

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

COMMITTEE DAY

AGENDA

November 19, 2020

10:00 a.m.

Via Live Webcasting

I. COMMITTEE ON ESTABLISHMENT AND PROJECT REVIEW

Peter Robinson, Chair

A. Applications for Construction of Health Care Facilities/Agencies

Acute Care Services – Construction

Exhibit # 1

	<u>Number</u>	<u>Applicant/Facility</u>
1.	201237 C	Strong Memorial Hospital (Monroe County)
2.	202029 C	Claxton-Hepburn Medical Center (St. Lawrence County)
3.	201268 C	The Unity Hospital of Rochester (Monroe County)
4.	202096 C	The Unity Hospital of Rochester (Monroe County)

Hospice Services - Construction

Exhibit # 2

	<u>Number</u>	<u>Applicant/Facility</u>
1.	202021 C	Hudson Valley Hospice (Dutchess County)

B. Applications for Establishment and Construction of Health Care Facilities/Agencies

Ambulatory Surgery Centers - Establish/Construct

Exhibit # 3

	<u>Number</u>	<u>Applicant/Facility</u>
1.	192309 B	5 East 98th Street, LLC d/b/a The Derfner Foundation Ambulatory Surgery Center (New York County)

2. 201256 E Gramercy Surgery Center, Inc.
(New York County)
3. 202015 E Mark Fromer, LLC d/b/a Eye Surgery Center of New York
(Bronx County)

Diagnostic and Treatment Centers - Establish/Construct

Exhibit # 4

- | <u>Number</u> | <u>Applicant/Facility</u> |
|---------------|--|
| 1. 201172 B | H & D East 180 Street, LLC
d/b/a Community Health Center at East 180th Street
(Bronx County) |
| 2. 202020 B | Touch Stone Pavilion, Inc.
(Richmond County) |
| 3. 202025 B | New Windsor Family Care, LLC
(Orange County) |
| 4. 202027 B | Physicare Multi-Services, Ltd.
(Kings County) |

C. Certificates

Exhibit # 5

Certificate of Dissolution

Applicant

Lutheran Augustana Center for Extended Care and Rehabilitation

Ralph Lauren Center for Cancer Care and Prevention



**Project # 201237-C
Strong Memorial Hospital**

**Program: Hospital
Purpose: Construction**

**County: Monroe
Acknowledged: July 14, 2020**

Executive Summary

Description

Strong Memorial Hospital (SMH), an 886-bed, voluntary not-for-profit, Article 28 hospital located at 601 Elmwood Avenue in Rochester (Monroe County), requests approval to certify a new extension clinic to provide imaging and physical therapy services with therapy pools to be located at 10 Miracle Mile Drive, Rochester, New York. Imaging, therapy and specialty services that have been on the Clinton Crossings Campus will be moved to the new extension clinic 12 minutes, 4.5 miles away. The clinic will occupy approximately 76,915 SF of the Marketplace Mall in Henrietta, NY, recently purchased by the University of Rochester Medical Center (URMC). The project includes an additional 9,415 SF of shell space for a total of approximately 86,330 SF. There will be no inpatient beds or emergency services at this location.

Many of the patients to be served in the new facility currently receive imaging and therapy services in one of SMH's existing off-campus locations that will remain in operation. The new center will provide easier access to patients in the greater Rochester area, including Monroe, Orleans, Genesee, Livingston, Ontario, and Wayne Counties.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant projects 53,617 visits in Year One and 97,428 in Year Three.

Program Summary

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law

Financial Summary

The total project cost is \$42,941,468 and the 10% equity requirement of \$4,294,147 will be funded from hospital operations. The balance of total project costs will be met via a 30-year term bond financing at 3.1933% interest. Morgan Stanley Bank has provided a bond issuance debt letter that is part of a larger financing at the stated terms. Due to identified shell space and unrecognized land acquisition costs, reimbursable costs are limited to \$42,887,159.

The submitted budget projects an excess of revenues over expenses of \$1,165,016 and \$1,516,133 during the first and third years, respectively.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Total Revenues	\$17,571,702	\$18,436,909
Total Expenses	<u>16,406,686</u>	<u>16,920,776</u>
Excess Revenues	\$1,165,016	\$1,516,133

Recommendations

Health Systems Agency
The FLHSA recommends approval of this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of documentation of review and approval of the therapy pools by the Bureau of Community Environmental Health & Food Protection (BCEHFP). [PMU]
3. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
4. Submission of Mechanical, Electrical and Plumbing (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

Approval conditional upon:

1. The project must be completed within five years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before May 1, 2021 and construction must be completed by February 6, 2024, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date
December 9, 2020

Need and Program Analysis

Program Description

Strong Memorial Hospital (SMH), a 886-bed tertiary teaching hospital located at 601 Elmwood Avenue in Rochester (Monroe County), seeks approval for a new extension clinic to be located at 10 Miracle Mile Drive in Rochester (Monroe County) certified for Medical Services-Other Medical Specialties. The extension clinic will support the relocation and expansion of hospital-based imaging, therapy, and specialty service visits from Building D in the Clinton Crossing Campus.

Analysis

The primary service area is Monroe County. The population of Monroe County in 2010 was 744,344 and per PAD projection data from the Cornell Program on Applied Demographics, the population is estimated to grow to 758,294 by 2025, an increase of 2%.

Strong Memorial Hospital currently operates a total of 52 extension clinics in Monroe, Ontario, Livingston, and Genesee Counties providing a variety of medical services. The Applicant reported that they currently provide imaging, therapies, and specialty visits at off-campus locations that will remain in operation. This project relocates some remaining hospital-based outpatient services to accommodate growth and provide convenience. The new building is readily accessible via public transportation.

Staffing is expected to increase as a result of this project by 47.3 FTEs in Year One of the completed project and increase to 49.8 FTEs by Year Three.

The number of projected visits is 53,617 in Year One and 97,428 in Year Three. The center is projecting Medicare utilization of 38% and Medicaid utilization of 10%. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

The proposed hours of operation for the extension clinic for the imaging services will be Monday through Friday from 7 am until 10 pm, Saturday and Sunday from 7 am to 7 pm; and for the therapy services Monday through Thursday from 7 am to 7 pm, Friday from 7:30 am to 4:30 pm, and Saturday from 8 am to noon.

Compliance with Applicable Codes, Rules and Regulations

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

Prevention Agenda

Strong Memorial Hospital states that the proposed project will advance local Prevention Agenda priorities by Promoting Well-Being/Prevention Mental and Substance Use Disorders and Promoting Healthy Women, Infants and Children. In addition, the hospital is working on healthy eating/food security, tobacco prevention, violence prevention, opioid use prevention and preventing sexually transmitted infections. Strong Memorial Hospital is implementing interventions to support Promoting Well-Being and Promoting Maternal and Infant Health goals of the 2019-2024 New York State Prevention Agenda:

1. Building community wealth by creating and supporting inclusive, healthy public spaces, engaging anchor institutions, supporting democratically governed worker cooperatives, revitalizing neighborhoods, and implementing evidence-based programs like Mental Health First Aid,
2. Reducing preterm birth disparities by enhancing collaboration and enhancing addressing key social determinants of health.

The application states that Strong Memorial Hospital engaged the local health department, the mayor's office, community-based non-profits and worker-owned collaboratives in their Prevention Agenda efforts.

Strong Memorial Hospital cites data indicators that it tracks to measure progress toward achieving local Prevention Agenda goals, including:

- Measuring people trained in mental health first aid, and monitoring strengthening of community resilience,
- Monitoring systems change in at least one barrier identified by the community In 2018 the applicant spent \$1,810,668 on community health improvement services, representing 0.047% of total operating expenses.

Conclusion

Approval of this project will increase access of imaging and physical therapy services for residents of Monroe and surrounding counties. Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Analysis

Purchase and Sale Agreement

The applicant submitted an executed First Amendment to Purchase and Sale Agreement for the site to be occupied, the terms of which are summarized below:

Date:	January 21, 2020
Premises:	Marketplace Mall
Seller:	Miracle Mile Associates
Purchaser:	University of Rochester
Purchase Price:	\$18,300,000

Total Project Cost and Financing

The total project cost is estimated at \$42,941,468. The distribution of these costs for land acquisition, renovation, acquisition of moveable equipment and shell space, and CON fees is listed below.

	<u>Article 28</u>	<u>Shell Space</u>	<u>Total</u>
Land Acquisition	\$3,784,178	\$0	\$3,784,178
Renovation & Demolition	19,952,408	44,721	19,997,129
Design Contingency	1,216,112	465	1,216,577
Construction Contingency	1,995,241	4,472	1,999,713
Planning Consultant Fees	83,578	0	83,578
Architect/Engineering Fees	2,816,340	3,130	2,819,470
Construction Manager Fees	1,610,421	1,521	1,611,942
Other Fees (Consultant, etc.)	1,514,781	0	1,514,781
Moveable Equipment	3,580,000	0	3,580,000
Telecommunications	2,556,000	0	2,556,000
Financing Cost	300,000	0	300,000
Interim Interest Expense	3,241,522	0	3,241,522
CON Fee	2,000	0	2,000
Additional Processing Fee	<u>234,578</u>	<u>0</u>	<u>234,578</u>
Total Project Cost	<u>\$42,887,159</u>	<u>\$54,309</u>	<u>\$42,941,468</u>

The applicant has submitted a MAI appraisal for the property inclusive of land (\$6,320,000), mall anchor building (\$2,770,000) and other mall space (\$7,020,000) for a total appraised value of \$16,110,000. The total square footage for the businesses to be occupying the land is 367,524 square feet. The MAI appraisal value of the land to be included in the total project cost for this application is \$3,784,178. This is based on the lower of cost or appraised value requirement for Medicaid reimbursement.

Additionally, reimbursement of Shell Space may occur upon approval of future CON which fits out the space for approved Article 28 functions. Therefore, due the identified shell space and unrecognized land acquisition costs, reimbursable costs are limited to \$42,887,159.

The applicant's financing of the project cost will be met as follows:

Equity	\$4,304,214
Bond Financing (30-year term, 3.1933% period)	\$38,737,928

Operating Budget

The applicant has submitted an incremental operating budget for the extension clinic, in 2020 dollars, which indicates the facility will generate an excess of revenue over expenses of \$1,165,016 and \$1,516,133 in the first and third years respectively. The significant increase in revenue per visit in year one and year three compared to the current year is due to the utilization and payor mix shift to more Medicare volume with a higher per diem rate payment rate resulting from the acquisition of a non-Article 28 private practice imaging group.

A summary of the facility's operating budget is as shown below:

	<u>Current Year (2019)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>						
Commercial FFS	39.97	\$4,464,315	57.82	\$7,668,332	53.59	\$8,046,811
Commercial MC	39.97	696,510	43.70	787,515	44.00	829,653
Medicare FFS	39.97	726,603	75.05	1,977,586	63.48	2,068,842
Medicare MC	39.97	1,082,817	76.50	3,060,826	64.22	3,200,289
Medicaid FFS	39.98	41,896	81.44	134,707	66.70	140,604
Medicaid MC	39.97	1,233,309	54.61	1,935,655	51.54	2,032,489
Private Pay	39.97	240,000	47.59	306,308	47.88	337,704
Charity Care	0.00	-	0.00	-	0.00	-
Bad Debt	0.00	-	0.00	-	0.00	-
All Other	59.66	879,870	92.18	1,700,773	83.20	1,780,517
Total Revenues		<u>\$9,365,320</u>		<u>\$17,571,702</u>		<u>\$18,436,909</u>
<u>Expenses</u>						
Operating		8,493,869		12,869,791		13,458,984
Capital		470,124		3,536,895		3,461,792
Total Expenses		<u>\$8,963,993</u>		<u>\$16,406,686</u>		<u>\$16,920,776</u>
Excess Revenues		401,327		1,165,016		1,516,133
Total Visits		234,299		287,914		331,725

The following is noted with respect to the submitted operating budget:

- Effective April 2, 2020, Medicaid payments have been reduced by 1.5% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in Years One and Three. This reduction has been reflected within the budget.
- Current average gross and net revenues for the projected cases and visits were used to calculate the operating revenues.
- Growth projections were derived from acquisition of medical imaging practice, historical growth trends, market share, population demographics, and growth in primary referral source FTEs (Orthopedic Hand Faculty).
- Expense and utilization assumptions reflect the current financial performance and historical growth trends as well as incremental Orthopedic patients to be located to the proposed site.
- The sports and orthotics and prosthetics programs will operate incremental space at the new site in addition to their current clinics.

Utilization broken down by payor source during the first and third years is as shown below. The payor mix is projected to shift to a greater percent of Medicare and less Commercial, Medicaid, Private pay and all other payors.

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	47.67%	46.06%	45.27%
Commercial MC	7.44%	6.26%	5.68%
Medicare FFS	7.76%	9.15%	9.83%
Medicare MC	11.56%	13.90%	15.02%
Medicaid FFS	0.45%	0.57%	0.64%
Medicaid MC	13.17%	12.31%	11.89%
Private Pay	2.56%	2.24%	2.13%
Charity Care	2.00%	2.00%	2.00%
Bad Debt	1.10%	1.10%	1.10%
All Other	6.29%	6.41%	6.45%
	<u>100.00%</u>	<u>100.00%</u>	<u>100.00%</u>

Capability and Feasibility

The total project cost is \$43,024,142 and the 10% equity requirement of \$4,304,214 will be funded from hospital operations. The \$38,719,928 balance of total project costs will be met via a 30-year term bond financing at 3.1933% interest. Morgan Stanley Bank has provided a bond issuance debt letter that is part of a larger financing at the stated terms.

The submitted budget projects an excess of revenues over expenses of \$1,165,016 and \$1,516,133 during the first and third years, respectively. Revenues are based on current reimbursement rates for imaging and physical therapy services. The submitted budget appears reasonable.

BFA Attachment A, June 30, 2018 and June 30, 2019 certified financial statements of Strong Memorial Hospital, indicates the availability of sufficient funds for the equity contribution. Also as shown, the entity had an average positive working capital position and an average positive net asset position for the periods ending June 30, 2018 and 2019. Also, the entity achieved an average excess of revenues over expenses of \$129,556,062 for the 2018-2019 period.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A Financial Summary- June 30, 2018 and June 30, 2019 certified financial statements of Strong Memorial Hospital.



**Project # 202029-C
Claxton-Hepburn Medical Center**

**Program: Hospital
Purpose: Construction**

**County: St. Lawrence
Acknowledged: August 19, 2020**

Executive Summary

Description

Claxton Hepburn Medical Center is requesting approval to renovate 7,910 square feet of vacant space on the 4th floor of the hospital to create a 12-bed Children and Adolescent Behavioral Health Inpatient Unit. The Medical Center currently operates a 28-bed Adult Behavioral Health unit. The space will be completely renovated (e.g., new walls, window, plumbing, mechanical, electrical, complete interior and floor finishes) and designed to meet NYS OMH Behavioral Health guidelines and standards.

The Department of Health (DOH) and the Office of Mental Health (OMH) have provided financial support for Claxton Hepburn to establish this new unit and DOH provided a \$2,633,200 capital award through the NYS Statewide II Health Care Facility Transformation Program and OMH awarded a Vital Access Program (VAP) award of \$3,000,000 to develop and staff this new unit in an effort to address the unmet need for behavioral health care in the North Country.

OPCHSM Recommendation
Contingent Approval

Need Summary

The addition of a 12 bed Children and Adolescent Behavioral Health Inpatient Unit will provide access to needed beds and services for younger mental health patients and provide separation from adult patients.

Program Summary

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Summary

Total project costs of \$3,198,886 will be met via cash of \$565,686 and a Statewide II Health Care Transformation Program Grant of \$2,633,200. The applicant has submitted a letter attesting that they will cover all operating shortfalls during the first- and third- year using existing funds. The hospital will also use the OMH VAP grant of \$3,000,000 to offset salary expense in years one and three.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,127,165	\$3,294,542
Expenses	<u>3,178,142</u>	<u>3,338,108</u>
Net Income	(\$50,977)	(\$43,566)

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0, including satisfactory response and resolution to any and all open comments in ProjNet. [AER]
3. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0, including satisfactory response and resolution to any and all open comments in ProjNet. [AER]

Approval conditional upon:

1. The project must be completed within two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before April 30, 2021 and construction must be completed by March 31, 2022, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

December 9, 2020

Program and Need Analysis

Program Description

The 2019 Community Health Assessment identified a need for inpatient and outpatient mental health services for children and adolescents for St. Lawrence County. Claxton-Hepburn Medical Center (CHMC) staffs the only general psychiatric unit in St. Lawrence County.

The proposed 12-bed inpatient Children and Adolescent Behavioral Health Unit will increase access to mental health services for children and decrease wait times for admission from the emergency department, decrease transfers, and provide continuity of care for patients in the community.

The 12 private patient bedrooms have shared toilet and shower rooms located within the patient bedroom corridor. A secondary staff substation is situated and designed for nighttime direct supervision of the bedroom corridor and has direct sightlines into the adjacent seclusion suite. A daytime activity and therapy zone will include education, social and dining space, two patient toilet rooms, an exam room, patient laundry, a group room, a quiet room, a consultation office, visitation/ family therapy room, and social work offices.

Claxton-Hepburn Beds			
Bed Category	Beds	Change	Upon Completion
Coronary Care	6		6
Intensive Care	4		4
Medical/Surgical	67		67
Maternity	10		10
Psychiatric	28	+12	40
Total	115		127

Source: HFIS 2020

Staffing is expected to increase by 34.2 FTEs as a result of this project.

Analysis

The CHMC Emergency Dept conducts over 1,925 psychiatric evaluations per year, of which 548, or 28.5%, are child evaluations. The closest facility for children's inpatient mental health services is five miles away at the St Lawrence Psychiatric Center (SLPC). SLPC has 27 inpatient children's mental health beds to serve both children and adolescents up to age 18 and is presently the only facility in St Lawrence County and northern New York which provides inpatient children and adolescent services, both acute care and long term care. The 27 beds are not enough to meet the high demands in the County and north country. SLPC has an occupancy rate of 96.3%. The next closest children's mental health unit is in Plattsburgh, 119 miles and 2.5 hours' drive, Hutchings in Syracuse, 128 miles and 2.5 hours' drive, and Four Winds in Saratoga Springs, 186 miles and 4 hour's drive. Given this lack of beds, children are often boarded in the Emergency Department for days while waiting for a bed to become available somewhere in New York State. Over the past five years, CHMC has transferred 1,329 children in need of inpatient mental health care out of the emergency department. Of these 1,329 children, only 132 were transferred to a facility in St Lawrence County with the remaining 1,197 being transferred to a facility outside St Lawrence County.

Claxton-Hepburn Utilization						
	Current Beds	2015	2016	2017	2018	2019
Claxton-Hepburn	115					
Medical/Surgical*	77	26.0%	26.0%	26.0%	32.8%	30.4%
General Psychiatric	28	89.3%	85.7%	78.6%	91.4%	86.5%
Obstetric	10	20.0%	20.0%	20.0%	11.8%	11.2%

*Includes ICU and Coronary care beds.

Source: SPARCS

Claxton-Hepburn Projected Visits				
	Current	First Year	Third Year	% Growth
Psychiatric	1,022	1,343	1,349	32.0%

The applicant is projecting a 32% increase in psychiatric visits by the third year after completion, increasing from 1,022 visits currently to 1,349 visits.

Compliance with Applicable Codes, Rules and Regulations

Staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Prevention Agenda

Claxton-Hepburn Medical Center is implementing three interventions to support the *Promote Well-Being and Prevent Mental and Substance Use Disorders* priority of the 2019-2024 New York State Prevention Agenda:

- Creation of a county-wide coalition devoted to opioid prevention
- Provider education
- Expansion of drug take back opportunities within the community

The application states that Claxton-Hepburn Medical Center engaged local partners in their Prevention Agenda efforts, including the St. Lawrence County Public Health Department, the St. Lawrence County Community Service Department, the St. Lawrence County Health Improvement Coalition, the Bridge to Wellness Coalition, the St. Lawrence County Community Services Board, and the Fort Drum Regional Health Planning Organization. Claxton-Hepburn Medical Center cites data indicators that it tracks to measure progress toward achieving local Prevention Agenda goals, including:

- Number of children able to receive inpatient treatment locally
- Number of children transferred out of the region for treatment
- Wait times for a bed to become available
- Time the child is held in Claxton-Hepburn Medical Center's emergency department
- Hospitalization rates for mental diseases and disorders

In 2018 the applicant spent \$137,632 on community health improvement services, representing 0.14% of total operating expenses.

Conclusion

The expansion of beds and segregation by age group will benefit St. Lawrence County and the surrounding area as demand increases. Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Analysis

Total Project Cost and Financing

Total project cost for the new construction, renovations and acquisition of moveable equipment is estimated at \$3,198,886, broken down as follows:

Renovation and Demolition	\$2,282,400
Design Contingency	228,240
Construction Contingency	228,240
Architect/Engineering Fees	184,800
Moveable Equipment	255,719
CON Fee	2,000
Additional Processing Fee	<u>17,487</u>
Total Project Cost	<u>\$3,198,886</u>

The applicant's financing plan is as follows:

Cash	\$565,686
NYS DOH Statewide II Health Care Facility Transformation Program Grant	<u>2,633,200</u>
Total	<u>\$3,198,886</u>

Operating Budget

The applicant submitted their first - and third- year operating budget, in 2020 dollars, as shown below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>2021</u>		<u>2023</u>	
	<u>Per</u>		<u>Per</u>	
	<u>Dischg.</u>	<u>Total</u>	<u>Dischg</u>	<u>Total</u>
<u>Revenues</u>				
Commercial FFS	\$849.74	\$1,080,020	\$884.78	\$1,137,826
Medicaid FFS	\$849.74	553,181	\$884.36	582,790
Medicaid MC	\$849.82	1,256,887	\$885.13	1,324,160
Private Pay	\$849.00	139,236	\$883.66	146,688
Other	<u>\$850.80</u>	<u>97,842</u>	<u>\$888.60</u>	<u>103,078</u>
Total Revenues		<u>\$3,127,166</u>		<u>\$3,294,542</u>
<u>Expenses</u>				
Operating	\$843.18	\$3,102,906	\$856.15	\$3,187,457
Capital	<u>\$20.44</u>	<u>75,236</u>	<u>\$40.46</u>	<u>150,651</u>
Total Expenses	\$863.63	\$3,178,142	\$2,482.92	\$3,338,108
Excess of Revenues /(Loss)		<u>(\$50,976)</u>		<u>(\$43,566)</u>
<u>Utilization</u>				
Discharges		3,680		3,723
Patient Days		12,877		12,923

Utilization by payor source during first and third years is broken down as follows:

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Discharges</u>	<u>%</u>	<u>Discharges</u>	<u>%</u>
Commercial FFS	1,271	34.5%	1,286	34.5%
Medicaid FFS	651	17.7%	659	17.7%
Medicaid MC	1,479	40.2%	1,496	40.2%
Private Pay	164	4.5%	166	4.5%
Other	115	3.1%	116	3.1%
Total	<u>3,680</u>	<u>100%</u>	<u>3,723</u>	<u>100%</u>

The following is noted with respect to the submitted budget and utilization:

- Effective January 1, 2020, Medicaid payments have been reduced by 1.5% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in years one and three. This reduction has been reflected within the budgets
- During the first three years, \$3,000,000 from the OMH VAP award will be used to offset salary expense, until the unit is fully ramped up at which time revenues are expected to cover these expenses

Capability and Feasibility

Claxton Hepburn Medical Center has the financial challenge of operating in a rural area and hospital leadership is committed to using the State dollars and benefits of systemwide performance improvement initiatives underway to ensure sustainability of the proposed Child and Adolescent behavioral health program. Total project cost of \$3,198,886 will be met via cash of \$565,686 and a New York State DOH Statewide II Health Care Facility Transformation Program Grant of \$2,633,200. The year ended December 31, 2020 internal financial statements of Claxton Hepburn Medical Center indicate positive working capital of \$60,433 and a net loss of \$1,600,058 (refer to BFA Attachment A).

The budget appears reasonable. While the submitted budget indicates a loss of \$50,976 and \$43,686 during years one and three respectively, Claxton Hepburn has submitted a letter stating it will cover the first- and third- year losses with existing funds. The hospital also indicated that they were awarded an OMH VAP award of \$3,000,000 to be used to offset salary expense in years one and three.

Hospital leadership is currently working to improve historically poor financial performance led by a new Chief Executive Officer hired in late 2019 and a new COO that started in February 2020. Inefficient billing processes and poor expense management have contributed to the current operating losses and volume loss has been exacerbated by the closure and ramp up of services due to the Covid-19 pandemic. As shown on BFA Attachment B, the internal financial statements of Claxton Hepburn Medical Center for August 31, 2020 show the facility incurred operating losses of \$1,252,185 for the month of August and year to date loss of \$6,932,557. The facility had a negative working capital position and a positive net asset position for the month of August.

To improve operations the applicant has implemented the following improvements:

- In the second quarter of 2020, the hospital engaged an outside consulting firm, Quorum Health Resources (QHR), to assist in identifying areas of improvement for the hospital and develop execution plans for the identified improvement initiatives.
- QHR determined that the hospital has a profitability shortfall of approximately \$17.0 million over the next 2 years. The hospital, in concert with QHR, have identified actions to bridge this gap and project a positive financial impact between \$11.7 and \$17.3 million.
- The hospital is also revamping provider efficiency reporting to create additional access and capacity to increase volume and grow revenue.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A Claxton Hepburn Medical Center Internal Financials through December 31, 2020
BFA Attachment B Claxton Hepburn Medical Center Internal financials for August 31, 2020



**Project # 201268-C
The Unity Hospital of Rochester**

**Program: Hospital
Purpose: Construction**

**County: Monroe
Acknowledged: July 17, 2020**

Executive Summary

Description

The Unity Hospital of Rochester (Unity), a 311-bed voluntary, not-for-profit Article 28 hospital located at 1555 Long Pond Road, Rochester (Monroe County), is seeking approval to be certified for radiology-therapeutic services and to install a linear accelerator (LINAC). Highland Hospital previously operated a LINAC in an extension clinic located on the Unity campus, but when Highland’s lease for the space terminated in March 2020 the extension clinic was relocated. The space formally occupied by Highland will become the site of Unity’s proposed radiation therapy program and will be operated in conjunction with the existing Unity medical oncology program to create a comprehensive cancer program on the Unity campus. Rochester General Hospital (RGH), a member of Rochester Regional Health System (RRH), will decommission one of its two linear accelerators at its main site, thus resulting in no net change in the number of LINACs in the area. The project will consist of the installation of a new state-of-the-art linear accelerator and related equipment.

Rochester Regional Health (RRH) is the sole corporate member and active parent, co-operator of five hospitals in the region, including Unity and RGH. RRH approved the addition of this service (via a board resolution) to provide access to, strengthen and expand oncology services for Finger Lakes Region residents as part of the RRH systemwide oncology programs.

**OPCHSM Recommendation
Contingent Approval**

Need Summary

As the replacement and relocation of one LINAC within the Rochester Regional Health System, this project has no impact on Public Need.

The applicant projects 3,522 visits in Year One and 6,327 in Year Three.

Program Summary

Based on the results of this review, a favorable recommendation can be made regarding the facility’s current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Summary

Total Project costs of \$5,405,149 will be funded with equity. The submitted incremental budget indicates a first-year loss of (\$137,776) due to investment and start-up costs and will offset loss through operations of the hospital. Year three shows a surplus of revenues over expenses of \$990,730. The budget appears reasonable.

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,421,823	\$4,350,605
Expenses	<u>2,559,599</u>	<u>3,359,875</u>
Net Income	(\$137,776)	\$ 990,730

Recommendations

Health Systems Agency
The Finger Lakes HSA recommends approval.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before February 1, 2021 and construction must be completed by March 31, 2021, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date
December 9, 2020

Need and Program Analysis

Program Description

The Unity Cancer Center, a component of RRH's Lipson Cancer Institute (RRH Lipson), proposes to enhance their existing program by adding therapeutic radiology.

The Center had an arrangement with Highland Hospital of Rochester, an affiliate of Strong Memorial Hospital, to provide that service at a Highland extension clinic located on Unity's campus, but that arrangement expired in March 2020.

