118 | 1,637,118 | - | - | - | 9,830,514 | - | - | 9,830,514 |
| Vocational Rehabilitation | - | - | - | - | - | - | - | - | 34,200 | 34,200 | - | 34,200 | - | - | 34,200 |
| Other revenues | 3,046,314 | - | 3,046,314 | - | - | - | 459,846 | 459,846 | - | - | (1,769,489) | 1,736,671 | - | - | 1,736,671 |
| Contributions | 569,959 | 170,019 | 739,978 | 17,437 | - | 17,437 | 3,365 | 3,365 | - | - | - | 590,761 | 170,019 | - | 760,780 |
| Special Events (net of direct costs of $280,751 and $350,063 for 2017 and 2016) | 325,532 | 113,764 | 439,296 | - | - | - | - | - | - | - | - | 325,532 | 113,764.00 | - | 439,296 |
| Investment Activity | 93,413 | - | 93,413 | 7,393 | - | 7,393 | 291 | 291 | - | - | - | 101,097 | - | - | 101,097 |
| Net Assets Released from Restrictions | 679,862 | (679,862) | - | - | - | - | - | - | - | - | - | 679,862 | (679,862) | - | - |
| **TOTAL REVENUE AND SUPPORT** | 174,557,300 | (396,079) | 174,161,221 | 6,820,997 | - | 6,820,997 | 16,152,963 | 16,152,963 | 34,200 | 34,200 | (1,769,489) | 195,795,971 | (396,079) | - | 195,399,892 |
| **EXPENSES:** | | | | | | | | | | | | | | | |
| **Program Services:** | | | | | | | | | | | | | | | |
| Residential Services | 82,154,021 | - | 82,154,021 | 4,034,438 | - | 4,034,438 | - | - | - | - | | 86,188,459 | - | - | 86,188,459 |
| Day and Community Services | 60,741,770 | - | 60,741,770 | 787,154 | - | 787,154 | - | - | - | - | - | 61,528,924 | - | - | 61,528,924 |
| Clinical Services | 6,284,710 | - | 6,284,710 | - | - | - | 14,722,116 | 14,722,116 | - | - | - | 21,006,826 | - | - | 21,006,826 |
| Employment Initative Services | 919,655 | - | 919,655 | 767,997 | - | 767,997 | - | - | 54,240 | 54,240 | - | 1,741,892 | - | - | 1,741,892 |
| **Total Program Services** | 150,100,156 | - | 150,100,156 | 5,589,589 | - | 5,589,589 | 14,722,116 | 14,722,116 | 54,240 | 54,240 | - | 170,466,101 | - | - | 170,466,101 |
| **Supporting Services:** | | | | | | | | | | | | | | | |
| Management and General | 21,777,432 | - | 21,777,432 | 1,140,385 | - | 1,140,385 | 2,253,254 | 2,253,254 | 14,939 | 14,939 | (1,647,151) | 23,538,859 | - | - | 23,538,859 |
| Fundraising | 528,267 | - | 528,267 | 6,976 | - | 6,976 | 2,627 | 2,627 | - | - | - | 537,870 | - | - | 537,870 |
| **Total Supporting Services** | 22,305,699 | - | 22,305,699 | 1,147,361 | - | 1,147,361 | 2,255,881 | 2,255,881 | 14,939 | 14,939 | (1,647,151) | 24,076,729 | - | - | 24,076,729 |
| **TOTAL EXPENSES** | 172,405,855 | - | 172,405,855 | 6,736,950 | - | 6,736,950 | 16,977,997 | 16,977,997 | 69,179 | 69,179 | (1,647,151) | 194,542,830 | - | - | 194,542,830 |
| **CHANGE IN NET ASSETS** | 2,151,445 | (396,079) | 1,755,366 | 84,047 | - | 84,047 | (825,034) | (825,034) | (34,979) | (34,979) | (122,338) | 1,253,141 | (396,079) | - | 857,062 |
| Net Assets - Beginning of Year | 31,580,784 | 1,096,685 | 32,677,469 | 882,416 | 10,000 | 892,416 | (8,694,045) | (8,694,045) | (553,398) | (553,398) | 6,565,926 | 29,781,683 | 1,096,685 | 10,000 | 30,888,368 |
| **NET ASSETS - END OF YEAR** | $ 33,732,229 | $ 700,606 | $ 34,432,835 | $ 966,463 | $ 10,000 | $ 976,463 | $ (9,519,079) | $ (9,519,079) | $ (588,377) | $ (588,377) | $ 6,443,588 | $ 31,034,824 | $ 700,606 | $ 10,000 | $ 31,745,430 |

See independent auditors' report.

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**APPENDIX C**

**YOUNG ADULT INSTITUTE, INC.**

**UNAUDITED FINANCIAL INFORMATION**

**(AS OF SEPTEMBER 30, 2020)**

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**YAI Consolidated Statement of Financial Position**
**For the Period July 1, 2020 through September 30, 2020**

| | As of September 30, 2020 | | | | | |
|---|---|---|---|---|---|---|
| **Assets:** | **YAI** | **PHC** | **MSA** | **IHOPE** | **Eliminations** | **Total** |
| Cash & Cash Equivalents | 7,296,008 | 642,524 | 278,402 | 383,323 | | 8,600,258 |
| Investments | 20,057,414 | | | | | 20,057,414 |
| Accounts & Tuition Receivable | 26,473,924 | 1,520,042 | 6,587,486 | 17,737,822 | | 52,319,274 |
| Due from Network Agencies | 16,681,162 | | | | (16,681,162) | - |
| Other Receivables | 4,322,867 | | | | | 4,322,867 |
| Prepaid expenses and other receivables | 3,316,712 | 732,259 | 813,417 | 503,192 | | 5,365,581 |
| Property and equipment | 49,646,517 | 902,619 | 1,453,328 | 202,192 | | 52,204,656 |
| Debt Service Reserve | 2,737,125 | | | | | 2,737,125 |
| **Total Assets** | **130,531,729** | **3,797,444** | **9,132,635** | **18,826,530** | **(16,681,162)** | **145,607,175** |
| | | | | | | |
| **Liabilities:** | | | | | | |
| Accounts payable and accrued expenses | 4,917,381 | 492,840 | 502,664 | 627,552 | | 6,540,438 |
| Accrued Pension | 1,449,997 | 88,508 | 63,626 | 85,274 | | 1,687,406 |
| Accrued Salary | 8,374,094 | 572,678 | 471,639 | 626,035 | | 10,044,447 |
| Accrued Vacation | 4,677,174 | 326,596 | | 98,719 | | 5,102,489 |
| Capital lease obligations | 2,511,728 | 178,894 | | | | 2,690,623 |
| Deferred Rent | 1,026,988 | 513,285 | 1,355,408 | 71,281 | | 2,966,962 |
| Due to Funding Sources | 3,944,154 | 799,835 | | | | 4,743,989 |
| Due to YAI | | 10,203,496 | 3,401,087 | 9,520,167 | (23,124,750) | - |
| Deferred Income | | | - | 68,484 | | 68,484 |
| Other Liabilities | 6,592,656 | | 1,011,966 | | | 7,604,622 |
| Notes and mortgages payable | 64,190,922 | - | 406,230 | | | 64,597,152 |
| **Total Liabilities** | **97,685,095** | **13,176,133** | **7,212,620** | **11,097,513** | **(23,124,750)** | **106,046,610** |
| | | | | | | |
| **Net Assets** | | | | | | |
| Net assets with donor restrictions | 1,809,866 | | | | | 1,809,866 |
| Net assets without donor restrictions | 31,036,769 | (9,378,689) | 1,920,015 | 7,729,017 | 6,443,588 | 37,750,700 |
| **Total Net Assets** | **32,846,634** | **(9,378,689)** | **1,920,015** | **7,729,017** | **6,443,588** | **39,560,565** |
| | | | | | | |
| **Total Liabilities & Net Assets** | **130,531,729** | **3,797,444** | **9,132,635** | **18,826,530** | **(16,681,162)** | **145,607,176** |

**YAI Consolidated Statement of Activities**
**For the three months ended September 30, 2020**

| | For the three months ended September 30, 2020 | | | | | |
|---|---|---|---|---|---|---|
| **Revenue and Support:** | **YAI** | **PHC** | **MSA** | **IHOPE** | **Eliminations** | **Total** |
| Medicaid & Medicare | 37,007,757 | 2,750,366 | - | | | 39,758,123 |
| Government Contracts | 4,235,099 | 190,252 | | | | 4,425,351 |
| Tuition Income | | | 2,242,793 | 4,070,610 | | 6,313,403 |
| Client Fees | 2,239,138 | 526,659 | - | | | 2,765,797 |
| Other Revenues | 1,495,450 | - | 6 | | (820,127) | 675,328 |
| Contributions | 215,945 | 12 | 401 | 10,896 | | 227,255 |
| **Total Revenue and Support** | **45,193,389** | **3,467,289** | **2,243,200** | **4,081,506** | **(820,127)** | **54,165,256** |
| | | | | | | |
| **Expenses:** | | | | | | |
| Salary & Fringe Benefits | 34,615,628 | 1,920,725 | 1,455,220 | 1,707,056 | | 39,698,629 |
| OTPS | 11,895,592 | 1,493,160 | 992,260 | 784,699 | (820,127) | 14,345,584 |
| **Total Expenses** | **46,511,220** | **3,413,886** | **2,447,481** | **2,491,755** | **(820,127)** | **54,044,213** |
| | | | | | | |
| **Change in Net Assets** | **(1,317,831)** | **53,403** | **(204,280)** | **1,589,751** | **-** | **121,043** |
| | | | | | | |
| Beginning Balance Net Assets | 34,164,465 | (9,432,092) | 2,124,295 | 6,139,266 | 6,443,588 | 39,439,522 |
| **Ending Balance Net Assets** | **32,846,634** | **(9,378,689)** | **1,920,015** | **7,729,017** | **6,443,588** | **39,560,565** |

**YAI Consolidated Statement of Financial Position**
**As of June 30, 2020 and June 30, 2019**

| | Actuals as of June 30, 2020 | Actuals as of June 30, 2019 | Variance ($) | Variance (%) |
|---|---|---|---|---|
| **Assets:** | **Total** | **Total** | **Total** | **Total** |
| Cash & Cash Equivalents | 5,944,818 | 10,355,193 | (4,410,375) | -42.59% |
| Investments | 16,629,433 | 13,263,816 | 3,365,617 | 25.37% |
| Accounts & Tuition Receivable | 54,994,124 | 38,988,761 | 16,005,363 | 41.05% |
| Other Receivables | 14,581,831 | 11,073,455 | 3,508,376 | 31.68% |
| Prepaid expenses and other receivables | 9,723,651 | 7,494,367 | 2,229,284 | 29.75% |
| Property and equipment | 51,625,670 | 43,944,532 | 7,681,138 | 17.48% |
| Debt Service Reserve | 2,816,358 | 2,632,962 | 183,396 | 6.97% |
| **Total Assets** | **156,315,885** | **127,753,086** | **28,562,799** | **22.36%** |
| | | | | |
| **Liabilities:** | | | | |
| Accounts payable and accrued expenses | 17,073,751 | 11,397,912 | 5,675,839 | 49.80% |
| Accrued Pension | 1,552,624 | 2,145,203 | (592,579) | -27.62% |
| Accrued Salary | 8,179,949 | 8,848,900 | (668,951) | -7.56% |
| Accrued Vacation | 5,237,409 | 4,215,178 | 1,022,231 | 24.25% |
| Capital lease obligations | 2,856,135 | 958,452 | 1,897,683 | 197.99% |
| Deferred Rent | 2,884,635 | 1,860,896 | 1,023,739 | 55.01% |
| Due to Funding Sources | 4,026,315 | 6,591,511 | (2,565,196) | -38.92% |
| Deferred Income | 359,592 | 455,185 | (95,593) | -21.00% |
| Other Liabilities | 8,653,208 | 11,211,109 | (2,557,901) | -22.82% |
| Notes and mortgages payable | 64,840,762 | 41,993,770 | 22,846,992 | 54.41% |
| **Total Liabilities** | **115,664,381** | **89,678,116** | **25,986,265** | **28.98%** |
| | | | | |
| **Net Assets** | | | | |
| Net assets with donor restrictions | 1,737,741 | 692,209 | 1,045,532 | 151.04% |
| Net assets without donor restrictions | 38,913,763 | 37,382,761 | 1,531,002 | 4.10% |
| **Total Net Assets** | **40,651,504** | **38,074,970** | **2,576,534** | **6.77%** |
| | | | | |
| **Total Liabilities & Net Assets** | **156,315,885** | **127,753,086** | **28,562,799** | **22.36%** |

**YAI Consolidated Statement of Activities**
**For the twelve months ended June 30, 2020 and 2019**

| | For the twelve months ended June 30, 2020 and 2019 | | | |
|---|---|---|---|---|
| **Revenue and Support:** | **Actuals as of June 30, 2020** | **Actuals as of June 30, 2019** | **Variance ($)** | **Variance (%)** |
| Medicaid & Medicare | 169,825,568 | 166,218,524 | 3,607,045 | 2.17% |
| Government Contracts | 18,340,489 | 20,285,156 | (1,944,667) | -9.59% |
| Tuition Income | 26,742,858 | 17,080,603 | 9,662,255 | 56.57% |
| Client Fees | 13,144,244 | 10,032,455 | 3,111,789 | 31.02% |
| Other Revenues | 8,149,787 | 4,938,461 | 3,211,326 | 65.03% |
| Contributions | 3,141,259 | 1,513,588 | 1,627,671 | 107.54% |
| **Total Revenue and Support** | **239,344,205** | **220,068,786** | **19,275,419** | **8.76%** |
| | | | | |
| **Expenses:** | | | | |
| Salary & Fringe Benefits | 166,200,805 | 152,664,619 | 13,536,186 | 8.87% |
| OTPS | 70,566,865 | 67,167,454 | 3,399,411 | 5.06% |
| **Total Expenses** | **236,767,670** | **219,832,073** | **16,935,597** | **7.70%** |
| | | | | |
| **Change in Net Assets from Operations** | **2,576,535** | **236,713** | **2,339,822** | **988.46%** |
| | | | | |
| **Non-Operating Loss** | - | (106,933) | 106,933 | -100.00% |
| | | | | |
| **Change in Net Assets** | **2,576,535** | **129,780** | **2,446,755** | **1885.31%** |
| | | | | |
| Beginning Balance Net Assets | 38,074,970 | 37,945,189 | 129,781 | 0.34% |
| **Ending Balance Net Assets** | **40,651,505** | **38,074,969** | **2,576,536** | **6.77%** |

# APPENDIX D

# CERTAIN DEFINITIONS

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*The following are definitions of certain terms, unless the context shall otherwise require, used in this Official Statement.*

**Accounts Receivable** shall mean all of the Institution's accounts receivable derived from the use or operation of any of its properties, including each Facility.

**Additional Bonds** shall mean one or more Series of additional bonds issued, executed, authenticated and delivered under the Indenture.

**Additional Improvements** shall mean the alterations of or additions to any Facility Realty.

**Administration Agreement** shall mean the Administration Agreement, dated as of December 1, 2020, among the Issuer, the Program Facilitator and the Institution.

**Affiliate** shall mean, with respect to a given Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with such given Person.

**Approved Facility** shall mean each Facility as occupied, used and operated by the Institution substantially for the Approved Project Operations, including such other activities as may be substantially related to or substantially in support of such operations, all to be effected in accordance with the Loan Agreement.

**Approved Project Operations** shall mean, (i) with respect to the 42nd Street Facility located at 220 East 42nd Street, Units 7NW and 8, New York, New York, for use by the Institution as its headquarters with offices and clinic space, operated by Premier Healthcare, providing essential services to individuals with developmental and other disabilities and their families; and (ii) with respect to the 35th Street Facility located at 314 East 35th Street, New York, New York, for use by the Institution as an Individualized Residential Alternative, a supervised housing opportunity certified by OPWDD for eligible individuals with developmental disabilities.

**Assignment of Mortgage** shall mean the Assignment of Mortgage and Security Agreement, dated as of December 1, 2020, from the Issuer to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

**Authorized Denomination** shall mean, in the case of the Initial Bonds, $100,000 or any integral multiple of $5,000 in excess thereof.

**Authorized Principal Amount** shall mean, in the case of the Initial Bonds, $6,515,000.

**Authorized Representative** shall mean, (i) in the case of the Issuer, the Chairperson, Vice Chairperson, Treasurer, Assistant Treasurer, Secretary, Assistant Secretary, Executive Director, Deputy Executive Director or General Counsel, or any other officer or employee of the Issuer who is authorized to perform specific acts or to discharge specific duties, (ii) in the case of the Program Facilitator, the Executive Director, Deputy Executive Director or any other officer or employee of the Program Facilitator who is authorized to perform specific acts or to discharge specific duties, and (iii) in the case of the Institution, a person named under "Authorized Representative" attached as an exhibit to the Loan Agreement or any other officer or employee of the Institution who is authorized to perform specific duties under the Loan Agreement or under any other Project Document and of whom another Authorized

Representative of the Institution has given written notice to the Issuer and the Trustee; provided, however, that in each case for which a certification or other statement of fact or condition is required to be submitted by an Authorized Representative to any Person pursuant to the terms of the Loan Agreement or any other Project Document, such certificate or statement shall be executed only by an Authorized Representative in a position to know or to obtain knowledge of the facts or conditions that are the subject of such certificate or statement.

**Balloon Indebtedness** shall mean (i) long-term Indebtedness, or short-term Indebtedness which is intended to be refinanced upon or prior to its maturity (and which short-term Indebtedness is subject to a commercially reasonable binding commitment for such refinancing) so that such short-term Indebtedness will be outstanding, in the aggregate, for more than one year as certified in a certificate of an Authorized Representative of the Institution delivered to the Trustee, twenty-five percent (25%) or more of the initial principal amount of which matures (or is payable at the option of the holder) in any twelve month period, or (ii) long-term Indebtedness, or short-term Indebtedness which is intended to be refinanced upon or prior to its maturity (and which short-term Indebtedness is subject to a commercially reasonable binding commitment for such refinancing) so that such short-term Indebtedness will be outstanding, in the aggregate, for more than one year as certified in a certificate of an Authorized Representative of the Institution delivered to the Trustee, twenty-five percent (25%) or more of the initial principal amount of which is payable at the option of the holder in any twelve month period, if such twenty-five percent (25%) or more is not to be amortized to below twenty-five percent (25%) by mandatory redemption prior to such twelve month period, or (iii) any portion of an issue of long-term Indebtedness which, if treated as a separate issue of Indebtedness would meet the test set forth in clause (i) of this definition and which Indebtedness is designated as Balloon Indebtedness in a certificate of an Authorized Representative of the Institution delivered to the Trustee stating that such portion shall be deemed to constitute a separate issue of Balloon Indebtedness.

**Beneficial Owner** shall mean, whenever used with respect to an Initial Bond, the Person in whose name such Initial Bond is recorded as the beneficial owner of such Initial Bond by the respective systems of DTC and each of the Participants of DTC. If at any time the Initial Bonds are not held in the Book-Entry System, Beneficial Owner shall mean "Holder" for purposes of the Security Documents.

**Bond Fund** shall mean, collectively or individually, as applicable, the Bond Fund (Taxable) and/or the Bond Fund (Tax-Exempt).

**Bond Fund (Taxable)** shall mean the special trust fund so designated, established pursuant to the Indenture.

**Bond Fund (Tax-Exempt)** shall mean the special trust fund so designated, established pursuant to the Indenture.

**Bondholder**, **Holder of Bonds**, **Holder** or **holder** shall mean any Person who shall be the registered owner of any Bond or Bonds.

**Bond Registrar** shall mean the Trustee acting as registrar as provided in the Indenture.

**Bond Resolution** shall mean the resolution of the Issuer adopted on May 12, 2020, as amended on September 22, 2020 and on November 17, 2020, authorizing the Project and the issuance of the Initial Bonds.

**Bonds** shall mean the Initial Bonds and any Additional Bonds.

**Business Day** shall mean any day that shall not be:

(i) a Saturday, Sunday or legal holiday;

(ii) a day on which banking institutions in the City are authorized by law or executive order to close; or

(iii) a day on which the New York Stock Exchange or the payment system of the Federal Reserve System is closed.

**City** shall mean The City of New York, New York.

**Closing Date** shall mean December 17, 2020, the date of the initial issuance and delivery of the Initial Bonds.

**Code** shall mean the Internal Revenue Code of 1986, as amended, including the regulations thereunder. All references to Sections of the Code or regulations thereunder shall be deemed to include any such Sections or regulations as they may hereafter be renumbered in any subsequent amendments to the Code or such regulations.

**Common Elements** shall mean, with respect to the 42nd Street Facility, the Institution's undivided 5.66% for Facility Unit 8 and 0.90% for Facility Unit 7NW of Common Interest in the Common Elements (as such term is defined in the Condominium Declaration).

**Completed Improvements Square Footage** shall mean (i) approximately 70,000 square feet, the square footage of the Improvements upon completion of the Project Work with respect to the 42nd Street Facility; and (ii) approximately 11,070 square feet with respect to the 35th Street Facility.

**Completion Deadline** shall mean December 1, 2021.

**Condominium** shall mean, with respect to the 42nd Street Facility, that certain condominium building known as 220 East 42nd Condominium located at 220 East 42nd Street, New York, New York created pursuant to the Condominium Act and the Condominium Declaration.

**Condominium Act** shall mean Article 9-B of the New York Real Property Law (339-d *et seq*.) of the State of New York and all modifications, supplements and replacements thereof and all regulations with respect thereto, now or hereafter enacted or promulgated.

**Condominium Board** shall have the meaning assigned to that term in the Condominium Declaration.

**Condominium By-Laws** shall mean, with respect to the 42nd Street Facility, the by-laws established and adopted pursuant to the Condominium Declaration, as amended, as the same may hereafter be further amended from time to time in accordance therewith.

**Condominium Declaration** shall mean, with respect to the 42nd Street Facility, the Declaration of 220 East 42nd Condominium dated as of December 15, 2015 and recorded in the Office of the City Register of The City of New York (the "City Register's Office") on May 9, 2016 under CRFN 2016000158961, as amended by the First Amendment to Declaration of 220 East 42nd Condominium dated as of February 15, 2017 and recorded in the City Register's Office on May 8, 2017 under CRFN 2017000174753, and the Second Amendment to Declaration of 220 East 42nd Condominium dated as of

October 1, 2019 and recorded in the City Register's Office on May 14, 2020 under CRFN 2020000147853, as the same may be further amended from time to time in accordance therewith.

**Condominium Documents** shall mean, with respect to the 42nd Street Facility, collectively, the Condominium Declaration and the Condominium By-Laws.

**Continuing Disclosure Agreement** shall mean, with respect to the Initial Bonds, the Agreement to Provide Continuing Disclosure, dated as of the Closing Date, among the Institution, the Trustee and Digital Assurance Certification, L.L.C., as dissemination agent, pursuant to the Loan Agreement and, as to any Series of Additional Bonds, the continuing disclosure agreement executed by the Institution.

**Control** or **Controls**, including the related terms "controlled by" and "under common control with", shall mean the power to direct the management and policies of a Person (x) through the ownership, directly or indirectly, of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its board of directors or trustees or other Governing Body, or (z) by contract or otherwise.

**Costs of Issuance** shall mean issuance costs with respect to the Initial Bonds described in Section 147(g) of the Code and any regulations thereunder, including but not limited to the following: Underwriter's spread (whether realized directly or derived through the purchase of the Initial Bonds at a discount below the price at which they are expected to be sold to the public); counsel fees (including bond counsel, counsel to the Underwriter, Trustee's counsel, Issuer's counsel, Institution's counsel, as well as any other specialized counsel fees incurred in connection with the borrowing); guarantee fees (other than Qualified Guarantee Fees, as defined in the Tax Regulatory Agreement); Trustee and Paying Agent fees; accountant fees and other expenses related to issuance of the Initial Bonds; printing costs for the Initial Bonds and for the preliminary and final offering documents relating to the Initial Bonds; public approval and process costs; fees and expenses of the Issuer incurred in connection with the issuance of the Initial Bonds; Blue Sky fees and expenses; and similar costs.

**Debt Service Reserve Fund (Tax-Exempt)** shall mean the special trust fund so designated, established pursuant to the Indenture.

**Debt Service Reserve Fund Requirement (Tax-Exempt)** shall mean, as of any particular date of computation, an amount (which amount may take the form of cash, Qualified Investments or any combination thereof) equal to the lesser of:

(i) ten percent (10%) of the Net Proceeds (as defined in the Tax Regulatory Agreement) of the Outstanding Tax-Exempt Bonds;

(ii) 100% of the greatest amount required in the then current or any future calendar year to pay the sum of the scheduled principal and interest payable on Outstanding Tax-Exempt Bonds; or

(iii) 125% of the average annual amount required in the then current or any future calendar year to pay the sum of scheduled principal and interest on Outstanding Tax-Exempt Bonds.

**Debt Service Reserve Fund Valuation Date** shall mean June 15 and December 15 of each year commencing June 15, 2021.

**Defaulted Interest** shall mean interest on any Initial Bond that is due and payable but not paid on the date due.

**Defeasance Obligations** shall mean Government Obligations that are not subject to redemption prior to maturity.

**Determination of Taxability** shall mean:

(i) (A) the adoption, promulgation or enactment of any federal statute or regulation, or any determination, decision, decree or ruling made by the Commissioner or any District Director of the Internal Revenue Service;

(B) the issuance of a public or private ruling or a technical advice memorandum by the Internal Revenue Service in which the Institution has participated or has been given the opportunity to participate, and which ruling or memorandum the Institution, in its discretion, does not contest or from which no further right of judicial review or appeal exists;

(C) a determination from which no further right of appeal exists of any court of competent jurisdiction in the United States in a proceeding in which the Institution has participated or has been a party, or has been given the opportunity to participate or be a party; or

(D) the admission in writing by the Institution;

in any case, to the effect that the interest payable on the Tax-Exempt Bond of a Holder or a former Holder thereof is includable in gross income for federal income tax purposes; or

(ii) the receipt by the Trustee of a written opinion of Nationally Recognized Bond Counsel to the effect that the interest payable on the Tax-Exempt Bonds is includable in gross income for federal income tax purposes or the refusal of any such counsel to render a written opinion that the interest on the Tax-Exempt Bonds is not so includable when required pursuant to a request by a Bondholder in accordance with the procedures set forth in the Indenture;

provided, however, that no such Determination of Taxability described in clauses (i)(B) or (i)(C) of this definition shall be considered to exist unless (1) the Holder or former Holder of the Tax-Exempt Bond involved in such proceeding (a) gives the Institution and the Trustee prompt notice of the commencement thereof and (b) (if the Institution agrees to pay all expenses in connection therewith) offers the Institution the opportunity to control the defense thereof and (2) either (a) the Institution does not agree within thirty (30) days of receipt of such offer to pay such expenses and to control such defense or (b) the Institution shall exhaust or choose not to exhaust all available proceedings for the contest, review, appeal or rehearing of such decree, judgment or action which the Institution determines to be appropriate. A Bondholder shall have the right to request the Trustee to obtain a written opinion of Nationally Recognized Bond Counsel pursuant to clause (ii) above, at the expense of the Institution, upon delivery by the Bondholder to the Institution of a letter from the Bondholder's accountant stating that, in his or her reasonable opinion, interest on the Tax-Exempt Bonds is includable in the gross income of such Bondholder for federal income tax purposes and stating the reasons for such determination. No Determination of Taxability described above will result from the inclusion of interest on any Tax-Exempt Bond in the computation of minimum or indirect taxes.

**DTC** shall mean The Depository Trust Company, a limited purpose trust company organized under the laws of the State, and its successors and assigns.

**Earnings Fund** shall mean the special trust fund so designated, established pursuant to the Indenture.

**Entity** shall mean any of a corporation, general partnership, limited liability company, limited liability partnership, joint stock company, trust, estate, unincorporated organization, business association, tribe, firm, joint venture, governmental authority or governmental instrumentality, but shall not include an individual.

**Event of Default** shall have the meaning specified in the Indenture and the Loan Agreement.

**Event of Taxability** shall mean the date specified in a Determination of Taxability as the date interest paid or payable on any Tax-Exempt Bond becomes includable for federal income tax purposes in the gross income of any Holder thereof as a consequence of any act, omission or event whatsoever, including any change of law, and regardless of whether the same was within or beyond the control of the Institution.

**Existing Facility Property** shall mean any fixture constituting part of any Facility Realty or any machinery, equipment or other item of personal property constituting part of the Facility Personalty.

**Facilities** shall mean, collectively, the 42nd Street Facility and the 35th Street Facility.

**Facility** shall mean, collectively or individually, as applicable, the 42nd Street Facility and/or the 35th Street Facility.

**Facility Lease Agreement** shall mean, with respect to the 42nd Street Facility, collectively or individually, as applicable, (i) the Sale and Purchase Agreement, dated as of January 8, 2019, between the Ground Lessee and the Institution, and/or (ii) the Omnibus Agreement, dated as of January 8, 2019, among the Ground Landlord, the Ground Lessee and the Institution, and shall include, in each case, any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Loan Agreement.

**Facility Personalty** shall mean those items of machinery, equipment and other items of personalty the acquisition and/or the installation of which is to be financed in whole or in part with the proceeds of the Bonds for installation or use at the 42nd Street Facility Realty as part of the Project pursuant to the Loan Agreement and listed under "Description of the Facility Personalty" relating to the 42nd Street Facility attached as an exhibit to the Loan Agreement and the Indenture, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto. Facility Personalty shall, in accordance with the Loan Agreement, include all property substituted for or replacing items of Facility Personalty and exclude all items of Facility Personalty so substituted for or replaced, and further exclude all items of Facility Personalty removed as provided in the Loan Agreement.

**Facility Realty** shall mean, collectively or individually, as applicable, the 42nd Street Facility Realty and/or the 35th Street Facility Realty.

**Facility Unit** shall mean, with respect to the 42nd Street Facility, collectively, Unit No. 8 and Unit No. 7NW, as each is so designated in the Condominium Declaration.

**Final Project Cost Budget** shall mean that certain budget of costs paid or incurred for the Project to be submitted by the Institution pursuant to the Loan Agreement upon completion of the Project.

**Fiscal Year** shall mean a year of 365 or 366 days, as the case may be, commencing on July 1 and ending on June 30 of the next calendar year, or such other fiscal year of similar length used by the

Institution for accounting purposes as to which the Institution shall have given prior written notice thereof to the Issuer and the Trustee at least ninety (90) days prior to the commencement thereof.

**Fitch** shall mean Fitch Ratings, Inc., a Delaware corporation, its successors and assigns, and if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

**42nd Street Facility** shall mean, collectively, the Facility Personalty and the 42nd Street Facility Realty.

**42nd Street Facility Realty** shall mean, collectively, the Land and the Improvements relating to the Facility Unit.

**GAAP** shall mean those generally accepted accounting principles and practices that are recognized as such by the American Institute of Certified Public Accountants or by the Financial Accounting Standards Board or through other appropriate boards or committees thereof, and that are consistently applied for all periods, after the Closing Date, so as to properly reflect the financial position of the Institution, except that any accounting principle or practice required to be changed by the Financial Accounting Standards Board (or other appropriate board or committee of the said Board) in order to continue as a generally accepted accounting principle or practice may be so changed.; provided, however, "GAAP" shall mean, with respect to the financial covenants of the Institution set forth in the Pledge and Security Agreement, such generally accepted accounting principles and practices that are consistently applied and in effect on the Closing Date.

**Governing Body** shall mean, when used with respect to any Entity, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Entity are exercised.

**Government Obligations** shall mean the following:

(i) direct and general obligations of, or obligations unconditionally guaranteed by, the United States of America;

(ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America, the payment of which is unconditionally guaranteed as a full faith and credit obligation of the United States of America for the timely payment thereof; or

(iii) securities or receipts evidencing ownership interests in obligations or specified portions (such as principal or interest) of obligations described in clauses (i) or (ii) above.

**Ground Landlord** shall mean SLG 220 News Owner LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns.

**Ground Lease** shall mean, with respect to the 42nd Street Facility, the Agreement of Lease, dated as of December 15, 2015, between the Ground Landlord and the Ground Lessee, and all amendments thereof and supplements thereto hereafter made in conformity therewith.

**Ground Lessee** shall mean SLG 220 News Lessee LLC, a limited liability company organized and existing under the laws of the State of Delaware, and its successors and assigns.

**Hazardous Materials** shall include any petroleum, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5101, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

**Impositions** shall mean all taxes and assessments, general and specific, if any, levied and assessed upon or against the Trust Estate, any Facility Realty or any part thereof, or interest of the Institution in any Facility, or against any of the loan payments or other payments or other amounts payable under the Loan Agreement, the Promissory Notes or any of the other Project Documents to which the Institution is a party, or the interest of the Issuer or the Institution in any Project Document, and all water and sewer charges, special district charges, assessments and other governmental charges and impositions whatsoever, foreseen or unforeseen, ordinary or extraordinary, under any present or future law, and charges for public or private utilities or other charges incurred in the occupancy, use, operation, maintenance or upkeep of any Facility Realty.

**Improvements** shall mean:

(i) all fixtures and other improvements of every nature whatsoever existing on the Closing Date and hereafter erected or situated on the Facility Unit with respect to the 42nd Street Facility or on the Land with respect to the 35th Street Facility;

(ii) any other related facilities, fixtures and other improvements constructed or erected on the Facility Unit, with respect to the 42nd Street Facility (including any improvements made as part of the Project Work pursuant to the Loan Agreement) or the Land with respect to the 35th Street Facility; and

(iii) all replacements, improvements, additions, extensions, substitutions, restorations and repairs to any of the foregoing.

**Indebtedness** shall mean, without duplication, (i) all obligations of the Institution recorded or required to be recorded as liabilities on the balance sheets thereof for the payment of moneys incurred or assumed by the Institution as determined in accordance with GAAP in effect on the Closing Date and consistently applied (exclusive of reserves such as those established for deferred taxes) and (ii) all contingent obligations in respect of, or to purchase or otherwise acquire or service, indebtedness of other persons, including but not limited to guarantees and endorsements (other than for purposes of collection in the ordinary course of business) of indebtedness of other persons, obligations to reimburse issuers of letters of credit or equivalent instruments for the benefit of any person, and contingent obligations to repurchase property theretofore sold by such contingent obligor. For the purposes of calculating Indebtedness for any period with respect to any Balloon Indebtedness, the Institution may, at its option, by a certificate of an Authorized Representative of the Institution delivered to the Trustee at the end of each Fiscal Year, direct that such Indebtedness may be calculated assuming that (i) the principal of such Indebtedness that is not amortized is amortized on a level debt service basis from the date of calculation thereof over a term not to exceed thirty (30) years, and (ii) interest is calculated at (A) the actual rate (if such rate is not variable or undeterminable) or (B) if such rate is variable or undeterminable, an assumed rate derived from The Bond Buyer Thirty-year Revenue Bond Index published immediately prior to the date of calculation, as certified in a certificate of an Authorized Representative of the Institution delivered to the Trustee; provided that if such index is at such time not being published a comparable index reasonably acceptable to the Majority Holders may be used.

**Indenture** shall mean the Indenture of Trust, dated as of December 1, 2020, between the Issuer and the Trustee, as from time to time amended or supplemented by Supplemental Indentures in accordance with the Indenture.

**Independent Accountant** shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Institution and approved by the Issuer and the Trustee (such approvals not to be unreasonably withheld or delayed).

**Independent Engineer** shall mean a Person (not an employee of any of the Issuer, the Institution or any Affiliate of either thereof) registered and qualified to practice engineering or architecture under the laws of the State, selected by the Institution, and approved in writing by the Program Facilitator (which approval shall not be unreasonably withheld or delayed).

**Initial Bonds** or **Series 2020 Bonds** shall mean, collectively or individually, as applicable, the Series 2020A Bonds and/or the Series 2020B Bonds.

**Institution** or **YAI** shall mean Young Adult Institute, Inc., a not-for-profit corporation organized and existing under the laws of the State, and its successors and assigns; provided, however, that nothing contained in this definition shall be deemed to limit or modify the obligations of the Institution under the Loan Agreement.

**Institution's Property** shall mean any machinery, equipment and other personal property installed at any Facility Realty at the Institution's own cost and expense.

**Interest Account** shall mean the special trust account of the Bond Fund (Tax-Exempt) or the Bond Fund (Taxable), as applicable, so designated, established pursuant to the Indenture.

**Interest Payment Date** shall mean, with respect to the Initial Bonds, January 1 and July 1 of each year, commencing July 1, 2021 (or, if any such day is not a Business Day, the immediately succeeding Business Day), and with respect to any Series of Additional Bonds, the dates set forth therefor in the Supplemental Indenture pursuant to which such Series of Additional Bonds are issued.

**Issuer** shall mean Build NYC Resource Corporation, a local development corporation created pursuant to the Not-for-Profit Corporation Law of the State at the direction of the Mayor of the City, and its successors and assigns.

**Issuer's Reserved Rights** shall mean, collectively,

(i) the right of the Issuer in its own behalf to receive all Opinions of Counsel, reports, financial statements, certificates, insurance policies, binders or certificates, or other notices or communications required to be delivered to the Issuer under the Loan Agreement;

(ii) the right of the Issuer to grant or withhold any consents or approvals required of the Issuer under the Loan Agreement;

(iii) the right of the Issuer to enforce in its own behalf the obligation of the Institution under the Loan Agreement to complete the Project;

(iv) the right of the Issuer to enforce or otherwise exercise in its own behalf all agreements of the Institution under the Loan Agreement with respect to ensuring that each Facility shall always constitute an Approved Facility;

(v) the right of the Issuer to amend with the Institution the recapture of benefits provisions of the Loan Agreement without the consent of the Trustee or any Bondholder;

(vi) the right of the Issuer in its own behalf (or on behalf of the appropriate taxing authorities) to enforce, receive amounts payable under or otherwise exercise its rights under the Loan Agreement, relating to, among other things, the maintenance of each Facility, alterations and improvements of each Facility, removal of property of any Facility, loan payments, the Institution's obligations under the Loan Agreement, taxes, assessments and charges, damage, destruction and condemnation of any Facility, loss proceeds, rebuilding of each Facility, insurance, advances, compliance with Legal Requirements, indemnification, discharge of liens, certain redemptions, subletting of any Facility and assignment and termination of the Loan Agreement; and

(vii) the right of the Issuer in its own behalf to declare a default with respect to any of the Issuer's Reserved Rights and exercise the remedies set forth in the Loan Agreement.

**Land** shall mean (i) with respect to the 42nd Street Facility Realty, the interest in the Facility Unit (including the Common Elements) in that certain lot, piece or parcel of land in the Borough of Manhattan, Block 1315 and Lots 1009 and 1011, generally known by the street address 220 East 42nd Street, Units 7NW and 8, New York, New York, all as more particularly described in "Description of the Land" relating to the 42nd Street Facility Realty attached as an exhibit to the Loan Agreement and the Indenture, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto; and (ii) with respect to the 35th Street Facility Realty, that certain lot, piece or parcel of land in the Borough of Manhattan, Block 940 and Lot 52, generally known by the street address 314 East 35th Street, New York, New York, all as more particularly described in "Description of the Land" relating to the 35th Street Facility Realty attached as an exhibit to the Loan Agreement and the Indenture, together with all easements, rights and interests now or hereafter appurtenant or beneficial thereto.

**Legal Requirements** shall mean the Constitutions of the United States and the State and all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, certificates of occupancy, directions and requirements (including zoning, land use, planning, environmental protection, air, water and land pollution, toxic wastes, hazardous wastes, solid wastes, wetlands, health, safety, equal opportunity, minimum wage, living wage, prevailing wage, sick leave, healthcare, benefits and employment practices) of all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, including those of the City, foreseen or unforeseen, ordinary or extraordinary, that are applicable now or may be applicable at any time hereafter to (i) the Institution, (ii) any Facility or any part thereof, or (iii) any use or condition of any Facility or any part thereof.

**Letter of Representation and Indemnity Agreement** shall mean the Letter of Representation and Indemnity Agreement, dated the Closing Date, from the Institution and Premier Healthcare to the Issuer, the Trustee and the Underwriter.

**Loan** shall mean the loan of the proceeds from the sale of the Initial Bonds made by the Issuer to the Institution pursuant to the terms of the Loan Agreement and the Indenture.

**Loan Agreement** shall mean the Loan Agreement, dated as of December 1, 2020, between the Issuer and the Institution, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

**Loan Payment Date** shall mean the twentieth (20th) day of each month (or, if the twentieth (20th) day shall not be a Business Day, the immediately preceding Business Day).

**Loss Event** shall mean an event by which the whole or part of any Facility shall be damaged or destroyed, or taken or condemned by a competent authority for any public use or purpose, or by agreement to which the Institution and those authorized to exercise such right are parties, or if the temporary use of any Facility shall be so taken by condemnation or agreement.

**Majority Holders** shall mean the Beneficial Owners of at least a majority in aggregate principal amount of the Bonds Outstanding, or, if the Bonds shall cease to be in book-entry form, the Holders of at least a majority in aggregate principal amount of the Bonds Outstanding.

**Moody's** shall mean Moody's Investors Service Inc., a Delaware corporation, its successors and assigns, and if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

**Mortgage** shall mean the Mortgage and Security Agreement, dated as of December 1, 2020, from the Institution to the Issuer and the Trustee, relating to the 35th Street Facility, and shall include any and all amendments thereof and supplements thereto made in accordance therewith and with the Indenture.

**Mortgaged Personalty** shall mean all machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property owned by the Institution and located at the 35th Street Facility, together with all repairs, replacements, improvements, substitutions and renewals thereof or therefor, and all parts, additions and accessories incorporated therein or affixed thereto.

**Mortgaged Property** shall mean, collectively, the Mortgaged Personalty and the 35th Street Facility, together with the other property set for forth in the granting clauses of the Mortgage.

**MSRB** shall mean the Municipal Securities Rulemaking Board or its successor entity.

**Nationally Recognized Bond Counsel** shall mean Hawkins Delafield & Wood LLP or other counsel acceptable to the Issuer and the Trustee and experienced in matters relating to tax exemption of interest on bonds issued by states and their political subdivisions.

**Net Proceeds** shall mean, when used with respect to any insurance proceeds or condemnation award, compensation or damages, the gross amount of any such proceeds, award, compensation or damages less all expenses (including reasonable attorneys' fees and any extraordinary expenses of the Issuer or the Trustee) incurred in the collection thereof.

**Non-PPA Expenses** shall mean all operating and nonoperating expenses of the Institution other than PPA Expenses.

**Non-PPA Facility** shall mean any facility of the Institution which is, or was, not subject to the Prior Property Approval process incorporated in New York State Codes, Rules and Regulations Parts 681, 686 and 690, as amended from time to time.

**Non-PPA Indebtedness** shall mean any Indebtedness incurred by the Institution to finance, in whole or in part, a Non-PPA Facility. Indebtedness incurred by the Institution with respect to a facility only a portion of which constitutes a Non-PPA Facility shall constitute Non-PPA Indebtedness to the extent such Indebtedness financed the Non-PPA Facility portion of such facility.

**Non-PPA Revenues** shall mean all operating and nonoperating revenues of the Institution other than PPA Revenues.

**Notice Parties** shall mean the Issuer, the Institution, the Program Facilitator, the Bond Registrar, the Paying Agents and the Trustee.

**Obligations** shall mean (a) any and all Indebtedness, obligations, covenants and liabilities of the Institution under the Security Documents, and (b) the payment of the principal, or Redemption Price of, Sinking Fund Installments for and interest on, the Initial Bonds, and (c) in the event of any proceeding by the Trustee for the collection or enforcement of any Indebtedness, obligations, covenants or liabilities under the Initial Bonds, the Loan Agreement, the Promissory Notes and/or the other Security Documents, all fees and expenses incurred by the Trustee or any Bondholder in re-taking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on any Facility, the Pledged Collateral or the other security provided for in the Security Documents, or in exercising its rights under the Pledge and Security Agreement or under the other Security Documents, together with all attorneys' fees and expenses and court costs relating thereto.

**Opinion of Counsel** shall mean a written opinion of counsel for the Institution or any other Person (which counsel shall be reasonably acceptable to the Issuer and the Trustee) with respect to such matters as required under any Project Document or as the Issuer or the Trustee may otherwise reasonably require, and which shall be in form and substance reasonably acceptable to the Issuer and the Trustee.

**OPWDD** shall mean the New York State Office for People With Developmental Disabilities.

**Organizational Documents** shall mean, (i) in the case of an Entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such Entity, (ii) in the case of an Entity constituting a corporation, the charter, articles of incorporation or certificate of incorporation, and the bylaws of such Entity, and (iii) in the case of an Entity constituting a general or limited partnership, the partnership agreement of such Entity.

**Outstanding**, when used with reference to a Bond or Bonds, as of any particular date, shall mean all Bonds which have been issued, executed, authenticated and delivered under the Indenture, except:

(i) Bonds cancelled by the Trustee because of payment or redemption prior to maturity or surrendered to the Trustee under the Indenture for cancellation;

(ii) any Bond (or portion of a Bond) for the payment or redemption of which, in accordance with the defeasance provisions of the Indenture, there has been separately set aside and held in the Redemption Account of the Bond Fund (Tax-Exempt) and in the Redemption Account of the Bond Fund (Taxable), as applicable, either:

(A) moneys, and/or

(B) Defeasance Obligations in such principal amounts, of such maturities, bearing such interest and otherwise having such terms and qualifications as shall be necessary to provide moneys,

in an amount sufficient to effect payment of the principal or applicable Redemption Price of such Bond, together with accrued interest on such Bond to the payment or Redemption Date, which payment or Redemption Date shall be specified in irrevocable instructions given to the Trustee to apply such moneys and/or Defeasance Obligations to such payment on the date so specified, provided, that, if such Bond or portion thereof is to be redeemed, notice of such redemption shall have been given as provided in the Indenture or provision satisfactory to the Trustee shall have been made for the giving of such notice; and

(iii) Bonds in exchange for or in lieu of which other Bonds shall have been authenticated and delivered under the Indenture,

provided, however, that in determining whether the Holders of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under the Indenture or under any other Security Document, Bonds owned by the Institution or any Affiliate of the Institution shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded. Bonds which have been pledged in good faith may be regarded as Outstanding for such purposes if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Institution or any Affiliate of the Institution.

**Participants** shall mean those financial institutions for whom the Securities Depository effects book entry transfers and pledges of securities deposited with the Securities Depository, as such listing of Participants exists at the time of such reference.

**Paying Agent** shall mean any paying agent for the Bonds appointed pursuant to the Indenture (and may include the Trustee) and its successor or successors and any other corporation which may at any time be substituted in its place pursuant to the Indenture.

**Permitted Encumbrances** shall mean, with respect to each Facility, as applicable:

(i) the Condominium Documents (and any liens permitted under the Condominium Documents), the Facility Lease Agreement, the Ground Lease, the Mortgage, the Assignment of Mortgage and any Project Document;

(ii) liens for real estate taxes, assessments, levies and other governmental charges, the payment of which is not yet due and payable;

(iii) any mechanic's, workmen's, repairmen's, materialmen's, contractors', warehousemen's, carriers', suppliers' or vendors' lien, security interest, encumbrance or charge or right in respect thereof, placed on or with respect to such Facility or any part thereof, if payment is not yet due and payable, or if such payment is being disputed pursuant to the Loan Agreement;

(iv) utility, access and other easements and rights-of-way, restrictions and exceptions that an Authorized Representative of the Institution certifies to the Issuer and the Trustee will not materially interfere with or impair the Institution's use and enjoyment of such Facility as provided in the Loan Agreement;

(v) such minor defects, irregularities, encumbrances, easements, rights-of-way and clouds on title as normally exist with respect to property similar in character to such Facility as do not, as set forth in a certificate of an Authorized Representative of the Institution delivered to the Issuer and the Trustee, either singly or in the aggregate, render title to such Facility unmarketable or materially impair the property affected thereby for the purpose for which it was acquired or purport to impose liabilities or obligations on the Issuer;

(vi) those encumbrances enumerated in the title report with respect to the 42nd Street Facility or those exceptions to title to the Mortgaged Property enumerated in the title mortgagee policy delivered pursuant to the Loan Agreement insuring the Trustee's mortgagee interest in the Mortgaged Property, a copy of which is on file at the designated corporate trust office of the Trustee;

(vii) liens arising by reason of good faith deposits with the Institution in connection with the tenders, leases of real estate, bids or contracts (other than contracts for the payment of money), deposits by the Institution to secure public or statutory obligations, or to secure, or in lieu of, surety, stay or appeal bonds, and deposits as security for the payment of taxes or assessments or other similar charges;

(viii) any lien arising by reason of deposits with, or the giving of any form of security to, any governmental agency or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Institution to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements;

(ix) any judgment lien against the Institution, so long as the finality of such judgment is being contested in good faith and execution thereon is stayed;

(x) any purchase money security interest in movable personal property, including equipment leases and financing;

(xi) liens on property due to rights of governmental entities or third party payors for recoupment of excess reimbursement paid;

(xii) a lien, restrictive declaration or performance mortgage with respect to the operation of such Facility arising by reason of a grant or other funding received by the Institution from the City, the State or any governmental agency or instrumentality;

(xiii) any grant of a mortgage, pledge, encumbrance or security interest in the Facility Unit and the common elements appurtenant thereto to the Ground Lessee;

(xiv) any mortgage, pledge, encumbrance or security interest in any property granted by the Ground Landlord (or any of its successors and/or assigns) to which the Condominium Documents, the Ground Lease and the Facility Lease Agreement are subject and subordinate to;

(xv) any mortgage, pledge, encumbrance or security interest granted by the Ground Lessee or any of its successors and/or assigns in the Ground Lease;

(xvi) any lien, security interest or encumbrance in the Pledged Collateral or the Trust Estate which lien, security interest or encumbrance is subordinate to the Security Documents;

(xvii) any Prior Pledge or lien securing any security interest permitted in the Pledge and Security Agreement; and

(xviii) any lien, security interest, encumbrances or charge which exists in favor of the Trustee or to which the Trustee shall consent in writing.

**Person** shall mean an individual or any Entity.

**Pledge and Security Agreement** shall mean the Pledge and Security Agreement, dated as of December 1, 2020, from the Institution to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

**Pledged Collateral** shall mean revenues of the Institution, consisting of the following, whether now owned or hereafter acquired, created or arising and wherever located (i) all Pledged Revenues; (ii) all claims and causes of action arising from or otherwise related to any of the foregoing, and all rights and judgments related to any legal actions in connection with such claims or causes of action, and all cash (or evidences of cash or of rights to cash) or other property or rights thereto relating to such claims or causes of action; and (iii) all proceeds (including, without limitation, insurance proceeds and condemnation awards), whether cash or non-cash, of any of the above.

**Pledged Revenues** shall mean all accounts, investment property income, payment intangibles, monies, receipts, earnings (inclusive of any investment income), revenues, including Public Funds, rentals, income, insurance proceeds, fees, gifts, donations, contributions, charges and other moneys received or receivable by or on behalf of the Institution, including, but without limiting the generality of the foregoing, (i) fees and charges of the Institution including fees or charges derived from the ownership or operation of each Facility, and all rights to receive any of the above, whether in the form of accounts, payment intangibles, contract rights, or other rights, and the proceeds of such rights, whether now owned or held or hereafter coming into existence; and (ii) gifts, grants, bequests, donations and contributions heretofore or hereafter made to the Institution; provided, however, that, there shall be expressly excluded from "Pledged Revenues" (y) the Unrestricted Investments Fund of the Institution and (z) Restricted Gifts. Notwithstanding the foregoing, "Pledged Revenues" shall include all income, distributions, dividends, earnings and revenues (y) derived from and deposited in the Unrestricted Investment Fund; and (z) derived from Restricted Gifts (unless otherwise prohibited by the terms of a Restricted Gift).

**PPA Expenses** shall mean all operating and nonoperating expenses properly incurred by the Institution with respect to a PPA Facility in accordance with the Prior Property Approval received by the Institution with respect to such PPA Facility.

**PPA Facility** shall mean any facility of the Institution which was, or will be, approved by the New York State Office for People with Developmental Disabilities pursuant to the Prior Property Approval process incorporated in New York State Codes, Rules and Regulations Parts 681, 686 and 690, as amended from time to time.

**PPA Revenues** shall mean revenues received by the Institution with respect to a PPA Facility intended to amortize the PPA Expenses incurred with respect to such PPA Facility.

**Premier Healthcare** shall mean Premier Healthcare, Inc., a New York not-for-profit corporation, whose sole corporate member is the Institution, and its successor and assigns.

**Premier Healthcare Lease** shall mean the Lease Agreement, dated June 10, 2020 (effective as of September 1, 2019), between the Institution and Premier Healthcare, and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Loan Agreement.

**Principal Account** shall mean the special trust account of the Bond Fund (Tax-Exempt) or the Bond Fund (Taxable), as applicable, so designated, established pursuant to the Indenture.

**Prior Pledge** shall mean (a) any prior pledge or lien securing any security interest permitted in the Pledge and Security Agreement and/or (b) with reference to the Pledged Collateral, any liens, pledges charges, encumbrances and security interests made and given by the Institution to secure prior obligations of the Institution as described in the exhibit attached to the Pledge and Security Agreement, and any replacement of any credit facility referenced in such exhibit which does not exceed the total amount available to the Institution under such existing credit facility.

**Program Facilitator** or **Facilitator** shall mean InterAgency Council of Developmental Disabilities Agencies, Inc., and its successors and assigns under the Administration Agreement.

**Project** shall mean, collectively or individually, as applicable, (i) the financing and reimbursing of the Institution for costs of the renovation, equipping and furnishing of two condominium units, an approximately 70,000 square foot facility located in a 37-story building located at 220 East 42nd Street, Units 7NW and 8, New York, New York, which facility the Institution operates as its headquarters with offices and clinic space, which are operated by Premier Healthcare, in providing essential services to individuals with developmental and other disabilities and their families; and/or (ii) the reimbursing of the Institution for costs of the redemption of the outstanding bonds issued on June 30, 2010 by the Dormitory Authority of the State of New York, the proceeds of which were used to finance and/or refinance the cost of the renovation of a residential facility, consisting of approximately 11,070 square feet, on three floors of a building located at 314 East 35th Street, New York, New York on an approximately 4,937 square feet of land, which facility is owned and operated by the Institution as an Individualized Residential Alternative, a supervised housing opportunity certified by OPWDD for eligible individuals with developmental disabilities.

**Project Completion Date** shall mean, with respect to the 42nd Street Facility, the date by which all of the following conditions have been satisfied: (i) the Issuer shall have received a signed and complete certificate of an Authorized Representative of the Institution in substantially the form set forth in the "Form of Project Completion Certificate" attached as an exhibit to the Loan Agreement, together with all attachments required thereunder, (ii) the Project Work shall have been finished and shall have been completed substantially in accordance with the plans and specifications therefor, (iii) the Issuer shall have received a copy of a certificate of occupancy or a temporary certificate of occupancy issued by the New York City Department of Buildings from the Institution, (iv) there shall be no certificate, license, permit, authorization, written approval or consent or other document required to permit the occupancy, operation and use of the 42nd Street Facility as an Approved Facility that has not already been obtained or received, except for such certificates, licenses, permits, authorizations, written approvals and consents that will be obtained in the ordinary course of business and the issuance of which are ministerial in nature, and (v) the 42nd Street Facility shall be ready for occupancy, use and operation for the Approved Project Operations in accordance with all applicable laws, regulations, ordinances and guidelines.

**Project Costs** shall mean, collectively, Project Costs (Taxable) and Project Costs (Tax-Exempt).

**Project Costs (Taxable)** shall mean (i) the costs with respect to the reimbursement of the Institution for costs of the redemption of the outstanding bonds issued on June 30, 2010 by the Dormitory Authority of the State of New York relating to the 35th Street Facility, (ii) the costs of issuance with respect to the Initial Bonds or (iii) other Project Costs (Tax-Exempt) relating to the 42nd Street Facility, not paid from the Tax-Exempt Bonds, and shall not include (i) fees or commissions of real estate brokers or (ii) operational costs.

**Project Costs (Tax-Exempt)** shall mean, with respect to the 42nd Street Facility:

(i) all costs of engineering and architectural services with respect to the Project Work, including the cost of test borings, surveys, estimates, permits, plans and specifications and for supervising demolition, construction and renovation, as well as for the performance of all other duties required by or consequent upon the proper construction of, and the making of alterations, renovations, additions and improvements in connection with, the completion of the Project Work;

(ii) all costs paid or incurred for labor, materials, services, supplies, machinery, equipment and other expenses and to contractors, suppliers, builders and materialmen in connection with the completion of the Project Work;

(iii) all costs of contract bonds and of insurance that may be required or necessary during the period of Project Work construction and renovation;

(iv) the payment of the Costs of Issuance with respect to the Initial Bonds;

(v) all costs which the Institution shall be required to pay, under the terms of any contract or contracts, for the completion of the Project Work, including any amounts required to reimburse the Institution for advances made for any item otherwise constituting a Project Cost (Tax-Exempt) or for any other costs incurred and for work done which are properly chargeable to the Project Work; and

(vi) all other costs and expenses relating to the completion of the Project Work or the issuance of a Series of Additional Bonds.

"Project Costs (Tax-Exempt)" shall not include (i) fees or commissions of real estate brokers, (ii) moving expenses, or (iii) operational costs.

**Project Documents** shall mean, collectively, the Administration Agreement, the Continuing Disclosure Agreement, the Facility Lease Agreement, the Ground Lease, the Premier Healthcare Lease and the Security Documents.

**Project Fund** shall mean, collectively or individually, as applicable, the Project Fund (Taxable) and/or the Project Fund (Tax-Exempt).

**Project Fund (Taxable)** shall mean the special trust fund so designated, established pursuant to the Indenture.

**Project Fund (Tax-Exempt)** shall mean the special trust fund so designated, established pursuant to the Indenture.

**Project Work** shall mean (i) the design, construction and/or renovation of the Improvements of the 42nd Street Facility, including the acquisition of building materials and fixtures, and (ii) the acquisition, whether by title or lease, of the Facility Personalty and any work required to install same.

**Promissory Notes** shall mean, (i) with respect to the Initial Bonds, collectively, those certain Series 2020A Promissory Note and Series 2020B Promissory Note in substantially the forms attached as exhibits to the Loan Agreement, (ii) with respect to any Series of Additional Bonds, that certain Promissory Note in substantially the form of any related exhibit to an amendment to the Loan Agreement, and (iii) with respect to the Bonds, collectively, those certain Promissory Notes described in clauses (i) and (ii) above, and shall include in each case any and all amendments thereof and supplements thereto made in conformity with the Loan Agreement and the Indenture.

**Public Funds** shall means all moneys appropriated, apportioned or otherwise payable to the Institution by the federal government, any agency thereof, the State, any agency of the State, a political subdivision, as defined in Section 100 of the General Municipal Law, any social services district in the State or any other governmental entity, including the New York State Office for People with Developmental Disabilities, the New York State Office of Mental Health, the New York State Office of Addiction Services and Supports and the New York State Department of Health (and any successor or

assigns with respect to each thereto), or any other division, department, office or agency of the State that is a source of Pledged Revenues of the Institution whether as PPA Revenues or Non-PPA Revenues.

**Qualified Investments** shall mean, to the extent permitted by applicable law, the following:

(A) 1. Cash deposits (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in (A)2 below).

2. Direct obligations of (including obligations issued or held in book entry form on the books of the Department of Treasury) the United States of America. In the event these securities are used for defeasance, they shall be non-callable and non-prepayable.

3. Obligations of the following federal agencies so long as such obligations are backed by the full faith and credit of the United States of America (in the event these securities are used for defeasance, they shall be non-callable and non-prepayable):

a. U.S. Export-Import Bank (Eximbank)

b. Rural Economic Community Development Administration

c. Federal Financing Bank

d. U.S. Maritime Administration

e. U.S. Department of Housing and Urban Development (PHAs)

f. General Services Administration

g. Small Business Administration

h. Government National Mortgage Association (GNMA)

i. Federal Housing Administration

j. Farm Credit System Financial Assistance Corporation

(B) To the extent permitted by law, the following obligations are "Qualified Investments" for all purposes other than defeasance investments in refunding escrow accounts:

1. Direct obligations of any of the following federal agencies which obligations are not fully guaranteed by the full faith and credit of the United States of America: (a) Senior debt obligations rated in the highest long-term rating category by at least two nationally recognized rating agencies issued by the Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC) and (b) Senior debt obligations of the Federal Home Loan Bank System.

2. U.S. dollar denominated deposit accounts, federal funds and bankers' acceptances with domestic commercial banks which either (a) have a rating on their short-term certificates of deposit on the date of purchase in the highest short-term rating category of at least two nationally recognized rating agencies, (b) are insured at all times by the Federal Deposit Insurance Corporation, or (c) are collateralized with direct obligations of the United States of America at one hundred two percent (102%) valued daily. All such certificates must mature no more than

three hundred sixty (360) days after the date of purchase. (Ratings on holding companies are not considered as the rating of the bank).

3. "Prime quality" commercial paper, with a maturity of 270 days or less, of issuing corporations organized under the laws of the United States, or of any state thereof, including paper issued by banks and bank holding companies. "Prime quality" shall be as rated by Moody's within its ratings of "P-1" or "P-2" or by S&P within its ratings of "A-1" or "A-2".

4. Investments in (a) money market funds subject to SEC Rule 2a-7 and rated in the highest short-term rating category of at least two nationally recognized rating agencies, including such funds for which the Trustee or an Affiliate of the Trustee serves as investment advisor, administrator, shareholder, servicing agent and/or custodian or sub-custodian, notwithstanding that (i) the Trustee charges and collects fees and expenses from such funds for services rendered, (ii) the Trustee charges and collects fees and expenses for services rendered pursuant to the Indenture and (iii) services performed for such funds and pursuant to the Indenture may converge at any time, and (b) public sector investment pools operated pursuant to SEC Rule 2a-7 in which the Issuer's deposit shall not exceed 5% of the aggregate pool balance at any time and such pool is rated in one of the two highest short-term rating categories of at least two nationally recognized rating agencies.

5. Pre-refunded municipal obligations defined as follows: Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and (a) which are rated, based on an irrevocable escrow account or fund (the "escrow"), in the highest long-term rating category of at least two (2) nationally recognized rating agencies; or (b) (i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or direct obligations of the United States of America, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate.

6. General obligations of states with a short-term rating in one of the two (2) highest rating categories and a long-term rating in one (1) of the two (2) highest rating categories of at least two (2) nationally recognized rating agencies. In the event such obligations are variable rate obligations, the interest rate on such obligations must be reset not less frequently than annually.

7. Investment agreements with any bank, registered broker/dealer, insurance company or any other financial institution or corporation, or any subsidiary thereof, rated at least "Aa3" by Moody's or "AA-" by S&P or "AA-" by Fitch. The credit rating may be at either the parent or subsidiary level.

8. Repurchase agreements collateralized by securities described in items 1-7 above, with any registered broker/dealer subject to the Securities Protection Corporation jurisdiction or any commercial bank, if such broker/dealer or bank has an uninsured, unsecured and un-guaranteed obligation rated at the time of purchase thereof, in one of the two highest rating categories by a rating agency, provided: (i) a master repurchase agreement or specific written

repurchase agreement governs the transaction, (ii) the securities are held, free and clear of liens or claims by third parties by the Trustee or an independent party acting solely as agent for the Trustee, and such agent is (A) a Federal Reserve Bank or (B) a bank which is a member of the Federal Deposit Insurance Corporation and which has combined capital, surplus and undivided profits of not less than $25,000,000, and the Trustee shall have received written confirmation from such third party that it holds such securities as agent for the Trustee, free of liens or claims by third parties, (iii) a perfected first security interest under the Uniform Commercial Code, or book entry procedures prescribed at 31 CFR 306.1 et seq. or 31 CFR 350.0 et seq. in such securities is created for the benefit of the Trustee, (iv) the repurchase agreement has a term of thirty days or less, or the Trustee will value the collateral securities at the current market value thereof no less frequently than monthly and will liquidate the collateral securities if any deficiency in the required collateral percentage is not restored within two Business Days of such valuation, and (v) the fair market value of the securities in relation to the amount of the repurchase obligation, including principal and interest, is equal to at least 102%.

9. Other forms of investments provided to the Trustee by the written direction of the Majority Holders.

The value of the above investments, other than cash, shall be determined as follows: "Value," which shall be determined as of the end of each month, means that the value of any investments shall be calculated as follows:

1. As to investments the bid and asked prices of which are published on a regular basis in *The Wall Street Journal* (or, if not there, then in *The New York Times*): the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination;

2. As to investments the bid and asked prices of which are not published on a regular basis in *The Wall Street Journal* or *The New York Times*: the average bid price at such price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Trustee at the direction of the Majority Holders) at the time making a market in such investments or the bid price published by a nationally recognized pricing service; and

3. As to certificates of deposit and bankers acceptances, the face amount thereof, plus accrued interest.

**Rating Agency** shall mean any of S&P, Moody's or Fitch and such other nationally recognized securities rating agency as shall have awarded a rating to the Initial Bonds.

**Rating Category** shall mean one of the generic rating categories of a Rating Agency without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

**Rebate Fund** shall mean the special trust fund so designated, established pursuant to the Indenture.

**Record Date** shall mean, with respect to any Interest Payment Date for the Initial Bonds, the close of business on the fifteenth ($15^{th}$) day of the month next preceding such Interest Payment Date, or, if such day is not a Business Day, the next preceding Business Day.

**Redemption Account** shall mean the special trust account of the Bond Fund (Tax-Exempt) or the Bond Fund (Taxable), as applicable, so designated, established pursuant to the Indenture.

**Redemption Date** shall mean the date fixed for redemption of Bonds subject to redemption in any notice of redemption given in accordance with the terms of the Indenture.

**Redemption Price** shall mean, with respect to any Bond or a portion thereof, the principal amount thereof to be redeemed in whole or in part, plus the applicable premium, if any, payable upon redemption thereof pursuant to such Bond or the Indenture.

**Refunding Bonds** shall mean Additional Bonds that may be issued under the Indenture to refund all Outstanding Bonds or any Series of Outstanding Bonds or any part of one or more Series of Outstanding Bonds.

**Reimbursement Resolution** shall mean the resolution adopted by the Institution on June 7, 2019 with respect to the Project and the debt financing thereof.

**Related Security Documents** shall mean all Security Documents other than the Indenture.

**Renewal Fund** shall mean the special trust fund so designated, established pursuant to the Indenture.

**Representations Letter** shall mean the Blanket Issuer Letter of Representations from the Issuer to DTC.

**Required Disclosure Statement** shall mean that certain Required Disclosure Statement in the "Form of Required Disclosure Statement" attached as an exhibit to the Loan Agreement.

**Restricted Gifts** shall mean gifts, grants, bequests, donations and contributions made to the Institution and designated or specified by the granting authority, donor or maker thereof as being for specified purposes that would prohibit the use of such amounts for the payment of the principal of and interest on the Initial Bonds or operating expenses.

**S&P** shall mean S&P Global Ratings, a division of Standard & Poor's Financial Services LLC, a Delaware limited liability company, its successors and assigns, and if such entity shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Trustee, by notice to the other Notice Parties.

**Securities Act** shall mean the Securities Act of 1933, as amended, together with any rules and regulations promulgated thereunder.

**Securities Depository** shall mean any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book-entry system to record ownership of book-entry interests in the Bonds, and to effect transfers of book-entry interests in the Bonds in book-entry form, and includes and means initially DTC.

**Securities Exchange Act** shall mean the Securities Exchange Act of 1934, as amended, together with any rules and regulations promulgated thereunder.

**Security Documents** shall mean, collectively, the Loan Agreement, the Promissory Notes, the Pledge and Security Agreement, the Indenture, the Mortgage, the Assignment of Mortgage and the Tax Regulatory Agreement.

**Series** shall mean all of the Bonds designated as being of the same series authenticated and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter authenticated and delivered in lieu thereof or in substitution therefor pursuant to the Indenture.

**Series 2020A Bonds** shall mean the Issuer's $5,490,000 Revenue Bonds (Young Adult Institute, Inc. Project), Series 2020A authorized, issued, executed, authenticated and delivered on the Closing Date under the Indenture.

**Series 2020B Bonds** shall mean the Issuer's $1,025,000 Revenue Bonds (Young Adult Institute, Inc. Project), Series 2020B (Taxable) authorized, issued, executed, authenticated and delivered on the Closing Date under the Indenture.

**Sinking Fund Installment** shall mean an amount so designated and which is established for mandatory redemption on a date certain of the Bonds of any Series of Bonds pursuant to the Indenture. The portion of any such Sinking Fund Installment of a Series of Bonds remaining after the deduction of any amounts credited pursuant to the Indenture toward the same (or the original amount of any such Sinking Fund Installment if no such amounts shall have been credited toward the same) shall constitute the unsatisfied balance of such Sinking Fund Installment for the purpose of calculation of Sinking Fund Installments of such Series of Bonds due on a future date.

**Sinking Fund Installment Account** shall mean the special trust account of the Bond Fund (Tax-Exempt) or the Bond Fund (Taxable), as applicable, so designated, established pursuant to the Indenture.

**State** shall mean the State of New York.

**Supplemental Indenture** shall mean any indenture supplemental to or amendatory of the Indenture, executed and delivered by the Issuer and the Trustee in accordance with the Indenture.

**Taxable Bonds** shall mean the Series 2020B Bonds and any Additional Bonds which are not Tax-Exempt Bonds.

**Tax-Exempt Bonds** shall mean the Series 2020A Bonds and any Additional Bonds as to which, at the time of original issuance, there shall be delivered to the Issuer an opinion of Nationally Recognized Bond Counsel to the effect that the interest on such Bonds is excluded from gross income for federal income tax purposes.

**Tax-Exempt Organization** shall mean an Entity organized under the laws of the United States of America or any state thereof which is an organization described in Section 501(c)(3) of the Code and exempt from federal income taxes under Section 501(a) of the Code, or corresponding provisions of federal income tax laws from time to time in effect.

**Tax Regulatory Agreement** shall mean the Tax Regulatory Agreement, dated the Closing Date, from the Issuer, the Institution, Premier Healthcare and the Program Facilitator to the Trustee, and shall include any and all amendments thereof and supplements thereto hereafter made in conformity therewith and with the Indenture.

**35th Street Facility** or **35th Street Facility Realty** shall mean, collectively, the Land and the Improvements located at 314 East 35th Street, New York, New York.

**Total Debt Service Coverage Ratio** shall mean the ratio for the applicable Fiscal Year of Total Net Revenues Available for Debt Service to Total Maximum Annual Debt Service.

**Total Maximum Annual Debt Service** shall mean the greatest amount required in the then current or any future Fiscal Year to pay the debt service on any outstanding Non-PPA Indebtedness of the Institution; provided, however, that any Non-PPA Indebtedness secured solely by a security interest in its Accounts Receivable in accordance with the Pledge and Security Agreement shall not be included in "Non-PPA Indebtedness" for the purposes of this definition; provided further, that the debt service for the final year of amortization of any Non-PPA Indebtedness shall not be included for purposes of this definition to the extent that such debt service is payable from any funded reserve(s) established with and held by a Person other than the Institution.

**Total Net Revenues Available for Debt Service** shall mean, for any Fiscal Year, the excess of Non-PPA Revenues, including the proceeds of business interruption insurance, over the Non-PPA Expenses accrued or paid by the Institution for such Fiscal Year as determined and reported by the independent certified public accountants of the Institution in its most recently audited financial statements. For purposes of this definition, as determined in accordance with generally accepted accounting principles, consistently applied, (i) extraordinary items shall be excluded from Non-PPA Revenues and Non-PPA Expenses, (ii) depreciation, amortization and current interest expenses shall be excluded from Non-PPA Expenses, and (iii), if the Indebtedness to be incurred or guaranteed is with respect to the refinancing of a Project, then "current interest expenses" for purposes of clause (ii) above and in the Pledge and Security Agreement shall include the bona fide loan payments made by the Institution with respect to such Facility in the Fiscal Year for which the determination is made.

**Trustee** shall mean The Bank of New York Mellon, New York, New York, in its capacity as trustee under the Indenture, and its successors in such capacity and their assigns hereafter appointed in the manner provided in the Indenture.

**Trust Estate** shall mean all property, interests, revenues, funds, contracts, rights and other security granted to the Trustee under the Security Documents.

**Underwriter** shall mean Municipal Capital Markets Group, Inc., as underwriter of the Initial Bonds.

**Unrestricted Investments Fund** shall mean one or more investment accounts maintained by the Institution with third party financial institutions or money managers comprised of monies set aside for investment and not intended for operations (which moneys are not, however, prohibited by the donor or by Legal Requirements from being applied to pay Indebtedness (including the Initial Bonds) of the Institution).

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# APPENDIX E

## SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT

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*The following is a summary of certain provisions of the Loan Agreement dated as of August 1, 2020 (the "Loan Agreement"), relating to the Series 2020 Bonds. This summary does not purport to be complete, and reference is made to the Loan Agreement for the detailed provisions thereof. This summary is qualified in its entirety by such reference. Headings are not part of the Loan Agreement and are included for ease of reference only.*

Agreement to Undertake Project. The Institution covenants and agrees in the Loan Agreement to undertake and complete the Project Work in accordance with the Loan Agreement and the requirements of the Condominium Documents and the Facility Lease Agreement, including, without limitation: (i) effecting the Project Work, (ii) making, executing, acknowledging and delivering any contracts, orders, receipts, writings and instructions with any other Persons, and in general doing all things which may be requisite or proper, all for the purposes of undertaking the Project Work, (iii) paying all fees, costs and expenses incurred in the Project Work from funds made available therefor in accordance with or as contemplated by the Loan Agreement and the Indenture, and (iv) asking, demanding, suing for, levying, recovering and receiving all such sums of money, debts due and other demands whatsoever that may be due, owing and payable to the Institution under the terms of any contract, order, receipt or writing in connection with the Project Work and to enforce the provisions of any contract, agreement, obligation, bond or other performance security entered into or obtained in connection with the Project Work.

Manner of Project Completion. The Institution will complete the Project Work, or cause the Project Work to be completed, by the Completion Deadline, in a first class workmanlike manner, free of defects in materials and workmanship (including latent defects); provided, however, the Institution may revise the scope of the Project Work, subject to the prior written consents of the Issuer and the Trustee (which consents shall not be unreasonably withheld, delayed or conditioned). The Institution will cause the Project Completion Date to occur by the Completion Deadline.

In undertaking the Project Work, the Institution shall take such action and institute such proceedings as shall be necessary to cause and require all contractors, manufacturers and suppliers to complete their agreements relating to the Project Work in accordance with the terms of the contracts therefor including the correction of any defective work. Upon request, the Institution will extend to the Issuer or the Trustee all vendors' warranties received by the Institution in connection with the Project, including any warranties given by contractors, manufacturers or service organizations who perform the Project Work.

Project Costs shall be paid from the applicable Project Fund or other funds provided by the Institution. In the event that moneys in the Project Fund are not sufficient to pay the costs necessary to complete the Project in full, the Institution shall pay that portion of such costs of the Project as may be in excess of the moneys therefor in the Project Fund and shall not be entitled to any reimbursement therefor from the Issuer, the Trustee or the Holders of any of the Bonds (except from the proceeds of Additional Bonds which may be issued for that purpose), nor shall the Institution be entitled to any diminution of the loan payments payable or other payments to be made under the Loan Agreement, under the Promissory Notes or under any other Project Document. All expenses incurred by the Institution or the Issuer in connection with the performance of its obligations under the Loan Agreement as described under this heading shall be considered a Project Cost. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery, if recovered prior to the date of completion of the Project, shall be deposited into the Project Fund (Tax-Exempt) and made available for payment of Project Costs (Tax-Exempt), or if recovered after such date of completion, be deposited in the Interest Account of the Bond Fund (Tax-Exempt).

The Institution shall pay all costs, charges, fees, expenses or claims incurred in connection with the Project Work. However, provided the Institution in good faith is diligently contesting by appropriate means (including proceedings), and with due diligence, the validity or application of any costs, charges, fees, expenses or claims of contractors, mechanics, materialmen, suppliers or vendors (collectively "Tradesmen"), nothing contained herein shall be deemed to require the Institution to pay, or cause to be paid, any costs, charges, fees, expenses or claims of such Tradesmen until such time as a compromise between the Institution and the Tradesmen has been reached or either the Institution or the Tradesmen are deemed to have prevailed by a court of competent jurisdiction. If, however, at any time, payment of such obligation shall become necessary to prevent the delivery of a deed, or its equivalent, conveying the 42nd Street Facility, or any part thereof, because of non-payment, then the Institution shall pay the same in sufficient time to prevent the delivery of such deed or its equivalent.

The Institution will perform or cause to be performed the Project Work in accordance with all applicable Legal Requirements, the Condominium Documents and the Facility Lease Agreement and with the conditions and requirements of all policies of insurance with respect to the 42nd Street Facility and the Project Work. Promptly upon finishing of the Project Work and the completion of the Improvements, the Institution will obtain or cause to be obtained all required permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the occupancy, operation and use of the 42nd Street Facility as an Approved Facility and shall furnish copies of same to the Trustee immediately upon the receipt thereof and to the Issuer immediately upon demand therefor.

Upon completion of the Project Work, the Institution shall (y) deliver to the Issuer the Final Project Cost Budget, which budget will include a comparison with the Project Cost Budget, and indicate the source of funds (i.e., Bond proceeds, equity, etc.) for each cost item, and (z) evidence the completion of the Project and the occurrence of the Project Completion Date by delivering to the Issuer and the Trustee a certificate of an Authorized Representative of the Institution in substantially the form set forth in the Loan Agreement, together with all attachments required thereunder.

Maintenance. During the term of the Loan Agreement, the Institution will: (i) keep each Facility in good and safe operating order and condition, ordinary wear and tear excepted, (ii) occupy, use and operate each Facility, or cause each Facility to be occupied, used and operated, as an Approved Facility and, with respect to the 42nd Street Facility, in accordance with the Condominium Documents and the Facility Lease Agreement, and (iii) make or cause to be made all replacements, renewals and repairs thereto (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) necessary to ensure that (x) the interest on the Tax-Exempt Bonds shall not cease to be excludable from gross income for federal income tax purposes, (y) the operations of the Institution at the Facilities shall not be materially impaired or diminished in any way, and (z) the security for the Bonds shall not be materially impaired.

All replacements, renewals and repairs shall be similar in quality, class and value to the original work and be made and installed in compliance with all applicable Legal Requirements and, with respect to the 42nd Street Facility, with all applicable requirements of the Condominium Documents and the Facility Lease Agreement.

The Issuer shall be under no obligation to replace, service, test, adjust, erect, maintain or effect replacements, renewals or repairs of the Facilities, to effect the replacement of any inadequate, obsolete, worn out or unsuitable parts of the Facilities, or to furnish any utilities or services for the Facilities, and the Institution agrees in the Loan Agreement to assume full responsibility therefor.

Alterations and Improvements. The Institution shall have the privilege of making such alterations of or additions to any Facility Realty ("Additional Improvements") or any part thereof from time to time

as it in its discretion may determine to be desirable for its uses and purposes, provided that: (i) as a result of the Additional Improvements, the fair market value of such Facility is not reduced below its fair market value immediately before the Additional Improvements are made and the usefulness, structural integrity or operating efficiency of such Facility is not materially impaired, (ii) the Additional Improvements are effected with due diligence, in a good and workmanlike manner and in compliance with all applicable Legal Requirements and, with respect to the 42nd Street Facility, with all applicable requirements of the Condominium Documents and the Facility Lease Agreement, (iii) the Additional Improvements are promptly and fully paid for by the Institution in accordance with the terms of the applicable contract(s) therefor, and (iv) the Additional Improvements do not change the nature of such Facility so that it would not constitute an Approved Facility. All Additional Improvements shall constitute a part of the related Facility, subject to the Loan Agreement, and, (i) with respect to the 42nd Street Facility, the Condominium Documents and the Facility Lease Agreement, and (ii) with respect to the 35th Street Facility, the Mortgage.

If at any time after the Project Completion Date the Institution shall make any Additional Improvements, the Institution shall notify an Authorized Representative of the Issuer of such Additional Improvements by delivering written notice thereof within thirty (30) days after the completion of the Additional Improvements.

In addition to the Facility Personalty, the Institution shall have the right to install or permit to be installed at any Facility Realty, machinery, equipment and other personal property at the Institution's own cost and expense (the "Institution's Property"). Once so installed, the Institution's Property shall not constitute part of the Facility Personalty and shall not be subject to the Loan Agreement, nor constitute part of any Facility, provided that the same is not made fixtures appurtenant to any Facility Realty. The Institution shall have the right to create or permit to be created any lien or charge on, or conditional sale or other title retention agreement with respect to, the Institution's Property, without the consent of or notice to the Issuer or the Trustee. The Institution's Property, if located at the 35th Street Facility, shall constitute part of the Mortgaged Property under the Mortgage.

Removal of Property of the Facility. The Institution shall have the right from time to time to remove from that property constituting part of any Facility any fixture constituting part of any Facility Realty or any machinery, equipment or other item of personal property constituting part of the Facility Personalty (in any such case, the "Existing Facility Property") and thereby removing such Existing Facility Property from that property constituting part of any Facility, provided, however:

(i) such Existing Facility Property is substituted or replaced by property (y) having equal or greater fair market value, operating efficiency and utility and (z) free of all mortgages, liens, charges, encumbrances, claims and security interests other than Permitted Encumbrances, or

(ii) if such Existing Facility Property is not to be substituted or replaced by other property but is instead to be sold, scrapped, traded-in or otherwise disposed of in an arms'-length bona fide transaction for consideration, the Institution shall pay to the Trustee for deposit in the Redemption Account of the Bond Fund (Tax-Exempt) and thereby cause a redemption of the Series 2020A Bonds to be effected in an amount (to the nearest integral multiple of Authorized Denomination) (and, if any excess amount shall exist, in the Interest Account of the Bond Fund (Tax-Exempt)) equal to the amounts derived from such sale or scrapping, the trade-in value credit received or the proceeds received from such other disposition; provided that no such redemption shall be required when such amount received in connection with any removal or series of removals does not exceed, in the aggregate, $25,000.

No such removal set forth in paragraph (i) or (ii) above shall be effected if (v) such removal would cause the interest on the Tax-Exempt Bonds to cease to be excludable from gross income for

federal income tax purposes, (w) such removal would change the nature of any Facility as an Approved Facility, (x) such removal would materially impair the usefulness, structural integrity or operating efficiency of any Facility, (y) such removal would materially reduce the fair market value of any Facility below its fair market value immediately before such removal (except by the amount by which the Series 2020A Bonds are to be redeemed as provided in paragraph (ii) above), or (z) there shall exist and be continuing an Event of Default under the Loan Agreement. Any amounts received pursuant to paragraph (ii) above in connection with any removal or series of removals, which are not in excess of $25,000, shall be retained by the Institution.

The removal from any Facility of any Existing Facility Property pursuant to the provisions of the Loan Agreement as described under this heading shall not entitle the Institution to any abatement or reduction in the loan payments and other amounts payable by the Institution under the Loan Agreement, under the Promissory Notes or under any other Project Document.

Implementation of Additional Improvements and Removals. In the event of any Additional Improvements or substitution or replacement of property pursuant to the Loan Agreement as described under the heading "Alternations and Improvements" or "Removal of Property of the Facility" above, (i) with respect to the 42nd Street Facility, the Institution shall cause all of the same to be made part of the 42nd Street Facility, and (ii) with respect to the 35th Street Facility, the Institution shall deliver or cause to be delivered to the Issuer and the Trustee any necessary documents in order to subject such Additional Improvements or substitute or replacement property to the lien and security interest of the Mortgage (in each case to the extent such Additional Improvements or substitute or replacement property relates to the Mortgaged Property) and to cause all of the same to be made part of the 35th Street Facility.

Loan of Proceeds. The Issuer agrees, upon the terms and conditions contained in the Loan Agreement and the Indenture, to loan the proceeds from the sale of the Initial Bonds to the Institution (the "Loan"). The Loan shall be made by depositing on the Closing Date the proceeds from the sale of (y) the Series 2020A Bonds into the Project Fund (Tax-Exempt) and the Debt Service Reserve Fund (Tax-Exempt) and (z) the Series 2020B Bonds into the Project Fund (Taxable), all in accordance with the Indenture. Such proceeds shall be disbursed to or on behalf of the Institution as provided in the Loan Agreement and in the Indenture.

Promissory Notes. The Institution's obligation to repay the Loan shall be evidenced by the Loan Agreement and the Promissory Notes. On the Closing Date, the Institution shall execute and deliver the Promissory Notes payable to the Issuer, and the Issuer will endorse the Promissory Notes to the Trustee. The Institution acknowledges in the Loan Agreement that the original principal amount payable under the Promissory Notes may be more or less than the original principal amount of the Loan if the Initial Bonds are sold at a discount or at a premium, respectively, and agrees that repayment of the Loan and the Promissory Notes will be made in accordance with the Loan Agreement.

Loan Payments. The Institution covenants in the Loan Agreement to pay the Promissory Note and repay the Loan made pursuant to the Loan Agreement by making loan payments which the Issuer agrees shall be paid in immediately available funds by the Institution directly to the Trustee no later than on each Loan Payment Date (except as provided in clauses (ii), (iv) and (v) below which shall be paid on the respective due dates thereof) for deposit in the Bond Fund (Tax-Exempt) or the Bond Fund (Taxable), as applicable (except to the extent that amounts are on deposit in the Bond Fund (Tax-Exempt) or the Bond Fund (Taxable), as applicable, and available therefor) in an amount equal to the sum of:

(i) (1) with respect to interest due and payable on the Series 2020A Bonds, an amount equal to the quotient obtained by dividing the amount of interest on the Series 2020A Bonds Outstanding payable on the first Interest Payment Date (after taking into account any amount on deposit in the Interest Account of

the Bond Fund (Tax-Exempt), and as shall be available to pay interest on the Series 2020A Bonds on the first Interest Payment Date) by the number of Loan Payment Dates between the Closing Date and the first Interest Payment Date, and thereafter in an amount equal to one-sixth (1/6) of the amount of interest which will become due and payable on the Series 2020A Bonds Outstanding on the next succeeding Interest Payment Date (after taking into account any amounts on deposit in the Interest Account of the Bond Fund (Tax-Exempt), and as shall be available to pay interest on the Series 2020A Bonds on such next succeeding Interest Payment Date); provided that in any event the aggregate amount so paid with respect to interest on the Series 2020A Bonds on or before the Loan Payment Date immediately preceding an Interest Payment Date shall be an amount sufficient to pay the interest next becoming due on the Series 2020A Bonds on such immediately succeeding Interest Payment Date; and (2) with respect to interest due and payable on the Series 2020B Bonds, an amount equal to the quotient obtained by dividing the amount of interest on the Series 2020B Bonds Outstanding payable on the first Interest Payment Date (after taking into account any amount on deposit in the Interest Account of the Bond Fund (Taxable), and as shall be available to pay interest on the Series 2020B Bonds on the first Interest Payment Date) by the number of Loan Payment Dates between the Closing Date and the first Interest Payment Date, and thereafter in an amount equal to one-sixth (1/6) of the amount of interest which will become due and payable on the Series 2020B Bonds Outstanding on the next succeeding Interest Payment Date (after taking into account any amounts on deposit in the Interest Account of the Bond Fund (Taxable), and as shall be available to pay interest on the Series 2020B Bonds on such next succeeding Interest Payment Date); provided that in any event the aggregate amount so paid with respect to interest on the Series 2020B Bonds on or before the Loan Payment Date immediately preceding an Interest Payment Date shall be an amount sufficient to pay the interest next becoming due on the Series 2020B Bonds on such immediately succeeding Interest Payment Date;

(ii) (1) with respect to principal due on the Series 2020A Bonds, on that Loan Payment Date as shall immediately precede the last Maturity Date of the Series 2020A Bonds, an amount equal to the principal amount of the Series 2020A Bonds becoming due on such Maturity Date; provided that in the event of the acceleration of the principal of the Series 2020A Bonds, a loan payment in the amount of the unpaid principal amount of the Series 2020A Bonds Outstanding (together with all interest accrued thereon to the date of payment) shall be due and payable on such date of acceleration; and (2) with respect to principal due on the Series 2020B Bonds, on that Loan Payment Date as shall immediately precede the Maturity Date of the Series 2020B Bonds, an amount equal to the principal amount of the Series 2020B Bonds becoming due on such Maturity Date; provided that in the event of the acceleration of the principal of the Series 2020B Bonds, a loan payment in the amount of the unpaid principal amount of the Series 2020B Bonds Outstanding (together with all interest accrued thereon to the date of payment) shall be due and payable on such date of acceleration;

(iii) (1) with respect to Sinking Fund Installment payments due on the Series 2020A Bonds, commencing on that Loan Payment Date as shall precede the first Sinking Fund Installment payment date by more than twelve (12) but less than thirteen (13) months, an amount equal to one-twelfth (1/12) of the amount of the Sinking Fund Installment on the Series 2020A Bonds first becoming due within the next succeeding thirteen (13) month period (or, if the first Sinking Fund Installment payment date following the Closing Date shall be on a date sooner than thirteen (13) calendar months following the Closing Date, then, with respect to such first Sinking Fund Installment, an amount equal to the quotient obtained by dividing such Sinking Fund Installment by the number of Loan Payment Dates between the Closing Date and such first Sinking Fund Installment payment date), and thereafter for each Sinking Fund Installment payment date commencing on that Loan Payment Date as shall precede such Sinking Fund Installment payment date by more than twelve (12) but less than thirteen (13) months, an amount equal to one-twelfth (1/12) of the amount of the Sinking Fund Installment of the Series 2020A Bonds Outstanding becoming due within such next succeeding thirteen (13) month period; provided that in any event the aggregate amount so paid with respect to Sinking Fund Installments on the Series 2020A Bonds on or before the

Loan Payment Date immediately preceding a Sinking Fund Installment payment date of the Series 2020A Bonds shall be an amount sufficient to pay the Sinking Fund Installment of the Series 2020A Bonds Outstanding becoming due on such next succeeding Sinking Fund Installment payment date; and (2) with respect to Sinking Fund Installment payments due on the Series 2020B Bonds, commencing on that Loan Payment Date as shall precede the first Sinking Fund Installment payment date by more than twelve (12) but less than thirteen (13) months, an amount equal to one-twelfth (1/12) of the amount of the Sinking Fund Installment on the Series 2020B Bonds first becoming due within the next succeeding thirteen (13) month period (or, if the first Sinking Fund Installment payment date following the Closing Date shall be on a date sooner than thirteen (13) calendar months following the Closing Date, then, with respect to such first Sinking Fund Installment, an amount equal to the quotient obtained by dividing such Sinking Fund Installment by the number of Loan Payment Dates between the Closing Date and such first Sinking Fund Installment payment date), and thereafter for each Sinking Fund Installment payment date commencing on that Loan Payment Date as shall precede such Sinking Fund Installment payment date by more than twelve (12) but less than thirteen (13) months, an amount equal to one-twelfth (1/12) of the amount of the Sinking Fund Installment of the Series 2020B Bonds Outstanding becoming due within such next succeeding thirteen (13) month period; provided that in any event the aggregate amount so paid with respect to Sinking Fund Installments on the Series 2020B Bonds on or before the Loan Payment Date immediately preceding a Sinking Fund Installment payment date of the Series 2020B Bonds shall be an amount sufficient to pay the Sinking Fund Installment of the Series 2020B Bonds Outstanding becoming due on such next succeeding Sinking Fund Installment payment date;

(iv) (1) on each Redemption Date, with respect to the Redemption Price (other than by Sinking Fund Installments) due and payable on the Series 2020A Bonds, whether as an optional or mandatory redemption, an amount equal to the Redemption Price together with accrued interest on the Series 2020A Bonds being redeemed on such Redemption Date; and (2) on each Redemption Date, with respect to the Redemption Price (other than by Sinking Fund Installments) due and payable on the Series 2020B Bonds, whether as an optional or mandatory redemption, an amount equal to the Redemption Price together with accrued interest on the Series 2020B Bonds being redeemed on such Redemption Date; and

(v) upon receipt by the Institution of notice from the Trustee pursuant to the Indenture that the amount on deposit in the Debt Service Reserve Fund (Tax-Exempt) shall be less than the Debt Service Reserve Fund Requirement (Tax-Exempt), the Institution shall pay to the Trustee for deposit in the Debt Service Reserve Fund (Tax-Exempt) on the first day of the month immediately following the receipt by the Institution of notice of such deficiency, commencing on the first day of the month immediately following receipt by the Institution of notice of such deficiency, until the amount of such deficiency has been satisfied, either (i) one-twelfth (1/12) of the amount of such deficiency if such deficiency is due to a withdrawal from the Debt Service Reserve Fund (Tax-Exempt) on account of the Institution's failure to make timely payments pursuant to the causes set forth in the Loan Agreement as described above under this heading or (ii) one-quarter (1/4) of the deficiency if such deficiency is due to a decrease in the value of the Qualified Investments held in the Debt Service Reserve Fund (Tax-Exempt).

In the event the Institution should fail to make or cause to be made any of the payments required under the Loan Agreement as described under this heading, the item or installment not so paid shall continue as an obligation of the Institution until the amount not so paid shall have been fully paid.

The Institution has the option to make advance loan payments for deposit in the applicable Bond Fund to effect the retirement, defeasance or redemption of the Bonds in whole or in part, all in accordance with the terms of the Indenture; provided, however, that no partial redemption of the Bonds may be effected through advance loan payments under the Loan Agreement if there shall exist and be continuing an Event of Default. The Institution shall exercise its option to make such advance loan payments by delivering a written notice of an Authorized Representative of the Institution to the Trustee in accordance

with the Indenture, with a copy to the Issuer, setting forth (i) the amount of the advance loan payment, (ii) the principal amount of each Series of Bonds Outstanding requested to be redeemed with such advance loan payment (which principal amount shall be in such minimum amount or integral Authorized Denomination as shall be permitted in the Indenture), and (iii) the date on which such principal amount of Bonds are to be redeemed (which date shall be not earlier than forty-five (45) days after the date of such notice). In the event the Institution shall exercise its option to make advance loan payments to effect the redemption in whole of the Bonds, and such redemption is expressly permitted under the Indenture as a result of the damage, destruction or condemnation of any Facility, or changes in law, or executive or judicial action, the Institution shall further deliver to the Issuer and the Trustee a certificate of an Authorized Representative of the Institution stating that, as a result of the occurrence of the event giving rise to such redemption, the Institution has discontinued, or at the earliest practicable date will discontinue, its operation of such Facility for its intended purposes. Such advance loan payment shall be paid to the Trustee in legal tender, for deposit in the Redemption Account of the applicable Bond Fund on or before the Redemption Date and shall be an amount which, when added to the amounts on deposit in the applicable Bond Fund and available therefor, will be sufficient to pay the Redemption Price of the Bonds to be redeemed, together with interest to accrue to the date of redemption and all expenses of the Issuer, the Trustee, the Bond Registrar and the Paying Agents in connection with such redemption. In the event the Bonds are to be redeemed in whole or otherwise retired, the Institution shall further pay on or before such Redemption Date, in legal tender, to the Issuer, the Trustee, the Bond Registrar and the Paying Agent all fees and expenses owed such party or any other party entitled thereto under the Loan Agreement or the Indenture together with (x) all other amounts due and payable under the Loan Agreement and the other Security Documents, and (y) any amounts required to be rebated to the federal government pursuant to the Indenture or the Tax Regulatory Agreement.

At its option, to be exercised on or before the forty-fifth (45th) day next preceding the date any Bonds of a Series are to be redeemed from mandatory Sinking Fund Installments, the Institution may deliver to the Trustee Bonds of such Series which are subject to mandatory Sinking Fund Installment redemption in an aggregate principal amount not in excess of the principal amount of Bonds of such Series to be so redeemed on such date. Each such Bond so delivered shall be credited by the Trustee at one hundred percent (100%) of the principal amount thereof against the obligation of the Issuer on such Sinking Fund Installment payment date and any excess over such Sinking Fund Installment shall be credited on future Sinking Fund Installments in direct chronological order, and the principal amount of Bonds to be redeemed by operation of the mandatory Sinking Fund Installments shall be accordingly reduced.

In the event Defaulted Interest shall become due on any Initial Bond, the Institution shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on such Initial Bond and the date of the proposed payment (which date shall be such as will enable the Trustee to comply with the Indenture), and shall deposit with the Trustee at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment.

No further loan payments need be made to the Issuer on account of the Bonds when and so long as the amount of cash and/or Defeasance Obligations on deposit in the applicable Bond Fund is sufficient to satisfy and discharge the obligations of the Issuer under the Indenture and pay the Bonds as provided in the defeasance provisions of the Indenture.

Any amounts remaining in the Earnings Fund, the Rebate Fund, the Bond Fund, the Debt Service Reserve Fund (Tax-Exempt), the Project Fund or the Renewal Fund after payment in full of (i) the Bonds (in accordance with the defeasance provisions of the Indenture), (ii) the fees, charges and expenses of the Issuer, the Trustee, the Bond Registrar and the Paying Agents in accordance with the Indenture, (iii) all

amounts required to be rebated to the federal government pursuant to the Tax Regulatory Agreement or the Indenture, and (iv) all amounts required to be paid under any Project Document, shall have been so paid, shall belong to and be paid to the Institution by the Trustee as overpayment of the loan payments.

In the event that the Institution fails to make any loan payment required in the Loan Agreement as described under this heading, the installment so in default shall continue as an obligation of the Institution until the amount in default shall have been fully paid.

Notwithstanding anything in the foregoing to the contrary, if the amount on deposit and available in the applicable Bond Fund is not sufficient to pay the principal of, Sinking Fund Installments for, redemption premium, if any, and interest on the Bonds when due (whether at maturity or by redemption or acceleration or otherwise as provided in the Indenture), the Institution shall forthwith pay the amount of such deficiency in immediately available funds to the Trustee for deposit in the applicable Bond Fund.

Loan Payments and Other Payments Payable Absolutely Net. The obligation of the Institution to pay the loan payments and other payments under the Loan Agreement and under the Promissory Notes shall be absolutely net to the Issuer and to the Trustee without any abatement, recoupment, diminution, reduction, deduction, counterclaim, set-off or offset whatsoever, so that the Loan Agreement and the Promissory Notes shall yield, net, to the Issuer and to the Trustee, the loan payments and other payments provided for herein, and all costs, expenses and charges of any kind and nature relating to the Facilities, arising or becoming due and payable under the Loan Agreement, shall be paid by the Institution and the Indemnified Parties (as defined in the Loan Agreement) shall be indemnified by the Institution for, and the Institution shall hold the Indemnified Parties harmless from, any such costs, expenses and charges.

Nature of Institution's Obligation Unconditional. The Institution's obligation under the Loan Agreement and under the Promissory Notes to pay the loan payments and all other payments provided for in the Loan Agreement and in the Promissory Notes shall be absolute, unconditional and a general obligation of the Institution, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Issuer, the Trustee or the Holder of any Bond and the obligation of the Institution shall arise whether or not the Project has been completed as provided in the Loan Agreement and whether or not any provider of a credit facility or liquidity facility or swap arrangement with respect to the Bonds shall be honoring its obligations thereunder. The Institution will not suspend or discontinue any such payment or terminate the Loan Agreement (other than such termination as is provided for thereunder), or suspend the performance or observance of any covenant or agreement required on the part of the Institution under the Loan Agreement, for any cause whatsoever, and the Institution waives all rights now or hereafter conferred by statute or otherwise to quit, terminate, cancel or surrender the Loan Agreement or any obligation of the Institution under the Loan Agreement except as provided in the Loan Agreement or to any abatement, suspension, deferment, diminution or reduction in the loan payments or other payments under the Loan Agreement or under the Promissory Notes.

Advances by the Issuer or the Trustee. In the event the Institution fails to make any payment or to perform or to observe any obligation required of it under the Loan Agreement, under the Promissory Notes or under any other Security Document, the Issuer or the Trustee, after first notifying the Institution in writing of any such failure on its part (except that no prior notification of the Institution shall be required in the event of an emergency condition that, in the reasonable judgment of the Issuer or the Trustee, necessitates immediate action), may (but shall not be obligated to), and without waiver of any of the rights of the Issuer or the Trustee under the Loan Agreement or any other Security Document to which the Issuer or the Trustee is a party, make such payment or otherwise cure any failure by the Institution to perform and to observe its other obligations under the Loan Agreement or thereunder. All amounts so advanced therefor by the Issuer or the Trustee shall become an additional obligation of the Institution to

the Issuer or the Trustee, as the case may be, which amounts, together with interest thereon at the rate of twelve percent (12%) per annum, compounded daily, from the date advanced, the Institution will pay upon demand therefor by the Issuer or the Trustee, as applicable. Any remedy vested in the Issuer or the Trustee herein or in any other Security Document for the collection of the loan payments or other payments or other amounts due under the Loan Agreement, under the Promissory Notes or under any other Security Document shall also be available to the Issuer or the Trustee for the collection of all such amounts so advanced. No advance shall be made by the Trustee except as specified in the Indenture.

Damage, Destruction and Condemnation. In the event of a Loss Event: (i) the Issuer shall have no obligation to rebuild, replace, repair or restore the affected Facility or to advance funds therefor, (ii) there shall be no abatement, postponement or reduction in the loan payments or other amounts payable by the Institution under the Loan Agreement or the Promissory Notes or any other Security Document to which it is a party, and the Institution waives in the Loan Agreement, to the extent permitted by law, any provisions of law which would permit the Institution to terminate the Loan Agreement, the Promissory Notes or any other Security Document, or eliminate or reduce its payments under the Loan Agreement, under the Promissory Notes or under any other Security Document, and (iii) the Institution will promptly give written notice of such Loss Event to the Issuer and the Trustee, generally describing the nature and extent thereof.

Loss Proceeds. The Issuer, the Trustee and the Institution shall cooperate and consult with each other in all matters pertaining to the settlement, compromise, arbitration or adjustment of any claim or demand on account of any Loss Event, and the settlement, compromise, arbitration or adjustment of any such claim or demand shall, as between the Issuer and the Institution, be subject to the written approval of the Institution and the Trustee (such approvals not to be unreasonably withheld).

The Net Proceeds with respect to each Facility shall be paid to the Trustee and deposited in the Renewal Fund (with respect to the 42nd Street Facility, subject to the terms of the Condominium Documents or Facility Lease Agreement, the Ground Lease or any mortgage document from the Ground Landlord, the Ground Lessee or the Institution; and with respect to the 35th Street Facility, except, as provided in the Mortgage in respect of property insurance proceeds that are less than a threshold amount). Pending the disbursement or transfer thereof, the Net Proceeds in the Renewal Fund shall be applied, and may be invested, as provided in the Indenture. The Institution shall be entitled to the Net Proceeds of any insurance proceeds or condemnation award, compensation or damages attributable to the Institution's Property.

Election to Rebuild or Terminate. In the event a Loss Event shall occur, the Institution shall either (with respect to the 42nd Street Facility, subject to the terms of the Condominium Documents, the Ground Lease, the Facility Lease Agreement or any mortgage granted by the Ground Landlord, the Ground Lessee or the Institution): (i) at its own cost and expense (except to the extent paid from the Net Proceeds), within one (1) year of the Loss Event, promptly and diligently rebuild, replace, repair or restore the affected Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, regardless of whether or not the Net Proceeds derived from the Loss Event shall be sufficient to pay the cost thereof, and the Institution shall not by reason of payment of any such excess costs be entitled to any reimbursement from the Issuer, the Trustee or any Bondholder, nor shall the loan payments or other amounts payable by the Institution under the Loan Agreement or the Promissory Notes or any other Security Document be abated, postponed or reduced, or (ii) (y) with respect to a Loss Event affecting the 35th Street Facility, and if, to the extent and upon the conditions permitted to do so under the Loan Agreement and under the Indenture, exercise its option to terminate the Loan Agreement and cause all the Bonds to be redeemed in whole; and (z) with respect to a Loss Event affecting the 42nd Street Facility, cause the Series 2020A Bonds to be redeemed in whole; provided that if all or substantially all of the Facilities shall be taken or condemned, or if the

taking or condemnation renders the Facilities unsuitable for use by the Institution as contemplated by the Loan Agreement, the Institution shall exercise its option to terminate the Loan Agreement pursuant to the terms thereof.

Not later than ninety (90) days after the occurrence of a Loss Event, the Institution shall advise the Issuer and the Trustee in writing of the action to be taken by the Institution under the Loan Agreement as described under the paragraph above, a failure to so timely notify being deemed an election in favor of clause (ii) of the paragraph above to be exercised in accordance with the provisions of clause (ii) of the paragraph above.

If the Institution shall elect to or shall otherwise be required to rebuild, replace, repair or restore the affected Facility as set forth in the Loan Agreement as described in clause (i) in the first paragraph under this heading, the Trustee shall disburse the Net Proceeds from the Renewal Fund in the manner set forth in the Indenture to pay or reimburse the Institution, at the election of the Institution, either as such work progresses or upon the completion thereof, provided, however, the amounts so disbursed by the Trustee to the Institution shall not exceed the actual cost of such work.

If the Institution shall exercise its option as described in clause (ii)(y) in the first paragraph under this heading, the amount of the Net Proceeds so recovered shall be transferred from the Renewal Fund and deposited in the Redemption Account of each applicable Bond Fund, and the Institution shall thereupon pay to the Trustee for deposit in the Redemption Account of each applicable Bond Fund an amount which, when added to any amounts then in the applicable Bond Fund and available for that purpose, shall be sufficient to retire and redeem all Bonds in whole at the earliest possible date (including, without limitation, principal and interest to the maturity or Redemption Date and redemption premium, if any), and shall pay the expenses of redemption, the fees and expenses of the Issuer, the Trustee, the Bond Registrar and the Paying Agents, together with all other amounts due under the Indenture, under the Loan Agreement and under each other Security Document, as well as any amounts required to be rebated to the federal government pursuant to the Indenture or the Tax Regulatory Agreement and such amount so deposited shall be applied, together with such other available amounts in the applicable Bond Fund, if applicable, to such redemption or retirement of the Bonds on said redemption or maturity date.

If the Institution shall exercise its option in the Loan Agreement as described in clause (ii)(z) in the first paragraph under this heading, the amount of the Net Proceeds so recovered shall be transferred from the Renewal Fund and deposited in the Redemption Account of the Bond Fund (Tax-Exempt), and the Institution shall thereupon pay to the Trustee for deposit in the Redemption Account of the Bond Fund (Tax-Exempt) an amount which, when added to any amounts then in the Bond Fund (Tax-Exempt) and available for that purpose, shall be sufficient to retire and redeem the Series 2020A Bonds in whole at the earliest possible date (including, without limitation, principal and interest to the maturity or Redemption Date and redemption premium, if any), and shall pay the expenses of redemption, the fees and expenses of the Issuer, the Trustee, the Bond Registrar and the Paying Agents, together with all other amounts due under the Indenture, under the Loan Agreement and under each other Security Document, as well as any amounts required to be rebated to the federal government pursuant to the Indenture or the Tax Regulatory Agreement and such amount so deposited shall be applied, together with such other available amounts in the Bond Fund (Tax-Exempt), if applicable, to such redemption or retirement of the Series 2020A Bonds on said redemption or maturity date.

It is acknowledged and agreed by the Issuer and the Institution that the determination to rebuild, replace, repair or restore the 42nd Street Facility may reside solely within the control of the Ground Landlord, the Ground Lessee or the Condominium Board, and the Ground Landlord, the Ground Lessee or the Condominium Board may elect, in lieu of the Institution, not to rebuild, replace, repair or restore the 42nd Street Facility as set forth in the Loan Agreement as described in clause (i) in the first paragraph

under this heading. If the Institution shall not otherwise rebuild, replace, repair or restore the 42nd Street Facility, the Institution shall exercise its option under the Loan Agreement as described in clause (ii)(z) in the first paragraph under this heading.

Effect of Election to Build. All rebuilding, replacements, repairs or restorations of the affected Facility in respect of or occasioned by a Loss Event shall: (i) automatically be deemed a part of such Facility under the Loan Agreement and, with respect to the 35th Street Facility, shall be subject to the lien and security interest of the Mortgage, (ii) be effected only if the Institution shall deliver to the Issuer and the Trustee a certificate from an Authorized Representative of the Institution acceptable to the Issuer and the Trustee to the effect that such rebuilding, replacement, repair or restoration shall not change the nature of such Facility as an Approved Facility, (iii) be effected with due diligence in a good and workmanlike manner, in compliance with all applicable Legal Requirements and, with respect to the 42nd Street Facility, all applicable requirements of the Condominium Documents and the Facility Lease Agreement and be promptly and fully paid for by the Institution in accordance with the terms of the applicable contract(s) therefor, (iv) restore such Facility to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, and to a state and condition that will permit the Institution to use and operate such Facility as an Approved Facility, (v) be effected only if the Institution shall have complied with the insurance provisions of the Loan Agreement, (vi) be preceded by the furnishing by the Institution to the Trustee of a labor and materials payment bond, or other security, satisfactory to the Trustee, and (vii) if the estimated cost of such rebuilding, replacement, repair or restoration is in excess of $250,000, be effected under the supervision of an Independent Engineer.

The date of completion of the rebuilding, replacement, repair or restoration of the affected Facility shall be evidenced to the Issuer and the Trustee by a certificate of an Authorized Representative of the Institution stating (i) the date of such completion, (ii) that all labor, services, machinery, equipment, materials and supplies used therefor and all costs and expenses in connection therewith have been paid for or arrangement for payment, reasonably satisfactory to the Trustee, has been made, (iii) that such Facility has been rebuilt, replaced, repaired or restored to substantially its condition immediately prior to the Loss Event, or to a condition of at least equivalent value, operating efficiency and function, in accordance with all applicable Legal Requirements and, with respect to the 42nd Street Facility, with all applicable requirements of the Condominium Documents and the Facility Lease Agreement, (iv) that all property constituting part of such Facility is subject to the Loan Agreement and, with respect to the 35th Street Facility, subject to the mortgage lien and security interest of the Mortgage, subject to Permitted Encumbrances, (v) the Rebate Amount (as defined in the Tax Regulatory Agreement) applicable with respect to the Net Proceeds and the earnings thereon (with a statement as to the determination of the Rebate Amount and a direction to the Trustee of any required transfer to the Rebate Fund), and (vi) that the restored Facility is ready for occupancy, use and operation for its intended purposes. Notwithstanding the foregoing, such certificate shall state (x) that it is given without prejudice to any rights of the Institution against third parties which exist at the date of such certificate or which may subsequently come into being, (y) that it is given only for the purposes of the Loan Agreement and of the Indenture and (z) that no Person other than the Issuer or the Trustee may benefit therefrom.

The certificate delivered pursuant to the Loan Agreement as described in the paragraph above shall be accompanied by (i) a certificate of occupancy (either temporary or permanent, provided that if it is a temporary certificate of occupancy, the Institution will proceed with due diligence to obtain a permanent certificate of occupancy), if required, and any and all permissions, licenses or consents required of governmental authorities for the occupancy, operation and use of the restored Facility for the purposes contemplated by the Loan Agreement; (ii) a certificate of an Authorized Representative of the Institution that all costs of rebuilding, repair, restoration and reconstruction of the restored Facility have been paid in full, together with releases of mechanics' liens by all contractors and materialmen who

supplied work, labor, services, materials or supplies in connection with the rebuilding, repair, restoration and reconstruction of the restored Facility (or, to the extent that any such costs shall be the subject of a bona fide dispute, evidence to the Trustee that such costs have been appropriately bonded or that the Institution shall have posted a surety or security at least equal to the amount of such costs); and (iii) a search prepared by a title company, or other evidence satisfactory to the Trustee, indicating that there has not been filed with respect to the restored Facility any mechanic's, materialmen's or any other lien in connection with the rebuilding, replacement, repair and restoration of the restored Facility and that there exist no encumbrances other than Permitted Encumbrances and those encumbrances consented to by the Issuer and the Trustee.

Issuance of Additional Bonds. Under the provisions of and subject to the conditions set forth in the Indenture, the Issuer is authorized to enter into a Supplemental Indenture and issue one or more Series of Additional Bonds on a parity with the Initial Bonds for the purpose of (w) completing the Project, (x) providing funds in excess of the Net Proceeds of insurance or eminent domain to repair, relocate, replace, rebuild or restore the affected Facility in the event of damage, destruction or taking by eminent domain, (y) providing extensions, additions or improvements to the affected Facility, or (z) refunding Outstanding Bonds. If the Institution is not in default under the Loan Agreement or under any other Project Document, the Issuer will consider the issuance of a Series of Additional Bonds in a principal amount as is specified in a written request in accordance with the applicable provisions set forth in the Indenture.

Pledge and Assignment to Trustee. As security for the payment of the Bonds and the obligations of the Institution under the Security Documents: (i) the Institution shall, pursuant to the Mortgage, grant to the Issuer and the Trustee, for the benefit of the Bondholders, a mortgage lien on and security interest in its fee interest in the Mortgaged Property; (ii) the Issuer shall assign its right, title and interest in the Mortgage to the Trustee pursuant to the Assignment of Mortgage; and (iii) the Issuer shall pledge and assign to the Trustee, for the benefit of the Bondholders, pursuant to the Indenture all of the Issuer's right, title and interest in the Promissory Notes and all of the Issuer's right, title and interest in the Loan Agreement (except for the Issuer's Reserved Rights), including all loan payments under the Loan Agreement and under the Promissory Notes, and in furtherance of such pledge, the Issuer will unconditionally assign such loan payments to the Trustee for deposit in the applicable Bond Fund in accordance with the Indenture.

Environmental Matters. The Institution shall not cause or permit any Facility or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Legal Requirements, nor shall the Institution cause or permit, as a result of any intentional or unintentional act or omission on the part of the Institution or any occupant or user of any Facility, a release of Hazardous Materials onto any Facility or onto any other property.

The Institution shall comply with, and require and enforce compliance by, all occupants and users of each Facility with all applicable Legal Requirements pertaining to Hazardous Materials, whenever and by whomever triggered, and shall obtain and comply with, and ensure that all occupants and users of each Facility obtain and comply with, any and all approvals, registrations or permits required thereunder.

The Institution shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, from, or affecting each Facility in accordance with all applicable Legal Requirements.

