

EXHIBIT "D"

INTERIM SUBLEASE

FPG COBBLE HILL ACQUISITIONS, LLC,

LANDLORD

TO

NYU HOSPITALS CENTER,

TENANT

Date:

October __, 2014

Demised Premises:

Portions of the First (1st) Floor at
The Polak Pavilion, 363 Hicks Street
The Henry Street Building, 340 Henry Street
Brooklyn, New York

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INTERIM SUBLEASE

INTERIM SUBLEASE (herein called this "*Lease*") dated as of October __, 2014 (herein called the "*Effective Date*"), by and between **FPG COBBLE HILL ACQUISITIONS, LLC**, a Delaware limited liability company having an office at c/o Fortis Property Group, LLC, 45 Main Street, Suite 800, Brooklyn, New York 11201 (herein called "*Landlord*") and **NYU HOSPITALS CENTER**, a New York not-for-profit corporation having an office at 550 First Avenue, New York, New York 10016 (herein called "*Tenant*").

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 Downstate at LICH Holding Company, Inc. ("*Overlandlord*"), 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 Overlandlord, 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**"). Landlord has been designated the Successful Offeror (as defined in the 2014 RFP), and has entered into a Purchase and Sale Agreement, as amended and restated by the First Amended and Restated Purchase and Sale Agreement, dated as of the date hereof (herein called the "**PSA**") regarding, *inter alia*, the sale of the LICH Portfolio to Landlord under and in accordance with the PSA. The buildings known as the Polak Pavilion, located at 363 Hicks Street, and the building known as the Henry Street Building, located at 340 Henry Street, 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 collectively 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.

In order to enable Landlord, or its affiliates, and/or contractors, as subtenants hereunder, to operate a freestanding emergency department, and certain other health care services described herein, in the Demised Premises, pursuant to the PSA, during the period commencing on the Commencement Date and expiring on the day upon which title to the Land and the Building is conveyed to the purchaser under the PSA, Overlandlord has leased the Demised Premises to Landlord pursuant to a lease dated June 30, 2014, as amended by that certain First Amended and Restated Interim Lease dated of even date herewith (as so amended, the “*Interim Overlease*”), and Landlord now wishes to sublease the Demised Premises to Tenant, and Tenant wishes to sublease 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 those portions of the first (1st) floor of the Building shown on the floor plan annexed hereto as *Exhibit B* (the “*ED Space*”), 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 \$0.00 per annum.

(c) “*Medical Licenses*” means all licenses and other governmental approvals required for the operation of a freestanding emergency department in the Demised Premises (including, without limitation, the approval of the DOH under Article 28 of the New York State Public Health Law).

(d) “*Permitted Use*” means:

(i) the operation, in the ED Space, of a freestanding emergency department, licensed under Article 28 of the New York State Public Health Law, with all supportive services (which shall include on-site or off-site laboratory services, radiology, on-site or off-site pharmacy services, social work services and outgoing ambulance transport) required under Article 28 of the New York State

Public Health Law, on a twenty-four (24) hours per day, seven (7) days per week, basis (the “*Emergency Department*”); and

(ii) Intentionally Omitted.

(e) Intentionally Omitted.

(f) “*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 (the “*Commencement Date*”) that Tenant 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 after the Initial Closing (as defined in the PSA), 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 (as defined in the PSA), both the New Medical Site (as defined in the PSA) and the Final Closing Premises (as defined in the PSA), or Tenant’s rights to acquire the New Medical Site at an NMS Closing are terminated;

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

(IV) the New Medical Site;

(C) the day upon which the Interim Overlease expires in accordance with its terms or is terminated;

(D) the day upon which the Final Closing (as defined in the PSA) shall occur;

(E) the Final Closing Deadline (as defined in the PSA);

(F) the day which is thirty (30) days after the commencement of operations in the Emergency Department of the New Medical Building (as defined in the PSA), or so long as such operations have commenced, such earlier date elected by Tenant upon no less than ten (10) days prior notice to Landlord;

(G) the day upon which the reverter in the deed delivered under the PSA for the New Medical Site is exercised (a “**Reverter Event**”); and

(H) 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.

Notwithstanding the foregoing, if Tenant notifies Landlord that Tenant is ready, willing and able to commence operations in the Demised Premises pursuant to and in accordance with the terms of this Lease, Landlord agrees to attempt to accelerate the commencement of the term of the Interim Overlease which would allow for the acceleration of the Commencement Date hereunder.

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.

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. Provided the PSA and Interim Overlease are in full force and effect as of the Commencement Date, 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) Intentionally Omitted

(b) the Additional Rent (including, without limitation, the Operating Expense Payment and the Excess Building Operating Expense Payment prescribed in Section 2.06 and payment of Tenant's Pro Rata Share of Impositions under Section 2.04(a)), for default in payment of which Landlord shall have the same remedies as for a default in the payment of Fixed Rent.

Notwithstanding anything to the contrary contained herein, no Fixed Rent shall be payable by Tenant during the Term. The foregoing rents, to the extent same become payable to Landlord hereunder, 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.

2.03 Delivery of Possession. Landlord shall deliver possession of the ED Space to Tenant on the Commencement Date in its then "as is, where is" condition, subject to the terms and conditions of this Lease.

2.04 Real Estate Taxes. 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 the Interim Overlease, 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) Commencing on the Commencement Date, Tenant covenants and agrees to pay, as hereinafter provided, Tenant's Pro Rata Share (as hereinafter defined) of all real estate taxes, business improvement district taxes and vault taxes, and all assessments and special assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the Effective Date 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), levied, assessed or imposed on or with respect to the Building and the Land (more particularly described in Exhibit A) by any governmental authority; it being agreed that only installments of assessments allocable to the term of this Lease, assuming that the assessment is paid in the maximum number of installments permitted, shall be included in "Impositions" hereunder (collectively "**Impositions**"). Notwithstanding the foregoing, if the Land is part of a tax lot including other parcels of land, then the term "**Land**", solely for purposes of this Section, shall be deemed to refer to all parcels of land in such tax lot, and the term "**Building**", solely for purposes of this Section, shall be deemed to refer to all buildings on such parcels of land. The parties acknowledge and agree that, for all purposes under this Lease, (i) the square footage of the Building shall be determined by a measurement performed by Landlord's architect on the same basis as was determined the square footage of the ED Space, subject to the reasonable consent of Tenant's architect, (ii) any measurement of the Land shall be done on a square footage basis, and (iii) the square footage of the ED Space is 32,602 square feet. As used in this Lease, subject to Section 2.04(d) below, the term "**Tenant's Pro Rata Share**" shall mean a fraction (expressed as a percentage) the numerator of which is the square footage of the Demised Premises, and the denominator of which is the gross square footage of the Building; provided, however, that, in the event the square footage of the Building changes after the date hereof, whether by reason of a tax lot segregation (such that the tax lot in which the Demised Premises is located no longer includes all of the buildings located within such tax lot on the date hereof) or the modification or demolition of any buildings within the tax lot in which the Demised Premises is located, Tenant's Pro Rata Share for any period in which such change is taken into account in calculating Impositions shall be adjusted to reflect the revised square footage of the Building and, if

applicable, the Land, as so modified, to be calculated in the same manner as the foregoing calculations were made, but, if a portion of a Building is demolished, allocating Impositions based on the land component of the assessed valuation among all parcels of land in such tax lot on a square footage basis based on the square footage of such land, and the Impositions based on assessed valuation of the buildings and other improvements on such tax lot on a square footage basis of such buildings and other improvements. In such event, Landlord shall cause its architect to calculate the proposed revision to Tenant's Pro Rata Share, with reasonable substantiation, and present it to Tenant for its approval, which approval shall not be unreasonably withheld or delayed. Such modification, as and when agreed upon, shall be effective as of the date the change in question occurred. For all purposes in this Lease, the term “**square footage**” shall refer to the gross square footage of the applicable space and/or floors of the Building (excluding any cellar, basement and/or below grade levels), as the case may be. It is understood and agreed that Tenant shall pay Tenant's Pro Rata Share of Impositions only to the extent 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 on a per diem basis based upon the portion of such fiscal year occurring on and after the Commencement Date or on and prior to the Expiration Date, as the case may be.

(b) Nothing contained in Section 2.04(a) 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 Demised 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) Within the later of thirty (30) days (i) after receipt of any invoice from Landlord documenting such Impositions, and (ii) before the due date of such Impositions to the applicable governmental authority, Tenant shall pay Tenant's Pro Rata Share of the amount of the charges set forth thereon to Landlord as Additional Rent. In the event Landlord obtains any refund or rebate of any Impositions from the applicable taxing authority, Landlord shall promptly

pay to Tenant Tenant's Pro Rata Share of such refunded or rebated amount. This subsection shall survive the expiration or sooner termination of this Lease.

(d) Notwithstanding anything contained in this Lease to the contrary, upon and after the Full Building Expense Date, Tenant's Pro Rata Share shall be deemed to mean one hundred percent (100%). Any Impositions accruing during a real estate tax fiscal year, only part of which occurs from and after the Full Building Expense Date, shall be prorated on a per diem basis, such that Tenant's Pro Rata Share calculated under Section 2.04(a) above shall be applied with respect to the payment of the portion of such Impositions applicable to the period prior to the Full Building Expense Date and Tenant's Pro Rata Share set forth in this Section 2.04(d) shall be applied with respect to the payment of the portion of such Impositions applicable to the period on and after the Full Building Expense Date

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 Operating Expense Payment.

(a) In consideration for certain of the services and work to be provided by or on behalf of Landlord to Tenant under this Lease, and in lieu of any other reimbursement or payment to Landlord therefor (except as otherwise expressly provided in this Lease), commencing on the Commencement Date, Tenant shall pay Landlord a per annum payment (the "**Operating Expense Payment**") equal to the product of (i) \$8.00 and (ii) the Rentable Square Feet (as hereinafter defined) of the ED Space, payable, in advance, in equal monthly installments on the first (1st) day of each month of the Term. For the month in which occurs the Commencement Date or the Expiration Date, or in which the square footage of the Demised Premises changes pursuant hereto, the Operating Expense Payment shall be adjusted on a per diem basis. As used herein, the term "**Rentable Square Feet**" shall mean the amount equal to the aggregate square footage of the ED Space, as the case may be, referenced in Section 2.04, as such square footage may change pursuant to the Lease.