According to the applicant:

- Cancer outpatient volumes are projected to grow 23% from 2016 to 2026. Physician visits are projected to grow 26% during this time, and chemotherapy is projected to grow 15%. Additionally, the growing and aging population, along with an increasing number of survivors, drives the demand for ongoing surveillance (imaging, physician visits) and interventions for recurrent tumors and secondary cancers.
- Monroe County residents experience poor cancer related outcomes, as compared to peer residents in New York State and have a higher cancer incidence rate than residents of New York State for all invasive Malignant Tumors and a significant majority of the cancers listed in the cancer registry. The area residents with cancers are not being diagnosed in the early stages of the disease. Enhancement of the program will help improve the low percentage of cancer cases diagnosed at an early stage, which will lead to improved outcomes and survival rates.

Staffing is expected to increase as a result of this construction/expansion project by 13.2 FTEs in Year One of the completed project and by 18.6 FTEs by Year Three of the completed project.

Analysis

The primary service area is Monroe County in the Finger Lakes region. The secondary service area includes several of the nearby counties. The need methodology set forth in 10 NYCRR Section 709.16 calculates the need for therapeutic radiology devices by health planning region. Department regulations require that at least ninety-five percent of the total population of the Finger Lakes region live within one hour's driving time of a LINAC. Furthermore, need for LINAC machines is determined by assuming that 60% of the cancer cases in a planning region will be candidates for radiological therapy. Of these, half will require 15 treatments a year and half will require 35. Each LINAC machine can provide 6,500 treatments per year.

The Finger Lakes health planning region has a total of 12 facilities – seven hospitals and five hospital extension clinics - providing linear accelerator services as follows:

Current/Approved Resources	# Facilities with LINAC Services			# LINAC Machines		
	Hospitals	Hospital Clinics	Total	in Hospitals	in Hospital Clinics	Total
Finger Lakes Region						
Chemung	1	0	1	3	0	3
Livingston	1	0	1	1	0	1
Monroe	4	3	7	8	4	12
Ontario	1	1	2	1	1	2
Schuyler	0	0	0	0	0	0
Seneca	0	0	0	0	0	0
Steuben	0	1	1	0	1	1
Total Finger Lakes Region	7	5	12	13	6	19

The table below shows no additional need for LINAC devices (linear accelerators) in the Finger Lakes health planning region:

	LINAC Need in Finger Lakes Region	Total
1	# of Cancer Cases/Year	7,929
2	60% will be Candidates for Radiation Therapy	4,757
3	50% of (2) will be Curative Patients	2,379
4	50% of (2) will be Palliative Patients	2,379
5	Course of Treatment for Curative Patients is 35 Treatments	83,255
6	Course of Treatment for Palliative patients is 15 Treatments	35,681
7	The Total Number of Treatments [(5) +(6)]	118,935
8	Need for LINAC Machines ¹ [(7)/6,500]	18
9	Existing/Approved Resources (Upon Approval of CON 201268)	19
10	Remaining Need for LINAC Machines [(8) -(9)]	-1

¹Each LINAC Machine has capacity for 6,500 Treatments

This project will not impact the number of linear accelerators in the Finger Lakes region because it represents the replacement and relocation of one LINAC within the Rochester Regional Health System; reducing the number of LINACs at Rochester General and adding the service at Unity.

Compliance with Applicable Codes, Rules and Regulations

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

Prevention Agenda

The Unity Hospital of Rochester does not state how the proposed project will advance local Prevention Agenda priorities. The Unity Hospital of Rochester is implementing interventions to support the Prevent Chronic Diseases priority of the 2019-2024 New York State Prevention Agenda:

1. Participate in 2020 Performance Commission and explore potential interventions to decrease preventable hospitalizations by improving management of chronic disease.
2. Hospitals will work with other organizations in the community to develop a program whereby primary care physicians will receive National Committee for Quality Assurance (NCQA) certification in diabetes care.
3. The Physical Activity and Nutrition Task Force, convened by the Monroe County Department of Public Health and the university of Rochester's Center for Community Health, will identify and implement sustainable policy, system and environmental changes that promote increased physical activity and improved nutrition among adults.

The application states that The Unity Hospital of Rochester engaged Common Ground Health (Finger Lakes HSA) and other local partners in their Prevention Agenda efforts. The Unity Hospital of Rochester cites data indicators that it tracks to measure progress toward achieving local Prevention Agenda goals, including:

- Number of preventable hospitalizations
- Number of primary care physicians receiving NCQA certification in diabetes care In 2018 the applicant spent \$99,100 on community health improvement services, representing 0.02% of total operating expenses.

Conclusion

The linear accelerator at The Unity Hospital of Rochester is replacing and relocating one of the linear accelerators currently operated at Rochester General Hospital, so this project does not change the number of LINACs in the Finger Lakes planning region. Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Analysis

Total Project Cost

Total project cost for new construction and equipment is estimated at \$5,405,149 broken down as follows:

Fixed Equipment	\$4,698,417
Other Fees	23,700
Movable Equipment	392,003
Telecommunications	259,474
Application Fee	2,000
Processing Fee	<u>29,555</u>
Total Project Cost	\$5,405,149

Total costs are based on a two-month construction period and will be funded by cash equity.

Operating Budget

The applicant has submitted an operating budget in 2020 dollars, for the first and third years, summarized below:

	<u>Per Visit</u>	<u>Year One</u>	<u>Per Visit</u>	<u>Year Three</u>
<u>Revenues</u>				
Medicaid Fee-For-Service	\$289.04	\$7,515	\$ 289.02	\$13,584
Medicaid Managed Care	\$686.16	242,313	\$686.15	435,708
Medicare Fee-For-Service	\$441.98	343,862	\$441.98	617,891
Medicare Managed Care	\$585.61	948,682	\$585.61	1,703,529
Commercial Manage Care	\$1,197.17	835,626	\$1197.16	1,501,237
Private Pay/Other	\$1,021.51	<u>43,925</u>	\$1021.51	<u>78,656</u>
Total Revenue		\$2,421,823		\$4,350,605
<u>Expenses</u>				
Operating	\$493.47	\$1,738,011	\$401.18	\$2,538,287
Capital	<u>\$233.27</u>	<u>\$821,588</u>	<u>\$129.85</u>	<u>\$821,588</u>
Total	\$726.75	\$2,559,599	\$531.04	\$3,359,875
Net Income/(Loss)		(\$137,776)		\$ 990,730
Total Visits		3,522		6,327

Utilization by payor source for the first and third years is as follows:

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee-For-Service	.74%	.74%
Medicaid Managed Care	10.02%	10.04%
Medicare Fee-For-Service	22.09%	22.10%
Medicare Managed Care	46.00%	45.98%
Commercial Manage Care	19.82%	19.82%
Private/Other	1.22%	1.22%
Charity Care	.11%	.11%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on the hospital's current and historical experience.
- Revenues reflect current outpatient reimbursement methodologies for ambulatory payment classification services, including the new rate structure as of April 2, 2020 for Medicaid.
- Utilization assumptions are based on the regional incidence of cancer in the geography it serves and the current experience that exist within Unity Hospital.
- First year losses will be covered by current operations of the facility as it installs the new LINAC machine and start-up for this continued service for the hospital operation.
- Expense and utilization assumptions are based on the current and historical medical experience of the current operator who provides this service via a third-party contractual service.

Capability and Feasibility

Total Project costs of \$5,405,149 will be funded with equity. Unity has sufficient resources to fund the project as shown in BFA Attachments A and B, Unity 2018-2019 certified financial statements and the internal financial statements for the period January 1, 2020 to August 31, 2020, respectively. Working capital requirements are estimated at \$559,980, which is equivalent to two months of third year expenses. The applicant will provide \$559,980 from its operations and has sufficient resources to fund working capital. Specifically, Unity maintained a positive working capital, positive net asset position, and achieved an excess of revenues over expenses of \$4,306,472 and \$1,675,553 for 2019 and 2018, respectively. The internal financial statement for Unity from January 1, 2020 to August 31, 2020 shows a positive working capital position, a positive net asset position and an operating income of \$1,652,000 for this period.

Rochester Regional Health, the active parent and co-operator of Unity maintained positive working capital, positive net asset positions, and achieved an excess of revenues over expenses of \$2,245,435 and \$2,158,849 for 2019 and 2018, respectively as shown in(BFA Attachment C. BFA Attachment D is the internal financial statements from January 1, 2020 thru August 31, 2020 and shows the RRH maintained a positive working capital position, net asset position and excess of revenues over expenses of (\$15,941). The facility indicated that the loss is due to COVID-19 and a reduction of elective surgeries.

The submitted incremental budget indicates a first-year loss of (\$137,776) due to investment and start-up costs and will offset loss through operations of the hospital. Year three shows a surplus of revenues over expenses of \$990,730. Revenues reflect current outpatient reimbursement methodologies for ambulatory payment classification services and current and historical experience of the hospital which offered the same service on site thru a third-party contractor. The budget appears reasonable.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A	Certified Financial Statement (2019-2018) of The Unity Hospital of Rochester
BFA Attachment B	Internal Financial Statement (January 1, 2020 thru August 31, 2020)
BFA Attachment C	Certified Financial Statement (2019-2018) of Rochester Regional Health and Affiliates
BFA Attachment D	Internal Financial Statement (January 1, 2020 thru August 31, 2020)
BFA Attachment E	Organizational Chart of RRH – Active Parent and Sole Member



**Project # 202096-C
The Unity Hospital of Rochester**

**Program: Hospital
Purpose: Construction**

**County: Monroe
Acknowledged: September 25, 2020**

Executive Summary

Description

The Unity Hospital of Rochester (Unity) is a 311-bed, not-for-profit Article 28 hospital at 1555 Long Pond Road, Rochester (Monroe County) with a 40 psychiatric bed division, The Unity Hospital of Rochester – St. Mary’s Campus (St. Mary’s Campus), at 89 Genesee Street, Rochester. The Unity Hospital of Rochester, Inc. is the operator and Rochester Regional Health (RRH) is the active parent/co-operator. RRH coordinates and manages health related services provided by its affiliate hospitals, which also include Rochester General Hospital, Newark-Wayne Community Hospital, United Memorial Medical Center, and Clifton Springs Hospital and Clinic.

Unity seeks permanent certification of 57 medical/surgical beds on two floors of its St. Mary’s Campus hospital building that previously received emergency approval for use as temporary COVID-19 surge space.

Unity now intends to operate these beds as a Long-Term Acute Care Hospital (LTACH) to be known as Unity Specialty Hospital. LTACH is a federal designation for the treatment of patients with serious medical conditions requiring longer lengths of stay, but no longer require intensive care or extensive diagnostic procedures. The requested medical/surgical beds will be federally designated as LTACH once the federal qualifying criteria are met. Under rules established by the Centers for Medicare and Medicaid Services (CMS), prospective LTACH’S must comply with 25-day average length of stays (ALOS) requirements over a minimum six-month period before the facility can be granted LTACH status.

The proposed location for LTACH is the six-story main hospital building on St. Mary’s Campus. The 5th floor space will accommodate a 33-bed unit occupying 26,584 square feet. The 6th floor will contain a 24-bed unit occupying 16,360 square feet. The pharmacy on the 1st floor is being renovated to accommodate the additional beds. Some renovations have already been done to accommodate the 33 beds on the 5th floor, but additional renovations are needed on the 6th floor and the pharmacy to implement the program.

Other services in the building include Unity outpatient services on the 1st floor of the hospital, Unity Living Center, a 120-bed Article 28 Residential Health Care Facility (RHCF) on the 2nd and 3rd floors, respectively, and a 40-bed inpatient psychiatric unit on the 4th floor.

Unity intends the LTACH to serve as a regional destination for long-term hospital patients in Upstate New York. They believe this project will also allow for a reduction in the length of stay and patient days at other RRH hospitals and create acute care capacity to care for incremental short-term acute care cases. The applicant indicates that Rochester General Hospital (RGH) will be a significant beneficiary of the LTACH in this regard.

OPCHSM Recommendation
Contingent Approval

Need Summary

Utilization at Rochester General Hospital supports the permanent approval of the 57 medical/surgical beds previously approved on a temporary, emergency basis.

A review of length of stay data on discharges from acute care hospitals in the primary and secondary catchment areas supports the viability of an LTACH at the applicant facility.

Program Summary

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Summary

Unity will finance the total project costs of \$14,032,161 through accumulated funds.

Project Budget

	(\$ in 000's)	
	<u>Year One</u>	<u>Year Three</u>
	<u>2021</u>	<u>2023</u>
Revenues	\$6,469	\$22,253
Expenses	<u>8,602</u>	<u>21,985</u>
Net Income/(Loss)	(\$2,133)	\$268
Discharges	126	531

Consolidated Budget

	(\$ in 000's)		
	<u>Current</u>	<u>Year One</u>	<u>Year</u>
	<u>Year 2019</u>	<u>2021</u>	<u>Three</u>
			<u>2023</u>
Revenues	\$513,879	\$519,039	\$534,823
Expenses	<u>509,572</u>	<u>518,175</u>	<u>531,558</u>
Net Income/ (Loss)	\$4,306	\$864	\$3,265
Discharges	20,361	20,487	20,892
Visits	909,976	909,976	909,976

Recommendations

Health Systems Agency

The Finger Lakes HSA recommends approval of this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
3. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must be completed by June 30, 2021, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not completed by this date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the completion date. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

December 9, 2020

Need and Program Analysis

Background

Unity Hospital of Rochester-St Mary's Campus Inpatient Beds			
Bed Type	Current Beds	Bed Change	Proposed Beds
Psychiatric	40		40
Medical / Surgical	0	57	57
Total	40	57	97

LTACHs are designed to care for high acuity, long stay patients who require an intense course of medical treatment for an extended period. Patients cared for by LTACHs are frequently ventilator dependent with multiple co-morbidities. For Medicare payment classification purposes, LTACHs must average an inpatient Length of Stay (LOS) greater than 25 days. There are currently two LTACHs in NYS, both in New York City.

The closest LTACH to Rochester is Select Specialty Hospital in Erie, PA, which is 162 miles or 2 hours and 45 minutes away. According to the applicant, 30% of Select Specialty Hospital's census consists of New York State residents

Approval of this project would allow Unity to offer a regional resource for long-term hospital patients throughout Upstate New York. Unity considers their primary referral area to be the following counties in the Finger Lakes and Western NY regions: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Seneca, Wayne, Wyoming and Yates. The secondary referral area would be the Central NY and Southern Tier regions consisting of Broome, Cayuga, Chenango, Chemung, Cortland, Delaware, Madison, Onondaga, Schuyler, Steuben, Tompkins and Tioga counties.

Program Proposal

An LTACH can be freestanding or co-located within a hospital. Freestanding LTACHs are in separate buildings from short term acute care hospitals. The LTACH proposed in this model will be freestanding, will meet the Medicare Conditions of Participation (CoPs), and will be operated by Unity.

Staffing is expected to increase as a result of this construction/expansion project by 57.6 FTEs in Year One of the completed project and by 153.3 FTEs by Year Three of the completed project.

The beds will be federally certified as LTACH beds once the qualifying criteria are met, but there is no comparable state designation so the beds will continue to be certified as medical surgical beds. Upon approval of the project, the St. Mary's Campus will change its name to Unity Specialty Hospital.

The applicant states the addition of LTACH beds will help address the significant overcrowding conditions that exist at Rochester General Hospital. The overcrowding conditions are expected to exist even after the COVID-19 crisis subsides.

The table below shows the utilization of the medical/surgical beds at Rochester General Hospital since 2015.

Rochester General Hospital Utilization					
Year	2015	2016	2017	2018	2019
Occupancy	88.0%	88.0%	92.3%	96.0%	97.2%

The ability to transfer patients who require a length of stay of 25 days or longer (Medicare requirement for designation of a LTACH) to another facility will help to mitigate the overcrowding by creating inpatient capacity at RGH.

The project will commence in a “ramp up” process with the 33-bed 5th floor unit opening first and the 24 bed 6th floor unit to follow. This phasing accommodates the delay in Medicare reimbursement and the scope of the renovations. In Year One, the LTACH is projected to have 126 admissions with 78 coming from Rochester General Hospital and the balance coming from other area hospitals. In Year Three, the LTACH is projected to have 531 admission with 78 coming from Rochester General Hospital and 453 coming from other area hospitals.

Analysis

An analysis of CMS LTACH MS-LTC-DRG's and 2018 NYS SPARCS Acute care discharge data was performed based on patient DRG and length of stay (LOS) data. Assuming a 60/40 Medicare/other payor split and a 34-day industry average LOS, the applicant conservatively modeled potential use of the proposed LTACH beds as shown below, concluding that the combined primary and secondary referral areas could support the LTACH beds.

Total LTACH Cases, 2018 Bed Days and Bed Need			
Primary Referral Area			
Payer	Cases	Days (ALOS = 34 days)	Beds (85% Occupancy)
Medicare	656	22,304	72
Non-Medicare	437	14,869	48
TOTAL	1,093	37,173	120

Secondary Referral Area			
Payer	Cases	Days (ALOS = 34 days)	Beds (85% Occupancy)
Medicare	115	3,910	13
Non-Medicare	77	2,607	8
TOTAL	192	6,517	21

Combined Primary and Secondary Referral Area			
Payer	Cases	Days (ALOS = 34 days)	Beds (85% Occupancy)
Medicare	771	26,214	85
Non-Medicare	514	17,476	56
TOTAL	1,285	43,690	141

Assuming all appropriate patients being transferred from Rochester General Hospital and a modest capture rate of cases from surrounding hospitals, the 57 proposed LTACH beds should prove to be adequately utilized.

LTACH patients are acutely ill and require complex care that while below that of a critical/intensive care unit is above any type of chronic care. Patients typically seen in LTACHs include those requiring prolonged ventilator use or weaning, ongoing dialysis for chronic renal failure, intensive respiratory care, multiple IV medications or transfusions; and/or complex wound care/care for burns.

With this project Unity Hospital is addressing the following objectives:

- Provide a new and sophisticated level of care in Upstate New York that would increase the number of discharges to the home vs Long-Term Care (LTC) stays.
- Reduce length of stay (LOS) and increase capacity at Rochester Regional Health's hospitals, especially Rochester General Hospital.
- Allow New York State residents to remain in New York for their care.
- Address the trend of DRGs supporting LTACH stays increasing in Upstate New York.

- Create a regional destination for long LOS hospital cases.

Compliance with Applicable Codes, Rules and Regulations

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

Prevention Agenda

The Unity Hospital of Rochester states that the proposed project will advance the 2019-2024 New York State Prevention Agenda priority of Preventing Chronic Diseases. To address this priority, the hospital is implementing interventions to decrease preventable hospitalizations by improving chronic disease management and promoting physical activity and nutrition. Specifically, the hospital will participate in the 2020 Performance Commission and implement a program to receive NCQA certification in diabetes care. As a member of the Physical Activity task force, the hospital promises to identify system and environmental changes to increase physical activity and improve nutrition practices but did not specify them in the application.

The Unity Hospital of Rochester described three relevant Prevention Agenda goals (decrease preventable hospitalizations, increase the number of primary care physicians receiving NCQA certification in diabetes care, and promote increased physical activity and improved nutrition in adults) but did not explain how the proposed project advances local Prevention Agenda priorities, nor did it identify any data or metrics to track progress toward local Prevention Agenda goals.

The hospital has engaged a broad coalition of partner organizations in its efforts to address Prevention Agenda priorities and stated that all four hospitals in the region contributed to the needs assessment, but partnered with the Monroe County Department of Health only in conducting the 2016 Community Health Needs Assessment. Collaboration with the Department of Health should continue in the implementation of interventions.

In 2018 the applicant spent \$99,100 on community health improvement services, representing 0.02% of total operating expenses.

Conclusion

Utilization at Rochester General Hospital supports the permanent approval of the 57 medical/surgical beds previously approved on a temporary, emergency basis. A review of length of stay data on discharges from acute care hospitals in the primary and secondary catchment areas supports the viability of an LTACH at the applicant facility.

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Analysis

Total Project Costs

Total project costs (TPC) for renovation and the acquisition of movable equipment is estimated at \$14,032,161, broken down as follows:

Renovation & Demolition	\$6,662,400
Asbestos Abatement or Removal	84,690
Design Contingency	565,040
Construction Contingency	760,974
Architect/Engineering Fees	417,849
Movable Equipment	4,077,714
Telecommunications	1,384,750
Application Fee	2,000
Additional Processing Fee	<u>76,744</u>
Total Project Cost	\$14,032,161

The project is broken down into three sub-projects as follows:

- Sub Project 1: 5th floor renovations with an estimated TPC of \$3,351,496.
- Sub Project 2: 6th floor renovations with an estimated TPC of \$9,543,340.
- Sub Project 3: 1st floor pharmacy renovations with an estimated TPC of \$1,058,581.

Unity will finance the total project costs through accumulated funds.

Total Operating Budget

The applicant has submitted an operating budget in 2020 dollars, for the current, first and third years of operation, summarized below:

	Current Year		Year One		Year Three	
	Per Discharge	Total (000's)	Per Discharge	Total (000's)	Per Discharge	Total (000's)
Inpt. Revenues						
Commercial MC	\$16,047.75	\$63,308	\$16,272.01	\$64,600	\$16,709.15	\$67,672,047
Medicare FFS	\$13,040.22	44,428	\$13,360.71	45,854	\$14,006.12	49,189,499
Medicare MC	\$12,799.96	91,379	\$13,086.76	94,081	\$13,674.36	100,451,832
Medicaid FFS	\$8,356.84	5,123	\$8,712.86	5,411	\$9,941.31	6,442
Medicaid MC	\$7,441.33	30,480	\$7,467.83	30,708	\$7,846.73	32,682
Private Pay	\$3,724.34	209	\$3,724.34	209	\$3,724.34	209
All Other	\$12,170.56	<u>7,485</u>	\$12,170.56	<u>7,485</u>	\$12,170.56	<u>7,485</u>
Total Inpt Revenues		\$242,41		\$248,346		\$264,130
Outpt Revenues						
Commercial MC	\$434.40	\$96,128	\$434.40	\$96,128	\$434.40	\$96,128
Medicare FFS	\$311.73	36,178	\$311.73	36,178	\$311.73	36,178
Medicare MC	\$336.24	74,494	\$336.24	74,494	\$336.24	74,494
Medicaid FFS	\$179.20	6,339	\$176.51	6,244	\$176.51	6,244
Medicaid MC	\$163.33	45,353	\$160.88	44,672	\$160.88	44,672
Private Pay	\$85.55	1,219	\$85.55	1,219	\$85.55	1,219
All Other	\$325.79	<u>4,599</u>	\$325.79	<u>4,599</u>	\$325.79	<u>4,599</u>
Total Outpt Revenues		\$264,308		\$263,533		\$263,533
Total Rev. (incl. Other)		\$513,879		\$519,039		\$534,823

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<u>Expenses</u>			
Operating	\$467,78	\$474,958	\$488,342
Capital	<u>41,785</u>	<u>43,216</u>	<u>\$43,216</u>
Total Expenses	\$509,572	\$518,175	\$531,558
Net Income/ (Loss)	<u>\$4,306</u>	<u>\$864</u>	<u>\$3,265</u>
Discharges	20,361	20,487	20,892
Visits	909,976	909,976	909,976
Average Cost per Discharge	\$9,330.08	\$9,692.58	\$10,145.28
Average Cost per Visit	\$351.22	\$351.22	\$351.22

Utilization for Current Year, Year One and Year Three is as follows:

<u>Discharges by Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial MC	19.37%	19.38%	19.39%
Medicare FFS	16.73%	16.76%	16.81%
Medicare MC	35.06%	35.09%	35.16%
Medicaid FFS	3.01%	3.03%	3.10%
Medicaid MC	20.12%	20.07%	19.94%
Private Pay	0.28%	0.27%	0.27%
Charity Care	2.41%	2.40%	2.39%
All Other	3.02%	3.00%	2.94%
Total	100.00%	100.00%	100.00%

The following are noted with respect to the submitted budget:

- The 33-bed 5th floor unit will open in Year One and the full 57-beds will be operational by Year Three.
- Scope of renovations, six-month compliance requirement and 25-day average length of stay based on Medicare's 42 C.F.R. Sec. 412.23(e).
- Financial projections reflect the compliance period and enhanced Medicare rates following six months of operation. LTACH is required to maintain a 25-day average length of stay for at least six months before enhanced payments start using weighted DRG rates.
- The projected utilization is based on an LTACH bed demand study performed by RRH, using assumptions for optimal occupancy of 85% and estimated potential referrals from acute care hospitals located within the primary and secondary referral areas and is based on patient DRG status and length of stay data.
- Payor mix is based on national LTACH experience with is 60% Medicare and 40% non-Medicare. For Medicare, LTACH's are paid under the same DRG patient classification system applied to the inpatient prospective payment system with weights applied to LTACH payments to account for medically complex patients.
- The operating expenses and revenues are based on utilization projections for the services that are part of this project. First Year incremental losses are attributed to economies of scale and learning curve associated with the ramp-up of LTACH services with Year 1 projections representing only the 33-bed unit, while Year 3 projections represent the entire 57-bed project.
- The number and mix of staff were determined by outreach to existing LTACH providers, the use of national indicators and variations of existing step-down units.
- Effective April 2, 2020, Medicaid payments have been reduced by 1.5% in accordance with the SFY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in years one and three. This reduction has been reflected within the budgets.

- All Other includes Workers Compensation, No-Fault Insurance, institutional payments from RRH-related entities, and other institutional payments.
- Existing contracts and methodologies are utilized for non-Medicare payors, there is no assumption Medicaid will provide an enhanced rate for LTACH patients.

Capability and Feasibility

Total project cost of \$14,032,161 will be funded through accumulated funds. The 2019 certified financial statements Unity indicates the availability of sufficient resources for this project (BFA Attachment A).

While Unity projects a year one deficit of revenues over expenses for the LTACH project of \$2,132,844 and \$267,841 income in the third year, the Unity enterprise budget projects an excess of revenues over expenses of \$864,221 and \$3,264,905 in the first and third year, respectively. The year one LTACH project losses will be absorbed through operational funds.

The applicant identified 78 LTACH-eligible patients that could be transferred from RGH to USH LTACH and reduce RGH patient days by 4,212. The backfill of this capacity at RGH with acute care admissions of 554 and 695 in years one and three would generate an incremental \$3.7M and \$5.3M in net income annually. This benefit is not included in the project operating or consolidated budget because it will accrue to RGH and hence the RRH system, not directly to Unity as the applicant.

Rochester Regional Health Care, Inc., co-operator of Unity has submitted an affidavit from the CFO stating that they are willing to absorb the net operational losses for year one and will support working capital requirements as needed. The budget appears reasonable.

As shown on BFA Attachment A, Unity has maintained positive working capital, positive net asset position, and a net operating income of \$1,652,000 for the period ended August 31, 2020. The operating income was offset by \$2,048,000 non-operating loss, resulting in net loss of \$396,000 for the period. The loss is attributable to COVID-19 outbreak which resulted in precipitous reductions in volume across-the-board and near complete elimination of outpatient surgeries from March to July. Monthly operating losses declined from a high point in April 2020 with a gradual return to normalcy, which combined with Federal aid, Unity expects to break-even for the year or show a modest surplus.

As shown on BFA Attachment B, the hospital maintained positive working capital, positive net asset position, and a net operating income of \$10,161,901 during 2019.

As shown on BFA Attachment C, Rochester Regional Health has maintained positive working capital, positive net asset position, and an operating loss of \$30,003,000 for period ended August 31, 2020, which was offset by \$13,098,000 in non-operating revenue, resulting in deficit of revenues over expenses of \$15,941,000. The loss is attributed to the outbreak of COVID-19 in March 2020. Between March and July, RRH experienced a significant drop in volume across-the-board as well as near complete elimination of outpatient surgeries in April 2020. During this period cumulative operational losses amounted to \$135 million and were partially offset by \$128 million in CARES Act grants. Operating losses have been declining and RRH expects to break-even for the year or show a modest surplus.

