

EXHIBIT "C"

**FIRST AMENDED AND RESTATED
INTERIM LEASE**

DOWNSTATE AT LICH HOLDING COMPANY, INC.,

LANDLORD

TO

FPG COBBLE HILL ACQUISITIONS, LLC,

TENANT

Effective Date:

June 30, 2014

Demised Premises:

Portions of the First (1st) Floor at:

The Polak Pavilion
363 Hicks Street
Brooklyn, New York

and

The Henry Street Building
340 Henry Street
Brooklyn, New York

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FIRST AMENDED AND RESTATED INTERIM LEASE

LEASE (herein called this "*Lease*") effective as of June 30, 2014 (herein called the "*Effective Date*"), by and between **DOWNSTATE AT LICH HOLDING COMPANY, INC.**, a New York not-for-profit corporation having an office c/o the State University of New York Health Science Center at Brooklyn, 450 Clarkson Avenue, Brooklyn, New York 11203 (herein called "*Landlord*") and **FPG COBBLE HILL ACQUISITIONS, LLC**, a Delaware limited liability company having an office c/o Fortis Property Group, 45 Main Street, Suite 800, Brooklyn, New York 11201 (herein called "*Tenant*"). This Lease amends, restates and supersedes in its entirety that certain Interim Lease dated June 30, 2014, by and between Landlord and Tenant, which Interim Lease shall have no further force or effect.

Statement of Facts

In accordance with Article VII Budget Bill: Health and Mental Hygiene (HMH) (S2606-D/A3006-D), Chapter 56 Part Q of the Laws of 2013-14, and pursuant to the authority provided by the Board of Trustees of the State University of New York (herein called "*SUNY*"), the Chancellor of SUNY submitted a plan to restructure University Hospital of Brooklyn to achieve its continued fiscal viability while preserving its status as a teaching hospital, which plan was duly approved by the Commissioner of Health of the State of New York and the Director the Division of the Budget of the State of New York on June 13, 2013 (herein called the "*Sustainability Plan*"). SUNY is the sole member in Landlord, and currently possesses the land and buildings constituting SUNY Downstate Medical Center at LICH (herein called "*LICH*") pursuant to a certain lease agreement dated May 29, 2011, by and between Landlord, as landlord, and SUNY, as tenant, which lease agreement was recorded on June 17, 2011 in the Kings County office of the New York City Register as CRFN 2011000215014, as such lease agreement has been amended to date (herein called the "*SUNY Lease*").

The Sustainability Plan determined that the State University of New York Health Science Center of Brooklyn (herein called "*Downstate*") must exit the operations of LICH as soon as possible. As a result, SUNY, on behalf of Downstate, in order to assist in determining the most expeditious and financially reasonable means to exit operations at LICH, issued a Request for Information (C002521) on May 1, 2013, to request expressions of interest from qualified parties who could provide health care services, including operation of an acute care hospital, at or around the main LICH campus. Thereafter, having determined that pursuing a request for proposal was an appropriate next step, SUNY issued Request for Proposal X002539 on July 17, 2013 (herein called the "*2013 RFP*") to request proposals from qualified parties to provide, or to arrange to provide, health care services at the main LICH campus, or in the community proximate to such campus, consistent with the health care needs of the community, and to purchase the LICH property, plant and equipment (herein collectively called the "*LICH Portfolio*").

Those proposals received in response to the 2013 RFP were reviewed and evaluated in accordance with the provisions set forth in the 2013 RFP, including a determination of the financial sufficiency of each such proposal based on appraisals provided by third party appraisers based on the highest and best use of each parcel of the

LICH Portfolio. As a result of such review and evaluation, SUNY selected the offeror whose proposal earned the highest final composite score to transact with SUNY, subject to the reservation of rights set forth in the 2013 RFP. However, such transaction did not occur as a result of certain litigation brought in the Supreme Court of the State of New York, County of Kings, styled *Boerum Hill Association, et al., vs. State University of New York, et al.* (Index Number 13007/13), *New York State Nurses Association, et al., vs. New York State Department of Health, et al.* (Index Number 5814/13) and *In the Matter of the Application of The Long Island College Hospital* (Index Number 9188/2011).

In settlement of the aforesaid litigation, SUNY and all other parties thereto entered into a certain Stipulation and Proposed Order that was filed with the Kings County Clerk's Office on February 25, 2014 (herein called the "*Stipulation*"). The Stipulation was "so ordered" by Justices Johnny Lee Baynes and Carolyn Demarest. Pursuant to the Stipulation, SUNY was authorized and directed to issue a new request for proposals from qualified parties to provide, or to arrange to provide, health care services at the main LICH campus, or in the community proximate to such campus, consistent with the health care needs of the community, and to purchase the LICH Portfolio. Also pursuant to the Stipulation, SUNY was authorized to discontinue providing medical services at LICH at any time on or after May 22, 2014.

In accordance with the Stipulation, SUNY issued its Request for Proposal X-002654 dated February 26, 2014, titled "HealthCare Services at LICH and Purchase of Property" (herein called the "*2014 RFP*"). Tenant has been designated by the Successful Offeror (as defined in the 2014 RFP), and has entered into a First Amended and Restated Purchase and Sale Agreement (herein called the "*PSA*") with Landlord and NYU Hospitals Center (herein called "*NYUHC*"), regarding, inter *alia*, the sale of the LICH Portfolio to Tenant and the commitment by NYUHC to use parts of the LICH Portfolio to provide health care services to the community in which the LICH Portfolio is located after the first closing of title under, and in accordance with, the PSA. The buildings known as the Polak Pavilion, located at 363 Hicks Street, and the Henry Street Building, located at 340 Henry Street, both in the Borough of Brooklyn, County of Kings, City and State of New York (herein collectively called the "*Building*"), and the parcel of land on which such Building was erected (herein called the "*Land*") more particularly described in *Exhibit A*, are parts of the LICH Portfolio.

In conformity with the terms of the Stipulation, SUNY discontinued providing most medical services at LICH on or about May 22, 2014, but, as a service to the community, elected to keep the emergency department open and operating, on a temporary voluntary basis, in the Building. SUNY has no obligation under the Stipulation or otherwise to continue operations in the emergency department, and reserves the right to discontinue such operations and close the emergency department at any time, subject to the approval of the New York State Department of Health (herein called the "*DOH*") and to the provisions of the PSA and this Lease.

Consistent with the 2014 RFP and the Successful Offeror's proposal in response thereto, NYUHC covenanted in the PSA to operate a freestanding emergency department in and from the Demised Premises (defined in Section 1.01(a) below) during the entire

period from and after the Commencement Date (defined in Section 1.01(d)(i) below), until the Final Closing Date (as such date may be delayed pursuant to the applicable provisions of the PSA).

In order to enable NYUHC, as the subtenant under a sublease with Tenant (herein called the “*Interim Sublease*”), to operate a freestanding emergency department in the Demised Premises, pursuant to the PSA, during the period commencing on the Commencement Date and expiring on the Final Closing Date (as such date may be delayed pursuant to the applicable provisions of the PSA). Landlord now wishes to lease the Demised Premises to Tenant, and Tenant now wishes to lease the Demised Premises from Landlord, upon, and subject to, all of the terms, covenants and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the rental payments to be made hereunder by Tenant to Landlord, and the other mutual consideration hereinafter set forth, Landlord and Tenant hereby covenant and agree as follows:

Article 1

Basic Lease Terms, Rules of Construction and Incorporation

1.01 Basic Lease Terms. For purposes of this Lease, the following terms shall have the meanings ascribed to them below:

(a) “*Demised Premises*” means portions of the first (1st) floor of the Building, as shown on the floor plan annexed hereto as *Exhibit B*, together with all fixtures and equipment that at the commencement, or during the term, of this Lease are thereto attached (except items not deemed to be included therein, and removable by Tenant, as provided in Article 12).

(b) “*Fixed Rent*” means \$40,000.00 for the Term. Landlord and Tenant have determined, and hereby declare, that the Fixed Rent, together with Tenant’s obligations to pay for the maintenance, operation and utility services furnished to the entire Building, represents fair value for the use of the Demised Premises during the Term.

(c) “*Permitted Use*” means the operation, in the Demised Premises, of a freestanding emergency department, with all supportive services with respect thereto required by all applicable laws, on a twenty-four (24) hours per day, seven (7) days per week, basis, with all licenses and other governmental approvals (herein collectively called the “*Medical Licenses*”) required for the operation thereof (including, without limitation, to the extent required therefor, the approval of the DOH under Article 28 of the New York State Public Health Law), *provided, however*, that, if Tenant exercises the Expansion Option, then:

(i) the permitted use of the Original Premises shall continue to be the operation of an emergency department, as aforesaid; and

(ii) the permitted use of the Expansion Space shall be the operation of a federally qualified health center, with all supportive

services with respect thereto required by all applicable laws, with any and all Medical Licenses required for the operation thereof (including, without limitation, to the extent required therefor, the approval of the DOH under Article 28 of the New York State Public Health Law).

(d) “*Term*” means the period of time for which the Demised Premises are hereby leased to Tenant, which period of time shall:

(i) commence on the date (herein called the “*Commencement Date*”) that NYUHC takes over operation of the emergency department services at the Demised Premises; and

(ii) expire on the earliest day to occur (herein called the “*Expiration Date*”) of:

(A) the day upon which the PSA expires in accordance with its terms;

(B) the day upon which the PSA is terminated with regard to either:

(I) if prior to the Initial Closing, the entire LICH Portfolio (including, without limitation, any termination of the PSA pursuant to the provisions of Section 4.6 thereof);

(II) if after the Initial Closing, but prior to the NMS Closing, both the New Medical Site and the Final Closing Premises; or

(III) if after the NMS Closing, the Final Closing Premises;

(C) if the PSA is terminated with regard only to the New Medical Premises, the earlier day to occur of:

(I) the date specified by Tenant to Landlord in a written notice given not less than thirty (30) days prior to such specified date, which notice may be given at any time on or after the date upon which the PSA is terminated with regard only to the New Medical Premises; and

(II) the date upon which Landlord shall have no further obligation to convey

the New Medical Premises to either Tenant or a Replacement Provider pursuant to Section 14.5 of the PSA;

(D) the day upon which the Final Closing shall occur;

(E) the Final Closing Deadline; and

(F) either (as the case may be):

(I) unless the Initial Closing shall have occurred, May 29, 2015, or the day (if any) to which such date is postponed with the written approval of the Dormitory Authority of the State of New York (herein called "*DASNY*"); or

(II) if both the Initial Closing and the NMS Closing shall have occurred, December 31, 2020,

or on such earlier date upon which the Term may expire, or be cancelled or terminated, pursuant to any of the terms, covenants, or conditions of this Lease or pursuant to law. In the event that the PSA is terminated prior to the Commencement Date (including, without limitation, pursuant to Section 4.6 thereof), this Lease shall be deemed to be terminated in its entirety as of the effective date of the termination of the PSA, notwithstanding that the Term has not yet commenced.

1.02 Other Definitions. Various terms used in this Lease are defined in *Exhibit C*, and shall have the meanings ascribed to them therein for all purposes of this Lease. Any terms used, but not defined, in this Lease shall have the meanings ascribed to them in the PSA or the Interim Sublease (as the case may be) for all purposes of this Lease. If any such term is defined in both the PSA and the Interim Sublease, the definition set forth in the PSA shall govern and control, except as otherwise specifically provided in this Lease.

1.03 Use of Defined Terms. Any term defined in the body of this Lease shall have the meaning ascribed to it therein, regardless of whether the usage of such term shall appear in the text of this Lease before or after the definition of the same.

1.04 Rules of Construction. In interpreting or construing this Lease or any provision thereof, those rules of construction set forth in *Exhibit C* shall be applied to the fullest extent applicable.

1.05 Incorporation. The exhibits attached to this Lease are hereby incorporated into this Lease in their entirety.

Article 2
Demise, Rents, Delivery of Possession

2.01 Demise. Landlord hereby leases the Demised Premises to Tenant, and Tenant hereby hires the Demised Premises from Landlord, for the Term, for the rents reserved in this Lease and upon, and subject to, the terms, covenants, conditions, limitations, restrictions and reservations provided in this Lease. Each party hereby expressly covenants and agrees to observe and perform all of the terms, covenants, conditions, limitations, restrictions and reservations contained in this Lease on its part to be observed and performed.

2.02 Rents. The rents reserved under this Lease for the Term shall be and consist of:

- (a) the Fixed Rent, which shall be payable in full on August 20, 2014; and
- (b) the Additional Rent, for default in payment of which Landlord shall have the same remedies as for a default in the payment of Fixed Rent.

The foregoing rents are all to be paid to Landlord at its office, or at such other place, or to such agent and at such place, as Landlord may designate by notice to Tenant, in lawful money of the United States of America by Tenant's good check (subject to collection) drawn on a Member Bank directly to the order of Landlord or, if Tenant shall so elect or shall be so required by another provision of this Lease, by wire transfer of federal funds to a bank account designated, from time to time, by Landlord in writing to Tenant. Tenant shall pay the Rents herein reserved promptly, as and when the same shall become due and payable, without demand therefor and without any abatement, deduction, or setoff whatsoever, except as specifically provided in this Lease. There shall be no proration of the Fixed Rent payable pursuant to this Lease regardless of the ultimate length of the Term (including, without limitation, if the Term shall begin or end in the middle of a calendar month).

2.03 Impositions. The parties acknowledge and agree that, as of the Effective Date, the Land and Building are exempt from real estate taxation by the City of New York due to their use and ownership. In the event that, as a result of the execution and delivery of this Lease or otherwise, the Land and/or the Building are placed on the tax rolls as taxable real estate, the following provisions shall be effective as between Landlord and Tenant:

- (a) Tenant covenants and agrees to pay, as hereinafter provided, all of the following items (collectively "***Impositions***"):
 - (i) all real estate taxes, vault taxes and business improvement district taxes; and
 - (ii) all assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the term of this Lease, and any other assessments of whatever name, nature, and kind, and whether or not now within the contemplation of the parties, including any special assessments for or imposed by any business improvement district or by any special assessment district),

in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen, of every character, kind and nature whatsoever which, at any time during the term of this Lease, may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or charged with respect to or become a lien on, Landlord, the Land, the Building, or the sidewalks or streets in front of or adjoining the Land, or any vault, passageway or space in, over or under such sidewalk or street, or any other appurtenances of the Land and/or the Building, or the rent or income received therefrom, or any use, possession or occupancy thereof, or this transaction or the Rents payable hereunder, or any document to which Tenant is a party creating or transferring an interest or estate in the Demised Premises, together with any and all interest, penalties, and costs resulting from delayed payment of any of the foregoing attributable to an act or omission of Tenant. It is understood and agreed that Tenant shall pay Impositions hereunder only to the extent the same accrue during the Term, and any Impositions accruing during a real estate tax fiscal year, only part of which is included within the Term, shall be prorated based upon the portion of such fiscal year occurring on and after the Commencement Date or on and before the Expiration Date, as the case may be.

(b) Nothing herein contained shall require Tenant to pay municipal, state or federal income, franchise, inheritance, estate, succession, capital stock transfer, gift, value added, stamp, payroll, gains, sales or profit tax, fees or capital levy, or fines penalties or interest for late payment (except as specifically set forth above), mortgage, mortgage recording or similar taxes of Landlord, or any corporate franchise taxes or unincorporated business taxes or similar taxes imposed upon Landlord or any successor of Landlord; *provided, however, that*, if, at any time during the term of this Lease, the method of real estate taxation prevailing as of the Effective Date shall be altered so that any new tax, assessment, levy (including, but not limited to, any municipal, state, or federal levy), imposition, or charge, or any part thereof, measured by, or based in whole or in part upon, the Premises or the Rental, shall be imposed upon Landlord, then all such taxes, assessments, levies, impositions or charges, or the part thereof to the extent that they are so measured or based, shall be deemed to be included within the term "*Impositions*" for the purposes hereof, to the extent that such Impositions would be payable if the Premises were the only property of Landlord subject to such Impositions, and Tenant shall pay and discharge the same as herein provided in respect of the payment of Impositions.

(c) Tenant shall, during the term of this Lease, pay and discharge, as additional rent, all Impositions not later than ten (10) days prior to the due date thereof. In respect of any payments of Impositions made by Tenant directly to the taxing authority, Tenant shall, upon Landlord's request, furnish to Landlord copies of receipted bills, if available, or other reasonably satisfactory evidence of payment thereof.

(d) Tenant shall have the right at its own expense to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith but only after payment of such Imposition unless such payment would operate as a bar to such contest or interfere materially with the prosecution thereof,

in which event, notwithstanding the provisions of Section 2.03(a) hereof, payment of such Imposition shall be postponed if and only so long as:

(i) neither the Land, the Building, nor any part thereof would by reason of such postponement or deferment be, in the reasonable judgment of the Landlord from time to time, in danger of being forfeited or lost within the ensuing ninety (90) days;

(ii) Landlord would not be, by reason of such postponement or deferment, subject to any actual or threatened criminal sanctions or penalties or, unless the deposit described in subsection (iii) below shall have been deposited in accordance therewith, personal liability, as Landlord shall determine in its reasonable judgment, and

(iii) if Landlord would be, by reason of such postponement or deferment, subject to any actual or threatened personal liability, Tenant shall have deposited with Landlord cash or other security reasonably acceptable to Landlord in the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges that may or might be assessed against or become a charge on the Premises or any part thereof or against Landlord in such proceedings.

Upon the termination of such proceedings, it shall be the obligation of Tenant to pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees (including reasonable counsel fees), interest, penalties or other liabilities in connection therewith, and upon such payment in full, Landlord shall return to Tenant, within ten (10) days following receipt of Tenant's request therefor together with evidence reasonably satisfactory to Landlord that such payment in full has been made, any amount deposited with it with respect to such Imposition as aforesaid. If at any time during the continuance of such proceedings Landlord shall reasonably deem the amount deposited as aforesaid insufficient, Tenant shall, upon demand, make an additional deposit of such additional sums or other acceptable security as Landlord reasonably may request, and upon failure of Tenant so to do, the amount theretofore deposited may be applied by Landlord to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith and any costs, fees (including reasonable counsel fees) or other liability accruing against Landlord or the Premises in any such proceedings, and the balance, if any, shall be returned to Tenant or the deficiency, if any, shall be paid by Tenant to Landlord on demand.

(e) Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition, of nonpayment of such Imposition, shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated therein.

2.04 Delivery of Possession; Health Care Operations. The parties acknowledge and agree that, pursuant to the PSA, NYUHC, and not Tenant, is responsible for complying with the requirements pertaining to the operation of an emergency department in the Premises during the term of this Lease, upon, and subject to, the applicable terms, covenants and conditions contained in the Interim Sublease. Consequently, Tenant hereby directs Landlord to deliver possession of the Demised Premises, free of tenancies, directly to NYUHC on the Commencement Date, and Landlord agrees to do so. The parties further acknowledge and agree that Tenant shall have no obligations or liability hereunder or otherwise to cause or assure the operation of the emergency department, other than its obligations to observe and comply with its maintenance, repair and other obligations under the Interim Sublease.

2.05 Termination of PSA. If the PSA shall terminate, or be terminated, prior to the Commencement Date, this Lease shall be deemed to terminate, and be of no further force or effect, automatically, as of the date of termination of the PSA.

2.06 Option for Additional Space. Provided that this Lease shall be in full force and effect without any default on the part of Tenant hereunder as to which Tenant has received the notice of default referred to in Section 23.02 below and has failed to cure such default within the applicable cure period referred to therein, Tenant shall have the one-time option (herein called the "**Expansion Option**"), exercisable at any time during the Term, to incorporate into the Demised Premises the space in the Building shown on **Exhibit B-1** to this Lease (herein called the "**Expansion Space**"), and no other space in the Building, by giving written notice to Landlord (herein called the "**Expansion Notice**"), which Expansion Notice shall:

- (a) state specifically that Tenant has elected to incorporate into the Demised Premises the entire Expansion Space; and
- (b) specify an effective date for expansion of the Demised Premises hereunder (which specified date shall not be less than ten (10) business days after the giving of the Expansion Notice to Landlord).

If Tenant shall give an Expansion Notice to Landlord as hereinbefore set forth, Tenant shall have the right to take possession of the Expansion Space on the effective date specified in the Expansion Notice (herein called the "**Expansion Effective Date**"), upon which date this Lease shall be deemed to be amended to incorporate the Expansion Space into the Demised Premises for the remaining balance of the Term. From and after the Expansion Effective Date, the term "**Demised Premises**", as used in this Lease, shall be deemed to mean collectively the premises originally demised to Tenant under this Lease (herein called the "**Original Premises**") and the Expansion Space, and all of the terms, covenants and conditions in this Lease applicable to the Original Premises shall also apply to the Expansion Space with such force and effect as if the Expansion Space were part of the premises originally demised to Tenant under this Lease. Without intention to limit the generality of the foregoing in any respect, Tenant shall accept possession of the Expansion Space on the Expansion Effective Date in its then "as is" condition. If and when Tenant shall take actual possession of the Expansion Space, it shall conclusively be presumed that the Expansion Space was in satisfactory condition as of the date of such taking of possession. Any work that is necessary or desirable to be performed and/or installed, in Tenant's reasonable judgment, in or to the Expansion Space in order to prepare the same for Tenant's use and occupancy shall be performed by Tenant, at Tenant's sole cost and expense, as Tenant's Work pursuant to this Lease. Promptly after the written request of either Landlord or Tenant, the parties shall join in

executing a formal amendment to this Lease confirming the incorporation of the Expansion Space into the Demised Premises.

Article 3
Use; Other Leases

3.01 Permitted Use. Tenant, as well as any permitted occupant, subtenant, or assignee of Tenant, shall use and occupy the Demised Premises for the Permitted Use, and for no other purpose.

3.02 Licenses and Permits. Tenant, at its sole cost and expense, shall use its diligent and good faith efforts to cause NYUHC and/or (if Tenant exercises the Expansion Option) LFHC to duly procure on or before the Commencement Date or the Expansion Effective Date (as the case may be) and thereafter maintain in full force and effect, all licenses, permits, approvals and authorizations (other than a Certificate of Occupancy) required for the proper and lawful occupancy and operation of the Permitted Use in the Demised Premises (including, without limitation, the Medical Licenses), and display the same for inspection by Landlord promptly after Landlord's written request therefor. At all times, Tenant shall use its diligent and good faith efforts to cause NYUHC and/or (if Tenant exercises the Expansion Option) LFHC to comply with, the terms and conditions of each such license, permit, approval, or authorization (including, without limitation, the Medical Licenses). Upon Tenant's request and at Tenant's expense, Landlord shall join in the application for any licenses, permits, approvals and authorizations sought by NYUHC and/or (if Tenant exercises the Expansion Option) LFHC (except for an application to change the Certificate of Occupancy for the Demised Premises or the Building) whenever such joinder by Landlord shall be required by any governmental agency having jurisdiction. For all purposes of this Section 3.02, Landlord acknowledges that NYUHC's obligation to obtain, maintain and comply with such licenses, permits, approvals and authorizations is limited by the provisions of Section 3.06 of the Interim Sublease, and agrees that Tenant's obligation to use its diligent and good faith efforts hereunder shall be suspended if, to the extent and for the duration that the provisions of Section 3.06 of the Interim Sublease frustrate such efforts.