In the event the Mortgage or any mortgage on any Facility is foreclosed, or a deed in lieu of foreclosure is tendered, or the Loan Agreement is terminated as provided therein, the Institution shall

deliver the affected Facility so that the conditions of such Facility with respect to any and all Hazardous Materials shall conform with all applicable Legal Requirements affecting such Facility.

Assignment of the Loan Agreement or Lease of Facility. The Institution shall not at any time, except as permitted by the Loan Agreement as described under the heading "Restrictions on Dissolution and Merger" below, assign or transfer the Loan Agreement without the prior written consents of the Issuer and the Trustee (which consents may be withheld by the Issuer or the Trustee in their absolute discretion); provided further, that the following conditions must be satisfied on or prior to the date the Issuer and the Trustee consent to any such assignment or transfer:

(i) the Institution shall have delivered to the Issuer and the Trustee a certificate of an Authorized Representative to the effect that the transfer or assignment to the assignee or transferee (the "New Institution") shall not cause any Facility to cease being an Approved Facility;

(ii) the New Institution shall be liable to the Issuer for the payment of all loan and other payments and for the full performance of all of the terms, covenants and conditions of the Loan Agreement and of any other Project Document to which it shall be a party;

(iii) the New Institution shall have assumed in writing (and shall have executed and delivered to the Issuer and the Trustee such document and have agreed to keep and perform) all of the terms of the Loan Agreement and each other Project Document on the part of the New Institution to be kept and performed, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State;

(iv) the New Institution shall be a not-for-profit corporation or a limited liability company constituting a Tax-Exempt Organization;

(v) such assignment or transfer shall not violate any provision of the Loan Agreement or any other Project Document;

(vi) an Opinion of Counsel shall have been delivered and addressed to the Issuer and the Trustee to the effect that (x) such assignment or transfer shall constitute the legally valid, binding and enforceable obligation of the New Institution and shall not legally impair in any respect the obligations of the New Institution for the payment of all loan payments nor for the full performance of all of the terms, covenants and conditions of the Loan Agreement, of the Promissory Notes or of any other Project Document to which the New Institution shall be a party, nor impair or limit in any respect the obligations of any other obligor under any other Project Document, and (y) the Loan Agreement and each of the other Project Documents to which the New Institution is a party constitute the legally valid, binding and enforceable obligation of the New Institution;

(vii) the New Institution shall have delivered to the Issuer the Required Disclosure Statement in form and substance satisfactory to the Issuer;

(viii) each such assignment shall contain such other provisions as the Issuer or the Trustee may reasonably require; and

(ix) an opinion of Nationally Recognized Bond Counsel shall have been delivered and addressed to the Issuer and the Trustee, to the effect that such assignment or transfer shall not affect the exclusion of the interest on any Tax-Exempt Bonds then Outstanding from gross income for federal income tax purposes.

The Institution shall furnish or cause to be furnished to the Issuer and the Trustee a copy of any such assignment or transfer in substantially final form at least thirty (30) days prior to the date of execution thereof.

The Institution shall not at any time lease all or substantially all of any Facility, without the prior written consents of the Issuer and the Trustee (which consents may be withheld by the Issuer or the Trustee in their absolute discretion); nor shall the Institution lease part (*i.e.,* not constituting substantially all) of any Facility without the prior written consents of the Issuer and the Trustee (which consents shall, in such case, not be unreasonably withheld and, in the case of the Issuer, such consent to be requested by the Institution of the Issuer in the form prescribed by the Issuer, and such consent of the Issuer to take into consideration the Issuer's policies as in effect from time to time); provided further, that the following conditions must be satisfied on or prior to the date the Issuer and the Trustee consent to any such letting:

(i) the Institution shall have delivered to the Issuer and the Trustee a certificate of an Authorized Representative to the effect that the lease shall not cause such Facility to cease being an Approved Facility;

(ii) the Institution shall remain primarily liable to the Issuer for the payment of all loan and other payments and for the full performance of all of the terms, covenants and conditions of the Loan Agreement and of the Promissory Notes and of any other Project Document to which it shall be a party;

(iii) any lessee in whole or substantially in whole of such Facility shall have assumed in writing (and shall have executed and delivered to the Issuer and the Trustee such document) and have agreed to keep and perform all of the terms of the Loan Agreement and each other Project Document on the part of the Institution to be kept and performed, shall be jointly and severally liable with the Institution for the performance thereof, shall be subject to service of process in the State, and, if a corporation, shall be qualified to do business in the State;

(iv) any lessee shall utilize such Facility as an Approved Facility and shall constitute a Tax-Exempt Organization;

(v) such lease shall not violate any provision of the Loan Agreement or any other Project Document;

(vi) with respect to any letting in part of any Facility, no more than an aggregate of twenty percent (20%) of the Completed Improvements Square Footage shall be leased by the Institution;

(vii) an Opinion of Counsel shall have been delivered and addressed to the Issuer and the Trustee, to the effect that such lease shall constitute the legally valid, binding and enforceable obligation of the lessee and shall not legally impair in any respect the obligations of the Institution for the payment of all loan or other payments nor for the full performance of all of the terms, covenants and conditions of the Loan Agreement, of the Promissory Notes or of any other Project Document to which the Institution shall be a party, nor impair or limit in any respect the obligations of any other obligor under any other Project Document;

(viii) such lease shall in no way diminish or impair the obligation of the Institution to carry the insurance required under the Loan Agreement or the Mortgage, as applicable, and the Institution shall furnish written evidence satisfactory to the Issuer and the Trustee that such insurance coverage shall in no manner be diminished or impaired by reason of such assignment, transfer or lease;

(ix) any such lessee shall have delivered to the Issuer the Required Disclosure Statement in form and substance satisfactory to the Issuer;

(x) each such lease shall contain such other provisions as the Issuer or the Trustee may reasonably require; and

(xi) an opinion of Nationally Recognized Bond Counsel shall have been delivered and addressed to the Issuer and the Trustee, to the effect that such lease shall not affect the exclusion of the interest on any Tax-Exempt Bonds then Outstanding from gross income for federal income tax purposes.

The Institution shall furnish or cause to be furnished to the Issuer and the Trustee a copy of any such lease in substantially final form at least thirty (30) days prior to the date of execution thereof.

Any consent by the Issuer or the Trustee to any act of assignment, transfer or lease shall be held to apply only to the specific transaction thereby authorized. Such consent shall not be construed as a waiver of the duty of the Institution, or the successors or assigns of the Institution, to obtain from the Issuer and the Trustee consent to any other or subsequent assignment, transfer or lease, or as modifying or limiting the rights of the Issuer or the Trustee under the foregoing covenant by the Institution.

For purposes of this heading, any license or other right of possession or occupancy granted by the Institution with respect to each Facility shall be deemed a lease subject to the provisions of the Loan Agreement as described under this heading.

Notwithstanding anything in the Loan Agreement to the contrary, each Facility may be occupied by Premier Healthcare and individuals invited by the Institution and Premier Healthcare for the purpose of operating each Facility as an Approved Facility without the consent of the Issuer or the Trustee.

Retention of Title to or of Interest in Facility; Grant of Easements. The Institution shall not sell, assign, encumber (other than Permitted Encumbrances), convey or otherwise dispose of its fee title to or interest in any Facility, including the Improvements, or any part of any Facility or interest therein, except as set forth in the Loan Agreement as described under the headings "Maintenance," "Alterations and Improvements," "Removal of Property of the Facility," "Implementation of Additional Improvements and Removals," "Damage, Destruction and Condemnation," "Loss Proceeds," "Election to Rebuild or Terminate", "Effect of Election to Build," "Assignment of Loan Agreement or Lease of Facility" and "Remedies on Default" or under this heading, without (i) the prior written consents of the Issuer and of the Trustee and (ii) the Institution delivering to the Trustee and the Issuer an opinion of Nationally Recognized Bond Counsel to the effect that such action pursuant to the Loan Agreement as described under this heading will not affect the exclusion of the interest on any Tax-Exempt Bonds then Outstanding from gross income for federal income taxes. Any purported disposition without such consents and opinion shall be void.

The Institution may, with the prior written consents of the Issuer and the Trustee (such consents not to be unreasonably withheld or delayed), so long as there exists no Event of Default under the Loan Agreement, grant such rights-of-way or easements over, across, or under, any Facility Realty, or grant such permits or licenses in respect to the use thereof, free from the lien and security interest of the Mortgage, as applicable, as shall be necessary or convenient in the opinion of the Institution for the operation or use of any Facility, or required by any utility company for its utility business, provided that, in each case, such rights-of-way, easements, permits or licenses shall not adversely affect the use or operation of any Facility as an Approved Facility, and provided, further, that any consideration received by the Institution from the granting of said rights-of-way, easements, permits or licenses shall be paid to the Trustee and deposited in the Redemption Account of the Bond Fund (Tax-Exempt) (and, if any excess

amount shall exist, in the Interest Account of the Bond Fund (Tax-Exempt)). The Issuer agrees, at the sole cost and expense of the Institution, to execute and deliver, and to cause and direct the Trustee to execute and deliver, any and all instruments necessary or appropriate to confirm and grant any such right-of-way or easement or any such permit or license and, if applicable, to release the same from the lien and security interest of the Mortgage.

No conveyance or release effected under the provisions of the Loan Agreement as described under this heading shall entitle the Institution to any abatement or diminution of the loan payments or other amounts payable under the Loan Agreement or any other Project Document to which it shall be a party.

Discharge of Liens. If any lien, encumbrance or charge is filed or asserted (including any lien for the performance of any labor or services or the furnishing of materials), or any judgment, decree, order, levy or process of any court or governmental body is entered, made or issued or any claim (such liens, encumbrances, charges, judgments, decrees, orders, levies, processes and claims being herein collectively called "Liens"), whether or not valid, is made against the Trust Estate, the Facilities or any part thereof or the interest therein of the Institution or against any of the loan payments or other amounts payable under the Loan Agreement, the Promissory Notes or any of the other Security Documents, or the interest of the Issuer or the Institution in any Security Document, other than Liens for Impositions not yet payable, Permitted Encumbrances, or Liens being contested as permitted by the Loan Agreement as described in the paragraph below, the Institution forthwith upon receipt of notice of the filing, assertion, entry or issuance of such Lien (regardless of the source of such notice) shall give written notice thereof to the Issuer and the Trustee and take all action (including the payment of money and/or the securing of a bond with respect to any such Lien) at its own cost and expense as may be necessary or appropriate to obtain the discharge in full of such Lien and to remove or nullify the basis therefor. Nothing contained in the Loan Agreement shall be construed as constituting the express or implied consent to or permission of the Issuer for the performance of any labor or services or the furnishing of any materials that would give rise to any Lien not permitted under the Loan Agreement as described in this paragraph.

The Institution may at its sole cost and expense contest (after prior written notice to the Issuer and the Trustee), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Lien, if: (i) such proceeding shall suspend the execution or enforcement of such Lien against the Trust Estate, any Facility or any part thereof or interest therein, or against any of the loan payments or other amounts payable under the Loan Agreement, the Promissory Notes or any of the other Project Documents to which the Institution is a party or the interest of the Issuer or the Institution in any Project Document, (ii) neither any Facility nor any part thereof or interest therein, the Trust Estate or any portion thereof, the loan payments or other amounts payable under the Loan Agreement, the Promissory Notes or any of the other Security Documents or the interest of the Issuer or the Institution in any Security Document would be in any danger of being sold, forfeited or lost, (iii) none of the Institution, the Issuer or the Trustee would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (iv) the Institution shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Issuer or the Trustee to protect the security intended to be offered by the Security Documents.

No Further Encumbrances Permitted. The Institution shall not create, permit or suffer to exist any mortgage, encumbrance, lien, security interest, claim or charge against (i) any Facility or any part thereof, or the interest of the Institution in any Facility, except for Permitted Encumbrances or (ii) the Trust Estate or any portion thereof, the loan payments or other amounts payable under the Loan Agreement, the Promissory Notes or any of the other Security Documents or the interest of the Issuer or the Institution in any Security Document. The Institution covenants that it shall take or cause to be taken all action, including all filing and recording, as may be necessary to ensure that there are no mortgage

liens on, or security interests in, (i) any Facility (other than Permitted Encumbrances) and (ii), with respect to the 35th Street Facility, prior to the mortgage lien thereon, and security interest therein, granted by the Mortgage.

Taxes, Assessments and Charges. The Institution shall pay when the same shall become due all Impositions. The Institution may pay any Imposition in installments if so payable by law, whether or not interest accrues on the unpaid balance.

In the event any Facility Realty is exempt from Impositions solely due to the Issuer's involvement with the Project and such Facility Realty, the Institution shall pay all Impositions to the appropriate taxing authorities equivalent to the Impositions that would have been imposed on such Facility Realty as if the Issuer had no involvement with the Project and such Facility Realty.

The Institution may at its sole cost and expense contest (after prior written notice to the Issuer and the Trustee), by appropriate action conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any Imposition, if: (i) such proceeding shall suspend the execution or enforcement of such Imposition against the Trust Estate, any Facility or any part thereof, or interest of the Institution in any Facility, or against any of the loan payments or other amounts payable under the Loan Agreement, the Promissory Notes or any of the other Project Documents, or the interest of the Issuer or the Institution in any Project Document, (ii) none of the Trust Estate, the Facilities or any part thereof or interest of the Institution in the Facilities, or any of the loan payments or other amounts payable under the Loan Agreement, the Promissory Notes or any of the other Project Documents, or the interest of the Issuer or the Institution in any Project Document, would be in any danger of being sold, forfeited or lost, (iii) none of the Institution, the Issuer or the Trustee would be in any danger of any civil or any criminal liability, other than normal accrual of interest, for failure to comply therewith, and (iv) the Institution shall have furnished such security, if any, as may be required in such proceedings or as may be reasonably requested by the Issuer or the Trustee to protect the security intended to be offered by the Security Documents.

Compliance with Legal Requirements. The Institution shall not occupy, use or operate the Facilities, or allow the Facilities or any part thereof to be occupied, used or operated, for any unlawful purpose or in violation of any certificate of occupancy affecting the Facilities or for any use which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect thereto.

At its sole cost and expense, the Institution shall promptly observe and comply with all applicable Legal Requirements (including, without limitation, as applicable, the LW Law, the Prevailing Wage Law, and the Earned Sick Time Act, constituting Chapter 8 of Title 20 of the New York City Administrative Code), whether foreseen or unforeseen, ordinary or extraordinary, that shall now or at any time hereafter be binding upon or applicable to the Institution, the Facilities, any occupant, user or operator of any Facility or any portion thereof, and will observe and comply with all conditions, requirements, and schedules necessary to preserve and extend all rights, licenses, permits (including zoning variances, special exception and non-conforming uses), privileges, franchises and concessions; provided, however, with respect to the 42nd Street Facility, the Institution need not so comply with any Legal Requirement insofar as (i) the Institution has no right under the Condominium Documents to compel the Condominium Board to comply or cause compliance with such Legal Requirement; (ii) when the Condominium Board is required, or the Institution reasonably believes the Condominium Board is required, under the terms of the Condominium Documents to comply with any Legal Requirement, so long as the Institution is promptly and vigorously exercising good faith diligent efforts to enforce such compliance; or (iii) any such non-compliance is the result of any action or failure to act on the part of the Condominium Board (which action or failure to act is not a breach of any obligation of the Condominium Board to the

Institution under the Condominium Documents) or of any agent, contractor, officer, director, employee or servant of the Condominium Board; (iv) if the Institution has no right under the Facility Lease Agreement or the Ground Lease to compel the Ground Landlord or the Ground Lessee to comply or cause compliance with such Legal Requirement; (v) if the Ground Landlord or the Ground Lessee is required, or the Institution reasonably believes the Ground Landlord or the Ground Lessee is required, under the terms of the Facility Lease Agreement or the Ground Lease to comply with such Legal Requirement, so long as the Institution is promptly and vigorously exercising good faith diligent efforts to enforce such compliance; or (vi) if such non-compliance is the result of any action or failure to act on the part of the Ground Landlord or the Ground Lessee (which action or failure to act is not a breach of any obligation of the Ground Landlord or the Ground Lessee to the Institution under the Facility Lease Agreement or the Ground Lease or of any agent, contractor, officer, director, employee or servant of the Ground Landlord or the Ground Lessee or of any other tenant of the Ground Landlord or the Ground Lessee unrelated to the Institution). The Institution will not, without the prior written consent of the Issuer and the Trustee (which consents shall not be unreasonably withheld or delayed), initiate, join in or consent to any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses that may be made of any Facility or any part thereof.

The Institution may at its sole cost and expense contest in good faith the validity, existence or applicability of any of the matters described in the Loan Agreement as described in the paragraph above if (i) such contest shall not result in the Trust Estate, the Facilities or any part thereof or interest of the Institution in any Facility, or any of the loan payments or other amounts payable under the Loan Agreement, the Promissory Notes or any of the other Project Documents, or the interest of the Issuer or the Institution in any Project Document, being in any danger of being sold, forfeited or lost, (ii) such contest shall not result in the Institution, the Issuer or the Trustee being in any danger of any civil or any criminal liability for failure to comply therewith, and (iii) the Institution shall have furnished such security, if any, as may be reasonably requested by the Issuer or the Trustee to protect the security intended to be offered by the Security Documents for failure to comply therewith.

The Institution expressly covenants and agrees in the Loan Agreement to comply, or cause compliance, with each and every provision of Parts 635, 681, 686 and 690 of Chapter XIV of Title 14 of the New York State Codes, Rules and Regulations as they pertain to services and programs of the Institution located at the 35th Street Facility which are funded by OPWDD, as such provisions may be amended or renumbered from time to time, to the same extent and effect as if the provisions thereof were fully set forth in the Loan Agreement. In the event of a conflict between the provisions of the Loan Agreement and such regulatory provisions, the provisions of the Loan Agreement shall be controlling.

Operation as Approved Facility. The Institution will not take any action, or suffer or permit any action, if such action would cause any Facility not to be an Approved Facility. The Institution will not fail to take any action, or suffer or permit the failure to take any action, if such failure would cause any Facility not to be an Approved Facility. The Institution will permit the Trustee and its duly authorized agents, at all reasonable times upon written notice to enter upon the Facilities and to examine and inspect the Facilities and exercise its rights under the Loan Agreement, under the Indenture and under the other Security Documents with respect to any Facility. The Institution will further permit the Issuer, or its duly authorized agent, upon reasonable notice, at all reasonable times, to enter the Facilities, but solely for the purpose of assuring that the Institution is operating each Facility, or is causing each Facility to be operated, as an Approved Facility consistent with the Approved Project Operations and with the corporate purposes of the Issuer.

Restrictions on Dissolution and Merger. The Institution covenants and agrees that at all times during the term of the Loan Agreement, it will (i) maintain its existence as a not-for-profit corporation constituting a Tax-Exempt Organization, (ii) continue to be subject to service of process in the State, (iii)

continue to be organized under the laws of, or qualified to do business in, the State, (iv) not liquidate, wind up or dissolve or otherwise dispose of all or substantially all of its property, business or assets ("Transfer") remaining after the Closing Date, except as provided in the Loan Agreement as described in the paragraph below, (v) not consolidate with or merge into another Entity or permit one or more Entities to consolidate with or merge into it ("Merge" or "Merger"), except as provided in the Loan Agreement as described in the paragraph below, and (vi) not change or permit the change of any Principal of the Institution, or a change in the relative Control of the Institution of any of the existing Principals, except in each case as provided in the Loan Agreement as described in the third paragraph under this heading.

Notwithstanding the Loan Agreement as described in the paragraph above, the Institution may Merge or participate in a Transfer if the following conditions are satisfied on or prior to the Merger or Transfer, as applicable: (i) when the Institution is the surviving, resulting or transferee Entity, (1) the Institution shall have a net worth (as determined by an Independent Accountant in accordance with GAAP) at least equal to that of the Institution immediately prior to such Merger or Transfer, (2) the Institution shall continue to be a Tax-Exempt Organization, (3) the Institution shall deliver to the Issuer and the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such action will not cause the interest on the Tax-Exempt Bonds to become includable in gross income for federal income tax purposes, and (4) the Institution shall deliver to the Issuer a Required Disclosure Statement with respect to itself as surviving Entity in form and substance satisfactory to the Issuer; or (ii) when the Institution is not the surviving, resulting or transferee Entity (the "Successor Institution"), (1) the predecessor Institution (the "Predecessor Institution") shall not have been in default under the Loan Agreement or under any other Project Document, (2) the Successor Institution shall be a Tax-Exempt Organization and shall be solvent and subject to service of process in the State and organized under the laws of the State, or under the laws of any other state of the United States and duly qualified to do business in the State, (3) the Successor Institution shall have assumed in writing all of the obligations of the Predecessor Institution contained in the Loan Agreement and in all other Project Documents to which the Predecessor Institution shall have been a party, (4) the Successor Institution shall have delivered to the Issuer a Required Disclosure Statement in form and substance acceptable to the Issuer acting in its sole discretion, (5) each Principal of the Successor Institution shall have delivered to the Issuer a Required Disclosure Statement in form and substance acceptable to the Issuer acting in its sole discretion, (6) the Successor Institution shall have delivered to the Issuer and the Trustee, in form and substance acceptable to the Issuer and the Trustee, an Opinion of Counsel to the effect that (y) the Loan Agreement and all other Project Documents to which the Predecessor Institution shall be a party constitute the legal, valid and binding obligations of the Successor Institution and each is enforceable in accordance with their respective terms to the same extent as it was enforceable against the Predecessor Institution, and (z) such action does not legally impair the security for the Holders of the Bonds afforded by the Security Documents, (7) the Successor Institution shall have delivered to the Issuer and the Trustee, in form and substance acceptable to the Issuer and the Trustee, an opinion of an Independent Accountant to the effect that the Successor Institution has a net worth (as determined in accordance with GAAP) after the Merger or Transfer at least equal to that of the Predecessor Institution immediately prior to such Merger or Transfer, and (8) the Successor Institution delivers to the Issuer and the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such action will not cause the interest on the Tax-Exempt Bonds to become includable in gross income for federal income tax purposes.

If there is a change in Principals of the Institution, or a change in the Control of the Institution, the Institution shall deliver to the Issuer prompt written notice thereof to the Issuer together with a Required Disclosure Statement in form and substance acceptable to the Issuer acting in its sole discretion.

Preservation of Exempt Status. The Institution agrees that it shall: (a) not perform any acts, enter into any agreements, carry on or permit to be carried on at the Facilities, or permit the Facilities to be used in or for any trade or business, which shall adversely affect the basis for its exemption under Section 501

of the Code; (b) not use more than three percent (3%) of the proceeds of the Tax-Exempt Bonds or permit the same to be used, directly or indirectly, in any trade or business that constitutes an unrelated trade or business as defined in Section 513(a) of the Code or in any trade or business carried on by any Person or Persons who are not governmental units or Tax-Exempt Organizations; (c) not directly or indirectly use the proceeds of the Tax-Exempt Bonds to make or finance loans to Persons other than governmental units or Tax-Exempt Organizations, provided that no loan shall be made to another Tax-Exempt Organization unless such organization is using the funds for a purpose that is not an unrelated trade or business for either the Institution or the borrower; (d) not take any action or permit any circumstances within its control to arise or continue, if such action or circumstances, or its expectation on the Closing Date, would cause the Tax-Exempt Bonds to be "arbitrage bonds" under the Code or cause the interest paid by the Issuer on the Tax-Exempt Bonds to be subject to federal income tax in the hands of the Holders thereof; and (e) use its best efforts to maintain the tax-exempt status of the Tax-Exempt Bonds.

Securities Law Status. The Institution covenants that: (i) each Facility shall be operated (i) exclusively for civic or charitable purposes and (ii) not for pecuniary profit, all within the meaning, respectively, of the Securities Act and of the Securities Exchange Act, (ii) no part of the net earnings of the Institution shall inure to the benefit of any person, private stockholder or individual, all within the meaning, respectively, of the Securities Act and of the Securities Exchange Act, and (iii) it shall not perform any act nor enter into any agreement which shall change such status as set forth in the Loan Agreement as described in this paragraph.

Further Assurances. The Institution will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such further acts, instruments, conveyances, transfers and assurances, including Uniform Commercial Code financing statements, at the sole cost and expense of the Institution, as the Issuer or the Trustee deems reasonably necessary or advisable for the implementation, effectuation, correction, confirmation or perfection of the Loan Agreement and any rights of the Issuer or the Trustee under the Loan Agreement, under the Indenture or under any other Security Document.

Tax Regulatory Agreement. The Institution shall comply with all of the terms, provisions and conditions set forth in the Tax Regulatory Agreement, including, without limitation, the making of any payments and filings required thereunder. Promptly following receipt of notice from the Trustee as provided in the Indenture that the amount on deposit in the Rebate Fund is less than the Rebate Amount (as defined in the Tax Regulatory Agreement), the Institution shall deliver the amount necessary to make up such deficiency to the Trustee for deposit in the Rebate Fund. The Institution agrees to pay all costs of compliance with the Tax Regulatory Agreement and costs of the Issuer relating to any examination or audit of the Bonds by the Internal Revenue Service (including fees and disbursements of lawyers and other consultants).

Compliance with the Indenture. The Institution will comply with the provisions of the Indenture with respect to the Institution. The Trustee shall have the power, authority, rights and protections provided in the Indenture. The Institution will use its best efforts to cause there to be obtained for the Issuer any documents or opinions of counsel required of the Issuer under the Indenture.

Reporting Information for the Trustee. The Institution shall furnish or cause to be furnished to the Trustee: (i) as soon as available and in any event within one hundred eighty (180) days after the close of each Fiscal Year, a copy of the annual audited consolidated financial statements of the Institution and its subsidiaries, including consolidating balance sheets as at the end of each such Fiscal Year, and the related statements of income, balances, earnings, retained earnings and changes in financial position for each such Fiscal Year, as audited by the Institution's Independent Accountant and prepared in accordance with GAAP, and certified by an Authorized Representative of the Institution; and (ii) a copy of any notice given to Bondholders, the MSRB or the Securities and Exchange Commission pursuant to Rule 15c2-

12(b)(5) adopted by the Securities and Exchange Commission or to the Trustee, promptly after the same is so given.

The Institution shall deliver to the Trustee with each delivery of annual financial statements required by the Loan Agreement as described in the paragraph above, (i) a certificate of an Authorized Representative of the Institution: (1) as to whether or not, as of the close of such preceding Fiscal Year, and at all times during such Fiscal Year, the Institution was in compliance with all the provisions which relate to the Institution in the Loan Agreement and in any other Project Document to which it shall be a party, and (2) as to whether or not a Determination of Taxability has occurred, and (3) if such Authorized Representative shall have obtained knowledge of any default in such compliance or notice of such default or Determination of Taxability, he shall disclose in such certificate such default or defaults or notice thereof and the nature thereof, whether or not the same shall constitute an Event of Default under the Loan Agreement, and any action proposed to be taken by the Institution with respect thereto, and (ii) a certificate of an Authorized Representative of the Institution that the insurance it maintains complies with the provisions of the Loan Agreement and of the Mortgage, that such insurance has been in full force and effect at all times during the preceding Fiscal Year, and that duplicate copies of all policies or certificates thereof have been filed with the Issuer and the Trustee and are in full force and effect.

In addition, upon twenty (20) days prior request by the Trustee, the Institution will execute, acknowledge and deliver to the Issuer and the Trustee a certificate of an Authorized Representative of the Institution either stating that to the knowledge of such Authorized Representative after due inquiry no default or breach exists under the Loan Agreement or specifying each such default or breach of which such Authorized Representative has knowledge.

The Institution shall immediately notify the Trustee and the Underwriter of the occurrence of any Event of Default or any event which with notice and/or lapse of time would constitute an Event of Default under any Project Document. Any notice required to be given pursuant to the Loan Agreement as described in this paragraph shall be signed by an Authorized Representative of the Institution and set forth a description of the default and the steps, if any, being taken to cure said default. If no steps have been taken, the Institution shall state this fact on the notice.

The Institution shall deliver to the Trustee all insurance-related documents required by the Loan Agreement.

The Trustee shall be under no obligation to review the financial statements received under the Loan Agreement as described under this heading for content and shall not be deemed to have knowledge of the contents thereof.

Continuing Disclosure. The Institution shall, if required by Securities and Exchange Commission Rule 15c2-12(b)(5), enter into and comply with and carry out all of the provisions of a Continuing Disclosure Agreement. Notwithstanding any other provision of the Loan Agreement, failure of the Institution to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default; however, the Trustee may (and, at the request of any participating underwriter or the Holders of at least twenty-five percent (25%) aggregate principal amount in Outstanding Bonds, shall, upon receipt of reasonable indemnification for its fees and costs acceptable to it), and any Holder or Beneficial Owner may, take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the Institution to comply with its obligations under the Loan Agreement as described in this paragraph. The Institution agrees that the Issuer shall have no continuing disclosure obligations.

Facility Lease Agreement and Premier Healthcare Lease. The Institution represents and warrants that it has delivered to the Issuer and the Trustee on the Closing Date a true, correct and complete copy of

each of the Premier Healthcare Lease, the Facility Lease Agreement and the Ground Lease. The Institution covenants and agrees that it shall not enter into an amendment, supplement or modification to the Premier Healthcare Lease or any Facility Lease Agreement which would adversely affect the interests of the Issuer, the Trustee or the Bondholders. Promptly following the execution of any amendment, supplement or modification to the Premier Healthcare Lease or any Facility Lease Agreement, the Institution shall furnish copies thereof to the Issuer and the Trustee.

The Institution agrees to observe and comply with all of its payment obligations and all of its material obligations, covenants and agreements set forth in each of the Facility Lease Agreement and the Premier Healthcare Lease and further agrees to promptly transmit to the Issuer and the Trustee copies of any termination or default notice it shall receive from, or deliver to, (i) the Ground Landlord or the Ground Lessee under any Facility Lease Agreement or (ii) Premier Healthcare under the Premier Healthcare Lease.

The Loan Agreement is and shall be subject and subordinate in all respects to each of the Ground Lease, the Condominium Documents and the Facility Lease Agreement, including all approved modifications and amendments thereto, and to all matters to which each of the Facility Lease Agreement is subject to and subordinate.

The Institution shall not claim any conflict or inconsistency with (y) any of the Facility Lease Agreement or the Premier Healthcare Lease as a defense to any obligation under the Loan Agreement, or (z) the Loan Agreement as a defense to any obligation under any Facility Lease Agreement or the Premier Healthcare Lease.

No event of default under any Facility Lease Agreement or the Premier Healthcare Lease has occurred and is continuing.

Obligations under and Covenants with Respect to the Condominium Documents. The Institution covenants and agrees that it shall (i) not enter into, consent, permit or approve an amendment, supplement or modification to, or termination of, any Condominium Documents which would (x) adversely affect the Issuer, without the prior written consent of the Issuer, or (y) adversely affect the security for the Bonds, without the prior written consent of the Trustee, and (ii) pay all costs, fees, charges and expenses required of it when due under any of the Condominium Documents.

Certain Covenants with Respect to the Common Elements. The Institution and the Issuer acknowledge in the Loan Agreement that the Institution does not have complete control over the Common Elements under various circumstances. With respect to the covenants relating to the Common Elements herein, the Institution need not so comply with such covenants with respect to the Common Elements insofar as (i) the Institution has no right under the Condominium Documents to compel the Condominium Board to comply or cause compliance with such covenants; (ii) when the Condominium Board is required, or the Institution reasonably believes the Condominium Board is required, under the terms of the Condominium Documents to comply with any such covenant, so long as the Institution is promptly and vigorously exercising good faith diligent efforts to enforce such compliance; or (iii) any such non-compliance is the result of any action or failure to act on the part of the Condominium Board (which action or failure to act is not a breach of any obligation of the Condominium Board to the Institution under the Condominium Documents) or of any agent, contractor, officer, director, employee or servant of the Condominium Board.

The Institution shall not vote in favor of or present any resolution that could or would materially adversely affect the obligations of the Institution or the Condominium with respect to the 42nd Street Facility under any material third-party agreements, including all labor and employment agreements or the

condition of the 42nd Street Facility, without the prior written consents of the Issuer and the Trustee, which consents shall not be unreasonably withheld, conditioned or delayed.

Events of Default. Any one or more of the following events shall constitute an "Event of Default" under the Loan Agreement:

(i) Failure of the Institution to pay any loan payment that has become due and payable by the terms of the Loan Agreement as described under the heading "Loan Payments" above which results in an Event of Default under the Indenture;

(ii) Failure of the Institution to pay any amount (except as set forth in the paragraph above) that has become due and payable or to observe and perform any covenant, condition or agreement on its part to be performed under the Loan Agreement, including covenants regarding insurance, recapture of benefits, indemnity, payment of fees and expenses, assignment of the Loan Agreement, discharge of liens, liens and encumbrances, payment of taxes, assessments and charges, compliance with Legal Requirements, restrictions on dissolution and merger, preservation of exempt status, securities law status, certain reporting requirements, determination of taxability and mandatory redemption of Bonds, and continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Institution specifying the nature of such failure by the Issuer or the Trustee or the Holders of more than twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding;

(iii) Failure of the Institution to observe and perform any covenant, condition or agreement under the Loan Agreement on its part to be performed (except as set forth in paragraph (i) or (ii) above or (xi) below) and (i) continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Institution specifying the nature of same by the Issuer or the Trustee or the Holders of more than twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding, or (ii) if by reason of the nature of such failure the same can be remedied, but not within the said thirty (30) days, the Institution fails to commence and thereafter proceed with reasonable diligence after receipt of said notice to cure such failure or fails to continue with reasonable diligence its efforts to cure such failure or fails to cure such failure within sixty (60) days of delivery of said notice;

(iv) The Institution shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts generally become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner or acquiesce in writing to, any petition filed against itself in an involuntary case under the Federal Bankruptcy Code, (vii) take any action for the purpose of effecting any of the foregoing, or (viii) be adjudicated a bankrupt or insolvent by any court;

(v) A proceeding or case shall be commenced, without the application or consent of the Institution, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like of the Institution or of all or any substantial part of its assets, or (iii) similar relief under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days; or any order for relief against the Institution shall be entered in an involuntary case under such Bankruptcy Code; the terms "dissolution" or "liquidation" of the Institution

as used above shall not be construed to prohibit any action otherwise permitted by the Loan Agreement as described under the heading "Restrictions on Dissolution and Merger" above;

(vi) Any representation or warranty made by the Institution (i) in the application and related materials submitted to the Issuer or the initial purchaser(s) of the Bonds for approval of the Project or its financing, or (ii) in the Loan Agreement or in any other Project Document, or (iii) in the Letter of Representation and Indemnity Agreement, or (iv) in the Tax Regulatory Agreement, or (v) by or on behalf of the Institution or any other Person in any Required Disclosure Statement, or (vi) in any report, certificate, financial statement or other instrument furnished pursuant to the Loan Agreement or any of the foregoing, shall in any case prove to be false, misleading or incorrect in any material respect as of the date made;

(vii) The commencement of proceedings to appoint a receiver or to foreclose any mortgage lien on or security interest in any Facility, including the Mortgage;

(viii) An "Event of Default" under the Indenture or under any other Security Document shall occur and be continuing;

(ix) The occurrence of an LW Event of Default (as defined in the Loan Agreement);

(x) Failure of the Institution to pay the amount required of it with respect to the Debt Service Reserve Fund (Tax-Exempt) under the Loan Agreement when required thereunder; or

(xi) Violation by the Institution of the applicable provisions of regulations or the covenants set forth in the Loan Agreement as described in the last paragraph under the heading "Compliance with Legal Requirements" above or shall fail to continue to operate the 35th Street Facility as a certified program for the developmentally disabled or others with special needs in accordance with a valid operating certificate duly issued by OPWDD, and the Institution, subsequent to 15 days after written notice shall have been given to the Institution by OPWDD requiring the same to be remedied, fails to remedy such violation or such failure to operate such certified program.

Remedies on Default. Whenever any Event of Default referred to in the Loan Agreement and as described in the heading "Events of Default" above shall have occurred and be continuing, the Issuer, or the Trustee where so provided, may, take any one or more of the following remedial steps:

(i) The Trustee, as and to the extent provided in the Indenture, may cause all principal installments of loan payments payable under the Loan Agreement as described under the heading "Loan Payments" above until the Bonds are no longer Outstanding to be immediately due and payable, whereupon the same, together with the accrued interest thereon, shall become immediately due and payable; provided, however, that upon the occurrence of an Event of Default under the Loan Agreement as described in paragraph (iv) or (v) under the heading "Events of Default" above, all principal installments of loan payments payable under the Loan Agreement as described under the heading "Loan Payments" above until the Bonds are no longer Outstanding, together with the accrued interest thereon, shall immediately become due and payable without any declaration, notice or other action of the Issuer, the Trustee, the Holders of the Bonds or any other Person being a condition to such acceleration;

(ii) The Issuer or the Trustee may take whatever action at law or in equity as may appear necessary or desirable to collect the loan payments then due and thereafter to become due, or to enforce performance or observance of any obligations, agreements or covenants of the Institution under the Loan Agreement;

(iii) The Trustee may take any action permitted under the Indenture with respect to an Event of Default thereunder; and

(iv) With respect to any Event of Default in connection with the 35th Street Facility, the Issuer or the Trustee may request OPWDD, in accordance with applicable statutes and regulations, to enter the 35th Street Facility, or replace the Institution with another operator, subject to the provisions of the Loan Agreement, take possession without judicial action of all real property contained in the 35th Street Facility and all personal property located in or on or used in connection with the 35th Street Facility, including furnishings and equipment thereon, and cause to be operated thereon a certified program for the developmentally disabled or other person with special needs within the 35th Street Facility in accordance with a valid operating certificate duly issued by OPWDD. In such event, OPWDD or any assignee will be required to make the payments owed by the Institution under the Loan Agreement with respect to the Series 2020B Bonds as they become due and owing.

Upon the occurrence of a default with respect to any of the Issuer's Reserved Rights, the Issuer, without the consent of the Trustee or any other Person, may proceed to enforce the Issuer's Reserved Rights by (i) bringing an action for damages, injunction or specific performance, and/or (ii) taking whatever action at law or in equity as may appear necessary or desirable to collect payment of amounts due by the Institution under the Issuer's Reserved Rights or to enforce the performance or observance of any obligations, covenants or agreements of the Institution under the Issuer's Reserved Rights.

No action taken pursuant to the Loan Agreement as described under this heading or by operation of law or otherwise shall, except as expressly provided in the Loan Agreement, relieve the Institution from the Institution's obligations thereunder, all of which shall survive any such action.

Bankruptcy Proceedings. In case proceedings shall be pending for the bankruptcy or for the reorganization of the Institution under the federal bankruptcy laws or any other applicable law, or in case a receiver or trustee (other than the Trustee under the Indenture) shall have been appointed for the property of the Institution or in the case of any other similar judicial proceedings relative to the Institution or the creditors or property of the Institution, then the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to the Loan Agreement and the Promissory Notes, irrespective of whether the principal of the Bonds (and the loan payments payable pursuant to the Promissory Notes and the Loan Agreement as described under the heading "Loan Payments" above) shall have been accelerated by declaration or otherwise, and irrespective of whether the Trustee shall have made any demand for payment under the Loan Agreement or thereunder, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such judicial proceedings relative to the Institution, the creditors or property of the Institution, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute such amounts as provided in the Indenture after the deduction of its charges and expenses. Any receiver, assignee or trustee in bankruptcy or reorganization is authorized by the Loan Agreement to make such payments to the Trustee, and to pay to the Trustee any amount due it for compensation and expenses, including expenses and fees of counsel incurred by it up to the date of such distribution.

Remedies Cumulative. The rights and remedies of the Issuer or the Trustee under the Loan Agreement shall be cumulative and shall not exclude any other rights and remedies of the Issuer or the Trustee allowed by law with respect to any default under the Loan Agreement. Failure by the Issuer or the Trustee to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon default by the Institution under the Loan Agreement shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to

enforce by mandatory injunction, specific performance or other appropriate legal remedy the strict compliance by the Institution with all of the covenants and conditions of the Loan Agreement, or of the rights to exercise any such rights or remedies, if such default by the Institution be continued or repeated.

No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in the Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under the Loan Agreement. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Issuer and/or the Trustee and the Institution or any delay or omission on the part of the Issuer and/or the Trustee in exercising any rights under the Loan Agreement or under the Indenture or under any other Security Document shall operate as a waiver. To the extent permitted by applicable law, the Institution in the Loan Agreement, waives the benefit and advantage of, and covenants not to assert against the Issuer or the Trustee, any valuation, inquisition, stay, appraisement, extension or redemption laws now existing or which may hereafter exist.

Effect on Discontinuance of Proceedings. In case any proceeding taken by the Issuer or the Trustee under the Indenture or the Loan Agreement or under any other Security Document on account of any Event of Default under the Loan Agreement or thereunder shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Issuer or the Trustee, then, and in every such case, the Issuer, the Trustee and the Holders of the Bonds shall be restored, respectively, to their former positions and rights under the Loan Agreement and thereunder, and all rights, remedies, powers and duties of the Issuer and the Trustee shall continue as in effect prior to the commencement of such proceedings.

Termination of the Loan Agreement. The Institution shall have the option to cause the redemption or defeasance in whole of all Outstanding Bonds in accordance with the terms set forth in the Indenture. After full payment of the Bonds or provision for the payment in full thereof having been made in accordance with the defeasance provisions of the Indenture, but not later than the receipt by the Institution of ten (10) days prior written notice from the Issuer directing termination of the Loan Agreement, the Institution shall terminate the Loan Agreement by giving the Issuer notice in writing of such termination and thereupon such termination shall forthwith become effective, subject, however, to (x) the delivery of those documents referred to in the Lease Agreement, and (y) the survival of those obligations of the Institution set forth in the Loan Agreement.

Issuance of Additional Bonds. If a Series of Additional Bonds is to be issued pursuant to the Indenture, the Issuer and the Institution shall enter into an amendment to the Loan Agreement, and the Institution shall execute and deliver new Promissory Notes, in each case providing, among other things, for the payment by the Institution of such additional loan payments as are necessary in order to amortize in full the principal of and interest on such Series of Additional Bonds and any other costs in connection therewith.

Any such completion, repair, relocation, replacement, rebuilding, restoration, additions, extensions or improvements shall become a part of the Facilities and shall be included under the Loan Agreement to the same extent as if originally included under the Loan Agreement.

Determination of Taxability. If any Holder of Tax-Exempt Bonds receives from the Internal Revenue Service a notice of assessment and demand for payment with respect to interest on any Tax-Exempt Bond, an appeal may be taken by such Holder at the option of either such Holder or the Institution. If such appeal is taken at the option of the Institution (exercised in accordance with the procedures set forth in the definition of "Determination of Taxability"), all expenses of the appeal including reasonable counsel fees shall be paid by the Institution, and the Institution shall control the

procedures and terms relating to such appeal, and such Holder and the Institution shall cooperate and consult with each other in all matters pertaining to any such appeal which the Institution has elected to take, except that no Holder of Tax-Exempt Bonds shall be required to disclose or furnish any non-publicly disclosed information, including without limitation, financial information and tax returns. Before the taking of any appeal which the Institution has elected to take, however, the Bondholder shall have the right to require the Institution to pay the tax assessed and conduct the appeal as a contest for reimbursement.

The obligations of the Institution to make the payments provided for in the Loan Agreement as described under this heading shall be absolute and unconditional, and the failure of the Issuer, the Trustee or any other Person to execute or deliver or cause to be delivered any documents or to take any action required under the Loan Agreement or otherwise shall not relieve the Institution of its obligation under the Loan Agreement as described under this heading.

Not later than one hundred twenty (120) days following a Determination of Taxability, the Institution shall pay to the Trustee an amount sufficient, when added to the amounts then in the Bond Fund (Tax-Exempt) and available for such purpose, to retire and redeem all Tax-Exempt Bonds then Outstanding, in accordance with the Indenture. The Tax-Exempt Bonds shall be redeemed in whole unless redemption of a portion of the Tax-Exempt Bonds Outstanding would have the result that interest payable on the Tax-Exempt Bonds remaining Outstanding after such redemption would not be includable in the gross income of any Holder of a Tax-Exempt Bond. In such event, the Tax-Exempt Bonds shall be redeemed in such amount as is deemed necessary in the opinion of Nationally Recognized Bond Counsel to accomplish that result.

Mandatory Redemption of Bonds as Directed by the Issuer or as a Result of the Institution's Loss of Interest in the Facility Unit. Upon the determination by the Issuer that (i) the Institution is operating any Facility or any portion thereof, or is allowing any Facility or any portion thereof to be operated, not for the Approved Project Operations in accordance with the Loan Agreement and the failure of the Institution within thirty (30) days of the receipt by the Institution of written notice of such noncompliance from the Issuer to cure such noncompliance together with a copy of such resolution (a copy of which notice shall be sent to the Trustee), (ii) the Institution, any Principal of the Institution or any Person that directly or indirectly Controls, is Controlled by or is under common Control with the Institution has committed a material violation of a material Legal Requirement and the failure of the Institution within thirty (30) days of the receipt by the Institution of written notice of such determination from the Issuer to cure such material violation (which cure, in the case of a Principal who shall have committed the material violation of a material Legal Requirement, may be effected by the removal of such Principal), (iii) as set forth in the Loan Agreement relating to certain continuing representations, any Conduct Representation (as defined in the Loan Agreement) is false, misleading or incorrect in any material respect at any date, as if made on such date, or (iv) a Required Disclosure Statement delivered to the Issuer under any Project Document is not acceptable to the Issuer acting in its sole discretion, the Institution covenants and agrees that it shall, no later than ten (10) days following the termination of such thirty (30) day period, pay to the Trustee advance loan payments in immediately available funds in an amount sufficient to redeem (x) all the Bonds Outstanding in whole with respect to any noncompliance set forth in clause (ii), (iii) or (vi) above; (y) the Series 2020A Bonds in whole with respect to any noncompliance set forth in clause (i) above relating to the 42nd Street Facility; or (z) the Series 2020B Bonds in whole with respect to any noncompliance set forth in clause (i) above relating to the 35th Street Facility; in each case at the Redemption Price of 100% of the aggregate principal amount of such Bonds Outstanding to be redeemed, together with interest accrued thereon to the Redemption Date. The Issuer shall give prior written notice of the meeting at which the Board of Directors of the Issuer are to consider such resolution to the Institution and the Trustee, which notice shall be no less than fifteen (15) days prior to such meeting.

In the event the Institution fails to obtain or maintain the liability insurance with respect to any Facility required under the Loan Agreement, and the Institution shall fail to cure such circumstance within ten (10) days of the receipt by the Institution of written notice of such noncompliance from the Issuer and a demand by the Issuer on the Institution to cure such noncompliance, upon notice or waiver of notice as provided in the Indenture, the Institution shall pay to the Trustee advance loan payments in immediately available funds in an amount sufficient to redeem (i) the Bonds Outstanding in whole with respect to such failure relating to both Facilities; (ii) the Series 2020A Bonds in whole with respect to such failure relating to the 42nd Street Facility; or (iii) the Series 2020B Bonds in whole with respect to such failure relating to the 35th Street Facility; in each case at the Redemption Price of 100% of the aggregate principal amount of such Bonds Outstanding to be redeemed, together with interest accrued thereon to the Redemption Date.

In the event any Facility Lease Agreement shall terminate or expire, or any mortgage on the 42nd Street Facility shall foreclose, with the effect of the Institution no longer having a fee interest or leasehold interest in the Facility Unit, the Institution shall deliver immediately to the Issuer and the Trustee a certificate of an Authorized Representative of the Institution stating such occurrence and shall cause the redemption of the Series 2020A Bonds Outstanding in whole pursuant to the Indenture.

Mandatory Redemption As a Result of Project Gifts or Grants. If, prior to completion of the construction or renovation of a component of the Project, the Institution receives any gift or grant required by the terms thereof to be used to pay any item which is a cost of such component of the Project, the Institution shall apply such gift or grant to completion of the construction or renovation of such component of the Project. In the event that the amount of such gift or grant is in excess of the amount necessary to complete such component of the Project, and if proceeds of the Tax-Exempt Bonds (i) have been expended on such component of the Project more than eighteen (18) months prior to the receipt of such gift or grant, or (ii) (A) have been expended on such component of the Project not more than eighteen (18) months prior to the receipt of such gift or grant and (B) the aggregate amount of Project Costs (Tax-Exempt) not otherwise provided for is less than the amount of Tax-Exempt Bond proceeds expended on such component of the Project, the Institution shall cause the Trustee to effect a redemption of Tax-Exempt Bonds in a principal amount equal to such excess only to the extent to which proceeds of the Tax-Exempt Bonds were expended for such component.

If, after completion of the construction or renovation of a component of the Project, the Institution receives any gift or grant which prior to such completion it reasonably expected to receive and which is required by the terms thereof to be used to pay any item which is a cost of such component of the Project, and if proceeds of the Tax-Exempt Bonds (i) have been expended on such component of the Project more than eighteen (18) months prior to the earlier of the date on which Tax-Exempt Bond proceeds were expended thereon or the placed in service date of such component, or (ii) (A) have been expended on such component of the Project not more than eighteen (18) months prior to the earlier of the date on which Tax-Exempt Bond proceeds were expended thereon or the placed in service date of such component and (B) the aggregate amount of Project Costs (Tax-Exempt) not otherwise provided for is less than the amount of Tax-Exempt Bond proceeds expended on such component of the Project, the Institution shall, to the extent not inconsistent with the terms of such gift or grant, deposit an amount equal to such gift or grant with the Trustee for deposit into the Redemption Account of the Bond Fund (Tax-Exempt) and cause the Trustee to effect a redemption of the Tax-Exempt Bonds in a principal amount equal to such gift or grant, but only to the extent to which proceeds of Tax-Exempt Bonds were expended for such component.

The Institution shall, prior to directing the redemption of any Tax-Exempt Bonds in accordance with the Indenture as described under this heading, consult with Nationally Recognized Bond Counsel for advice as to a manner of selection of Tax-Exempt Bonds for redemption that will not affect the exclusion

of interest on any Tax-Exempt Bonds then Outstanding from gross income for federal income tax purposes.

Right to Cure Issuer Defaults. The Issuer grants the Institution full authority for the account of the Issuer to perform any covenant or obligation the non-performance of which is alleged to constitute a default in any notice received by the Institution, in the name and stead of the Issuer, with full power of substitution.

Prohibition on the Purchase of Bonds. Neither the Institution nor any related person thereto shall purchase any Bonds for its own account during the term of the Loan Agreement, whether by direct negotiation through a broker or dealer, or by making a tender offer to the Holders thereof, or otherwise.

Investment of Funds. Any moneys held as part of the Rebate Fund, the Earnings Fund, the Project Fund, the Bond Fund (Taxable), the Bond Fund (Tax-Exempt), the Debt Service Reserve Fund (Tax-Exempt) or the Renewal Fund or in any special fund provided for in the Loan Agreement or in the Indenture to be invested in the same manner as in any said Fund shall, at the written request of an Authorized Representative of the Institution or of the Program Facilitator on behalf of the Institution, be invested and reinvested by the Trustee as provided in the Indenture (but subject to the provisions of the Tax Regulatory Agreement). None of the Issuer, the Trustee or any of their members, directors, officers, agents, servants or employees shall be liable for any depreciation in the value of any such investments or for any loss arising therefrom. Interest and profit derived from such investments shall be credited and applied as provided in the Indenture, and any loss resulting from such investments shall be similarly charged.

Force Majeure**.** In case by reason of *force majeure* the Institution or the Issuer shall be rendered unable wholly or in part to carry out its obligations under the Loan Agreement, then except as otherwise expressly provided in the Loan Agreement, if such party shall give notice and full particulars of such *force majeure* in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice (other than (i) the obligations of the Institution to make the loan payments or other payments required under the terms of the Loan Agreement, or (ii) the obligations of the Institution to comply with the recapture of benefits, insurance or indemnity provisions under the Loan Agreement), so far as they are affected by such *force majeure*, shall be suspended during the continuance of the inability then claimed, which shall include a reasonable time for the removal of the effect thereof, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "*force majeure*" shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, war, terrorism, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other act or event so long as such act or event is not reasonably foreseeable and is not reasonably within the control of the party claiming such inability. Notwithstanding anything to the contrary herein, in no event shall the Institution's financial condition or inability to obtain financing constitute a *force majeure*. It is understood and agreed that the requirements that any *force majeure* shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be satisfied in the event of a strike or other industrial disturbance even though existing or impending strikes or other industrial disturbances could have been settled by the party claiming a *force majeure* under the Loan Agreement by acceding to the demands of the opposing person or persons.

The Institution shall promptly notify the Issuer and the Trustee upon the occurrence of each *force majeure*, describing such *force majeure* and its effects in reasonable detail. The Institution shall also

promptly notify the Issuer and the Trustee upon the termination of each such *force majeure*. The information set forth in any such notice shall not be binding upon the Issuer or the Trustee, and the Issuer or the Trustee shall be entitled to dispute the existence of any *force majeure* and any of the contentions contained in any such notice received from the Institution.

Assignment of Mortgage and Pledge under Indenture. Pursuant to (i) the Mortgage, the Institution will mortgage its fee interest in the Mortgaged Property to the Issuer and the Trustee as security for the Bonds and the obligations of the Institution under the Security Documents, (ii) the Assignment of Mortgage, the Issuer will assign all of its right, title and interest in the Mortgage to the Trustee, and (iii) the Indenture, the Issuer will pledge and assign the Promissory Notes and the loan payments and certain other moneys receivable under the Loan Agreement to the Trustee as security for payment of the principal or Redemption Price, if applicable, of, Sinking Fund Installments for, and interest on the Bonds. The Institution consents to the Issuer's pledge and assignment to the Trustee of all its right, title and interest in the Mortgage, the Promissory Notes and the Loan Agreement (except for the Issuer's Reserved Rights).

Amendments. The Loan Agreement may be amended only with the concurring written consent of the Trustee given in accordance with the provisions of the Indenture, except in connection with any amendment relating to the recapture of benefits provisions, and only by a written instrument executed by the Institution and the Issuer.

Third Party Beneficiaries. The Issuer and the Institution agree that the Loan Agreement is executed in part to induce the purchase by others of the Bonds and for the further securing of the Bonds, and accordingly all covenants and agreements on the part of the Issuer and the Institution as set forth in the Loan Agreement are declared to be for the benefit of the Holders from time to time of the Bonds and may be enforced as provided in the Indenture on behalf of the Bondholders by the Trustee.

Nothing in the Loan Agreement expressed or implied is intended or shall be construed to confer upon, or to give to, any Person, other than the Issuer, the Trustee, the Bond Registrar, the Institution, the Paying Agents and the Holders of the Bonds any right, remedy or claim under or by reason of the Loan Agreement or any covenant, condition or stipulation thereof. All the covenants, stipulations, promises and agreements herein contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Trustee, the Bond Registrar, the Institution, the Paying Agents and the Holders of the Bonds.

Recourse Under the Loan Agreement. All covenants, stipulations, promises, agreements and obligations of the Issuer contained in the Loan Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer, and not of any member, director, officer, employee or agent of the Issuer or any natural person executing the Loan Agreement on behalf of the Issuer in such person's individual capacity, and no recourse shall be had for any reason whatsoever thereunder against any member, director, officer, employee or agent of the Issuer or any natural person executing the Loan Agreement on behalf of the Issuer. No recourse shall be had for the payment of the principal of, redemption premium, if any, Sinking Fund Installments for, Purchase Price or interest on the Bonds or for any claim based thereon or under the Loan Agreement against any member, director, officer, employee or agent of the Issuer or any natural person executing the Bonds. In addition, in the performance of the agreements of the Issuer herein contained, any obligation the Issuer may incur for the payment of money shall not subject the Issuer to any pecuniary or other liability or create a debt of the State or the City, and neither the State nor the City shall be liable on any obligation so incurred and any such obligation shall be payable solely out of amounts payable to the Issuer by the Institution under the Loan Agreement and under the Promissory Notes.

# APPENDIX F

# SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

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*The following is a summary of certain provisions of the Indenture of Trust, dated as of August 1, 2020 (the "Indenture"), relating to the Series 2020 Bonds. This summary does not purport to be complete, and reference is made to the Indenture for the detailed provisions thereof. This summary is qualified in its entirety by such reference. Headings are not part of the Indenture and are included for ease of reference only.*

Defaulted Interest. Defaulted Interest on any Initial Bond shall cease to be payable to the owner of such Initial Bond on the relevant Record Date and shall be payable to the owner in whose name such Initial Bond is registered at the close of business on a special record date (the "Special Record Date") for the payment of such Defaulted Interest, which Special Record Date shall be fixed in the following manner. It is provided in the Loan Agreement that the Institution shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Initial Bond and the date of the proposed payment (which date shall be such as will enable the Trustee to comply with the next sentence), and shall deposit with the Trustee at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment. Money deposited with the Trustee on account of Defaulted Interest shall be held in trust for the benefit of the owners of the Initial Bonds entitled to such Defaulted Interest as provided in in the Indenture. Following receipt of such funds the Trustee shall fix the Special Record Date for the payment of such Defaulted Interest which shall be not more than fifteen (15) nor less than ten (10) days prior to the date of the proposed payment and not less than ten (10) days after the receipt of such funds by the Trustee. The Trustee shall promptly notify the Institution of such Special Record Date and, in the name and at the expense of the Institution, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class postage prepaid, to each owner of an Initial Bond entitled to such notice at the address of such owner as it appears on the bond registration books not less than ten (10) days prior to such Special Record Date.

Additional Bonds. So long as the Promissory Notes, the Loan Agreement and the other Security Documents are each in effect, and the prior written consent of the Holders of at least sixty-six and two-thirds percent (66-2/3%) in aggregate principal amount of the Bonds shall have been obtained (except such consent shall not be required with respect to refunding Outstanding Bonds), one or more Series of Additional Bonds may be issued, authenticated and delivered upon original issuance for the purpose of (i) completing the Project, (ii) providing funds in excess of Net Proceeds to repair, relocate, replace, rebuild or restore any Facility in the event of damage, destruction or taking by eminent domain, (iii) providing extensions, additions or improvements to any Facility, the purpose of which shall be for the Approved Project Operations, or (iv) refunding Outstanding Bonds. Such Additional Bonds shall be payable from the loan payments, receipts and revenues of the Facilities including such extensions, additions and improvements thereto. Prior to the issuance of a Series of Additional Bonds and the execution of a Supplemental Indenture in connection therewith, the Issuer and the Institution shall enter into an amendment to the Loan Agreement, and the Institution shall execute a new Promissory Note, which shall provide, among other things, that the loan payments payable by the Institution under the Loan Agreement and the aggregate amount to be paid under all Promissory Notes shall be increased and computed so as to amortize in full the principal of and interest on such Additional Bonds and any other costs in connection therewith. In addition, the Institution and the Issuer shall enter into an amendment to each Security Document with the Trustee which shall provide that the amounts guaranteed or otherwise secured thereunder be increased accordingly.

Each such Series of Additional Bonds shall be deposited with the Trustee and thereupon shall be authenticated by the Trustee. Upon payment to the Trustee of the proceeds of sale of such Series of

Additional Bonds, they shall be made available by the Trustee for pick-up by the order of the purchaser or purchasers thereof, but only upon receipt by the Trustee of the items set forth in the Indenture.

Upon the request of the Institution, one or more Series of Refunding Bonds may be authenticated and made available for pick-up upon original issuance to refund all Outstanding Bonds or any Series of Outstanding Bonds or any part of one or more Series of Outstanding Bonds. Bonds of a Series of Refunding Bonds shall be issued in a principal amount sufficient, together with other moneys available therefor, to accomplish such refunding and to make such deposits required by the provisions of the Indenture and of the resolution authorizing said Series of Refunding Bonds. In the case of the refunding as described in this paragraph of less than all Bonds Outstanding of any Series or of any maturity within such Series, the Trustee shall proceed to select such Bonds in accordance with the provisions of the Indenture.

Each Series of Additional Bonds issued pursuant to the Indenture shall be equally and ratably secured under the Indenture with the Initial Bonds and all other Series of Additional Bonds, if any, issued pursuant to the Indenture, without preference, priority or distinction of any Bond over any other Bonds except as expressly provided in or permitted by the Indenture (including, without limitation, the exception that the Project Fund (Taxable) and the Bond Fund (Taxable) shall only secure the Taxable Bonds, and the Project Fund (Tax-Exempt), the Debt Service Reserve Fund (Tax-Exempt) and the Bond Fund (Tax-Exempt) shall only secure the Tax-Exempt Bonds).

No Series of Additional Bonds shall be issued unless the Promissory Notes, the Loan Agreement, the Mortgage and the other Security Documents are in effect and, at the time of issuance, there is no Event of Default nor any event which upon notice or lapse of time or both would become an Event of Default.

Payments Due on Saturdays, Sundays and Holidays. In any case where any payment date of principal, Sinking Fund Installment and/or interest on the Bonds, or the Redemption Date of any Bonds, shall be a day other than a Business Day, then payment of such principal, Sinking Fund Installment and/or interest or the Redemption Price, if applicable, need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the principal, Sinking Fund Installment and/or Interest Payment Date or the Redemption Date, as the case may be, except that interest shall continue to accrue on any unpaid principal.

Creation of Funds and Accounts. The following special trust Funds and Accounts comprising such Funds are established under the Indenture: (a) Project Fund (Tax-Exempt), (b) Project Fund (Taxable), (c) Bond Fund (Tax-Exempt) consisting of (i) a Principal Account, (ii) an Interest Account, (iii) a Redemption Account and (iv) a Sinking Fund Installment Account, (d) Bond Fund (Taxable) consisting of (i) a Principal Account, (ii) an Interest Account, (iii) a Redemption Account and (iv) a Sinking Fund Installment Account, (e) Renewal Fund, (f) Earnings Fund, (g) Rebate Fund and (h) Debt Service Reserve Fund (Tax-Exempt).

All of the Funds and Accounts created under the Indenture shall be held by the Trustee. All moneys required to be deposited with or paid to the Trustee for the credit of any Fund or Account under any provision of the Indenture and all investments made therewith shall be held by the Trustee in trust and applied only in accordance with the provisions of the Indenture, and while held by the Trustee shall constitute part of the Trust Estate (subject to the granting clauses of the Indenture), other than the Rebate Fund, and be subject to the lien of the Indenture.

Project Fund. There shall be deposited in the applicable Project Fund, so indicated, any and all amounts required to be deposited therein pursuant to the Indenture as described under the headings

"Earnings Fund" and "Rebate Fund" below or otherwise required to be deposited therein pursuant to the Loan Agreement or the Indenture.

The Trustee shall apply the amounts on deposit in the Project Fund (Tax-Exempt) to the payment, or reimbursement to the extent the same have been paid by or on behalf of the Institution or the Issuer, of Project Costs (Tax-Exempt) to the extent requisitioned under the Indenture as described in the paragraph below. The Trustee shall apply the amounts on deposit in the Project Fund (Taxable) to the payment, or reimbursement to the extent the same have been paid by or on behalf of the Institution or the Issuer, of Project Costs (Taxable) to the extent requisitioned under the Indenture as described in the paragraph below.

The Trustee is authorized to disburse from the Project Fund (Tax-Exempt) amounts required to pay (in whole or in part) the Project Costs (Tax-Exempt) and is directed to issue its checks (or, at the direction of the Institution, make wire transfers) for each disbursement from the Project Fund (Tax-Exempt) for the Project Costs (Tax-Exempt), upon a requisition submitted to the Trustee, signed by an Authorized Representative of the Institution; provided, however, that the Trustee shall retain in the Project Fund (Tax-Exempt) an amount equal to the greater of (a) $60,000 or (b) the lesser of (i) one percent (1%) of the original principal amount of the Series 2020A Bonds or (ii) $500,000, until an Authorized Representative of the Institution shall have delivered the completion certificate and other documents required by the Loan Agreement.

The Trustee is authorized to disburse from the Project Fund (Taxable) amounts required to pay (in whole or in part) the Project Costs (Taxable) and is directed to issue its checks (or, at the direction of the Institution, make wire transfers) for each disbursement from the Project Fund (Taxable) for the Project Costs (Taxable), upon a requisition submitted to the Trustee, signed by an Authorized Representative of the Institution.

The completion of the Project shall be evidenced as set forth in the Loan Agreement including the filing of the certificate of an Authorized Representative of the Institution referred to therein. Upon the filing of such certificate, the balance in the Project Fund (Tax-Exempt) in excess of the amount, if any, stated in such certificate for the payment of any remaining part of the Project Costs (Tax-Exempt), shall, after making any transfer to the Rebate Fund as directed pursuant to the Tax Regulatory Agreement and the Indenture as described under the heading "Rebate Fund" below, be deposited by the Trustee in the Redemption Account of the Bond Fund (Tax-Exempt). Upon payment of all the costs and expenses incident to the completion of the Project, any balance of such remaining amount in the Project Fund (Tax-Exempt), together with any amount on deposit in the Earnings Fund derived from transfers made thereto from the Project Fund (Tax-Exempt), shall, after making any such transfer to the Rebate Fund, and after depositing in the Debt Service Reserve Fund (Tax-Exempt) an amount equal to any deficiency therein, be deposited in the Redemption Account of the Bond Fund (Tax-Exempt) to be applied to the redemption of Series 2020A Bonds at the earliest practicable date or, if the amount is not an Authorized Denomination, then to the Interest Account of the Bond Fund (Tax-Exempt). The Trustee shall promptly notify the Institution of any amounts so deposited in the Redemption Account of the Bond Fund (Tax-Exempt).

If any money remains in the Project Fund (Taxable) after the Closing Date, the Trustee shall transfer such money to the Interest Account of the Bond Fund (Taxable).

In the event the Institution shall be required to or shall elect to cause the Bonds to be redeemed in whole pursuant to the Loan Agreement, the balance in the Project Fund (Tax-Exempt) and in the Earnings Fund (in excess of any amount the Trustee is directed to transfer to the Rebate Fund pursuant to the Tax Regulatory Agreement and the Indenture as described under the heading "Rebate Fund" below) and in the Debt Service Reserve Fund (Tax-Exempt) shall be deposited in the Redemption Account of the Bond

Fund (Tax-Exempt). In the event the unpaid principal amount of the Bonds shall be accelerated upon the occurrence of an Event of Default under the Indenture, the balance in the Project Fund (Tax-Exempt) and in the Earnings Fund (in excess of any amount the Trustee is directed to transfer to the Rebate Fund pursuant to the Tax Regulatory Agreement and the Indenture as described under the heading "Rebate Fund" below) and in the Debt Service Reserve Fund (Tax-Exempt) shall be deposited in the Bond Fund (Tax-Exempt) as provided in Indenture as described under the heading "Application of Revenues and Other Moneys After Default" below.

Except as provided in the Indenture as described under the heading "Earnings Fund" below, all earnings on amounts held in the Project Fund (Tax-Exempt) shall be transferred by the Trustee and deposited in the Earnings Fund. Any transfers by the Trustee of amounts to the Rebate Fund shall first be drawn by the Trustee from the Earnings Fund prior to drawing any amounts from the Project Fund (Tax-Exempt).

Renewal Fund. The Net Proceeds resulting from any Loss Event with respect to a Facility, together with any other amounts so required to be deposited therein under the Loan Agreement or the Mortgage, shall be deposited in the Renewal Fund (except as otherwise provided in the Mortgage).

In the event the Bonds shall be subject to redemption in whole (either by reason of such Loss Event or otherwise) pursuant to the terms thereof or the Indenture, and the Institution shall have so directed the Trustee in writing within ninety (90) days of the occurrence of such Loss Event, the Trustee shall, after making any transfer to the Rebate Fund as directed pursuant to the Tax Regulatory Agreement and pursuant to the Indenture as described under the heading "Rebate Fund" below, transfer the amounts deposited in the Renewal Fund to the Redemption Account of the applicable Bond Fund.

If, on the other hand, (1) the Bonds shall not be subject to optional redemption in whole (whether by reason of such Loss Event or otherwise), or (2) the Bonds shall be subject to optional redemption in whole (whether by reason of such Loss Event or otherwise) and the Institution shall have failed to take action to effect such redemption, or (3) the Institution shall have notified the Trustee of its intent to rebuild, replace, repair and restore the affected Facility, the Trustee shall apply the amounts on deposit in the Renewal Fund, after making any transfer to the Rebate Fund as directed pursuant to the Tax Regulatory Agreement and pursuant to the Indenture as described under the heading "Rebate Fund" below, to such rebuilding, replacement, repair and restoration.

If an Event of Default shall exist at the time of the receipt by the Trustee of the Net Proceeds in the Renewal Fund, the Trustee shall promptly request the written direction of the Majority Holders and shall thereupon apply such Net Proceeds, after making any transfer to the Rebate Fund as directed pursuant to the Tax Regulatory Agreement and pursuant to the Indenture as described under the heading "Rebate Fund" below, to the rebuilding, replacement, repair and restoration of the affected Facility, or for deposit in the Redemption Account of the applicable Bond Fund, as directed by the Majority Holders (or if no such direction shall be received within ninety (90) days after request therefor by the Trustee shall have been made, for deposit in the Redemption Account of the Bond Fund (Tax-Exempt).

The Trustee is authorized to apply the amounts in the Renewal Fund to the payment (or reimbursement to the extent the same have been paid by or on behalf of the Institution or the Issuer) of the costs required for the rebuilding, replacement, repair and restoration of the affected Facility upon written instructions from the Institution. The Trustee is further authorized and directed to issue its checks for each disbursement from the Renewal Fund upon a requisition submitted to the Trustee and signed by an Authorized Representative of the Institution. Each such requisition shall be accompanied by bills, invoices or other evidences or documentation (if respect to the 35th Street Facility, including, without limitation, a title continuation or other evidence that no mechanics or other liens have been filed)

satisfactory to the Trustee. The Trustee shall be entitled to rely on such requisition. The Trustee shall keep and maintain adequate records pertaining to the Renewal Fund and all disbursements therefrom and shall furnish copies of same to the Issuer and the Institution upon reasonable written request therefor.

All earnings on amounts on deposit in the Renewal Fund shall be transferred by the Trustee and deposited in the Earnings Fund. Any transfers by the Trustee of amounts to the Rebate Fund shall first be drawn by the Trustee from the Earnings Fund prior to drawing any amounts from the Renewal Fund.

Any surplus remaining in the Renewal Fund after the completion of the rebuilding, replacement, repair and restoration of the restored Facility shall, after making any transfer to the Rebate Fund as directed pursuant to the Tax Regulatory Agreement and pursuant to the Indenture as described under the heading "Rebate Fund" below, and after depositing in the Debt Service Reserve Fund (Tax-Exempt) an amount equal to any deficiency therein, be transferred by the Trustee to the Redemption Account of the Bond Fund (Tax-Exempt) and used to redeem the Series 2020A Bonds to the nearest integral multiple of Authorized Denominations.

Payments into Bond Fund. The Trustee shall promptly deposit the following receipts into the applicable Bond Fund so indicated:

(a) The interest accruing on any Series of Bonds from the date of original issuance thereof to the date of delivery, which shall be credited to the Interest Account of the applicable Bond Fund and applied to the payment of interest on such Series of Bonds.

(b) Excess or remaining amounts in the Project Fund (Tax-Exempt) required to be deposited (subject to any transfer from the Project Fund (Tax-Exempt) required to be made to the Rebate Fund in accordance with directions received pursuant to the Tax Regulatory Agreement and the Indenture as described under the heading "Rebate Fund" below, or to the Debt Service Reserve Fund (Tax-Exempt) to the extent of any deficiency therein) (i) in the Redemption Account of the Bond Fund (Tax-Exempt) or in the Interest Account of the Bond Fund (Tax-Exempt), as applicable, or in the Redemption Account of the Bond Fund (Tax-Exempt), which shall be kept segregated from any other moneys within such Account, or (ii) in the Bond Fund (Tax-Exempt), ), in each case, pursuant to the Indenture as described in under the heading "Project Fund" above. Excess or remaining amounts in the Project Fund (Taxable) required to be deposited in the Interest Account of the Bond Fund (Taxable) pursuant to the Indenture as described in under the heading "Project Fund" above.

(c) Loan payments received by the Trustee pursuant to the Loan Agreement, which shall be deposited in and credited, to the extent necessary, first to the Interest Account, second to the Principal Account, and third to the Sinking Fund Installment Account of the applicable Bond Fund.

(d) Advance loan payments received by the Trustee pursuant to the Loan Agreement, which shall be deposited in and credited to the Redemption Account of the applicable Bond Fund.

(e) Any amounts transferred from the Earnings Fund pursuant to the Indenture as described in the last paragraph under the heading "Earning Fund" below, which shall be deposited in and credited to the Interest Account of the Bond Fund (Tax-Exempt).

(f) The excess amounts referred to in the Indenture as described in the fourth paragraph under the heading "Application of Bond Fund Moneys" below, which shall be deposited in and credited to the Interest Account of the applicable Bond Fund.

(g) Any amounts transferred from the Redemption Account pursuant to the Indenture as described in the last paragraph under the heading "Application of Bond Fund Moneys" below, which shall be deposited to the Interest Account, the Principal Account and the Sinking Fund Installment Account of the applicable Bond Fund, as the case may be and in such order of priority, and applied solely to such purposes.

(h) Amounts in the Renewal Fund required by the Indenture as described under the heading "Renewal Fund" above or by the Mortgage to be deposited (subject to any transfer required to be made to the Rebate Fund in accordance with directions received pursuant to the Tax Regulatory Agreement and pursuant to the Indenture as described under the heading "Rebate Fund" below or to the Debt Service Reserve Fund (Tax-Exempt) to the extent of any deficiency therein) to the Redemption Account of the Bond Fund (Tax-Exempt) pursuant to the Indenture as described under the last paragraph under the heading "Renewal Fund" above.

(i) All other receipts when and if required by the Loan Agreement or by the Indenture or by any other Security Document to be paid into the applicable Bond Fund, which shall be credited (except as provided in the provisions of the Indenture as described under the heading "Application of Revenues and other Moneys After Default" below) to the Redemption Account of the applicable Bond Fund.

(j) Any amounts transferred from the Debt Service Reserve Fund (Tax-Exempt) pursuant to the Indenture as described under the heading "Debt Service Reserve Fund" below, which shall be deposited in and credited to the Interest Account, the Principal Account, the Sinking Fund Installment Account or the Redemption Account, as the case may be, of the Bond Fund (Tax-Exempt).

Application of Bond Fund Moneys. The Trustee shall (i) on each Interest Payment Date pay or cause to be paid out of the Interest Account in the applicable Bond Fund the interest due on the applicable Series of Bonds, and (ii) further pay out of the Interest Account of the applicable Bond Fund any amounts required for the payment of accrued interest upon any redemption (including any mandatory Sinking Fund Installment redemption) of the applicable Series of Bonds.

The Trustee shall on each principal payment date on each Series of Bonds pay or cause to be paid to the respective Paying Agents therefor out of the Principal Account of the applicable Bond Fund, the principal amount, if any, due on the applicable Series of Bonds (other than such as shall be due by mandatory Sinking Fund Installment redemption), upon the presentation and surrender of the requisite applicable Series of Bonds.

There shall be paid from the Sinking Fund Installment Account of the applicable Bond Fund to the Paying Agents on each Sinking Fund Installment payment date in immediately available funds the amounts required for the Sinking Fund Installment due and payable with respect to the applicable Series of Bonds which are to be redeemed from Sinking Fund Installments on such date (accrued interest on such Bonds being payable from the Interest Account of the applicable Bond Fund). Such amounts shall be applied by the Paying Agents to the payment of such Sinking Fund Installment when due. The Trustee shall call for redemption, in the manner provided in the Indenture, the applicable Series of Bonds for which Sinking Fund Installments are applicable in a principal amount equal to the Sinking Fund Installment then due with respect to such applicable Series of Bonds. Such call for redemption shall be made even though at the time of mailing of the notice of such redemption sufficient moneys therefor shall not have been deposited in the applicable Bond Fund.

Amounts in the Redemption Account of each Bond Fund shall be applied, at the written direction of the Institution, as promptly as practicable, to the redemption of the applicable Series of Bonds at prices not exceeding the Redemption Price thereof applicable on the earliest date upon which the applicable

Series of Bonds are next subject to optional redemption, plus accrued interest to the Redemption Date. Any amount in the Redemption Account not so applied to the redemption of the applicable Series of Bonds by forty-five (45) days prior to the next date on which the applicable Series of Bonds are so redeemable shall be applied to the redemption of the applicable Series of Bonds on such Redemption Date. Any amounts deposited in the Redemption Account and not applied within twelve (12) months of their date of deposit to the redemption of the applicable Series of Bonds (except if held in accordance with the defeasance provisions of the Indenture) shall be transferred to the Interest Account. Upon the redemption of any applicable Series of Bonds, an amount equal to the principal of such applicable Series of Bonds so redeemed shall be credited against the next ensuing and future Sinking Fund Installments for such applicable Series of Bonds in chronological order of the due dates of such Sinking Fund Installments until the full principal amount of such applicable Series of Bonds so redeemed shall have been so credited. The portion of any such Sinking Fund Installment remaining after the deduction of such amounts so credited shall constitute and be deemed to be the amount of such Sinking Fund Installment for the purposes of any calculation thereof under the Indenture. The applicable Series of Bonds to be redeemed shall be selected by the Trustee in the manner provided in the Indenture. Amounts in the Redemption Account to be applied to the redemption of the applicable Series of Bonds shall be paid to the respective Paying Agents on or before the Redemption Date and applied by them on such Redemption Date to the payment of the Redemption Price of the applicable Series of Bonds being redeemed plus interest on such Bonds accrued to the Redemption Date.

The Issuer shall receive a credit in respect of Sinking Fund Installments for any applicable Series of Bonds which are subject to mandatory Sinking Fund Installment redemption and which are delivered by the Issuer or the Institution to the Trustee on or before the forty-fifth (45th) day next preceding any Sinking Fund Installment payment date and for any applicable Series of Bonds which prior to said date have been redeemed (otherwise than through the operation of the Sinking Fund Installment Account) and cancelled by the Trustee and not theretofore applied as a credit against any Sinking Fund Installment (whether pursuant to the provisions of the Indenture as described in the fourth paragraph under this heading or otherwise). Each applicable Series of Bond so delivered, cancelled or previously redeemed shall be credited by the Trustee at one hundred percent (100%) of the principal amount thereof against the obligation of the Issuer on such Sinking Fund Installment payment date with respect to Bonds of such Series and maturity and the principal amount of such Bonds to be redeemed by operation of the Sinking Fund Installment Account on the due date of such Sinking Fund Installment shall be reduced accordingly, and any excess over such principal amount shall be credited on future Sinking Fund Installments in direct chronological order, and the principal amount of Bonds to be redeemed by application of Sinking Fund Installment payments shall be accordingly reduced.

The Institution shall on or before the forty-fifth (45th) day next preceding each Sinking Fund Installment payment date furnish the Trustee with the certificate of an Authorized Representative of the Institution indicating whether or not and to what extent the provisions of the Indenture as described under this heading are to be availed of with respect to such Sinking Fund Installment payment, stating, in the case of the credit provided for, that such credit has not theretofore been applied against any Sinking Fund Installment and confirming that immediately available cash funds for the balance of the next succeeding prescribed Sinking Fund Installment payment will be paid on or prior to the next succeeding Sinking Fund Installment payment date.

Moneys in the Redemption Account of each Bond Fund which are not set aside or deposited for the redemption of Bonds shall be transferred by the Trustee to the Interest Account, to the Principal Account or to the Sinking Fund Installment Account of the applicable Bond Fund.

Earnings Fund. All investment income or earnings on amounts held in the Project Fund (Tax-Exempt), the Renewal Fund, the Debt Service Reserve Fund (Tax-Exempt) or any other special fund

(other than the Rebate Fund, the Project Fund (Taxable) or either Bond Fund) shall be deposited upon receipt by the Trustee into the Earnings Fund. The Trustee shall keep separate accounts of all amounts deposited in the Earnings Fund and by journal entry indicate the Fund source of the income or earnings.

On the first Business Day following each Computation Period (as defined in the Tax Regulatory Agreement), and following the receipt by the Trustee of a certificate of written direction from an Authorized Representative of the Program Facilitator delivered by the Program Facilitator to the Trustee pursuant to the Tax Regulatory Agreement, including certifying that the Yield (as defined in the Tax Regulatory Agreement) on the Nonpurpose Investments (as defined in the Tax Regulatory Agreement) does not exceed the Yield on the Tax-Exempt Bonds, the Trustee shall withdraw from the Earnings Fund and deposit to the Rebate Fund an amount such that the amount held in the Rebate Fund after such deposit is equal to the Rebate Amount (as defined in the Tax Regulatory Agreement) calculated as of the last day of the Computation Period. In the event of any deficiency, the balance required shall be provided by the Institution pursuant to the Tax Regulatory Agreement. Computations of the amounts on deposit in each Fund and of the Rebate Amount shall be furnished to the Trustee by the Institution in accordance with the Tax Regulatory Agreement.

The foregoing notwithstanding, the Trustee shall not be required to transfer amounts from the Earnings Fund to the Rebate Fund (and shall instead apply such amounts in the Earnings Fund as provided in the immediately following sentence), if the Institution shall deliver to the Trustee a certificate of an Authorized Representative of the Institution to the effect that (x) the applicable requirements of a spending exception to rebate has been satisfied as of the relevant semiannual period as set forth in the Tax Regulatory Agreement, (y) the proceeds of the Tax-Exempt Bonds have been invested in obligations the interest on which is not included in gross income for federal income tax purposes under Section 103 of the Code or (z) the proceeds of the Tax-Exempt Bonds have been invested in obligations the Yield on which (calculated as set forth in the Tax Regulatory Agreement) does not exceed the Yield on such Tax-Exempt Bonds (calculated as set forth in the Tax Regulatory Agreement). Any amounts on deposit in the Earnings Fund following the transfers to the Rebate Fund required by the Indenture as described under this heading shall be deposited in the Project Fund (Tax-Exempt) until the completion of the Project as provided in the Loan Agreement, and thereafter in the Interest Account of the Bond Fund (Tax-Exempt).

Rebate Fund. The Rebate Fund and the amounts deposited therein shall not be subject to a security interest, pledge, assignment, lien or charge in favor of the Trustee, any Bondholder or any other Person.

The Trustee, upon the receipt of a certification of the Rebate Amount (as defined in the Tax Regulatory Agreement) from an Authorized Representative of the Program Facilitator pursuant to the Tax Regulatory Agreement including certifying that the Yield (as defined in the Tax Regulatory Agreement) on the Nonpurpose Investments (as defined in the Tax Regulatory Agreement) does not exceed the Yield on the Tax-Exempt Bonds, shall deposit in the Rebate Fund within sixty (60) days following each Computation Date (as defined in the Tax Regulatory Agreement), an amount such that the amount held in the Rebate Fund after such deposit is equal to the Rebate Amount calculated as of such Computation Date. If there has been delivered to the Trustee a certification of the Rebate Amount in conjunction with the completion of the Project pursuant to the Loan Agreement or the restoration of a Facility pursuant to the Indenture as described under the heading "Renewal Fund" above, at any time during a Bond Year, the Trustee shall deposit in the Rebate Fund at that time an amount such that the amount held in the Rebate Fund after such deposit is equal to the Rebate Amount calculated at the completion of the Project or the restoration of a Facility as aforesaid. The amount deposited in the Rebate Fund pursuant to the previous sentences shall be withdrawn from the Earnings Fund. If the amount on deposit in the Rebate Fund following such deposit is less than the Rebate Amount, the Trustee shall promptly deliver a notice stating the amount of such deficiency to the Institution. It is provided in the Loan Agreement that promptly upon

receipt of such notice, the Institution shall deliver the amount necessary to make up such deficiency to the Trustee for deposit in the Rebate Fund.

If within sixty (60) days following any Computation Date, the amount on deposit in the Rebate Fund exceeds the Rebate Amount, the Trustee, upon the receipt of written instructions from an Authorized Representative of the Program Facilitator, shall withdraw such excess amount and deposit it in the Project Fund (Tax-Exempt) until the completion of the Project as provided in the Loan Agreement, or, after the completion of the Project, deposit it in the Interest Account of the Bond Fund (Tax-Exempt).

The Trustee, upon the receipt of written instructions from an Authorized Representative of the Program Facilitator, shall pay to the United States, out of amounts in the Rebate Fund, (i) not less frequently than once each five (5) years after the Closing Date, an amount such that, together with prior amounts paid to the United States, the total paid to the United States is equal to 90% of the Rebate Amount with respect to the Series 2020A Bonds as of the date of such payment and (ii) notwithstanding the defeasance provisions under the Indenture, not later than thirty (30) days after the date on which all Series 2020A Bonds have been paid in full, 100% of the Rebate Amount as of the date of payment.

Transfer to Rebate Fund. The Trustee shall have no obligation under the Indenture to transfer any amounts to the Rebate Fund unless the Trustee shall have received specific written instructions from an Authorized Representative of the Program Facilitator to make such transfer.

Investment of Funds and Accounts. Amounts in any Fund or Account established under the Indenture may, if and to the extent then permitted by law, be invested only in Qualified Investments provided that any Qualified Investment shall not have a maturity date greater than five (5) years from the date of the making of such investment unless such Qualified Investment may be put at par at any time at the option of the owner thereof. Any investment herein authorized is subject to the condition that no portion of the proceeds derived from the sale of the Tax-Exempt Bonds shall be used, directly or indirectly, in such manner as to cause any Tax-Exempt Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code. In particular, unexpended Tax-Exempt Bond proceeds transferred from the Project Fund (Tax-Exempt) (or from the Earnings Fund with respect to amounts deposited therein from the Project Fund (Tax-Exempt)) to the Redemption Account of the Bond Fund (Tax-Exempt) pursuant to the Indenture may not be invested at a Yield (as defined in the Tax Regulatory Agreement) which is greater than the Yield on the applicable Series of Tax-Exempt Bonds. Such investments shall be made by the Trustee only at the written request of an Authorized Representative of the Program Facilitator; and if such investment is to be in one or more certificates of deposit, investment agreements or guaranteed investment contracts, then such written request shall include written assurance to the effect that such investment complies with the Tax Regulatory Agreement. Any investment under the Indenture shall be made in accordance with the Tax Regulatory Agreement, and an Authorized Representative of the Program Facilitator shall so certify to the Trustee with each such investment direction as referred to below. Such investments shall mature in such amounts and at such times as may be necessary to provide funds when needed to make payments from the applicable Fund. Net income or gain received and collected from such investments shall be credited and losses charged to (i) the Rebate Fund with respect to the investment of amounts held in the Rebate Fund, (ii) the applicable Bond Fund with respect to the investment of amounts held in the applicable Bond Fund, and (iii) the Earnings Fund with respect to the investment of amounts held in any other Fund.

Upon the written direction of an Authorized Representative of the Program Facilitator, the Trustee shall sell at the best price reasonably obtainable, or present for redemption or exchange, any obligations in which moneys shall have been invested to the extent necessary to provide cash in the respective Funds or Accounts, to make any payments required to be made therefrom, or to facilitate the transfers of moneys or securities between various Funds and Accounts as may be required from time to

time pursuant to the provisions of the Indenture. The Trustee shall not be liable for losses incurred as a result of actions taken in good faith in accordance with the Indenture as described in this paragraph. As soon as practicable after any such sale, redemption or exchange, the Trustee shall give notice thereof to the Issuer, the Program Facilitator and the Institution.

Neither the Trustee nor the Issuer shall be liable for any loss arising from, or any depreciation in the value of any obligations in which moneys of the Funds and Accounts shall be invested in accordance with the Indenture. The investments authorized by the Indenture shall at all times be subject to the provisions of applicable law, as amended from time to time.

In computing the amount in any Fund or Account, obligations purchased as an investment of moneys therein shall be valued at fair market value as determined by the Trustee one month prior to each Interest Payment Date.

In the case of the Debt Service Reserve Fund (Tax-Exempt), a "surplus" means the amount by which the amount on deposit therein is in excess of the Debt Service Reserve Fund Requirement (Tax-Exempt). On each Debt Service Reserve Fund Valuation Date, and upon any withdrawal from the Debt Service Reserve Fund (Tax-Exempt), the Trustee shall determine the amount on deposit in the Debt Service Reserve Fund (Tax-Exempt). If on any such date a deficiency exists, the Trustee shall notify the Issuer and the Institution of such deficiency and that such deficiency must be replenished by the Institution as required by the Loan Agreement. If a surplus exists, the Trustee shall notify the Issuer and the Institution thereof and, subject to the requirements of the Tax Regulatory Agreement, shall upon written instructions of the Institution transfer an amount equal to such surplus to Project Fund (Tax-Exempt) until the completion of the Project as provided in the Loan Agreement and thereafter shall transfer such amount to the Interest Account of the Bond Fund (Tax-Exempt).

Application of Moneys in Certain Funds for Retirement of Bonds. Notwithstanding any other provisions of the Indenture, if on any Interest Payment Date or Redemption Date the amounts held in the Funds established under the Indenture (other than the Earnings Fund and the Rebate Fund) are sufficient to pay one hundred percent (100%) of the principal or Redemption Price, as the case may be, of all Outstanding Bonds and the interest accruing on such Bonds to the next date on which such Bonds are redeemable or payable, as the case may be, whichever is earlier, the Trustee shall so notify the Issuer, the Program Facilitator and the Institution. Upon receipt of written instructions from an Authorized Representative of the Program Facilitator directing such redemption, the Trustee shall proceed to redeem all such Outstanding Bonds in the manner provided for redemption of such Bonds by the Indenture.

Repayment to the Institution from the Funds. After payment in full of the Bonds (in accordance with the defeasance provisions of the Indenture) and the payment of all fees, charges and expenses of the Issuer, the Trustee, the Bond Registrar, the Paying Agents and the Program Facilitator and all other amounts required to be paid under the Indenture and under each of the Security Documents, and the payment of any amounts which the Trustee is directed to rebate to the federal government pursuant to the Indenture and the Tax Regulatory Agreement, all amounts remaining in any Fund shall be paid to the Institution upon the expiration or sooner termination of the term of the Loan Agreement as provided therein.

Non-presentment of Bonds In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity, or at the Redemption Date thereof, or otherwise, and funds sufficient to pay any such Bond shall have been made available to the Trustee for the benefit of the Holder or Holders thereof, together with interest to the date on which principal is due, all liability of the Issuer to the Holder thereof for the payment of such Bond shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Trustee to pay such funds to the Person

entitled thereto or if the Person is not known to the Trustee, to hold such funds, without liability for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such funds, for any claim of whatever nature on his part under the Indenture or on, or with respect to, such Bond. Such amounts so held shall, pending payment to the Holder of such Bond, (y) be subject to any rebate requirement as set forth in the Tax Regulatory Agreement or the Indenture, and (z) shall be uninvested, or, if invested, invested or re-invested only in Government Obligations maturing within thirty (30) days. Funds remaining with the Trustee as above and unclaimed for the earlier of two (2) years or one month less than the applicable statutory escheat period shall be paid to the Institution. After the payment of such unclaimed moneys to the Institution, the Holder of such Bond shall thereafter look only to the Institution for the payment thereof, and all obligations of the Trustee or such Paying Agent with respect to such moneys shall thereupon cease.

Debt Service Reserve Fund. If on any Interest Payment Date or Redemption Date on a Series of Tax-Exempt Bonds the amount in the Interest Account of the Bond Fund (Tax-Exempt) shall be less than the amount of interest then due and payable on the applicable Series of Tax-Exempt Bonds, or if on any principal payment date on the applicable Series of Tax-Exempt Bonds the amount in the Principal Account shall be less than the amount of principal of the applicable Series of Tax-Exempt Bonds then due and payable, or if on any Sinking Fund Installment payment date for the applicable Series of Tax-Exempt Bonds the amount in the Sinking Fund Installment Account of the Bond Fund (Tax-Exempt) shall be less than the amount of the Sinking Fund Installment then due and payable on the applicable Series of Tax-Exempt Bonds, in each case, after giving effect to all payments received by the Trustee in immediately available funds by 10:00 a.m. (New York City time) on such date from or on behalf of the Institution or the Issuer on account of such interest, principal or Sinking Fund Installment (and after any transfers to the Bond Fund (Tax-Exempt) from the Earnings Fund), the Trustee forthwith shall transfer moneys from the Debt Service Reserve Fund (Tax-Exempt) first, to such Interest Account, second to such Principal Account, and third, to such Sinking Fund Installment Account of the Bond Fund (Tax-Exempt), all to the extent necessary to make good any such deficiency.

Upon the occurrence of an Event of Default under the Indenture and the exercise by the Trustee of remedies in the Loan Agreement and the Indenture, any moneys in the Debt Service Reserve Fund (Tax-Exempt) shall be transferred by the Trustee to the Bond Fund (Tax-Exempt) and applied in accordance with the provisions of the Indenture as described under the heading "Application of Revenues and Other Moneys After Default" below, notice of which shall be given by the Trustee to the Institution, the Issuer and the Bondholders. On the Loan Payment Date next preceding the final maturity date of the applicable Series of Tax-Exempt Bonds, any moneys in the Debt Service Reserve Fund (Tax-Exempt) shall be transferred to the Bond Fund (Tax-Exempt) and used to pay the principal and interest on the applicable Series of Tax-Exempt Bonds on the respective final maturity date.

The Trustee shall give to the Institution on or prior to each Loan Payment Date on which the Institution is obligated pursuant to the Loan Agreement to pay to the Trustee amounts in respect of any deficiency in the Debt Service Reserve Fund (Tax-Exempt), telephonic notice (to be promptly confirmed in writing) specifying any such deficiency in the Debt Service Reserve Fund (Tax-Exempt). The failure of the Trustee to deliver such notice or any defect in such notice shall not relieve the Issuer from any of its obligations under the Indenture or any other obligor from any of its obligations under any of the Security Documents.

In the event that the Institution shall deliver written notice to the Trustee of its intention to redeem a Series of Tax-Exempt Bonds in part, the Institution may direct the Trustee to apply such amounts in the Debt Service Reserve Fund (Tax-Exempt) to effect such redemption such that the amount remaining in the Debt Service Reserve Fund (Tax-Exempt) upon such redemption shall not be less than

the reduced Debt Service Reserve Fund Requirement (Tax-Exempt) as will be applicable to the remainder of the applicable Series of Tax-Exempt Bonds Outstanding.

Payment of Redeemed Bonds. Notice having been given in the manner provided in the Indenture, the Bonds or portions thereof so called for redemption shall become due and payable on the Redemption Dates so designated at the Redemption Price, plus interest accrued and unpaid to the Redemption Date. If, on the Redemption Date, moneys for the redemption of all the Bonds or portions thereof to be redeemed, together with interest to the Redemption Date, shall be held by the Paying Agents so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the Redemption Date, (i) interest on the Bonds or portions thereof so called for redemption shall cease to accrue and become payable, (ii) the Bonds or portions thereof so called for redemption shall cease to be entitled to any lien, benefit or security under the Indenture, and (iii) the Holders of the Bonds or portions thereof so called for redemption shall have no rights in respect thereof, except to receive payment of the Redemption Price together with interest accrued to the Redemption Date. If said moneys shall not be so available on the Redemption Date, such Bonds or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

Payment of the Redemption Price plus interest accrued to the Redemption Date shall be made to or upon the order of the registered owner only upon presentation of such Bonds for cancellation and exchange as provided in the Indenture; provided, however, that any Holder of at least $1,000,000 in original aggregate principal amount of the Initial Bonds may, by written request to the Trustee no later than five (5) days prior to the Redemption Date, direct that payments of Redemption Price and accrued interest to the Redemption Date be made by wire transfer as soon as practicable after tender of the Bonds in federal funds at such wire transfer address as the owner shall specify to the Trustee in such written request.

Payment of Principal and Interest. The Issuer covenants in the Indenture that it will from the sources therein contemplated promptly pay or cause to be paid the interest, principal, Redemption Price of, and Sinking Fund Installments for, the Bonds, together with interest accrued thereon, at the place, on the dates and in the manner provided in the Indenture and in the Bonds according to the true intent and meaning thereof.

Performance of Covenants; Authority. The Issuer covenants in the Indenture that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in the Indenture, in any and every Bond executed, authenticated and delivered thereunder and in all proceedings pertaining thereto. The Issuer covenants in the Indenture that it is duly authorized under the Constitution and laws of the State, including particularly its Organizational Documents, to issue the Bonds authorized by the Indenture and to execute the Indenture, to make the Loan to the Institution pursuant to the Loan Agreement and the Promissory Notes, to assign the Loan Agreement and the Promissory Notes, to execute and deliver the Assignment of Mortgage, and to pledge the loan payments, revenues and receipts pledged by the Indenture in the manner and to the extent set forth in the Indenture; that all action on its part for the issuance of the Bonds and the execution and delivery of the Indenture has been duly and effectively taken; and that the Bonds in the hands of the Holders thereof are and will be the valid and enforceable special limited revenue obligations of the Issuer according to the import thereof.

Loan Agreement. An executed copy of the Loan Agreement will be on file in the office of the Issuer and in the designated corporate trust office of the Trustee. Reference is made to the Loan Agreement for a detailed statement of the terms and conditions thereof and for a statement of the rights and obligations of the parties thereunder. All covenants and obligations of the Institution under the Loan Agreement shall be enforceable either by the Issuer or by the Trustee, to whom, in its own name or in the name of the Issuer, is granted by the Indenture the right, to the extent provided therefor in the Indenture as

described in this paragraph and subject to the provisions of the Indenture as described under the heading "Indemnity of Trustee" below, to enforce all rights of the Issuer and all obligations of the Institution under the Loan Agreement, whether or not the Issuer is enforcing such rights and obligations. The Trustee shall take such action in respect of any matter as is provided to be taken by it in the Loan Agreement upon compliance or noncompliance by the Institution and the Issuer with the provisions of the Loan Agreement relating to the same.

Creation of Liens; Indebtedness. It is the intention of the Issuer and the Trustee that the Mortgage is and will continue to be a mortgage lien upon the Mortgaged Property (subject only to Permitted Encumbrances). The Issuer covenants in the Indenture that it will not create or suffer to be created, or incur or issue any evidences of indebtedness secured by, any lien or charge upon or pledge of the Trust Estate, except the lien, charge and pledge created by the Indenture and the other Security Documents.

Issuer Tax Covenant. The Issuer covenants in the Indenture that it shall not take any action within its control, nor refrain from taking any action reasonably requested by the Institution or the Trustee, that would cause the interest on the Tax-Exempt Bonds to become includable in gross income for federal income tax purposes; provided, however, the breach of such covenant shall not result in any pecuniary liability of the Issuer and the only remedy to which the Issuer shall be subject shall be specific performance.

Events of Default; Acceleration of Due Date. Each of the following events is defined as and shall constitute an "Event of Default" under the Indenture:

(a) Failure in the payment of the interest on any Bond when the same shall become due and payable;

(b) Failure in the payment of the principal, redemption premium, if any, of, or Sinking Fund Installment for, any Bonds, when the same shall become due and payable, whether at the stated maturity thereof or upon proceedings for redemption thereof or otherwise, or interest accrued thereon to the Redemption Date after notice of redemption therefor or otherwise;

(c) Failure of the Issuer to observe or perform any covenant, condition or agreement in the Bonds or under the Indenture on its part to be performed (except as set forth in subparagraph (a) or (b) above) and (i) continuance of such failure for more than thirty (30) days after written notice of such failure has been given to the Issuer and the Institution specifying the nature of same from the Trustee or the Holders of more than twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding, or (ii) if by reason of the nature of such failure the same can be remedied, but not within the said thirty (30) days, the Issuer or the Institution fails to commence and thereafter proceed with reasonable diligence after receipt of said notice to cure such failure or fails to continue with reasonable diligence its efforts to cure such failure or fails to cure such failure within sixty (60) days of delivery of said notice; or

(d) The occurrence of an "Event of Default" under the Loan Agreement or any other Security Document.

Upon the happening and continuance of any Event of Default, unless the principal of all the Bonds shall have already become due and payable, either the Trustee (by notice in writing to the Issuer and the Institution) or the Holders of over twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding (by notice in writing to the Issuer, the Institution and the Trustee) may declare the principal or Redemption Price, if any, of all the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon such declaration the same shall become and be immediately

due and payable, anything in the Indenture or in any of the Bonds contained to the contrary notwithstanding.

If there shall occur an Event of Default under the Loan Agreement relating to insolvency, reorganization or bankruptcy of the Institution, the unpaid principal of all the Bonds (and all principal installments of loan payments under the Loan Agreement) and the interest accrued thereon shall be due and payable immediately without the necessity of any declaration or other action by the Trustee or any other Person.

The right of the Trustee or of the Holders of over twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding to make any such declaration as aforesaid, however, is subject to the condition that if, at any time before such declaration, all overdue installments of principal of and interest on all of the Bonds which shall have matured by their terms and the unpaid Redemption Price of the Bonds or principal portions thereof to be redeemed has been paid by or for the account of the Issuer, and all other Events of Default have been otherwise remedied, and the reasonable and proper charges, expenses and liabilities of the Trustee, shall either be paid by or for the account of the Issuer or provision satisfactory to the Trustee shall be made for such payment and each Facility shall not have been sold or otherwise encumbered, and all defaults have been otherwise remedied as provided in the Indenture, then and in every such case any such default and its consequences shall ipso facto be deemed to be annulled, but no such annulment shall extend to or affect any subsequent default or impair or exhaust any right or power consequent thereon.

Pursuant to the Loan Agreement, the Issuer has granted to the Institution full authority for the account of the Issuer to perform any covenant or obligation the non-performance of which is alleged in any notice received by the Institution to constitute a default under the Indenture, in the name and stead of the Issuer with full power to do any and all things and acts to the same extent that the Issuer could do and perform any such things and acts with power of substitution. The Trustee agrees to accept such performance by the Institution as performance by the Issuer.

Enforcement of Remedies. Upon the occurrence and continuance of any Event of Default, then and in every case the Trustee may proceed, and upon the written request of the Holders of over twenty-five percent (25%) in aggregate principal amount of the Bonds Outstanding shall proceed, to protect and enforce its rights and the rights of the Bondholders under the Bonds, the Loan Agreement, the Indenture and under any other Security Document forthwith by such suits, actions or special proceedings in equity or at law, or by proceedings in the office of any board or officer having jurisdiction, whether for the specific performance of any covenant or agreement contained in the Indenture or in any other Security Document or in aid of the execution of any power granted in the Indenture or in any other Security Document or for the enforcement of any legal or equitable rights or remedies as the Trustee, being advised by counsel, shall deem most effectual to protect and enforce such rights or to perform any of its duties under the Indenture or under any other Security Document. In addition to any rights or remedies available to the Trustee under the Indenture or elsewhere, upon the occurrence and continuance of an Event of Default the Trustee may take such action, without notice or demand, as it deems advisable.

In the enforcement of any right or remedy under the Indenture or under any other Security Document, the Trustee shall be entitled to sue for, enforce payment on and receive any or all amounts then or during any default becoming, and any time remaining, due from the Issuer, for principal, interest, Sinking Fund Installments, Redemption Price, or otherwise, under any of the provisions of the Indenture, of any other Security Document or of the Bonds, and unpaid, with interest on overdue payments at the rate or rates of interest specified in the Bonds, together with any and all costs and expenses of collection and of all proceedings under the Indenture, under any such other Security Document and under the Bonds, without prejudice to any other right or remedy of the Trustee or of the Bondholders, and to recover and

enforce judgment or decree against the Issuer, but solely as provided in the Indenture and in the Bonds, for any portion of such amounts remaining unpaid, with interest, costs and expenses, and to collect (but solely from the moneys in the applicable Bond Fund and other moneys available therefor to the extent provided in the Indenture) in any manner provided by law, the moneys adjudged or decreed to be payable. The Trustee shall file proof of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Bondholders allowed in any judicial proceedings relative to the Institution or the Issuer or their creditors or property.

Regardless of the occurrence of an Event of Default, the Trustee, if requested in writing by the Holders of over twenty-five percent (25%) in aggregate principal amount of the Bonds then Outstanding, and furnished with reasonable security and indemnity, shall institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient to prevent any impairment of the security under the Indenture or under any other Security Document by any acts which may be unlawful or in violation of the Indenture or of such other Security Document or of any resolution authorizing any Bonds, and such suits and proceedings as the Trustee may be advised shall be necessary or expedient to preserve or protect its interests and the interests of the Bondholders; provided, that such request shall not be otherwise than in accordance with the provisions of law and of the Indenture and shall not be unduly prejudicial to the interests of the Holders of the Bonds not making such request.

Application of Revenues and Other Moneys After Default. All moneys received by the Trustee pursuant to any right given or action taken under the provisions of the Indenture or under any other Security Document, and all moneys held in all Funds and Accounts (other than the Rebate Fund), shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses, liabilities and advances (including legal fees and expenses) incurred or made by the Trustee, and after making any required deposits to the Rebate Fund in accordance with the Tax Regulatory Agreement, be deposited on a pro rata basis in the Bond Fund (Tax-Exempt) and the Bond Fund (Taxable); provided however, that (i) the amounts on deposit in the Bond Fund (Tax-Exempt) shall remain in such Fund and (ii) the amounts on deposit in the Bond Fund (Taxable) shall remain in such Fund. Any and all moneys so deposited and available for payment of the Bonds shall be applied, subject to the provisions of the Indenture pertaining to the compensation of the Trustee, Bond Registrar and Paying Agents, as follows (provided, however, that the amounts on deposit in the Bond Fund (Tax-Exempt) shall only be applied to the payment of Tax-Exempt Bonds and the amounts on deposit in the Bond Fund (Taxable) shall only be applied to the payment of Taxable Bonds):

(a) Unless the principal of all of the Bonds shall have become or have been declared due and payable,

First - To the payment to the Persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege; and

Second - To the payment to the Persons entitled thereto of the unpaid principal, Redemption Price, if any, of any of the Bonds or principal installments which shall have become due (other than Bonds or principal installments called for redemption for the payment of which moneys are held pursuant to the provisions of the Indenture), in the order of their due dates, with interest on such Bonds, at the rate or rates expressed thereon, from the respective dates upon which they become due and, if the amount available shall not be sufficient to pay in full Bonds or principal installments due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal due on such date, to the Persons entitled thereto without any discrimination or privilege.

(b) If the principal of all the Bonds shall have become or have been declared due and payable, to the payment to the Bondholders of the principal and interest (at the rate or rates expressed in the Bonds) then due and unpaid upon the Bonds and if applicable to the Redemption Price of the Bonds without preference or priority of principal over interest or of interest over principal, Sinking Fund Installments, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto without any discrimination or preference.

(c) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of the Indenture, then, subject to the provisions of the Indenture as described in subparagraph (b) above which shall be applicable in the event that the principal of all the Bonds shall later become due and payable, the moneys shall be applied in accordance with the provisions of the Indenture as described in subparagraph (a) above.

Whenever moneys are to be applied pursuant to the provisions of the Indenture as described under this heading, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue; provided, however, that if the principal or Redemption Price of the Bonds Outstanding, together with accrued interest thereon, shall have been declared to be due and payable pursuant to the Indenture as described under the heading "Events of Default; Acceleration of Due Date" above, such date of declaration shall be the date from which interest shall cease to accrue. The Trustee shall give such written notice to all Bondholders as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Actions by Trustee. All rights of actions under the Indenture, under any other Security Document or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Holders of the Bonds, and any recovery of judgment shall, subject to the provisions of the Indenture as described under the heading "Application of Revenues and Other Moneys After Default" above, be for the equal benefit of the Holders of the Outstanding Bonds.

Majority Holders Control Proceedings. Anything in the Indenture to the contrary notwithstanding, the Majority Holders shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of the Indenture, or for the appointment of a receiver or any other proceedings under the Indenture; provided, that such direction shall not be otherwise than in accordance with the provisions of law and of the Indenture.

Individual Bondholder Action Restricted. No Holder of any Bond shall have any right to institute any suit, action or proceeding at law or in equity (i) with respect to the Bonds, the Indenture or any other Security Document, (ii) for the enforcement of any provisions of the Bonds, the Indenture or any other Security Document, (iii) for the execution of any trust under the Indenture or (iv) for any remedy under the Bonds, the Indenture or any other Security Document, unless such Holder shall have previously given to the Trustee written notice of the occurrence of an Event of Default as provided in the Indenture, and the

Holders of over twenty-five percent (25%) in aggregate principal amount of the Bonds then Outstanding shall have filed a written request with the Trustee, and shall have offered it reasonable opportunity either to exercise the powers granted in the Bonds, the Indenture or in such other Security Document or by the laws of the State or to institute such action, suit or proceeding in its own name, and unless such Holders shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused to comply with such request for a period of sixty (60) days after receipt by it of such notice, request and offer of indemnity, it being understood and intended that no one or more Holders of Bonds shall have any right in any manner whatever by his, its or their action to affect, disturb or prejudice the pledge created by the Indenture, or to enforce any right under the Indenture except in the manner herein provided; and that all proceedings at law or in equity to enforce any provision of the Bonds or the Indenture shall be instituted, had and maintained in the manner provided in the Indenture and, subject to the provisions of the Indenture as described under the heading "Application of Revenues and Other Moneys After Default," be for the equal benefit of all Holders of the Outstanding Bonds.

Nothing in the Indenture, in any other Security Document or in the Bonds contained shall affect or impair the right of any Bondholder to payment of the principal or Redemption Price, if applicable, of, Sinking Fund Installments for, and interest on any Bond at and after the maturity thereof, or the obligation of the Issuer to pay the principal or Redemption Price, if applicable, of, Sinking Fund Installments for, and interest on each of the Bonds to the respective Holders thereof at the time, place, from the source and in the manner herein and in said Bonds expressed.

Effect of Discontinuance of Proceedings. In case any proceedings taken by the Trustee on account of any Event of Default shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case, the Institution, the Issuer, the Trustee and the Bondholders shall be restored, respectively, to their former positions and rights under the Indenture, and all rights, remedies, powers and duties of the Trustee shall continue as in effect prior to the commencement of such proceedings.

Remedies Not Exclusive. No remedy by the terms of the Indenture conferred upon or reserved to the Trustee or to the Holders of the Bonds is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to any other remedy given under the Indenture or now or hereafter existing at law or in equity or by statute.

Delay or Omission. No delay or omission of the Trustee or of any Holder of the Bonds to exercise any right or power arising upon any default shall impair any right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by the Indenture to the Trustee and the Holders of the Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient by the Trustee or by the Bondholders.

Notice of Default. The Trustee shall promptly mail to the Issuer, to registered Holders of Bonds, to the Program Facilitator and to the Institution by first class mail, postage prepaid, written notice of the occurrence of any Event of Default. The Trustee shall not, however, be subject to any liability to any Bondholder by reason of its failure to mail any notice required by the Indenture as described in this paragraph.

Waivers of Default. The Trustee shall waive any default under the Indenture and its consequences and rescind any declaration of acceleration only upon the written request of the Majority Holders; provided, however, that there shall not be waived without the consent of the Holders of all the Bonds Outstanding (a) any default in the payment of the principal of any Outstanding Bonds at the date specified therein or (b) any default in the payment when due of the interest on any such Bonds, unless,

prior to such waiver, all arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds on overdue installments of interest in respect of which such default shall have occurred, and all arrears of payment of principal when due, as the case may be, and all expenses of the Trustee in connection with such default shall have been paid or provided for, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely to the Trustee, then and in every such case the Institution, the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights under the Indenture, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon.

Indemnity of Trustee. The Trustee shall be under no obligation to institute any suit, or to take any remedial or legal action under the Indenture or under or pursuant to any other Security Document or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in the execution of the trusts created by the Indenture or in the enforcement of any rights and powers or fulfillment of any extraordinary duties under the Indenture, or under any other Security Document, until it shall be indemnified to its satisfaction against any and all reasonable compensation for services, costs and expenses, outlays, and counsel fees and other disbursements, and against all liability not due to its willful misconduct or gross negligence.

Compensation of Trustee, Bond Registrar and Paying Agents. The Trustee, the Bond Registrar and Paying Agents shall be entitled to receive and collect from the Institution as provided in the Loan Agreement payment or reimbursement for reasonable fees for services rendered under the Indenture and under each other Security Document and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee, the Bond Registrar or Paying Agents in connection therewith. Upon an Event of Default, but only upon an Event of Default, the Trustee shall have a first right of payment prior to payment on account of the principal of or interest on any Bonds, upon the revenues (but not including any amounts held by the Trustee under the Indenture provisions regarding Bonds not presented for payment, payment of redeemed Bonds or defeasance of Bonds) for the foregoing advances, fees, costs and expenses incurred.

Resignation or Removal of Trustee. The Trustee may resign and thereby become discharged from the trusts created under the Indenture for any reason by giving written notice by first class mail, postage prepaid, to the Issuer, to the Program Facilitator, to the Institution and to the Holders of all Bonds not less than sixty (60) days before such resignation is to take effect, but such resignation shall not take effect until the appointment and acceptance thereof of a successor Trustee pursuant to the Indenture as described under the heading "Successor Trustee" below.

The Trustee may be removed at any time by an instrument or concurrent instruments in writing filed with the Trustee and signed by the Issuer or the Majority Holders or their attorneys-in-fact duly authorized. Such removal shall become effective either upon the appointment and acceptance of such appointment by a successor Trustee or at the date specified in the instrument of removal. The Trustee shall promptly give notice of such filing to the Issuer, the Program Facilitator and the Institution. No removal shall take effect until the appointment and acceptance thereof of a successor Trustee pursuant to the Indenture as described under the heading "Successor Trustee" below.

If the Trustee shall resign or shall be removed, such Trustee must transfer and assign to the successor Trustee, not later than the date of the acceptance by the successor Trustee of its appointment as such, or thirty (30) days from the date specified in the instrument of removal or resignation, if any, whichever shall last occur, (i) all amounts (including all investments thereof) held in any Fund or Account under the Indenture, together with a full accounting thereof, (ii) all records, files, correspondence, registration books, Bond inventory, all information relating to the Indenture and to Bond payment status

(i.e., outstanding principal balances, principal payment and interest payment schedules, Sinking Fund Installment schedules, pending notices of redemption, payments made and to whom, delinquent payments, default or delinquency notices, deficiencies in any Fund or Account balance, etc.) and all such other information (in whatever form) relating to all Funds and Accounts in the possession of the Trustee being removed or resigning, and (iii) all Security Documents and other documents or agreements, including, without limitation, all Uniform Commercial Code Financing Statements, all insurance policies or certificates, letters of credit or other instruments provided to the Trustee being removed or resigning (clauses (i), (ii) and (iii), together with the Trust Estate, being collectively referred to as the "Trust Corpus").