As shown on BFA Attachment D, the system has maintained positive working capital, positive net asset position, and a net operating income of \$35,692,000 during 2019.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

- BFA Attachment A Internal Financial Statements for The Unity Hospital of Rochester and Affiliate for period ended August 31, 2020
- BFA Attachment B 2019 Consolidated Certified Financial Statements for The Unity Hospital of Rochester and Affiliate
- BFA Attachment C Internal Financial Statements for Rochester Regional Health for period ended August 31, 2020
- BFA Attachment D 2019 Consolidating Certified Financial Statements for Rochester Regional Health
- BFA Attachment E Rochester Regional Health Organization Chart



Project # 202021-C
Hudson Valley Hospice

Program: Hospice
Purpose: Construction

County: Dutchess
Acknowledged: July 29, 2020

Executive Summary

Description

Hudson Valley Hospice, Inc., an existing voluntary, not-for-profit Article 28 hospice, requests approval to construct a new 14-bed inpatient facility to be located at 542 Violet Avenue, Hyde Park (Dutchess County). The hospice is proposed to be located at 374 Violet Avenue, Poughkeepsie with an additional office at 400 Aaron Court, Kingston (Ulster County). These beds will serve the residents of Dutchess and Ulster Counties who require care but cannot be appropriately managed in the home setting. The applicant proposes to construct a one-story building on approximately 6.7 acres upon approval of this application.

OPCHSM Recommendation
Contingent Approval

Need Summary

The 14-bed facility will address the need for inpatient hospice service in Dutchess and Ulster Counties, where there are currently no such beds.

Program Summary

Based on the information reviewed, staff found the hospice has been operated in substantial compliance with all applicable laws, rules and regulations.

Financial Summary

The total project cost of \$9,930,714, will be funded by \$1,404,239 from operating cash and a bank loan of \$8,526,475. The bank loan is at a floating interest rate of LIBOR plus 3% (approximately 3.31% as of 8/27/2020) for a term of five years and twenty-year amortization period. The applicant has indicated that they will refinance the balloon payment (\$6,890,944) when it is due or, if refinancing is not available, they will fund it through operating cash.

The submitted budget indicates a projected operating loss of (\$1,011,242) and a positive net income of \$132,852 during the first and third years, respectively. The applicant has provided a letter stating that the first-year incremental loss will be offset from operating cash. Revenues are based on current reimbursement methodologies for hospice inpatient beds. The submitted budget appears reasonable.

Table with 3 columns: Category, Year One, Year Three. Rows include Revenues, Expenses, and Net Income/(Loss).

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 4006(9)(b) states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of thirty hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a MAI appraisal that is acceptable to the Department of Health. [BFA]
3. Submission of a loan commitment that is acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. The project must be completed within two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before March 1, 2021 and construction must be completed by October 1, 2022, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

December 9, 2020

Need and Program Analysis

Proposal

Hudson Valley Hospice (“HVVospice”) a not-for-profit, Article 40 Hospice provider, serving Dutchess and Ulster counties, seeks approval to construct a new 14-bed inpatient facility to be located at 542 Violet Avenue, Hyde Park (Dutchess County).

Inpatient care is one of the four levels of hospice care required to be available under the Medicare Hospice Benefit. Inpatient care is necessary when a dying patient requires symptom management, pain control or has other acute conditions which cannot be managed in other settings. Inpatient care is initiated when other efforts to manage symptoms are ineffective; there is no specific qualifier for inpatient care.

HVVospice proposes to construct a one-story, 15,213-square-foot building on property that is in contract to be purchased upon approval of this project. HVVospice seeks to construct a facility which would include 14 patient rooms as well as ancillary, support and office spaces. The applicant is also planning to have two of the 14 patient rooms available to be used for end-of-life pediatric patients.

Analysis

There are currently no certified inpatient hospice beds in Dutchess or Ulster counties. Inpatient care is available to HVVospice patients only through contractual arrangements with local hospitals and skilled nursing facilities.

The existing need methodology indicates a need for ten beds in Dutchess County and seven beds in Ulster County. This project is intended to serve both counties.

In the past six years (2014-2019), HVVospice has experienced significant growth in total patient referrals (1,464 to 2,372), admissions (693 to 1,682), average daily census (118 to 279, increasing to 320 YTD in 2020) and total patient days of care (43,026 to 101,784). Inpatient days of care for HVVospice have increased from 700 to 1,314 between 2014 and 2019.

HVVospice states they have made important cultural changes within their agency which has led to the rapid growth indicated above. The applicant sites building relationships with contracted Skilled Nursing Facilities and hospital partners, building better relationships with community physicians and community groups, and a shift away from conventional admission concepts as factors contributing to their recent growth.

HVVospice has also made significant improvements regarding market penetration in terms of death service ratio of hospice patients in Dutchess and Ulster Counties. In 2014, Dutchess County was ranked 49th and Ulster County was ranked 55th worst out of New York State’s 62 counties with 31% and 28% death service ratios respectively. By 2019 Dutchess and Ulster counties’ death service ratios were 4th and 13th respectively, successfully caring for 54% and 44% of each County’s Medicare patients who died using hospice services.

Programmatic Attachment A contains several charts detailing HVVospice’s growth.

The applicant’s proposal would improve access to specialized inpatient care and allow the agency to provide a supportive, home-like environment for management of their patients’ pain and symptoms as an alternative to a hospital or nursing home environment.

HVVospice anticipates that a dedicated 14-bed inpatient facility will provide care to an average of 11 to 12 patients per day, based on the patients currently managed by the agency in its contracted hospitals (4 to 8 patients daily). The applicant estimates that by the time the unit is opened it could achieve 85% overall occupancy.

Additionally, HVVospice has determined that approval of their proposal will enable them to provide higher quality service at a lower cost per day.

Facility Compliance/Enforcement

HVHospice is a Joint Commission accredited provider. The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

Conclusion

Based on the information reviewed, staff found the hospice has been operated in substantial compliance with all applicable laws, rules and regulations. The 14-bed unit will allow patients in Dutchess and Ulster Counties to receive Hospice care in a home-like setting.

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for land acquisition, new construction and the acquisition of moveable equipment, is estimated at \$9,930,714, further broken down as follows:

Land Acquisition	\$89,900
New Construction	5,794,523
Site Development	1,545,000
Design Contingency	731,892
Construction Contingency	365,946
Architect/Engineering Fees	196,600
Other Fees (Consultant)	259,612
Moveable Equipment	515,000
Financing Costs	80,801
Interim Interest Expense	319,743
CON Fee	2,000
Additional Processing Fee	29,697
Total Project Cost	\$9,930,714

Project costs are based on a nineteen-month construction period.

The applicant's financing plan appears as follows:

Equity	\$1,404,239
Bank Loan (Floating at Libor plus 3% (approximately 3.31% as of 8/27/2020) for a term of five years with a twenty-year amortization period	8,526,475

The applicant has indicated that they will refinance the balloon payment (\$6,890,944) when it is due. If refinancing is not available, they will provide equity via operations to meet the balloon payment. As a contingency of approval, the applicant must submit a MAI appraisal and a bank loan commitment.

Operating Budget

The applicant has submitted an incremental operating budget, in 2020 dollars, for the first and third years, summarized below:

	<u>Cost Per Day</u>	<u>Total</u>	<u>Cost Per Day</u>	<u>Total</u>
<u>Revenues</u>				
Medicare	\$765.30	\$1,662,233	\$876.73	\$2,666,125
Other Third Party	\$516.77	197,921	\$588.87	316,223
Private Payer	\$60.00	<u>219,000</u>	\$200.08	<u>240,900</u>
Total Revenues		\$2,079,154		\$3,223,248
<u>Expenses</u>				
Operating	\$616.70	\$2,250,953	\$491.83	\$2,342,094
Capital	<u>229.98</u>	<u>839,443</u>	<u>\$157.14</u>	<u>748,302</u>
Total Expenses	\$846.68	\$3,090,396	\$648.97	\$3,090,396
Net Income/(Loss)		(\$1,011,242)		\$132,852
Utilization (Patient Days)		3,650		4,782

The following is noted with respect to the submitted budget:

- The applicant has submitted a letter stating that the incremental losses will be offset from operations.
- Expense assumptions are based on the historical experience of other hospice bed facilities.
- Utilization assumptions are based on the historical experience of other hospice bed facilities.
- Medicare rates were based on the FY2020 Hospice Wage Index Final rates as posted on the CMS website.
- Commercial payor revenues were based on the average reimbursement rates of Commercial payers in 2019,
- Private pay room and board charges were arrived of using average reimbursement rates of their contracted nursing homes in 2019.

Utilization broken down by payor source during the first and third year is as follows:

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Medicare	59.51%	63.59%
Commercial	10.49%	11.23%
Private Party	30.00%	25.18%

Capability and Feasibility

Total project cost of \$9,930,714 will be met as follows: Equity via operations of \$1,404,239 and a bank loan of \$8,526,475 at Floating at LIBOR plus 3% (approximately 3.31% as of 8/27/2020) for a term of five years with a twenty-five-amortization period. The applicant has indicated that they will refinance the balloon payment (\$6,890,944) when it is due. If refinancing is not available, they will provide equity via operations to meet the balloon payment. The applicant has submitted a letter of interest in regard to financing.

Working capital requirements are estimated at \$515,066, which is equivalent to two months of third year expenses. The applicant will provide equity from operations to meet the working capital requirements. BFA Attachment A is the 2018 and 2019 certified financial statements of Hudson Valley Hospice, which indicates the availability of sufficient funds for the equity contribution for the working capital and the total project cost portion.

The submitted budget indicates projected incremental operating performance of (\$1,011,242) and \$132,852 during the first and third years, respectively. The first-year loss will be offset via operations. Revenues are based on current reimbursement methodologies for hospice inpatient beds. The submitted budget appears reasonable.

As shown on BFA Attachment A, the entity had an average positive working capital position and an average positive net asset position from 2018 through 2019. Also, the entity achieved an average net income of \$439,026 from 2018 through 2019.

BFA Attachment B is the June 30, 2020 internal financial statements of Hudson Valley Hospice. As shown, the entity had a positive working capital position and a positive net asset position through June 30, 2020. Also, the entity achieved an excess of revenues over expenses of \$717,112.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

<h2>Attachments</h2>

Programmatic Attachment A	Patients Served
BFA Attachment A	2018 and 2019 certified financial statements of Hudson Valley Hospice
BFA Attachment B	June 30, 2020 internal financial statements of Hudson Valley Hospice



Project # 192309-B

5 East 98th Street, LLC d/b/a The Derfner Foundation
Ambulatory Surgery Center

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment and Construction **Acknowledged:** December 19, 2019

Executive Summary

Description

5 East 98th Street, LLC d/b/a The Derfner Foundation Ambulatory Surgery Center (DFASC), an existing New York limited liability company, requests approval to establish and construct a multi-specialty Article 28 freestanding ambulatory surgery center (FASC) to be located at 5 East 98th Street, New York (New York County). The FASC will be housed in sub-leased space on the 14th floor of an existing high-rise building that is currently being used by Mount Sinai Surgical Associates, an office-based surgery practice. No construction will be needed to implement this project because the space is already Article 28-compliant. The FASC will occupy 5,200 square feet of space and will include two operating rooms, one procedure room and the requisite support areas. The applicant requests certification for Ambulatory Surgery – Multi Specialty. The initial surgical specialties to be provided will include General Surgery, Gynecology, Colorectal, Pediatric, ENT, Podiatry, Plastic Surgery and Radiation Oncology (specifically, brachytherapy seed implantation).

The sole member of 5 East 98th Street, LLC is East 98th Street Community Services, Inc. (Community Services), an existing New York not-for-profit corporation. Community Services is a subsidiary of Mount Sinai Health System, Inc. (System), an integrated not-for-profit health care system that provides medical care services throughout the New York metropolitan area across eight hospital campuses. The System is the sole member and passive parent of Community Services. 5 East 98th Street, LLC

is member-managed. The Board of Directors of both 5 East 98th Street, LLC and East 98th Street Community Services, Inc. are comprised of the same board members.

Michael Marin, M.D., who is Board Certified in Vascular Surgery, will be the Medical Director of the Center. The FACS will have a Transfer Agreement for backup and emergency services with Mount Sinai Hospital (MSH), which is located 131 feet from the proposed Center.

The Center will acquire the assets of the existing private practice, currently valued at \$350,000, to be funded through MSH equity.

This applicant states that converting an existing private practice into a regulated Article 28 facility will enhance the quality of care and allow the operator to provide screening and other outreach programs to the community that are not currently feasible through the member physicians' private practice. The current office-based surgical practice primarily sees patients covered by commercial insurers. Through this conversion project the applicant expects to see a mix of payors that is more consistent with Mount Sinai facilities.

OPCHSM Recommendation

Contingent approval with an expiration of the operating certificate five years from the date of its issuance.

Need Summary

The number of projected procedures is 3,060 in Year One and 3,246 in Year Three, with utilization of Medicaid at 5.0% and Charity Care at 2.0% each year.

Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Summary

There are no project costs for this application. The budget is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,353,308	\$4,618,080
Expenses	<u>3,466,597</u>	<u>3,559,070</u>
Net Income/(Loss)	\$886,835	\$1,059,010

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures;
 - b. Data displaying the breakdown of visits by payor source
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery
 - d. Data displaying the number of emergency transfers to a hospital
 - e. Data displaying the percentage of charity care provided;
 - f. The number of nosocomial infections recorded during the year reported
 - g. A list of all efforts made to secure charity cases
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. (RNR)
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of Policies and Procedures, which should include Radiation Safety Precautions for Patients and Staff. [HSP]
6. Submission of an executed Sub-Lease Agreement, acceptable to the Department of Health. [BFA]
7. Submission of an executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
8. Submission of a photocopy of an executed Lease Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed Administrative Services Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]
11. Submission of a photocopy of the executed Certificate of Amendment of the applicant's Articles of Organization, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
3. The staff of the facility must be separate and distinct from staff of other entities. The signage must clearly denote the facility is separate and distinct from other adjacent entities. The entrance to the facility must not disrupt any other entity's clinical program space. The clinical space must be used exclusively for the approved purpose. [HSP]
4. The applicant must obtain and furnish a license from the Bureau of Radioactive Material or New York City Department of Health and Mental Hygiene Office of Radiological Health. [HSP]
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

December 9, 2020

Need Analysis

Analysis

The service area consists of New York County. The population of New York County in 2010 was 1,585,873 with 595,344 individuals (37.5%) who are 45 and over, which is the primary population group utilizing ambulatory surgery services. Per PAD projection data, this population group (45 and over) is estimated to grow to 703,766 by 2025 and represent 41.2% of the projected population of 1,709,958.

The number of projected procedures is 3,060 in Year One and 3,246 in Year Three. These projections are based on the current practices of participating surgeons. The applicant states that all the procedures are currently being performed either at Mount Sinai facilities or in an office-based setting. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	612	20.0%	649	20.0%
Commercial MC	1,285	42.0%	1,361	42.0%
Medicare FFS	153	5.0%	163	5.0%
Medicare MC	612	20.0%	649	20.0%
Medicaid MC	153	5.0%	163	5.0%
Private Pay	31	1.0%	32	1.0%
Charity Care	61	2.0%	65	2.0%
Other	153	5.0%	164	5.0%
Total	3,060	100.0%	3,246	100.0%

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: Fidelis, Health First, MetroPlus, Wellcare, Affinity, Empire Health Plus, Emblem Medicaid, and United Community. The Center will work collaboratively with local Federally Qualified Health Centers (FQHC) within the service area to provide service to the under-insured in their service area. The Center has developed a financial assistance policy with a sliding fee scale to be utilized when the Center is operational. The Center will operate Monday through Friday from 6 am until 8pm. As needed, the hours can be expanded to address additional procedures.

The table below shows the number of patient visits for ambulatory surgery centers in New York County for 2018 and 2019.

Spec Type	Facility Name	Patient Visits		
		2017	2018	2019
Gastroenterology	Carnegie Hill Endo, LLC	11,718	12,280	13,862
Gastroenterology/ Pain Management	East Side Endoscopy	9,498	8,828	8,812
Multi	Fifth Avenue Surgery Center	1,997	4,031	3,936
Gastroenterology	Gramercy Park Digestive Disease Center	9,863	11,972	12,335
Gastroenterology	Gramercy Park DDC-Bennett Ave (opened 4/8/20)	N/A	N/A	N/A
Multi	Gramercy Surgery Center, Inc	3,365	3,105	4,851
Multi	Greenwich Village ASC, LLC (opened 10/13/17)	N/A	522	1,270
Orthopedics	HSS ASC of Manhattan (opened 9/13/17)	N/A	1,895	3,603
Orthopedics	HSS West Side ASC (opened 7/16/19)	N/A	N/A	N/A
Ophthalmology	Hudson Yards Surgery Center (opened 6/30/20)	N/A	N/A	N/A
Gastroenterology	Kips Bay Endoscopy Center, LLC	9,410	9,464 ¹	10,051
Gastroenterology	Liberty Endoscopy Center (opened 1/13/17)	N/A	5,240	6,568

Spec Type	Facility Name	Patient Visits		
		2017	2018	2019
Gastroenterology	Manhattan Endoscopy Center, LLC	14,616	11,032	12,298
Gynecology	Manhattan Reproductive Surgery Center (opened 3/27/19)	N/A	N/A	N/A
Multi	Manhattan Surgery Center	6,364	5,974	6,395
Ophthalmology	Mid-Manhattan Surgi-Center (closed 4/30/19)	3,348	3,180	426
Multi	Midtown Surgery Center	2,411	2,745	3,428
Multi	NY Center for Ambulatory Surgery (opened 12/13/19)	N/A	N/A	N/A
Ophthalmology	Retinal Ambulatory Surgery Center of New York Inc	4,095	4,179	4,882
Multi	SurgiCare of Manhattan, LLC	3,967	4,377	4,257
Gastroenterology	The Endoscopy Center of New York	12,488	13,377	14,758
Gastroenterology	West Side GI	17,802	18,694	17,894
Total Visits		110,942	120,895	129,626

¹ Estimation, based upon partial year data

Conclusion

Approval of this project will provide increased access to plastic, general, gynecology, podiatry, colorectal, pediatric, ENT and radiation oncology services in an outpatient setting for the residents of New York County.

Program Analysis

Program Description

5 East 98th Street, LLC d/b/a The Derfner Foundation Ambulatory Surgery Center seeks approval for the establishment and construction of an Article 28 diagnostic and treatment center to be certified as a multi-specialty, freestanding ambulatory surgery center (FASC). The proposed center will specialize in general surgery, gynecology, colorectal surgery, pediatrics, ENT surgery, plastic surgery, and radiation oncology (brachytherapy seed implantation).

Proposed Operator	5 East 98 th Street, LLC
Doing Business As	The Derfner Foundation Ambulatory Surgery Center
Site Address	5 East 98 th Street, 14 th floor, New York, New York 10029 (New York County)
Surgical Specialties	Multi-Specialty
Operating Rooms	2
Procedure Rooms	1
Hours of Operation	Monday through Friday from 6:00 am to 8:00 pm.
Staffing (1st / 3rd Year)	18.00 FTEs / 18.00 FTEs
Medical Director	Michael Marin M.D.
Emergency, In-Patient & Back-up Support Services Agreement and Distance	Mount Sinai Hospital which is located 131 feet (1-minute walking travel time) from the proposed center
After-hours access	An on-call service will be available 24 hours per day, 7 days per week to immediately refer the patient to the Center's on-call physician

Character and Competence

The proposed managers of 5 East 98th Street LLC are as follows:

Name	Title
<i>Michael Marin, M.D.</i>	<i>President/Treasurer</i>
<i>Donald Scanlon</i>	<i>Chairman</i>
<i>Stephen Harvey</i>	<i>Secretary</i>

Dr. Michael Marin, MD is the proposed Medical Director and President/Treasurer for the ambulatory surgery center. He received his medical degree from Mount Sinai School of Medicine in New York. He is board certified in Surgery. He completed his residency at Columbia-Presbyterian Medical Center in New York. He completed his fellowship in Vascular Surgery at Albert Einstein College. He has been employed at Mount Sinai Hospital for 24 years and is the Chairman of the Department of Surgery. He performed the world's first minimally invasive repair of a popliteal and iliac artery aneurysms and the world's first endovascular repair of a ruptured abdominal aortic aneurysm. He holds memberships in most regional, national, and international professional societies.

Mr. Donald Scanlon has been employed by Mount Sinai Health System for 16 years and is the Chief Financial Officer. As the Chief Financial Officer, he oversees all financial matters of Mount Sinai Health System, which includes implementation, managing, and running of all finance activities including business planning, budgeting, forecasting and negotiations. Mr. Scanlon has significant managerial experience in healthcare.

Mr. Stephen Harvey has been employed by Icahn School of Medicine of Mount Sinai for approximately 29 years holding positions of Senior Vice President and Chief Financial Officer. As the Senior Vice-President and Chief Financial Officer, he oversees all financial matters at the Icahn School of Medicine at Mount Sinai. He also is responsible for the planning, implementation, managing and running of all finance activities, including business planning, budgeting, forecasting and negotiations of the Icahn School of Medicine. Mr. Harvey has significant managerial experience.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the Applicant plans to work closely with its patients to educate them regarding the availability of primary care services offered by local providers, including the broad array of services offered by Mount Sinai Hospital. Through this program, the Center's patients will be better able to make informed choices regarding preventative medicine. Prior to leaving the Center, each patient will be provided information concerning the local availability of primary care services. The Applicant will seek to undertake the following steps to initiate a community outreach and marketing plan to the following identified providers in order to reach the underserved population: serve all persons regardless of age, color, race, creed, national origin, religion, sex, sexual orientation, marital status, and disability or payer source. The Center will work collaboratively with local federally qualified health centers (FQHCs) with locations in the Center's service area of New York County and with which the Center would seek to establish a collaborative relationship. The Center will participate as a provider with the FQHC to develop referral and other collaborative arrangements to enhance access to ambulatory surgery services to Medicaid and other charity care patients. As part of the partnership

developed with the FQHC and other providers, the Center would agree to waive all or a portion of the fees for the patients who qualify for charity care and will allow physicians from these other providers to become credential to perform surgery at the Center. The Center promotes a willingness to provide charitable care as evidence by the projection of a 5% Medicaid and 2% Charity Care in the proposed budget. The Center plans to contract with Medicaid managed care plans to provide ambulatory surgery services to Medicaid patients.

The Center plans to utilize an Electronic Medical Record (EMR) program and to fully integrate and exchange information with a Regional Health Information Organization (RHIO) with the capability for clinical referral and event notification.

Conclusion

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicant's character and competence or standing in the community.

Financial Analysis

Administrative Services Agreement

The applicant has submitted a draft Administrative Services Agreement for non-clinical and administrative support services, summarized as follows:

Contract Provider:	Icahn School of Medicine at Mount Sinai
Facility Operator:	5 East 98th Street, LLC d/b/a The Derfner Foundation Ambulatory Surgery Center
Services Provided:	Develop policies and procedures; perform periodic audits of operations and provide feedback regarding adherence to operational programs, quality assurance, risk management and oversight of operations; develop efficient systems for workflow related to materials management, advise and assist with capital equipment purchases and other significant acquisitions, negotiate purchase contracts with third-party vendors, assist in periodic inventory audits and purchasing trends; prepare/maintain adherence to licensure and accreditation, recommend third-party specialists to provide independent review of operations and compliance with licensure and accreditation standards, advise on changes to licensure and accreditation; assist in procuring insurance and selecting third-party IT vendors; prepare quarterly financial reports, annual business plan and budget; periodic analyses of operations, staffing levels, expense, inventory management and patient throughput, assist in conducting annual financial audit and taxes, coordinate with financial institutions to secure financing; conducting annual strategic planning.
Terms:	5 years with automatic one-year renewals.
Fee:	\$501,161 (\$41,763/month) during the first year of Administrative Term, the fee will be prorated if the effective date occurs later than January 1 of a given year. Administrative Service Fee will increase by 4% over preceding year.

Icahn School of Medicine at Mount Sinai, a non-for-profit corporation formed under the New York Education Law, will be providing all the above services. 5 East 9th Street, LLC will retain ultimate control in all final decisions associated with the services. The applicant has submitted an executed attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation and understands that the Department will hold the applicant accountable.

Lease Agreement

The applicant has submitted an executed lease rental agreement that includes the site to be occupied, summarized below:

Date	December 10, 1985
Premises:	Entire property bounded by 98th Street, Fifth Avenue, 101st Street and Madison Avenue New York, New York 10029
Landlord:	The Mount Sinai Hospital
Tenant:	The Mount Sinai School of Medicine of the City University of New York
Term:	48 Years and 11 Months commencing on December 10, 1985 and expiring on November 9, 2034.
Rental:	Base rent for total leased space is \$10.00 per year
Provisions:	Tenant is responsible for real estate taxes, insurance, utilities, repairs and maintenance.

The Mount Sinai School of Medicine of the City University of New York is currently known as Icahn School of Medicine at Mount Sinai.

An affidavit has been submitted from Mount Sinai Hospital and Mount Sinai School of Medicine confirming the lease is a non-arm's length agreement. The landlord and tenant are related in that they are both corporately affiliated with Mount Sinai Health System, Inc.

Sub-Lease Agreement

The applicant has submitted a draft sub-lease rental agreement for the site to be occupied, summarized below:

Premises:	Approx. 5,200 sq. ft. located on 14 th floor at 5 East 98 th Street, New York, New York 10029
Sub-Lessor:	Icahn School of Medicine at Mount Sinai (formerly The Mount Sinai School of Medicine of the City University of New York)
Sub-Lessee:	5 East 98 th Street, LLC
Term:	The term shall commence on the date upon which the New York State Department of Health issues a Certificate of Need to Tenant authorizing Tenant to operate and shall end on November 8, 2034.
Rental:	Base rent for total leased space is \$433,712 per year (\$36,143 per month) for the first year. Rent will increase by 3% of the base year rent beginning in year 2 and thereafter. Tenant shall pay as Additional Rent the cost of telecommunication services of \$29,481 (\$2,457) provided by sub-landlord. Additional Rent will increase 4% beginning in year 2 and thereafter. Rent for initial and final lease years will be pro-rated to appropriately reflect lease commencement and expiration.
Provisions:	Tenant is responsible for utilities and maintenance.

The applicant has submitted an affidavit stating that both the sub-lessor and the sub-lessee are related in that they are corporately affiliated with the Mouth Sinai Health System, Inc. through a passive parent relationship; hence, the lease is a non-arm's length agreement. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square footage rental.

Operating Budget

The applicant has submitted an operating budget, in 2020 dollars, for years one and three, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Commercial FFS	\$1,905	\$1,165,782	\$1,905	\$1,236,647
Commercial MC	\$1,642	2,108,919	\$1,642	2,235,402
Medicare FFS	\$1,314	200,997	\$1,314	214,075
Medicare MC	\$1,117	683,390	\$1,117	724,931
Medicaid MC	\$796	121,862	\$796	129,791
Private Pay	\$393	12,184	\$393	13,010
All Other	\$394	<u>60,299</u>	\$394	<u>64,223</u>
Total Revenue		\$4,353,432		\$4,618,080
<u>Expenses</u>				
Operating	\$954.35	\$2,920,308	\$918.25	\$2,980,649
Capital	<u>178.53</u>	<u>546,289</u>	<u>178.20</u>	<u>578,421</u>
Total	\$1,132.87	\$3,466,597	\$1,096.45	\$3,559,070
Net Income		<u>\$886,835</u>		<u>\$1,059,010</u>
Procedures		3,060		3,246
Cost/Procedure		\$1,132.87		\$1,096.45

Utilization by payor source for year one and year three is as follows:

<u>Payor</u>	<u>Years One & Three</u>
Commercial FFS	20.0%
Commercial MC	42.0%
Medicare FFS	5.0%
Medicare MC	20.0%
Medicaid MC	5.0%
Private Pay	1.0%
Charity Care	2.0%
All Other	<u>5.0%</u>
Total	100.0%

The following is noted with respect to the submitted budget:

- Payor mix is based on the historical experience of the existing physicians' private practice and Mount Sinai Hospital.
- Expenses are based on the staffing pattern (a total of 18 FTEs including 6 FTE RNs and 5 FTE Technician and Specialist staff) and the experience of similar FASCs in New York State. The cost for the ASA is included as an operating cost and rent expense is included in the capital costs.
- Projected utilization is based on the experience of the private practice and the industry experience overall.
- The Medicaid rate is based on the downstate region's Medicaid APG base rate of \$116.24, which is adjusted based on the given procedure's APG weight. The applicant has provided a schedule detailing the projected procedures by CPT code, with estimated patient volume, in support of their Medicaid projections.
- Effective April 2, 2020, Medicaid payments have been reduced by 1.5% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in years one and three. This reduction has been reflected within the budgets.
- The Medicare rate is based on the 2019 Medicare FFS rate with Medicare Managed Care estimated at 85% of the FFS rate. Commercial, Self-Pay and All Other rates are projected based on a percentage of the 2019 Medicare fee-for-service (FFS) rate, ranging from 145% for Commercial FFS payors, down to 30% for Self-Pay/All Other payors.