3.03 Certificate of Occupancy. Tenant shall not, at any time, use or occupy, or suffer or permit anyone to use or occupy, the Demised Premises, or do, or permit anything to be done, in the Demised Premises, in violation of the Certificate of Occupancy for the Demised Premises or for the Building.

3.04 Other Leases. During the Term:

(a) Landlord shall not, without the prior written consent of NYUHC, lease, sublease, license, or enter into any occupancy agreement with regard to any space in the Building (other than this Lease and any license or occupancy agreement with, and limited to, SUNY and/or any affiliate or subsidiary of SUNY), nor shall Landlord, in its capacity as the landlord under the SUNY Lease, permit SUNY to enter into any such lease, sublease, license, or occupancy agreement. Nothing contained herein, however, shall be deemed or construed so as to prohibit or preclude Landlord, SUNY, or any affiliate or subsidiary of SUNY from using and/or occupying, at any time and from time to time during the Term (but in no event after the Full Building Expense Date), one or more portions of the Building (other than the Demised Premises and the Common Areas) under their own name or names and for their own lawful purposes, *provided, however*, that,

from and after the date upon which the Initial Closing shall occur, Landlord shall not use or occupy such portion(s) of the Building, or permit the same to be used or occupied by SUNY or any affiliate or subsidiary of SUNY, for the provision of medical services of any kind without the consent of NYUHC; and

(b) in the event that Landlord, SUNY and/or any affiliate or subsidiary of SUNY (or any tenant or occupant of any of them, other than Tenant hereunder) occupies and/or uses space in the Building, which (in the aggregate) exceeds 1,000 square feet, for a period of nine (9) consecutive months, then from and thereafter, Landlord will pay Tenant a monthly charge for any space in the Building being so occupied and/or used during each month, at the per annum rate equal to eight dollars (\$8.00) per square foot of all such space (which shall be paid on the first (1st) day of each month with respect to space occupied and/or used in the immediately preceding month, and which shall be prorated for any partial month of occupancy or use).

3.05 Use of First Floor Space. If Landlord or SUNY shall allow any person or entity to use or occupy any portion of the first (1st) floor of the Building (other than Tenant, or any person or entity claiming by, through, or under Tenant pursuant to this Lease, and other than the use of Common Areas for their intended purposes), then Landlord shall make any alterations to the Building, the Demised Premises (including its demising walls) and/or the Building Systems (whether inside or outside of the Demised Premises) required under applicable laws by reason of such other use or occupancy (including changes that must be made due to such proposed use or occupancy to cause the Demised Premises and its operations to comply with applicable laws).

Article 4

Preparation of the Demised Premises

4.01 Condition of the Demised Premises. Tenant has fully inspected the Demised Premises and is satisfied with the condition thereof. Consequently, Tenant shall accept possession of the Demised Premises on the Commencement Date in their then "as is" condition, *provided, however*, that, if, between the Effective Date and the Commencement Date, the Demised Premises shall be materially damaged by vandalism caused by Landlord or its employees, Landlord shall repair such damage diligently and in good faith, and at its own cost and expense, commencing promptly after the Commencement Date. Additionally, if and when Tenant shall take actual possession of the Demised Premises (whether to perform Tenant's Work in and to the same or otherwise), it shall be conclusively presumed that the Demised Premises were in satisfactory condition as of the date of such taking of possession, *except, however*, for any damage by vandalism as aforesaid. For all purposes of this Section 4.01, if Landlord shall deliver possession of the Demised Premises to NYUHC and/or LFHC at the direction of Tenant, such delivery of possession shall be deemed to be delivery of possession to Tenant.

4.02 Performance of Tenant's Work. Tenant's Work shall be performed by Tenant, at its sole cost and expense, in accordance with all of the terms, covenants and conditions of this Lease (including, without limitation, Article 11), as if such Tenant's Work was a Tenant's Change.

Article 5
Apportionments

5.01 Apportionments. The following items with respect to the Building (excluding, however any such item that is included in calculation of the Full Net Costs (as such term is defined in the PSA), but only to the extent of such inclusion) shall be apportioned, without duplication, between Landlord and Tenant, as of 11:59 p.m. on the day prior to the Commencement Date:

(a) Water charges and sewer rents (if any) shall be apportioned on the basis of the fiscal period for which assessed. Landlord shall endeavor to obtain an estimate of the apportionment based on water meter readings as of a date not earlier than thirty (30) days prior to the Commencement Date and shall provide evidence of payment to Tenant on or before the Commencement Date.

(b) The value of fuel, if any, stored at the Building or on the Land shall be credited to Landlord at Landlord's cost, including any taxes, on the basis of readings obtained from Landlord's supplier not earlier than fifteen (15) days prior to the Commencement Date and invoices from such supplier.

(c) Utility charges (including telephone, steam, electric, and gas, as applicable) with respect to the Building, based on bills and invoices as and when received.

(d) Such other items of income and expense as are customarily apportioned between sellers and purchasers of real properties that are located in the Borough of Brooklyn and are similar to the Building shall be apportioned, to the extent applicable to the Building.

If the net result of such apportionments is a credit in favor of Landlord, then Tenant shall pay such net amount to Landlord, as Additional Rent pursuant to this Lease, not later than thirty (30) days after the Commencement Date. If, conversely, the net result of such apportionments is a credit in favor of Tenant, then Landlord shall allow Tenant to offset the amount of such credit against the first amount or amounts of charges payable by Tenant to Landlord pursuant to the provisions of Section 14.03, 15.01 and/or 16.01 below.

5.02 Access to Books and Records. Each of Landlord and Tenant shall be given reasonable access during normal business hours after the Commencement Date, on reasonable prior notice to the other, to those portions of the books and records maintained by the other party with respect to the Building as are reasonably necessary to enable the inquiring party to determine the inquiring party's rights to any apportionments to be paid to such party pursuant to this Article 5. Any information obtained by a party from the exercise of such right of access shall be treated as confidential by such party, subject to the New York State Freedom of Information Law (FOIL) contained in Article 6 of the New York State Public Officer's Law.

5.03 Claims for Overpayments. If Landlord shall, in the past, have made any overpayments with respect to water or sewer charges or similar items, which overpayments were not otherwise apportioned hereunder, then any refunds with respect to such overpayments shall remain the sole property of Landlord, and Tenant hereby relinquishes all claims thereto. If, and to the extent that, any

overpayments of such items were apportioned at the Commencement Date, then the corresponding refunds shall be similarly apportioned.

5.04 Inability to Apportion. If any item subject to apportionment under Section 5.01 cannot be apportioned as of the date set forth in Section 5.01 above because of the unavailability of the information necessary to compute such apportionment, or if any errors or omissions in computing apportionments at the Commencement Date shall be discovered subsequent thereto, then such item shall be apportioned or reapportioned (as the case may be), such errors and omissions corrected and the proper party paid or reimbursed (as the case may be) promptly after the previously unavailable information becomes available or such error or omission is discovered.

Article 6
Subordination, Notice to Lessors and Mortgagees

6.01 Subordination. This Lease, and all of the rights of Tenant hereunder, are, and shall continue to be, subject and subordinate in all respects to:

(a) all ground leases, overriding leases and underlying leases of the Land and/or the Building, whether now or hereafter existing, including, without limitation:

(i) the SUNY Lease; and

(ii) that certain sublease agreement dated contemporaneously herewith, by and between SUNY, as Sublandlord, and Landlord, as subtenant;

(b) all mortgages, indentures of mortgage, deeds of trust and other documents of similar import (including, without limitation, any indenture of mortgage and/or deed of trust to a trustee to secure an issue of bonds) that may, now or hereafter, affect the Land and/or the Building and/or any of such leases, whether or not such instruments shall also cover other lands and/or buildings;

(c) all encumbrances and/or requirements affecting the Land and/or the Building relating to Landlord's allocated share of any debt associated with the State Personal Income Tax Revenue Bonds (General Purpose), Series 2012D, issued by DASNY (herein called the "**PIT Bond Debt**"),

(d) each and every advance made, or hereafter to be made, under such mortgages or relating to the PIT Bond Debt; and

(e) all renewals, modifications, replacements and extensions of such leases and such mortgages, and all spreaders and consolidations of such mortgages.

This Section 6.01 shall be self-operative, and no further instrument of subordination shall be required. In confirmation of such subordination, Tenant shall promptly execute and deliver any instrument that Landlord, the lessor of any such lease, the holder of any such mortgage, or any of their respective successors in interest may reasonably request to evidence such subordination.

6.02 Notice to Lessors and Mortgagees. In the event of any act or omission of Landlord that would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease (other than in the event of casualty or condemnation, or on account of a Permitted Closure Event) or to claim a partial or total eviction, Tenant shall not exercise such right:

(a) until it has given written notice of such act or omission to the holder of each Superior Mortgage and the lessor of each Superior Lease whose name and address shall previously have been furnished to Tenant in writing; and

(b) unless such act or omission shall be one that is not capable of being remedied by Landlord, or by such mortgage holder or lessor, within a reasonable period of time, until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when such holder or lessor shall have become entitled under such Superior Mortgage or Superior Lease (as the case may be) to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under this Lease or otherwise, after similar notice, to effect such remedy), provided that such holder or lessor shall, with due diligence, give Tenant written notice of intention to, and commence and continue to, remedy such act or omission.

6.03 Attornment. If the lessor of a Superior Lease or the holder of a Superior Mortgage shall succeed to the rights of Landlord under this Lease, whether through the termination of such Superior Lease, the entry into possession of the Demised Premises, foreclosure, the delivery of a new lease or deed, or otherwise, then, at the request of such Successor Landlord, and upon such Successor Landlord's written agreement to accept Tenant's attornment, Tenant shall attorn to and recognize such Successor Landlord as Tenant's landlord under this Lease. Tenant shall promptly execute and deliver any instrument that such Successor Landlord may reasonably request to evidence such attornment. Upon such attornment, this Lease shall continue in full force and effect as, or as if it were, a direct lease between such Successor Landlord and Tenant, upon all of the terms, conditions and covenants as are set forth in this Lease and shall be applicable after such attornment, except that such Successor Landlord shall not be:

(a) liable for any previous act or omission of Landlord (or its predecessors in interest) under this Lease, but such Successor Landlord shall be obligated to comply with the provisions of this Lease, from and after such attornment, subject to the further provisions of this Section 6.03;

(b) bound by any previous modification of this Lease, not expressly provided for in this Lease, unless such modification shall have been expressly approved in writing by the lessor of the Superior Lease or the holder of the Superior Mortgage through which, or by reason of which, such successor landlord shall have succeeded to the rights of Landlord under this Lease;

(c) responsible for any monies owed, or claimed to be owed, by Landlord (or its predecessors in interest) to Tenant;

(d) subject to any credits, offsets, claims, counterclaims, demands, or defenses that Tenant may have against Landlord (or its predecessors in interest);

(e) bound by any covenant to undertake or complete any construction, renovation, or alteration of the Demised Premises or any portion thereof, or to pay for, or reimburse, Tenant for any costs incurred in connection with such construction, renovation, or alteration;

(f) required to account for any security deposit other than any security deposit actually delivered to such Successor Landlord; or

(g) bound by any obligation to make any payment to Tenant, or to grant, or be subject to, any credits, except for services, repairs, maintenance and restoration provided for under this Lease to be performed after the date of attornment, it being expressly understood, however, that such Successor Landlord shall not be bound by an obligation to make payment to Tenant with respect to construction, renovation, or alteration performed by, or on behalf of, Tenant at the Demised Premises.

Article 7 **Quiet Enjoyment**

7.01 Quiet Enjoyment. So long as Tenant pays all of the Additional Rent due under this Lease and performs all of Tenant's other obligations hereunder, Tenant shall peaceably and quietly have, hold and enjoy the Demised Premises, subject, nevertheless, to the obligations of this Lease and, as provided in Section 6.01 above, to the Superior Leases and the Superior Mortgages.

Article 8 **Assignment And Subletting**

8.01 Landlord's Consent Required. Without the prior written consent of Landlord in each instance (except in the circumstances specifically provided in Section 8.04 below), which Landlord may grant or withhold in its sole and absolute discretion, and without the further prior written consent of the New York State Office of Attorney General (herein called the "AG"), the New York State Office of the State Comptroller (herein called the "OSC") and DASNY in each instance (except that, from and after the Initial Closing, the consent of DASNY shall not be required hereunder), neither Tenant nor any person or entity claiming by, through, or under Tenant shall, in any manner or form:

(a) assign, mortgage, pledge, or otherwise transfer or encumber this Lease and/or the leasehold estate created hereby;

(b) sublet, underlet, license, or grant concessions in the Demised Premises or any part thereof; or

(c) otherwise suffer or permit the Demised Premises or any part thereof to be used or occupied by others.

If Tenant is a corporation, the provisions of this Article 8 shall apply to a transfer (however accomplished, whether in a single transaction or in a series of related or unrelated transactions) of stock

(or any other mechanism, such as, by way of example, the issuance of additional stock, the execution and delivery of a stock voting agreement, or a change in class(es) of stock), unless, after giving effect to such transfer or other mechanism, Tenant remains a Permitted Kestenbaum Entity, as if such transfer (or other mechanism) were instead an assignment of this Lease. If Tenant is a partnership (limited or general), a joint venture, a limited liability company, or another entity, the provisions of this Article 8 shall apply with respect to a transfer (however accomplished, whether in a single transaction or in a series of related or unrelated transactions) of an equity or beneficial interest in such entity (or any other mechanism, such as, by way of example, the creation of additional general partnership or limited partnership interests or other interest) unless, after giving effect to such transfer or other mechanism, Tenant remains a Permitted Kestenbaum Entity, as if such transfer (or other mechanism) were instead an assignment of this Lease.

8.02 Further Covenants Concerning Assignments. With respect to each and every assignment or other transfer of Tenant's right, title and/or interest under this Lease, whether made with Landlord's consent pursuant to Section 8.01 or without Landlord's consent pursuant to Section 8.04:

(a) such assignment or transfer shall be made only if, and shall not be effective until, the assignee shall execute, acknowledge and deliver to Landlord an agreement (in form and substance satisfactory to Landlord), whereby the assignee shall:

(i) assume the obligations of this Lease on the part of Tenant to be performed or observed; and

(ii) agree that the provisions of this Article 8 shall, notwithstanding such assignment or transfer, continue to be binding upon it in respect of all future assignments and transfers;

(b) notwithstanding such assignment or transfer, and notwithstanding the acceptance of Additional Rent by Landlord from the assignee, transferee, or any other party, the original named Tenant and all successors in interest thereto shall remain fully liable for:

(i) the payment of the Additional Rent due and to become due hereunder; and

(ii) the performance of all the covenants, agreements, terms, provisions and conditions contained in this Lease on the part of Tenant to be performed or observed; and

(c) the joint and several liability of Tenant and any immediate or remote successor in interest of Tenant for the due performance of the obligations of this Lease on Tenant's part to be performed or observed shall not be discharged, released, or impaired in any respect by any agreement or stipulation made by Landlord extending the time of, or modifying any of the obligations of, this Lease, or by any waiver or failure of Landlord to enforce any of the obligations of this Lease.

8.03 Further Covenants Concerning Subleases. With respect to each and every sublease or subletting of the Demised Premises made with Landlord's consent pursuant to Section 8.01:

(a) such subletting shall be for a term ending not later than one day prior to the expiration date of this Lease;

(b) such sublease shall not be valid, and no subtenant shall take possession of the Demised Premises or any part thereof, until an executed counterpart of such sublease has been delivered to Landlord;

(c) such sublease shall provide that:

(i) it is subject and subordinate in all respects to this Lease, as well as to all Superior Leases and/or Superior Mortgages that are in effect from time to time, and to all of the covenants, agreements, terms, provisions and conditions contained in each of the same;

(ii) in the event of termination, re-entry, or dispossession by Landlord under this Lease, Landlord may, at its option, take over all of the right, title and interest of Tenant, as sublessor, under such sublease, and

(iii) such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not:

(A) be liable for any previous act or omission of Tenant under such sublease;

(B) be subject to any offset, not expressly provided in such sublease, that theretofore accrued to such subtenant against Tenant; or

(C) be bound by any previous modification of such sublease or by any previous prepayment of more than one month's rent;

(iv) such sublease may not be changed, modified, or amended unless the proposed change, modification, or amendment is approved in writing by Landlord, AG, OSC and DASNY (except that, from and after the Initial Closing, the consent of DASNY shall not be required hereunder); and

(v) Landlord shall be deemed to be a third party beneficiary of such sublease, and shall be entitled to enforce the provisions thereof regarding the use and operation of the portion of the Demised Premises sublet thereunder;

(d) notwithstanding such subletting, and notwithstanding the acceptance of Additional Rent by Landlord from the subtenant or any other party, the original named Tenant and all successors in interest thereto shall remain fully liable for:

(i) the payment of the Additional Rent due and to become due hereunder;

(ii) the performance of all the covenants, agreements, terms, provisions and conditions contained in this Lease on the part of Tenant to be performed or observed; and

(iii) all acts and omissions of such subtenant, or anyone claiming by, under, or through such subtenant, that shall be in violation of any of the obligations of this Lease, which violation shall be deemed to be a violation by Tenant; and

(e) without Landlord's prior written consent in each instance, which may be granted or withheld in Landlord's sole and absolute discretion, in no event shall the subtenant, in any manner or form:

(i) assign, mortgage, pledge, or otherwise transfer or encumber its sublease and/or the subleasehold estate created thereby;

(ii) sublet, underlet, license, or grant concessions in its sublet space or any part thereof; or

(iii) otherwise suffer or permit the sublet space or any part thereof to be used or occupied by others.

8.04 Certain Permitted Transactions. In accordance with the PSA, emergency department services are to be furnished in and from the Demised Premises by NYUHC, by New York University, by any affiliate of either of them, by either of their faculty physicians or faculty physician groups and/or by the employees of any of the foregoing, as determined by NYUHC from time to time in its sole discretion. The use and occupancy of all or any portion(s) of the Demised Premises by any of the foregoing in connection with providing emergency department services in and from the Demised Premises will not require consent of Landlord, DASNY, the AG, or the OSC. Further, Landlord's consent shall not be required (but the consent of the AG, the OSC and DASNY shall continue to be required, except that, from and after the Initial Closing, the consent of DASNY shall not be required hereunder) in connection with any of the following transactions:

(a) if the PSA shall be assigned in compliance with the provisions thereof, an assignment of this Lease to the assignee of the PSA;

(b) a sublease of all of the Demised Premises to a Permitted Kestenbaum Entity;

(c) if Tenant exercises the Expansion Option, a sublease or subleases of all or a portion(s) of the Expansion Space to an experienced and suitably licensed (if applicable) operator of federally qualified health centers (including, without limitation, NYUHC and/or LFHC), or to an entity that is controlled by, under common control with, or controls such an operator, subject to:

(i) Landlord's prior determination that such subtenant (if other than NYUHC or LFHC) is a Responsible Affiliate or Contractor; and

(ii) Landlord's prior written approval of the form and substance of each such sublease, which approval shall not be unreasonably withheld, delayed, or conditioned, and shall be given if such sublease shall be substantially similar, in all pertinent respects, to the Interim Sublease; and

(d) a sub-sublease or sub-subleases of portions of the Demised Premises by NYUHC to its faculty physicians or faculty physician groups, to New York University, or to any affiliate of New York University.

Notwithstanding the foregoing, however, the form of any such assignment or sublease shall be subject to the prior written approval of Landlord, which approval shall not be unreasonably withheld, delayed, or condition. If Landlord shall have approved the form of assignment or sublease with regard to a prior transaction, such form shall be deemed to be approved by Landlord with respect to any subsequent transaction, whether or not with the same permitted assignee or subtenant or with a different permitted assignee or subtenant. In addition, the occupancy of a portion of the Demised Premises by any affiliate of SUNY (including, without limitation, the State University of New York on behalf of the University Hospital of Brooklyn) as clinical laboratory space shall be permitted without consent.

8.05 Miscellaneous. If this Lease be assigned or otherwise transferred, or if the Demised Premises or any part thereof be sublet or occupied by anybody other than Tenant, Landlord may, after default by Tenant (other than in the case of an assignment or other transfer), collect rent from the assignee, subtenant, or occupant, and apply the net amount collected to the Additional Rent herein reserved, but no such assignment, subletting, occupancy, or collection shall be deemed a waiver of the provisions of this Article 8 or Landlord's acceptance of the assignee, subtenant, or occupant as tenant. The listing of any name other than that of Tenant, whether on the doors of the Demised Premises or otherwise, shall not operate to vest any right or interest in this Lease or in the Demised Premises, nor shall it be deemed to be the consent of Landlord to any assignment or transfer of this Lease, to any sublease of the Demised Premises or any portion thereof, or to the use or occupancy of the Demised Premises or any portion thereof by others. If Landlord shall decline to give its consent to any proposed assignment or sublease, Tenant shall indemnify, defend and hold harmless Landlord against and from any and all loss, liability, damages, costs and expenses (including reasonable counsel fees) resulting from any claims that may be made against Landlord by the proposed assignee or sublessee or by any brokers or other persons claiming a commission or similar compensation in connection with the proposed assignment or sublease.

Article 9

Compliance With Laws And Requirements Of Public Authorities

9.01 Tenant's Obligation to Comply. Tenant shall comply, at Tenant's cost and expense, with all laws and requirements of public authorities that shall, with respect to the Demised Premises or the use and occupation thereof, or the abatement of any nuisance, hereafter impose any violation, order, or duty upon Landlord or Tenant arising from:

(a) the use and occupancy of the Demised Premises for the Permitted Use;

(b) the particular manner of conduct of Tenant's or any subtenant's business or operation of its installations, equipment, or other property therein;

(c) any cause or condition created by, or at the instance of, Tenant or any subtenant; or

(d) the breach of any of Tenant's obligations under this Lease or any subtenant's obligations under its Sublease.