Successor Trustee. If at any time the Trustee shall be dissolved or otherwise become incapable of acting or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator thereof, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee or of its property or affairs, the position of Trustee shall thereupon become vacant. If the position of Trustee shall become vacant for any of the foregoing reasons or for any other reason or if the Trustee shall resign, the Institution shall cooperate with the Issuer and the Issuer shall appoint a successor Trustee and shall use its best efforts to obtain acceptance of such trust by the successor Trustee within sixty (60) days from such vacancy or notice of resignation. Within twenty (20) days after such appointment and acceptance, the Issuer shall notify in writing the Institution and the Holders of all Bonds.

In the event of any such vacancy or resignation and if a successor Trustee shall not have been appointed within sixty (60) days of such vacancy or notice of resignation, the Majority Holders, by an instrument or concurrent instruments in writing, signed by such Bondholders or their attorneys-in-fact thereunto duly authorized and filed with the Issuer, may appoint a successor Trustee which shall, immediately upon its acceptance of such trusts, and without further act, supersede the predecessor Trustee. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of the Indenture as described under this heading, within ninety (90) days of such vacancy or notice of resignation, the Holder of any Bond then Outstanding, the Issuer, any retiring Trustee or the Institution may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Trustee.

Any predecessor Trustee shall transfer to any successor Trustee appointed under the Indenture as described under this heading as a result of a vacancy in the position the Trust Corpus by a date not later than thirty (30) days from the date of the acceptance by the successor Trustee of its appointment as such. Where no vacancy in the position of the Trustee has occurred, the transfer of the Trust Corpus shall take effect in accordance with the provisions of the Indenture as described under the heading "Resignation or Removal of Trustee" above.

Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be a national banking association or a bank or trust company duly organized under the laws of any state of the United States and shall be authorized by law and its charter to perform all the duties imposed upon it by the Indenture and each other Security Document shall be the successor to such Trustee without the execution or filing of any paper or the performance of any further act.

Defeasance. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all Bonds the principal or Redemption Price, if applicable, of, Sinking Fund Installments for, interest and all other amounts due or to become due thereon or in respect thereof, at the times and in the manner stipulated therein and in the Indenture, and all fees and expenses and other amounts due and

payable under the Indenture and the Loan Agreement, and any other amounts required to be rebated to the federal government pursuant to the Tax Regulatory Agreement or the Indenture, shall be paid in full, then the pledge of any loan payments, revenues or receipts from or in connection with the Security Documents or the Facilities under the Indenture and the estate and rights thereby granted, and all covenants, agreements and other obligations of the Issuer to the Bondholders under the Indenture shall thereupon cease, terminate and become void and be discharged and satisfied and the Bonds shall thereupon cease to be entitled to any lien, benefit or security under the Indenture, except as to moneys or securities held by the Trustee or the Paying Agents as provided in the Indenture as described below under this heading. At the time of such cessation, termination, discharge and satisfaction, (a) the Trustee shall cancel and discharge the lien of the Indenture and of the Mortgage and execute and deliver to the Institution all such instruments as may be appropriate to satisfy such liens and to evidence such discharge and satisfaction, and (b) the Trustee and the Paying Agents shall pay over or deliver to the Institution or on its order all moneys or securities held by them pursuant to the Indenture which are not required (i) for the payment of the principal or Redemption Price, if applicable, Sinking Fund Installments for, or interest on Bonds not theretofore surrendered for such payment or redemption, (ii) for the payment of all such other amounts due or to become due under the Security Documents, or (iii) for the payment of any amounts the Trustee has been directed to pay to the federal government under the Tax Regulatory Agreement or the Indenture.

Bonds or interest installments for the payment or redemption of which moneys (or Defeasance Obligations which shall not be subject to call or redemption or prepayment prior to maturity and the full and timely payment of the principal of and interest on which when due, together with the moneys, if any, set aside at the same time, will provide funds sufficient for such payment or redemption) shall then be set aside and held in trust by the Trustee or Paying Agents, whether at or prior to the maturity or the Redemption Date of such Bonds, shall be deemed to have been paid within the meaning and with the effect expressed in the Indenture as described in the first paragraph under this heading, if (a) in case any such Bonds are to be redeemed prior to the maturity thereof, all action necessary to redeem such Bonds shall have been taken and notice of such redemption shall have been duly given or provision satisfactory under the requirements of the Indenture to the Trustee shall have been made for the giving of such notice, and (b) if the maturity or Redemption Date of any such Bond shall not then have arrived, (i) provision shall have been made by deposit with the Trustee or other methods satisfactory to the Trustee for the payment to the Holders of any such Bonds of the full amount to which they would be entitled by way of principal or Redemption Price, Sinking Fund Installments, and interest and all other amounts then due under the Security Documents to the date of such maturity or redemption, and (ii) provision satisfactory to the Trustee shall have been made for the mailing of a notice to the Holders of such Bonds that such moneys are so available for such payment on such maturity or Redemption Date.

Defeasance Opinion and Verification. Prior to any defeasance becoming effective as provided in the Indenture as described in the paragraph above, there shall have been delivered to the Issuer and to the Trustee (a) an opinion of Nationally Recognized Bond Counsel to the effect that interest on any Tax-Exempt Bonds being discharged by such defeasance will not become subject to federal income taxation by reason of such defeasance, and (b) a verification from an independent certified public accountant or firm of independent certified public accountants (in each case reasonably satisfactory to the Issuer and the Trustee) to the effect that the moneys and/or Defeasance Obligations are sufficient, without reinvestment, to pay the principal of, Sinking Fund Installments for, interest on, and redemption premium, if any, of the Bonds to be defeased.

Supplemental Indentures Without Bondholders' Consent. The Issuer and the Trustee may, from time to time and at any time, enter into Supplemental Indentures without the consent of the Bondholders for any of the following purposes:

(a) To cure any formal defect, omission or ambiguity in the Indenture or in any description of property subject to the lien thereof, if such action is not materially adverse to the interests of the Bondholders. The Issuer and the Trustee may request an Opinion of Counsel with respect to any of the foregoing matters.

(b) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may lawfully be granted or conferred and which are not contrary to or inconsistent with the Indenture as theretofore in effect.

(c) To add to the covenants and agreements of the Issuer in the Indenture other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with the Indenture as theretofore in effect.

(d) To add to the limitations and restrictions in the Indenture other limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with the Indenture as theretofore in effect.

(e) To confirm, as further assurance, any pledge under, and the subjection to any lien or pledge created or to be created by, the Indenture, of the properties of the Facilities, or revenues or other income from or in connection with the Facilities or of any other moneys, securities or funds, or to subject to the lien or pledge of the Indenture additional revenues, properties or collateral.

(f) To modify or amend such provisions of the Indenture as shall, in the opinion of Nationally Recognized Bond Counsel, be necessary to assure that the interest on the Tax-Exempt Bonds not be includable in gross income for federal income tax purposes.

(g) To effect any other change herein which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or the Bondholders.

(h) To modify, amend or supplement the Indenture or any Supplemental Indenture in such manner as to permit the qualification thereof under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or to permit the qualification of the Bonds for sale under the securities laws of the United States of America or of any of the states of the United States of America, and, if they so determine, to add to the Indenture or any Supplemental Indenture such other terms, conditions and provisions as may be permitted by said Trust Indenture Act of 1939 or similar federal statute.

Before the Issuer and the Trustee shall enter into any Supplemental Indenture pursuant to the Indenture as described under this heading, there shall have been filed with the Trustee an opinion of Nationally Recognized Bond Counsel stating that such Supplemental Indenture is authorized or permitted by the Indenture and complies with its terms, and that upon execution it will be valid and binding upon the Issuer in accordance with its terms.

Supplemental Indentures With Bondholders' Consent. Subject to the terms and provisions contained in the Indenture, the Majority Holders shall have the right from time to time, to consent to and approve the entering into by the Issuer and the Trustee of any Supplemental Indenture as shall be deemed necessary or desirable by the Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained herein. Nothing herein contained shall permit, or be construed as permitting, (i) a change in the times, amounts or currency of payment of the principal of, Sinking Fund Installments for, redemption premium, if any, or interest on any Outstanding Bonds, a change in the terms of redemption, maturity of the principal of or the interest on any Outstanding Bonds, or a reduction in the principal amount of or the Redemption Price of any

Outstanding Bond or the rate of interest thereon, or any extension of the time of payment thereof, without the consent of the Holder of such Bond, (ii) the creation of a lien upon or pledge of the Trust Estate other than the liens or pledge created by the Indenture and the other Security Documents, except as provided in the Indenture with respect to Additional Bonds, (iii) a preference or priority of any Bond or Bonds over any other Bond or Bonds, (iv) a reduction in the aggregate principal amount of Bonds required for consent to such Supplemental Indenture, or (v) a modification, amendment or deletion with respect to any of the terms set forth in the Indenture as described in this paragraph, without, in the case of items (ii) through and including (v) of this paragraph, the written consent of one hundred percent (100%) of the Holders of the Outstanding Bonds.

If at any time the Issuer shall determine to enter into any Supplemental Indenture for any of the purposes of the Indenture as described under this heading, it shall cause notice of the proposed Supplemental Indenture to be mailed, postage prepaid, to all Bondholders. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture, and shall state that a copy thereof is on file at the offices of the Trustee for inspection by all Bondholders.

Within one year after the date of such notice, the Issuer and the Trustee may enter into such Supplemental Indenture in substantially the form described in such notice only if there shall have first been filed with the Trustee (i) the written consents of the Majority Holders or the Holders of not less than 100%, as the case may be, in aggregate principal amount of the Bonds then Outstanding and (ii) an opinion of Nationally Recognized Bond Counsel stating that such Supplemental Indenture (a) is authorized or permitted by the Indenture and complies with its terms, and that upon execution it will be valid and binding upon the Issuer in accordance with its terms and (b) will not cause the interest on any Tax-Exempt Bonds to become includable in gross income for federal income tax purposes. Each valid consent shall be effective only if accompanied by proof of the holding, at the date of such consent, of the Bonds with respect to which such consent is given. A certificate or certificates by the Trustee that it has examined such proof and that such proof is sufficient in accordance with the Indenture shall be conclusive that the consents have been given by the Holders of the Bonds described in such certificate or certificates. Any such consent shall be binding upon the Holder of the Bonds giving such consent and upon any subsequent Holder of such Bonds and of any Bonds issued in exchange therefor (whether or not such subsequent Holder thereof has notice thereof), unless such consent is revoked in writing by the Holder of such Bonds giving such consent or a subsequent Holder thereof by filing such revocation with the Trustee prior to the execution of such Supplemental Indenture.

If the Holders of not less than the percentage of Bonds required in the Indenture as described under this heading shall have consented to and approved the execution thereof as provided in the Indenture, no Holder of any Bond shall have any right to object to the execution of such Supplemental Indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Issuer from executing the same or from taking any action pursuant to the provisions thereof.

Upon the execution of any Supplemental Indenture pursuant to the Indenture as described under this heading, the Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under the Indenture of the Issuer, the Trustee and all Holders of Bonds then Outstanding shall thereafter be determined, exercised and enforced under the Indenture, subject in all respects to such modifications and amendments.

Rights of Institution. Anything in the Indenture to the contrary notwithstanding, any Supplemental Indenture entered into pursuant to the Indenture which materially and adversely affects any rights, powers and authority of the Institution under the Loan Agreement or requires a revision of the

Loan Agreement shall not become effective unless and until the Institution shall have given its written consent to such Supplemental Indenture signed by an Authorized Representative of the Institution.

Amendments of Related Security Documents Not Requiring Consent of Bondholders. The Issuer and the Trustee may, without the consent of or notice to the Bondholders, consent (if required) to any amendment, change or modification of any of the Related Security Documents for any of the following purposes: (i) to cure any ambiguity, inconsistency, formal defect or omission therein; (ii) to grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, remedies, powers, authority or security which may be lawfully granted or conferred; (iii) to subject thereto additional revenues, properties or collateral; (iv) to evidence the succession of a successor Trustee or to evidence the appointment of a separate or co-Trustee or the succession of a successor separate or co-Trustee; (v) to make any change required in connection with a permitted amendment to a Related Security Document or a permitted Supplemental Indenture; (vi) to provide for changes to the recapture of benefits provisions in the Loan Agreement; and (vii) to make any other change that, in the judgment of the Trustee (which, in exercising such judgment, may conclusively rely, and shall be protected in relying, in good faith, upon an Opinion of Counsel or an opinion or report of engineers, accountants or other experts) does not materially adversely affect the Bondholders. The Trustee shall have no liability to any Bondholder or any other Person for any action taken by it in good faith pursuant to the Indenture as described under this heading. Before the Issuer or the Trustee shall enter into or consent to any amendment, change or modification to any of the Related Security Documents, there shall be filed with the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such amendment, change or modification will not cause the interest on any of the Tax-Exempt Bonds to cease to be excluded from gross income for federal income tax purposes under the Code.

Amendments of Related Security Documents Requiring Consent of Bondholders. Except as provided in the Indenture as described in the paragraph above, the Issuer and the Trustee shall not consent to any amendment, change or modification of any of the Related Security Documents, without mailing of notice and the written approval or consent of the Majority Holders given and procured as set forth in the Indenture as described under the heading "Supplemental Indentures With Bondholders' Consent" above; provided, however, there shall be no amendment, change or modification to (i) the obligation of the Institution to make loan payments with respect to the Bonds under the Loan Agreement or the Promissory Notes or (ii) the Tax Regulatory Agreement, without the delivery of an opinion of Nationally Recognized Bond Counsel to the effect that such amendment, change, modification, reduction or postponement will not cause the interest on any Tax-Exempt Bonds to become includable in gross income for federal income tax purposes. If at any time the Institution shall request the consent of the Trustee to any such proposed amendment, change or modification, the Trustee shall cause notice of such proposed amendment, change or modification to be mailed in the same manner as is provided in the Indenture with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the principal office of the Trustee for inspection by all Bondholders. The Trustee may, but shall not be obligated to, enter into any such amendment, change or modification to a Related Security Document which affects the Trustee's own rights, duties or immunities under such Related Security Document or otherwise. Before the Trustee shall enter into or consent to any amendment, change or modification to any of the Related Security Documents, there shall be filed with the Trustee an opinion of Nationally Recognized Bond Counsel to the effect that such amendment, change or modification will not cause the interest on any of the Tax-Exempt Bonds to cease to be excluded from gross income for federal income tax purposes under the Code.

Parties Interested in Indenture. Nothing in the Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any Person, other than the Issuer, the Institution, the Trustee, the Bond Registrar, the Paying Agents, the Holders of the Bonds and the Underwriter, to the extent

applicable, any right, remedy or claim under or by reason of the Indenture or any covenant, condition or stipulation thereof. All covenants, stipulations, promises and agreements in the Indenture contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Institution, the Trustee, the Bond Registrar, the Paying Agents, the Holders of the Bonds and the Underwriter, to the extent applicable.

No Pecuniary Liability of Issuer or Members; No Debt of the State or the City. Every agreement, covenant and obligation of the Issuer under the Indenture is predicated upon the condition that any obligation for the payment of money incurred by the Issuer shall not create a debt of the State or the City and neither the State nor the City shall be liable on any obligation so incurred, and the Bonds shall not be payable out of any funds of the Issuer other than those pledged therefor but shall be a limited revenue obligation of the Issuer payable by the Issuer solely from the loan payments, revenues and receipts pledged to the payment thereof in the manner and to the extent in the Indenture specified and nothing in the Bonds, in the Loan Agreement, in the Indenture or in any other Security Document shall be considered as pledging any other funds or assets of the Issuer. The Issuer shall not be required under the Indenture or the Loan Agreement or any other Security Document to expend any of its funds other than (i) the proceeds of the Bonds, (ii) the loan payments, revenues and receipts and other moneys pledged to the payment of the Bonds, (iii) any income or gains therefrom, and (iv) the Net Proceeds with respect to the Facilities. No provision, covenant or agreement contained in the Indenture or in the Bonds or any obligations herein or therein imposed upon the Issuer or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge upon its general credit.

All covenants, stipulations, promises, agreements and obligations of the Issuer contained in the Indenture shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Issuer and not of any member, director, officer, employee or agent of the Issuer in his individual capacity, and no recourse shall be had for the payment of the principal or Redemption Price, if any, of, Sinking Fund Installments for, or interest on the Bonds or for any claim based thereon or under the Indenture against any member, director, officer, employee or agent of the Issuer or any natural person executing the Bonds. None of the Bonds, the interest thereon, the Sinking Fund Installments therefor, or the Redemption Price thereof shall ever constitute a debt of the State or of the City and neither the State nor the City shall be liable on any obligation so incurred, and the Bonds shall not be payable out of any funds of the Issuer other than those pledged therefor.

# APPENDIX G

# FORM OF CONTINUING DISCLOSURE AGREEMENT

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**AGREEMENT TO PROVIDE CONTINUING DISCLOSURE**

**BUILD NYC RESOURCE CORPORATION**
**REVENUE BONDS (YOUNG ADULT INSTITUTE, INC. PROJECT)**
**$5,490,000 SERIES 2020A**
**$1,025,000 SERIES 2020B (TAXABLE)**

This **AGREEMENT TO PROVIDE CONTINUING DISCLOSURE** (the "Disclosure Agreement"), dated as of December 17, 2020 is executed and delivered by Young Adult Institute, Inc. (the "Obligated Person"), The Bank of New York Mellon, as Trustee (the "Trustee"), and Digital Assurance Certification, L.L.C. ("DAC"), as exclusive Disclosure Dissemination Agent (the "Disclosure Dissemination Agent") for the benefit of the Holders (hereinafter defined) of the Bonds (hereinafter defined) issued by Build NYC Resource Corporation (the "Issuer") and in order to provide certain continuing disclosure with respect to the Bonds in accordance with Rule 15c2-12 of the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time (the "Rule").

The services provided under this Disclosure Agreement solely relate to the execution of instructions received from the parties hereto through use of the DAC system and are not intended to constitute "advice" within the meaning of the United States Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act"). DAC is not obligated hereunder to provide any advice or recommendation to the Obligated Person or anyone on the Obligated Person's behalf regarding the "issuance of municipal securities" or any "municipal financial product" as defined in the Act and nothing in this Disclosure Agreement shall be interpreted to the contrary.

SECTION 1. Definitions. Capitalized terms not otherwise defined in this Disclosure Agreement shall have the meaning assigned in the Rule or, to the extent not in conflict with the Rule, in the Indenture (hereinafter defined). The capitalized terms shall have the following meanings:

"Annual Filing Date" means the date, set in Sections 2(a) and 2(f) of this Disclosure Agreement, by which the Annual Report is to be filed with the MSRB.

"Annual Financial Information" means annual financial information as such term is used in paragraph (b)(5)(i) of the Rule and specified in Section 3(a) of this Disclosure Agreement.

"Annual Report" means an Annual Report described in and consistent with Section 3 of this Disclosure Agreement.

"Audited Financial Statements" means the financial statements (if any) of the Obligated Person for the prior fiscal year, certified by an independent auditor as prepared in accordance with generally accepted accounting principles or otherwise, as such term is used in paragraph (b)(5)(i) of the Rule and specified in Section 3(b) of this Disclosure Agreement.

"Bonds" means the bonds as listed on the attached Exhibit A, with the 9-digit CUSIP numbers relating thereto.

"Certification" means a written certification of compliance signed by the Disclosure Representative stating that the Annual Report, Audited Financial Statements, Voluntary Financial Disclosure, Notice Event notice, Failure to File Event notice or Voluntary Event Disclosure delivered to the Disclosure Dissemination Agent is the Annual Report, Audited Financial Statements, Voluntary Financial Disclosure, Notice Event notice, Failure to File Event notice or Voluntary Event Disclosure required to be or voluntarily submitted to the MSRB under this Disclosure Agreement. A Certification shall accompany each such document submitted to the Disclosure Dissemination Agent by the Obligated Person and include the full name of the Bonds and the 9-digit CUSIP numbers for all Bonds to which the document applies.

"Disclosure Dissemination Agent" means Digital Assurance Certification, L.L.C., acting in its capacity as Disclosure Dissemination Agent hereunder, or any successor Disclosure Dissemination Agent designated in writing by the Obligated Person pursuant to Section 9 hereof.

"Disclosure Representative" means the chief financial officer of the Obligated Person or his or her designee, or such other person as the Obligated Person shall designate in writing to the Disclosure Dissemination Agent from time to time as the person responsible for providing Information to the Disclosure Dissemination Agent.

"Failure to File Event" means the Obligated Person's failure to file an Annual Report on or before the Annual Filing Date.

"Financial Obligation" means a (i) a debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term Financial Obligation shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

"Force Majeure Event" means: (i) acts of God, war or terrorist action; (ii) failure or shut-down of the Electronic Municipal Market Access System maintained by the MSRB; or (iii) to the extent beyond the Disclosure Dissemination Agent's reasonable control, interruptions in telecommunications or utilities services, failure, malfunction or error of any telecommunications, computer or other electrical, mechanical or technological application, service or system, computer virus, interruptions in Internet service or telephone service (including due to a virus, electrical delivery problem or similar occurrence) that affect Internet users generally, or in the local area in which the Disclosure Dissemination Agent or the MSRB is located, or acts of any government, regulatory or any other competent authority the effect of which is to prohibit the Disclosure Dissemination Agent from performance of its obligations under this Disclosure Agreement.

"Holder" means any person (a) having the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries) or (b) treated as the owner of any Bonds for federal income tax purposes.

"Indenture" means the Indenture of Trust pursuant to which the Bonds were issued, dated as of December 1, 2020, between the Issuer and the Trustee, as from time to time amended or

supplemented by Supplemental Indentures in accordance with Article XI of the Indenture.

"Information" means, collectively, the Annual Reports, the Audited Financial Statements (if any), the Notice Event notices, the Failure to File Event notices, the Voluntary Event Disclosures and the Voluntary Financial Disclosures.

"Issuer" means Build NYC Resource Corporation, as conduit issuer of the Bonds.

"MSRB" means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the United States Securities Exchange Act of 1934, as amended.

"Notice Event" means any of the events enumerated in paragraph (b)(5)(i)(C) of the Rule and listed in Section 4(a) of this Disclosure Agreement.

"Obligated Person" means Young Adult Institute, Inc. or any other person who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all or part of the obligations on the Bonds (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities), as shown on Exhibit A.

"Official Statement" means that Official Statement prepared by the Obligated Person in connection with the Bonds, as listed on Exhibit A.

"Program Facilitator" means the InterAgency Council of Developmental Disabilities Agencies, Inc.

"Trustee" means The Bank of New York Mellon and its successors and assigns.

"Voluntary Event Disclosure" means information of the category specified in any of subsections (e)(vi)(1) through (e)(vi)(11) of Section 2 of this Disclosure Agreement that is accompanied by a Certification of the Disclosure Representative containing the information prescribed by Section 7(a) of this Disclosure Agreement.

"Voluntary Financial Disclosure" means information of the category specified in any of subsections (e)(vii)(1) through (e)(vii)(9) of Section 2 of this Disclosure Agreement that is accompanied by a Certification of the Disclosure Representative containing the information prescribed by Section 7(b) of this Disclosure Agreement.

SECTION 2. Provision of Annual Reports.

(a) The Obligated Person shall provide, annually, an electronic copy of the Annual Report and Certification to the Disclosure Dissemination Agent, together with a copy for the Trustee, not later than 180 days after the end of each fiscal year of the Obligated Person (or any time thereafter following a Failure to File Event as described in this Section), commencing with the fiscal year ending June 30, 2020 such date and each anniversary thereof, the "Annual Filing Date." Promptly upon receipt of an electronic copy of the Annual Report and the Certification, the Disclosure Dissemination Agent shall provide the Annual Report to the MSRB through its Electronic Municipal Market Access ("EMMA") System for municipal securities disclosures.

The Annual Financial Information and Audited Financial Statements may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 3 of this Disclosure Agreement.

(b) If on the fifteenth (15th) day prior to the Annual Filing Date, the Disclosure Dissemination Agent has not received a copy of the Annual Report and Certification, the Disclosure Dissemination Agent shall contact the Disclosure Representative by telephone and in writing (which may be by e-mail), with a copy to the Program Facilitator, to remind the Obligated Person of its undertaking to provide the Annual Report pursuant to Section 2(a). Upon such reminder, the Obligated Person shall, not later than two (2) business days prior to the Annual Filing Date, either: (i) provide the Disclosure Dissemination Agent with an electronic copy of the Annual Financial Information, Audited Financial Statements, if available, and unaudited financial statements, if Audited Financial Statements are not available in accordance with subsection (d) below and the Certification, or (ii) instruct the Disclosure Dissemination Agent in writing, with a copy to the Trustee, that a Failure to File Event may occur, state the date by which the Annual Financial Information and Audited Financial Statements for such year are expected to be provided, and, at the election of the Obligated Person, instruct the Disclosure Dissemination Agent to send a notice to the MSRB in substantially the form attached as Exhibit B on the Annual Filing Date, accompanied by a cover sheet completed by the Disclosure Dissemination Agent in the form set forth in Exhibit C-1.

(c) If the Disclosure Dissemination Agent has not received an Annual Report and Certification by 6:00 p.m. Eastern time on the Annual Filing Date (or, if such Annual Filing Date falls on a Saturday, Sunday or holiday, then the first business day thereafter) for the Annual Report, a Failure to File Event shall have occurred and the Obligated Person hereby irrevocably directs the Disclosure Dissemination Agent to immediately send a notice to the MSRB in substantially the form attached as Exhibit B without reference to the anticipated filing date for the Annual Report, accompanied by a cover sheet completed by the Disclosure Dissemination Agent in the form set forth in Exhibit C-1.

(d) If Audited Financial Statements of the Obligated Person are prepared but not available prior to the Annual Filing Date, the Obligated Person shall provide unaudited financial statements for filing prior to the Annual Filing Date in accordance with Section 3(b) hereof and, when the Audited Financial Statements are available, provide in a timely manner an electronic copy to the Disclosure Dissemination Agent, accompanied by a Certification, together with a copy for the Trustee, for filing with the MSRB.

(e) The Disclosure Dissemination Agent shall:

(i) verify the filing specifications of the MSRB each year prior to the Annual Filing Date;

(ii) upon receipt, promptly file each Annual Report received under Section 2(a) and 2(b) with the MSRB;

(iii) upon receipt, promptly file each Audited Financial Statement received under Section 2(d) with the MSRB;

(iv) upon receipt, promptly file the text of each Notice Event received under Sections 4(a) and 4(b)(ii) with the MSRB, identifying the Notice Event as instructed pursuant to Section 4(a) or 4(b)(ii) (being any of the categories set forth below) when filing pursuant to Section 4(c) of this Disclosure Agreement:

1. Principal and interest payment delinquencies;

2. Non-Payment related defaults, if material;

3. Unscheduled draws on debt service reserves reflecting financial difficulties;

4. Unscheduled draws on credit enhancements reflecting financial difficulties;

5. Substitution of credit or liquidity providers, or their failure to perform;

6. Adverse tax opinions, IRS notices or events affecting the tax-exempt status of the securities;

7. Modifications to rights of securities holders, if material;

8. Bond calls, if material;

9. Defeasances;

10. Release, substitution, or sale of property securing repayment of the securities, if material;

11. Ratings changes;

12. Tender offers;

13. Bankruptcy, insolvency, receivership or similar event of the Obligated Person;

14. Merger, consolidation, or acquisition of the Obligated Person, if material;

15. Appointment of a successor or additional trustee, or the change of name of a trustee, if material;

16. Incurrence of a Financial Obligation, if material; and

17. Default, event of acceleration, termination event, modification of terms or other similar events under the terms of a Financial Obligation reflecting financial difficulties.

(v) upon receipt (or irrevocable direction pursuant to Section 2(c) of this Disclosure Agreement, as applicable), promptly file a completed copy of Exhibit B to this

Disclosure Agreement with the MSRB, identifying the filing as "Failure to provide annual financial information as required" when filing pursuant to Section 2(b)(ii) or Section 2(c) of this Disclosure Agreement;

(vi) upon receipt, promptly file the text of each Voluntary Event Disclosure received under Section 7(a) with the MSRB, identifying the Voluntary Event Disclosure as instructed by the Obligated Person pursuant to Section 7(a) (being any of the categories set forth below) when filing pursuant to Section 7(a) of this Disclosure Agreement:

1. "amendment to continuing disclosure undertaking;"

2. "change in obligated person;"

3. "notice to investors pursuant to bond documents;"

4. "certain communications from the Internal Revenue Service;"

5. "secondary market purchases;"

6. "bid for auction rate or other securities;"

7. "capital or other financing plan;"

8. "litigation/enforcement action;"

9. "change of tender agent, remarketing agent, or other on-going party;"

10. "derivative or other similar transaction;" and

11. "other event-based disclosures;"

(vii) upon receipt, promptly file the text of each Voluntary Financial Disclosure received under Section 7(b) with the MSRB, identifying the Voluntary Financial Disclosure as instructed by the Obligated Person pursuant to Section 7(b) (being any of the categories set forth below) when filing pursuant to Section 7(b) of this Disclosure Agreement:

1. "quarterly/monthly financial information;"

2. "change in fiscal year/timing of annual disclosure;"

3. "change in accounting standard;"

4. "interim/additional financial information/operating data;"

5. "budget;"

6. "investment/debt/financial policy;"

7. "information provided to rating agency, credit/liquidity provider or other third party;"

8. "consultant reports;" and

9. "other financial/operating data;"

(viii) provide the Obligated Person and the Program Facilitator evidence of the filings of each of the above when made, which shall be by means of the DAC system, for so long as DAC is the Disclosure Dissemination Agent under this Disclosure Agreement.

(f) The Obligated Person may adjust the Annual Filing Date upon change of its fiscal year by providing written notice of such change and the new Annual Filing Date to the Disclosure Dissemination Agent, the Trustee and the MSRB, provided that the period between the existing Annual Filing Date and new Annual Filing Date shall not exceed one year.

(g) Any Information received by the Disclosure Dissemination Agent before 6:00 p.m. Eastern time on any business day that it is required to file with the MSRB pursuant to the terms of this Disclosure Agreement and that is accompanied by a Certification and all other information required by the terms of this Disclosure Agreement will be filed by the Disclosure Dissemination Agent with the MSRB no later than 11:59 p.m. Eastern time on the same business day; provided, however, the Disclosure Dissemination Agent shall have no liability for any delay in filing with the MSRB if such delay is caused by a Force Majeure Event provided that the Disclosure Dissemination Agent uses reasonable efforts to make any such filing as soon as possible.

SECTION 3. Content of Annual Reports.

Each Annual Report shall contain:

(a) Annual Financial Information with respect to the Obligated Person which shall contain the information set forth in Exhibit D hereto, together with a narrative explanation as may be necessary to avoid misunderstanding regarding the presentation of such Annual Financial Information concerning the Obligated Person; and

(b) Audited Financial Statements prepared in accordance with generally accepted accounting principles ("GAAP") or alternate accounting principles as described in the Official Statement will be included in the Annual Report. If Audited Financial Statements are not available, the Obligated Person shall be in compliance under this Disclosure Agreement if unaudited financial statements, prepared in accordance with GAAP or alternate accounting principles as described in the Official Statement, are included in the Annual Report. Audited Financial Statements (if any) will be provided pursuant to Section 2(d).

Any or all of the items listed above may be included by specific reference from other documents, including official statements of debt issues with respect to which the Obligated Person is an "obligated person" (as defined by the Rule), which have been previously filed with the Securities and Exchange Commission or are available from the MSRB Internet Website. If the document incorporated by reference is a final official statement, it must be available from the MSRB. The Obligated Person will clearly identify each such document so incorporated by reference.

Any Annual Financial Information containing modified operating data or financial information shall include an explanation, in narrative form, of such modifications.

SECTION 4. Reporting of Notice Events.

(a) The occurrence of any of the following events with respect to the Bonds constitutes a Notice Event:

1. Principal and interest payment delinquencies;

2. Non-payment related defaults, if material;

3. Unscheduled draws on debt service reserves reflecting financial difficulties;

4. Unscheduled draws on credit enhancements reflecting financial difficulties;

5. Substitution of credit or liquidity providers, or their failure to perform;

6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices and determinations with respect to the tax status of the Bonds or other material events affecting the tax status of the Bonds;

7. Modifications to rights of the security holders, if material;

8. Bond calls, if material;

9. Defeasances;

10. Release, substitution, or sale of property securing repayment of the Bonds, if material;

11. Rating changes;

12. Tender offers;

13. Bankruptcy, insolvency, receivership or similar event of the Obligated Person;

    Note to subsection (a)(13) of this Section 4: For the purposes of the event described in subsection (a)(13) of this Section 4, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or

similar officer for an Obligated Person in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Obligated Person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Obligated Person.

14. The consummation of a merger, consolidation or acquisition involving the Obligated Person, or the sale of all or substantially all of the assets of the Obligated Person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

15. Appointment of a successor or additional trustee or the change of name of a trustee, if material;

16. Incurrence of a Financial Obligation of the Obligated Person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Obligated Person, any of which affect security holders, if material; and

17. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Obligated Person, any of which reflect financial difficulties.

The Obligated Person shall, in a timely manner not in excess of ten business days after its occurrence, notify the Trustee, the Program Facilitator and the Disclosure Dissemination Agent in writing upon the occurrence of a Notice Event. Upon actual knowledge of the occurrence of a Notice Event, the Trustee shall promptly notify the Obligated Person and also shall notify the Disclosure Dissemination Agent in writing of the occurrence of such Notice Event. Each such notice shall instruct the Disclosure Dissemination Agent to report the occurrence pursuant to subsection (c) and shall be accompanied by a Certification. Such notice or Certification shall identify the Notice Event that has occurred (which shall be any of the categories set forth in Section 2(e)(iv) of this Disclosure Agreement), include the desired text of the disclosure, the written authorization for the Disclosure Dissemination Agent to disseminate such information, and identify the desired date for the Disclosure Dissemination Agent to disseminate the information (provided that such date is not later than the tenth business day after the occurrence of the Notice Event).

(b) The Disclosure Dissemination Agent is under no obligation to notify the Obligated Person or the Disclosure Representative of an event that may constitute a Notice Event. In the event the Disclosure Dissemination Agent so notifies the Obligated Person or the

Disclosure Representative, such notified party will within two business days of receipt of such notice (but in any event not later than the tenth business day after the occurrence of the Notice Event, if the Obligated Person determines that a Notice Event has occurred), instruct the Disclosure Dissemination Agent that (i) a Notice Event has not occurred and no filing is to be made or (ii) a Notice Event has occurred and the Disclosure Dissemination Agent is to report the occurrence pursuant to subsection (c) of this Section 4, together with a Certification. Such Certification shall identify the Notice Event that has occurred (which shall be any of the categories set forth in Section 2(e)(iv) of this Disclosure Agreement), include the text of the disclosure that the Obligated Person desires to make, contain the written authorization of the Obligated Person for the Disclosure Dissemination Agent to disseminate such information, and identify the date the Obligated Person desires for the Disclosure Dissemination Agent to disseminate the information (provided that such date is not later than the tenth business day after the occurrence of the Notice Event).

(c) If the Disclosure Dissemination Agent has been instructed as prescribed in subsection (a) or as prescribed in subsection (b) of this Section 4 to report the occurrence of a Notice Event, the Disclosure Dissemination Agent shall promptly file a notice of such occurrence with the MSRB, in accordance with Section 2(e)(iv) hereof. This notice will be filed with a cover sheet completed by the Disclosure Dissemination Agent in the form set forth in Exhibit C-1.

SECTION 5. CUSIP Numbers.

Whenever providing information to the Disclosure Dissemination Agent, including but not limited to Annual Reports, documents incorporated by reference in the Annual Reports, Audited Financial Statements, Notice Event notices and Voluntary Event Disclosure, the Obligated Person shall indicate the full name of the Bonds and the 9-digit CUSIP numbers for the Bonds as to which the provided information relates.

SECTION 6. Additional Disclosure Obligations.

The Obligated Person acknowledges and understands that other state and federal laws, including but not limited to the United States Securities Act of 1933, as amended, and Rule 10b-5 promulgated under the United States Securities Exchange Act of 1934, as amended, may apply to the Obligated Person, and that the duties and responsibilities of the Disclosure Dissemination Agent under this Disclosure Agreement do not extend to providing legal advice regarding such laws. The Obligated Person acknowledges and understands that the duties of the Disclosure Dissemination Agent relate exclusively to execution of the mechanical tasks of disseminating information as described in this Disclosure Agreement.

SECTION 7. Voluntary Filing.

(a) The Obligated Person may instruct the Disclosure Dissemination Agent to file Voluntary Event Disclosure with the MSRB from time to time pursuant to a Certification of the Disclosure Representative. Such Certification shall identify the Voluntary Event Disclosure (which shall be any of the categories set forth in Section 2(e)(vi) of this Disclosure Agreement), include the text of the disclosure that the Obligated Person desires to make and identify the date

the Obligated Person desires for the Disclosure Dissemination Agent to disseminate the information. If the Disclosure Dissemination Agent has been instructed by the Obligated Person as prescribed in this Section 7(a) to file a Voluntary Event Disclosure, the Disclosure Dissemination Agent shall promptly file such Voluntary Event Disclosure with the MSRB in accordance with Section 2(e)(vi) hereof. This notice will be filed with a cover sheet completed by the Disclosure Dissemination Agent in the form set forth in Exhibit C-2.

(b) The Obligated Person may instruct the Disclosure Dissemination Agent to file Voluntary Financial Disclosure with the MSRB from time to time pursuant to a Certification of the Disclosure Representative. Such Certification shall identify the Voluntary Financial Disclosure (which shall be any of the categories set forth in Section 2(e)(vii) of this Disclosure Agreement), include the desired text of the disclosure, contain the written authorization for the Disclosure Dissemination Agent to disseminate such information, if applicable, and identify the desired date for the Disclosure Dissemination Agent to disseminate the information. If the Disclosure Dissemination Agent has been instructed by the Obligated Person as prescribed in this Section 7(b) to file a Voluntary Financial Disclosure, the Disclosure Dissemination Agent shall promptly file such Voluntary Financial Disclosure with the MSRB in accordance with Section 2(e)(vii) hereof. This notice will be filed with a cover sheet completed by the Disclosure Dissemination Agent in the form set forth in Exhibit C-3.

(c) The parties hereto acknowledge that the Obligated Person is not obligated pursuant to the terms of this Disclosure Agreement to file any Voluntary Event Disclosure pursuant to Section 7(a) hereof or to file any Voluntary Financial Disclosure pursuant to Section 7(b) hereof.

(d) Nothing in this Disclosure Agreement shall be deemed to prevent the Obligated Person from disseminating any other information through the Disclosure Dissemination Agent using the means of dissemination set forth in this Section 7, or including any other information in any Annual Report, Failure to File Event notice or Notice Event notice in addition to that which is specifically required by this Disclosure Agreement. If the Obligated Person chooses to include any information in any Annual Report, Failure to File Event notice or Notice Event notice in addition to that which is specifically required by this Disclosure Agreement or to file Voluntary Event Disclosure or Voluntary Financial Disclosure, the Obligated Person shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report, Voluntary Financial Disclosure, Voluntary Event Disclosure, Failure to File Event Notice or Notice Event notice.

SECTION 8. Termination of Reporting Obligation.

The obligations of the Obligated Person and the Disclosure Dissemination Agent under this Disclosure Agreement shall terminate with respect to the Bonds upon the legal defeasance, prior redemption or payment in full of all of the Bonds, when the Obligated Person is no longer an Obligated Person with respect to the Bonds, or upon delivery by the Disclosure Representative to the Disclosure Dissemination Agent of an opinion of nationally recognized bond counsel to the effect that continuing disclosure is no longer required.

SECTION 9. Disclosure Dissemination Agent.

The Obligated Person hereby appoints DAC as exclusive Disclosure Dissemination Agent under this Disclosure Agreement. The Obligated Person may, upon thirty days written notice to the Disclosure Dissemination Agent and the Trustee, replace or appoint a successor Disclosure Dissemination Agent. Upon termination of DAC's services as Disclosure Dissemination Agent, whether by notice of the Obligated Person or DAC, the Obligated Person agrees to appoint a successor Disclosure Dissemination Agent or, alternatively, agrees to assume all responsibilities of the Disclosure Dissemination Agent under this Disclosure Agreement for the benefit of the Holders of the Bonds. Notwithstanding any replacement or appointment of a successor, the Obligated Person shall remain liable until payment in full for any and all sums owed and payable to the Disclosure Dissemination Agent. The Disclosure Dissemination Agent may resign at any time by providing thirty days' prior written notice to the Obligated Person.

SECTION 10. Remedies in Event of Default.

In the event of a failure of the Obligated Person or the Disclosure Dissemination Agent to comply with any provision of this Disclosure Agreement, the Holders' rights to enforce the provisions of this Disclosure Agreement shall be limited solely to a right, by action in mandamus or for specific performance, to compel performance of the parties' obligation under this Disclosure Agreement. Any failure by a party to perform in accordance with this Disclosure Agreement shall not constitute a default on the Bonds or under any other document relating to the Bonds, and all rights and remedies shall be limited to those expressly stated herein.

SECTION 11. Duties, Immunities and Liabilities of Disclosure Dissemination Agent.

(a) The Disclosure Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement. The Disclosure Dissemination Agent's obligation to deliver the information at the times and with the contents described herein shall be limited to the extent the Obligated Person has provided such information to the Disclosure Dissemination Agent as provided in this Disclosure Agreement. The Disclosure Dissemination Agent shall have no duty with respect to the content of any disclosures or notice made pursuant to the terms hereof. The Disclosure Dissemination Agent shall have no duty or obligation to review or verify any Information, or any other information, disclosures or notices provided to it by the Obligated Person and shall not be deemed to be acting in any fiduciary capacity for the Obligated Person, the Holders of the Bonds or any other party. The Disclosure Dissemination Agent shall have no responsibility for the Obligated Person's failure to report to the Disclosure Dissemination Agent a Notice Event or a duty to determine the materiality thereof. The Disclosure Dissemination Agent shall have no duty to determine or liability for failing to determine whether the Obligated Person has complied with this Disclosure Agreement. The Disclosure Dissemination Agent may conclusively rely upon certifications of the Obligated Person at all times.

THE OBLIGATED PERSON AGREES TO INDEMNIFY AND SAVE THE DISCLOSURE DISSEMINATION AGENT AND THE TRUSTEE AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, HARMLESS AGAINST ANY LOSS, EXPENSE AND LIABILITY WHICH THEY MAY INCUR ARISING OUT OF OR IN THE EXERCISE OR PERFORMANCE OF THEIR POWERS AND DUTIES HEREUNDER, INCLUDING THE COSTS AND EXPENSES (INCLUDING ATTORNEYS FEES) OF

DEFENDING AGAINST ANY CLAIM OF LIABILITY, BUT EXCLUDING LOSSES, EXPENSES AND LIABILITIES DUE TO THE DISCLOSURE DISSEMINATION AGENT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AND THE TRUSTEE'S (AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS') NEGLIGENCE OR WILLFUL MISCONDUCT.

The obligations of the Obligated Person under this Section shall survive the resignation or removal of the Disclosure Dissemination Agent and the defeasance, redemption or payment in full of the Bonds.

(b) The Disclosure Dissemination Agent may, from time to time, consult with legal counsel (either in-house or external) of its own choosing in the event of any disagreement or controversy, or question or doubt as to the construction of any of the provisions hereof or its respective duties hereunder, and it shall not incur any liability and shall be fully protected in acting in good faith upon the advice of such legal counsel. The fees and expenses of such counsel shall be payable by the Obligated Person.

(c) All documents, reports, notices, statements, information and other materials provided to the MSRB under this Disclosure Agreement shall be provided in an electronic format through the EMMA System and accompanied by identifying information as prescribed by the MSRB.

SECTION 12. No Issuer or Trustee Responsibility.

The Obligated Person and the Disclosure Dissemination Agent acknowledge that neither the Issuer nor the Trustee have undertaken any responsibility, and shall not be required to undertake any responsibility, with respect to any reports, notices or disclosures required by or provided pursuant to this Disclosure Agreement (other than, with respect to the Trustee only, those notices required under Section 4 hereof) and shall have no liability to any person, including any Holder of the Bonds, with respect to any such reports, notices or disclosures (other than, with respect to the Trustee only, those notices required under Section 4 hereof). The Issuer (as conduit issuer) is not, for purposes of and within the meaning of the Rule, (i) committed by contract or other arrangement to support payment of all, or part of, the obligations on the Bonds, or (ii) a person for whom annual financial information and notices of material events will be provided. The Trustee shall be indemnified and held harmless in connection with this Disclosure Agreement to the same extent provided in the Indenture for matters arising thereunder. In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action. The parties' only recourse against the Trustee shall be limited solely to a right, by action in mandamus or for specific performance, to compel performance of the Trustee's obligation under this Disclosure Agreement.

SECTION 13. Amendment; Waiver.

Notwithstanding any other provision of this Disclosure Agreement, the Obligated Person, the Trustee and the Disclosure Dissemination Agent may amend this Disclosure Agreement and

any provision of this Disclosure Agreement may be waived, if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws acceptable to each of the Obligated Person, the Trustee and the Disclosure Dissemination Agent to the effect that such amendment or waiver does not materially impair the interests of Holders of the Bonds and would not, in and of itself, cause the undertakings herein to violate the Rule if such amendment or waiver had been effective on the date hereof but taking into account any subsequent change in or official interpretation of the Rule; provided none of the Obligated Person, the Trustee or the Disclosure Dissemination Agent shall be obligated to agree to any amendment modifying their respective duties or obligations without their consent thereto.

Notwithstanding the preceding paragraph, the Obligated Person, the Trustee and the Disclosure Dissemination Agent shall have the right to amend this Disclosure Agreement for any of the following purposes:

(i) to comply with modifications to and interpretations of the provisions of the Rule as announced by the Securities and Exchange Commission from time to time;

(ii) to add or change a dissemination agent for the information required to be provided hereby and to make any necessary or desirable provisions with respect thereto;

(iii) to evidence the succession of another person to the Obligated Person or the Trustee and the assumption by any such successor of the covenants of the Obligated Person or the Trustee hereunder;

(iv) to add to the covenants of the Obligated Person or the Disclosure Dissemination Agent for the benefit of the Holders, or to surrender any right or power herein conferred upon the Obligated Person or the Disclosure Dissemination Agent; and

(v) for any purpose for which, and subject to the conditions pursuant to which, amendments may be made under the Rule, as amended or modified from time to time, or any formal authoritative interpretations thereof by the Securities and Exchange Commission.

SECTION 14. Beneficiaries.

This Disclosure Agreement shall inure solely to the benefit of the Obligated Person, the Trustee, the Disclosure Dissemination Agent, the underwriter, and the Holders from time to time of the Bonds, and shall create no rights in any other person or entity.

SECTION 15. Governing Law.

This Disclosure Agreement shall be governed by the laws of the State of New York (without regard to its conflicts of laws provisions).

SECTION 16. Counterparts.

This Disclosure 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.

The Disclosure Dissemination Agent, the Trustee and the Obligated Person have caused this Disclosure Agreement to be executed, on the date first written above, by their respective officers duly authorized.

**DIGITAL ASSURANCE CERTIFICATION, L.L.C.**,
as Disclosure Dissemination Agent

By:_____
Name:_____
Title:_____

**YOUNG ADULT INSTITUTE, INC.,**
**as Obligated Person**

By:_____
Name:_____
Title:_____

**THE BANK OF NEW YORK MELLON,**
as Trustee

By: _____
Name: _____
Title: _____

## EXHIBIT A

## NAME AND CUSIP NUMBERS OF BONDS

| | |
|---|---|
| Name of Issuer: | Build NYC Resource Corporation |
| Obligated Person(s): | Young Adult Institute, Inc. |
| Name of Bond Issue: | Revenue Bonds (Young Adult Institute, Inc. Project) Series 2020A and Series 2020B (Taxable) |
| Date of Issuance: | December 17, 2020 |
| Date of Official Statement: | December 10, 2020 |

| Maturity | CUSIP No. |
|---|---|
| July 1, 2030 | 12008EQU3 |
| July 1, 2030 | 12008EQX7 |
| July 1, 2045 | 12008EQW9 |

**EXHIBIT B**

**NOTICE TO MSRB OF FAILURE TO FILE ANNUAL REPORT**

| | |
|---|---|
| Name of Issuer: | Build NYC Resource Corporation |
| Obligated Person(s): | Young Adult Institute, Inc. |
| Name of Bond Issue: | Revenue Bonds (Young Adult Institute, Inc. Project) Series 2020A and Series 2020B (Taxable) |
| Date of Issuance: | December 17, 2020 |
| CUSIP Numbers: | |

NOTICE IS HEREBY GIVEN that the Obligated Person has not provided an Annual Report with respect to the above-named Bonds as required by the Agreement to Provide Continuing Disclosure, dated as of December 17, 2020, by and among the Obligated Person, The Bank of New York Mellon, as Trustee, and Digital Assurance Certification, L.L.C., as Disclosure Dissemination Agent. The Obligated Person has notified the Disclosure Dissemination Agent that it anticipates that the Annual Report will be filed by _____[if known].

Dated:_____

Digital Assurance Certification, L.L.C., as Disclosure Dissemination Agent, on behalf of the Obligated Person

_____

cc: Obligated Person
Program Facilitator

# EXHIBIT C-1
# EVENT NOTICE COVER SHEET

This cover sheet and accompanying "event notice" will be sent to the MSRB, pursuant to Securities and Exchange Commission Rule 15c2-12(b)(5)(i)(C) and (D).

Name of Issuer: Build NYC Resource Corporation
Obligated Person: Young Adult Institute, Inc.

Six-Digit CUSIP Number:

_____

_____

or Nine-Digit CUSIP Number(s) of the bonds to which this event notice relates:

_____

Number of pages attached: _____

Description of Notice Events (Check One):

1._____"Principal and interest payment delinquencies;"
2._____"Non-Payment related defaults, if material;"
3._____"Unscheduled draws on debt service reserves reflecting financial difficulties;"
4._____"Unscheduled draws on credit enhancements reflecting financial difficulties;"
5._____"Substitution of credit or liquidity providers, or their failure to perform;"
6._____"Adverse tax opinions, IRS notices or events affecting the tax status of the security;"
7._____"Modifications to rights of securities holders, if material;"
8._____"Bond calls, if material;"
9._____"Defeasances;"
10._____"Release, substitution, or sale of property securing repayment of the securities, if material;"
11._____"Rating changes;"
12._____"Tender offers;"
13._____"Bankruptcy, insolvency, receivership or similar event of the obligated person;"
14._____"Merger, consolidation, or acquisition of the obligated person, if material;" and
15._____"Appointment of a successor or additional trustee, or the change of name of a trustee, if material;"
16.____"Incurrence of a Financial Obligation of the obligated person, if material;"
17.____"Default, event of acceleration, termination event, modification of terms or other similar events under the terms of a Financial Obligation of the obligated person reflecting financial difficulties."

____ Failure to provide annual financial information as required.

I hereby represent that I am authorized by the obligated person or its agent to distribute this information publicly:

Signature:

_____

Name: _____ Title: _____

Digital Assurance Certification, L.L.C.
390 N. Orange Avenue
Suite 1750
Orlando, FL 32801
407-515-1100

Date:

## EXHIBIT C-2
## VOLUNTARY EVENT DISCLOSURE COVER SHEET

This cover sheet and accompanying "voluntary event disclosure" will be sent to the MSRB, pursuant to the Agreement to Provide Continuing Disclosure dated as of December 17, 2020 by and among the Obligated Person, the Trustee and DAC.

Name of Issuer: Build NYC Resource Corporation
Obligated Person: Young Adult Institute, Inc.

Six-Digit CUSIP Number:

_____

_____

or Nine-Digit CUSIP Number(s) of the bonds to which this notice relates:

_____

Number of pages attached: _____

Description of Voluntary Event Disclosure (Check One):

1._____"amendment to continuing disclosure undertaking;"
2._____"change in obligated person;"
3._____"notice to investors pursuant to bond documents;"
4._____"certain communications from the Internal Revenue Service;"
5._____"secondary market purchases;"
6._____"bid for auction rate or other securities;"
7._____"capital or other financing plan;"
8._____"litigation/enforcement action;"
9._____"change of tender agent, remarketing agent, or other on-going party;"
10._____"derivative or other similar transaction;" and
11._____"other event-based disclosures."

I hereby represent that I am authorized by the obligated person or its agent to distribute this information publicly:

Signature:

_____

Name: _____ Title: _____

Digital Assurance Certification, L.L.C.
390 N. Orange Avenue
Suite 1750
Orlando, FL 32801
407-515-1100

Date:

## EXHIBIT C-3
## VOLUNTARY FINANCIAL DISCLOSURE COVER SHEET

This cover sheet and accompanying "voluntary financial disclosure" will be sent to the MSRB, pursuant to the Agreement to Provide Continuing Disclosure dated as of December 17, 2020 by and among the Obligated Person, the Trustee and DAC.

Name of Issuer: Build NYC Resource Corporation
Obligated Person: Young Adult Institute, Inc.

Six-Digit CUSIP Number:

_____

_____

or Nine-Digit CUSIP Number(s) of the bonds to which this notice relates:

_____

Number of pages attached: _____

Description of Voluntary Financial Disclosure (Check One):

1._____"quarterly/monthly financial information;"
2._____"change in fiscal year/timing of annual disclosure;"
3._____"change in accounting standard;"
4._____"interim/additional financial information/operating data;"
5._____"budget;"
6._____"investment/debt/financial policy;"
7._____"information provided to rating agency, credit/liquidity provider or other third party;"
8._____"consultant reports;" and
9._____"other financial/operating data."

I hereby represent that I am authorized by the obligated person or its agent to distribute this information publicly:

Signature:

_____

Name:_____ Title: _____

Digital Assurance Certification, L.L.C.
390 N. Orange Avenue
Suite 1750
Orlando, FL 32801
407-515-1100

Date:

**EXHIBIT D**

**FORM OF ANNUAL FINANCIAL INFORMATION**

| | |
|---|---|
| Name of Issuer: | Build NYC Resource Corporation |
| Obligated Person(s): | Young Adult Institute, Inc. |
| Name of Bond Issue: | Revenue Bonds (Young Adult Institute, Inc. Project) Series 2020A and Series 2020B (Taxable) |
| Date of Issuance: | December 17, 2020 |
| Date of Official Statement: | December 10, 2020 |
| CUSIP Nos. | |

**Funding Sources.** Funding sources for the Obligated Person's 20__ Fiscal Year were as follows:

| Funding Source | Approx. % of Revenues |
|---|---|
| NYS Office for People with Developmental Disabilities | |
| NYS Department of Health | |
| NYS Education Department | |
| [list other sources] | |

**Debt Service Coverage.**

The Total Debt Service Coverage Ratio for Fiscal Year 20__ is as follows:

Revenues
Expenses
Total Net Revenue

Less Extraordinary Revenue Items
Plus Extraordinary Expense Items
Plus Depreciation and Amortization
Plus Current Interest Expense

Total Net Revenues Available for Debt Service

Maximum Annual Debt Service

Total Debt Service Coverage Ratio

(This page intentionally left blank.)

# APPENDIX H

# FORM OF APPROVING OPINION OF BOND COUNSEL

(This page intentionally left blank.)

*Upon delivery of the Series 2020 Bonds, Bond Counsel to the Issuer proposes to issue its approving opinion in substantially the following form:*

Hawkins Delafield & Wood LLP

7 WORLD TRADE CENTER
250 GREENWICH STREET
NEW YORK, NY 10007
WWW.HAWKINS.COM

December 17, 2020

Build NYC Resource Corporation
New York, New York

Ladies and Gentlemen:

We have examined a record of proceedings relating to the issuance of the Revenue Bonds (Young Adult Institute, Inc. Project), Series 2020A in the aggregate principal amount of $5,490,000 (the "Series 2020A Bonds") and the Revenue Bonds (Young Adult Institute, Inc. Project), Series 2020B (Taxable) in the aggregate principal amount of $1,025,000 (the "Series 2020B Bonds"; together with the Series 2020A Bonds, the "Bonds") of Build NYC Resource Corporation, a local development corporation organized pursuant to the Not-For-Profit Corporation Law of the State of New York (the "NFP Corporation Law") at the direction of the Mayor of The City of New York (the "Issuer").

The Bonds are issued under and pursuant to an Indenture of Trust, dated as of December 1, 2020 (the "Indenture"), between the Issuer and The Bank of New York Mellon, as trustee (the "Trustee"), and a resolution of the Issuer adopted on May 12, 2020, as amended on September 22, 2020 and November 17, 2020, authorizing the Bonds.

The Bonds are dated the date hereof and are issuable as fully registered bonds. The Bonds shall mature and shall bear interest at fixed rates payable on January 1 and July 1 of each year commencing July 1, 2021, all as set forth in the Indenture. The Bonds are subject to optional and mandatory redemption prior to maturity, including from mandatory sinking installments, in the manner and upon the terms and conditions set forth in the Indenture.

The Bonds are issued on behalf of Young Adult Institute, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York (the "Institution"), for the purpose of (i) financing and reimbursing the Institution for a portion of the costs of the renovation, equipping and furnishing of two condominium units, an approximately 70,000 square foot facility located in a 37-story building located at 220 East 42nd Street, Units 7NW and 8, New York, New York (the "42nd Street Facility"), which 42nd Street Facility the Institution operates as its headquarters with offices, and as clinic space which is operated by Premier Healthcare, Inc., a New York not-for-profit corporation ("Premier") whose sole member is the Institution, all in providing essential services to individuals with developmental and other disabilities and their families; and (ii) reimbursing the Institution for the cost of the redemption of the outstanding bonds issued on June 30, 2010 by the Dormitory Authority of the State of New York, the proceeds of which were used to finance and/or refinance the cost of the renovation of a residential facility, consisting of approximately 11,070 square feet, on three floors of a building located at 314 East 35th Street, New York, New York (the "35th Street Facility") on an approximately 4,937 square feet of land, which 35th Street Facility is owned and operated by the Institution as an Individualized Residential

Alternative, a supervised housing opportunity certified by the New York State Office for People With Developmental Disabilities for eligible individuals with developmental disabilities (collectively, the "Project").

The Issuer and the Institution have entered into a Loan Agreement, dated as of December 1, 2020 (the "Loan Agreement"), providing, among other things, for the financing, and reimbursing the Institution of, a portion of the costs of the Project and the loan of the proceeds of the Bonds to the Institution. The obligation of the Institution to repay the loan will be evidenced by a certain Series 2020A Promissory Note with respect to the Series 2020A Bonds and a certain Series 2020B Promissory Note with respect to the Series 2020B Bonds, each dated the date hereof, each from the Institution in favor of the Issuer, and each endorsed by the Issuer to the Trustee (collectively, the "Promissory Notes").

The Bonds are secured by a lien and security interest in the Pledged Collateral (as such term is defined in the Pledge and Security Agreement hereinafter defined) pursuant to a Pledge and Security Agreement, dated as of December 1, 2020, from the Institution to the Trustee (the "Pledge and Security Agreement"). The Bonds are also secured by a mortgage lien on and a security interest in the Institution's fee title interest in the 35th Street Facility and the other Mortgaged Property (as such term is defined in the Mortgage as hereinafter defined) pursuant to a Mortgage and Security Agreement, dated as of December 1, 2020, from the Institution, as mortgagor, to the Issuer and the Trustee, as mortgagees (the "Mortgage"). Pursuant to an Assignment of Mortgage and Security Agreement, dated as of December 1, 2020 (the "Assignment of Mortgage"), the Issuer has assigned to the Trustee all of the Issuer's right, title and interest in and to the Mortgage.

It is provided in the Indenture that, upon complying with certain prescribed conditions, the Issuer may issue additional bonds from time to time on the terms and conditions and for the purposes stated in the Indenture, and said additional bonds, if issued, will be equally and ratably secured under the Indenture with the Outstanding (as defined in the Indenture) Bonds.

**We are of the opinion that:**

1. The Issuer is duly organized and validly existing under the NFP Corporation Law, and has the right and power thereunder to enter into the Indenture, and the Indenture has been duly authorized, executed and delivered by the Issuer, is in full force and effect, and is valid and binding upon the Issuer and enforceable against the Issuer in accordance with its terms.

2. The Issuer has the right and power under the NFP Corporation Law to enter into the Loan Agreement, and the Loan Agreement has been duly authorized, executed and delivered by the Issuer, is in full force and effect, and constitutes a valid and binding agreement of the Issuer enforceable against the Issuer in accordance with its terms.

3. The Issuer has the right and power under the NFP Corporation Law to enter into the Assignment of Mortgage, and the Assignment of Mortgage has been duly authorized, executed and delivered by the Issuer, is in full force and effect, and constitutes a valid and binding agreement of the Issuer enforceable against the Issuer in accordance with its terms.

4. The Bonds have been duly authorized and issued by the Issuer in accordance with law and in accordance with the Indenture and are the valid and binding special limited revenue obligations of the Issuer, payable solely from the loan payments, revenues and receipts derived from the Loan Agreement and the Promissory Notes and pledged under the Indenture. The Bonds are secured pursuant to (i) the security interest in the Pledged Collateral of the Pledge and Security Agreement and (ii) the lien and security interest in the Mortgaged Property of the Mortgage. The Bonds are enforceable in

accordance with their terms and the terms of the Indenture and are entitled to the benefit of the Indenture. All conditions precedent to the delivery of the Bonds under the Indenture have been fulfilled.

5. Under existing statutes and court decisions and assuming continuing compliance with certain tax covenants described below, (i) interest on the Series 2020A Bonds is excluded from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), and (ii) interest on the Series 2020A Bonds is not treated as a preference item in calculating the alternative minimum tax under the Code.

The Code establishes certain requirements that must be met subsequent to the issuance and delivery of the Series 2020A Bonds in order that, for federal income tax purposes, interest on the Series 2020A Bonds be not included in gross income pursuant to Section 103 of the Code. These requirements include, but are not limited to, requirements relating to the use and expenditure of proceeds of the Series 2020A Bonds, restrictions on the investment of proceeds of the Series 2020A Bonds prior to expenditure and the requirement that certain earnings be rebated to the federal government. Noncompliance with such requirements may cause the interest on the Series 2020A Bonds to become subject to federal income taxation retroactive to their date of issue, irrespective of the date on which such noncompliance occurs or is ascertained.

On the date of delivery of the Series 2020A Bonds, the Issuer, the Institution, Premier, InterAgency Council of Developmental Disabilities Agencies, Inc. (the "Program Facilitator") and the Trustee have executed the Tax Regulatory Agreement dated the date hereof (the "Tax Regulatory Agreement") containing provisions and procedures pursuant to which such requirements can be satisfied. In executing the Tax Regulatory Agreement, the Issuer, the Institution and Premier covenant that they will comply with the provisions and procedures set forth therein and that they will do and perform all acts and things necessary or desirable to assure that the interest paid on the Series 2020A Bonds will, for federal income tax purposes, be excluded from gross income.

6. Under existing statutes, the interest on the Series 2020A Bonds is exempt from personal income taxes imposed by the State of New York or any political subdivision thereof, including The City of New York.

In rendering the opinions in paragraphs 5 and 6 above, we have (i) relied upon and assumed the material accuracy of the representations, statements of intention and reasonable expectations, and certifications of fact contained in the Issuer Tax Certification delivered on the date hereof by the Issuer and in the Tax Regulatory Agreement with respect to the use of proceeds of the Series 2020A Bonds and the investment of certain funds, and other matters affecting the exclusion of interest on the Series 2020A Bonds from gross income for federal income tax purposes under Section 103 of the Code, (ii) relied upon the opinion of Cullen and Dykman, LLP, counsel to the Institution and to Premier, dated the date hereof, regarding, among other matters, the current qualifications of the Institution and of Premier as each being an organization described in Section 501(c)(3) of the Code, and (iii) relied upon and assumed compliance by the Issuer, the Institution, Premier and the Program Facilitator with the procedures and ongoing covenants set forth in the Tax Regulatory Agreement and with the ongoing tax covenants set forth in the Indenture and the Loan Agreement. We note that the opinion of counsel to the Institution and to Premier is subject to a number of qualifications and limitations. Each of the Institution and Premier has covenanted that it will do nothing to impair its status as a tax-exempt organization, and that it will comply with the requirements of the Code and any applicable regulations throughout the term of the Series 2020A Bonds. Failure of the Institution or of Premier to be organized and operated in accordance with the Internal Revenue Service's requirements for the maintenance of the status of each of the Institution and Premier as an organization described in Section 501(c)(3) of the Code or to use the assets being financed with the proceeds of the Series 2020A Bonds in activities of the Institution or of Premier that do not

constitute unrelated trades or businesses within the meaning of Section 513 of the Code may result in interest on the Series 2020A Bonds being included in gross income for federal income tax purposes, possibly from the date of issuance of the Series 2020A Bonds.

Further, under the Code, failure to comply with such procedures and covenants may cause the interest on the Series 2020A Bonds to be included in gross income for federal income tax purposes, retroactive to the date of issuance of the Series 2020A Bonds, irrespective of the date on which such noncompliance occurs or is ascertained. Compliance with certain of such requirements may necessitate that persons not within the control of the Issuer, of the Institution or of Premier take or refrain from taking certain actions.

We express no opinion as to any other federal, state or local tax consequences arising with respect to the Series 2020A Bonds, or the ownership or disposition thereof, except as stated in paragraphs 5 and 6 above. We render our opinion under existing statutes and court decisions as of the date hereof, and we assume no obligation to update, revise or supplement our opinion to reflect any action hereafter taken or not taken, any fact or circumstance that may hereafter come to our attention, any change in law or interpretation thereof that may hereafter occur, or for any other reason. We express no opinion as to the consequence of any of the events described in the preceding sentence or the likelihood of their occurrence. In addition, we express no opinion on the effect of any action taken or not taken in reliance upon an opinion of other counsel regarding federal, state or local tax matters, including, without limitation, exclusion from gross income for federal income tax purposes of interest on the Series 2020A Bonds.

The foregoing opinions are qualified only to the extent that the enforceability of the Bonds, the Indenture, the Tax Regulatory Agreement, the Promissory Notes, the Pledge and Security Agreement, the Mortgage, the Assignment of Mortgage and the Loan Agreement may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally and is subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

In rendering this opinion, we have assumed the due recording of the Mortgage and the Assignment of Mortgage and the due filing and sufficiency of financing statements under the New York State Uniform Commercial Code.

In rendering this opinion, we have relied as to matters of title of the Institution to the real property constituting a part of the Mortgaged Property under the Mortgage on the mortgagee title insurance policy issued by Old Republic National Title Insurance Company insuring the Trustee's and the Issuer's mortgagee interests under the Mortgage in the real property constituting a part of the Mortgaged Property, dated the date hereof.

In rendering this opinion, with respect to the due authorization, execution and delivery of (y) the Loan Agreement, the Promissory Notes, the Pledge and Security Agreement, the Mortgage and the Tax Regulatory Agreement by the Institution, and the enforceability of each of the same against the Institution, and (z) the Tax Regulatory Agreement by Premier, and the enforceability of the same against Premier, we have relied upon the opinion of Cullen and Dykman, LLP, counsel to the Institution and to Premier, dated the date hereof.

In rendering this opinion, with respect to the due authorization, execution and delivery of the Indenture, the Pledge and Security Agreement and the Tax Regulatory Agreement by the Trustee, and the enforceability of each of the same against the Trustee as its legal, valid and binding obligation, we have relied upon the opinion of Paparone Law PLLC, counsel to the Trustee, dated the date hereof.

In rendering this opinion, we have assumed the due authorization, execution and delivery of the Tax Regulatory Agreement by the Program Facilitator, and the enforceability of the same against the Program Facilitator.

Attention is called to the fact that we have not been requested to examine and have not examined any documents or information relating to the Institution or Premier other than the record of proceedings hereinabove referred to, and no opinion is expressed as to any financial or other information, or the adequacy thereof, which has been or may be supplied to any purchaser or purchasers of the Series 2020A Bonds or of the Series 2020B Bonds.

In rendering this opinion, we express no opinion as to the necessity for obtaining any licenses, permits or other approvals relating to the 42nd Street Facility, the 35th Street Facility or the Project or the application or effect of any environmental laws, ordinances, rules, regulations or other requirements of any governmental authority with respect to the 42nd Street Facility, the 35th Street Facility, the Project or the transactions contemplated under the Indenture.

The foregoing opinions are further subject, however, to the qualification that we express no opinion as to matters relating to the rights in, title to or sufficiency of the description of any property or collateral described in the Security Documents (as defined in the Indenture) or the creation, perfection or relative priority of any lien or security interest created with respect to such property or collateral thereunder.

We have examined a Series 2020A Bond in fully registered form numbered AR-1 and a Series 2020B Bond in fully registered form numbered BR-1, and, in our opinion, the form of each said Bond and their execution are regular and proper.

We undertake no responsibility for the accuracy, completeness or fairness of any official statement or other offering materials relating to the Bonds and express herein no opinion relating thereto.

This opinion is issued as of the date hereof, and we assume no obligation to update, revise or supplement this opinion to reflect any action hereafter taken or not taken, or any facts or circumstances, or any changes in law or in interpretations thereof, that may hereafter arise or occur, or for any other reason.

Very truly yours,

(This page intentionally left blank.)

# APPENDIX I

## COPIES OF THE CONDOMINIUM DECLARATION AND SUMMARIES OF CERTAIN PROVISIONS OF THE GROUND LEASE, OMNIBUS AGREEMENT AND SALE AND PURCHASE AGREEMENT

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R

CONDOMINIUM NO: 2701
3020-791053

**DECLARATION**
**Establishing a Plan for Condominium Ownership**
**of the Premises known as**
**220 East 42nd Street**
**220 East 42nd Street, New York, New York 10017**

**Pursuant to Article 9-B of the Real Property Law of the State of New York**
**Name:**
**220 EAST 42ND CONDOMINIUM**

**SLG 220 NEWS LESSEE LLC**
**220 East 42nd Street**
**New York, New York 10017**

**Date of Declaration:**

**As of December 15, 2015**

**The land affected by the within instrument lies in**
**Section 5, Block 1315 formerly known as Lot 24**
**now known as Lots 1001-1040**
**on the Tax Map of the Borough of Manhattan, City of New York**

**Ganfer & Shore, LLP**
**Attorneys for Declarant**
**360 Lexington Avenue**
**New York, New York 10017**
**(212) 922-9250**



INDEX TO DECLARATION





**DECLARATION OF**
**220 EAST 42ND CONDOMINIUM**

(Pursuant to Article 9-B of the Real Property Law of the State of New York)

SLG 220 NEWS LESSEE LLC, a Delaware limited liability company with offices at c/o SL Green Realty Corp., 420 Lexington Avenue, New York, New York ("SLG 220 GROUND LESSEE", which, together with its successors and assigns, is referred to herein as "Declarant"), does hereby declare as follows:

WHEREAS, SLG 220 NEWS OWNER LLC (the "Fee Owner"), a Delaware limited liability company, with offices at c/o SL Green Realty Corp., 420 Lexington Avenue, New York, New York, is the owner in fee simple of (x) the Land (as defined in Section 3.1 below), and (y) all easements, rights and appurtenances belonging thereto and all other property, real, personal or mixed, intended for use in connection therewith described in Exhibit A annexed hereto (collectively, the "Fee Estate");

WHEREAS, Fee Owner and Declarant entered into that certain Agreement of Lease dated as of December 15, 2015 (as such Agreement of Lease may be hereafter amended in accordance with the provisions thereof, the "Ground Lease"), ground leasing the Fee Estate (the "Leasehold Interest") for a term that shall consist of (i) the period between the date hereof and the Possession Date (as such term is defined in Exhibit C annexed hereto), plus (ii) a period of thirty (30) years and ninety (90) days commencing on the last day of the calendar month in which the Possession Date shall occur (with the last day of the term of the Ground Lease being hereafter referred to as the "Ground Lease Expiration Date"), a date being no less than thirty (30) years after the recordation of this Declaration;

WHEREAS, simultaneously with the execution of the Ground Lease, Fee Owner conveyed ownership of the Building (as such term is defined in Section 3.1 below) located thereon, at 220 East 42nd Street, New York, New York 10017, to Declarant;

WHEREAS, Declarant intends to submit its Leasehold Interest in the Property (as such term is defined in Section 3.1 below) under the Ground Lease and its ownership of the Building to a leasehold condominium regime pursuant to the provisions of the Condominium Act (as defined in Section 2.1 below); and

NOW THEREFORE, pursuant to the Condominium Act, Declarant hereby declares and states on behalf of itself, its successors and assigns, and on behalf of all Persons having or seeking to acquire any interest of any nature whatsoever in the Property as follows:

ARTICLE 1

**DEFINITIONS**

1.1 All capitalized terms used in this Declaration (hereinafter referred to as the "Declaration") that are not otherwise defined in the Articles hereof will have the meanings set

forth in Exhibit C annexed hereto or the By-Laws (as such term is defined in Section 2.4 below), unless the context in which they are used will otherwise require.

ARTICLE 2

**SUBMISSION OF THE PROPERTY**

2.1 Declarant hereby submits its Leasehold Interest in the Property (as such term is defined in Section 3.1 below) pursuant to a "no-action" letter issued by the Attorney General of the State of New York on January 21, 2016, under File Number NA15-0215 pursuant to the provisions of Article 9 B of the Real Property Law of the State of New York, as amended from time to time (the "Condominium Act"), and pursuant thereto does hereby establish a condominium to be known as "220 East 42nd Condominium" (the "Condominium").

2.2 Throughout the Declaration (and the exhibits attached hereto), certain terms are used to describe ownership of the leasehold condominium units and the rights of the owners in and to such leasehold condominium units. While the use of terms such as "owner" and "ownership" may suggest otherwise, the condominium units created pursuant to the Declaration are leasehold units. The Declaration does not impose the condominium form of ownership on the Fee Interest underlying the Leasehold Property, and, no reference herein to "ownership," "conveyance," "sale," "purchase" or like terms shall refer to such Fee Estate.

2.3 As of the Filing Date, title to all leasehold Units, individually and collectively shall automatically vest in Declarant, without the need to execute specific and particular deeds or indentures in each Unit. Any purchaser of a Unit, upon acceptance of a deed, shall take title subject to the terms of the Ground Lease and the terms of the Declaration (and the exhibits annexed hereto).

2.4 Attached to the Declaration and made a part hereof are the by-laws of the Condominium, which set forth detailed provisions governing the operation, use and occupancy of the Condominium (with said by-laws, as they may be amended from time to time, in accordance with the relevant provisions of Articles 17 of the Declaration, being hereinafter referred to as the "By-Laws").

ARTICLE 3

**DESCRIPTION OF THE PROPERTY**

3.1 The property hereby submitted to a leasehold condominium regime is comprised of (a) Declarant's Leasehold Interest, as tenant under the Ground Lease, in and to the land more particularly described on Exhibit A attached hereto (the "Land"), (b) Declarant's ownership interest in and to the building (including all below grade segments) and all other structures and improvements, including above and below grade segments situated on the Land now and hereafter, known as 220 East 42nd Street, New York, New York 10017 (with such structures and improvements being hereunder referred to as the "Building"), in which the Units of the Condominium are located and to be known as "220 East 42nd Condominium", and (c) all



easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, intended for use in connection therewith described in Exhibit A annexed hereto (with the Land, the Building and all easements, rights and appurtenances belonging thereto, and all other property, real and personal or mixed, intended for use in connection therewith being hereinafter collectively referred to as the "Property").

3.2 As more particularly described in Exhibit B of the Declaration and shown on the Floor Plans (as defined in Section 5.1 below) recorded on even date herewith, the Condominium shall initially contain the following: forty (40) Units, consisting of: (i) a commercial condominium unit designated for retail located on portions of the Cellar Level (as per the Certificate of Occupancy)/Concourse Level (the "Concourse Level") and the First Floor of the Building, as more particularly shown as the "Retail Unit" on the Floor Plans (which, together with any other Condominium Unit designated for retail use that may, at any given time, be then owned by VNSNY, shall collectively be referred to as the "VNSNY Retail Unit"); (ii) a commercial condominium unit designated for retail use located on the Sub-Cellar Level, Concourse Level, First Floor, and First Floor Mezzanine Level (the "Declarant Retail Unit") as more particularly shown as the "Unit 1" on the Floor Plans and on Exhibit B to this Declaration; and (iii) thirty-eight (38) commercial Units designated for office use located on portions of the Second through Thirty-Seventh Floors of the Building (the "Office Units"). The Office Units to be purchased by VNSNY from Declarant (i.e., initially those identified on the Floor Plans as Units 2S, 3, 5, 6, and 7S), together with any other Office Units that may, at any given time, be then owned by VNSNY, shall be collectively designated as the "VNSNY Office Units" (with all of the VNSNY Office Units being sometimes referred to herein collectively as the "VNSNY Office Unit," and with all of the VNSNY Office Units together with the VNSNY Retail Unit being sometimes referred to herein collectively as the "VNSNY Unit"). All the remaining Office Units in the Building shall be retained by Declarant, as more particularly shown on the Floor Plans, and shall be designated as the "Declarant Office Units" (with all of the Declarant Office Units, together with the Declarant Retail Unit, being sometimes referred to herein collectively as the "Declarant Units"). The owner of a Unit is referred to herein as a "Unit Owner," and the Unit Owners are sometimes referred to, respectively, as (a) the "Declarant Office Unit Owner" with respect to the Declarant Office Units, (b) the "Declarant Retail Unit Owner" with respect to the Declarant Retail Unit, (c) the "VNSNY Retail Unit Owner" with respect to the VNSNY Retail Unit, (e) the "VNSNY Office Unit Owner" with respect to the VNSNY Office Units, and (f) the "VNSNY Unit Owner" with respect to the VNSNY Unit. The portion of the Condominium that consists of the Retail Units (i.e., the Declarant Retail Unit and the VNSNY Retail Unit) is sometimes referred to herein as the "Retail Area." The portion of the Condominium that consists of the Office Units (i.e., the Declarant Office Units and the VNSNY Office Units) is sometimes referred to herein as the "Office Area."

ARTICLE 4

**DESCRIPTION OF THE BUILDING**

4.1 The Building consists of one Class 1A (fireproof) building, having thirty-six (36) stories above grade and two (2) below grade level, containing approximately 1,110,141 gross square feet in the aggregate. The Building is constructed of steel frame with concrete slab floor



systems, including steel columns, foundation walls and footing. The floors in the Building are named respectively (from bottom to top): Sub-Cellar level, Cellar level (a/k/a Concourse level), First Floor, First Floor Mezzanine, Floors 2 through 37, and the Main Roof.

ARTICLE 5

**THE UNITS**

5.1 Exhibit B annexed hereto and made a part hereof sets forth the following data with respect to each Unit necessary for the proper identification thereof: (i) its Unit designation; (ii) tax lot number; (iii) approximate location in the Building; (iv) square foot area; (v) the General Common Elements to which the Unit has immediate access; (vi) the percentage interest in the General Common Elements appurtenant to such Unit and (vii) description of the Limited Common Elements. The location of each Unit is shown on the floor plans of the Building (the "Floor Plans"), certified by Peter F. Farinella Architect, P.C., and approved by the Tax Map Unit of the Department of Finance of the City of New York and filed with the New York County office of the Register of the City of New York (the "City Register's Office") approximately simultaneously with the recording of this Declaration.

5.2 The location and dimensions of each Unit is shown on the Floor Plans and made a part hereof.

5.3 Each Unit includes, and each Unit Owner shall be responsible for, subject to Sections 5.10, 5.13, 5.16 and 5.17 of the By-Laws and the VNSNY Standards annexed hereto as Exhibit I and made a part hereof:

5.3.1 entranceways, doors, plate glass installed within the storefront appurtenant to a Unit (if any), flooring, wallcoverings, exposed or unexposed plumbing, gas and heating fixtures, appliances and equipment from the branch or fixture shut-off valves to which they are attached, and any special pipes or equipment which a Unit Owner may install within a wall or ceiling, or under the floor, but shall not include gas, water or other pipes, conduits, wiring or ductwork within the walls, ceilings or floors that service more than one Unit or that constitutes part of any Base Building System;

5.3.2 lighting and electrical fixtures, cabinets, including cabinetry, countertops and appliances within the Unit;

5.3.3 betterments and improvements including any special equipment, Fixtures (subject to Section 5.17 of the By-Laws) or Facilities affixed, attached or exclusively serving the Unit;

5.3.4 all movable partitions, business and trade fixtures, machinery and equipment, and all furniture, furnishings and other articles of moveable personal property owned by a Unit Owner and located in its respective Unit ("Unit Owner's Property"), subject to Section 5.17 of the By-Laws; and



5.3.5 Facilities for services such as heating, cooling, venting, air conditioning, communications, security, lighting, plumbing, electrical work, fire safety exclusively servicing such Unit and located outside of the core area of the Building.

5.4 Each Unit shall include the floor areas (including all installations currently existing therein), outlined on the Floor Plans and made a part hereof, as the same may be revised and/or amended in accordance with the provisions of the Declaration.

5.5 The Units shall not include any of the Common Elements located therein, including, without limitation, any Base Building Systems and/or Facilities or other materials and equipment used by and for any other Unit or the Building.

5.6 The Declarant Retail Unit shall include all storefronts, windows, window framing, doors, door assemblies, entranceways, equipment relating to any of the foregoing, and any other opening into and within the Declarant Retail Unit and Exterior Facade appurtenant to the Declarant Retail Unit, together with related and similar installations and Signage in accordance with the terms of the Declaration and By-Laws (collectively, the "Declarant Retail Facade Elements").

5.7 Except if and to the extent the same are designated as Common Elements pursuant to Article 7 below, the VNSNY Retail Unit shall include all storefronts, windows, window framing, doors, door equipment, door assemblies, entranceways, equipment relating to any of the foregoing, and any other opening into and within that portion of the Retail Area comprising the VNSNY Retail Unit, together with related and similar installations and Signage in accordance with the terms of the Declaration and By-Laws, but subject to the VNSNY Standards set forth in Exhibit I to the Declaration annexed hereto and made a part hereof (collectively, the "VNSNY Retail Façade Elements").

ARTICLE 6

**DIMENSIONS OF UNITS**

6.1 Each Unit will be measured horizontally from the exterior side of the exterior walls (columns, mechanical pipes, shafts, shaftways, chases, chaseways and conduits are not deducted) to (i) the centerline of the partitions separating one Unit from another Unit or separating one Unit from corridors, stairs, elevators and other mechanical equipment spaces or any Common Elements not within a Unit, or (ii) to the exterior side of the opposite exterior walls. Each Unit will be measured vertically from the top of the concrete floor to the underside of the concrete ceiling; provided, however that where a Unit consists of two or more contiguous floors, the Unit shall be measured from top of the concrete floor of the lowest floor to the underside of the concrete ceiling of the highest floor; it being agreed, however, that the portions of such a Unit consisting of two or more contiguous floors that relate to the structural integrity thereof (including, without limitation, the floor slabs between two floors located in the same Unit and any other Structural Components of such Unit) shall be deemed to be General Common Elements pursuant to Article 7 below.

ARTICLE 7

**COMMON ELEMENTS**

7.1 The general common areas (the "General Common Elements") consist, in general, of those areas for the common use of the Units and the Unit Owners or which are necessary or convenient for the existence, Maintenance or safety of the Property, including the Core and Shell and the areas identified in Section 7.3 hereof. The General Common Elements are appurtenant to, serve and benefit each Unit. The General Common Elements are for the common use of all Unit Owners, subject to and in accordance with the provisions of this Declaration and the By-Laws annexed hereto as Exhibit D.

7.2 The General Common Elements will remain undivided and no Unit Owner or other person will bring or will have the right to bring any action for partition or division thereof except as may be specifically provided for herein and in the By-Laws.

7.3 The General Common Elements include the following:

7.3.1 The Leasehold Interest in the Property (as more particularly described in Exhibit A attached to the Declaration).

7.3.2 All foundations, footings, columns, girders, floor slabs, framing, and decking and ceilings, structural steel, beams, bracings and supports for exterior walls and interior load bearing walls and the Main Roof and any Roof Setbacks, the Base Building Systems and Exterior Facade and all other structural members of the Building or which otherwise affect the structural integrity of the Building (collectively, the "Structural Components").

7.3.3 The sidewalks and sidewalk areas, street-level setbacks and driveways surrounding the Building at street level, and all street trees, shrubbery, plantings and other landscaping located thereon including planters.

7.3.4 All passages, hallways, corridors, stairs, stairways and their landings and all mechanical space and all other rooms, areas, spaces and other parts of the Building, except those portions which are located within and are part of a Unit or Limited Common Element, as more particularly set forth on the Floor Plans, as the same may be revised and/or amended in accordance with the provisions of the Declaration.

7.3.5 The exterior portion of all exterior windows (i.e., windows on the Exterior Facade of the Building), except for the Declarant Retail Façade Elements and/or the VNSNY Retail Façade Elements (but subject to the VNSNY Standards set forth in Exhibit I annexed to this Declaration). Notwithstanding anything to the contrary herein, any Structural Components of the Declarant Retail Façade Elements and/or the VNSNY Retail Façade Elements shall be deemed to be General Common Elements.

7.3.6 Existing service/freight elevators and passenger elevators and their respective shafts, pits and machinery and elevator lobbies servicing the Building, as more



particularly shown on the Floor Plans and made a part hereof, as the same may be revised and/or amended in accordance with the provisions of the Declaration.

7.3.7 The Lobby and service corridor areas (including all installations currently existing therein), located on the 1st Floor, as more particularly shown on the Floor Plans and made a part hereof, as the same may be revised and/or amended in accordance with the provisions of the Declaration.

7.3.8 Main Roof and Roof Setbacks (except as otherwise identified as being part of a Limited Common Element on the Floor Plans).

7.3.9 Courtyards.

7.3.10 Refuse room for the disposal of trash.

7.3.11 The Building mechanical rooms and other utility rooms, as more particularly shown on the Floor Plans and made a part hereof, as the same may be revised and/or amended in accordance with the provisions of the Declaration.

7.3.12 All easements, rights of way, privileges, appurtenances and other rights appurtenant to or pertaining to the Property, except those, which by their terms or by the terms of the Declaration, are appurtenant or pertain only to only one Unit or a Limited Common Element.

7.3.13 Any other Facilities in the Building that serve or benefit or are necessary or convenient for the existence, Maintenance, operation or safety of more than one Unit, and are not a part of any Unit or Limited Common Element.

7.3.14 Notwithstanding the designation pursuant to this Section 7.3 of an item that serves more than one, but less than all, of the Units as a Common Element (a "Limited Common Element"), the allocation of Common Expenses relating to Common Elements will be done in accordance with Section 5.1.8 of the By-Laws.

7.4 The "Declarant Unit Limited Common Elements" include the following:

7.4.1 The terraces identified on the Floor Plans as a Limited Common Element appurtenant to a Declarant Unit.

7.4.2 Any portion of the Building that exclusively services or benefits a Declarant Unit and is not designated as part of a Unit or the General Common Elements or the VNSNY Limited Common Elements, if any.

7.5 The "VNSNY Limited Common Elements" include the following:

7.5.1 The terraces identified on the Floor Plans as a Limited Common Element appurtenant to one or more VNSNY Units.



7.5.2 Any portion of the Building that exclusively services or benefits one or more VNSNY Units and is not designated as part of a Unit or the General Common Elements or the Declarant Unit Limited Common Elements, if any.

7.6 Notwithstanding anything to the contrary set forth herein, with respect to certain General Common Elements relating to structural integrity that are located entirely within a single Unit (e.g., floor slabs between two floors located in the same Unit), such will be considered a General Common Element.

ARTICLE 8

**USE OF UNITS**

8.1 Subject to the provisions of this Article 8, the Units shall be used and occupied for any lawful purpose, and, subject to the prior approval of the Condominium Board, for any uses accessory thereto that are permitted under the certificate of occupancy then in effect for the Building and otherwise in accordance with Applicable Laws and the provisions of the Declaration ("Accessory Uses").

8.2 To the extent that, under Applicable Law, any Accessory Uses referred to in Section 8.1 above require any governmental permit, approval or license to be issued and/or maintained in connection therewith (collectively, "Accessory Permits"), the applicable Unit Owner shall be responsible for obtaining and maintaining the same at such Unit Owner's own cost and expense (and the Unit Owner's obligation to pay such costs and expenses shall be in addition to such Unit Owner's obligation to pay Common Charges); provided, however, that, if and to the extent permitted by Applicable Law (in a manner not resulting in the Condominium Board being required to incur any cost or expense (except to a de minimis extent) in connection therewith or suffering any liability thereby), in lieu of taking any action that may be required by Applicable Law resulting from the Unit Owner's particular use or manner of use and occupancy of its Unit or the Building, such Unit Owner may instead cease such particular use or manner of use and occupancy. The Condominium Board shall reasonably cooperate with such Unit Owner and shall execute such applications, authorizations and other instruments reasonably required to enable such Unit Owner to obtain the Accessory Permits (but only if the same shall be accurate and in the proper form and reasonably necessary for the Condominium Board to execute, and provided that the Condominium Board shall not be required to incur any cost or expense in connection therewith or suffer any liability thereby). Each Unit Owner agrees to furnish the Condominium Board with a copy of such Unit Owner's applications in connection therewith, and to furnish the Condominium Board with a copy of all such Accessory Permits promptly following such Unit Owner's receipt thereof. The foregoing provisions shall not be deemed the Condominium Board's consent to any use of a Unit not otherwise permitted hereunder. Declarant does not represent that the Unit Owners shall be able to obtain the required Accessory Permits for all Accessory Uses that a Unit Owner might be contemplating in connection with the Unit Owner's occupancy of its Unit, and the Unit Owner's inability to obtain any such Accessory Permit shall not in any way reduce or impair any of the Unit Owner's obligations under the Declaration.



8.3 Subject to the provisions of the VNSNY Standards set forth in Exhibit I hereto, Unit Owners shall not use or occupy their respective Units or any part thereof or permit their respective Units or any part thereof to be used or occupied for: (i) any Prohibited Uses, as more particularly set forth on Exhibits G-1 and G-2 annexed hereto, or (ii) the use, storage, production or generation of Hazardous Materials or in violation of any Hazardous Materials Law (provided, however, that the foregoing prohibition shall not apply to Hazardous Materials, including, without limitation, standard office cleaning supplies, if and to the extent permitted by Applicable Law and in such quantities as is permitted by Applicable Law). Each Unit Owner shall indemnify and hold the Indemnified Parties (as such term is defined in Exhibit C annexed hereto) harmless from and against any and all loss, liability, claims, penalties, costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by the Indemnified Parties arising in connection with Hazardous Materials used, stored, produced or brought in or on the respective Unit Owner's Unit or the Building by such Unit Owner; provided, however, that Declarant shall not be obligated to indemnify the Unit Owners for actions of any Permitted Users of the Declarant Unit unless such Permitted User is an Affiliate of Declarant, in which case the Declarant shall be obligated to indemnify the Unit Owners for the actions of such Affiliate of Declarant. In the event of a breach of the provisions of this Section 8.3 by a Unit Owner, or by the Permitted Users of such Unit Owner, which, in either case, shall include such Unit Owner's or Permitted User's agents, employees, contractors and visitors), the Indemnified Parties, in addition to all of its rights and remedies under the Declaration and By-Laws and pursuant to all Applicable Laws, may require such Unit Owner to remove any such Hazardous Materials from the Unit or the Building in the manner prescribed for such removal by all requirements of Applicable Laws. If any Hazardous Materials shall be introduced by Declarant or the Condominium Board into the VNSNY Unit or such public portions of the Building as are intended for use by (or generally utilized by) the VNSNY Unit Owner, Declarant shall, at Declarant's expense, promptly remove (or cause to be removed) such Hazardous Materials, and shall indemnify, defend and hold harmless the VNSNY Unit Owner with respect to all loss, cost, damage and expense, including reasonable legal fees and expenses, arising out of third party claims made against the VNSNY Unit Owner or its Permitted Users as a result of such Hazardous Materials.

8.4 The Declarant Retail Unit may be used for retail purposes and for such other purposes as are permitted by Applicable Law and in a manner commensurate with Comparable Buildings (as such term is defined in Exhibit C annexed hereto), provided that Declarant may not take a Declarant Prohibited Action (as such term is defined in Exhibit C annexed hereto) with respect thereto.

8.5 The VNSNY Retail Unit may be used only as set forth in the VNSNY Standards annexed hereto as Exhibit I.

8.6 The Declarant Office Units may be used for any general office purposes and for such other purposes as are permitted by Applicable Law and in a manner commensurate with Comparable Buildings, provided that Declarant may not take a Declarant Prohibited Action with respect thereto.

8.7 The VNSNY Office Unit may be used only as set forth in the VNSNY Standards annexed hereto as Exhibit I.

8.8 Intentionally deleted.

8.9 Notwithstanding anything to the contrary contained herein, but subject to VNSNY Standards set forth in Exhibit I, Declarant and its designees shall, subject to the provisions of this Section 8.9 (x) have the right to use any Unit owned by Declarant for any lawful purpose (including, without limitation, all Accessory Uses permitted by Applicable Law), other than for a Declarant Prohibited Use, (y) have the right, from time to time, to amend the certificate of occupancy for the Building to reflect a changed usage of any Unit owned by Declarant, and (z) have the exclusive right to decide the location of all Signage and Telecommunications Equipment owned or operated by others in order to prevent interference with the functionality of its own (or its tenants') Signage and Telecommunications Equipment, and grant licenses and easements in connection therewith. Declarant shall not have the right to undertake the actions described in the immediately foregoing clauses (y) or (z) if and to the extent that such action would cause a VNSNY Adverse Impact, unless VNSNY shall give its prior written consent thereto. The VNSNY Unit Owner shall have no liability for any costs or expenses incurred by Declarant in connection with any Signage or Telecommunications Equipment owned or operated by any party other than VNSNY Unit Owner.

8.10 Unit Owners shall Maintain their respective Units and perform such necessary repairs and Alterations in accordance with Sections 5.16 and 5.17 of the By-Laws (but, with respect to the VNSNY Units, subject to the VNSNY Standards set forth in Exhibit I annexed to this Declaration).

ARTICLE 9

**CONDOMINIUM GOVERNANCE**

9.1 Subject to Section 9.2 below, the affairs of the Condominium shall be governed and controlled by the Condominium Board as described in the Declaration and the By-Laws. When in the Declaration or in the By-Laws an action is to be undertaken or is authorized to be done by the Condominium, it shall mean the Condominium acting through the Condominium Board, unless the text clearly requires another interpretation (e.g., through a vote of the Unit Owners).

9.2 Notwithstanding anything to the contrary contained in the Declaration or in the By-Laws, during the term of the Ground Lease, it is the intention of the parties that the Condominium Board shall be comprised of three (3) members, each of whom shall be designated by the Declarant, pursuant to the Power of Attorney (as defined in Section 9.3 below); and any one of the members of the Condominium Board, as designated by the Declarant, shall be authorized to act on behalf of the Condominium Board to perform all duties and to have all obligations that would otherwise be the responsibility of the Condominium Board. Notwithstanding anything to the contrary contained in this Section 9.2 or elsewhere in the Declaration or the By-Laws, (i) no Unit Owner, other than Declarant, will have the right to



designate a voting member of the Condominium Board; and (ii) Declarant shall have no right to designate a Unit Owner, a representative of a Unit Owner or any party affiliated with any Unit Owner (except, in each instance, if and for so long as any such Unit Owners, representatives or affiliated parties are Declarant Entities) to be a voting member of the Condominium Board.

9.3 Any act requiring a meeting or vote of Unit Owners under the Declaration or the By-Laws shall be taken by the Declarant, pursuant to an irrevocable proxy and power of attorney (collectively, the "Power of Attorney"), in the same form as annexed hereto as Exhibit F, coupled with an interest, granted by (or deemed to be granted by) each Unit Owner to Declarant upon such Unit Owner's acceptance of a deed to a Unit, without the necessity of such meeting or vote, including, without limitation, any amendment to the Declaration and/or By-Laws, whether or not to restore the Property in the event of a substantial fire or other casualty or condemnation or termination of the Condominium; provided, however, that nothing contained herein shall be deemed to diminish the rights of the Fee Owner or any Permitted Mortgagees, and provided further that any action taken by the Declarant pursuant to the Power of Attorney must be in accordance with the provisions of this Declaration and the By-Laws. Furthermore, neither Declarant nor the Condominium Board shall (whether through the Power of Attorney or otherwise) amend this Declaration or the By-Laws (or any exhibit thereto, including, without limitation, the VNSNY Standards set forth in Exhibit I) if and to the extent that such amendment would cause a VNSNY Adverse Impact. The grant of such Power of Attorney will run with the Land and any subsequent conveyance of any Unit will not be deemed to terminate such Power of Attorney.

ARTICLE 10

**ALTERATIONS, ADDITIONS, IMPROVEMENTS AND CHANGES TO THE UNITS**

10.1 Declarant will have the right, at its own cost and expense (except in situations where the same shall be performed for the benefit of the Building generally, in which case, if the costs of the same are permitted to be included as Common Expenses pursuant to the provisions of the By-Laws, then such costs may be included in Common Charges), subject to the requirements set forth in Subsection 5.17.2 of the By-Laws, but without the need for a vote or consent of the Condominium Board or any Unit Owner to: (1) decorate or make Alterations, whether structural (e.g., penetrate floor slabs) or non-structural, interior or exterior, ordinary or extraordinary, in, to and upon any Unit owned by Declarant, or to a Common Element, (2) change the layout or number of rooms in its Unit(s) from time to time; (3) change its Unit(s), by subdividing the same, into any desired number of condominium units, combining its Unit(s) or combining any units resulting from a subdivision, altering the boundary walls between its Unit(s), or otherwise; (4) designate its Unit(s) as part of a newly created or expanded condominium unit or designate all or part of its Unit(s) as a newly created or expanded Unit or Common Element; (5) change, alter or modify the facade or portion of the exterior wall appurtenant to its Unit(s), including, without limitation, storefronts and entranceways; (6) create or eliminate floor area; (7) install, modify, Maintain, replace and/or remove all Signage on the exterior of the Building; and (8) reapportion among the newly created or expanded Units resulting from any subdivision, combination or otherwise their percentage interests in the Common Elements that will be based upon the approximate proportion that the floor area of the



Unit at the date of the Declaration bears to the then aggregate floor are of all the Units, but such proportion shall reflect the substantial exclusive advantages enjoyed by one or more, but not all, Units in a part or parts of the Common Elements, and provided that in no case may such reapportionment result in a greater percentage of Common Interest for the total of the new Declarant owned Units than existed for the original Declarant owned Units; provided, however, that the percentage interest in the Common Elements appurtenant to any Unit owned by another Unit Owner will not be changed by reason thereof unless the owner of such Unit will consent thereto, and Declarant will comply with all Applicable Laws and the other legal requirements set forth in Article 27 hereof. Declarant will have the right, without the consent of any other Unit Owner or the Condominium Board, to amend the Declaration and By-Laws (and the Floor Plans, if applicable) to reflect the foregoing changes, in accordance with Article 17 of the Declaration. Notwithstanding anything to the contrary contained in this Section 10.1, Declarant shall not have the right to perform Alterations in the Common Elements if and to the extent that the existence of such Alterations (following the completion thereof) would cause a VNSNY Adverse Impact. A temporary disruption of, or interference with, VNSNY's business operations resulting from the performance of such Alterations shall not be deemed to be a VNSNY Adverse Impact, and such disruption or interference shall be subject to the relevant provisions of Section 5.17 of the By-Laws.

10.2 For so long as Declarant shall own the Declarant Retail Unit and/or the Declarant Office Units, the Declarant Retail Unit Owner and/or the Declarant Office Unit Owner, as the case may be, shall have the right to perform the Alterations and changes to its Units in accordance with and subject to the restrictions set forth in Section 10.1 above and in compliance with the terms of the Declaration and the By-Laws.

10.3 The Condominium Board (or its designee) shall perform Alterations to, operate, Maintain and replace the Common Elements (as necessary) in accordance with the terms of Subsections 5.16 and 5.17.1 of the By-Laws.

10.4 All Unit Owners performing Alterations to their respective Units shall do so in compliance with the terms of Article 27 of the Declaration and Section 5.17 of the By-Laws.

ARTICLE 11

**PERSON TO RECEIVE SERVICE**

11.1 The Secretary of State of the State of New York is hereby designated to receive service of process in any action which may be brought against the Condominium. In the event that the Condominium receives service of process, the Condominium Board shall promptly notify each of the Unit Owners.



ARTICLE 12

**DETERMINATION OF PERCENTAGE INTERESTS IN COMMON ELEMENTS**

12.1 The percentage interest of each Unit in the Common Elements has been based upon floor space, subject to the location of such space and the additional factors of relative value to other space in the Condominium, the uniqueness of the Unit, the availability of Common Elements for exclusive or shared use and the overall dimensions of the particular Unit, pursuant to Section 339-i.1(iv) of the Condominium Act.

ARTICLE 13

**ENCROACHMENTS**

13.1 If (a) any portion of the Common Elements encroaches upon any Unit or upon any other Common Element, (b) any Unit encroaches upon any other Unit or upon any portion of the Common Elements or (c) any such encroachments shall hereafter occur as a result of (i) settling or shifting of the Building, (ii) any Alteration, Maintenance or repair of the Common Elements or Units made in accordance with the terms of the Declaration or the By-Laws, or (iii) any Alteration, Maintenance of the Building (or any portion thereof) or of any Unit or Common Element after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit or the Common Elements; then, in any such event, a valid easement shall exist for such encroachment and for the Maintenance of the same as long as the Building shall stand. In connection with the encroachments referred to in clause (c) above, the Condominium Board and/or Declarant shall take commercially reasonable precautions to prevent such encroachments from occurring. Notwithstanding the foregoing, except as may be required in connection with a repair of any portion of the Building or the Base Building Systems, neither Declarant nor the Condominium Board shall take any action to create an encroachment upon the VNSNY Unit if and to the extent that such encroachment would cause a VNSNY Adverse Impact, except in compliance with VNSNY's consent rights and obligations under the VNSNY Standards.

ARTICLE 14

**ACCESS TO AND EASEMENTS RELATING TO COMMON ELEMENTS AND UNITS**

14.1 Subject to the terms of the Declaration and the By-Laws, Declarant, the Unit Owners, the Condominium Board, Permitted Users, managing agent and the Permitted Users of the foregoing shall have in common with the others, an easement for ingress and egress through, as well as for the use and enjoyment of, all of the General Common Elements, and the General Common Elements shall be subject to such easement. Notwithstanding the foregoing, however, no Person shall use or enjoy the Common Elements, except in accordance with the reasonable purposes for which they are intended and in accordance with all reasonable rules and regulations promulgated therefor by the Condominium Board, and without encroaching upon the rights of other Persons to do so. Subject to the terms of the Declaration and the By-Laws (including, without limitation, the Rules and Regulations annexed hereto, as the same may be hereafter

amended in accordance with the provisions of the Condominium Documents) and Force Majeure, each Unit Owner shall have such easements of egress and ingress to the entrances and exits of the Building as are reasonably necessary or appropriate for such Unit Owner and its Permitted Users to obtain access to its Unit(s) at any time.

14.2 Subject to the terms of the Declaration and the By-Laws, each Unit Owner shall have an easement in common with all other Unit Owners to use, Maintain, repair, perform Alterations and replace all Common Elements located in any of the other Units or elsewhere in the Property that exclusively serve such Unit Owner's Unit, including an easement to connect to existing utilities, including, without limitation, utilities for steam, gas (but only if and to the extent the same currently services a Unit, or if and to the extent that the Condominium Board elects, in its sole discretion, to permit gas service for one or more Units), electricity, water (including condenser water), telecommunication, ventilation, other utilities and similar services. All easements and rights of access described in this Section 14.2 shall be exercised only by the Condominium Board and/or Declarant on behalf of the Unit Owners, it being the intent of this provision that no Unit Owner other than Declarant shall have any right to do so, and that Declarant may not delegate its rights under this Section 14.2 to Declarant's Permitted Users. The Condominium Board shall have an easement and a right of access to each Unit and to the Common Elements contained therein to inspect the same, to remove violations therefrom and to install, operate, maintain, repair, alter, rebuild, restore and replace any of the Common Elements located in, over, under, through, adjacent to, or upon the same, and each Unit and the Common Elements shall be subject to such easement and right of access. Declarant and/or the Condominium Board, as the case may be, shall use commercially reasonable efforts to minimize interference with the use of the affected Units for their permitted purposes, to the extent practicable, in connection with such easements and rights of access. Such entry shall be permitted on reasonable prior notice (but in no event less than two (2) Business Days for any scheduled entry) to the affected Unit Owner (which need not be given in writing) based on the nature of the repair or replacement, except that no prior notice will be necessary in the case of an Emergency. Each Unit Owner shall be entitled to have a representative present (provided that the Unit Owner makes such a representative available) when the Declarant or the Condominium Board accesses such Unit Owner's Unit, except in the case of Emergency. Plans and specifications with respect to any such proposed work shall be submitted by the Unit Owner who has requested that the Condominium Board exercise any such easement or right of access to the Unit Owner whose Unit is to be accessed, and all work is to be prosecuted diligently to completion. Notwithstanding any other provision of the Declaration or the By-Laws, any Alterations carried out in connection with the easements granted hereinabove shall be such that neither the configuration nor the usable area of the affected Unit shall be adversely affected in more than a de minimis manner, except to the extent required by Applicable Laws. If the usable area of the affected Unit shall be reduced by more than one (1%) percent, then the percentage interest of the Common Elements allocated to such Unit shall be adjusted appropriately. If and to the extent that the Condominium Board and/or Declarant take any action pursuant to the provisions of this Section 14.2 at the request of any particular Unit Owner or to the extent otherwise permitted pursuant to the Condominium Documents, then such Unit Owner shall reimburse the Condominium Board and/or Declarant and/or the Unit Owner burdened by the exercise of such easement, as the case may be, for all reasonable costs expended by the Condominium Board and/or Declarant, as the case may be, in connection therewith within thirty



(30) days after submission of an invoice therefor to such Unit Owner (and the Unit Owner's obligation to do so shall be in addition to such Unit Owner's obligation to pay Common Charges).

14.3 Declarant and the Condominium Board shall have an easement for the use of any vaults located on the side of the Building (subject to the provisions of Article 8), if and to the extent such vaults are deemed the equivalent of General Common Elements hereunder, provided such does not create a VNSNY Adverse Impact.

14.4 Declarant and its Permitted Users shall have an easement in, over, under, through and upon the General Common Elements, to use the same, without being subject to any fee or charge, for all purposes and activities in connection with the sale or renting of any Units owned by Declarant including, without limitation, the right to place "for sale," "for rent" and other signs and promotional materials, of such size and content as Declarant shall determine (provided that the same shall be reasonably consistent with the practice of owners of Comparable Buildings).

14.5 Declarant and the Condominium Board with respect to the General Common Elements and the Building each shall have the right to grant such additional electric, steam, gas, water, ventilation, telecommunications or other easements for utilities or otherwise or relocate such easements, as each of them shall deem necessary or desirable for the proper operation and Maintenance of the Building, the General Common Elements or the respective Units, as the case may be, or any portion thereof, or for the general health, safety or welfare of Permitted Users; provided that such additional utilities or the relocation of existing utilities or the addition to existing utilities or the use thereof will not prevent or materially interfere with or materially adversely affect the use of the other existing utilities for the normal conduct of business of tenants and occupants of the Units or with the use of the Units for their permitted purposes or diminish the square footage of the Units, and provided further that any work shall comply with all of the requirements of Article 27 of the Declaration and the By-Laws. Any utility company and its employees and agents shall have the right of access, upon reasonable notice (of at least two (2) Business Days for any scheduled entry) to all affected parties (which need not be given in writing), except in an Emergency (in which case no prior notice shall be required), to any Unit or the Common Elements in furtherance of such easements, provided that, except in an Emergency, such right of access shall be exercised in such manner as shall not materially interfere or materially adversely affect the normal conduct of business of the tenants and occupants of the Units or with the use of the Units for their permitted purposes. To the extent practicable, such Unit Owner shall be afforded the opportunity to have a representative present when the utility company and its employees and agents shall enter upon the Unit of such Unit Owner. Any fees, compensation or other profits received by Declarant or the Condominium Board in furtherance of the aforesaid easements shall be the property of the Declarant or the Condominium Board granting such easements, as applicable. The Condominium Board or Declarant shall reasonably designate which risers are to be used by each Unit Owner, and no Unit Owner may use any riser not designated for such Unit Owner's use by the Condominium Board or Declarant. In no event shall a Unit Owner be permitted to utilize the risers in such amounts that would leave the other Unit Owners with insufficient riser capacity for the normal operations of such Unit (as being conducted prior to change in the utilization of such risers). Notwithstanding anything to the contrary set forth herein, with respect to the VNSNY Units,



Declarant's and the Condominium Board's rights under this Section 14.5 shall be subject in all respects to the provisions pertaining to utilities and expenses incurred in connection therewith and riser and shaft space, each as set forth in Exhibit I annexed hereto.

14.6 Declarant and the Condominium Board have the right of access and an easement (a) to install, utilize, operate, Maintain, repair, perform Alterations, rebuild, restore and replace the Common Elements located in, over, under, through or upon any Unit, or any other Common Elements or elsewhere on the Property; and (b) to Maintain any encroachment on any Unit or Common Elements resulting from the Maintenance, performance of Alterations, rebuilding, restoration or replacement of the Common Elements; and (c) subject to Section 14.16 of this Declaration, to each Unit to inspect same and/or to remove violations therefrom. Such right of access and easement also includes the right to access the Main Roof or any Roof Setbacks for the purpose of storing and launching Window Washing Equipment from such Main Roof or Roof Setbacks (including lowering and raising such equipment along tracks on the Exterior Facade of the Building). No Unit Owner shall be permitted to locate or store any furniture and/or other Fixture on any Roof Setback that will, in the reasonable discretion of the Condominium Board, interfere with the use or operation of the Window Washing Equipment in more than a de minimis manner. The provisions set forth in Section 14.2 above as to restrictions upon Declarant and the Condominium Board (and such other protections granted to the Unit Owners) in connection with the access and easement rights thereunder shall also apply to the access and easement rights set forth in this Section 14.6. Notwithstanding anything to the contrary set forth herein, with respect to any terraces appurtenant to any VNSNY Unit, Declarant's and the Condominium Board's rights under this Section 14.6 shall be subject in all respects to the provisions pertaining to terraces set forth in Exhibit I annexed hereto.

14.7 Each Unit shall have an easement of physical support and of necessity from the other Units and the Common Elements, and shall be subject to an easement of physical support and necessity in favor of the other Units and the Common Elements. All such easements shall be exercised only by Declarant and/or the Condominium Board on behalf of, and with respect to, each Unit.

14.8 All Persons shall have a right of emergency egress through passageways, emergency stairways and exits contained within any Unit or Common Element, and each Unit shall be subject to the rights of all individuals to use such passageways, stairways and exits for emergency egress.

14.9 Subject to the terms set forth in Exhibit I annexed to this Declaration, Declarant and its Permitted Users shall have an exclusive right and easement to erect, use, lease, maintain, repair, replace and operate antennae, satellite dishes and other telecommunications equipment ("Telecommunications Equipment") and Signage on any part of the Main Roof, Roof Setbacks, Exterior Façade of the Building and elsewhere on the Common Elements, and to utilize any risers, conduits, piping, cables, ducts and electrical panels and rooms, telephone/cable panels and rooms in connection therewith. The exercise of the easement and these rights do not require the consent of the Condominium Board or the Unit Owners, and shall be without charge to Declarant. Declarant shall have the absolute right to lease, license or otherwise grant rights to other Unit Owners in connection with Declarant's exclusive easements and rights; provided that



Declarant shall (or Declarant shall cause the Condominium Board to), upon request of other Unit Owners, make available to such Unit Owners pathways through the Common Elements for risers, conduits, piping, cables and ducts. Such pathways shall be made available to such other Unit Owners without charge, but such Unit Owners will be solely responsible for all costs of utilizing such pathways for any purpose (including, without limitation, the costs of surveys, core drilling and installation of risers, conduits, piping, cables and ducts), and all work to be performed by such Unit Owners in connection therewith shall be performed in compliance with the applicable provisions of this Declaration and the By-Laws. Any obligations of Declarant under any lease, license or other right of use granted by Declarant with respect to the Common Elements shall be the obligation of Declarant and not of the Condominium, and any rights of Declarant, including, without limitation, the right to receive rent or other consideration for such lease, license or other right of use, shall be the right of Declarant, and not of the Condominium or any other Unit Owner. In connection with such easement and related rights, Declarant and its Permitted Users shall each have, to the extent necessary or advisable for such erection, use, lease, Maintenance and operation, an easement in common with all Unit Owners for ingress, egress and the use of any Common Elements. In accordance with Section 8.6 hereof, Declarant reserves the exclusive right to decide the location of all Signage and Telecommunications Equipment owned or operated by others in order to prevent interference with the functionality of its own (or its tenants') Signage or Telecommunications Equipment. The VNSNY Unit Owner shall have no liability for any costs or expenses incurred by Declarant in connection with any Signage or Telecommunications Equipment (including, without limitation, any Alterations, repairs and/or improvements performed on the Main Roof, Roof Setbacks or the Exterior Façade of the Building in connection with the Maintenance, operation and/or installation of any Signage or Telecommunications Equipment), in each case to the extent that the same is owned, operated or installed by any party other than VNSNY Unit Owner (or any Permitted User of the VNSNY Unit Owner). Notwithstanding anything to the contrary set forth in this Section 14.9, the Declarant's and the Condominium Board's rights under this Section 14.9 cannot be exercised in a manner that would in any way diminish the rights of the VNSNY Unit Owner set forth in Exhibit I annexed hereto (except to a de minimis extent) or otherwise result in a VNSNY Adverse Impact.

14.10 Subject to Declarant's rights under Section 14.9 above, the VNSNY Unit Owner shall have the right to Maintain exterior Signage on the Building's exterior, subject to and solely as and to the extent expressly provided in Exhibit I annexed hereto.