- All Other includes Workers' Compensation, No Fault, Tricare, union arrangements, and/or any special payment arrangements. The Workers' Compensation rate is based on 30% of the Medicaid FFS rate.

Capability and Feasibility

There are no project costs for this application. The submitted budget projects a net income of \$886,835 and \$1,059,010 during years one and three of operations, respectively. The budget appears reasonable. Medicare and Medicaid reimbursement rates are based on the current and projected federal and state government rates for FASCs. The Private Pay rates reflect anticipated adjustments to be negotiated based on industry norms and the experience of MHS.

Working capital requirements are estimated at \$593,178 based on two months of third year expenses. The working capital will be funded through the existing accumulated funds of Mount Sinai Hospital. BFA Attachment B, MSH's internal financial statements as of June 30, 2020, shows sufficient funds available. The entity has maintained positive working capital, a positive net equity position, and had an operating revenue over operating expenses before other items of \$20,438,000. BFA Attachment A is MSH's 2019 certified financial statements, which shows the entity maintained positive working capital, a positive net equity position, and had a net operating revenue of \$201,790,000 for the period.

BFA Attachment C is the Pro-Forma balance sheet for 5 East 98th Street, LLC, which shows the operation will start with \$945,178 in members' equity.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Supplemental Information

Surrounding Hospital Responses

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas.

Mount Sinai Beth Israel -- **No Response**
 First Avenue at 16th Street
 New York, New York 10003

Mount Sinai Hospital -- **No Response**
 One Gustave L Levy Place
 New York, New York 10029

Metropolitan Hospital Center -- **No Response**
 1901 First Avenue
 New York, New York 10029

Lenox Hill Hospital -- **No Response**
 100 East 77th Street
 New York, New York 10021

Henry J Carter Specialty Hospital -- **No Response**
 1752 Park Avenue
 New York New York 10035

DOH Comment

In the absence of comments from hospitals in the area of the ASC, the Department finds no basis for reversal or modification of the recommendation for approval of this application based on public need, financial feasibility and owner/operator character and competence.

<h2>Attachments</h2>

BHFP Attachment	Map
BFA Attachment A	2019 Certified Financial Statement of Mount Sinai Hospital.
BFA Attachment B	June 30, 2020 Internal Financials of Mount Sinai Hospital
BFA Attachment C	Pro-Forma Balance Sheet of 5 East 98th Street, LLC



**Project # 201256-E
Gramercy Surgery Center, Inc.**

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment **Acknowledged:** July 16, 2020

Executive Summary

Description

Gramercy Surgery Center, Inc. (Gramercy), a New York Domestic Business Corporation, requests approval to transfer 72.4% ownership interest from Katy Chiang (Estate) to existing shareholders Austin Cheng (41.2%) and Tung Cheng (26.2%), and new shareholder Jeffrey Flynn (5%). Gramercy, an existing Article 28, Diagnostic and Treatment Center, operates two ambulatory surgery sites; 380 Second Avenue, New York and 59-25 Kissena Boulevard, Flushing. There are no costs associated with this transfer as it is contained within Katy Chiang's Last Will and Testament.

Gramercy Surgery Center became operational December 6, 2006. This full review CON has been filed because, as a business corporation, when a stockholder acquires 10% or more of the shares, PHHPC approval is required.

OPCHSM Recommendation
Contingent Approval

Need Summary

There are no changes in staffing or services as a result of this ownership transfer.

Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicants' character and competence or standing in the community.

Financial Summary

The submitted budget indicates a net income of \$613,726 and \$853,211 for the first and third years, respectively, subsequent to the change in ownership interest. The budget appears reasonable.

<u>Budget</u>	<u>First Year</u>	<u>Third Year</u>
Revenues	\$15,661,155	\$16,276,980
Expenses	\$15,047,429	\$15,423,769
Net Income	\$613,726	\$853,211

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the applicant's amended bylaws, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's amended shareholders agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

December 9, 2020

Need and Program Analysis

Program

The primary service area is the New York City region. The Center began operations in December 2006 in New York County, as a multi-specialty surgery center also providing Lithotripsy O/P services. An extension clinic was certified in Queens County in April 2015 offering multi-specialty surgery services. There will be no change to the services provided as a result of the change in ownership. The hours of operation for the centers are Monday through Friday from 7 am until 7 pm.

The two centers provided a total of 6,065 visits in 2017, and 4,933 visits in 2018. The Center's Medicaid utilization was 6.3% in 2017, and 5.0% in 2018 per the AHCF cost reports. Per SPARCS in 2019, the two centers had a total of 6,070 visits and Medicaid utilization of 8.8% through November. Both centers are current with their SPARCS reporting for 2020.

Upon approval of the project, the applicant projects to have 6,860 visits in Year One and 7,126 in Year Three.

Character and Competence

The following table details the proposed change in ownership:

Member Name	Current	Proposed
Katy R. Chiang,	72.40%	0.00%
Tung W. Cheng, DPM*	9.00%	35.20%
Austin Franklin Cheng*	9.00%	50.20%
Jeffrey Flynn*	0.00%	5.00%
Harry Koster M.D.	1.96%	1.96%
Richard Koplin M.D.	1.82%	1.82%
Harvey Rosenblum M.D.	1.22%	1.22%
Kamran Jafri M.D.	1.00%	1.00%
Stacey Silvers M.D.	0.60%	0.60%
Berdj Stephanian M.D.	0.40%	0.40%
Jonat Lok M.D.	0.40%	0.40%
Joel Kreutzer M.D.	0.40%	0.40%
Vinoo Thomas M.D.	0.40%	0.40%
Michael Ehrenhaus M.D.	0.40%	0.40%
Albert Leung M.D	0.20%	0.20%
Previously Withdrawn/Redeemed Shares Held by Center	0.80%	0.80%
<i>TOTAL</i>	100%	100%

****Subject to Character & Competence Review***

The new proposed member, **Jeffrey Flynn**, is the Chief Operating Officer/ Administrator of Gramercy Surgery Center since its inception in 2006. He previously worked at the office-based surgery practice before the ASC was formed and assisted in the operation of that center. He has participated in four (4) pre-occupancy surveys with the New York State Department of Health and 16 deemed status surveys with AAAHC, the accrediting body for the facility. He holds a Certified Administrator of Surgery Center designation and sits on the board for the New York State Association of Ambulatory Surgery Centers, as well as the Ambulatory Surgery Center Association.

Mr. Austin Cheng is the current CEO of Gramercy Surgery Center. He supervises 80-90 personnel over three (3) separate buildings, improves processes, learns breakdowns in workflows, evaluates renovation projects and financial feasibility. He has led the surgery center through the unprecedented global pandemic by ensuring the facilities abide by the everchanging regulations and implementing COVID-19 testing protocols and procedures.

Dr. Tung Cheng, DPM has been a member and manager of the Gramercy Surgery Center 11 years. He supervises other podiatrists and staff in the practice. He attends Board of Managers meetings and consults on major decisions.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Dr. Cheng disclosed the following cases against Gramercy Surgery Center.

- On March 22, 2103, the plaintiff commenced an action to recover for personal injuries as a result of alleged negligence and medical malpractice. The plaintiff alleged that on August 3, 2012 the Gramercy Surgery Center was negligent in managing post-surgery care by permitting the plaintiff to fall and sustain bodily injuries following Green Light Laser ambulation of the prostate. The matter was resolved by confidential settlement in September 2015.
- On September 4, 2015, the plaintiff commenced this action for medical malpractice to recover for personal injuries allegedly sustained during the course of treatment for right foot bunions and hammertoes. The plaintiff alleges that the defendants negligently performed a surgical correction to the bunions and hammertoes on March 8, 2013, which later required a subsequent correction of the same condition on August 2, 2013. The plaintiff alleges that Gramercy Surgery Center failed to maintain sterile conditions in the OR, leading to a foot infection. On February 28, 2020, the plaintiff filed his Note of Issue with Request for Jury, certifying this case as trial ready. The defendants intend to dismiss the action by way of summary judgement motion. The deadline of the filing of that motion is May 28, 2020. A trial date has not been set.
- On May 3, 2017 the plaintiff and her husband commenced this action for medical malpractice, lack of informed consent, and loss of consortium, to recover for personal injuries allegedly sustained during the course of an intra-gastric balloon removal performed on December 16, 2016. The plaintiff alleges that she suffered a tracheal laceration requiring surgical repair during the course of the intra-gastric balloon removal. This action is in the pre-trial discovery phase.
- On February 19, 2019, the plaintiffs commenced this action for medical malpractice, lack of informed consent, and loss of consortium, to recover for personal injuries allegedly sustained during the course of urological care and treatment. On August 21, 2016 the plaintiff underwent a High Intensity Focused Ultrasound procedure to treat prostate cancer. This action is in the discovery phase.
- O, the plaintiff May 10, 2019, commenced this action for medical malpractice and lack of informed consent to recover for personal injuries allegedly sustained during the course of surgical and podiatric treatment to correct various right foot deformities including a bunion and hammertoes. The plaintiff alleges that on February 12, 2018 a negligently performed radiofrequency ablation treatment of neuroma was performed on the plaintiff's right foot. On April 16, 2018, a negligently performed removal of painfully retained hardware in the right foot, removal of neuroma in the right foot, and exostectomy of the metatarsal heads of the second and third right metatarsals. On May 7, 2019, a plantar surgery was performed in order to remedy the previous complications. This action is in the discovery phase.
- On December 23, 2019 the plaintiff commenced this action from medical malpractice and lack of informed consent to recover for personal injuries allegedly sustained during the course of surgical and podiatric care rendered between the dates of January 4, 2019 and August 28, 2109. The defendant is awaiting further details of the claim. This action is in the discovery phase.

Conclusion

Approval of this project will have no impact on services provided. Based on the information reviewed, staff found nothing that would reflect adversely upon the applicants' character and competence or standing in the community.

Financial Analysis

Operating Budget

The applicant has provided the current year (2019) results and the first and third-year operating budgets subsequent to the change in ownership, in 2020 dollars, is summarized below:

	Current Year 2019		Year One 2020		Year Three 2022	
	Per Proc	Total	Per Proc	Total	Per Proc	Total
<u>Revenues</u>						
Medicaid FFS	\$1,408.88	\$11,271	\$1,437.25	\$11,498	\$1,493.00	\$11,944
Medicaid MC	\$1,746.30	\$873,151	\$1,746.51	\$890,721	\$1,745.87	\$925,312
Medicare FFS	\$1,332.49	\$2,395,812	\$1,332.62	\$2,444,021	\$1,332.77	\$2,538,934
Medicare MC	\$2,155.73	\$2,315,257	\$2,154.97	\$2,361,845	\$2,156.03	\$2,453,567
Commercial FFS	\$4,682.74	\$6,391,945	\$4,684.31	\$6,520,564	\$4,681.26	\$6,773,790
Commercial MC	\$2,612.35	\$4,104,006	\$2,611.72	\$4,186,587	\$2,612.12	\$4,349,173
Private Pay/Other	\$2,490.09	\$953,649	\$2,499.88	\$1,231,822	\$2,533.71	\$1,287,286
Charity Care		\$0		\$0		\$0
Bad Debt		(<u>\$1,918,907</u>)		(<u>\$1,985,903</u>)		(<u>\$2,063,026</u>)
Total Revenues		\$15,126,184		\$15,661,155		\$16,276,980
<u>Expenses</u>						
Operating	\$1,742.77	\$11,606,858	\$1,782.33	\$12,226,762	\$1,781.00	\$12,691,414
Capital	\$431.77	\$2,875,555	\$411.18	\$2,820,667	\$383.43	\$2,732,355
Total Expenses	\$2,174.54	<u>\$14,482,413</u>	\$2,193.50	<u>\$15,047,429</u>	\$2,164.43	<u>\$15,423,769</u>
Net Income		\$643,771		\$613,726		\$853,211
Procedures		6,660		6,860		7,126

Utilization by payor source for the Gramercy is summarized below. There is no material change in payor mix.

<u>Payor</u>	<u>Current Year 2019</u>	<u>Year One 2020</u>	<u>Year Three 2022</u>
Medicaid FFS	0.12%	0.12%	0.11%
Medicaid MC	7.51%	7.43%	7.44%
Medicare FFS	27.00%	26.73%	26.73%
Medicare MC	16.13%	15.98%	15.97%
Commercial FFS	20.49%	20.29%	20.31%
Commercial MC	23.58%	23.37%	23.37%
Private Pay/Other	4.11%	4.08%	4.07%
Charity Care	<u>1.06%</u>	<u>2.00%</u>	<u>2.00%</u>
Total	100%	100%	100%

- Revenue, expense and utilization assumptions are based on current reimbursement rates and historical experience of Gramercy.
- Volume (procedures) are expected to increase between the current year and year three.
- Utilization by Payor Source is expected to remain steady.

Capability and Feasibility

The submitted budget indicates a net income of \$613,726 and \$853,211 for the first and third years, respectively, subsequent to the change in ownership interest. The budget appears reasonable. As shown on BFA Attachment A, Gramercy Surgery Center, Inc. has positive working capital in the amount of \$2,563,403, a positive net asset position of \$2,515,291, and a net income of \$575,322 for the period ending December 31, 2019.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A Gramercy Surgery Center, Inc – Financial Summary 2018-2019



Project # 202015-E
Mark Fromer, LLC d/b/a Eye Surgery Center of New York

Program: Diagnostic and Treatment Center **County:** Bronx
Purpose: Establishment **Acknowledged:** August 20, 2020

Executive Summary

Description

The Eye Surgery Centers of New York (ESCNY) is requesting indefinite life. ESCNY was approved under CON# 102452-B on September 9, 2013 and commenced operations on April 7, 2015. The CON was submitted prior to the expiration and by SAPA rules is allowed to continue operating while the CON is under review.

Mark D. Fromer, M.D., a Board-certified ophthalmologist, who is the sole member of the FASC, will continue to serve as Medical Director. ESCNY has a Transfer and Affiliation Agreement with St. Barnabas Hospital. St. Barnabas Hospital is 2.6 miles from ESCN with a travel time of 15 minutes.

There are no changes to the operation with respect to size, location, services and ownership. ESCNY is not proposing to expand or renovate the facility, and there are no changes to the existing lease which provides for an initial 10-year term with two (2) five-year renewal options. There are no new capital costs and all prior capital and working capital costs have been fully amortized.

OPCHSM Recommendation
Contingent Approval

Need Summary

The applicant displays progress engaging MMC providers, growth in actual and projected visits, and continued commitment to serve the

uninsured and underinsured. Data submission by the applicant, a contingency of CON 102452 has been completed.

When initially approved (CON 102452), Medicaid procedures were projected at 40.0% and Charity Care was projected at 5.0% for Year Three. Actual Charity Care in Year Three (2018) was 0.3% and Medicaid was 42.6%. The total number of procedures was 2,645 in Year One (2016-1st full year) and 7,335 in Year Three (2018).

Program Summary

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Summary

There are no project costs. The submitted budget indicates net operating income of \$618,750 and \$1,370,625 in years one (2021) and three (2023), respectively. Revenues are based on current reimbursement rates. The budget appears reasonable.

<u>Budget</u>	<u>Year One 2021</u>	<u>Year Three 2023</u>
Total Revenues	\$6,703,750	\$9,675,625
Total Expenses	<u>\$6,085,000</u>	<u>\$8,305,000</u>
Net Income	\$618,750	\$1,370,625

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the applicant's executed amended operating agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

December 9, 2020

Need and Program Analysis

Background

Eye Surgery Centers of New York is an existing Article 28 Diagnostic and Treatment Center single-specialty ambulatory surgery center specializing in ophthalmology. The center has three operating rooms and two procedure rooms. The Center is located at 3130 Grand Concourse, Bronx, 10458, in Bronx County and the primary service area is Bronx County.

The table below provides Year 3 projections and actual utilization by payor, for CON 102452, and projections for Year 1 following approval of this application. While the center did not meet its charity care projection for Year 3 in its initial application, they were able to project 1.5% charity care going forward on the strength of 1.45% charity care realized in 2019.

Payor	CON 102452 Projected Year 3 (2018)	CON 102452 Actual Year 3 (2018)	CON 202015 Projections Year 1
Medicaid	40.0%	42.6%	32.3%
Medicare	30.0%	37.4%	36.4%
Comm Ins	25.0%	19.7%	21.2%
Private Pay	0.0%	0.0%	8.6%
Charity Care	5.0%	0.3%	1.5%
Total	100.0%	100.0%	100.0%

The table below provides information on projections and utilization for Year One (2016-1st full year) and Year Three (2018) based on CON 102452.

CON 102452- Visits	Year 1 (2016)		Year 3 (2018)	
Eye Surgery Centers of NY	Projected	Actual	Projected	Actual
Total	3,900	2,645	6,000	7,335

The Center currently has Medicaid Managed Care contracts with the following health plans: Affinity, Fidelis, Healthfirst, Metroplus, UHC Community, HealthPlus, VNS Choice, Archcare, Healthcare Partners, HIP, and MVP. This center's Medicaid utilization has averaged over 30% since 2017. The center receives referrals from the Ophthalmology Department of Bronxcare Hospital physicians.

The Center is accredited by the Accreditation Association for Ambulatory Health Care (AAAHC). The Center is open Monday through Friday, 7:30 am to 5:00 pm, with extended hours as necessary. Dr. Mark Fromer, M.D. will continue to serve as the Medical Director. There are no anticipated changes in services. Staffing is forecasted to increase to 28.0 FTEs in Year One and 34.5 FTEs in Year Three.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

Conclusion

The center's Medicaid utilization has averaged over 30% since 2017. Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Analysis

Operating Budget

The applicant has submitted their current year (2019) and year one and three operating budget, in 2019 dollars, subsequent to receiving indefinite life certification, as summarized below:

	Current Year 2019		Year One 2020		Year Three 2022	
	Total	Procedures	Total	Procedures	Total	Procedures
Revenues						
Commercial FFS	\$1,375,849	2,556	\$1,420,525	3,180	\$2,050,265	4,400
Medicare FFS	\$776,419	1,443	\$801,770	1,800	\$1,157,205	2,500
Medicare MC	\$1,582,171	2,940	\$1,633,700	3,655	\$2,357,950	5,000
Medicaid FFS	\$414,210	772	\$429,040	1,000	\$620,000	1,300
Medicaid MC	\$1,649,615	3,065	\$1,702,765	3,840	\$2,480,275	5,300
Private Pay	\$599,733	1,114	\$618,750	1,300	\$899,930	2,000
Charity Care	\$0	175	\$0	225	\$0	500
Other	<u>\$95,000</u>	<u>-</u>	<u>\$97,200</u>	<u>-</u>	<u>\$110,000</u>	<u>-</u>
Total Revenues	\$6,492,997	12,065	\$6,703,750	15,000	\$9,675,625	21,000
Expenses						
Operating	\$4,413,441		\$5,340,000		\$7,520,000	
Capital	<u>\$731,684</u>		<u>\$745,000</u>		<u>\$785,000</u>	
Total Expenses	\$5,145,125		\$6,085,000		\$8,305,000	
Net Income	<u>\$1,347,872</u>		<u>\$618,750</u>		<u>\$1,370,625</u>	
# of Procedures	12,065		15,000		21,000	
Cost per Procedure	\$426.45		\$405.67		\$395.48	

Utilization by payor source related to the submitted operating budget is summarized below:

Payor	Current Year 2019		Year One 2020		Year Three 2022	
	Per Procedure	Utilization	Per Procedure	Utilization	Per Procedure	Utilization
Commercial FFS	\$538.28	21.19%	\$446.71	21.20%	\$465.97	20.96%
Medicare FFS	\$538.06	11.96%	\$445.43	12.00%	\$462.88	11.90%
Medicare MC	\$538.15	24.37%	\$446.98	24.36%	\$471.59	23.81%
Medicaid FFS	\$536.54	6.40%	\$429.04	6.67%	\$476.92	6.19%
Medicaid MC	\$538.21	25.40%	\$443.43	25.60%	\$467.98	25.24%
Private Pay	\$538.36	9.23%	\$475.96	8.67%	\$449.97	9.52%
Charity Care	\$0.00	1.45%	\$0.00	1.50%	\$0.00	2.38%
Totals		100.00%		100.00%		100.00%

- Revenue, expense and utilization assumptions are based upon the Center's historical operating experience.
- Volume (procedures) are expected to increase between the current year and year three.
- Utilization by Payor Source is expected to remain steady.

Capability and Feasibility

The submitted budget indicates net operating income of \$618,750 and \$1,370,625 in years one (2021) and three (2023), respectively. Revenues are based on current reimbursement rates. The budget appears reasonable.

BFA Attachment A is Mark Fromer, LLC's 2018 and 2019 certified financial statements, which indicates the facility had a positive working capital position and maintained positive equity and net income for 2018 and 2019.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A 2018 and 2019 Certified Financial Statements, Mark Fromer, LLC



Project # 201172-B
H & D East 180 Street, LLC d/b/a
Community Health Center at East 180th Street

Program: Diagnostic and Treatment Center **County:** Bronx
Purpose: Establishment and Construction **Acknowledged:** July 3, 2020

Executive Summary

Description

H and D East 180th Street, LLC, an existing New York State limited liability company whose members are Hector D. Reyes, M.D. and Divina Abreu-Espinal, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) at 870 East 180th Street, Bronx (Bronx County). The Center will occupy three floors and 11,979 square feet of newly constructed space that will house twenty-three exam rooms, two dental rooms, diagnostic radiology space, a closed pharmacy, three behavioral health treatment rooms with consultation rooms and designated support areas. Upon opening, the Center will do business as the Community Health Center at East 180th Street.

The primary service area is the Bathgate section of Bronx County, a Medically Underserved Area (MUA). The primary service area is designated as a Health Professional Shortage Area for Primary Medical Care Services, Mental Health Services, Dental Health Services. The Applicant is requesting approval to be certified for primary care, other medical specialties and dental services.

OPCHSM Recommendation
Contingent Approval

Need Summary

The Center will expand access to primary care and other medical specialty physician services as well as diagnostic radiology, dental and

behavioral health services in an area of above average PQIs and designations as a Health Professional Shortage Area and a Medically Underserved Area. The number of projected visits is 28,390 in Year One and 47,317 in Year Three.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Summary

Total project costs of \$10,172,625 will be met with \$1,019,779 member's equity/operational cash and a bank loan of \$9,177,986 for a 25-year term. The interest rate will be fixed for the first 10 years at 250 Basis points over the prevailing Federal Home Loan Bank of New York 10-year advance rate. The rate will then reset 10 years thereafter, at the prevailing Federal Home Loan Bank of New York 10-year advance rate plus 2.5% basis points with a floor rate of 4.18%. Tompkins Mahopac Bank has provided a letter of interest for the financing. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,185,527	\$6,975,875
Expenses	<u>3,513,164</u>	<u>4,496,398</u>
Net Income	\$672,363	\$2,479,477

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed bank loan commitment for project costs, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of an amended and executed Articles of Organization of H&D E. 180th St, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Operating Agreement of H&D E. 180th St, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed lease agreement between tenant HD at E. 180th Street and landlord Sonid Holdings, LLC, acceptable to the Department. [CSL]
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
8. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-01. [AER]

Approval conditional upon:

1. The project must be completed within two years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before April 15, 2021 and construction must be completed by August 31, 2022, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

December 9, 2020

Need and Program Analysis

Program Description

Proposed Operator	H and D East 180 th Street, LLC
To Be Known As	Community Health Center at East 180 th Street
Site Address	870 East 180 th Street Bronx, New York 10460 (Bronx County)
Services	Medical Services – Primary Care Medical Services - Other Medical Specialties (including diagnostic radiology) Dental
Hours of Operation	Monday-Friday 8 AM to 4 PM Saturday 8 AM to 12 PM
Staffing (1st Year / 3rd Year)	25.5 FTEs / 35.2 FTEs
Medical Director(s)	Cecilia G. Calderon, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by Bronx Lebanon Hospital 2.2 miles / 15 minutes away

Analysis

The primary service area are the neighborhoods of Crotona, Bathgate, Belmont and East Tremont in Bronx County, including the following zip codes: 10459, 10460, 10462, and 10472. The population of Bronx County was 1,385,108 in 2010 and is projected to grow to 1,567,988 by 2025, an increase of 13.2%.

PQIs are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition. It shows that the PQI rate for the primary service area is higher than the New York State rate.

Hospital Admissions per 100,000 Adults for Overall PQIs

PQI Rates: 2016	Primary Service Area	New York State
All PQI's	1,997	1,363

Areas of Bronx County are designated as a Health Professional Shortage Area or as a Medically Underserved Area/Population as follows (Source-HRSA):

- Health Professional Shortage Area for Dental services: Medicaid Eligible-Crotona
- Health Professional Shortage Area for Mental Health services: Medicaid Eligible-Crotona
- Health Professional shortage Area for Primary Care services: Medicaid Eligible-Crotona
- Medically Underserved Area: Bathgate Service Area

The number of projected visits is 28,390 in Year One and 47,317 in Year Three. This center is projecting Medicaid utilization of 67%. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Character and Competence

The members of H and D East 180th Street, LLC are:

Name	Membership
Hector D. Reyes	50%
Divina Abreu-Espinal	50%
Total	100%

Mr. Hector Reyes is the President/Owner of HDR Management Corp., a management company which provides management services to healthcare facilities. His responsibilities include business development, operations, and management of medical practices. He is also the Executive Vice President for non-Article 28 health practices.

Ms. Divina Abreu-Espinal has been a high school special education teacher in the Yonkers Public Schools for 10 years. She teaches students with special needs and also works to improve their mental health. She consults with students to discuss their emotions and experiences to ensure they create and maintain a working plan of action specific to their needs, academically or socially. She has gained significant operations and managerial experience as a member of several real estate businesses owned and operated by family members. Additionally, several of her associates are either health care providers or hold high level managerial positions at health care related entities.

Dr. Cecilia Calderon is the proposed Medical Director. She is the current Chief Medical Officer/Medical Director of multiple private medical practices. She received her medical degree from the Universidad Autonoma de Santo Domingo in the Dominican Republic. She completed her Internal medicine residency at Bronx Lebanon Hospital. She is board certified in Internal Medicine.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

Approval for this project will provide for the improved access to a variety of medical and dental services for the residents of Crotona, Bathgate, Belmont, East Tremont as well as the surrounding communities within Bronx County. The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Total Project Cost and Financing

Total project cost of \$10,172,625 for site development, new construction and moveable equipment are broken down as follows:

New Construction	\$6,963,408
Renovation & Demolition	253,750
Site Development	517,650
Temporary Utilities	20,300
Design Contingency	696,341
Construction Contingency	348,170
Fixed Equipment (NIC)	101,500
Planning Consultant Fees	20,000
Architect /Engineering Fees	350,000
Construction Manager Fees	125,000
Other Fees	35,000
Moveable Equipment	329,875
Telecommunications	126,875
Financing Costs	42,000
Interim Interest Expense	185,124
CON Fee	2,000
Additional Processing Fee	<u>55,632</u>
Total Project Cost	<u>\$10,172,625</u>

Project costs are based on a 17-month construction period. The applicant's financing plan is as follows: \$1,019,779 member's equity/operational cash and a bank loan of \$9,177,986 for a 25-year term. The interest rate will be fixed for the first 10 years at 250 Basis points over the prevailing Federal Home Loan Bank of New York 10-year advance rate. The rate will then reset 10 years thereafter at the prevailing Federal Home Loan Bank of New York 10-year advance rate plus 2.5% basis points. Floor rate of 4.18%. Tompkins Mahopac Bank has provided a letter of interest for the financing. BFA attachment A provides the net worth statements of Hector D. Reyes and Divina Abreu-Espinal, which indicate sufficient resources to meet the equity requirements of this application.