However, Tenant shall not be required to make any structural or other substantial change in the Demised Premises unless the requirement arises from a cause or condition referred to in subsection (b), (c), or (d) above, nor shall Tenant be obligated to make any Building Required Upgrade that Landlord is obligated to make pursuant to the provisions of Section 13.03 below or any Permitted Non-Upgrade (provided, however, that NYUHC promptly discontinues any of its operations that would be in violation of any law or requirement of public authorities due to such unmade Building Required Upgrade or Permitted Non-Upgrade). Tenant shall give prompt notice to Landlord of any notice that Tenant receives citing or alleging the violation of any law or requirement of public authority with respect to the Demised Premises.

9.02 Tenant's Right to Contest. Tenant may contest by appropriate proceedings, instituted and conducted at Tenant's cost and expense, the validity, or applicability to the Demised Premises, of any law or requirement of public authority with which Tenant otherwise would be obliged to comply pursuant to Section 9.01, and Tenant need not comply with any such law or requirement of public authority for so long as Tenant shall be engaged in such a contest relating thereto, provided that:

(a) Landlord shall not be subject to criminal penalty or to prosecution for a crime, nor shall the Demised Premises or any part thereof be subject to being condemned or vacated, by reason of such contest and/or non-compliance;

(b) Tenant shall defend, indemnify and hold Landlord harmless from and against all liability, loss, or damage that Landlord shall suffer by reason of such contest and/or non-compliance (including, without limitation, reasonable attorney's fees and other expenses reasonably incurred by Landlord); and

(c) Tenant shall prosecute such proceedings diligently and in good faith, and shall keep Landlord advised as to the status of the same.

Without limiting the application of subsection (b) above thereto, Landlord shall be deemed to be subject to prosecution for a crime, within the meaning of such subsection, if Landlord, or any officer or employee of Landlord individually, is charged with a crime of any kind or degree whatever, whether by service of a summons or otherwise, unless such charge is withdrawn before Landlord or such officer or employee (as the case may be) is required to plead or answer thereto. If necessary, Tenant may institute and conduct such proceedings in the name of, but without expense to, Landlord. Landlord shall cooperate with Tenant in all reasonable respects in connection with such proceedings, provided that Landlord shall not be obligated to incur any cost or expense with respect thereto.

9.03 Hazardous Materials. Tenant shall not knowingly cause or permit Hazardous Materials to be used, transported, stored, released, handled, produced, or installed in, on, or from the Demised

Premises or the Building. However, nothing contained in this Section 9.03 shall be construed so as to prohibit Tenant's storage, handling and use in the Demised Premises of commercially reasonable quantities of substances typically used in facilities operated for the Permitted Use, provided that such substances are used, transported, stored, released, handled and maintained within the Demised Premises, as well as disposed of, in accordance with all of the applicable legal requirements. In the event of a breach of the provisions of this Section 9.03, Landlord may, in addition to all of its rights and remedies under this Lease and pursuant to law, require Tenant to remove any such Hazardous Materials from the Demised Premises in the manner prescribed for such removal by all of the applicable legal requirements. The provisions of this Section 9.03 shall survive the expiration or sooner termination of this Lease. Tenant shall remove all Hazardous Materials from the Demised Premises that it is required to remove hereunder, and repair any damage to the Demised Premises caused thereby, not later than the Expiration Date or the earlier termination of this Lease.

Article 10 **Insurance**

10.01 Violation of Landlord's Insurance Policies, Etc. Tenant shall not:

(a) violate, or permit the violation of, any condition imposed by the standard fire insurance policy then issued for medical and/or health service buildings in the Borough of Brooklyn, City of New York; or

(b) do, or permit anything to be done, in the Demised Premises, or keep, or permit anything to be kept, therein, if the same could:

(i) subject Landlord to any liability or responsibility for personal injury, death, or property damage;

(ii) increase the fire or other casualty insurance rate on the Building or the property therein over the rate that would otherwise then be in effect (unless Tenant pays the resulting premium as provided in Section 10.09); or

(iii) result in insurance companies of good standing refusing to insure the Building or any of such property in amounts reasonably satisfactory to Landlord.

Notwithstanding the foregoing, however, Tenant shall not be responsible for any increase in the fire or other casualty insurance rate applicable to the Building if the sole cause of the same for which Tenant might otherwise be responsible shall be Tenant's mere use of the Demised Premises for the Permitted Use.

10.02 Tenant's Insurance Requirements. Tenant shall provide, or cause NYUHC and/or LFHC to provide, on or before the Commencement Date (or, if the Term shall commence on the date of this Lease, then within ten (10) days thereafter), and shall keep in force during the entire Term, the following insurance coverage, which coverage shall be effective as of the Commencement Date:

(a) a policy of commercial general liability insurance, and/or umbrella or follow-form excess liability insurance, written on an occurrence basis with respect to the Demised Premises and all operations related thereto, with coverage including, specifically, the Demised Premises and all elevators, garages, parking areas, streets, alleys and sidewalks adjoining or appurtenant to the Demised Premises, which policy shall:

(i) name Landlord and all Landlord Indemnitees as additional insureds, protecting Landlord, Landlord's Indemnitees and Tenant against any liability whatsoever occasioned by accident in or about the Demised Premises and/or any appurtenance(s) thereto;

(ii) have limits of liability of not less than Ten Million (\$10,000,000.00) Dollars of combined single limit coverage on a per occurrence basis (including property damage), with a deductible of not more than Twenty-Five Thousand (\$25,000.00) Dollars;

(iii) unless Landlord and Landlord's Indemnitees are specifically indemnified by NYUHC and LFHC in their respective subleases and/or sub-subleases, pursuant to indemnification provisions substantially the same as those contained in Section 19.02 below, contain a contractual liability coverage endorsement with respect to Tenant's indemnification obligations under this Lease; and

(iv) contain a provision or endorsement that such policy, and the coverage evidenced thereby, shall be primary with respect to any policies carried by Landlord, and that any coverage carried by Landlord shall be excess insurance;

(b) a policy of fire and extended coverage insurance, in an amount adequate to cover the cost of replacement of all personal property, fixtures, furnishing and equipment (including, without limitation, Tenant's Work) located in the Demised Premises, which policy shall contain a provision or endorsement that such policy, and the coverage evidenced thereby, shall be primary with respect to any policies carried by Landlord, and that any coverage carried by Landlord shall be excess insurance;

(c) during any period when Tenant's Changes (including, without limitation, Tenant's Work) are being undertaken, builder's risk insurance in accordance with the requirements of Section 11.04 below with regard to the work in question;

(d) automobile liability insurance, with a combined single limit of not less than One Million (\$1,000,000.00) Dollars;

(e) workers' compensation (including, without limitation, employer's liability) in accordance with the laws of the State of New York or reasonable proof of the existence of a bona-fide self-insurance program that satisfies all requirements of law for workers' compensation and employer's liability; and

(f) such insurance against such other hazards as shall, from time to time, reasonably be required by Landlord, in such amounts as Landlord shall so require, which other insurance and the amounts thereof shall be comparable to that customarily carried with respect to premises similarly situated to the Demised Premises, giving due regard to the type of improvements and their construction, use and occupancy.

The foregoing policies shall be issued by companies of recognized responsibility registered to do business in New York State and rated A- V or better (or the then equivalent of such rating) by Best's Insurance Reports or any successor publication of comparable standing. Tenant or its designee shall endeavor to notify Landlord of any cancellation or material modification of insurance policies within fifteen (15) days of notification by the insurer, pursuant to the policy language.

10.03 Blanket and Umbrella Policies. Any casualty insurance required to be carried by Tenant (or applicable subtenant) pursuant to Section 10.02 above may be carried under a blanket policy or policies covering the Demised Premises and other locations of Tenant (if any), provided that such policy or policies contain endorsements that:

- (a) with respect to comprehensive liability insurance only, name Landlord and all of Landlord's Indemnitees as additional insureds; and
- (b) specifically reference the Demised Premises.

The liability insurance required to be carried by Tenant (or applicable subtenant) pursuant thereto may be maintained in the form of primary and excess liability coverages.

10.04 Delivery of Certificates. Prior to the time that insurance is first required to be carried by Tenant pursuant to Section 10.02, Tenant (or applicable subtenant) shall deliver to Landlord certificates evidencing such insurance (including, but not limited to, a certified copy of the endorsement naming Landlord as an additional insured). Thereafter, in the event that any such insurance shall expire or be terminated during the Term, Tenant shall deliver to Landlord certificates evidencing the renewal or replacement thereof promptly after Landlord's written request therefor. Tenant shall, upon reasonable prior notice from Landlord, make available to Landlord at the Demised Premises or elsewhere in the City of New York originals of such policies for its review, from which Landlord may not make copies.

10.05 Tenant's Failure to Carry Insurance. If Tenant fails to provide and keep in force the insurance coverages required in Section 10.02, at the times and for the durations specified in this Lease, Landlord shall have the right, but not the obligation, at any time and from time to time thereafter, and without notice, to procure such insurance and/or pay the premiums therefor, in which event Tenant shall reimburse to Landlord as Additional Rent, within five (5) days after demand therefor by Landlord, all sums so paid by Landlord, together with any costs or expenses incurred by Landlord in connection therewith, without prejudice to any of the other rights and remedies available to Landlord under this Lease, at law, or in equity.

10.06 Requirement to Obtain Waivers of Subrogation. Landlord and Tenant shall each endeavor to secure an appropriate provision in, or an endorsement upon, each fire or extended coverage policy obtained by it and covering the Building, the Demised Premises and/or the personal property, fixtures and equipment located therein 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, described above shall extend to Landlord's Indemnitees and, in the case of Tenant, to all persons and entities occupying the Demised Premises in accordance with the terms of this Lease (including, without limitation, any subtenant or sub-subtenant thereof). If, and to the extent that, such waiver or permission can be obtained only upon the payment of an additional charge, then, except as provided in Section 10.07 below, the party benefiting from the waiver or permission shall pay such charge upon demand, failing which such party 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.

10.07 Inability to Obtain Waiver of Subrogation. In the event that either party shall be unable, at any time, to obtain one of the provisions referred to in Section 10.06 in any of its insurance policies, such party shall cause the other party to be named in such policy or policies as one of the assureds, but if any additional premium shall be imposed for the inclusion of such other party as such as assured, such other party shall pay such additional premium upon demand, or the party carrying such insurance shall be excused from its obligations under Section 10.06, as well as under this Section 10.07, with respect to the insurance policy or policies for which such additional premiums would be imposed. If a party is named as one of the assureds in any of the other party's policies in accordance with the foregoing, the party so named shall endorse promptly to the order of the party carrying such insurance, without recourse, any check, draft, or order for the payment of money representing the proceeds of any such policy, or any other payment growing out of, or connected with, said policy, and the party so named shall be deemed irrevocably to have waived any and all rights in and to such proceeds and payments.

10.08 Release of Claim. Subject to the provisions of Sections 10.06 and 10.07, and insofar as may be permitted by the terms of the insurance policies carried by it, each party hereby releases the other with respect to any claim (including, without limitation, a claim for negligence) that it might otherwise have against the other party for loss, damage, or destruction with respect to its property by fire or other casualty (including, without limitation, rental value or business interruption, as the case may be) occurring during the Term.

10.09 Increase in Insurance Rate. If, by reason of Tenant's failure to comply with the provisions of Section 9.01 or 10.01, the rate of fire insurance with extended coverage on of the Building or equipment, or any other property of Landlord, shall be higher than it would have been had Tenant so complied, Tenant shall reimburse Landlord, on demand, for that part of the premiums for fire insurance and extended coverage paid by Landlord because of such failure on the part of Tenant. In connection therewith, as well as for any other purpose under this Lease, a schedule or make up of rates for the Building or the Demised Premises, as the case may be, issued by the New York Fire Insurance Rating Organization or other similar body making rates for fire insurance and extended coverage for the premises concerned, shall be conclusive evidence of the facts therein stated and of the several items and charges in the fire insurance rate with extended coverage then applicable to such premises.

10.10 Landlord Not to Insure Tenant's Property or Tenant's Work. Landlord will not carry insurance of any kind on Tenant's Property or Tenant's Work, and Landlord shall not be obligated to repair any damage thereto or to replace the same.

10.11 Buildings Common Areas Insurance. Tenant agrees that all insurance required to be carried by Tenant pursuant to this Article 10 with respect to the Demised Premises, shall also cover the Building Common Areas.

Article 11
Tenant's Changes

11.01 General Requirements. Tenant may, from time to time during the Term, make such Tenant's Changes as Tenant may reasonably consider necessary for the conduct of its business in the Demised Premises, upon the following conditions:

(a) Tenant shall not then be in default of any of Tenant's obligations under this Lease after notice and the expiration of any applicable grace period;

(b) all Tenant's Changes shall be made at the sole cost and expense of Tenant;

(c) except with respect to:

(i) the installation of air-conditioning equipment serving the Demised Premises on the exterior of the Demised Premises in compliance with this Article 11 (and thereafter maintained by Tenant in accordance with Section 13.01); and/or

(ii) the installation of signage pursuant to Section 17.05 below,

the outside appearance of the Building (including, without limitation, as a result of any changes in or to windows or window treatments) shall not be affected materially, unless, and then only to the extent that, the same shall be reasonably required in order for Tenant to satisfy its obligations under Article 3 (but subject to compliance with the other provisions of this Article 11);

(d) the strength of the Building, and/or of any of its structural parts, shall not be affected;

(e) except for repair of structural issues on the roof top and/or the MEP Systems performed in accordance with this Article 11, no part of the Building outside of the Demised Premises shall be physically affected, unless, and then only to the extent that, the same shall be reasonably required in order for Tenant to satisfy its obligations under Article 3 (but subject to compliance with the other provisions of this Article 11);

(f) the proper functioning of any of the mechanical, electrical, sanitary and other service systems of the Building shall not be affected;

(g) in performing the work involved in making such changes, Tenant shall be bound by, and shall observe, all of the terms, conditions and covenants contained in this Article 11; and

(h) Tenant shall notify Landlord in writing, not less than ten (10) business days prior to proceeding with any Tenant's Changes, which notice shall contain, or shall be given to Landlord together with:

(i) a reasonably detailed narrative description of such Tenant's Changes;

(ii) the names and addresses of the contractors and/or subcontractors who will be performing such Tenant's Changes, which contractors and/or subcontractors shall be determined by Landlord to be Responsible Affiliates or Contractors prior to the commencement thereof; and;

(iii) complete plans and specifications for such Tenant's Changes, which plans and specifications shall be subject to Landlord's prior written approval (not to be unreasonably withheld or delayed), if:

(A) such Tenant's Changes, or any portion thereof, shall be structural in nature, or shall affect the structure or the service systems of the Building;

(B) the aggregate cost and expense of performing such Tenant's Changes (exclusive of the costs of painting, carpeting, wall covering and other decorative work, the cost of obtaining and installing items constituting Tenant's Property and the fees paid to any architect or engineer) shall exceed \$100,000.00; or

(C) the nature or extent of such Tenant's Changes, or any portion thereof, shall require the preparation of plans and specifications in order to comply with any applicable requirement of legal authority.

In the event that, pursuant to Section 11.01(h)(iii) above, Tenant is required to submit plans and specifications to Landlord for its prior written approval in connection with a Tenant's Change, Landlord may, as a condition of granting such approval, require Tenant to make reasonable revisions in and to such plans and specifications. Additionally, any material revision or change with respect to plans and specifications previously approved in writing by Landlord shall similarly require Landlord's prior written approval (not to be unreasonably withheld or delayed). Landlord shall charge no fees to Tenant for the review of Tenant's plans and specifications or for the supervision of the work, except that Tenant shall pay to Landlord, within ten (10) days after Landlord's demand therefor, the reasonable expense incurred by Landlord for the review of such plans and specifications by its architect, engineer and/or other consultants. Landlord's approval of Tenant's plans and specifications shall in no manner constitute, or be deemed to constitute, a judgment or acknowledgment by Landlord as to their legality or compliance with laws and/or requirements of public authorities. Notwithstanding anything to the contrary or otherwise contained in this Lease, Tenant may permit NYUHC and/or (if Tenant exercises the Expansion Option) LFHC to make Decorative Alterations in and to the Demised Premises, at any

time during the Term, without the requirement of obtaining Landlord's prior approval thereof or to comply with the provisions of this Section 11.01 other than the provisions of subparagraphs (a) and (b) hereof.

11.02 Permits; Compliance with Law; Etc. Tenant, at its expense, shall obtain all necessary governmental permits and certificates for the commencement and prosecution of Tenant's Changes (including, without limitation, any Decorative Alterations) and for final approval thereof upon completion, and shall furnish copies thereof to Landlord. Tenant's Changes (including, without limitation, Decorative Alterations) shall be performed in compliance with such permits and certificates, with all applicable laws and requirements of public authorities and with all applicable requirements of insurance bodies. Upon Tenant's request, and at Tenant's sole cost and expense, Landlord shall join in the application (or, to the extent required by the applicable governmental agency, execute the application, as sole applicant) for any licenses, permits, approvals and authorizations whenever such action is necessary (provided, however, that any required consent of Landlord with respect to the Tenant's Change(s) in question have been obtained), except that Landlord shall not be obligated to join in, and Tenant shall not be permitted to submit, any application in connection with the Certificate of Occupancy for either Building or the Demised Premises.

11.03 Manner of Performing Tenant's Changes. Tenant's Changes (including, without limitation, Decorative Alterations) shall be performed in a good and workmanlike manner, using first-class materials and equipment and in such a manner as to not unreasonably interfere with Landlord in the maintenance of the remainder of the Building. All electrical and plumbing work in connection with Tenant's Changes shall be performed by contractors or subcontractors licensed therefor by all governmental agencies having or asserting jurisdiction. Promptly after Landlord's request, Tenant shall furnish to Landlord a complete set of "as built" plans and specifications, together with copies of all governmental sign-offs required in connection with such work, except for Tenant's Changes that do not require a building permit and for which "as built" plans are not prepared by Tenant. The aforesaid obligation to deliver "as built" plans and specifications shall survive the expiration or termination of this Lease.

11.04 Insurance. Throughout the performance of Tenant's Changes, Tenant, at its expense, shall maintain, or cause to be maintained, builder's risk insurance covering the Demised Premises (and the Building Common Areas, if applicable), and include property of every kind and description intended to become a permanent part of the Demised Premises (and the Building Common Areas, if applicable). Such insurance shall:

- (a) name Landlord and Landlord's Indemnitees as additional insureds;
- (b) have such limits as Landlord may reasonably prescribe; be written by insurers that are registered to do business in New York State and are reasonably satisfactory to Landlord;
- (c) be written on an "All Risk" form, and provide coverage for direct physical loss and damage (including, without limitation, flood and earthquake, off-site storage, transit, soft costs, delay in completion (including, but not limited to, delayed start-up and extra expense), testing, machinery breakdown, equipment and indoor/outdoor installed fixtures and structures, materials and supplies);

(d) cover the total value of Tenant's Changes, as well as the value of any equipment, supplies and/or material for such operations that may be in storage (on or off site) or in transit;

(e) cover the cost of removing debris (including, without limitation, demolition) as may be legally necessary by operation of any law, ordinance, or regulation, and the loss or damage to any owned, borrowed, leased, or rented capital equipment, tools (including, without limitation, tools of Tenant's agents and employees) and property of Landlord held in their care, custody and/or control;

(f) name Tenant, as named insured, and Landlord and Tenant as loss payees, as their interests may appear; and

(g) specify that, in the event a loss occurs at an occupied facility, occupancy shall be permitted without the consent of the insurance company.

Tenant shall furnish Landlord with certificates evidencing that such insurance is in effect at or before the commencement of any Tenant's Changes and, on request, at reasonable intervals thereafter during the performance of the work. In the event of any loss to any Tenant's Changes, Tenant shall provide the insurance company that issued such Builder's Risk insurance with prompt, complete and timely notice, and contemporaneously provide Landlord with a copy of such notice. Tenant shall thereafter take all appropriate actions in a timely manner to adjust such claim on terms that provide the maximum possible payment for the loss (it being hereby acknowledged that insurance proceeds payable with respect to a property loss on account of the Demised Premises shall be used for the cost of repairs or restoration in accordance with the provisions of Article 20 below. Tenant shall also provide Landlord with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims.

11.05 Violations and Liens. Tenant shall procure, at its expense and with diligence and dispatch, the cancellation or discharge of all notices of violation arising from, or otherwise connected with, Tenant's Changes (including, without limitation, any Decorative Alterations), issued by the Department of Buildings or by any other public or quasi-public authority having or asserting jurisdiction. Tenant shall defend, indemnify and save harmless Landlord from and against any and all mechanic's and other liens filed in connection with Tenant's Changes (including, without limitation, any Decorative Alterations), including, without limitation, the liens of any security interest in, conditional sales of, or chattel mortgages upon any materials, fixtures, or articles so installed in, and constituting part of, the Demised Premises, except to the extent that the same remain Tenant's property as permitted under Section 12.01, and against all costs, expense and liabilities incurred in connection with any such lien, security interest, conditional sale, or chattel mortgage or any action or proceeding brought thereon. Tenant shall procure, at its expense, the satisfaction or discharge of all such liens within thirty (30) days after Landlord makes written demand therefor. However, nothing herein contained shall prevent Tenant from contesting, in good faith and at its own expense, any such notice of violation, provided that Tenant shall comply with the provisions of Section 9.02.

Article 12
Tenant's Property

12.01 Fixtures Become Landlord's Property. All fixtures, equipment, improvements and appurtenances attached to, or built into, the Demised Premises at any time during the Term (including, without limitation, at the commencement thereof), whether or not by or at the expense of Tenant, shall be and remain a part of the Demised Premises, shall be deemed the property of Landlord and shall not be removed by Tenant, except as expressly provided in this Article 12. Notwithstanding the foregoing, any equipment, fixtures or other installations so installed by Tenant that are not in the nature of building systems (such as CT scanners and other medical equipment, hoods, and the like), may, at Tenant's option, remain the property of Tenant and be removed from the Demised Premises in accordance with the applicable provisions of this Lease (including, without limitation, Section 12.02 below). The rights of Tenant under the preceding sentence shall run to the benefit of NYUHC and/or LFHC, as subtenants of any or all of the Demised Premises.

12.02 Right to Remove Tenant's Property. All of Tenant's Property shall be and remain the property of Tenant, and may be removed by Tenant at any time during the Term. Tenant shall repair, or pay the cost of repairing, any damage to the Demised Premises and/or to the Building resulting from such removal. The rights of Tenant under the preceding sentence shall run to the benefit of NYUHC and/or LFHC, as subtenants of any or all of the Demised Premises.

12.03 Obligation to Remove Tenant's Property. Tenant shall, on or before the Expiration Date, or as promptly as practicable after any earlier termination of this Lease (in no event more than thirty (30) days after the applicable Closure Date):

- (a) remove from the Demised Premises, at Tenant's cost and expense, all of Tenant's Property, except such items thereof as Tenant (i) has determined to abandon of, which Tenant shall give written notice to Landlord, or (ii) shall have expressly agreed in writing with Landlord are to remain and become the property of Landlord; and
- (b) fully repair any damage to the Demised Premises and/or the Building resulting from such removal.