14.11 Except as set forth in Exhibit I annexed hereto, the VNSNY Unit Owner shall not attach or permit any party to attach Signage of any kind to the exterior or interior storefront window of the VNSNY Retail Unit or that is otherwise visible from the exterior of the Building.

14.12 Subject to Declarant's rights under Section 14.9 above, the Declarant Retail Unit Owner shall have the right and an easement to operate and Maintain from time to time, one or more Signs on the Property for the purposes of advertising (i) the sale or lease of any the Declarant Retail Unit, and (ii) the operation of any business of Declarant Retail Unit Owner, a tenant, occupant, managing agent or operator of all or any portion of the Declarant Retail Unit Owner, all subject to the prior approval of Declarant. Declarant shall determine, in Declarant's sole discretion, whether the installation of any such Signs shall be performed by Declarant, the

Declarant Retail Unit Owner or any Permitted Users of all or any portion of the Declarant Retail Unit. The VNSNY Unit Owner shall have no liability for any costs or expenses incurred by Declarant in connection with any Signage (including, without limitation, any Alterations, repairs and/or improvements performed on the Main Roof, Roof Setbacks or the Exterior Façade of the Building in connection with the Maintenance, operation or installation of any Signage), in each case to the extent that the same is owned, operated or installed by any party other than VNSNY Unit Owner (or any Permitted User of the VNSNY Unit Owner).

14.13 Declarant Retail Unit Owner shall have an easement to use the sidewalks in front of the Declarant Retail Unit for purposes permitted by Applicable Laws and approved by the Condominium Board.

14.14 As of the date of this Declaration, it is intended that an elevator and staircase (including for these purposes all appurtenant installations, including shafts, equipment, doors, etc.) will be installed to extend below the VNSNY Retail Unit on the First Floor to the Concourse Level of the Building in an area that as of the date hereof has not yet been designated in Unit 1, and that the VNSNY Retail Unit Owner and the Unit 1 Owner will, prior to the Possession Date, agree (it being agreed that failure to do so shall not be deemed to in any way diminish the rights granted to the VNSNY Retail Unit, or the obligations of the Unit 1 Owner, under this Section 14.14) upon the location of such elevator and stairway (with the portions extending into Unit 1 being referred to as the "VNSNY Retail Concourse Connection"). There shall be an easement in favor of the VNSNY Retail Unit Owner and its designees for the VNSNY Retail Concourse Connection over Unit 1 for the repair, replacement and Maintenance of, and for access to, the elevator and staircase located within the VNSNY Retail Concourse Connection (with such portions of the elevator and staircase being referred to as the "VNSNY Retail Concourse Elevator and Stairway"). When the location of the easement for the VNSNY Retail Concourse Connection is established, the VNSNY Retail Unit Owner and the Unit 1 Owner will reasonably cooperate so as to create a sketch of the location and deliver same to the Condominium Board, and the parties shall have the right to, without the involvement of any other persons, record an instrument in the City Register's Office (as an amendment to the Declaration or as a separate document) identifying the actual location of the VNSNY Retail Concourse Connection and the appurtenant easement. The VNSNY Retail Concourse Connection shall be treated as if it were a VNSNY Limited Common Element. Accordingly, the VNSNY Retail Unit Owner shall be responsible for all repair, replacement and Maintenance obligations in connection with the VNSNY Retail Concourse Elevator and Stairway. The VNSNY Retail Unit Owner shall have the right to post directional signs in the VNSNY Retail Concourse Connection identifying VNSNY Retail Concourse Elevator and Stairway as providing access to the VNSNY Retail Unit, provided such signs are consistent with the location, size and appearance of similar signs existing in the Building. Notwithstanding the foregoing, the Condominium Board shall be responsible for (i) procuring and maintaining casualty insurance for the VNSNY Retail Concourse Elevator and Stairway, and (ii) restoring the VNSNY Retail Concourse Elevator and Stairway in the event that such is damaged or destroyed as a result of a casualty.

14.15 The Unit Owner of Unit 7S and its designees shall have, and Unit 7N shall be subject to an easement for access to, and the for use of, the elevator lobby, service lobby,



stairwells, bathrooms and corridors located in Unit 7N (the "Seventh Floor Easement Area"). In connection with the foregoing, the Unit Owner of Unit 7N shall be responsible for the Maintenance of the Seventh Floor Easement Area (except for any areas therein which are General Common Elements that the Condominium Board is responsible for, if any). The Unit Owner of Unit 7S shall have the right to post directional signs in the Seventh Floor Easement Area identifying the Unit consistent with the location, size and appearance of similar signs existing on other floors. In the event that the Unit Owner of Unit 7N fails to perform its obligations under Section 5.3.1 of the By-Laws to restore the Seventh Floor Easement Area following a casualty, Declarant shall have the obligation to do so, so that the 7N Unit Owner and its designees shall have access to, and the use of, the elevator lobby, service lobby, stairwells, bathrooms and corridors located in Unit 7N, which elevator lobby, service lobby, stairwells, bathrooms and corridors following such restoration shall be comparable in quality to the bathrooms existing prior to such casualty. The above notwithstanding, the Declarant shall have no obligations to restore the Seventh Floor Easement Area pursuant to the preceding sentence if Unit 7N is owned by VNSNY or a VNSNY Successor.

14.16 Declarant and the Condominium Board shall have the right, at reasonable times, at reasonable intervals and upon reasonable advance notice (of at least two (2) Business Days) to the affected Unit Owner (which need not be given in writing), except that no prior notice will be necessary in the case of an Emergency, to enter into the Property and all Common Elements and Units therein to inspect the Common Elements that the inspecting party is permitted or required to Maintain in order to inspect or correct conditions dangerous to persons or property. Each Unit Owner shall be entitled to have a representative present (provided that the Unit Owner makes such a representative available) when the Declarant or the Condominium Board accesses such Unit Owner's Unit, except in the case of Emergency, but may waive such right in writing at any time. Declarant and/or the Condominium Board, as the case may be, shall use commercially reasonable efforts to minimize interference with the use of the affected Units for their permitted purposes, to the extent practicable, in connection with any entry permitted pursuant to this Section 14.16.

14.17 Each Unit Owner shall have a right and easement to use the sidewalks and the ramps, stairways, entrances and exits constituting Common Elements and any replacements thereof for the sole purpose of providing a means of ingress and egress to and from the Property and the respective Units and an approach to and from the public street. Notwithstanding the foregoing, the Condominium Board shall have the right at any time and without thereby being deemed to infringe upon such right and easement, and without incurring any liability to any Unit Owner therefor, to change the arrangement or location of entrances, passageways, doors and doorways, corridors, stairs, toilets and other like public service portions of the Building, provided that the same shall not (i) materially interfere with a Unit Owner's access to its Unit, or (ii) with respect to the VNSNY Unit, create a VNSNY Adverse Impact.

14.18 Declarant shall have the right, exercisable in its sole discretion, to make (or to allow its Permitted Users to make) reasonable quantities of penetrations in floor slabs that constitute a Common Element, as part of an Alteration or Maintenance and repair and which separates two floors both of which are wholly owned by Declarant, provided that such proposed penetration will not materially adversely affect the structural integrity of the Building.



14.19 Declarant, the Declarant Retail Unit Owner and the Condominium Board, as the case may be, may, from time to time, install and maintain or permit the installation and Maintenance of scaffolding and/or a sidewalk bridge ("Scaffolding") outside of the Property if required by Applicable Law or in connection with any Maintenance and repair obligations and/or Alterations being performed at the Building. The Scaffolding shall be erected (i) in a way so as not to impair or restrict reasonable access to any Unit Owner's entrance to its respective Unit; (ii) in a way so as to reasonably minimize blockage and concealment of any Unit Owner's windows or its Signage (to the extent that the same shall be reasonably practicable under the circumstances); (iii) in a way so as to be consistent with the general manner in which scaffolding is installed in similar buildings in Manhattan, and (iv) and thereafter be maintained in a commercially reasonable manner. Unless necessitated by the nature of the work or otherwise agreed to by and between the Declarant or Condominium Board and the affected Unit Owner, such Scaffolding shall be double-height scaffolding (instead of single-height scaffolding) and shall have appropriate lighting. The Declarant Retail Unit Owner and/or the Condominium Board, as the case may be, shall use reasonable diligence to cause the Scaffolding to be removed as quickly as shall be reasonably practicable under the circumstances (but without any obligation to use overtime or premium pay labor in order to do so). If any portion of any Unit Owner's exterior Signage is blocked or obscured by such Scaffolding, then Declarant, the Declarant Retail Unit Owner and/or the Condominium Board, as the case may be, shall erect and maintain, on any Unit Owner's behalf, for so long as such Scaffolding shall remain in place, Signage hanging from such Scaffolding in a form and design reasonably acceptable to the Declarant and the affected Unit Owner. No Unit Owner shall have any liability for any costs or expenses incurred by Declarant or the Condominium Board in connection with any Scaffolding (or any Signage hanging from such Scaffolding) that is installed for the specific benefit of any other Unit Owner, except in situations where the underlying Maintenance, repair Alterations and/or compliance with Applicable Law, is being performed for the benefit of the Building generally, in which case, if the costs of the same are permitted to be included as Common Expenses pursuant to the provisions of the By-Laws, then the costs of the Scaffolding, any Signage required to be hung from such Scaffolding, and any other costs incurred in connection therewith may be included in Common Charges. Notwithstanding anything to the contrary set forth in this Section 14.19, the Declarant's and the Condominium Board's rights under this Section 14.19 cannot be exercised in a manner that would in any way diminish the rights of the VNSNY Unit Owner set forth in Exhibit I annexed hereto (except to a de minimis extent) or otherwise result in a VNSNY Adverse Impact.

14.20 Declarant or Fee Owner and/or the party charged with performing the Initial Construction of the VNSNY Unit (e.g., contractors, employees, etc.) shall, until Initial Construction (which includes, without limitation, the completion of any "punch-list" work) of the VNSNY Unit is fully completed, have a right and an easement on, through, and over each of the Units and the Common Elements in order to perform and complete the Initial Construction of the VNSNY Unit.

14.21 Any easements granted to Declarant, the Condominium Board, any Unit or any Unit Owner under the Declaration and the By-Laws may be exercised by such party's employees, agents, contractors, suppliers, customers, guests, invitees, licensees, servants, tenants, subtenants, members, and visitors, as the case may be, to the extent necessary to



effectuate the purpose for the easement or as otherwise authorized by Declarant, the Condominium Board or Unit Owner, but, in all cases, subject to the provisions of the Declaration and the By-Laws.

14.22 Intentionally deleted.

ARTICLE 15

**NAME OF CONDOMINIUM AND BUILDING**

15.1 The Condominium shall be designated and known as "220 East 42nd Condominium." The Building does not currently have a name, but Declarant reserves the right to name the Building in the future. Declarant shall own and control all rights and interests, including the right to apply for any state trademark and prosecute to registration any federal trademark applications, to litigate against those whom Declarant believes may be infringing Declarant's rights in and to the name of the Condominium and Building. Only Declarant shall have the right to change or assign the name of the Condominium and/or the Building. In addition, Declarant shall have the right to maintain one or more plaques or other Signs identifying Declarant (and/or the managing agent of the Property, Permitted Users and Unit Owners) with such other information as Declarant determines in its sole discretion. The VNSNY Unit Owner shall have no liability for any costs or expenses incurred by Declarant, the Condominium Board, and/or any other Unit Owner in connection with (i) the enforcement or defense of Declarant's Condominium and Building naming rights, or (ii) the installation of any Signs identifying Declarant (and/or the managing agent of the Property, Permitted Users and Unit Owners, other than any Signs identifying the VNSNY Unit or any of the constituent Units that comprise the VNSNY Unit). Notwithstanding anything to the contrary set forth herein, Declarant's and the Condominium Board's rights under this Section 15.1 shall be subject in all respects to the provisions pertaining to competitors set forth in the VNSNY Transaction Documents.

ARTICLE 16

**COVENANTS RUNNING WITH THE LAND**

16.1 Subject to the priority of the Ground Lease, all provisions of the Declaration, and the By-Laws and the Rules and Regulations that are annexed hereto and made a part hereof, including, without limitation, the provisions of this Article 16, shall to the extent applicable and unless otherwise expressly herein or therein provided to the contrary, be perpetual and be construed to be covenants running with the Land and with every part thereof and interest therein, and all of the provisions hereof and thereof shall be binding upon and inure to the benefit of the owner of all or any part thereof, or interest therein, and such Unit Owner's heirs, executors, administrators, legal representatives, successors and assigns, but the same are not intended to create, nor shall they be construed as creating, any rights in or for the benefit of the general public or any other third party. All present and future Unit Owners, tenants, subtenants, licensees, and other Permitted Users of the Units shall be subject to the Ground Lease, the Declaration, the By-Laws and the Rules and Regulations and shall comply with the provisions of

the Declaration, the By-Laws and Rules and Regulations, as each may be amended from time to time (in accordance with the relevant provisions of the Condominium Documents), and to any restrictions and limitations with respect to the Property and the Units set forth in the Declaration and the By-Laws that apply to all such future Unit Owners, tenants (including any existing tenants), subtenants, licensees, and other Permitted Users of the Units. The acceptance of a deed of conveyance or the entering into of a Unit Lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of the Ground Lease, the Declaration, the By-Laws, and the Rules and Regulations, as each may be amended from time to time, are accepted and ratified by such Unit Owner, tenant, subtenant, licensee or Permitted User, and all of such provisions shall be deemed and taken to be covenants running with the Land and shall bind any Person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or Unit Lease or use and occupancy agreement thereof.

16.2 If any provision of the Declaration or the By-Laws is invalid under, or would cause the Declaration and the By-Laws to be insufficient to submit the Property to the provisions of, the Condominium Act, such provision shall be deemed deleted from the Declaration or the By-Laws, as the case may be, for the purpose of submitting the Property to the provisions of the Condominium Act but shall nevertheless be valid and binding upon and inure to the benefit of the owners of the Property and their heirs, executors, administrators, legal representatives, successors and assigns, as covenants running with the Land and with every part thereof and interest therein under other applicable law to the extent permitted under such applicable law with the same force and effect as if, immediately after the recording of the Declaration and the By-Laws, all Unit Owners had signed and recorded an instrument agreeing to each such provision as a covenant running with the Land. If any provision that is necessary to cause the Declaration and the By-Laws to be sufficient to submit the Property to the provisions of the Condominium Act is missing from the Declaration or the By-Laws, then such provision shall be deemed included as part of the Declaration or the By-Laws, as the case may be, for the purposes of submitting the Property to the provisions of the Condominium Act.

ARTICLE 17

**AMENDMENTS OF DECLARATION**

17.1 Declarant shall have the right to amend, add to, modify or delete any provision of the Declaration (or By-Laws), without the consent of the Condominium Board, or any Unit Owner to (i) reflect any changes in any Units owned by Declarant and/or the reapportionment of the Common Interest of the affected units owned by Declarant resulting therefrom made by Declarant in accordance with the terms of Section 10.1 of the Declaration; (ii) required by a Permitted Mortgagee or any governmental agency having regulatory jurisdiction over the Condominium or any title insurance company selected by Declarant to insure title to any Unit owned by Declarant; provided, however, that (a) such amendment: (x) does not materially limit any rights or increase any obligations of any party under the terms of the Ground Lease or the Declaration and By-Laws; and (y) does not change the Common Interest of any Unit other than a Unit owned by Declarant; and (b) Declarant provides prior written notice of its proposed amendment (along with a copy of such proposed amendment) to the Fee Owner, a Permitted



Mortgagee, Condominium Board and all Unit Owners. Declarant shall be deemed to have and is granted an irrevocable power of attorney coupled with an interest from all Unit Owners to execute and file or record all documents necessary to accomplish such amendment, modification or deletion of the Declaration. Notwithstanding anything to the contrary contained hereinabove, neither the Condominium Board nor Declarant shall have any right to enter into any amendment or modification to the Declaration or the By-Laws resulting in a VNSNY Adverse Impact, unless VNSNY shall give its prior written consent thereto.

17.2 Subject to the restrictions set forth in Section 17.1 above, the Condominium Board shall have the right to amend the Declaration and By-Laws, as permitted by its Power of Attorney.

17.3 Subject to the restrictions set forth in Section 17.1 above, the Declarant Retail Unit Owner shall have the right to amend the Declaration and By-Laws, but only in order to effectuate a subdivision of its Unit.

17.4 No such amendment, modification, addition or deletion shall be effective until recorded in the City Register's Office.

ARTICLE 18

**TERMINATION OF CONDOMINIUM**

18.1 Subject to the priority of the Ground Lease, the Condominium will continue and the Property will not be subject to an action for partition until such time as withdrawal of the Property from the provisions of the Condominium Act is authorized: (i) in accordance with the terms and provisions of Section 5.3 and Article 8 of the By-Laws; and (ii) as a result of the vote to do so of at least eighty (80%) percent in number and in Common Interest of all Unit Owners, which shall be voted in accordance with the terms of Section 9.3 of the Declaration; provided, however, that the Condominium may not be terminated, unless (a) (i) all of the Unit Owners (other than Declarant and VNSNY) shall then be in a Termination Default, and (ii) VNSNY shall then be in a VNSNY Termination Default, in each case, of any of their respective obligations under the Declaration or the By-Laws (subject, however, to the last sentence of this Section 18.1), and the VNSNY Termination Requirements have been satisfied, or (b) the Condominium shall be terminated in accordance with the provisions of Section 5.3 of the By-Laws following the occurrence of a fire or other casualty or a condemnation. Notwithstanding any allegation by Declarant or the Condominium Board of the existence of a Termination Default on the part of a Unit Owner, Declarant and the Condominium Board shall have no right to terminate or to initiate or acquiesce in the termination of the Ground Lease and/or the Condominium Documents unless and until the VNSNY Termination Requirements have been satisfied. Notwithstanding anything to the contrary contained in this Section 18.1, if, at the relevant point in time, there shall be no Unit Owners other than the VNSNY Unit Owner and Declarant, clause (a) of this Section 18.1 shall be deemed deleted and replaced with: "The VNSNY Unit Owner shall then be in a VNSNY Termination Default of any obligation under any of the VNSNY Transaction Documents, and the VNSNY Termination Requirements have been satisfied."



18.2 In the event said withdrawal is authorized as aforesaid, the Property will be subject to an action for partition by Declarant as if owned in common, in which event the net proceeds of sale, together with the net proceeds of any applicable insurance policies, will be apportioned amongst the Unit Owners in proportion to their respective Common Interest and shall be deposited into a separate trust fund, which fund shall thereafter be distributed to the Fee Owner.

18.3 The Condominium shall terminate (i) as a matter of law if the Ground Lease expires by its terms or is terminated in accordance with the Ground Lease termination provisions set forth in this Article 18 (and Declarant shall ensure that the Ground Lease shall not terminate earlier than the Ground Lease Expiration Date other than in accordance with the Ground Lease termination provisions set forth in this Article 18), or (ii) upon voluntary termination of the Condominium, in accordance with this Article 18, and the Unit Owners in their respective interests prior to or after such termination shall cooperate in such acts as are necessary or reasonably requested by any person in order to confirm or effectuate such termination. Notwithstanding the foregoing, even if the Ground Lease is terminated, the Condominium shall not be terminated in the event a new Ground Lease is entered into in accordance with the terms and conditions of the Ground Lease. In the event the Condominium is terminated and any Existing Lease and/or Unit Lease has not also terminated in accordance with its terms, then (a) such termination of the Condominium will not impair the effectiveness of such Existing Lease and/or Unit Lease, (b) each owner of the portions of the Property that are subject to the Existing Lease and/or Unit Lease shall recognize all of the rights of the tenant under such Existing Lease and/or Unit Lease, and (c) the interests of such successors will be subject to such Existing Lease and/or Unit Lease.

ARTICLE 19

**POWER OF ATTORNEY**

19.1 Each Unit Owner, upon acceptance of a deed for a Unit, will execute and, upon failing to execute, will be deemed to have executed the Power of Attorney in the same form as annexed hereto as Exhibit F, coupled with an interest in favor of the Condominium Board and the Declarant, respectively.

19.2 Each Unit Owner shall grant to Declarant the Power of Attorney to amend the Declaration and By-Laws and to effectuate the rights granted to Declarant under the Declaration and By-Laws, which rights shall be exercised in accordance with the terms and conditions set forth in the Declaration and By-Laws, including, without limitation, Article 17 of the Declaration.



ARTICLE 20

**WAIVER**

No provision contained in the Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches that may occur.

ARTICLE 21

**CAPTIONS**

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Declaration or the intent of any provision hereof.

ARTICLE 22

**CERTAIN REFERENCES**

22.1 A reference in the Declaration to any one gender, masculine, feminine or neuter, includes the other two, and the singular includes the plural and vice versa, unless the context otherwise requires.

22.2 The terms "herein," "hereof" or "hereunder" or similar terms used in the Declaration refer to this entire Declaration and not to the particular provision in which the terms are used, unless the context otherwise requires.

22.3 Unless otherwise stated, all references herein to Articles, Sections or other provisions are references to Articles, Sections or other provisions of the Declaration.

ARTICLE 23

**SEVERABILITY**

If any provision of the Declaration is invalid or unenforceable as against any person or under certain circumstances, the remainder of the Declaration and the applicability of such provision to other persons or circumstances shall not be affected thereby. Each provision of the Declaration shall, except as otherwise herein provided, be valid and enforceable to the fullest extent permitted by law.

ARTICLE 24

**COVENANT OF FURTHER ASSURANCES**

Any party that is subject to the terms of the Declaration and the By-Laws, whether such party is a Unit Owner, Permitted User, a member of the Condominium Board or an officer of the

Condominium Board or otherwise, shall, upon prior reasonable written request, at the expense of any such other party requesting the same (including, without limitation, reasonable attorney, architectural and engineering fees), execute, acknowledge and deliver to such other party such instruments, in addition to those specifically provided for herein, and take such other action as such other party may reasonably request to effectuate the provisions of the Declaration and the By-Laws or of any transaction contemplated herein or to confirm or perfect any right to be created or transferred hereunder or pursuant to any such transaction.

ARTICLE 25

**SUCCESSORS AND ASSIGNS**

Except as set forth herein or in the By-Laws to the contrary, and subject to the priority of the Ground Lease, the rights and/or obligations of the Condominium Board and the Unit Owners shall inure to the benefit of and be binding upon any successor or assign, respectively, of the Condominium Board and the Unit Owners, and shall constitute and be enforceable with respect to the Property as a covenant running with the Land.

ARTICLE 26

**INCORPORATION BY REFERENCE**

The terms, covenants, conditions, descriptions and other information contained in Exhibits A through S, and Schedule A, are each incorporated herein by this reference and made a part of the Declaration as if set forth at length in the text hereof. If and to the extent that any of the provisions of this Declaration or By-Laws (including, solely with respect to the owner of the VNSNY Unit, the VNSNY Standards set forth in Exhibit I hereto) conflict, or are otherwise inconsistent, with the Rules and Regulations set forth in Schedule A attached hereto (or any amendments and/or additions thereto), then, whether or not such inconsistency is expressly noted in this Declaration or By-Laws, the provision of this Declaration or By-Laws (or, solely with respect to the owner of the VNSNY Unit, the VNSNY Standards set forth in Exhibit I hereto) shall prevail, and any inconsistency with such Schedule A shall be deemed to be a waiver of such Rules and Regulations with respect to the applicable Unit Owner to the extent of the inconsistency.

ARTICLE 27

**LEGAL REQUIREMENTS**

27.1 A Unit Owner shall, at its own cost and expense (and the Unit Owner's obligation to pay such costs and expenses shall be in addition to such Unit Owner's obligation to pay Common Charges), comply with all laws, orders, ordinances and regulations of Federal, State, County and Municipal authorities including, but not limited to, the Americans with Disabilities Act, Title III, 42 U.S.C.S. § 12181-12189 ("Applicable Laws") and with any direction made pursuant to law or any public officers which shall, with respect to the occupancy, use or manner of use of its Unit, Limited Common Element, and/or with respect to the Building if arising out of



such Unit Owner's particular use or manner of use and occupancy of its Unit, Limited Common Element, and/or the Building (including the use permitted under the Declaration) or to any abatement of nuisance, impose any violation, order or duty upon Declarant or the Condominium Board or a Unit Owner arising from such Unit Owner's occupancy, use or manner of use of its Unit or any installations made therein by or at such Unit Owner's request or required by reason of a breach of any of such Unit Owner's covenants or agreements under the Declaration and/or the By-Laws. Notwithstanding the foregoing, a Unit Owner shall have no obligation to perform any structural repairs or Alterations to its Unit or the Building pursuant to this Section 27.1 unless the need therefore arises out of such Unit Owner's particular use or manner of use of its Unit or arises out of Alterations, repairs and/or improvements made by such Unit Owner. (For the avoidance of doubt, if Declarant or the Condominium Board shall have performed an Alteration, repair and/or improvement on behalf of a Unit Owner, and if such performance was faulty, then the corrective work shall be the responsibility of Declarant or the Condominium Board, as the case may be, rather than such Unit Owner and the cost incurred in connection with such work shall be paid by the Declarant or the Condominium Board and not be included in Common Charges.) If and to the extent permitted by Applicable Law, in lieu of taking any action that may be required by Applicable Law resulting from the Unit Owner's particular use or manner of use and occupancy of its Unit or the Building, such Unit Owner may instead cease such particular use or manner of use and occupancy.

27.2 If a Unit Owner receives written notice of any violation of law, ordinance, rule, order or regulation applicable to its Unit and/or Limited Common Element, it shall give prompt notice thereof to the Condominium Board.

27.3 Except as aforesaid, the Condominium Board shall, comply with or cause to be complied with, all laws, orders, ordinances and regulations of Federal, State, County and Municipal authorities and any direction, made pursuant to law, of any public officer or officers which shall, with respect to the Common Elements of the Building, or which affect the Unit Owners' use or enjoyment of, or access to, their respective Units and the Common Elements, impose any violation, order or duty upon the Condominium Board or any Unit Owner and with respect to which a Unit Owner is not obligated by Section 27.1 to comply. The Condominium Board may contest the validity of any such law, ordinance, rule, order or regulation.

27.4 No Office Unit Owner shall clean any window in its Unit from the outside (within the meaning of Section 202 of the New York Labor Law or any successor statute thereto). In addition, unless the equipment and safety devices required by all Applicable Laws, including Section 202 of the New York Labor Law or any successor statute thereto, are provided and used, an Office Unit Owner will not require, permit, suffer or allow the cleaning of any window in such Unit Owner's Unit from the outside (within the meaning of said Section). Each Office Unit Owner shall indemnify the Indemnified Parties against liability as a result of any violation of the foregoing; provided, however, that, for so long as VNSNY shall be the owner of the VNSNY Unit, the VNSNY Unit Owner's sole obligation in connection herewith shall be to indemnify and hold harmless Declarant and the Declarant Entities. The Condominium Board shall provide external window cleaning to the Office Area in the Building no less than two (2) times per year.



ARTICLE 28

**EXISTING LEASES**

28.1 Prior to the date of the Declaration, Fee Owner (or predecessors in interest to Fee Owner) entered into certain leases for portions of the Building that comprise the Declarant Office Units and/or the Declarant Retail Unit or portions of such Units, which are more particularly described in the Ground Lease (with such leases, including any past or future amendments, modifications, replacements and/or renewals to such leases, but excluding any new lease, being referred to herein as the "Existing Leases"). Upon execution of the Ground Lease, Fee Owner assigned its interest in the Existing Leases to Declarant. The Condominium Board will not have the right to take, permit or suffer any actions with respect to any portion of the Property that the landlord under any Existing Lease is prohibited from taking, permitting or suffering with respect to any portion of the Property under the terms of any Existing Lease (the "Existing Lease Rights"). All rights that may be exercised by the Condominium Board and the Declarant under the Declaration and the By-Laws are subject to the Existing Lease Rights, but only to the extent that such Existing Lease Rights are set forth in an Existing Lease and only for so long as such Existing Lease is in full force and effect. If applicable, Declarant shall send any and all notices from such tenants that are required in connection with the exercise of any Existing Lease Rights to the Condominium Board. Declarant may exercise the Existing Lease Rights on behalf of the tenants under such Existing Leases.

28.2 Notwithstanding anything to the contrary contained in the Declaration or the By-Laws, easements through and access to any Unit granted under the Declaration and By-Laws will be restricted to the extent that such access is restricted by Existing Lease Rights.

28.3 No tenant of any Unit or portion thereof will have the right to directly arbitrate or bring any action against the Unit Owners or the Condominium Board. In the event that a tenant has any injunctive or arbitration rights under an Existing Lease, only the Unit Owner that is the landlord under such existing lease shall have the right to bring an action against another Unit Owner or the Condominium Board to the extent such parties are the cause giving rise to such action or arbitration.

28.4 All leases executed by a Unit Owner and a tenant after the date of the Declaration (to the extent permitted pursuant to Article 7 of the By-Laws) are referred to herein as "Unit Leases", shall be subject and subordinate in all respects to the Declaration and the By-Laws, shall expressly state so therein.

ARTICLE 29

**GENERAL PRINCIPLES**

29.1 Notwithstanding anything to the contrary contained in this Declaration and the By-Laws, the terms hereof and thereof shall be interpreted in all instances to give effect to the overriding principle that the provisions of the Declaration shall be applied to the VNSNY Unit



only to the extent that the benefits and the limitations set forth herein are set forth in the VNSNY Standards and any conflict between the provisions of this Declaration and the VNSNY Standards annexed as Exhibit I hereto shall be resolved in favor of the VNSNY Standards (it being understood that the VNSNY Standards may in different instances be more extensive or more restrictive than the rights or obligations of other Unit Owners other than VNSNY).

In no event shall the VNSNY Standards be deemed to apply to any Unit Owner other than the owner of the VNSNY Unit, tenant and/or other third-party, and there shall be no third-party beneficiary of the VNSNY Standards. For the avoidance of doubt, the principles in this Section 29.1 shall mean that no other Unit Owner can require, or shall have a right to require, that the VNSNY Standards must be applied to another Unit Owner, tenant and/or other third-party, and no Unit Owner (other than the owner of the VNSNY Unit), tenant and/or other third-party may assert any claim or cause of action arising out of or resulting from the VNSNY Standards not having been met.

29.2 Notwithstanding anything to the contrary set forth herein and in the By-Laws, the rights and powers of the Declarant and the Condominium Board shall be subject to the VNSNY Standards, and neither the Declarant nor the Condominium Board may take any action that would diminish the rights of the VNSNY Unit Owner set forth in Exhibit I annexed hereto (except to a de minimis extent).

29.3 Notwithstanding anything to the contrary set forth herein, the Declarant Unit Owner may operate the Declarant Units and perform work in the Declarant Units and in the General Common Elements and the Limited Common Elements (other than those Limited Common Elements appurtenant to the VNSNY Unit) and may use for its purposes and incorporate General Common Elements and Limited Common Elements (other than those Limited Common Elements appurtenant to the VNSNY Unit) into Declarant Units (including the placement of equipment on Main Roof, and the establishment and use of signage on the Building) and the Declarant Unit Owner may amend the Declaration in any manner, provided that any of the foregoing are in accordance with Applicable Laws, are in accordance with the VNSNY Standards, and do not result in a VNSNY Adverse Impact.

*(Signature Page Follows)*

IN WITNESS WHEREOF, the Declaration has been executed as of the 29 day of January, 2016.

SLG 220 NEWS LESSEE LLC

By: _____
Name: Neil H. Kessner
Title: Executive Vice President

**ACKNOWLEDGMENT**

STATE OF NEW YORK )
: ss.
COUNTY OF NEW YORK )

On the 29 day of January in the year 2016, before me, the undersigned, personally appeared Neil H. Kessner, personally known to me or proved to me on the basis of satisfactory evidence to the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and by his signature on the instrument, the individuals, or the person on behalf of which the individual acted, executed the foregoing instrument.

_____
Notary Public

JoAnne M. Maloney
Notary Public, State of New York
No. 01MA6211902
Qualified in New York County
Commission Expires 09/28/2017

**SCHEDULE A**

**RULES AND REGULATIONS**

Where there is a conflict between the terms of these Rules and Regulations and the terms of the Condominium Documents (including, solely with respect to the owner of the VNSNY Units, the VNSNY Standards attached as Exhibit I to the Declaration) to which this Schedule A is attached, the terms of the Condominium Documents (including, solely with respect to the owner of the VNSNY Units, the VNSNY Standards attached as Exhibit I to the Declaration) shall control.

1. No animals, birds, bicycles or vehicles shall be brought into or kept in the Building. The Units shall not be used for manufacturing or commercial repairing or for sale or display of merchandise or as a lodging place, or for any immoral or illegal purpose, nor shall any Unit be used for a public stenographer or typist; barber or beauty shop; secretarial or messenger service; employment, travel or tourist agency; commercial document reproduction; or for any business that is prohibited pursuant to the Condominium Documents. Unit Owners shall not cause or permit in the Building any disturbing noises which may interfere with occupants of this Building or neighboring buildings, any cooking or objectionable odors, or any nuisance of any kind, or any inflammable or explosive fluid, chemical or substance. Canvassing, soliciting and peddling in the Building are prohibited, and each Unit Owner shall cooperate so as to prevent the same.

2. The toilet rooms and other water apparatus shall not be used for any purposes other than those for which they were constructed, and no sweepings, rags, ink, chemicals or other unsuitable substances shall be thrown therein. Unit Owners shall not place anything out of doors, windows or skylights, or into hallways, stairways or elevators, nor place food or objects on outside window sills. Unit Owners shall not obstruct or cover the halls, stairways and elevators, or use them for any purpose other than ingress and egress to or from Unit Owner's Unit, nor shall skylights, windows, doors and transoms that reflect or admit light into the Building be covered or obstructed in any way, other than Building standard window coverings. All drapes and blinds installed by Unit Owner on any exterior window of the Building shall conform in style and color to the Building standard.

3. Unit Owners shall not place a load upon any floor of the Building in excess of the load per square foot which such floor was designed to carry and which is allowed by law. The Condominium Board reserves the right to reasonably prescribe the weight and position of all safes, file cabinets and filing equipment in the Building. Business machines and mechanical equipment shall be placed and maintained by Unit Owners, at such Unit Owner's expense, only with the Condominium Board's consent (which consent shall not be unreasonably withheld, conditioned or delayed) and in settings reasonably approved by the Condominium Board to control weight, vibration, noise and annoyance. Smoking or carrying lighted cigars, pipes or cigarettes in the elevators of the Building is prohibited.

4. Unit Owners shall not move any heavy or bulky materials into or out of the Building or make or receive large deliveries of goods, furnishings, equipment or other items without the Condominium Board's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed), and then only during such hours and in such manner as the Condominium Board shall reasonably approve and in accordance with the Condominium Board's rules and regulations pertaining thereto. If any material or equipment requires special handling, the Unit Owner shall employ only persons holding a Master Rigger's License to do such work, and all such work shall comply with all legal requirements. The Condominium Board reserves the right to inspect all freight to be brought into the Building, and to exclude any freight which violates any rule, regulation or other provision of the Condominium Documents.

5. No sign, advertisement, notice or thing shall be inscribed, painted or affixed on any part of the Building, without the prior written consent of the Condominium Board. The Condominium Board may remove anything installed in violation of this provision, and Unit Owner shall pay the cost of such removal and any restoration costs. Interior signs on doors and directories shall be inscribed or affixed by the Condominium Board at Unit Owner's expense. The Condominium Board shall reasonably control the color, size, style and location of all signs, advertisements and notices. No advertising of any kind by Unit Owner shall refer to the Building (except if such reference is merely to the Unit Owner's or its permitted occupant's address at the Building) unless first approved in writing by the Condominium Board.

6. No article shall be fastened to, or holes drilled or nails or screws driven into, the ceilings, walls, doors or other portions of the Building, nor shall any part of the Building be painted, papered or otherwise covered, or in any way marked or broken, without the prior written consent of the Condominium Board.

7. No existing locks shall be changed, nor shall any additional locks or bolts of any kind be placed upon any door or window by a Unit Owner, without the prior written consent of the Condominium Board (which consent shall not be unreasonably withheld, conditioned or delayed). Two (2) sets of keys to all exterior and interior locks shall be furnished to the Condominium Board. Before leaving the Building at any time, Unit Owners shall close all windows and close and lock all doors.

8. The use in the Building of auxiliary heating devices, such as portable electric heaters, heat lamps or other devices whose principal function at the time of operation is to produce space heating, is prohibited.

9. Unit Owners shall keep all doors from the hallway to its Unit closed at all times except for use during ingress to and egress from the Unit. Unit Owners acknowledges that a violation of the terms of this paragraph may also constitute a violation of codes, rules or regulations of governmental authorities having or asserting jurisdiction over the Building.

10. Unit Owners shall be permitted to maintain an "in-house" messenger or delivery service within the Building, provided that Unit Owner shall require that any messengers in its employ affix identification to the breast pocket of their outer garment, which shall bear

the following information: name of Unit Owner, name of employee and photograph of the employee. Messengers in Unit Owner's employ shall display such identification at all time. In the event that Unit Owner or any agent, servant or employee of Unit Owner, violates the terms of this paragraph, the Condominium Board shall be entitled to terminate Unit Owner's permission to maintain within the Building in-house messenger or delivery service upon written notice to Unit Owner.

11. Unit Owners will be entitled to ten (10) listings on the Building lobby directory board, without charge. Any additional directory listing (if space is available), or any change in a prior listing, with the exception of a deletion, will be subject to a fourteen ($14.00) dollar service charge, payable as Common Charges.

12. In case of any conflict or inconsistency between any provisions of the Condominium Documents and any of the rules and regulations as originally or as hereafter adopted, the provisions of the Condominium Documents shall control.



**EXHIBIT A**

**DESCRIPTION OF THE LAND**

220 East 42nd Street

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of 42nd Street distant 255 feet easterly from the corner formed by the intersection of the southerly side of 42nd with the easterly side of Third Avenue;

RUNNING THENCE southerly and parallel with said easterly side of Third Avenue and along the easterly line of certain lands now or formerly of the City of New York, 197 feet 6 inches to the northerly side of 41st Street;

THENCE easterly along the said northerly side of 41st Street, 355 feet to the corner formed by the intersection of said northerly side of 41st Street and the westerly side of Second Avenue;

THENCE northerly along said westerly side of Second Avenue, 197 feet 6 inches to the corner formed by the intersection of said westerly side of Second Avenue with the southerly side of 42nd Street;

THENCE westerly along said southerly side of 42nd Street, 355 feet to the point or place of BEGINNING.

TOGETHER with the benefits and SUBJECT to the burdens of a light and air easement recorded in Liber 3682 Cp. 394.



**EXHIBIT "B" TO THE CONDOMINIUM DECLARATION**
**220 EAST 42ND CONDOMINIUM**
**220 EAST 42ND STREET, NEW YORK, NEW YORK**
**BLOCK: 1315**

**DESCRIPTION OF THE UNITS**

| UNIT | TAX LOT | UNIT TOTAL SQUARE FEET | % OF COMMON INTEREST | USE TYPE | LOCATION OF UNIT | LIMITED COMMON ELEMENTS SQUARE FEET | GENERAL COMMON ELEMENTS TO WHICH UNIT HAS IMMEDIATE ACCESS |
|---|---|---|---|---|---|---|---|
| Retail Unit | 1001 | Total: 21,306 (Concourse: 10,629; First Floor: 10,677) | 2.55 | Retail | Concourse Level, First Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 1 | 1002 | Total: 67,082 (Sub-Cellar: 15,083; Concourse: 20,430; First Floor: 31,025; First Fl. Mezz: 544) | 6.21 | Retail | Sub-Cellar, Concourse Level, First Floor, First Floor Mezzanine | | Cellar Storage, Management Office, Bldg. Crew Lockers, Bldg. Workshop Rooms, Fire Pump Rooms, Mechanical Rooms, Electrical Rooms, Loading Dock, Equipment Rooms, Security Rooms, Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 2N | 1003 | 21,467 | 2.48 | Office | Second Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 2S | 1004 | 32,559 | 3.87 | Office | Second Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 3 | 1005 | 48,020 | 5.69 | Office | Third Floor | Terrace 7,640 | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 4 | 1006 | 47,716 | 5.62 | Office | Fourth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 5 | 1007 | 44,380 | 5.27 | Office | Fifth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 6 | 1008 | 48,798 | 5.87 | Office | Sixth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 7N | 1009 | 19,749 | 2.01 | Office | Seventh Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 7S | 1010 | 27,767 | 3.61 | Office | Seventh Floor | Terrace 1,519 | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 8 | 1011 | 47,707 | 5.66 | Office | Eighth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 9 | 1012 | 47,617 | 5.59 | Office | Ninth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 10 | 1013 | 37,347 | 4.43 | Office | Tenth Floor | Terrace 10,516 | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 11 | 1014 | 36,986 | 3.84 | Office | Eleventh Floor | Terrace 107 | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 12 | 1015 | 27,737 | 2.34 | Office | Twelfth Floor | Terrace 1,430 | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 13 | 1016 | 34,760 | 3.60 | Office | Thirteenth Floor | Terrace 682 | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 14 | 1017 | 36,653 | 3.81 | Office | Fourteenth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 15 | 1018 | 22,407 | 2.32 | Office | Fifteenth Floor | Terrace 14,416 | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 16 | 1019 | 21,522 | 2.24 | Office | Sixteenth Floor | Terrace 326 | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 17 | 1020 | 21,029 | 2.49 | Office | Seventeenth Floor | Terrace 448 | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 18 | 1021 | 21,817 | 2.59 | Office | Eighteenth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 19 | 1022 | 9,602 | 0.99 | Office | Nineteenth Floor | Terrace 12,567 | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 20 | 1023 | 10,514 | 1.08 | Office | Twentieth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 21 | 1024 | 10,514 | 1.08 | Office | Twenty-First Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 22 | 1025 | 10,514 | 1.08 | Office | Twenty-Second Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 23 | 1026 | 10,514 | 1.08 | Office | Twenty-Third Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 24 | 1027 | 10,148 | 1.05 | Office | Twenty-Fourth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 25 | 1028 | 6,669 | 0.67 | Office | Twenty-Fifth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 26 | 1029 | 9,603 | 1.00 | Office | Twenty-Sixth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 27 | 1030 | 10,632 | 1.10 | Office | Twenty-Seventh Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 28 | 1031 | 9,767 | 1.01 | Office | Twenty-Eighth Floor | Terrace 1,160 | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 29 | 1032 | 9,767 | 1.01 | Office | Twenty-Ninth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 30 | 1033 | 9,773 | 1.01 | Office | Thirtieth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 31 | 1034 | 9,786 | 1.01 | Office | Thirty-First Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Unit 32 | 1035 | 9,777 | 1.01 | Office | Thirty-Second Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 33 | 1036 | 9,794 | 1.01 | Office | Thirty-Third Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 34 | 1037 | 7,326 | 0.75 | Office | Thirty-Fourth Floor | Terrace 2,410 | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 35 | 1038 | 7,373 | 0.75 | Office | Thirty-Fifth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 36 | 1039 | 6,342 | 0.65 | Office | Thirty-Sixth Floor | Terrace 1,072 | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 37 | 1040 | 5,115 | 0.57 | Office | Thirty-Seventh Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| TOTAL | | | 100.00 | | | | |



## EXHIBIT C

## DEFINITIONS

For convenience of presentation, definitions of certain of the terms used in the Declaration and/or By-Laws are set forth below:

"Accessory Permits" shall have the meaning ascribed thereto in Section 8.2 of the Declaration.

"Accessory Uses" shall have the meaning ascribed thereto in Section 8.1 of the Declaration.

"Affiliate" refers to (i) a Controlling Person or a Controlled Person, or (ii) in the case of a not-for-profit or statutorily-created entity, an entity that has identical or substantially overlapping boards of directors or trustees with another entity.

"Alterations" refers to any alterations, installations, improvements (including capital improvements), addition, repairs, restorations or replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, in, to and upon a Unit or a Common Element, excluding decorative items such as carpeting, painting, and wall coverings.

"Applicable Laws" shall have the meaning ascribed thereto in Section 27.1 of the Declaration.

"Arbitration" shall mean an arbitration conducted in accordance with the provisions of Article 10 of the By-Laws.

"Audit" shall have the meaning ascribed thereto in Section 5.1 of the By-Laws.

"Base Building Systems" shall mean the electrical, mechanical/HVAC, plumbing, sprinkler and other utility systems of the Building, elevators, heating, ventilating, air conditioning and fire and life safety systems, emergency generator(s), security systems, cooling towers servicing the Building and related Facilities as follows: (a) the low pressure steam heating system of the Building (including the steam service and circulating pumps), the branch systems from and after the point of entry to or exit from any Unit; (b) the electrical system of the Building (including any and all switchboards, feeders, panels, transformers and meters), up to the main disconnect switch at the switchboard serving the elements of any Unit; (c) the plumbing and sanitary systems of the Building, but excluding any branch systems and pipes from and after the point of entry to or exit from any Unit; (d) the main telephone switching equipment and closet for the Building; (e) Two-Way Voice Communications Fire Alarm (excluding Unit devices), and life safety systems (including, without limitation, generator and emergency generator, panel and distribution systems for the Building), (f) all information technology closets and distribution systems for the Building, up to the distribution switch for any Unit; (g) the sprinkler system for the Building, up to the point of entry to any Unit (excluding any dedicated sub-systems); (h) the security system for the Building (including, without limitation, technology



operations, communications, lighting (including exterior and interior lighting in stairways and corridors), cameras, cross-monitoring at street, closed circuit television systems, card control/access devices, if any, and door positions switches), but excluding any security systems from and after the point of entry to or exit from any Unit (which exclusion shall include, without limitation, any security system attached to the entrance doors to any Unit); (i) the hot water systems of the Building, but excluding any branch systems and pipes from and after the point of entry to or exit from any unit; (j) the central chiller plant, cooling towers located on the Main Roof or any Roof Setbacks (together with all steam turbine driven refrigeration machines, plate heat exchanger and chiller equipment), and all other air conditioning systems of the Building, but excluding any branch systems and pipes from and after the point of entry to or exit from any Unit; (k) the domestic water tank and risers and condenser water systems; and (l) to the extent not specifically identified as part of or servicing only a particular Unit, all other risers, shafts, equipment, apparatus, and installations the common use of which is necessary or convenient for the existence, Maintenance or safe operation of more than one (1) Unit.

"Building" shall have the meaning ascribed thereto in Section 3.1 of the Declaration.

"Business Day(s)" refers to any day other than Saturdays, Sundays and all days observed by the State or Federal Government as holidays and those designated as holidays by the applicable building service union employees service contract or by the applicable operating engineers contract with respect to HVAC service.

"By-Laws" refers to the By-Laws governing the operations of the Condominium referenced in Section 2.4 of the Declaration, which are set forth as Exhibit D of the Declaration.

"Casualty" shall have the meaning ascribed thereto in Section 5.1 of the By-Laws.

"City Register's Office" shall have the meaning ascribed thereto in Section 5.1 of the Declaration.

"Commercial General Liability Insurance" shall have the meaning ascribed thereto in Section 5.2 of the By-Laws.

"Common Charges" refers to the assessments and other amounts payable to the Condominium Board by the Unit Owners for the purpose of enabling the Condominium Board to pay the Common Expenses.

"Common Elements" refers collectively to the General Common Elements and Limited Common Elements.

"Common Expense(s)" shall have the meaning ascribed thereto in Section 5.1 of the By-Laws.

"Common Interest" is the undivided percentage interest of each Unit in the Common Elements as determined in accordance with Article 12 of the Declaration and as set forth in Exhibit B of the Declaration.



"Comparable Building(s)" shall mean multi-tenanted first-class office buildings in the vicinity of the Building that are of the same approximate age of the Building, which have been upgraded for first-class office use and are operated as, and maintained in a condition suitable for, first-class office use.

"Condominium" shall have the meaning ascribed thereto in Section 2.1 of the Declaration.

"Condominium Act" shall have the meaning ascribed thereto in Section 2.1 of the Declaration.

"Condominium Casualty Restoration Work" shall have the meaning ascribed thereto in Section 5.3 of the By-Laws.

"Condominium's Determination" shall have the meaning ascribed thereto in Section 5.1 of the By-Laws.

"Condominium Documents" shall mean the Declaration, together with all exhibits annexed thereto (including, without limitation, the By-Laws and the VNSNY Standards annexed as Exhibit I hereto), the No-Action Letter and the Floor Plans.

"Condominium" refers to 220 East 42nd Condominium.

"Condominium Act" shall have the meaning ascribed thereto in Section 2.1 of the Declaration.

"Condominium Board" or "Board" refers to the governing body of the Condominium, whose members shall be selected pursuant to the terms of Article 2 of the By-Laws.

"Condominium Board Estoppel Certificate" shall have the meaning ascribed thereto in Section 5.8 of the By-Laws.

"Condominium Board's Statement" shall have the meaning ascribed thereto in Section 5.1 of the By-Laws.

"Condominium Non-disturbance Agreement" shall have the meaning ascribed thereto in Section 5.8 of the By-Laws.

"Condominium Square Footage" shall refer to the square footage of the Condominium, as shown on Exhibit Q of the Declaration.

"Controlled Person" shall mean a Person (1) fifty percent (50%) or more of the beneficial interest in which is owned, directly or indirectly, by any one or more Persons who, acting singly or together, are Controlling Persons, or (2) material decisions concerning the management of which can be unilaterally made or vetoed by any one or more Persons who, acting singly or together, are Controlling Persons acting in its or their capacity as trustee(s), general partner(s), managing member(s) or controlling shareholder(s), or the equivalent, of such Person.

"Controlling Person" shall mean a Person that (i) owns, directly or indirectly, fifty percent (50%) or more of the beneficial interest in a Person or (ii) as a trustee, general partner, managing member or controlling shareholder (or the equivalent) of a Person has the power unilaterally to make or veto material decisions concerning the management of such Person.

"Core and Shell" shall have the meaning ascribed thereto in the Ground Lease.

"Declarant" shall have the meaning ascribed thereto in Paragraph 1 of the recitals of the Declaration, as well as any Affiliate, successor and/or assign thereof; and for the avoidance of doubt, any successor in title to all Declarant Units shall be deemed the Declarant and Declarant Unit Owner for purposes of the Condominium Documents.

"Declarant Entity" or "Declarant Entities" shall mean any direct or indirect parent, affiliate or subsidiary of Declarant, and/or any employee, director, partner, officer, member, beneficiary or trustee of Declarant or any direct or indirect parent, affiliate or subsidiary of Declarant.

"Declarant Unit Limited Common Elements" shall have the meaning ascribed thereto in Section 7.4 of the Declaration.

"Declarant Office Share" shall mean a percentage allocation of the Office Area, which shall be in the same proportion that the square footage of the Declarant Office Units (as shown on Exhibit Q) bears to the total square footage of the Office Area (as shown on Exhibit Q).

"Declarant Office Unit" or "Declarant Office Units" shall have the meaning ascribed thereto in Section 3.2 of the Declaration, as more particularly described in Exhibit B annexed hereto and shown on the Floor Plans.

"Declarant Office Unit Owner" refers to the owner of the Declarant Office Unit at the time in question.

"Declarant Prohibited Action" shall mean (i) the use of any Declarant Unit (or any portion of such Unit) for any use that is prohibited by, as applicable, Exhibit G-1 (Office Unit Prohibited Uses) and G-2 (Retail Unit Prohibited Uses); and (ii) any action prohibited or restricted by the terms of Exhibit I annexed hereto or any of the other VNSNY Transaction Documents.

"Declarant Retail Façade Elements" shall have the meaning ascribed thereto in Section 5.6 of the Declaration.

"Declarant Retail Share" shall mean a percentage allocation of the Retail Area, which shall be in the same proportion that the square footage of the Declarant Retail Unit (as shown on Exhibit Q) bears to the total square footage of the Retail Area (as shown on Exhibit Q).

"Declarant Retail Unit" or "Declarant Retail Unit" shall have the meaning ascribed thereto in Section 3.2 of the Declaration, and as more particularly shown on Exhibit B annexed hereto and the Floor Plans.



"Declarant Retail Unit Owner" refers to the owner of the Declarant Retail Unit at the time in question.

"Declarant Unit" shall mean any Unit owned by Declarant at the time in question.

"Declarant Unit Owner" shall mean the owner of a Declarant Unit.

"Declaration" refers to the instrument creating the Condominium, as the same may be amended from time to time as referenced in Article 1 of the Declaration.

"Electric Rates" shall have the meaning ascribed thereto in Section 5.13 of the By-Laws.

"Electrical Work" shall have the meaning ascribed thereto in Section 5.13 of the By-Laws.

"Eligible Tenant" shall have the meaning ascribed thereto in Section 5.8.3 of the By-Laws.

"Emergency" refers to a situation (a) impairing or imminently likely to impair structural support of any portion of the Building or causing or imminently likely to cause bodily injury to persons or physical damage to the Building or any property in, on, under, within, upon or about the Building, (b) causing or imminently likely to cause economic loss to a Unit Owner, any Permitted User or the Condominium, (c) causing or imminently likely to cause loss of any utility, elevator service or other essential services to the Building, (d) causing or imminently likely to cause interference (other than de minimis interference) with ingress to and egress from the Building, or (e) ordered by a governmental agency, the New York City Fire Department or Applicable Law.

"Existing Leases" shall have the meaning ascribed in Section 28.1 of the Declaration.

"Existing Lease Rights" shall have the meaning ascribed in Section 28.1 of the Declaration.

"Exterior Facade" refers to the structural and outer portion of the Building above grade, including, but not limited to, the outer portion of all exterior windows on the façade of the Building, the exterior of all doors, masonry, aluminum or other skin materials, walls or parapets, whether or not visible from the street level but, excluding, the doors and doors ways which form a part of any Unit or the Declarant Retail Facade Elements.

"Facilities" means all equipment and facilities necessary for the operation of the Building or its systems and includes, but is not limited to, the following items (grouped more or less functionally) which are set forth only for purposes of illustrating the broad scope of that term: system, equipment, apparatus, convertor, radiator, heater, heat exchanger, mechanism, device, machinery, motor, pump, control, tank or tank assembly, insulation, induction unit, condenser, compressor, fan, damper, blower, thermostat, thermometer, coil, vent, sensor, shut-off valve or other valve, gong, panel, receptacle, outlet, relay, alarm, sprinkler head, electric distribution facility, wiring, wireway, switch, switchboard, circuit breaker, transformer, fitting, siamese connection, hose, plumbing fixture, lighting fixture, other fixture, bulb, telephone, meter, meter



assembly, piping, line, duct, conduit, cable, riser, main shaft, pit, flue, lock or other hardware, rack, screen, strainer, trap, drain, catch basin, leader, filter, canopy, incinerator, closet, door, railing, coping, step, appurtenance, urn, basket, mail box, carpeting, tile or other floor covering, wallpaper or other wall covering, tree, shrubbery, flower or other planting and horticulture tub or box.

"Fee Estate" shall have the meaning ascribed thereto in the preamble.

"Fee Owner" shall have the meaning ascribed thereto in the preamble.

"Filing Date" refers to the date of the filing of the Declaration with the City Register's Office.

"Fixtures" shall mean, collectively, all fixtures, equipment, improvements and appurtenances attached to or built into a Unit, whether or not at the expense of the Unit Owner.

"Floor Plans" refers to the floor plans of the Building, certified by Peter F. Farinella, Architect, P.C., as the same may be amended from time to time, which are approved by the Tax Map Unit of the Department of Finance of the City of New York and filed with the City Register's Office.

"Force Majeure" shall have the meaning ascribed thereto in Section 5.10.2 of the By-Laws.

"Ground Lease" shall have the meaning ascribed thereto in the preamble.

"Ground Lease Expiration Date" shall have the meaning ascribed thereto in the preamble.

"Ground Rent" shall have the same meaning as the term "Rent" used in the Ground Lease.

"Hazardous Material(s)" means (A) those substances included within the definitions of any one or more of the terms "hazardous substances," "toxic pollutants", "hazardous materials", "toxic substances", and "hazardous waste" in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (as amended), the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sections 1801 et seq., the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. Section 6901 et seq., Section 311 of the Clean Water Act, 15 U.S.C. § 2601 et seq., 33 U.S.C. § 1251 et seq., 42 U.S.C. 7401 et seq., the regulations and publications issued under any such laws and New York Environmental Conservation Law, Section 27-0901 et seq. (B) petroleum (within the meaning of Section 12 of the New York State Navigation Law and the regulations adopted and publication promulgated pursuant to the above), radon gas, lead based paint, asbestos or asbestos containing material and polychlorinated biphenyls and (C) mold.

"Hazardous Materials Law(s)" means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other binding governmental requirements now or hereafter enacted or in force, and any court judgments applicable to a Unit Owner or to the Property relating to industrial hygiene or to environmental or unsafe conditions or to human



health including, but not limited to, those relating to the generation, manufacture, storage, handling, transportation, disposal, release, emission or discharge of Hazardous Materials, those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to the Property, and those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about the Property.

"Indemnified Parties" refers to Declarant, the Condominium, the Condominium Board and Fee Owner, together with their respective principals, officers, directors, shareholders, employees, agents, a Permitted Mortgagee, selling agent and the managing agent.

"Initial Condominium Documents" shall mean the Condominium Documents as they exist on the date of the formation of the Condominium, without amendment.

"Initial Construction of the VNSNY Unit" refers to the work to be performed in the VNSNY Unit that Declarant has undertaken or, has caused to be undertaken, pursuant to the VNSNY Sale Agreement.

"Interest Rate" shall have the meaning ascribed thereto in Section 5.1 of the By-Laws.

"Keytag" shall have the meaning ascribed thereto in Section 5.18 of the By-Laws.

"Land" shall have the meaning ascribed thereto in Section 3.1 of the Declaration.

"Leasehold Interest" shall have the meaning ascribed thereto in the preamble.

"Limited Common Elements" refers collectively to the Declarant Unit Limited Common Elements and the VNSNY Limited Common Elements.

"Loading dock" shall mean the loading dock(s), including staging, platforms, access ramps, truck entrance, service entrance and service corridors and other areas appurtenant thereto identified as such on the Floor Plans.

"Lobby" shall mean the main lobby, including the building vestibule and concierge desk currently located on the 1st Floor of the 42nd Street side of the Building, as more particularly shown on the Floor Plans, as the same may be revised and/or amended in accordance with the provisions of the Declaration.

"Main Roof" shall mean the uppermost roof of the Building, as more particularly labeled as the Roof on the Floor Plans, as the same may be revised and/or amended in accordance with the provisions of the Declaration.

"Maintenance" or "Maintain" refers to the maintenance, repair, reconditioning, replacement, refurbishing, reconfiguration, inspection, testing, cleaning, painting, installation, as and when necessary or desirable of any portion of the Building (including the Units), Structural Components, the Base Building Systems, or Facilities and to an Alteration in accordance with the terms of the Declaration and the By-Laws.

"No-Action Letter" refers to a "no-action" letter issued by the New York State Department of Law in order to convey title to the Units without the protections or necessity of an offering plan.

"Notices" shall have the meaning ascribed thereto in Section 4.1 of the By-Laws.

"Office Area" shall have the meaning ascribed thereto in Section 3.2 of the Declaration.

"Office Share" shall mean an Office Unit Owner's percentage allocation of the Office Area, which shall be in the same proportion that the square footage of the relevant Office Units (as shown on Exhibit Q) bears to the total square footage of the Office Area (as shown on Exhibit Q).

"Office Units" shall have the meaning ascribed thereto in Section 3.2 of the Declaration.

"Operating Year" shall mean each calendar year of condominium operation.

"Permitted Mortgage" refers to one or more Unit mortgages as to which the Condominium Board has received notice in accordance with the provisions of the By-Laws, and which is otherwise permitted to be placed against a Unit by Declarant in accordance with the provisions of the Declaration and By-Laws.

"Permitted Mortgagee" refers to the holder of a Permitted Mortgage or any holder of a mortgage on the Declarant Office Unit and/or the Declarant Retail Unit.

"Permitted User(s)" refers to any Unit Owner, Declarant, the Condominium Board, and all employees, agents, contractors, suppliers, customers, guests, invitees, licensees, servants, tenants, subtenants, students, faculty and visitors of a Unit Owner or a tenant or subtenant of a Unit Owner and/or the Condominium Board, and all tenants or subtenants, if any (and to the extent permitted by the Declaration or the By-Laws), as the case may be, and occupants of a Unit and all officers, directors, members, partners and shareholders of a Unit Owner and/or the Condominium Board.

"Person(s)" refers to an individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, or any other legal entity, any Federal, State, County or municipal government, or any bureau, department, agency, authority or subdivision thereof and any beneficiaries, officers, directors, employees, agents, partners, shareholders, or fiduciaries thereof acting in such capacity on behalf of any of the foregoing.

"Possession" shall mean delivery by Declarant to VNSNY of the VNS Units with all of the Seller's Work related to the VNS Units substantially complete with the VNS Units in broom-clean condition, except for the earlier initial delivery of the VNSNY Office Unit located on the 6th Floor, with all of the Seller's Work (as such term is defined in the VNSNY Sale Agreement) related to the VNS Units substantially complete and all Required Permits having been obtained in accordance with the terms of the VNSNY Sale Agreement.



"Possession Date" shall mean the date that Possession shall have occurred. For the avoidance of doubt, the term "Possession Date," as used herein, shall have the same meaning as "Delivery Date" in the VNSNY Transaction Documents (excluding the earlier delivery of the VNSNY Office Unit located on the 6th Floor).

"Power of Attorney" shall have the meaning ascribed thereto in Section 9.3 and referenced in Article 19 of the Declaration and annexed hereto as Exhibit F.

"Prime Rate" shall have the meaning ascribed thereto in Section 5.1 of the By-Laws.

"Prohibited Person" shall mean (i) any entity on, or, under the relevant statute and/or regulations governing any such list, deemed to be on, the list of Specially Designated Nationals and Blocked Persons maintained by the Office of Foreign Assets Control of the United States Department of the Treasury or on any comparable list hereafter maintained by said Office or successor thereto, or by any other office or agency of the government of the United States or any similarly designated persons under any federal statute that is a successor to or similar to or of similar import as the statutes currently providing for such designations or maintenance of lists of such designated persons, or (ii) if such entity shall be the "Unit Owner" under the Declaration, an entity entitled, directly or indirectly, to diplomatic or sovereign immunity that has not been effectively waived.

"Prohibited Uses" shall have the meaning ascribed thereto in Section 8.3 of the Declaration and annexed hereto as Exhibit G, subject to the terms set forth in Exhibit I.

"Property" shall have the meaning ascribed thereto in Section 3.1 of the Declaration.

"Proposed Transfer" shall have the meaning ascribed thereto in Section 7.3 of the By-Laws.

"Proposed Transferee" shall have the meaning ascribed thereto in Section 7.3 of the By-Laws.

"Purchase Notice" shall have the meaning ascribed thereto in Section 5.3 of the By-Laws.

"Related Party" shall have the meaning ascribed thereto in Section 7.4 of the By-Laws.

"Required Permits" shall mean any governmental license, permit, exemption, certificate or other authorization (including, without limitation, a temporary Certificate of Occupancy for the VNSNY Office Unit and/or the VNSNY Retail Unit, as applicable, and/or an amendment to the current Certificate of Occupancy for the VNSNY Office Unit and/or the VNSNY Retail Unit, as applicable, and/or the Building), if and to the extent that the same shall be necessary in connection with the Initial Construction of the VNSNY Unit for the lawful conduct by VNSNY of VNSNY's business in the VNSNY Office Unit and/or the VNSNY Retail Unit, as applicable, including, without limitation, the use thereof for the purposes set forth in Article 8 of the Declaration.

"Retail Area" shall have the meaning ascribed thereto in Section 3.2 of the Declaration



"Retail Share" shall mean a Retail Unit Owner's percentage allocation of the Retail Area, which shall be in the same proportion that the square footage of the relevant Retail Units (as shown on Exhibit Q) bears to the total square footage of the Retail Area (as shown on Exhibit Q).

"Retail Units" refers to collectively, the Declarant Retail Unit and the VNSNY Retail Units.

"Retail Unit Owner" refers to the Declarant Retail Unit Owner and the VNSNY Retail Unit Owner.

"Required Documentation" refers to such applications, permits, certifications, affidavits, forms, agreements, acknowledgments or other documents as may be required to enable the Unit Owners to exercise their rights or obligations under the Declaration and the By-Laws, including, without limitation, the rights to Maintain the Units and the Common Elements.

"Roof Setbacks" refers to the Building setbacks/ roof areas located on Floors 3, 7, 10, 12, 13, 15, 16, 19, 34 and Main Roof, as more particularly shown on the Floor Plans, as the same may be revised and/or amended in accordance with the provisions of the Declaration.

"Rules and Regulations" refers to the rules and regulations promulgated by the Condominium Board, from time to time, in accordance with the By-Laws and annexed hereto as Schedule A.

"Scaffolding" shall have the meaning ascribed in Section 14.18 of the Declaration.

"Signage" or "Signs" refers to any and all signs, notice, advertisement or illumination, illustration, art work, poster, logo, canopy, banner or similar sign (including, without limitation, logos or other identification of Persons) located in any Unit or upon any Common Elements or Scaffolding that is visible outside of the Unit.

"Significant Casualty" shall have the meaning ascribed thereto in Section 5.3 of the By-Laws.

"SLG 220 Ground Lessee" shall have the meaning ascribed in the preamble.

"Special Assessments" shall have the meaning set forth in Subsection 5.1.15 of the By-Laws.

"Structural Components" shall have the meaning ascribed thereto in Section 7.3 of the Declaration.

"Successor" shall have the meaning ascribed thereto in Section 7.5 of the By-Laws.

"Successor Owner" shall have the meaning ascribed thereto in Section 7.6 of the By-Laws.



"Supplemental HVAC System" shall have the meaning ascribed thereto in Section 5.10 of the By-Laws.

"Telecommunications Equipment" shall have the meaning ascribed thereto in Section 14.9 of the Declaration.

"Termination Default" shall mean the occurrence of any one or more of the following events: (1) there shall be a breach or default by a Unit Owner in the payment of any (x) fixed monthly installment of Common Charges, (y) fixed monthly installment of Special Assessments to the Condominium Board under the Condominium Documents, or (z) installment purchase payments to Declarant under any Unit Purchase Agreement ((x), (y) and (z) being, collectively, the "Recurring Monetary Obligations"), and such breach or default shall continue for at least ten (10) days after notice shall have been given to such Unit Owner of such breach or default (in each case, a "Recurring Payment Monetary Default"), (2) there shall be a breach or default by a Unit Owner in the payment of any monetary obligations other than the payment of Recurring Monetary Obligations, and such breach or default shall continue for at least thirty (30) days after the Unit Owner has been given notice of such breach or default (in each case, a "Non-Recurring Payment Monetary Default"; Non-Recurring Payment Monetary Defaults and Recurring Payment Monetary Defaults are collectively referred to as "Monetary Defaults") or (3) there shall be a breach or default by a Unit Owner in the performance of any of such Unit Owner's non-monetary obligations under the Condominium Documents or the applicable Unit Purchase Agreement, and such breach or default shall continue for at least thirty (30) days after such Unit Owner has been given written notice of such breach or default, or beyond the expiration of the cure period for the relevant obligation set forth in the applicable document (or if no cure period is specified or if such cure period is less than thirty (30) days, thirty (30) days after the Unit Owner has been given notice, which 30-day period shall be extended as necessary so long as the Unit Owner has commenced the cure of such default within such 30-day period and thereafter continues diligently to cure) (each, a "Nonmonetary Default").

"Termination Requirements" shall mean that the following requirements, with respect to any Unit (other than a Declarant Unit) have been satisfied:

(i) Declarant or the Condominium Board, as applicable, shall have delivered to the Unit Owner a written notice stating that a default by the Unit Owner has occurred under the Condominium Documents or the applicable Unit Purchase Agreement and specifying the nature of such default, and stating that a Termination Default will occur if such default is not cured within the time period specified in the notice (which shall be not less than the time period specified for a Termination Default under the Condominium Documents);

(ii) the Unit Owner shall have the right, in the case of a Nonmonetary Default, prior to the expiration date of the cure period set forth in the notice described in clause (i) above, to petition a court of competent jurisdiction in the State of New York for a temporary restraining order or preliminary injunction preventing Fee Owner, Declarant and/or the Condominium Board, as applicable, from terminating the Ground Lease, the Condominium Documents and/or the Unit Owner's rights thereunder pending the adjudication of such Nonmonetary Default (with such temporary restraining order or preliminary injunction being referred to herein as "Injunctive

Relief"); and if the Unit Owner's petition for Injunctive Relief shall have been timely filed, then, from and after the date on which such Unit Owner's petition for Injunctive Relief is filed, Fee Owner, Declarant or the Condominium Board, as applicable, shall take no further action to terminate the Ground Lease, the Condominium Documents and/or such Unit Owner's rights thereunder or to initiate or acquiesce in the termination of the Condominium Documents or the Ground Lease and/or such Unit Owner's rights thereunder pending a decision by the court on whether to grant such Injunctive Relief; and if such temporary restraining order or preliminary injunction is granted, then pending the adjudication of the underlying Nonmonetary Default as provided below, Fee Owner, Declarant or the Condominium Board, as applicable, shall take no further action to terminate the Ground Lease, the Condominium Documents and/or such Unit Owner's rights thereunder or to initiate or acquiesce in the termination of the Condominium Documents or the Ground Lease and/or such Unit Owner's rights thereunder; and

(iii) If (a) a court of competent jurisdiction shall have issued a determination ordering or permitting the termination of the Ground Lease or the Condominium and/or the Unit Owner's rights hereunder (or thereunder) on the basis that a Nonmonetary Default has occurred, and such determination has not been stayed pending appeal, or (b) a Monetary Default shall have occurred and not have been cured within the respective time periods therefor set forth in the definition of a "Termination Default", then, in either such case, the Termination Requirements shall be deemed to have been satisfied with respect to the defaulting Unit Owner.

"Transfer Instruments" shall have the meaning ascribed thereto in Section 7.3 of the By-Laws.

"Transferor Unit Owner" shall have the meaning ascribed thereto in Section 7.3 of the By-Laws.

"Unit" or "Condominium Unit" refers to a space designated as a Unit in the Declaration and Floor Plans, and all such Units are collectively referred to as "Units."

"Unit Lease" refers to any lease or sublease of a Unit entered into on or after the date of the Declaration.

"Unit Owner" refers to the owner of a Unit, and all such Unit Owners are collectively referred to as the "Unit Owners."

"Unit Owner Estoppel Certificate" shall have the meaning ascribed thereto in Section 5.8 of the By-Laws.

"Unit Owner's Determination" shall have the meaning ascribed thereto in Section 5.1 of the By-Laws.

"Unit Owner's Notice" shall have the meaning ascribed thereto in Section 7.3 of the By-Laws.

"Unit Owner's Property" shall have the meaning ascribed thereto in Section 5.3.4 of the Declaration.



"Unit Owner's Operating Payment" shall have the meaning ascribed thereto in Section 5.1 of the By-Laws.

"Unit Purchase Agreement" shall mean the applicable unit purchase and sale agreement pursuant to which such Unit has been conveyed to a Unit Owner. The VNSNY Sale Agreement is the Unit Purchase Agreement applicable to the conveyance to VNSNY of the VNSNY Unit.

"Unusable" shall mean cannot be occupied for the Unit Owner's (or its Permitted Users') operation of business.

"VNSNY" refers to (i) the initial owner of the VNSNY Unit (i.e., Visiting Nurse Service of New York, a New York not-for-profit corporation), (ii) any VNSNY Successor, and/or (iii) any other permitted successor, transferee or assignee owner of the VNSNY Unit that does not qualify as a VNSNY Successor, unless the provisions of Exhibit I hereto expressly limit the applicable right or option to said initial owner of the VNSNY Unit and any VNSNY's Successor (in which case the provisions of this clause (iii) shall not apply with respect to such right or option).

"VNSNY Adverse Impact" shall mean (i) an increase of VNSNY's monetary obligations under the VNSNY Transaction Documents, (ii) an adverse effect on, or diminishment of, VNSNY's rights or the Condominium Board's obligations under the VNSNY Transaction Documents (except, in either case, to a de minimis extent), (iii) any increase VNSNY's other obligations under the VNSNY Transaction Documents (except to a de minimis extent), or (iv) interference with VNSNY's business operations (except to a de minimis extent).

"VNSNY Limited Common Elements" shall have the meaning ascribed thereto in Section 7.5 of the Declaration.

"VNSNY Office Share" shall mean a percentage allocation of the Office Area, which shall be in the same proportion that the square footage of the VNSNY Office Units (as shown on Exhibit Q) bears to the total square footage of the Office Area (as shown on Exhibit Q).

"VNSNY Office Unit" or "VNSNY Office Units" shall have the meaning ascribed thereto in Section 3.2 of the Declaration.

"VNSNY Office Unit Owner" refers to the owner of the VNSNY Office Unit, which, following the Filing Date, shall be VNSNY.

"VNSNY Retail Façade Elements" shall have the meaning ascribed thereto in Section 5.7 of the Declaration.

"VNSNY Retail Share" shall mean a percentage allocation of the Retail Area, which shall be in the same proportion that the square footage of the VNSNY Retail Unit (as shown on Exhibit Q) bears to the total square footage of the Retail Area (as shown on Exhibit Q).

"VNSNY Retail Unit" shall have the meaning ascribed thereto in Section 3.2 of the Declaration.



"VNSNY Retail Unit Owner" refers to the owner of the VNSNY Retail Unit, which, following the Filing Date, shall be VNSNY.

"VNSNY Sale Agreement" refers to that certain purchase and sale agreement pursuant to which Declarant shall sell Declarant's rights and title to the VNSNY Unit to VNSNY, as more particularly set forth therein.

"VNSNY Standards" shall refer to those provisions set forth on Exhibit I attached hereto and made a part hereof.

"VNSNY Successor" shall have the meaning set forth in Exhibit I attached hereto and made a part hereof.

"VNSNY Termination Default" shall mean the occurrence of any one or more of the following events: (1) there shall be a breach or default by the VNSNY Unit Owner in the payment of any (x) fixed monthly installment of Common Charges, (y) fixed monthly installment of Special Assessments to the Condominium Board, or (z) Installment Purchase Payments to Declarant under the VNSNY Sale Agreement ((x), (y) and (z) are, collectively, the "VNSNY Recurring Monetary Obligations"), and such breach or default shall continue for ten (10) days after the VNSNY Unit Owner has been given written notice thereof (in each case, a "VNSNY Recurring Payment Monetary Default"), (2) there shall be a breach or default by the VNSNY Owner in the payment of any monetary obligations other than the payment of the VNSNY Recurring Monetary Obligations, and such breach or default remains uncured for a period of thirty (30) days after the VNSNY Unit Owner has been given written notice of such breach or default (in each case, a "VNSNY Non-Recurring Payment Monetary Default") or (3) there shall be a breach or default by the VNSNY Unit Owner in the performance of any of the VNSNY Unit Owner's non-monetary obligations under any of the VNSNY Transaction Documents, and such breach or default shall continue for at least thirty (30) days after the VNSNY Unit Owner has been given written notice of such breach or default, or beyond the expiration of the cure period for the relevant obligation set forth in the applicable document (or if no cure period is specified or if such cure period is less than thirty (30) days, thirty (30) days after the VNSNY Unit Owner has been given notice, which 30-day period shall be extended as necessary so long as the VNSNY Unit Owner has commenced the cure of such default within such 30-day period and thereafter continues diligently to cure) (each, a "VNSNY Nonmonetary Default").

"VNSNY Termination Requirements" shall mean the Termination Requirements, as applied to the VNSNY Unit following a VNSNY Termination Default.

"VNSNY Transaction Documents" shall mean the Condominium Documents, VNSNY Units Mortgage (as defined in the VNSNY Sale Agreement), VNSNY Omnibus Agreement (as defined in the VNSNY Sale Agreement), and the VNSNY Sale Agreement, together with all other written agreements between VNSNY and Declarant and/or Fee Owner relating to the VNSNY Unit or VNSNY's rights or obligations with respect to the VNSNY Unit.



"VNSNY Unit" collectively refers to all VNSNY Office Units and/or the VNSNY Retail Unit, all as initially described in Section 3.2 of the Declaration, that are owned by VNSNY, and any other Units that may, at any given time, be then owned or occupied by VNSNY. (For the avoidance of doubt, the initial VNSNY Units shall be the VNSNY Retail Unit and Office Units 2S, 3, 5, 6, and 7S.)

"VNSNY Unit Owner" refers to (i) the initial owner of the VNSNY Unit (i.e., Visiting Nurse Service of New York, a New York not-for-profit corporation), (ii) any VNSNY Successor, and/or (iii) any other permitted successor, transferee or assignee owner of the VNSNY Unit that does not qualify as a VNSNY Successor, unless the provisions of Exhibit I hereto expressly limit the applicable right or option to said initial owner of the VNSNY Unit and any VNSNY's Successor (in which case the provisions of this clause (iii) shall not apply with respect to such right or option).

"Waiver" shall have the meaning ascribed thereto in Section 5.19 of the By-Laws.

"Window Washing Equipment" refers to the equipment (whether or not owned by the Condominium) used to wash the Exterior Facade, including, without limitation, storage chests, washing rigs, ropes, davits and related equipment.

"Zoning Resolution" shall have the meaning ascribed thereto in Section 5.19 of the By-Laws.

**EXHIBIT D**

**BY-LAWS**

**OF**

**220 EAST 42ND CONDOMINIUM**

**220 East 42nd Street**
**New York, New York 10017**



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**BY-LAWS**

ARTICLE 1

**GENERAL**

1.1 **Purpose.** The purpose of these By-Laws is to set forth the rules and procedures concerning the conduct of the affairs of the Condominium. The Condominium forms a part of Block 1315 of Section 5 of the Tax Map of the Borough of Manhattan, City, County and State of New York, the Building, including, without limitation, the Units and the Common Elements, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, intended for use in connection therewith, all of which have been submitted to the provisions of Article 9-B of the Real Property Law of the State of New York by the recording of the Declaration in the City Register's Office, together with these By-Laws. All terms used herein which are not separately defined herein, shall have the meanings ascribed to those terms in the Declaration.

1.2 **Applicability of By-Laws.** These By-Laws are applicable to the Property and to the use and occupancy thereof. All present and future Unit Owners and their respective Permitted Users, as well as, all other persons who may use the Facilities of the Property, are and shall be subject to the Ground Lease, the Declaration and these By-Laws. The acceptance of a deed of conveyance, or the succeeding to title to, or the execution of a Unit Lease for, or the act of occupancy of, a Unit shall constitute an agreement that, the provisions of the Ground Lease, the Declaration, these By-Laws and the Rules and Regulations, and are accepted, ratified, and will be complied with.

1.3 **Principal Office of Condominium.** The principal office of the Condominium shall be located within the Borough of Manhattan, at such place as may be designated from time to time by the Condominium Board (as defined in Section 2.1 below).

ARTICLE 2

**BOARD OF MANAGERS**

2.1 **Number, Term and Qualification.** Except as otherwise provided in Section 9.2 of the Declaration and as more particularly set forth in Section 2.2 herein, the affairs of the Condominium shall be governed by a board of managers of the Condominium (the "Condominium Board").

2.2 **Members.** As more particularly set forth in Section 9.2 of the Declaration, the Condominium Board shall consist of three (3) members each of whom shall be designated and appointed by the Declarant, pursuant to the Power of Attorney granted under Section 9.3 of the Declaration; and any one of the members of the Condominium Board, as designated by the Declarant, shall be authorized to act on behalf of the Condominium Board to perform all duties and to have all obligations, that would otherwise be the responsibility of the Condominium Board.



2.3 **Powers and Duties.**

2.3.1 The Condominium Board shall have the powers and duties necessary for or incidental to the administration of the affairs of the Condominium as well as the performance of all covenants and agreements to which the Condominium is subject (except such powers and duties which by law, the Declaration, or these By-Laws may not be delegated to the Condominium Board by the Unit Owners). All determinations with respect to the administration of the affairs of the Condominium shall be made by the Condominium Board.

2.3.2 Subject to the provisions of Section 2.2 above and the VNSNY Standards set forth in Exhibit I to the Declaration, and without limiting the generality thereof the Condominium Board shall have all powers and duties expressly set forth elsewhere in the Declaration and these By-Laws and shall be entitled to make such determinations and take such actions and incur such liabilities as may be required to effectuate the Condominium Board's obligations under the Declaration and these By-Laws, including without limitation, the following matters:

2.3.2.1 Operating, caring for and Maintaining the Common Elements in accordance with the provisions of the Declaration and these By-Laws including making contracts and incurring liabilities for utilities, services and supplies (except to the extent such obligations and rights have been specifically allocated to one or the other Unit Owner under the terms of the Declaration or these By-Laws).

2.3.2.2 Performing the obligations and enforcing the rights of the Condominium and except to the extent such obligations and rights have been specifically allocated to one or the other Unit Owner under the terms of the Declaration or these By-Laws.

2.3.2.3 Adopting a budget, determining the amount of Common Charges and Special Assessments (as hereinafter defined) subject to the provisions of Section 5.1 of these By-Laws.

2.3.2.4 Providing estoppel certificates, non-disturbance agreements and/or other documents as may be required by a Permitted Mortgagee in connection with any Permitted Mortgage or requested by a Unit Owner or its tenant relating to such Unit Owner's payment of Common Charges.

2.3.2.5 Employing and dismissing personnel necessary for the Maintenance and operation of the Common Elements.

2.3.2.6 Making contracts and incurring liabilities in connection with the exercise of any of the powers and duties of the Condominium Board.

2.3.2.7 Bringing actions on behalf of the Condominium, with respect to any cause of action relating to the Common Elements or the rights of the Condominium, as the Condominium Board deems advisable.



2.3.2.8 Causing repairs to be performed in a Unit in the event of an Emergency Situation.

2.3.2.9 Procuring such fidelity bonds as the Condominium Board deems advisable covering officers and employees of the Condominium Board handling and responsible for the Condominium Board's funds and personal property and to procure managers' and officers' liability insurance if the Condominium Board deems it advisable. The premiums of such bonds and insurance shall be at market rates and be paid by the Condominium Board as a part of Common Expenses.

2.3.2.10 Determining policies, adopting and amending the administrative rules and regulations governing the details of operation of the Property and its use, including the Common Elements, and amending such administrative rules and regulations from time to time as the Condominium Board deems advisable, provided that the same (i) are consistent with the rights, powers and responsibilities of the Condominium Board under the Declaration and these By-Laws, (ii) do not result in a VNSNY Adverse Impact, and (iii) are not adopted or applied by the Condominium Board in a discriminatory manner so as to materially adversely (and without justification) affect one Unit Owner and not the other.

2.3.2.11 Making repairs and restorations of the Common Elements or parts thereof damaged or destroyed by fire or other casualty or necessitated as a result of condemnation or eminent domain proceedings which repairs and restorations shall be performed after a casualty to the Common Elements in accordance with the terms of these By-Laws.

2.3.2.12 Control power shutoffs and other interruptions of the normal functioning of the Condominium, to facilitate the performance of Alterations, Maintenance, repairs in or to particular Units and/or the Common Elements, which is permitted or required under the Declaration and these By-Laws. In making determinations under the preceding sentence, the Condominium Board will comply with all relevant provisions of the Declaration and make all commercially reasonable efforts to disrupt the business operation of the Unit Owners and their Permitted Users as little as reasonably possible under the circumstances then prevailing;

2.3.2.13 Enforcing rights and obligations of Unit Owners under the Declaration and the By-Laws.

2.3.2.14 Opening and maintaining bank accounts on behalf of the Condominium (with respect to matters within its jurisdiction as provided in these By-Laws) and designating signatories therefor.

2.3.2.15 Adjusting and settling insurance claims (and executing and delivering releases in connection therewith) to the extent the loss involves the Common Elements in accordance with the provisions of Section 5.2 of these By-Laws.

2.3.2.16 Borrowing money on behalf of the Condominium (including, without limitation, from Declarant Entities, but with no right to pay any interest thereon to such Declarant Entities), when required in connection with the operation, care, upkeep and Maintenance of, or the making of repairs, or Alterations of, the Common Elements, provided,



however, that no lien to secure repayment of any sum borrowed may be created on any Unit or its appurtenant interest in the Common Elements without the consent of the owner of such Unit.

2.3.2.17 Organizing corporations to act as designees of the Condominium Board with respect to such matters as the Condominium Board may determine.

2.3.2.18 Executing, acknowledging and delivering (i) any declaration or other instrument affecting the Property that the Condominium Board deems necessary or appropriate to comply with any law, ordinance, regulation, zoning resolution or requirement of the Department of Buildings, the City Planning Commission, the Board of Standards and Appeals, or any other public authority, applicable to the Maintenance, demolition, construction, and Alteration of the Building, (ii) any consent, covenant, restriction, easement or declaration affecting the Property that the Condominium Board deems necessary or appropriate, or (iii) any consent or other document requested by a Unit Owner, which is delivered pursuant to the terms of the Declaration or the By-Laws.

2.3.2.19 Preparing, executing and recording on behalf of all Unit Owners, as their attorney-in-fact, coupled with an interest, a restatement of the Declaration and/or these By-Laws (without modification) whenever, in the Condominium Board's estimation, it is advisable to consolidate and restate all amendments, modifications, additions and deletions theretofore made to the Declaration and/or these By-Laws.

2.3.2.20 Obtaining and reviewing insurance for the Property pursuant to the provisions of Section 5.2 of these By-Laws.

2.3.2.21 Entering into a zoning lot merger or any declaration or other instruments if same shall be required to enable Declarant to acquire, purchase, allocate, sell or dispose of any development rights now or in the future appurtenant to the Property or other zoning lot pursuant to a zoning lot and development agreement or to merge or subdivide a zoning lot.

2.3.2.22 Performing any and all duties imposed on the Condominium Board by Applicable Law or insurance requirements applicable to the Property.

2.3.2.23 Enforcing rights and obligations of the Condominium and the Unit Owners.

2.3.2.24 Licensing or leasing the Common Elements (provided that the Condominium Board may not do so if and to the extent that the same would unreasonably interfere with the use and enjoyment of a Unit by the respective Unit Owner).

2.3.3 Except as otherwise provided under Sections 9.2 and 9.3 of the Declaration, any act with respect to a matter determined to be necessary or desirable by the Condominium Board shall be done or performed by the Condominium Board or shall be done on its behalf and at its direction by the agents, employees or designees of the Condominium Board.

2.4 **Managing Agents and Managers.** With respect to matters concerning the determinations which the Condominium Board is entitled to make, the Condominium Board may employ a managing agent and/or a manager at a compensation established by the Condominium Board to perform such duties and services as the Condominium Board shall authorize and such cost shall be a Common Expense in accordance with Section 5.1 of these By-Laws (but subject to the VNSNY Standards set forth in Exhibit I to the Declaration).

2.5 **Resignation and Removal.** A Condominium Board member may resign at any time by written notice delivered personally or sent by certified mail or by a reputable overnight courier, return receipt requested, to the Condominium Board. Such resignation shall take effect at the time specified therein and, unless specifically requested, acceptance of such resignation shall not be necessary to make it effective.

2.6 **Designations; Vacancies.** Subject to the terms of Section 9.2 of the Declaration, the Condominium Board shall be filled by designation, in writing, in accordance with the provisions of Section 2.2 hereof. In the event of any vacancy on the Condominium Board for whatever reason, such vacancy shall be filled by the Declarant as more particularly set forth in Section 9.2 of the Declaration. A member of the Board will serve until such member is removed by the Declarant.

2.7 **Regular Meetings of Board.** Subject to Section 2.2 hereof, regular meetings of the Condominium Board may be held at such time and place in the Borough of Manhattan as shall be determined from time to time by the Condominium Board. Notice of regular meetings shall be given to each member thereof, by personal delivery, mail, or facsimile (or such other method as all members of the Condominium Board shall have agreed upon), at least five (5) Business Days prior to the day named for such meeting. Notwithstanding anything to the contrary set forth herein, for such time as Declarant (or a Declarant Entity) designates all persons to the Condominium Board, there shall be no requirement for the Board to hold regular meetings.

2.8 **Special Meetings of Board.** Subject to Section 2.2 hereof, special meetings of the Condominium Board may be called by any member of the Condominium Board by giving five (5) Business Days' prior notice to each member of the Condominium Board, which notice shall state the time, place (in the Borough of Manhattan) and purpose of the meeting.

2.9 **Waiver of Notice.** Any Board member may at any time waive notice of a Board meeting in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Condominium Board at any meeting thereof shall constitute a waiver of notice by him of the time and place thereof. If all the members are present at any meeting of a Board, no notice shall be required and any business may be transacted at such meeting.

2.10 **Determinations by Board; Quorum.**

2.10.1 Except as otherwise provided under Sections 9.2 and 9.3 of the Declaration and Sections 2.2 and 2.10.4 hereof, all determinations by the Condominium Board shall be made at a meeting of the Condominium Board at which a quorum thereof is present. At any Condominium Board meeting, all the members thereof shall constitute a



quorum, and the votes of a majority of such members present shall constitute the decision of the Condominium Board. Any determination or action taken by the Condominium Board that does not require the unanimous consent of all three (3) Board members (other than any determination or action required by applicable law or the requirements under any public liability, property or other insurance carried by the Condominium Board) shall be made in a commercially reasonable manner. Any dispute as to whether any such action or decision was commercially reasonable shall be submitted to binding arbitration, as provided in this Agreement, promptly upon the disputing party becoming aware of such action or decision.

2.10.2 If at any Condominium Board duly called meeting there is less than a quorum present, a majority of those members present may adjourn the meeting from time to time provided that all members of the Condominium Board are notified of the new date, time and place of the adjourned meeting. At any such adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

2.10.3 Members of the Condominium Board may participate in a meeting thereof by means of a conference telephone or similar communications equipment by means of which all persons participating in such meeting can hear each other and such participation shall constitute presence at such meeting. Notwithstanding anything to the contrary contained herein, and subject to Section 2.2 hereof, any action permitted or required to be taken at a meeting of the Condominium Board may be taken without a meeting if all members of the Condominium Board consent in writing to the adoption of a resolution authorizing such action and the writing or writings are filed with the minutes of the Condominium Board.

2.10.4 Notwithstanding anything to the contrary set forth herein, for so long as all members of the Condominium Board are designated by the Declarant: (i) any one of the members of the Condominium Board, as designated by the Declarant, shall be authorized to act on behalf of the Condominium Board to perform all duties and to have all obligations that would otherwise be the responsibility of the Condominium Board; and (ii) a quorum shall not be required at any meeting of the Condominium Board.

2.11 **Compensation.** No member of the Condominium Board shall receive any compensation for acting as such.

2.12 **Liability of Condominium Board and Unit Owners.**

2.12.1 To the extent permitted by Applicable Law, no member of the Condominium Board shall have any personal liability with respect to any contract, act or omission of the Condominium Board or of any managing agent or manager in connection with the affairs or operation of the Condominium or the Units (except in their capacities as Unit Owners), and the liability of any Unit Owner with respect thereto shall be limited as hereinafter set forth. Every contract made by the Condominium Board or by any managing agent or manager thereof shall provide or be deemed to provide that it is made by the Condominium Board, managing agent or manager only as agent for all Unit Owners; that the Condominium Board members or managing agent or manager shall have no personal



liability thereon (except in their capacities as Unit Owners); and shall also state the applicable limitations of liability of Unit Owners provided for in the next sentence. The liability of any Unit Owner with respect to any contract, act or omission with respect to the Condominium shall be limited to such proportionate share of the total liability as is equal to the Common Interest of such Unit Owner and, unless expressly stated to the contrary in such contract (as determined by the Condominium Board in its sole and absolute discretion), to the extent permitted by Applicable Law, shall be limited to such Unit Owner's interest in such Unit Owner's Unit and such Unit Owner's appurtenant interest in the Common Elements and any proceeds thereof (including, without limitation, any insurance proceeds in connection therewith and any proceeds from the sale or other disposition of such Unit Owner's interest in its Unit), so that such Unit Owner shall have no personal liability for such contract, act or omission. Nothing in the preceding sentence shall limit (i) a Unit Owner's liability for the payment of Common Charges, or (ii) such liability that Declarant might have pursuant to other provisions of the Condominium Documents. Any such contract or agreement may also provide that it covers the assets, if any, of the Condominium Board. Notwithstanding anything herein to the contrary, to the extent permitted by Applicable Law, Condominium Board members shall have no liability to Unit Owners. The negligence of any Condominium Board member shall be deemed to be the negligence of Declarant, and nothing contained herein shall be deemed to exculpate Declarant from any liability that Declarant might otherwise have resulting from such negligence. The Condominium Board may contract or effect any transaction with any Board member, any Unit Owner, or any Affiliate of any of them, without incurring any liability for self-dealing, provided such dealing (a) does not have a material adverse impact on any Unit Owner, or (b) if the Condominium Board enters into a contract or effects any transaction with Declarant or any Affiliate of Declarant, and if such contract or transaction results in any costs includable within Common Charges, then all payments required to be made by the Condominium Board under such contract or in connection with such transaction shall not exceed competitive market rates that would be charged by independent third parties therefor.

2.12.2 To the extent permitted by Applicable Law, neither the Condominium Board nor any member thereof shall be liable for either (i) any failure or interruption of any utility or other service to be obtained by, or on behalf of, the Condominium Board or to be paid for as a Common Expense; or (ii) any injury, loss or damage to any individual or property, occurring in or about either a Unit or any Common Element. Furthermore, the obligations of each of the parties hereunder shall not in any way be affected because the Condominium Board is unable to fulfill any of its obligations or to supply any service by reason of Force Majeure. The Condominium Board shall have the right, without incurring any liability to the Unit Owners, to stop any service because of accident or Emergency, or, to the extent reasonably necessary, for Maintenance and/or Alterations that the Condominium Board is required to perform hereunder, until such Maintenance and/or Alterations shall have been completed. The Condominium Board shall use commercially reasonable efforts to minimize such stoppage to such extent as shall be practical.

2.12.3 Interruption

2.12.3.1 For the purposes of this Section 2.12.3, the term "Interruption" shall mean any instance (other than a fire or other casualty) in which the VNSNY Unit Owner



shall be unable to use all or any portion of the VNSNY Unit for the primary uses expressly permitted therein by the Condominium Documents solely by reason of (x) the failure of the Condominium Board to perform any of the Condominium Board's obligations pursuant to Section 5.16 of these By-Laws, or (y) the interruption, curtailment or suspension of the Building services that the Condominium Board is required to provide pursuant to Sections 5.10 and 5.13 of these By-Laws.

2.12.3.2 For the purposes of this Section 2.12.3, the term "Declarant Interruption" shall mean any instance in which an Interruption shall have occurred, and (x) the VNSNY Unit Owner shall have notified the Condominium Board of such Interruption and the VNSNY Unit Owner's inability to use all or any portion of the VNSNY Unit for the primary uses expressly permitted therein by the Condominium Documents by reason thereof, (y) such Interruption and the VNSNY Unit Owner's inability to so use all or any portion of the VNSNY Unit shall continue (other than as a result of Force Majeure) for at least six (6) consecutive Business Days after delivery of such notice by the VNSNY Unit Owner to the Condominium Board, and (z) such Interruption shall have been caused by, or otherwise result from, the negligence or willful misconduct of the Condominium Board or of Declarant, or of any of their respective employees, agents, contractors or representatives. If and to the extent that an Interruption continues as a result of Force Majeure, then such Interruption shall not be deemed a Declarant Interruption for the period of such Force Majeure.

2.12.3.3 If a Declarant Interruption shall occur that renders the VNSNY Unit (or a substantial portion thereof) unusable, then, notwithstanding anything to the contrary contained in Section 2.12.2 above, and, subject to the terms of Section 2.12.3.4, as the VNSNY Unit Owner's sole remedy in connection with such Declarant Interruption and provided that such Declarant Interruption shall then be continuing, the VNSNY Unit Owner shall be entitled to an abatement of the Common Charges payable by the VNSNY Unit Owner on a pro rata basis, calculated by multiplying the amount of Common Charges otherwise then payable pursuant to the Condominium Documents with respect to the VNSNY Unit by a fraction, the numerator of which shall be the rentable square footage area of the VNSNY Unit that shall have been rendered unusable, and the denominator of which shall be the number of rentable square feet of the VNSNY Unit. Such abatement, if due, shall begin on the shall apply to the period that begins on the day that the VNSNY Unit Owner delivered notice to the Condominium Board of such Declarant Interruption and the VNSNY Unit Owner's inability to so use all or any portion of the VNSNY Office Unit and/or VNSNY Retail Unit, and which shall end on the earlier of the day on which such Declarant Interruption shall cease or the day immediately prior to the day on which the applicable portion of the VNSNY Unit shall be useable for the primary uses expressly permitted therein by the Condominium Documents. For the purposes hereof, a "substantial portion" of the VNSNY Unit shall mean (i) a usable area of at least 2,500 square feet of the VNSNY Office Unit, (ii) a useable area of at least 1,000 square feet of the VNSNY Retail Unit.

2.12.3.4 If any portion of the VNSNY Unit shall have been rendered unusable as a result of a Declarant Interruption and the same shall have remained uncured for a period in excess of sixty (60) days, then, as the VNSNY Unit Owner's sole monetary remedy in connection with such Declarant Interruption and provided that such Declarant Interruption shall then be continuing, the VNSNY Unit Owner shall be entitled to an abatement of Common

Charges as set forth in Section 2.12.3.3 above regardless of whether the area rendered unusable by such Declarant Interruption shall be a substantial portion of the VNSNY Unit.

2.12.3.5 In the event that the VNSNY Unit Owner shall be entitled to an abatement of Common Charges by reason of a Declarant Interruption, then the Condominium Board shall recoup the amount of such abatement by means of a Special Assessment imposed upon Declarant. Nothing in this Section 2.12.3 shall limit the obligation of Declarant, the Condominium Board and/or the Fee Owner to perform all maintenance and repairs in the VNSNY Unit in such manner and in such time periods as are set forth in the Condominium Documents.

2.12.3.6 Notwithstanding anything to the contrary set forth in this Section 2.12.3 of the By-Laws, (i) the Condominium Board shall he obligated to use commercially reasonable efforts to end any Declarant Interruption, including, but not limited to, the use of overtime or premium pay labor and the payment of overtime expenses, and (ii) if the Condominium Board fails to satisfy its obligations set forth in the immediately foregoing clause (i), VNSNY shall have the right to seek equitable remedies with respect to the Declarant's or the Condominium Board's obligations under the Condominium Documents.

2.13 **Fidelity Bonds.**

2.13.1 The Condominium Board shall determine whether it desires to obtain or ensure maintenance of fidelity bonds, in amounts deemed appropriate by the Condominium Board, for the managing agent or manager, if any, employed by the Condominium Board, and the premiums on such bonds (if obtained by the Condominium Board) shall be paid by Declarant, and shall not constitute Common Expenses.

2.13.2 The Condominium Board shall determine whether it desires to obtain and maintain directors and officers insurance (i) to indemnify the Condominium for any obligation which it incurs as a result of the indemnification of members and officers of the Condominium as required by Applicable Law or by a court order, (ii) to indemnify members and officers of the Condominium Board in instances in which they may be indemnified by the Condominium under the provisions of these By-Laws, and/or (iii) to indemnify members and officers of the Condominium in instances in which they may not otherwise be indemnified, to the extent provided by such insurance. The cost of any insurance purchased pursuant to the terms of this Section 2.13.2 shall be paid by Declarant, and shall not constitute Common Expenses

2.14 **Intentionally Omitted.**

2.15 **Principal Office of Condominium Board.** The principal offices of the Condominium Board shall be located within the Property or at such other place in the Borough of Manhattan reasonably convenient thereto as may he designated from time to time by the Condominium Board.

2.16 **Status of Condominium Board.** In addition to the status conferred upon the Condominium Board under or pursuant to the provisions of the Condominium Act, the Condominium Board shall, to the extent permitted by Applicable Law, be deemed to constitute a



separate unincorporated association for all purposes under and pursuant to the provisions of the General Associations Law of the State of New York. In the event of the incorporation of the Condominium Board pursuant to the provisions of Section 2.17 below, the provisions of this Section 2.16 shall no longer be applicable to the Condominium Board.

2.17 **Incorporation of the Condominium Board.** To the extent and in the manner provided in the Condominium Act, the Condominium Board may, as provided in this Article 2, be incorporated under the applicable statutes of the State of New York. In the event that the Condominium Board so incorporates, it shall have, to the extent permitted by Applicable Law, the status conferred upon it under such statutes in addition to the status conferred upon the Condominium Board under or pursuant to the provisions of the Condominium Act. The certificate of incorporation and by-laws of any such resulting corporation shall conform as closely as practicable to the provisions of the Declaration and these By-Laws and the provisions of the Declaration and these By-Laws shall control in the event of any inconsistency or conflict between the provisions hereof and the provisions of such certificate of incorporation and by-laws.

2.18 **Board as Agents of Unit Owners.** In exercising their respective powers and performing their respective duties under the Declaration and these By-Laws, the Condominium Board shall act in good faith as, and shall be, the agent of the Unit Owners, subject to and in accordance with the provisions of the Declaration and these By-Laws. Notwithstanding the foregoing, no Unit Owner shall have the right to challenge or object to an act of the Condominium Board taken in a good faith, non-discriminatory manner, except to the extent (i) expressly provided otherwise in the Declaration or these By-Laws, or (ii) such act shall have a material adverse impact upon such Unit Owner and has been taken without reasonable justification.

ARTICLE 3

**OFFICERS**

3.1 **Designation.** The principal officers of the Condominium shall be a President, Vice President, Secretary and Treasurer thereof, all of whom shall be elected by the members of the Condominium Board. The Condominium Board members may appoint an Assistant Treasurer, Assistant Secretary and such other officers as in their judgment may be desirable. None of the officers of the Condominium Board need be Unit Owners or have any interest therein or be Board members.

3.2 **Election of Officers.** The officers of the Condominium Board shall be elected annually by the members of the Condominium Board and shall hold office until their successors are elected or until his or her death, resignation or removal.

3.3 **Resignation and Removal of Officers.** Any officer may resign at any time by written notice delivered or sent by certified mail, return receipt requested, to the Condominium Board. Such resignation shall take effect at the time specified therein and, unless specifically requested, acceptance of such resignation shall not be necessary to make it effective. A successor officer may be elected at any regular Board meeting or at any special Board meeting



called for such purpose. Any officer may be removed at any time, either with or without cause, by the affirmative vote of at least two members of the Condominium Board.

3.4 **President.** The President of the Condominium shall be the chief executive officer of the Condominium and shall preside at all meetings of the Condominium Board. The President shall have all of the general powers and duties that are incident to the office of president of a stock corporation organized under the Business Corporation Law of the State of New York.

3.5 **Vice President.** The Vice President shall take the place of the President and perform the duties of the President whenever such President shall be absent or unable to act. If both the President and the Vice President of the Condominium Board are unable to act, the Condominium Board shall appoint some member of the Board to act in the place of such President and Vice President on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Condominium Board or by the President.

3.6 **Secretary.** The Secretary of the Condominium shall keep the minutes of all meetings of the Condominium Board. The Secretary shall have charge of such books and papers as the Condominium Board shall direct and shall in general perform all the duties incident to the office of secretary of a stock corporation organized under the Business Corporation Law of the State of New York. Any Assistant Secretary appointed by the Condominium Board pursuant to Section 3.1 of these By-Laws shall have all of the powers of the Secretary.

3.7 **Treasurer.** The Treasurer shall have the care and custody of the funds and securities of the Condominium and shall be responsible for keeping full and accurate financial records and books of account thereof showing all receipts and disbursements necessary for the preparation of all required financial data. The Treasurer shall be responsible for the deposit of all funds and other securities in the name of the Condominium Board (or in the name of the managing agent appointed by the Condominium Board) in such depositories as may from time to time be designated by the Condominium Board and shall in general perform all of the duties incident to the office of treasurer of a stock corporation organized under the Business Corporation Law of the State of New York. Any Assistant Treasurer appointed by the Condominium Board pursuant to Section 3.1 of these By-Laws shall have all of the powers of the Treasurer.

3.8 **Execution of Documents.** The Condominium Board may proscribe rules governing the execution of documents, including without limitation, all agreements, contracts, deeds, leases, checks and other instruments of the Condominium, as it sees fit.

3.9 **Compensation of Officers.** No officer shall receive any compensation for acting on the Condominium Board.

3.10 **Superseding Clause.** Notwithstanding anything to the contrary contained hereinabove, the provisions of this Article 3 are subject to the provisions of Sections 9.2 and 9.3 of the Declaration.



ARTICLE 4

**NOTICES; UNIT OWNER MEETINGS**

4.1 **Notices.** All notices, demands, requests or other communications (collectively, "Notices") required or desired to be given hereunder to the Condominium Board or a Unit Owner (and except as otherwise expressly set forth in the Declaration or these By-Laws) shall be sent by (i) certified or registered mail, return receipt requested, postage prepaid, or (ii) national overnight delivery service, (iii) facsimile transmission (provided that the original shall be simultaneously delivered by national overnight delivery service or personal delivery), or (iv) personal delivery, as the case may be, and if there is a managing agent of the Condominium Board, a duplicate shall be sent in like manner to such managing agent. All Notices to the Condominium Board or any Unit Owner shall, except as otherwise provided herein, be sent to the address of such Unit Owner at the Property or to such other address(es) as may have been designated by such Unit Owner from time to time, in writing, to the Condominium Board. A copy of all Notices given to the Condominium Board by a Unit Owner shall be given in like manner by such Unit Owner to the attorneys for the Condominium Board, and all Notices given by the Condominium Board to a Unit Owner may be given on the Condominium Board's behalf by the attorneys for the Condominium Board, provided that the name and address of such attorneys shall have theretofore been furnished to the Unit Owners.

4.2 **Fee Owner Notice.** All Notices required or desired to be given hereunder to the Fee Owner and any Permitted Mortgagees shall be sent to their respective addresses, as designated by them from time to time, in writing to the Condominium Board.

4.3 **Effective Date.** Any Notice so sent by certified or registered mail, national overnight delivery service or personal delivery shall be deemed given on the date of receipt or refusal as indicated on the return receipt, or the receipt of the national overnight delivery service or personal delivery service. Any Notice sent by facsimile transmission shall be deemed given when received as confirmed by the telecopier electronic confirmation receipt. Notwithstanding the foregoing, whenever under these By-Laws a Notice is (a) received on a day that is not a Business Day or is required to be delivered on or before a specific day that is not a Business Day, the day of receipt or required delivery shall automatically be extended to the next Business Day and (b) delivered by hand (or so attempted, but refused) or by facsimile transmission, it shall be deemed given on the day of delivery unless delivery is made after 2:00 p.m. or not on a Business Day, in which event delivery shall be deemed given on the next occurring Business Day.

4.4 **Waiver of Service of Notice.** Whenever notice is required to be given by law, the Declaration or these By-Laws, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed the equivalent thereof.

4.5 **Annual Meetings.** Except as otherwise provided under Sections 9.2 and 9.3 of the Declaration and Section 2.2 hereof, the first annual meeting of Unit Owners may be called on or no more than one (1) year after the recording of the Declaration. Such meeting shall be held not less than 10 days nor more than 40 days after such date. Thereafter, annual meetings of Unit Owners may be held approximately thirty (30) days before or after each anniversary of the first

annual meeting. Notwithstanding anything to the contrary set forth herein, for such time as Declarant (or a Declarant Entity) and VNSNY (or a VNSNY Successor) are the only Unit Owners, there shall be no obligation to hold any meetings of Unit Owners.

4.6 **Place of Meetings.** Meetings of the Unit Owners shall be held at such place as may be designated by the Condominium Board.

4.7 **Special Meetings**. The President of the Condominium Board shall call a special meeting of Unit Owners, if so directed by resolution of the Condominium Board or upon a petition signed and presented to the Secretary of the Condominium Board by any Unit Owner.

4.8 **Notice of Meetings and Actions Taken.** Subject to Section 2.2 hereof, notice of each annual or special meeting shall be given by the appropriate Secretary to all Unit Owners of record entitled to vote thereat as of the date of said notice. Each such notice shall state the purposes of the meeting and the time and place where it is to be held and no business shall be transacted thereat except as stated in the notice. All notices hereunder shall be given by personal delivery, regular mail, recognized overnight courier or telegram, at least ten (10) but no more than thirty (30) business days prior to the day named for the meeting and shall be given or sent to the Unit Owners entitled to receive same at their address at the Property or at such other address at the Property or elsewhere as any Unit Owner has designated by notice in writing to the appropriate Secretary at least ten (10) days prior to the giving of notice of the applicable meeting

4.9 **Adjournment of Meetings.** If any meeting of Unit Owners(s) cannot be held because a quorum is not present, the Unit Owner present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than 48 hours from the time fixed for the original meeting.

4.10 **Voting.**

4.10.1 Each Unit Owner or a person designated by such Unit Owner to act as proxy on such Unit Owner's behalf and who need not be a Unit Owner, shall be entitled to cast the votes appurtenant to such Unit as set forth herein and in the Declaration at all meetings of Unit Owners. The designation of any such proxy shall be made in writing to the Secretary of the Condominium Board and shall be revocable at any time by written notice to such Secretary by the Unit Owner so designating; provided, however, that no designation to act as a proxy shall be effective for a period in excess of six months, except a designation of (i) a Permitted Mortgagee to act as the proxy of its mortgagor; and (ii) Declarant pursuant to Sections 9.2 and 9.3 of the Declaration.

4.10.2 Except as otherwise set forth herein or in the Declaration, at all meetings of Unit Owners, each Unit Owner (or such Unit Owner's proxy) entitled to vote thereat will be entitled to cast one vote for each .001% (rounded off to the nearest .001%) of Common Interest attributable to such Unit Owner's Unit.

4.11 **Quorum.** Except as otherwise provided in these Condominium By-Laws, the presence in person or by proxy of all Unit Owners shall constitute a quorum at all meetings of Unit Owners.



4.12 **Waiver of Meeting.** Upon the unanimous determination of all Unit Owners, no annual meetings of the Unit Owners need take place.

4.13 **Superseding Clause.** Notwithstanding anything to the contrary contained hereinabove, the provisions of this Article 4 shall be subject to the provisions of Sections 9.2 and 9.3 of the Declaration.

ARTICLE 5

**OPERATION OF THE PROPERTY**

5.1 **Determination of Common Expenses and Fixing of Common Charges.**

5.1.1 The Condominium Board (or its managing agent) shall provide a copy of the proposed Condominium Estimated Operating Statement (as hereinafter defined) to each member of the Condominium Board.

5.1.2 Except as otherwise provided herein and in the VNSNY Standards set forth in Exhibit I to the Declaration, Common Expenses shall be determined by the Condominium Board as set forth below, and shall be allocated among the Unit Owners in accordance with the provisions of Section 5.1.8 below.

5.1.3 For purposes of this Section 5.1 and unless otherwise indicated throughout the Declaration or these By-Laws, the term "Common Expenses" shall be defined to include (subject to the exclusions and deductions set forth in Section 5.1.7 below): (i) all costs and expenses and taxes thereon, if any, incurred or borne by the Condominium Board or on behalf of the Condominium to operate and Maintain the Common Elements, and (ii) all such other expenses included as Common Expenses, all as set forth on Exhibit P annexed hereto and made a part hereof.