(b) Notwithstanding the foregoing to the contrary, with respect to each calendar month commencing with the month in which the Full Building Expense Date occurs and thereafter, Tenant shall also pay Landlord all charges that accrue under Sections 13.02, 14.03, 15.02, 16.01 and/or 16.04 of the Interim Overlease during such month, to the extent such charges exceed the monthly Operating Expense Payment due hereunder (the "**Excess Building Operating Expense Payment**"). Landlord may, from time to time (but not more often than monthly), furnish Tenant with reasonably detailed invoices for any and all Excess Building Operating Expense Payments, and Tenant shall pay Landlord the amount of the charges set forth thereon within thirty (30) days after receipt of such invoice, as Additional Rent. For the month in which the Full Building Expense

Date occurs, the Excess Building Operating Expense Payment shall be adjusted on a per diem basis. As used herein, the term “**Full Building Expense Date**” shall mean the date which is four (4) years after the conveyance of the New Medical Site to Tenant (or its affiliate) under the PSA at the Initial Closing or the NMS Closing (as therein defined), as extended by actual delays caused by Landlord's acts or omissions, beyond the dates when the same would have occurred but for the act or omission of Landlord. If Tenant contends that such a delay has occurred or is occurring due to an act or omission of Landlord, in order to claim such Unavoidable Delay, Tenant shall notify Landlord in writing within two business days of Tenant has actual knowledge of such a delay (and any period from such second (2nd) business day until Tenant gives actual notice to Landlord shall not be part of such delay). In such notice, Tenant shall identify the nature of the act or omission causing the delay, the nature of the delay and Tenant's estimate of the duration of the delay, to the extent reasonably practicable.

Article 3 **Use and Operating Covenant**

3.01 Permitted Use. Tenant, as well as any permitted managing agent, 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. Subject to Section 3.06, Tenant, at its sole cost and expense, shall procure on or before the Commencement Date, and use good faith, diligent efforts, based on its good faith professional judgment, to 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, (i) a Certificate of Need issued therefor by the DOH, to the extent so required [a “*CON*”], and (ii) the Medical Licenses) (collectively, the “*Required Licenses*”), and display the same for inspection by Landlord promptly after Landlord’s written request therefor. Subject to Section 3.06, at all times Tenant shall use good faith, diligent efforts, based on its good faith professional judgment, 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 and shall request that Overlandlord join in the application for any licenses, permits, approvals and authorizations sought by Tenant (except for an application to change the Certificate of Occupancy for the Demised Premises or the Building) whenever such joinder by Landlord and/or Overlandlord shall be required by any governmental agency having jurisdiction.

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 Operating Covenant.

(a) Subject to Section 3.06, Tenant shall, throughout the Term, use good faith diligent efforts to continuously operate the Emergency Department (on a 24 hours/day, 7 days/week basis) in the ED Space.

(b) Tenant agrees that Overlandlord is a third party beneficiary (and the sole third party beneficiary) of the rights and obligations under this Section 3.04 and Overlandlord shall have the right to enforce this Section 3.04 against Tenant as such beneficiary if Landlord fails to enforce the provisions of this Section 3.04, including, without limitation, the right to give notices of default to Tenant pursuant to this Lease.

3.05 Use of Common Areas Subject in all respects to the provisions of Section 17.04 below, but notwithstanding anything to the contrary provided in Section 17.01 below or elsewhere in this Lease, Tenant shall have the right to non-exclusive use of the Common Areas located within the first (1st) floor of the Building, including, without limitation, the loading dock on the first (1st) floor of the Building for deliveries and pick-ups, and to other areas of the Building where access is necessary for Tenant's operation of the Emergency Department in the Demised Premises and performance of its obligations hereunder. In addition, Tenant, at its sole cost and expense, shall have the right, subject to all applicable requirements of public authorization 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 (i) the location is such equipment is subject to the reasonable approval of Landlord, and (ii) such installation and maintenance thereof is subject to the provisions of Article 11 and Section 13.01. The non-exclusive use of the Common Areas hereunder is subject to such reasonable rules and regulations as Landlord informs Tenant from time to time, consistently applied, and which Landlord agrees shall not increase Tenant's obligations hereunder other than to a de minimis extent.

3.06 Tolling of Tenant's Performance Tenant's obligations under Sections 3.02 and 3.04(a) shall be subject to extension or interruption, as to all or a portion of such obligations, as applicable under the circumstances, due to the following events:

(a) Unavoidable Delay or Unavoidable Interruption (as defined in **Exhibit E**), subject to the provisions of **Exhibit E** hereto in each instance, or interruptions in service required, in Tenant's good faith professional judgment, to protect or preserve patient health or safety;

(b) any breach by Overlandlord in its obligations under the Interim Overlease which delays or interrupts Tenant's performance of its obligations (it being agreed that such a breach is a material breach by Overlandlord);

(c) any default by Landlord under this Lease (including Section 13.02 or Section 13.03) which delays or interrupts Tenant's performance of its obligations;

(d) delays due to the time required to determine the necessity for or to perform, or due to the failure to complete any Tenant Space Required Upgrade, any work required under Section 13.02, or any Building Required Upgrades under Section 13.03, including obtaining (and to the extent required to obtain) any legally required acceptance or sign-off from each applicable governmental agency having jurisdiction with respect to such Tenant Space Required Upgrade, work required under Section 13.02, or Building Required Upgrade; provided, however, that Tenant shall use good faith and diligent efforts to apply for and obtain such acceptances and sign-offs;

(e) any failure to complete a Permitted Non-Upgrade (as defined in Section 13.03(b)); provided, however, in the event of any loss of any Required License by reason of the failure to complete a Permitted Non-Upgrade, Tenant shall continue to make good faith and diligent efforts to procure all Required Licenses to the extent the same can be procured prior to completion of such Permitted Non-Upgrade;

(f) any exercise by Overlandlord or Landlord of any of its rights under either Section 16.05 or Section 17.02 hereof which delays or interrupts Tenant's performance of its obligations;

(g) a Permitted Closure Event (as defined in Section 13.03(c));

(h) incidental cessation consistent with the customary operations of emergency departments or ambulatory surgery centers in Tenant's network; or

(i) withdrawal of the DOH Consent (as defined in the Purchase Agreement).

Notwithstanding the occurrence of any of the foregoing events described under subsections 3.06(a) through (i), (x) Tenant shall continue to make good faith and diligent efforts, based on Tenant's good faith professional judgment, to cause compliance with its obligations under Sections 3.02 and 3.04 hereof, except in the case of a Permitted Closure Event, and (y) the effect of such event shall only apply to the obligation actually delayed or interrupted by the occurrence of the applicable event. Tenant shall deliver to Landlord of notice of the applicable event under this Section 3.06 promptly following Tenant having obtained actual knowledge of the occurrence of same, and provided further that the extension or period of tolling of the applicable obligation, as the case may be, shall be only for the period of actual delay or interruption caused by such event.

3.07 Third Party Beneficiary. Tenant agrees that Overlandlord is a third party beneficiary (and the sole third party beneficiary) of this Lease and Overlandlord shall be entitled to enforce the provisions of this Lease regarding the use and operation of the Demised Premises.

Article 4
Preparation of the Demised Premises

4.01 [Intentionally Deleted.]

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 applicable legal requirements and 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. Prior to the Commencement Date, Landlord and Tenant acknowledge that Tenant will be granted the right to enter the Demised Premises by SUNY pursuant to that certain permit annexed hereto as Exhibit G (the "Access Permit") to observe and to prepare to commence operations on the Commencement Date and to perform Tenant's Initial ED Work (as such items are defined in Section 11.01). Such access shall be subject to reasonable prior notice to Landlord and coordination with the existing operations. Tenant acknowledges and agrees that Landlord is not a party to such permit, and makes no representations in connection therewith, and has no obligations (or authority) to Tenant to provide any access to the Demised Premises prior to the Commencement Date.

4.03 Notice of Licenses and Permits. Promptly following Landlord's request from time to time, Tenant shall provide updates to Landlord concerning the status of Tenant's receipt of all licenses, permits, approvals and authorizations required for the proper and lawful occupancy and operation of the Permitted Use in the Demised Premises (including, without limitation, the Medical Licenses).

Article 5
Other Users

5.01 [Intentionally Deleted].

5.02 Use of First Floor Space. If Overlandlord or Landlord shall allow any person or entity to use or occupy any portion of the first (1st) floor of the Building (other than Tenant under this Lease, and other than the 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 serving the Demised Premises (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).

5.03 Occupancy of Remainder of Building. Landlord agrees to make commercially reasonable efforts to cause Overlandlord to comply with Section 3.04 of the Interim Overlease.

5.04 Occupancy of Remainder of the Landlord's Premises. During the Term, Landlord will not lease or grant occupancy rights to any space being leased by Landlord under the Interim Overlease for the provision of medical services of any kind, other than a lease of any Expansion Space (as defined in the Interim Overlease) to Sunset Park Health Council dba Lutheran Family Health Centers for use as set forth in Section 1.01(c)(ii) of the Interim

Overlease, and no lease or occupancy agreement entered into by Landlord (other than this Lease) shall have a term (including renewals) that extends beyond the Full Building Expense Date.

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;

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

(iii) the Interim Overlease.

(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 Overlandlord's allocated share of any debt associated with the State Personal Income Tax Revenue Bonds (General Purpose), Series 2012D, issued by the State of New York (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 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 Overlandlord, 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, Overlandlord, 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.

Article 7 **Quiet Enjoyment**

7.01 **Quiet Enjoyment.** So long as Tenant pays all of the Fixed Rent and 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 Article 6, 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**"), DASNY and Overlandlord and, as to subsection (a) below only, DOH, in each instance, 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) that results in a change of control of Tenant, 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) that results in a change of control of such 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 and Overlandlord'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 Lease 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 Fixed Rent and/or 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 Fixed Rent and 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 and Overlandlord'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 such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not:

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

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

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

(d) notwithstanding such subletting, and notwithstanding the acceptance of Fixed Rent and/or 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 Fixed Rent and 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 Tenant, 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 Tenant 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. Landlord's consent shall not be required in connection with a sublease of a portion of the Demised Premises to (a) New York University, (b) a Related Entity to Tenant or New York University, or (c) Tenant's or New York University's facility physicians or faculty physicians group; provided, however, that the consent of Overlandlord, AG, OSC and DASNY to any such sublease shall be required to the extent required under Article 8 of the Interim Overlease. For purposes of this Article, a "Related Entity" shall mean: (x) any wholly-owned subsidiary of Tenant or New York University or any corporation or entity which controls or is controlled by Tenant or New York University or any entity affiliated with Tenant or New York University; or (y) any entity (i) to which substantially all of the assets of Tenant or

New York University are transferred or (ii) into which Tenant or New York University may be merged or consolidated. With respect to any sublet not requiring the consent of Landlord hereunder, Tenant shall deliver notice thereof to Landlord on or before entering into the sublease agreement with respect thereto, and will deliver a copy of such sublease agreement promptly after the full execution and deliver thereof. 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 University Hospital of Brooklyn) as clinical laboratory space shall be permitted without the consent of Landlord.

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 Fixed Rent and 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, on the Building directory, 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 or Overlandlord shall decline to give its consent to any proposed assignment or sublease, Tenant shall indemnify, defend and hold harmless Landlord and Overlandlord 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. During the Term, except as otherwise provided in Sections 4.01, 9.03, 13.02 and 13.03, 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 only (and not including the HVAC Systems, MEP System, Life Safety System and elevator) 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 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

- (d) the breach of any of Tenant's obligations under this Lease.