Lease Agreement

The applicant has submitted an executed lease agreement, the terms of which are summarized below:

Date:	March 25, 2020
Premises:	11,979 square feet of space at 870 East 180th Street, Bronx, NY 10460
Owner:	Sonid Holdings, LLC
Tenant:	H and D East 180th Street, LLC
Security:	\$56,250 deposit paid
Rental:	Base rent \$225,000 per annum for years one through five, with a 10% increase for each five-year period thereafter. From the Commencement date until the existing building is vacant. there shall be no rent due. From the date the existing building is vacant until the date construction commences, Base Rent shall be \$5,000.00 plus Additional Rent equal to all taxes and water/sewer due. The Rent and Additional Rent due under this paragraph shall accrue and be payable by Tenant upon the commencement of construction. From the date construction commences until a date that is six months after the issuance of a permanent or temporary certificate of occupancy and the issuance of an operating certificate. Base Rent and Additional Rent shall accrue and be payable by Tenant by the payment to Landlord of 60% of the distribution of profits if and when distributions are made under the Operating Agreement of Tenant.
Term:	49 years

Provisions:	Tenant is also responsible for taxes, assessments, water and sewer rates or charges, and other governmental charges.
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Operating Budget

The applicant submitted their year one and year three operating budget, in 2020 dollars, as shown below:

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$77.66	\$66,169	\$77.66	\$110,282
Commercial MC	\$62.60	55,334	\$62.60	88,890
Medicare FFS	\$134.00	152,228	\$134.03	253,714
Medicare MC	\$110.39	470,142	\$110.39	783,570
Medicaid FFS	\$219.20	124,503	\$219.35	207,504
Medicaid MC	\$176.77	3,262,053	\$176.76	5,436,752
Private Pay	\$79.79	22,712	\$80.03	37,853
All Other*	\$60.54	<u>34,386</u>	\$60.58	<u>57,310</u>
Total Revenue		<u>\$4,185,527</u>		<u>\$6,975,875</u>
 <u>Expenses</u>				
Operating	\$102.30	\$2,904,634	\$82.38	\$3,897,956
Capital	<u>21.43</u>	<u>608,530</u>	<u>12.65</u>	<u>598,442</u>
Total Expenses	\$123.73	<u>\$3,513,164</u>	\$95.03	<u>\$4,496,398</u>
Net Income		<u>\$672,363</u>		<u>\$2,479,477</u>
Visits		28,393		47,318
Cost/Visit		\$123.73		\$95.03

Utilization by payor source during first and third years is broken down as follows:

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial FFS	852	3%	1,420	3%
Commercial MC	852	3%	1,420	3%
Medicare FFS	1,136	4%	1,893	4%
Medicare MC	4,259	15%	7,098	15%
Medicaid FFS	568	2%	946	2%
Medicaid MC	18,454	65%	30,756	65%
Private Pay	284	1%	473	1%
Charity Care	1,420	5%	2,366	5%
All Other	<u>568</u>	<u>2%</u>	<u>946</u>	<u>2%</u>
Total	28,393	100%	47,318	100%

The following is noted with respect to the submitted budget:

- The revenue assumptions are based on several actual Article 28 Diagnostic and Treatment centers operating in the same geographical location with similar square footage, specialties and anticipated patient flow.
- Based on their operating experience, the projected revenue, payor mix, utilization, patient visits, staffing, and operating expenses for the first and third year were developed and/or projected.
- Actual expenses unique to this facility were substituted where it was known or easily estimated.

Capability and Feasibility

The total project cost is \$10,172,625 will be funded via \$1,019,779 member's equity and a \$9,177,986 loan for a 25-year term. The interest rate will be fixed for the first 10 years at 250 Basis points over the prevailing Federal Home Loan Bank of New York 10-year advance rate. The Rate will then reset 10 years thereafter at the prevailing Federal Home Loan Bank of New York 10-year advance rate plus 2.5% basis points. Floor rate of 4.18%. Tompkins Mahopac Bank has provided a letter of interest for the financing.

Working capital requirements are estimated at \$749,400 based on two months of third year expenses and will be satisfied via members' equity and a working capital loan of \$374,700 at 3.95% interest over a term of five years. Hector Reyes and Divina Abreu-Espinal have each submitted affidavits of disproportionate share, indicating that Hector Reyes and Divina Abreu-Espinal will each contribute 60% and 40% to working capital, respectively. BFA Attachment A provides the net worth statements of Hector D. Reyes and Diniva Abreu-Espinal, which indicate the availability of sufficient funds for stated levels of equity. BFA Attachment B, the pro forma balance sheet for the applicant, indicates that the facility will initiate operations with members equity of \$1,394,476.

The submitted budget indicates the facility will generate net income of \$672,363 and \$2,479,477 in the first and third years, respectively. The revenue assumptions are based on several actual D&TCs operating in the same geographical location with similar square footage, specialty's and anticipated patient flow.

Conclusion

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A	Net Worth Statements - Hector D. Reyes and Divina Abreu-Espinal
BFA Attachment B	Pro Forma Balance Sheet – Community Health Center at East 180 th Street
BHFP Attachment	Map



Project # 202020-B Touch Stone Pavilion

Program: Diagnostic and Treatment Center County: Richmond Purpose: Establishment and Construction Acknowledged: August 10, 2020

Executive Summary

Description

Touch Stone Pavilion, Inc., an existing New York corporation, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be located at 318 Seguire Avenue, Staten Island (Richmond County). The D&TC will be housed in approximately 1,394 square feet of leased space on the first floor of a single-story building, which will be renovated to come into compliance with Article 28 standards. The building is owned by 318 Seguire LLC, a related entity, which will lease the clinic space to Touch Stone Pavilion, Inc. The applicant requests certification for Medical Services – Primary Care and Medical Services – Other Medical Specialties which will initially include orthopedics, physiatry, rheumatology, and neurology.

Ownership of the Center is as follows:

Table with 2 columns: Proposed Operator, Shareholder. Row 1: Touch Stone Pavilion, Inc., Angelo DiMaggio 100%

Joseph Jimenez, M.D., who specializes in internal medicine will serve as Medical Director. The proposed Center is in discussions to have a Transfer and Affiliation Agreement for emergency and backup services with Staten Island University Hospital located 8.1 miles (15 minutes' travel time) away.

OPCHSM Recommendation Contingent Approval

Need Summary

Approval for this project will provide for additional access to a variety of medical services for individuals in Richmond County. The applicant projects 4,680 visits in Year One and 7,411 in Year Three.

Program Summary

The background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Summary

The total project cost of \$274,752 will be met via proposed member's equity. The budget appears reasonable and is as follows:

Table with 3 columns: Revenues, Expenses, Net Income, Year One, Year Three. Values: Revenues (\$658,771, \$1,043,054), Expenses (605,520, 841,930), Net Income (\$53,251, \$201,124)

Recommendations

Health Systems Agency - There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed building lease that is acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of an executed proposed Certificate of Incorporation, acceptable to the Department. [CSL]
5. Submission of a photocopy of a stock certificate of the corporation, acceptable to the Department. [CSL]
6. Submission of photocopy of the applicant corporation's bylaws, acceptable to the Department. [CSL]
7. Submission of photocopy of a shareholder affidavit, acceptable to the Department. [CSL]
8. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
9. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before May 1, 2021 and construction must be completed by July 1, 2021, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

December 9, 2020

Need and Program Analysis

Program Description

Proposed Operator	Touch Stone Pavilion, Inc
To Be Known As	Touch Stone Pavilion
Site Address	318 Seguire Avenue Staten Island, New York 10309 (Richmond County)
Certified Services	Medical Services – Primary Care Medical Services - Other Medical Specialties
Hours of Operation	Monday-Friday 8:30 AM to 6 PM If need dictates will expand to include Saturday 8:30 AM to 6 PM
Staffing (1st Year / 3rd Year)	7.75 FTEs / 12.33 FTEs
Medical Director(s)	Joseph Jimenez, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Staten Island University 8.1 miles / 15 minutes away

Analysis

The primary service area is Richmond County. The population of Richmond County was 468,730 in 2010 and is estimated to grow to 486,008 by 2025, an increase of 4%.

The number of projected visits is 4,680 in Year One and 7,411 in Year Three. The center is projecting Medicaid utilization of 36%. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Character and Competence

The sole shareholder of Touch Stone Pavilion, Inc. is **Angelo DiMaggio**.

Mr. Angelo DiMaggio is a Chiropractor. He is the current owner and three chiropractic practices:

<i>Touchstone Chiropractic PC</i>	<i>01/2000-present</i>
<i>NYBK Chiropractic PC</i>	<i>06/2015-present</i>
<i>ADA Chiropractic PC</i>	<i>06/2015-present</i>

Dr. Joseph Jimenez is the proposed Medical Director. He is board certified in Physical Medicine and Rehabilitation. He has operated his private practice, Dev Wellness Care, LLC, for over three years, where he practices his core competencies in Sports Medicine, Interventional Pain Management, Medical Pain Management, and Physical Medicine and Rehabilitation. He also responsible for marketing, finance, and administrative infrastructure development. He was the previous Owner/Medical Provider at Performance Spine and Sports Medicine for nine years. He received his medical degree from Rutgers Robert Wood Johnson Medical School. He completed his residency in Internal Medicine at Jersey Shore Medical Center and his residency in Physical Medicine and Rehabilitation at JFK Medical Center.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

Approval for this project will provide for additional access to a variety of medical services for individuals in Richmond County. The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

<h2>Financial Analysis</h2>

Total Project Cost and Financing

The total project cost of \$274,752 for leasehold improvements, renovations, moveable equipment and CON fees is distributed as follows:

Renovation & Demolition	\$156,250
Design Contingency	15,625
Construction Contingency	15,625
Architect /Engineering Fees	12,500
Other Fees	45,000
Moveable Equipment	26,260
CON Fee	2,000
Additional Processing Fee	<u>1,492</u>
Total Project Cost	\$274,752

Lease Agreement

The applicant has submitted a draft lease agreement, the terms of which are summarized below:

Premises:	1,394 square feet of space at 318 Seguine Avenue, Staten Island, NY 10309
Landlord:	318 Seguine LLC
Tenant:	Touch Stone Pavilion, Inc.
Rental:	Base rent \$41,820 annually (\$30.00 per sq. ft) with a 3% increase per annum thereafter after 10 years.
Term:	10 years
Provisions:	Lessee shall be responsible for real estate taxes, maintenance, personal property insurance and pro rata share of electricity, water and gas.

The applicant submitted an affidavit that the lease is a non-arm's length agreement. Angelo DiMagio has ownership interest in both 318 Seguine LLC and Touch Stone Pavilion, Inc. The applicant has submitted letters from two New York realtors attesting to the rent reasonableness.

Operating Budget

The applicant has submitted their first year and third-year operating budget, in 2020 dollars, as shown below:

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$165.05	\$216,216	\$164.98	\$342,342
Medicare FFS	\$135.00	31,590	\$134.82	50,018
Medicare MC	\$108.00	101,088	\$108.00	160,056
Medicaid FFS	\$166.49	77,915	\$166.48	123,365
Medicaid MC	\$124.84	151,934	\$124.84	240,562
Private Pay	\$190.09	<u>80,028</u>	\$189.97	<u>126,711</u>
Total Revenue		\$658,771		\$1,043,054
 <u>Expenses</u>				
Operating	\$116.18	\$543,700	\$105.27	\$780,110
Capital	<u>\$13.21</u>	<u>61,820</u>	<u>\$8.34</u>	<u>61,820</u>
Total Expenses	\$129.38	\$605,520	\$113.61	\$841,930
Net Income		<u>\$53,251</u>		<u>\$201,124</u>
Visits		4,680		7,411
Cost/Visit		\$129.38		\$113.61

Utilization by payor source during first and third years is broken down as follows:

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial FFS	1,310	28%	2,075	28%
Medicare FFS	234	5%	371	5%
Medicare MC	936	20%	1,482	20%
Medicaid FFS	468	10%	741	10%
Medicaid MC	1,217	26%	1,927	26%
Private Pay	421	9%	667	9%
Charity Care	<u>94</u>	<u>2%</u>	<u>148</u>	<u>2%</u>
Total	4,680	100%	7,411	100%

The following is noted with respect to the submitted budget:

- Medicaid Fee for Service Rate is based on the base rate plus the cost of capital as obtained from the New York State Bureau of D&TC Reimbursement.
- The Medicaid Managed Care rate is assumed to be 75% of the Medicaid Ambulatory Patient Group (APG) Fee for Service rate.
- The Commercial Insurance and Medicare Managed Care rate is based on 80% of the Medicare Part B Fee Schedule.
- The number of FTEs, the mix of staff and related operating expenses were determined based on a combination of the projected utilization, experience of the applicant in providing similar services, industry standards and the experience of similar D&TCs in New York State.
- Effective April 2, 2020, Medicaid payments have been reduced by 1.5% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in years one and three. This reduction has been reflected within the budgets.

Capability and Feasibility

BFA Attachment A provides the net worth statement of Angelo DiMaggio, the proposed sole shareholder of Touch Stone Pavilion, Inc., which shows sufficient liquid assets overall to fund the total project cost and working capital requirement (noted below) when including cash value of life insurance.

The submitted operating budget indicates the facility will generate net income of \$53,251 and \$201,124 in the first and third years, respectively. Revenues are based on prevailing reimbursement methodologies for D&TCs.

Working capital requirements are estimated at \$140,322 based on two months of third-year expenses and will be satisfied via equity from the proposed member's personal resources. The pro forma balance sheet for the applicant indicates that the facility will initiate operations with member equity of \$411,582 (BFA Attachment B).

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

<h2>Attachments</h2>

BFA Attachment A	Net Worth Statement of Touch Stone Pavilion, Inc.
BFA Attachment B	Pro Forma Balance Sheet, Touch Stone Pavilion, Inc.
BHFP Attachment	Map



**Project # 202025-B
New Windsor Family Care**

Program: Diagnostic and Treatment Center **County:** Orange
Purpose: Establishment and Construction **Acknowledged:** September 1, 2020

Executive Summary

Description

New Windsor Family Care LLC, an existing New York limited liability company whose sole member is Minoo Pedeom-Shapiro, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be located at 377 Broadway, Newburgh (Orange County). The applicant requests certification for primary care for adult and pediatric care and other specialties including orthopedics and endocrinology. Newburgh is expected to be the primary service area.

The proposed D&TC will be housed in approximately 4,665 square feet of leased space on the ground floor of an existing two-story building. The space is currently in use as a private practice operated by Dr. Minoo Pedeom-Shapiro. Dr. Shapiro will renovate the space to meet Article 28 standards.

Minoo Pedeom-Shapiro, M.D., who is Board-certified in Pediatrics, will also serve as the Medical Director of the center. The applicant is in discussion with representatives from St. Luke's Cornwall Hospital, a division of Montefiore Medical Center, to establish Transfer and Affiliation Agreement (TAA). St. Luke's Cornwall Hospital is located 0.7 miles (4-minute travel time) from the proposed D&TC.

OPCHSM Recommendation
Contingent Approval

Need Summary

Approval for this project will provide for the improved access to a variety of medical services for underserved individuals residing in Newburgh and Orange County as a whole. The center is projecting Medicaid utilization of 65% and Charity Care of 2%.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Summary

The total project cost of \$153,931 will be met via accumulated funds from the sole member, Minoo Pedeom-Shapiro. The applicant has submitted an affidavit confirming that Dr. Pedeom-Shapiro will cover all operating shortfalls during the first year.

<u>Budget</u>	<u>Year One</u> <u>2021</u>	<u>Year Three</u> <u>2023</u>
Revenues	\$1,101,459	\$2,179,971
Expenses	<u>\$1,233,407</u>	<u>\$1,872,660</u>
Net Income/(Loss)	(\$131,948)	\$307,311

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed Lease Agreement, acceptable to the Department of Health. [BFA]
4. Submission of a photocopy of an amended and executed lease agreement, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended and executed Articles of Organization of New Windsor Family Care, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Operating Agreement New Windsor Family Care, LLC acceptable to the Department. [CSL]
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]
8. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Construction must start on or before May 1, 2021 and construction must complete by July 1, 2021, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the construction dates. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

December 9, 2020

Need and Program Analysis

Program Description

Proposed Operator	New Windsor Family Care, LLC
To Be Known As	New Windsor Family Care
Site Address	377 Broadway Newburgh, New York 12550 (Orange County)
Certified Services	Medical Services – Primary Care Medical Services - Other Medical Specialties
Hours of Operation	Monday-Friday 8 AM to 6 PM Will expand or modify hours as volume or need dictates
Staffing (1st Year / 3rd Year)	13.89 FTEs / 21.70 FTEs
Medical Director(s)	Minoo Pedeom-Shapiro, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by St. Luke's Cornwall Hospital 0.7 miles / 4-minute travel time

Background

The primary service area includes Newburgh in Orange County. The population of Orange County was 378,813 in 2010 and is estimated to grow to 391,144 by 2025, an increase of 3.3%. The center expects to provide the following services: primary medical care, pediatric, orthopedics, endocrinology, behavioral health, and physical therapy services.

Parts of Orange County are designated as a Health Professional Shortage Area or as a Medically Underserved Area/Population as follows (Source-HRSA):

- Health Professional Shortage Area for Primary Care services - Medicaid Eligible in Orange County
- Medically Underserved Area - Orange County

The number of projected visits is 9,216 in Year One and 18,240 in Year Three. The center is projecting Medicaid utilization of 65% and Charity Care of 2%. The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

Character and Competence

Dr. Minoo Pedeom-Shapiro is the proposed sole member and proposed Medical Director. She initiated New Windsor Pediatrics, PLLC approximately 21 years ago. She has been affiliated with St. Luke's Cornwall Hospital for over 21 years. She received her medical degree from the National University of Iran. She completed his Radiology residency at the National University of Iran. She completed his Internal Medicine and Pediatrics Residency at Mount Sinai and Rainbow Children's Hospital. She is Board Certified in Pediatrics. She has received multiple recognitions and awards for her work in Pediatrics.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

Approval for this project will provide for the improved access to a variety of medical services for underserved individuals residing in Newburgh and Orange County as a whole. The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Total Project Cost and Financing

The total project cost for renovations and movable equipment is estimated at \$153,931 broken down as follows:

Renovation & Demolition	\$63,000
Design Contingency	6,300
Construction Contingency	6,300
Planning Consultant Fees	8,000
Architect/Engineering Fees	10,000
Other Fees (Consultant, etc.)	35,000
Movable Equipment	22,500
Application Fee	2,000
Additional Processing Fee	<u>831</u>
Total Project Cost	\$153,931

The financing for this project will be as follows:

Cash	\$153,931
Total Funds	\$153,931

BFA Attachments A shows sufficient resources to meet the equity requirement.

Lease Rental Agreement

The applicant has submitted a draft lease agreement for the site to be occupied, the terms of which are summarized below:

Premises:	Approx. 5,000 sq. ft. located at 377 Broadway, Newburgh, New York 12550
Landlord:	Pedoem-Shapiro, LLC
Tenant:	New Windsor Family Care LLC
Term:	5 Years with one 5-year option for renewal
Rental:	Base rent for total leased space is \$60,000 per year (\$5,000 per month) for the first 5 years, increasing at 2.0% in year 6 through the remainder of the lease term. Tenant shall deposit \$5,000 as a security deposit at Lease signing.
Provisions:	Tenant is responsible for utilities.

The applicant submitted an affidavit stating the lease agreement between the landlord and the tenant is a non-arms-length arrangement due to common ownership. Common ownership between landlord and tenant consists of the sole proposed member.

The site currently houses New Windsor Pediatrics, a private practice operated by Dr. Pedoem-Shapiro. The private practice will be converted to the Article 28 D&TC.

Operating Budget

The applicant has submitted an operating budget, in 2020 dollars, for years one and three, summarized below:

	<u>First Year Total Budget</u>		<u>Third Year Total Budget</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
Commercial FFS	\$164.93	\$152,064	\$165.00	\$300,960
Medicare FFS	\$150.04	207,360	\$150.00	410,400
Medicare MC	\$119.95	55,296	\$120.00	109,440
Medicaid FFS	\$139.46	64,289	\$139.52	127,238
Medicaid MC	\$103.06	569,919	\$103.07	1,127,965
Private Pay	\$190.33	<u>52,531</u>	\$190.07	<u>103,968</u>
Total Revenue		\$1,101,459		\$2,179,971
<u>Expenses</u>				
Operating	\$124.03	\$1,143,021	\$97.71	\$1,782,274
Capital	<u>9.81</u>	<u>90,386</u>	<u>4.96</u>	<u>90,386</u>
Total	\$133.83	\$1,233,407	\$102.67	\$1,872,660
Net Income / (Loss)		<u>(\$131,948)</u>		<u>\$307,311</u>
Total Visits		9,216		18,240
Cost per Visit		\$133.83		\$102.67

Utilization by payor source for Year One and Year Three is as follows:

<u>Payor</u>	<u>First Year</u>	<u>Third Year</u>
Commercial FFS	10.0%	10.0%
Medicare FFS	15.0%	15.0%
Medicare M/C	5.0%	5.0%
Medicaid FFS	5.0%	5.0%
Medicaid M/C	60.0%	60.0%
Private Pay	3.0%	3.0%
Charity	<u>2.0%</u>	<u>2.0%</u>
Total	100.0%	100.0%

The following is noted with respect to the submitted budget:

- The Medicaid Fee for Service rate is conservatively estimated based on the Medicaid APG base rate of \$141.64 per visit as obtained from the Department of Health's Bureau of D&TC Reimbursement.
- Effective April 2, 2020, Medicaid payments have been reduced by 1.5% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in years one and three. This reduction has been reflected within the budgets.
- Medicaid Managed Care is assumed to be 75% of the Medicaid APG Fee for Service rate.
- Commercial Insurance and Medicare Fee for Service is based on the Medicare Part B fee schedule.
- Medicare Managed Care is based on 80% of the Medicare Part B fee schedule.
- Proposed budget estimates the increase in utilization from inception and through year three based on significant need in the target community, which is designated as a Health Professional Shortage Area for primary care services as well as a Medically Underserved Area. The proposed operator plans to implement a comprehensive marketing plan and community outreach.
- Expenses are based predominantly on the labor costs for the staffing model that includes: Physicians (5.5 FTEs by year three), Aides, Orderlies and Attendants (6.0 FTEs by year three), 1.0 FTE RN and 1.0 FTE Nurse Practitioner, 0.2 FTE Social Worker and Psychologist, and 0.65 FTE Physical Therapist by year three, as well as medical supplies and rent expense as documented per the lease assignment agreement.

Capability and Feasibility

Project cost of \$153,931 will be met with accumulated funds from the sole member. Working capital requirements are estimated at \$312,110 based on two months of third year expenses. BFA Attachment A is the member's personal net worth statement, which indicates sufficient resources overall to fund the equity requirements. BFA Attachment B is the Pro-Forma balance sheet for New Windsor Family Care, which shows the operation will start with \$444,057 in members' equity.

The submitted budget projects net operating loss of \$131,948 and net income of \$307,311 during years one and three of operations, respectively. The budget appears reasonable.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A	Net Worth Statement of Proposed Member of New Windsor Family Care LLC
BFA Attachment B	Pro-Forma Balance Sheet
BHFP Attachment	Map



**Project # 202027-E
Physicare Multi-Services, Ltd**

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment **Acknowledged:** August 10, 2020

Executive Summary

Description

Physicare Multi-Services, Ltd (the Center), an Article 28 diagnostic and treatment center (D&TC) located at 3508 Flatlands Avenue, Brooklyn (Kings County), requests approval to transfer 100% ownership interest (200 shares issued and outstanding) from Mohamed Aly, the sole current member, to Physicare, LLC. Physicare, LLC's sole member is Moustafa Elsheshtawy, M.D.

On February 14, 2020 Physicare Multi-Services, Ltd. and Mohamed Aly (the sellers) entered a Stock Purchase Agreement (SPA) with Physicare, LLC (subsequently amended on May 16, 2020) for the sale and acquisition of 100% issued and outstanding stock (200 shares) of the D&TC for \$10,000. The transaction will be finalized upon Public Health and Health Planning Council (PHHPC) approval.

The new shareholder will continue to operate the D&TC at the existing leased site.

The Center provides Primary Care, Podiatry, and Physical Therapy services. There are no planned changes to the services currently provided. The existing agreement for back-up medical services with Coney Island Hospital will remain in place. Moustafa Elsheshtawy, M.D. is board-certified in Internal Medicine and Cardiovascular Diseases and will be the facility's Medical Director and Manager.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no Need review of this application

Program Summary

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicants' character and competence or standing in the community.

Financial Summary

There are no project costs associated with this transaction. The applicant will fund the \$10,000 stock purchase from liquid resources. The budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,105,389	\$1,105,251
Expenses	<u>\$1,082,557</u>	<u>\$1,082,557</u>
Net Income/(Loss)	\$22,832	\$22,694

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of an executed certificate of amendment of the applicant's certificate of incorporation, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's amended bylaws, acceptable to the Department. [CSL]
3. Submission of a photocopy of an executed amendment of the second level shareholder's operating agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed amendment of the lease, acceptable to the Department. [CSL]
5. Submission of the applicant's revised stock certificate, acceptable to the Department. [CSL]
6. Submission of the applicant's executed shareholders' agreement, acceptable to the Department. [CSL]
7. Submission of the applicant's executed Administrative Services Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

December 9, 2020

Program Analysis

Character and Competence

Name	Current	Proposed
Mohammed Aly	100%	-----
Moustafa Elsheshtawy, MD	-----	100%

Moustafa Elsheshtawy, M.D. owns his own private practice, Doctor's Medical PC and practices in the Mount Sinai Health System. Doctor's Medical PC provides comprehensive medical outpatient care, employing 25 professional employees and ancillary staff. The practice has been able to grow by adding new diagnostic modalities and treatment options. He received his medical degree at the Tanta Fac in Egypt. He completed his residency in Cardiovascular Disease at Maimonides Medical Center and Internal Medicine at Coney Island Hospital. He is board certified in Internal Medicine with a sub-certification in Cardiovascular Disease.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Conclusion

Based on the information reviewed, staff found nothing that would reflect adversely upon the applicants' character and competence or standing in the community.

Financial Analysis

Lease Agreement

The applicant has submitted the executed lease agreements for the site, the terms of which are summarized below:

Date:	October 1, 2016
Premises:	3,450 square feet located at 3508 Flatlands Avenue Street, Brooklyn, New York 11234
Landlord:	Claire Slobodski and Steve Slobodski – a/k/a Flatland Management LLC
Tenant:	Physicare Multi-Services, Ltd
Rental:	Rent started on October 1, 2016 at \$148,590 per year and by October 1, 2022 it would have been \$235,794 per year (8% per year increase)
Term:	7 years, ending September 30, 2023
Provisions:	Real estate taxes, maintenance, insurance and utilities.

Assignment and Assumption of Lease and Landlord's Consent Agreement

The applicant has submitted an executed assignment and assumption of lease and landlord's consent agreement for the proposed site, the terms of which are summarized below

Date:	September 28, 2020 (to be effective upon PHHPC approval)
Premises:	3,450 square feet located at 3508 Flatlands Avenue Street, Brooklyn, New York 11234
Assignor:	Physicare Multi-Services, Ltd
Assignee:	Physicare Management, LLC
Assigned Rights:	All of assignor's rights, duties and obligations in connection with the lease.
Landlords consent:	Landlord has consented to Mohamed A. Aly's sale of 100% of his stock in Physicare Multiservice, Ltd to Moustafa O. Elsheshtawy or an entity that he wholly owns and controls.