Any items of Tenant's Property that Tenant shall be obligated to remove from the Demised Premises pursuant to Section 12.03(a) above and that shall remain in the Demised Premises after the Expiration Date, or, if applicable under this Section 12.03, after a period of thirty (30) days following the Closure Date, shall be deemed conclusively to have been abandoned by Tenant. Any such items may be retained by Landlord as its property, or may be disposed of by Landlord in such manner as Landlord shall determine and at Tenant's expense, in either case without accountability or compensation to Tenant in any manner or form. Tenant's obligations under this Section 12.03 shall survive the Expiration Date or sooner termination of this Lease. Notwithstanding the foregoing, or anything else to the contrary in this Lease, Tenant shall have the right to acquire, or to acquire the right to use, movable personal property or medical equipment (such as a CT scanner) pursuant to equipment leases, conditional sales agreements, and similar financing transactions, and may grant personal property security interests therein as part of such transactions.

12.04 Included Medical Equipment. Landlord shall not remove the Personal Property (as defined in the PSA) that exists in the Demised Premises on the date hereof, from the Demised Premises, and Tenant shall have full right to deal with or dispose of any such Personal Property left in the Demised Premises on the Commencement Date without charge or consideration. Landlord shall not be responsible for, or required to deliver on the Commencement Date, any of such Personal Property that is stolen or otherwise removed from the Demised Premises without Landlord's authorization prior to the Commencement Date. Further, Landlord makes no representation or warranty as to the condition or utility of such Personal Property.

Article 13 **Repairs And Maintenance**

13.01 Tenant's Obligations. Tenant shall take good care of the Demised Premises. Tenant shall promptly make, at its expense, all repairs in and about the Demised Premises and the Building (whether ordinary or extraordinary, interior or exterior, or structural or otherwise) that are required by reason of:

- (a) the performance or existence of Tenant's Work or Tenant's Changes;
- (b) the installation, use, or operation of Tenant's Property in the Demised Premises;
- (c) the moving of Tenant's Property in or out of the Building; or
- (d) any wrongful act or negligence of Tenant or any of its employees, agents, or contractors, provided, however, that nothing in this subsection (d) shall derogate from the release of claims in Section 10.08.

Tenant shall, at its expense, replace all scratched, damaged, or broken doors or other glass in or about the Demised Premises, as well as repair, maintain and replace all wall and floor coverings and all lighting fixtures therein. Except in emergency situations, all repairs, maintenance and replacements to performed or made by Tenant as provided herein shall be performed or made by contractors and/or subcontractors that are determined by Landlord to be Responsible Affiliates or Contractors prior to the commencement of the same. Notwithstanding anything to the contrary set forth in this Section 13.01 or otherwise in this Lease, in no event shall Tenant be required to make any Building Required Upgrade or any Permitted Non-Upgrades in the Building. Landlord shall permit each of Tenant and NYUHC to have access to all areas of the Building necessary for Tenant and NYUHC to perform, at its sole cost and expense, any obligations that Tenant or NYUHC may have under Article 13 of the Interim Sublease, subject to their respective compliance with the provisions of Articles 11 and 13 of the Interim Sublease.

13.02 Landlord's Obligations. The Building shall be kept, maintained, repaired and restored as follows:

- (a) Except as specifically provided in Section 13.02(b) or 13.03 below, during the period between the Commencement Date and the Building Operations Takeover Date, Landlord shall, at Tenant's sole cost and expense, keep and maintain the HVAC Systems, the MEP Systems, the Life Safety Systems and the Medical Systems (collectively, the "***Building Systems***"), as well as the Building Common Areas, in working order, condition and repair, to the extent that they service the Demised Premises. Except as may

be otherwise specifically set forth in this Lease, Landlord shall not be obligated to perform any other maintenance, repair, or replacement with respect to the Demised Premises or the Building, nor shall Landlord be obligated to perform any Permitted Non-Upgrades in the Building. Should any maintenance, repair, or replacement be necessary, desirable, or required in and to the Demised Premises and/or the Building, other than that required to be performed by Tenant pursuant to Section 13.01 above or Landlord pursuant to this Section 13.02, or in any other provision of this Lease, Tenant may, but shall not be obligated to, perform the same at Tenant's sole cost and expense in accordance with the provisions of Section 13.01 above. In addition to the foregoing, Landlord shall, at Tenant's sole cost and expense, perform such other necessary and appropriate maintenance, repairs, replacements and operational services with respect to the Building and the sidewalks adjacent thereto, as set forth in Section 13.02 of the Interim Sublease and as requested by Tenant in writing, from time to time. Further, Landlord shall permit Tenant access to all areas of the Building and to all Building Systems (whether on or off-site) as necessary for Tenant to perform, at Tenant's sole cost and expense and subject to Tenant's compliance with the provisions of this Lease in connection therewith (including, without limitation, Article 11 and Section 13.01 hereof), any obligations it may have under any sublease approved hereunder (including, without limitation, the Interim Sublease). In connection with the performance of Landlord's obligations under this Section 13.02(a), Tenant may reasonably determine whether a replacement, a capital repair, or an ordinary repair is necessary to be made hereunder at Tenant's sole cost and expense. All amounts payable by Tenant pursuant to this Section 13.02(a) shall be reimbursed by Tenant to Landlord within thirty (30) days after Tenant's receipt of a reasonably detailed invoice therefor (which invoices may be given by Landlord from time to time during the course of any work performed by Landlord pursuant hereto), each of which invoices shall be accompanied by reasonably detailed back-up substantiating the amount to be paid by Tenant pursuant thereto.

(b) From and after 11:59 PM on December 31, 2014, or earlier if Tenant shall so elect in a written notice given by Tenant to Landlord specifying a date for transfer of such responsibilities (the "***Building Operations Takeover Date***"), which notice shall be given at least thirty (30) days' prior to the Building Operations Takeover Date specified therein, Tenant shall perform, at its sole cost and expense, all maintenance, repairs, replacements and operational services theretofore required to be performed by Landlord pursuant to Section 13.02(a) above and Sections 15.01, 16.04 and 16.05 below, in lieu of Landlord performing the same, ***provided, however***, that:

(i) in connection with such maintenance, repairs, replacements and operational services, Tenant shall comply with the requirements of ***Exhibit D*** to this Lease (Standard Contract Clauses and Affirmative Action Clauses), including, without limitation, the requirement to use Tenant's good faith efforts to achieve a goal of twenty (20%) percent participation, collectively, for Certified Minority-Owned Business Enterprises and Certified Women-Owned Business Enterprises;

(ii) neither Tenant nor any contractor thereof shall discriminate against any employee or applicant for employment, shall fail to undertake

or continue existing programs of affirmative action to ensure that Minority Group Members and women are afforded equal employment opportunities without discrimination and/or shall fail to make and document its conscientious and active efforts to employ and utilize Minority Group Members and women in connection with the performance Tenant's obligations under this Section 13.02(b);

(iii) Tenant and any such contractor shall state in all solicitations or advertisements for employees in connection with the performance Tenant's obligations under this Section 13.02(b) that, in the performance of such obligations, all qualified applicants will be afforded equal employment opportunities without discrimination;

(iv) at Landlord's request, Tenant or any such contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding to furnish a written statement that such employment agency, labor union, or representative will not discriminate, and that such union or representative will affirmatively cooperate in the implementation of Tenant's obligations herein; and

(v) Landlord may require that Tenant and/or any such contractor submit compliance reports pursuant to the regulations relating to their operations and implementation of their affirmative action or equal employment opportunity program in effect as of the Building Operations Takeover Date.

Landlord shall cooperate with Tenant in all reasonable respects in connection with Tenant's efforts to secure any governmental approvals and/or permits required to allow Tenant to perform such obligations (including, without limitation, promptly submitting such correct and appropriate applications and documentation reasonably required by any governmental agency to be submitted by Landlord in connection therewith), provided that Landlord shall not be obligated to incur any out-of-pocket cost or expense with respect thereto. From and after the Building Operations Takeover Date, Landlord shall permit Tenant reasonable access to all areas of the Building and to all Building Systems (whether on or off-site) as necessary for Tenant to perform such maintenance, repairs, replacements and operational services, all to be performed at Tenant's sole cost and expense, and in compliance with the provisions of this Lease in connection therewith (including, without limitation, Article 11 and Section 13.01 hereof). Except in emergency situations, all repairs, maintenance and replacements to be performed or made by Tenant as provided herein shall be performed or made by contractors and/or subcontractors that are determined by Landlord to be Responsible Affiliates or Contractors prior to the commencement of the same, each of which contractors and/or subcontractors shall agree in writing to observe and perform the requirements set forth in subsections (i) through (v) above.

13.03 Building Required Upgrades. If a Building Required Upgrade shall be required to be made in or to the Building, the following provisions, and not Section 13.02, shall apply thereto:

(a) Tenant shall require that NYUHC comply with its obligations under Section 13.03 of the Interim Sublease to seek from the applicable government agency, diligently and in good faith, either a waiver of the Building Required Upgrade or a modification thereof so as to reduce the cost of the Building Required Upgrade as much as reasonably possible. However, neither Tenant nor NYUHC shall be obligated to:

(i) agree to or incur any material cost in connection with such waiver or modification; or

(ii) pursue such waiver or modification if NYUHC determines, in its good faith professional judgment, that such efforts would:

(A) put NYUHC at risk of not otherwise satisfying its obligations under Section 3.02 or 3.04 of the Interim Sublease;

(B) put NYUHC at risk of civil or criminal liability; or

(C) otherwise jeopardize NYUHC's operating certificate to operate an Article 28 facility.

Landlord, in its sole discretion and at any time, may elect by notice to Tenant to cause NYUHC to immediately cease such efforts to obtain a waiver or modification, Tenant shall request that NYUHC keep Landlord promptly apprised of NYUHC's efforts in seeking such waiver or modification.

(b) Following NYUHC's diligent and good faith efforts as aforesaid, as such efforts may be terminated by NYUHC or Landlord pursuant hereto, if the applicable governmental or accrediting authority refuses to waive the Building Required Upgrade, Landlord shall, subject to the provisions of Section 13.03(d) below, perform the Building Required Upgrade (as the same may be modified by the applicable governmental or accrediting authority, either as a result of NYUHC's efforts pursuant to Section 13.03(a) above or otherwise) as expeditiously as practicable and at Landlord's sole cost and expense (except for Tenant's BRU Contribution, which shall be paid by Tenant as hereinafter provided).

(c) If, as a result of any Building Required Upgrade performed by Landlord pursuant to this Section 13.03, a portion of the Building, or a component or components of any Building System, that is not then in working order, condition and repair will be replaced or otherwise placed in working order, condition and repair, Tenant shall reimburse Landlord, within thirty (30) days after receipt of a reasonably detailed invoice or invoices therefor (which invoices may be sent to Tenant from time to time during the progress of the work), for the portion of the cost and expense incurred by Landlord in performing such Building Required Upgrade equal to Landlord's reasonable estimate of

the costs and expenses that would have been incurred by Tenant under Section 13.02 above, or pursuant to any other applicable provision of this Lease, to replace or otherwise place such portion of the Building, or Building System component or components, in working order, condition and repair, but for the performance of such Building Required Upgrade (“*Tenant’s BRU Contribution*”).¹ Any invoice given by Landlord to Tenant pursuant to this Section 13.03(c) shall be accompanied by reasonably detailed back-up substantiating the amount to be paid by Tenant pursuant thereto.

(d) Notwithstanding anything to the contrary provided in this Section 13.03, Landlord shall have no obligation to perform or pay for any Building Required Upgrade if the aggregate cost of such Building Required Upgrade, in addition to all Building Required Upgrades previously installed during the Term (excluding costs then or theretofore reimbursable to Landlord pursuant to Section 13.02(a) above and, without duplication, costs then or theretofore reimbursable to Landlord as Tenant’s BRU Contributions), would exceed Five Million (\$5,000,000.00) Dollars (the “*Building Required Upgrade Cap*”). With respect thereto:

(i) If Landlord shall reasonably determine prior to the commencement of any Building Required Upgrade that the cost and expense of performing the same, net of any Tenant’s BRU Contribution that would be payable with regard thereto (such net amount, the “*Net BRU Cost*”), will exceed the amount of the Building Required Upgrade Cap existing prior to the performance of such Building Required Upgrade (the “*Available BRU Cap Amount*”), Landlord may give written notice thereof to both Tenant and NYUHC, whereupon Landlord shall not be required to perform such Building Required Upgrade unless, within thirty (30) days after Landlord gives such notice, Tenant or NYUHC shall agree, in a writing reasonably acceptable to Landlord, to reimburse Landlord, as an additional Tenant’s BRU Contribution, for the amount of the Net BRU Cost that is in excess of the Available BRU Cap Amount. Rather than so agreeing, Tenant shall have the right to notify Landlord, during such thirty (30) day period, that Tenant shall perform such Building Required Upgrade, in which event Landlord shall reimburse Tenant for an amount equal to the lesser of the Net BRU Cost or the Available BRU Cap Amount within thirty (30) days after Landlord’s receipt of a reasonably detailed invoice therefor (which invoices may be given by Tenant from time to time during the course of any work performed by Tenant pursuant

¹For purposes of example of the operation of this provision, if the applicable Building Required Upgrade is the replacement of a malfunctioning 10 ton air conditioning unit with a working 10 ton air conditioning unit, such work shall be performed by Landlord, and Tenant’s BRU Contribution with regard thereto shall be the entire cost and expense thereof. If the applicable Building Required Upgrade is the installation of an additional, supplemental 10 ton air conditioning unit, such work shall be performed and paid for in its entirety by Landlord, subject to the provisions of Section 13.03(d) of this Lease. If the applicable Building Required Upgrade is the replacement of a malfunctioning 10 ton air conditioning unit with a working 15 ton air conditioning unit, then such work shall be performed by Landlord subject to the provisions of Section 13.03(d), but Tenant shall reimburse Landlord for, and bear as Tenant’s BRU Contribution, the portion of the cost thereof representing the reasonable costs that would have been incurred to replace or otherwise place such 10 to air conditioning unit in working order, condition and repair.

hereto), each of which invoices shall be accompanied by reasonably detailed back-up substantiating the amount to be paid by Landlord pursuant thereto.

(ii) If, after the commencement of any Building Required Upgrade, the cost and expense thereof shall be increased by reasonably unanticipated field conditions so that the Net BRU cost will exceed the Available BRU Cap Amount, Landlord shall so notify Tenant and NYUHC promptly after discovering the same. In such event, Landlord may, if and to the extent practicable and in compliance with applicable Law, but only if neither Tenant nor NYUHC shall agree within two (2) business days after Landlord's written request to pay the excess amount necessary to complete the Building Required Upgrade, cease its performance of the Building Required Upgrade immediately or as soon as practicable thereafter. Any cost or expense incurred by Landlord in performing such Building Required Upgrade prior to the day upon which Landlord may practicably and lawfully cease such performance that is in excess of the then Available BRU Cap Amount shall be Landlord's sole expense. Thereafter, the provisions of Section 13.03(d)(i) above shall apply to such Building Required Upgrade, with regard to Landlord's obligation to resume performing the same, as if such excess cost and expense were known prior to the original commencement of such work.

(e) Except as expressly provided in Section 13.02(a) or in this Section 13.03, Landlord shall have no obligation to make any replacements, additions, modifications, or changes to any portion of the Building by reason of any Laws (including, without limitation, any Plant Requirements).

13.04 Landlord Not Liable for Interference. Except as expressly otherwise provided in this Lease, Landlord shall have no liability to Tenant by reason of any inconvenience, annoyance, interruption, or injury to business arising from Landlord's making any repairs or changes that Landlord elects, or is required pursuant to any provision of this Lease or by law, to make in or to any portion of the Building or the Demised Premises, or in or to the fixtures, equipment or appurtenances of the Building or the Demised Premises. However, with respect to any such repairs or changes, Landlord shall:

(a) at all times maintain a reasonable means of ingress to, and egress from, the Demised Premises; and

(b) perform such repairs or changes with reasonable diligence and in such a manner as will not unreasonably interfere with Tenant's use of the Demised Premises for the Permitted Use.

Article 14
Electricity

14.01 Use of Facilities. The Building is equipped with feeders, risers and other wiring designed to furnish electric service to the Demised Premises. Upon the written request of Tenant, additional risers, feeders and/or other equipment shall be installed by Landlord, at the cost and expense of Tenant, if, in Landlord's reasonable judgment, the same will not:

- (a) cause permanent damage or injury to the Building (including, without limitation, the Demised Premises);
- (b) cause or create a dangerous or hazardous condition; or
- (c) entail excessive or unreasonable alterations, repairs, or expense.

Rigid conduit only will be allowed. At all times, Tenant's use of electric current shall never exceed the capacity of the then existing feeders to the Building, or its risers or other wiring installations. Without intention to limit the generality of the foregoing in any respect, in no event shall Tenant use or install any fixtures, equipment, or machines if the use of the same, in conjunction with the use of other fixtures, equipment and machines in the Demised Premises, would result in an overload of the electrical circuits directly or indirectly servicing the Demised Premises.

14.02 Bulbs, Ballasts, Etc. Tenant shall, at Tenant's sole cost and expense, furnish, install and replace, as required, all lighting tubes, lamps, bulbs and ballasts required in the Demised Premises. All lighting tubes, lamps, bulbs and ballasts so installed shall become Landlord's property upon the expiration or sooner termination of this Lease.

14.03 Payment for Electric Service. Subject to the provisions of Section 14.01 above and Sections 14.04 and 16.06 below, Landlord shall arrange to be furnished, at Tenant's sole cost and expense and utilizing the existing feeders, risers and other wiring of the Building, electric service for Tenant's use in the Demised Premises. The parties acknowledge and agree that, prior to the Commencement Date, Landlord will discontinue all use and operations in the Building, and that, at all times during the Term, the Demised Premises will be the only portion of the Building that is used and/or operated for the delivery of medical services or otherwise. As a result, Tenant shall pay and discharge all costs and expenses for electricity used or consumed in the Building (including, without limitation, any applicable demand factors and any tax imposed upon Landlord by any municipal, state, or federal agency or subdivision with respect to the purchase, sale, or resale of electrical energy supplied to Tenant hereunder). Landlord shall, from time to time (but not more often than monthly), furnish Tenant with copies of invoices received by Landlord for electricity used or consumed in the Building (including, without limitation all electricity used or consumed in order to operate the HVAC Systems and the Life Safety Systems). Within thirty (30) days after receipt of each such invoice, Tenant shall pay the amount of the charges set forth thereon to Landlord as Additional Rent.

14.04 Disclaimer of Landlord's Liability. Landlord shall not be liable or responsible to Tenant, in any manner or respect, for any loss, damage, or expense that Tenant may sustain or incur if either the quantity or character of electric service is changed or is no longer available or suitable for Tenant's requirements.

Article 15
Heat, Ventilating And Air Conditioning

15.01 Operation of the HVAC Systems. Subject to the provisions of Section 16.06 below, as well as Section 13.02(b) above from and after the Building Operations Takeover Date, Landlord, at Tenant's sole cost and expense, shall furnish heat, ventilation and air conditioning in the Demised Premises throughout the Term. Air conditioning, heating and ventilation shall be provided during those periods of the year as may be required for comfortable occupancy of the Demised Premises. Except during any period from and after the Building Operations Takeover Date, Landlord shall, from time to time (but not more often than monthly), furnish Tenant with reasonably detailed invoices for the costs and expenses of furnishing heat, ventilation and air conditioning to the Building (including, without limitation, the costs and expenses of maintaining, repairing and/or replacing any portion or portions of the HVAC Systems and the cost and expense of all electricity and natural gas consumed in connection with operating such systems). Within thirty (30) days after receipt of each such invoice, Tenant shall pay the amount of the charges (without duplication of charges under any other Article of this Lease) set forth thereon to Landlord as Additional Rent.

Article 16
Other Services

16.01 Hot and Cold Water. Subject to the provisions of Section 16.06 below, Landlord, at Tenant's sole cost and expense, shall furnish hot and cold water to the Demised Premises through the existing wet-columns for all purposes necessary for Tenant's use and occupancy of the Demised Premises for the Permitted Use. Landlord shall, from time to time (but not more often than monthly), furnish Tenant with reasonably detailed invoices for the costs and expenses of furnishing water to the Building (including, without limitation, all associated sewer rents and charges and all sales and other taxes thereon). Within thirty (30) days after receipt of each such invoice, Tenant shall pay the amount of the charges set forth thereon to Landlord as Additional Rent.

16.02 Telephone, Cable Television and Internet Services. Tenant may, at its election, contract with any existing communications provider servicing the Demised Premises, or any other communications provider selected by Tenant, and use any existing point of entry currently made available to such provider. If Tenant, at any time, requires a new or additional point of entry, Landlord will not unreasonably withhold its consent thereto, including the location thereof, provided that Tenant performs and pays for the work required to install the additional point of entry to Tenant or Tenant's communications provider.

16.03 Garbage and Refuse. Tenant shall, at its own cost and expense, comply with all laws, rules and regulations regarding recycling of materials, and shall arrange for the removal of its garbage and refuse from the Demised Premises at Tenant's sole cost and expense. Tenant's storage and removal of its garbage and refuse shall be subject to such reasonable rules and regulations as, in the reasonable judgment of Landlord, are necessary for the proper maintenance of the Building. Any and all hazardous medical waste materials and other materials, and other matter commonly used in the health care industry, shall be generated, dealt with, handled, stored, and disposed of by Tenant, at Tenant's sole cost and expense, in conformity with federal, state, and local laws and regulations and in conformity with generally accepted health and safety standards.

16.04 Fire and Life Safety Systems. Subject to the provisions of Section 16.06 below, Landlord shall permit Tenant to connect, or continue to connect (as the case may be), the Demised Premises to the Life Safety Systems (if, and to the extent, any such systems shall exist), at Tenant's sole cost and expense (without duplication of charges under any other Article of this Lease). Subject to the provisions of Section 13.02(b) above from and after the Building Operations Takeover Date, Landlord shall, also at Tenant's sole cost and expense (without duplication of charges under any other Article of this Lease), continue to operate such systems to the fullest extent of their designs and design capacities throughout the Term. Upon the written request of Tenant, additions to, or modifications of, the Life Safety Systems shall be installed by Landlord, at the cost and expense of Tenant, if, in Landlord's reasonable judgment, the same:

- (a) are necessary in order to supply required fire and life safety services to the Demised Premises; and
- (b) will not:
 - (i) cause permanent damage or injury to the Building (including, without limitation, the Demised Premises);
 - (ii) cause or create a dangerous or hazardous condition; or
 - (iii) entail excessive or unreasonable alterations, repairs, or expense.