However, Tenant shall not be required to make any structural change in the Demised Premises unless the requirement arises from a cause or condition referred to in subsection 9.01(b) or (c) above. 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) Neither Landlord nor Overlandlord shall 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 and Overlandlord harmless from and against all liability, loss, or damage that Landlord and/or Overlandlord 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/or Overlandlord); and

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

Without limiting the application of subsection (b) above thereto, Landlord or Overlandlord shall be deemed to be subject to prosecution for a crime, within the meaning of such subsection, if such party, or any officer or employee of such party 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 such party 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. Landlord warrants, to the best of its knowledge, that there are no Hazardous Materials present in violation of applicable laws in the Demised Premises and the Building as of the Effective Date which would materially interfere with Tenant's use and operations in the Demised Premises. Landlord shall remediate, in compliance with all applicable laws and requirements of public authorities (including the DOH), any asbestos-containing materials required to be remediated (pursuant to such laws and requirements of public authorities) in connection with Landlord's maintenance and repair obligations set forth

in Section 13.02. From the Commencement Date (or such earlier date on which Tenant is granted access to the Demised Premises pursuant to the terms of this Lease) and throughout the Term, 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, use or disposition in or from 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 in accordance with all of the applicable legal requirements. In the event of a breach of the provisions of this Section, 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 shall survive the expiration or sooner termination of this Lease. In addition, to Landlord's obligations above in this Section 9.03, Landlord shall promptly remove, or cause the removal of, any Hazardous Material from the Building, as required by all of the applicable legal requirements, only to the extent same are interfering with Tenant's use and operations in the Demised Premises, except for those Hazardous Materials that Tenant is required to remove pursuant to this Lease (including, without limitation, Hazardous Materials which become required to be removed under applicable legal requirements due to Tenant's Changes or operations in the Demised Premises). Tenant shall remove all Hazardous Materials from the Demised Premises that it is required to remove hereunder (including, without limitation, Hazardous Materials which become required to be removed under applicable legal requirements due to Tenant's Changes or operations in the Demised Premises), 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 or Overlandlord 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 and Overlandlord.

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, 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, Overlandlord and all Landlord Indemnitees and all Overlandlord's Indemnitees as additional insureds, protecting Landlord, Overlandlord, and such Landlord's Indemnitees and Overlandlord'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 Seventy-Five Million (\$75,000,000.00) Dollars of combined single limit coverage on a per occurrence basis (including property damage), with a deductible not to exceed \$25,000.00;

(iii) Intentionally Omitted; 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;

(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 and Overlandlord 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 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 Overlandlord, Landlord and all of Overlandlord's Indemnitees and Landlord's Indemnitees as additional insureds; and

(b) specifically reference the Demised Premises.

The liability insurance required to be carried by Tenant 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 shall deliver to Landlord certificates evidencing such insurance (including, but not limited to, a certified copy of the endorsement naming Landlord and Overlandlord 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 or Overlandlord, make available to such requesting party in the Demised Premises or elsewhere in the City of New York originals of such policies for its review from which Landlord or Overlandlord, as the case may be, 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 or using the Demised Premises in accordance with the terms of this Lease. 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. Landlord agrees to make reasonable efforts to cause Overlandlord to deliver such provision or endorsement to and for the benefit of Tenant.

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 Building 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 the Building or equipment, or any other property of Landlord or Overlandlord, shall be higher than it would have been had Tenant so complied, Tenant shall reimburse Landlord or Overlandlord, as the case may be, within thirty (30) days after demand, for that part of the premiums for fire insurance and extended coverage paid by Landlord or Overlandlord, as the case may be, 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 Landlord's Insurance Requirements. Landlord shall maintain throughout the Term a policy of commercial general liability insurance as customarily maintained by owners of buildings similarly situated to the Building in Brooklyn, New York.

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) subject to (i) Tenant's rights to install signage (interior and exterior) in compliance with all applicable laws (including building codes and zoning requirements) as provided elsewhere herein, and (ii) Tenant's right to install air-conditioning equipment serving the Demised Premises in or on the exterior of the Demised Premises in compliance with this Article 11 (and thereafter maintained by Tenant in accordance with Section 13.01), 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);

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

(e) 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);

(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 Lease; and

(h) Tenant shall notify Landlord and Overlandlord 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 and Overlandlord 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 subject to Landlord's and Overlandlord's prior written approval (which approval shall not be unreasonably withheld or delayed);

(iii) proof reasonably satisfactory to Landlord and Overlandlord of the aggregate cost and expense of performing such Tenant's Changes; and

(iv) complete plans and specifications for such Tenant's Changes, which plans and specifications shall be

subject to Landlord's and Overlandlord's prior written approval (which approval shall not be unreasonably withheld or delayed), if:

(x) 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;

(y) the aggregate cost and expense of performing such Tenant's Changes (exclusive of Decorative Changes), 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

(z) 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)(iv) above, Tenant is required to submit plans and specifications to Landlord and Overlandlord for its prior written approval in connection with a Tenant's Change, Landlord and/or Overlandlord 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 theretofore approved in writing by Landlord and Overlandlord shall similarly require Landlord's and Overlandlord's prior written approval (which approval shall not be unreasonably withheld or delayed). Landlord and Overlandlord 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 and Overlandlord, within ten (10) days after Landlord's and/or Overlandlord's demand therefor, the reasonable expense incurred by Landlord and Overlandlord, as applicable, for the review of such plans and specifications by its architect, engineer and/or other consultants. Landlord's and Overlandlord's approval of Tenant's plans and specifications shall in no manner constitute, or be deemed to constitute, a judgment or acknowledgment by Landlord or Overlandlord 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 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. Notwithstanding anything to the contrary contained herein, Landlord acknowledges that Tenant intends to perform certain work to bring the Demised Premises in conformance with its operating standards and laws and requirements of public authorities as to the Emergency Department, including, without limitation, installation of a CT scanner and construction of one or more data closets within the Demised Premises to house Tenant's telecommunications systems (such work being "*Tenant's Initial ED Work*"), which shall be performed in accordance with Section 4.02.

Tenant shall advise Landlord and Overlandlord from time to time of the nature and scope of Tenant's Initial ED Work, but the provisions of Section 11.04(h)(iv) above shall not apply, subject to obtaining any necessary consent of Overlandlord thereto required under the Interim Overlease.

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, any 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, and shall cause Overlandlord to join, in the application 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 the Building or the Demised Premises.

11.03 Manner of Performing Tenant's Changes. Tenant's Changes (including, without limitation, any 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 or Overlandlord, as applicable, 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 following 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. Landlord shall provide to Tenant "as built" plans and specifications for work performed by Landlord with respect to the Demised Premises to the extent required by Landlord to be provided to Overlandlord under the Interim Overlease. 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 include property of every kind and description intended to become a permanent part of the Demised Premises. Such insurance shall:

- (a) name Landlord and Landlord's Indemnitees, and Overlandlord and Overland's Indemnitees, as additional insureds;
- (b) have such limits as Landlord may reasonably prescribe;
- (c) be written by insurers that are registered to do business in New York State and are reasonably satisfactory to Landlord;

(d) 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);

(e) 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;

(f) 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;

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

(h) 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 Overlandlord, to the extent required under the Interim Overlease, with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims. Landlord shall provide the insurance required under the Interim Overlease for any work to be performed by Landlord.

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 and Overlandlord 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 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 or Overlandlord 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.

11.06 Intentionally Omitted.

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.

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.

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 later than the Required Surrender 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 after the Required Surrender 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 may, at its option, but shall have no obligation to, remove the Personal Property (as defined in the PSA) that exists in the Demised Premises on the date hereof from the Demised Premises. 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 to deliver on the Commencement Date any of such Personal Property. 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, at its sole cost and expense, shall maintain the Demised Premises (including, without limitation, the portions of the Building Systems located within and serving the Demised Premises) in good order and repair. In addition, except as otherwise expressly provided in this Lease (for example, in Section 9.03 or Section 13.02), Tenant shall promptly make, at its expense, all repairs in and about the Demised Premises and/or 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 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 approved in writing by Landlord prior to the commencement of the same which approval will not be unreasonably withheld or delayed,

provided that if such contractor and/or subcontractor is deemed a Responsible Affiliate or Contractor pursuant to and as defined in the Interim Overlease, no approval shall be required. Landlord shall cause Overlandlord to permit Tenant access to all areas of the Building necessary for Tenant to perform, at its sole cost and expense, any obligations Tenant may have under this Section 13.01, subject to Tenant's compliance with the provisions of Article 11 hereof and this Section 13.01.

13.02 Landlord's Obligations. Landlord shall, at its expense, other than Tenant's payment of the Operating Expense Payment, and subject to Section 13.03 (and except as expressly set forth in Section 13.01 above), operate, keep, maintain and replace (in accordance with all current federal, state and local legal requirements pertaining to physical plant and life safety systems, including Article 28 of the New York Public Health Law and regulations issued thereunder (collectively, the "**Plant Requirements**")) as necessary (as determined by Landlord below), (i) the HVAC Systems, (ii) the Life Safety Systems, (iii) the MEP Systems, (iv) the Medical Systems (collectively, "**Building Systems**"), and (v) elevators, if any, serving the Demised Premises, in working order, condition and repair, and in compliance with Plant Requirements. It is understood and agreed that in connection with fulfilling its obligation hereunder, Landlord will reasonably determine if a replacement or capital repair is necessary, in lieu of an ordinary repair. Landlord shall maintain in good order and repair and in compliance with Plant Requirements (w) the portions of the Building Systems which run through the Demised Premises to other portions of the Building and which do not provide service to the Demised Premises, (x) the structural portions of the Building, including structural steel (and fireproofing thereof), and the roof, exterior and foundation thereof ("**Structural Repairs**"), (y) areas of the Building outside the Demised Premises, including the Common Areas, to the extent same affect operations in the Demised Premises or licensing requirements with respect thereto, and (z) sidewalks adjacent to the Demised Premises (including removal of snow, ice and debris) consistent with customary standards of office buildings in Brooklyn, New York. Landlord shall additionally provide security services (the "**Security Services**") for the unoccupied areas of the Building (including, without limitation, untenanted space and all entrances, lobbies and Common Areas of the Building, other than the Demised Premises), which Security Services are described on *Exhibit I* annexed hereto (the "**Security Plan**"). At the request of either Tenant or Landlord, if there is a need to increase security above the Security Plan, the parties agree to develop an enhanced security plan, which enhanced security shall be at Tenant's sole cost and expense. Landlord's cost of maintenance, repair and security services, except as provided in Section 13.03, shall be covered in the Operating Expense Payment. Except as may be otherwise specifically set forth in this Lease Landlord shall not be obligated to perform any other maintenance, repair, or restoration with respect to the Demised Premises or the Building. Should any maintenance, repair, or restoration 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, at its sole cost and expense, but shall not be obligated to, perform the same at Tenant's sole cost and expense in accordance with the provisions of Article 11 and Section 13.01 above. As part of Landlord's maintenance obligations hereunder, Landlord shall inspect and service all Building Systems in accordance with the Plant Requirements and shall maintain, and provide access to Tenant and its representatives and designees, at reasonable times and upon reasonable notice, to logs regarding maintenance of the Building Systems for purposes of audits conducted by the Joint Commission or other audits conducted by governmental or quasi-

governmental third parties (including accrediting organizations) having jurisdiction over Tenant's use and occupancy of the Demised Premises. Landlord shall give Tenant no less than ten (10) days' prior written notice of its taking over the performance of Overlandlord's obligations under Section 13.02(a) of Interim Overlease.