Physicare Management LLC, is owned and operated by Moustafa Elsheshtawy, M.D., the proposed new indirect sole shareholder of Physicare Multi-Services, Ltd.

First Amendment to Lease Agreement

The applicant has submitted an executed first amendment to the lease agreement for the proposed site:

Date:	September 28, 2020 (to be effective upon PHHPC approval)
Premises:	3,450 square feet located at 3508 Flatlands Avenue Street, Brooklyn, New York 11234
Landlord:	Flatland Management LLC
Tenant:	Physicare Management, LLC
Rental:	\$157,500 per year (\$13,125 per month) with a 3% increase every two years
Term:	9 years 10 months - ending July 31, 2030
Provisions:	Real estate taxes, maintenance, insurance and utilities.

License Agreement

The applicant has submitted an executed license agreement for certain real property and improvements at the proposed site:

Date:	September 1, 2020 (to be effective upon PHHPC approval)
Premises:	3,450 square feet located at 3508 Flatlands Avenue Street, Brooklyn, New York 11234
Licensor:	Physicare Management, LLC
Licensee:	Physicare Multi-Services, Ltd
Rental:	\$157,500 per year (\$13,125 per month) with a 3% increase every two years
Term:	9 years 10 months - ending July 30, 2030
Provisions:	Real estate taxes, maintenance, insurance and utilities.

Share Purchase Agreement

The applicant has submitted an executed Stock Purchase Agreement to be effectuated upon PHHPC approval. The terms are summarized below:

Date:	February 14, 2020 and amendment dated May 16, 2020
Seller:	Physicare Multi-Services, Ltd and Mohamed Aly
Buyer:	Physicare, LLC
Shares Acquired:	All the issued and outstanding shares of stock (200 shares / 100%)
Asset Acquired:	All the assets and property owned by the company which are necessary to conduct the business.
Assumption of Liabilities:	Agreed upon liabilities
Purchase Price:	\$10,000
Payment of the Purchase Price:	Equity due at Closing

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of September 10, 2020, the facility had \$320 in outstanding Medicaid liabilities.

Operating Budget

The applicant has submitted the current year (2019) and the first and third year projected operating budgets, in 2021 dollars, as summarized below:

Revenues	Current Year		Year One		Year Three	
	Visits	Total	Visits	Total	Visits	Total
Medicaid - MC	\$85.70	\$895,663	\$84.41	\$926,339	\$84.41	\$926,339
Medicare - FFS	\$99.85	170,038	\$99.85	178,540	\$99.85	178,540
Private Pay	\$141.24	8,898	\$141.56	9,343	\$141.56	9,343
Bad Debt		(8,695)		(8,833)		(8,971)
Management Fees		<u>164,800</u>		<u>0</u>		<u>0</u>
Total Revenue		\$1,230,704		\$1,105,389		\$1,105,251
Expenses						
Operating	\$85.05	\$1,039,041	\$61.87	\$793,701	\$61.87	\$793,701
Capital	<u>\$23.29</u>	<u>284,587</u>	<u>\$22.52</u>	<u>288,856</u>	<u>\$22.52</u>	<u>288,856</u>
Total Expenses	\$108.34	\$1,323,628	\$84.39	\$1,082,557	\$84.39	\$1,082,557
Net Income (Loss)		<u>(\$92,924)</u>		<u>\$22,832</u>		<u>\$22,694</u>
Utilization (Visits)		12,217		12,828		12,828
Cost/Visits		\$108.34		\$84.39		\$84.39

The following is noted with respect to the submitted budget:

- The current reflects the facility's 2019 revenue and expenses.
- Utilization and revenues are based on the 2019 AHCF costs. The current year management fees will not continue.
- In accordance with the FY 2021 Enacted State Budget and effective April 2, 2020, Medicaid payments are being reduced by 1.5% across the board. The reduction is reflected within the budgets.
- First year expenses are adjusted for staffing changes, some expenses increased by 1.5% and elimination of third-party medical consultants as the new owner is a Medical Doctor and its Medical Director.
- Breakeven is projected at 97.9% in the first year.

Utilization by payor for the current, first and third years is summarized below:

Payor	Current Year		Year One		Year Three	
	Visits	%	Visits	%	Visits	%
Medicaid – MC	10,451	85.54%	10,974	85.55%	10,974	85.55%
Medicare – FFS	1,703	13.94%	1,788	13.94%	1,788	13.94%
Private Pay	<u>63</u>	<u>0.52%</u>	<u>66</u>	<u>0.51%</u>	<u>66</u>	<u>0.51%</u>
Total	12,217	100%	12,828	100%	12,828	100%

Capability and Feasibility

There are no project costs associated with this transaction. The applicant will fund the \$10,000 stock purchase from liquid resources. BFA Attachment A shows the personal net worth statement of Moustafa Elsheshtawy, M.D., which shows the availability of sufficient liquid resources.

The working capital requirement is estimated at \$180,426 based on two months of first year expenses. The applicant will fund working capital from ongoing operations and the extent needed from Moustafa Elsheshtawy, M.D liquid resources. A review of BFA Attachments A reveals sufficient resources to meet all the equity requirements.

The submitted budget projects a first- and third-year profit of \$22,832 and \$22,694, respectively. The budget appears reasonable.

BFA Attachment D is Physicare Multi-Services, Ltd's pro forma balance sheet that shows operations will have positive working capital and a deficit of \$88,129 due to transfer of negative net equity via the Stock Purchase Agreement.

BFA Attachments E and F are Physicare Multi-Services, Ltd's 2019 certified financial statements and internal financial statements as of June 30, 2020, which show negative working capital and negative net assets. For 2019, the Center had a \$92,924 loss and for the six-months ending June 30, 2020 the Center generated a profit of \$79,395.

Conclusion

The applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

BFA Attachment A	Net Worth Statement of Proposed Member
BFA Attachment B	Pre and Post Closing Organizational Chart
BFA Attachment C	Pre and Post Closing Shareholder Chart
BFA Attachment D	Pro-Forma Statement
BFA Attachment E	Physicare Multi-Services, Ltd's 2019 certified financial statements
BFA Attachment F	Physicare Multi-Services, Ltd's June 30, 2020 internal financial statements



MEMORANDUM

To: Public Health and Health Planning Council

From: Michael Bass, Deputy General Counsel *MB*

Date: November 3, 2020

Subject: Proposed Dissolution of Lutheran Augustana Center for Extended Care and Rehabilitation, Inc.

Lutheran Augustana Center for Extended Care and Rehabilitation, Inc (“Lutheran Augustana” or the “Corporation”) requests Public Health and Health Planning Council (“PHHPC”) approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law (NPCL) sections 1002 and 1003, and 10 NYCRR Part 650.

Lutheran Augustana, operated a skilled nursing facility within the Lutheran Medical Center hospital, until 2017. It was initially formed under the name Augustana Lutheran Home for the Aged, on August 28, 1967, under the Membership Corporation Law and Social Services Law. The original corporate purpose was “to own, maintain and operate a Christian Institution for aged adults” in Brooklyn, NY and to perform any services incidental to such operation.

In 1992, a Certificate of Amendment to the Certificate of Incorporation was filed changing the name of the corporation to the Lutheran Augustana Center for Extended Care and Rehabilitation. Lutheran Medical Center and NYU Langone merged in 2015 and organized under the NYU Langone Health System. Subsequently, in June 2017, NYU Langone Health System, the parent and sole member of Lutheran Augustana, closed the skilled nursing facility as it was deemed to provide a duplicative service within the NYU Langone Health System.

On April 15, 2020, by the unanimous written consent of the board of directors of the Corporation, it was determined that it was in the best interests of the corporation to wind up and dissolve pursuant to Article 10 of the NPCL, following and contingent upon the final resolution of any outstanding assets and liabilities of the Corporation. On May 1, 2020, the Board of Directors of NYU Langone Health System, approved the dissolution.

The required documents: Verified Petition to the Attorney General, Plan of Dissolution and Distribution of Assets, and a proposed Certificate of Dissolution, with supporting organizational documents of the corporation and resolutions of the Board of Directors of the Corporation and its member, NYU Langone Health System, authorizing the dissolution, are included for PHHPC’s review. Letters from Mr. Frank Cicero, consultant to the corporation and a correspondence from Attorney Sheila Eisenberg to the

Department of Health explaining the need and desire for the dissolution, have been received and are enclosed.

Lastly, please note that the Verified Petition and Certificate of Dissolution indicate that, on the date of this application, the corporation has no assets or outstanding liabilities and holds no assets legally required to be used for a particular purpose. As such, the corporation respectfully requests permission from PHHPC to dissolve. There is no legal objection to the proposed dissolution, Verified Petition, Plan of Dissolution, and Certificate of Dissolution.

Attachments

Cicero Consulting Associates VCC, Inc.

White Plains Unit
Frank M. Cicero
Charles F. Murphy, Jr.
James Pserianos
Michael D. Ungerer
Noelia Chung
Brian Baldwin
Michael F. Cicero
Karen Dietz
Evelyn Branford
Michael C. Maiale
Patrick Clemente

925 Westchester Ave. • Suite 201 • White Plains, NY 10604
Tel: (914) 682-8657 • Fax: (914) 682-8895
cicero@ciceroassociates.com

Albany Unit
William B. Carmello
Joseph F. Pofit
Albert L. D'Amato
Mark Van Guysling
Rosemerie Porco
Daniel Rinaldi, Jr.
Mary Ann Anglin

Emeritus Consultants
Nicholas J. Mongiardo
Joan Greenberg
Martha H. Pofit
Frank T. Cicero, M.D.
Rose Murphy

Michael P. Parker, Sr.
(1941-2011)
Anthony J. Maddaloni
(1952-2014)

August 6, 2020

John Walters, Esq.
Senior Attorney
Bureau of Health Facility Planning and Development
Division of Legal Affairs
New York State Department of Health
Corning Tower - Empire State Plaza
Albany, NY 12237

Re: Lutheran Augustana Center for Extended Care and Rehabilitation
Proposed Corporate Dissolution

Dear Mr. Walters,

We represent, NYU Langone Health System, which controls Lutheran Augustana Center for Extended Care and Rehabilitation, Inc., the entity that operated the Lutheran Augustana nursing home ("Lutheran Augustana"). Lutheran Augustana ceased operations in accordance with a closure plan approved by the New York State Department of Health, and the Health System is now taking steps to dissolve the corporate entity. Accordingly, we are requesting that the Public Health and Health Planning Council (PHHPC) approve the Certificate of Dissolution.

Please let me or Sheila Eisenberg, Esq. know if you require any additional information in order to move this matter forward to PHHPC at the earliest possible time. (Sheila's email address is Sheila.eisenberg@nyulangone.org, and her phone number is 212-404-4074.) Thank you.

Sincerely,

Frank M. Cicero

Frank M. Cicero

cc: Ms. Colleen Leonard, Executive Secretary, PHHPC
Sheila Eisenberg, Esq., Senior Counsel (Corporate), NYU Langone Health System



CERTIFICATE OF DISSOLUTION OF

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is

If the name of the corporation has been changed, the name under which it was formed is

SECOND: The certificate of incorporation was filed with the Department of State on

THIRD: The name and address of each officer and director of the corporation is:

FOURTH: The corporation is a *(check the appropriate box)*

charitable corporation non-charitable corporation.

FIFTH: At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets as provided in Not-for-Profit Corporation Law §1002, the corporation holds

(Check the appropriate statement)

assets which are legally required to be used for a particular purpose.

no assets which are legally required to be used for a particular purpose.

SIXTH: The corporation elects to dissolve.

SEVENTH: *(Check the appropriate statement)* The dissolution was authorized by

- a vote of a majority of the board of directors. The corporation has no members.
- the majority vote of the board of directors, followed by two-thirds vote of the members.

EIGHTH: *(Check the appropriate statement)*

- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by the Attorney General. A copy of the approval of the Attorney General is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by a Justice of the Supreme Court. A copy of the Court's Order is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing a copy of the Plan of Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.
- The corporation is a non-charitable corporation. The corporation's Plan of Dissolution is not required to contain the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law and is not required to be filed with Attorney General.

X _____
(Signature)

(Print or Type Name of Signer)

(Capacity of Signer)



**Division of Corporations,
State Records and
Uniform Commercial Code**

New York State
Department of State
**Division of Corporations,
State Records and
Uniform Commercial Code**
One Commerce Plaza
99 Washington Avenue
Albany, NY 12231
www.dos.ny.gov

**CERTIFICATE OF DISSOLUTION
OF**

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

Filer's Name: _____

Address: _____

City, State and Zip Code: _____

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at www.dos.ny.gov.
2. This Certificate of Dissolution must be signed by an officer, director or duly authorized person.
3. Attach the consent of the New York State Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. Attach a copy of the approval of the Attorney General or Order of the Supreme Court, if required.
6. The Certificate of Dissolution must include the approval of the Attorney General if the corporation is a charitable corporation or if the corporation is a non-charitable corporation and holds assets at the time of dissolution legally required to be used for a particular purpose.
7. Attach any other consent or approval required by law.
8. The fee for filing this certificate is **\$30**, made payable to the Department of State.

For DOS Use Only

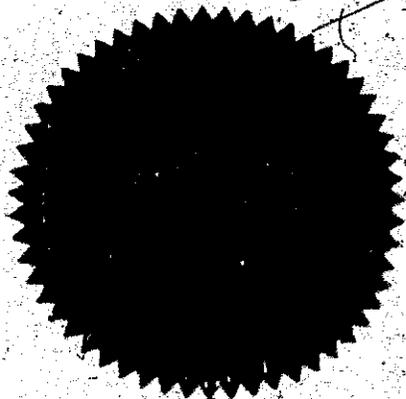


State Board of Social Welfare

Albany

Know all Men by These Presents:

At a meeting of the State Board of Social Welfare, held on the nineteenth day of December, 1967, due inquiry and investigation having been made, the Board approved the proposed Certificate of Incorporation of AUGUSTANA LUTHERAN HOME FOR THE AGED, INC., pursuant to Section 11 of the Membership Corporations Law and Section 35 of the Social Services Law of the State of New York.



In Witness Whereof, the State Board of Social Welfare has caused these presents to be signed in accordance with the provisions of the statutes and its by-laws, and the official seal of the Board and of the Department to be hereunto affixed, this twentieth day of December, in the year one thousand nine hundred and sixty-seven.

[Handwritten Signature]
Secretary

CERTIFICATE OF INCORPORATION
of
AUGUSTANA LUTHERAN HOME FOR THE AGED, INC.,
pursuant to the Membership Corporation Law.

WE, THE UNDERSIGNED, desiring to form a corporation
pursuant to the provisions of the Membership Corporation Law,
do make, subscribe, acknowledge and file this certificate.

FIRST: The name of the corporation is AUGUSTANA
LUTHERAN HOME FOR THE AGED, INC.

SECOND: The purposes for which it is formed are as
follows:

To own, maintain and operate a Christian institution
for aged adults in the Borough of Brooklyn, in the City of New
York, and to perform any other necessary services incidental
to such operation; to purchase, lease or otherwise acquire and
hold real property, whether improved or unimproved, or any
interest therein and to any amount, to build, own or lease and
hold one or more buildings, and to purchase, lease or otherwise
acquire and hold personal property for the purposes hereinabove
stated; to solicit, collect and raise funds and receive donations
in support of such institution and its program; and to parti-
cipate in governmental programs for the support of such insti-
tutions for the elderly or for the persons residing therein
at the discretion of the Board of Directors of the Corporation.

N

THIRD: The territory in which its operations are principally to be conducted is New York City.

FOURTH: Its office is to be located in the City of New York, in the County of Kings, State of New York.

FIFTH: The number of its directors is to be sixteen.

SIXTH: The names and residences of the directors until the first annual meeting are as follows:

<u>Names</u>	<u>Residences</u>
Dr. Alfred L. Beck	102 Grand Boulevard Scarsdale, New York
Dr. Paul C. White	708 West 192nd Street New York, New York
Dr. John W. Wagner	5 Winthrop Road Chappaqua, New York
Rev. Ralph E. Petersen	130 East 54th Street New York, New York 10022
Dr. Monrad G. Paulsen	430 West 116th Street New York, New York 10027
Rev. Roy Roderick	1625 85th Street Brooklyn, New York 11214
Mr. Henry H. Heil	Wagner College Grymes Hall Staten Island, New York 10301
Rev. John R. Frenssen	267 West Chestnut Street Kingston, New York 12401
Mr. Richard Weis	5 Deer Run Road Poughkeepsie, New York 12603
Rev. James B. Christ	29 Jamaica Avenue Wyandanch, New York 11798

3

Mr. Leonard Evans

47 Fieldstone Drive
Syosset, Long Island, N.Y. 11791

Rev. Robert H. Arnold

127-18 102nd Avenue
Richmond Hill, N.Y. 11419

Mr. A. Henry Johnson

88-21 191st Street
Hollis, New York 11423

Rev. Frederick G. Gotwald

58 Cleveland Drive
Groton-on-Hudson, N.Y. 10520

Mr. A. Sherwood Anderson

291 Broadway
New York, New York 10007

Mr. Herbert Holmgren

200 Park Avenue South
New York, New York

SEVENTH: All of the subscribers to this certificate are of full age; at least two-thirds of them are citizens of the United States, and at least one of them is a resident of the State of New York. Of the persons named as directors at least one is a citizen of the United States and a resident of the State of New York.

IN WITNESS WHEREOF, we have made, signed and acknowledged this certificate, this 28th day of August, in the year 1967.

Arthur H. Seck
Paul G. White
Walter S. Volz
Donald S. Evans
A. Sherwood Anderson

4

Mr. Leonard Evans

47 Fieldstone Drive
Syosset, Long Island, N.Y. 11791

Rev. Robert H. Arnold

127-18 102nd Avenue
Richmond Hill, N.Y. 11419

Mr. A. Henry Johnson

88-21 191st Street
Hollis, New York 11423

Rev. Frederick G. Gotwald

58 Cleveland Drive
Groton-on-Hudson, N.Y. 10520

Mr. A. Sherwood Anderson

291 Broadway
New York, New York 10007

Mr. Herbert Holmgren

200 Park Avenue South
New York, New York

SEVENTH: All of the subscribers to this certificate are of full age; at least two-thirds of them are citizens of the United States, and at least one of them is a resident of the State of New York. Of the persons named as directors at least one is a citizen of the United States and a resident of the State of New York.

IN WITNESS WHEREOF, we have made, signed and acknowledged this certificate, this 28th day of August, in the year 1967.

Accepted by
Paul G. White

Paul G. White

Donald S. Evans

Donald S. Evans

A. Sherwood Anderson

A. Sherwood Anderson

4

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

On this 28th day of August, 1967, before me came
ALFRED L. BECK and PAUL C. WHITE to me known to be the
individuals described in and who executed the foregoing
instrument, and acknowledged that they executed the same.

William H. Steinkamp

WILLIAM H. STEINKAMP
Notary Public, State of New York
No. 60-9175350
Qualified in Westchester County
Term Expires March 30, 1968

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

On this 28th day of August, 1967, before me came
RALPH E. PETERSON to me known to be the individual described
in and who executed the foregoing instrument, and acknowledged
that he executed the same.

William H. Steinkamp

WILLIAM H. STEINKAMP
Notary Public, State of New York
No. 60-9175350
Qualified in Westchester County
Term Expires March 30, 1968

STATE OF NEW YORK)
COUNTY OF New York) SS.:

On this 28th day of August, 1967, before me came
LEONARD EVANS to me known to be the individual described in
and who executed the foregoing instrument, and acknowledged
that he executed the same.

William H. Steinkamp

WILLIAM H. STEINKAMP
Notary Public, State of New York
No. 60-9175350
Qualified in Westchester County
Term Expires March 30, 1968

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.

On this 28th day of August, 1967, before me came
A. SHERWOOD ANDERSON to me known to be the individual described
in and who executed the foregoing instrument, and acknowledged
that he executed the same.

M. Louis Thomas
M. LOUIS THOMAS
Notary Public, State of New York
No. 11-291263
Qualified in New York County
Commission Expires March 30, 1968

HON. CHARLES A. BECKINELL

THE UNDERSIGNED Justice of the Supreme Court

Second Judicial District in which the office of the
corporation is to be located approves the foregoing certi-
ficate of incorporation of AUGUSTANA LUTHERAN HOME FOR THE
AGED, INC.

BROOKLYN, N.Y.
JAN 4 1968

Charles A. Beckinella
Justice of the Supreme Court
Second Judicial District

Notice of Application Waived
(This is not to be deemed an
approval on behalf of any
Department or Agency of the
State of New York, nor an
authorization of activities
otherwise limited by law.)

Dated: January 2, 1968
HOWES J. LEFKOWITZ
Attorney General

By *Ronald Cole*
Assistant Attorney General

FILED
JAN 30 1968

658780 - 7

S/S

CERTIFICATE OF INCORPORATION

OF

AUGUSTANA LUTHERAN HOME FOR THE AGED, INC.

JK

DATED: August 28th, 1967

STATE OF NEW YORK
DEPARTMENT OF REVENUE
FILED JAN 9 1968

TAX \$
FILING FEE \$

STEINKAMP & STEINKAMP
60 East 42nd Street
New York, New York 10017

Jan. P. ...
By *[Signature]*
P. Z...

7

893551

Certificate of amendment of the certificate of incorporation of
AUGUSTANA LUTHERAN HOME FOR THE AGED, INC. under Section 803 of
the Not-for-Profit Corporation Law.

WE, THE UNDERSIGNED, desire to make, sign, verify and file
this certificate.

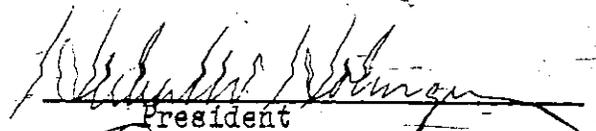
1. The name of the corporation is AUGUSTANA LUTHERAN HOME
FOR THE AGED, INC.

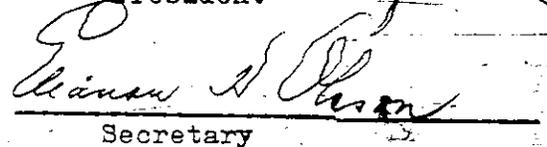
2. The certificate of incorporation was filed in the office
of the Secretary of State of the State of New York on January 9, 1968.

3. Pursuant to Article FIFTH which is to be amended, the
number of directors of the corporation is sixteen. The text of Article
FIFTH to be substituted is as follows: "The number of its directors
is to be fifteen."

4. The amendment of the certificate of incorporation was
authorized by unanimous vote of the members of the corporation at the
annual meeting of the members of the corporation duly called and held
on February 19, 1971, and the President and Secretary of the corporation
were authorized to sign the certificate of amendment and one of them
was authorized to verify the same.

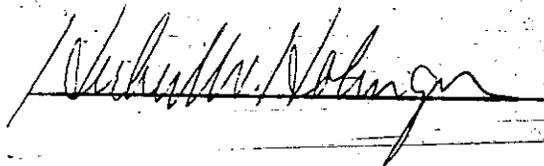
IN WITNESS WHEREOF, we have made and signed this certificate
the 19th day of February, 1971.


President


Secretary

STATE OF NEW YORK }
COUNTY OF KINGS } ss.:

HERBERT W. HOLMGREN, President of Augustana Lutheran Home for the Aged, Inc., one of the signers of the foregoing certificate, being duly sworn, deposes and says that he has read the foregoing certificate of amendment of the certificate of incorporation of Augustana Lutheran Home for the Aged, Inc. and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters believes it to be true.



Sworn to before me this
19th day of February, 1971.

Notary Public, State of New York



REBECCA BRECHNER
Notary Public, State of New York
No. 41-0399000
Qualified in Queens County
Commission Expires March 30, 1971

893554 - 3

memorandum 1/9/68 *King*
658780 - 7

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

JE
AUGUSTANA LUTHERAN HOME FOR THE AGED, INC.

Under Section 803 of the Not-for-Profit
Corporation Law

Wilford L. Wilson, Esq.
250 Broadway, 24th floor
New York, N.Y. 10007

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAR 11 1971

TAXES

None

FILED FEE \$

30

John P. Longo

Secretary of State

mk

24 King

A 91018

Certificate of Type of not-for-profit corporation of AUGUSTANA LUTHERAN HOME FOR THE AGED, INC. under Section 113 of the Not-for Profit Corporation Law.

We, the undersigned, John W. C. Borngasser and Eleanor H. Olsson, the president and secretary respectively of AUGUSTANA LUTHERAN HOME FOR THE AGED, INC., hereby certify:

1. The name of the corporation is AUGUSTANA LUTHERAN HOME FOR THE AGED, INC.

2. The corporation was formed under the Membership Corporations Law and its certificate of incorporation was filed by the Secretary of State on January 9, 1968. A Certificate of Amendment reducing the number of directors to fifteen was filed on March 11, 1971.

3. The post-office address to which the Secretary of State shall mail a copy of any notice required by law is 1680 - 60th Street, Brooklyn, New York 11204.

4. That under Section 201 it is a Type B not-for-profit corporation.

IN WITNESS WHEREOF we have signed this certificate this 24th day of July, 1973.

John W. C. Borngasser President
Eleanor H. Olsson Secretary

STATE OF NEW YORK

COUNTY OF KINGS

ss.:

John W. C. Borngasser, being duly sworn, deposes and says that he is the president of AUGUSTANA LUTHERAN HOME FOR THE AGED, INC., the corporation and one of the persons who signed the foregoing certificate of type, that he has read the certificate of type and knows the contents thereof and that the same is true to his own knowledge.

John W. C. Borngasser

Sworn to before me this

31st day of July, 1973.

Harold A. Satter
Notary Public

HAROLD A. SATTER
Notary Public, State of New York
No. 30-3458275
Qualified in Nassau County
Term Expires March 30, 1975

A 91018

3

Certificate of type of not-for-profit corporation of AUGUSTANA LUTHERAN HOME FOR THE AGED, INC. under Section 113 of the Not-for Profit Corporation Law.

Memberships

11/9/68

King Co.

Dated: July 24, 1973

658780

M



STATE OF NEW YORK
DEPARTMENT OF STATE
TAX: *None*
FILING: *10*
FILED AUG - 8 1973

John P. ...
Secretary of State

34 King
Type B

3

Wilford L. Wilson, Esq.
250 Broadway
New York, N. Y. 10007

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

AUGUSTANA LUTHERAN HOME FOR THE AGED, INC.

Under Section 803 of the
Not-For-Profit Corporation Law

We, the undersigned, hereby certify:

1. The name of the corporation is AUGUSTANA LUTHERAN HOME FOR THE AGED, INC. It was formed under that name and the name has not been changed.

2. The Certificate of Incorporation of said corporation was filed by the Department of State on January 9, 1968. A Certificate of Amendment reducing the number of directors to fifteen was filed on March 11, 1971.

3. The corporation is a corporation as defined in sub-paragraph (a) (5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law, and is a Type B corporation under Section 201. ✓

4. The post office address to which the Secretary of State shall mail a copy of any notice required by Law is: 1680 - 60th Street, Brooklyn, New York 11204.

5. The Certificate of Incorporation is amended as follows:

a. To change the name to AUGUSTANA HOME FOR THE AGED, INC.

b. To amend Article SECOND by the deletion of the words "a Christian" and the substitution therefor of the word "an", so that Article SECOND shall read as follows:

The purposes for which it is formed are as follows:

To own, maintain and operate an institution for aged adults in the Borough of Brooklyn, in the City of New York, and to perform any other necessary services incidental to such operation; to purchase, lease or otherwise acquire and hold real property, whether improved or unimproved, or any interest therein and to any amount, to build, own or lease and hold one or more buildings, and to

A 188150

purchase, lease or otherwise acquire and hold personal property for the purposes hereinabove stated; to solicit, collect and raise funds and receive donations in support of such institution and its program; and to participate in governmental programs for the support of such institutions for the elderly or for the persons residing therein at the discretion of the Board of Directors of the Corporation.

6. The manner in which the Amendment of the Certificate of Incorporation was authorized was by consent of a majority of the members of the corporation voting in person or by proxy at a meeting of the members duly called for that purpose upon due notice to all members of record given in the manner required for a special meeting of the Corporation; said meeting was held at the office of the Corporation, 1680 - 60th Street, Brooklyn, New York, at 3 P. M. on June 21, 1974; a majority of the members was present; the Certificate of Incorporation of the corporation does not require the consent of more than a majority of the members to change the name of the corporation and to amend the purposes.