5.1.4 Intentionally omitted.

5.1.5 Intentionally omitted.

5.1.6 Intentionally omitted.

5.1.7 The costs and expenses described above shall exclude or have deducted from them, as appropriate:

5.1.7.1 salaries of personnel above the grade of building manager (except for any personnel, regardless of grade, employed by Declarant or any Declarant Entities that provide cleaning and security services to the Building or to the Building and other buildings owned by Declarant or other Declarant Entities (provided that the cost of such services, including the salaries, fringe benefits, payroll taxes, and other compensation for such personnel, does not exceed competitive market rates charged by independent third parties for services comparable to such services being provided at the Building), in which case such salaries, fringe benefits, payroll taxes and compensation shall be equitably apportioned among all such buildings);



5.1.7.2 expenditures for capital improvements except (a) capital expenditures or expenses for equipment designed to result in savings or reduction of expenses that would otherwise be included in Common Expenses (e.g., energy saving devices), provided the amount paid by a Unit Owner is limited to each Unit Owner's share of any such projected savings or reduction of Common Expenses, and (b) capital expenditures required by Applicable Law not yet enacted as of the Filing Date, in any of which cases the cost thereof shall be included in Common Expenses for the Operating Year in which the costs are incurred and subsequent Operating Years, with the amount to be included to be calculated equal to such cost amortized on a straight line basis, to the extent that such items are depreciated over such period, over the useful life of such item(s) all in accordance with GAAP, with an interest factor equal to the Prime Rate at the time of the Condominium's (or the Fee Owner on behalf of the Condominium) having incurred said expenditure as most recently published in The Wall Street Journal Eastern Edition (or, in the event that The Wall Street Journal fails to publish such rate, such other publication as the Condominium Board shall designate in its sole discretion) (with such published rate being herein called the "Prime Rate"; and the Prime Rate plus two percent (2%) per annum being herein called the "Interest Rate"). If the Condominium shall lease any such item of capital equipment designed to result in savings or reductions in Common Expenses, then the rentals and other costs paid pursuant to such leasing shall be included in Common Expenses for the Operating Year in which they are incurred, subject to the limitation on the charge to each Unit Owner as set forth above;

5.1.7.3 cost of repairs, replacements or restorations incurred by reason of fire or other casualty to the Common Elements or by the exercise of the right of eminent domain (provided, however, that reasonable deductibles paid by the Condominium under any insurance policies covering repairs, replacements or restorations in the event of a casualty to the Common Elements shall not be excluded from Common Expenses, but shall instead be included, amortized on a straight line basis, to the extent that such items are depreciated over such period, over the useful life of the item(s) being repaired (all in accordance with GAAP), replaced or restored, with an interest factor equal to the Prime Rate);

5.1.7.4 advertising, marketing, entertainment and promotional expenditures;

5.1.7.5 legal fees incurred in bankruptcy or similar proceedings, disputes with Unit Owners and legal and auditing fees, other than legal and auditing fees reasonably incurred (a) in connection with the maintenance and operation of the Land and Building or (b) in connection with the preparation of statements required pursuant to Common Expenses provisions, but not in connection with disputes with Unit Owners over Common Expenses;

5.1.7.6 costs incurred in performing work or furnishing services to or for individual Unit Owners other than work or services of a kind and scope which the Condominium would be obligated to furnish to all Unit Owners without charge if such work were required in a Unit Owner's Unit;

5.1.7.7 the cost incurred by the Condominium in performing work or furnishing any service to or for a Unit Owner for which a separate charge is made, including



without limitation, the supply of overtime air-conditioning, ventilation and heating at the Condominium's cost and expense, regardless of the amount billed or received by the Condominium for performing such work or furnishing such service;

5.1.7.8 the original cost, depreciation or amortization of the Building or its contents or components;

5.1.7.9 interest, amortization payments or other costs associated with any mortgages, loans or any other comparable debts, including, without limitation, any refinancing of the Ground Lease, Building or Land (provided, however, that amortization payments and interest permitted to be included within Common Expenses pursuant to clause (ii) above, as well as ordinary and reasonable interest costs incurred in connection with the operation of the Condominium (and payable to a third party), shall not be excluded from Common Expenses);

5.1.7.10 the cost of correcting defects in the construction of the Building or in the Building equipment, except that conditions (not occasioned by construction defects) resulting from ordinary wear and tear (and not otherwise coming within the scope of items described in clause (iii) above) shall not be deemed such defects;

5.1.7.11 damages and repairs necessitated by the negligence or willful misconduct of the Condominium, the Declarant or any of the Declarant Entities, and/or their respective employees, agents or contractors;

5.1.7.12 all costs associated with charitable contributions, civic contributions or political contributions;

5.1.7.13 costs incurred in connection with any portion of the Building that is used for commercial concessions, such as parking and for which parking fees are charged, including, without limitation, any compensation paid to clerks, attendants or other persons and employed by such commercial concessions (provided, however, that, if profits shall be generated from such commercial concessions in excess of the costs of operating such concessions, and if such profits shall be applied towards Common Expenses, then the reasonable costs incurred in connection therewith shall be included in Common Expenses, but only for so long as the profits of such concession continue to exceed the costs of operating such concession);

5.1.7.14 the cost of acquiring, leasing, installing, Maintaining, displaying, protecting, insuring or restoring any sculptures, paintings or other original works of art;

5.1.7.15 bad debt loss, rent loss or reserves for either of them;

5.1.7.16 costs incurred by the Condominium arising out of the Condominium's or the Declarant's failure to perform or breach of any of their respective covenants, agreements, representations, warranties, guarantees or indemnities made under these By-Laws or any other documents affecting the Land and/or the Building;

5.1.7.17 the cost of treating, removing and/or wrapping asbestos and asbestos containing materials and other Hazardous Materials, and the cost of any environmental studies other than standard periodic monitoring;

5.1.7.18 profits, franchise, gains, estate, income, succession, gift, mortgage, transfer, unincorporated business, gross receipt and commercial rent taxes imposed upon the Condominium (or Declarant), or any interest or penalties for failure to timely pay those taxes or any other taxes;

5.1.7.19 costs incurred in connection with obtaining any rebates, credits and similar items, unless the Condominium receives the benefit of such rebates, credits or similar items (as the case may be), in which case the costs incurred in connection with obtaining any such rebate, credit or similar item, less the full amount of such rebate, credit or similar item, shall be included in the Common Expenses;

5.1.7.20 interest, fines, penalties or other late payment charges paid by the Condominium (including, without limitation, deductibles under any insurance policies covering such liabilities), if same result from the Condominium's negligence, willful misconduct or violation of Applicable Laws;

5.1.7.21 the cost of any proceeding, judgment, settlement, or arbitration award resulting from any liability of the Condominium, which is the result of negligence, willful misconduct or fraud (other than a liability for amounts otherwise includable in Common Expenses hereunder), and all other expenses incurred in connection therewith, including, without limitation, damages and attorneys' fees and disbursements;

5.1.7.22 costs relating to withdrawal liability or unfunded pension liability under the Multi-Employer Pension Plan Act or similar law;

5.1.7.23 the cost of (a) installing in the Building any specialty facility, such as an observatory, broadcasting facility, telecommunications facility, theater, auditorium, luncheon club, athletic or recreational club, child care or similar facility, cafeteria or dining facility, and (b) operating and Maintaining any such facility, including any compensation paid to clerks, attendants or other persons, but the cost of operation and maintenance shall be excluded from Common Expenses only (x) if such facility is not available for use by the Unit Owners or the Unit Owners' employees, or (y) if a Unit Owner elects not to make use of such existing or contemplated facility, which election shall be made, if at all, within thirty (30) days after Declarant or the Condominium Board shall request of a Unit Owner that such Unit Owner make such election (and, if there shall then be one or more Unit Owners in addition to Declarant and VNSNY, then such costs of operation and maintenance shall be excluded only from Common Expenses chargeable to the Unit Owner(s) who shall have elected not to make use of such facility);

5.1.7.24 costs incurred in connection with constructing additions to, or building additional stories on, the Building, or adding buildings or other structures adjoining the Building, or connecting the Building to other structures adjoining the Building;



5.1.7.25 costs incurred in connection with the acquisition, maintenance or disposition of (a) air rights, (b) transferable development rights, (c) easements, including, without limitation, any reciprocal agreements, or (d) other real property interests, including, without limitation, all or any part of Declarant's interest in the Building;

5.1.7.26 costs and expenses incurred by the Condominium in connection with any obligation of the Condominium to indemnify any Unit Owner pursuant to these By-Laws or otherwise; provided, that if and to the extent that such costs and expenses would have been incurred by the Condominium even in the absence of such indemnity obligation and would otherwise be includable in Common Expenses, then such costs and expenses shall nevertheless be included in Common Expenses;

5.1.7.27 costs and expenses for which the Condominium receives compensation from any third party, including the Unit Owners (other than through provisions similar to this Article 5);

5.1.7.28 subject to the provisions of clause (ii) above, any item which under GAAP would not be regarded as an operating, maintenance or management expense;

5.1.7.29 any cost of any installation and decoration in connection with preparing space for any individual Unit Owner of the Building or any contribution or allowance on account thereof;

5.1.7.30 insurance premiums attributable to the particular manner of use or occupancy of any Unit Owner or other occupant of the Building as distinguished from the mere use;

5.1.7.31 real estate taxes and any costs relating to tax certiorari or any other proceeding for the reduction of real estate taxes or the assessed valuation of the land and/or building;

5.1.7.32 rent paid by the Condominium Board or Declarant or any agent of the Condominium Board or Declarant for office space (including, but not limited to, office space used for a management office) and any other expenses related solely to the occupancy of such office space (in contradistinction to costs expended in the management of the Condominium);

5.1.7.33 costs relating to the sale, transfer, disposition or financing of the Building or any interest therein or in any Person of whatever tier owning an interest therein;

5.1.7.34 the rental cost of any item, which, if purchased, would not properly be considered a Common Expense to the extent permitted by this Section 5.1.7;

5.1.7.35 all costs of the Declarant's general corporate and general administrative overhead expenses that are not otherwise includable as a Common Expense to the extent permitted by this Section 5.1.7;



5.1.7.36 to the extent any costs that are otherwise includable in Common Expenses are incurred with respect to the Building and other properties (including salaries, fringe benefits and other compensation of the Board's personnel who provide services to both the Building and other properties), the amounts that should be properly, fairly and equitably allocated solely to such other properties;

5.1.7.37 any expenses for repairs or maintenance that are covered by warranties and service contracts to the extent such expenses are reimbursed to the Condominium pursuant thereto;

5.1.7.38 costs and expenses in connection with leasing, sales, financings or refinancings (including, without limitation, fees in connection with brokerage, work allowances, takeover fees, and legal, arbitration, accounting, advertising and other professional fees, expenses and disbursements in connection therewith) of the Land, Building and/or Units;

5.1.7.39 costs and expenses relating to disputes with individual Unit Owners (including legal, arbitration, accounting and other professional fees, expenses and disbursements in connection therewith), unless such disputes are in connection with obligations of such Unit Owners that are for the benefit of the Condominium generally;

5.1.7.40 amounts paid to the Condominium or to affiliates of the Condominium, including, without limitation, the Declarant Entities, for any services in the Building to the extent such amounts exceed the charges for such services rendered by other owners or landlords of Comparable Buildings;

5.1.7.41 expenses of relocating or moving any Unit Owner or any equipment of any Unit Owner;

5.1.7.42 takeover or buy-back costs (in the nature of a recapture upon a proposed conveyance of a Unit or the leasing thereof, or related to any tenant leasing any part of a Unit owned by Declarant) incurred by the Condominium or Declarant in connection with any Unit in the Building;

5.1.7.43 the cost of providing any service customarily provided by a managing agent and the cost of which is customarily included in management fees (e.g., bookkeeping and accounting costs);

5.1.7.44 the cost of acquiring or replacing any separate electrical meter the Condominium may provide to any individual Unit Owner;

5.1.7.45 the cost of temporary exhibitions located at or within the Building;

5.1.7.46 such amounts of Ground Rent and any other payments under the Ground Lease that are expressly allocable to a specific Unit or are made payable by a specific Unit Owner (rather than the Unit Owners generally), or that are not expressly provided for in the Ground Lease. For the avoidance of doubt, and notwithstanding anything to the contrary set forth herein, with the exception of the Declarant, all other Unit Owners (including the owner of



the VNSNY Units) shall be required to pay, as part of its Common Charges, a portion of Ground Rent and any other payments under the Ground Lease in an amount equal to the Common Interest percentage allocated to its Unit. With respect to Units owned by Declarant, amounts due in payment of Ground Rent and any other payments under the Ground Lease shall be deemed to have been paid directly by Declarant in its capacity as lessee under the Ground Lease, and therefore will not be included in the Common Charges due from Units owned by the Declarant;

5.1.7.47 expenses allocable directly and solely to any specific Unit Owner under the provisions of the Declaration or these By-Laws, except that the Condominium Board may, if it so elects, include such expenses within Common Expenses, provided that the same shall be allocated solely to such Unit Owner in accordance with the provisions of this Section 5.1 (or, alternatively, may be imposed solely upon such Unit Owner as a Special Assessment in accordance with the provisions of the Declaration or these By-Laws);

5.1.7.48 amounts reserved for working capital purposes or future expenses (including, without limitation, maintenance, repair, rebuilding and replacement of Common Elements);

5.1.7.49 the costs of (i) obtaining or ensuring the maintenance of any fidelity bonds, or (ii) insurance premiums for any directors and officers insurance;

5.1.7.50 except to the extent payment of such dues or fees is required by Applicable Laws, dues and fees for trade and industry associations and costs of their related activities;

5.1.7.51 costs and expenses incurred by Declarant in connection with enforcement of leases entered into for the Declarant Unit, including court costs, accounting fees, auditing fees, attorneys' fees and disbursements in connection with any summary proceeding to dispossess any tenant thereof; and

5.1.7.52 losses to the Condominium resulting from the negligence or willful misconduct of any managing agent, and/or their respective employees, agents or contractors, who is an Affiliate of the Condominium, the Declarant or any of the Declarant Entities.

5.1.8 Allocations of Common Expenses shall be made, and the inclusion of Common Expenses in Common Charges shall be, as follows:

5.1.8.1 Common Expenses shall be allocated among the Unit Owners as set forth herein, subject to the terms set forth in Exhibit I to the Declaration. Accordingly, notwithstanding any provisions of the Declaration or By-Laws to the contrary, at such time as there are any VNSNY Units, the calculation and allocation of Common Expenses and Common Charges for the VNSNY Units will be determined first in accordance with the provisions of these By-Laws (but subject to the terms set forth in Exhibit I to the Declaration), and then the balance of Common Expenses and Common Charges that are not allocated to the VNSNY Units will be allocated by the Condominium Board among the Units that are not VNSNY Units in accordance with the relative percentages of Common Interests of those Units among each other, or otherwise as may permitted by these By-Laws.

5.1.8.2 Subject to the terms set forth in Exhibit I to the Declaration, allocations of Common Expenses as described in 5.1.8.1 above shall be made in accordance with (x) the allocation method set forth in Exhibit O annexed hereto ("Initial Allocation Method"), or (y) if the Initial Allocation Method does not fairly reflect the extent to which the respective Units benefit from the goods or services for which the item of Common Expense is incurred, one of the following methods ("Alternate Allocation Methods"), as reasonably determined by the Condominium Board for the purpose of being best able to measure the extent to which the respective Units benefit from the goods or services for which the item of Common Expense is incurred: (i) direct allocation to one or more individual Units or to the VNSNY Retail Unit, Declarant Retail Unit, VNSNY Office Unit, and/or Declarant Office Unit, (ii) allocation made in the proportion that the relative number of square feet of the Office Area or the Retail Area, or any combination thereof, bears to the total Condominium Square Footage of the Units being allocated to, as set forth in Exhibit Q annexed hereto, (iii) allocation to the Office Area or the Retail Area, or any combination thereof, in proportion with the percentage of total insurable value of the Office Units or the Retail Units, or any combination thereof, as reflected in the Condominium's then current insurance documentation, (iv) allocation based upon a cost analysis allocating actual costs to the Office Units or the Retail Units, or any combination thereof, or (v) to the extent that none of the methods set forth in the foregoing subclauses (i) - (iv) would equitably allocate the Common Expenses, then any other rational and equitable basis of allocation as reasonably determined by the Condominium Board.

5.1.8.3 The determination of whether the Initial Allocation Method or one of the (and which) Alternate Allocation Methods is applied to any Common Expense shall be made, subject to change in the future as to whether the Initial Allocation Method or one of the (and which) Alternate Allocation Methods applicable to any particular Common Expense and any resulting changes in the percentage of allocation applicable thereto, as well as to changes to categories or line items of Common Expenses (whether by inclusion of new categories or line items, elimination of categories or line items, or modification of categories or line items, in each case subject to the applicable provisions of this Section 5.1), shall be made by the Condominium Board acting in its reasonable discretion for the purpose of being best able to measure the extent to which the respective Units benefit from the goods or services for which the item of Common Expense is incurred. Pursuant to 5.1.12 below, each Unit Owner shall have the right to dispute a Condominium Final Operating Statement, including the use of any Alternate Allocation Methods, as well as any changes to categories or line items of Common Expenses, utilized or made by the Condominium Board in the preparation thereof. The initial estimate of Common Expenses for the 2016 Operating Year, and the allocation of those expenses to the Office Area and the Retail Area, and to the Unit Owners, is reflected in Exhibit O annexed hereto and made a part hereof.

5.1.8.4 Subject to the terms set forth in Exhibit I to the Declaration, each Unit Owner shall pay as Common Charges for each Operating Year a sum equal to the total of such Unit Owner's Office Share and Retail Share (all if and as applicable) of the Common Expenses (the "Unit Owner's Operating Payment"), as allocated to the Office Area or the Retail Area, or to an individual Unit, in accordance with the provisions of this Section 5.1. The Unit Owner's Estimated Operating Payments shall be due and payable in equal monthly installments, in arrears, on the first day of each succeeding calendar month, during each Operating Year, based upon the Condominium Estimated Operating Statement (as described below in Section 5.1.9)



furnished prior to the commencement of such Operating Year (as such Condominium Estimated Operating Statement may be revised). Notwithstanding anything to the contrary set forth herein, as long as the expenses of the Building that are included in Common Expenses that comprise Common Charges payable by Unit Owners are fully paid, the Declarant shall be deemed to have fulfilled its obligation to pay the Common Charges allocable to the Declarant Units in full.

5.1.9 Subject to the terms set forth in Exhibit I to the Declaration, the Condominium Board shall furnish to the Unit Owners, prior to or after the commencement of each Operating Year (but shall endeavor to do so at least thirty (30) days prior to the commencement of such Operating Year), a statement setting forth its good faith estimate of the Common Expenses to operate and Maintain the entire Condominium (the "Condominium Estimated Operating Statement"), together with an allocation of such Common Expenses in accordance with the provisions of Section 5.1.8 above, and each Unit Owner's estimated Operating Payment for such Operating Year (the "Unit Owner's Estimated Operating Payment") and the basis for such calculation. The good faith estimate shall take into account actual Common Expenses for the prior Operating Year, to the extent available, modified to reflect reasonably anticipated changes in Common Expenses for the year as to which the statement relates, and to which the Condominium Board may add a reasonable reserve. The Condominium Board may at any time and from time to time furnish the Unit Owners with a revised Condominium Estimated Operating Statement setting forth the Condominium Board's revised good faith estimate of the Unit Owner's Estimated Operating Payment for such Operating Year and shall disclose the reason for such changes. If the Condominium Board shall notify the Unit Owners of a change in the Unit Owner's Estimated Operating Payment obligation (whether from one Operating Year to the next, or a revision made during an Operating Year), then such change in the amount of a Unit Owner's Estimated Operating Payment shall not be due until the Condominium Board shall have given such Unit Owner at least thirty (30) days' notice of such change. Notwithstanding anything to the contrary set forth herein, Condominium Expenses do not include personal expenses of any Unit Owner (including, without limitation, costs pertaining solely to the ownership, operation and maintenance of any Unit).

5.1.10 Within twelve (12) months following the expiration of each Operating Year, the Condominium Board shall submit to each Unit Owner a final statement, prepared by the Condominium, setting forth the actual Common Expenses for such Operating Year (the "Condominium Final Operating Statement"), and the Unit Owner's Operating Payment, if any, due to the Condominium from the Unit Owner for such Operating Year. Such Condominium Final Operating Statement shall also set forth the allocation of the specific Common Expenses among the Office Units, Retail Units, VNSNY Units, Declarant Units, and, to the extent that such Common Expenses are not allocated in accordance with the allocations set forth on Exhibit O annexed hereto and made a part hereof (or, in the alternative, pursuant to the most recently used previous method of allocation), a statement as to the revised manner of allocation and the reasons therefor. In the event that the total amount that a Unit Owner is obligated to pay as such Unit Owner's Operating Payment for such Operating Year (as shown on the relevant Condominium Final Operating Statement) shall be greater than or less than the total amount of such Unit Owner's Estimated Operating Payments paid by such Unit Owner for such Operating Year, then, within thirty (30) days after receipt of such Condominium Final Operating Statement,



such Unit Owner shall make payment of any unpaid portion of the Unit Owner's Operating Payment, or any excess paid by the Unit Owner shall be, at the Condominium Board's option, either refunded to such Unit Owner or credited against the payment(s) of such Unit Owner's Estimated Operating Payments next coming due. The payment obligations of the parties described herein shall survive the period that a Unit Owner shall own its Unit.

5.1.11 Until a new good faith estimate of each Unit Owner's Estimated Operating Payment for such Operating Year is rendered, each Unit Owner's monthly Estimated Operating Payment for any month shall be deemed to be equal to the Unit Owner's Estimated Operating Payment for December of the preceding Operating Year.

5.1.12 Each Condominium Final Operating Statement furnished to a Unit Owner shall constitute a final determination as between the Condominium and such Unit Owner of the Common Expenses for the periods represented thereby, unless a Unit Owner, within one hundred and twenty (120) days after a Condominium Final Operating Statement is furnished to such Unit Owner, shall give a notice to the Condominium Board that such Unit Owner disputes the accuracy or appropriateness of any of same, which notice shall specify the particular respects in which the disputed Condominium Final Operating Statement is inaccurate or inappropriate. Pending the resolution of such dispute, the Unit Owner shall pay the Unit Owner's Operating Payment, exclusive of the amount in dispute, to the Condominium Board in accordance with the Condominium Final Operating Statement furnished by the Condominium Board, but such Unit Owner shall have the right to withhold payment of the amount in dispute pending resolution of such dispute. The Unit Owner shall have the right, during reasonable business hours and upon not less than ten (10) Business Days' prior written notice to the Condominium Board (which notice must be given, if at all, during the aforesaid 120-day period), to examine the Condominium's books and records with respect to any Condominium Final Operating Statement, provided (a) such examination is concluded within fifty (50) days following the date commenced, (b) such examination may only be conducted by full-time, regular employees of an independent and reputable, certified public accounting firm (a "Unit Owner's Accountant"), and such firm is not being compensated by the Unit Owner for such services on a contingency or success fee basis, and (c) the Unit Owner delivers a confidentiality agreement to the Condominium Board with respect to such dispute and such examination in form and substance reasonably satisfactory to the Condominium Board and the Unit Owner. If Condominium Board disputes the results of any examination performed by a Unit Owner's Accountant on behalf of the Unit Owner in accordance with this Section 5.1.12 (an "Audit"), and if such dispute is not resolved between the Condominium Board and the Unit Owner within thirty (30) days after delivery of the Audit to the Condominium Board, the Condominium Board will refer the decision of the issues raised to a reputable independent firm of certified public accountants (the "Condominium Board's Accountant"), which firm is not being compensated by the Condominium Board for such services on a contingency or success fee basis. The Condominium Board's Accountant and the Unit Owner's Accountant shall then review the Common Expenses in dispute within sixty (60) days after the appointment of both accountants, and if the Condominium Board's Accountant and the Unit Owner's Accountant are unable to agree upon the appropriate Common Expenses for the applicable Operating Year within such sixty (60) day period, then a third independent certified public accountant (the "Independent Accountant") shall be selected by the Condominium Board's Accountant



and the Unit Owner's Accountant, and the Independent Accountant shall review the Common Expenses in dispute within thirty (30) days after the Independent Accountant shall have been selected in accordance with the following procedure. The Condominium Board's Accountant and the Unit Owner's Accountant shall each make a separate determination of the Common Expenses for the applicable Operating Year. The determination made by the Condominium Board's Accountant is hereinafter referred to "Condominium's Determination", and the determination made by the Unit Owner's Accountant is hereinafter referred to as "Unit Owner's Determination". Each of the Condominium Board's Accountant and the Unit Owner's Accountant shall deliver a copy of its determination to the other party's accountant and the Independent Accountant within fifteen (15) days after the selection of the Independent Accountant. No changes in the determinations of the Common Expenses will be allowed after such delivery. The Independent Accountant shall have the right to determine the correct amount of Common Expenses disputed by the Unit Owner, regardless of whether such determination shall be the same as the amount set forth as the Condominium's Determination or the Unit Owner's Determination. The Common Expenses as so determined by the Independent Accountant shall be binding upon the parties, and the parties shall promptly comply with such determination. If either the Condominium Board's Accountant or the Unit Owner's Accountant shall fail to timely submit a determination, then the determination which was timely submitted shall control. In the event that the Condominium Board's Accountant and the Unit Owner's Accountant shall be unable to agree upon the designation of the Independent Accountant within sixty (60) days after the appointment of the Condominium Board's Accountant, then either party shall have the right to request the New York office of the American Arbitration Association to designate a reputable independent firm of certified public accountants as the Independent Accountant, which designation shall be conclusive and binding upon the parties. Each party shall be responsible for the fees and expenses of the accountant selected by it, and the parties shall share equally the fees and expenses of the Independent Accountant and of the American Arbitration Association. If the Condominium Board and such Unit Owner shall agree in writing, or it shall be ultimately determined by an arbitration proceeding or a final non-appealable judgment of a court of competent jurisdiction, that: (i) such Unit Owner overpaid such Unit Owner's Operating Payment for any Operating Year, then such excess (without interest) shall be, at the Condominium Board's option, either refunded to such Unit Owner or (if applicable) credited against the payment(s) of such Unit Owner's Estimated Operating Payment next coming due; (ii) such Unit Owner overpaid such Unit Owner's Operating Payment for any Operating Year by more than three (3%) percent, then the Condominium Board shall (in addition to the refund or credit to such Unit Owner of such overpayment as set forth in clause (i) above) pay to such Unit Owner interest at the Prime Rate on the amounts so paid from the date(s) that each such excess amount was paid by such Unit Owner until the date that such overpayment shall have been refunded or credited in full to such Unit Owner; or (iii) such Unit Owner underpaid such Unit Owner's Operating Payment for any Operating Year, then such shortfall without interest shall be paid by such Unit Owner to the Condominium Board within twenty (20) days thereafter. If a Unit Owner shall have elected to withhold payment of a disputed amount and such dispute shall be ultimately determined (in whole or in part) in favor of the Condominium Board, then such deficiency shall be paid by such Unit Owner to the Condominium Board within twenty (20) days thereafter, together with interest at the Prime Rate on the deficiency amounts not paid

from the date(s) that each such amounts were due following rendition of the Condominium Final Operating Statement until the date that such deficiency shall have been paid in full to the Condominium Board.

5.1.13 If the first Operating Year is not a full calendar year, then the Common Expenses for such first Operating Year shall be computed by the Condominium Board, giving effect to seasonal variations, to obtain the amounts thereof which would have been incurred had said first Operating Year been a full calendar year, and each Unit Owner's Operating Payment shall be computed by the Condominium Board based upon such annualized amounts.

5.1.14 The Condominium Board's failure to render any Condominium Final Operating Statement with respect to any Common Expenses due pursuant to this Article 5 within twelve (12) months following the expiration of an Operating Year shall not prejudice the Condominium's right to render such a Condominium Final Operating Statement with respect to such Common Expenses. The obligations of each Unit Owner under the provisions of this Article 5 with respect to any Common Expenses due shall survive the expiration or sooner termination of the Ground Lease for a period of up to two (2) years. Nothing herein contained shall restrict the Condominium Board from issuing a Condominium Final Operating Statement with respect to an Operating Year at any time that an error in a previously furnished Condominium Final Operating Statement is discovered for such Operating Year (provided, however, that such corrected Condominium Final Operating Statement is rendered within eighteen (18) months following the date that the original such Condominium Final Operating Statement was delivered to the Unit Owners). The Condominium Board shall retain all Condominium Final Operating Statements for a period of at least six (6) years after such Condominium Final Operating Statement is rendered to the Unit Owners.

5.1.15 "Special Assessments" shall mean those assessments levied against Unit Owners for the purpose of paying non-recurring, extraordinary expenses affecting the Common Elements, including without limitation, capital expenses relating to the Common Elements, or as otherwise expressly provided in the Declaration or these By-Laws (including the allocation provisions of Section 5.1.8). All Special Assessments relative to the Common Elements shall be levied by the Condominium Board against the Unit Owners in the proportion of each Unit Owner's respective Common Interests (except as otherwise provided in the Declaration or these By-Laws). Such Special Assessments shall be payable by the Unit Owners in addition to their respective obligations to pay Common Charges as hereinabove provided by this Section 5.1. Special Assessments may be payable either in one lump sum or in installments, as the Condominium Board shall determine, provided, however, that the Condominium Board shall give each Unit Owner not less than thirty (30) days' written notice, except in the case of an Emergency Situation, prior to the date upon which such Special Assessment, or the first installment thereof, shall be due and payable, which notice shall set forth, in reasonable detail, the nature and purpose thereof. The Condominium Board shall have all rights and remedies for the collection of Special Assessments as are provided herein for the collection of Common Charges (including, without limitation, the provisions of Section 5.6 hereof). Notwithstanding anything to the contrary contained in this Section 5.1.15, the Condominium Board shall be expressly



prohibited from levying a Special Assessment for any cost or expense that is otherwise excluded from Common Expenses pursuant to Section 5.1.7 of these By-Laws, unless such Special Assessment (or the costs or expenses comprising such Special Assessment) is expressly permitted to be charged to a Unit Owner pursuant to another provision in the Condominium Documents. As set forth elsewhere in these By-Laws, the Condominium Board shall make available certain services to the Unit Owners, and the costs thereof, should a Unit Owner request (or be obligated to accept) the same, shall constitute a Special Assessment.

5.2 **Insurance.**

5.2.1 **Fee Owner**. It is understood that the Fee Owner is obligated to carry certain insurance pursuant to the terms of the Ground Lease with respect to the Common Elements.

5.2.2 **Condominium Board.** The Condominium Board shall be required to obtain and maintain or cause to be obtained and maintained, to the extent (i) obtainable on a commercially reasonable basis and (ii) not covered by the Fee Owner's insurance coverage with respect to the Common Elements as set forth in Section 5.2.1 above, the following insurance required to be maintained by the Condominium in accordance with the terms of these By-Laws, including, without limitation, the following: (a) fire insurance with all risk extended coverage, vandalism and malicious mischief endorsements and increased cost of construction endorsements, insuring the Building (excluding the Unit, Unit Owner's Fixtures, Unit Owner's Property or other personal property constituting a part of such Unit), together with all service machinery contained therein and covering the interests of the Fee Owner, Condominium, the Condominium Board and the Unit Owners and their Permitted Mortgagees, as their respective interests may appear, in an amount equal to the full replacement cost of the Property without any co-insurance clause, said policies to contain a New York standard mortgagee clause in favor of each Permitted Mortgagee, which shall provide that the loss, if any, thereunder shall be payable to such Permitted Mortgagee as its interest may appear, subject however, to the loss payment provisions hereinafter set forth (collectively, the "Commercial Property Insurance"); (b) rent insurance in an amount equal to Common Charges for two (2) years (or for such other period of time as the Condominium Board may determine is appropriate); (c) worker's compensation and New York State disability benefits insurance; (d) boiler and machinery insurance; (e) plate glass insurance to the extent, if any, determined by the Condominium Board; (f) water damage insurance to the extent, if any, determined by the Condominium Board; (g) elevator liability and collision insurance; (h) fidelity insurance, if the managing agent or manager is not an Affiliate of Declarant; (i) directors and officers liability insurance; and (j) such other insurance as the Condominium Board may determine. All such insurance shall be written by recognized and well-rated insurance companies, having a policyholder's rating of no less than "A" and a financial size category of not less than "X" in the most current edition of Best's Insurance Reports and authorized to transact business in the State of New York. If at any time it appears that public liability (including, without limitation, the property damage subset) limits in the City of New York for premises similarly situated, due regard being given to the use and occupancy thereof, are higher than the foregoing limits, then the Condominium Board shall increase the foregoing limits accordingly. The Condominium Board may engage



an insurance carrier who is an Affiliate of Declarant to provide terrorism coverage with respect to the Condominium Board's Commercial Property Insurance; provided that such affiliated insurance carrier is chartered by the State of New York and authorized to provide insurance as a "captive" insurer. The insurance carried by the Condominium Board with respect to the Property may be carried under a blanket policy that also covers other properties owned by Affiliates of Declarant. In no event shall the insurance carried by the Condominium Board be less, whether in scope of coverage or policy limits, than what Declarant is obligated to provide pursuant to the Ground Lease. The premiums for all insurance referred to above incurred with respect to the Property shall be allocated among the Unit Owners in accordance with the provisions of these By-Laws.

5.2.3 All such policies shall provide that that adjustment of loss shall be made exclusively by the Condominium Board. Insurance proceeds with respect to any loss adjusted or payable to (i) the Condominium Board shall be paid to the Condominium Board, except that proceeds of all policies of physical damage insurance, if in excess of $1,000,000 or such lesser amount as may be required under the terms of a Permitted Mortgage, shall be payable the Fee Owner under the Ground Lease.

5.2.4 All policies of physical damage insurance shall contain, to the extent obtainable, waivers of subrogation and waivers of any defense based on (i) co insurance, (ii) other insurance, (iii) invalidity arising from any acts of the insured, or (iv) pro rata reduction of liability. Duplicate originals or certificates of insurance of all policies of physical damage insurance and of all renewals thereof shall be delivered to the Fee Owner, all Unit Owners and any Permitted Mortgagees at least three (3) days prior to expiration of the then current policies. Proof of payment of premiums shall also be delivered to such parties within thirty (30) days following the effective date of such renewals.

5.2.5 The Condominium Board shall be required to maintain commercial general liability insurance covering claims for personal and bodily injury or property damage occurring in, on, under, within, upon or about the Property, or as a result of operations thereon (hereinafter the "Commercial General Liability Insurance"), in such amounts as may be required by Applicable Law and as may from time to time be carried by prudent owners of first class office properties in New York City, but in all events for limits not less than what Declarant is obligated to provide pursuant to the Ground Lease. The Condominium Board shall be required to maintain all such insurance as may be required by any Permitted Mortgagee in connection with a Permitted Mortgage. Any insurance maintained by the Condominium Board may provide for such commercially reasonable deductible amounts as the Condominium Board may determine, but no other retention or self-insurance.

5.2.6 All policies maintained by the Condominium Board shall provide that (a) Fee Owner, all Unit Owners and Permitted Mortgagees are to be named as additional insureds for any liability insurance, (b) the Condominium Board is deemed a loss payee for casualty with respect to the Common Elements, and (c) all Unit Owners are deemed loss payees and all Permitted Mortgagees are deemed mortgagees for property insurance and loss of rents under business interruption insurance, and that the Condominium Board is authorized to sign all checks for payment of proceeds or other instruments required in connection with the processing, payment and settlement of claims on such Unit Owners'



behalf. The Condominium Board shall provide, or cause to be provided, certificate(s) of insurance to the Fee Owner, all Unit Owners and Permitted Mortgagees evidencing all required Condominium Board policy coverages and additional insured, loss payee or mortgagee status. Notwithstanding anything to the contrary contained in this Subsection 5.2.5, the Condominium Board is authorized to pay overall loss proceeds from the Commercial Property Insurance to the Fee Owner for application as provided in the Condominium Documents and the Ground Lease, even with respect to such proceeds as to which the Unit Owners are deemed loss payees.

5.2.7 **Unit Owners**. Unit Owners shall comply with the following insurance requirements:

5.2.7.1 Each Unit Owner shall be solely responsible for obtaining and maintaining, at the Unit Owner's own cost and expense (and the Unit Owner's obligation to pay such costs and expenses shall be in addition to such Unit Owner's obligation to pay Common Charges), such property insurance with respect to such Unit Owner's respective Unit and the Unit Owner's Fixtures, Unit Owner's Property and any other personal property located within its respective Unit as such Unit Owner determines is suitable with respect to property not covered under the Condominium Board's insurance. All policies of property insurance maintained by any Unit Owner shall, to the extent obtainable, contain a waiver of subrogation with respect to the Fee Owner, Condominium Board, each Unit Owner, each Permitted Mortgagee and their respective agents and employees.

5.2.7.2 Each Unit Owner shall pay for and keep in force commercial general liability policies in standard form, including Products, Completed Operations, and Contractual Liability coverage (covering the liability of Unit Owner to the Indemnified Parties by virtue of any indemnification agreement in the Declaration or these By-Laws), covering bodily injury, and property damage liability, personal injury and advertising liability, fire legal liability, all in connection with the use and occupancy of or the condition of the Unit, the Building or the related Common Elements, in amounts not less than: (i) $10,000,000, general aggregate per location; (ii) $10,000,000, per occurrence for bodily injury & property damage; (iii) $10,000,000, personal and advertising injury; and (iv) $1,000,000, fire legal liability, with such deductibles as are reasonably acceptable to the Condominium Board and by recognized and well-rated insurance companies, having a policyholder's rating of no less than "A-" and a financial size category of not less than "VII" in the most current edition of Best's Insurance Reports and authorized to transact business in the State of New York. If at any time it appears that public liability or property damage limits in the City of New York for premises similarly situated, due regard being given to the use and occupancy thereof, are higher than the foregoing limits, then the Unit Owner shall increase the foregoing limits accordingly. Notwithstanding the foregoing, Declarant may, with respect to any Unit owned by Declarant, engage an insurance carrier who is an Affiliate of Declarant (and without regard to the Best's Insurance Reports rating and financial size category requirements set forth above) to provide any property insurance coverage required to be carried by a Unit Owner pursuant to this Section 5.2.7.2. The Fee Owner, Condominium Board, its managing agent and each Permitted Mortgagee of whom the Unit Owner has received notice shall be named as additional insureds in the aforesaid insurance policies. Each Unit Owner shall also secure and keep in force (a) "all risk" property insurance, including the perils of flood, earthquake, terrorism and environmental damage,

covering the property of the Unit Owner, including alterations, improvements and betterments installed by or for the Unit Owner, and/or paid for or purchased by the Unit Owner, in an amount equivalent to the insurable value of said property, defined as the "cost to replace or reconstruct new without deduction for physical depreciation", and (b) "all risk" business interruption or earnings insurance, including the perils of flood, earthquake, terrorism and environmental damage, to cover the loss of gross profits and continuing expenses (including without limitation Common Charges payable under these By-Laws) during the period of partial or total shutdown of Unit Owner's business. All such policies shall be primary and shall provide that the Condominium and each such Permitted Mortgagee shall be afforded thirty (30) days prior notice of cancellation and/or modification of said insurance. Each Unit Owner shall deliver Accord 28 certificates of insurance evidencing such policies to the Condominium Board or at the Condominium Board's request, duplicate originals of such policies. All premiums and charges for the aforesaid insurance shall be paid by the Unit Owner and if a Unit Owner shall fail to make such payment when due, the Condominium Board may, after giving the Unit Owner at least ten (10) days' notice, make such payment and the amount thereof shall be repaid to the Condominium Board by the Unit Owner on demand. The Unit Owners shall not violate or permit to be violated any condition of any of said policies, and the Unit Owners shall perform and satisfy the requirements of the companies writing such policies.

5.2.7.3 No Unit Owner shall (1) do or permit any act or thing to be done in or to its Unit that will be in material conflict with any public liability, property or other policy of insurance at any time carried by the Condominium Board with respect to the Property, (2) keep anything in its Unit or in the Common Elements that is prohibited by the Fire Department, National Fire Protection Association, fire insurance rating organizations or other authority having jurisdiction, (3) permit its Unit or the Common Elements to be used in any manner that will increase the insurance rate for the Property over that in effect as of the date of this Declaration, unless such Unit Owner pays the additional cost thereof as provided below, which payment shall be in addition to Common Charges, (although use of the VNSNY Office Units and the Declarant Office Units merely for general office use will not be deemed to require the payment of any such additional premiums by the respective Unit Owners), or (4) willfully or knowingly violate or suffer or permit the violation of the terms of any policy of insurance required hereunder, or do or permit or suffer anything to be done, or keep anything in any portion of the Building that could result in termination of any such policies, could adversely affect the right of recovery under any such policies, or would result in reputable and independent insurance companies refusing to insure the Property and improvements in the amounts required hereunder at regular rates.

5.2.7.4 Any costs, expenses, fines, penalties or damages that shall be imposed upon the Condominium Board by reason of a default by a Unit Owner in performing its obligations under this Section 5.2.7 or by reason of any increase in the premium charged for insurance carried by the Condominium Board resulting from a change in the insurance rate for the Property attributable to a use of such Unit Owner's Unit, other than for commercial or retail use or for any other use to which such Unit is put as of the date of the recordation of the Declaration, shall be assessed against such Unit and shall be payable by the Unit Owner thereof (and the Unit Owner's obligation to do so shall be in addition to such Unit Owner's obligation to pay Common Charges). For all purposes hereunder, a schedule or "makeup" of rates for the Property issued by the New York Fire Insurance Rating Bureau or other body making fire



insurance rates applicable to the Property shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rate or rates then applicable to the Property.

5.2.7.5 Each Unit Owner shall, at its own cost and expense (and the Unit Owner's obligation to pay such costs and expenses shall be in addition to such Unit Owner's obligation to pay Common Charges), maintain or cause to be maintained at all times such additional insurance, in type and limit, as is customarily carried with respect to comparable properties as the Condominium Board may reasonably require.

5.2.7.6 Any policies required to be furnished pursuant to Section 5.2 hereof may be maintained by the Unit Owner (including, without limitation, Declarant) under a blanket policy or coverages provided that the coverage satisfying the requirements of this Section are assigned to the Units owned by such Unit Owner. Notwithstanding anything to the contrary set forth herein, if and for so long as Declarant is an Affiliate of the Fee Owner, the insurance maintained by the Fee Owner (or by a tenant pursuant to Section 5.2.7.9 of these By-Laws) shall be deemed to fulfill the requirements for insurance to be carried under this Section 5.2.7 with respect to the Declarant Units, and Declarant shall not be required to acquire or maintain any additional insurance with respect to the Declarant Units.

5.2.7.7 Neither the issuance of any insurance policy hereunder, nor the minimum limits specified herein with respect to a Unit Owner's insurance coverage, shall be deemed to limit or restrict in any way any Unit Owner's liability in connection with or arising out of its work and the indemnification obligations set forth in this Declaration.

5.2.7.8 Notwithstanding anything to the contrary set forth above, in the event that any Unit is subject to more stringent insurance requirements (including, without limitation, any requirements as to deductibles, types of coverages, amounts/scope of coverage, and carriers) as a result of any lease or a Permitted Mortgage placed upon such Unit, or otherwise, the Condominium Board will be obligated to satisfy the more stringent requirements, and, the Condominium Board, if necessary, will obtain such additional insurance coverage as may be required. Any additional costs incurred as a result of the foregoing will be borne by the Unit Owner whose Unit is subject to the more stringent requirements (and the Unit Owner's obligation to do so shall be in addition to such Unit Owner's obligation to pay Common Charges).

5.2.7.9 Notwithstanding anything to the contrary contained herein, a Unit Owner shall be deemed to have fully satisfied its obligations under this Section 5.2.7 if the Unit Owner requires the tenant or occupant of the Unit Owner's Unit to maintain the insurance required under this Section 5.2.7 with respect to such Unit in the Unit Owner's stead.

5.2.8 Notwithstanding anything in this Section 5.2 to the contrary, it is intended that the Condominium Board and the Unit Owners are to collectively maintain such policies of insurance (and in such form) as are required by the Ground Lease. If there shall be any conflict between the terms of this Section 5.2 and the terms of Article 9 of the Ground Lease, the terms of Article 9 of the Ground Lease shall control; provided that any insurance not expressly required by Section 5.2.7 of these By-Laws to be carried by the Unit



Owners, but required under the Ground Lease, shall be the sole responsibility and obligation of the Condominium Board to obtain and maintain.

5.3 **Repair or Reconstruction after Fire or Other Casualty.**

5.3.1 Subject to the provisions of Section 5.3.3 hereof, in the event that the Property or any part thereof is damaged or destroyed by fire or other casualty ("Casualty"), (i) the Condominium Board, with respect to any damage to or destruction of the Units, Common Elements (except for any Unit Owner's Fixtures or Unit Owner's Property or other personal property located in any Unit), shall arrange (either directly or through the Fee Owner, pursuant to the terms of the Ground Lease) for the prompt repair and restoration thereof (the "Condominium Casualty Restoration Work"), and (ii) the Unit Owners, with respect to any damage to or destruction of their respective Unit Owner's Fixtures and Unit Owner's Property located therein, shall arrange for the prompt repair and restoration thereof, in each case subject to delays due to adjustment of insurance claims, labor troubles and other causes of Force Majeure or otherwise beyond a party's reasonable control. In the event of a Casualty, a Unit Owner shall promptly after obtaining knowledge of such Casualty, shall give notice to the Condominium Board, and the Condominium shall continue in full force and effect, except as otherwise provided in this Section 5.3.

5.3.2 If the Building and/or any Unit are reconstructed or repaired following a Casualty, in accordance with the terms of these By-Laws, the Condominium Board shall use commercially reasonable efforts to perform the Condominium Casualty Restoration Work in a manner that restores the respective portions of the Building to substantially what existed prior to the occurrence of the Casualty, using materials and equipment that are at least comparable to the materials and equipment that was damaged or destroyed. However, if the size or volume of the Building or of any Unit changes (in the course of such reconstruction or repair) from its existing size or volume, the Condominium Board (acting on behalf of the Unit Owners) shall (x) fairly and reasonably adjust the Unit Owner's Common Interest using the same measurement standard as was used initially so that the percentage interests shall continue to reflect the proportion that the floor area of each Unit bears to the aggregate floor area of all of the Units in the Building, and (y) prepare and record in the City Register's Office an amendment to the Declaration and Floor Plans, confirming such reallocation.

5.3.3 In the event that three-fourths or more of the Building is destroyed or substantially damaged (a "Significant Casualty") and if 75% or more of all Unit Owners do not "promptly resolve" to proceed with the repair or restoration thereof, the Condominium Board will not repair the Building and the Property shall be subject to an action for partition instituted by any Unit Owner or lienor, as if owned in common, in which case the net proceeds of sale, together with the net proceeds of insurance policies, shall be distributed to (and become the exclusive property of) the Fee Owner. Additionally, in the event that (i) a casualty occurs that results in or would result in the VNSNY Unit Owner being displaced from the VNSNY Unit for a period of two or more years, and/or (ii) there is no requirement to rebuild the VNSNY Unit pursuant to the VNSNY Transaction Documents, then the Condominium Board shall have the right to treat such as a Significant Casualty and elect to terminate the Condominium. Notwithstanding anything contained in this subsection to the



contrary, to the extent otherwise required under the Condominium Act, any vote for the purposes of resolving whether or not to proceed with the repair or restoration of the Building (or any portion thereof) after a Significant Casualty and the termination of the Condominium shall be made by Declarant as appointed through the Power of Attorney granted pursuant to Section 9.3 of the Declaration. As used in this Subsection, the words "promptly resolve" mean resolve as promptly as practical under the circumstances, but in any event, not more than ninety (90) days from the date of such damage or destruction.

5.3.4 In the event of a termination of the Condominium, a written notice to the Unit Owners, given within ninety (90) days after such Significant Casualty, specifying a date for the expiration of the Condominium, which date shall not be more than sixty (60) days after the giving of such notice, and upon the date specified in such notice the Condominium shall terminate, without prejudice, however, to the Condominium Board's rights and remedies against the Unit Owners under the By-Laws or the Declaration in effect prior to such termination. After any such Casualty, the Unit Owners shall cooperate with the Condominium Board's restoration by removing from their respective Units, as promptly as reasonably possible, all of the Unit Owner's salvageable Unit Owner's Property. In the event of a termination of the Condominium by reason of a Casualty, each of the Unit Owners shall assign its insurance proceeds (or the right to collect same) to the Fee Owner, except that a Unit Owner shall not be obligated to assign any insurance proceeds relating to personal property to the Fee Owner.

5.3.5 Supplementing the foregoing provisions of this Section 5.3: (i) if an independent contractor chosen by the Condominium Board estimates that the Condominium Casualty Restoration Work necessitated by damage or destruction to a Unit by Casualty cannot be substantially completed within fifteen (15) months after the occurrence of the Casualty (which estimate shall be obtained and delivered to the Unit Owner(s) within one hundred twenty (120) days after the Casualty), any Unit Owner whose Unit (or a substantial portion thereof) has been rendered Unusable by such Casualty, may cause the Condominium Board to purchase such Unit for the payment of $10, by such Unit Owner delivering a notice of such Unit Owner's election (a "Purchase Notice") to the Condominium Board within thirty (30) days after the delivery of the Condominium Board's estimate to the Unit Owner (with time being of the essence); (ii) if so much of the Condominium Casualty Restoration Work necessitated by Casualty as would be necessary to render a Unit tenantable has not been substantially completed within fifteen (15) months after the occurrence of such Casualty, then the Unit Owner whose Unit has been rendered Unusable (or a substantial portion thereof) by such Casualty may cause the Condominium Board to purchase such Unit for the payment of $10, by such Unit Owner delivering a Purchase Notice to the Condominium Board within thirty (30) days after the expiration of such fifteen (15) month period (with time being of the essence). In any such event, the Unit Owner in question shall deliver an executed and acknowledged deed in recordable form (together with all other reasonably required instruments, documentation and tax forms) to the Condominium Board within ten (10) days following the date on which such Purchase Notice is delivered to the Condominium Board. On or before the date that such deed is delivered to the Condominium Board, the Unit Owner shall vacate and surrender possession (and all rights of occupancy by any party claiming by, through or under such Unit Owner) of the affected Unit. Notwithstanding the foregoing, (a) the fifteen (15) month period referred to in clause (ii)

above shall be extended by up to an additional four (4) months to the extent such restoration is delayed by reason of adjustment of insurance claims or Force Majeure or otherwise beyond the Condominium Board's reasonable control, and (b) if such Casualty shall occur during the last two (2) years of the term of the Ground Lease, then the fifteen (15) month period referred to in clause (ii) above shall be deemed to be six (6) months. For the purposes hereof, a "substantial portion" of a Unit shall mean 25% or more of such Unit. Notwithstanding anything to the contrary set forth herein, the provisions of this Section 5.3.5 shall not apply with respect to any damage or destruction to a VNSNY Unit by Casualty, and in such an event, the terms of the Ground Lease and the VNSNY Transaction Documents shall govern and control.

5.3.6 Anything hereinbefore contained in this Section 5.3 to the contrary notwithstanding, the Condominium Board and each Unit Owner shall endeavor to secure an appropriate clause in, or an endorsement upon, each fire or extended coverage or rent or business interruption insurance policy obtained by it and covering the Building, the respective Units or the Unit Owner's Fixtures, Unit Owner's Property or other personal property located in such Units or thereon, pursuant to which the respective insurance companies waive subrogation or permit the insured, prior to any loss, to agree with a third party to waive any claim it might have against such third party. The waiver of subrogation or permission for waiver of any claim hereinbefore referred to (which the parties each confirm to each other is available as of the date of the Declaration) shall extend to the agents of each party and its employees and, in the case of the Unit Owners, shall also extend to its related corporations and all other persons and entities occupying or using their respective Units in accordance with the terms of these By-Laws. If, and to the extent that such waiver or permission can be obtained only upon payment of an additional charge, then, except as provided in the following two Sections, the party benefiting from the waiver or permission shall pay such charge upon demand, or shall be deemed to have agreed that the party obtaining the insurance coverage in question shall be free of any further obligations under the provisions hereof relating to such waiver or permission.

5.3.7 Intentionally deleted.

5.3.8 If a Unit Owner is unable at any time to obtain one of the provisions referred to in Subsection 5.3.6 above in any of its insurance policies, the Unit Owner shall endeavor to cause the Condominium and the Condominium Board to be named in such policy or policies as one of the insureds, but if any additional premium shall be imposed for the inclusion of the Condominium as such an insured, the Condominium Board shall pay such additional premium upon demand, or the Unit Owner shall be excused from its obligations under Subsection 5.3.6 with respect to the insurance policy or policies for which such additional premiums would be imposed. If the Condominium is named as one of the insureds in any of a Unit Owner's policies in accordance with the foregoing, the Condominium Board shall endorse promptly to the order of the Unit Owner, without recourse, any check, draft or order for the payment of money representing the proceeds of any such policy or any other payment arising from or connected with such policy, and the Condominium Board hereby irrevocably waives any and all rights in and to such proceeds and payments (subject, however, to any provisions contained elsewhere in this Section 5.3 requiring a Unit Owner's insurance proceeds to be paid over to the Condominium Board).



5.3.9 Subject to the provisions of Subsections 5.3.6, 5.3.7 and 5.3.8 and provided that doing so would not invalidate the insurance coverage carried by the Condominium Board or the Unit Owners, as applicable, each of the Condominium Board and the Unit Owners hereby releases the others with respect to any claim (including a claim for negligence) that the releasing party might otherwise have against the other party for loss, damage or destruction with respect to its property by Casualty (including rental value or business interest, as the case may be) occurring during the existence of the Condominium.

5.3.10 Subject to the provisions of Exhibit I to the Declaration, if a Casualty shall occur and, by reason thereof, a Unit (or a material portion thereof) shall be rendered Unusable, then, from the date of such Casualty and continuing until the date that the Condominium Casualty Restoration Work with respect to such Unit (or such material portion thereof) has been substantially completed, the Unit Owner whose Unit (or such material portion thereof) has been rendered Unusable shall be relieved from the obligation to pay Common Charges (or, if applicable, the Common Charges allocable to such Unusable portion). For the purposes hereof, a "material portion" of a Unit shall mean 10% or more of such Unit.

5.3.11 In the event that any Unit Owner elects to transfer its Unit to the Condominium Board, any casualty insurance proceeds payable to the Owner of such Unit shall be payable to the Condominium Board after such election.

5.4 **Payment of Common Charges.**

5.4.1 The Unit Owners shall be obligated to pay to the Condominium Board the Common Charges assessed to them by the Condominium Board in accordance with the provisions of Section 5.1 at such time or times as the Condominium Board determines. Unless otherwise determined by the Condominium Board, Common Charges shall be payable, in 12 equal monthly installments, in arrears, on the last day of each month. Unless otherwise determined by the Condominium Board, in its sole discretion, payments of Common Charges shall be made by the Unit Owners to the Condominium Board by wire transfer or ACH electronic transfer of immediately available federal funds in accordance with instructions provided by the Condominium Board to the Unit Owners from time-to-time, or such other method approved in advance in writing by the Condominium Board, and shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by the Condominium Board's bank. Notwithstanding the preceding sentence, the Condominium Board, in its sole discretion, may direct the Unit Owners from time-to-time to pay Common Charges to a "lockbox" or other depository by check whereby checks are to be issued by the Unit Owners in payment of Common Charges, which checks may initially be cashed or deposited by a person or entity other than the Condominium Board (albeit on the Condominium Board's authority), by the Condominium Board delivering not less than thirty (30) days' (or if the payee's taxpayer identification number changes, sixty (60) days') prior written notice of the same to the Unit Owners (which notice shall set forth where, to whom and by what means the Common Charges are to be remitted). No Unit Owner may exempt itself from liability to pay Common Charges or from any of its other obligations hereunder by waiver of the use or enjoyment of any of the Common Elements or by abandonment of its Unit. Any sums assessed against a Unit



Owner by the Condominium Board or expended by the Condominium Board on behalf of a Unit Owner, as provided in the Declaration or these By-Laws, or any direct payment obligations hereunder, shall be deemed Common Charges payable under this Section 5.4 for which the Condominium Board shall have a lien for nonpayment as provided in Section 5.6 of these By-Laws.

5.4.2 Provided that the Condominium Board shall consent in writing at the time of such sale or other conveyance (which consent may be withheld or conditioned by the Condominium Board in its sole and absolute discretion (except as otherwise provided in the VNSNY Standards set forth in Exhibit I to the Declaration with respect to the VNSNY Unit), based on the Condominium Board's analysis of the creditworthiness of the purchaser in question), (i) a Unit Owner shall not be liable for the payment of any part of the Common Charges assessed against such Unit Owner's Unit subsequent to a sale or other conveyance by such Unit Owner (made in accordance with these By-Laws) of such Unit together with its appurtenant Common Interests, and (ii) a purchaser of a Unit shall not be liable for the payment of Common Charges accrued and unpaid against such Unit prior to the acquisition by such purchaser of such Unit. In the event of a foreclosure sale of a Unit by a Permitted Mortgagee or such Permitted Mortgagee's nominee or designee or by any third party (including, without limitation, any third party transferee obtaining title from a Permitted Mortgagee or a Permitted Mortgagee's nominee or designee), (x) the owner of such Unit prior to the foreclosure sale shall remain liable for the payment of all unpaid Common Charges that accrued prior to such sale, and (y) such Permitted Mortgagee or such Permitted Mortgagee's nominee or designee or by any third party (including, without limitation, any third party transferee obtaining title from a Permitted Mortgagee or a Permitted Mortgagee's nominee or designee) shall not be liable for the payment of any unpaid Common Charges that accrued prior to such sale. Except to the extent prohibited by law, the Condominium Board, on behalf of all Unit Owners, shall have a lien on each Unit for unpaid Common Charges, together with interest thereon, assessed against such Unit.

5.4.3 All liens provided for in Subsection 5.4.2 hereof, to the extent permitted by Applicable Law, shall be subordinate to the lien of any first Permitted Mortgage of record and to liens for real estate taxes on the Unit.

5.4.4 Notwithstanding the provisions of Subsection 5.4.2 hereof, neither the seller nor the purchaser of a Unit shall be liable for, nor shall the Unit be conveyed subject to a lien for, any unpaid Common Charges against such Unit accrued prior to such conveyance in excess of the amount set forth in a written statement from the Condominium Board.

5.4.5 In the event that, prior to the Units being separately assessed for real estate tax purposes, the Condominium Board pays real estate taxes on behalf of a Unit Owner, the amount of such real estate taxes, determined by multiplying the total real estate taxes due on the entire Property by the percentage of Common Interest carried by that Unit, shall be deemed to be Common Charges, and the Condominium Board shall have a lien (as provided in Subsection 5.4.2 hereof) for any such accrued and unpaid amounts. The immediately preceding sentence shall not be construed to impose any liability for real estate taxes on any Unit Owner that is entitled to an exemption from the payment of real estate



taxes (as confirmed by the New York City Department of Finance) during the period that such exemption shall be applicable.

5.5 **Collection of Common Charges.** The Condominium Board shall take prompt action to collect any Common Charges due to the Board that remain unpaid for more than thirty days after the due date for payment thereof.

5.6 **Default in Payment of Common Charges and Special Assessments.** In the event any Unit Owner fails to make payment of Common Charges or Special Assessments or any other amount required to be paid by such Unit Owner pursuant to the Declaration or these By-Laws within ten (10) days after the same shall first come due, such Unit Owner shall be obligated to pay (a) a "late charge" equal to one (1%) percent of such amounts that remain unpaid for more than ten days from their respective due dates (although nothing herein shall be deemed to extend the period within which such amounts are to be paid), and (b) interest at the rate of 1.5% per month (but in no event in excess of the maximum rate permitted by law) on such unpaid amounts computed from the due date thereof, together with all reasonable expenses, including, without limitation, reasonable attorneys' fees paid or incurred by the Condominium Board or by any managing agent in any proceeding brought to collect such unpaid Common Charges or Special Assessments or in any action to foreclose the lien on such Unit arising from said unpaid Common Charges or Special Assessments as provided in Section 339-z of the Condominium Act, in the manner provided in Section 339-aa thereof or in any other manner permitted by law. The Declarant shall not be obligated to pay any "late charge" or interest for the late payment of Common Charges or Special Assessments; provided, that the foregoing shall not relieve Declarant of its obligation to make timely payments of Common Charges or Special Assessments in a timely manner so as to ensure that the Condominium Board has available funds to pay its obligations on a timely basis. All such "late charges," interest and expenses shall be added to and shall constitute Common Charges or Special Assessments payable by such Unit Owner. Notwithstanding the foregoing, the Condominium Board may establish its own reasonable alternate fees for late payments, whether such fees are more or less than the charges set forth herein. The Condominium Board shall diligently and in good faith enforce the obligations of each Unit Owner to pay such Common Charges and/or Special Assessments that are the obligation of the respective Unit Owner, provided that nothing contained in this Article 5 shall be construed to impose any obligation upon the Condominium Board to commence or prosecute an action to foreclose a lien on a Unit because of unpaid Common Charges or Special Assessments or to take any other legal action in connection therewith. Notwithstanding anything to the contrary contained in this Section 5.6, for so long as VNSNY is the owner of the VNSNY Unit, (i) the VNSNY Unit Owner shall not be obligated to pay any "late charge," and (ii) interest on late payments by the VNSNY Unit Owner shall not be due unless such payment of Common Charges or Special Assessments has not been paid within ten (10) days after a written notice of failure to make payment shall have been delivered to the VNSNY Unit Owner, in which case the interest on any such late payment shall accrue from the date such payment was due in accordance with the express provisions of the Declaration or these By-Laws.

5.7 **Foreclosure of Liens for Unpaid Common Charges.** In any action brought by the Condominium Board to foreclose a lien on a Unit because of unpaid Common Charges (or Special Assessments or any other amount required to be paid by such Unit Owner pursuant to the Declaration or these By-Laws), the Unit Owner shall be required to pay a reasonable rental for

the use and occupancy of such Unit Owner's Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver, after delivering reasonable prior notice to such Unit Owner, to collect the same. A suit to recover a money judgment for unpaid Common Charges (or Special Assessments or any other amount required to be paid by such Unit Owner pursuant to the Declaration or these By-Laws) shall be maintainable without foreclosing or waiving the lien securing such charges. No action shall be brought to foreclose such lien unless at least thirty (30) days' notice of claim of lien is given to the defaulting Unit Owner and any Permitted Mortgagee thereof. The Condominium Board, acting on behalf of the Unit Owners, shall have the power to bid in the amount of the lien at the foreclosure sale and to acquire and hold, lease, mortgage and convey same. In the event the net proceeds received on such foreclosure sale (after deduction of all reasonable legal fees, advertising costs, brokerage commissions and other reasonable costs and expenses incurred in connection therewith) are insufficient to satisfy the defaulting Unit Owner's obligations, such Unit Owner shall remain liable for the deficit.

5.8 **Estoppel Certificates and Nondisturbance.**

5.8.1 Within ten (10) Business Days following the written request of any Unit Owner, the Condominium Board will deliver to such requesting Unit Owner, or to a prospective tenant, purchaser or mortgagee of such Unit Owner, a statement ("Condominium Board Estoppel Certificate"), in the form annexed hereto as Exhibit J-1, indicating (to the extent accurate) that such requesting Unit Owner is current in its payment of all amounts due under the Declaration and these By-Laws, that no written notice of default has been sent to such requesting party and to the knowledge of the Condominium Board (without the Condominium Board having made any investigation), no such default exists. Any such Condominium Board Estoppel Certificate may be relied upon by any permitted tenant, purchaser or mortgagee of such Unit.

5.8.2 Within ten (10) Business Days following the written request of the Condominium Board, each Unit Owner will deliver to the Condominium Board, or to any party designated by the Condominium Board, a statement ("Unit Owner Estoppel Certificate"), in the form annexed hereto as Exhibit J-2, indicating (to the extent accurate) that no written notice of default has been sent by such Unit Owner to the Condominium Board (or to Declarant or Fee Owner, to the extent that any agreements between Unit Owner and Declarant and/or Fee Owner shall then exist), and, to the knowledge of such Unit Owner, no such default exists. Such Unit Owner Estoppel Certificate shall also state whether there has been any modification of any agreements entered into between such Unit Owner and the Condominium Board, Declarant or Fee Owner (respectively), and, if so, such Unit Owner Estoppel Certificate shall identify such modifications. Furthermore, such Unit Owner Estoppel Certificate shall contain such other information relating to such Unit Owner's occupancy of its Unit as the Condominium Board shall reasonably request. Any such Unit Owner Estoppel Certificate may be relied upon by any party designated by the Condominium Board.

5.8.3 In addition, subject to the VNSNY Standards set forth in Exhibit I to the Declaration, upon the written request of the VNSNY Unit Owner accompanied by such documentation as is reasonably sufficient to allow the Condominium Board to proceed as



hereinafter described, the Condominium Board will enter into a nondisturbance agreement with a tenant under a lease for space in the VNSNY Unit pursuant to, and on the terms set forth in, the provisions of said Exhibit I.

5.9 **Statement of Common Charges.** The Condominium Board shall promptly provide any Unit Owner who so requests with a written statement of all unpaid Common Charges, Special Assessments, late charges and interest due to it from such Unit Owner.

5.10 **Services**

5.10.1 Subject to and except as otherwise provided in the VNSNY Standards set forth in Exhibit I to the Declaration, the Condominium Board shall provide the following services to the Unit Owners, and the costs thereof shall constitute a Common Expense, except as otherwise provided in these By-Laws or the Declaration:

5.10.1.1 Provide passenger elevator service to the Office Area during business hours on Business Days. As used in these By-Laws, the term "business hours" means 8:00 A.M. to 6:00 P.M. At all times other than during business hours on Business Days, not fewer than one elevator in each elevator bank shall be on call in the Building. Freight elevator service shall be provided during the time periods reasonably determined by the Condominium Board, to be provided on a "first-come, first-served" basis (provided that the Condominium Board may also utilize a reservation protocol consistent with reservation protocols utilized in Comparable Buildings).

5.10.1.2 Maintain and keep in good order and repair the central heating, ventilating and air-conditioning system installed in the Units in reasonably accordance with the standards of Comparable Buildings, provided that only steam heat will be provided to the Retail Area. The aforesaid system will be operated by the Condominium Board during business hours on Business Days, and the Condominium Board shall provide Unit Owners with reasonable prior notice of any scheduled Maintenance.

5.10.1.3 Provide Building standard cleaning services to the public portions of the Building on Business Days in a manner consistent with cleaning services then being provided to the public portions of Comparable Buildings.

5.10.1.4 Furnish water for ordinary lavatory, drinking, pantry and office cleaning purposes. If a Unit Owner requires, uses or consumes water for any other purposes, the Condominium Board may install a meter or meters or other means to measure such Unit Owner's water consumption, and the Unit Owner shall reimburse the Condominium for the cost of the meter or meters and the installation thereof, and pay for the maintenance of said meter equipment and/or pay the Condominium's costs of other means of measuring such water consumption by such Unit Owner (and the Unit Owner's obligation to do so shall be in addition to such Unit Owner's obligation to pay Common Charges). Such Unit Owner shall reimburse the Condominium for the cost of all water consumed as measured by said meter or meters or as otherwise measured, including sewer rents (and the Unit Owner's obligation to do so shall be in addition to such Unit Owner's obligation to pay Common Charges). The Condominium Board



will reasonably cooperate with such Unit Owner so as to enable such Unit Owner to, periodically and on reasonable advance notice to the Condominium Board, check any such meter.

5.10.1.5 Provide Building access control (including, without limitation, messenger services) and a security monitoring operation.

5.10.2 Subject to and except as otherwise provided in the VNSNY Standards set forth in Exhibit I to the Declaration, the Condominium Board reserves the right to interrupt, curtail or suspend the services required to be furnished by the Condominium Board under this Section 5.10 or elsewhere under these By-Laws or otherwise to interrupt, curtail or suspend any services provided to the Units when the necessity therefor arises by reason of required Maintenance, Alterations, accident, labor dispute, riot, war, insurrection, terrorism, bioterrorism, Emergency, casualty, shortages of labor or materials, mechanical breakdown, Acts of God, or when required by any law, order or regulation of any federal, state, county or municipal authority, or by reason of Alterations deemed necessary or desirable by the Condominium Board for the benefit of the Building or any portion(s) thereof, or for any other event of Force Majeure. "Force Majeure" means actual delays (after taking into account all reasonable measures that are taken or should reasonably have been taken by the Delayed Party (as hereafter defined) to mitigate the effect of the following) which are caused by any of the following and which are not attributable to the improper acts or omissions of the Delayed Party or its Affiliates: an act of God, an industry-wide inability to obtain labor, equipment, supplies or materials or reasonable substitutes therefore in the open market, an enemy action, terrorism, a civil commotion, an earthquake, a flood, a fire or any other casualty, a war, hostilities, an invasion, an insurrection, a riot, mob violence, malicious mischief, sabotage, embargo, an unusual failure of transportation, a strike of any labor union, a lockout, a condemnation, litigation which results in an injunction or a restraining order, or any other similar cause not within the reasonable control of the Delayed Party, (i) the existence of which shall either be actually known by the party harmed by the delay (the "Harmed Party") or the party being delayed (the "Delayed Party") shall have notified the Harmed Party by notice given not later than five (5) Business Days after the Delayed Party first actually knew of the existence or occurrence thereof, and (ii) which has the effect of delaying the Delayed Party's performance of its obligations hereunder, which event shall be deemed to continue only as long as the Delayed Party shall be using reasonable efforts within the Delayed Party's control promptly to minimize the effects thereof. The period of delay caused by any occurrence of an event of Force Majeure shall be deemed to commence on the earlier of (x) the date that the Delayed Party has actual knowledge of such occurrence, and (y) five (5) Business Days before the date the Delayed Party gives notification to the Harmed Party of such occurrence. Upon cessation of the event of Force Majeure causing such delay, (1) the Delayed party shall deliver notice of the cessation of the event of Force Majeure to the Harmed Party together with an estimate of the number of days of delay caused by the event of Force Majeure, and (2) the Delayed Party shall recommence or continue the performance of the obligation affected by such event of Force Majeure. Under no circumstances shall the non-payment of money or a failure attributable to a lack of funds be deemed to be (or to have caused) an event of Force Majeure. The Condominium Board shall exercise good faith to complete all required repairs or other necessary work so that the Unit Owners' inconvenience resulting therefrom may be for as short a period of time as circumstances will permit, as well as provide written notice



reasonably in advance of regularly scheduled Maintenance. Except as otherwise provided in Section 2.12.3 above, no diminution or abatement of Common Charges or other compensation shall or will be claimed by a Unit Owner as a result thereof, nor shall these By-Laws or any of the obligations of the Unit Owners be affected or reduced by reason of such interruption, curtailment, or suspension.

5.10.3 Subject to and except as otherwise provided in the VNSNY Standards set forth in Exhibit I to the Declaration, each Unit Owner shall reimburse the Condominium for the cost to the Condominium of removal from the Unit and the Building of any refuse and rubbish of a Unit Owner, and the Unit Owner shall pay all bills therefor when rendered (and the Unit Owner's obligation to do so shall be as a Special Assessment, in addition to such Unit Owner's obligation to pay Common Charges).

5.10.4 Subject to and except as otherwise provided in the VNSNY Standards set forth in Exhibit I to the Declaration, if a Unit Owner shall require HVAC service at any time other than during business hours on Business Days, the Condominium Board shall furnish such service (herein called "after-hours air-conditioning service") upon advance written notice from the Unit Owner as specified below, and the Unit Owner shall pay to the Condominium Board the Condominium's then established charges therefor within thirty (30) days after billed therefor (and the Unit Owner's obligation to do so shall be as a Special Assessment, in addition to such Unit Owner's obligation to pay Common Charges). If the Unit Owner shall not timely pay the same, the Unit Owner shall also pay interest thereon at the then Interest Rate. Requests for after-hours air-conditioning service shall be submitted in writing to the Building manager, by a person designated by the Unit Owner as authorized to make such requests, before 1:00 P.M. on a non-holiday weekday for such weekday and at least thirty-six (36) hours prior to a holiday or weekend.

5.10.5 Subject to and except as otherwise provided in the VNSNY Standards set forth in Exhibit I to the Declaration, and notwithstanding anything in these By-Laws to the contrary, the Condominium Board agrees that, in the event that a Unit Owner requires additional heating, ventilation and air-conditioning in the Unit Owner's Unit, and the Condominium Board, upon the Unit Owner's request therefor, consents to the installation of a system in the Unit to provide such additional heating, ventilating and air-conditioning (which consent shall not be unreasonably withheld, conditioned or delayed), then and in such event, the Unit Owner may install, and the Condominium Board consents to the installation of, at the Unit Owner's own cost and expense in accordance with, and subject to, the applicable provisions of these By-Laws and the Declaration one or more additional heating, ventilating and air-conditioning systems (hereinafter individually or collectively referred to as the "Supplemental HVAC System"). The costs of installation (including, without limitation, connection to any condenser water source), maintenance and operation of the Supplemental HVAC System shall be borne by the Unit Owner, and the Unit Owner shall be responsible for the design and installation of its own condenser water pumps, capable of delivering the required flow to the Unit Owner's equipment. The Unit Owner (or at the Condominium Board's option, the Condominium) shall install, at the Unit Owner's own cost and expense (and the Unit Owner's obligation to pay such costs and expenses shall be in addition to such Unit Owner's obligation to pay Common Charges), valved outlets into the condenser water riser, the cost of which valves are to be paid for by the Unit Owner.

Whenever a Unit Owner shall make a connection to any condenser water source, the Unit Owner shall also leave additional valved outlets of a size, and in such locations, to be determined by the Condominium Board. All facilities, equipment, machinery and ducts installed by the Unit Owner in connection with the Supplemental HVAC System shall (a) be subject to the Condominium Board's prior written approval, which approval shall not be unreasonably withheld or delayed, (b) comply with the Condominium Board's reasonable requirements as to Maintenance and operation, and (c) comply with all other terms, covenants and conditions of these By-Laws and the Declaration applicable thereto. Except as otherwise expressly provided in Section 2.12.3 above, the Condominium Board and the Condominium shall have no liability or responsibility whatsoever for any interruption in service of the Supplemental HVAC System (if any) for any cause whatsoever, nor shall any such interruption entitle the Unit Owner to any abatement of Common Charges, or relieve or release the Unit Owner from any of its obligations under these By-Laws. The Unit Owners shall cooperate fully with the Condominium Board and to abide by all reasonable regulations and requirements which the Condominium Board may prescribe for the proper connection, functioning and protection of the Supplemental HVAC System.

5.10.6 Subject to and except as otherwise provided in the VNSNY Standards set forth in Exhibit I to the Declaration, the Condominium Board shall furnish, if required and to the extent available, up to the rated number of tons of condenser water for each Unit Owner's Supplemental HVAC System at a per ton charge to be determined annually by the Condominium Board, and which shall be as a Special Assessment, in addition to such Unit Owner's obligation to pay Common Charges. If, after the first anniversary of the Possession Date, the cost to the Condominium Board of furnishing condenser water for such Supplemental HVAC System shall be increased, then the aforesaid charge to the Unit Owner shall be increased (on at least forty-five (45) days advance written notice, and not more frequently than once per year) to fairly reflect the amount of the increased cost to the Condominium Board. Notwithstanding the foregoing, such increase shall not exceed the lower of (a) the percentage increase of such rates in other Manhattan buildings managed by the Declarant Entities (if applicable), and (b) an increase of three (3%) percent per annum, on a cumulative basis.

5.10.7 Subject to the Rules and Regulations (set forth on Schedule A annexed hereto (including, without limitation, Building security procedures), each Unit Owner shall have access to and use of the Unit Owner's Unit twenty-four (24) hours per day and three hundred sixty-five (365) days per year.

5.11 **Real Estate Taxes.** Until the Units are separately assessed for real estate tax purposes, the Unit Owners shall pay their respective share of all real estate taxes with respect to the Property to the Condominium Board as Common Charges, which will in turn pay such taxes to the proper authorities of The City of New York. Notwithstanding the preceding sentence, if real estate taxes which are initially assessed against each of the Units by the taxing authorities of the City of New York are in a different proportion (based upon the total assessment for the Units) than the proportion that the Common Interest of each Unit bears to the Common Interests of all Units, the Unit Owners shall, within thirty (30) days after the finalization of the tax roll for the fiscal year in which the Units are separately assessed, adjust the payment of real estate taxes to reflect the proportionate allocation by the taxing authorities of the City of New York. Once



the real estate taxes are separately assessed against each Unit, real estate taxes shall be paid directly by the Unit Owner to the New York City Department of Finance (and the Unit Owner's obligation to do so shall be in addition to such Unit Owner's obligation to pay Common Charges). Nothing contained in this Section 5.11 shall be construed to (i) require VNSNY to be responsible for the payment of real estate taxes prior to the date that VNSNY shall have acquired title to the VNSNY Unit, or (ii) impose any liability for real estate taxes on any Unit Owner that is entitled to an exemption from the payment of real estate taxes (as confirmed by the New York City Department of Finance) during the period that such exemption shall be applicable.

5.12 **Gas.** Subject to Section 5.10 of these By-Laws, if separately metered, each Unit Owner shall be required to pay the bills for gas consumed or used in such Unit Owner's Unit (or portion thereof) directly to the utility company; otherwise, charges for gas will be paid by the Condominium Board and will be allocated among the Unit Owners as Common Charges. The provisions of the immediately preceding sentence shall not be construed to allow Unit Owners to obtain new gas service to Units that do not currently have such gas service. Only the Condominium Board may determine, in its sole discretion, which Units may receive new gas service.

5.13 **Electricity.** Subject to and except as otherwise set forth in the VNSNY Standards set forth in Exhibit I to the Declaration:

5.13.1 The Condominium Board shall furnish to each Unit, through the existing transmission facilities installed in the Building, alternating electric current in such reasonable quantity as may be now required for each Unit Owner's ordinary use of the Unit Owner's Unit for the purposes herein specified. Such electric current shall be measured by meter or meters (which, if there is more than one meter per Unit, shall be totalized) provided and installed by the Condominium Board at such location or locations as the Condominium Board shall select, and, subject to the VNSNY Standards set forth in Exhibit I to the Declaration, each Unit Owner shall pay monthly, in arrears, to the Condominium Board or to a vendor selected by the Condominium Board (which vendor may be an Affiliate of Declarant) such amounts (which shall be computed by using the Electric Rates, as hereinafter defined) paid by the Condominium Board plus (as an administrative fee) an additional three (3%) percent of such computed amount as may be billed by the Condominium Board or such vendor to each Unit Owner therefor on the basis of each Unit Owner's consumption of alternating current in each Unit Owner's Unit (an "Electric Bill"). If a Unit Owner shall fail to pay any such amount within thirty (30) days after billing, such Unit Owner shall pay the Condominium Board interest thereon at the then Interest Rate until such bill shall be fully paid plus any of the Condominium Board's reasonable attorneys' fees, costs and expenses paid or incurred in collecting on such bill(s). Each Unit Owner's obligation to make the payments required under this Section 5.13.1 shall be deemed a Special Assessment, and shall be in addition to such Unit Owner's obligation to pay Common Charges. The Condominium Board and its agents shall be permitted access to the electric closets and the meters. Each Unit Owner shall supply, at the Unit Owner's cost, adequate electric lighting and electric power to the Condominium Board or the Condominium Board's contractors to clean or make repairs in the Unit. The Condominium Board will reasonably cooperate with such Unit Owner so as to enable such Unit Owner to,



periodically and on reasonable advance notice to the Condominium Board, check any electric meter serving its Unit.

5.13.2 Each Unit Owner's use of electrical energy shall never exceed the capacity of the then existing feeders to the Building or the then existing risers or wiring installation serving the Unit Owner's Unit; in furtherance thereof, each Unit Owner's demand electrical load in the Unit Owner's Unit shall be reasonably determined by the Condominium Board, and any increase to such demand electrical load shall be subject to the Condominium Board's prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed, provided that (i) the installation of additional risers will provide sufficient additional electric capacity (in the Condominium Board's reasonable exercise of its judgment), (ii) there is sufficient room in the Building's mechanical areas, shafts and vertical chases (in the Condominium Board's reasonable exercise of its judgment) for such installation, and (iii) the Unit Owner installs the required additional risers and electric capacity, at such Unit Owner's cost and expense. Each Unit Owner understands that, if the demand load exceeds 3.5 watts per usable square foot in any area, the HVAC system may not be able to perform, and the Condominium Board shall have no responsibility or liability on account thereof. Any additional risers or risers required by a Unit Owner to supply such Unit Owner's electrical requirements in excess of the above capacity and all other equipment proper and necessary in connection therewith, upon request of the Unit Owner, will be installed by the Condominium Board, at the Unit Owner's own cost and expense (and the Unit Owner's obligation to pay such costs and expenses shall be in addition to such Unit Owner's obligation to pay Common Charges), if in the Condominium Board's reasonable judgment, the same are necessary and will not cause or create a hazardous condition or entail excessive or unreasonable alterations, repairs or expense or interfere with or disturb other Unit Owners. All electrical wiring shall be installed in accordance with Applicable Law (including, without limitation, the New York City Building Code), and shall be run in EMT. In order that personal safety and property of the Condominium and the Unit Owners and occupants of the Units and the Building may not be imperiled by the over taxing of the capacity of the electrical distribution system of the Units or the Building, and to avert possible adverse effect upon the Building's electrical system, no Unit Owner shall, without prior consent of the Condominium Board, which consent shall not be unreasonably withheld (provided that same would not affect the power of the Building or any other Unit Owner's power or power allocated to future Unit Owners), make or perform or permit any changes in or alterations to wiring installations or other electrical facilities in or serving the Unit, if such changes or alterations would result in such Unit Owner's consumption of electricity in excess of 5.0 watts actual demand load per usable square foot or would otherwise constitute an Alteration that requires the Condominium Board's consent pursuant to Section 5.17 of these By-Laws. Any such alterations or changes performed by a Unit Owner shall be in compliance with all codes and legal requirements. Should the Condominium Board grant such consent, all additional risers, wiring or other equipment required therefor shall be provided by the Condominium Board and the cost thereof shall be paid by the Unit Owner to the Condominium Board within thirty (30) days after being billed therefor. The Condominium Board's approval of any electrical alterations or changes shall not be deemed a representation that the same comply with applicable codes or other legal requirements. The Condominium Board, its agents and engineers and consultants may survey the electrical fixtures, appliances and



equipment in the Units and each Unit Owner's use of electrical energy therein from time to time to determine whether a Unit Owner is complying with its obligations under this Article 5.

5.13.3

5.13.3.1 The Indemnified Parties shall have no liability to the Unit Owners for any loss, damage or expense which a Unit Owner may sustain or incur by reason of any change, failure, inadequacy or defect in the supply or character of the electrical energy furnished to a Unit Owner's Unit or if the quantity or character of the electrical energy is no longer available or suitable for a Unit Owner's requirements, except for any actual damage suffered by a Unit Owner by reason of any such failure, inadequacy or defect caused by the Condominium Board's negligence or willful misconduct, and then only after prior actual notice has been given to the Condominium Board.

5.13.3.2 In addition to the foregoing, the Condominium Board shall have the right on five (5) days' prior notice to a Unit Owner (whenever possible) to "shut down" electrical energy to such Unit Owner's Unit when necessitated by the need for repairs, alterations, connections or reconnections, with respect to the Building electrical system (singularly or collectively, "Electrical Work"), regardless of whether the need for such Electrical Work arises in respect of such Unit, any other Unit, or any Common Elements. The Condominium Board may not, however, shut down a Unit Owner's electrical energy for such Electrical Work during business hours unless such Electrical Work shall be required because of an Emergency or required by the electric energy provider servicing the Building. The Indemnified Parties shall have no liability to any Unit Owner for any loss, damage, or expense which a Unit Owner may sustain due to such "shut down" or Electrical Work. The Condominium Board shall use commercially reasonable efforts to minimize interference with the business operations of the Unit Owners affected by such shut downs, and shall act with reasonable diligence (but without being obligated to use overtime or premium pay labor) to cause such electric service to be restored.

5.13.4 None of the Indemnified Parties shall in any way be liable or responsible to the Unit Owners for any loss, damage or expense that the Unit Owner may sustain or incur if either the quantity or character of electric service is changed or is no longer available or suitable for the Unit Owner's requirements, except if and to the extent resulting from the Condominium Board's failure to pay the electric company (but in no event will the Indemnified Parties have any responsibility for consequential damages); provided, however, that the provisions of Section 2.12.3 above shall apply. Subject to a requesting Unit Owner's compliance with all applicable provisions of these By-Laws and the Declaration, and provided that the Condominium Board has available shaft space for risers, the Condominium Board may elect, in its sole discretion, to install at such Unit Owner's reasonable expense additional risers to provide additional electric capacity to its Unit. Any such additional capacity must be obtained by such Unit Owner from the electric company without diminution of, or any other adverse effect upon, the Building or the electrical capacity and electrical cost for the balance of the Building. Any riser or risers necessary to supply the Unit Owner's electrical requirements in excess of those specified in Subsection 5.13.2 above will be installed by the Condominium Board at the reasonable cost

and expense of the Unit Owner and only if, in the Condominium Boards reasonable judgment, the same is reasonably practicable and will not cause adverse damage or injury to the Building or the operation thereof or any Unit, or cause or create a dangerous or hazardous condition. In addition to the installation of such riser or risers, the Condominium Board will also, at the cost and expense of such Unit Owner, install all other equipment proper and necessary in connection therewith, subject to the aforesaid terms and conditions. All of such costs and expenses shall be paid by the Unit Owner to the Condominium Board within thirty (30) days after rendition of any bill or statement to the Unit Owner therefor.

5.13.5 The term "Electric Rates" shall be deemed to mean the rates at which the Condominium Board purchases electrical energy from the utility company or other provider supplying electrical service to the Building, including any surcharges or charges incurred, or utility taxes or sale taxes or other taxes payable by or imposed upon the Condominium in connection therewith, or increase thereof by reason of fuel adjustment or any substitutions for such Electric Rates or additions thereto. The Condominium Board shall use commercially reasonable efforts to purchase electrical energy at the lowest rates available to the Building, provided that there is no loss in quality of the electric service by reason thereof (except to a de minimis extent). The Condominium Board and the Unit Owners acknowledge that they understand that the electric rates, charges, taxes and other costs may be changed by virtue of peak demand, time-of-day rates, or other methods of billing, and that the foregoing reference to changes in methods or rules of billing is intended to include any such change.

5.13.6 Provided that the Condominium Board does not discriminate against a Unit Owner, the Condominium Board reserves the right to terminate the furnishing of electrical energy at any time, upon sixty (60) days' notice to the Unit Owners, unless such notice is not feasible under the circumstances or such shorter period is necessitated by law, in which event the Condominium Board will give the Unit Owners such reasonable notice as is possible. Notwithstanding the foregoing, if the Condominium Board shall discontinue furnishing electrical energy to a Unit Owner pursuant to this Section, then, provided that such Unit Owner is using diligent efforts to obtain electrical energy directly from the utility supplying the same to the Building, the Condominium Board agrees not to terminate the furnishing of electrical energy to such Unit Owner until such Unit Owner succeeds in procuring same directly from the utility, unless the Condominium Board is prohibited from doing so by any Applicable Laws. If the Condominium Board shall so discontinue the furnishing of electrical energy, (a) each Unit Owner shall arrange to obtain electrical energy directly from the utility company or other provider furnishing electrical energy to the Building, (b) the Condominium Board shall permit the existing feeders, risers, wiring and other electrical facilities serving the Units to be used by the applicable Unit Owner for such purpose to the extent that they are available, suitable and safe, (c) from and after the effective date of such discontinuance, the Condominium Board shall not be obligated to furnish electric energy to the Unit Owners, (d) such discontinuance shall be without liability of the Indemnified Parties to any Unit Owner, and (e) if the Condominium Board shall discontinue the furnishing of electrical energy as a result of any legal requirement or insurance requirement, the Condominium Board shall install and Maintain at locations in the Building selected by the Condominium Board any necessary electrical meter equipment, panel boards, feeders, risers, wiring and other conductors and equipment which may be



required to obtain electrical energy directly from the utility company or other provider supplying the same. The cost of the work described in clause (e) above shall be divided equally between the Condominium Board and the Unit Owners (unless the Condominium Board's decision to discontinue the furnishing of electrical energy was not the result of any legal requirement or insurance requirement, in which event the Condominium Board shall bear the entire expense hereinabove described). The Condominium Board shall be promptly given by each Unit Owner a copy of each electric utility bill of the Unit owner if a Unit Owner should become a direct customer of the utility company or other provider servicing the Building.

5.13.7 In the event that any tax shall be imposed upon the Condominium Board's receipts from the sale, use or resale of electrical energy to the Unit Owners, the pro rata share allocable to the electrical energy service received by each Unit Owner shall be passed onto, included in the Electric Bill of, and paid by the Unit Owner, if and to the extent not prohibited by law (and the Unit Owner's obligation to do so shall be in addition to such Unit Owner's obligation to pay Common Charges).

5.13.8 The Condominium Board may, if a Unit Owner so elects, furnish and install all replacement lighting, tubes, lamps, starters, bulbs and ballasts required in such Unit Owner's Unit, and the Unit Owner shall pay to the Condominium Board (or its designated contractor) within twenty (20) days of demand the then established charges therefor, which charges shall be reasonably competitive and the payment shall be in addition to Common Charges.

5.14 **Water Charges and Sewer Rents.** Subject to Section 5.10 of these By-Laws and Exhibit I to the Declaration, water and sewer services shall be supplied to and for all of the Units and the Common Elements through one or more Base Building Systems by the City of New York or such other utility servicing the Units and the Common Elements. Except to the extent Unit Owners are billed directly by the City of New York by separate meter, the Condominium Board shall pay all such charges, together with all related sewer rents arising therefrom, promptly after the bills for the same shall have been rendered.

5.15 **Utilities Serving the Common Elements and the Units.** Subject to Section 5.10 of these By-Laws and Exhibit I to the Declaration, the cost and expense of water, sewer facilities, steam, electricity and gas serving or benefiting any Common Element shall be determined by the Condominium Board and constitute a Common Expense; provided that the same shall not be greater than the reasonable, out-pocket-costs incurred by the Condominium Board for such expenses, plus a commercially reasonable administrative fee.

5.16 **Maintenance, Cleaning and Repair Obligations.**

5.16.1 **Unit Owners.**

5.16.1.1 Subject to the VNSNY Standards set forth in Exhibit I to the Declaration, each Unit Owner shall take good care of the Unit Owner's Unit, the fixtures and appurtenances therein, and at its own cost and expense (and the Unit Owner's obligation to pay such costs and expenses shall be in addition to such Unit Owner's obligation to pay Common



Charges), make all repairs thereto as and when needed to preserve them in good working order and condition. Subject to the VNSNY Standards set forth in Exhibit I to the Declaration, each Unit Owner shall be responsible, at such Unit Owner's own cost and expense (and the Unit Owner's obligation to pay such costs and expenses shall be in addition to such Unit Owner's obligation to pay Common Charges), for the cleaning of its Unit, and which such Unit Owner shall perform or cause to be performed in a manner befitting a first-class office building in midtown Manhattan. It is currently contemplated that the Condominium Board will require each Unit Owner (other than Declarant) to use the provider of cleaning services for the Building designated by the Condominium Board (which may be an entity affiliated with Declarant, provided that the increases in charges therefor above the amount of the charges in effect on the Possession Date do not exceed commercially reasonable market increases in charges for comparable levels of service at Comparable Buildings), and the costs and expenses thereof shall be paid by each of the Unit Owners to the Condominium Board as a Special Assessment, which shall be in addition to such Unit Owner's obligation to pay Common Charges. The base cleaning standard for the Office Units shall be as set forth in Exhibit N. All additional cleaning requirements of a Unit Owner, as well as all cleaning of the Retail Units, may be performed only by such Unit Owner's own employees or by the provider of cleaning services for the Building designated by the Condominium Board, at mutually agreed upon rates between such Unit Owner and such cleaning services provider. The costs thereof shall be paid by each of the Unit Owners to the Condominium Board as a Special Assessment, which shall be in addition to such Unit Owner's obligation to pay Common Charges All damage or injury to a Unit, whether structural or non-structural, and to its fixtures, glass, appurtenances and equipment or to the Building, or to its fixtures, glass, appurtenances and equipment caused by a Unit Owner moving property in or out of the Building or by installation or removal of furniture, fixtures or other property, or resulting from fire, explosion, air-conditioning unit or system, short circuits, flow or leakage of water, steam, illuminating gas, sewer gas, sewerage or odors or by frost or by bursting or leaking of pipes or plumbing works or gas, or from any other cause of any other kind or nature whatsoever due to carelessness, omission, neglect, improper conduct or other cause of a Unit Owner, its servants, employees, agents, visitors or licensees, shall be repaired, restored or replaced promptly by such Unit Owner at its own cost and expense (and the Unit Owner's obligation to pay such costs and expenses shall be in addition to such Unit Owner's obligation to pay Common Charges) to the satisfaction of the Condominium Board. All aforesaid repairs, restorations and replacements shall be in quality and class equal to the original work or installations and shall be done in a good and workmanlike manner. If a Unit Owner fails to make such repairs, restorations or replacements, or fails to properly clean its Unit, the same may be made or performed by the Condominium Board at expense of the Unit Owner, and all sums so spent and expenses incurred by the Condominium Board shall be collectible as additional Common Charges and shall be paid by the Unit Owner within ten (10) days after rendition of a bill or statement therefor. Each Unit Owner shall promptly make, at the Unit Owner's own cost and expense (and the Unit Owner's obligation to pay such costs and expenses shall be in addition to such Unit Owner's obligation to pay Common Charges), all repairs in and to the Unit Owner's Unit for which the Unit Owner is responsible, using only the contractor for the trade or trades in question, selected only from the Condominium Board's list of approved contractors, such approval not to be unreasonably withheld. Any other repairs in or to the Building or the facilities and systems thereof for which a Unit Owner is responsible shall be performed by the Condominium Board at the Unit Owner's cost and expense (and the Unit Owner's obligation to



pay such costs and expenses shall be in addition to such Unit Owner's obligation to pay Common Charges). Notwithstanding anything to the contrary set forth in this Section 5.16.1, with respect to the VNSNY Unit and VNSNY Limited Common Elements, the VNSNY Unit Owner's rights and obligations under this Section 5.16.1 shall be subject in all respects to the applicable provisions of Exhibit I of the Declaration.

5.16.1.2 No Unit Owner will clean any window in the Unit Owner's Unit from the outside (within the meaning of Section 202 of the New York Labor Law or any successor statute thereto). In addition, unless the equipment and safety devices required by all legal requirements including Section 202 of the New York Labor Law or any successor statute thereto are provided and used, no Unit Owner will require, permit, suffer or allow the cleaning of any window in the Unit Owner's Unit from the outside (within the meaning of said Section). Each Unit Owner hereby indemnifies the Indemnified Parties against liability as a result of any violation of the foregoing; provided, however, that the VNSNY Unit Owner's sole obligation in connection herewith shall be to indemnify and hold harmless Declarant and the Declarant Entities. The Condominium Board shall provide external window cleaning to the Office Units no less than two (2) times per year. The provisions of this Section 5.16.1.2 shall not apply to the Retail Unit Owners. Subject to the provisions of Exhibit I to the Declaration, the Condominium Board and the Retail Unit Owners shall enter into a mutually satisfactory arrangement pursuant to which the storefront and other exterior windows of each of the Retail Units (including, without limitation, the Declarant Retail Façade Elements and the VNSNY Retail Façade Elements) shall be cleaned.

5.16.1.3 Notwithstanding anything to the contrary contained herein or in the Declaration (but subject to the provisions of Exhibit I to the Declaration), all Maintenance of any Limited Common Element shall be made by the Unit Owner having exclusive use thereof at such Unit Owner's own cost and expense, but any structural Maintenance and/or structural Alterations to any structural components of the Limited Common Elements shall be made by the Condominium Board and the cost and expense thereof shall be charged to all Unit Owners as a Common Expense.

5.16.1.4 Notwithstanding anything to the contrary set forth herein, the terms and provisions set forth in Exhibit I to the Declaration shall apply with respect to services provided to the VNSNY Units.

5.16.2 **Condominium Board.** The Condominium Board shall make all repairs and replacements, structural and otherwise, necessary or desirable in order to keep in good order and repair the Common Elements of the Building (including the exterior of the Building and the public portions of the Building, the need for which the Condominium Board may have knowledge, and including the public halls and stairways, plumbing, wiring and other Building equipment for the general supply of water, heat, air-conditioning, gas and electricity, and life safety equipment), and the cost and expense thereof will be charged to all Unit Owners as a Common Expense, except for repairs provided in the Declaration or these By-Laws to be made by a Unit Owner. The Condominium Board shall Maintain the Building in a manner that is comparable to Comparable Buildings. Each Unit Owner agrees to notify the Condominium Board of the necessity of repairs of which a Unit Owner may have knowledge, for which the Condominium Board may be responsible under the

provisions of the preceding sentence. There shall be no allowance to a Unit Owner for diminution of value and no liability on the part of the Indemnified Parties by reason of inconvenience, annoyance or injury to business arising from the Condominium Board or others making repairs, alterations, additions or improvements in or to any portion of the Building or the Units or in and to the fixtures, appurtenances or equipment thereof. It is specifically agreed that no Unit Owner shall not be entitled to any setoff or reduction of Common Charges by reason of any failure of the Condominium Board to comply with the covenants of this Article or any other Article of these By-Laws. Each Unit Owner agrees that the Unit Owner's sole remedy at law in such instance will be by way of an action for damages for breach of contract. The Condominium Board may establish rules and regulations as it deems necessary to protect the Common Elements and the Units and to ensure the integrity of the Building and the health and safety of its occupants. The Condominium Board shall clean, or cause to be cleaned, the General Common Elements of the Building (but not any Unit areas or Limited Common Element areas), and the cost and expense thereof will be charged to all Unit Owners as a Common Expense.

5.17 **Performance of Alterations and Repairs in Units and Common Elements.**

5.17.1 Except as otherwise provided in the Declaration or these By-Laws, all Alterations in or to any Common Elements will be made by the Condominium Board, and the cost and expense thereof will be charged to the Unit Owners as a Common Expense. The Condominium Board shall use commercially reasonable efforts to ensure that all Alterations performed by the Condominium Board will be promptly commenced and completed, and will be performed in such manner so as not to interfere in more than a de minimis manner with the occupancy of any Unit Owner.

5.17.2 Notwithstanding anything to the contrary set forth in the Declaration or these By-Laws, Declarant may make any Alterations in or to any Unit owned by Declarant or to the General Common Elements, without the consent of any other Unit Owner or the Condominium Board or enter into any alteration agreement with respect thereto (and without being subject to the provisions of sections 5.17.3 – 5.17.6), provided that such Alteration or repair does not (i) have a material adverse effect on any other Unit, (ii) reduce the value or structural integrity of the Building, and/or (iii) create a VNSNY Adverse Impact. The Condominium Board shall be authorized to execute any Required Documentation in connection with such work. Declarant shall use commercially reasonable efforts to minimize interference with other Unit Owners in connection with the performance of such Alterations (but shall not be obligated to use overtime or other premium pay labor in connection therewith), and the Common Charges abatement provisions set forth in Section 2.12.3 above shall apply as if Declarant was the Condominium Board.

5.17.3 Subject to the VNSNY Standards set forth in Exhibit I to the Declaration, but notwithstanding anything else to the contrary set forth in the Declaration or these By-Laws, no Unit Owner shall make any Alterations in or to its Unit or the electrical, plumbing, mechanical or heating, ventilating and air-conditioning systems serving its Unit, including, but not limited to, a water cooler, an air-conditioning or cooling system, mechanical or electrical equipment, or any unit or part thereof or other apparatus of like or other nature, without the Condominium Board's prior written consent, such consent not to



be unreasonably withheld, delayed or conditioned for non-structural Alterations, additions or improvements, and then only by contractors or mechanics reasonably approved by the Condominium Board; provided, however, that no such consent shall be required (i) if such non-structural Alterations are merely decorative in nature (e.g., finishes, painting, carpeting, wall covering and furniture systems that do not affect the Building's electrical systems or equipment), or (ii) if such non-structural Alterations do not affect any base building systems (e.g., HVAC, life safety, electrical, etc.), and would not, in the Condominium Board's reasonable determination, cost more than $250,000.00 in the aggregate (with such amount to be increased by ten (10%) percent every five (5) years, commencing on the fifth (5th) anniversary of the Possession Date). All Alterations shall be done at the Unit Owner's expense (and the Unit Owner's obligation to perform the same at its own expense shall be in addition to such Unit Owner's obligation to pay Common Charges) and at such times and in such manner as the Condominium Board may from time to time reasonably designate and in full compliance with all Applicable Laws. As a condition precedent to the Condominium Board's consent to the making by a Unit Owner of Alterations to the Unit Owner's Unit, the Unit Owner shall, upon the request of the Condominium Board, obtain and deliver to the Condominium Board a performance bond and a labor and materials payment bond issued by a surety company reasonably satisfactory to the Condominium Board and licensed to do business in the State of New York, each in an amount equal to one hundred fifteen percent (115%) of the cost of all such work, labor, and services to be performed and materials to be furnished in connection with such work, signed by such surety and a receipt of payment in full of the premium for such bond. The Condominium Board and the Condominium Board's designees shall be obligee(s) or insured(s) under such surety bond. Notwithstanding the foregoing, if any mechanic's lien is filed against a Unit, the Building or the Property for work claimed to have been done for or materials claimed to have been furnished to a Unit Owner, it shall be discharged by the Unit Owner within thirty (30) days thereafter, at the Unit Owner's expense (and the Unit Owner's obligation to pay such discharge cost shall be in addition to such Unit Owner's obligation to pay Common Charges), by filing the bond required by law or payment or otherwise. If the Unit Owner fails to discharge such lien, then the Condominium Board (upon thirty (30) days' prior notice to the Unit Owner) shall have the right to discharge same (by filing the bond required by law or by payment in full of the mechanic's lien or otherwise), and the Condominium Board's costs and expense in obtaining such discharge shall be repaid in full by the Unit Owner to the Condominium within twenty (20) days after written demand therefor. In addition, the Unit Owner shall defend, save and hold the Indemnified Parties harmless from any such mechanic's lien or claim, including, without limitation, the Indemnified Parties' reasonable attorneys' fees, costs and expenses. The Indemnified Parties shall not be liable for any failure of any Building facilities or services, including, but not limited to, the heating, ventilating and air-conditioning installations, and/or additions by a Unit Owner, arising from a Unit Owner's faulty installation or addition, and such Unit Owner shall correct any such faulty installation or addition. Upon a Unit Owner's failure to correct same, the Condominium Board may make such correction and charge the Unit Owner for the cost thereof. Such sum due to the Condominium Board shall be paid by the Unit Owner within thirty (30) days after being billed therefor, and unless so paid, the Unit Owner shall also pay the Condominium Board the then Interest Rate on such unpaid amount. Notwithstanding anything to the contrary set forth in this Section 5.17.3, with respect to the VNSNY Unit, the VNSNY Unit Owner's



rights and obligations under this Section 5.17.3 shall be subject in all respects to the applicable provisions of Exhibit I of the Declaration.

5.17.4 Prior to commencing any work pursuant to the provisions of Section 5.17, the Unit Owner shall simultaneously furnish to the Condominium Board and the Fee Owner (if applicable):

5.17.4.1 Copies of all governmental permits and authorizations which may be required in connection with such work.

5.17.4.2 A certificate evidencing that the Unit Owner (or the Unit Owner's contractors) has (have) procured the insurance required by the Rules and Regulations for Unit Owner Alterations attached hereto as Exhibit L (but subject to the provisions of Exhibit I to the Declaration).

5.17.4.3 All Alterations upon a Unit, made by either party, including all paneling, decoration, partitions, railing, mezzanine floors, galleries and the like, affixed to the realty so that they cannot be removed without material damage, shall, unless the Condominium Board elects otherwise, become the property of the Condominium and shall remain upon, and be surrendered with, the Unit, as a part thereof, at the expiration or sooner termination of the Ground Lease, as the case may be. In the event the Condominium Board shall elect otherwise, then such Alterations made by a Unit Owner upon the Unit as the Condominium Board shall select (including, without limitation, any Supplemental HVAC System), shall be removed by the Unit Owner, and the Unit Owner shall restore the Unit to its original condition (including any changes to the façade (windows), at its own cost and expense, at or prior to the expiration or sooner termination of the Ground Lease; provided, however, that (x) the Unit Owner shall not be required to restore any improvements within either the Declarant Office Units or the VNSNY Office Units that are of typical office nature, and (y) so long as the Unit Owner delivers a cover letter with its plans wherein the Unit Owner requests the Condominium Board in bold type to identify specific extraordinary improvements (e.g., slab cuts, staircases, etc.) that the Condominium Board will require removal and restoration by the Unit Owner as set forth above, the Condominium Board shall identify same during its review of the Unit Owner's plans. Where furnished by or at the expense of the Unit Owner, all movable property, furniture, furnishings and trade fixtures, not affixed to the realty so that they can be removed without material damage shall remain the property of the Unit Owner, shall be removed by the Unit Owner on or before the expiration of the Ground Lease or sooner termination thereof and, in case of damage by reason of their removal, the Unit Owner shall immediately repair any damage and restore the Unit to good order and condition. In case the Unit Owner shall desire not to remove any part of such property, the Unit Owner shall notify the Condominium Board in writing not less than sixty (60) days prior to the expiration of the Ground Lease specifying the items of property which the Unit Owner desires not to remove. If within thirty (30) days after the service of such notice the Condominium Board shall request the Unit Owner to remove any of the said Unit Owner's property, and/or if the Condominium Board shall elect, not less than thirty (30) days prior to the expiration of the Ground Lease, to require the removal of any Alterations referred to above, the Unit Owner shall at its expense, at or before the expiration of the term of the Ground Lease, remove said property, and in case of damage by reason of such removal, immediately repair and restore the Unit to good order and condition. All property permitted or required to be removed



by a Unit Owner at the expiration or sooner termination of the Ground Lease remaining in the Unit after the Unit Owner's removal shall be deemed abandoned and may, at the election of the Condominium Board, either be retained as the Condominium's property or may be removed from the Unit by the Condominium Board (or any successor to the Condominium Board), at the Unit Owner's expense (and the Unit Owner's obligation to reimburse such expense shall be in addition to such Unit Owner's obligation to pay Common Charges).

5.17.4.4 Notwithstanding anything to the contrary set forth in this Section 5.17.4, with respect to the VNSNY Unit, the VNSNY Unit Owner's rights and obligations under this Section 5.17.4 shall be subject in all respects to the applicable provisions of Exhibit J of the Declaration.

5.17.5

5.17.5.1 Before proceeding with any Alteration requiring the Condominium Board's consent, the Unit Owner shall submit to the Condominium Board three (3) copies of detailed plans and specifications therefor, for the Condominium Board's review and approval (and the Condominium Board's approval regarding plans and specifications for non-structural Alterations and/or additions shall not be unreasonably withheld). The Condominium Board shall respond to the Unit Owner's requests for consents to plans and specifications within ten (10) Business Days after receipt of complete plans and specifications therefor. If the Condominium Board disapproves the plans submitted, then the Condominium Board shall specify such disapproval in reasonable detail. In no event by reason thereof shall the Unit Owner's connected electrical load exceed the capacity of the distribution system in or to the Unit Owner's Unit.

5.17.5.2 The Unit Owner shall promptly reimburse the Condominium Board for all reasonable out-of-pocket expenses incurred by the Condominium Board in connection with (i) the Condominium Board's decision and the decision of any superior lessor and superior mortgagee as to whether to approve the proposed Alterations, and (ii) inspecting the Alterations to determine whether the same are being or have been performed in accordance with the approved plans and specifications therefor and with all legal requirements and insurance requirements, including the reasonable fees and expenses of any attorney, architect or engineer employed for such purpose (and the Unit Owner's obligation to do so shall be in addition to such Unit Owner's obligation to pay Common Charges). The Condominium Board shall exercise its good faith efforts to obtain consents from any superior lessor and superior mortgagee. If such Alterations require consent by or notice to the superior lessor, or the superior mortgagee, the Unit Owner, notwithstanding anything to the contrary contained in this Article 5, shall not proceed with the performance of such Alterations until such consent has been received, or such notice has been given, as the case may be, and all applicable Alterations for which consent has been received shall be performed in accordance with the approved plans and specifications therefor, and no changes thereto shall be made without the prior consent of the Condominium Board. It is anticipated that the consent of any superior lessor and/or superior mortgagee with respect to any proposed Alteration shall not be required, unless such Alteration shall constitute a material structural Alteration of the Building or the Base Building Systems that may lessen the value of the Building.

5.17.5.3 The Unit Owner shall not be permitted to install and make part of its Unit any materials, fixtures or articles which are subject to liens, chattel mortgages or security interests (as such term is defined in the Uniform Commercial Code as then in effect in New York), but the Unit Owner shall be permitted to lease normal office equipment, e.g., typewriter, photocopy machines and telex machines, which are not to be built into its Unit.

5.17.5.4 No Alterations (other than decorative Alterations) shall be undertaken (i) except under the supervision of a licensed architect or licensed professional engineer reasonably satisfactory to the Condominium Board and (ii) except after at least ten (10) days' prior notice to the Condominium Board.

5.17.5.5 Notwithstanding anything to the contrary set forth in this Section 5.17.5, with respect to the VNSNY Unit, the VNSNY Unit Owner's rights and obligations under this Section 5.17.5 shall be subject in all respects to the applicable provisions of Exhibit I of the Declaration.

5.17.6

5.17.6.1 All Alterations shall at all times comply with all Applicable Laws and insurance requirements and the Rules and Regulations, including any modifications to the Rules and Regulations that the Condominium Board may adopt with respect to the making of any Alterations (which, in its current form, is attached hereto as Exhibit L (but subject to the provisions of Exhibit I to the Declaration)), and shall be made at such times and in such manner as the Condominium Board may from time to time direct. Any modifications of the Rules and Regulations shall be reasonable and non-discriminatory. The Unit Owner, at its expense, (the payment of which shall be in addition to Common Charges) shall (a) obtain all necessary municipal and other governmental permits, authorizations, approvals and certificates for the commencement and prosecution of such Alterations and for final approval thereof upon completion, (b) deliver three (3) copies to the Condominium Board and (c) cause all Alterations to be performed in a good and first class workmanlike manner, using new materials and equipment at least equal in quality to the original installations of the Building or the then standards for the Building established by the Condominium Board. The Condominium Board shall reasonably cooperate with a Unit Owner performing approved Alterations, provided that the Condominium Board shall not incur any expense in connection therewith or suffer any liability thereby. All Alterations shall be promptly commenced and completed and shall be performed in such manner so as not to interfere in more than a de minimis manner with the occupancy of any other Unit Owner nor delay or impose any additional expense upon the Condominium in the maintenance, cleaning, repair, safety, management, or security of the Building (or the Building's equipment) or in the performance of any improvements. If any additional expense is incurred, the Condominium Board may collect the amount of such additional expense from the Unit Owner, and the Unit Owner's failure to promptly pay the same when billed shall entitle the Condominium Board to treat the non-payment thereof as a non-payment of Common Charges under these By-Laws, and until paid to the Condominium Board, such additional Common Charge shall bear interest at the then Interest Rate (but, with respect to the VNSNY Unit Owner, subject to the last sentence Section 5.6 above). Upon completion of the Unit Owner's improvements, the Unit Owner shall deliver a complete set of "As-Built" drawings and plans to the Condominium Board. No improvements shall involve the removal of



any fixtures, equipment or other property in the Unit which are not the Unit Owner's exclusive property without the Condominium Board's prior written consent (not to be unreasonably withheld, conditioned or delayed) and unless they shall be promptly replaced, at the Unit Owner's expense (and the Unit Owner's obligation to be responsible for such expense shall be in addition to such Unit Owner's obligation to pay Common Charges), with fixtures, equipment or other property, of like utility and at least equal value (which thereupon shall become the property of the Condominium).

5.17.6.2 The Unit Owner, at its own cost and expense (and the Unit Owner's obligation to pay such costs and expenses shall be in addition to such Unit Owner's obligation to pay Common Charges), promptly shall procure the cancellation or discharge of all notices of violation arising from or otherwise connected with its Alterations which shall be issued by any public authority having or asserting jurisdiction.

5.17.6.3 Only the Condominium Board or persons first approved by the Condominium Board in accordance with this Article 5 shall be permitted to act as contractor for any work to be performed in accordance with this Article 5. The Condominium Board reserves the right to exclude from the Building any person attempting to act as construction contractor in violation of this Article 5. In the event a Unit Owner shall employ any contractor permitted in this Article 5, such contractor or any subcontractor may have use of the Building facilities subject to the provisions of these By-Laws and the Rules and Regulations governing construction. The Unit Owner will advise the Condominium Board of the names of any such contractor and subcontractor the Unit Owner proposes to use in its Unit at least fifteen (15) days prior to the beginning of work by such contractor or subcontractor.

5.17.6.4 No Unit Owner may at any time, either directly or indirectly employ or permit the employment of any contractor, mechanic or laborer, or permit any materials in its Unit, if the use of such contractor, mechanic or laborer or such materials would, in the Condominium Board's exclusive opinion, create any difficulty, work slowdown, sabotage, wild-cat strike, strike or jurisdictional dispute with other contractors, mechanics and/or laborers engaged by the Unit Owner or the Condominium Board or others, or would in any way disturb the peaceful and harmonious construction, maintenance, cleaning, repair, management, security or operation of the Building or any part thereof, or in any other building owned by Fee Owner (or an affiliate of Fee Owner or co-venturer of Fee Owner). In the event of any interference or conflict, or perceived interference or conflict, the Unit Owner, upon demand of the Condominium Board, shall cause all contractors, mechanics or laborers, or all materials causing, in the Condominium Board's sole and exclusive opinion, such interference, difficulty or conflict, to leave or be removed from the Building immediately, and the Unit Owner will be obligated to defend, save and hold the Indemnified Parties harmless from any and all loss arising thereby, including, without limitation, any reasonable attorney's fees and any claims made by contractors, mechanics and/or laborers so precluded from having access to the Building; provided, however, that the VNSNY Unit Owner's sole obligation in connection herewith shall be to indemnify and hold harmless Declarant and the Declarant Entities.

5.17.6.5 No approval of any plans or specifications by the Condominium Board or consent by the Condominium Board allowing the Unit Owner to make any improvements or any inspection of improvements made by or for the Condominium Board shall



in any way be deemed to be an agreement by the Condominium Board that the contemplated improvements comply with any Applicable Laws or insurance requirements or the certificate of occupancy for the Building, nor shall it be deemed to be a waiver by the Condominium Board of the compliance by the Unit Owner with any provision of these By-Laws.

5.17.6.6 In making any Alterations to the Unit Owner's Unit, (a) the Unit Owner must comply with the Building Rules & Regulations For Unit Owner Alterations, a current listing of which is attached hereto as Exhibit L (but subject to the provisions of Exhibit I to the Declaration), and (b) all work and materials shall be at least equal to or superior to those existing in Comparable Buildings (but subject to the provisions of Exhibit I to the Declaration with respect to the VNSNY Units).

5.17.6.7 Notwithstanding anything to the contrary set forth in this Section 5.17.6, with respect to the VNSNY Unit, the VNSNY Unit Owner's rights and obligations under this Section 5.17.6 shall be subject in all respects to the applicable provisions of Exhibit I of the Declaration.

5.17.7 Notwithstanding anything to the contrary contained in this Article 5, on or before the expiration of the Ground Lease, any Unit Owner other than the VNSNY Unit Owner (it being agreed that the restoration obligations of the VNSNY Unit Owner are as set forth in Exhibit I of the Declaration), at such Unit Owner's own cost and expense (and such Unit Owner's obligation to pay such costs and expenses shall be in addition to such Unit Owner's obligation to pay Common Charges), shall remove all telephone, data and communications equipment, wiring and components thereof installed by or on behalf of such Unit Owner, which are located inside and/or outside of such Unit Owner's Unit.

5.17.8 Notwithstanding anything to the contrary contained in this Article 5, if the VNSNY Unit Owner seeks to undertake the performance of an Alteration that requires both the consent of the Condominium Board pursuant to these By-Laws and the consent of the Fee Owner pursuant to the Ground Lease, the VNSNY Unit Owner shall simultaneously deliver the appropriate documentation (as more particularly set forth in this Article 5 and in the Ground Lease) to both the Condominium Board and the Fee Owner. If the Fee Owner has approval rights under the Ground Lease with respect to the proposed Alteration, Declarant shall ensure that (i) the Fee Owner's review of the proposed Alteration shall be coordinated with the review being conducted by the Condominium Board (so that the fees and expenses for such review shall not be duplicated) and (ii) the Fee Owner will be bound by the same response requirements (and deemed approvals, if and to the extent that the same shall be applicable) that bind the Condominium Board in accordance with the Rules and Regulations for Unit Owner Alterations attached hereto as Exhibit L.

5.17.9 Notwithstanding anything to the contrary contained in the Condominium Documents, but subject to any requirements of Applicable Laws, none of the Condominium Board, Declarant or any Declarant Entities shall diminish (except to a de minimis extent) (i) any obligation to provide any services or utilities to the VNSNY Unit in accordance with Exhibit I to the Declaration in a manner that would result in a VNSNY Adverse Impact; and/or (ii) any rights belonging to the owner of the VNSNY Unit pursuant to the terms set forth in Exhibit I to the Declaration.