13.03 Upgrades.

(a) If a Building Required Upgrade shall be required to be made in or to the Building, then, in such event, Tenant shall diligently and in good faith seek from the applicable government agency either a waiver of the Building Required Upgrade or a modification so as to reduce the cost of the Building Required Upgrade as much as reasonably possible, but Tenant is not obligated to agree to or to incur any material cost or pursue such waiver or modification or if Tenant determines, in its good faith professional judgment, that such efforts would put Tenant, at risk of not otherwise satisfying its obligations under Section 3.02 or Section 3.04 or to a risk of civil or criminal liability, or would otherwise jeopardize Tenant's operating certificate to operate an Article 28 facility; provided, however, Overlandlord, in its sole discretion and at any time, may elect by notice to Tenant to have Tenant immediately cease such efforts to obtain any further waiver or modification. Tenant shall keep Landlord and Overlandlord promptly apprised of any Building Required Upgrade being required and of its efforts in seeking such waiver or modification. Following Tenant's diligent and good faith efforts as aforesaid, as such efforts may be terminated by Tenant or Overlandlord pursuant hereto, if the applicable governmental or accrediting authority refuses to waive or modify the Building Required Upgrade, Landlord shall (i) cause Overlandlord to perform the Building Required Upgrade (as the same may be modified by the applicable governmental or accrediting authority, either as a result of Tenant's efforts pursuant hereto or otherwise) as expeditiously as practicable and in accordance with Section 13.03(b) of the Interim Overlease, subject to the provisions of Section 13.03(d) of the Interim Overlease, and (y) contribute toward the cost thereof to the extent (and when) required (or elected by Landlord) under Sections 13.03(c) and (d) of the Interim Overlease. Notwithstanding the foregoing, Landlord shall have no obligation to cause Overlandlord to install any Building Required Upgrade which Overlandlord is not required to install pursuant to Section 13.03(d) of the Interim Overlease (any Building Required Upgrades which Overlandlord is not required to install pursuant to Section 13.03(d) of the Interim Overlease, and which neither Landlord nor Overlandlord elects to complete, in its sole judgment, are hereinafter referred to as "**Permitted Building Non-Upgrades**"). Except as expressly provided in this Section 13.03(a), and notwithstanding anything in this Lease to the contrary (including, without limitation, Section 13.02), Landlord shall have no obligation to make (or cause to be made) any replacements, additions, modifications or changes to any portion of the Building solely by reason of any Laws, including Plant Requirements; it being understood that the foregoing shall not be construed to diminish or limit Landlord's obligation under Section 13.02 hereof to otherwise maintain the applicable portions of the Building thereunder in working order, condition and repair.

(b) If, after taking into account the effect of any Building Required Upgrades that Landlord is obligated to perform under Section 13.02 or subsection (a) of this Section 13.03, any portion of the ED Space is required to be replaced, upgraded, modified or changed in order to be in compliance with Plant Requirements (a "***Tenant Space Required Upgrade***") (including to avoid the loss or failure to renew a Required License, or to cure a citation or deficiency issued against Tenant by the DOH or the CMS with respect to such a condition relating to the Emergency Department), Tenant shall have the right to make diligent and good faith efforts to obtain a waiver or modification of the requirement from the applicable governmental agency. Whether or not such waiver or modification is granted, Tenant shall install such Tenant Space Required Upgrade at Tenant's sole cost, as expeditiously as practicable. Notwithstanding the foregoing, Tenant may determine (after making such diligent and good faith efforts to obtain a waiver of or modification to such Tenant Space Required Upgrade to eliminate the requirement to install same or reduce the cost thereof as much as reasonably possible), in its good faith professional judgment, considering the short-term nature of this Lease and the operations in the Demised Premises, to not install such Tenant Space Required Upgrade ("***Permitted Tenant Space Non-Upgrade***" and, together with Permitted Building Non-Upgrades, "***Permitted Non-Upgrades***"). In the event the DOH or the CMS issues a citation or deficiency against Tenant with respect to the Emergency Department due to a condition which is the obligation of Landlord to cure under Section 13.02, a Building Required Upgrade or a Permitted Non-Upgrade, and Tenant, in its good faith, professional, judgment, cannot reach a satisfactory resolution with the applicable agency of such citation or deficiency, under the standards set forth in Section 13.03(a), within thirty (30) days of receipt of such citation or deficiency, then: (i) in the case of such a Permitted Non-Upgrade, Tenant may elect to file and pursue a notice of closure with the DOH for the Emergency Department and upon receipt of approval by DOH, may cease operations of the Emergency Department (such event shall also be referred to herein as a "***Permitted Closure Event***"); and (ii) in the case of such a condition which Landlord is required to cure under Section 13.02 or a Building Required Upgrade, Tenant may file a notice of closure if Tenant in good faith, based on its good faith professional judgment, believes that such action must be taken to avoid a risk of the revocation of a Medical License or other license of Tenant (any event described under clause (i) or clause (ii) of this subsection shall be referred to in this Lease as a "***Permitted Closure Event***").

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 or would violate or cause the loss of any regulatory license or approval for the operation of the Demised Premises by Tenant.

13.05 Provision Required under Article 28 of 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 dispossession 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 dispossession proceedings and sixty (60) days prior to the expiration of this Lease, Tenant shall immediately 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 14
Electricity

14.01 Use of Building 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:

- (a) Are necessary in order to supply Tenant's electrical requirements;
- (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.

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 Sections 14.04 and 16.05 below, Landlord shall arrange to be furnished, at its cost and expense (except as provided below) and utilizing the existing feeders, risers and other wiring of the Building, electric service for Tenant's use in the Demised Premises. The cost of electricity shall be covered in the Operating Expense Payment. Landlord agrees to reasonably cooperate with Tenant and to request that Overlandlord reasonably cooperate with Tenant, at Tenant's sole cost and expense, to effect any sales tax exemption to which Tenant may be eligible, including, without limitation, by signing such reasonable documentation requested by Tenant to effectuate same.

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, unless due to the gross negligence or willful acts of Landlord.

Article 15 **Heat, Ventilating And Air Conditioning**

15.01 Operation of the Building HVAC Systems. Subject to the provisions of Section 16.05 below, Landlord, at its cost and expense, shall furnish heat, ventilation and air conditioning in the Demised Premises through the HVAC Systems satisfying Plant Requirements. Air conditioning and heating and ventilation shall be provided throughout the year during such periods as may be required for comfortable occupancy of the Demised Premises or are required by Plant Requirements. Costs of providing such services shall be covered in the Operating Expense Payment.

Article 16 **Other Services**

16.01 Hot and Cold Water. Subject to the provisions of Section 16.05 below, Landlord, at its sole expense except as provided below, shall furnish hot and cold water to the Demised Premises through the existing wet-columns for all purposes necessary for Tenant's performance of the Permitted Uses. The cost of hot and cold water shall be covered in the Operating Expense Payment.

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

("POE") currently made available to said provider. If Tenant, at any time, requires a new or additional POE, Landlord will not unreasonably withhold its consent thereto, including the location thereof, provided that Tenant performs in accordance with this Lease (including Article 11 hereof) and pays for the work required to install the additional POE 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 16.05 below, Landlord shall permit Tenant to connect, or continue to connect (as the case may be), the Demised Premises to the Building Life Safety Systems (if, and to the extent, any such systems shall exist), at Tenant's sole cost and expense. Landlord shall continue to operate such systems to the fullest extent of their designs and design capacities throughout the Term and in compliance with Plant Requirements. Upon the written request of Tenant, additions to, or modifications of, the Building 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 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 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.

16.06 Parking. Upon Tenant's request, Landlord shall cause Overlandlord to lease to Landlord, and Landlord shall in turn permit Tenant to use, the parking required to be provided under Section 31.08 of the Interim Overlease, subject to Tenant's compliance with the applicable provisions of the Interim Overlease with respect to the use of parking spaces being leased.

16.07 Other Systems. Subject to the provisions of Section 16.05 above, Landlord, at its sole cost and expense, shall operate the Medical Systems, and provide medical gas to the Demised Premises through the Medical Systems, in accordance with 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.

Article 17

Landlord's Access, Changes In Building Facilities, Name

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 Overlandlord or Landlord, as applicable. 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 (and Overlandlord reserves such rights pursuant to the Interim Overlease to the extent same do not exceed the scope of rights reserved by Landlord herein), 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 provided by Tenant at the Demised Premises and the laws, rules and regulations governing Tenant's operations 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 required repairs and changes in a timely manner, comply with Tenant'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 Tenant'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 Building 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 interior and exterior signage onto and in the Demised Premises and the Building as Tenant deems appropriate for its medical operations.

Article 18 **Notice of Accidents**

18.01 Notice of Accidents. Tenant shall give notice to Landlord, promptly after Tenant receives actual knowledge 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, Overlandlord nor any agent or employee of either 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 or Overlandlord, as applicable, its respective 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, subject to Sections 10.06, 10.07 and 10.08, 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;
- (d) all reasonable costs, expenses and liabilities incurred in, or in connection with, each such claim or any action or proceeding brought thereon;
- (e) the breach of any covenant to be performed by Tenant hereunder;
- (f) A misrepresentation made by Tenant hereunder; and
- (g) Tenant's failure to pay any broker retained by Tenant a commission or other compensation in connection herewith.

Notwithstanding the foregoing, neither the foregoing indemnification, nor any other indemnification given by Tenant under this Lease, shall give rise to any claim that Tenant is responsible for any consequential, indirect, or punitive damages or under Section 24.02.

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; provided, however, such indemnification obligation shall not apply to the extent that it is finally determined by a court of competent jurisdiction that the negligence or willful misconduct of Landlord or Landlord's Indemnitees contributed to the loss

or damage raised by such claim. The provisions of this Section 0 shall survive the termination or expiration of the Term.