16.05 Medical Systems. Subject to the provisions of Section 16.06 below, as well as Section 13.02(b) above from and after the Building Operations Takeover Date, Landlord, at Tenant's sole cost and expense, shall operate the Medical Systems, and provide medical gas to the Demised Premises through the Medical Systems, in accordance with the Plant Requirements (but at least the current standards of operations), which includes the requirement to monitor central medical gas alarm panels on a 24/7 basis. Except during any period from and after the Building Operations Takeover Date, Landlord shall, from time to time (but not more often than monthly), furnish Tenant with reasonably detailed invoices for the costs and expenses of operating the Medical Systems (including, without limitation, the costs and expenses of all electricity and medical gases consumed in connection with operating such systems). Within thirty (30) days after receipt of each such invoice, Tenant shall pay the amount of the charges (without duplication of charges under any other Article of this Lease) set forth thereon to Landlord as Additional Rent.

16.06 Service Stoppages. Landlord reserves the right, without any liability to Tenant except as hereinafter provided, to stop service of any of the heating, ventilating, air conditioning, electric, sanitary, elevator, fire, life safety, or other building systems serving the Demised Premises, or the rendition of any of the other services required of Landlord under this Lease, whenever and for so long as may be reasonably necessary by reason of accidents, emergencies, strikes, or the making of repairs or changes that Landlord is required to make pursuant to this Lease or by law, or in good faith deems necessary, by reason of difficulty in securing proper supplies of natural gas, steam, water, electricity, labor or supplies, or by reason of any other cause beyond Landlord's reasonable control. Landlord shall endeavor to minimize inconvenience to Tenant in connection with such stoppages. Landlord shall give Tenant and NYUHC at least one (1) day's prior notice of scheduled stoppages or material interruptions of any

Building Services, and as much advance notice as practicable of emergency stoppages or interruptions of any Building Services in emergency circumstances.

Article 17

Landlord's Access, Changes In Facilities

17.01 Certain Areas Reserved to Landlord. The use and occupancy of all portions of the Building, except the inside surfaces of all walls, windows and doors bounding the Demised Premises, the upper surface of the finish floors located in the same, the lower surface of the finish ceilings located in the same and the space located between the foregoing, are reserved to Landlord. Such reservation includes, without limitation, all exterior walls, core corridor walls, core corridor doors and core corridor entrances of the Building, as well as any space in, or adjacent to, the Demised Premises (including, without limitation, spaces located within the demising walls, within the bearing columns, below the finish floors and above the finish ceilings of the same) used, or suitable for use, for shafts, stacks, pipes, chases, wires, conduits, fan rooms, ducts, electric or other utilities, sinks, or other fixtures or facilities servicing the Building (regardless of whether or not the Demised Premises are also serviced by the same). Without intention to limit the generality of the foregoing in any respect, Tenant shall permit Landlord to install such fixtures and/or facilities in any such reserved area(s), as well as to operate, use, maintain, repair, restore and/or replace all such fixtures and facilities now or hereafter located in any of the same.

17.02 Landlord's Right of Entry. Subject to the provisions of Section 17.03 below, Landlord reserves the rights, for itself as well as for its agents, employees, contractors and other designees, to enter and/or pass through the Demised Premises or any part thereof, at any time, from time to time and without liability to Tenant, to:

- (a) examine the Demised Premises or any portion thereof;
- (b) maintain, repair, restore, replace, alter and/or change the Demised Premises and/or its facilities as is provided for by this Lease, as may be mutually agreed upon by the parties, as may be required of Landlord in order to comply with any requirement of legal authorities, or as may be necessary or desirable in connection with the maintenance, repair and/or restoration of the Building (including, without limitation, the Demised Premises) and/or its fixtures or facilities; and/or
- (c) exercise the rights reserved and/or granted to Landlord pursuant to Section 17.01 above.

Landlord further reserves the right to take such materials into and upon the Demised Premises that may be reasonably required in connection with the purpose(s) for such entry or passage, as aforesaid. However, the foregoing reservation of rights to enter upon the Demised Premises and/or to perform work in, to, or about the same shall not be deemed to:

- (i) impose any obligation on Landlord to do so over and above such obligations as are specifically imposed upon Landlord pursuant to any other provision of this Lease;

(ii) render Landlord liable to Tenant, or to any third party, for the failure to do so (except to the extent of any such liability to Tenant specifically imposed upon Landlord pursuant to any other provision of this Lease);

(iii) relieve Tenant from any obligation to perform such work that, in the first instance, is the obligation of Tenant to perform pursuant to this Lease; or

(iv) relieve Tenant from any obligation to indemnify Landlord as provided elsewhere in this Lease.

17.03 Conditions Relating to Landlord's Right of Entry. Except to the extent otherwise required by emergency circumstances affecting the Building or any portion thereof (including, without limitation, the Demised Premises), Landlord shall exercise its right of entry pursuant to Section 17.02 above, or pursuant to any other applicable provisions of this Lease, only upon reasonable advance notice to Tenant and only during reasonable hours of business days. In emergency circumstances, Landlord shall have the right to enter on and/or pass through the Demised Premises, or any part thereof, at such times as such entry shall be required and without prior notice to Tenant. However, a policeman or fireman shall accompany Landlord's entry into any security area whenever possible, and Landlord shall give Tenant prompt notice after such entry. In recognition of the nature of the services to be provided by NYUHC and/or LFHC at the Demised Premises and the laws governing their operation therein (including, without limitation, the Health Insurance Portability and Accountability Act (HIPAA) of 1996), when exercising its right of entry pursuant to Section 17.02 above, or pursuant to any other applicable provisions of this Lease, Landlord shall use its good faith and commercially reasonable efforts to perform any work therein in a timely manner, comply with NYUHC's and/or LFHC's reasonable directions so as to cause the least practical interference with Tenant's use and occupancy of the Demised Premises and avoid contact with NYUHC's and/or LFHC's confidential patient records or other information. To the greatest degree practicable (taking into consideration, among all other relevant factors, the cost factors relating to the same), any installation, alteration, change, or other work made or performed by Landlord in or to the Demised Premises shall be designed so as to not unreasonably interfere with Tenant's use and occupancy of the same. Except in circumstances of an emergency, Landlord shall exercise its right of entry pursuant to Section 17.02 above in a manner that will not materially and unreasonably interfere with the provision of medical services conducted in the Demised Premises or result in Tenant's or any subtenant's loss of any license.

17.04 Changes in Layout and Facilities. Landlord reserves the right, upon reasonable prior notice to Tenant and without incurring any liability to Tenant therefor (including, without limitation, without constituting an actual or constructive eviction), to make such changes in or to the Building and/or the fixtures and equipment thereof, as well as in or to the size, composition, number, arrangement, or location of the public entrances, doors, doorways, halls, passages, elevators, escalators, stairways and other public portions of the Building, as Landlord may deem reasonably necessary or desirable, provided that such changes do not unreasonably interfere with access to, or egress from, the Demised Premises by Tenant or members of the public or unreasonably diminish elevator or other services theretofore available to Tenant or members of the public.

17.05 Signage. Subject to all applicable requirements of law (including, without limitation, any applicable building codes and zoning requirements), Tenant shall have the right to install such signage onto and in the Demised Premises and the Building as NYUHC and/or LFHC deem appropriate for their operations.

17.06 Use of Building Common Areas. Subject in all respects to the provisions of Section 17.04 above, but notwithstanding anything to the contrary provided in Section 17.01 above or elsewhere in this Lease, Tenant, its permitted subtenant(s) and their respective agents, employees, invitees, business guests and contractors shall have the non-exclusive right to use, together with Landlord, its affiliates and their respective agents, employees, invitees, the Building Common Areas that are necessary and/or appropriate to be used thereby for purposes of access to, and egress from, the various portions of the Demised Premises and the loading dock, solely for purposes of gaining such access and egress (both from and to the outside of the Building and between such portions of the Demised Premises and the loading dock), and using the loading dock for deliveries and pick-ups, and to other areas of the Building where access is necessary for NYUHC's operation of an emergency department in the Demised Premises and performance of its obligations under the Interim Sublease. In addition, Tenant, at its sole cost and expense, shall have the right, subject to all applicable requirements of public authorities and requirements of insurance bodies, to install and maintain, on the loading dock, air conditioning equipment as part of Tenant's system to service the Demised Premises (and to connect such equipment to the Demised Premises), provided that such installation and maintenance thereof is subject to the provisions of Article 11 and Section 13.01. The operation, maintenance, repair and/or restoration of the Building Common Areas shall, at all times, be governed by, and be upon and subject to, all of the applicable terms, covenants and conditions of this Lease (including, with regard to Landlord's obligations with regard thereto, the provisions of Section 13.02(a), as such provisions apply to portions of the Building and the facilities thereof other than the HVAC Systems, the MEP Systems and the Life Safety Systems). For avoidance of doubt, the Building's ambulance bays and ancillary facilities are parts of the Demised Premises, rather than the Building Common Areas.

Article 18

Notice of Accidents

18.01 Notice of Accidents. Tenant shall give notice to Landlord, promptly after Tenant learns of the same, of:

- (a) all accidents in or about the Demised Premises for which Landlord might be liable;
- (b) all fires in the Demised Premises;
- (c) all material damage to the Demised Premises (including, without limitation to or in the fixtures, equipment and/or appurtenances thereof); and
- (d) all damage to any parts or appurtenances of the Building's sanitary, electrical, heating, ventilating, air conditioning, elevator and/or other systems located in, passing through, or servicing the Demised Premises or any part thereof.

Article 19
Non-Liability And Indemnification

19.01 Non-Liability. Neither Landlord nor any agent or employee thereof shall be liable to Tenant for any injury to Tenant or to any other person, or for any damage to, or loss (by theft or otherwise) of, any property of Tenant or of any other person, irrespective of the cause of such injury, damage, or loss, unless such injury, damage, or loss is caused by, or due to, the negligence of Landlord, its agents, or employees occurring within the scope of their respective employments, it being understood that no property, other than such as might normally be brought upon or kept in the Demised Premises as an incident to the reasonable use of the Demised Premises for the purpose herein permitted, will be brought upon or be kept in the Demised Premises.

19.02 Tenant's Indemnification of Landlord. Tenant shall indemnify and save harmless Landlord and Landlord's Indemnitees against and from:

- (a) any and all claims arising from the conduct or management of the Demised Premises or of any business therein;
- (b) any and all claims arising from any work or thing whatsoever done, or any condition created (other than by Landlord for Landlord's or Tenant's account), in or about the Demised Premises during the Term;
- (c) any and all claims arising from any negligent or otherwise wrongful act or omission of Tenant or any of its subtenants or licensees or its or their employees, agents, or contractors; and
- (d) all reasonable costs, expenses and liabilities incurred in, or in connection with, each such claim or any action or proceeding brought thereon.

If any action or proceeding is brought against Landlord and/or any of the Landlord's Indemnitees by reason of any such claim, Tenant, upon notice from Landlord, shall resist and defend such action or proceeding. The provisions of this Section 19.02 shall survive the termination or expiration of the Term.

19.03 Landlord's Inability to Perform. Except as otherwise expressly provided in this Lease, this Lease and the obligations of Tenant hereunder shall not be affected, impaired, or excused in any manner or respect because Landlord is unable to fulfill, or is delayed in fulfilling, any of its obligations under this Lease by reason of an Unavoidable Delay or an Unavoidable Interruption (as defined in the Interim Sublease)

Article 20
Destruction Or Damage

20.01 Restoration or Repair by Landlord. If the Demised Premises and/or any public portion(s) and/or facilities of the Building that service or benefit the Demised Premises shall be partially or totally damaged or destroyed by fire or other cause, then, whether or not the damage or destruction shall have resulted from the fault or neglect of Tenant or its employees, agents, or contractors, Landlord may if it so elects (but shall not be obligated to), if this Lease is not terminated pursuant to the provisions of this Article 20, repair the damage and restore and rebuild the Demised Premises, such public portion(s)

and/or such facilities (as the case may be) at its expense, with reasonable dispatch after notice to it of the damage or destruction, *except, however*, that, by undertaking to perform such work, Landlord shall not be or become obligated to repair or replace any of Tenant's Property, to restore any Tenant's Work or Tenant's Changes, to restore any rentable area in the Building other than the Demised Premises, nor to repair or restore any public areas and/or building facilities that do not service or benefit the Demised Premises. Tenant shall not be entitled to receive any damages or other compensation from Landlord or its employees, agents and contractors, nor shall Tenant have or bring a claim against any of the foregoing, for inconvenience, loss of business, or annoyance arising from any repair or restoration of any portion of the Building (including, without limitation, the Demised Premises) necessitated by fire or other cause. Landlord shall use its best efforts to effect such repair or restoration promptly and in such manner as to not unreasonably interfere with Tenant's use and occupancy.

20.02 Restoration or Repair by Tenant. If the Demised Premises and/or any public portion(s) and/or facilities of the Building that service or benefit the Demised Premises shall be partially or totally damaged or destroyed by fire or other cause, and Landlord shall not elect pursuant to Section 20.01 above to repair or restore the Demised Premises and/or the Building with respect to the same, Tenant may if it so elects (but shall not be obligated to), if this Lease is not terminated pursuant to the provisions of this Article 20, repair the damage and restore and rebuild the Demised Premises, such public portion(s) and/or such facilities (as the case may be) at its expense, with reasonable dispatch after notice to it of the damage or destruction, *provided, however*, that Tenant shall not restore any rentable area in the Building other than the Demised Premises, nor repair or restore any public areas and/or building facilities that do not service or benefit the Demised Premises. If Tenant shall elect to perform any such repair, restoration, or rebuilding, all of such work shall be deemed to be and constitute Tenant's Changes, to be performed by Tenant in compliance with all of the applicable provisions of this Lease (including, without limitation, Article 11 hereof). Upon the completion of such repair, restoration and/or rebuilding, Tenant shall deliver to Landlord a reasonably detailed invoice of all of the costs and expenses incurred by Tenant in connection thereof, together with copies of all invoices from contractors or other suppliers in connection therewith and copies of lien waivers from all contractors and subcontractors involved in the work). Landlord shall, but only to the extent of the insurance proceeds actually received by Landlord in connection with such fire or other casualty loss (less the cost and expense incurred by Landlord in adjusting the claim and otherwise collecting such proceeds), reimburse Tenant within ten (10) business days after receiving the aforesaid invoice and accompanying materials for the costs and expenses set forth in such invoice.

20.03 Abatement of Rents. If the Demised Premises shall be partially damaged or partially destroyed by fire or other cause, the rents payable hereunder shall be abated, to the extent that the Demised Premises shall have been rendered untenable, for the period from the date of such damage or destruction to the date upon which Landlord shall substantially complete Landlord's Restoration Work. If the Demised Premises shall be totally (which shall be deemed to include substantially totally) damaged or destroyed by fire or other cause, or rendered completely (which shall be deemed to include substantially completely) untenable by reason of such damage or destruction thereto and/or to the means of access thereto, the rents shall abate as of the date of the damage or destruction and until Landlord shall substantially complete Landlord's Restoration Work, *provided, however, that*, should Tenant reoccupy all or any portion of the Demised Premises for the conduct of its business during the period when Landlord's Restoration Work is being performed and prior to the date upon which the same is substantially completed, the rents (fairly allocated to the portion of the Demised Premises so reoccupied by Tenant, if applicable) shall be payable by Tenant from the date of such re-occupancy.

20.04 Rights to Terminate Lease. This Lease shall be subject to termination by Landlord and/or Tenant (as the case may be) in the following circumstances:

- (a) If:
 - (i) the Building shall be totally damaged or destroyed by fire or other cause;
 - (ii) the Building shall be so damaged or destroyed by fire or other cause (whether or not the Demised Premises are damaged or destroyed) as to require a reasonably estimated expenditure of more than forty (40%) percent of the full insurable value of the Building immediately prior to the casualty; or
 - (iii) the Building or the Demised Premises shall be so damaged or destroyed by fire or other cause such that, in Landlord's reasonable estimate, the time to repair or restore the Demised Premises would exceed thirty (30) days,

then, in any such case, either Landlord or Tenant may terminate this Lease by giving the other written notice to such effect within sixty (60) days after the date of the casualty.

(b) If so much of the Demised Premises and/or the means of access thereto is damaged or destroyed by fire or other cause that the rents shall be completely abated pursuant to Section 20.03 above, then either party may terminate this Lease by giving the other party written notice thereof within sixty (60) days after the date of such damage or destruction.

20.05 Inability to Collect Insurance Proceeds. Notwithstanding any of the foregoing provisions of this Article 20, if, by reason of some action or inaction on the part of Tenant or any of its employees, agents, or contractors, Landlord, the lessor of any Superior Lease, or the holder of any Superior Mortgage is unable to collect all of the insurance proceeds (including rent insurance proceeds) applicable to the damage or destruction of the Building or any portion thereof (including, without limitation, the Demised Premises) by fire or other cause, then, without prejudice to any other remedies that may be available against Tenant, there shall be no abatement of the rents, but the total amount of such rents not abated (that would otherwise have been abated) shall not exceed the amount of the uncollected insurance proceeds.

20.06 Section 227 of the RPL Not Applicable. The provisions of this Article 20 shall be considered an express agreement governing any case of damage or destruction of the Demised Premises by fire or other casualty, and Section 227 of the Real Property Law of the State of New York (providing for such a contingency in the absence of an express agreement) and any other requirement of public authorities of like import, now or hereafter in force, shall have no application in such case.

Article 21
Eminent Domain

21.01 Taking of the Entire Demised Premises. If:

(a) the entire Demised Premises is lawfully taken by condemnation or in any other manner for any public or quasi-public use or purpose during the Term; or

(b) all of the access to and from the Demised Premises is so taken, and Landlord shall be unable to, or shall elect not to, provide a reasonable alternate means of access thereto,

then, and in either such event, this Lease, and the Term and estate hereby granted, shall forthwith terminate as of the date of vesting of title in such taking, and the rents shall be prorated and adjusted as of such date.

21.02 Taking of Part of the Demised Premises. If:

(a) only a portion of the Demised Premises is lawfully taken by condemnation or in any other manner for any public or quasi-public use or purpose during the Term, and the remaining area of the Demised Premises is not reasonably sufficient for Tenant to continue feasible operation of its business; or

(b) whether or not a portion of the Demised Premises is so taken, access to and from the Demised Premises is materially impeded, and Landlord shall be unable to, or shall elect not to, provide a reasonable alternate means of access thereto,

then, and in either such event, Tenant shall have the right to terminate this Lease by giving written notice thereof to Landlord not more than thirty (30) days after the earlier to occur of:

(i) the date on which notice of such taking is given by Landlord to Tenant; or

(ii) the date of vesting of title in such taking.

Upon the giving of such notice by Tenant, this Lease shall terminate on the date of such taking, and the rents shall be prorated as of such termination date. If, upon a taking of a portion of the Building, either Tenant shall not have the right to terminate this Lease as hereinbefore set forth, or Tenant shall have such a right but shall not give a timely termination notice to Landlord, then, and in either such event, this Lease shall be unaffected by such taking, except that, if a portion of the Demised Premises shall be so taken:

(A) the rents apportioned to the portion of the Demised Premises so taken shall be prorated and adjusted as of the date of such taking; and

(B) after the date of such taking, the rents shall be payable according to the rentable area remaining.

21.03 Condemnation Award or Damages. Landlord shall be entitled to receive the entire award in any proceeding with respect to any taking provided for in this Article 21, without deduction therefrom for any estate vested in Tenant by this Lease, and Tenant shall receive no part of such award, except as hereinafter expressly provided in this Article 21. Tenant hereby expressly assigns to Landlord all of its right, title and interest in or to every such award. Notwithstanding anything herein to the contrary, Tenant may, at its sole cost and expense, make a separate claim for damages against the condemning authority for Tenant's moving expenses, the value of Tenant's fixtures and/or Tenant's Changes that do not become part of the Building or the property of Landlord and/or any other measure of damage to which Tenant may be entitled and that is cognizable in a separate claim, *provided, however*, that Landlord's award and/or claim for damages is not thereby reduced, delayed, or otherwise adversely affected.

21.04 Temporary Takings. If the temporary use or occupancy of the entire Demised Premises or any portion thereof shall be lawfully taken by condemnation or in any other manner for any public or quasi-public use or purpose during the Term, then:

(a) Tenant shall be entitled, except as hereinafter set forth, to receive that portion of the award for such taking that represents compensation for the use and occupancy of the Demised Premises, together with, if so awarded, damages for the taking of Tenant's Property and/or for moving expenses; and

(b) Landlord shall be entitled to receive that portion of the award for such taking that represents reimbursement for the cost of restoration of the Demised Premises (excluding, however, the cost of restoring Tenant's Property, Tenant's Work and/or Tenant's Changes).

This Lease shall be and remain unaffected by such taking, and Tenant shall continue to be responsible for all of its obligations hereunder (including, without limitation, for payment of the full rents reserved in this Lease, as and when they become due) insofar as such obligations are not affected by such taking. If the period of temporary use or occupancy shall extend beyond the Expiration Date, the part of the award that represents compensation for the use or occupancy of the Demised Premises (or a part thereof) shall be divided between Landlord and Tenant, so that Tenant shall receive so much thereof as represents the period prior to the Expiration Date and Landlord shall receive so much thereof as represents the period subsequent to the Expiration Date. All moneys received by Tenant as, or as part of, an award for temporary use and occupancy for a period beyond the date to which the rents hereunder have been paid by Tenant shall be received, held and applied by Tenant as a trust fund for payment of the rents falling due hereunder.

21.05 Restoration by Landlord. In the event of a taking that does not result in a termination of this Lease, Landlord, at its expense (but only to the extent that any damages awarded to Landlord for consequential damage to the portion of the Building not taken shall be sufficient for the purpose), may if it so elects (but shall not be obligated to) proceed with reasonable diligence to repair, alter and restore the remaining parts of the Building (including, without limitation, the Demised Premises) to the extent that the same may be feasible and so as to constitute a complete and tenantable building and premises, *provided, however*, that, by undertaking to perform such work, Landlord shall not be obligated to repair or replace any of Tenant's Property, to restore any Tenant's Work or Tenant's Changes, to restore any

rentable area in the Building other than the Demised Premises, nor to repair or restore any public areas and/or building facilities that do not service or benefit the Demised Premises.