5.18 **Rules and Regulations**

5.18.1 Each Unit Owner, its servants, employees, agents, visitors and licensees shall observe faithfully and comply strictly with the Rules and Regulations attached hereto and incorporated herein as Schedule A to the Declaration. The Condominium Board shall have the right from time to time to make reasonable changes in and additions to the said Rules and Regulations with the same force and effect as if they were originally attached hereto and incorporated herein, provided the Unit Owner receives written notice of such changes at least thirty (30) days prior to the effectiveness thereof and such changes do not conflict with the terms of these By-Laws and are applicable to all Unit Owners in a non-discriminatory manner. In the event of a conflict between the Rules and Regulations and the terms of these By-Laws, the terms of these By-Laws shall govern and control. Notwithstanding the foregoing, neither the Condominium Board nor Declarant shall have the right to make any modification to the Rules and Regulations resulting in a VNSNY Adverse Impact, except in compliance with VNSNY's rights and obligations under the VNSNY Standards.

5.18.2 Any failure by the Condominium Board to enforce any Rules and Regulations, now or hereafter in effect, against a Unit Owner shall not constitute a waiver of the enforceability of any such Rules and Regulations. Notwithstanding the foregoing, the Condominium Board shall use commercially reasonable efforts to apply and enforce such Rules and Regulations in a non-discriminatory manner.

5.18.3 Each Unit Owner and its employees, contractors, agents and invitees shall comply with the Rules and Regulations (but subject to the provisions of Exhibit I of the Declaration) in effect, from time to time, with regard to the Building's security system. The current Rules and Regulations (but subject to the provisions of Exhibit I of the Declaration) with regard thereto are the following:

> During normal business hours on Business Days, only persons displaying such "key tag" identification ("Keytag") being used in connection with the security system employed by the Condominium Board at such time to the lobby attendant shall be granted access to the Building. During normal business hours on Business Days, anyone not displaying the Keytag to the lobby attendant shall obtain access to the Building only (i) if that person's arrival was pre-arranged with the lobby attendant with a list of anticipated visitors, or (ii) if not on a pre-arranged list, the person's arrival to the Building can be announced via telephone and then approved by a Unit Owner. After normal business hours on Business Days, access to the Building shall only be obtained by Keytag holders, swiping their Keytag on the Keytag reader outside the Building's front doors or by utilizing the telephone link to the personnel of the security provider contracted by the Condominium Board, who will in turn call a Unit Owner's Unit to attempt to gain such Unit Owner's approval (or the approval of a permitted user thereof) for access of persons not holding a Keytag.

5.18.4 No employee of the Condominium Board or of the Condominium Board's managing agent shall have any authority to accept the keys to a Unit. The delivery

of keys to a Unit by a Unit Owner to any employee of the Condominium Board or of the Condominium Board's managing agent shall not operate to discharge any of such Unit Owner's obligations with respect to such Unit.

5.19 **Zoning Rights**

5.19.1 The Condominium Board shall have the right, and no Unit Owner (other than Declarant) shall have the right, (i) to cause all or any part of the Property and/or the zoning lot upon which the Building is located in whole or in part and/or the Building, to be combined with any other land or premises so as to constitute the combined premises into a single zoning "lot" or "development" or "enlargement" as those terms are now, or may hereafter be, defined in the Zoning Resolution of The City of New York (the "Zoning Resolution"), (ii) to cause any lot, development or enlargement at any time constituting or including all or any part of the Property, the Land or the Building to be subdivided into two or more lots, developments or enlargements, (iii) to cause development rights (whether from the Land or other premises) to be transferred to any such lot, development or enlargement, (iv) to cause other combinations, subdivisions and transfers to be effected, whether similar or dissimilar to those now permitted by law or (v) to exploit, sell, convey, lease or otherwise transfer any so called "air rights", "air space", "zoning rights" or "development rights" above or appurtenant to the Land or the Building. Each Unit Owner (other than Declarant) will, at the request of the Condominium Board, acknowledge that such Unit Owner is not a "party in interest" as defined in the Zoning Resolution, and shall not and cannot become a "party in interest" under any circumstances by virtue of its leasehold interest in its Unit. Each Unit Owner (other than Declarant) will, at the request of the Condominium Board, further acknowledge that neither the Unit Owner nor the estate or interest of the Unit Owner hereunder would be "adversely affected" (within the meaning of the Zoning Resolution) by any development of the Land or the Building or any such combined premises nor by the filing of any declaration combining all or a part of the Land or the Building with any other premises, and that the Unit Owner's estate and interest hereunder are not and would not be superior to any such declaration.

5.19.2 Notwithstanding the provisions of Section 5.19.1, above, in the event that a Unit Owner is deemed to have any of the rights disclaimed in Section 5.19.1 above, or is deemed to be a party in interest, such Unit Owner (other than Declarant) will, at the request of the Condominium Board, transfer such rights and any rights as a party in interest to the Condominium Board. In furtherance thereof, each Unit Owner (other than Declarant) will, within three (3) days after written request by the Condominium Board, execute and deliver to the Condominium Board a waiver of its right to join in a Declaration of Restrictions pursuant to Section 12-10 of the Zoning Resolution (a "Zoning Waiver"). Upon each transfer of a Unit by a Unit Owner (other than Declarant) in accordance with Article 7 hereof (with no consent thereto being implied hereby), the Proposed Transferee shall execute, acknowledge and deliver to the Condominium Board, and at any other time or times, within three (3) days after written request of the Condominium Board, the Unit Owner (other than Declarant) and each Proposed Transferee shall execute, acknowledge and deliver to the Condominium Board, (i) any further Zoning Waiver, (ii) if requested by the Condominium Board, any Declaration of Restrictions pursuant to said Section 12-10 (or any successor provision thereto), and (iii) any other instrument in form and substance



satisfactory to the parties intended to evidence the fact that such Unit Owner (or such assignee) has no right and asserts no claim, and/or has transferred to the Condominium Board any such right or claim, to participate in any way in the matters reserved to the Condominium Board pursuant to Section 5.19.1 above. If a Unit Owner (or such assignee) fails to so execute any such instrument within ten (10) days after the Condominium Board's written request therefor, such Unit Owner (or such assignee) hereby irrevocably appoints the Condominium Board its agent and attorney-in-fact, coupled with an interest, to execute and deliver the same in such Unit Owner's name.

5.19.3 Notwithstanding anything to the contrary contained in this Section 5.19, neither Declarant nor the Condominium Board shall exercise any of the zoning rights set forth herein in connection with the Building, if and to the extent that such exercise would cause a VNSNY Adverse Impact.

5.20 **Miscellaneous (VNSNY Standards)**

5.20.1 Notwithstanding anything to the contrary contained in the Declaration and these By-Laws, the VNSNY Standards set forth in Exhibit I to the Declaration shall be interpreted in all instances to give effect to the overriding principle that the provisions of the Declaration and these By-Laws shall be applied to the VNSNY Unit only to the extent that the benefits and the limitations and obligations set forth therein are not set forth in Exhibit I to the Declaration, and any provisions of the Declaration (including the provisions of these By-Laws) and the VNSNY Standards set forth in Exhibit I to the Declaration that conflict or are inconsistent shall be resolved in favor of VNSNY Standards set forth in Exhibit I to the Declaration (it being understood that the VNSNY Standards set forth in Exhibit I to the Declaration may in different instances be more extensive or more restrictive than the rights or obligations of other Unit Owners other than VNSNY and that the obligations of the Condominium Board to VNSNY be increased or decreased in some cases to the VNSNY Units as compared to such obligations to other Unit Owners).

ARTICLE 6

**MORTGAGES**

6.1 **Notice to Condominium Board.** Unit Owners shall have the right to mortgage their respective Units, but only to the extent permitted and otherwise in compliance with the terms and conditions contained in Section 6.2. Any Unit Owner who mortgages the Unit, or the holder of such mortgage (with each such holder being deemed a "Permitted Mortgagee" under the terms of the Declaration and these By-Laws), shall supply the Condominium Board with the name and address of the mortgagee, and shall file a conformed copy of the note and mortgage with the Condominium Board. Any Unit Owner who satisfies a mortgage covering the Unit shall so notify the Condominium Board, and shall file a conformed copy of the satisfaction of mortgage with the Condominium Board. The Secretary of the Condominium shall maintain such information in a book entitled 'Mortgages of Units." The terms and conditions contained in this Section 6.1 and Section 6.2 shall only apply to all Unit Owners other than Declarant.



6.2 **Restrictions on Mortgaging.** (A) No Unit Owner shall be permitted to mortgage, encumber, pledge or hypothecate its Unit unless such Unit Owner owns more than sixty (60%) percent of the Common Interest in the Common Elements of the Condominium; and (B) no Unit Owner shall execute any mortgage or other document mortgaging, encumbering, pledging or hypothecating title to its Unit until such Unit Owner shall have paid in full to the Condominium Board all unpaid Common Charges theretofore assessed against such Unit, and shall have satisfied all unpaid liens, except the liens of Permitted Mortgages imposed against such Unit; and (C) no Unit Owner shall execute any mortgage or other document mortgaging, encumbering, pledging or hypothecating title to its Unit without including therein its appurtenant interests, it being the intention to prevent any severance of such combined ownership. Any mortgage or other instrument purporting to affect one or more of such interests without including all such interests shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein.

6.3 **Notice of Default and Unpaid Common Charges**. The Condominium Board shall notify each Permitted Mortgagee, Declarant and the Fee Owner of (i) any default in the payment of Common Charges by the applicable Unit Owner, (ii) any other default beyond all cure periods by the Unit Owner of such Unit under the provisions of the Declaration or these By-Laws that may to the Condominium Board's knowledge then exist, and (iii) the commencement by the Condominium Board of any action or proceeding pursuant to Article 5 of these By-Laws.

6.4 **Performance by Permitted Mortgagees.** The Condominium Board shall accept, from any Permitted Mortgagee, payment of any sum or performance of any act required to be paid or performed by such Unit Owner pursuant to the provisions of the Declaration or these By-Laws, with the same force and effect as though paid or performed by such Unit Owner, and in such event the Permitted Mortgagee shall be entitled to an additional thirty (30) day period after expiration of applicable notice and cure periods within which to cure any monetary default by a Unit Owner hereunder and an additional thirty (30) days after expiration of applicable notice and cure periods to cure any non-monetary default; provided, however, that in the case of a non-monetary default that cannot, in the exercise of diligence, be cured within such the thirty (30) day period, the Permitted Mortgagee shall have such time as is reasonably necessary to cure such non-monetary default (including any time reasonably necessary to obtain possession of the Property covered by such Permitted Mortgage if possession is necessary to enable such Permitted Mortgagee to cure or remedy such default or event of default), provided that such Permitted Mortgagee proceeds with all due diligence to cure or remedy such breach or default and/or obtain possession. To facilitate the foregoing, for a period of thirty (30) days following the giving of notice to a Permitted Mortgagee of a default by a Unit Owner in payment of Common Charges, the Condominium Board will not commence a proceeding to foreclose its lien for said Unit Owner's nonpayment of Common Charges or other assessments. If the Permitted Mortgagee fails to cure said default within the aforesaid periods, the Condominium Board shall be free to commence a proceeding to foreclose its lien at its discretion. In the event that more than one Permitted Mortgage is secured by a Unit, the senior Permitted Mortgagee shall be entitled to take all actions permitted under this Article 6, unless all the Permitted Mortgagees otherwise designate a different Permitted Mortgagee to so act, by notice to the Condominium Board. Subject to the terms and conditions set forth in any loan documents executed in connection with a Permitted Mortgage then encumbering the Declarant Office Units, or the Declarant Retail Unit (and except as otherwise provided in said loan documents), the Permitted



Mortgagee shall have a blanket, perpetual and non-exclusive easement to (i) enter the Condominium or any part thereof (upon reasonable prior written notice to the Condominium Board and subject to the rights of Unit Owners and their Permitted Users) to inspect the condition and repair of the Common Elements, and (ii) to inspect the books and records of the Condominium. The permission of the Unit Owners shall not be required to exercise the foregoing rights.

6.5 **Intentionally Omitted.**

6.6 **Rights of Permitted Mortgagees.**

6.6.1 Any insurance proceeds or awards otherwise payable, pursuant to the terms of the Declaration or these By-Laws, to Declarant (and not the Condominium Board) shall, upon notice from a Permitted Mortgagee, be delivered instead to Declarant's Permitted Mortgagee.

6.6.2 If Declarant shall fail to appoint an arbitrator or otherwise fail to take any action as may be required or permitted under the Declaration and these By-Laws with respect to Arbitration within the time periods applicable thereto, such appointment or action as otherwise would have been permitted by Declarant may be taken by its Permitted Mortgagee, and such appointment and action shall be permitted in all respects by the other Unit Owners and the Condominium Board.

6.6.3 If more than one Permitted Mortgagee having a lien on a Unit exercises any of the rights afforded by Article 6 of these By-Laws, only that Permitted Mortgagee, to the exclusion of all other Permitted Mortgagees, whose Permitted Mortgage is most senior in lien with respect to such Unit shall be recognized by the other Unit Owners and the Condominium Board as having exercised such right, for so long as such Permitted Mortgagee shall be diligently exercising its rights under these By-Laws with respect thereto.

6.6.4 Subject to the terms and conditions set forth in any loan documents executed in connection with a Permitted Mortgage then encumbering a Declarant Unit (and except as otherwise provided in said loan documents), the Condominium Board shall not exercise any material approval, consent or voting right to which it is entitled under the Condominium Documents without obtaining the Permitted Mortgagee's prior written consent and, accordingly, in such instances, the Condominium Board's approval, consent or vote under the Condominium Documents shall not be deemed effective or given unless the Permitted Mortgagee has so consented thereto.

6.6.5 During the continuance of an event of default under a Permitted Mortgage on a Declarant Unit, the applicable Permitted Mortgagee shall have the rights and privileges that Declarant has as though the Permitted Mortgagee were in fact the owner of the Declarant Unit, which rights and privileges shall include, without limitation, all voting rights accruing to Declarant under the terms of the Condominium Documents. Upon the occurrence and continuance of an event of default under a Permitted Mortgage on the Declarant Unit, and to the extent so provided in said loan documents, the applicable Permitted Mortgagee may vote in place of Declarant and may exercise any and all of

Declarant's rights. To the extent required by said loan documents, the Condominium Board will accept the resignation of the members of the Condominium Board, which shall be tendered at the request of the Permitted Mortgagee upon the continuance of an event of default under a Permitted Mortgage on the Declarant Unit, and the Condominium Board shall accept the appointees to the Condominium Board designated by the Permitted Mortgagee.

6.6.6 Subject to the terms and conditions set forth in any loan documents executed in connection with a Permitted Mortgage then encumbering the Declarant Unit (and except as otherwise provided in said loan documents), the Condominium Board shall not amend, supplement, terminate or modify the Condominium Documents, including, but not limited to, changing the boundaries of any Unit, changing any ownership percentage interest or votes allocated to a Unit or changing the rights of Declarant to appoint members to the Condominium Board, or permit the Condominium to be terminated, withdrawn from a condominium regime, partitioned, subdivided, expanded or otherwise modified, in each case without the prior written consent of the applicable Permitted Mortgagee.

6.6.7 Declarant shall notify each Permitted Mortgagee and the Fee Owner of any Condominium Board or Declarant default that continues beyond all cure periods under the provisions of the Declaration or these By-Laws that may to Declarant's knowledge then exist.

6.6.8 The Condominium Board shall accept, from any Permitted Mortgagee, payment of any sum or performance of any act required to be paid or performed by the Declarant pursuant to the provisions of the Declaration or these By-Laws, with the same force and effect as though paid or performed by the Declarant, and in such event the Permitted Mortgagee shall be entitled to an additional thirty (30) day period after expiration of applicable notice and cure periods within which to cure any monetary default by the Declarant hereunder and an additional thirty (30) days after expiration of applicable notice and cure periods to cure any non-monetary default; provided, however, that in the case of a non-monetary default that cannot, in the exercise of diligence, be cured within such the applicable thirty (30) day period, the Permitted Mortgagee shall have such time as is reasonably necessary to cure such non-monetary default (including any time reasonably necessary to obtain possession of the Property covered by such Permitted Mortgage if possession is necessary to enable such Permitted Mortgagee to cure or remedy such default or event of default), provided that such Permitted Mortgagee proceeds with all due diligence to cure or remedy such breach or default and/or obtain possession. If the Permitted Mortgagee fails to cure said default within the aforesaid periods, the Condominium Board shall be free to exercise its rights hereunder. In the event that more than one Permitted Mortgage is secured by a Declarant Unit, the senior Permitted Mortgagee shall be entitled to take all actions permitted under this Article, unless all the Permitted Mortgagees otherwise designate a different Permitted Mortgagee to so act, by notice to each Unit Owner.

6.6.9 Notwithstanding anything to the contrary contained in this Section 6.6, no Permitted Mortgagee will have the right to take any action in connection with the Building, if and to the extent that taking such action would cause a VNSNY Adverse



Impact, except in compliance with VNSNY's rights and obligations under the VNSNY Standards.

6.6.10 Notwithstanding anything to the contrary set forth in this Section, Wells Fargo Bank, National Association, as administrative agent, having an address at 150 East 42nd Street, 37th Floor, New York, New York 10017, which as of the date of the recordation of this Declaration holds a mortgage on the Property, shall be deemed a Permitted Mortgagee, along with its successors and/or assigns, but only if such mortgage enters into a subordination, nondisturbance and attornment agreement with the Condominium (i) in the form of Exhibit E attached to the Ground Lease, or (ii) on such mortgagee's standard form that shall contain the same substantive protections as those contained in the form annexed as Exhibit E to the Ground Lease, but only if any variations from such form annexed to the Ground Lease shall not result in a VNSNY Adverse Impact.

ARTICLE 7

**SELLING AND LEASING OF UNITS**

7.1 **Selling and Leasing.** Except as otherwise set forth in Exhibit I to the Declaration, no Unit Owner other than Declarant (but subject to the provisions of Section 7.2 below) or its designees may sell or lease his or her Unit without complying with the following provisions.

7.1.1 Right of First Refusal. Any Unit Owner who receives a bona fide offer to (a) purchase his Unit together with its appurtenant interests in the Common Elements or (b) lease his Unit (such offer to purchase or lease a Unit, as the case may be, is called an "Outside Offer," the party making any such Outside Offer is called "Outside Offeror" and the Unit Owner to whom the Outside Offer is made is called an "Offeree Unit Owner"), which he intends to accept, shall give notice, together with a copy of a signed agreement between the Outside Offeror and the Offeree Unit Owner, by certified or registered mail to the Condominium Board or by personal delivery upon any person so designated by the Condominium Board, of the receipt of such Outside Offer. Said notice shall also state the name and address of the Outside Offeror, the terms of the proposed transaction and such other information as the Condominium Board may reasonably require. The giving of such notice to the Condominium Board shall constitute an offer by such Unit Owner to sell his Unit together with its appurtenant interest in the Common Elements or to lease his Unit to the Condominium Board, or its designee, corporate or otherwise, on behalf of all other Unit Owners, upon the same terms and conditions as contained in such Outside Offer and shall also constitute a representation and warranty by the Unit Owner who has received such Outside Offer, to the Condominium Board on behalf of all Unit Owners, that such Unit Owner believes the Outside Offer to be bona fide in all respects. The Offeree Unit Owner shall submit in writing such further information with respect thereto as the Condominium Board may reasonably request. Not later than thirty (30) days after receipt of such notice together with such further information as may have been requested, the Condominium Board may elect, by sending written notice to such Offeree Unit Owner before the expiration of said thirty (30) day period, by certified or registered mail, to purchase such Unit together with its appurtenant interest in the Common Elements or to



lease such Unit, as the case may be (or to cause the same to be purchased or leased by its designee, corporate or otherwise), on behalf of all Unit Owners, upon the same terms and conditions as contained in the Outside Offer and as stated in the notice from the Offeree Unit Owner.

7.1.2 Condominium Board Acceptance. If the Condominium Board shall timely elect to purchase or lease such Unit together with its appurtenant interests in the Common Elements, or to cause the same to be purchased or leased by its designee, corporate or otherwise, title shall close or a lease shall be executed at the office of the attorneys for the Condominium Board, in accordance with the terms of the Outside Offer, within sixty (60) days after the giving of notice by the Condominium Board of its election to accept such offer. At the closing, the Offeree Unit Owner, if such Unit together with its appurtenant interests in the Common Elements is to be sold, shall convey the same to the Condominium Board, or to its designee, on behalf of all other Unit Owners, by deed in the form required by Section 339-o of the Real Property Law of the State of New York, with all tax and/or documentary stamps affixed at the expense of such Unit Owner, who shall also pay all other taxes arising out of such sale. Real estate taxes and Common Charges shall be apportioned between the Offeree Unit Owner and the Condominium Board, or its designee, corporate or otherwise, as of the closing date. If such Unit is to be leased, the Offeree Unit Owner, as landlord, and the Condominium Board, or its designee, corporate or otherwise, as tenant, shall execute a lease covering such Unit for the rental and term contained in such Outside Offer.

7.1.3 Condominium Board's Waiver. If the Condominium Board or its designee shall fail to accept such offer within thirty (30) days after receipt of notice, as aforesaid, the Condominium Board shall be deemed to have waived its right of first refusal, but such waiver shall only be effective if Common Charges through and including the date of closing of title to such Unit have been paid, and such Offeree Unit Owner may consummate the sale or lease to the Outside Offeror. In the event that the Offeree Unit Owner does not, within ninety (90) days following the expiration of said thirty (30) day period consummate the sale or lease of such Unit to the Outside Offeror, then, should such Offeree Unit Owner thereafter elect to sell such Unit together with its appurtenant interest in the Common Elements or to lease such Unit, as the case may be, the Offeree Unit Owner shall be required to again comply with all the terms and provisions of this Article 8.1.

7.1.4 Acceptance of Declaration and By-Laws. Any deed to an Outside Offeror shall be deemed to provide that the acceptance thereof by the grantee shall constitute an affirmative acceptance and assumption of the provisions of the Declaration, these By-Laws and the Rules and Regulations, as the same may be amended from time to time.

7.1.5 Intentionally deleted.

7.1.6 Default. Any purported sale or lease of a Unit in violation of this Article 7.1 shall be voidable at the election of the Condominium Board, and if the Condominium Board shall so elect, the Unit Owner shall be deemed to have authorized and empowered the Condominium Board to institute legal proceedings to evict the purported



tenant (in case of an unauthorized leasing), in the name of the said Unit Owner as the purported landlord. Such Unit Owner shall reimburse the Condominium Board for all expenses (including attorneys' fees and disbursements) incurred in connection with such proceedings.

7.2 Notwithstanding anything to the contrary set forth herein, Declarant's and the Condominium Board's rights under this Article 7 shall be subject in all respects to the provisions pertaining to competitors set forth in the VNSNY Transaction Documents.

7.3 **No Severance of Ownership**. No Unit Owner shall execute any deed, mortgage or other instrument conveying or mortgaging title to his Unit without including therein its appurtenant interests in the Common Elements, it being the intention to prevent any severance of such combined ownership. Any such deed, mortgage or other instrument purporting to affect one or more of such interests without including all such interests shall be deemed and taken to include the interest or interests so omitted even though the latter shall not be expressly mentioned or described therein. No part of the appurtenant interests in the Common Elements of any Unit may be sold, conveyed or otherwise disposed of, except as part of a sale, conveyance or other disposition of the Unit to which such interests are appurtenant or as part of a sale, conveyance or other disposition of such part of the appurtenant interests in the Common Elements of all Units.

7.4 **Release by Condominium Board of Right of First Refusal**. The right of first refusal contained in Article 7.1 may be released or waived by the Condominium Board only in the manner provided herein. In the event the Condominium Board shall release or waive its right of first refusal as to any Unit, such Unit together with its appurtenant interests in the Common Elements may be sold, conveyed or leased, free and clear of the provisions of Article 7.1, except that such release or waiver shall only be effective if Common Charges through and including the date of closing of title to such Unit have been paid.

7.5 **Certificate of Termination of Right of First Refusal.** A certificate executed and acknowledged by the Secretary or Assistant Secretary of the Condominium stating either that the provisions of Article 7.1 have been met by a Unit Owner or that the right of first refusal contained therein has been duly released or waived by the Condominium Board subject to the provisions of Article 7.4, and that as a result thereof the rights of the Condominium Board thereunder have terminated, shall be conclusive upon the Condominium Board and the Unit Owners in favor of all persons who rely on such certificate in good faith. The Condominium Board shall furnish such certificate upon request to any Unit Owner in respect to whom the provisions of Article 7.1 have, in fact, terminated. The Condominium Board may establish a reasonable fee for such certificate from time to time.

7.6 Intentionally deleted.

7.7 Intentionally deleted.

7.8 **Unauthorized Sales or Leases of Units.** Any purported sale, transfer, lease or occupancy of a Unit consummated in violation of this Article 7 shall be voidable at the election of the Condominium Board, and if the Condominium Board shall so elect, the Unit Owner shall

be deemed to have authorized and empowered the Condominium Board to institute legal proceedings to eject the purported purchaser or transferee (in case of an unauthorized sale or transfer) or to evict the purported tenant or occupant (in case of an unauthorized leasing or occupancy agreement), in the name of the said Unit Owner as the owner or landlord, as the case may be and have record title restored, as required. Said Unit Owner shall reimburse the Condominium Board for all expenses (including reasonable attorneys' fees and disbursements) incurred in connection with such proceedings, and such expenses shall be a lien on such Unit until said expenses are paid and/or satisfied.

7.9 **Exceptions.**

7.9.1 The provisions of this Article 7 shall not apply with respect to any sale, transfer, lease or occupancy of any Unit together with its appurtenant Common Interest by (a) Declarant or any Affiliate of Declarant, (b) the Condominium Board, (c) any proper officer conducting the sale of a Unit in connection with the foreclosure of a mortgage or other lien covering such Unit or delivering a deed in lieu of such foreclosure, (d) a Permitted Mortgagee or such Unit Owner's nominee, who has acquired title to any Unit at any foreclosure sale of such Unit Owner's Permitted Mortgage or by deed in lieu thereof delivered in a bona fide transaction, (e) a Permitted Mortgagee who acquires title to a Unit pursuant to the remedies contained in its Permitted Mortgage, (f) any Unit Owner to Declarant or any Affiliate of Declarant, or (g) any transfer or lease permitted under the terms of Exhibit I to the Declaration. Further to the foregoing, upon the acquisition of any Unit together with its appurtenant Common Interest (through foreclosure, power of sale, deed in lieu of foreclosure or otherwise) by a Permitted Mortgagee or such Permitted Mortgagee's nominee or designee or by any third party (including, without limitation, any third party transferee obtaining title from a Permitted Mortgagee or Permitted Mortgagee's nominee or designee) (with each of the foregoing being referred to herein as a "Successor Owner"), such Successor Owner shall be deemed to be a successor in interest to all of Declarant's rights and interests under the Condominium Documents.

7.10 **Conditions Precedent.**

7.10.1 No sale or transfer of a Unit shall be effective or valid unless and until the Unit Owner delivers to the Condominium Board duplicate originals of the instrument of sale or transfer duly executed and acknowledged (wherein the purchaser or transferee assumes the performance of the Unit Owner's obligations under these By-Laws and the Declaration) and all related and accompanying documents; provided, however, that if the transferor is then current in all of its monetary obligations under these By-Laws and the Declaration, the aforesaid assumption by the purchaser or transferee shall be applicable only to obligations arising following such sale or transfer.

7.10.2 No lease or other occupancy agreement of all or any part of a Unit or modification of a lease or other occupancy agreement shall be effective or valid unless and until the Unit Owner delivers to the Condominium Board (x) duplicate originals of the instrument of the lease or other occupancy agreement (containing the provisions required by this Article 7 and all related and accompanying documents and (y) a certificate of insurance evidencing that (a) the Condominium Board is an additional insured under the insurance



policies required to be maintained by Unit Owners of the Building pursuant to Section 5.2 of these By-Laws, and (b) there is in full force and effect, the insurance otherwise required by such Section 5.2. No leasing or other occupancy shall be for a term (including any renewal or extension options contained in the lease or other occupancy agreement) ending later than one day prior to the expiration date of the Ground Lease. Any lease shall be subject and subordinate to these By-Laws, the Declaration and the Ground Lease, and shall contain substantially the following provisions (modified as appropriate to be applicable to subleases or other occupancy agreements):

"In the event of a default under any underlying lease of all or any portion of the premises demised hereby that results in the termination of such lease, the tenant hereunder shall, at the option of the Condominium Board, attorn to and recognize the Condominium Board as landlord hereunder and shall, promptly upon the Condominium Board's request, execute and deliver all instruments necessary or appropriate to confirm such attornment and recognition. Notwithstanding such attornment and recognition, the Condominium Board shall not (A) be liable for any previous act or omission of the landlord under this lease, (B) be subject to any offset that shall have accrued to the tenant hereunder against said landlord, or (C) be bound by any modification of this lease or by any prepayment of more than one month's rent, unless such modification or prepayment shall have been previously approved in writing by the Condominium Board. The tenant hereunder hereby waives all rights under any present or future law to elect, by reason of the foreclosure of any lien on the applicable Unit or other termination of any possessory rights with respect to the applicable Unit, to terminate this lease or surrender possession of the premises demised hereby; and

"This lease may not be assigned or modified or the premises demised hereunder further sublet, in whole or in part, without the prior written consent of the Condominium Board in accordance with the terms of these By-Laws."

7.11 **Subsequent Transactions**. The Condominium Board's waiver of its right of first refusal in connection with any sale, transfer, lease or other occupancy agreement shall neither release the Unit Owner from its liability for the performance of such Unit Owner's obligations under these By-Laws or the Declaration nor constitute the Condominium Board's waiver of its right of first refusal in connection with any further sale, transfer, lease or other occupancy of the Unit. If a lease or other occupancy agreement to which the Condominium Board has issued a waiver of its right of first refusal is assigned or is modified in any material manner, then all of the procedures and requirements set forth in this Article 7 shall be deemed to apply to such assignment or modification as if the same were the initial lease or other occupancy transaction. If all or any portion of the Unit that has been leased is sublet without the waiver of the Condominium Board's right of first refusal in each instance obtained (in such case where the waiver of the Condominium Board would have been required had such sublease been a lease), then the Unit Owner shall immediately terminate such sublease, or arrange for the termination thereof, and proceed expeditiously to have the occupant thereunder dispossessed. Without limiting the generality of the foregoing, any subleasing of any Unit (or portion thereof) of any tier shall be subject to the same procedures and requirements set forth in this Article 7 that would have applied had such sublease transaction been a direct lease transaction.



7.12 **Costs.** The Unit Owner shall pay to the Condominium Board, promptly upon demand therefor, all reasonable out-of-pocket costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the Condominium Board in connection with any sale or transfer of its Unit or the lease or other occupancy agreement, modification of such lease or other occupancy agreement, or any assignment, subletting or further occupancy of all or any part of its Unit, whether proposed or consummated.

7.13 **Exculpation and Indemnity.** The Condominium Board shall have no liability to a Unit Owner (or to any broker engaged by such Unit Owner) or to the Proposed Transferee if the Condominium Board shall not provide a waiver of its right of first refusal to a Proposed Transfer, and such Unit Owner shall indemnify, defend and hold the Condominium Board and all Indemnified Parties harmless from and against any and all loss, liability, damages, cost and expense (including, without limitation, reasonable attorneys' fees and disbursements), resulting from any claims that may be made against the Condominium Board by the Proposed Transferee or by any brokers or other persons claiming a commission or similar compensation in connection with the Proposed Transfer; provided, however, that the VNSNY Unit Owner's sole obligation in connection herewith shall be to indemnify and hold harmless Declarant and the Declarant Entities.

7.14 **Transfer of Declarant Rights.** Notwithstanding anything to the contrary set forth herein, the Declarant may transfer any rights held by Declarant under the Condominium Documents and any special rights held as Declarant Unit Owner to any person that purchases all (but not less than all) of the Declarant Units.

ARTICLE 8

CONDEMNATION

8.1 **Repair and Restoration.** If the whole or any substantial part (i.e., twenty five (25%) percent or more of the aggregate rentable area of the Building) of the Building shall be condemned by eminent domain or acquired by private purchase in lieu thereof, for any public or quasi-public purpose (collectively, a "Condemnation"), or if twenty five (25%) percent or more of the Units in the Condominium shall become subject to a Condemnation, the Condominium Board shall have the right to terminate the Condominium on the date of the vesting of title through such proceeding or purchase, in which case the proceeds of any award shall be distributed to the Fee Owner. The Unit Owners shall have no claim against the Condominium, the Condominium Board, the Declarant or the Fee Owner for the value of their respective Units, nor shall the Unit Owners be entitled to any part of the condemnation award or private purchase price.

8.2 **Damages.** Damages awarded to any Unit Owner for any Condemnation shall be promptly paid over and shall belong to the Fee Owner, whether or not the damages are awarded as compensation for loss or reduction in value of the Building; however, nothing shall restrict or limit a Unit Owner from asserting a claim for any additional damages resulting from the Condemnation for any unamortized Unit Owner improvements paid for by the Unit Owner, the interruption of the Unit Owner's business, the Unit Owner's moving expenses, or the Unit Owner's Fixtures and Unit Owner's Property, provided that such claim does not reduce the Fee Owner's award.



8.3 **Unit Re-Purchase.** Notwithstanding anything to the contrary contained in this Article 8, each Unit Owner shall have the right (i) to require the Declarant to repurchase the relevant Unit for a purchase price of $10 in the event that (x) either (a) the Condominium Board shall not exercise the Condominium termination right set forth in Section 8.1 above, if applicable, or (b) the conditions set forth in Section 8.1 above that would allow the Condominium Board to terminate the Condominium shall not have occurred, and (y) a portion of such Unit Owner's Unit in excess of twenty five (25%) percent of the aggregate area thereof shall become subject to a Condemnation, but only if the Unit Owner shall reasonably determine that it is not in the Unit Owner's economic interest to continue the Unit Owner's occupancy of its Unit as a result of such Condemnation, and (ii) to seek an award (and retain any award that the Unit Owner is successful in obtaining) from the condemning authority for any damages suffered by the Unit Owner in connection with such Condemnation, provided that such claim does not reduce the Fee Owner's award.

8.4 **Adjustment of Common Interest.** If all or a portion of any Unit shall be taken by Condemnation, and the Condominium is not terminated as set forth above in this Article 8, the Common Interest appurtenant to each Unit remaining after such taking shall be adjusted as follows: (a) if one Unit is taken in its entirety, the Common Interest appurtenant to the remaining Units shall be increased in proportion to the existing Common Interests of such Units to 100% in the aggregate; and (b) if a portion of any Unit (a "Partially Taken Unit") is so taken and any other Units (a "Retained Unit") are not taken, then each Partially Taken Unit shall, for the purpose of calculation only, be treated as if it had been divided prior to such taking into two (2) Units, one of which (the "Non-Taken Unit") having appurtenant thereto a Common Interest equal to the product of the Common Interest of the Partially Taken Unit and a fraction, the numerator of which is the floor area in square feet of the Non-Taken Unit and the denominator of which is the floor area in square feet of the Partially Taken Unit, and the other of which (the "Taken Unit") having appurtenant thereto a Common Interest equal to the product of the Common Interest of the Partially Taken Unit and a fraction, the numerator of which is the floor area in square feet of the Taken Unit and the denominator of which is the area in square feet of the Partially Taken Unit (the "Taken Common Interest"). The Taken Common Interest shall be allocated among the Retained Units and the Non-Taken Units in proportion to their respective Common Interests prior to such reallocation.

8.5 **Self-Contained Unit**. If all or a portion of any Unit shall be taken by Condemnation, and the Condominium is not terminated as set forth above in this Article 8, the Condominium Board shall (or shall cause Fee Owner to) restore such Unit to a self-contained unit (with the cost thereof not to be included in Common Charges), and, with respect to that portion of the Unit so taken, such Unit Owner's ownership shall cease and terminate from the date of title vesting in such proceeding (and such Unit Owner's obligation to pay Common Charges and Special Assessments shall be equitably apportioned from and after such date).

8.6 **Condominium Repairs.** If all or a portion of the Property shall be taken by Condemnation, and the Condominium is not terminated as set forth above in this Article 8, the Condominium Board shall (or shall cause Fee Owner to) make such repairs as the Condominium Board (or the Fee Owner) shall reasonably deem necessary in connection therewith (with the cost thereof not to be included in Common Charges).

8.7 **Temporary Taking.** Subject to the provisions of Exhibit I to the Declaration, in the event of a temporary taking (i.e., less than one (1) year) of the use of a Unit (or a portion thereof), the affected Unit Owner shall not be released from or with respect to any of such Unit Owner's obligations under the Declaration or these By-Laws (including, without limitation, the obligation to pay Common Charges and Special Assessments), but the Condominium Board shall assign to such Unit Owner any award made for such temporary taking of the use of such Unit (or portion thereof). Notwithstanding the foregoing, in the case of VNSNY, if the amount of the award shall be insufficient to compensate VNSNY in full for the Common Charges payable by VNSNY during the period of such taking, VNSNY shall be entitled to an abatement of Common Charges, but only to the extent of such deficiency (which abated amount shall be paid by Declarant as a Special Assessment).

ARTICLE 9

**RECORDS**

9.1 **Records.** The Condominium Board or the managing agent for the Condominium Board, if any, shall keep detailed records of the actions of the Condominium Board, minutes of the meetings of the Condominium Board, and financial records and books of account with respect to the activities of the Condominium Board, including a listing of all receipts and expenditures. Unit Owners shall not have any right to challenge or audit such financial records or books of account except as expressly set forth in Section 5.1 of these By-Laws, and, by acceptance of a deed to their respective Units, all Unit Owners are deemed to waive any other rights to challenge or audit such financial records or books of account, to the extent such waiver is permitted by Applicable Law.

9.2 **Availability of Documents.** Copies of the Declaration, these By-Laws, the Rules and Regulations and the Floor Plans, as the same may be amended from time to time, shall be maintained at the office of the Condominium Board and shall be available for inspection by Unit Owners and their authorized agents during reasonable business hours.

ARTICLE 10

**ARBITRATION**

10.1 **General Procedure.** Any arbitration provided for in the Declaration or these By-Laws shall be conducted in accordance with the provisions of this Article 10. Arbitration will be conducted before one impartial arbitrator in New York City by the American Arbitration Association or any successor organization thereof, in accordance with its rules then in effect, and the decision rendered in such arbitration will be binding upon the parties and may be entered in any court having jurisdiction. In the event that the American Arbitration Association is not then in existence and has no successor, any arbitration hereunder will be conducted in New York City before one impartial arbitrator appointed, on application of any party, by any justice of the highest court of appellate jurisdiction located in the County of New York having jurisdiction over the matter. The decision of the arbitrator so chosen will be given within ten (10) days after such arbitrator's appointment. Any arbitrator appointed or selected in connection with any arbitration under this Article 10 will be a lawyer or real estate owner, developer, or manager



familiar with office condominium properties and having general legal or real estate experience, as the case may be, of not less than fifteen years.

10.2 **Agreement by Parties.** The parties to any dispute under the Declaration and these By-Laws (including disputes between a Unit Owner and the Condominium Board, and disputes between Unit Owners involving the Declaration and these By-Laws) agree that such dispute shall be submitted to Arbitration as set forth in Section 10.3 below, whether or not the provisions specifically calls for Arbitration of disputes. However, by mutual agreement between them, parties may vary any of the provisions of Section 10.1 with respect to the Arbitration of such dispute, or may agree to resolve their dispute in any other manner, including, without limitation, the manner set forth in Section 3031 of the New York Civil Practice Law and Rules and known as the "New York Simplified Procedure for Court Determination of Disputes." Notwithstanding anything to the contrary contained in this Article 10, the Condominium Board reserves the right to elect whether any dispute relating to (i) the payment of any monies from a Unit Owner to the Condominium Board or any of the Indemnified Parties, (ii) the termination of the Condominium, or (iii) the termination of any right of a Unit Owner (or any Person claiming by, through or under such Unit Owner) to occupy a Unit or any portion thereof shall be resolved by Arbitration or through any courts located in the City of New York that may have jurisdiction over such dispute.

10.3 **Expedited Arbitration Proceeding.** Any dispute subject to Arbitration shall be submitted to an "Expedited Arbitration Proceeding," which shall be a binding arbitration proceeding conducted in The City of New York under the Commercial Arbitration Rules of the AAA and administered pursuant to the Expedited Procedures provisions thereof; provided, however, that with respect to any such arbitration, (a) the list of arbitrators referred to in Section E-5(b) thereof will be returned within five (5) days from the date of mailing; (b) the parties will notify the AAA by telephone, within four (4) days, of any objections to the arbitrator appointed and will have no right to object if the arbitrator so appointed was on the list submitted by the AAA and was not objected to in accordance with Section E-5(b) as modified by clause (a) above; (c) the notification of the hearing referred to in Section E-8 will be four (4) days in advance of the hearing; (d) the hearing will be held within seven (7) days after the appointment of the arbitrator; (e) the decision of the arbitrator will be final and binding on the parties; and (f) the arbitrator will not have been employed by either party (or their respective affiliates) during the period of three (3) years prior to the date of the Expedited Arbitration Proceeding.

10.4 **Costs and Expenses.** The arbitrator will determine the extent to which each party is successful in any arbitration proceeding conducted pursuant to this Article in addition to rendering a decision on the dispute submitted. If the arbitrator determines that one party is entirely unsuccessful, such party will pay all of the fees of such arbitrator. If the arbitrator determines that both parties are partially successful, each party will be responsible for such arbitrator's fees only to the extent such party is unsuccessful (e.g., if a party is eighty percent (80%) successful and the other party is twenty percent (20%) successful, then the party that is eighty percent (80%) successful will be responsible for twenty percent (20%) of such arbitrator's fees, and the party that is twenty percent (20%) successful will be responsible for eighty percent (80%) of such arbitrator's fees). Each disputant will bear the fees and expenses of its own counsel and expert witnesses, except that the other party shall be responsible therefor to the extent that such other party shall be deemed unsuccessful in accordance with the preceding



provisions. All costs and expenses paid or incurred by the Condominium Board in connection with any arbitration held hereunder, including, without limitation, the fees and expenses of counsel and expert witnesses, shall not be included in Common Expenses.

10.5 **Ground Lease Exceptions.** Notwithstanding any other provision contained herein to the contrary, this Article 10 shall not require or permit the use of Arbitration for a dispute between certain parties where arbitration is not available under the Ground Lease with respect to either such parties or such dispute. A determination that is made with respect to the rights and obligations of a party pursuant to the Ground Lease (whether by Arbitration under the Ground Lease or otherwise) shall be deemed binding as a determination of such obligation under the Declaration (and these By-Laws) and shall not create the availability of separate Arbitration of such disputes under the Declaration (and these By-Laws).

ARTICLE 11

**CERTAIN REMEDIES**

11.1 **Self Help.** If any Unit Owner shall violate or breach any of the provisions of the Declaration and these By-Laws on such Unit Owner's part to be observed or performed, including, without limitation, any breach of Unit Owner's obligation to paint, decorate, Maintain, repair or replace its Unit pursuant to the terms of the Declaration and these By-Laws, and shall fail to cure such violation or breach within fifteen (15) days after receipt of written notice of the same from the Condominium Board, the Condominium's managing agent, or Declarant or Fee Owner (or, with respect to any violation or breach of the same not reasonably susceptible to cure within such period, to commence such cure within such 15-day period and, thereafter, to prosecute such cure with due diligence to completion), the Condominium Board shall have the right, on five (5) days' notice (except in the case of an Emergency, in which case prior notice shall be required only if and to the extent that such prior notice is reasonable under the circumstances), to enter such Unit Owner's Unit, and summarily to abate, remove, or cure such violation or breach without thereby being deemed guilty or liable in any manner of trespass. In addition, in the event that the Condominium Board shall determine that the abatement, removal, or cure of any such violation or breach is immediately necessary for the preservation or safety of the Building or for the safety of the occupants of the Building or other individuals or is required to avoid the suspension of any necessary service in the Building, the Condominium Board may take such action immediately, without allowing said Unit Owner any period of time within which to cure or to commence to cure such violation or breach, and with only such prior notice as shall be reasonable under the then prevailing circumstances. Each Unit Owner shall be entitled to have a representative present at all times when the Condominium Board accesses such Unit Owner's Unit, but may waive such right in writing at any time. In the event that the Condominium Board requires access to such Unit Owner's Unit in an Emergency situation, then such Unit Owner shall be entitled to have its representative present during such access (provided that such Unit Owner makes such representative available), but such entitlement shall not be construed to change the Condominium Board's notice obligation applicable to its access to the Unit in the case of an Emergency.



11.2 **Right of Injunction.**

11.2.1 In addition to the remedies set forth in Section 11.1 above, if any Unit Owner shall violate or breach any of the provisions of the Declaration and these By-Laws on such Unit Owner's part to be observed or performed, the Condominium Board shall have the right to enjoin, abate, or remedy the continuance or repetition of any such violation or breach by appropriate proceedings brought either at law or in equity, provided that the Condominium Board gives the Unit Owner written notice that such violation exists, that repairs or replacements are necessary and that the Condominium Board will complete such repairs or replacements in the event the Unit Owner does not promptly act or complete the repairs or replacements.

11.2.2 Furthermore, the violation or breach of any of the terms of the Declaration and these By-Laws with respect to any rights, easements, privileges, or licenses granted to Declarant or a Unit Owner shall give to Declarant or the Condominium Board the right to enjoin, abate, or remedy the continuation or repetition of any such violation or breach by appropriate proceedings brought either at law or in equity in accordance with the terms of the Declaration and these By-Laws.

11.3 **Remedies Cumulative.** With the exception of those instances where the Condominium Documents state that the remedies available to the Condominium Board or Declarant are "exclusive" (or "sole" or words of the same effect), the remedies specifically granted to the Condominium Board or to Declarant in this Article 11 or elsewhere in the Declaration and these By-Laws shall be cumulative, shall be in addition to all other remedies obtainable at law or in equity and may be exercised at one time or at different times, concurrently or in any order, in the sole discretion of the Condominium Board or Declarant, as the case may be. Further, the exercise of any remedy shall not operate as a waiver, or preclude the exercise, of any other remedy.

11.4 **Costs and Expenses.** All sums of money expended, and all costs and expenses incurred, pursuant to the terms of Article 11 hereof by the Condominium Board or Declarant in connection with the abatement, enjoinment, removal, or cure of any violation, breach, or default committed by a Unit Owner, shall be immediately payable by such Unit Owner to the Condominium Board or Declarant, as the case may be, which amount shall, in either event, bear interest (to be computed from the date expended) at the rate of 2% per month (but in no event in excess of the maximum rate chargeable to such Unit Owner pursuant to Applicable Law). All sums payable by a Unit Owner to the Condominium Board pursuant to the terms of this Section shall, for all purposes hereunder, constitute Common Charges payable by such Unit Owner.

11.5 **Consequential Damages.** Notwithstanding anything in this Article 11 to the contrary, in no event shall any party be liable for special, punitive or consequential damages.

ARTICLE 12

**MISCELLANEOUS**

12.1 **Waiver.** No provision contained in these By-Laws or the Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches that may occur.

12.2 **Captions.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these By-Laws nor the intent of any provision hereof.

12.3 **Certain References.**

12.3.1 A reference in these By-Laws to any one gender, masculine, feminine or neuter, includes the other two, and the singular includes the plural, and vice versa, unless the context otherwise requires.

12.3.2 The terms "herein," "hereof" or "hereunder" or similar terms used in these By-Laws refer to these entire By-Laws and not to the particular provision in which the terms are used, unless the context otherwise requires.

12.3.3 Unless otherwise stated, all references herein to Articles, Sections or other provisions are references to Articles, Sections or other provisions of these By-Laws.

12.3.4 Unless otherwise stated, all references herein to the Declaration or the By-Laws shall be deemed to be references to such documents as same may be amended from time to time.

12.4 **Severability.** Subject to the provisions of the Declaration, if any provision of these By-Laws is invalid or unenforceable as against any person, party or under certain circumstances, the remainder of these By-Laws and the applicability of such provision to other persons, parties or circumstances shall not be affected thereby. Each provision of these By-Laws shall, except as otherwise herein provided, be valid and enforced to the fullest extent permitted by law. If any term, covenant, condition or provision of these By-Laws is found invalid or unenforceable to any extent, by a final judgment or award that shall not be subject to change by any appeal, then any Unit Owner or the Condominium Board may initiate an arbitration in accordance with the provisions of Article 10 for the purpose of requesting the arbitrators to devise a valid and enforceable substitute term, covenant, condition or provision for these By-Laws which shall as nearly as possible carry out the intention of the parties with respect to the terms, covenant, condition or provisions theretofore found invalid or unenforceable.

12.5 Intentionally deleted.

12.6 **Successors and Assigns.** Except as set forth herein or in the Declaration to the contrary, the rights and/or obligations of any Unit Owner or its designee as set forth herein shall inure to the benefit of and be binding upon any successor or assign of said Unit Owner or its designee.



12.7 **Submission to Jurisdiction.** Each Unit Owner is hereby deemed to (a) irrevocably consent and submit to the jurisdiction of any Federal, state, county or municipal court sitting in the State of New York in respect to any action or proceeding brought therein by the Condominium Board against a Unit Owner concerning any matters arising out of or in any way relating to these By-Laws or the Declaration; (b) irrevocably waive personal service of any summons and complaint and consents to the service upon it of process in any such action or proceeding by mailing of such process to the Unit Owner at the address set forth on Schedule B attached hereto, and hereby irrevocably designate that Person set forth on Schedule B attached hereto to accept service of any process on the Unit Owner's behalf and hereby agrees that such service shall be deemed sufficient; (c) irrevocably waive all objections as to venue and any and all rights it may have to seek a change of venue with respect to any such action or proceedings; (d) agree that the laws of the State of New York shall govern in any such action or proceeding, and waive any defense to any action or proceeding granted by the laws of any other country or jurisdiction unless such defense is also allowed by the laws of the State of New York; and (e) agree that any final judgment rendered against it in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law. Each Unit Owner shall be deemed to further agree that any action or proceeding by the Unit Owner against the Condominium Board in respect to any matters arising out of or in any way relating to these By-Laws or the Declaration shall be brought only in the State of New York, county of New York. In furtherance of the foregoing, each Unit Owner is hereby deemed to agree that its address for notices by the Condominium Board and service of process under these By-Laws and the Declaration shall be the Property. Notwithstanding the foregoing provisions of this Section 12.7, each Unit Owner may, by written notice to the Condominium Board, change the designated agent for acceptance of service of process to any other Person located in the City, County and State of New York. EACH UNIT OWNER SHALL BE DEEMED TO WAIVE THE RIGHT TO TRIAL BY JURY IN ANY SUMMARY PROCEEDING THAT MAY HEREAFTER BE INSTITUTED AGAINST IT OR IN ANY ACTION THAT MAY BE BROUGHT HEREUNDER, PROVIDED SUCH WAIVER IS NOT PROHIBITED BY LAW. No Unit Owner shall be allowed to interpose any counterclaim in any summary proceeding, unless by not imposing such counterclaim a Unit Owner would be barred from asserting such counterclaim in a separate action or proceeding.

12.8 **Consents.** Each Unit Owner shall be deemed to waive any claim against the Condominium Board that such Unit Owner may have based upon any assertion that the Condominium Board has unreasonably withheld or unreasonably delayed any consent or approval, and each Unit Owner agrees that its sole remedy shall be an action or proceeding to enforce any such provision or for specific performance, injunction or declaratory judgment. In the event of a determination favorable to a Unit Owner, the requested consent or approval shall be deemed to have been granted; however, the Condominium Board shall have no personal or other liability to the Unit Owner for the Condominium Board's refusal to give such consent or approval. The sole remedy for the Condominium Board's unreasonably withholding or delaying of consent or approval shall be as set forth in this Section 12.8.

12.9 **Eligible Account.** The Condominium Board shall hold any funds of the Condominium in an eligible account as specified in the loan documents for a Permitted Mortgage on a Declarant Unit.



ARTICLE 13

**AMENDMENT TO BY-LAWS**

13.1 **Amendment.** These By-Laws may only be amended by and simultaneously with and in the same manner as an amendment to the Declaration as set forth in Article 17 of the Declaration.



**EXHIBIT "B" TO THE CONDOMINIUM DECLARATION**
**220 EAST 42ND CONDOMINIUM**
**220 EAST 42ND STREET, NEW YORK, NEW YORK**
**BLOCK: 1315**

**DESCRIPTION OF THE UNITS**

| UNIT | TAX LOT | UNIT TOTAL SQUARE FEET | % OF COMMON INTEREST | USE TYPE | LOCATION OF UNIT | LIMITED COMMON ELEMENTS | GENERAL COMMON ELEMENTS TO WHICH UNIT HAS IMMEDIATE ACCESS |
|---|---|---|---|---|---|---|---|
| Retail Unit | 1001 | Total: 21,306 (Concourse: 10,629; First Floor: 10,677) | 2.55 | Retail | Concourse Level, First Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 1 | 1002 | Total: 67,082 (Sub-Cellar: 15,083; Concourse: 20,430; First Floor: 31,025; First Fl Mezz: 544) | 6.21 | Retail | Sub-Cellar, Concourse Level, First Floor, First Floor Mezzanine | | Cellar Storage, Management Office, Bldg. Crew Lockers, Bldg. Workshop Rooms, Fire Pump Rooms, Mechanical Rooms, Electrical Rooms, Loading Dock, Equipment Rooms, Security Rooms, Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 2N | 1003 | 21,467 | 2.48 | Office | Second Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 2S | 1004 | 32,559 | 3.87 | Office | Second Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 3 | 1005 | 48,020 | 5.69 | Office | Third Floor | Terrace (Third Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 4 | 1006 | 47,716 | 5.62 | Office | Fourth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 5 | 1007 | 44,380 | 5.27 | Office | Fifth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 6 | 1008 | 48,798 | 5.87 | Office | Sixth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 7N | 1009 | 19,749 | 2.01 | Office | Seventh Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 7S | 1010 | 27,767 | 3.61 | Office | Seventh Floor | Terrace (Seventh Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 8 | 1011 | 47,707 | 5.66 | Office | Eighth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 9 | 1012 | 47,617 | 5.59 | Office | Ninth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 10 | 1013 | 37,347 | 4.43 | Office | Tenth Floor | Terrace (Tenth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 11 | 1014 | 36,986 | 3.84 | Office | Eleventh Floor | Terrace (Eleventh Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Unit 12 | 1015 | 27,737 | 2.34 | Office | Twelfth Floor | Terrace (Twelfth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 13 | 1016 | 34,760 | 3.60 | Office | Thirteenth Floor | Terrace (Thirteenth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 14 | 1017 | 36,653 | 3.81 | Office | Fourteenth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 15 | 1018 | 22,407 | 2.32 | Office | Fifteenth Floor | Terrace (Fifteenth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 16 | 1019 | 21,522 | 2.24 | Office | Sixteenth Floor | Terrace (Sixteenth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 17 | 1020 | 21,029 | 2.49 | Office | Seventeenth Floor | Terrace (Seventeenth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 18 | 1021 | 21,817 | 2.59 | Office | Eighteenth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 19 | 1022 | 9,602 | 0.99 | Office | Nineteenth Floor | Terrace (Nineteenth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 20 | 1023 | 10,514 | 1.08 | Office | Twentieth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 21 | 1024 | 10,514 | 1.08 | Office | Twenty-First Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 22 | 1025 | 10,514 | 1.08 | Office | Twenty-Second Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 23 | 1026 | 10,514 | 1.08 | Office | Twenty-Third Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 24 | 1027 | 10,148 | 1.05 | Office | Twenty-Fourth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 25 | 1028 | 6,669 | 0.67 | Office | Twenty-Fifth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 26 | 1029 | 9,603 | 1.00 | Office | Twenty-Sixth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 27 | 1030 | 10,632 | 1.10 | Office | Twenty-Seventh Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 28 | 1031 | 9,767 | 1.01 | Office | Twenty-Eighth Floor | Terrace (Twenty-Eighth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 29 | 1032 | 9,767 | 1.01 | Office | Twenty-Ninth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 30 | 1033 | 9,773 | 1.01 | Office | Thirtieth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 31 | 1034 | 9,786 | 1.01 | Office | Thirty-First Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 32 | 1035 | 9,777 | 1.01 | Office | Thirty-Second Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |

Exhibit B-2

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Unit 33 | 1036 | 9,794 | 1.01 | Office | Thirty-Third Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 34 | 1037 | 7,326 | 0.75 | Office | Thirty-Fourth Floor | Terrace (Thirty-Fourth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 35 | 1038 | 7,373 | 0.75 | Office | Thirty-Fifth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 36 | 1039 | 6,342 | 0.65 | Office | Thirty-Sixth Floor | Terrace (Thirty-Sixth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 37 | 1040 | 5,115 | 0.57 | Office | Thirty-Seventh Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| TOTAL | | | 100.00 | | | | |

Exhibit B-3

EXHIBIT E

**Intentionally Omitted**

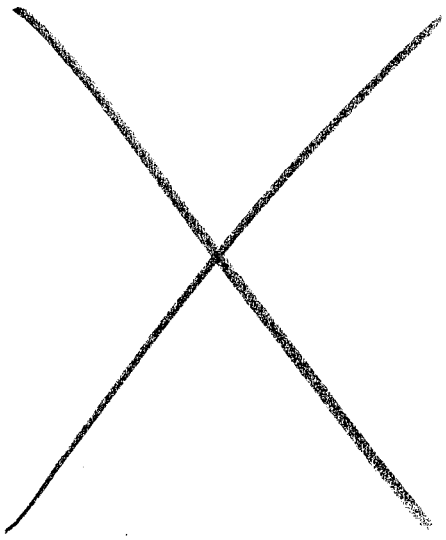


Exhibit E

EXHIBIT F

**POWER OF ATTORNEY**

Terms used in this Unit Owner's Power of Attorney which are used (a) in the declaration (the "Declaration") establishing a plan for condominium ownership of the premises known as "220 East 42nd Condominium" (the "Condominium") and by the street number 220 East 42nd Street, New York, New York under Article 9-B of the Real Property Law of the State of New York, dated as of June 4, 2012, and recorded in the Office of the Register of the City of New York New York, County of New York on _____, under CRFN #_____, as the same is amended, restated or supplemented at any time, or (b) in the By-Laws of the Condominium ("By-Laws") attached to, and recorded together with, the Declaration, as the same is amended, restated or supplemented at any time, shall have the same meanings in this Power of Attorney as in the Declaration or the By-Laws.

The undersigned, _____, the owner of the Condominium Unit (the "Unit") in the 220 East 42nd Condominium, which is designated and described in the Declaration as the "_____ Unit" and also designated as Tax Lot _____ in Block 1315 of Section ____ of the Borough of Manhattan on the Tax Map of the Real Property Assessment Department of The City of New York and on the Floor Plans, and hereby nominate, constitute and appoint the persons who may from time to time constitute the Condominium Board true and lawful attorneys-in-fact for the undersigned, coupled with an interest, with power of substitution, in their own names, as members of the Condominium Board or in the name of their designee (corporate or otherwise), on behalf of all Unit Owners, in accordance with such Unit Owners' respective interests in the Common Elements, subject to the provisions of the Ground Lease and the By-Laws then in effect, (1)(a) to acquire or lease any Unit, together with its appurtenant interests, from any Unit Owner desiring to sell, convey, transfer, assign, surrender or lease the same, (b) to acquire any Unit, together with its appurtenant interests, from any Unit Owner who elects to surrender the same pursuant to the By-Laws, (c) to acquire any Unit, together with its appurtenant interests, which becomes the subject of a foreclosure or other similar sale, all on such terms and at such price or rental, as the case may be, as said attorneys-in-fact shall deem proper, in the name of the Condominium Board or its designee, corporate or otherwise, on behalf of all Unit Owners, and, after any such acquisition or leasing, to convey, sell, lease, sublease, mortgage or otherwise deal with (but not vote the interest appurtenant thereto) any such Unit so acquired by them, or to sublease any Unit so leased by them without the necessity of further authorization by the Unit Owners, on such terms as said attorneys-in-fact may determine, granting to said attorneys-in fact the power to do all things in the said premises which the undersigned could do if the undersigned were personally present, and (d) to enforce of Condominium Board's lien for unpaid Common Charges; (2) upon determination by the Condominium Board, to commence, pursue, appeal, settle and/or terminate administrative and certiorari proceedings to obtain reduced real estate tax assessments with respect to the Units, including retaining counsel and taking any other actions that the Condominium Board deems necessary or appropriate, and (3) to execute, acknowledge and deliver (a) any declaration or other instrument affecting the Common Elements that the Condominium Board, with respect to the Common Elements deem necessary or appropriate to comply with any ordinance, regulation, zoning resolution or requirement of the Department of Buildings, the City Planning Commission,

the Board of Standards and Appeals, or any other public authority, applicable to the Maintenance, demolition, construction, Alteration, repair or restoration of the Common Elements or (b) any consent, covenant, restriction, easement or declaration, or any amendment thereto, affecting the Common Elements that the Condominium Board deems necessary or appropriate.

The acts of a majority of such persons constituting the Condominium Board, as applicable, shall constitute the acts of said attorneys-in-fact.

I hereby nominate, constitute and appoint the Declarant, true and lawful attorney-in-fact for the undersigned, coupled with an interest, with power of substitution, on behalf of all Unit Owners, in accordance with such Unit Owners' respective interests in the Common Elements, subject to the provisions of the Ground Lease, Declaration and By-Laws then in effect, to do the following: (1) to perform any act that would otherwise be required by a meeting or vote of the Unit Owners under the Declaration and By-Laws (including, without limitation, vote whether to restore or not in the event of a substantial fire or other casualty or condemnation, and termination of the Condominium, vote of directors of Condominium Board and amendment of the Declaration and By-Laws); and (2) amend the terms and provisions of the Declaration, By-Laws and the Rules and Regulations of the Condominium or any permits, applications or documents required to undertake, perform or complete work to the Units or Common Elements by Declarant or obtain an amended certificate of occupancy therefor, or any of said documents when such amendment: (i) shall be required to reflect any changes in Units and/or the reapportionment of the Common Interests of the Units resulting therefrom made by Declarant in accordance with the Declaration or (ii) shall be required by (a) a lender designated by Declarant to make a mortgage loan secured by a mortgage on any Unit, referred to as a "Permitted Mortgagee" in the Declaration, (b) any governmental agency having regulatory jurisdiction over the Condominium, (c) any title insurance company selected by Declarant to insure title to any Unit or (d) to effectuate the provisions of the Ground Lease, Declaration and/or By-Laws.

I hereby further nominate, constitute and appoint the members of the Condominium Board of 220 East 42nd Condominium (and any member thereof, from time to time, and if the Condominium is terminated, then those persons who comprised the Condominium Board prior to such termination) and its successors, true and lawful attorney-in-fact for the undersigned, coupled with an interest, with power of substitution, in their own names, as members of the Condominium Board or in the name of their designee (corporate or otherwise), on behalf of all Unit Owners, to execute on behalf of each Unit Owner upon the termination of the Condominium in accordance with the express provisions of the Declaration, to execute such documentation on behalf of the Unit Owners as might be deemed necessary or desirable by the attorney-in-fact to implement or confirm such termination, including without limitation, a conveyance of the Building.

This Power of Attorney shall be irrevocable.

Notwithstanding any of the foregoing provisions of this power of attorney to the contrary, the power of attorney described above may only be exercised on behalf of the undersigned if (a) (i) the undersigned has failed to perform as required under the VNSNY Transaction Documents, after written notice requesting such performance and the expiration of any applicable cure period(s) afforded to the undersigned (or the Declarant, as the ground lessee under the Ground Lease) under the relevant VNSNY Transaction Documents, and (ii) such failure entitles the Fee Owner to terminate the Ground Lease (and therefore the Condominium) pursuant to the express provisions of the VNSNY Transaction Documents, or (b) the undersigned has failed, upon the termination of the Condominium in accordance with the express provisions of this Declaration, after (1) written notice requesting that the undersigned execute such documentation as is then deemed necessary or desirable by the attorney-in-fact to implement or confirm the termination of the Condominium, including without limitation a conveyance of the Building, and (2) the expiration of a reasonable period of time to cure such failure set forth in such notice; provided, however, that in no event shall such power of attorney be exercised on behalf of the undersigned if the undersigned has a defense to the (x) exercise of such power of attorney, or (y) underlying demand by the Fee Owner, Declarant or the Condominium Board (as the case may be) that undersigned comply with the alleged requirement(s) at issue under the VNSNY Transaction Documents, in each case, which defense has been asserted in writing prior to the expiration of said cure period(s).

(SIGNATURES FOLLOW ON NEXT PAGE)

IN WITNESS WHEREOF, the undersigned has/have executed this Power of Attorney as of _____.

_____
Name:
Title:

STATE OF NEW YORK )
) ss.:
COUNTY OF NEW YORK )

On the _____ day of _____ in the year _____, 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

UNIT: ____
TITLE COMPANY: _____
TITLE NUMBER: _____

**POWER OF ATTORNEY**
**FOR UNIT____**
**FOR**
**220 EAST 42ND CONDOMINIUM**

*After recording, please return by mail to:*

Ganfer & Shore, LLP
360 Lexington Avenue
New York, New York 10017
Attn.: Matthew J. Leeds, Esq.

**EXHIBIT G-1**

**OFFICE UNIT PROHIBITED USES**

An Office Unit Owner shall not use, or permit its respective Office Unit (or any part thereof) to be used, for any of the following purposes:

(i) the sale to the public of any products kept in a Unit, or any demonstrations to the public, or the sale (whether by persons or by vending machines) of alcoholic beverages, candy, cigarettes, cigars, tobacco, newspapers, magazines, beverages or similar items,

(ii) advertise or conduct any auction, distress, fire or bankruptcy sale, or a real or fictitious going-out-of business sale, or suffer, permit or conduct the type of business commonly called a "cut price," "outlet," "discount," or "cut rate" dealer or store, flea market or temporary outlet for toys or other goods, but nothing herein shall preclude the conducting of a bona fide bankruptcy sale in accordance with Applicable Laws;

(iii) the conduct of any gambling activities;

(iv) the conduct of an employment agency that would cause excess traffic in the main (42nd Street) lobby of the Building, and encourages (through advertising) its customers or clients to come to its offices in the Building without first making an appointment;

(v) any use prohibited by the Rules and Regulations annexed to the Declaration as Schedule A and incorporated herein by reference and made a part hereof as if set forth at length in the text hereof;

(vi) the sale or use of narcotics or other controlled or prohibited substances (provided that the foregoing shall not be construed to prohibit the use of medications in accordance with Applicable Law);

(vii) for any pornographic or obscene purposes, for any commercial sex establishment, or for any pornographic, obscene, nude or semi-nude performances, modeling, obscene materials, activities or sexual conduct;

(viii) lodging or sleeping; or

(ix) any use that will constitute a public nuisance.

Exhibit G-1

**EXHIBIT G-2**

**RETAIL UNIT PROHIBITED USES**

A Retail Unit Owner shall not use, or permit its respective Retail Unit (or any part thereof) to be used, for any of the following purposes:

(i) advertise or conduct any auction, distress, fire or bankruptcy sale, or a real or fictitious going-out-of business sale, or suffer, permit or conduct the type of business commonly called a "cut price," "outlet," "discount," or "cut rate" dealer or store, flea market or temporary outlet for toys or other goods, but nothing herein shall preclude the conducting of a bona fide bankruptcy sale in accordance with Applicable Laws;

(ii) the conduct of any gambling activities;

(iii) the sale or use of narcotics or other controlled or prohibited substances (provided that the foregoing shall not be construed to prohibit the use of medications in accordance with Applicable Law);

(iv) for any pornographic or obscene purposes, for any commercial sex establishment, or for any pornographic, obscene, nude or semi-nude performances, modeling, obscene materials, activities or sexual conduct; or

(v) any use that will constitute a public nuisance.

Exhibit G-2

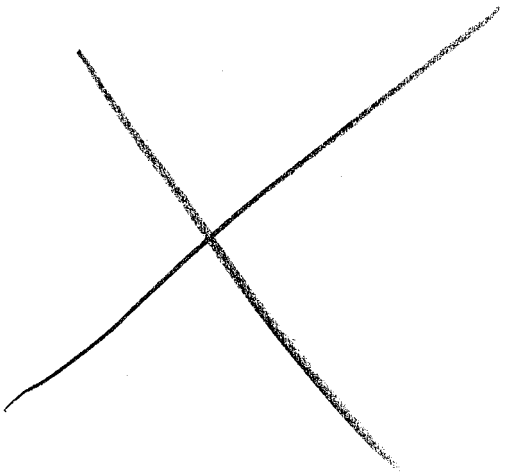
**EXHIBIT H-1**

**VNSNY STREET SIGNAGE LOCATION**

(attached)

Exhibit H

Exhibit H-1



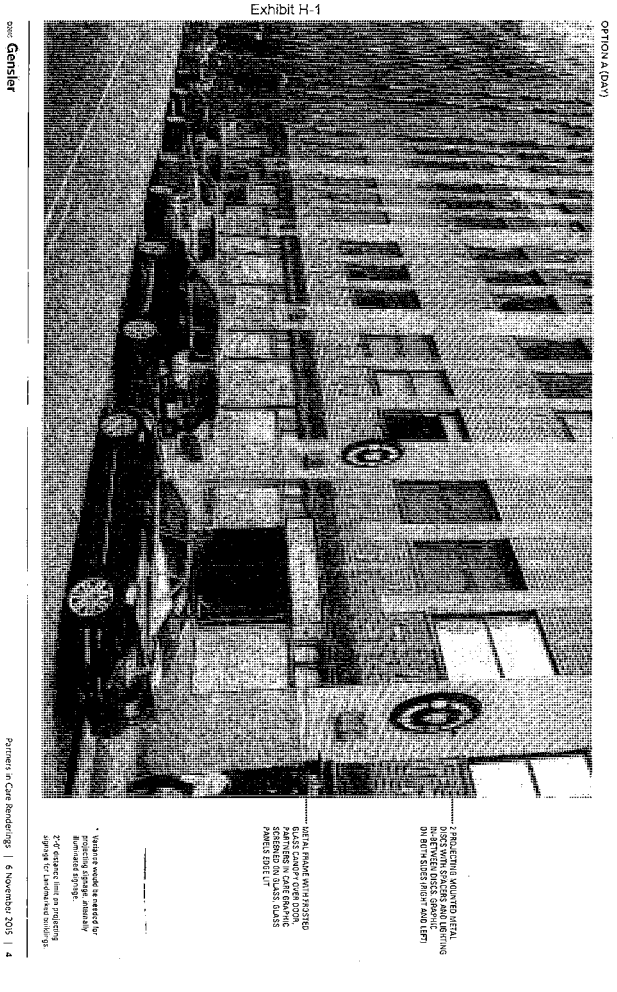


**EXHIBIT H-2**

**WPIX SIGNAGE LOCATION**

(attached)

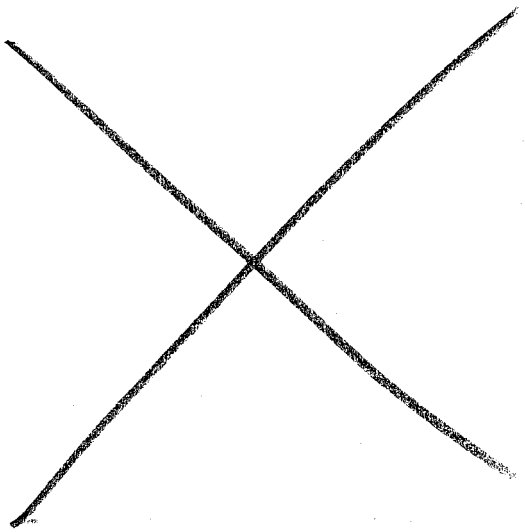
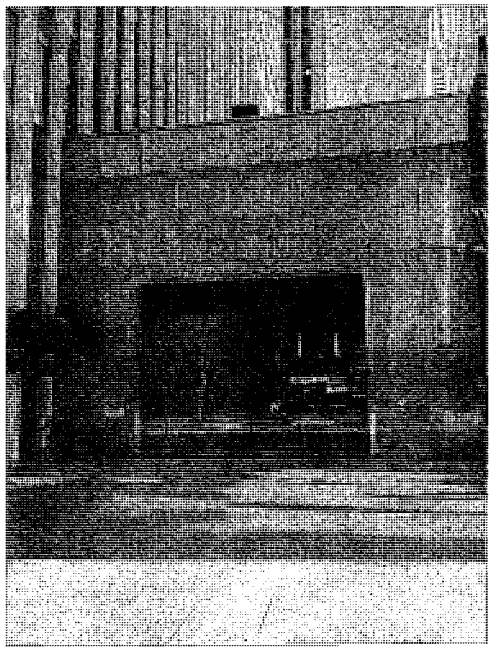


Exhibit H

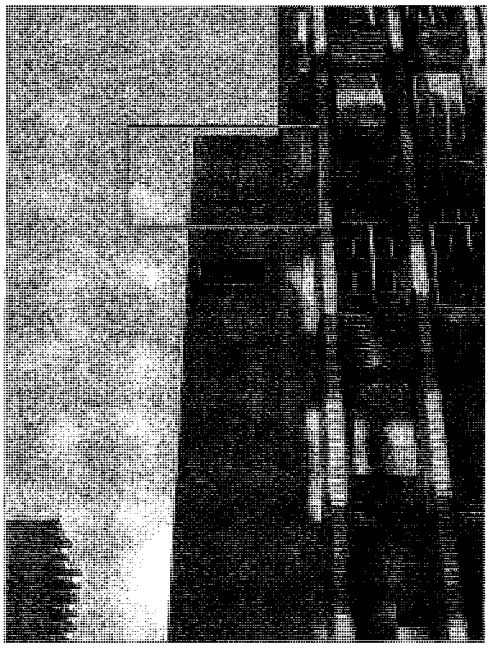
Exhibit H-2



**Second Avenue/42nd Street Corner Signage**

Ground Floor East Facing Façade

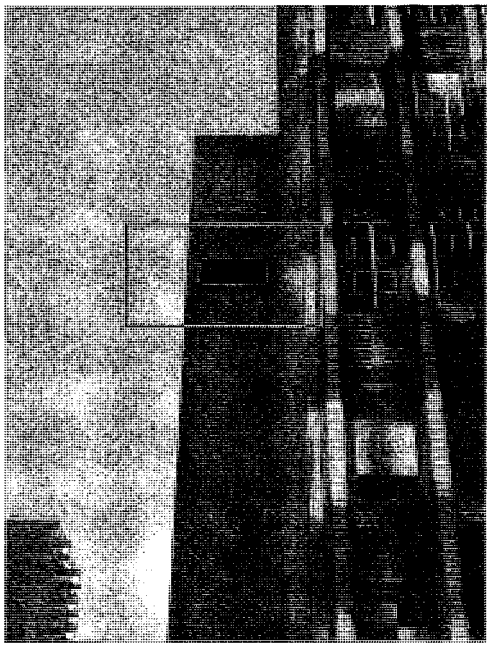
Exhibit H-2



**WPIX Logo**

Second Avenue North Facing Façade

Exhibit H-2



**WPIX Time and Temperature Clock**

Second Avenue North Facing Façade

EXHIBIT H-3

APPROVED SIGNAGE

(attached)

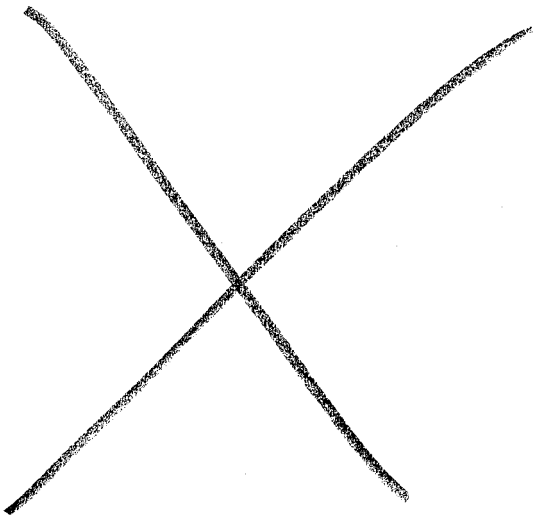


Exhibit H

Exhibit H-3

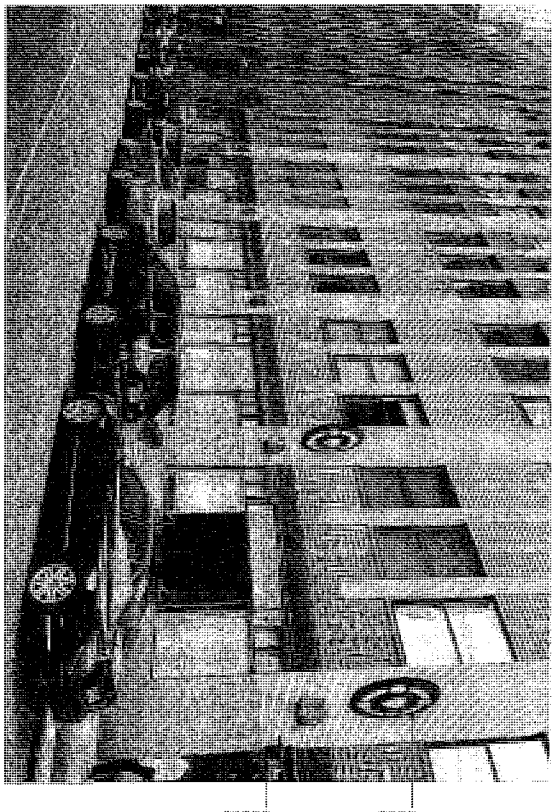



Exhibit H-3

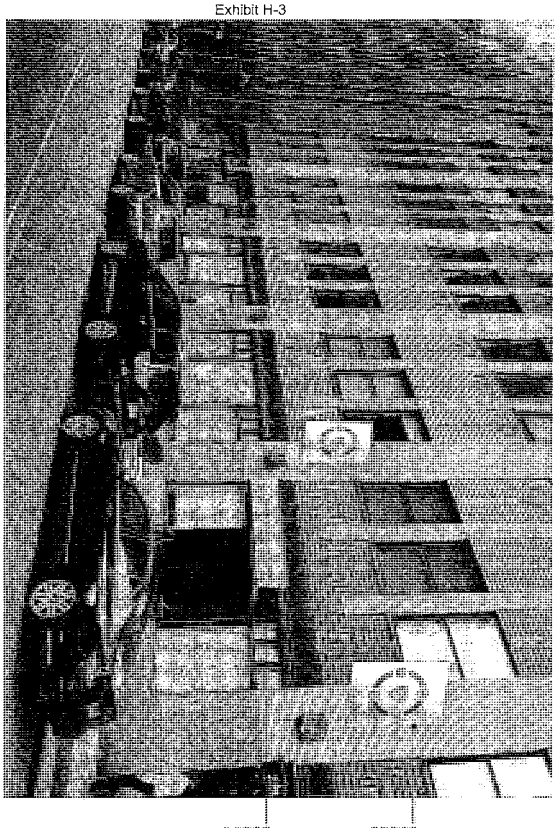



EXHIBIT I

VNSNY STANDARDS

(attached)

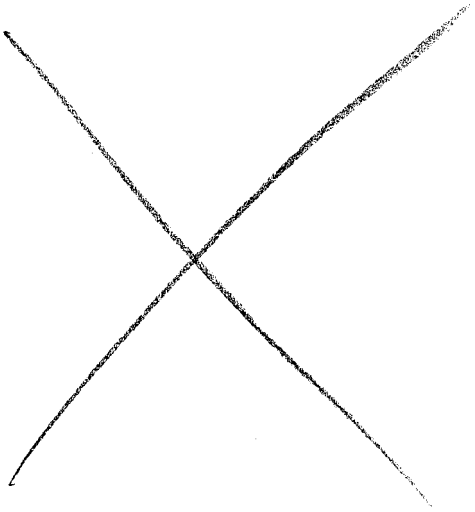


Exhibit I

**EXHIBIT I**

**VNSNY STANDARDS**

All capitalized terms used in this Exhibit I shall have the meanings set forth in the Declaration and By-Laws unless otherwise defined herein.

Notwithstanding anything to the contrary contained in the Declaration and the By-Laws, the VNSNY Standards set forth in this Exhibit I to the Declaration shall be interpreted in all instances to give effect to the overriding principle that the provisions of the Declaration shall be applied to the VNSNY Unit only to the extent that the benefits and the limitations and obligations set forth therein are not set forth in this Exhibit I and any provisions of the Declaration and these VNSNY Standards that conflict or are inconsistent shall be resolved in favor of these VNSNY Standards (it being understood that the VNSNY Standards may in different instances be more extensive or more restrictive than the rights or obligations of other Unit Owners other than VNSNY and that the obligations of the Condominium Board to VNSNY be increased or decreased in some cases to the VNSNY Units as compared to such obligations to other Unit Owners).

In addition, if any statement contained in the VNSNY Sale Agreement or that certain Omnibus Agreement included as part of the VNSNY Transaction Documents (the "VNSNY Omnibus Agreement") is not consistent with the terms of the Declaration or the By-Laws, the provisions of the VNSNY Sale Agreement or the VNSNY Omnibus Agreement, as applicable, shall prevail and such provision shall be deemed to be included in this Exhibit I.

SECTION 1
ALTERATIONS

1. (a) The performance of any Alterations by VNSNY (and the removal thereof at the End of Term (as hereinafter defined)) shall be expressly subject to the terms of the VNSNY Transaction Documents applicable thereto. Notwithstanding anything to the contrary set forth in Sections 5.17.3 through and including 5.17.6 of the By-Laws and subject to the further provisions of this Section 1(a), VNSNY shall make no changes or alterations in or to the VNSNY Units (with any changes or alterations performed by or on behalf of VNSNY and any other owner of the VNSNY Units or anyone claiming by, through or under VNSNY or such other owner of the VNSNY Units, being collectively referred to herein as "Alterations"), without the prior written consent of the Condominium Board; provided, however, that the Condominium Board agrees not to unreasonably withhold, condition or delay its consent in accordance with the procedure set forth in Section 1(b) below to Alterations that (I) do not affect the Building's exterior (including the exterior appearance of the Building); provided, however, that the Condominium Board shall not unreasonably withhold, condition or delay consent to (x) any Alterations to VNSNY's Private Entrance (as defined in Section 8 of this Exhibit I) provided that in the Condominium Board's reasonable discretion, following the performance of such proposed Alterations, the exterior appearance of VNSNY's Private Entrance will be consistent with other Building street entrances on the 42nd Street side of the Building (as opposed to Building



entrances located on the 41st street side of the Building and as opposed to any service entrances) and otherwise consistent with the remainder of the exterior of the Building, (y) any Alterations relating solely to the pavers, plantings and/or furniture located on the Terraces (as defined in Section 5 of this Exhibit I) provided that in the Condominium Board's reasonable discretion, following the performance of such proposed Alterations, the Terraces will be consistent with terraces of buildings located in Midtown Manhattan that are comparable to the Building and consistent with the remainder of the exterior of the Building, and (z) temporary or permanent accent lighting and sound system speakers on the Terraces in accordance with, and subject to, the provisions of Section 5(b) below, (II) do not adversely affect the usage or the proper functioning of any Base Building Systems, (III) are non-structural (or are structural provided such structural alterations are customarily performed by tenants of office space comparable in size to the VNSNY Units in buildings comparable to the Building (e.g., installation of internal stairways) and do not affect the Certificate of Occupancy covering the Building and/or the VNSNY Units, and (IV) do not adversely affect any service required to be furnished by the Condominium Board to any other Unit Owner, tenant or occupant of the Building, in each case, other than to a de minimis extent (collectively, "Non-Material Alterations"). Notwithstanding the foregoing, the Condominium Board's consent shall not be required (provided VNSNY shall be required to comply with all of the other terms and conditions of the VNSNY Transaction Documents applicable to the performance of Alterations) with respect to (A) Non-Material Alterations which (i) do not require a building permit, (ii) are limited to work within the VNSNY Units, (iii) do not require a change in the Certificate of Occupancy for the VNSNY Units or the Building, and (iv) are non-structural and do not affect any Base Building Systems, and (B) work that is solely of a decorative nature, such as painting, wallpapering, and carpeting, in each case, made within the VNSNY Units (all such items described in either clause (A) or clause (B) shall collectively be referred to as, "Non-Consent Alterations"). For purposes of clarification, in no event shall any Alterations performed in connection with the Terraces or the VNSNY Private Entrance be or be deemed to be Non-Consent Alterations. All Alterations shall be performed in a workmanlike manner using good quality materials, subject to the other provisions of this Section 1. VNSNY may employ architects, contractors, subcontractors and engineering firms of VNSNY's choice to design and construct Alterations, subject to the Condominium Board's reasonable approval, such approval not to be unreasonably withheld, conditioned or delayed, subject to the other provisions of this Section 1 (including, without limitation, Section 1(b)(iv) below); provided, that (1) all work to the Building's life safety systems (including tie ins to such systems) shall be performed by the Condominium Board's designated contractor provided that the rates charged by such contractor to VNSNY are commercially reasonable, and (2) VNSNY shall utilize the Condominium Board's designated expeditor provided that the rates charged by such expeditor to VNSNY are commercially reasonable. The Condominium Board hereby approves the general contractor and any of the subcontractors, architects, engineers and consultants listed on Exhibit K to the Declaration and approval of all other contractors shall be granted or withheld in accordance with the provisions hereinabove set forth; provided, however, that the Condominium Board shall have the right, from time to time, to revoke its consent to any of the contractors, subcontractors, architects, engineers and consultants set forth on Exhibit K to the Declaration upon written notice to VNSNY (provided that the Condominium Board shall not revoke its approval if VNSNY shall have entered into an agreement to retain the services of any such party with respect to a particular Alteration prior to receipt of such written notice from the Condominium Board). All Alterations to the VNSNY Units that are permanently affixed to the



VNSNY Units, including air conditioning equipment and duct work shall, unless same constitute Specialty Alterations for which VNSNY has been directed to remove from the VNSNY Units in accordance with the provisions of Section 1(c) below, become the property of Declarant or Condominium Board, and shall be surrendered with the VNSNY Units at the End of Term. For purposes herein, the term "End of Term" shall mean the earliest of (X) the expiration of the Ground Lease, and (Y) the date upon which VNSNY is required to vacate the VNSNY Units pursuant to the express provisions of any of the VNSNY Transaction Documents.

(b) Notwithstanding anything to the contrary set forth in Sections 5.17.3 through and including 5.17.6 of the By-Laws, all Alterations performed by VNSNY shall be performed in accordance with the following conditions:

(i) Prior to the commencement of any Alterations (other than for Non-Consent Alterations that are merely decorative in nature, such as painting or installing carpeting) for which plans and specifications are required to be prepared pursuant to Applicable Laws or pursuant to good construction practices, VNSNY shall first submit to the Condominium Board for its approval (except with respect to Non-Consent Alterations) (which approval shall be granted or withheld pursuant to the terms and conditions of this Section 1 and the VNSNY Transaction Documents) detailed dimensioned coordinated plans and specifications, including layout, architectural, mechanical, electrical, plumbing and structural drawings for each proposed Alteration ("VNSNY's Plans"); it being agreed, however, that with respect to all other Alterations (i.e., any Alteration with respect to which VNSNY's Plans are not required pursuant to the foregoing provisions of this Section 1(b)(i) other than work that is solely of a decorative nature, such as painting, wallpapering, and carpeting) VNSNY shall provide to the Condominium Board a reasonable description thereof at least ten (10) Business Days prior to the commencement thereof. The Condominium Board shall respond to any request for consent to an Alteration not later than fifteen (15) Business Days after delivery of written request for such consent (accompanied by VNSNY's Plans) that the Condominium Board either: (i) approves VNSNY's Plans, (ii) disapproves VNSNY's Plans (stating the reasons therefor), (iii) in good faith requires clarification or additional information or (iv) has engaged the services of an outside consultant (each, an "Outside Consultant") to review VNSNY's Plans (an "Outside Consultant Notice"), it being agreed that VNSNY will pay all reasonable, out-of-pocket costs and expenses ("Outside Consultants Fees") incurred by the Condominium Board to retain such outside consultant with respect to the review of VNSNY's Plans; provided, however, the Condominium Board will initially provide VNSNY with a reasonable non-binding, good faith estimate of such Outside Consultant Fees (though nothing hereunder shall modify VNSNY's obligations to pay all such Outside Consultant Fees incurred in connection with a particular Alteration irrespective if same exceeds the estimate, provided that all rates charged by any such Outside Consultant are commercially reasonable) and the time periods required for the Condominium Board's approval hereunder shall not commence unless and until VNSNY confirms that such estimate is acceptable to VNSNY). If the Condominium Board delivers an Outside Consultant Notice to VNSNY within the time period set forth above, the effect thereof shall be to extend by ten (10) Business Days the number of days that the Condominium Board shall have to respond to VNSNY's Plans. If the Condominium Board fails to respond within such fifteen (15) Business Day period (as same may be extended if the Condominium Board gives an Outside Consultant Notice), then VNSNY shall have the right to deliver a second notice to the Condominium Board



requesting the Condominium Board's consent to such Alteration, which request shall state in bold upper case letters at the top of the first page and on the envelope in which any such request is sent as follows: **"THIS IS A TIME SENSITIVE NOTICE AND THE CONDOMINIUM BOARD SHALL BE DEEMED TO HAVE CONSENTED TO THE REQUESTED ALTERATION(S) IF IT FAILS TO RESPOND IN THE TIME PERIOD PROVIDED."** If VNSNY shall have delivered such reminder notice to the Condominium Board, and the Condominium Board shall fail to respond to such reminder notice within five (5) Business Days after the delivery of such reminder notice to the Condominium Board, and provided that VNSNY has otherwise complied with all of VNSNY's obligations under this Section 1 and the VNSNY Transaction Documents in connection with such request, then the Condominium Board shall be deemed to have consented to the Alteration provided that any such Alteration (x) is limited to work within the VNSNY Units, is non-structural and does not affect Building systems serving any portion of the Building outside of the VNSNY Units, and (y) does not require a change in the Certificate of Occupancy for the Building (or any of the VNSNY Units); provided, however, that for such proposed Alterations where deemed consent is not permitted pursuant to clause (x) or (y), VNSNY shall have the right to deliver a third request to the Condominium Board with respect thereto again stating that **"THIS IS A TIME SENSITIVE NOTICE AND THE CONDOMINIUM BOARD SHALL BE DEEMED TO HAVE CONSENTED TO THE REQUESTED ALTERATION(S) IF IT FAILS TO RESPOND IN THE TIME PERIOD PROVIDED.**", and if the Condominium Board shall fail to respond to such third (3rd) notice within five (5) Business Days after delivery thereof, then consent to such proposed Alterations shall deemed to have been granted by the Condominium Board.

(ii) All Alterations in and to the Building shall be performed in a good and workmanlike manner and in accordance with the rules and regulations governing Alterations attached as Exhibit K to the Declaration and any reasonable modifications thereof or additions thereto for which VNSNY has received at least ten (10) days' prior written notice, provided such modifications or additions shall not require VNSNY to remove or make any changes to any Alterations existing prior to VNSNY's receipt of such applicable modification(s) or addition(s) to the rules and regulations. Prior to the commencement of any such Alterations, VNSNY shall, at its sole cost and expense, obtain and deliver to the Condominium Board a copy of any governmental permit required to commence such Alterations. Except with respect to Seller's Work (as such term is defined in the VNSNY Sale Agreement) (for which no reimbursement shall be required), VNSNY shall reimburse the Condominium Board (or Fee Owner and the Declarant, as applicable) for all reasonable out-of-pocket third party costs incurred by the Condominium Board (or Fee Owner or the Declarant, as applicable) in connection with VNSNY's performance of Alterations in and/or to the VNSNY Units (including, without limitation, the costs incurred by Condominium Board (or Fee Owner or the Declarant, as applicable) in connection with the coordination of Alterations which would be likely to affect (as reasonably determined by the Condominium Board) Base Building Systems or services of the Building or portions of the Building outside of the VNSNY Units); provided, however, that VNSNY shall not be required to pay any duplicate costs or fees incurred by the Condominium Board, Fee Owner or the Declarant (i.e., VNSNY shall reimburse only one of Condominium Board, Fee Owner or the Declarant for any particular cost or fee, depending on which of such parties actually incurs such cost or fee, without duplication); and provided, further, VNSNY shall not be required to reimburse Condominium Board, Fee Owner or the Declarant for any costs

incurred in connection with the review of Alterations by the then designated engineer for the Building. Such third-party fees (if any) shall be paid by VNSNY hereunder within thirty (30) days following receipt of an invoice written invoice therefor (accompanied by reasonably satisfactory evidence thereof).

(iii) All Alterations shall be done in compliance with all other applicable provisions of the Declaration and By-Laws, the VNSNY Transaction Documents, and all Applicable Laws and also New York City Local Law No. 76 and similar present or future laws, and regulations issued pursuant thereto, on abatement, storage, transportation and disposal of asbestos and other hazardous materials, which work, if required, shall be effected at VNSNY's sole cost and expense, by contractors and consultants approved by the Condominium Board (which approval shall not be unreasonably withheld, conditioned or delayed) and in compliance with the aforesaid rules and regulations.

(iv) VNSNY may employ architects, contractors, subcontractors and engineering firms of VNSNY's choice to design and construct Alterations, subject to the Condominium Board's approval in accordance with Section 1(a). Except with respect to Seller's Work, the performance of all Alterations shall be done in a manner which does not create any actual work stoppage, picketing, labor disruption, disharmony or dispute in the Building, or any unreasonable interference with the business of any other Unit Owner or tenant or occupant of the Building or unreasonably disturbs any other Unit Owner or tenant or occupant of the Building. The Condominium Board agrees that it shall not discriminate against VNSNY in enforcing the foregoing requirement.

(v) VNSNY shall keep the Building and the VNSNY Units free and clear of all liens for any work or material claimed to have been furnished to VNSNY or to the VNSNY Units following the Possession Date; it being agreed that VNSNY, at its expense, shall cause any lien filed against the VNSNY Units or the Building, for work or materials claimed to have been furnished to VNSNY or any other occupant of the VNSNY Units (or anyone claiming by, through or under VNSNY), shall be discharged of record within thirty (30) days after written notice thereof has been received by VNSNY.

(vi) Prior to the commencement of any work by or for VNSNY, VNSNY shall furnish to the Condominium Board certificates evidencing the existence of the following insurance (it being understood and agreed, however, VNSNY's carrying of the below insurance shall satisfy the below requirements so long as such insurance covers the acts of VNSNY's contractors:

(a) Workmen's compensation insurance covering all persons employed for such work and with respect to whom death or bodily injury claims could be asserted against Declarant, Fee Owner, the Condominium, the Condominium Board, VNSNY or the Building.

(b) Broad form general liability insurance written on an occurrence basis naming the Fee Owner and Condominium Board and their respective designees (of which VNSNY has received written notice) as additional insureds, with limits of not less than



$10,000,000 combined single limit for personal injury in any one occurrence, and with limits of not less than $5,000,000 for property damage (the foregoing limits may be revised from time to time by the Condominium Board to such higher limits as the Condominium Board from time to time reasonably requires); provided, however, with respect to any contractors and/or subcontractors performing minor or merely decorative work (e.g., painting, wallpapering and carpeting), the limits of such insurance shall be commensurate with the particular trade and the scope of the work being performed (as reasonably determined by the Condominium Board). VNSNY, at its sole cost and expense, shall cause all such insurance to be maintained at all time when the work to be performed for or by VNSNY is in progress. All such insurance shall be obtained from a company authorized to do business in New York and shall provide that it cannot be canceled without thirty (30) days prior written notice to the Condominium Board. All polices, or certificates therefor, issued by the insurer, shall be delivered to the Condominium Board. Blanket coverage shall be acceptable, provided that coverage meeting the requirements of this paragraph is assigned to VNSNY's location at the Building.

(vii) In granting its consent to any Alterations costing in excess of $1,000,000.00, the Condominium Board may impose such conditions as to guarantee completion (including, without limitation, requiring VNSNY to post additional security or a bond to insure the completion of such Alterations, payment, restoration or otherwise), as the Condominium Board may reasonably require; provided, however, the Condominium Board shall not impose such conditions as to guarantee completion if the owner of the VNSNY Units is then the Initially Named Owner. For purposes hereof, the "Initially Named Owner" shall mean the Visiting Nurse Service of New York, Inc. and any VNSNY Affiliate or VNSNY Successor of Visiting Nurse Service of New York, Inc. to whom the VNSNY Units are sold or transferred in accordance with the provisions of Section 3 below.

(viii) The review and/or approval by Declarant and/or the Condominium Board, their respective agents, consultants and/or contractors, of any Alteration or of plans and specifications therefor and the coordination of such Alteration work with the Building, as described in part above, are solely for the benefit of Declarant and/or the Condominium Board, and the Declarant, Condominium Board, their respective agents, consultants and/or contractors shall have no duty toward VNSNY; nor shall the Declarant, Condominium Board, their respective agents, consultants and/or contractors be deemed to have made any representation or warranty to VNSNY, or have any liability, with respect to the safety, adequacy, correctness, efficiency or compliance with laws of any plans and specifications, Alterations or any other matter relating thereto.

(ix) Within one hundred twenty (120) days following the completion of any Alterations (other than Non-Consent Alterations that are merely decorative in nature, such as painting or installing carpeting) for which VNSNY's Plans are required to be provided under this Section 1, VNSNY shall submit to the Condominium Board one (1) printed copy and one (1) copy on CD (using a current version of Autocad or such other similar software as is then commonly in use) of final, "as-built" plans (or final and approved VNSNY's Plans with field notes incorporating all changes) showing all such Alterations and demonstrating that such Alterations were performed substantially in accordance with plans and specifications first approved by the Condominium Board. In addition, within twenty (20) days following the Condominium Board's written request therefor, VNSNY shall provide to the Condominium



Board all governmental approvals and confirmations of completion for such Alterations and/or an itemization of VNSNY's total construction costs incurred with respect to any Alterations costing in excess of $50,000.00 in the aggregate.

(c) Notwithstanding anything contained herein or in Section 5.17.4 of the By-Laws, VNSNY shall not be obligated to remove any Alterations except for Specialty Alterations. For purposes of this Section 1, "Specialty Alterations" shall mean Alterations installed by or on behalf of VNSNY that (x) are non-standard office installations (i.e., not typically found in office space leased in first-class office buildings comparable to the Building) with respect to the VNSNY Office Units, (y) non-standard training facility and/or office installations (i.e., not typically found in office and/or training center space leased in first-class office buildings comparable to the Building) with respect to the VNSNY Retail Unit, and (z) would increase Declarant's, Fee Owner or the Condominium Board's demolition costs (in excess of such costs if such Alteration had not been installed) by more than $100,000.00; it being agreed that (i) subject to the exclusions set forth in the immediately following clause (ii), the following Alterations shall be deemed to be Specialty Alterations (with respect to which no further notice shall be required by Declarant, Fee Owner, or the Condominium Board as set forth in this Section 1(c) below): raised computer room floors (but only if such raised computer room floors exceed five (5%) percent of the rentable square foot area of the VNSNY Units), cooking kitchens, vaults, generator, structurally reinforced filing systems, internal staircases (excluding any internal staircases existing in the VNSNY Units as of the Possession Date and excluding any internal staircases in the VNSNY Retail Unit to be installed in the VNSNY Units as part of Seller's Work), pneumatic tubes, vertical and horizontal transportation systems (excluding any elevators existing in the VNSNY Units as of the Possession Date and the one (1) elevator to be installed in the VNSNY Retail Unit as part of Seller's Work), any Alterations which penetrate or expand an existing penetration of any floor slab, any other Alterations which materially or adversely affects the structural elements of the Building (which for purposes of this Exhibit I shall mean the exterior walls and roof of the Building, foundations, footings, load bearing columns, ceiling and floor slabs, windows and window frames of the Building) and (ii) the following Alterations shall not be deemed to be Specialty Alterations: voice and data wiring and cabling, non-cooking café/pantries, Alterations existing in the VNSNY Units prior to the Possession Date (including, without limitation, the existing access doors connecting the First Floor portion of the VNSNY Retail Unit (the "VNSNY Ground Floor Space") to the lobby of the Building), additional access points to the Terraces installed by or on behalf of VNSNY, and any portions of Seller's Work including, without limitation, the convenience stair and elevator to be installed as part of Seller's Work connecting the VNSNY Ground Floor Space to the portion of the VNSNY Retail Unit located on the Cellar/Concourse Level. VNSNY shall, at VNSNY's sole cost and expense and prior to the End of Term, remove any Specialty Alteration and repair any damage to the Building due to such removal, cap all electrical, plumbing and waste disposal lines in accordance with sound construction practice and restore the Building to the condition existing prior to the making of such Specialty Alteration provided that such Specialty Alteration is designated as such by the Condominium Board in writing simultaneously with the Condominium Board's approval of the VNSNY Plans applicable thereto (including, without limitation, any Above Standard Items (as such term is defined in the VNSNY Sale Agreement) installed as part of Seller's Work that constitute Specialty Alterations with respect to which VNSNY received written notice of such designation during the plan review procedure set forth in VNSNY Sale Agreement); it being



agreed that with respect to all Alterations (other than Seller's Work), such designation by the Condominium Board shall only be required at the time of such approval of the VNSNY Plans if VNSNY requests such designation in writing simultaneously with the submission of such VNSNY Plans to the Condominium Board for approval and, absent such request from VNSNY, such designation by the Condominium Board may be made at any time on or before the date that is six (6) months prior to the End of Term. All such work shall be performed in accordance with plans and specifications first approved by the Condominium Board pursuant to the terms of this Section 1 and all applicable terms, covenants, and conditions of the VNSNY Transaction Documents. If the Condominium Board's (or Fee Owner's) insurance premiums increase solely as a result of any Specialty Alterations, VNSNY shall pay the actual, reasonable out-of-pocket amount of each such increase incurred by the Condominium Board (or Fee Owner) each year within thirty (30) days of delivery of a bill therefor from the Condominium Board (or Fee Owner, as applicable) (which shall be accompanied by reasonable back-up documentation therefor, if applicable). The Condominium Board shall advise VNSNY together with the Condominium Board's approval of the plans and specifications in question whether or not VNSNY shall be required to remove any portion of such Specialty Alteration prior to the End of Term; it being agreed that if the Condominium Board does not advise VNSNY that any Specialty Alteration needs to be removed with the Condominium Board's approval thereof, VNSNY shall not be required to remove such Specialty Alteration.

(d) VNSNY is hereby notified that certain portions of the Building are subject to the jurisdiction of the Landmarks Preservation Commission ("LPC"). In accordance with Sections 25-305, 25-306, 25-309 and 25-310 of the Administrative Code of the City of New York and the rules set forth in Title 63 of the Rules of the City of New York, any demolition, construction, reconstruction, alteration or minor work as described in such Sections and such rules may not be commenced within certain portions of the Building without the prior written approval of the LPC. VNSNY is notified that such demolition, construction, reconstruction, alterations or minor work includes, but is not limited to, (a) work to the exterior of the Building involving windows, signs, awnings, flagpoles, banners and storefront alterations and (b) may include interior work to the Building that (i) requires a permit from the Department of Buildings or (ii) changes, destroys or affects an interior architectural feature of an interior landmark or an exterior architectural feature of an improvement that, in each case, is a landmark or located on a landmark site or in a historic district. Without limiting the provisions hereof, VNSNY shall submit to the Condominium Board for its prior approval (not to be unreasonably withheld, conditioned or delayed) all applications for Certificates of No Effect, Certificates of Appropriateness or other similar requests (including applications for modifications of Certificates of No Effect, Certificates of Appropriateness or other similar requests previously granted) from the LPC. VNSNY shall keep the Condominium Board apprised of all LPC proceedings and shall deliver copies of all notices, approvals and rejections received by VNSNY from the LPC. VNSNY shall use the Condominium Board's designated LPC consultant to prosecute all filings with the LPC for Certificates of No Effect, Certificates of Appropriateness or other similar requests.

(e) Subject to the terms of the VNSNY Transaction Documents, Fee Owner, Declarant and the Condominium Board (as applicable) shall reasonably cooperate with VNSNY in connection with obtaining all necessary permits and authorizations for Alterations, which may include, without limitation, any LPC approval, any Terrace or Antenna Installations pursuant to

Sections 5 and 6 below (respectively), and executing applications reasonably required by VNSNY for such permits prior to completion of the Condominium Board's review of VNSNY's plans and specifications for such Alterations; provided, that (i) execution of any such application by Declarant, Fee Owner or the Condominium Board, as applicable, shall not constitute such party's consent to the proposed Alteration in question and (ii) no such application shall include a proposed change in the Certificate of Occupancy for the Building. Subject to the terms of the VNSNY Transaction Documents, VNSNY shall reimburse Declarant, Fee Owner, and the Condominium Board (without duplication) within thirty (30) days after written demand therefor (accompanied by reasonably satisfactory evidence thereof), for all reasonable and actual out-of-pocket costs and expenses reasonably incurred by such party in connection with its cooperation in obtaining such permits, authorizations and changes.

(f) Notwithstanding anything to the contrary set forth in this Exhibit I, the Declaration and/or the By-Laws, VNSNY (or any then owner of the VNSNY Units or any then permitted occupant of the VNSNY Units) shall have the right to install identification signage within the elevator vestibule and corridor of each full floor of the VNSNY Units (it being agreed that any such reasonable and customary signage within the elevator vestibule and corridor installed prior to the Possession Date in the VNSNY Office Units shall be at the Condominium Board's sole cost and expense (and any subsequent modification thereafter thereto and/or subsequent replacements thereof shall be at VNSNY's (or such other owner's or occupant's) sole cost and expense)). With respect to any floors on which the VNSNY Units are located where the VNSNY Units do not comprise such entire floor (i.e., any partial floors), VNSNY (or any then owner of the VNSNY Units or any then permitted occupant of the VNSNY Units) shall have the right to install identification signage on the entry doors to such portion of the VNSNY Unit and to include VNSNY's name (or the name of such other party) on any directory maintained by the Condominium Board for such floor (it being agreed that any such reasonable and customary signage on the entry doors to such portion of the VNSNY Unit and on any directory installed prior to the Possession Date shall be at the Condominium Board's sole cost and expense (and any subsequent modification thereafter thereto and/or subsequent replacements thereof shall be at VNSNY's (or such other owner's or occupant's) sole cost and expense)).

(g) Notwithstanding anything herein to the contrary set forth in this Section 1, in the event that any dispute or controversy arises concerning the provisions of this Section 1, either VNSNY or the Condominium Board may submit such dispute to expedited arbitration in accordance with the applicable provisions of Article 10 of the By-Laws.

SECTION 2
PERMITTED USE

2. (a) (i) Subject to the terms of Section 2(a)(ii) below, the VNSNY Units shall be used and occupied solely for (I) executive, administrative and general office use (the "Primary Use"), and (II) for customary ancillary uses in connection with such Primary Use as shall be reasonably required by VNSNY in the operation of its business (including, without limitation, the use of the VNSNY Retail Unit for the uses as described in Section 2(a)(ii) below), consistent with ancillary uses in other headquarters of home and community based health organizations located in Class "A" high-rise office buildings located in midtown Manhattan, provided such



ancillary uses are (x) ancillary to the Primary Use, (y) primarily for the use of VNSNY's employees (but subject to the provisions of Section 2(a)(ii) below) and (z) permitted in accordance with all Applicable Laws (it being acknowledged that the Condominium Board makes no representation that any of such ancillary uses are so permitted by Applicable Laws); and further provided that any such ancillary uses shall not generate significantly more (A) traffic into and out of the Building and/or the VNSNY Units and/or (B) use of the passenger elevators servicing the Building than the traffic and/or use normally generated by VNSNY with a similar Primary Use, and for no other purposes (it being agreed that (1) access to the VNSNY Retail Unit for training purposes by any persons who are not VNSNY employees that have been issued Building photo identification access key cards (as opposed to temporary access identification access key cards) shall be permitted only through VNSNY's Private Entrance, and (2) VNSNY's use of the VNSNY Units in connection with special events held therein from time to time in connection with VNSNY's business operations being conducted in the Building that generate additional traffic for entry to such event or exit therefrom shall not, in either case, be deemed to be a violation of the requirement of clause (A) or (B) hereof). Notwithstanding anything contained herein to the contrary, but subject to the provisions of Section 2(a)(ii)(2) below, VNSNY's Private Entrance shall be used solely for the VNSNY's Private Entrance Permitted Uses (as defined in Section 8 of this Exhibit I) and for no other purpose.

(ii) (1) In addition to the Primary Use, subject to VNSNY's compliance with all Applicable Laws, the VNSNY Retail Unit may be used for training facilities for (x) VNSNY's employees and prospective employees that have filed an application for employment and for any employees of third-party vendors of VNSNY (or any VNSNY Competitor (as such term is defined in the VNSNY Transaction Documents) that shall then be the owner of the VNSNY Units pursuant to the terms of the VNSNY Transaction Documents), and (y) any other persons (i.e., other than employees, prospective employees, and employees of third-party vendors) provided that the training being conducted for such other persons is similar to the training provided for employees, prospective employees, and employees of third-party vendors (except that VNSNY shall be permitted to charge a fee for such training services otherwise conducted in accordance with the terms hereof) and provided such use by such other persons (i.e., other than employees, prospective employees, and employees of third-party vendors) shall not exceed, in the aggregate, thirty (30) days per calendar year, in each case, as an accessory use to the Primary Use. In addition to the foregoing, subject to VNSNY's compliance with Applicable Laws, the Cellar/Concourse Level portion of the VNSNY Retail Unit may be used as office space in connection with the Primary Use. VNSNY expressly acknowledges and agrees that in no event shall the VNSNY Retail Unit be used for any retail purposes or for a training facility, classrooms, school or any similar purposes for "off the street" students, guests or invitees or for any tuition or fee based services (as opposed to training facilities for the persons set forth in clauses (x) and (y) of this Subsection 2(a)(ii) above). VNSNY's rights hereunder shall be expressly conditioned upon (I) subject to Section 2(a)(iii) below, such training facility use being permitted in accordance with all Applicable Laws and the certificate of occupancy for the Building (it being acknowledged that Declarant and the Condominium Board make no representation that training facility use is so permitted by Applicable Laws and such certificate of occupancy) and VNSNY complying with all Applicable Laws related thereto and any applicable approvals of governmental authorities in connection therewith; (II) access to the VNSNY Retail Unit for training purposes by any persons who are not VNSNY employees that have been issued



Building photo identification access key cards (as opposed to temporary access identification access key cards) shall be permitted only through VNSNY's Private Entrance (and not through the main lobby entrance to the Building), (III), intentionally omitted, and (IV) subject to the requirement that the VNSNY Units be owned by the Initially Named Owner. Subject to the provisions of this Section 2(a)(ii) below, if Declarant's (or Fee Owner's or the Condominium Board's) expeditor reasonably determines that such training facility use is not permitted pursuant to the Certificate of Occupancy for the Building and/or the VNSNY Units then VNSNY, at VNSNY's sole cost and expense but with Declarant's (and the Condominium Board's and Fee Owner's) cooperation as hereinafter set forth, shall be entitled to seek to modify the Building's then existing Certificate of Occupancy in a manner that shall expressly permit use of the VNSNY Retail Unit for training facilities (the "C/O Modification"). VNSNY hereby acknowledges and agrees that if any applicable governing authority requires any modifications to be made to the Building (outside of the VNSNY Units) and/or the performance of other work in the Building (outside of the VNSNY Units) in order to grant or approve such C/O Modification, then, to the extent the Condominium Board approves such modifications and/or work (which approval shall be granted in the Condominium Board's reasonable discretion with respect to any modifications of any portion of the Building outside of the VNSNY Units required therefor, unless the same materially and adversely affect the Building or other Unit Owners, tenants or occupants therein, in which case such approval shall be at the Condominium Board's sole discretion), Declarant (or the Condominium Board, as applicable) shall perform same at VNSNY's sole cost and expense (which shall be payable by VNSNY in advance prior to Declarant (or the Condominium Board, as applicable, without duplication) commencing same upon notice from Declarant (or the Condominium Board, as applicable) to VNSNY of such anticipated costs). Declarant, Fee Owner and the Condominium Board shall, at VNSNY's sole cost and expense, reasonably cooperate with VNSNY's C/O Modification. In connection with the C/O Modification, VNSNY shall utilize Declarant's (or the Condominium Board's, as applicable) designated expediter and shall not file any application or other document with the applicable governing authority without Declarant's (or the Condominium Board's as applicable) reasonable approval.

(2) Notwithstanding anything contained in Sections 2(a)(i) and 2(a)(ii)(1) above, subject to VNSNY's compliance with all Applicable Laws and subject to all restrictions contained in Section 3 below in connection with sales, leases or other transfers of the VNSNY Units (whether for all or merely portion(s) thereof), upon at least ninety (90) days prior written notice to the Condominium Board, VNSNY shall have the right to utilize the VNSNY Retail Unit for (and the provisions of Section 2(a)(iv) and Section 8 below (including, without limitation, VNSNY's Private Entrance Permitted Uses) shall be deemed modified to permit the use of VNSNY's Private Entrance in connection with):

(A) first-class retail use, subject, however, to limitations contained in the Condominium Declaration, By-Laws, and VNSNY Transaction Documents; it being agreed, however, that in no event shall the VNSNY Retail Unit be used for any of the prohibited uses set forth on Schedule 3 to this Exhibit I; and it being further agreed that if the VNSNY Retail Unit shall be used for a first-class retail use pursuant hereto, such use shall be subject to such reasonable and customary operating covenants as may be imposed by the Condominium Board in connection therewith from time to time.



(B) first-class corporate training, continuing education or professional education purposes, specifically excluding any remedial training, drug addiction or pre-college level review course purposes; and

(C) medical uses that are (I) non-surgical, (II) private and/or non-governmental (for purposes of example only and not of limitation, a clinic for the Veterans Administration or social services would be prohibited, but a private clinic is permissible), and (III) open by appointment only (i.e., the clinic or other facility will not accept walk-ins). For purposes hereof, the term "non-surgical" shall (1) include, without limitation, dermatology and dentistry practices that perform ambulatory surgical procedures as routine parts of such practices, but (2) exclude, without limitation, ambulatory surgery centers (commonly known as ASCs).