19.03 Tenant's Indemnification of Overlandlord. Tenant shall indemnify and save harmless Overlandlord and Overlandlord'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 Overlandlord for Overlandlord'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;
- (d) all reasonable costs, expenses and liabilities incurred in, or in connection with, each such claim or any action or proceeding brought thereon;
- (e) the breach of any covenant to be performed by Tenant hereunder;
- (f) A misrepresentation made by Tenant hereunder; and
- (g) Tenant's failure to pay the Broker retained by Tenant a commission or other compensation in connection herewith.

Notwithstanding the foregoing, neither the foregoing indemnification, nor any other indemnification given by Tenant under this Lease, shall give rise to any claim (i) that Tenant is responsible for any consequential, indirect, or punitive damages, or (ii) under Section 24.02.

If any action or proceeding is brought against Overlandlord and/or any of the Overlandlord's Indemnitees by reason of any such claim, Tenant, upon notice from Overlandlord, shall resist and defend such action or proceeding; provided, however, such indemnification obligation shall not apply to the extent that it is finally determined by a court of competent jurisdiction that the negligence or willful misconduct of Overlandlord or Overlandlord's Indemnitees contributed to the loss or damage raised by such claim. The provisions of this Section 19.03 shall survive the termination or expiration of the Term.

19.04 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 Unavoidable Delays (other than if same constituted an Unavoidable Delay with respect to Tenant's obligations hereunder).

19.05 Landlord's Indemnification of the Tenant Indemnitees.

(a) Subject to the terms of Sections 10.06, 10.07, 10.08, 19.04 and 24.02, Landlord shall indemnify the Tenant Indemnitees, and hold the Tenant Indemnitees harmless, from and against, all losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) that are incurred by a Tenant Indemnitee and that derive from a claim (a "Claim Against Tenant") made by a third party against such Tenant Indemnitee arising from or alleged to arise from:

(i) the breach of any covenant to be performed by Landlord hereunder;

(ii) a misrepresentation made by Landlord hereunder;

(iii) Landlord's failure to pay any broker retained by Landlord a commission or other compensation in connection herewith;

(iv) Landlord shall not be required to indemnify the Tenant Indemnitees, and hold the Tenant Indemnitees harmless, in either case as aforesaid, to the extent that it is finally determined by a court of competent jurisdiction that the negligence or willful misconduct of a Tenant Indemnitee contributed to the loss or damage sustained by the Person making the Claim Against Tenant.

(v) The parties intend that the Tenant Indemnitees (other than Tenant) shall constitute third-party beneficiaries of this Section 19.05.

Notwithstanding the foregoing, no indemnification given by Landlord under this Lease shall give rise to any claim that Landlord is responsible for any consequential, indirect or punitive damages.

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 elect (but shall not be obligated to), if this Lease is not otherwise terminated pursuant to the provisions of this Article 20, to 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 (as described in Section 20.01). 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 re-occupied 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;

(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; or

(c) the portion of Pacific Street which is closed and part of the LICH Portfolio is permanently lawfully taken or re-opened as a public road;

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:

(x) 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

(y) 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 Demised 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 Demised 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, 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 last day of the Term, 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 all of Tenant's Property and other property referenced in the last sentence of Section 12.01 therefrom (except as otherwise expressly provided in Sections 12.03(a) or 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 or any earlier termination of this Lease or any re-entry by Landlord upon the Demised Premises, or if Landlord or Overlandlord notifies Tenant that this Lease is likely to be terminated, Tenant shall 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 of Tenant 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 shall obtain such approvals of such closure, Tenant shall comply with the Closure Plan and terminate its medical operations in the Demised Premises at the earliest practicable time permitted by the terms of the Closure Plan (the "**Closure Date**"). Tenant shall be entitled to remain and conduct any required medical operations in the Demised Premises as a holdover tenant 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, 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 day following such expiration or termination, irrespective of whether or not Landlord accepts rent from Tenant for a period beyond such date. 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, from and after the Required Surrender Date, Tenant shall pay as Additional Rent, on (except as otherwise provided in Subsection (a) below) the first day of each month of the holdover period, an amount equal to the higher of:

(a) the sum of (i) One Hundred Twenty-Five Thousand (\$125,000) Dollars, plus (ii) all Additional Rent which accrues during the holdover period (it being agreed that all Additional Rent shall continue to accrue during the holdover period), including, without limitation, all Additional Rent which accrues under Section 2.04 and 2.06 hereof (it being agreed that for purposes of this Subsection, so long as the Full Building Expense Date has not then occurred, the Operating Expense Payment under Section 2.06(a) hereof shall be deemed to be, from and after the Required Surrender Date, in the amount equal to two (2) times the amount thereof set forth in said Section 2.06(a)), which Additional Rent shall be paid by Tenant to Landlord (from time to time) within thirty (30) days of Landlord's submission to Tenant of a reasonably detailed invoice therefor; 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 Required Surrender Date, 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.

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 or Overlandlord'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), either Landlord or Overlandlord 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 either Landlord or Overlandlord shall have given Tenant a written notice specifying such default;
- (b) Intentionally Omitted; or

(c) 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) or 23.02(b) above), and either:

(i) such situation shall continue for, and shall not be completely remedied by Tenant within, thirty (30) days after either Landlord or Overlandlord shall have given Tenant a written notice specifying the same; or

(ii) if:

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

(y) 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

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

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

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

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

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

(d) Tenant shall abandon the Demised Premises (unless as a result of a casualty or a lawful taking),

then, and in any of such cases, either Landlord or Overlandlord may give Tenant a notice of intention to end the Term at the expiration of five (5) days from the date of the 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.

23.03 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 for thirty (30) days after either Landlord or Overlandlord shall have given Tenant a written notice specifying such default;

(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, either Landlord or Overlandlord, or their respective 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 dispossession 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.

Article 24
Damages

24.01 Additional Rent Obligation. 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 Transaction Costs. Landlord has made a substantial investment in connection with the PSA and the transactions described therein. Landlord's costs and expenses incurred in connection with the PSA and the transactions described therein include, without limitation: (x) a downpayment made thereunder (in the amount of \$24,000,000, and potentially increasing to \$26,000,000 (and may include Extension Payments under and as defined in Section 4.4(a) of the PSA), (y) payment of operating deficit costs and expenses with respect to the Demised Premises for the period from and after May 23, 2014 and through the Commencement Date (which may exceed \$15,000,000), and (z) actual, out-of-pocket due diligence expenses, fees

of attorneys and consultants, and lender deposits and commitment fees and other actual out-of-pocket expenses paid to third parties in connection with financing the acquisition and/or development of the LICH Portfolio (all costs and expenses incurred by Landlord in connection with the PSA and the transactions therein described and/or the acquisition, financing and development of the LICH Portfolio, including without limitation, those described at clauses (x), (y) and (z) above, are hereinafter collectively referred to as the “**Transaction Costs**”). Landlord agrees that Tenant shall have no liability to Landlord under this Section, under Section 19.03, or under any other provision of this Lease, or otherwise, for reimbursement of Transaction Costs, loss of opportunity to consummate the transaction under the PSA, or otherwise, if the PSA is terminated, or a Reverter Event occurs due to a default by Tenant hereunder or under the PSA.

24.03 Other Damages. Nothing contained in this Lease shall be construed to limit or preclude Landlord’s or Overlandlord’s recovery from Tenant of any 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, but expressly subject to the limitations set forth in Section 24.02. In no event shall either party be liable for any consequential, indirect or punitive damages due to any default or indemnification hereunder.

24.04 Tenant’s Transactional Costs. Tenant has made, and will make, a substantial investment in connection with this Lease and the PSA, and the transactions described therein, including, without limitation, the costs and expenses of Tenant’s Work and the purchase of equipment for use in the Demised Premises and the operations therein, and the costs and expenses of constructing a new medical facility and related improvements on the New Medical Site (as defined in the PSA). All such costs and expenses, together with all other costs and expenses incurred by Tenant in connection with the acquisition, financing and development of such facility and related improvements, and all actual, out-of-pocket due diligence expenses, fees of attorneys and consultants, and lender deposits and commitment fees and other actual out-of-pocket expenses paid to third parties in connection with financing the acquisition and/or construction of such facility and related improvements, are hereinafter collectively referred to as the “**Tenant’s Transaction Costs**”. Tenant agrees that neither Landlord nor Overlandlord shall have any liability to Tenant under Section 19.05 or under any other provision of this Lease, or otherwise, for reimbursement of Tenant’s Transaction Costs, loss of opportunity to consummate the transaction under the PSA, or otherwise, if the PSA is terminated, or if a Reverter Event occurs due to a default of Landlord hereunder, or under the PSA.

Article 25 **Other Remedies**

25.01 Right to Perform Landlord’s or Tenant’s Obligations.

(a) If Tenant shall default in the performance of any of Tenant’s obligations under this Lease, either Landlord or Overlandlord 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, neither Landlord nor Overlandlord may exercise such right only if such default has continued past the

expiration of the applicable grace period, after Landlord or Overlandlord 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 either Landlord or Overlandlord shall elect to exercise the foregoing right, Landlord or Overlandlord, as the case may be, may send to Tenant, either on a monthly basis or otherwise (as such party shall elect), bills for those expenses incurred by such party in connection therewith (including, without limitation, bills for any property, material, labor and/or services provided, furnished, or rendered by such party, or at its instance, to Tenant), which bills shall be due and payable by Tenant to such party, as Additional Rent under this Lease, in accordance with the terms of such bills.

(b) If Landlord shall default in the performance of any of Landlord's obligations under Section 13.02 of this Lease, Tenant shall have the right (but not the obligation) to perform the same for Landlord's account, and at Landlord's cost and expense, in compliance with Article 11 of this Lease, without thereby waiving such default and without notice, *provided, however, that*, other than in an emergency, Tenant may exercise such right only if Tenant shall have given to Landlord notice such default and such default has continued beyond thirty (30) days after receipt of such notice. In the event that Tenant shall elect to exercise the foregoing right, Tenant may send to Landlord, either on a monthly basis or otherwise (as Tenant shall elect), bills for those reasonable, out-of-pocket, expenses incurred by Tenant in connection therewith (including, without limitation, bills for any property, material, labor and/or services provided, furnished, or rendered by Tenant, or at its instance, to Landlord), which bills shall be due and payable by Landlord to Tenant within thirty (30) days of receipt of same by Landlord.

25.02 Right to Default Interest. If Tenant is late in making any payment due to Landlord or Overlandlord under this Lease for a period of ten (10) days, interest shall accrue on such payment for the benefit of Landlord or Overlandlord, as the case may be, from the date upon which such payment was first due and payable to the date of Tenant's payment thereof (with all accrued interest thereon), 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.