7. The approval of a Justice of the Supreme Court of the Second Judicial District was annexed to the Certificate of Incorporation at the time it was filed with the Department of State. No approval was necessary to reduce the number of directors. The following approvals or consents will be endorsed upon or annexed to this Certificate of Amendment prior to its delivery to the Department of State: ~~the consent of the Commissioner of Health and the~~ approvals of a Justice of the Supreme Court of the Second Judicial District and the Public Health Council.

IN WITNESS WHEREOF, we have executed this Certificate this
21st day of June 1974.

John D. ...
President
Arthur L. Loeffler
Assistant Secretary

STATE OF NEW YORK

COUNTY OF KINGS

ss.:

John W. Borngasser and Arthur L. Loeffler, being severally, duly sworn, depose and say that they are the President and Assistant Secretary, respectively, of Augustana Lutheran Home for the Aged, Inc. and that they have read the foregoing Certificate of Amendment of Certificate of Incorporation of Augustana Lutheran Home for the Aged, Inc., and know the contents thereof; that the same is true to their own knowledge, except as to those matters stated therein to be alleged on information and belief, and that as to those matters deponents believe them to be true.

for Borngasser
Arthur L. Loeffler

Subscribed and sworn to before me
this 21st day of June 1974.

Rebecca Brechner
Notary Public

REBECCA BRECHNER
Notary Public, State of New York
No. 41-0399080
Qualified in Queens County
Commission Expires March 30, 1975

STATE OF NEW YORK
COUNTY OF KINGS } ss.:

John W. Borngasser and Arthur L. Loeffler being severally,
duly sworn, depose and say:

1. That John W. Borngasser is the President of Augustana Lutheran Home for the Aged, Inc. mentioned in the foregoing Certificate and was such President at the time of the consent mentioned therein to change the name and purposes of the corporation.

2. That Arthur L. Loeffler is the Assistant Secretary of Augustana Lutheran Home for the Aged, Inc. mentioned in the foregoing Certificate and was such Assistant Secretary at the time of the consent mentioned therein to change the name and purposes of the corporation.

3. That they were duly authorized to execute and file the foregoing Certificate of Amendment by action of a majority of the members of the corporation at a special meeting.

4. Such consent was given by affirmative votes cast by a majority of the members at a meeting of members duly called for that purpose after due notice to all members of the corporation given in the manner required for a special meeting of the corporation; said meeting was held at the office of the corporation, 1680 - 60th Street, Brooklyn, New York on June 21, 1974, at 3 P. M.; a majority of the members was present.

5. That the Certificate of Incorporation of this corporation does not require a consent of more than a majority of the members to change the name and purposes of the corporation.

John W. Borngasser
Arthur L. Loeffler

Subscribed and sworn to before
me this 21st day of June 1974.

Rebecca Brechner
Notary Public

REBECCA BRECHNER
Notary Public, State of New York
No. 41-0399080
Qualified in Queens County
Commission Expires March 30, 1975

4



September 3, 1974

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after inquiry and investigation at a meeting of the Public Health Council held on the 30th. day of August, 1974, I hereby certify that the Certificate of Amendment of the Certificate of Incorporation of Augustana Lutheran Home For the Aged, Inc., is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

MARIANNE K. ADAMS
Secretary

Sent to: Wilford L. Wilson, Esq.
250 Broadway
New York, NY 10007

Augustana Home for the Aged, Inc.
1880 60th. Street
Brooklyn, NY 11204

COUNCIL

NORMAN S. MOORE, M.D.
CHAIRMAN
GEORGE BAEHR, M.D.
BLONEVA P. BOND
DETLEV BRONK, Ph. D.
GORDON E. BROWN

MORTON P. HYMAN
CHARLES T. LANIGAN
GERALD B. MANLEY, M.D.
GEORGE R. METCALF
JAMES F. X. O'ROURKE, M.D.
W. KENNETH RILAND, D.O.

JOHN F. ROACH, M.D.
HOWARD A. RUSK, M.D.
JOHN M. WALSH

HOLLIS S. INGRAHAM, M.D.
EX OFFICIO

WAIVER OF NOTICE OF APPLICATION BY ATTORNEY-GENERAL

Notice of application waived. (This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of activities otherwise limited by law).

Dated: *Sept 24* 1974

LOUIS J. LIEFKOWITZ
Attorney-General

by *Joyce J. Wagner*

I, HON. J. COURTNEY MCGROARTY

Justice of the Supreme

Court of the State of New York, Second Judicial District, hereby approve the foregoing Certificate of Amendment of Certificate of Incorporation of Augustana Lutheran Home for the Aged, Inc. and consent that the same be filed.

Dated: Brooklyn, New York
OCTOBER 8 1974

J. Courtney McGroarty
Justice of the Supreme Court
Second Judicial District

HON. J. COURTNEY MCGROARTY

A 188150 - 7

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
AUGUSTANA LUTHERAN HOME FOR THE
AGED, INC.

1/9/48.
Kemp 6
658780-7
Type B
not add
1680-60th St Bklyn ny

RECEIVED
JUL 24 1974
STATE DEPT. OF HEALTH
OFFICE OF THE COUNSEL

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED OCT 17 1974
TAX \$ none
FILING FEE \$ 30

201 635-8178
657-8169

John J. [Signature]
Acting Secretary of State

24 Kemp
Type B

Wilford L. Wilson, Esq.
250 Broadway
New York, N. Y. 10007

490-9000
267-1213

HA

RECEIVED
JUN 26 1974
STATE DEPT. OF HEALTH
OFFICE OF THE COUNSEL

5/10/15

7

CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION OF
AUGUSTANA HOME FOR THE AGED, INC. UNDER SECTION 803 OF THE NOT-FOR-
PROFIT CORPORATION LAW.

WE, THE UNDERSIGNED, do hereby certify:

1. The name of the corporation is Augustana Home for the Aged, Inc. It was formed under the name of Augustana Lutheran Home for the Aged, Inc.

2. The Certificate of Incorporation of said corporation was filed by the Department of State on January 9, 1968. A Certificate of Amendment reducing the number of directors to fifteen was filed by the Department of State on March 11, 1971. A Certificate of Amendment changing the name to its present name and amending Article SECOND was filed by the Department of State on October 17, 1974.

3. The corporation is a corporation as defined in subparagraph (a) (5) of Section 102 (Definitions) of the Not-for-Profit Corporations Law, and is a Type B corporation under Section 201.

4. The post office address to which the Secretary of State shall mail a copy of any notice required by law is: 1680 - 60th Street, Brooklyn, New York 11204.

5. The Certificate of Incorporation is amended as follows:

a. To change the name to AUGUSTANA LUTHERAN HOME FOR THE AGED, INC.

b. To amend Article SECOND by the deletion of the word "an" before "institution" and the substitution therefor of the words "a Christian", so that Article SECOND shall read as follows:

The purposes for which it is formed are as follows:
To own, maintain and operate a Christian institution
for aged adults in the Borough of Brooklyn, in the

A 435203

City of New York, and to perform any other necessary services incidental to such operation, to purchase, lease or otherwise acquire and hold real property, whether improved or unimproved, or any interest therein and to any amount; to build, own or lease and hold one or more buildings and to purchase, lease or otherwise acquire and hold personal property for the purposes hereinabove stated; to solicit, collect and raise funds and receive donations in support of such institution and its program; and to participate in governmental programs for the support of such institutions for the elderly or for the persons residing therein at the discretion of the Board of Directors of the corporation."

6. The manner in which the amendment of the Certificate of Incorporation was authorized was by consent of a majority of the members voting in person at a special meeting of the members duly called for that purpose upon due notice to all members of record given in the manner required for a special meeting of the corporation; said meeting was held at the office of the corporation, 1680 260th Street, Brooklyn, New York at 3 P. M. on August 13, 1976; a majority of the members was present; the Certificate of Incorporation of the corporation does not require the consent of more than a majority of the members to change the name of the corporation and to amend the purposes.

7. The approval of a Justice of the Supreme Court of the Second Judicial District was annexed to the Certificate of Incorporation at the time it was filed with the Department of State. No approval was necessary to reduce the number of directors. The following approvals or consents will be endorsed upon or annexed to this Certificate of Amendment prior to its delivery to the

Department of State: the approvals of a Justice of the Supreme Court of the Second Judicial District and the Public Health Council.

IN WITNESS WHEREOF, we have executed this Certificate this 29th day of August 1977.

Leonard S. Evans
Arthur L. Loeffler

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

Leonard S. Evans and Arthur L. Loeffler, being severally, duly sworn, depose and say that they are the President and Assistant Secretary, respectively, of Augustana Home for the Aged, Inc. and that they have read the foregoing Certificate of Amendment of Certificate of Incorporation of Augustana Home for the Aged, Inc. and know the contents thereof; that the same is true to their own knowledge except as to those matters stated therein to be alleged on information and belief, and that as to those matters deponents believe them to be true.

Leonard S. Evans
Arthur L. Loeffler

Subscribed and sworn to before me this 29th day of August 1977.

Rebecca Brechner
Notary Public

REBECCA BRECHNER
Notary Public, State of New York
No. 41-0399080
Qualified in Queens County
Commission Expires March 30, 1979

STATE OF NEW YORK]
COUNTY OF NEW YORK]

ss.:

Leonard S. Evans and Arthur L. Loeffler, being severally,
duly sworn, depose and say:

1. That Leonard S. Evans is the President of Augustana Home for the Aged, Inc. mentioned in the foregoing Certificate and was such President at the time of the consent mentioned therein to change the name and purposes of the corporation.

2. That Arthur L. Loeffler is the Assistant Secretary of Augustana Home for the Aged, Inc. mentioned in the foregoing Certificate and was such Assistant Secretary at the time of the consent mentioned therein to change the name and purposes of the corporation.

3. That they were duly authorized to execute and file the foregoing Certificate of Amendment by action of a majority of the members of the corporation at a special meeting.

4. Such consent was given by affirmative votes cast by a majority of the members at a meeting of members duly called for that purpose after due notice to all members of the corporation given in the manner required for a special meeting of the corporation; said meeting was held at the office of the corporation, 1680 - 60th Street, Brooklyn, New York on August 13, 1976 at 3 P. M. a majority of the members was present, which constituted a quorum.

5. That the Certificate of Incorporation of this corporation does not require a consent of more than a majority of the

4

members to change the name and purposes of the corporation.

Arnold Eisen

Arthur L. Loeffler

Subscribed and sworn to before me this 29th day of August 1977.

Rebecca Brechtman
Notary Public

REBECCA BRECHTMAN
Notary Public, State of New York
No. 41-0399080
Qualified in Queens County
Commission Expires March 30, 1979

WAIVER OF NOTICE OF APPLICATION BY ATTORNEY GENERAL

Notice of application waived. (This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of activities otherwise limited by law.

Dated: 1977

LOUIS J. LEFKOWITZ
Attorney General

By

I, HON. THOMAS RUSSELL JONES Justice of the Supreme Court

of the State of New York, Second Judicial District, hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of Augustana Home for the Aged, Inc. and consent that the same be filed.

Dated: Brooklyn, New York
SEPTEMBER 22 1977

Thomas Russell Jones
Justice of the Supreme Court
Second Judicial District

HON. THOMAS RUSSELL JONES

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL
STATE OF N. Y.

By
Robert J. Task
ROBERT J. TASK
ASSISTANT ATTORNEY GENERAL

September 21, 1977

THE UNDERSIGNED HAS NO
OBJECTION TO THE GRANTING
OF JUDICIAL APPROVAL
HEREON AND WAIVES
STATUTORY NOTICE



STATE OF NEW YORK,
DEPARTMENT OF HEALTH
ALBANY 12237

PUBLIC HEALTH COUNCIL

September 14, 1977

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after inquiry and investigation at a meeting of the Public Health Council held on the 24th day of June, 1977, I hereby certify that a Certificate of Amendment of the Certificate of Incorporation of Augustana Home for the Aged, Inc., identical with the Certificate of Amendment to which this APPROVAL is annexed except for the date of execution, was APPROVED. Said APPROVAL is hereby reissued, to be annexed to the Certificate of Amendment herein executed on the 29th day of August, 1977 to replace the original Certificate of Amendment which has been misplaced.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party pay or reimbursement guidelines.

Marianne K. Adams

Marianne K. Adams
Secretary

COUNCIL

NORMAN S. MOORE, M.D.
CHAIRMAN
BLONEVA P. BOND
GORDON E. BROWN
JOSEPH R. FONTANETTA, M.D.
WILLIAM LEE FROST

MORTON P. HYMAN
MSGR. CHARLES J. FAHEY
W. KENNETH RILAND, D.O.
Jeanne E. Jonas

HOWARD A. RUSK, M.D.
JOHN M. WALSH
KENNETH W. WOODWARD, M.D.

6
COMMISSIONER OF HEALTH
ROBERT P. WHALEN, M.D.
EX OFFICIO

NOTICE OF ENTRY

Sir: PLEASE TAKE NOTICE that the within is a true-certified copy of a

July entered in the office of the clerk of the within named court

on 19

Dated: 19

Yours, etc.,

Attorneys for
Office and Post Office Address

To:
Attorney for

NOTICE OF SETTLEMENT

Sir: PLEASE TAKE NOTICE that

of which the within is a true copy will be presented for settlement to Mr. Justice

one of the Justices of the within named Court at

on the day of 19

at M.

Dated: 19

Yours, etc.,

Attorneys for
Office and Post Office Address

To:
Attorney for

Index No. A 435203

Certificate of Amendment of
the Certificate of Incorporation
of Augustana Home for the
Aged, Inc. under Section 803 of
the Not-for-Profit Corporations
Law.

Dated: August 29, 1977

Attorneys for
Office and Post Office Address
Wilford L. Wilson, Esq.
4-B Edinburgh Lane
Lakehurst, NJ 08733

To: Esq

Attorney for

Service of a copy of the within
is hereby admitted:

Dated, N.Y. 19

Attorney for

STATE OF NEW YORK
DEPARTMENT OF STATE
TAX: none
FILING FEE: 130
FILED OCT 13 1977

Paul Wilson
Secretary of State

24 Kings

assn 10/17/74

Dwy Augustana Lutheran Home for

the aged, Inc

1/9/68

658790-7

NA add 180-65th St

*Blk 11/1204
New York, NY*

13150

CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION OF
AUGUSTANA LUTHERAN HOME FOR THE AGED, INC., UNDER SECTION 603 OF
THE NOT-FOR-PROFIT CORPORATION LAW.

The undersigned, being the President and Secretary of Augustana Lutheran Home for the Aged, Inc., hereby certify:

1. The name of the corporation is Augustana Lutheran Home for the Aged, Inc. It was formed under the name of Augustana Lutheran Home for the Aged, Inc., was changed to Augustana Home for the Aged, Inc., and then changed to its original name as hereinafter set forth.

2. The Certificate of Incorporation of said corporation was filed by the Department of State on January 9, 1968. The said corporation was formed under the Membership Corporation Law. A Certificate of Amendment reducing the number of directors to fifteen was filed by the Department of State on March 11, 1971. A Certificate of Amendment changing the name to Augustana Home for the Aged, Inc. and amending Article SECOND was filed by the Department of State on October 17, 1974. A Certificate of Amendment changing the name to its original and present name and amending Article SECOND was filed by the Department of State on October 13, 1977.

3. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law, and is a Type B corporation under Section 201. The corporate purposes are not enlarged, limited or in any way changed by this Certificate of Amendment.

4. The post office address to which the Secretary of State

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shall mail a copy of any notice required by law to: 1680-60th Street, Brooklyn, New York 11204.

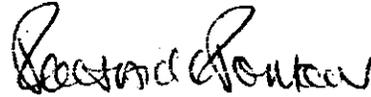
5. The Certificate of Incorporation is hereby amended to add an Article relating to the distribution of the assets of the corporation, reading as follows:

"EIGHTH: In the event of dissolution, all of the remaining assets and property of the corporation shall after necessary expenses thereof be distributed to the Metropolitan New York Synod, Lutheran Church in America or its successor in interest provided that the Metropolitan New York Synod, Lutheran Church in America or its successor in interest is an organization which is exempt under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or if neither the Metropolitan New York Synod or its successor in interest is exempt under said 501(c)(3) as amended, then to such organization as shall so qualify under said 501(c)(3) as amended, or to another organization to be used in such manner as in the judgment of a Justice of the Supreme Court of the State of New York will best accomplish the general purposes for which this corporation was formed."

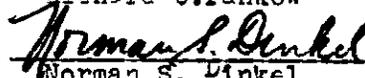
6. The manner in which the amendment of the Certificate of Incorporation was authorized was by consent of a majority of the members voting in person at a special meeting of the members duly called for that purpose upon due notice to all members of record given in the manner required for a special meeting of the corporation; said meeting was held at the office of the corporation, 1680-60th Street, Brooklyn, New York at 3 P.M. on March 21, 1980; a majority of the members was present; the Certificate of Incorporation of the corporation does not require the consent of more than a majority of the members to add an article relating to the dissolution of the corporation.

7. The approval of a Justice of the Supreme Court of the Second Judicial District was annexed to the Certificate of Incorporation at the time it was filed with the Department of State. No approval was necessary to reduce the number of directors. The following approvals will be endorsed upon or annexed to this Certificate of Amendment prior to its delivery to the Department of State; the approval of a Justice of the Supreme Court of the Second Judicial District and the approval of the Public Health Council.

IN WITNESS WHEREOF, we have executed this Certificate this 21st day of March 1980.



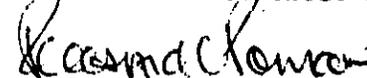
Richard C. Pankow



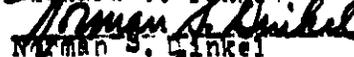
Norman S. Dinkel

State of New York
COUNTY OF KINGS : SS

RICHARD C. PANKOW and NORMAN S. DINKEL, being severally duly sworn, depose and say that they are the President and Secretary respectively of Augustana Lutheran Home for the Aged, Inc. and that they have read the foregoing Certificate of Amendment of the Certificate of Incorporation of Augustana Lutheran Home for the Aged, Inc., and know the contents thereof; that the same is true to their own knowledge except as to those matters stated therein to be alleged on information and belief and that as to those matters deponents believe them to be true.

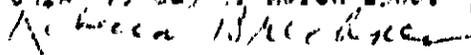


Richard C. Pankow



Norman S. Dinkel

Subscribed and sworn to before me
this 21 day of March 1980.



REBECCA BRECHNER
Notary Public, State of New York
No. 41 032080
21st St. 4th Fl. Queens County
New York Expires March 20, 1984

State of New York :
County of Kings :33

Richard C. Pankow and Norman S. Dinkel, being severally duly sworn, depose and say:

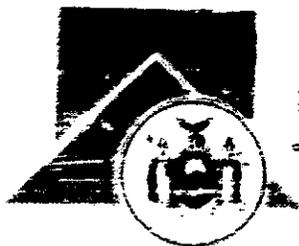
1. That Richard C. Pankow is the President of Augustana Lutheran Home for the Aged, Inc., mentioned in the foregoing Certificate and was such President at the time of the consent mentioned therein to add an article relating to the dissolution of the corporation.

2. That Norman S. Dinkel is the Secretary of Augustana Lutheran Home for the Aged, Inc. mentioned in the foregoing Certificate and was such Secretary at the time of the consent mentioned therein, to add an article relating to the dissolution of the corporation.

3. That they were duly authorized to execute and file the foregoing Certificate of Amendment by action of the majority of the members of the corporation at a special meeting.

4. Such consent was given by affirmative votes cast by a majority of the members at a meeting of members duly called for that purpose after due notice to all members of the corporation given in the manner required for a special meeting of the corporation; said meeting was held at the office of the corporation, 1680-60th Street, Brooklyn, New York on March 21, 1980 at 3 P.M. A majority of the members was present which constituted a quorum.

5. That the Certificate of Incorporation of this corporation does not require a consent of more than a majority of the members



STATE OF NEW YORK
DEPARTMENT OF HEALTH

PUBLIC HEALTH COUNCIL

April 23, 1980

Rebecca Brechner, Esq.
110 West 40th Street
New York, New York 10018

Re: Proposed Certificate of Amendment
to Certificate of Incorporation;
Augustana Lutheran Home for the
Aged, Inc.

Dear Ms. Brechner:

Section 804 (a) of the Not-for-Profit Corporation Law requires the prior approval of the Public Health Council for the filing with the Secretary of State of any certificate of amendment, to a certificate of incorporation which required the prior approval of the Public Health Council pursuant to Article 28 of the Public Health Law, which changes or eliminates a purpose, power or provision which required such Public Health Council approval, or which changes the name of said corporation.

Upon review by Public Health Council staff, it has been determined that the certificate of amendment herein, executed on March 21, 1980, proposes to effect no such changes, and therefore does not require formal action by vote of a majority of the members of said Council at a regular meeting thereof.

Sincerely,

Marianne K. Adams
Executive Secretary

COUNCIL

JOSEPH R. FONTANETTA, M.D.
WILLIAM LEE FROST
MONTON P. HYMAN
JEANNE E. JONAS
MARIE MULLAUGHLIN, M.D.
HOWARD A. BUNK, M.D.
KENNETH K. WOODRIDGE, M.D.
COMMISSIONER OF HEALTH
DAVID A. CLEGG, M.D.

JOSEPH R. FONTANETTA, M.D.
WILLIAM LEE FROST
MONTON P. HYMAN
JEANNE E. JONAS
MARIE MULLAUGHLIN, M.D.
HOWARD A. BUNK, M.D.

HOWARD A. BUNK, M.D.
KENNETH K. WOODRIDGE, M.D.

COMMISSIONER OF HEALTH
DAVID A. CLEGG, M.D.

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W. J. P. King B

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Original Augustana Lutheran Home for the Aged, Inc.

CERTIFICATE OF AMENDMENT TO THE
CERTIFICATE OF INCORPORATION OF
AUGUSTANA LUTHERAN HOME FOR THE
AGED, INC., UNDER SECTION 803 OF
THE NOT-FOR-PROFIT CORPORATION
LAW.

Egert Diner 11/9/68 64-8750-7

Acorn 10/15/77

LA 43503-7

Dated March 21, 1980

King L.

REBECCA BRECHNER
Attorney for Augustana
Lutheran Home For the Aged,
Inc.,
110 West 40th Street
New York City, N Y 10018

485907

Not add 110 80-60 St. No.

11204

Tel.# 212 921-5459

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STATE OF NEW YORK
DEPARTMENT OF STATE
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CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION

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AUGUSTANA LUTHERAN HOME FOR THE AGED, INC.

under Section 803 of the Not-for-Profit Corporation Law.

IT IS HEREBY CERTIFIED THAT:

(1) The name of the Corporation is AUGUSTANA LUTHERAN HOME FOR THE AGED, INC. It was formed under the name AUGUSTANA LUTHERAN HOME FOR THE AGED, INC.

(2) The Corporation was formed pursuant to Section 11 of the Membership Corporations Law and Section 35 of the Social Services Law of the State of New York under the name AUGUSTANA LUTHERAN HOME FOR THE AGED, INC. by Certificate of Incorporation filed with the Department of State of the State of New York on January 9, 1968. By Certificate filed with the Department of State of the State of New York on March 11, 1971 the number of Directors of the Corporation were changed from sixteen (16) to fifteen (15). By Certificate of Type filed with the Department of State of the State of New York August 8, 1973 the Corporation defined itself as a Type B Not-for-Profit Corporation. By Certificate filed with the Department of State of the State of New York October 17, 1974 the Corporation amended its name to AUGUSTANA HOME FOR THE AGED and deleted the word "CHRISTIAN" from the purposes clause. By Certificate filed with the Department of State of the State of New York October 13, 1977 the Corporation changed its name to AUGUSTANA LUTHERAN HOME FOR THE AGED, INC. and inserted the word "CHRISTIAN" in its purposes clause thereby

reversing the Amendment filed on October 17, 1974. By Certificate filed with the Department of State of the State of New York on May 6, 1980 the Corporation added an additional article designated "EIGHTH" to the Certificate of Incorporation relating to the distribution of corporate assets on the dissolution of the Corporation.

(3) The Corporation is a Corporation as defined in Subparagraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law. The Corporation was not formed for pecuniary profit or financial gain and shall remain a Type B Corporation under Section 201 of the Not-for-Profit Corporation Law.

(4) The Certificate of Incorporation is amended:

a. To designate the Secretary of State as agent of the Corporation by adding the following paragraph:

Designation of Secretary of State and Corporate Address:

The Secretary of State is designated as the agent of the corporation upon whom process against it may be served and the post office address to which the Secretary of State shall mail a copy of process against the corporation served upon him is:

Augustana Lutheran Home for the Aged, Inc.
1680 60th Street
Brooklyn, New York 11204

b. Paragraph Second in the original Certificate of Incorporation to be amended provides as follows:

To own, maintain and operate a Christian institution for aged adults in the Borough of Brooklyn, in the City of New York, and to perform any other necessary services incidental to such operation; to purchase, lease, or otherwise acquire and hold real property, whether improved or unimproved, or any interest therein and to any amount; to build, own or lease and hold one or more buildings, and to purchase, lease or otherwise acquire and hold personal property for the purposes hereinabove stated; to solicit, collect and raise funds and receive donations in support of such institution and its program; and to participate in governmental programs for the support of such institutions for the elderly or for the persons residing therein at the discretion of the Board of Directors of the Corporation.

Said Paragraph in the original Certificate of Incorporation is hereby deleted and replaced by adding new Paragraph Second as follows:

"Second: The purposes for which the Corporation is formed and the business and objects to be carried on and promoted by it are as follows:

a. To provide a home for support of aged and infirm persons; provided however, that the corporation shall not establish or operate an adult care facility as defined in Social Services Law Section two, without the prior written approval of the New York State Department of Social Services.

3

b. To provide, on a non-profit basis Nursing Home Facilities and services for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, where no adequate housing exists for such groups, pursuant to Section 232 of the National Housing Act as amended.

c. The Corporation is empowered to do and perform all acts reasonably necessary to accomplish the purposes of the Corporation including the execution of a Regulatory Agreement with the Secretary of Housing and Urban Development acting by and through the Federal Housing Commissioner and through execution of a Regulatory Agreement with the New York State Medical Care Facilities Finance ~~Act~~ and such ~~and~~ and undertakings as may be necessary to ~~secure~~ the corporation secure the benefits of financing with the assistance of mortgage insurance under the provisions of the National Housing Act. Such Regulatory Agreements and other incidents and undertaking shall remain binding upon the Corporation, its successors and assigns, so long as the mortgage on the Corporation's property is insured or held by the Secretary of Housing and Urban Development.

d. The Corporation is irrevocably dedicated to and operated exclusively for, non-profit purposes and no part of the income or assets of the corporation shall be distributed to nor inure to the benefit of any individual.

e. In the event of the dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the Corporation's property shall not be conveyed to any

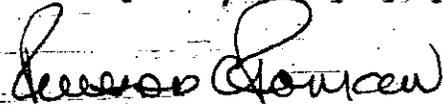
organizations created or operated for profit or to any individual for less than the fair market value of such property, and all assets remaining after the payment of the Corporation's debts shall be conveyed or distributed only to an organization or organizations created and operated for non-profit purposes similar to those of the Corporation: PROVIDED, however, that the Corporation shall at all times have the power to convey any or all of its property to the Secretary of Housing and Urban Development or his nominee.

f. So long as the mortgage on the Corporation's property is insured or held by the Secretary of Housing and Urban Development this article may not be amended without the prior written approval of said Secretary nor may Bylaws be amended or adopted inconsistent with provisions of this Article or the Regulatory Agreement between the Corporation and the Secretary of Housing and Urban Development and any Regulatory Agreement with the New York State Medical Care Facilities Finance Agency."

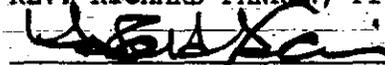
The undersigned have been authorized to execute and file this Certificate of Amendment by the unanimous vote of a majority of the members of said corporation present at an annual meeting of the Corporation held upon due notice pursuant to Section 605 of the Not-for-Profit Corporation Law as more fully appears by the affidavit of the undersigned Secretary of the Corporation hereto annexed.