(3) Notwithstanding anything to the contrary set forth in this Exhibit I or the Declaration or By-Laws, the Condominium Board shall not voluntarily make any changes to the Building's Certificate of Occupancy following a C/O Modification that would prohibit or otherwise adversely affect VNSNY's right to use the VNSNY Units for the uses expressly permitted hereunder unless such change is made pursuant to a request by VNSNY or unless required by Applicable Laws.

(iii) Intentionally omitted.

(iv) Subject to the provisions of Section 2(a)(ii)(2) above and VNSNY's compliance with Applicable Laws, VNSNY's Private Entrance shall be used only as a reception area for VNSNY's employees and prospective employees and for access for VNSNY's employees and prospective employees to the VNSNY Retail Unit or to the main lobby of the Building (and thereafter to the VNSNY Office Units in the Building, but in no event for purposes of loitering in the main lobby) (subject to the limitations hereinafter set forth with respect to such access to the main lobby of the Building through VNSNY's Private Entrance). Subject to Applicable Laws, VNSNY shall have the right, at VNSNY's sole cost and expense and subject to the terms and conditions hereof and those contained in the VNSNY Transaction Documents (including, without limitation, Section 1 above), to utilize the existing access door connecting the VNSNY Retail Unit to the main lobby of the Building for access purposes solely by VNSNY's employees that have been issued Building identification access key cards (and in no event shall such access to the main lobby be utilized by VNSNY's prospective employees or any other guests or invitees) and only during such times as VNSNY's Private Entrance is open and VNSNY's employees or security personnel are adequately stationed in the VNSNY Retail Unit to ensure that only those persons permitted hereunder (i.e., VNSNY's employees) are permitted to access the main lobby of the Building through such access door); provided, however, that VNSNY shall be required to install, at its sole cost and expense, a key card locking system connected to the Building's security system and otherwise reasonably satisfactory to the Condominium Board. VNSNY acknowledges and agrees that VNSNY's Private Entrance shall be manned at all times that the dedicated exterior entrance of the VNSNY Retail Unit is unlocked (in accordance with the provisions of Section 8(c)(vi) below) and, notwithstanding anything to the contrary contained in the Declaration, By-Laws, and/or the VNSNY Transaction

Documents, VNSNY shall be solely responsible for all security required in connection with the use of VNSNY's Private Entrance and any access to the VNSNY Units and the Building through VNSNY's Private Entrance; provided, however, that except if caused by VNSNY's negligence, willful misconduct or failure to comply with the security requirements contained in this Exhibit I and/or any of the VNSNY Transaction Documents, in no event shall VNSNY be liable to the Condominium Board for any injury or damage to persons or property in the Building caused by or resulting from theft, illegal entry or trespass, vandalism or any other crime committed by any person other than VNSNY's employees or agents (it being agreed that the foregoing shall not be or be deemed to relieve VNSNY from any liability in connection with third-party claims (other than by the Condominium Board) made against VNSNY or to require the Condominium Board to indemnify VNSNY in connection with any such third-party claims).

(b) No portion of the VNSNY Units shall be used for any purpose which: (i) unreasonably or materially interferes with the maintenance or operation of the Building; (ii) materially and adversely affects any service provided to, and/or the use and occupancy by, any Building tenants or occupants or other Unit Owners; (iii) unreasonably interferes with, annoys or disturbs any other Unit Owner or tenant or occupant in the Building, (iv) constitutes a public or private nuisance or (v) violates the certificate of occupancy issued for the VNSNY Units or the Building. Without limiting the foregoing, neither the VNSNY Units, nor the halls, corridors, stairways, elevators or any other portion of the Building shall be used by VNSNY or VNSNY's servants, employees, licensees, invitees or visitors in connection with the aforesaid permitted use or otherwise so as to cause any congestion of the public portions of the Building or the entranceways, sidewalks or roadways adjoining the Building whether by trucking or by the congregating or loitering thereon of VNSNY and/or the servants, employees, licensees, invitees or visitors of VNSNY (provided that the foregoing shall exclude any congestion solely resulting from elevators and elevator dispatching systems that are not performing in accordance with the requirements contained in this Exhibit I in connection therewith).

(c) VNSNY shall not permit messengers, delivery personnel or other individuals providing such services to VNSNY ("Delivery Personnel") to: (i) assemble, congregate or to form a line outside of the VNSNY Units or the Building in a manner that unreasonably impedes the flow of pedestrian traffic outside of the VNSNY Units or Building or (ii) park or otherwise leave bicycles, wagons or other delivery carts that are not in active use in the Common Elements outside of the VNSNY Units or on the sidewalks of the Building except in locations outside of the Building designated by the Condominium Board or Applicable Law from time-to-time. VNSNY shall use reasonable efforts to require all Delivery Personnel to comply with all reasonable rules promulgated by the Condominium Board from time-to-time regarding the use of outside messenger services provided that VNSNY has received reasonable prior written notice thereof (which rules shall be enforced by the Condominium Board against all Unit Owners and tenants of the Building in a non-discriminatory manner).

SECTION 3
TRANSFER RIGHTS

3. Certain Transfer Rights.

(a) (i) Notwithstanding anything to the contrary contained in the Declaration,



By-Laws, and/or the VNSNY Transaction Documents, under no circumstances shall VNSNY be permitted to separately sell or otherwise transfer the VNSNY Units; it being the intention of the parties that the entire VNSNY Units shall at all times be owned by the same entity. If and to the extent VNSNY is permitted to and does sell, assign or otherwise transfer its interest in the VNSNY Units pursuant to the express provisions of this Section 3, VNSNY shall also be required to sell, assign or otherwise transfer its interest in all of the VNSNY Transaction Documents (in form reasonably satisfactory to the Condominium Board and VNSNY), provided any such sale, assignment or transfer shall not release VNSNY from liability under the VNSNY Transaction Documents unless otherwise expressly agreed (in their sole discretion) in writing by the parties thereto. Notwithstanding anything to the contrary contained in any of the VNSNY Transaction Documents, Declarant and the Condominium Board shall not have the right to transfer their rights under any of the VNSNY Transaction Documents to non-Affiliated parties (other than the Condominium Board itself), it being the intention of the parties that (x) Declarant shall at all times be the party in control of the Condominium Board (as detailed in the Declaration and By-Laws), and (y) the entities that directly control the day to day operations and management of the Declarant and the Condominium Board shall at all times be Affiliated entities.

(ii) If VNSNY shall lease, sublease or otherwise permit the occupancy of all or any part of the VNSNY Units or shall sell all of the VNSNY Units, such lease, sublease or other occupancy agreement or sale shall be subject to the terms of the VNSNY Transaction Documents.

(iii) Notwithstanding anything to the contrary contained herein, in no event shall VNSNY be permitted to sell, assign or otherwise transfer its interest in any of the VNSNY Units (even if otherwise permitted under this Section 3) prior to the Possession Date.

(b) (i) From and after the Possession Date, but subject to Section 3(b)(iii) below, no further sale or transfer or lease (or sublease or other permitted occupancy) of the VNSNY Units (or any portion thereof) shall occur without the Condominium Board's prior written consent, which shall be granted or withheld in accordance with this Section 3. For purposes hereof, the Condominium Board's rights and obligations (including, without limitation, the requirements applicable to the Condominium Board's consent rights) shall be applicable (and all prohibitions shall likewise be applicable) with respect to any initial sale, transfer, lease, sublease or other occupancy agreement and any subsequent sales, transfers, leases, subleases or other occupancy agreements.

(ii) If VNSNY shall lease all or any part of the VNSNY Units, such lease shall not relieve VNSNY of any of its obligations hereunder or under any of the VNSNY Transaction Documents and such lease shall be subject to the terms and requirements of the VNSNY Transaction Documents. VNSNY shall provide the Condominium Board with notice at least ten (10) days prior to the effective date of any lease of all or any portion of the VNSNY Units.

(iii) The transfer of a majority of the issued and outstanding capital stock of any corporate owner of the VNSNY Units or any tenant thereof or a majority of the total interest in any partnership owner, tenant or company, however accomplished, and whether in a single transaction or in a series of related or unrelated transactions, the merger or consolidation of a



corporate tenant or sublessee, shall, subject to the provisions of this Section 3(b)(iii) below, be deemed a sale of the VNSNY Units or an assignment of such lease, as applicable. If the VNSNY Units shall be sold or otherwise transferred, or if the VNSNY Units or any part thereof are leased or occupied by anybody other than VNSNY, the Condominium Board (or Fee Owner, as applicable) may, after default by VNSNY (and after the expiration of any applicable notice or cure period provided for in the VNSNY Transaction Documents), collect rent from the transferee, tenant or occupant, and apply the net amount collected to the amounts payable by VNSNY pursuant to the VNSNY Transaction Documents, but no sale, leasing, occupancy or collection shall be deemed a waiver of the provisions hereof, the acceptance of the purchaser, tenant or occupant as a Unit Owner or tenant in the Building, or a release of VNSNY from the further performance by VNSNY of covenants on the part of VNSNY contained in any of the VNSNY Transaction Documents. The consent by the Condominium Board to any sale or lease shall not in any way be construed to relieve VNSNY from obtaining the express consent in writing of the Condominium Board to any further sale or lease. In no event shall any permitted tenant assign or encumber its lease or sublet all or any portion of its space, or otherwise suffer or permit the space or any part thereof to be used or occupied by others, without the Condominium Board's prior written consent in each instance which shall be granted or withheld in accordance with all applicable provisions of this Section 3 as if such lease or sublease or assignment were made by VNSNY. A material modification of a lease or other occupancy agreement, or an amendment or extension of a lease or any other occupancy agreement (except if made solely to document an express right granted pursuant to such lease or occupancy agreement) shall be deemed a lease. The listing of the name of a party or entity other than that of VNSNY on the Building or floor directory or on or adjacent to the entrance door to the VNSNY Units shall neither grant such party or entity any right or interest in the VNSNY Transaction Documents or in the VNSNY Units nor constitute the Condominium Board's consent to any sale, lease or sublease to, or occupancy of the VNSNY Units by, such party or entity. The above notwithstanding, the Condominium Board's consent shall not be required in connection with a sale of the VNSNY Units or the leasing thereof to an entity into or with which VNSNY is merged or consolidated or otherwise transferred to an entity to which all or substantially all of the assets, stock or other equity interests of VNSNY are transferred (collectively, herein called a "VNSNY Successor", which term shall include any VNSNY Successor to any VNSNY Successor) or to any entity which controls or is controlled by or is under common control with VNSNY (herein called a "VNSNY Affiliate", which term shall include any VNSNY Affiliate of any VNSNY Affiliate), provided that in any of such events (a) the VNSNY Successor or VNSNY Affiliate, as the case may be, is a reputable entity of good character and, solely with respect to a VNSNY's Successor, such entity has a net worth (as such term is hereinafter defined) (or, if such VNSNY Successor is a professional services firm or partnership, such VNSNY Successor has a net operating income, computed in accordance with generally accepted accounting principles, consistently applied) at least equal to the net worth of the owner of the VNSNY Units immediately prior to such merger, consolidation or other transfer (it being agreed that no such net worth or net operating income requirement shall be imposed with respect to a transfer by deed to a VNSNY Affiliate provided that the Initially Named Owner enters into a guaranty, in form and substance reasonably acceptable to the Condominium Board, guaranteeing all of the obligations of the owner of the VNSNY Units under the VNSNY Transaction Documents whether accruing prior to or after the effective date of any such transfer to such VNSNY Affiliate (including, without limitation, the full and prompt payment of the Common



Charges and Installment Purchase Payments)), (b) if applicable (i.e., with respect to a VNSNY Successor), proof reasonably satisfactory to the Condominium Board of such net worth shall have been delivered to the Condominium Board at least ten (10) days prior to the effective date of any such transaction (or, if Applicable Laws or confidentiality requirements prevent same from being provided prior to said transaction, then within five (5) days following the effective date of such transaction, time being of the essence), (c) a duplicate original instrument of the sale, assignment or lease in form and substance reasonably satisfactory to the Condominium Board (it being agreed that such instrument satisfying all of the terms and conditions of the VNSNY Transaction Documents shall be deemed satisfactory), duly executed and acknowledged by VNSNY and the VNSNY Affiliate or VNSNY Successor, shall have been delivered to the Condominium Board at least ten (10) days prior to the effective date of any such transaction (or, if Applicable Laws or confidentiality requirements prevent same from being provided prior to said transaction, then within five (5) days following the effective date of such transaction, time being of the essence), (d) an instrument in form and substance reasonably satisfactory to the Condominium Board, duly executed and acknowledged by the purchase, assignee or tenant, as applicable, in which such party assumes (as of the Possession Date) observance and performance of, and agrees to be personally bound by, all of the terms, covenants and conditions of the VNSNY Transaction Documents on VNSNY's part to be performed and observed shall have been delivered to the Condominium Board at least ten (10) days prior to the effective date of any such transaction (or, if Applicable Laws or confidentiality requirements prevent same from being provided prior to said transaction, then within five (5) days following the effective date of such transaction, time being of the essence), and (e) such merger, consolidation or transfer of assets, stock or other equity interests shall be for a good business purpose and not principally for the purpose of transferring the VNSNY Units or VNSNY's rights under the VNSNY Transaction Documents. For purposes hereof, the term "net worth" shall mean the excess of total assets over total liabilities; total assets and total liabilities each being determined in accordance with generally accepted accounting principles consistently applied, and the calculation of net worth for a VNSNY Successor shall be calculated in the similar manner as that is calculated for VNSNY prior to such transaction.

(iv) Intentionally omitted.

(v) Any lease entered into by VNSNY with respect to any VNSNY Units or any portion thereof shall be expressly subject to all of the terms of this Exhibit I and the other VNSNY Transaction Documents.

(c) Intentionally omitted.

(d) If VNSNY requests the Condominium Board's consent to a specific sale, transfer or leasing, it shall submit in writing to the Condominium Board (i) the name and address of the proposed purchaser, transferee or tenant, (ii) a final term sheet containing all material terms of the proposed sale, transfer or lease or (at VNSNY's discretion) a duly executed counterpart of the proposed purchase or transfer agreement or lease, as applicable (it being agreed that any consent granted hereunder by the Condominium Board based on a final term sheet (as opposed to a duly executed sale, transfer or lease agreement) shall be expressly conditioned upon (a) the final executed sale, transfer or lease agreement containing all of the material terms set forth in such final term sheet, (b) the Condominium Board receiving an

executed copy of such transfer or lease agreement within ten (10) days after execution thereof (and, in all cases, prior to the effective date thereof), and (c) such sale, transfer or lease agreement being fully executed within one (1) year following such consent from the Condominium Board), (iii) reasonably satisfactory information as to the nature and character of the business of the proposed purchaser, transferee or tenant and as to the nature of its proposed use of the space, and (iv) banking, financial or other credit information relating to the proposed purchaser, transferee or tenant reasonably sufficient to enable the Condominium Board to determine the financial responsibility and character of the proposed purchaser, transferee or tenant. The Condominium Board shall have a period of thirty (30) days from the date VNSNY submits all of the required documents set forth above in the first (1st) sentence of this Section 3(d) to either grant or withhold its consent to any proposed sale, transfer or lease pursuant to the terms of this Section 3. If the Condominium Board fails to respond within such 30-day period, then VNSNY shall have the right to deliver a second notice to the Condominium Board requesting the Condominium Board's consent to such sale, transfer or lease, which request shall state in bold upper case letters at the top of the first page in which any such request is sent as follows: **"THIS IS A TIME SENSITIVE NOTICE AND SUBJECT TO THE PROVISIONS OF SECTION 3(d) OF EXHIBIT I TO THE DECLARATION, DECLARANT AND CONDOMINIUM BOARD SHALL BE DEEMED TO HAVE APPROVED VNSNY'S SALE, TRANSFER OR LEASE REQUEST."** If VNSNY shall have delivered such reminder notice to the Condominium Board, and the Condominium Board shall fail to respond to such reminder notice within ten (10) Business Days after the Condominium Board's receipt of such reminder notice, then the Condominium Board shall be deemed to have consented to such sale, transfer or lease (but subject to the other applicable provisions of this Section 3).

(e) The Condominium Board will not unreasonably withhold, condition or delay its consent to VNSNY's request for consent (if any such consent is required pursuant to this Section 3) to any sale, transfer or lease for any use permitted in accordance with the provisions of Section 2 above, provided that:

(i) The VNSNY Units shall not, without the Condominium Board's prior consent, have been listed or otherwise publicly advertised for leasing or subleasing by or on behalf of VNSNY at a rental rate (as applicable) lower than the then prevailing rental rate (as applicable) for other Units (or portions thereof) in the Building; provided, however, that the foregoing shall not be deemed to prohibit VNSNY from listing with brokers the availability of the VNSNY Units for sale, transfer or leasing or subleasing without specifying the sale or transfer price or the rental rate, as applicable nor shall the foregoing be or be deemed to prohibit VNSNY from selling, transferring or leasing the VNSNY Units for a sale or transfer price or a rental rate that is lower than the then prevailing price or rate (as applicable) for other Units (or portions thereof) in the Building;

(ii) With respect to a lease or sublease of more than one (1) full floor of the VNSNY Units only, the proposed purchaser, transferee or tenant or subtenant has a net worth (as such term is defined in Section 3(b)(iii) above) at least equal to fifteen (15) multiplied by the sum of (x) the annual Installment Purchase Payments (as such term



is defined in the VNSNY Sale Agreement) for the last year of the proposed lease or sublease (without taking into consideration any abatements or reductions thereof), and (y) the then annual Common Charges (without taking into consideration any abatements or reductions thereof), in each case, payable by VNSNY pursuant to the VNSNY Transaction Documents with respect to the VNSNY Units (or the portion thereof being transferred, sold or leased, as determined on a rentable square foot basis);

(iii) The proposed purchaser, transferee or tenant or subtenant shall be of a character, be engaged in a business, and propose to use the VNSNY Units, in a manner consistent with the permitted use and in keeping with the standards of the Building (in each case, as reasonably determined by the Condominium Board; it being agreed, however, that any use expressly permitted in accordance with the provisions of Section 2 above shall be deemed to satisfy the provisions of this Section 3(e)(iii));

(iv) The proposed purchaser, transferee or tenant or subtenant shall not then be a tenant, subtenant, assignee or occupant of any space in the Building nor shall the proposed assignee or subtenant be a person or entity who has dealt with the Declarant or the Declarant's agent (directly or through a broker) with respect to space in the Building during the six (6) months immediately preceding VNSNY's request for the Condominium Board's consent; provided that, in any such instance, Declarant has comparably-sized space for a comparable term available in the Building (or will have comparably-sized space for a comparable term available in the Building within six (6) months after the proposed effective date of such assignment or subletting);

(v) The character of the business to be conducted in the VNSNY Units by the proposed purchaser, transferee or tenant or subtenant shall not be likely to materially increase operating expenses or materially and adversely increase the burden on the then existing (or, if the Building is not then fully-occupied, accounting for a fully-occupied Building) cleaning services, elevators (provided that the foregoing shall exclude any such burden solely resulting due to elevators in the Building that are not performing in accordance with the requirements contained in this Exhibit I in connection therewith) or other services and/or systems of the Building (as reasonably determined by the Condominium Board);

(vi) In case of a lease or sublease, the tenant or subtenant shall be expressly subject to all of the obligations of VNSNY under the VNSNY Transaction Documents and the further condition and restriction that such lease or sublease shall not be assigned, encumbered or otherwise transferred or the VNSNY Units further sublet by the subtenant in whole or in part, or any part thereof suffered or permitted by the subtenant to be used or occupied by others, without the prior written consent of the Condominium Board in each instance (which consent shall be granted or withhold in accordance with the terms of this Section 3);

(vii) No lease or sublease shall end later than one (1) day before the end of the Term;



(viii) At no time shall there be more than four (4) occupants, including VNSNY, of separately demised space on any full floor upon which the VNSNY Units are located and in no event shall VNSNY be entitled to separately sell or transfer (as opposed to leasing or subleasing) the VNSNY Retail Unit unless same is part of a sale or transfer of the entirety of the VNSNY Units;

(ix) VNSNY shall reimburse the Condominium Board within thirty (30) days after written request therefor accompanied by reasonably satisfactory documentation of any reasonable costs (if any), including reasonable attorneys' fees and disbursements, which are actually incurred by the Condominium Board in connection with said sale, transfer, lease or sublease;

(x) The character of the business to be conducted in the VNSNY Units by the proposed purchaser, transferee, tenant or subtenant shall not require any material alterations, installations, improvements, additions or other physical changes to be performed, or made to, any portion of the Building other than the VNSNY Units (as reasonably determined by the Condominium Board); and

(xi) The proposed purchaser, transferee, tenant or subtenant shall not be any entity which is entitled to diplomatic or sovereign immunity that has not been effectively waived or which is not subject to service of process in the State of New York or to the jurisdiction of the courts of the State of New York and the United States located in New York County.

(f) Any consent of the Condominium Board under this Section 3 shall be subject to the terms of this Section 3 (including, without limitation, the deemed consent provisions of Section 3(d) above) and conditioned upon there being no default by VNSNY, after notice and the expiration of the applicable cure period, under any of the terms, covenants and conditions of the VNSNY Transaction Documents at the time that the Condominium Board's consent to any such sale, transfer, lease or sublease is requested and on the date of the commencement of the term of any proposed lease or sublease or the effective date of any proposed sale or transfer. VNSNY acknowledges and agrees that no assignment or subletting shall be effective unless and until VNSNY, upon receiving any necessary written consent from the Condominium Board (and unless it was theretofore delivered to the Condominium Board), causes a duly executed copy of the sale, transfer, lease or sublease agreement to be delivered to the Condominium Board. Any such lease or sublease shall provide that it is subject to the VNSNY Transaction Documents and shall be in a form reasonably acceptable to the Condominium Board. Any such sale or transfer of the VNSNY Units shall contain an assumption by the purchaser or transferee of all of the terms, covenants and conditions of the VNSNY Transaction Documents to be performed by VNSNY arising from and after the effective date of such agreement; provided, however, with respect to any purchase or transfer to a VNSNY's Successor or VNSNY's Affiliate, such assumption by the purchaser or transferee shall be of all of the terms, covenants and conditions of the VNSNY Transaction Documents to be performed by VNSNY arising from and after the Possession Date.



(g) Provided that the relevant portion of the VNSNY Units is not separately demised, the occupancy of the VNSNY Units by one or more Service and Business Relationship Entities (as defined below, and for the uses permitted in accordance with the provisions of Section 2 above), shall be permitted without the need to obtain the Condominium Board's consent; provided, that (a) such Service and Business Relationship Entities shall not occupy portions of the VNSNY Units constituting, in the aggregate, more than 10% of the rentable square footage of the VNSNY Units, (b) in no event shall the use of any portion of the VNSNY Units by a Service and Business Relationship Entity create or be deemed to create any right, title or interest of such Service and Business Relationship Entity in any portion of the VNSNY Units or the VNSNY Transaction Documents, (c) such Service and Business Relationship Entity shall not have any signage outside of the VNSNY Units, (d) no consideration shall be paid to VNSNY by any such Service and Business Relationship Entity with respect to such portion of the Premises occupied by such Service and Business Relationship Entity in connection with such use that is in excess of the Installment Purchase Payments and Common Charges payable by VNSNY with respect to such portion of the VNSNY Units (determined on a per square foot basis), and (e) such Service and Business Relationship Entity is engaged in a business, and uses the portion of the VNSNY Units that it occupies in a manner, that is in keeping with standards of the Building (as reasonably determined by the Condominium Board). "Service and Business Relationship Entities" shall mean (i) any Affiliate of VNSNY, (ii) persons actively engaged in providing services to VNSNY or any Affiliate of VNSNY, (iii) VNSNY's (or any of VNSNY's Affiliate's) attorneys, consultants and other persons with which VNSNY (or any Affiliate of VNSNY) has an active and meaningful business relationship (including clients and customers of, and service providers and vendors to, VNSNY) and (iv) any regulatory authorities having jurisdiction over VNSNY or any Affiliate of VNSNY that is using the relevant portion of the VNSNY Units for a purpose associated with the business of VNSNY.

(i) Any lease entered into by VNSNY with respect to any VNSNY Units or any portion there shall be expressly subject to all of the terms of the VNSNY Transaction Documents.

(j) Notwithstanding anything herein to the contrary set forth in this Section 3, in the event that any dispute or controversy arises concerning the provisions of this Section 3, VNSNY may submit such dispute to expedited arbitration in accordance with the applicable provisions of Article 10 of the By-Laws.

SECTION 4
LEGAL COMPLIANCE

4. Certain Legal Compliance Obligations.

(a) VNSNY, at its own expense, shall comply with all laws, orders and regulations of any governmental authority having or asserting jurisdiction over the VNSNY Units (subject, however, to VNSNY's right to contest the applicability or legality thereof in accordance with the provisions of Section 4(b) below), which shall impose any violation, order or duty upon Fee Owner, the Condominium Board, and/or VNSNY with respect to the VNSNY Units (other than any vertical elements of Base Building Systems located within the VNSNY

Units and not exclusively serving the VNSNY Units), the making of any alterations therein by VNSNY (or anyone claiming by, through, or under VNSNY, but excluding any such compliance required in connection with Seller's Work), or the use or occupancy thereof by VNSNY (or anyone claiming by, through, or under VNSNY), including, without limitation, compliance in the VNSNY Units with all City, State and Federal laws, rules and regulations on the disabled or handicapped, on fire safety and on hazardous materials; provided, however, that VNSNY shall not be obligated to make structural repairs or Alterations in or to the VNSNY Units in order to comply with Applicable Laws unless the need for same arises out of (i) VNSNY's particular manner of use of the VNSNY Units (other than arising out of the mere use of (x) the VNSNY Office Units for executive, administrative and general office use, and (y) the VNSNY Retail Unit for office, conference and/or first-class retail use), (ii) any cause or condition (including, but not limited to, an Alteration made by or on behalf of VNSNY) created by VNSNY (other than arising out of the mere use of (X) the VNSNY Office Units for executive, administrative and general office use, and (Y) the VNSNY Retail Unit for office, conference and/or first-class retail use, in each case, as permitted pursuant to Section 2 of this Exhibit I), or (iii) the breach of any of VNSNY's obligations hereunder or under the VNSNY Transaction Documents after notice and the expiration of any applicable cure or grace periods, whether or not such compliance requires work which is structural or non-structural, ordinary or extraordinary, foreseen or unforeseen.

(b) VNSNY, at its expense, after notice to the Condominium Board, may contest, by appropriate proceedings prosecuted diligently and in good faith, the validity, or applicability to the VNSNY Units, of any Applicable Laws, provided that (a) the Condominium Board, Declarant or Fee Owner shall not be subject to criminal penalty or to prosecution for a crime, or any other fine or charge, nor shall the VNSNY Units or any part thereof or the Building, or any part thereof, be subject to being condemned or vacated, nor shall the Building, or any part thereof, be subjected to any lien (unless VNSNY shall remove such lien by bonding or otherwise) or encumbrance, in each case, by reason of non-compliance or otherwise by reason of such contest; (b) VNSNY shall indemnify the Condominium Board, Declarant and Fee Owner against the cost of such contest and against all liability for damages, interest, penalties and the reasonable and actual out-of-pocket expenses (including reasonable attorneys' fees and expenses), resulting from or incurred in connection with such contest or non-compliance; (c) VNSNY shall have provided the Condominium Board with such security as the Condominium Board shall reasonably require to ensure the diligent and good faith prosecution of such proceedings and to cover any costs or liabilities the Condominium Board, Declarant or the Fee Owner may incur in connection therewith; (d) such noncompliance or contest shall not prevent the Condominium Board or any Unit Owner from obtaining any and all permits and licenses in connection with the operation of the Building; and (e) VNSNY shall keep the Condominium Board advised as to the status of such proceedings.

(c) VNSNY shall require every person (if any) engaged by him to clean any window in the VNSNY Units from the outside to use the equipment and safety devices required by Section 42 of the Labor Law and the rules of any governmental authority having or asserting jurisdiction. The foregoing shall not be construed to relieve the Condominium Board from its cleaning obligations set forth in this Exhibit I, the Declaration and/or By-Laws.



(d) VNSNY at its expense shall comply with all requirements of the New York Board of Fire Underwriters, or any other similar body affecting the VNSNY Units, and shall not use the VNSNY Units in a manner which shall increase the rate of fire insurance of the Fee Owner or the Condominium Board over that in effect prior to the Possession Date. If VNSNY's use of the VNSNY Units increases the fire insurance rate, VNSNY shall reimburse the Condominium Board for all such increased costs. That the VNSNY Units are being used for the purpose set forth in Section 2 above shall not relieve VNSNY from the foregoing duties, obligations and expenses.

(e) (i) Declarant or Condominium Board, as applicable, at Declarant's sole cost and expense (but subject to reimbursement, if any, in accordance with Section 7 of this Exhibit I), shall comply with all Applicable Laws applicable to the Common Elements (including, without limitation the Fire Stairs, the Main Roof and the core floor slabs) (subject, however, to Section 5 of this Exhibit I with respect to the Terraces and as otherwise set forth below and Subject to Section 8 of this Exhibit I with respect to the VNSNY Private Entrance and as otherwise set forth below), the non-leasable and public areas of the Building, Base Building Systems and all structural portions of the Building (except as set forth in Section 4(a) above), but, in all cases, only if and to the extent that same would have an adverse effect on VNSNY's ability to use or occupy the VNSNY Units in accordance with the provisions as to use set forth in Section 2 above or would otherwise result in a VNSNY Adverse Impact; provided, however, that the foregoing shall not be or be deemed to require Declarant or the Condominium Board to comply with any laws which VNSNY shall be required to comply with pursuant to the terms of this Section 4 or otherwise as set forth in the VNSNY Transaction Documents or other occupants of the Building shall otherwise be required to comply with, subject, however, to the Condominium Board's right to contest diligently and in good faith the applicability or legality thereof. In the case where Declarant or the Condominium Board is required to cure any violations pursuant to the preceding sentence (i.e., where failure to comply has a material adverse effect on VNSNY's ability to use or occupy the VNSNY Units for the Primary Use and VNSNY is not using the VNSNY Units (or applicable portion thereof)), VNSNY shall be entitled to an abatement of Common Charges and Installment Purchase Payments in proportion to the portion of the VNSNY Units with respect to which there is a material adverse effect on VNSNY's ability to use or occupy the VNSNY Units (or the applicable portion thereof) in accordance with the provisions as to use set forth in Section 2 above or would otherwise result in a VNSNY Adverse Impact and provided VNSNY is not using the VNSNY Units (or the applicable portion thereof) because of Declarant's or the Condominium Board's, as applicable, failure to cure such violation, which abatement shall commence upon VNSNY's delivery of written notice to the Condominium Board of such violation until such time as such use or access is restored (which abated amount of Common Charges shall be paid by the Declarant to the Condominium Board as a Special Assessment). With respect to any compliance with laws that other occupants of the Building are otherwise required to comply with, if and to the extent failure to so comply would result in any adverse effect on VNSNY's ability to use or occupy the VNSNY Units in accordance with the provisions as to use set forth in Section 2 above or would otherwise result in a VNSNY Adverse Impact, then upon notice from VNSNY thereof, Declarant or the Condominium Board, as applicable, shall enforce the provisions of the Declaration and By-Laws, applicable lease or other occupancy agreement to cause such party to comply with its obligations under the Declaration and By-Laws, applicable lease or other occupancy agreement.



For purposes of clarification, Declarant and the Condominium Board shall be required to cure any violations set forth herein that are the responsibility of Declarant or the Condominium Board hereunder regardless of whether VNSNY is using the VNSNY Units at the time such violation exists and Declarant and the Condominium Board shall defend, indemnify and hold VNSNY harmless from all third-party claims arising in connection with Declarant's and/or the Condominium Board's failure to timely cure such violations as required hereunder.

(ii) Notwithstanding anything contained in this Exhibit I or the VNSNY Transaction Documents to the contrary, the obligations of the Declarant and the Condominium Board to comply with any Applicable Laws relating to the 3rd Floor Terrace and the VNSNY Private Entrance shall be limited as follows: (a) with respect to the 3rd Floor Terrace, the obligations of the Declarant and the Condominium Board shall be solely in connection with any work or changes required by Applicable Laws to the structural steel of the 3rd Floor Terrace and the structural concrete support components of the 3rd Floor Terrace or otherwise required due to any equipment of the Condominium Board located on the 3rd Floor Terrace and, in all cases, except if such compliance is required solely due the VNSNY's negligence, willful misconduct, misuse of the 3rd Floor Terrace, any Alterations performed by VNSNY in connection therewith and/or any compliance required solely because the 3rd Floor Terraces is being utilized by VNSNY (as opposed to being reserved solely to the Condominium Board) (in which case such compliance shall be performed at VNSNY's sole cost and expense), and (b) with respect to the VNSNY Private Entrance, the obligations of the Declarant and the Condominium Board shall be limited solely to any work or changes required by Applicable Laws to the structural steel of the doorway and the structural concrete support components of the doorway comprising the VNSNY Private Entrance and, in all cases, except if such compliance is required solely due to VNSNY's negligence, willful misconduct, misuse of the VNSNY Private Entrance or any Alterations performed by VNSNY in connection therewith (in which case such compliance shall be performed at VNSNY's sole cost and expense). If VNSNY shall, at any time, utilize the 7th Floor Terrace in violation of the terms of Section 5(b)(xx) below, then the references in this Section 4(e)(ii) above to the 3rd Floor Terrace shall also be deemed to include the 7th Floor Terrace. For purposes of this paragraph, the references to VNSNY shall include any then owner of the VNSNY Units and any occupant of the VNSNY Units. Notwithstanding anything contained herein or any VNSNY Transaction Documents to the contrary but subject to the provisions of Section 1(f)(iii) of the VNSNY Sale Agreement, in no event shall the Condominium Board or the Declarant be or be deemed responsible for any occupancy or public assembly permits required in connection with VNSNY's use of the Terraces.

(f) (i) Notwithstanding the foregoing, any Hazardous Materials (as defined on Exhibit C) located in the VNSNY Units as of the Possession Date and which are encountered in connection with Alterations performed by or on behalf of VNSNY after the Possession Date (or in connection with the performance by Declarant of Seller's Work) shall be the sole responsibility of the Condominium Board to abate and remediate as and to the extent required in accordance with Applicable Laws (it being agreed that in no event shall the Condominium Board enclose or encapsulate the same), all at Declarant's sole cost and expense (except if and to the extent such costs may be included in Common Expenses in accordance with



the express provisions of Section 7 below). If any such Hazardous Materials are discovered in the VNSNY Units during an Alteration, then VNSNY shall promptly notify the Condominium Board of same and the Condominium Board shall be responsible pursuant to the preceding sentence therefor. For purposes of this Section 4(f)(i) only, the term "Hazardous Materials" shall mean only such materials as are, on the Possession Date, classified or defined as hazardous materials pursuant to Applicable Laws.

(ii) Nothing in this Exhibit I or in the Declaration or By-Laws shall be construed or deemed to prevent VNSNY's use of any Hazardous Materials customarily used in the ordinary course of VNSNY's business in the VNSNY Units, provided such use is in accordance with all Applicable Laws.

SECTION 5
TERRACES

5. Terraces.

(a) Provided that the portions of the 3rd floor of the Building and/or the portions of the 7th floor of the Building (as applicable), in each case, that are directly contiguous to the Terraces (as hereinafter defined) shall then be included as part of the VNSNY Units, VNSNY shall be permitted access to those certain terraces on the 3rd floor of the Building (the "3rd Floor Terrace") and/or the 7th floor of the Building (the "7th Floor Terrace", and together with the 3rd Floor Terrace, collectively, the "Terraces") (as the case may be) which are contiguous to the VNSNY Units (but excluding any portions of the Terraces containing any Non-VNSNY Terrace Items (as such term is defined in Section 5(c) below)), as such Terraces are identified on Schedule 4 to this Exhibit I, subject to and provided that VNSNY complies with the provisions of this Section 5. Except to the extent performed by Declarant in connection with Seller's Work, any work or Alterations that may be required to permit the use of the Terraces for any particular purposes shall be performed by VNSNY at VNSNY's sole cost and expense and in accordance with Section 1 above and the terms and conditions of any other VNSNY Transaction Documents applicable to the performance by VNSNY of Alterations.

(b) VNSNY's use and access to Terraces shall be subject to the following terms and conditions:

(i) With respect to the 3rd Floor Terrace, VNSNY shall be required to repair and maintain such 3rd Floor Terrace as set forth in Section 5.16.1 of the By-Laws (but subject to the provisions of Section 4(e) above) as if the 3rd Floor Terrace is included as part of the VNSNY Units for purposes thereof; provided, however, on one (1) occasion only, but only if and to the extent required prior to the End of Term for VNSNY to be able to use the 3rd Floor Terrace (as reasonably determined by the Condominium Board), the Condominium Board shall, at its sole cost and expense, replace the roof membrane located on the 3rd Floor Terrace (provided that the cost thereof may be included in Common Expenses payable in part by the owner of the VNSNY Unit). With respect to the 7th Floor Terrace, provided that VNSNY's use thereof is limited to the use permitted under this Section 5 (including, without limitation clause (xx) below), then the maintenance and repairs of the 7th Floor Terrace (excluding any repairs or maintenance required due to any installation of the Antennae Installations thereon by or on

behalf of VNSNY or any other owner or occupant of the VNSNY Units) shall be performed by the Condominium Board as required with respect to other Common Elements and the costs thereof shall be included in Common Expenses payable in part by the owner of the VNSNY Unit (except such repairs and maintenance that shall be at VNSNY's sole cost and expense (or at the expense of the then owner of the VNSNY Units) if required due to VNSNY's (or any other owner of the VNSNY Unit's or any other party claiming, by through or under VNSNY or any such other owner's) negligence, willful misconduct of breach of the VNSNY Transaction Documents. Notwithstanding anything in the Declaration, By-Laws or any of the other VNSNY Transaction Documents to the contrary, the Condominium Board's sole obligation with respect to the repair and maintenance of the 3rd Floor Terrace (or the 7th Floor Terrace if and to the extent same is not being used in accordance with the requirements and limitations set forth in Section 5(xx) below) (other than the portions thereof where Non-VNSNY Terrace Items are then being stored and that are not otherwise accessible by VNSNY) shall be to repair, as necessary, the structural steel and structural concrete supports (as opposed to pavers, etc.) portions of the 3rd Floor Terrace (or 7th Floor Terrace if applicable) if and to the extent reasonably required (as reasonably determined by the Condominium Board) except that the Condominium Board shall not be responsible to perform any such repairs (or if same are performed by the Condominium Board, then such repairs shall be at VNSNY's sole cost and expense) if such repairs are required due to (a) the 3rd Floor Terrace (or the 7th Floor Terrace if applicable) being used or are usable by VNSNY (i.e., if such repairs or maintenance would not be required if VNSNY was not permitted access or use of the 3rd Floor Terrace (or the 7th Floor Terrace if applicable) (whether or not then actually being used) then the Condominium Board shall not be required to perform such repairs or, if such repairs are performed by the Condominium Board, then same shall be at VNSNY's sole cost and expense), or (b) VNSNY's negligence, willful misconduct or misuse of the Terraces;

(ii) VNSNY shall not perform any Alterations, improvements, changes, decorations or any other work in, to or on the Terraces or place any furniture, equipment or other personal property on the Terraces, whether temporary or permanent, except to the extent expressly provided for in this Section (e.g., without limitation, no signs, banners, plants or other objects shall be hung from or around the Terraces by VNSNY except to the extent expressly provided for in this Section) and subject to Section 1 of this Exhibit I; provided, however, subject to VNSNY's compliance with the terms and conditions of this Section and the terms and conditions of any other VNSNY Transaction Documents applicable to the performance of Alterations by VNSNY (including, without limitation, obtaining the consent of the Condominium Board in connection therewith as and to the extent set forth in Section 1 of this Exhibit I), VNSNY shall be permitted to (x) perform Non-Material Alterations to the Terraces, and (y) install temporary or permanent accent lighting and sound system speakers on the Terraces (each as more particularly set forth in the last sentence of this Section 5(b) below), in each case, in accordance with Section 1 of this Exhibit I; it being agreed that all Alterations performed on the Terraces (including, without limitation, the items described in clause (x) and (y)) shall constitute Specialty Alterations if designated as such by the Condominium Board in writing simultaneously with the Condominium Board's approval thereof provided that (except with respect to Seller's Work, with respect to which a request from VNSNY for such designation shall not be required) such designation has been requested in writing by VNSNY simultaneously with the submission of plans and specification in connection therewith (including, without limitation, any Above Standard Items (as such term is defined in the VNSNY Sale Agreement)



installed as part of Seller's Work that constitute Specialty Alterations with respect to which VNSNY received written notice during the plans review procedure set forth in the VNSNY Sale Agreement provided such designation has been requested in writing by VNSNY);

(iii) except with respect to any gas service expressly described in Section 5(d) below, Declarant and/or Condominium Board shall not provide any services to the Terraces (e.g., without limitation, Declarant and/or Condominium Board shall not provide electricity, air-conditioning, heat, cleaning (except as otherwise provided in clause (xvii) below), etc.); it being agreed, however, that the foregoing shall not vitiate to any extent the Condominium Board's obligations to repair and maintain the Terraces (but only to the extent expressly required pursuant to Section 5(b)(i) above) and the Non-VNSNY Terrace Items in accordance with the provisions of this Exhibit I, the Declaration and/or By-Laws;

(iv) VNSNY shall, at its own expense (regardless of whether VNSNY shall then actually be utilizing the Terraces), keep and maintain the Terraces (excluding any Non-VNSNY Terrace Items and any other portions of the Terraces reserved for the Declarant or the Condominium Board in accordance with the provisions of this Section 5 or Declaration or By-Laws (i.e., any portions of the Terraces to which VNSNY shall not then have access)) in a clean and orderly condition at all times utilizing VNSNY's own employees or cleaning contractor or vendor; it being agreed, however, that except for the Building's designated cleaning contractor and any vendor hired by VNSNY with respect to a particular event conducted on the Terraces (e.g., a caterer), VNSNY shall not be permitted to utilize any third-party contractor to perform such cleaning service;

(v) VNSNY shall not cause, allow or permit (a) objects to be thrown from the Terraces or (b) music or other noise to emanate from the Terraces which actually and reasonably annoys or disturbs any other Unit Owners or occupant of the Building (but subject to the provisions of Section 5(b)(xix) below);

(vi) VNSNY shall, at its expense, promptly comply or cause compliance with (a) all Applicable Laws and any insurance policy then in effect for the Building which are related to VNSNY's access to the Terraces (but excluding any such compliance required in connection with Seller's Work) and (b) reasonable rules and regulations promulgated by the Condominium Board from time-to-time governing access to the Terraces;

(vii) VNSNY shall obtain as part of the insurance policy or policies required under the VNSNY Transaction Documents for the VNSNY Units insurance coverage for the Terraces that satisfies the requirements of the VNSNY Transaction Documents (it being agreed that the foregoing shall be deemed to vitiate any obligations of the Condominium Board in connection with its insurance obligations under Section 5.2 of the By-Laws);

(viii) VNSNY shall not be permitted to assign or transfer all or any portion of the rights granted to VNSNY pursuant to this Section 5 except together with an assignment or transfer of the portions of the 3rd floor of the Building (with respect to the 3rd Floor Terrace) and/or the 7th floor of the Building (with respect to the 7th Floor Terrace) that are directly contiguous to such Terraces to the extent such assignment or transfer is otherwise permitted pursuant to the VNSNY Transaction Documents;



(ix) VNSNY shall indemnify and hold Declarant, Fee Owner and the Condominium Board harmless from and against any loss, cost, damage, claim, liability and expense (including, without limitation, reasonable attorneys' fees and disbursements) arising from VNSNY's access to and use of the Terraces (unless same arises due to Declarant's, Fee Owner's or the Condominium Board's negligence or willful misconduct);

(x) VNSNY agrees that it shall not (A) enclose any portion of the Terraces except as may be expressly approved by the Condominium Board in its sole discretion, (B) permit any cooking in any portion of the Terraces, (C) permit any lodging on any portion of the Terraces or (D) except as expressly permitted pursuant to this Section 5 below and/or pursuant to Section 9 below, place, hang, affix or otherwise attach anything on the ledges or railings of the Building, the exterior facade of the Building, any Building common areas, including the roof mezzanine, or on the perimeter of the Terraces;

(xi) Except to the extent that same is an obligation of the Declarant in connection with Seller's Work as set forth in the VNSNY Sale Agreement, VNSNY shall obtain all permits and licenses required by any applicable governmental authority, agency, commission or department with respect to VNSNY's use of the Terraces, renew all such permits and licenses as and when required by Applicable Laws and pay promptly as and when due all taxes, license, permit and other fees or charges imposed in respect thereof;

(xii) VNSNY shall comply with all Building requirements which, in the reasonable judgment of the Condominium Board, are necessary or advisable to assure the safety of all persons and property that may be adversely affected by VNSNY's use of the Terraces;

(xiii) Except if and to the extent included as part of Seller's Work, Declarant, Fee Owner and/or the Condominium Board shall have no independent obligation to provide any safety features with respect to the Terraces and Declarant's, Fee Owner's and/or the Condominium Board's not doing so shall not vitiate to any extent any obligation of VNSNY to indemnify Declarant, Fee Owner and/or the Condominium Board hereunder or as otherwise provided for herein;

(xiv) VNSNY acknowledges that its use of the Terraces is at its sole risk and VNSNY acknowledges that Declarant, Fee Owner and the Condominium Board shall not be required to provide any security, or patrol the Terraces;

(xv) VNSNY shall not use loudspeakers or other sound amplification systems or equipment on the Terraces if any sound or vibration emanating therefrom can be heard inside any other Unit or any portion of the Building (other than the VNSNY Units) being occupied by any tenant or occupant of the Building (but subject to the provisions of Section 5(b)(xix) below);

(xvi) VNSNY shall not, without the prior written consent of the Condominium Board, permit the Terraces to be used by film companies, television companies or communications companies for any commercial or other purpose;



(xvii) VNSNY shall at all times keep the drains on the Terraces free of leaves and debris so as to prevent any blockage, or, at VNSNY's election, the Condominium Board shall perform such cleaning at VNSNY's reasonable expense;

(xviii) no furniture, furnishings, or related installations on the Terraces shall exceed the height of the parapet wall or guard rails, as applicable, of the Terraces or be readily visible from the street except if and to the extent approved by the Condominium Board, which approval shall not be unreasonably withheld, conditioned or delayed. All such furniture, furnishings, or related installations shall be installed in such a manner so that they are securely affixed to the roof decking or movable;

(xix) in the event that (a) VNSNY violates any of the covenants, agreements, terms, provisions or conditions contained in this Section 5 (and provided that VNSNY has received notice of such violation and has received a reasonable opportunity to devise appropriate measures to prevent a recurrence of such violation) but subject to the last sentence of this paragraph or (b) VNSNY's access to the Terraces violates any requirement of any governmental authorities asserting jurisdiction over the Building (and provided that VNSNY has received notice of such violation and has received a reasonable opportunity to devise appropriate measures to prevent a recurrence of such violation; provided, that in no event shall the foregoing be or be deemed to permit VNSNY's use of the Terraces if prohibited by Applicable Law), then Declarant and/or the Condominium Board shall have the right and power to discontinue VNSNY's access to the Terrace(s) with respect to which such violation occurs without the same constituting an actual or constructive eviction or breach by Declarant and/or Condominium Board of the Declaration, By-Laws, and/or any of the terms of the VNSNY Transaction Documents, without incurring any liability to VNSNY, and the VNSNY Transaction Documents and VNSNY's obligations thereunder shall not be impaired or diminished by reason thereof, nor shall VNSNY be entitled to any compensation or diminution or abatement of Common Charges or the Installment Purchase Payments by reason thereof and the VNSNY Transaction Documents shall remain in full force and effect. Notwithstanding the foregoing to the contrary, with respect to a violation by VNSNY of the provisions of clause (v) or (xv) above, the Condominium Board shall not have the right to discontinue VNSNY's use of the Terraces as a result of such violation unless any violation of either clause (v) and/or (xv) occurs on three (3) separate occasions (as opposed to multiple complaints in connection with the same event being conducted) in any consecutive twelve (12) month period (with each such violation being evidenced by one or more bona fide complaints made to the Condominium Board by any other Unit Owners or occupants of the Building of which VNSNY shall have received (in each instance) notice (a "Terrace Complaint Notice") either, at the Condominium Board's election, by (x) written notice, or (y) to Jay Margolias by e-mail to (Jay.margolias@vnsny.org) and telephone to ((212) 609-5742 (office) (917) 693-6535 (cell)) and to Kerry Parker by e-mail to (Kerry.parker@vnsny.org) and telephone to ((212) 290-6570 (office) (973) 820-3604 (cell)) (or such other e-mail address(es) and/or telephone numbers designated by VNSNY from time to time upon reasonable prior notice to the Condominium Board)) and, in the case that Terrace Complaint Notices shall have been delivered to VNSNY with respect to three (3) or more separate occasions in any consecutive 12-month period, the Condominium Board shall have the right to discontinue VNSNY's use of the Terrace with respect to which such violations occur for a period of twelve (12) months after notice thereof (provided that during such period that such access is discontinued, the Condominium Board shall provide VNSNY with reasonable access to

such Terrace for purposes of accessing any equipment of VNSNY located thereof (e.g., a generator and/or any Antennae Installations). Any Terrace Complaint Notice given to VNSNY shall set forth approximately when the applicable violation occurred and the nature thereof and such Terrace Complaint Notice shall be given to VNSNY (A) reasonably promptly after the Condominium Board's receipt of the relevant bona fide complaint(s), and (B) in no event shall VNSNY be given any Terrace Complaint Notice less than twenty-four (24) hours after any prior Terrace Complaint Notice has been given (i.e., VNSNY shall have at least twenty-four (24) hours to devise appropriate measures to prevent a recurrence of the violation after the Terrace Complaint Notice with respect thereto shall have been given to VNSNY before any subsequent Terrace Complaint Notice may be given to VNSNY for purposes hereof); and

(xx) notwithstanding anything to the contrary contained in this Section 5 or elsewhere in the VNSNY Transaction Document, the 7th Floor Terrace shall in no event be used to conduct events or for large gatherings (as reasonably determined by Landlord).

Mention in this Section of any particular remedy shall not preclude Declarant, Fee Owner, and/or the Condominium Board from any other remedy in law or in equity.

(c) Subject to Declarant's obligations as part of Seller's Work, anything to the contrary in this Section 5 notwithstanding, Declarant, Fee Owner and/or the Condominium Board shall have the right to use the Terraces for the installation, maintenance and storage in a location that reasonably minimizes interference with VNSNY's use thereof to the extent reasonably practical and not unreasonably expensive based on the nature of such equipment (provided such storage shall only be temporary while such equipment is being used unless it is reasonably determined by the Condominium Board that it is not reasonably practical or prudent or unreasonably expensive to permanently store such equipment in any location other than the Terraces including, without limitation, on the Main Roof) of Building systems and/or equipment and/or staging of equipment used in performing work in the Building and the cleaning thereof (collectively, the "Non-VNSNY Terrace Items"); provided, however, that any such Non-VNSNY Terrace Items on the Terrace located on the 3rd floor of the Building shall be appropriately screened by Declarant and/or the Condominium Board, as applicable, in accordance with Schedule 5 to this Exhibit I. Further, Declarant and Condominium Board each reserves the right, upon reasonable notice (which notice may be oral) at reasonable times, or in an emergency at any time, to have access to, and the use of, the Terraces to maintain, repair and inspect same or the structural components of the Terraces as well as any Building equipment located on the roof of the Building, except that, in connection with all of the foregoing, Declarant and the Condominium Board shall use reasonable efforts as are practicable under the circumstances to minimize any inconvenience to VNSNY (provided in no event shall the Condominium Board be required to use overtime or premium-pay labor in connection therewith).

(d) Declarant and the Condominium Board hereby approve, in concept only, the installation by VNSNY (at VNSNY's sole cost and expense) of an emergency generator (with a power supply capacity not to exceed 400kw) on the 3rd Floor Terrace in a location thereon to be approved by the Condominium Board (it being agreed that such approval shall not be unreasonably withheld, conditioned or delayed provided such location shall not exceed 20' X 10', shall be located so that such generator (and any enclosures thereof) installed thereon shall not be visible from either 42nd Street or Second Avenue (provided that if there is no such location



where such generator and enclosures are not visible from 42nd Street or Second Avenue (as reasonably determined by the Condominium Board), then such generator shall be located in some other location on the 3rd Floor Terrace as shall be reasonably designated by the Condominium Board to minimize such visibility), and shall not interfere with any of the Condominium Board's equipment located on such Terrace). In all cases, if and to the extent the generator is visible from 42nd Street or Second Avenue, all such visible portions shall be screened as reasonably required by the Condominium Board. In connection with the installation of VNSNY's emergency generator, Declarant and the Condominium Board hereby approve, in concept only, the installation by VNSNY, at its sole cost and expense, of a gas line reasonably sufficient to accommodate such emergency generator and the Condominium Board shall provide VNSNY with reasonably sufficient shaft space in connection therewith; it being agreed that if VNSNY shall not install such gas line or utilize such shaft space for a period of five (5) years (commencing as of the hereof), then the Condominium Board shall thereafter have no obligation to provide or reserve such shaft space pursuant hereto. In connection with the required meter to be installed by the public utility to measure VNSNY's gas consumption (which meter shall be installed at VNSNY's sole cost and expense), the Condominium Board shall either, at its election, provide space (at no rental cost to VNSNY) in the Condominium Board's then existing meter room for the installation of such meter or such other space in the Building (at no rental cost to VNSNY) for VNSNY to construct its own meter room at VNSNY's sole cost and expense. VNSNY expressly acknowledges and agrees that all such work conceptually approved pursuant to this Section 5(d) shall remain subject to all of the requirements contained in Section 1 of this Exhibit I (it being agreed, however, that the Condominium Board's consent thereto shall not be unreasonably withheld, conditioned or delayed provided that same does not differ (other than to a de minimis extent) from the specifications contained in this Section 5(d) (whether or not such Alterations are structural) and shall be granted or withheld within the time periods set forth in Section 1).

SECTION 6

ANTENNA

6. Antenna

(a) VNSNY shall be entitled to use space on the 7th Floor Terrace for up to one (1) dish of a maximum size of thirty (30") inches in a location reasonably approved by the Condominium Board (the "Antenna Area") without paying any charges to the Condominium Board therefor, except as provided in Section 1 or otherwise in the VNSNY Transaction Documents with respect to Alterations or this Section 6. Such right shall include the right to install, maintain and operate thereon in a location reasonably designated by the Condominium Board, at VNSNY's sole cost and expense, an antenna, dish or other satellite communications device (provided that such antenna dish or other device shall not be affixed to the façade of the Building) together with riser/shaft space and penetrations reasonably required in connection therewith for the purposes of VNSNY running necessary wiring between the Antenna Area to the VNSNY Office Units in a location reasonably designated by the Condominium Board (hereinafter referred to as the "Antenna Installations"), subject to all of the applicable terms, covenants and provisions of this this Exhibit I and the other VNSNY Transaction Documents, and subject to the Condominium Board's prior written approval including, without limitation,



approval as to weight, location and method of attachment, and which shall also be required for modifications to, and the removal of, the same. The Condominium Board shall, in its reasonable discretion, designate the available space on the Antenna Area, which space shall be sufficient for the Antenna Installations and which space shall expressly exclude all mechanical, electrical, plumbing and other service systems of the Building located thereon and all passageways required for access thereto for personnel, materials and equipment and designate the course through which conduits for the Antenna Installations may be run. In connection with VNSNY's installation, maintenance and operation of its Antenna Installations, VNSNY shall comply with all Applicable Laws governing such Antenna Installations, and shall procure, maintain and pay for all permits and licenses required therefor, including all renewals thereof (and the Condominium Board shall cooperate with VNSNY in connection therewith at no cost or expense to the Condominium Board). The installation, maintenance, and operation of the Antenna Installations shall be subject to all of the terms, covenants and conditions of this Exhibit I and the VNSNY Transaction Documents.

(b) Intentionally omitted.

(c) VNSNY shall pay for all electrical service required for VNSNY's use of its Antenna Installations, which shall be submetered in accordance with the applicable provisions of the VNSNY Transaction Documents.

(d) VNSNY, at VNSNY's sole cost and expense, shall promptly repair any and all damage to the Antenna Area and to any part of the Building caused by or resulting from the installation, maintenance and repair, operation or removal of the Antenna Installations erected or installed by VNSNY pursuant to the provisions of this Section, except to the extent resulting from the negligence or willful misconduct of Declarant, Fee Owner or the Condominium Board. VNSNY further covenants and agrees that the Antenna Installations and any related equipment erected or installed by VNSNY pursuant to the provisions of this Section shall be erected, installed, repaired, maintained and operated by VNSNY at the sole cost and expense of VNSNY and without charge, cost or expense to Declarant, Fee Owner or the Condominium Board.

(e) The Antenna Installations and related equipment installed by VNSNY pursuant to the provisions of this Section shall be VNSNY's property and any Alterations performed in connection with this Section 6 shall be deemed to be Specialty Alterations, and, on or before the End of Term shall be removed by VNSNY, at VNSNY's sole cost and expense, and VNSNY shall repair any damage to the Antenna Area, or to any other portion or portions of the Building caused by or resulting from said removal, except to the extent resulting for the negligence or willful misconduct of the Condominium Board or any other Unit Owners, tenants or occupants of the Building.

SECTION 7
COMMON EXPENSES

7. Common Expenses.

A. Notwithstanding anything to the contrary set forth in Section 5.1 of the By-Laws,



VNSNY shall pay to the Condominium Board, Common Expenses in accordance with this Section 7:

B. Definitions: For the purpose of this Section 7, the following definitions shall apply:

(i) The term the "Percentage", for purposes of computing operating expense escalations hereunder, shall mean 26.86%.

(ii) The term "Operating Year" shall mean the twelve (12) months following the Possession Date, and each subsequent period of twelve (12) months.

(iii) The term "Common Expenses" or "Expenses" shall mean the total, without duplication, of all the actual and reasonable costs and expenses (but subject to the provisions of this Section 7(B) with respect to Expenses the calculation of which is expressly agreed upon (e.g., capital expenditures)) incurred by the Condominium Board (computed on an accrual basis and, to the extent applicable, in accordance with generally accepted accounting principles, consistently applied ("GAAP")) with respect to the operation and maintenance of the Building and the services provided tenants and occupants therein (grossed up in accordance with the provisions below), net of any cash discounts, trade discounts or quantity discounts, including, without limitation, the costs and expenses incurred for and with respect to: all Basic Rent (as defined in the Ground Lease) payable under the Ground Lease (it being expressly acknowledged and agreed that none of the exclusions described in Section 7.C below or otherwise in the VNSNY Transaction Documents shall be or be deemed to reduce in any manner the amount of such Basic Rent that shall be included in Common Expenses), steam and any other fuel; water rates and sewer rents; air-conditioning; mechanical ventilation; heating; cleaning, by contract or otherwise; window washing (interior and exterior); elevators, escalators; porters and matron service; all electricity purchased for the Building except that which is purchased by or for a Unit Owner for consumption in such Unit Owner's Unit or otherwise redistributed to tenants or occupants in the Building; protection and security; lobby decoration; repairs, replacements and improvements which are reasonably appropriate for the continued operation of the Building as a first-class building (but subject to the limitations with respect to capital expenditures set forth below); maintenance; management fees; painting of non-tenant areas; supplies; wages, salaries, disability benefits, pensions, hospitalization, retirement plans and group insurance respecting employees of the Building up to and including the building manager; uniforms and working clothes for such employees and the cleaning thereof and expenses imposed pursuant to law or to any collective bargaining agreement with respect to such employees; workmen's compensation insurance, payroll, social security, unemployment and other similar taxes with respect to such employees; the total of all the costs and expenses incurred or borne by the Condominium Board with respect to procuring and maintaining in respect of the Building the following insurance coverages (collectively, the "Building Insurance"): comprehensive all risk insurance on the Building and the personal property contained therein or thereon, commercial general liability insurance against claims for personal injury, bodily injury, death or property damage, occurring upon, in or about the Building, extended coverage, boiler and machinery, sprinkler, apparatus, rental, business income and plate glass insurance, owner's contingent or protective liability insurance, workers' compensation and employer's liability insurance, insurance against acts of terrorism (including, without limitation, bio terrorism) (but subject to Section 7.C.(rr) below) and

any insurance required by a mortgagee, in each case, in commercially reasonable amounts with commercially reasonable deductibles (it being agreed that any amounts and deductibles consistent with amounts and deductibles maintained by comparable risk averse owners of comparable buildings in Midtown Manhattan shall be deemed commercially reasonable for purposes hereof); and association fees or dues paid to civic organizations and associations representing the Building in the City of New York, provided that (a) it is customary for the owners of Class "A" office buildings in Manhattan to be members of such organizations and associations, and (b) there be included only that portion of the dues and fees calculated as if the Building were the only asset owned by the Unit Owners (including the Declarant), the Condominium Board and their Affiliates.

C. Notwithstanding anything to the contrary in this Section 7, Expenses shall not include the following, except to the extent specifically permitted by a specific exception to the following:

(a) expenditures for capital improvements or other capital expenditures except for capital expenditures required to comply with governmental laws, rules, regulations, or other requirements applicable to the Building which are enacted, adopted, promulgated, amended or modified (in respect of such amendment or modification only) after the Possession Date, or any reinterpretation of any such governmental laws, rules, regulations, or other requirements that is issued after the Possession Date, in either of which cases the cost thereof shall be included in Expenses for the Operating Year in which the costs are incurred and subsequent Operating Years, amortized on a straight line basis over the useful life of the item in question in accordance with GAAP, with an interest factor equal to the prime rate of JPMorgan Chase, New York, (or the successor thereto) (the "Prime Rate") at the time of the Condominium Board's having incurred said expenditure;

(b) depreciation or amortization of the Building or its contents or components, except as determined in accordance with GAAP on materials, tools, supplies and vendor-type equipment to the extent purchased by the Condominium Board to enable the Condominium Board to supply services to the Building that the Condominium Board might otherwise contract for with a third party where the cost of such contract would otherwise have been included in the charge for such third party's services, and when depreciation or amortization is permitted or required in accordance with this clause (ii), the item shall be amortized on a straight line basis during the period which VNSNY owns the VNSNY Units, including interest at the Condominium Board's actual financing cost, if any, or if such item was not financed by the Condominium Board, at the Prime Rate at the time of the Condominium Board's having incurred the cost of such item;

(c) expenses for the preparation of space for any tenant or prospective tenant of the Building or any Unit Owner, or expenses in connection with services or other benefits which are not offered to VNSNY or for which VNSNY is charged for directly but which are provided to another tenant or occupant of Building;

(d) expenses for repairs or other work which is caused by fire, windstorm, or any other insurable casualty, including costs subject to the Condominium Board's insurance deductible;



(e) expenses incurred in selling or transferring Units and/or leasing or obtaining new tenants or retaining existing tenants, including leasing commissions, legal expenses (except for those related to having to operate the Building), advertising or promotion;

(f) Legal expenses incurred in enforcing the terms of the Condominium Declaration, By-Laws and/or any lease or other occupancy agreement;

(g) interest, amortization or other costs, including legal fees associated with any mortgage, loan or refinancing of the Building and/or in connection with or relating to the Building;

(h) expenses incurred for any necessary replacement of any item to the extent that it is covered under warranty;

(i) the cost of any item or service for which VNSNY separately reimburses the Condominium Board or pays the cost thereof directly to third parties, or that the Condominium Board provides selectively to one or more tenants of the Building, other than VNSNY, and is not required to provide to VNSNY free of charge (other than VNSNY's obligation to make Common Expense payments provided for in this Section 7); whereby under such provisions, whether or not the Condominium Board is reimbursed by such other tenant(s) or Unit Owner(s), including the actual cost of any special electrical, heating, ventilation or air-conditioning required by any tenant that exceeds the standards which the Condominium Board is required to provide to VNSNY without additional charge under this provision or is required during times other than hours during which such services are provided to VNSNY without additional charge under this provision;

(j) accounting and legal fees (except for those reasonable out-of-pocket accounting and legal fees related to having to operate the Building, and which are not otherwise excluded pursuant to the provisions of this Section 7) relating to the ownership, construction, leasing, sale or any litigation relating to the Building;

(k) any interest or penalty incurred due to the late payment of any Expense;

(l) any amount paid to an entity or individual related to the Condominium Board which exceeds the amount which would be paid for similar goods or services on an arms-length basis between unrelated parties; except with respect to management fees, which shall be computed, in each Operating Year, as three (3%) percent of the gross revenue for the entire Building, which gross revenues shall be grossed up to 100% to account for vacancies, concessions to Unit purchasers, free rent periods and periods of rent abatement for other occupants of the Building in each Operating Year;

(m) any amount paid to an entity or individual related to the Condominium Board which exceeds the amount which would be paid for similar goods or services on an arms-length basis between unrelated parties;



(n) payroll and payroll-related expenses associated with administrative and clerical personnel; data processing; dues, subscriptions, general office expenditures and other administrative expenditures and professional fees of any kind;

(o) any costs or expenses for sculpture, paintings, or other works of "fine art" (as opposed to decorative art work customarily found in Comparable Buildings), including, costs incurred with respect to the purchase, ownership, leasing, repair, and/or maintenance of such works of art;

(p) salaries, wages, fringe benefits and other compensation for officers, employees and executives of the Condominium and any Affiliates of the Condominium Board above the grade of building manager;

(q) Expenses directly resulting from the negligence or willful misconduct of the Condominium Board or any of its Affiliates, their agents, contractors, vendors, servants or employees;

(r) bad debt loss, rent loss, or reserve for bad debt or rent loss;

(s) the cost of compliance with any law in effect as of the Possession Date which the Condominium Board was legally required to fully comply with prior to the Possession Date and which compliance was not legally permitted to be performed after the Possession Date (it being agreed that the foregoing shall not include any laws which are reinterpreted after the Possession Date);

(t) any costs and expenses incurred to test, survey, clean up, contain, abate, remove or otherwise remediate hazardous materials (which are defined as hazardous materials under Applicable Laws as of the Possession Date) from the Building (except to the extent that VNSNY or its agents are responsible for the introduction of such materials into the Building) in violation of any Applicable Laws, including any damages or future claims asserted against the Condominium Board in connection with the same;

(u) costs associated with the operation of the business of the partnership or entity which constitutes the Condominium Board or any of its Affiliates, as the same are distinguished from the costs of operation of the Building (which shall specifically include, but not be limited to, reasonable out-of-pocket accounting costs associated with the operation of the Building);

(v) intentionally omitted;

(w) the cost of installations, alterations, improvements, repairs, replacements and decorations (including, without limitation, painting, carpeting and wallpapering) incurred to prepare Units for sale or transfer or space for leasing to, use by or continued occupancy of tenants or other occupants of the Building;

(x) costs that are duplicative of any other cost that is included in Expenses;



(y) charges for the general overhead costs that the Condominium and costs incurred by the Condominium Board in managing, operating, maintaining, or staffing its offices that are not located at the Building;

(z) the cost of any charitable or political contributions of the Condominium Board;

(aa) any costs or other amounts expressly excluded from Expenses pursuant to any other provisions of this Section;

(bb) to the extent that employees of the Condominium Board are not employed exclusively at the Building, the costs and expenses with respect to such employees shall be prorated by equitably allocating such costs and expenses to services rendered by such employees for the benefit of the Building;

(cc) costs relating to withdrawal liability or unfunded pension liability under the Multi Employer Pension Plan Act;

(dd) the cost of (i) installing, operating and maintaining any specialty facility, such as an observatory, lodging, broadcasting facilities, luncheon club, athletic or recreational club, child care facility, auditorium, cafeteria or dining facility, conference center or similar facilities which are not supplied to Unit Owners, tenants or occupants of the Building generally (including VNSNY) in the Building as part of Expenses, or (ii) the cost of any service that is provided to one or more other Unit Owners or other occupants of the Building which service is not required to be furnished to VNSNY or for which VNSNY is charged separately (i.e., not as part of Common Expenses) and directly, at any level, under the VNSNY Transaction Documents without a separate or additional charge; and, further, if a service is provided to one or more Unit Owners or occupants of the Building and also provided to VNSNY under the VNSNY Transaction Documents without a separate or additional charge, but the level of such service provided to one or more other Unit Owners or occupants of the Building is in excess of the level of such service provided to VNSNY under the VNSNY Transaction Documents without a separate or additional charge, then, in any such case, Expenses shall exclude the portion of the total cost of providing such service to such other Unit Owners or occupants which is attributable to providing such other Unit Owners or occupants with the excess level of such service (as opposed to the cost of providing such other Unit Owners or occupants the level of such service that is provided to VNSNY without a separate or additional charge therefor);

(ee) costs incurred in connection with making any additions to, or building additional stories on, the Building or its plazas, or adding buildings or other structures adjoining the Building, or connecting the Building to other structures adjoining the Building;

(ff) costs incurred in connection with the acquisition or sale of air rights, transferable development rights, easements or other real property interests, and costs incurred in connection with the sale or transfer of all or any portion of the Building, or the interest in any person or entity owning an interest therein;

(gg) costs incurred by the Condominium Board which result from the Condominium Board's, Declarant's, Fee Owner's or other Unit Owner's, tenant's or occupant's

breach of any contractual obligations and/or willful misconduct;

(hh) costs and expenses incurred by the Condominium Board in connection with any obligation of the Condominium Board to indemnify any Unit Owner (including VNSNY) and/or Building tenant pursuant to the Declaration and By-Laws or such tenant's lease or otherwise (except in connection with the incurrence of costs and expenses that would otherwise be Expenses under this Section 7);

(ii) advertising and promotional expenditures;

(jj) real estate taxes and other property taxes;

(kk) payments of principal (in addition to interest and expenses) incurred in connection with any mortgages, financing, refinancing, and mezzanine loans or in connection with any refinancing thereof, including, without limitation, any default interest or late fees in connection therewith;

(ll) costs of curing any defects in the construction of the Building (whether in the VNSNY Units or elsewhere in the Building),

(mm) reasonable and actual out-of-pocket legal and accounting fees incurred in connection with the condominium conversion of the Building and/or the Declarant's ownership, leasing, sale or construction of the VNSNY Units or other Units,

(nn) any fines, interest or penalties incurred due to the late payment of any Expenses, or imposed due to a violation of law,

(oo) insurance covering improvements in any leased, owned or tenantable space in the Building that VNSNY or any other occupant is required to insure;

(pp) costs incurred for the repair and restoration of the Building the need for which results from a condemnation;

(qq) the cost of any separate electrical meter installed for (and serving exclusively) any leasable, owned or tenantable area, and the cost of any survey Declarant and/or Condominium Board may provide to determine the electrical costs to be charged to any tenant in the Building or Unit Owner for their leasable, owned or tenantable area;

(rr) in the event that the Terrorism Risk Insurance Act ("TRIA") shall expire at any time following the Possession Date, then any amount by which the cost of insurance against acts of terrorism (including, without limitation, bio-terrorism) obtained by the Fee Owner or the Condominium Board exceeds such cost of such insurance if TRIA had not expired (i.e., the increase in the cost of such insurance solely due to the expiration of TRIA shall be excluded from Common Expenses); and

(ss) any increased insurance costs and/or increases in the Condominium Board's insurance rates (including, without limitation, the rate of fire insurance) over those in effect prior to the Possession Date as a result of (i) the specific manner of use of



any Units other than the VNSNY Units, and/or (ii) the actions or inactions of any occupants of the Building other than VNSNY (or any then owner of the VNSNY Units or occupant of the VNSNY Units).

D. (a) The above notwithstanding, if after the Possession Date the Condominium Board shall purchase any item of capital equipment or make any capital expenditure designed to result in savings or reductions in Expenses, then the costs for same shall be included in Expenses (to the extent of the cost savings only). The costs of capital equipment or capital expenditures are so to be included in Expenses for the Operating Year in which the costs are incurred and subsequent Operating Year, on a straight line basis in accordance with GAAP, to be amortized over such period of time as reasonably can be estimated as the time in which such savings or reductions in Expenses are expected to equal the Condominium Board's costs for such capital equipment or capital expenditure, with an interest factor equal to the Prime Rate; provided, however, the cost thereof allocated to any Operating Year shall in no event exceed the cost savings of such capital equipment or expenditure that was actually realized during such Operating Year. If the Condominium Board shall lease any such item of capital equipment designed to result in savings or reductions in Expenses, then the rentals and other costs paid pursuant to such leasing shall be included in Expenses for the Operating Year in which they were incurred (but solely to the extent of the cost savings that was actually realized during such Operating Year).

(b) If during all or part of an Operating Year, the Condominium Board shall not furnish any particular item(s) of work or service (which would constitute an Expense hereunder) to portions of the Building due to the fact that such portions are not occupied or leased, or because such item of work or service is not required or desired by the tenant of such portion, or such tenant is itself obtaining and providing such item of work or service, or for other reasons, then, for the purposes of computing the amounts payable hereunder, the amount of the Expenses for such item for such period shall be increased by an amount equal to the additional operating and maintenance expenses which would reasonably have been incurred during such period by the Condominium Board if it had at its own expense furnished such item of work or services to 100% of the Building.

E. VNSNY shall pay to the Condominium Board, as part of its Common Charges, in the manner hereinafter provided, an amount equal to the Percentage of the Expenses for such Operating Year (such amount being hereinafter called the "Expense Payment"); provided, however, that VNSNY shall not pay any Expenses Payment during the period commencing on the Possession Date through and including the day immediately preceding the first (1st) anniversary of the Possession Date. Notwithstanding anything contained herein to the contrary, commencing on the Purchase Payment Start Date (as defined in the VNSNY Sale Agreement), VNSNY shall be required to pay the Percentage of the portion of the Common Expenses comprising the Basic Rent under the Ground Lease as and when such amounts are payable to the Fee Owner under the Ground Lease.

F. Following the expiration of each Operating Year following the Possession Date until the End of Term and after receipt of necessary information and computations from the Condominium Board's certified public accountant, the Condominium Board shall submit to VNSNY a statement or statements, as hereinafter described, setting forth the Expenses for the



preceding Operating Year, and the Expense Payment, if any, due to the Condominium Board from VNSNY for such Operating Year. If such statement shows an Expense Payment due from VNSNY to the Condominium Board with respect to the preceding Operating Year, then (i) VNSNY shall make payment of any unpaid portion thereof within thirty (30) days after receipt of such statement; and (ii) VNSNY shall also pay the Condominium Board within forty-five (45) days after receipt of such statement, an amount equal to the product obtained by multiplying the Expense Payment for the Operating Year by a fraction, the denominator of which shall be twelve (12) and the numerator of which shall be the number of months of the current Operating Year which shall have elapsed prior to the first day of the month immediately following the rendition of such statement; and (iii) VNSNY shall also pay to the Condominium Board commencing as of the first day of the month immediately following the rendition of such statement and on the first day of each month thereafter until a new statement is rendered an amount equal to 1/12th of the total Expense Payment for the preceding Operating Year. If such statement shows an overpayment by VNSNY of an Expense Payment with respect to the preceding Operating Year, then the Condominium Board shall within thirty (30) days after delivery of such statement credit against the next installment(s) of Common Charges coming due the amount of such overpayment (less any amounts then delinquent under the Declaration and By-Laws, which shall be credited against such delinquency). If no such installment(s) of Common Charges shall then be coming due, the Condominium Board shall within thirty (30) days after delivery of such statement refund to VNSNY the amount of such overpayment (less any amounts then delinquent under the Declaration and By-Laws, which shall be credited against such delinquency), except that no such refund shall be required to be paid so long as VNSNY is then in default after notice and the expiration of the cure period applicable to such default, if any, under the VNSNY Transaction Documents. The aforesaid monthly payments based on the total Expense Payment for the preceding Operating Year shall from time to time, but no more than one (1) additional time in an Operating Year, be adjusted to reflect, if the Condominium Board can reasonably so estimate, known increases in rates or cost, for the current Operating Year applicable to the categories involved in computing Expenses whenever such increases become known prior to or during such current Operating Year. The payments required to be made under clauses (ii) and (iii) above shall be credited toward the Expense Payment due from VNSNY for the then current Operating Year, subject to adjustment as and when the statement for such current Operating Year is rendered by the Condominium Board.

G. (i) The statements of the Expenses to be furnished by the Condominium Board as provided above shall be certified by the Condominium Board, and shall be prepared in reasonable detail and based on information and computations made for the Condominium Board by a Certified Public Accountant (who may be the CPA now or then employed by the Condominium Board for the audit of its accounts): said Certified Public Accountant may rely on the Condominium Board's allocations and estimates wherever operating cost allocations or estimates are needed for this Section. The statements thus furnished to VNSNY shall constitute a final determination as between the Condominium Board and VNSNY of the Expenses for the periods represented thereby, unless VNSNY within one hundred eighty (180) days after they are furnished give notice to the Condominium Board that it disputes their accuracy or their appropriateness, which notice shall specify the particular respects in which the statement is inaccurate or inappropriate. Pending the resolution of any such dispute, VNSNY shall pay such additional amounts to the Condominium Board in accordance with the statements furnished by the Condominium Board.



(ii) the Condominium Board shall grant VNSNY (together with its legal counsel or an independent certified public accountant retained by VNSNY or such other party retained by VNSNY to perform such work that is, as determined by the Condominium Board, reasonably qualified to perform such review) reasonable access to, and the right to audit, so much of the Condominium Board's books and records as may be required for the purposes of verifying the Expenses incurred for the Operating Year or Operating Years (the "Records") which VNSNY has timely disputed within the one hundred eighty (180) day period provided for in Section (hereinafter, an "Audit") during normal business hours at the place where they are regularly maintained in New York, for a period of sixty (60) days from the date that written notice is given by VNSNY to the Condominium Board (the "Examination Period") provided and on the express condition that: (A) notice is given by VNSNY in a timely fashion and in the manner set forth in Section 4.1 of the By-Laws, (B) all Common Charges are paid by VNSNY to the Condominium Board in accordance with the statements furnished to VNSNY under this Section, (C) the person examining the Condominium Board's Records is not a person who is paid based in whole or in part on the amount of any reduction of the payment resulting from the examination or any other so-called "contingency fee" basis, and (D) VNSNY's legal counsel and its accountants shall execute a confidentiality agreement (in form and substance reasonably satisfactory to the Condominium Board and VNSNY) with respect thereto prior to the time access to the Condominium Board's Records is given. The Condominium Board shall retain Records in connection with each Operating Year for at least three (3) years following the end thereof.

(iii) In the event that VNSNY, after having opportunity to examine the Records in accordance with the terms herein, shall disagree with the Condominium Board's statement, then VNSNY may at any time prior to the expiration of the Examination Period (time being of the essence) send a written notice (a "VNSNY's Statement") to the Condominium Board of such disagreement, specifying in reasonable detail the basis for VNSNY's disagreement and the amount of the Expense Payment VNSNY claims is due, the Condominium Board and VNSNY shall attempt to resolve such disagreement. If they are unable to do so within thirty (30) days, the Condominium Board and VNSNY shall mutually designate a Certified Public Accountant (the "Arbiter") whose determination made in accordance with this subsection shall be binding upon the parties. If the determination of the Arbiter shall substantially confirm the determination of the Condominium Board, then VNSNY shall pay the cost of the Arbiter. If the Arbiter shall substantially confirm the determination of VNSNY, then the Condominium Board shall pay the cost of the Arbiter (and shall reimburse VNSNY for the actual and reasonable out-of-pocket costs incurred by VNSNY in connection with such dispute, subject to the last sentence of this Section 7(G)(iii) below with respect to reimbursement by the Condominium Board of VNSNY's audit costs). In all other events, the cost of the Arbiter shall be borne equally by the Condominium Board and VNSNY. The Arbiter shall be a member of an independent certified public accounting firm having at least fifty (50) accounting professionals and having at least ten (10) years of experience in commercial real estate accounting. In the event that the Condominium Board and VNSNY shall be unable to agree upon the designation of the Arbiter within thirty (30) days after receipt of notice from the other party requesting agreement as to the designation of the Arbiter, which notice shall contain the names and addresses of two or more certified public accountants who are acceptable to the party sending such notice (any one of whom, if acceptable to the party receiving such notice as shall be evidenced by notice given by the receiving party to the other party within such thirty (30) day

period, shall be the agreed upon Arbiter), then either party shall have the right to request the American Arbitration Association (the "AAA") (or any organization which is the successor thereto) to designate as the Arbiter, a certified public accountant whose determination made in accordance with this subsection shall be conclusive and binding upon the parties, and the cost charged by the AAA (or any organization which is the successor thereto), for designating such Arbiter, shall be shared equally by the Condominium Board and VNSNY. The Condominium Board and VNSNY hereby agree that any determination made by an Arbiter designated pursuant to this subsection shall not exceed the amount(s) as determined to be due in the first instance by the Condominium Board's statement, nor shall such determination be less than the amount(s) claimed to be due by VNSNY in VNSNY's Statement, and that any determination which does not comply with the foregoing shall be null and void and not binding on the parties. In rendering such determination such Arbiter shall not add to, subtract from or otherwise modify the provisions of this Section 7, including the immediately preceding sentence. Notwithstanding the foregoing provisions of this Section, VNSNY, pending the resolution of any contest pursuant to the terms hereof, shall continue to pay all sums as determined to be due in the first instance by such the Condominium Board's statement and upon the resolution of such contest, suitable adjustment shall be made in accordance therewith with appropriate refund to be made by the Condominium Board to VNSNY (or credit allowed VNSNY against the next installment of Common Charges and other amounts becoming due) if required thereby; provided, however, if after such final determination, it is determined that the Expenses with respect the Expenses Payment in question were overstated by more than three (3%) percent, then the Condominium Board shall pay to VNSNY (in addition to the amount of any overpayment by VNSNY), interest thereon at the Interest Rate accruing from the date of VNSNY's payment of the disputed amount to the date of reimbursement with respect to such Expense Payment together with VNSNY's actual and reasonable out-of-pocket costs to conduct the applicable Audit. If the Condominium Board fails to make such payment to VNSNY within thirty (30) days after such final determination, then, provided VNSNY gives the Condominium Board a notice of such failure to make such payment following the thirtieth (30th) day after such final determination and if the Condominium Board fails to make such payment within five (5) Business Days following the delivery of such notice of failure to make payment, VNSNY may credit such amount against its next installment of Common Charges then due and owing until fully recouped. The term "substantially" as used in this Section 7(G)(iii), shall mean a variance of three percent (3%) or more of increases in Expenses for the Operating Year to which VNSNY's Statement applies, as applicable.

H. In no event shall the Installment Purchase Payments payable by VNSNY pursuant to the VNSNY Transaction Documents be reduced by virtue of any provision contained in this Section 7.

I. The Condominium Board's and VNSNY's obligation to make the adjustments referred to above shall survive the End of Term.

J. Any delay or failure of the Condominium Board in billing any escalation hereinabove provided shall not constitute a waiver of or in way impair the continuing obligation of VNSNY to pay such escalation hereunder; provided, that the Condominium Board shall not have the right to require VNSNY to pay any portion of the Expenses in respect of a particular Operating Year in excess of the estimated payment of Expenses paid by VNSNY with respect to



such Operating Year unless the Condominium Board gives VNSNY a statement of the Expenses with respect to such Operating Year within two (2) years after the last day of such Operating Year.

SECTION 8
VNSNY PRIVATE ENTRANCE

8. VNSNY's Private Entrance.

(a) (i) For so long as the VNSNY Units include the entire VNSNY Retail Unit (the "Private Entrance Condition"), then, VNSNY shall have the right to utilize the dedicated exterior entrance shown on Schedule 7 to this Exhibit I (the "VNSNY's Private Entrance").

(ii) Commencing on the Possession Date (the "VNSNY's Private Entrance Commencement Date") and ending on the End of Term, VNSNY shall be entitled to utilize the VNSNY's Private Entrance solely for use by VNSNY (and by VNSNY's employees, prospective employees, guests and invitees) for the sole purposes of (i) gaining access to, and egress from, the 1st Floor portion of the VNSNY Retail Unit and, via the staircase and private elevator to be constructed in the VNSNY Retail Unit as part of Seller's Work, the Cellar/Concourse Level thereof, (ii) solely with respect to VNSNY's employees, to access the main lobby of the Building via the existing access door connecting the VNSNY Retail Unit to the main lobby of the Building (subject to any restrictions described in Section (2)(a)(iv) above), and (iii) maintaining a reception, security and/or concierge desk, and, subject to the provisions of Section 2(a)(ii)(2) above, for no other purpose (collectively, the "VNSNY's Private Entrance Permitted Uses"). Upon the VNSNY's Private Entrance Commencement Date, the VNSNY's Private Entrance shall be deemed included in the VNSNY Units for all purposes under the VNSNY Transaction Documents, except as expressly set forth in this Section 8.

(b) For purposes of this Section 8, all references to VNSNY shall be deemed to include any then owner of the VNSNY Retail Unit and any permitted occupant(s) of the VNSNY Retail Unit.

(c) The use of the VNSNY's Private Entrance by VNSNY shall be upon, and subject to, all of the terms, covenants and conditions contained in the VNSNY Transaction Documents applicable to the VNSNY Units, except that:

(i) VNSNY shall only be entitled to utilize the VNSNY's Private Entrance for the VNSNY's Private Entrance Permitted Uses;

(ii) Notwithstanding anything to the contrary contained in the VNSNY Transaction Documents, all repairs and maintenance applicable to the VNSNY Private Entrance (but, for the avoidance of doubt, excluding the sidewalk appurtenant thereto) from and after the Possession Date shall be performed by VNSNY at VNSNY's sole cost and expense provided, however, that notwithstanding anything in the Declaration, By-Laws or any of the other VNSNY Transaction Documents to the contrary, the Condominium Board's sole obligation with respect to the repair of the VNSNY Private



Entrance shall be limited solely to the structural steel of the doorway and the structural concrete support components of the doorway comprising the VNSNY Private Entrance, in all cases, except if such repairs are required solely due to VNSNY's negligence, willful misconduct, misuse of the VNSNY Private Entrance or any Alterations performed by VNSNY in connection therewith (in which case such compliance shall be performed at VNSNY's sole cost and expense);

(iii) Fee Owner, Declarant and the Condominium Board shall have no obligation to provide security services to the VNSNY's Private Entrance. As such, from and after the VNSNY's Private Entrance Commencement Date, VNSNY shall be required to ensure, at VNSNY's sole cost and expense, that there is at least one (1) employee of VNSNY (or attendant contracted by VNSNY, provided that the same does not create any actual work stoppage, picketing, labor disruption, disharmony or dispute in the Building) posted during any time that (I) VNSNY is providing training in any portion of the VNSNY Retail Unit, and (II) VNSNY's Private Entrance is open (i.e., at all times except when VNSNY's Private Entrance is locked and not otherwise accessible), provided such employee or attendant shall adhere to the reasonable security procedures put in place by the Condominium Board throughout the Building (including, but not limited to, checking in all guests through the Building's access control system, ensuring the Condominium Board processes all Building ID cards for employees and notifying the Condominium Board of changes in an employee's status, issuing temporary non-photograph access cards to VNSNY's trainees and visitors, etc.). VNSNY shall ensure that all of VNSNY's employees, visitors and/or guests "swipe" their access cards and/or non-photograph guest passes whenever such parties enter the Building through VNSNY's Private Entrance through the Building's access control system. Notwithstanding anything to the contrary set forth in this Section 8(c)(iii), except if caused by VNSNY's negligence, willful misconduct or failure to comply with the security requirements contained in this Exhibit I and/or any of the VNSNY Transaction Documents, in no event shall VNSNY be liable to the Condominium Board for any injury or damage to persons or property in the Building caused by or resulting from theft, illegal entry or trespass, vandalism or any other crime committed by any person other than VNSNY's employees or agents (it being agreed that the foregoing shall not be or be deemed to relieve VNSNY from any liability in connection with third-party claims (other than by the Condominium Board) made against VNSNY or to require the Condominium Board to indemnify VNSNY in connection with any such third-party claims).

(iv) (A) For so long as VNSNY (or any other owner of the VNSNY Retail Unit or any other permitted occupant thereof) has the right to utilize the VNSNY Private Entrance pursuant to this Section 8 and subject to any reasonably required maintenance, repairs and/or replacements to the Building's exterior that may obscure or remove the Street Signage (as defined below) on a temporary basis (it being agreed that the Condominium Board shall use reasonable efforts, to the extent in the Condominium Board's reasonable control, to minimize any such obscuring or removal caused by the Condominium Board), and subject to all required LPC approvals and Applicable Laws, VNSNY shall have the right to install and thereafter maintain at VNSNY's cost and expense (except as otherwise provided below to the contrary), signage and a canopy adjacent to/above the VNSNY Private Entrance (the "Street Signage") as shown on



Exhibit H-1 annexed to the Declaration identifying VNSNY's name and/or logo (or the name and/or logo of any then owner of the VNSNY Retail Unit or any permitted occupant thereof); provided, however, the design, font, size, color, materials, finish and manner of installation of any such Street Signage shall be subject to the Condominium Board's prior approval, which approval shall not be unreasonably conditioned, withheld or delayed; it being agreed, however, that both of the signage renderings shown on Exhibit H-3 annexed to the Declaration are hereby approved with respect to design only (as opposed to method of installation, materials, etc.) by the Condominium Board for all purposes of this Section 8. Notwithstanding the foregoing to the contrary, any reasonable and customary signage (including, without limitation, the signage shown on Exhibit H-3) included as part of the Street Signage and installed prior to the Possession Date shall be at the Condominium Board's sole cost and expense (and any subsequent modification thereafter thereto and/or subsequent replacements thereof shall be at VNSNY's (or such other owner's or occupant's) sole cost and expense)). Any such installation of the Street Signage shall be subject to the terms and conditions of Section 1 hereof and all other terms and conditions of the VNSNY Transaction Documents applicable to the performance of Alterations by VNSNY. The Condominium Board, at its option, may elect to install the Street Signage on behalf of VNSNY , and in such case (other than the initial installation that shall be at the Condominium Board's sole cost and expense), VNSNY shall reimburse to the Condominium Board the actual reasonable out-of-pocket costs incurred by the Condominium Board in connection therewith within thirty (30) days after VNSNY's receipt of a written invoice therefor (accompanied by reasonably satisfactory evidence thereof). VNSNY shall, at its sole cost and expense, be responsible through the End of Term to maintain the Street Signage in good order and repair (any such repairs to be performed at such times and in such a manner as reasonably designated or reasonably approved by the Condominium Board). On or before the End of Term (or such earlier date that VNSNY shall no longer have the right to utilize the VNSNY Private Entrance, VNSNY (or any then owner of the VNSNY Retail Unit or any permitted occupant thereof, at its sole cost and expense, shall remove the Street Signage and repair any damage to the Building resulting from such removal (any such removal and repairs to be performed at such times and in such a manners as reasonably designated or approved by the Condominium Board), provided, however, the Condominium Board, at its option, may elect to remove the Street Signage on behalf of VNSNY as described above, and in such case, VNSNY shall reimburse to the Condominium Board the actual reasonable out-of-pocket costs incurred by the Condominium Board in connection therewith within thirty (30) days after VNSNY's receipt of a written invoice therefor (accompanied by reasonably satisfactory evidence thereof).

(B) VNSNY hereby expressly acknowledges that the Street Signage shall, notwithstanding anything to the contrary contained in this Exhibit I or any other VNSNY Transaction Documents, be expressly subject to LPC approval and Declarant, Fee Owner and the Condominium Board make no representations whatsoever with respect to whether such consent shall be granted and VNSNY shall not be entitled to any diminution of Common Charges, the Installment Purchase Payments or any other amounts otherwise due under the Declaration, By-Laws, and/or VNSNY Transaction Documents if such consent is not obtained for any reason; it being agreed, however, that Declarant, Fee Owner

and the Condominium Board shall cooperate with VNSNY to receive such LPC approval in accordance with the provisions of Section 1(e) above.

(C) Notwithstanding anything to the contrary set forth in Section 14.11 of the Declaration, VNSNY (or any then owner of the VNSNY Retail Unit or any permitted occupant thereof) shall have the right to install (subject to provisions of Section 1 above and subject to the Condominium Board's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed and subject to any LPC approvals that may be required in connection therewith (if any)), at VNSNY's (or such other party's) sole cost and expense, one or more signs depicting VNSNY's (or such other party's) name and/or logo in the interior of the VNSNY's Private Entrance (even if the same are visible from the exterior of the Building).

(v) Except as expressly set forth in this Section 8 and in Section 12 of this Exhibit I, VNSNY acknowledges and agrees that the Condominium Board shall not be obligated to provide any services to the VNSNY's Private Entrance. VNSNY shall, at VNSNY's sole cost and expense and utilizing the Condominium Board's designated cleaning contractor, cause the VNSNY Private Entrance (but, for the avoidance of doubt, excluding the sidewalk appurtenant thereto) and the associated reception, security and/or concierge desk of VNSNY's Private Entrance to be cleaned in a first-class manner as reasonably required by the Condominium Board; it being expressly acknowledged and agreed by VNSNY that all such cleaning may exceed "office cleaning" that would otherwise be required to be provided pursuant to Section 12.1 of this Exhibit I (and such additional cleaning shall be payable by VNSNY in accordance with Section 12.1 of this Exhibit I).

(vi) VNSNY shall be required to (x) install a security system (including hardware and software) reasonably designated by the Condominium Board (and utilizing the Condominium Board's designated contractors, vendors and consultants), which system shall be tied-in to the Building's security system and which shall include the installation of a security device (reasonably designated by the Condominium Board) that is able to process access cards and security passes for VNSNY's employee, invitees and guests (it being agreed that any turnstiles installed by VNSNY shall be compatible with the Building security system), (y) a video camera or cameras directly outside of the VNSNY's Private Entrance so the entrance thereto is visible and inside the VNSNY's Private Entrance, each of which shall be installed with an output that the Condominium Board is able to connect to so that the Condominium Board can monitor the exterior of and interior of the VNSNY's Private Entrance at all times. The egress door from the VNSNY's Private Entrance to the main lobby of the Building shall be alarmed and only accessible with a Building-standard card access card, as more particularly set forth in Section 2(a)(iv) above, except in the case of emergency.

(vii) Subject to Section 4(f)(ii) of this Exhibit I, from and after the Possession Date, VNSNY shall be responsible, at VNSNY's sole cost and expense, to comply with all Applicable Laws relating to the VNSNY Private Entrance (but, for the avoidance of doubt, excluding the sidewalk appurtenant thereto).



SECTION 9
EXTERIOR SIGNAGE

9. VNSNY's Exterior Signage.

(a) For so long as the (i) Initially Named Owner is the owner of the VNSNY Units, (ii) Initially Named Owner (and any of its permitted Service and Business Relationship Entities) is in actual occupancy of not less than seventy (70%) percent rentable square foot area of the VNSNY Units, (iii) Initially Named Owner (and any of its permitted Service and Business Relationship Entities) is in actual occupancy of not less than 200,000 rentable square feet in the VNSNY Units, and (iv) VNSNY is not in default under any of the VNSNY Transaction Documents after notice and the expiration of the applicable cure period (collectively, the conditions set forth in clauses (i)-(iv) above being referred to herein as the "Signage Conditions"), and subject to any reasonably required maintenance, repairs and/or replacements to the Building's exterior that may obscure or remove the WPIX Signage on a temporary basis (it being agreed that the Condominium Board shall use reasonable efforts, to the extent in the Condominium Board's reasonable control, to minimize any such obscuring or removal caused by the Condominium Board), and subject to all required LPC approvals and Applicable Laws, VNSNY shall have the right to install and thereafter maintain at VNSNY's cost and expense, (x) VNSNY's pro-rata share (based on the rentable square foot area of the VNSNY Units and the rentable square footage in the Building being occupied by such other occupant to whom such rights with respect to the flagpoles are granted) of the exterior flagpoles on East 42nd Street (the "Flag Signage") but only if the Condominium Board elects (in its sole discretion) to grant the use of any such exterior flagpoles on East 42nd Street to any other occupant of the Building (other than the Condominium Board, Fee Owner or their Affiliates) and such flag polls are being used by such occupant, and (y) the signs in the place of the current WPIX logos and the time and temperature clock located on the Second Avenue north facing façade and the Second Avenue/42nd Street corner of the Building located on the ground floor east facing façade wall (collectively, the "WPIX Signage") in the locations shown on Exhibit H-2 annexed to the Declaration, in each case, identifying VNSNY's name and/or logo; provided, however, the design, font, size, color, materials, finish and manner of installation of any such Flag Signage and WPIX Signage shall be subject to the Condominium Board's prior approval, which approval shall not be unreasonably conditioned, withheld or delayed. VNSNY expressly acknowledges and agrees that VNSNY's rights hereunder with respect to the WPIX Signage only shall commence from and after the expiration or sooner termination of that certain lease between SLG 220 News Owner LLC and WPIX, Inc. dated as of June 25, 2010 (as amended, the "WPIX Lease") and the expiration or sooner termination of the rights of the tenant under the WPIX Lease with respect to the WPIX Signage. Any such installation of the Flag Signage and the WPIX Signage shall be subject to the terms and conditions of Section 1 hereof and all other terms and conditions of the VNSNY Transaction Documents applicable to the performance of Alterations by VNSNY. The Condominium Board, at its option, may elect to install the Flag Signage and/or the WPIX Signage on behalf of VNSNY, and in such case, VNSNY shall reimburse to the Condominium Board the actual reasonable out-of-pocket costs incurred by the Condominium Board in connection therewith within thirty (30) days after VNSNY's receipt of a written invoice therefor (accompanied by reasonably satisfactory evidence thereof). VNSNY shall, at its sole cost and expense, be responsible through the End of Term to maintain the Flag Signage (excluding any flag pole not installed by VNSNY as part of the Flag Signage unless



resulting from VNSNY's misuse, negligence or willful misconduct) and the WPIX Signage, as applicable, in good order and repair (any such repairs to be performed at such times and in such a manner as reasonably designated or reasonably approved by the Condominium Board). If and to the extent VNSNY (or any other owner of the VNSNY Units or occupant of the VNSNY Units) installs any WPIX Signage as aforesaid (or such WPIX Signage is installed on behalf of VNSNY or any other owner or occupant of the VNSNY Units), then on or before the End of Term (or such earlier date that VNSNY fails to satisfy the Signage Conditions after notice and a reasonable opportunity to cure the same, VNSNY, at its sole cost and expense, shall remove the WPIX Signage and repair any damage to the Building resulting from such removal (any such removal and repairs to be performed at such times and in such a manners as reasonably designated or approved by the Condominium Board), provided, however, the Condominium Board, at its option, may elect to remove the Flag Signage and/or the WPIX Signage, as applicable, on behalf of VNSNY as described above, and in such case, VNSNY shall reimburse to the Condominium Board the actual reasonable out-of-pocket costs incurred by the Condominium Board in connection therewith within thirty (30) days after VNSNY's receipt of a written invoice therefor (accompanied by reasonably satisfactory evidence thereof).

(b) VNSNY hereby expressly acknowledges that all signage described in this Section 9 and the VNSNY Transaction Documents and VNSNY's rights with respect thereto shall, notwithstanding anything to the contrary contained in this Exhibit I or any other VNSNY Transaction Documents, be expressly subject to LPC approval and Declarant, Fee Owner and the Condominium Board make no representations whatsoever with respect to whether such consent shall be granted and VNSNY shall not be entitled to any diminution of Common Charges, the Installment Purchase Payments or any other amounts otherwise due under the Declaration, By-Laws, and/or VNSNY Transaction Documents if such consent is not obtained for any reason; it being agreed, however, that Declarant, Fee Owner and the Condominium Board shall cooperate with VNSNY to receive such LPC approval in accordance with the provisions of Section 1(e) above.

SECTION 10
SELF HELP RIGHTS

10. VNSNY's Self-Help Rights.

(a) Provided that (x) no default after notice and the expiration of any applicable cure period has occurred and is continuing under any of the Declaration, By-Laws, and/or VNSNY Transaction Documents at the time VNSNY gives the Self-Help Notice (defined below) and upon performance of the Self-Help Items (defined below), and (y) VNSNY (and any of its permitted Service and Business Relationship Entities) shall be in actual occupancy of at least sixty (60%) percent of the rentable square foot area of the VNSNY Units at the time VNSNY gives the Self-Help Notice and during the performance of the Self-Help Items, then subject to the provisions of this Section 10, if the Condominium Board fails to provide on a timely basis in accordance with the provisions of the VNSNY Transaction Documents any item of maintenance or repair with respect to items that are exclusively located within the VNSNY Units and which do not affect the exterior of the Building, the structure of the Building, the Base Building Systems (except if exclusively serving the VNSNY Units or affect only the horizontal distribution thereof located within the VNSNY Units), and which do not require any



modifications to the certificate of occupancy and such failure by the Condominium Board is not the result of a delay caused by VNSNY, casualty, condemnation, Force Majeure or other unavoidable delay, VNSNY shall have the right (but not the obligation) to perform and fulfill the Condominium Board's obligation with respect thereto (and to charge Condominium Board for the costs thereof as and to the extent hereinafter provided, and the Condominium Board shall recoup the amount of such costs by means of a Special Assessment imposed upon Declarant). The extent of the work performed by VNSNY in curing any such Condominium Board default shall not exceed the work that is reasonably necessary to effectuate such remedy and the cost of such work shall be reasonably prudent and economical under the circumstances. Notwithstanding anything to the contrary contained herein, VNSNY shall not be entitled to cure any failure of Condominium Board if (A) such cure requires access to the premises of other Unit Owners or occupants of the Building or to any other portion of the Building outside of the VNSNY Units, or (B) the performance of such cure would impair or disrupt services (other than to a de minimis extent) to the Unit Owners or occupants of the Building. The defaults of the Condominium Board that VNSNY is permitted to cure in accordance with the provisions of this Section 10(a) are hereinafter collectively referred to as "Self-Help Items".

(b) If VNSNY believes that Condominium Board has failed to perform any Self-Help Item as required by the Declaration or By-Laws (including, without limitation, this Exhibit I), VNSNY may give Condominium Board a notice (a "Self-Help Notice") of VNSNY's intention to perform such Self-Help Item on the Condominium Board's behalf, which notice shall contain a statement in bold type and capital letters at the top of such notice and on the envelope containing such notice stating "**THIS IS A TIME SENSITIVE SELF HELP NOTICE AND CONDOMINIUM BOARD SHALL BE DEEMED TO WAIVE ITS RIGHTS IF IT FAILS TO RESPOND IN THE TIME PERIOD PROVIDED**" as a condition to the effectiveness thereof. If Condominium Board fails within thirty (30) days (or, one (1) Business Day with respect to any Self-Help Item that may result in damage or injury to any persons or property) to the after VNSNY gives such Self-Help Notice to either (i) commence (and thereafter continue to diligently perform) the cure of such Self-Help Item or (ii) give a notice to VNSNY (a "Condominium Board's Self-Help Dispute Notice") disputing in good faith VNSNY's right to perform the cure of such Self-Help Item pursuant to the terms of this Section 10, then VNSNY shall have the right, but not the obligation, to commence and thereafter diligently prosecute the cure of such Self-Help Item in accordance with the provisions of this Section 10 at any time thereafter, but prior to the date on which the Condominium Board either commences to cure such Self-Help Item or gives to VNSNY a Condominium Board's Self-Help Dispute Notice. If either (A) within such thirty (30) day (or one (1) Business Day) period or at any time thereafter prior to the date on which VNSNY commences to cure such Self-Help Item, the Condominium Board gives a Condominium Board's Self-Help Dispute Notice, or (B) VNSNY disputes whether the Condominium Board has commenced to cure or is diligently proceeding with the cure of such Self-Help Item, VNSNY may commence an expedited arbitration proceeding in accordance with the terms and requirements of Article 10 of the By-Laws (a "Self-Help Arbitration"). Such Self-Help Arbitration shall determine either (1) whether the Condominium Board has failed to commence or has been and is then continuing to fail to diligently prosecute the Self-Help Item in question or (2) whether VNSNY has the right pursuant to the terms of this Section 10 to cure such Self-Help Item. If VNSNY shall prevail in such Self-Help Arbitration, VNSNY may perform the cure of such Self-Help Item. Upon completion of the cure of such Self-Help Item, as provided herein, by VNSNY, VNSNY shall give notice

thereof (the "Self-Help Item Completion Notice") to the Condominium Board together with a copy of paid invoices setting forth the reasonable out-of-pocket costs and expenses incurred by VNSNY to complete such Self-Help Item taking into account the circumstances of such Self-Help Item (the "Self-Help Amount"). The Condominium Board shall reimburse VNSNY in the amount of the Self-Help Amount within thirty (30) days after VNSNY gives to the Condominium Board the Self-Help Item Completion Notice. If the Condominium Board fails to make such payment within thirty (30) days after receipt the Self-Help Item Completion Notice, VNSNY shall have the right to give to the Condominium Board a second written notice (herein called a "Second Self-Help Completion Notice") requesting payment of the Self Help Amount, again accompanied by all applicable invoices with respect thereto. The Second Self-Help Completion Notice shall contain the following language in capitalized bold print: "**IF THE CONDOMINIUM BOARD SHALL FAIL TO PAY THE SELF HELP AMOUNT WITHIN TEN (10) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE, VNSNY SHALL HAVE THE RIGHT TO OFFSET SUCH AMOUNT AGAINST THE NEXT INSTALLMENTS OF COMMON CHARGES DUE UNDER THE CONDOMINIUM DOCUMENTS.**" If the Condominium Board fails to pay the Self Help Amount within ten (10) business days after its receipt of a Second Self-Help Completion Notice, as VNSNY's sole remedy for such failure, such unpaid and undisputed Self Help Amount shall be credited against the next installment(s) of Common Charges thereafter becoming due under the Condominium Documents. Within such 10-business day period the Condominium Board may dispute VNSNY's right to such credit by providing written notice thereof to the Condominium Board and if VNSNY and the Condominium Board fail to resolve any such dispute within 30 days after the Condominium Board's delivery of the dispute notice, if any, then either party may bring arbitration proceeding pursuant to the terms and requirements set forth in the VNSNY Transaction Documents. If the Condominium Board fails to dispute such credit within the 10-business day period described above, VNSNY shall be entitled to take such credit against the next installment(s) of Common Charges thereafter becoming due.

(c) VNSNY shall diligently prosecute any Self-Help Item to completion in accordance with all Applicable Laws and provisions of the Declaration and By-Laws (including, without limitation, this Exhibit I). Anything to the contrary herein notwithstanding, VNSNY shall perform all Self-Help Items in accordance with the Alteration Rules attached as Exhibit L to the Declaration and perform such work pursuant to Section 1 above; provided, however, that the Condominium Board's consent to such Alterations shall not be required (if such consent is otherwise required pursuant to Section 1 above and VNSNY shall not be required to reimburse the Condominium Board for any costs set forth in Section 1 with respect to any review of such Alterations or supervision thereof by the Condominium Board.

(d) In the event of any dispute under this Section 10, either party shall have the right to submit such dispute to expedited arbitration in accordance with the terms and requirements of the VNSNY Transaction Documents, specifically, Article 10 of the Declaration.

SECTION 11
FIRE STAIRS



11. Fire Stairs. (a) VNSNY shall have a non-exclusive right to use any fire stairwells serving the VNSNY Office Units (the portion(s) thereof utilized by VNSNY between the VNSNY Office Units, herein called the "Fire Stairs") for the sole purpose of access between said floors, at no additional charge to VNSNY, provided that (1) such use shall be permitted by, and at all times in accordance with, all Applicable Laws; (2) VNSNY obtains all necessary governmental and regulatory approvals for the use of the Fire Stairs if applicable and required pursuant to Applicable Laws (and the Condominium Board shall cooperate with VNSNY in connection therewith pursuant to the provisions of Section 5(e) above); (3) VNSNY shall comply with all of the Condominium Board's reasonable rules and regulations adopted from time to time with respect thereto (provided VNSNY receives prior notice of same); (4) access doors to the Fire Stairs shall never be propped or blocked open; (5) VNSNY shall not store or place anything in the Fire Stairs or otherwise impede ingress thereto or egress therefrom; (6) VNSNY shall not permit or suffer any of its employees, agents or contractors to use any portion of the Fire Stairs other than for ingress and egress between the different floors of the VNSNY Office Units, except in case of emergency, and shall be responsible for assuring that VNSNY's employees do not use the Fire Stairs for loitering or any other purpose other than ingress and egress between the different floors of the VNSNY Office Units and use in the event of a fire or other emergency; (7) subject to applicable re-entry rules and regulations from time to time in effect, VNSNY shall, at its sole cost and expense if VNSNY shall elect to utilize the Fire Stairs pursuant hereto, install a key card locking system reasonably satisfactory to the Condominium Board and that complies with Applicable Laws on all doors between the Fire Stairs and the VNSNY Office Units (it being agreed that if permitted by Applicable Laws, such key card locking system need not be installed on the Fire Stairs door itself on any particular floor of the VNSNY Office Units in which a vestibule or similar space exists between such Fire Stairs door and the remainder of the VNSNY Office Unit on such floor, provided that the same is installed on any door(s) leading from such vestibule or similar space to the remainder of the VNSNY Office Unit on such floor), and (8) notwithstanding anything to the contrary contained in the VNSNY Transaction Documents, except to the extent resulting for the negligence or willful misconduct of the Condominium Board or any other Unit Owners, tenants or occupants of the Building, if VNSNY shall elect to utilize the Fire Stairs pursuant hereto, then VNSNY shall be responsible for all non-structural repairs and maintenance required in connection with the Fire Stairs (i.e., solely those portion(s) of the Fire Stairs that are utilized by VNSNY between the VNSNY Office Units) other than such repairs and maintenance as shall be required due to the normal use of the Fire Stairs by other Unit Owners and occupants of the Units. Except for such repair and maintenance obligations that are VNSNY's responsibility hereunder, the Condominium Board shall perform all other required maintenance and repairs to the Fire Stairs in accordance with the provisions of Section 4(e) of this Exhibit I and the Condominium Board's obligations to repair and maintain the Common Elements (including, without limitation, the Fire Stairs) pursuant to the Declaration and By-Laws. VNSNY shall provide the Condominium Board with a "master" card key so that the Condominium Board (and their designated agents) shall have access through each entry door where same is necessary. VNSNY hereby waives any and all claims against the Condominium Board arising out of or in connection with parties gaining access to and from such floors through the Fire Stairs, except to the extent any such claims arise as a result of the Condominium Board's or the Condominium Board's agents, contractors, or employees' negligence or willful misconduct. All of the provisions of the VNSNY Transaction Documents in respect of insurance and indemnification shall apply to VNSNY's actions in or use of the Fire Stairs. VNSNY may



paint the Fire Stairs and install carpet and light fixtures therein and make such other decorative Alterations and upgrades to finishes as the Condominium Board shall approve, which approval shall be granted or withheld in accordance with the terms of Section 1 of this Exhibit I and any other provisions contained in the VNSNY Transaction Documents applicable to VNSNY's performance of (and removal of) Alterations. VNSNY shall be solely responsible for (x) any additional cleaning costs solely with respect to the use of the Fire Stairs by VNSNY and (y) all repairs and maintenance costs associated with the Fire Stairs, except if such repairs and/or maintenance arise from the use thereof by another occupant of the Building or require structural repairs that do not arise from VNSNY's (or VNSNY's employees, agents, or contractors) use thereof or negligence or willful misconduct. If VNSNY shall elect to utilize the Fire Stairs pursuant to the provisions of this Section 11, following notice thereof from VNSNY to the Condominium Board, the Condominium Board shall deliver the Fair Stairs to VNSNY for VNSNY's use hereunder in compliance with the then latest codes applicable to fire ratings of walls and doors. Subject to VNSNY's maintenance and repair obligations contained herein, the Condominium Board shall maintain the Fire Stairs in compliance with Applicable Laws (but only as and to the extent that same is required in connection with VNSNY's use thereof or otherwise required pursuant to the provisions of the Declaration and By-Laws or Applicable Laws).

(b) For purposes of this Section 11 only, all references herein to VNSNY shall be deemed to include any then owner of the VNSNY Office Units and any permitted occupant of the VNSNY Office Units.

SECTION 12
SERVICES

12.1 Cleaning

a. The Condominium Board shall cause the VNSNY Units to be kept clean in accordance with the specifications annexed hereto as Schedule 1 to this Exhibit I, provided they are kept in reasonable order by VNSNY (it being expressly acknowledged by VNSNY that any cleaning of the VNSNY Retail Units and/or the VNSNY Private Entrance that is in excess of the "office cleaning" specifications set forth on Schedule 1 to this Exhibit I shall be performed at VNSNY's sole cost and expense and which shall be performed in accordance with Section 12.1b below). The Condominium Board, its cleaning contractor and their employees shall have after-hours access to the VNSNY Units and the use of VNSNY's light, power and water in the VNSNY Units as may be reasonably required for the purpose of cleaning the VNSNY Units. The Condominium Board may remove VNSNY's extraordinary refuse (above that ordinarily generated by a general office user) from the Building and VNSNY shall pay the reasonable cost thereof.

b. VNSNY acknowledges that the Condominium Board has designated a cleaning contractor for the Building. VNSNY agrees to employ said cleaning contractor or such other contractor as the Condominium Board shall from time to time designate (the "Building Cleaning Contractor") to perform all cleaning services required hereunder that are not the responsibility of the Condominium Board pursuant to Section 12.1(a) above to be performed by VNSNY within



the VNSNY Units and for any other waxing, polishing, and other cleaning and maintenance work of the VNSNY Units and VNSNY's furniture, fixtures and equipment (collectively, "VNSNY Cleaning Services") provided that the prices charged by said contractor are comparable to the prices customarily charged by other reputable cleaning contractors employing union labor in midtown Manhattan for the same level and quality of service. VNSNY acknowledges that it has been advised that the cleaning contractor for the Building may be a division or affiliate of the Condominium Board and/or Fee Owner. VNSNY agrees that it shall not employ any other cleaning and maintenance contractor, nor any individual, firm or organization for such purpose, without the Condominium Board's prior written consent. In the event that the Condominium Board and VNSNY cannot agree on whether the prices then being charged by the Building Cleaning Contractor for such cleaning services are comparable to those charged by other reputable contractors as herein provided, then the Condominium Board and VNSNY shall each obtain two (2) bona fide bids for such services from reputable cleaning contractors performing such services in comparable buildings in midtown Manhattan employing union labor, and the average of the four bids thus obtained shall be the standard of comparison. In the event that the Building Cleaning Contractor does not agree to perform such cleaning services for VNSNY at such average price, the Condominium Board shall not unreasonably withhold, condition or delay its consent to the performance of VNSNY Cleaning Services by a reputable cleaning contractor designated by VNSNY employing union labor with the proper jurisdictional qualifications; provided, however, that, without limitation, the Condominium Board's experience with such contractor or any criminal proceedings pending or previously filed against such contractor may form a basis upon which the Condominium Board may withhold or withdraw its consent.

c. The Condominium Board shall have the right, from time to time and as reasonably required by the Condominium Board, to access (and to permit the Building Cleaning Contractor to access) the janitor closets (designated on the Floor Plans as "JC") located in the VNSNY Units.