21.06 Restoration by Tenant. In the event of a taking that does not result in a termination of this Lease, if Landlord shall not elect pursuant to Section 21.05 above to repair, alter and restore the remaining parts of the Building, Tenant, at its expense, may if it so elects (but shall not be obligated to) proceed with reasonable diligence to repair, alter and restore the remaining parts of the Building (including, without limitation, the Demised Premises) to the extent that the same may be feasible and so as to constitute a complete and tenantable building and premises, *provided, however*, that Tenant shall not restore any rentable area in the Building other than the Demised Premises, nor repair or restore any public areas and/or building facilities that do not service or benefit the Demised Premises. If Tenant shall elect to perform any such repairs, alterations and/or restoration, all of such work shall be deemed to be and constitute Tenant's Changes, to be performed by Tenant in compliance with all of the applicable provisions of this Lease (including, without limitation, Article 11 hereof). Upon the completion of such repairs, alterations and/or restoration, Tenant shall deliver to Landlord a reasonably detailed invoice of all of the costs and expenses incurred by Tenant in connection thereof, together with copies of all invoices from contractors or other suppliers in connection therewith and copies of lien waivers from all contractors and subcontractors involved in the work). Landlord shall, but only to the extent of any damages awarded to Landlord for consequential damage to the portion of the Building not taken (less the cost and expense incurred by Landlord in obtaining such damages), reimburse Tenant within ten (10) business days after receiving the aforesaid invoice and accompanying materials for the costs and expenses set forth in such invoice.

Article 22 **Surrender; Holdover**

22.01 End of Term. On the Expiration Date, upon any earlier termination of this Lease, or upon any re-entry by Landlord upon the Demised Premises, but subject to the remainder of this Article 22, Tenant shall:

- (a) immediately cease its use and operation of the Demised Premises for the Permitted Use and any other uses or purposes;
- (b) quit and surrender the Demised Premises to Landlord in good order, condition and repair, except for ordinary wear and tear; and
- (c) remove therefrom all of Tenant's Property and the other property referenced in the last sentence of Section 12.01 (except as otherwise expressly provided in Section 12.03(a), Section 12.04, or elsewhere in this Lease) and restore the Demised Premises wherever such removal results in damage thereto.

On or before the Expiration Date, any earlier termination of this Lease, or any re-entry by Landlord upon the Demised Premises, or if Landlord notifies Tenant that this Lease is likely to be terminated, Tenant shall (or shall cause its subtenants to) proceed diligently and in good faith to prepare a notice of closure (together with any necessary plan of closure) for the emergency department and any other medical operations in the Demised Premises, and file the same with the DOH, and to work with DOH to obtain its approval (and any other required governmental approvals) to such closure. If Tenant (or any

such subtenant, as the case may be) shall obtain such approvals of such closure, Tenant shall comply (or cause such subtenant to comply, as applicable) with the Closure Plan and cause the applicable subtenant to terminate its medical operations in the Demised Premises at the earliest practicable time permitted by the terms of the Closure Plan (the "**Closure Date**"). Such subtenants shall be entitled to remain and conduct any required medical operations in the Demised Premises as holdover tenants during the period commencing after the Expiration Date or earlier termination of this Lease, and until either (as the case may be) the Closure Date, if the Closure Date shall occur prior to the Initial Closing, or the thirtieth (30th) day after the Closure Date, if the Closure Date shall occur after the Initial Closing (as the case may be, the "**Required Surrender Date**").

22.02 Holdover. If Tenant, or any person or entity claiming by, through, or under Tenant (including, without limitation, NYUHC and/or LFHC), shall hold over in possession of the Demised Premises or any portion thereof after the expiration or termination of the Term, such continued occupancy of the Demised Premises or any portion thereof shall be conclusively deemed to be a month-to-month tenancy, commencing on the first day after the expiration or termination of the Term, irrespective of whether or not Landlord accepts rent from Tenant for a period beyond the Expiration Date or the effective date of such termination (as the case may be). Such month-to-month tenancy shall be upon all of the terms, covenants and conditions set forth in this Lease applicable to the Term, except that, if Tenant, or any person or entity claiming by, through, or under Tenant (other than NYUHC and/or LFHC), shall hold over in possession of the Demised Premises or any portion thereof after the expiration or termination of the Term, or if NYUHC and/or LFHC shall hold over in possession of the Demised Premises or any portion thereof after the Required Surrender Date, Tenant shall pay as Additional Rent, on the first day of each month of the holdover period, an amount (the "**Holdover Rent**") equal to the higher of:

- (a) the sum of One Hundred Twenty-Five Thousand (\$125,000) Dollars, plus two-twelfths of all Additional Rent payable by Tenant during the last year of the Term (i.e., the year immediately prior to the holdover period); and
- (b) two hundred (200%) percent of the then fair market rental value of the Demised Premises, as reasonably estimated by Landlord in a written notice given to Tenant (subject to the provisions of Section 22.03 below).

If Landlord shall, at any time after the expiration or termination of the Term or after the Required Surrender Date (as applicable), proceed to remove Tenant from the Demised Premises as a holdover, the amount of damages that Landlord shall be entitled to prove and receive for the use and occupancy of the Demised Premises during any holdover period shall be calculated in the same manner as set forth above. In addition to the foregoing, Landlord shall be entitled to recover from Tenant any losses or damages arising from such holdover. Notwithstanding the foregoing, however, if NYUHC and/or LFHC shall hold over in possession of the Demised Premises or any portion thereof after the Required Surrender Date, the Holdover Rent shall not come into force or effect, or accrue, as between Landlord and Tenant (regardless of whether an increase in rent shall be effectuated as between Tenant and NYUHC and/or LFHC) until ten (10) business days after NYUHC and/or LFHC (as the case may be) vacates and surrenders possession of the Demised Premises to Tenant, and Tenant shall be liable for neither any Holdover Rent nor any of the aforesaid losses or damages, and shall have no other liability to Landlord under this Lease by reason of such holdover by NYUHC and/or LFHC (including, without limitation,

legal expenses or other enforcement costs), if the Demised Premises shall be vacated and surrendered to Landlord within such ten (10) business day period.

22.03 Dispute as to Holdover Rent. Tenant may dispute Landlord's estimate of the fair market rental value of the Demised Premises estimated by Landlord pursuant to Section 22.02 above by giving written notice thereof to Landlord not later than ten (10) days after Landlord shall give its estimate notice to Tenant. Such dispute notice shall have no force or effect hereunder, and Landlord's estimate shall be deemed to be conclusive and binding upon the parties, unless such dispute notice is given in a timely fashion and is accompanied by a certified opinion of an independent, reputable New York licensed real estate broker, having leasing experience in the Borough of Brooklyn for a period of not less than ten (10) years, setting forth such broker's opinion of the fair market rental value of the Demised Premises. If Tenant shall give such a dispute notice to Landlord in a timely fashion, and the parties shall fail to enter into a writing confirming their agreement as to such fair market rental value within fifteen (15) days thereafter, the following procedure shall be followed:

(a) Either party shall have the right, at any time thereafter prior to the execution and delivery of such a confirmatory writing, to request that the Real Estate Board of New York, Inc., furnish to Landlord and Tenant a listing of not less than three (3) independent, reputable New York licensed real estate brokers, each of whom shall have leasing experience in the Borough of Brooklyn for a period of not less than ten (10) years. The parties shall thereupon attempt to agree upon one of such brokers to furnish his or her opinion as to the fair market rental value of the Demised Premises. If the parties fail to so appoint one of such brokers within five (5) business days after their receipt of such list, then the first broker appearing on such list shall conclusively be presumed to have been selected by both Landlord and Tenant.

(b) The broker appointed pursuant to subsection (a) above shall render his or her opinion as to the fair market rental value of the Demised Premises within fifteen (15) days after his or her appointment. The average of the determination of such appointed broker, on the one hand, and either Landlord's estimate or the determination of Tenant's broker (whichever comes closest to the determination of such appointed broker), on the other hand, shall be conclusive and binding upon the parties as to the fair market rental value of the Demised Premises.

(c) Pending the determination of the fair market rental value of the Demised Premises as aforesaid, Tenant shall pay to Landlord as Additional Rent, upon the expiration or termination of the Term, an amount computed using Landlord's estimate of the fair market rental value. Upon the determination of the fair market rental value of the Demised Premises in accordance with the preceding provisions hereof, appropriate adjustments and payments shall be effected.

22.04 Landlord's Continuing Right to Evict Tenant. Notwithstanding anything to the contrary contained in this Lease, the acceptance of any rent paid by Tenant pursuant to Section 22.02 above shall not preclude Landlord from commencing and prosecuting a holdover or summary eviction proceeding. The preceding sentence shall be deemed to be an "agreement expressly providing otherwise" within the meaning of Section 232-c of the Real Property Law of the State of New York. All damages that Landlord may suffer by reason of Tenant's holding over in the possession of the Demised Premises

following the expiration or termination of the Term may be the subject of a separate action, and need not be asserted by Landlord in any summary proceedings against Tenant.

Article 23
Conditions of Limitation; Right of Re-Entry

23.01 Conditions of Limitation — Financial Defaults. To the extent permitted by applicable law, this Lease, together with the Term and estate hereby granted, is subject to the limitations that, if:

- (a) Tenant shall make an assignment of the property of Tenant for the benefit of creditors;
- (b) Tenant shall file a voluntary petition under any bankruptcy or insolvency law;
- (c) an involuntary petition alleging an act of bankruptcy or insolvency shall be filed against Tenant under any bankruptcy or insolvency law;
- (d) a petition shall be filed by, or against, Tenant under the reorganization provisions of the United States Bankruptcy Act, the arrangement provisions of the United States Bankruptcy Act, or the provisions of any law of like import; or
- (e) a permanent receiver of Tenant, or of or for the property of Tenant, shall be appointed,

then, at any time after Landlord's receipt of notice of the occurrence of such event (or, if such event occurs without the acquiescence of Tenant, at any time after such event continues unstayed for ninety (90) days), Landlord may give Tenant a notice of intention to end the Term at the expiration of five (5) days from the date of service of such notice of intention. Upon the expiration of such five (5) day period, this Lease, together with the Term and the estate hereby granted, whether or not the Term shall theretofore have commenced, shall terminate with the same effect as if that day were the Expiration Date, but Tenant shall remain liable for damages as provided in Article 24.

23.02 Conditions of Limitation — Other Defaults. This Lease, together with the Term and estate hereby granted, is subject to the further limitations that, if:

- (a) Tenant shall default in the payment of any item of Additional Rent, on the day upon which the same is due and payable pursuant to this Lease, and such default shall continue for thirty (30) days after Landlord shall have given Tenant a written notice specifying such default; or
- (b) Tenant shall do anything, or shall permit anything to be done, whether by action or inaction, contrary to any of Tenant's obligations under this Lease (other than a default of the nature described in Section 23.02(a) above), and either:
 - (i) such situation shall continue for, and shall not be completely remedied by Tenant within, thirty (30) days after Landlord shall have given Tenant a written notice specifying the same; or

(ii) if:

(A) such situation cannot, with commercially reasonable due diligence, be completely remedied within such thirty (30) day period;

(B) such situation is of a nature that it is susceptible of being completely remedied within a reasonable period of time after the expiration of such thirty (30) day period; and

(C) the continuation of such situation for the period reasonably required to completely remedy the same will not subject Landlord to the risk of criminal liability (as more particularly described in Section 9.02),

then, and in such event, if Tenant shall not:

(I) within the aforesaid thirty (30) day period, advise Landlord in writing of Tenant's intention to duly institute all steps necessary to completely remedy such situation;

(II) duly institute, within the aforesaid thirty (30) day period, and thereafter diligently prosecute to completion all steps necessary to completely remedy the same; and

(III) complete such remedy within such time after the date of the giving of said notice of Landlord as shall reasonably be necessary,

then, and in either of such cases, Landlord may give Tenant a notice of intention to end the Term at the expiration of fifteen (15) days from the date of the service of such notice of intention. Upon the expiration of such fifteen (15) day period, this Lease, together with the Term and the estate hereby granted, whether or not the Term shall theretofore have commenced, shall terminate with the same effect as if that day were the Expiration Date, but Tenant shall remain liable for damages as provided in Article 24.

23.03 Right of Re-entry. If:

(a) Tenant shall default in the payment of any item of Additional Rent, on the day upon which the same is due and payable pursuant to this Lease, and such default shall continue after expiration of the notice and cure period under Section 23.02(a) above;

(b) this Lease shall be terminated as provided in Section 23.01 or 23.02 above; or

(c) Tenant shall hold over in possession of the Demised Premises past the Expiration Date or any earlier termination of this Lease,

then, and in either such event, Landlord, or Landlord's agents and employees, may immediately or at any time thereafter re-enter the Demised Premises, or any part thereof, in the name of the whole, either by summary dispossess proceedings, by any other suitable action or proceeding at law or in equity, by force, or otherwise, without being liable to indictment, prosecution, or damages therefor, and may repossess the same, and remove any persons therefrom, to the end that Landlord may have, hold and enjoy the Demised Premises again as and of its first estate and interest therein, but Tenant shall remain liable for damages as provided in Article 24. The word "re-enter", as herein used, is not restricted to its technical legal meaning.

23.04 Provision Required under Article 28 of the Public Health Law. Landlord acknowledges that its rights of reentry into the premises set forth in this Lease do not confer on it the authority to operate a hospital, as defined in Article 28 of the New York Public Health Law in the Demised Premises and agrees that he will give the New York State Department of Health, Tower Building, Empire State Plaza, Albany, NY 12237, notification by certified mail of its intent to reenter the Demised Premises or to initiate dispossess proceedings or that this Lease is due to expire, at least thirty (30) days prior to the date on which the Landlord intends to exercise a right of reentry or to initiate such proceedings or at least 60 days before expiration of the Lease. Upon receipt of notice from the Landlord of its intent to exercise his right of reentry or upon the service of process in dispossess proceedings and sixty (60) days prior to the expiration of this Lease, Tenant shall immediately notify (or cause the applicable subtenant(s) under the Interim Subleases to notify) by certified mail the New York State Department of Health, Tower Building, Empire State Plaza, Albany, NY 12237, of the receipt of such notice or service of such process or that the Lease is about to expire.

Article 24 **Damages**

24.01 Measure of Damages. If Landlord shall terminate this Lease or re-enter the Demised Premises as provided in Article 23 above, or shall otherwise terminate this Lease or re-enter the Demised Premises by reason of Tenant's default, then, and in any such event, Tenant shall pay to Landlord, as damages, immediately upon such termination or expiration, the Additional Rent payable by Tenant up to the time thereof, to the extent that the same shall remain unpaid by Tenant.

24.02 Other Damages. Nothing contained in this Lease shall be construed to limit or preclude Landlord's recovery from Tenant of any out-of-pocket sums or damages to which Landlord may be entitled, under this Lease or by law, in connection with any default by Tenant, whether in addition to, or in lieu of, the damages particularly provided for in this Lease. In no event shall Tenant be liable for any consequential, indirect, or punitive damages that Landlord (or Landlord's Indemnitees) suffers.

Article 25 **Other Remedies**

25.01 Right to Retain Money. If Landlord shall terminate this Lease or re-enter the Demised Premises as provided in Article 23 above, or shall otherwise terminate this Lease or re-enter the Demised Premises by reason of Tenant's default, Landlord shall be entitled to retain all sums, if any,

therefore paid by Tenant to Landlord, whether as advance rent, security, or otherwise, but such sums shall be credited by Landlord against any Additional Rent due from Tenant at the time of such termination or re-entry or, at Landlord's option, against any damages payable by Tenant as provided in this Lease (including, without limitation, in Article 24 above) or otherwise.

25.02 Right to Require Wire Transfers. If, on two (2) occasions, Tenant shall default in the payment of any Additional Rent payable by Tenant to Landlord on a monthly basis pursuant to any provision of this Lease, which default, in each instance, continues after any notice required under this Lease and the expiration of any applicable cure period, Landlord shall have the right, at any time thereafter and in addition to any other remedy available to Landlord under this Lease or otherwise, to give Tenant written notice requiring Tenant thereafter to pay such Rents to Landlord in the form of wire transfers of federal funds to a bank account from time to time designated in writing by Landlord to Tenant, whereupon, notwithstanding the provisions of Section 2.02, Tenant shall pay such Rents to Landlord in such form for the entire remaining balance of the Term.

25.03 Right to Perform Tenant's Obligations. If Tenant shall default in the performance of any of Tenant's obligations under this Lease, Landlord shall have the right (but not the obligation) to perform the same for Tenant's account, and at Tenant's cost and expense, without thereby waiving such default and without notice, *provided, however, that*, other than in an emergency, Landlord may exercise such right only if such default has continued past the expiration of the applicable grace period, after Landlord shall have given to Tenant the applicable notice of default, provided for in Section 23.02 for the cure of defaults of such nature. In the event that Landlord shall elect to exercise the foregoing right, Landlord may send to Tenant, either on a monthly basis or otherwise (as Landlord shall elect), bills for those expenses incurred by Landlord in connection therewith (including, without limitation, bills for any property, material, labor and/or services provided, furnished, or rendered by Landlord, or at its instance, to Tenant), which bills shall be due and payable by Tenant to Landlord, as Additional Rent under this Lease, in accordance with the terms of such bills.

25.04 Right to Late Charges. If Tenant is late in making any payment due to Landlord under this Lease for five (5) or more days, a late charge shall accrue for the benefit of Landlord with respect to such payment from the date upon which such payment was first due and payable to the date of Tenant's payment thereof, computed at the rate of five (5%) percent per annum over the Base Rate in effect on the date upon which such payment was first due and payable to Landlord. Such late charge shall be paid by Tenant to Landlord on demand, as Additional Rent under this Lease. It is the parties intention that all amounts payable by Tenant pursuant to this Section 25.04 shall be deemed to be late charges and not interest. In the event, however, that it shall be finally determined that any amount payable by Tenant hereunder constitutes interest as to which a maximum lawful rate shall apply, and such maximum lawful rate shall be less than the rate of the late charge computed as set forth above, then:

(a) the amount of such late charge shall be recomputed at the maximum lawful rate chargeable to Tenant in such circumstances; and

(b) any excess over such recomputed late charge theretofore paid by Tenant to Landlord shall be promptly refunded to Tenant.

25.05 Right of Injunction. In the event of a breach or threatened breach by Tenant of any of its obligations under this Lease, Landlord shall have the right of injunction.

25.06 Remedies Not Exclusive. Unless otherwise expressly provided in this Lease, and then only to the extent so expressly provided, the specific remedies to which Landlord may resort pursuant to this Lease (including, without limitation, pursuant to this Article 25) are cumulative, and are not intended to be exclusive of any other remedies or means of redress to which Landlord lawfully be entitled at any time. In the event that Landlord or Tenant shall default in any of their respective obligations under this Lease, the other party may invoke any remedy to which such party otherwise shall be entitled at law or in equity, as if specific remedies were not provided for herein. The provisions of this Section 25.06 are hereby made specifically subject to the provisions of Article 33 below.

Article 26 **Waivers**

26.01 Waiver of Right of Redemption. Tenant, for itself and on behalf of any and all persons claiming by, through, or under Tenant (including, without limitation, creditors of all kinds), hereby irrevocably waives and surrenders any and all rights and privileges that any of them might have under, or by reason of, any present or future law to redeem the Demised Premises or to have a continuance of this Lease for the Term after being dispossessed or ejected from the Demised Premises by process of law, under the terms of this Lease, or after the termination of this Lease as herein provided.

26.02 Waiver of Right to Designate Nature of Payments. Tenant hereby irrevocably waives any right that Tenant may have to designate the items against which any payments made by Tenant to Landlord are to be credited. Landlord may apply any payment made by Tenant to Landlord against any item of Additional Rent that shall be or become payable to Landlord, as Landlord sees fit, irrespective of, and notwithstanding, any designation or request by Tenant as to the items against which any such payments are to be credited.

26.03 Waiver of Jury Trial. Landlord and Tenant hereby waive trial by jury in any action, proceeding, or counterclaim brought by either of them against the other on any matter whatsoever arising out of, or in any way connected with, this Lease, the relationship of Landlord and Tenant, the Demised Premises and/or Tenant's use or occupancy thereof (including, without limitation, any claim of injury or damage, or any emergency or other statutory remedy with respect thereto).

26.04 Waiver of Counterclaims. In the event that Landlord commences any summary proceeding for possession of the Demised Premises, Tenant shall not interpose any counterclaim of any nature or description in any such proceeding, except for a mandatory counterclaim (a counterclaim that would be lost if not so interposed).

26.05 Waiver of Additional Services. The provisions of Article 14, Article 15 and Article 16 shall be considered express agreements governing the services to be furnished by Landlord to Tenant and/or the Demised Premises. Any laws and/or requirements of public authorities, now or hereafter in force, shall have no application if the same shall in any manner or respect enlarge any of Landlord's obligations with respect to such services.

Article 27 **No Waivers Or Modifications**

27.01 No Waivers. The failure of either party to insist, in any one or more instances, upon the strict performance of any one or more of the obligations of this Lease, or to exercise any election herein

contained (unless otherwise specifically provided to the contrary in this Lease), shall not be construed as a waiver or relinquishment for the future of the performance of such obligations of this Lease or of the right to exercise such election, but the same shall continue and remain in full force and effect with respect to any subsequent breach, act, or omission. Without intention to limit the generality of the foregoing in any respect:

(a) no agreement to accept a surrender of all or any part of the Demised Premises shall be valid unless in writing and signed by Landlord;

(b) the delivery of keys to an employee of Landlord or of its agent shall not operate as a termination of this Lease or a surrender of the Demised Premises;

(c) the receipt by Landlord of rent with knowledge of Tenant's breach of any obligation of this Lease shall not be deemed a waiver of such breach; and

(d) no payment by Tenant, or receipt or acceptance by Landlord, of a lesser amount than the correct Additional Rent due hereunder shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance or to pursue any other remedy provided for in this Lease or otherwise.

27.02 No Modifications. No executory agreement hereafter made between Landlord and Tenant shall be effective to change, modify, waive, release, discharge, terminate, or effect an abandonment of this Lease, in whole or in part, unless such executory agreement has been approved in writing by the AG, OSC and DASNY (except that, from and after the Initial Closing, the approval of DASNY shall not be required hereunder), is in writing, refers specifically to this Lease and is signed by the party against whom enforcement of the change, modification, waiver, release, discharge, termination, or effectuation of the abandonment is sought.

Article 28 **Broker**

28.01 Broker. Landlord and Tenant covenant, warrant and represent that they have not dealt with any broker or finder concerning the renting of the Demised Premises to Tenant. Landlord and Tenant each agree to hold the other harmless against any claims for a brokerage commission arising out of any assertion by any broker or finder that it dealt with such indemnifying party with respect to the renting of the Demised Premises to Tenant. The provisions of this Section 28.01 shall survive the termination or expiration of the Term.