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

25.04 Right to Costs of Enforcement. Tenant shall reimburse Landlord on demand, as Additional Rent under this Lease, for all reasonable, out-of-pocket costs and expenses of every kind and nature whatsoever (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Landlord in connection with:

(a) collecting, or endeavoring to collect, the Fixed Rent, Additional Rent and/or any part thereof payable by Tenant under this Lease; and/or

(b) enforcing, or endeavoring to enforce, any rights against Tenant under, or in connection with, this Lease or pursuant to law,

provided, in each such instance, that Landlord is the prevailing party in any applicable action or proceeding, or a settlement is made in favor of Landlord. The foregoing costs and expenses shall include, but shall not be limited to, any reasonable, out-of-pocket costs and/or expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred in instituting and/or prosecuting any summary proceedings instituted by Landlord against Tenant. Conversely, Landlord shall reimburse Tenant on demand for all reasonable, out-of-pocket costs and expenses of every kind and nature whatsoever (including, without limitation, reasonable attorneys' fees and disbursements) incurred by Tenant in connection with enforcing, or endeavoring to enforce, any rights against Landlord under, or in connection with, this Lease or pursuant to law, provided, in each such instance, that Tenant is the prevailing party in any applicable action or proceeding, or a settlement is made in favor of Tenant.

25.05 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 and Overlandlord 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 or Overlandlord 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 (and Overlandlord, with respect to a default by Tenant) 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 25.05 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 (or Overlandlord, if applicable) are to be credited. Landlord may apply any payment made by Tenant to Landlord against any installment of Fixed Rent and/or 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 or Overlandlord 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 or Overlandlord'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 Fixed Rent or 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 amend or modify this Lease, unless such executory agreement has been approved in writing by Overlandlord, AG, OSC and DASNY.

27.03 Prevailing. In any action or proceeding by either party against the other under Section 24.02 or Section 24.04, the party that does not prevail shall pay to the prevailing party the legal fees and disbursements incurred by the prevailing party in connection therewith.

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, 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 the other party at the address set forth in the Preamble to this Lease; and in the case of such notice, statement, demand or other communication to Landlord, (i) same shall be sent to the attention of Joel Kestenbaum and (ii) a copy thereof shall be sent simultaneously to Tannenbaum Helpern Syracuse Hirschtritt LLP, 900 Third Avenue, New York, New York 10022, Attention: Robert E. Helpern, Esq., and (iii) in the case of such notice, statement, demand or other communication to Tenant, same shall be sent to Tenant at 550 First Avenue, New York, NY 10016, Attention: Vicki Match Suna, Senior Vice President-Real Estate, with a copy to Annette Johnson, Esq., Senior Vice President, General Counsel, with an additional copy to Tenant at 1 Park Avenue, New York, NY 10016, Attention; Director of Real Estate and with a copy to Dentons US LLP, 1221 Avenue of the Americas, New York, NY 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 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 hereunder, may be given by the attorneys for such party, with the same force and effect as if given, rendered or made by such party. Copies of all such notices, statements, demands and other communications delivered to either Landlord or Tenant hereunder shall be delivered simultaneously, in the same

manner provided hereunder, 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.

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 Fixed Rent and 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.

Tenant acknowledges and agrees that Overlandlord may request such a statement from Tenant hereunder, in which event Tenant shall deliver same to Overlandlord in compliance with this Section 30.01.

Article 31
Merger, Invalidity, Governing Law, Representations; Additional Provisions

31.01 Merger. All understandings and agreements heretofore had between the parties 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 this Lease; 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 Third Party Beneficiary. Except as herein expressly provided in this Lease as to Overlandlord, there are no third party beneficiaries of this Lease.

31.06 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.

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 Intentionally Deleted.

Article 34
Overlease

34.01 Obligations of Landlord Performed by Overlandlord. In the event of any inconsistency between the terms and condition of the Interim Overlease and the terms and conditions of this Lease, the terms and conditions of this Lease shall govern and control the respective rights and obligations of Landlord and Tenant. Tenant acknowledges that certain obligations of Landlord hereunder are to be performed by Overlandlord under the Interim Overlease. Further, notwithstanding anything contained in this Lease to the contrary, Landlord shall not be liable for the performance of such obligations hereunder to the extent that such obligations are also express obligations of Overlandlord under the Interim Overlease, but the failure of such obligations to be performed hereunder shall constitute an Unavoidable Delay to the extent provided in *Exhibit E* hereto. If Overlandlord shall default in any of its obligations to Landlord with respect to the Demised Premises, Landlord shall not, except as and to the extent hereinafter set forth, be obligated to bring any action or proceeding or take any steps to enforce Landlord's rights against Overlandlord. Landlord shall cooperate in seeking to obtain the performance of Overlandlord pursuant to the Interim Overlease and, upon the written request of Tenant, shall make a demand upon Overlandlord to fulfill its obligations with respect to the Demised Premises. If following the making of such demand and the expiration of any applicable grace period granted to Overlandlord under the Interim Overlease, Overlandlord shall fail to perform its obligations under the Interim Overlease, then Tenant, at its sole cost and expense, shall have the right to take such action against Overlandlord in its own name and, in connection therewith, all of the rights of Landlord under the Interim Overlease with respect thereto shall be and they hereby are conferred upon and assigned to Tenant, and Tenant shall be subrogated to such rights. If any such action against Overlandlord in Tenant's name is barred by reason of lack of privity, non-assignability or otherwise, Landlord agrees that Tenant shall have the right, at its sole cost and expense, to bring such action in Landlord's name and Landlord shall promptly execute all documents and take all such actions reasonably requested in connection therewith. In addition, to the extent the Interim Overlease confers "self-help" right upon Overlandlord and there is a reasonable basis for Tenant to request Landlord's exercise of such rights, Landlord shall exercise those rights for the benefit of Tenant. Any recovery obtained by Tenant hereunder against Overlandlord in connection with Overlandlord's default under the Interim Overlease or any abatement, credit, set-off or offset, to the extent it relates to such obligation of Overlandlord, shall be the property of Tenant and Tenant shall have the right to any such abatement, credit, set-off or offset. If any action of Tenant hereunder requires the consent of Overlandlord pursuant to the Interim Overlease if Landlord were to take such action under the Interim Overlease, then as a condition of Tenant taking such action hereunder, Tenant must, in addition to any other consents required hereunder, obtain the consent of the Overlandlord prior to taking such action. Nothing set forth in this Lease (including, without limitation, in this Section 34.01) shall be construed to increase any obligation of Overlandlord under the Interim Overlease or to diminish any right of Overlandlord under the Interim Overlease. Without intention to limit the generality of the foregoing in any respect, the provisions of Sections 33.01 and 33.02 of the Initial Overlease shall be and remain in full force and effect, and shall fully apply, with regard to any action or proceeding brought, or any other enforcement steps taken, by Landlord or Tenant against Overlandlord under, or pursuant to, this Lease (including, without limitation, under or pursuant to this Section 34.01).


34.02 Overlandlord and Landlord Defaults. Tenant agrees to deliver notice to Landlord promptly upon Tenant becoming actually aware of a material breach by Overlandlord under the Interim Overlease and/or by Landlord under this Lease which may permit Tenant to cease operations of the Emergency Department pursuant to Section 3.04 above.

[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:

FPG COBBLE HILL ACQUISITIONS, LLC

By: 
Name: Joel Kestenbaum
Title: President

TENANT:

NYU HOSPITALS CENTER

By: _____
Name:
Title:

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

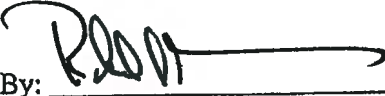
LANDLORD:

FPG COBBLE HILL ACQUISITIONS, LLC

By: _____
Name:
Title:

TENANT:

NYU HOSPITALS CENTER

By:  _____
Name: Robert I. Grossman, MD
Title: Chief Executive Officer

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

On the 7 day of October, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared Joel Kestenbaum, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) 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 28, 2017

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(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) 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(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

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 I. Giesma, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Maria Olivero
Notary Public

MARIA OLIVERO
Notary Public - State of New York
No. 010L6061709
Qualified in New York County
My Comm. Expires Jul. 16, 2015

Exhibit A
Legal Description of the Land

ALL 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 of Demised Premises – ED Space

(Follows immediately on next page)

Exh. B-1



New York City, NY

Perkins Eastman

132 FIFTH AVENUE
NEW YORK, NY 10003
TEL: 212 305 7878
F: 212 305 7874

NYU @ LICH
EMERGENCY
DEPARTMENT

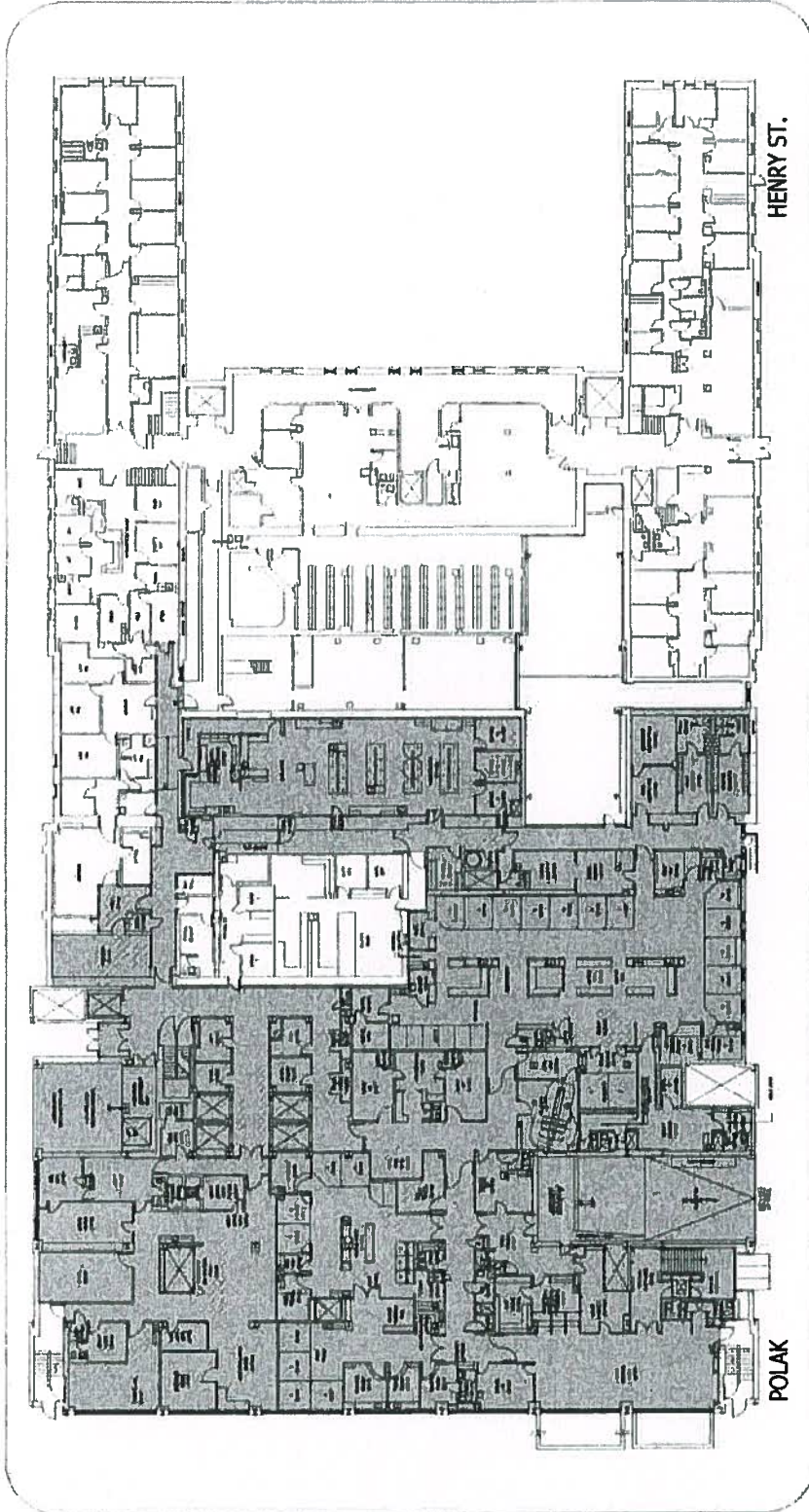
Date: 06/25/14



SCALE: 1/32"=1'-0" (1/8"=1'-0")

1

PACIFIC STREET



HENRY STREET

HENRY ST.