12.2 Water

a. The Condominium Board shall provide cold and tempered water to the VNSNY Units for ordinary lavatory purposes and cold water for drinking purposes and for standard office pantry and cleaning purposes only. VNSNY shall pay the amount (without administrative fees or mark-up) of the Condominium Board's cost for all excessive water used by VNSNY for any purpose other than ordinary drinking, cleaning or lavatory uses, and any sewer rent or tax based thereon. In connection with any such excessive consumption, the Condominium Board shall install a water meter to measure VNSNY's water consumption (separate from any other water consumption in the Building) for all purposes and VNSNY agrees to pay for the reasonable cost of installation and maintenance thereof and for water consumed as shown on said meter to the extent same exceeds the ordinary use specified herein at the Condominium Board's cost therefor.

12.3 HVAC

a. Heating - The Condominium Board shall provide heating service to the VNSNY Office Units and to the portion of the VNSNY Retail Unit located on the first floor of the

Building only (but expressly excluding any portions of the VNSNY Retail Unit located below the first floor of the Building) through the presently existing system(s) (and/or through any systems installed as part of Seller's Work, if any) serving the VNSNY Office Units and/or serving the portion of the VNSNY Retail Unit with respect to which such service is being provided hereunder in accordance with the specifications attached hereto as Schedule 2 to this Exhibit I. "HVAC Periods" means Monday through Friday, 8:00 a.m. until 6:00 p.m., and Saturday, 8:00 a.m. until 1:00p.m. excluding the following holidays: New Year's Day, Abraham Lincoln's Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day and as otherwise set forth on Schedule 2 to this Exhibit I. If VNSNY requires heat to such portions of the VNSNY Units with respect to which the Condominium Board is providing heating services hereunder other than during HVAC Periods during the Heating Season (as described on Schedule 2 to this Exhibit I), the Condominium Board shall furnish such heat, provided that VNSNY requests same via the Condominium Board's electronic work order system (or, if such system is not operational, by notice hand delivered, e-mailed or faxed to the Condominium Board at the Condominium Board's office in the Building, addressed to the attention of the Operations Manager) before 2:00 p.m. on any business day for service on such business day, and before 2:00 p.m. on the business day immediately preceding any non-business day for service on such non-business day. Notwithstanding the foregoing, the Condominium Board shall use reasonable efforts to supply such requested service if less notice is given to the Condominium Board. If after-hours heat service is requested for a weekend or for a period of time that does not immediately precede or follow the normal working hours of the personnel providing such after-hours service, the minimum charge prescribed by the Condominium Board shall be for four (4) hours. VNSNY shall reimburse the Condominium Board, within thirty (30) days after receipt of an invoice from the Condominium Board evidencing the same, for the provision by the Condominium Board of non HVAC Period heating service at the current rate of $495.00 per hour (in the aggregate regardless of whether such overtime service is being requested for all or any portion of the VNSNY Office Units and/or the first floor of the VNSNY Retail Unit), which rate shall be subject to increase from time to time based on any actual increases in the Condominium Board's actual cost to provide such service. If, at any time prior to the End of Term, the Building's heating systems shall have the capability of furnishing heat to heating zones on a per zone basis at a reduced cost, the foregoing rate shall be equitably reduced in proportion to the portions of the VNSNY Units (if less than all) requesting non HVAC Period heating service (provided, however, in no event shall the aggregate amounts payable to the Condominium Board (by VNSNY and any other user) in connection with such service be less than the actual cost to the Condominium Board to provide such service). The Condominium Board shall not be required to provide any heating service to any portions of the VNSNY Retail Unit located below the first floor of the Building.

b. Air Conditioning – (i) Subject to the provisions of this Section 12 (including Section 12.3b.(iii) below) and all other applicable provisions of the VNSNY Transaction Documents, the Condominium Board shall supply air-conditioning service to the VNSNY Office Units and to the portion of the VNSNY Retail Unit located on the first floor of the Building only (but expressly excluding any portions of the VNSNY Retail Unit located below the first floor of the Building) through the Building's central air-conditioning facilities (the "Building HVAC System") during the HVAC Periods in accordance with the specifications annexed hereto as Schedule 2 to Exhibit I. The Condominium Board reserves the right to suspend operation of the



Building HVAC System at any time that the Condominium Board, in its reasonable judgment, deems it necessary to do so for reasons such as accidents, emergencies or any situation arising in the VNSNY Office Units or within the Building which has an adverse affect, either directly or indirectly, on the operation of Building HVAC System, including without limitation, reasons relating to the making of repairs, alterations or improvements in the VNSNY Office Units or the Building, and VNSNY agrees that any such suspension in the operation of the Building HVAC System may continue until such time as the reason causing such suspension has been remedied and that the Condominium Board shall not be held responsible or be subject to any claim by VNSNY due to such suspension except as set forth in Section 2.12.3 of the By-Laws. VNSNY further agrees that the Condominium Board shall have no responsibility or liability to VNSNY if operation of the Building HVAC System is prevented by casualty, condemnation, Force Majeure or other unavoidable delay or any cause beyond the Condominium Board's reasonable control, or by the orders or regulations of any federal, state, county or municipal authority or by failure of the equipment or electric current, steam and/or water or other required power source except as set forth in Section 2.12.3 of the By-Laws. The Condominium Board shall not be required to provide any air conditioning service to any portions of the VNSNY Retail Unit located below the first floor of the first floor of the Building and/or to the VNSNY Private Entrance.

(ii) In the event that VNSNY shall require air conditioning service other than during HVAC Periods during the Cooling Season (as described on Schedule 2 to this Exhibit I), the Condominium Board shall furnish such after hours service through the Building HVAC System provided that written notice is given to the Condominium Board by VNSNY prior to before 2:00 p.m. on any business day for service on such business day, and before 2:00 p.m. on the business day immediately preceding any non-business day for service on such non-business day. Notwithstanding the foregoing, the Condominium Board shall use reasonable efforts to supply such requested service if less notice is given to the Condominium Board. If after-hours air-conditioning service is requested for a weekend or for a period of time that does not immediately precede or follow the normal working hours of the personnel providing such after-hours service, the minimum charge prescribed by the Condominium Board shall be for four (4) hours. VNSNY shall reimburse the Condominium Board, within thirty (30) days after receipt of an invoice from the Condominium Board evidencing the same, for the provision by the Condominium Board of non HVAC Period air conditioning service at the current rate of $558.00 per hour (in the aggregate regardless of whether such overtime service is being requested for all or any portion of the VNSNY Office Units), which rate shall be subject to increase from time to time based on any actual increases in the Condominium Board's actual cost to provide such service; provided, however, that the cost of the first four (4) hours of after-hours air-conditioning service to the first floor of the VNSNY Retail Unit per week shall be at the Condominium Board's actual cost (without administrative fees or mark-up). If, at any time prior to the End of Term, the Building's air conditioning systems shall have the capability of furnishing air conditioning to air conditioning zones on a per zone basis at a reduced cost, the foregoing rate shall be equitably reduced in proportion to the portions of the VNSNY Units (if less than all) requesting non HVAC Period air conditioning service (provided, however, in no event shall the aggregate amounts payable to the Condominium Board (by VNSNY and any other user) in connection with such service be less than the actual cost to the Condominium Board to provide such service).



c. Condenser Water – (i) Subject to the provisions of this Section 12.3c, the Condominium Board shall make available to VNSNY or reserve for VNSNY's use up to an aggregate of four hundred thirty (430) tons of condenser water ("Supplemental Condenser Water") in connection with the operation by VNSNY of supplemental air-conditioning equipment including, without limitation, the Concourse 30-Ton Unit (it being agreed that no more than 200 tons of such Supplemental Condenser Water will be used to serve VNSNY's server room and conference center loads and no more than 200 tons of such Supplemental Condenser Water will be used to serve overtime/supplemental cooling loads in the VNSNY Units). From and after the Possession Date, VNSNY shall be required to pay for the Supplemental Condenser Water (i.e., for the entire four hundred thirty (430) tons) regardless of whether same is actually being used. In addition to the Supplemental Condenser Water set forth above, the Condominium Board shall reserve for VNSNY an additional two hundred (200) tons of condenser water (the "Additional Reserved Condenser Water"), which Additional Reserved Condenser Water shall be reserved for VNSNY as follows: (x) on or before the first anniversary of the Possession Date, time being of the essence, VNSNY shall give to the Condominium Board notice (the "Initial Supplemental Condenser Water Notice") setting forth how much of such Additional Reserved Condenser Water (the "Initially Elected Amount") VNSNY has elected to utilize from and after the Possession Date (it being agreed that from and after the Possession Date, VNSNY shall be required to pay for the full amount of such designated Additional Reserved Condenser Water regardless of whether same is actually being used); (y) as part of the Initial Supplemental Condenser Water Notice, VNSNY may elect to require the Condominium Board to reserve for an additional twelve (12) month period (ending on the 2nd anniversary of the Possession Date) all or any portion of the Additional Reserved Condenser Water amount that VNSNY has not designated as the Initially Elected Amount (such designated amount to be reserved for an additional 12 month period, the "12 Month Reserved Amount"), provided, that if VNSNY shall fail to designate any 12 Month Reserved Amount in the Initial Supplemental Condenser Water Notice, the Condominium Board shall not be required to reserve any additional amount (other than any Initially Elected Amount) (it being agreed that from the date VNSNY gives the Initial Supplemental Condenser Water Notice designating the 12 Month Reserve Amount through and including the second (2nd) anniversary of the Possession Date ("CW Outside Date") or such earlier date that VNSNY shall give a Second Supplemental Condenser Water Notice, VNSNY shall be required to pay for such 12 Month Reserved Amount regardless of whether same is actually being used), and (z) on or before the CW Outside Date, VNSNY shall give a second notice (the "Second Supplemental Condenser Water Notice") electing how much of the 12 Month Reserved Amount (if any) VNSNY has elected to actually utilize or reserve, provided that if no Second Supplemental Condenser Water Notice is given, VNSNY shall be deemed to have elected not to use any of the 12 Month Reserved Amount (it being agreed that from and after the Possession Date, VNSNY shall be required to pay for the full amount of the 12 Month Reserved Amount so elected to be utilized or reserved in the Second Supplemental Condenser Water Notice (in addition to the Initially Elected Amount, if any) regardless of whether same is actually being used). VNSNY shall pay for the Supplemental Condenser Water as set forth in the immediately preceding sentence. The Condominium Board shall have no obligation to reserve for VNSNY's future use any Supplemental Condenser Water or Additional Reserved Condenser Water except any amounts properly and timely designated in the Initial Supplemental Condenser Water Notice and/or the Second Supplemental Condenser Water Notice; provided, that if VNSNY thereafter requires additional supplemental condenser



water, the Condominium Board shall provide such additional supplemental condenser water to VNSNY to the extent such additional supplemental condenser water is available after taking into account reasonably appropriate reserves to serve the current and anticipated future needs of the Condominium Board and the other Unit Owners, tenants, subtenant and occupants of the Building as reasonably determined by the Condominium Board (on a non-discriminatory basis). For purposes of clarification, in no event shall the Condominium Board be required to reserve or provide for VNSNY or for the VNSNY Units condenser water in excess of six hundred thirty (630) tons in the aggregate.

(ii) Commencing on the Possession Date, VNSNY shall pay to the Condominium Board an annual charge of $600.00 per ton of Supplemental Condenser Water reserved by VNSNY (whether or not actually used by VNSNY) (the "Annual Condenser Water Charge"), plus sales tax, if applicable, subject to increase as provided for herein. Except as otherwise provided for herein, all sums payable under this Section 12.3c shall be paid by VNSNY within thirty (30) days after the issuance of a statement therefor. The Annual Condenser Water Charge shall be increased from time to time based on any actual increases in the Condominium Board's actual cost to provide such condenser water. In connection with the foregoing, VNSNY (or any then owner of the VNSNY Units) shall pay to the Condominium Board a tap-in charge in an amount equal to $2,500.00) per tap; provided, however, the Condominium Board shall waive such charge with respect to any such Supplemental Condenser Water required in connection with supplemental air-conditioning systems being installed as part of Seller's Work.

d. Concourse 30-Ton Unit - Notwithstanding anything contained in this Exhibit I or any of the VNSNY Transaction Documents to the contrary, from and after the Possession Date, VNSNY (or any then owner of the VNSNY Retail Unit) shall be solely responsible at VNSNY's (or such other owner's) sole cost and expense for all repairs, maintenance and replacements (except as set forth below) required in connection with that certain thirty (30) ton HVAC unit (the "Concourse 30-Ton Unit") to be installed as part of Seller's Work in the VNSNY Retail Unit. In connection with such requirements, VNSNY (or such other owner of the VNSNY Units) shall maintain at all times following the Possession Date a commercially reasonable maintenance agreement with a contractor reasonably acceptable to the Condominium Board and VNSNY (or such other owner of the VNSNY Units) shall perform all reasonable and customary repairs and maintenance to the Concourse 30-Ton Unit required in accordance with manufacturer guidelines and otherwise to maintain same in a first class condition and maximize the useful life thereof. Notwithstanding the foregoing to the contrary, provided that VNSNY (or any then owner of the VNSNY Retail Unit) has theretofore complied with its repair and maintenance obligations set forth herein with respect to the Concourse 30-Ton Unit, if the Concourse 30-Ton Unit is required to be replaced prior to the End of Term (i.e., the Concourse 30-Ton Unit can no longer continue to be repaired in lieu of such replacement as reasonably determined by the Condominium Board), then with respect to the first such replacement only, the Condominium Board shall, at its sole cost and expense, provide a replacement unit (which shall be reasonably selected by the Condominium Board to provide reasonably comparable service to the service provided to the VNSNY Retail Unit by the initially installed Concourse 30-Ton Unit as of the Possession Date). For purposes of clarification, following any such replacement provided for in the immediately preceding sentence, VNSNY (or the then owner of the VNSNY Retail Unit) shall remain liable for the repair, maintenance and replacement of such replacement unit and the

Condominium Board shall have no further obligations in connection therewith. Electricity usage with respect to the Concourse 30-Ton Unit (or any replacement thereof) shall be payable by VNSNY in accordance with Section 12.8 based on the electricity usage thereof as measured be meters installed pursuant to Section 12.8.

12.4 Passenger Elevator Service – The Condominium Board shall (i) provide passenger elevator service from the lobby of the Building to each floor on which the VNSNY Office Units are located in accordance with the elevator specifications annexed hereto as Schedule 6 to this Exhibit I during Business Hours on Business Days and Elevator Cars 23 and 24 and at least one (1) elevator from C-Bank (collectively, the "Concourse Elevators") will serve the Concourse Level (provided such service to the Concourse Level shall not be subject to the elevator specifications annexed hereto as Schedule 6 to this Exhibit I), and (ii) provide a minimum of one (1) passenger elevator from the lobby of the Building to each floor of the VNSNY Office Units and a minimum of one (1) of the Concourse Elevators, in each case, twenty four (24) hours per day, seven (7) days per week, in all cases, subject to all other applicable provisions of the VNSNY Transaction Documents, and subject to casualty, condemnation, Force Majeure or other unavoidable delay or any cause beyond the Condominium Board's reasonable control, or by the orders or regulations of any federal, state, county or municipal authority or by failure of the equipment or electric current, steam and/or water or other required power source and takedowns for maintenance, repairs and upgrades except as set forth in Section 2.12.3 of the By-Laws.

12.5 Freight Elevator Service – No bulky materials including, but not limited to, furniture, office equipment, packages, or merchandise requiring carting (as opposed to hand held) ("Freight Items") shall be received in the VNSNY Units or Building by VNSNY or removed from the VNSNY Units or Building by VNSNY except by means of the one (1) freight elevator servicing the VNSNY Units and the loading dock only, which the Condominium Board will provide without charge on Business Days between the hours of 8:00 a.m. to 12:00 p.m. and 1:00 p.m to 5:00 p.m. ("Regular Freight Hours") on a first come, first served basis. If VNSNY requires additional freight elevator or loading dock service for the receipt, delivery or removal of Freight Items at hours other than Regular Freight Hours and VNSNY is the first to reserve during such times, the Condominium Board shall make available to VNSNY, upon reasonable notice, overtime freight elevator and loading dock service at VNSNY's sole cost. As of the date of this Lease, such cost is $243.00 per hour plus sales tax, if applicable, which cost shall be subject to increase from time to time based on the actual increases in the Condominium Board's actual cost to provide such service, and which cost is subject to a four (4) hour minimum. The actual, reasonable, out-of-pocket cost to repair any damage done to the Building or VNSNY Units by VNSNY, its employees, agents, servants, representatives and/or contractors in the course of moving any Freight Items shall be paid by VNSNY within thirty (30) days after written demand by the Condominium Board. Notwithstanding the foregoing, the charge to VNSNY for overtime freight elevator service shall be reduced from the Condominium Board's then-prevailing rates for same to $0.00 solely in connection with (i) the performance of Seller's Work, and (ii) the first four hundred (400) hours of such overtime use in connection with VNSNY's initial single-phase move into the VNSNY Units (including delivery of furniture, fixtures and equipment).

12.7 Building Access - Except in the case of an emergency or due to casualty or condemnation or causes beyond the Condominium Board's reasonable control, VNSNY shall have access to the VNSNY Units 24 hours per day, 7 days per week.



12.8 Electricity –

a. VNSNY acknowledges and agrees that electric service shall be supplied to the VNSNY Units on a "submetered basis" in accordance with the provisions of this Section 12.8. Electricity and electric service, as used herein, shall mean any element affecting the generation, transmission, and/or distribution or redistribution of electricity, including but not limited to services which facilitate the distribution of service. The Condominium Board shall make electricity available from and after the Possession Date and through the End of Term at the combined electrical closets servicing the VNSNY Units for all purposes with a capacity of not less than six (6) watts demand load per rentable square foot of the VNSNY Units (as such amounts are specified on the last page of Schedule 6 to Exhibit I with respect to the initial VNSNY Units purchased by VNSNY under the VNSNY Sale Agreement and which shall be subject to increase or decrease upon the sale of any existing VNSNY Units or purchase of additional VNSNY Units, as applicable) (exclusive of the Building HVAC System) which shall be distributed by VNSNY at its sole cost and expense (subject to the terms of the VNSNY Transaction Documents); it being agreed that VNSNY shall have the right, at its sole cost and expense, to redistribute such electrical capacity among the VNSNY Units as reasonable required from time to time (subject to any consent required in connection therewith pursuant to Section 1 of this Exhibit I) provided that prior to the End of Term or any sooner expiration of any of the VNSNY Transaction Documents or the sale of any VNSNY Units or any portion thereof that is affected by such electrical redistribution, VNSNY (or any then owner of the VNSNY Units) shall be required to restore such electrical capacity to each portion of the VNSNY Units as such capacity existed as of the Possession Date (or the date of purchase with respect to any units comprising the VNSNY Units following the initial Possession Date). The Condominium Board shall not unreasonably withhold, condition or delay its consent to a request by VNSNY for a reasonable amount of additional electrical capacity; provided, that (i) there exist in the Condominium Board's reasonable judgment appropriate reserves to serve the current and anticipated future needs of the Condominium Board and the other Unit Owners, tenants and occupants of the Building, (ii) the Condominium Board receives a load letter from VNSNY's engineer certifying that VNSNY requires such additional electrical capacity and that the load is not too excessive for the Building and its electrical equipment and (iii) the Condominium Board is reimbursed by VNSNY within thirty (30) days after the Condominium Board's request therefor for the Condominium Board's reasonable and actual out-of-pocket cost of providing such additional electrical capacity to VNSNY. If the Condominium Board grants VNSNY's request for such additional electrical capacity and VNSNY requires that the Condominium Board supply a quantity of such additional electrical capacity to a particular location that exceeds the capacity of the Building's bus ducts at that location, the Condominium Board shall do so in a reasonable manner at VNSNY's reasonable expense. If the Condominium Board grants VNSNY's request for such additional electrical capacity the Condominium Board will make such additional electric capacity available from a location in the Building reasonably designated by the Condominium Board.

b. If and so long as the Condominium Board provides redistributed electricity to the VNSNY Units on a submetered basis, VNSNY agrees that the charges for such redistributed electricity shall be computed in the manner hereinafter described, to wit, a sum equal to the



product of (i) the Condominium Board's actual cost for such electricity ("the Condominium Board's Cost") multiplied by 103%. Where more than one (1) meter measures the service of VNSNY in the Building, the service rendered through each meter shall be aggregated and billed as if measured on one meter, in accordance with the rates herein specified.

c. The Condominium Board's Cost shall be determined as follows: (i) the total dollar amount billed to the Condominium Board by the public utility and/or service providers supplying electric service to the Building for the Building's consumption for the relevant billing period for energy (kilowatt hours, i.e., "KWH") shall be divided by the total kilowatt hours consumed by the Building for that billing period, carried to six decimal places, and (ii) the total dollar amount billed to the Condominium Board by the public utility and/or service providers supplying electric service to the Building for the relevant billing period for demand (kilowatts, i.e., "KW") for the Building's consumption for such billing period, shall be divided by the total demand (kilowatts) of the Building for such billing period, carried to six decimal places (and the Condominium Board's Cost, so defined, for KWH and for KW shall be applied to VNSNY's electricity consumption and demand, KWH and KW, for the relevant billing period).

d. The Condominium Board shall install submeters at the Condominium Board's cost and expense to measure VNSNY's (or any other VNSNY Unit occupant's) electricity consumption (separately from the consumption of any other occupant of the Building), KWH and KW. Bills therefor shall be rendered by the Condominium Board monthly, and the amount, as computed from a meter, shall be deemed to be, and shall be payable by VNSNY within thirty (30) days after written demand therefor. If any tax is imposed upon the Condominium Board's receipt from the resale of electrical energy to VNSNY by any Federal, State or Municipal authority, VNSNY covenants and agrees that, where permitted by law, VNSNY's share of such taxes based upon its usage and demand shall be passed on to, and shall be included in the bill of, and shall be paid by VNSNY to the Condominium Board. In the event that a meter reading with respect to any meter is performed in-person in the Building (as distinguished from electronic readings by remote connection), VNSNY shall have the right, upon reasonable prior written notice to the Condominium Board, to have a representative of VNSNY present to observe such meter readings (provided such representative is available at such reasonable times as such readings occur). Upon VNSNY's request, the Condominium Board shall advise VNSNY of when any such meter readings are expected to occur.

e. If, after the initial installation thereof, all or part of the meters or system by which the Condominium Board measures VNSNY's consumption of electricity (the "Submetering System") shall not be operable or malfunction, the Condominium Board shall promptly, at the Condominium Board's expense (except as may be included in Common Charges and except if due to the negligence or willful misconduct of VNSNY or VNSNY's agents, employee or contractors), repair (or replace, if necessary) the Submetering System and, pending completion of such repair or replacement (a) the Condominium Board, through an independent, reputable electrical consultant selected by the Condominium Board, shall reasonably estimate the readings that would have been yielded by said Submetering System as if such system was operable or the malfunction had not occurred, as the case may be, on the basis of VNSNY's prior usage and demand and the lighting and equipment installed within the VNSNY Units and (b) the Condominium Board shall utilize such estimated readings and the bill rendered based thereon shall be binding and conclusive on VNSNY unless, within sixty (60) days after receipt of such a



bill, VNSNY challenges, in writing to the Condominium Board, the accuracy or method of computation thereof. If, within thirty (30) days of the Condominium Board's receipt of such a challenge, the parties are unable to agree on the amount of the contested bill, the controlling determination of same shall be made by an independent electrical consultant mutually agreed upon by the parties or, upon their inability to agree, as selected by the American Arbitration Association. The determination of such electrical consultant shall be final and binding on both the Condominium Board and VNSNY and the expenses of such consultant shall be divided equally between the parties. Pending such controlling determination, VNSNY shall timely pay electric invoices to the Condominium Board in accordance with the contested bill. VNSNY shall be entitled to a refund from the Condominium Board within twenty (20) days of the determination, or shall make additional payment to the Condominium Board within twenty (20) days of the determination, in the event that the electrical consultant determines that the amount of a contested bill should have been other than as reflected thereon.

f. The Condominium Board shall not be liable to VNSNY for any loss or damage or expense which VNSNY may sustain or incur if either the quantity or character of electric service is changed or is no longer available or suitable for VNSNY's requirements, except (x) to the extent caused by the negligence or willful misconduct of the Condominium Board, and (y) as set forth in Section 2.12.3 of the By-Laws. VNSNY covenants and agrees that at all times its use of electric current shall never exceed the capacity of existing feeders to the Building or wiring installation. Any riser or risers to supply VNSNY's electrical requirements in excess of the capacity the Condominium Board is required to supply as set forth in Section 12.8a above, upon written request of VNSNY, will be installed by the Condominium Board, at the sole reasonable and actual out-of-pocket cost and expense of VNSNY, if, in the Condominium Board's reasonable judgment (and on a non-discriminatory basis), the same are necessary and will not cause permanent damage or injury to the Building or the VNSNY Units or cause or create a dangerous or hazardous condition or entail excessive or unreasonable alterations, repairs or expense or interfere with or disturb other tenants or occupants (in each case, beyond a de minimis extent). In addition to the installation of such riser or risers, the Condominium Board will also at the sole reasonable and actual out-of-pocket cost and expense of VNSNY, install all other equipment proper and necessary in connection therewith subject to the aforesaid terms and conditions. The Condominium Board reserves the right, if required by Applicable Laws, to terminate the furnishing of electricity, upon not less than ninety (90) days' written notice to VNSNY, in which event VNSNY may make application directly to the public utility and/or other providers for VNSNY's entire separate supply of electric current and the Condominium Board shall permit its wires and conduits and any other existing electrical facilities serving the VNSNY Units as may be necessary, to the extent available and safely capable, to be used for such purpose, but only to the extent of VNSNY's then authorized load; it being agreed, however, that the foregoing ninety (90) day period shall be reasonably extended if additional time is reasonably necessary for VNSNY to obtain electric services directly from the utility provider and VNSNY is diligently pursuing same. Any meters, risers, or other equipment or connections necessary to enable VNSNY to obtain electric current directly from such utility and/or other providers shall be installed at VNSNY's sole reasonable and actual out-of-pocket cost and expense. Only rigid conduit or electricity metal tubing (EMT) will be allowed. Once VNSNY is receiving electricity directly from the public utility or other provider, the Condominium Board may discontinue furnishing the electric current.

12.9 Building Noise Levels – The Condominium Board shall operate the Base Building Systems in such a manner that noise levels in the interior of the VNSNY Units comprised of floors above the VNSNY Unit shall not exceed an NC rating of 40 within ten (10) feet of the applicable mechanical room housing such Base Building Systems on the applicable floor of the VNSNY Units.

12.10 Telecommunications Providers – VNSNY (or any then owner of the VNSNY Units) shall have the right, at its sole cost and expense, to contract for telecommunications service from any reputable carrier which serves Midtown Manhattan, subject to the Condominium Board's reasonable consent (which consent may include, without limitation, the condition that such service provider enter into a license agreement with the Condominium Board which is reasonably satisfactory to the Condominium Board), and the Condominium Board shall reasonably cooperate with VNSNY in connection therewith, without cost, expense or liability to the Condominium Board or any other Unit Owner. Any such provider selected and VNSNY and approved by the Condominium Board shall be required to run all cabling in the dedicated shaft/riser space provided for VNSNY's use pursuant to this Exhibit I (i.e., no additional shaft/riser space shall be provided by the Condominium Board in connection with such use) and all equipment of such provider shall be located in the VNSNY Units only (i.e., the Condominium Board shall not be required to grant to such provider any additional space in the Building). As of the Date of Declaration, Verizon, Above Net, AT&T, Cogent Communications, Time Warner Cable and Level 3 Communications provide data and telecommunication service to the Building (it being agreed that the foregoing shall not be or be deemed to require the Condominium Board to retain all or any such listed providers that are not then providing data and telecommunications services to the VNSNY Units).

SECTION 13
Repair, Reconstruction after Fire or Other Casualty

13.1 Notwithstanding anything to the contrary contained in Section 5.3.10 of the By-Laws, if a Casualty shall occur and, by reason thereof, the VNSNY Units (or a material portion thereof) shall be rendered Unusable, then, from the date of such Casualty and continuing until the earlier to occur of (i) the date VNSNY occupies the VNSNY Units (or the applicable material portion thereof) for the ordinary conduct of business, or (ii) one hundred eighty (180) days following the substantial completion of the Condominium Casualty Restoration Work with respect to the VNSNY Units (or such material portion thereof), VNSNY shall be relieved from the obligation to pay Common Expenses (or, if applicable, the Common Expenses allocable to such Unusable portion of the VNSNY Units). For purposes hereof, a "material portion" of the VNSNY Units shall mean a portion of the VNSNY Units comprising at least ten (10%) percent of the rentable square foot area thereof.

13.2 Notwithstanding anything to the contrary contained in the By-Laws, in the event that the Ground Lease shall be terminated pursuant to Article 13 thereof, any portion of the Common Expenses theretofore paid by VNSNY on account of Basic Rent applicable to any period following such termination shall be promptly refunded to VNSNY.



13.3 VNSNY's Private Elevator - (a) Notwithstanding anything to the contrary contained in Section 5.2 of the By-Laws, the Commercial Property Insurance maintained by the Condominium Board shall include coverage for the private elevator located in the VNSNY Retail Unit and being installed as part of Seller's Work.

(b) Notwithstanding anything contained in Section 5.3.1 of the By-Laws, the Condominium Casualty Restoration Work (if required to be performed by the Condominium Board) shall include the repair and restoration (as necessary) of the private elevator located in the VNSNY Retail Unit and being installed as part of Seller's Work.

SECTION 14
Insurance

14.1 Notwithstanding anything to the contrary contained in Section 5.2.7.2 of the By-Laws, with respect to the VNSNY Units:

(a) A deductible of $100,000.00 shall be deemed acceptable (which amount may be reasonably increased from time to time subject to the Condominium Board's reasonable approval);

(b) With respect to VNSNY's obligation to secure and keep in force "all risk" property insurance, including the perils of flood, earthquake and terrorism, the coverage amounts required shall not exceed the amounts a similarly situated (including location) occupant of premises in buildings comparable to the Building would be required to maintain;

(c) VNSNY shall not be required to maintain any environmental insurance coverage;

(d) VNSNY shall be required to keep in full force "all risk" business interruption insurance, including the perils of flood, earthquake and terrorism (limited in the same manner as set forth in Section 14.1(b) above), but limited solely to cover the occupancy costs payable by VNSNY under the VNSNY Transaction Documents (including without limitation Common Charges payable under these By-Laws and the Installment Purchase Payments payable under the VNSNY Sale Agreement) during the period of partial or total shutdown of VNSNY's business in the Building; and

(e) VNSNY shall not be required to provide duplicate originals or copies of any policies required to be maintained by VNSNY (provided that VNSNY shall provide to the Condominium Board an ACORD 25 (2010/05) and an ACORD 28 (2009/12) certificate in respect of the insurance required under Section 5.2.7.2 of the By-Laws (as amended hereby) (the 2006 Accord 28 being unacceptable to the Condominium Board)).



Schedule 1 to Exhibit I

**CLEANING SPECIFICATIONS**

GENERAL CLEANING

DAILY

- Dust sweep all stone, ceramic tile, marble terrazzo, vinyl tile, linoleum, and other types of flooring
- Carpet sweep all carpets and rugs
- Police all private stairwells and keep in clean condition
- Hand dust and wipe clean all furniture, fixtures and window sills, as necessary
- Empty and clean all waste receptacles and remove wastepaper
- Wash clean all water coolers and fountains
- Dust clean all glass furniture tops with impregnated cloths
- Dust all telephones
- Dust all baseboards, as necessary
- Upon completion of nightly chores, turn off all lights, close all windows, leave doors in position found and set alarm
- Clean elevators and building corridors that VNSNY will share

WEEKLY

- Vacuum clean all carpets and rugs (2x per week)
- Wipe clean all "bright work"
- Dust all baseboards
- Remove all finger marks from painted surfaces
- Mop all stone, ceramic tile, marble terrazzo, vinyl tile, linoleum, and other types of flooring
- Mop stairwells

MONTHLY

- Dust all pictures, frames, and similar wall hangings not reached in nightly cleaning
- Dust clean all vertical surfaces not reached in nightly cleaning
- Dust all ventilation louvers

OTHER

- Clean inside and outside of all exterior windows, 3x per year, weather permitting
- Clean all perimeter induction units (1x per year) NOTE: Occupant must provide adequate access to perimeter HVAC equipment for cleaning and maintenance.

LAVATORIES (excluding private and executive lavatories)

DAILY

- Clean and wash all floors, using proper disinfectants
- Clean and polish all mirrors, shelves, bright work and enameled surfaces
- Wash and disinfect all basins, bowls and urinals
- Wash and disinfect all toilet seats
- Hand dust and clean all partitions, tile walls, dispensers and receptacles
- Empty all receptacles
- Supply and Replenish all toilet tissue, towels, soap and sanitary products, as necessary
- Remove all finger marks from painted surfaces

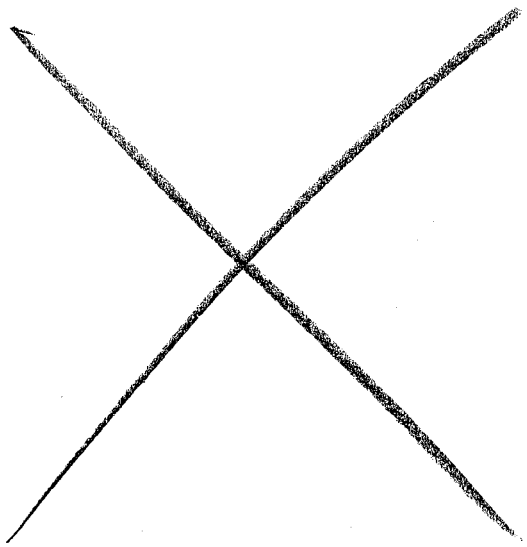
MONTHLY



- Machine scrub floor, as necessary

OTHER

- Clean and wash all partitions and tile walls as needed



Schedule 2 to Exhibit I

HVAC Specification

Summer
Outdoor 91°F db, 72°F wb
Indoor 75°F db, 60°F wb RH 55%
Winter
Outdoor 11°F db
Indoor 70°F db (+/- 2°F)

Heat Load
Lighting and Power: 5 watts/usf
People: One person/150 usf
Cooling Season: May 15th – October 15th
Heating Season: October 16th – May 14th



Schedule 3 to Exhibit I

PROHIBITED USES

1. A trust company, or safe deposit business.

2. The sale of travelers' checks and/or foreign exchange

3. A stock brokerage office or for stock brokerage purposes

4. The business of photographic reproductions and/or offset printing (except that VNSNY and any permitted occupants of the VNSNY Units may use part of the VNSNY Units for photographic reproductions and/or offset printing in connection with, either directly or indirectly, its own business and/or activities)

5. An employment or travel agency

6. A school or classroom (subject to Section 2 of Exhibit I)

7. Medical or psychiatric offices (except as otherwise expressly permitted under Section 2 of this Exhibit I)

8. Conduct of an auction

9. Gambling activities

10. A liquor store, tavern, nightclub, cocktail lounge, dance hall, bar or any other establishment selling alcoholic beverages for on-premises consumption.

11. The conduct of obscene, pornographic or similar disreputable activities.

12. Use by an agency, department or bureau of the United States Government, any state or municipality within the United States or any foreign government, or any political subdivision of any of them

13. Use by any charitable, religious or union or other not-for-profit organization (other than VNSNY or any permitted transferee), or any tax exempt entity within the meaning of Section 168(j)(4)(A) of the Internal Revenue Code of 1986, as amended, or any successor or substitute statute, or rule or regulation applicable thereto (as same may be amended).

14. A bowling alley, billiards parlor, bingo parlor, arcade, game room or other amusement center.



15. A theater (motion picture or live performance).

16. A health club, gymnasium or spa (excluding an upscale best-in-class premium fitness club operated by a best-in-class premium operator (e.g., Equinox (as operated on the date hereof) shall be acceptable but Crunch Fitness (as operated on the date hereof) shall not be acceptable).

17. A gas station, automobile fueling station, service station, automotive repair shop or truck stop.

18. A flea market, open air market, or pawn shop.

19. A child day care facility.

20. A storage or mini-warehouse facility.

21. An establishment for the sale or rental of automobiles, trucks, mobile homes, boats or recreational motor vehicles.

22. A dry cleaning plant, central laundry or laundromat.

23. An adult type bookstore or other establishment selling, renting, displaying or exhibiting pornographic or obscene materials (including without limitation: magazines, books, movies, videos, photographs or so called "sexual toys") or providing adult type entertainment or activities (including, without limitation, any displays or activities of a variety involving, exhibiting or depicting sexual themes, nudity or lewd acts).

24. A massage parlor.

25. A skating rink.

26. A mortuary, crematorium or funeral home.

27. A call center (provided, however, that the foregoing shall be or be deemed to prohibit (i) a call center that in the Condominium Board's reasonable discretion is then consistent in class and character with the Building, or (ii) a call center operated by VNSNY in connection with its business functions conducted in the VNSNY Office Units (i.e., in connection with those functions defined as a "Competing Business" in the VNSNY Omnibus Agreement)).

28. Veterinary hospital or animal raising or boarding facilities.

29. As an office, store, reading room, headquarters, center or other facility devoted or opposed to the promotion, advancement, representation, purpose or benefit of: (a) any political party, political movement or political candidate, (b) any religion, religious group or religious denomination, (c) any foreign government or (d) any "cause" of any type or nature whatsoever that is likely to lead to protests in or about the Building.

30. Any establishment the primary purpose of which:

(a) is to sell, afford or permit on-premises sexual stimulation or sexual liaisons;

(b) permits or presents obscene, nude or semi-nude performances or modeling;

(c) sells, affords or permits body massages of a sexual nature;

(d) sells "rubber goods" or other sexual or erotic products of a type not commonly found in national chain pharmacies; or



(e) sells, rents or permits the viewing of x-rated video, photographs, books or other material (except, in the case of a video rental store or book store, if such materials do not constitute a primary product of the establishment and if such materials are discreetly displayed in such manner as not to be visible from the sidewalk outside the premises).

31. As a facility for the sale of paraphernalia for use with illicit drugs.

32. As a pawn shop

33. Any church synagogue, mosque or other place of religious services.

34. Any food use including, without limitation, any restaurant, café or any other operation serving food and/or beverages for off-premises or on-site consumption, in any case, that is being operated as primary business in the VNSNY Retail Units (as opposed to such food use being operated as an ancillary use in connection with the business operations being conducted in the remainder of the VNSNY Units or in connection with a permitted use of the VNSNY Retail Unit provided for in Section 2 of this Exhibit I above).

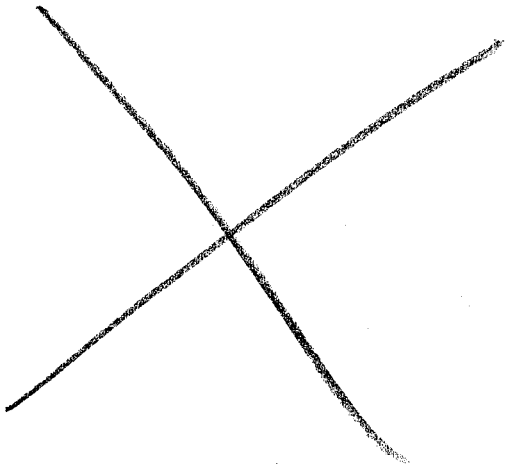
35. As a tourist/gift shop

36. As a pop up store, electronic store, or any discount store.

Schedule 4 to Exhibit I

Terraces

[See attached]



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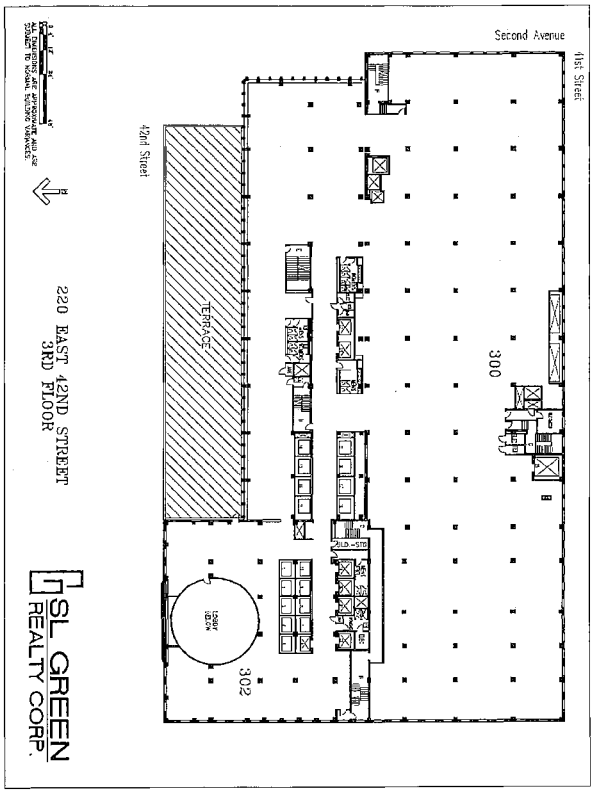


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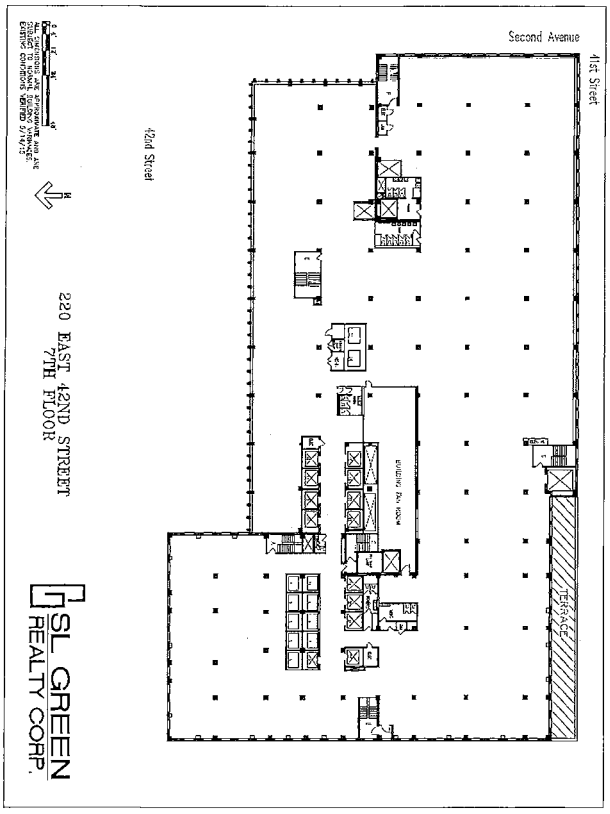


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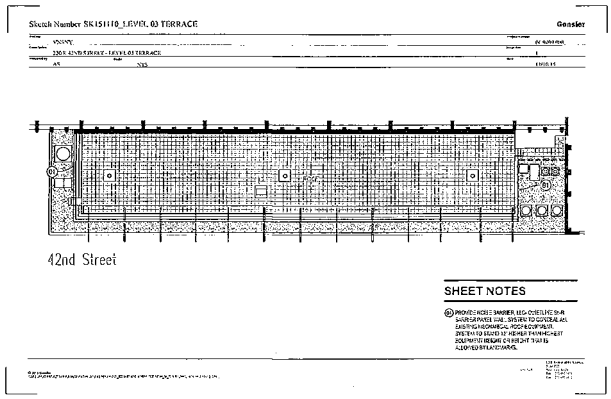
Schedule 5 to Exhibit I

Terrace Screening

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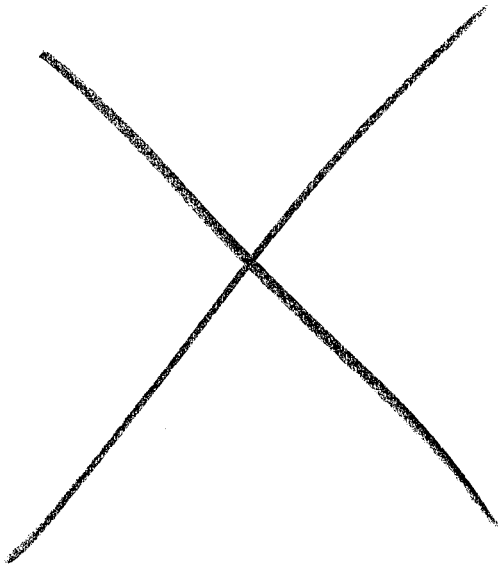
Schedule 6 to Exhibit I

Elevator Specifications

[see attached]





A Elevator Performance

1 All elevators will operate within 3% of rated speed.

2 All elevators will level within 1/8 inch.

3 All gearless elevators will have floor to floor performance times of 10.0 seconds or less. Geared elevators will have floor to floor performance times of 11.0 seconds or less. Floor to floor performance is defined as the time between the doors beginning to close and when they are three-quarters open on a one-floor run.

B Elevator Reliability

1 Mean Time Between Callbacks (MTBC) shall be 60 days or greater per passenger elevator. After an elevator is modernized and for a period of ten years after the modernization, MTBC for those elevators shall be 90 days or greater per modernized passenger elevator. MTBC shall be calculated by dividing 365 days by the average number of callbacks logged per elevator over one full year. Callbacks shall be defined as unscheduled shutdowns caused by equipment failure. Callbacks for elevator issues that do not prevent the elevator from operating, callbacks for elevators that are running on arrival, or callbacks for shutdowns due to vandalism or other non-equipment related issues, shall not be counted in the callback tally.

2 Average Uptime Rate shall be 92% or greater. The Uptime Rate for each elevator shall be calculated by subtracting the number of business hours the passengers elevators are out of service over a six-month period from the total number of business hours during the same period, divided by the total number of business hours. The Average Uptime Rate shall be the average of the calculated Uptime Rates for all passenger elevators during the same time period. Out of service time resulting from passenger misuse shall not be counted. Out of service time while a modernization is being performed on the elevator shall not be counted. Out of service time during Department of Buildings inspections or during code-mandated periodic inspections and tests shall not be counted. Business hours shall be 9 AM to 5 PM, Monday through Friday, not including legal holidays recognized by New York State.

C Elevator Traffic Performance

1 The following elevator traffic performance shall be provided on passenger elevators:

a The Overall Average Hall Call Response Time shall not exceed 24 seconds between 8 AM and 6 PM. The Overall Average Hall Call Response Time shall be calculated by taking the sum of the products of the total registered hall calls and the Average Hall Call Response Time for each group serving floors occupied by VNSNY, and dividing that sum by the sum of the total registered hall calls. When evaluated, these Average Hall Call Response Times shall be measured during five consecutive working days, 8 AM to 6 PM, and shall not include any days that fall within a week containing a holiday.



b. It is expected that the VNSNY will make equal use of the available elevators on its occupied floors; the Overall Average Hall Call Response Time criterion may not be met if some elevator banks are strongly favored over others for reasons of convenience.

2 The previously specified elevator traffic performance requirements are only applicable when all available passenger elevators are in active group service. These performance levels are not applicable when elevators are out of passenger group service for scheduled maintenance, repairs, tests, inspections, upgrades, or modernizations.

3 The previously specified elevator traffic performance requirements are only applicable if VNSNY occupancy does not exceed the following densities (see attached RSF chart):

a One person per 160 RSF on the 2nd floor
b One person per 180 RSF on the 3rd floor
c One person per 150 RSF averaged over all other floors.

D Future Modernization Scope

1 When the Condominium Board performs a modernization of the gearless elevators, whether to meet the performance criteria or at its own discretion, the scope of the modernization will include installation of a destination-based dispatching system.

E Measurement Frequency

1 VNSNY shall have the right to request reports from the Condominium Board not more than twice per year, and The Condominium Board shall produce such reports upon request that demonstrates each of the identified criteria. If reports indicate that the criteria are not met, the Condominium Board shall take the necessary action to meet the specified criteria and will produce an additional report after those actions are taken to demonstrate compliance.

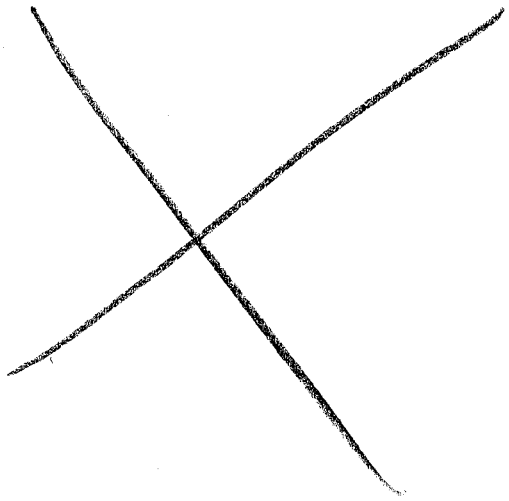


| FLOOR | RSF |
|---|---|
| Partial 2nd floor | 44,401 RSF |
| Entire 3rd floor | 65,310 RSF |
| Entire 5th floor | 60,422 RSF |
| Entire 6th floor | 67,301 RSF |
| Part 7th floor | 41,425 RSF |
| Entire 7th floor | 64,523 RSF |
| Entire 8th floor | 64,916 RSF |

Schedule 7 to Exhibit I

VNSNY Private Entrance

[see attached]





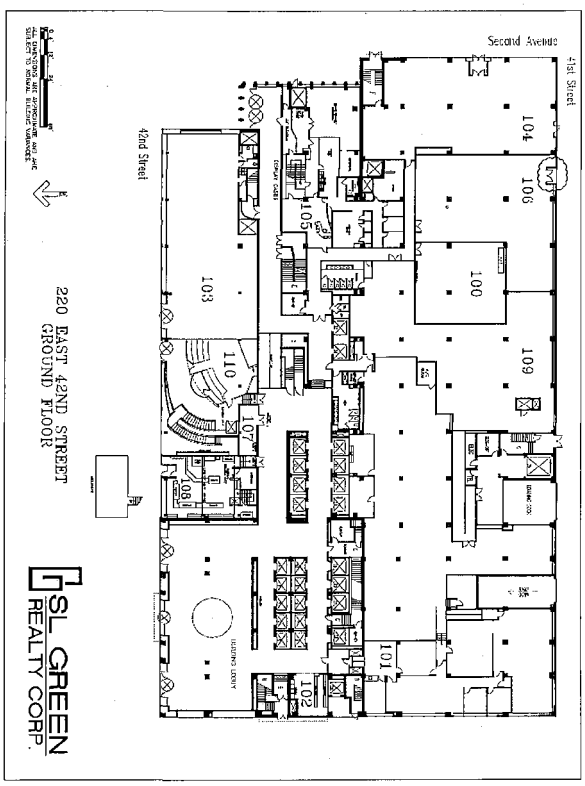





**EXHIBIT J-1**

**FORM OF CONDOMINIUM BOARD ESTOPPEL CERTIFICATE**

[UNIT OWNER]

_____
_____
_____

Re: 220 East 42nd Condominium
220 East 42nd Street
New York, New York (the "Condominium")

Ladies and Gentlemen:

Reference is hereby made to that certain Declaration of 220 East 42nd Condominium (the "Declaration") dated as of June 4, 2012, and recorded on of _____ ___, 2012, in the New York County Register's Office in Reel ___ Page __. The undersigned Board of Managers of the Condominium (the "Condominium Board") hereby certifies to _____, the owner of the _____ Unit of the Condominium (the "Unit Owner"), that:

1. Unit Owner is current in its payment of all amounts due under the Declaration and By-Laws of the Condominium.

2. No written notice of default has been sent by the undersigned to the Unit Owner.

3. To the actual knowledge of the Condominium Board, no default exists on the part of the Unit Owner.

The term "actual knowledge of the Condominium Board" as used herein means the actual knowledge (and not the implied or constructive knowledge) without any duty of investigation or inquiry by the undersigned.

This estoppel certificate may be relied upon by any permitted tenant, purchaser or mortgagee of Unit Owner. Any capitalized terms used herein and not defined herein shall have the meanings ascribed to them in the Declaration.

Very Truly Yours,

THE BOARD OF MANAGERS OF
THE 220 EAST 42ND CONDOMINIUM

By: _____
Name:
Title:



**EXHIBIT J-2**

**FORM OF UNIT OWNER ESTOPPEL CERTIFICATE**

THE BOARD OF MANAGERS OF
THE 220 EAST 42ND CONDOMINIUM
c/o SL Green Realty Corp.
420 Lexington Avenue
New York, New York

Re: 220 East 42nd Condominium
220 East 42nd Street
New York, New York (the "Condominium")

Ladies and Gentlemen:

Reference is hereby made to that certain Declaration of 220 East 42nd Condominium (the "Declaration") dated as of _____, 20___, and recorded on _____ ___, 20__, in the New York County Register's Office in CRFN _____. The undersigned, the owner of the _____ Unit of the Condominium, hereby certifies to the Board of Managers of the Condominium (the "Condominium Board") that:

1. No written notice of default has been sent by the undersigned to the Condominium Board (or to Declarant or Fee Owner (as such terms are defined in the Declaration), to the extent that any agreements between Unit Owner and Declarant and/or Fee Owner shall exist).

2. To the actual knowledge of the undersigned, no default on the part of the Condominium Board exists.

3. [There has been no modification of any agreements entered into between the undersigned and the Condominium Board, Declarant or Fee Owner (respectively)] [The agreements entered into between the undersigned and the Condominium Board, Declarant or Fee Owner (respectively), have been modified as follows: _____].

4. Amount of Common Charges $_____paid monthly.

5. Amount of Special Assessments, if any $_____ paid [ ] Monthly [ ] Quarterly [ ] Annually. Reason for Special Assessments:_____.

6. [Such other information as the Condominium Board shall reasonably request.]

The term "actual knowledge of the undersigned" as used herein means the actual knowledge (and not the implied or constructive knowledge) without any duty of investigation or inquiry by the undersigned.

This estoppel certificate may be relied upon by any party designated by the Condominium Board. Any capitalized terms used herein and not defined herein shall have the meanings ascribed to them in the Declaration.

Sincerely,

Very Truly Yours,

By: _____
Name:



**EXHIBIT K**

**CURRENT LIST OF APPROVED CONTRACTORS AND CONSULTANTS**

Contractors

1. Construction Managers / General Contractors
   a. JT Magen & Company
   b. Plaza Construction
   c. Hunter Roberts
   d. Cauldwell Wingate
   e. Cross New York

2. Demolition
   a. Riteway Demolition
   b. Tri-State Demolition
   c. Liberty Demolition
   d. Titan Contracting

3. Mechanical Contractor
   a. BP Mechanical
   b. JT Falk
   c. REACT Industries
   d. Donnelly Mechanical
   e. JDP Mechanical

4. Electrical Contractor
   a. Quantum Electric
   b. Unity Electric
   c. Adco Electric

5. Cabling Contractor
   a. G-Systems, Inc.

6. Security
   a. Worldwide Security

7. Plumbing Contractor
   a. Par Plumbing
   b. Lab Plumbing
   c. Pace Plumbing
   d. Olympic Plumbing

8. Fire Protection Contractor
   a. Rael Automatic Sprinkler Co.
   b. Sirina Fire Protection
   c. Island Fire Protection
   d. T McGowan Fire Protection



9. Drywall / Lath / Acoustics Contractor
   a. Jacobson
   b. JP Phillips
   c. Nastasi & Associates
   d. National Acoustics
   e. Curtis
   f. Eurotech
   g. Donaldson

10. Flooring
   a. Architectural Flooring
   b. ARI
   c. Computer Floors
   d. Tristate
   e. Consolidated

11. Painting
   a. Bond Painting
   b. Caruso Painting
   c. Spectrum Painting
   d. L&L Painting

12. Structural Steel
   a. Orange County Ironworks
   b. Kramen
   c. Empire City
   d. Maspeth
   e. United Structural Works

13. Concrete / Fire Proofing
   a. Navillus
   b. Tangent
   c. Eurotech
   d. Cirocco

Consultants

1. Architect
   a. Gensler
   b. Mancini Duffy
   c. TPG Planning & Design
   d. Ted Moudis Associates

2. MEPFP Engineer
   a. JFK&M Consulting Engineers
   b. Robert Derector Associates Consulting Engineers
   c. ADS Engineering
   d. AMA Consulting Engineers

3. Structural Engineer
   a. Severud Associates
   b. Gilsanz Murray Steficek



   c. Shmerykowsky Consulting Engineers

4. Vertical Transportation Consultant
   a. Joseph Neto Associates
   b. VDA Associates
   c. Jenkins & Huntington

5. Lighting Design
   a. Bliss Fasman
   b. Kugler Ning Lighting Design
   c. Focus Lighting

6. IT / Technology
   a. Linear Technologies
   b. TM Technology Partners
   c. Shen Milson & Wilke

7. Food Service Consulting
   a. Cini-Little
   b. Jacobs Doland Beer
   c. Clevenger Frable LaVallee

8. Acoustical Engineer
   a. Longman Lindsey
   b. Shen Milson & Wilke
   c. Cerami Associates

9. LEED
   a. Vidaris
   b. Code Green
   c. Atelier Ten

10. A/V & Security Consultant
   a. Linear Technologies
   b. TM Technology Partners
   c. Shen Milson & Wilke

## EXHIBIT L

## BUILDING RULES AND REGULATIONS FOR UNIT OWNER ALTERATIONS

**Construction Guidelines**

1. At the beginning of every alteration, Unit Owner contractor to coordinate with Building Management office. The Contractor and the Fire Safety Director of the Building shall check the fire alarm equipment, within the alteration site, to ascertain the condition of same.

2. General Contractor to provide Building Management with an emergency contact list for the firm. In addition, General Contractor to staff the project with a Superintendent or Foreman capable of communicating with Building Management on premises at all times to continually keep area safe, broom clean, free of all debris, and coordinate subcontractor work.

3. All construction materials shall be delivered to the job in proper containers and stored in the Unit Owners work area. Waste, excess-building materials, tools or equipment shall not be stored or allowed to accumulate in corridors or stairwells.

4. Any and all NYCDOB filings for this project must be completed by the Filing Representative designated by the Condominium Board or Declarant. The Condominium Board, Declarant, and/or Fee Owner will not sign NYCDOB permit applications which have been prepared by a filing representative not designated to the property by the Condominium Board or Declarant.

5. Vendor(s) will comply with ICIP rules and regulations, if in fact the building is designated ICIP, including but not limited to all submissions, filings, and coordination with the Condominium Board, Declarant, and/or Fee Owner's consultant. ICW designations will be provided as needed.

6. Permits must be posted at job site in a conspicuous location and kept in the Building Management Office at all times.

7. All Fire exits shall be kept clear and accessible at all times.

8. Any welding, soldering, or other activities requiring excessive heat or open flame shall be performed before 8:00 A.M. or after 7:00 P.M. during the week or on weekends and will be at Unit Owner's sole cost. Welding activities shall be performed only by person having a valid New York Certificate of Fitness for welding on his person. During all welding operations there must be a person, in the capacity of a Fire Watcher, having a fire extinguisher and protective blankets. Prior to any welding in the building, the Contractor is to contact the Building Management office twenty-four (24) hours in advance to have Class "E" system temporarily taken off-line. The use of electronic equipment is permitted only, fuel powered equipment is not acceptable.

9. All fireproofing on steel must be repaired if damaged, missing or non-code compliant. Contact the Chief Engineer/Superintendent through the Building Manager's office for



inspections and approval before installing ceilings. All openings made in ceilings, columns, walls, floors, etc., must be properly sealed (fire stopped).

10. The Condominium Board, Declarant, and/or Fee Owner shall not be responsible for any disturbance or deficiency created in the air conditioning or other mechanical, electrical or structural facilities within the building as a result of the alterations. If such disturbance or deficiency results, it shall be the Unit Owner's responsibility to correct the resulting conditions immediately and to restore the services to the reasonable satisfaction of the Condominium Board, Declarant, and Fee Owner, as well as their architect and engineers. Building Management reserves the right to make such corrections at the Unit Owner's reasonable expense.

11. All mechanical and plumbing connections to building water systems, waste, vent lines, etc. are to be performed after business hours must be coordinated with the Building Management/Engineers, and will be at Unit Owner's reasonable expense, with no interruption of service during normal business hours and not without being coordinated with Building Management.

12. Provide and maintain filter on supply and return grille openings as applicable, to keep dust from entering the Building's air supply systems. Provide double filters, or apply bulk filter media over package filters at all HVAC equipment running during construction, including perimeter induction units. Upon completion of demolition/construction all filters are to be removed, equipment cleaned to Building Management satisfaction and unit primary filters to be replaced. If not cleaned to Building Management satisfaction, Building Management, Condominium Board, or Declarant will perform cleaning at Unit Owner's reasonable expense.

13. All abandoned ductwork, conduit wiring or piping not necessary for new construction use must be removed from hung ceiling areas and floor ducts.

14. Any attachments of walls, framing, or other construction elements to window mullions is not permitted. Proposed details of termination of walls at mullions must be submitted by the contractor to the Condominium Board for approval (which approval shall not be unreasonably withheld, conditioned or delayed).

15. Installation of any finish on convector/radiator enclosures, or any location which would inhibit the operation of windows is prohibited.

16. All furniture adjacent to perimeter heating/cooling equipment must be at least 2'-0" from such equipment to facilitate cleaning and service. If required clearance is not maintained, Unit Owner must, at Unit Owner's cost, move all obstructions if so requested by Building Management.

17. All signage visible from outside of the building must be submitted to Condominium Board for comment and approval prior to installation.

18. All retail storefront windows shall be painted until premises are ready to open for business. Paint is to be Benjamin Moore #826. Royal Blue. Colored renderings of any proposed branding or advertising must be submitted for Condominium Board's written approval prior to



installation. Failure to adhere to this guideline will result in Condominium Board or Declarant performing said work at Unit Owner's sole cost and expense and removal of any and all unapproved branding/advertising.

19. All work to be performed by Unit Owner shall be done in a manner, which will not interfere with or disturb other Unit Owners and occupants of the Building.

20. All work that inconveniences or disturbs other Unit Owners must be scheduled before 8:00AM or after 6:00PM and will be at Unit Owner's sole cost for operating and exclusive use of building services. If Unit Owner's General Contractor or subcontractors are negligent in any of their responsibilities, Unit Owner shall be charged for any corrective work performed on Unit Owner's behalf by the Condominium Board, Declarant, and/or Fee Owner. The Building Manager reserves the right to stop any work which causes a disturbance after the Unit Owner is notified thereof and given a reasonable period to address the same, at no cost to the Condominium Board, Declarant, and/or Fee Owner.

21. The use of freight elevators for hoisting contractor's material, equipment, rubbish, must be arranged with the Building Manager and Superintendent to avoid conflict with regular building operations. If major quantities of contractor's material are being brought to the job, exclusive use of the freight car before and after regular building hours is to be instituted. The Unit Owner is responsible for all overtime elevator charges.

22. All construction deliveries shall be made during off-hours. Deliveries can be made after 6:00PM or completed by 8:00AM, Monday-Friday, or all day on weekends. There is a minimum of four (4) hours on the weekend and use of services is to be scheduled with Building Management at Unit Owner's sole cost.

23. Walls and floors in corridors adjacent to construction areas and leading to the freight elevators are to be protected with clear plastic and Masonite or equivalent with special protection for corners.

24. Intentionally deleted.

25. Do not place equipment, partitions, furniture or any other Unit Owner installation outside the Unit Owner's Unit (or other area of the Building occupied by the Unit Owner pursuant to a written agreement).

26. Unit Owner's contractors must restore damaged fireproofing at existing structure resulting from the new construction performed by or on behalf of the Unit Owner.

27. Electric panel covers are not to be left off at any time unless when being worked on. Covers must be replaced each night before leaving the site.

28. Do not leave equipment, partitions, fixed installations or other facilities in areas that might block or interfere with necessary access, entrances or exits.

29. Windows shall not be opened without prior Building Manager approval. Any windows that are opened must be closed at the end of the work day.



30. Smoking is prohibited at all times throughout the Building and Property. No radio playing is permitted on any jobsite.

31. Construction personnel are to use only the assigned restroom and wash-up facilities as directed by Building Management.

32. Contractors and vendors who operate cellular devices and/or two-way communication devices must keep the volume on these devices to a minimum. When passing through Units, common areas and/or public spaces, the device should be set to vibrate. If the use of the device is necessary in a work space, the contractor should be mindful of his or her surroundings and keep the conversations short and the tone at a minimum. There is to be no loitering in common areas for use of such devices.

33. Unit Owners agree to keep the Land, Building and Units free and clear of any and all mechanics' liens for work performed and materials furnished.

34. Contractor to inform Building Management of any incidents (e.g. damage, leaks, thefts, etc.) or injuries and submit a detailed incident report within one (1) business day of the incident. At all times Unit Owner, its contractor, and its subcontractors shall indemnify and hold harmless the Condominium Board, Declarant, Fee Owner and Building Management (and their respective agents) from any and all claims, liability, loss, damage or injury to person or property resulting from alteration, installation, or operation or maintenance of the same performed by Unit Owner or Unit Owner's agents, servants, contractors and/or employees. Unit Owner's vendor's, General Contractor and all sub-contractors are required to execute a Provider's Agreement (the form of which shall be reasonably determined by the Condominium Board) and provide the proper insurance coverage, however failure to do so shall not obviate liability by Unit Owner or its Vendor.

35. Engineering calculations or system configurations contained in the submitted documents are the sole responsibility of the Unit Owner and that of its architects/engineers. The Condominium Board shall reasonably cooperate with Unit Owner's architects/engineers, including providing such architects/engineers with Building drawings, to the extent such are in the actual possession of the Condominium Board, Declarant or its affiliates.

36. Harmonious relations shall be used by all Contractors and subcontractors performing any and all work in a professional manner throughout the Building and Property. Labor shall work in close harmony with one another as well as with Building Management and building's maintenance personnel.

37. All work shall be subject to inspection by Building Management. Any and all deficiencies noted, as a result of the inspection, shall be corrected by the Unit Owner or the Unit Owner's Contractor at the Unit Owner or Contractor expense, if applicable.

38. All work must conform to all federal, state, municipal, and OSHA rules and regulations. If any violation is received in connection with the installation or alteration performed by or on behalf of the Unit Owner, the Unit Owner must, at its sole cost and expense

have said violation corrected and obtain a Notice of Dismissal from the department having jurisdiction and governing same.

39. Any rule, regulation, law or ordinance requiring the filing of proposed alterations, improvements, renovations or any work required by federal, state, and local authorities having jurisdiction shall be properly filed and permitted as required at the Unit Owner's sole cost and liability.

40. Use of materials that give off strong odors must be used after hours, only after use has been permitted and approved by Building Management. Such approval can be gained by submitting the applicable MSDS for all proposed materials. Adhesives, sealants and sealant primers must comply with volatile organic compound limits. Aerosol adhesives must comply with Green Seal standards for commercial adhesives.

41. If the scope of work requires access to spaces other than the Unit Owner's Unit, arrangements for access will have to be made by Unit Owner with Building Management.

42. Unit Owner is approved to construct only those improvements shown on the drawings approved by the Condominium Board.

43. In connection with any alteration, a Unit Owner is required to submit two (2) sets of as-built architectural and engineering drawings, and an electronic file of the as-built documents in an AUTO CAD 2000 LT format.

44. The project architect and/or engineer must certify at the project completion that the improvements were built in accordance with the plans.

45. The New York City Building Department must sign off at completion of any job for which such sign-off is required under Applicable Laws.

46. All new storefront projects must be protected by the Condominium Board's pre-approved exterior plywood shed with entry door(s) and painted Green as specified and dictated by the New York City Department of Buildings.

Failure to comply with these guidelines after the Unit Owner is notified thereof and given a reasonable period to address such failure will result in immediate work stoppage and potential dismissal of the offending party from the project.



**EXHIBIT M**

Intentionally Omitted

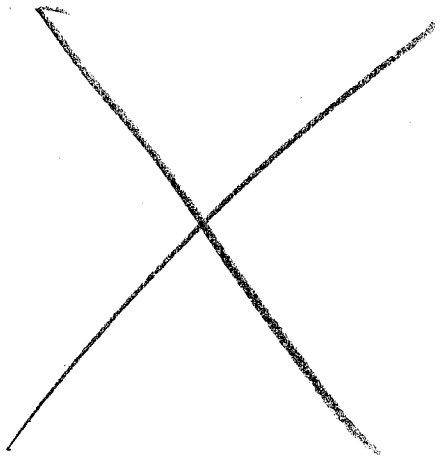




**EXHIBIT N**

BASE OFFICE CLEANING STANDARDS

GENERAL CLEANING

DAILY
- Dust sweep all stone, ceramic tile, marble terrazzo, vinyl tile, linoleum, and other types of flooring
- Carpet sweep all carpets and rugs
- Police all private stairwells and keep in clean condition
- Hand dust and wipe clean all furniture, fixtures and window sills, as necessary
- Empty and clean all waste receptacles and remove wastepaper
- Wash clean all water coolers and fountains
- Dust clean all glass furniture tops with impregnated cloths
- Dust all telephones
- Dust all baseboards, as necessary
- Upon completion of nightly chores, turn off all lights, close all windows, leave doors in position found and set alarm
- Clean elevators and building corridors that VNSNY will share

WEEKLY
- Vacuum clean all carpets and rugs (2x per week)
- Wipe clean all "bright work"
- Dust all baseboards
- Remove all finger marks from painted surfaces
- Mop all stone, ceramic tile, marble terrazzo, vinyl tile, linoleum, and other types of flooring
- Mop stairwells

MONTHLY
- Dust all pictures, frames, and similar wall hangings not reached in nightly cleaning
- Dust clean all vertical surfaces not reached in nightly cleaning
- Dust all ventilation louvers

OTHER
- Clean inside and outside of all exterior windows, 3x per year, weather permitting
- Clean all perimeter induction units (1x per year) NOTE: Occupant must provide adequate access to perimeter HVAC equipment for cleaning and maintenance.

LAVATORIES (excluding private and executive lavatories)

DAILY
- Clean and wash all floors, using proper disinfectants
- Clean and polish all mirrors, shelves, bright work and enameled surfaces
- Wash and disinfect all basins, bowls and urinals
- Wash and disinfect all toilet seats
- Hand dust and clean all partitions, tile walls, dispensers and receptacles
- Empty all receptacles
- Supply and Replenish all toilet tissue, towels, soap and sanitary products, as necessary
- Remove all finger marks from painted surfaces

MONTHLY
- Machine scrub floor, as necessary

OTHER
- Clean and wash all partitions and tile walls as needed

## EXHIBIT O

### COMMON EXPENSES ALLOCATIONS

| Unit | Initial Allocation Percentage |
|---|---|
| Retail Unit | 2.55 |
| Unit 1 | 6.21 |
| Unit 2N | 2.48 |
| Unit 2S | 3.87 |
| Unit 3 | 5.69 |
| Unit 4 | 5.62 |
| Unit 5 | 5.27 |
| Unit 6 | 5.87 |
| Unit 7N | 2.01 |
| Unit 7S | 3.61 |
| Unit 8 | 5.66 |
| Unit 9 | 5.59 |
| Unit 10 | 4.43 |
| Unit 11 | 3.84 |
| Unit 12 | 2.34 |
| Unit 13 | 3.60 |
| Unit 14 | 3.81 |
| Unit 15 | 2.32 |
| Unit 16 | 2.24 |
| Unit 17 | 2.49 |
| Unit 18 | 2.59 |
| Unit 19 | 0.99 |
| Unit 20 | 1.08 |
| Unit 21 | 1.08 |
| Unit 22 | 1.08 |
| Unit 23 | 1.08 |
| Unit 24 | 1.05 |
| Unit 25 | 0.67 |
| Unit 26 | 1.00 |
| Unit 27 | 1.10 |
| Unit 28 | 1.01 |
| Unit 29 | 1.01 |
| Unit 30 | 1.01 |
| Unit 31 | 1.01 |
| Unit 32 | 1.01 |
| Unit 33 | 1.01 |
| Unit 34 | 0.75 |
| Unit 35 | 0.75 |
| Unit 36 | 0.65 |
| Unit 37 | 0.57 |



Exhibit O

## EXHIBIT P

### COMMON EXPENSES INCLUSIONS

"Common Expenses" shall mean all costs and expenses and taxes thereon, if any, incurred or borne by the Condominium Board or on behalf of the Condominium for the applicable period with respect to the operation and Maintenance of the Land and Building and all appurtenances thereto, and the services provided to the Unit Owners thereof, including, but not limited to, the costs and expenses incurred for and with respect to: all Ground Rent under the Ground Lease; electricity (other than electricity purchased by or for a Unit Owner for consumption in such Unit Owner's Unit); steam and any other fuel, water and sewer charges; air conditioning, ventilation and heating; metal, elevator and elevator cab, messenger service; lobby, sidewalk and plaza maintenance; equipment, services and personnel for protection and security; lobby decoration and interior and exterior landscape maintenance; sprinkler maintenance and alarm service; Maintenance, replacements, and improvements which are appropriate for the continued operation of the Building as a first-class building in Manhattan; rental (or depreciation) of vacuums, window washing rigs and other equipment used in cleaning and Maintenance; painting and decoration of non-Unit Owner areas; cleaning of non-Unit Owner areas and window washing (interior and exterior) of the Building by contract or otherwise; garbage and trash removal; premiums for fire and extended coverage insurance, special extended coverage insurance, owner's protective insurance, and other casualty insurance coverage, boiler and machinery insurance, sprinkler, apparatus insurance, public liability and umbrella liability insurance, property damage insurance, rent, or rental value insurance, plate glass insurance, environmental peril insurance, terrorism insurance and any other insurance which the Condominium Board may deem necessary or which is required by the Fee Owner under the Ground Lease and/or the holder of any superior mortgage; supplies, wages, salaries, disability benefits, pensions, hospitalization, retirement plans, and group insurance and other direct or indirect expenses respecting employees of the Condominium and the Condominium's contractors up to and including the grade of building manager; uniforms and working clothes for such employees and the cleaning thereof; expenses imposed on the Condominium pursuant to laws, orders, rules, regulations, and other legal requirements or pursuant to any collective bargaining agreement with respect to such employees, worker's compensation insurance, payroll, social security, unemployment, and other similar taxes with respect to such employees; a bookkeeper and an accountant; telephone and other Building office expenses; professional and consulting fees, including legal and auditing fees; association fees or dues; computer services, by contract or by otherwise; the expenses, including payments to attorneys, experts and appraisers, incurred by the Condominium in connection with any application, proceeding or settlement wherein the Condominium obtains or seeks to obtain reduction in the assessed valuation and/or reduction in or refund of real estate taxes; and an annual fee for management of the Building (which shall initially be equal to the product of $1.50 multiplied by the number of rentable square feet in the Building, and which management fee shall thereafter be increased annually (beginning on the first anniversary of the Possession Date, and continuing thereafter on each such anniversary date), in the following manner: the annual management fee then in effect shall be increased by the same percentage increase (if any) that the Common Expenses shall have increased over the preceding year.



## EXHIBIT Q

### CONDOMINIUM SQUARE FOOTAGE

**Retail Units**

| Unit | Interior Square Footage (approx. square feet) |
|---|---|
| Retail Unit | 21,306 |
| Unit 1 | 67,082 |
| **TOTAL RETAIL UNITS** | **88,388** |

**Office Units**

| Unit | Interior Square Footage (approx. square feet) |
|---|---|
| Unit 2N | 21,467 |
| Unit 2S | 32,559 |
| Unit 3 | 48,020 |
| Unit 4 | 47,716 |
| Unit 5 | 44,380 |
| Unit 6 | 48,798 |
| Unit 7N | 19,749 |
| Unit 7S | 27,767 |
| Unit 8 | 47,707 |
| Unit 9 | 47,617 |
| Unit 10 | 37,347 |
| Unit 11 | 36,986 |
| Unit 12 | 27,737 |
| Unit 13 | 34,760 |
| Unit 14 | 36,653 |
| Unit 15 | 22,407 |
| Unit 16 | 21,522 |
| Unit 17 | 21,029 |
| Unit 18 | 21,817 |

| | |
|---|---|
| Unit 19 | 9,602 |
| Unit 20 | 10,514 |
| Unit 21 | 10,514 |
| Unit 22 | 10,514 |
| Unit 23 | 10,514 |
| Unit 24 | 10,148 |
| Unit 25 | 6,669 |
| Unit 26 | 9,603 |
| Unit 27 | 10,632 |
| Unit 28 | 9,767 |
| Unit 29 | 9,767 |
| Unit 30 | 9,773 |
| Unit 31 | 9,786 |
| Unit 32 | 9,777 |
| Unit 33 | 9,794 |
| Unit 34 | 7,326 |
| Unit 35 | 7,373 |
| Unit 36 | 6,342 |
| Unit 37 | 5,115 |
| TOTAL OFFICE UNITS | 819,568 |

Exhibit Q

FIRST AMENDMENT
TO
DECLARATION OF CONDOMINIUM (INCLUDING THE BY-LAWS)
ESTABLISHING A PLAN FOR LEASEHOLD CONDOMINIUM
OWNERSHIP OF PROPERTY KNOWN AS
220 EAST 42ND STREET, NEW YORK, NEW YORK 10017

Name of Condominium: 220 East 42nd Condominium

Dated: As of February 15, 2017

Block: 1315

Lots Affected: 1006 and 1041 (f/k/a 1006 and n/k/a 1006 and 1041)

Record and Return to:

Ganfer & Shore, LLP
360 Lexington Avenue
New York, New York
Attention: Matthew J. Leeds, Esq.

**FIRST AMENDMENT TO DECLARATION OF 220 EAST 42ND CONDOMINIUM**

This First Amendment to Declaration (this "Amendment"), made as of February 15, 2017, by SLG 220 NEWS LESSEE LLC, a Delaware limited liability company with offices at c/o SL Green Realty Corp., 420 Lexington Avenue, New York, New York ("SLG 220 GROUND LESSEE", which, together with its successors and assigns, is referred to herein as "Declarant"), does hereby declare as follows:

RECITALS

A. Declarant is the original declarant under that certain Declaration Establishing a Plan for Leasehold Condominium Ownership of the Property known as 220 East 42nd Street, New York, New York 10017 (the "Declaration"), which Declaration was dated as of December 15, 2015, and recorded in the Office of the Register of the City of New York, New York County (the "Office") on May 9, 2016 in CRFN 2016000158961 as Condominium No. 2701 to create the 220 East 42nd Condominium (the "Condominium").

B. Declarant is the current owner of Unit 4 in the Condominium.

C. Pursuant to Article 10.1 of the Declaration, in addition to other rights set forth therein, Declarant has the right, at its own cost and expense (except in situations where the same shall be performed for the benefit of the Building generally, in which case, if the costs of the same are permitted to be included as Common Expenses pursuant to the provisions of the By-Laws, then such costs may be included in Common Charges), subject to the requirements set forth in Subsection 5.17.2 of the By-Laws, but without the need for a vote or consent of the Condominium Board or any Unit Owner, to change the layout or number of rooms in its Unit(s) from time to time; to change its Unit(s), by subdividing the same, into any desired number of condominium units, combining its Unit(s) or combining any units resulting from a subdivision, altering the boundary walls between its Unit(s), or otherwise; to designate its Unit(s) as part of a newly created or expanded condominium unit or designate all or part of its Unit(s) as a newly created or expanded Unit or Common Element; and to reapportion among the newly created or expanded Units resulting from any subdivision, combination or otherwise their percentage interests in the Common Elements that will be based upon the approximate proportion that the floor area of the Unit at the date of the Declaration bears to the then aggregate floor are of all the Units, but such proportion shall reflect the substantial exclusive advantages enjoyed by one or more, but not all, Units in a part or parts of the Common Elements (provided that (i) in no case may such reapportionment result in a greater percentage of Common Interest for the total of the new Declarant owned Units than existed for the original Declarant owned Units; (ii) the percentage interest in the Common Elements appurtenant to any Unit owned by another Unit Owner will not be changed by reason thereof unless the owner of such Unit consents thereto, and (iii) Declarant complies with all Applicable Laws and the other legal requirements set forth in Article 27 of the Declaration.

D. Pursuant to Article 10.1 of the Declaration, Declarant has the right, without the consent of any other Unit Owner or the Condominium Board, to amend the Declaration and By-Laws (and the Floor Plans, if applicable) to reflect the permitted changes set forth in Article 10.1, in accordance with Article 17 of the Declaration.



E. Pursuant to Sections 5.5, 5.6, and 5.7 of the By-Laws, the Condominium Board has the right to foreclose a lien on a Unit because of unpaid Common Charges (or Special Assessments or any other amount required to be paid by such Unit Owner pursuant to the Declaration or By-Laws).

NOW THEREFORE, in consideration of the foregoing recitals and in accordance with the terms of the Declaration and By-laws, the Declaration and By-laws are hereby amended as follows:

1. The Declaration is hereby amended to subdivide Unit 4 (a/k/a tax lot number 1006) to create a new Unit ("Unit 4E"). Unit 4E is composed generally of approximately 19,707 square feet once incorporated in Unit 4, located on the fourth floor of the Building. There will be no changes to the Common Elements or other Units as a result of the subdivision of Unit 4.

2. The Unit known as Unit 4 in the Declaration shall now be known as "Unit 4W."

3. The Declaration is hereby amended to reflect a total of 41 Units existing in the Condominium, as more particularly described in the "Exhibit B – Description of the Units" annexed hereto as Exhibit 1. Revisions to the percentage of interest in Common Elements and total square footage of Unit 4 listed in "Exhibit B – Description of the Units" contained in the Declaration is hereby amended as follows with respect to Unit 4W (f/k/a Unit 4) and Unit 4E:

OLD

| UNIT | TAX LOT | UNIT TOTAL SQUARE FEET | % OF COMMON INTEREST | USE TYPE | LOCATION OF UNIT | LIMITED COMMON ELEMENTS | COMMON ELEMENTS TO WHICH UNIT HAS IMMEDIATE ACCESS |
|---|---|---|---|---|---|---|---|
| Unit 4 | 1006 | 47,716 | 5.62 | Office | Fourth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |

NEW

| UNIT | TAX LOT | UNIT TOTAL SQUARE FEET | % OF COMMON INTEREST | USE TYPE | LOCATION OF UNIT | LIMITED COMMON ELEMENTS | COMMON ELEMENTS TO WHICH UNIT HAS IMMEDIATE ACCESS |
|---|---|---|---|---|---|---|---|
| Unit 4W | 1006 | 28,009 | 3.10 | Office | Fourth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 4E | 1041 | 19,707 | 2.52 | Office | Fourth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |

4. In accordance with the above, the annexed version of "Exhibit B – Description of the Units" shall be deemed to replace the prior version of the same.

5. In accordance with the above, the Floor Plans prepared by Peter F. Farinella, Architect, P.C. have been amended and filed with the Department of Finance to reflect the reconfiguration of the Units as set forth above.

6. To the fullest extent permitted by Applicable Law, the Condominium Board shall have the right, without the consent of any Unit Owner, to assign without consideration to the Declarant, Ground Lessor, any Unit Owner (except for VNSNY), or any designee of any of the foregoing (each, a "Permitted Assignee"), any and all rights the Condominium Board has to collect any delinquency, to foreclose any lien on a Unit arising out of unpaid Common Charges (or Special Assessments or any other amount required to be paid by such Unit Owner pursuant to the Declaration or By-Laws), and/or to accept a deed in lieu from any Unit Owner that has defaulted on its obligation to pay Common Charges (or Special Assessments or any other amount required to be paid by such Unit Owner pursuant to the Declaration or By-Laws). Any Permitted Assignee shall be required to (a) assume any and all obligations of the Condominium Board in connection with any of the foregoing, and (b) indemnify, defend and hold the Condominium Board harmless from and against any and all loss, liability, damages, cost and expense (including, without limitation, reasonable attorneys' fees and disbursements), resulting from any claims that may be made against the Condominium Board in connection with the exercise of any rights assigned by the Condominium Board to such Permitted Assignee. In no event will the Permitted Assignee be deemed to be acting on account of the Board or any Unit Owner, and no party other than the Permitted Assignee shall be entitled to any consideration, proceeds, and/or excess proceeds deriving from the exercise of the rights assigned to such Permitted Assignee. In the event that the Condominium Board assigns such rights to a Permitted Assignee, the Condominium Board shall be obligated to reasonably cooperate with and/or execute documents for the benefit of the Permitted Assignee, at no cost to the Condominium Board or other Unit Owners, in order to effectuate such Permitted Assignee's ability to exercise such rights.

7. The Declaration and By-laws and Rules and Regulations, as modified by this Amendment, are incorporated herein by reference with the same effect as if set forth at length. Except as revised herein, all other terms and provisions of the Declaration and By-Laws and Rules and Regulations are hereby ratified and confirmed and shall remain in full force and effect.

8. All capitalized terms used in this Amendment and not defined in this Amendment shall have the meanings given to them in the Declaration and By-laws, and references to the Declaration shall henceforth refer to the Declaration, as amended, including as amended by this Amendment.

9. This Amendment is to be recorded against all tax lots (i.e., against each Unit) comprising the Condominium.

*(Signature Page Follows)*



**IN WITNESS WHEREOF, Declarant has caused this Amendment to the Declaration to be executed as of the day and year first written above.**

SLG 220 NEWS LESSEE LLC

By: _____
Name: Neil H. Kessner
Title: Executive Vice President

**ACKNOWLEDGMENT**

STATE OF NEWYORK )
): ss.
COUNTYOF NEWYORK )

On the 22nd day of February in the year 2017, before me, the undersigned, personally appeared Neil H. Kessner, 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 by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the foregoing instrument.

Notary Public

SEAL

JoAnne M. Maloney
Notary Public, State of New York
No. 01MA6211602
Qualified in New York County
Commission Expires 09/29/20

**Exhibit 1**

EXHIBIT "B" TO THE CONDOMINIUM DECLARATION
220 EAST 42ND CONDOMINIUM
220 EAST 42ND STREET, NEW YORK, NEW YORK
BLOCK: 1315

DESCRIPTION OF THE UNITS

| UNIT | TAX LOT | UNIT TOTAL SQUARE FEET | % OF COMMON INTEREST | USE TYPE | LOCATION OF UNIT | LIMITED COMMON ELEMENTS | GENERAL COMMON ELEMENTS TO WHICH UNIT HAS IMMEDIATE ACCESS |
|---|---|---|---|---|---|---|---|
| Retail Unit | 1001 | Total: 21,306 (Concourse: 10,629; First Floor: 10,677) | 2.55 | Retail | Concourse Level, First Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 1 | 1002 | Total: 67,082 (Sub-Cellar: 15,083; Concourse: 20,430; First Floor: 31,025; First Fl. Mezz: 544) | 6.21 | Retail | Sub-Cellar, Concourse Level, First Floor, First Floor Mezzanine | | Cellar Storage, Management Office, Bldg. Crew Lockers, Bldg. Workshop Rooms, Fire Pump Rooms, Mechanical Rooms, Electrical Rooms, Loading Dock, Equipment Rooms, Security Rooms, Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 2N | 1003 | 21,467 | 2.48 | Office | Second Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 2S | 1004 | 32,559 | 3.87 | Office | Second Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 3 | 1005 | 48,020 | 5.69 | Office | Third Floor | Terrace (Third Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 4W | 1006 | 28,009 | 3.10 | Office | Fourth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 4E | 1041 | 19,707 | 2.52 | Office | Fourth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 5 | 1007 | 44,380 | 5.27 | Office | Fifth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 6 | 1008 | 48,798 | 5.87 | Office | Sixth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 7N | 1009 | 19,749 | 2.01 | Office | Seventh Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 7S | 1010 | 27,767 | 3.61 | Office | Seventh Floor | Terrace (Seventh Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 8 | 1011 | 47,707 | 5.66 | Office | Eighth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 9 | 1012 | 47,617 | 5.59 | Office | Ninth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 10 | 1013 | 37,347 | 4.43 | Office | Tenth Floor | Terrace (Tenth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |

| UNIT | TAX LOT | UNIT TOTAL SQUARE FEET | % OF COMMON INTEREST | USE TYPE | LOCATION OF UNIT | LIMITED COMMON ELEMENTS | GENERAL COMMON ELEMENTS TO WHICH UNIT HAS IMMEDIATE ACCESS |
|---|---|---|---|---|---|---|---|
| Unit 11 | 1014 | 36,986 | 3.84 | Office | Eleventh Floor | Terrace (Eleventh Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 12 | 1015 | 27,737 | 2.34 | Office | Twelfth Floor | Terrace (Twelfth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 13 | 1016 | 34,760 | 3.60 | Office | Thirteenth Floor | Terrace (Thirteenth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 14 | 1017 | 36,653 | 3.81 | Office | Fourteenth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 15 | 1018 | 22,407 | 2.32 | Office | Fifteenth Floor | Terrace (Fifteenth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 16 | 1019 | 21,522 | 2.24 | Office | Sixteenth Floor | Terrace (Sixteenth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 17 | 1020 | 21,029 | 2.49 | Office | Seventeenth Floor | Terrace (Seventeenth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 18 | 1021 | 21,817 | 2.59 | Office | Eighteenth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 19 | 1022 | 9,602 | 0.99 | Office | Nineteenth Floor | Terrace (Nineteenth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 20 | 1023 | 10,514 | 1.08 | Office | Twentieth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 21 | 1024 | 10,514 | 1.08 | Office | Twenty-First Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 22 | 1025 | 10,514 | 1.08 | Office | Twenty-Second Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 23 | 1026 | 10,514 | 1.08 | Office | Twenty-Third Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 24 | 1027 | 10,148 | 1.05 | Office | Twenty-Fourth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 25 | 1028 | 6,669 | 0.67 | Office | Twenty-Fifth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 26 | 1029 | 9,603 | 1.00 | Office | Twenty-Sixth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 27 | 1030 | 10,632 | 1.10 | Office | Twenty-Seventh Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 28 | 1031 | 9,767 | 1.01 | Office | Twenty-Eighth Floor | Terrace (Twenty-Eighth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 29 | 1032 | 9,767 | 1.01 | Office | Twenty-Ninth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 30 | 1033 | 9,773 | 1.01 | Office | Thirtieth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 31 | 1034 | 9,786 | 1.01 | Office | Thirty-First Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 32 | 1035 | 9,777 | 1.01 | Office | Thirty-Second Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 33 | 1036 | 9,794 | 1.01 | Office | Thirty-Third Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 34 | 1037 | 7,326 | 0.75 | Office | Thirty-Fourth Floor | Terrace (Thirty-Fourth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 35 | 1038 | 7,373 | 0.75 | Office | Thirty-Fifth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 36 | 1039 | 6,342 | 0.65 | Office | Thirty-Sixth Floor | Terrace (Thirty-Sixth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 37 | 1040 | 5,115 | 0.57 | Office | Thirty-Seventh Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| TOTAL | | | 100.00 | | | | |

SECOND AMENDMENT
TO
DECLARATION OF CONDOMINIUM (INCLUDING THE BY-LAWS)
ESTABLISHING A PLAN FOR LEASEHOLD CONDOMINIUM
OWNERSHIP OF PROPERTY KNOWN AS
220 EAST 42ND STREET, NEW YORK, NEW YORK 10017

Name of Condominium: 220 East 42nd Condominium

Dated: As of October 1, 2019

Block: 1315

Lots Affected: 1009 (f/k/a 1009 and n/k/a 1009 and 1042), 1010, and 1042

Record and Return to:

Ganfer Shore Leeds & Zauderer, LLP
360 Lexington Avenue
New York, New York
Attention: David S. Fitzhenry, Esq.

**SECOND AMENDMENT TO DECLARATION OF 220 EAST 42ND CONDOMINIUM**

This Second Amendment to Declaration (this "Amendment"), made as of October 1, 2019, by SLG 220 NEWS LESSEE LLC, a Delaware limited liability company with offices at c/o SL Green Realty Corp., 420 Lexington Avenue, New York, New York ("SLG 220 GROUND LESSEE", which, together with its successors and assigns, is referred to herein as "Declarant"), does hereby declare as follows:

RECITALS

A. Declarant is the original declarant under that certain Declaration Establishing a Plan for Leasehold Condominium Ownership of the Property known as 220 East 42nd Street, New York, New York 10017 (the "Original Declaration"), which Original Declaration was dated as of December 15, 2015, and recorded in the Office of the Register of the City of New York, New York County (the "Office") on May 9, 2016 in CRFN 2016000158961 as Condominium No. 2701 to create the 220 East 42nd Condominium (the "Condominium"). The Original Declaration was amended by the First Amendment to the Declaration dated February 15, 2017 and recorded in the Office on May 8, 2017 in CRFN 2017000174753 (the "First Amendment"). The Original Declaration and the First Amendment are collectively referred to herein as the "Declaration."

B. Declarant is the current owner of Unit 7N in the Condominium.

C. Visiting Nurse Service of New York is the current owner of Unit 7S in the Condominium.

C. Pursuant to Article 10.1 of the Declaration, in addition to other rights set forth therein, Declarant has the right, at its own cost and expense (except in situations where the same shall be performed for the benefit of the Building generally, in which case, if the costs of the same are permitted to be included as Common Expenses pursuant to the provisions of the By-Laws, then such costs may be included in Common Charges), subject to the requirements set forth in Subsection 5.17.2 of the By-Laws, but without the need for a vote or consent of the Condominium Board or any Unit Owner, to change the layout or number of rooms in its Unit(s) from time to time; to change its Unit(s), by subdividing the same, into any desired number of condominium units, combining its Unit(s) or combining any units resulting from a subdivision, altering the boundary walls between its Unit(s), or otherwise; to designate its Unit(s) as part of a newly created or expanded condominium unit or designate all or part of its Unit(s) as a newly created or expanded Unit or Common Element; and to reapportion among the newly created or expanded Units resulting from any subdivision, combination or otherwise their percentage interests in the Common Elements that will be based upon the approximate proportion that the floor area of the Unit at the date of the Declaration bears to the then aggregate floor are of all the Units, but such proportion shall reflect the substantial exclusive advantages enjoyed by one or more, but not all, Units in a part or parts of the Common Elements (provided that (i) in no case may such reapportionment result in a greater percentage of Common Interest for the total of the new Declarant owned Units than existed for the original Declarant owned Units; (ii) the percentage interest in the Common Elements appurtenant to any Unit owned by another Unit Owner will not be changed by reason thereof unless the owner of such Unit consents thereto, and

(iii) Declarant complies with all Applicable Laws and the other legal requirements set forth in Article 27 of the Declaration.

D. Pursuant to Article 10.1 of the Declaration, Declarant has the right, without the consent of any other Unit Owner or the Condominium Board, to amend the Declaration and By-Laws (and the Floor Plans, if applicable) to reflect the permitted changes set forth in Article 10.1, in accordance with Article 17 of the Declaration.

E. In accordance with Article 17.1 of the Declaration, Visiting Nurse Service of New York, as the owner of Unit 7S, has consented to the recording of this Amendment.

NOW THEREFORE, in consideration of the foregoing recitals and in accordance with the terms of the Declaration and By-laws, the Declaration and By-laws are hereby amended as follows:

1. As more particularly described in the "Exhibit B – Description of the Units" annexed hereto as Exhibit 1, the Declaration is hereby amended as follows:

a. Unit 7N is hereby subdivided to create the following two Units: (i) Unit 7NW: a Unit (a/k/a tax lot number 1009), composed generally of approximately 6,986 square feet once incorporated in Unit 7N, located on the northwest side of the seventh floor of the Building; and (ii) Unit 7NE: a new Unit (a/k/a tax lot number 1042) consisting approximately of the 12,763 square feet once incorporated in Unit 7N and certain space previously located within Unit 7S; and

b. The interior square footage of Unit 7S is hereby reduced by approximately 557 square feet to reflect the reconfiguration of the seventh floor of the Building, with approximately 508 square feet becoming part of Unit 7NE and approximately 49 square feet becoming General Common Elements.

2. The Declaration is hereby amended to reflect a total of 42 Units existing in the Condominium, as more particularly described in the revised "Exhibit B – Description of the Units" annexed hereto as Exhibit 1. Revisions to the percentage of interest in Common Elements and total square footages of Unit 7N, as well as the revised total square footage of Unit 7S, listed in "Exhibit B – Description of the Units" contained in the Declaration are hereby amended as follows with respect to Unit 7NW (f/k/a Unit 7N), Unit 7NE, and Unit 7S:

OLD

| UNIT | TAX LOT | UNIT TOTAL SQUARE FEET | % OF COMMON INTEREST | USE TYPE | LOCATION OF UNIT | LIMITED COMMON ELEMENTS | COMMON ELEMENTS TO WHICH UNIT HAS IMMEDIATE ACCESS |
|---|---|---|---|---|---|---|---|
| Unit 7N | 1009 | 19,749 | 2.01 | Office | Seventh Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 7S | 1010 | 27,767 | 3.61 | Office | Seventh Floor | Terrace: Approx. 1,519 sq. ft. (Seventh Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |





NEW

| UNIT | TAX LOT | UNIT TOTAL SQUARE FEET | % OF COMMON INTEREST | USE TYPE | LOCATION OF UNIT | LIMITED COMMON ELEMENTS | COMMON ELEMENTS TO WHICH UNIT HAS IMMEDIATE ACCESS |
|---|---|---|---|---|---|---|---|
| Unit 7NW | 1009 | 6,986 | 0.90 | Office | Seventh Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 7NE | 1042 | 13,271 | 1.11 | Office | Seventh Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 7S | 1010 | 27,210 | 3.61 | Office | Seventh Floor | Terrace: Approx. 1,519 sq. ft. (Seventh Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |

3. Article 14.15 of the Declaration is hereby revised to read as follows:

The Unit Owner of Unit 7S and its designees shall have, and Unit 7NE shall be subject to an easement for access to, and for the use of, the elevator lobby, service lobby, stairwells, bathrooms and corridors located in Unit 7NE (the "Seventh Floor Easement Area"). In connection with the foregoing, the Unit Owner of Unit 7NE shall be responsible for the Maintenance of the Seventh Floor Easement Area (except for any areas therein which are General Common Elements that the Condominium Board is responsible for, if any). The Unit Owner of Unit 7S shall have the right to post directional signs in the Seventh Floor Easement Area identifying the Unit consistent with the location, size and appearance of similar signs existing on other floors. In the event that the Unit Owner of Unit 7NE fails to perform its obligations under Section 5.3.1 of the By-Laws to restore the Seventh Floor Easement Area following a casualty, Declarant shall have the obligation to do so, so that the 7S Unit Owner and its designees shall have access to, and the use of, the elevator lobby, service lobby, stairwells, bathrooms and corridors located in Unit 7NE, which elevator lobby, service lobby, stairwells, bathrooms and corridors following such restoration shall be comparable in quality to the bathrooms existing prior to such casualty. The above notwithstanding, the Declarant shall have no obligations to restore the Seventh Floor Easement Area pursuant to the preceding sentence if Unit 7NE is owned by VNSNY or a VNSNY Successor.

4. In accordance with the above, the annexed version of "Exhibit B – Description of the Units" shall be deemed to replace the prior version of the same.

5. In accordance with the above, the Floor Plans prepared by Peter F. Farinella, Architect, P.C. have been amended and filed with the Department of Finance to reflect the reconfiguration of the Units as set forth above.

6. The Declaration and By-laws and Rules and Regulations, as modified by this Amendment, are incorporated herein by reference with the same effect as if set forth at length. Except as revised herein, all other terms and provisions of the Declaration and By-Laws and Rules and Regulations are hereby ratified and confirmed and shall remain in full force and effect.

7. All capitalized terms used in this Amendment and not defined in this Amendment shall have the meanings given to them in the Declaration and By-laws, and references to the





Declaration shall henceforth refer to the Declaration, as amended, including as amended by this Amendment.

8. This Amendment is to be recorded against all tax lots (i.e., against each Unit) comprising the Condominium.

(*Signature Page Follows*)



IN WITNESS WHEREOF, Declarant has caused this Second Amendment to the Declaration to be executed as of the day and year first written above.

SLG 220 NEWS LESSEE LLC

By: _____
Name: Neil H. Kessner
Title: Executive Vice President

## ACKNOWLEDGMENT

STATE OF NEWYORK )
): ss.
COUNTYOF NEWYORK )

On the 7th day of February in the year 2020, before me, the undersigned, personally appeared Neil H. Kessner, 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 by his/her signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the foregoing instrument.

Notary Public

JoAnne M. Maloney
Notary Public, State of New York
No. 01MA6211902
Qualified in New York County
Commission Expires 09/26/20



## Exhibit 1

EXHIBIT "B" TO THE CONDOMINIUM DECLARATION
220 EAST 42ND CONDOMINIUM
220 EAST 42ND STREET, NEW YORK, NEW YORK

BLOCK: 1315

DESCRIPTION OF THE UNITS

| UNIT | TAX LOT | UNIT TOTAL SQUARE FEET | % OF COMMON INTEREST | USE TYPE | LOCATION OF UNIT | LIMITED COMMON ELEMENTS | GENERAL COMMON ELEMENTS TO WHICH UNIT HAS IMMEDIATE ACCESS |
|---|---|---|---|---|---|---|---|
| Retail Unit | 1001 | Total: 21,306 (Concourse: 10,629; First Floor: 10,677) | 2.55 | Retail | Concourse Level, First Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 1 | 1002 | Total: 67,082 (Sub-Cellar: 15,083; Concourse: 20,430; First Floor: 31,025; First Fl. Mezz: 544) | 6.21 | Retail | Sub-Cellar, Concourse Level, First Floor, First Floor Mezzanine | | Cellar Storage, Management Office, Bldg. Crew Lockers, Bldg. Workshop Rooms, Fire Pump Rooms, Mechanical Rooms, Electrical Rooms, Loading Dock, Equipment Rooms, Security Rooms, Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 2N | 1003 | 21,467 | 2.48 | Office | Second Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 2S | 1004 | 32,559 | 3.87 | Office | Second Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 3 | 1005 | 48,020 | 5.69 | Office | Third Floor | Terrace (Third Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 4W | 1006 | 28,009 | 3.10 | Office | Fourth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 4E | 1041 | 19,707 | 2.52 | Office | Fourth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 5 | 1007 | 44,380 | 5.27 | Office | Fifth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 6 | 1008 | 48,798 | 5.87 | Office | Sixth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 7NW | 1009 | 6,986 | 0.90 | Office | Seventh Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 7NE | 1042 | 13,271 | 1.11 | Office | Seventh Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 7S | 1010 | 27,210 | 3.61 | Office | Seventh Floor | Terrace: Approx. 1,519 sq. ft. (Seventh Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 8 | 1011 | 47,707 | 5.66 | Office | Eighth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |



| UNIT | TAX LOT | UNIT TOTAL SQUARE FEET | % OF COMMON INTEREST | USE TYPE | LOCATION OF UNIT | LIMITED COMMON ELEMENTS | GENERAL COMMON ELEMENTS TO WHICH UNIT HAS IMMEDIATE ACCESS |
|---|---|---|---|---|---|---|---|
| Unit 9 | 1012 | 47,617 | 5.59 | Office | Ninth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 10 | 1013 | 37,347 | 4.43 | Office | Tenth Floor | Terrace (Tenth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 11 | 1014 | 36,986 | 3.84 | Office | Eleventh Floor | Terrace (Eleventh Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 12 | 1015 | 27,737 | 2.34 | Office | Twelfth Floor | Terrace (Twelfth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 13 | 1016 | 34,760 | 3.60 | Office | Thirteenth Floor | Terrace (Thirteenth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 14 | 1017 | 36,653 | 3.81 | Office | Fourteenth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 15 | 1018 | 22,407 | 2.32 | Office | Fifteenth Floor | Terrace (Fifteenth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 16 | 1019 | 21,522 | 2.24 | Office | Sixteenth Floor | Terrace (Sixteenth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 17 | 1020 | 21,029 | 2.49 | Office | Seventeenth Floor | Terrace (Seventeenth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 18 | 1021 | 21,817 | 2.59 | Office | Eighteenth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 19 | 1022 | 9,602 | 0.99 | Office | Nineteenth Floor | Terrace (Nineteenth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 20 | 1023 | 10,514 | 1.08 | Office | Twentieth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 21 | 1024 | 10,514 | 1.08 | Office | Twenty-First Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 22 | 1025 | 10,514 | 1.08 | Office | Twenty-Second Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 23 | 1026 | 10,514 | 1.08 | Office | Twenty-Third Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 24 | 1027 | 10,148 | 1.05 | Office | Twenty-Fourth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 25 | 1028 | 6,669 | 0.67 | Office | Twenty-Fifth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 26 | 1029 | 9,603 | 1.00 | Office | Twenty-Sixth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 27 | 1030 | 10,632 | 1.10 | Office | Twenty-Seventh Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 28 | 1031 | 9,767 | 1.01 | Office | Twenty-Eighth Floor | Terrace (Twenty-Eighth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |



| UNIT | TAX LOT | UNIT TOTAL SQUARE FEET | % OF COMMON INTEREST | USE TYPE | LOCATION OF UNIT | LIMITED COMMON ELEMENTS | GENERAL COMMON ELEMENTS TO WHICH UNIT HAS IMMEDIATE ACCESS |
|---|---|---|---|---|---|---|---|
| Unit 29 | 1032 | 9,767 | 1.01 | Office | Twenty-Ninth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 30 | 1033 | 9,773 | 1.01 | Office | Thirtieth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 31 | 1034 | 9,786 | 1.01 | Office | Thirty-First Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 32 | 1035 | 9,777 | 1.01 | Office | Thirty-Second Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 33 | 1036 | 9,794 | 1.01 | Office | Thirty-Third Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 34 | 1037 | 7,326 | 0.75 | Office | Thirty-Fourth Floor | Terrace (Thirty-Fourth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 35 | 1038 | 7,373 | 0.75 | Office | Thirty-Fifth Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 36 | 1039 | 6,342 | 0.65 | Office | Thirty-Sixth Floor | Terrace (Thirty-Sixth Floor) | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| Unit 37 | 1040 | 5,115 | 0.57 | Office | Thirty-Seventh Floor | | Building Lobby, Corridors, Elevators, Elevator Lobbies, Mechanical Rooms, Stairs |
| TOTAL | | | 100.00 | | | | |

## I. Overview and Creation of Condominium Units

The process for the creation of the leasehold condominium units is summarized as follows:

1. The fee property owner, SLG 220 News Owner LLC ("Ground Lessor") leases the land and the building ("Property") to its affiliate, SLG 220 News Lessee LLC, as the tenant ("Ground Lessee/Seller") for a 30-year term, pursuant to a ground lease.

2. Ground Lessee has formed a leasehold condominium that subdivides the Property into multiple units, with units 7NW and 8 (collectively, the "YAI Unit") being specifically designated for sale to YAI in certain condominium documents. The term of the leasehold condominium will be co-extensive with term of the underlying lease from Ground Lessor to Ground Lessee/Seller (i.e., at least 30 years, subject to any other controlling documents). The ground lease and condominium documents contain the use restrictions, transfer restrictions, alteration provisions, etc., specific to YAI and/or the YAI Unit, and other restrictions that are applicable to the remaining units that may either be sold to other not-for-profit unit purchasers or leased by Ground Lessee/Seller to for-profit commercial tenants.

3. Pursuant to a Sale and Purchase Agreement dated as of January 8, 2019 (the "PSA"), Ground Lessee/Seller sold condominium units 7NW and 8 to YAI on June 16, 2020. YAI pays for its units with a 30-year purchase money installment obligation to Ground Lessee/Seller, with annual payments (principal and interest) as set forth in the PSA.

    a. The legal documents creating the leasehold condominium include a ground lease from Ground Lessor to Ground Lessee, a condominium declaration and by-laws by Ground Lessee/Seller (who is also the declarant under the condominium declaration), condominium floor plans, no-action letter application and affidavits.

    b. The legal documents selling the leasehold condominium units to YAI include the PSA, a deed from Ground Lessee/Seller to YAI, and an omnibus agreement (the "Omnibus Agreement") among Ground Lessor, Ground Lessee/Seller and YAI, as further described below.

    c. Ground Lessee/Seller may also require YAI to enter into and deliver a mortgage (the "YAI Mortgage") to Ground Lessee/Seller in order to secure the YAI's purchase price obligations under the PSA. A default under the terms of the YAI Mortgage would likely subject (but not limit) YAI to certain remedies set forth below.

## II. Payments made by YAI

The payments to be made by YAI will be made through a combination of (a) payment by YAI of common charges (which include the condo unit's share of operating expenses and ground rent), and (b) payment by YAI of interest and principal over the 30-year term in a total amount.

The legal rights and obligations of the parties will be contained in the ground lease, the condominium declaration and by-laws and the PSA. However, in addition to these documents, the parties also entered into an Omnibus Agreement among Ground Lessor, Ground Lessee and the YAI, for the purpose of memorializing those agreements among the parties that do not logically belong in any of the foregoing documents.

## III. Remedies for a Default by YAI

Ground Lessor's mortgage lender (the "Fee Mortgagee") will hold a mortgage on the land and will receive a collateral assignment of (a) the ground lease, (b) YAI's common charge payments due to the condominium board, and (c) YAI's purchase money obligations under the PSA. The ground lease will be subordinate to the lien of any existing or future mortgage encumbering the Property, provided that the Fee Mortgagee or other holder of such mortgage enters into a non-disturbance agreement ("NDA") with the condominium board, with respect to which the condominium unit owners (including YAI) will be a third-party beneficiary. The form of NDA will provide that the Fee Mortgagee agrees not to terminate the ground lease in the event of a foreclosure of the fee mortgage provided that the ground lease is not then terminable by reason of a default of the condominium board thereunder (as the successor tenant under the ground lease). The ground lease provides, in turn, that the ground lease is not terminable as a result of a default on the part of the condominium board thereunder following the creation of the condominium unless a unit owner is (or, in the event that more than one entity purchases leasehold condominium units in the building, all unit owners are each) in default of its obligations under the condominium documents. Upon the failure of the YAI to comply with its obligations under any of the documents described above, the affiliated Ground Lessor entities or, if the Ground Lessor defaults under its mortgage and the Fee Mortgagee takes over the affiliated Ground Lessor entities' position, the Fee Mortgagee (which, together with the affiliated Ground Lessor entities, will hereafter be collectively referred to as the "Ultimate Fee Owner") will have the following remedies:

1. Remedy Pursuant to the Provisions of the ground lease:

   YAI's obligation to pay common charges under the condominium declaration includes YAI's proportionate share of the ground rent payable under the ground lease. Because the Ground Lessee's ability to pay the ground rent is predicated on the Ground Lessee's receipt of the unit owner's common charges, the YAI's failure to pay common charges will cause the Ground Lessee to default under the ground lease. Such a default under the ground lease will give the Ultimate Fee Owner the right to terminate the ground lease, thereby terminating the leasehold condominium and all of the YAI's ownership interests therein.

   However, if more than one entity purchases leasehold condominium unit(s) in the building, then the structure prevents (except as set forth in the last sentence of this paragraph) the termination of the ground lease upon just a single entity's failure to pay its monetary obligations unless all of the other unit owners are simultaneously in default. In circumstances where there are multiple unit owners in the building and a single NFP unit owner defaults, the ground lease and the structure remain in place, but the remedies set

forth below may be pursued against any defaulting NFP unit owner(s). NFP unit owners may be obligated under the Omnibus Agreement to permit the termination of the ground lease as a result of the default of another NFP unit owner, in which case the non-defaulting NFP unit owners will either, at the Ultimate Fee Owner's option, (i) form a new leasehold condominium and "recreate" the terms and conditions agreed to by the parties, or (ii) enter into a lease for each non-defaulting NFP unit owners' space for the remaining term of the ground lease, which lease will contain terms and conditions consistent with the terms and conditions of the leasehold condominium transaction documents, so long as, in either case, the non-defaulting NFP unit owners are neither required to pay any increased costs (including real estate taxes that would otherwise have been exempted) nor otherwise adversely affected.

2. Remedies Pursuant to the Provisions of the Condominium Declaration:

   If YAI fails to pay common charges and/or special assessments (which includes YAI's proportionate share of the ground rent, plus all of the building's operating expenses), the condominium board, which is controlled at all times by the Ultimate Fee Owner, has a statutory lien and the right to foreclose. This right of foreclosure is described in the condominium declaration. The condominium board can also pursue an action for monetary damages without commencing a foreclosure procedure. If the condominium board does foreclose, but the foreclosure does not yield an amount that covers all of the condominium board's monetary damages, YAI remains liable for the deficiency.

3. Remedies Pursuant to the Provisions of the PSA:

   A failure by YAI to pay either a monthly installment purchase payment ("IPP") to the Seller under the PSA, or the failure of YAI to pay any common charges and/or special assessments due to the condominium board under the condominium declaration, is a default under the PSA. In the event that such a default occurs, the Seller (and, thus, the Ultimate Fee Owner) may require YAI to reconvey the Unit back to the Seller.

   The Ultimate Fee Owner may also elect to maintain an action for damages that would cover the net present value of all of YAI's remaining IPP obligations, and all of the remaining common charges and special assessments due to the condominium board under the condominium declaration (calculated on the basis of the most recent annual amount of common charges and special assessments). The Ultimate Fee Owner also has the legal right to sue and collect each month for any IPP, common charges and/or special assessments that would have been due to the Seller and the condominium board (respectively) had the PSA not been terminated (plus interest in each case).

4. Remedies Pursuant to the Provisions of the Omnibus Agreement

   Under the Omnibus Agreement, the Ground Lessor (and, therefore, the Ultimate Fee Owner) is granted the right to exercise all of the remedies available to the condominium board under the condominium declaration and/or the Seller under the PSA. In addition,

YAI may be required to reconvey the Unit to the Seller pursuant to the Omnibus Agreement in the event that the type of default described above has occurred.