Article 29 **Notices**

29.01 Notices. Except for rent bills and emergency repair notices (which may be hand-delivered or sent via facsimile machine and shall be deemed given upon receipt), any notice, statement, demand, or other communication required or permitted to be given, rendered, or made by either party to the other, or to NYUHC, pursuant to this Lease or pursuant to any applicable requirement of public authority, shall be in writing (whether or not so stated elsewhere in this Lease), and shall be deemed to have been

properly given, rendered, or made if sent by nationally recognized overnight courier service providing for receipted delivery, addressed to as set forth below:

- (a) with respect to notices to Landlord, to:

Downstate at LICH Holding Company, Inc.
c/o State University of New York
State University Plaza
Albany, New York 12246
Attention: Mr. Robert Haelen

- with a copy to -

Cozen O'Connor
277 Park Avenue - 20th Floor
New York, New York 10172
Attention: Marc S. Intriligator, Esq.

- (b) with respect to notices to Tenant, to:

FPG Cobble Hill Acquisitions LLC
c/o Fortis Property Group LLC
45 Main Street, Suite 800
Brooklyn, New York 11201
Attention: Mr. Joel Kestenbaum

- with a copy to -

Tannenbaum Helpern Syracuse & Hirschtritt LLP
900 Third Avenue
New York, New York 10022
Attention: Robert E. Helpern, Esq.

- (c) with respect to notices to NYUHC, to:

NYU Hospitals Center
550 First Avenue
New York, New York 10016
Attention: Vicki Match Suna, Senior Vice President-Real Estate

- with a copy to -

NYU Hospitals Center
550 First Avenue
New York, New York 10016
Attention: Annette Johnson, Esq., Senior Vice President, General Counsel

- with a copy to -

NYU Hospitals Center
1 Park Avenue
New York, New York 10016
Attention: Director of Real Estate

- with a copy to -

Dentons US LLP
1221 Avenue of the Americas
New York, New York 10020
Attention Andrew J. Weiner, Esq.

Any notice, statement, demand, or other communication so sent shall be deemed to have been given, rendered, or made on the date of receipt or refusal thereof, as set forth in the business records of such overnight courier service. Either party, or NYUHC, may, by notice as aforesaid, designate a different address, and/or up to two (2) additional addresses, for notices, statements, demands, or other communications intended for it. Any notice, statement, demand, or other communication required or permitted to be given, rendered, or made by either party to the other or to NYUHC hereunder may be given by the attorney for such party, with the same force and effect as if given, rendered, or made by the party itself.

Article 30 **Estoppel Certificate**

30.01 *Estoppel Certificate.* Each party shall, at any time and from time to time, as requested by the other party, upon not less than ten (10) days' prior notice, execute and deliver to the other party a statement certifying to such person or entity as directed by such other party:

- (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications);
- (b) whether any options granted to Tenant pursuant to the provisions of this Lease have been exercised;
- (c) the dates to which the Additional Rent have been paid and the amounts thereof;
- (d) whether or not, to the best knowledge of the signer, the other party is in default in performance of any of its obligations under this Lease and, if so, specifying each such default of which the signer may have knowledge; and
- (e) such other matters pertaining to this Lease as reasonably requested by such other party.

Article 31
Miscellaneous Provisions

31.01 Merger. All understandings and agreements heretofore had between the parties as to the leasing of the Demised Premises to Tenant are merged in the Lease Documents, which alone fully and completely express their agreements. Without intention to limit the generality of the foregoing in any respect, Tenant specifically acknowledges and agrees that:

(a) Landlord has not made, and is not making, any warranties, representations, promises, or statements concerning the Building, the Demised Premises, or otherwise, except for those warranties, representations, promises, or statements (if any) specifically set forth in the Lease Documents; and

(b) in executing and delivering this Lease, Tenant is not relying upon any warranties, representations, promises, or statements made by any person or entity (whether purportedly on Landlord's behalf or otherwise) concerning the Building, the Demised Premises, or otherwise, except for those warranties, representations, promises, or statements (if any) specifically set forth in this Lease.

31.02 Invalidity. If any of the provisions of this Lease, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held to be invalid or unenforceable, shall not be affected thereby, and every provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

31.03 Governing Law. This Lease shall be governed in all respects by the laws of the State of New York.

31.04 Consents. Wherever Landlord's consent or approval is required pursuant to this Lease, and this Lease provides that such consent or approval shall not be unreasonably withheld, delayed, or conditioned, Landlord, if it refuses such consent or approval, shall describe with reasonable specificity the reason for such refusal. If Landlord shall refuse such consent or approval, or if Landlord shall delay or condition the same, Tenant in no event shall be entitled to make, nor shall Tenant make, any claim, and Tenant hereby waives any claim, for money damages (nor shall Tenant claim any money damages by way of set-off, counterclaim, or defense) based upon any claim or assertion by Tenant that Landlord unreasonably withheld, delayed, or conditioned its consent or approval. Rather, Tenant's sole remedy shall be an action or proceeding to enforce any such provision, for specific performance, injunction, or declaratory judgment, or, if Tenant so elects, for a determination as to whether Landlord reasonably withheld, delayed, or conditioned its consent (which determination shall be final and conclusive on the parties) pursuant to the Simplified Procedure For Court Determination of Disputes as set forth in the CPLR §3031 et seq. (or any successor thereto).

31.05 Conflicts. In the event of any conflict between any of the terms, covenants and/or conditions contained in this Lease and any of the terms, covenants and/or conditions contained in the PSA, the terms, covenants and/or conditions contained in the PSA shall control and be governing.

31.06 Representations. To induce Tenant to enter into this Lease, and in consideration thereof, the representations and warranties made by Landlord under Section 7.1 of the PSA are hereby

incorporated by reference, as if made by Landlord to Tenant hereunder. Conversely, to induce Landlord to enter into this Lease, and in consideration thereof, the representations and warranties made by Tenant under Section 8.1 of the PSA are hereby incorporated by reference, as if made by Tenant to Landlord hereunder.

31.07 Standard State University of New York Provisions; Priority of Application. The provisions set forth in *Exhibit D* attached hereto (referred to therein as Exhibit A: Standard Contract Clauses and Exhibit A-1: Affirmative Action Clauses) are expressly incorporated by reference into this Sublease as if set forth at length herein. In the event of any conflict between the terms and conditions set forth in this Sublease and/or any of the Exhibits hereto, and the provisions set forth in *Exhibit D*, the provisions set forth in *Exhibit D* shall prevail.

31.08 Parking. With regard only to the period prior to the Initial Closing, to the extent that, under applicable laws, the operations conducted in the Demised Premises (including, without limitation, the Expansion Space, if applicable) require a lease or license for parking of automobiles, then, upon notice from Tenant to Landlord, Landlord shall lease, and be deemed to lease, such portion of the Parking Garage to Tenant hereunder as necessary to provide such parking, *provided, however*, that in no event shall the aggregate square foot area of the Demised Premises and the portion of the Parking Garage so leased to Tenant exceed seventy thousand (70,000) square feet.

31.09 Approvals. The Parties hereby acknowledge and agree that this Lease is subject to the approval of AG and OSC, and this Lease shall not be valid and enforceable until such approvals are given. The Parties further acknowledge and agree that this Lease shall not be effective until it has been fully approved and executed by all applicable governmental agencies, including AG and OSC.

Article 32

Adjacent Excavation And Construction; Vaults

32.01 Adjacent Excavation and Construction. If an excavation or other substructure work shall be made upon land adjacent to the Demised Premises, or shall be authorized to be made, Tenant shall afford to the person causing, or authorized to cause, such excavation, license to enter upon the Demised Premises for the purpose of doing such work as shall be necessary to preserve the Building from injury or damage, and to support the same by proper foundations, without any claim for damages or indemnity against Landlord, or diminution or abatement of rent.

32.02 Vaults. No vaults, vault space, or area, whether or not enclosed or covered, situated outside of the property line of the Land is leased hereunder, anything contained in, or indicated on, any sketch, blue print, or plan, or anything contained elsewhere in this Lease, to the contrary notwithstanding. Landlord makes no representation as to the location of the property line of the Land. All vaults and vault space, and all such areas, not within the property line of the Land, that Tenant may be permitted to use and/or occupy, is to be used and/or occupied under a revocable license, and, if any such license be revoked, or if the amount of such space or area be diminished or required by any federal, state, or municipal authority or public utility, Landlord shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such revocation, diminution, or requisition be deemed a constructive or actual eviction. Any tax, fee, or charge of municipal authorities for such vault or area shall be paid by Tenant.

Article 33
Parties Bound

33.01 Successors and Assigns. The obligations of this Lease shall bind and benefit the successors and assigns of the parties with the same effect as if mentioned in each instance where a party is named or referred to, except that:

(a) no violation of the provisions of Article 8 shall operate to vest any rights in any successor or assignee of Tenant; and

(b) the provisions of this Section 33.01 shall not be construed as modifying the conditions of limitation contained in Article 23.

However, the obligations of Landlord under this Lease shall not be binding upon the party named herein as Landlord with respect to any period subsequent to the transfer of its interest in the Building as owner or lessee thereof. In the event of such transfer, such obligations shall thereafter be binding upon each transferee of the interest of Landlord herein named as such owner or lessee of the Building, but only with respect to the period ending with a subsequent transfer within the meaning of this Section 33.01.

33.02 Landlord's Exculpation. Tenant shall look only to Landlord's estate and property in the Building (or the proceeds thereof) and, where expressly so provided in this Lease, to offset against the rents payable under this Lease, for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default by Landlord hereunder, and no other property or assets of Landlord, or of any partner, member, officer, or director thereof (whether disclosed or undisclosed), shall be subject to levy, execution, or other enforcement procedure for the satisfaction of Tenant's remedies under, or with respect to, this Lease, the relationship of Landlord and Tenant hereunder, the Demised Premises and/or Tenant's use or occupancy thereof. For sake of clarification only, this Section 33.02 shall not be construed:

(a) to limit or expand, in any manner or respect, Tenant's rights and/or remedies in its capacity as purchaser under the PSA for any breach by Landlord in its capacity as seller under the PSA; or


(b) to preclude or limit Tenant's right to seek injunctive relief or specific performance to enforce Landlord's obligations under this Lease, at law, or in equity.

[Signatures begin at the top of the next page.]

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the day and year first above written.

LANDLORD:

**DOWNSTATE AT LICH HOLDING
COMPANY, INC.**

By: 
Name: Robert Haelen
Title: President

TENANT:

FPG COBBLE HILL ACQUISITIONS, LLC

By: _____
Name:
Title:

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the day and year first above written.

LANDLORD:

**DOWNSTATE AT LICH HOLDING
COMPANY, INC.**

By: _____

Name:

Title:

TENANT:

FPG COBBLE HILL ACQUISITIONS, LLC

By: _____ 

Name: Joel Kestenbaum

Title: President

Approval as to Form

Eric T. Schneiderman

Attorney General

By: _____

Name: _____

Date: _____

Approved:

Thomas P. DiNapoli

State Comptroller

By: _____

Name: _____

Date: _____

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 8th day of October, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert Haalen, 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.

Janice Bilik
Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JANICE BILIK
Notary Public, State of New York
No. 01B14888896
Qualified in Putnam County
Commission Expires March 16, 2015

On the ___ day of October, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the ___ day of October, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF ^{Kings} ~~NEW YORK~~)

On the 7 day of October, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared Joel Kastenbaum, 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.

Chaim Weiss

Notary Public

CHAIM WEISS
Notary Public, State of New York
No. 01WE6291958
Qualified in Rockland County
My Commission Expires October 26, 2017

Exhibit A
Legal Description of the Land

A PORTION OF that certain lot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the westerly side of Henry Street as physically opened with the southerly side of Pacific Street (as it formerly existed);

RUNNING THENCE westerly along the southerly side of Pacific Street 404 feet to the easterly side of Hicks Street;

THENCE southerly along the easterly side of Hicks Street, 200 feet to the northerly side of Amity Street;

THENCE easterly along the northerly side of Amity Street, 404 feet to the westerly side of Henry Street;

THENCE northerly along the westerly side of said Henry Street, 200 feet to the corner, the point or place of **BEGINNING**.

Exhibit B
Floor Plan (Demised Premises)
(Follows immediately on next page)



New York City, NY
Perkins Eastman
115 SPRUE AVENUE
NEW YORK, NY 10003
T 212 333 7500
F 212 333 7676

**NYU @ LICH
EMERGENCY
DEPARTMENT**

Date: 06/25/14



LEVEL

1

PACIFIC STREET

HENRY STREET

HENRY ST.

AMITY STREET

SPACE REQUESTED
BY NYU LANGONE MEDICAL CENTER
(32,990 SF TOTAL)

POLAK

HICKS STREET

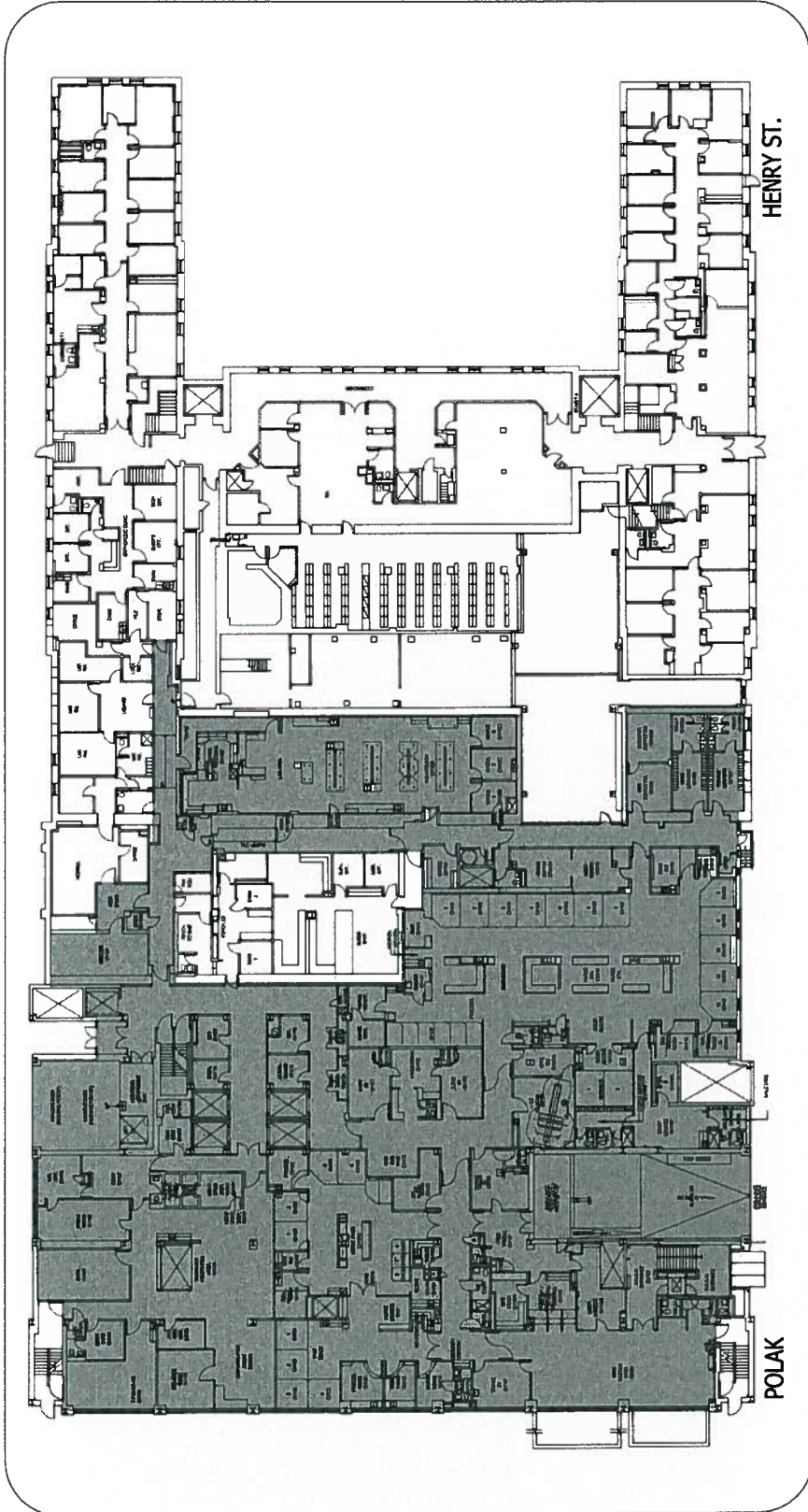


Exhibit B-1
Floor Plan (Expansion Space)
(Follows immediately on next page)

Exhibit C
Definitions and Rules of Construction

A. Definitions

The term “***Additional Rent***” means all sums of money, other than the Fixed Rent, that shall become due and payable by Tenant to Landlord under this Lease, whether or not so denoted in the provision of this Lease requiring Tenant’s payment of the same.

The term “***Base Rate***” means the prime rate of Chase Manhattan Bank (or Citibank, N.A., if Chase Manhattan Bank shall not then have an established prime rate; or the prime rate of any major banking institution doing business in New York City, as selected by Landlord, if none of the aforementioned banks shall be in existence or have an established prime rate).

The term “***Building Common Areas***” means those entrances, doors, doorways, halls, passages, loading dock, and other portions of the Building (including, without limitation, if the Expansion Option is exercised and the Expansion Space is located in whole or in part on the second (2nd) floor of the Building, elevators, escalators and/ stairways) that are necessary and/or appropriate to be used thereby for purposes of access to, and egress from, the various portions of the Demised Premises and the loading dock, solely for purposes of gaining such access and egress (both from and to the outside of the Building and between such portions of the Demised Premises and the loading dock) and using the loading dock for deliveries and pick-ups, and to other areas of the Building where access is necessary for NYUHC’s operation of an emergency department in the Demised Premises and performance of its obligations under the Interim Sublease; all of which is for the non-exclusive use of Landlord, Tenant and Tenant’s permitted subtenant(s), and their respective agents, employees, invitees, business guests and contractors.

The term “***Building Required Upgrade***” means any replacement, modification, addition, or change to a portion of the Building, or to any component of a Building System, otherwise required to be replaced, modified, added, or changed by Tenant pursuant to Section 13.02 of the Interim Sublease, as to which replacement, modification, addition, or change either:

(a) DOH has notified NYUHC that the maintenance of a Certificate of Need or any other Required License for the emergency department operated by NYUHC in the Demised Premises is contingent on the making of such a replacement, modification, addition, or change;

(b) any governmental or accrediting agency issuing Required Licenses has notified NYUHC that it will revoke or refuse to renew a Required License, will issue a violation against the Building, or will take other action that could require NYUHC to cease operations in the Demised Premises or subject Tenant or NYUHC to criminal or civil liability, if such replacement, modification, addition, or change is not made; or

(c) DOH or the Center for Medicare and Medicaid Services has issued a citation or deficiency against NYUHC relating to the emergency department operated by NYUHC in the Demised Premises, which citation or deficiency may be cured or removed only by the making of such replacement, modification, addition, or change.

The term “*business days*” means all days except Saturdays, Sundays, days now or hereafter observed by the Federal or New York State government as legal holidays and days now or hereafter designated as holidays by the applicable building service union employees service contract or by the applicable Operating Engineers contract.

The term “*Certified Minority-Owned Business Enterprise*” has the meaning ascribed to such term in *Exhibit D* to this Lease (Affirmative Action Clauses).

The term “*Certified Women-Owned Business Enterprise*” has the meaning ascribed to such term in *Exhibit D* to this Lease (Affirmative Action Clauses).

The term “*Closure Plan*” means that certain plan for the discontinuance of hospital operations in the Building and on other premises in the vicinity thereof heretofore submitted by SUNY to the DOH and approved thereby.

The term “*control*” means ownership of all of the voting stock of a corporation or all of the legal or equitable interest in any other entity (as the case may be).

The term “*Decorative Change*” means a Tenant Change, made by NYUHC and/or LFHC in accordance with the provisions of the sublease and/or sub-sublease thereto, consisting of merely decorative changes in and to the Demised Premises (such as, for example, the installation of carpeting or other customary floor coverings or painting or the installation of customary wall coverings) that in each case do not involve electrical, plumbing, or mechanical connections.

The term “*Hazardous Materials*” means any flammable explosives, radioactive materials, hazardous wastes, hazardous and toxic substances, or related materials, asbestos or any material containing asbestos, biohazardous medical waste materials and other similar materials commonly used in the health care industry, or any other substance or material, as defined by any Federal, state, or local laws, statutes, ordinances, codes, rules, regulations, licenses, authorizations, decisions, orders, injunctions, or decrees that pertain to health, safety, or the environment (including, without limitation, ground, air, water, or noise pollution or contamination, and underground or above-ground tanks), and shall include, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the New York State Environmental Conservation Law; the New York State Navigation Law; and any other local, state, or federal environmental laws, codes, or ordinances, and all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended, or come into effect, in the future.

The term “*HVAC Systems*” means the heating, ventilating and air conditioning systems of the Building, servicing the Demised Premises either exclusively or together with other part(s) of the Building, existing as of the date of this Lease.

The term “*Landlord’s Indemnities*” means, collectively:

- (a) the State of New York;
- (b) SUNY, any corporation within SUNY and any direct or indirect subsidiary thereof;
- (c) The Health Science Center at Brooklyn Foundation, Inc., a New York not-for-profit corporation, and any direct or indirect subsidiary thereof;
- (d) Staffco of Brooklyn, LLC, a New York limited liability company, or any direct or indirect subsidiaries thereof;
- (e) any affiliates, agents, representatives, employees, consultants, counsel and other professional advisors of or to Landlord or any entity described in subsections (a), (b), (c), or (d) above; and
- (f) any officers, directors, trustees, shareholders, partners, members, managers, or principals of Landlord or of any of the foregoing.

The term “*Lease Documents*” means, collectively, this Lease, the PSA and any other written agreement, expressly referring to this Lease, made between the parties concurrently with the execution and delivery of this Lease.

The term “*LFHC*” means Sunset Park Health Council dba Lutheran Family Health Centers.

The term “*Life Safety Systems*” means the fire and life safety systems of the Building, servicing the Demised Premises either exclusively or together with other part(s) of the Building, existing as of the date of this Lease.

The term “*Medical Systems*” means the medical gas systems, the pneumatic tube (PEVCO) system and all other systems and utilities located outside of the Demised Premises, including the bulk oxygen and medical air systems, and the central medical gas alarm panel, that are, on the date hereof, providing service to the Demised Premises.

The term “*Member Bank*” means a commercial bank that is a member of the New York Clearing House Association with offices for banking purposes in the City of New York.

The term “*MEP Systems*” means the mechanical, electrical and plumbing systems of the Building, servicing the Demised Premises either exclusively or together with other part(s) of the Building, existing as of the date of this Lease.

The term “*Minority Group Member*” has the meaning ascribed to such term in *Exhibit D* to this Lease (Affirmative Action Clauses).

The term “*parties*” means, collectively, Landlord and Tenant.