AMITY STREET

SPACE REQUESTED
BY NYU LANGONE MEDICAL CENTER
(32,980 SF TOTAL)

POLAK

HICKS STREET

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 “***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 “***Building Required Upgrade***” shall mean any replacement, addition, modification, or change to a portion of the Building, or to any component of a Building System, otherwise required to be replaced, added, modified, or changed by Landlord pursuant to Section 13.02 of this Lease, as to which replacement, addition, modification, or change either:

(a) DOH has notified NYUHC that the maintenance of a CON or any other Required License for the Emergency Department is contingent on the making of such replacement, addition, modification, or change;

(b) any governmental or accrediting agency issuing Required Licenses has notified Tenant 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 Tenant to cease operations in the Demised Premises or subject Landlord or Tenant to criminal or civil liability, if such replacement, addition, modification or change is not made; or

(c) DOH or CMS has issued a citation or deficiency against Tenant relating to the Emergency Department which citation or deficiency may be cured or removed only by the making of such replacement, addition, modification, or change.

The term “***CMS***” shall mean the Center for Medicare and Medicaid Services.

The term “***Closure Plan***” shall mean 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 “***Common Areas***” shall mean those entrances, doors, doorways, halls, passages, elevators, escalators, stairways, loading dock, and other portions of the first floor of the Building 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 Tenant's operation of the Emergency Department in the Demised Premises and performance of its obligations hereunder; all of which is for the non-exclusive use of Overlandlord, Landlord and Landlord's permitted subtenant(s), and their respective agents, employees, invitees, business guests and contractors.

The term "**control**", for purposes of Sections 8.01 and 8.04 hereof, shall mean ownership of all of the voting stock of a corporation or all of the legal and equitable interest in any other entity (as the case may be).

The term "**Decorative Change**" shall mean a Tenant Change in accordance with the provisions of Lease, 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 Indemnitees**" means, collectively:

(a) any affiliates, agents, representatives, employees, consultants, counsel and other professional advisors of or to Landlord; and

(b) any officers, directors, trustees, shareholders, partners, members, managers, or principals of Landlord or of any of the foregoing.

The term “*Life Safety Systems*” means the fire and life safety systems of the Buildings, 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 services to the Demised Premises.

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 “*Overlandlord’s Indemnitees*” 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 Overlandlord 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 Overlandlord or of any of the foregoing.

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

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

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, medical 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 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;
- (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, upgrading, 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: ona@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.nesnycontacts.com/FromEmail/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 subcontract 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 an 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.

Exhibit E**Definition of Unavoidable Delays or Unavoidable Interruptions**

“Unavoidable Delays” or ***“Unavoidable Interruptions”*** shall mean delays in the performance by Overlandlord, Landlord or Tenant of its obligations hereunder, including its obligations under Section 3.02 or Section 3.04, incurred by Overlandlord, Landlord or Tenant or, as applicable under the Lease, or its respective affiliates, contractors, permitted successors or permitted assigns, due to strikes, lockouts or other labor disputes, severe weather conditions, earthquakes or other acts of God, inability to obtain labor or materials due to restrictions of governmental authorities, enemy action, civil commotion, fire or other casualty, Environmental Conditions (as defined in the PSA) at the New Medical Site (and the need to remediate them), acts or omissions of Landlord or its affiliates (and its successors and assigns as owner of the Premises (as defined in the PSA)) that delay Tenant's performance of its obligations hereunder, condemnation or act of eminent domain, acts of war or terrorism, Overlandlord or Landlord's material failure to maintain the Building solely to the extent required of Overlandlord in the Interim Overlease or Landlord in this Lease, respectively (including performance by Landlord of its obligations under Sections 13.02 and 13.03), or any other material breach by Overlandlord under the Interim Overlease or Landlord under this Lease, Landlord's failure to make any Permitted Building Non-Upgrade, any action by third parties (including members or representatives of the general public or the community to be serviced by the Emergency Department), delays in obtaining or maintaining any Required License or other license or permit reliant on other governmental approval, any other action by any governmental agency with jurisdiction that adversely affects Tenant's ability to satisfy its obligations under this Lease (including under Section 3.02 or Section 3.04) (including the time required to perform any work required to obtain or maintain the same, or to respond to any such action), or court orders not resulting from any unlawful action by Overlandlord (as to Overlandlord's obligations), Landlord (as to Landlord's obligations), Tenant (as to Tenant's obligations) or any of its affiliates or contractors. Tenant shall give Overlandlord and Landlord notice of such Unavoidable Delay or Unavoidable Interruption promptly following Tenant having obtained actual knowledge of the occurrence of same. Where and when possible Landlord or Tenant, as the case may be, shall diligently pursue completion of the obligation in question, taking the Unavoidable Delay or Unavoidable Interruption into account.

Exhibit F
Intentionally Omitted

Exhibit G
Section 4.02 Permit

Exh. G-1

State University of New York
Revocable Permit

THIS AGREEMENT, made as of the 30th day of June, 2014, by and between the STATE UNIVERSITY OF NEW YORK, an educational corporation organized and existing under the laws of the State of New York, and having its principal place of business located at State University Plaza, Albany, New York 12246, hereinafter referred to as "State University", acting for and on behalf of the State University of New York Health Science Center at Brooklyn on behalf of its University Hospital of Brooklyn, hereinafter referred to as the "College", and NYU HOSPITALS CENTER, hereinafter referred to as the "Permittee". The State University and Permittee collectively may hereinafter be referred to as the "Parties," as in the parties to this Agreement.

WITNESSETH:

WHEREAS, the College leases those certain buildings known as the Polak Pavilion and the Henry Street Building, located at 363 Hicks Street and 340 Henry Street, in Brooklyn, New York, hereinafter collectively referred as the "Building", from Downstate at LICH Holding Company, Inc., hereinafter referred to as the "Ground Lessor";

WHEREAS, the Permittee will be conducting certain activities in the Building, hereinafter collectively referred to as the "activity", which requires access to the Building from time to time, as well as the use of certain facilities and services therein;

WHEREAS, State University has such facilities and services available in the Building; and

WHEREAS, the parties desire to enter into an agreement whereby State University will permit Permittee to conduct the activity in and about the Building, as well as make such facilities and services available to the Permittee for its use in connection with the activity,

NOW, THEREFORE, be it known that a revocable permit is hereby granted to the Permittee, as well as to the Permittee's agents, employees and contractors, subject to the terms and conditions hereinafter provided, to enter the Building from time to time, to conduct the activity therein and to use the facilities and services only in connection with the conduct of the activity.

1. State University shall supply all ordinary and necessary water, gas, electricity, light, heat and sewerage facilities for use in connection with the activity. No telephone service shall be provided by State University to the Permittee hereunder.

2. The Permittee shall take good care of the portion(s) of the Building in which it conducts the activity (collectively, the "premises"), as well as all fixtures therein and appurtenances thereto, to preserve the premises, as well as such fixtures and appurtenances, in good order and condition.

3. As part of the activity, the Permittee may, from time to time, make renovations or alterations in and to the Building in accordance with the applicable provisions of this agreement, all at the sole cost and expense of the Permittee. In connection with such renovations or alterations: (a) the strength of the Building, and/or of any of its structural parts, shall not be affected; (b) the proper functioning of any of the mechanical, electrical, sanitary and other service systems of the Building shall not be affected; and (c) the Permittee shall notify State University in writing, not less than two (2) business days prior to proceeding with any such renovations or alterations, which notice shall contain, or shall be given to State University together with: (i) a reasonably detailed narrative description of such renovations or alterations; (ii) the names and addresses of the contractors and/or subcontractors who will be performing such renovations or alterations, which contractors and/or subcontractors shall be determined by State University (in accordance with the standards and guidelines issued by the New York State Office of State Comptroller) to be responsible affiliates or contractors vendors prior to the commencement thereof; and; (iii) complete plans and specifications for such renovations or alterations, which plans and specifications shall be subject to State University's prior written approval (not to be unreasonably withheld or delayed). The Permittee, at its expense, shall obtain all necessary governmental permits and certificates for the commencement and prosecution of such renovations and alterations, and for final approval thereof upon completion, and shall furnish copies thereof to State University. Such renovations or alterations shall be performed in a good and workerlike manner, using first-class materials and equipment. The Permittee 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, the said renovations or alterations by any public or quasi public authority having or asserting jurisdiction, and shall defend, indemnify and save harmless State University and the College from and against, as well as promptly bond and remove from the Building, any and all mechanic's and other liens filed in connection with such renovations or alterations.

4. In consideration of the facilities and services to be provided by State University as enumerated herein, the Permittee agrees to reimburse State University in accordance with the costs or services stipulated on the Attached EXHIBIT "C" and any other extraordinary costs incurred by the College to meet the requirements of the Permittee. Payment shall be made by the Permittee within thirty (30) days of receipt of an official billing statement from the College. The form and manner of presentation of the statement shall be mutually agreed upon by the Permittee and the College.

5. The Permittee shall be responsible for any and all damages or loss by theft or otherwise of property, whether such property shall belong to State University or to others, and for injury to persons (including death) which may in any way result from the operation or conducting of the activity, or may be caused by any of the persons involved in the activity, whether or not directly caused by the Permittee.

6. The Permittee shall be responsible for, and shall use reasonable efforts to maintain, good discipline and proper behavior on the part of all persons in any way involved with

the activity, and agrees to remove any personnel involved in the activity whose actions, or failure to act, shall, in the sole judgment of State University, after consulting with the Permittee, be deemed to be detrimental to State University.