The term “*Permitted Kestenbaum Entity*” means any entity as to which both:

(a) Louis Kestenbaum and/or Joel Kestenbaum (together with their respective spouses, parents, parents in law, brothers, brothers in law, sisters, sisters in law and the lineal descendants (whether by blood or adoption) of his or her parents) shall own, directly or indirectly through any entity owned directly or indirectly by any of the foregoing individuals, not less than fifty-one (51%) percent of the capital stock (if a corporation) or fifty-one (51%) percent of all of the equity and beneficial interests therein (if a partnership, limited liability company, or other entity); and

(b) Louis Kestenbaum and/or Joel Kestenbaum shall control the day to day operation of the business of such corporation, partnership, limited liability company, or other entity, except in the event of their deaths or disability.

For purposes of making the calculation described in subsection (a) above with regard to a corporation, partnership, limited liability company, or other entity, there shall be disregarded any direct or indirect stock or interests therein that:

(i) are redeemable or required to be redeemed by such corporation or entity, or by the direct or indirect shareholders or equity holders therein;

(ii) entitle the holder(s) thereof to a fixed or floating return out of the dividends or distributions within such corporation, partnership, limited liability company, or other entity;

(iii) entitle the holder(s) thereof to event of default and forfeiture remedies similar to the rights of a secured mezzanine lender;

(iv) except for a possible right to share in residual profits or income similar to so-called "equity kickers" reserved by some mezzanine lenders, do not entitle the holder(s) thereof to participate in any of the residual profits or income of such corporation, partnership, limited liability company, or other entity; and

(v) are held by an independent, institutional equity investor as a result of its infusion into such corporation, partnership, limited liability company, or other entity of part of the proceeds of an investment fund or pool raised either through a public offering or a bona fide, registered private placement.

The term "***Plant Requirements***" means all current federal, state and local legal requirements pertaining to physical plant and life safety systems, including, without limitation, Article 28 of the New York Public Health Law and regulations issued thereunder.

The term "***rents***" means the Fixed Rent and Additional Rent reserved under this Lease, as set forth in Section 2.02.

The term "***Responsible Affiliate or Contractor***" means any one or more affiliates of Tenant or any approved subtenant of the Demised Premises, or one or more contractors therewith, each of whom have been determined by SUNY, in accordance with standards and guidelines issued by the New York State Office of State Comptroller, to be responsible vendors.

The term “**Successor Landlord**” means the party succeeding to Landlord’s rights under this Lease pursuant to Section 6.03.

The term “**Superior Leases**” means those leases to which this Lease is, at the time in question, subject and subordinate pursuant to Section 6.01.

The term “**Superior Mortgages**” means those mortgages and other encumbrances to which this Lease is, at the time in question, subject and subordinate pursuant to Section 6.01.

The term “**Tenant’s Changes**” means any changes proposed to be made by Tenant in or to the Demised Premises.

The term “**Tenant’s Property**” means all paneling, movable partitions, lighting fixtures, special cabinet work, other business and trade fixtures, machinery and equipment, communications equipment and office equipment, whether or not attached to, or built into, the Demised Premises, that are installed in the Demised Premises by Tenant or for its account, without expense to Landlord, and can be removed without permanent damage to the Building, and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Demised Premises.

The term “**Tenant’s Work**” means all installations, materials, or work, other than Landlord’s Work, that is necessary or desirable to be performed and/or installed, in Tenant’s reasonable judgment, in or to the Demised Premises in order to prepare the same for Tenant’s use and occupancy.

B. Rules of Construction

The terms “**include**”, “**including**”, “**such as**” and words of like import shall each be construed as if followed by the phrase “without being limited to”.

The term “**obligations of this Lease**” and words of like import shall mean the covenants to pay Fixed Rent and Additional Rent under this Lease, together with all of the other covenants and conditions contained in this Lease.

The term “**Tenant’s obligations hereunder**” and words of like import, and the term “**Landlord’s obligations hereunder**” and words of like import, shall mean the obligations of this Lease that are to be performed or observed by Tenant, or by Landlord, as the case may be. Reference to “**performance**” of either party’s obligations under this Lease shall be construed as “performance and observance”.

Reference to Tenant being or not being “**in default hereunder**” or words of like import shall mean that Tenant is in default in the performance of one or more of Tenant’s obligations hereunder, or that Tenant is not in default in the performance of any of Tenant’s obligations hereunder, or that a condition of the character described in Section 23.01 or 23.02 has occurred and continues, or has not occurred or does not continue, as the case may be.

References to Landlord as having “**no liability to Tenant**” or being “**without liability to Tenant**” shall mean that Tenant is not entitled to:

- (a) terminate this Lease or claim actual or constructive eviction (partial or total);

(b) receive any abatement or diminution of rent or be relieved, in any manner, of any of its other obligations under this Lease; or

(c) be compensated for loss or injury suffered or to enforce any other kind of liability whatsoever against Landlord under, or with respect to, this Lease, or with respect to Tenant's use or occupancy of the Demised Premises.

The terms "*laws*", "*requirements of public authorities*" and words of like import shall each mean and include:

(a) any law, statute, resolution, code, ordinance and/or the like of any or all of the federal, state, city, county and/or borough governments;

(b) any rule, regulation, order, directive, requirement and/or the like of any or all departments, subdivisions, bureaus, agencies, or offices of any or all of the federal, state, city, county and/or borough governments, or of any other governmental, public, or quasi-public authorities, having jurisdiction over the Demised Premises and/or the use or operation thereof (including, without limitation, the conduct of medical operations therein);

(c) the lawful direction of any public officer within the scope of his or her authority; and/or

(d) the provisions of any applicable resolution, permit, special permit, license and/or the like pertaining to the Demised Premises and/or the use or operation thereof (including, without limitation, the conduct of medical operations therein).

The terms "*requirements of insurance bodies*" and words of like import shall each mean rules, regulations, orders and other requirements of the New York Board of Fire Underwriters and/or the New York Fire Insurance Rating Organization and/or any other similar body performing the same or similar functions and having jurisdiction or cognizance of the Building and/or the Demised Premises.

The term "*repair*" shall be deemed to include restoration and replacement as may be necessary to achieve and/or maintain good working order and condition.

The term "*changes*" shall be deemed to include alterations, additions, installations, substitutions, improvements and/or decorations.

Reference to "*termination of this Lease*" includes expiration or earlier termination of the Term or cancellation of this Lease pursuant to any of the provisions of this Lease or to law. Upon a termination of this Lease, the Term and estate granted by this Lease shall end at noon of the date of termination, as if such date were the Expiration Date, and neither party shall have any further obligation or liability to the other after such termination except:

(a) as shall be expressly provided for in this Lease;

(b) for such obligations as, by their nature or under the circumstances, can only be, or by the provisions of this Lease may be, performed after such termination, which obligations shall survive the termination of this Lease; and

(c) for any liability for a payment that shall have accrued to, or with respect to, any period ending at the time of termination, which liability shall survive the termination of this Lease.

The term "*Tenant*" shall mean the tenant named in the lease, or any assignee or other successor in interest (immediate or remote) of such tenant, while such tenant or such assignee or other successor in interest, as the case may be, is in possession of the Demised Premises as the holder of Tenant's estate and interest granted by this Lease and also, if Tenant is not an individual or a corporation, all of the persons, firms and corporations then comprising Tenant.

Words and phrases used in the singular shall be deemed to include the plural and vice versa, and nouns and pronouns used in any particular gender shall be deemed to include any other gender.

The rule of *ejusdem generis* shall not be applicable to limit a general statement following or referable to an enumeration of specific matters to matters similar to the matters specifically mentioned.

All references in this Lease to numbered Articles, numbered Sections and lettered Exhibits are references to Articles and Sections of this Lease, and Exhibits annexed to (and thereby made part of) this Lease, as the case may be, unless expressly otherwise designated in the context.

Exhibit D
Standard State University of New York Provisions

[Attached Hereto]

Exhibit A Standard Contract Clauses

State University of New York

February 11, 2014

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a Contractor, licensor, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. **PROHIBITION AGAINST ASSIGNMENT** Except for the assignment of its right to receive payments subject to Article 5-A of the State Finance Law, the Contractor selected to perform the services herein are prohibited in accordance with Section 138 of the State Finance Law from assigning, transferring, conveying, subletting or otherwise disposing of its rights, title or interest in the contract without the prior written consent of SUNY and attempts to do so are null and void. Notwithstanding the foregoing, SUNY may, with the concurrence of the New York Office of State Comptroller, waive prior written consent of the assignment, transfer, conveyance, sublease or other disposition of a contract let pursuant to Article XI of the State Finance Law if the assignment, transfer, conveyance, sublease or other disposition is due to a reorganization, merger or consolidation of Contractor's its business entity or enterprise and Contractor so certifies to SUNY. SUNY retains the right, as provided in Section 138 of the State Finance Law, to accept or reject an assignment, transfer, conveyance, sublease or other disposition of the contract, and to require that any Contractor demonstrate its responsibility to do business with SUNY.

3. **COMPTROLLER'S APPROVAL.** (a) In accordance with Section 112 of the State Finance Law, Section 355 of New York State Education Law, and 8 NYCRR 316, Comptroller's approval is not required for the following contracts: (i) materials; (ii) equipment and supplies, including computer equipment; (iii) motor vehicles; (iv) construction; (v) construction-related services; (vi) printing; and (vii) goods for State University health care facilities, including contracts for goods made with joint or group purchasing arrangements.

(b) Comptroller's approval is required for the following contracts: (i) contracts for services not listed in Paragraph (3)(a) above made by a State University campus or health care facility certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$250,000; (ii) contracts for services not listed in Paragraph (3)(a) above made by a State University campus not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$50,000; (iii) contracts for services not listed in Paragraph (3)(a) above made by health care facilities not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$75,000; (iv) contracts whereby the State University agrees to give something other than money, when the value or reasonably estimated value of such consideration exceeds \$10,000; (v) contracts for real property transactions if the contract value exceeds \$50,000; (vi) all other contracts not listed in Paragraph (3)(a) above, if the contract value exceeds \$50,000, e.g. SUNY acquisition of a business and New York State Finance Article 11-B contracts and (vii) amendments for any amount to contracts not listed in Paragraph (3)(a) above, when as so amended, the contract exceeds the threshold amounts stated in Paragraph (b) herein. However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

(c) Any contract that requires Comptroller approval shall not be valid, effective or binding upon the State University until it has been approved by the Comptroller and filed in the Comptroller's office.

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by SUNY of any SUNY-approved sums due and owing for work done upon the project.

7. **NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based on the submission of competitive bids, Contractor affirms, under penalty of perjury, and each person signing on behalf of Contractor, and in the case of a joint bid each

party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered it to SUNY a non-collusive bidding certification on Contractor's behalf.

8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 *et seq.*) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).

9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State, its representatives, or the State Comptroller.

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as SUNY and its representatives and entities involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. SUNY shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate SUNY official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way

adversely affect, SUNY's or the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to the State University of New York by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State University of New York is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the State University of New York contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

(a) In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(1) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrades, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(2) at SUNY's request. Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(3) Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(b) Contractor will include the provisions of "1", "2" and "3". above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a Contractor or sub-contractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. SUNY shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, SUNY shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit A, the terms of this Exhibit A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or

public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certification, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MacBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165(5) of the State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl St., 7th Floor
Albany, NY 12245
Tel: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearch/Public.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to SUNY;

(b) The Contractor has complied with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Search Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The contractor agrees to document

these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that SUNY may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with SUNY in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact the NYS Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal or similar services, then in accordance with Section 163(4-g) of the State Finance Law, the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to SUNY, the Department of Civil Service and the State Comptroller.

24. PURCHASES OF APPAREL AND SPORTS EQUIPMENT. In accordance with State Finance Law Section 165(7), SUNY may determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder as defined in State Finance Law Section 163 based on (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including employee compensation, working conditions, employee rights to form unions and the use of child labor; or (b) bidder's failure to provide information sufficient for SUNY to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.

25. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

26. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the Contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or SUNY discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if SUNY determines that such action is in the best interests of the State.

27. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

THE FOLLOWING PROVISIONS SHALL APPLY ONLY TO THOSE CONTRACTS TO WHICH A HOSPITAL OR OTHER HEALTH SERVICE FACILITY IS A

28. Notwithstanding any other provision in this contract, the hospital or other health service facility remains responsible for insuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, state and local statutes, rules and regulations. In the foregoing sentence, the word "service" shall be construed to refer to the health care service rendered by the hospital or other health service facility.

29. (a) In accordance with the 1980 Omnibus Reconciliation Act (Public Law 96-499), Contractor hereby agrees that until the expiration of four years after the furnishing of services under this agreement, Contractor shall make available upon written request to the Secretary of Health and Human Services, or upon request, to the Comptroller General of the United States or any of their duly authorized representatives, copies of this contract, books, documents and records of the Contractor that are necessary to certify the nature and extent of the costs hereunder.

(b) If Contractor carries out any of the duties of the contract hereunder, through a subcontract having a value or cost of \$10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that, until the expiration of four years after the furnishing of such services pursuant to such subcontract, the subcontractor shall make available upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, copies of the subcontract and books, documents and records of the subcontractor that are necessary to verify the nature and extent of the costs of such subcontract.

(c) The provisions of this section shall apply only to such contracts as are within the definition established by the Health Care Financing Administration, as may be amended or modified from time to time.

Exhibit A-1: Affirmative Action Clauses

State University of New York

June 6, 2012

1. DEFINITIONS. The following terms shall be defined in accordance with Section 310 of the Executive Law:

STATE CONTRACT herein referred to as "State Contract", shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the State University of New York ("University") is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing, to be performed for, or rendered or furnished to the University; (b) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University as an owner of a state assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project.

SUBCONTRACT herein referred to as "Subcontract", shall mean any agreement providing for a total expenditure in excess of \$25,000 for construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon between a Contractor and any individual, partnership, corporation, or not-for-profit corporation, in which a portion of a Contractor's obligation under a State Contract is undertaken or assumed, but shall not include any construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon for the beneficial use of Contractor.

WOMEN-OWNED BUSINESS ENTERPRISE herein referred to as "WBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more United States citizens or permanent resident aliens who are women; (b) an enterprise in which the ownership interest of such women is real, substantial and continuing; (c) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any Contract or any goal, set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract may not be divided between the minority-

owned business enterprise goal and the women-owned business enterprise goal.

MINORITY-OWNED BUSINESS ENTERPRISE herein referred to as "MBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more minority group members; (b) an enterprise in which such minority ownership is real, substantial and continuing; (c) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000.00), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

MINORITY GROUP MEMBER shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America. (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or Pacific Islands.

CERTIFIED ENTERPRISE OR BUSINESS shall mean a business verified as a minority or women-owned business enterprise pursuant to section 314 of the Executive Law. A business enterprise which has been approved by the New York Division of Minority & Women Business Development ("DMWBD") for minority or women-owned enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women, and that also meets the financial requirements set forth in the regulations.

2. TERMS. The parties to the attached State Contract agree to be bound by the following provisions which are made a part hereof (the word "Contractor" herein refers to any party other than the University):

1(a) Contractor and its Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(b) Prior to the award of a State Contract, the Contractor shall submit an equal employment opportunity (EEO) policy statement to the University within the time frame established by the University.

(c) As part of the Contractor's EEO policy statement, the Contractor, as a precondition to entering into a valid and binding State Contract, shall agree to the following in the performance of the State Contract: (i) The Contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to

ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State Contracts:(ii) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the State Contract, all qualified applicants will be afforded equal employment opportunities without discrimination; (iii) At the request of the University the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(d) Except for construction contracts, prior to an award of a State Contract, the Contractor shall submit to the contracting agency a staffing plan of the anticipated work force to be utilized on the State Contract or, where required, information on the Contractor's total work force, including apprentices, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the contracting agency. The form of the staffing plan shall be supplied by the contracting agency. If Contractor fails to provide a staffing plan, or in the alternative, a description of its entire work force, the University may reject Contractor's bid, unless Contractor either commits to provide such information at a later date or provides a reasonable justification in writing for its failure to provide the same.

(e) After an award of a State Contract, the Contractor shall submit to the University a workforce utilization report, in a form and manner required by the agency, of the work force actually utilized on the State Contract, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the University.

(f) The Contractor shall include the provisions of this section in every Subcontract in such a manner that the requirements of the provisions will be binding upon each Subcontractor as to work in connection with the State Contract, including the requirement that Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the Contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the State Contract.

(g) To ensure compliance with the requirements of this paragraph, the University shall inquire of a Contractor whether the work force to be utilized in the performance of the State Contract can be separated out from the Contractor's and/or Subcontractors' total work force and where the work of the State Contract is to be performed. For Contractors who are unable to separate the portion of their work force which will be utilized for the performance of this State Contract, Contractor shall provide reports describing its entire work force by the specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories which the agency may specify.

(h) The University may require the Contractor and any Subcontractor to submit compliance reports, pursuant to the regulations relating to their operations and implementation of their affirmative action or equal

employment opportunity program in effect as of the date the State Contract is executed.

(i) If a Contractor or Subcontractor does not have an existing affirmative action program, the University may provide to the Contractor or Subcontractor a model plan of an affirmative action program. Upon request, the Director of DMWBD shall provide a contracting agency with a model plan of an affirmative action program.

(j) Upon request, DMWBD shall provide the University with information on specific recruitment sources for minority group members and woman, and contracting agencies shall make such information available to Contractors

2. Contractor must provide the names, addresses and federal identification numbers of certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State Contract and a description of the Contract scope of work which the Contractor intends to structure to increase the participation by Certified minority- and/or women-owned business enterprises on the State Contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract which the Contractor intends to be performed by a certified minority- or woman-owned business enterprise. In the event the Contractor responding to University solicitation is joint venture, teaming agreement, or other similar arrangement that includes a minority-and women owned business enterprise, the Contractor must submit for review and approval: i. the name, address, telephone number and federal identification of each partner or party to the agreement; ii. the federal identification number of the joint venture or entity established to respond to the solicitation, if applicable; iii. A copy of the joint venture, teaming or other similar arrangement which describes the percentage of interest owned by each party to the agreement and the value added by each party; iv. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, teaming agreement, or other similar arrangement.

3. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN. The University shall determine whether Contractor has made conscientious and active efforts to employ and utilize minority group members and women to perform this State Contract based upon an analysis of the following factors:

(a) Whether Contractor established and maintained a current list of recruitment sources for minority group members and women, and whether Contractor provided written notification to such recruitment sources that contractor had employment opportunities at the time such opportunities became available.

(b) Whether Contractor sent letters to recruiting sources, labor unions, or authorized representatives of workers with which contractor has a collective bargaining or other agreement or understanding requesting assistance in locating minority group members and women for employment.

(c) Whether Contractor disseminated its EEO policy by including it in any advertising in the news media, and in particular, in minority and women news media.

(d) Whether Contractor has attempted to provide information concerning its EEO policy to Subcontractors with which it does business or had anticipated doing business.

(e) Whether internal procedures exist for, at a minimum, annual dissemination of the EEO policy to employees, specifically to employees having any

responsibility for hiring, assignment, layoff, termination, or other employment decisions. Such dissemination may occur through distribution of employee policy manuals and handbooks, annual reports, staff meetings and public postings.

(f) Whether Contractor encourages and utilizes minority group members and women employees to assist in recruiting other employees.

(g) Whether Contractor has apprentice training programs approved by the N.Y.S. Department of Labor which provides for training and hiring of minority group members and women.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor.

4. PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES. Based upon an analysis of the following factors, the University shall determine whether Contractor has made good faith efforts to provide for meaningful participation by minority-owned and women-owned business enterprises which have been certified by DMWBD:

(a) Whether Contractor has actively solicited bids for Subcontracts from qualified M/WBES, including those firms listed on the Directory of Certified Minority and Women-Owned Business Enterprises, and has documented its good faith efforts towards meeting minority and women owned business enterprise utilization plans by providing, copies of solicitations, copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publications of such advertisements; dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the University, with certified minority- and women-owned business enterprises, and the reasons why any such firm was not selected to participate on the project.

(b) Whether Contractor has attempted to make project plans and specifications available to firms who are not members of associations with plan rooms and reduce fees for firms who are disadvantaged.

(c) Whether Contractor has utilized the services of organizations which provide technical assistance in connection with M/WBE participation.

(d) Whether Contractor has structured its Subcontracts so that opportunities exist to complete smaller portions of work.

(e) Whether Contractor has encouraged the formation of joint ventures, partnerships, or other similar arrangements among Subcontractors.

(f) Whether Contractor has requested the services of the Department of Economic Development (DED) to assist Subcontractors' efforts to satisfy bonding requirement.

(g) Whether Contractor has made progress payments promptly to its Subcontractors.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor. It shall be the responsibility of Contractor to ensure compliance by every Subcontractor with these provisions.

5. GOALS. (a) GOALS FOR MINORITY AND WOMEN WORK FORCE PARTICIPATION. (i) The University shall include relevant work force availability data, which is provided by the DMWBD, in all documents which solicit bids for State Contracts and

shall make efforts to assist Contractors in utilizing such data to determine expected levels of participation for minority group members and women on State Contracts.

(ii) Contractor shall exert good faith efforts to achieve such goals for minority and women's participation. To successfully achieve such goals, the employment of minority group members and women by Contractor must be substantially uniform during the entire term of this State Contract. In addition, Contractor should not participate in the transfer of employees from one employer or project to another for the sole purpose of achieving goals for minority and women's participation.

(b) GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION. For all State Contracts in excess of \$25,000.00 whereby the University is committed to expend or does expend funds in return for labor services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing or all State Contracts in excess of \$100,000.00 whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of eleven percent (11%) for Certified Minority-Owned Business Enterprises and eight percent (8%) for Certified Women-Owned Business Enterprises.

6. ENFORCEMENT. The University will be responsible for enforcement of each Contractor's compliance with these provisions. Contractor, and each Subcontractor, shall permit the University access to its books, records and accounts for the purpose of investigating and determining whether Contractor or Subcontractor is in compliance with the requirements of Article 15-A of the Executive Law. If the University determines that a Contractor or Subcontractor may not be in compliance with these provisions, the University may make every reasonable effort to resolve the issue and assist the Contractor

or Subcontractor in its efforts to comply with these provisions. If the University is unable to resolve the issue of noncompliance, the University may file a complaint with the DMWBD.

7. DAMAGES FOR NON COMPLIANCE.

Where the University determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to liquidated damages to the University. Such liquidated damages shall be calculated as an amount equaling the difference between:

a. All sums identified for payment to MWBES had the Contractor achieved the contractual MWBE goals; and

b. All sums actually paid to MWBES for work performed or materials supplied under the Contract. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the University, Contractor shall pay such liquidated damages to the University within sixty (60) days after such damages are assessed, unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the University.