7. In addition to the authority of State University of New York under paragraph 26, if, in the judgment of State University, activities of any personnel in any way involved in the activity should be such that State University, after consultation with the Permittee, shall determine that the continuation of the activity for the then remaining period covered by this agreement shall be contrary to law or the best interest of State University, State University may terminate this agreement without liability of any kind whatsoever therefor, and the Permittee and all personnel so involved shall be thereupon removed from State University premises.

8. This agreement shall be interpreted according to the laws of the State of New York. The Permittee shall comply with established University and College regulations and policies and with all laws, rules, orders, regulations, and requirements of Federal, State and municipal governments applicable thereto including the provisions contained in the rider attached hereto and made a part hereof as EXHIBIT "A and A-1". If necessary, Permittee shall obtain and keep in force at its sole cost and expense, any permits or licenses which may be required by any local, State or Federal Governmental body.

9. The Permittee agrees that the issuance of this permit shall in no way diminish the statutory authorization of State University to possession, pursuant to the Education Law, of the State controlled property to which this permit relates; nor shall the dominion and control by State University over the said State property be in any way diminished.

10. The Permittee specifically agrees that this permit does not create the relationship of landlord and tenant between State University and the Permittee regarding the use of the State controlled property to which this permit relates.

11. The Permittee specifically agrees that this permit shall be void, and of no further force and effect, upon any use of the State controlled property to which this permit relates which is inconsistent with State Law or which in any way conflicts with the purposes or objectives of State University. State University hereby warrants and represents that the intended use by Permittee does not violate any existing rule or regulation of State University.

12. Upon removal from said premises, the Permittee shall, at its sole cost and expense, restore the premises as nearly as possible to the condition in which the premises were in when the use by the Permittee began, other than ordinary wear and tear to the premises and other than renovations, alterations, or installation theretofore performed, or then being performed, in accordance with the provisions of this agreement. If, however, any such renovation, alteration, or installation shall not be substantially completed, the Permittee shall, not later than reasonably promptly after such removal, render the construction site in a safe and lawful condition, and remove all construction supplies, materials and debris from the building.

13. The Permittee shall have the right, so long as this permit shall remain in force, to enter upon the Building for the purpose of performing the activity therein.

14. The Permittee specifically agrees not to hold itself out as representing the State of New York, the State University of New York, or the College in connection with the use of the State-owned property to which this permit relates, nor shall the name of the State of New York, the State University of New York, or the College be used by Permittee for any purpose without prior approval of State University.

15. The Permittee assumes all risk incidental to the use of said premises and shall be solely responsible for any and all accidents and injuries to persons and property (including death) arising out of or in connection with the activity, use of facilities, its appurtenances and the surrounding grounds, and hereby covenants and agrees to indemnify and hold harmless the State of New York and its agencies, as well as the State University of New York and its subsidiaries (including, but not limited to, the College and Ground Lessor), from any and all claims, suits, actions, damages and costs of every nature and description arising out of, or relating to, the use of the facilities, its appurtenances and the surrounding grounds or the violation by said Permittee, its agents, employees or contractors of any law, code, order, ordinance, rule or regulation in connection therewith. The Permittee further agrees, on being requested to do so, to assume the defense and to defend, at its own cost and expense, any action brought at any time against the State of New York and its agencies, as well as the State University of New York and its subsidiaries (including, but not limited to, the College and Ground Lessor), in connection with the claims, suits and losses, as aforesaid. State University, to the fullest extent authorized by State law and decisions thereunder, shall be responsible for any claims, costs, damages or injuries to persons or property of whatever kind or nature arising out of and as a result of the negligence if the State University, its officers and employees. This agreement does not apply to any liability, claim, damage, suit or judgment arising from the acts done, or omissions made, by or on behalf of any party other than State University, the College, or their respective officers or employees.

16. The Permittee agrees to provide the College with a liability insurance policy in the amount of \$ 10,000,000 per occurrence of combined, single limit coverage, with a deductible of not more than \$ 25,000, naming the State of New York, the State University of New York, the College and Ground Lessor, as additional insureds, covering property damage, personal injury or death arising out of the use of the Building and/or University facilities and services. The Permittee further agrees to send the College designee cited in paragraph 20 of this Permit, a copy of any notice of cancellation of such policy, renewal certificate of insurance or new certificate of insurance naming State University, as an additional insured, within five (5) business days.

17. Except as provided for in paragraph 18 herein, the Permittee specifically agrees that if this permit is cancelled or terminated for any reason, the Permittee shall have no

claim against the State of New York nor its officers and employees, and the State of New York, its officers and employees shall be relieved from any and all liability.

18. Subject to the availability of lawful appropriation and consistent with the New York State Court of Claims Act, the State University shall hold the Permittee harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the State University or of its officers or employees when acting within the course and scope of their employment in connection with this Agreement.

19. State University shall have the right to terminate this contract early for cause.

20. Any notice to either party hereunder must be in writing signed by the party giving it and shall be served either personally or be registered mail addressed as follows:

TO THE COLLEGE:

Downstate at LICH Holding Company, Inc.
c/o State University of New York
State University Plaza
Albany, New York 12248
Attention: Mr. Robert Haelen

TO THE PERMITTEE:

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

with copies to:

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

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

Or to such other addressee as may be hereafter designated by notice. All notices become effective only when received by the addressee.

21. The activity shall be conducted and performed at the Permittee's sole cost and expense.

22. In the event that the Permittee desires to obtain any and all necessary governmental licenses, permits, approvals and/or authorizations for the commencement and performance of the activity, State University shall (or shall cause Ground Lessor, if requested by the Permittee), at the Permittee's expense, join in the application for such required licenses, permits, approvals and authorizations promptly following the Permittee's submission of the application therefor to State University, provided that such application shall be customary in form and content, and true and correct in all respects; provided, further, that if any applicable governmental agency requires that State University or Ground Lessor be the named applicant under such application, State University shall, at Tenant's expense, execute (or shall cause Ground Lessor to execute, if requested by the Permittee) such application, as applicant thereunder, promptly following Tenant's submission of such application therefor to State University. Any request made by the Permittee for the execution of any application aforesaid shall be delivered with the Permittee's written certification that the submitted application is both customary in form and true and correct in all respects.

23. With regard to all portions of the Building now being operated by State University and/or the College as a part of, or in conjunction with, its current emergency department, the Permittee shall exercise the right of entry pursuant to this agreement only upon at least two (2) business days advanced notice given by e-mail or telephonically to Alan Dzija (e-mail address Alan.Dzija@downstate.edu and telephone number (718) 270-3176), which right of entry need not be exercised only during business hours. In recognition of the nature of the services provided by State University in the said emergency department, and the laws, rules and regulations governing State University's operations therein, including, without limitation, the Health Insurance Portability and Accountability Act (HIPAA) of 1996, when exercising the aforesaid right of entry, the Permittee shall use its best efforts to perform any required repairs and changes in a timely manner, comply with State University's directions so as to cause the least practical interference with State University's use and occupancy of the on-going emergency department and avoid contact with State University'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 the Permittee in or to said emergency department shall be designed so as not unreasonably to interfere with State University's use and occupancy of the same.

24. The Permittee understands that State University is granting rights at the time hereof to FPG Cobble Hill Acquisitions, LLC (the "Other Permittee") that are similar to the rights granted to the Permittee herein, to conduct similar activities in the Building to the activity. The Permittee agrees to cooperate with the Other Permittee in all reasonable respects, to coordinate their respective actions in furtherance of their respective activities and not to cause interference with the activities of the Other Permittee.

24. This agreement constitutes the entire agreement of the parties hereto and all previous communications between the parties, whether written or oral, with reference to the subject matter of this contract are hereby superseded.

25. The relationship of the Permittee to State University and the State of New York arising out of this agreement shall be that of independent contractor.

26. The permission hereby granted shall be for a duration from the date of this permit to August 31, 2014, and may be revoked at any time prior thereto as a result of a breach by the Permittee of any of its obligations under this permit, but not otherwise. Upon revocation of the permission hereby granted and notice thereof (stating the reason for such revocation) served either in person or by certified mail, return receipt requested, said Permittee shall and will promptly discontinue conducting the activity in the Building and shall thereupon remove all of its property from the Building and shall restore the Building to the same condition it was in before use by the Permittee commenced, subject to ordinary wear and tear to the premises and those renovations or alterations theretofore performed in accordance with the provisions of this agreement. Under no circumstances shall State University or the College be held liable for damages of any kind, either direct or indirect, for termination of this permit.

27. The parties' hereby annex New York University standard Contract and Affirmative Action Clauses ("Exhibit A- A-1") to this agreement. In case of any conflict between the terms of Exhibits A and A-1 and any other term(s) in this agreement or any other document made a part hereof, the terms of Exhibit A and A-1 shall control.

IN WITNESS WHEREOF, the Permittee has caused this instrument to be sealed and signed by its duly authorized officer, and the State University has caused this instrument to be executed by its duly authorized officer.

STATE UNIVERSITY OF NEW YORK NYU HOSPITALS CENTER

By: *Christa Bain-Dunne*
Campus President
or Authorized Designee

By: *Vicki Match*
Official Representative of Permittee
Vicki Match Suna, AIA
Vice Dean and Senior Vice President, Real
Estate Development & Facilities



HERE

EXHIBIT A
State University of New York
Revocable Permit
NYU HOSPITALS CENTER
Name of Permittee

Standard Contract Clauses

Please see attached.

EXHIBIT B
State University of New York
Revocable Permit
NYU HOSPITALS CENTER
Name of Permittee

INTENTIONALLY OMITTED.

EXHIBIT C
State University of New York
Revocable Permit
NYU HOSPITALS CENTER
Name of Permittee

The Permittee agrees to compensate the College in the amount of \$1.00 for the use of the facilities described in Exhibit B. This compensation was determined on the following basis:

Negotiated payment reflecting nature and scope of activity

Standard Contract Clauses

EXHIBIT A

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 366 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 \$60,000; (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 \$60,000; (vi) all other contracts not listed in Paragraph 3(a) above, if the contract value exceeds \$60,000, 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 Universally 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 16 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 exami-

nation, 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.

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, upgrading, 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 195(B) 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 12246
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.newnyccontracts.com/FrontEnd/VendorSearchPublic.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

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

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 96-498), 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.

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 Assignees 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.

EXHIBIT A-1

January 14, 2013

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 for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between a State agency and a prime contractor, in which a portion of the prime contractor's obligation under the State contract is undertaken or assumed by a business enterprise not controlled by the prime 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.

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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, learning 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 woman 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 _____ percent (____%) for Certified Minority-Owned Business Enterprises and _____ percent (____%) 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 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.

Exhibit H
Intentionally Omitted

Exh. H-1

Exhibit I**Security Plan**

Landlord shall cause at least one (1) security guard, unarmed and radio-equipped, to be present in the Building twenty-four (24) hours per day, seven (7) days per week.