IN WITNESS WHEREOF the undersigned have made,
subscribed and acknowledged this Amendment to the Certificate of

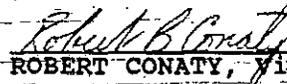
Incorporation, this 4th day of November, 1991 and affirm that the statements made herein are true under the penalties of perjury.



REV. RICHARD PANKOW, President



REV. HAROLD FRIES, Secretary



ROBERT CONATY, Vice President

STATE OF NEW YORK)

) ss.:

COUNTY OF KINGS)

On the 4th day of November, 1991, before me personally came REV. RICHARD PANKOW, REV. HAROLD FRIES and ROBERT CONATY each to me known and each being by me duly sworn depose and say:

That each resides respectively at 7424 4th Avenue, Brooklyn, New York, 939 83rd Street, New York and 234 Plateau Lane, Bedford,

New York and that REV. RICHARD PANKOW is the President of

AUGUSTANA LUTHERAN HOME FOR THE AGED, INC., REV. HAROLD FRIES is

the Secretary of said Corporation and ROBERT CONATY is the Vice

President of said Corporation which is the Corporation described

in and which executed the foregoing Certificate of Amendment;

that each knows the seal of said Corporation and that the seal

affixed to said instrument is such Corporate Seal, that it was so

affixed by Order of the Board of Directors of said Corporation

and that each signed their name thereto by like Order.


Notary Public

DIANE TELLA

Notary Public
New York

Commission Expires Dec. 31, 1992

6

APPROVAL BY A JUSTICE OF THE SUPREME COURT
OF
AMENDMENT TO CERTIFICATE OF INCORPORATION
OF
AUGUSTANA LUTHERAN HOME FOR THE AGED, INC.
A NOT-FOR-PROFIT CORPORATION

The undersigned, a Justice of the Supreme Court of the State of New York, County of Kings, Second Judicial District in which Judicial District is located the principal office of AUGUSTANA LUTHERAN HOME FOR THE AGED, INC. does hereby approve the foregoing Amendment to the Certificate of Incorporation of AUGUSTANA LUTHERAN HOME FOR THE AGED, INC. and consent to the filing thereof with the Secretary of State of the State of New York.

Dated:

JUN 5 P, 1992


JUSTICE OF THE SUPREME COURT
OF THE STATE OF NEW YORK

THE UNDERSIGNED HAS NO OBJECTION
TO THE GRANTING OF JUDICIAL
APPROVAL HEREON AND WAIVES
STATUTORY NOTICE.

ROBERT ABRAMS, ATTORNEY GEN.
STATE OF NEW YORK

By *Laura Werner*
April 8, 1992

ASSISTANT ATTORNEY GENERAL

7

STATE OF NEW YORK)
COUNT OF KINGS) ss:.

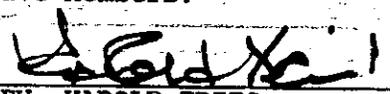
REV. HAROLD FRIES being duly sworn, deposes and says:

That he is the Secretary of AUGUSTANA LUTHERAN HOME FOR THE AGED, INC. the corporation described in the foregoing Certificate of Amendment;

That at meeting of the members of the Board of Directors of the Corporation, a quorum being present, held on ~~NOVEMBER 4~~ 1991 upon due notice on motion duly seconded;

All of the Directors of the corporation present in person or by proxy at said meeting unanimously approved the foregoing Certificate of Amendment and authorized REV. RICHARD PANKOW, President of the Board of Directors, ROBERT CONATY, Vice President and your deponent, REV. HAROLD FRIES, Secretary of the corporation to execute and file the foregoing Certificate.

The Corporation does not have Members.


REV. HAROLD FRIES

Sworn to before me this
4th day of NOVEMBER, 1991


Notary Public

DIANE TALLANT
Notary Public
Commission Expires Dec. 31, 1991

8



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNWALL TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

December 30, 1991

Thomas J. Ford, Esq.
Hahn, Hahn & Ford
105 Hillside Avenue
Williston Park, New York 11596-2389

Re: Augustana Lutheran Home for the Aged, Inc.

Dear Mr. Ford:

The certificate of amendment of the certificate of incorporation of the above referenced corporation does not require the approval of the Public Health Council for filing with the Department of State, since the certificate neither alters the corporation's purposes under Article 28 of the Public Health Law nor changes its name.

Sincerely,

Karen Westervelt
Executive Secretary

9

NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES
40 NORTH PEARL STREET, ALBANY, NEW YORK 12243-0001

MARY JO BANE
Commissioner



SUSAN V. DEMERS
Deputy Commissioner
and General Counsel

May 21, 1992

Thomas J. Ford, Esq.
Hahn, Hahn and Ford, Esqs.
10 South Hillside Avenue
Williston Park, NY 11596-2389

Re: Augustana Lutheran Home for the
Aged, Inc.

Dear Mr. Ford:

This is with respect to the proposed certificate of amendment of the above-named organization which was forwarded to this Department for review and/or approval. The certificate has been given careful consideration and I have the following comments.

You have advised me that this organization operates a nursing home and that it does not operate an adult care facility as defined in Social Services Law nor does it intend to do so in the future. Therefore, if you revise this certificate of amendment at paragraph second, subparagraph a. to read as follows, the certificate will not require the approval of this Department:

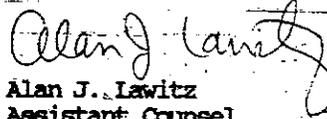
"Second: The purposes for which the Corporation is formed and the business and objects to be carried on and promoted by it are as follows:

- a. To provide a home for support of aged and infirm persons; provided, however, that the corporation shall not establish or operate an adult care facility as defined in Social Services Law Section two, without the prior written approval of the New York State Department of Social Services. (New matter is underlined.)

If you make the foregoing change, it will not be necessary for you to resubmit the proposed certificate to the Department.

This letter is not to be construed as an approval by the State Department of Social Services, or any Office of the Department, but only as a statement that no such approval is necessary for a certificate containing the above-recited language.

Very truly yours,



Alan J. Lawitz
Assistant Counsel
Bureau of Adult Services Law
(518) 474-9490

AJL:alm

cc: Peggi DeMidio



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PART 72

CERTIFICATE OF AMENDMENT OF THE CERTIFICATE OF INCORPORATION

OF

AUGUSTANA LUTHERAN HOME FOR THE AGED, INC.

Handwritten signature/initials

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STATE OF NEW YORK
DEPARTMENT OF STATE
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BY: KAP
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PART 72

HAHN, HAHN & FORD
ATTORNEYS AND COUNSELLORS AT LAW
PROFESSIONAL BUILDING
105 HILLSIDE AVENUE
WILLISTON PARK, N. Y. 11596 - 2389

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CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF INCORPORATION
OF

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AUGUSTANA LUTHERAN HOME FOR THE AGED, INC.

(under Section 803 of the Not-for-Profit
Corporation Law of the State of New York)

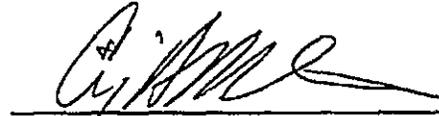
WE THE UNDERSIGNED, being the Chairperson and Secretary of Augustana Lutheran Home for the Aged, Inc., a New York State not-for-profit corporation, hereby certify and set forth:

- FIRST: The name of the Corporation is AUGUSTANA LUTHERAN HOME FOR THE AGED, INC. (hereinafter referred to as the "Corporation").
- SECOND: The original Certificate of Incorporation of the Corporation was filed in the office of the New York State Secretary of State on January 9, 1968 under Article 7 of the Law of the State of New York entitled "Membership Corporations Law," under the name Augustana Lutheran Home for the Aged, Inc.
- THIRD: The Corporation is a corporation as defined in subparagraph (a)(5) of the Not-for-Profit Corporation Law of the State of New York and is a Type corporation ✓ under Section 201 of said law and the Corporation shall remain a Type B corporation after this amendment is effectuated.
- FOURTH: Paragraph 1st of the Corporation's Certificate of Incorporation, which sets forth the name of the corporation, is hereby amended to read as follows:
"1st: The name of the corporation is Lutheran Augustana Center for Extended Care and Rehabilitation, Inc."
- FIFTH: This amendment to the Certificate of Incorporation of the Corporation, as amended, was unanimously approved on December 4, 2002 by vote of the Board of Directors of the Corporation.
- SIXTH: This amendment was unanimously approved on February 26, 2003 by a vote of the Board of Trustees of the sole Member of the Corporation.

SEVENTH: The Secretary of State is hereby designated as agent of the Corporation upon whom process may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him/her is 5434 Second Avenue, Brooklyn, New York 11220, Attn: Executive Director.

IN WITNESS WHEREOF, this Certificate has been signed this 26th day of February 2003, by the undersigned who affirm that the statements made herein are true under the penalties of perjury.


Howard Smith
Chairperson of the Board of Directors


Rev. Craig Miller
Secretary

2



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N Y. 12237

PUBLIC HEALTH COUNCIL

July 29, 2003

Mr. Dominic J. Lodato
Attorney at Law
8118 13th Avenue
Brooklyn, New York 11228

Re: Certificate of Amendment to the Certificate of Incorporation of Augustana Lutheran Home for the Aged, Inc.

Dear Mr. Lodato:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 25th day of July, 2003, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment to the Certificate of Incorporation of Augustana Lutheran Home for the Aged, Inc., hereafter to be known as Lutheran Augustana Center for Extended Care and Rehabilitation, Inc., dated February 26, 2003.

Sincerely,

Karen S. Westervelt
Executive Secretary

/md

F03081300609

CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF INCORPORATION
OF
AUGUSTANA LUTHERAN HOME FOR
THE AGED, INC.

DRAWDOWN

DOMINIC J. LODATO
Attorney at Law
8118 13th AVENUE
BROOKLYN, N.Y. 11228
(718) 680-0471
(718) 921-3286

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ENTITY NAME: LUTHERAN AUGUSTANA CENTER FOR EXTENDED CARE AND
REHABILITATION, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)
PROCESS PROVISIONS

COUNTY: KING

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FILED:08/27/2013 DURATION:***** CASH#:130827000121 FILM #:130827000111

FILER:

MANATT, PHELPS & PHILLIPS, LLP
7 TIMES SQUARE

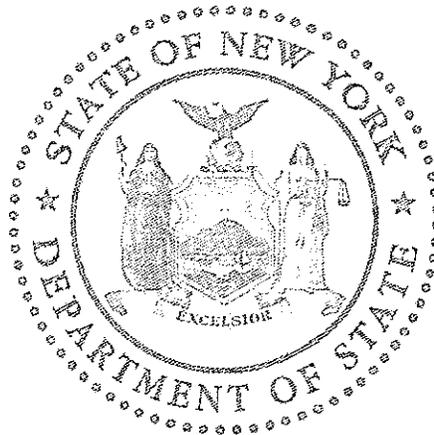
NEW YORK, NY 10036

ADDRESS FOR PROCESS:

THE CORPORATION
ATTN: EXECUTIVE DIRECTOR
BROOKLYN, NY 11220

5434 SECOND AVENUE

REGISTERED AGENT:



=====
SERVICE COMPANY: NATIONAL CORPORATE RESEARCH, LTD. - 26 SERVICE CODE: 26

FEEs	90.00	PAYMENTS	90.00
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COPIES	10.00	DRAWDOWN	90.00
HANDLING	50.00	OPAL	0.00
		REFUND	0.00

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on August 27, 2013.



Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

LUTHERAN AUGUSTANA CENTER FOR EXTENDED CARE
AND REHABILITATION, INC.

Under Section 803 of the Not-for-Profit Corporation Law of the State of New York

FIRST: The name of the corporation is Lutheran Augustana Center for Extended Care and Rehabilitation, Inc. (the "Corporation"). The name under which it was formed is Augustana Lutheran Home for the Aged, Inc.

SECOND: The date of filing of the Corporation's Certificate of Incorporation with the Department of State is January 9, 1968. The law under which the Corporation was formed is the Membership Corporations Law of the State of New York.

THIRD: The Corporation is a corporation as defined in Section 102(a)(5) of the New York Not-for-Profit Corporation Law (the "N-PCL"). The Corporation is a Type B corporation under Section 201 of the N-PCL. The Corporation shall remain a Type B Corporation under Section 201 of said law.

FOURTH: The Corporation's Certificate of Incorporation is hereby amended as follows.

(a) Paragraph Second (e), which addresses the distribution of the Corporation's assets upon its dissolution, is hereby amended to read in its entirety as follows:

"(e) In the event of the dissolution of the Corporation or the winding up of its affairs, or other liquidation of its assets, the board of directors shall, after (i) paying all of the liabilities of the Corporation exclusively from assets and properties of the Corporation or (ii) making provision for the payment of all of the liabilities of the Corporation exclusively from assets and properties of the Corporation, shall distribute all of the assets of the Corporation to (i) Lutheran Medical Center if Lutheran Medical Center is then tax-exempt under Internal Revenue Code Section 501(c)(3) or (ii) if Lutheran Medical Center is not then so tax-exempt, then to other not-for-profit organizations that are then so tax-exempt, as selected by the Board of Directors in its discretion, subject to the laws of the State of New York; provided, however, that the Corporation shall at all times have the power to convey any or all of its property to the Secretary of Housing and Urban Development, exclusively for a public purpose."

(b) Paragraph Eighth, as added by Section 5 of the Certificate of Amendment to the Corporation's Certificate of Incorporation that was filed with the Department of State on May 6, 1980, and which reads as set forth below, is hereby deleted because it is potentially inconsistent with Article 2(e) of the Corporation's Certificate of Incorporation:

"EIGHTH: In the event of dissolution, all of the remaining assets and property of the corporation shall after necessary expenses thereof be distributed to the Metropolitan New York Synod, Lutheran Church in America or its successor in interest provided that the Metropolitan New York Synod, Lutheran Church in America or its successor in interest is an organization which is exempt under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or if neither the Metropolitan New York Synod, Lutheran Church in America or its successor in interest is exempt under said 501(c)(3) as amended, then to such organization as shall so Qualify under said 501(c)(3) as amended, or to another organization to be used in such manner as in the judgment of a Justice of the Supreme Court of the State of New York will best accomplish the general purposes for which this corporation was formed."

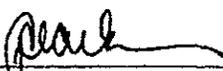
FIFTH: In accordance with Section 802(a)(1) of the N-PCL, this Certificate of Amendment was authorized by Lutheran Medical Center, the sole member of the Corporation, acting for such purposes at a duly called meeting of the Executive Committee of the Lutheran Medical Center Board of Trustees that was held on July 24, 2013. Approval was by the unanimous vote of the Trustees present at such meeting of the Executive Committee, and a quorum being present at all times.

SIXTH: The Secretary of State is designated as the agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

The Corporation
5434 Second Avenue
Brooklyn, NY 11220
Attn: Executive Director

SEVENTH: As required by Article 2(f) of the Corporation's Certificate of Incorporation, the consent of the Secretary of Housing and Development to this Certificate of Amendment is annexed hereto.

IN WITNESS WHEREOF, I have signed this certificate and hereby affirm it as true under penalties of perjury this 26th day of August, 2013.



Name: Jeanne Lee
Title: Executive Director



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

OFFICE OF HOUSING

August 22, 2013

Ms. Barbara Arky
Executive Vice President and General Counsel
Lutheran HealthCare
150 55th Street
Brooklyn, NY 11220

Re: Lutheran Augustana Center for Extended Care and Rehabilitation
FHA Project Nos. 012-43138 and 012-10027

Dear Ms. Arky:

This letter is in response to Lutheran Augustana Center for Extended Care and Rehabilitation's ("Augustana") request for HUD consent to the Amendment of the Certificate of Incorporation of Augustana ("ACOI"). The attached ACOI amends the dissolution clause to the extent necessary to bring it into full technical compliance with the provisions of the Internal Revenue Code as they relate to tax-exempt § 501(c)(3) organizations.

The Department of Housing and Urban Development hereby consents to Augustana's request to amend its Certificate of Incorporation. Please provide this office and the FHA lender with a certified copy of the ACOI after it has been filed with the New York State Secretary of State's Office.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela B. Collier".

Angela B. Collier
Workload Manager
Office of Healthcare Programs

cc: Jeanne Lee, Augustana
David Perry, Century Health Capital, Inc.
Ellen A. Dickason, HUD OHP
Jaehoon Chung, HUD OGC

NCR-26

130827000 III

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF

LUTHERAN AUGUSTANA CENTER FOR EXTENDED CARE AND REHABILITATION, INC.

UNDER SECTION 803 OF THE
NOT-FOR-PROFIT CORPORATION LAW

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DEPARTMENT OF STATE
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Manatt, Phelps & Phillips, LLP
7 Times Square
New York, NY 10036

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**LUTHERAN AUGUSTANA CENTER FOR EXTENDED CARE AND
REHABILITATION, INC.
BY-LAWS**

ARTICLE I NAME, SEAL AND OFFICES

Section 1. Name. The name of this Corporation is LUTHERAN AUGUSTANA CENTER FOR EXTENDED CARE AND REHABILITATION, INC., a New York Not-For-Profit Corporation, hereinafter referred to as the “Corporation.”

Section 2. Principal Office. The principal place of business of the Corporation shall be located at 5434 Second Avenue, Brooklyn, New York, 11220. The Corporation’s principal place of business may be changed from time to time by action of the Board of Directors of the Corporation (the “Board”).

Section 3. Seal. The Board may, at its pleasure, obtain a seal for the Corporation which may be in whatever form is desired by the Board.

ARTICLE II PURPOSES

Section 1. Purpose. To own, maintain and operate an institution for persons in need of long-term care or rehabilitation in the Borough of Brooklyn, in the City of New York, and to perform any other necessary services incidental to such operation.

Section 2. Mission. The Corporation exists to serve its neighbors. It is dedicated to caring for whole persons and providing a full range of services focusing on an individual’s physical, emotional, spiritual, intellectual and social well-being.

ARTICLE III MEMBERSHIP

Section 1. Qualification. The sole member of the Corporation shall be NYU Langone Health System (the “Member”). Unless the Member’s By-Laws otherwise require, the board of trustees of the Member shall exercise the Member’s membership rights and obligations.

Section 2. Meetings. There shall be an annual meeting of the Member, which shall be held on such date and at such time and place as are designated by Member. Special meetings of the Member may be called at any time by the Member or by the Chairperson of the Corporation or the Secretary upon the written request of a majority of the entire number of directors of the Corporation.

Section 3. Action by the Member Without a Meeting. Whenever under provision of law, the Certificate of Incorporation or these By-Laws, the Member is required or permitted to take action by vote, such action may be taken without a meeting, upon the consent of the Member, which consent shall set forth the action so taken. Such consent may be written or electronic. If written, the consent must be executed by the Member or the Member’s authorized corporate officer, director, employee or agent by signing such consent or causing his signature to be affixed to such waiver by any reasonable means including but not limited to facsimile signature. If electronic, the transmission of the consent must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the transmission was authorized by the Member. Consent thus given by the Member shall have the same effect as a unanimous vote of Members, and any certificate with respect to authorization or

taking of any such action that is delivered to the Department of State of the State of New York shall recite that the authorization was by unanimous written or electronic consent.

ARTICLE IV BOARD OF DIRECTORS

Section 1. Powers and Duties. The Board shall manage and control the affairs and property of the Corporation. All corporate powers, except such as are otherwise provided for in the Certificate of Incorporation, these By-Laws, or the laws of the State of New York, shall be and hereby are vested in and shall be exercised by the Board. The Board may, except as otherwise provided by the laws of the State of New York, delegate to committees of its own number, or to officers of the Corporation, such powers as it may see fit.

Section 2. Number and Election; Qualifications; Term of Office.

(a) The Board shall consist of at least fifteen (15) members, one of whom shall be the Chief Executive Officer of the Member or his designee. The number of directors may be fixed from time to time by the Member. No decrease in the number of directors shall serve to diminish the term of any director then in office. The directors shall be elected at the annual meeting of the Member. A vacancy on the Board arising at any time and from any cause may be filled by the Member.

(b) Directors shall be elected for a term of three (3) years by the Member at its Annual Meeting. Each director shall hold office until his or her successor shall have been elected and qualified or until his or her death, resignation or removal. The election of directors shall be so arranged that approximately one-third (1/3) thereof are elected each year. Terms of directors will begin the first meeting after the Annual Meeting.

(c) The Bishop of the Metropolitan New York Synod, or his/her duly appointed representative, shall be an honorary member of the Board with the privilege of voice but not vote.

(d) **Quorum.** Except as otherwise required by applicable law or these By-Laws, the quorum shall be as follows: (i) if the Member has fixed the size of the board at 15 or less the quorum shall be one-third (1/3) of the entire number of directors and (ii) if the Member has fixed the size of the board at more than fifteen (15) the quorum shall be five directors plus one additional director for every ten directors (or fraction thereof) in excess of fifteen (15). If a quorum is not present, a majority of the directors present may adjourn the meeting, from time to time, without notice other than announcement at the meeting, until such a quorum is present.

(e) **Removal.** A director may be removed with or without cause, at any time, by the Member. Any director may be removed, with cause, by a majority vote of the directors then in office, provided there is a quorum of not less than a majority present at the meeting of directors at which such action is taken.

(f) **Resignation.** Any director may resign at any time by giving written notice of such resignation to the Chairperson of the Corporation.

Section 3. Compensation. No member of the Board of Directors shall receive compensation for their services as such; except that directors shall be allowed reimbursement for reasonable expenses actually incurred, on resolution of the Board.

Section 4. Honorary Directors. The Board of Directors may from time to time select a former director to be designated as an Honorary Director. Such designation shall entitle the person to attend all meetings of the Board, but no voting privileges shall be conferred thereby.

ARTICLE V MEETINGS

Section 1. Meetings of the Board of Directors. Meetings of the Board of Directors, annual, regular or special, may be held at any place within or without the State of New York as may be fixed by the Board of Directors from time to time or as shall be specified in the respective notice or waivers of notice thereof. The Board of Directors may fix times and places for regular meetings of the Board of Directors and no notice of such meetings need be given. Special meetings of the Board of Directors may be called at any time as determined by the Board of Directors. A special meeting of the Board may be called at any time by the Chairperson and shall be called by the Chairperson upon written request of any four (4) members of the Board. In the case of a special meeting, the purpose or purposes for which the meeting is called shall be stated in the notice of the meeting. The notice shall be given in such time as is practicable under the circumstances.

Notice of a meeting need not be given to a director or alternate director who submits a waiver of notice, in signed writing, via facsimile with a facsimile signature, or via electronic mail, whether before or after the meeting; who orally waives notice at the meeting; or who attends a meeting, in person or by proxy, without protesting lack of due notice. A notice or waiver of notice need not specify the purpose of any regular or special meeting of the Board of Directors.

A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. Notice of any adjournment of a meeting of the Board of Directors to another time or place shall be given to the directors who were not present at the time of the adjournment and, unless such time and place are announced at the meeting, to the other directors.

Section 2. Action of the Board. The action of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as otherwise provided by applicable law or these By-Laws. Any member of the Board may participate in a meeting thereof by means of a conference telephone or similar device by which all persons can hear all other persons participating in the meeting at the same time. Any Board action may be taken without a meeting if all members of the Board consent in writing.

Section 3. Adjournment. At any meeting of the Board, whether or not a quorum is present, a majority of the directors present may adjourn the meeting to another time and place without further notice to any absent director. At any such adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 4. Organization. At all meetings of the Board, the Chairperson of the Corporation, or, in his or her absence, the Vice-Chair, if one has been elected, shall preside. The Secretary shall act as secretary at all meetings of the Board. In the absence of the Secretary, the presiding officer shall appoint any person to act as secretary of the meeting.

Section 5. Minutes of Meetings. All actions of the Board of Directors shall be recorded in minutes of the meeting or in an action by written consent. Such minutes or actions by written consent shall be maintained in the books and records of the Corporation and sent to the members of the Board.

ARTICLE VI OFFICERS

Section 1. The officers of the Corporation shall be Chairperson, Vice-Chairperson for Operations, who shall be the Chief Executive Officer of the Member or his designee as the Vice-Chairperson for Operations, Vice-Chairperson, Secretary and Treasurer.

Section 2. The Board shall elect the following officers of the Board at its Annual Meeting, each for a term of one (1) year and until his/her successor is elected: Chairperson, Vice-Chairperson for Operations, Vice-Chairperson, Secretary and Treasurer.

(a) The Chairperson shall be the head of the Corporation, who shall call and preside at all meetings of the Board and shall execute in the name of the Corporation as authorized by the Board. No employee of the Corporation shall serve as Chairperson of the Board.

(b) The Vice-Chairperson for Operations as a member of and on behalf of the Board shall exercise general supervision of the affairs of the Corporation. The Vice-Chairperson for Operations shall report the general standing of the Corporation and all pertinent facts affecting the Corporation to the Board of Directors and at the Annual Meeting of the Corporation.

(c) The Vice-Chairperson shall perform the duties of the Chairperson at the request of the Chairperson or in his/her absence or in the event of his/her death or in the event of his/her incapacity to serve, such incapacity to be determined by the Board.

(d) The Secretary shall give due notice of all meetings of the Board, keep accurate records of the proceedings there at and in other respects perform the duties pertaining to that office.

(e) The Treasurer shall be responsible for all the financial affairs of the Corporation and shall make regular financial reports to the Board. The Treasurer shall report in writing to the Board of Directors regarding the financial condition of the Corporation, and all other reports required by N-PCL § 172-b in appropriate detail. These reports shall be filed with the minutes of the meeting of the Board. The financial records of the Corporation shall be audited at least annually by a Certified Public Accountant, who shall not be a member of the Board.

(f) The Executive Director shall be duly licensed as a Nursing Home Administrator by the State of New York, appointed by the Board and directly responsible to the Vice-Chairperson for Operations. The job description, term of office and compensation shall be defined by the Board and by such rules, regulations, and stated proceedings as shall be necessary to insure the proper functioning of the Corporation. He/She shall serve as advisor to the Board and its committees. The staff shall be employed and supervised by the Executive Director or by those to whom he/she delegates this responsibility. Personnel policies and salary scales shall be submitted to the Board by the Executive Director for their approval before implementation.

ARTICLE VII INDEMNIFICATION

Subject to the provisions of Article XVII, the Corporation shall indemnify each director and officer to the fullest extent permitted by applicable law. Such indemnification shall include the advancement of expenses. Directors and officers of the Corporation so indemnified shall include every director and officer thereof or former director and officer thereof. The right of indemnification herein provided for shall be in addition to any and all rights to which any director or officer of the Corporation otherwise might be entitled, and the provisions hereof shall neither impair nor adversely affect such rights.

ARTICLE VIII MEDICAL SERVICES

Section 1. There shall be a Medical Staff appointed by the Board of Directors.

Section 2. The duties of the Medical Staff shall be to develop and implement medical policies; to be responsible for the overall health-care program in accordance with standards determined by appropriate professional and governmental health-care regulatory agencies and to advise the Board of Directors on patient care, medical and related matters.

Section 3. The Board of Directors shall appoint a New York licensed physician as Medical Director.

Section 4. The duties of the Medical Director shall include direction and supervision of the Health and Medical Care Program, development of medical policies, By-Laws, Rules and Regulations and a Medical Staff Table of Organization, provisions for staff appointment and privileges, scheduling of Medical Staff meetings, provisions for initial and periodic resident examinations, establish and implement procedures that meet medical record requirements, provide for consultants and specialists and the establishment of qualifications for paramedical personnel. The Medical Director shall be an advisory member of the Board of Directors.

ARTICLE IX VOLUNTEER ORGANIZATIONS

Section 1. The Board of Directors is authorized to designate one or more volunteer organizations (auxiliaries) for the Corporation and to provide for such an organization to be an integral part of the corporation.

Section 2. The designated organization may perform Corporation related services, conduct fund raising activities, conduct community service projects, enter into contracts as

approved by the Chairperson, and carry on such other activities necessary to accomplish its purpose as approved by the Board of Directors.

Section 3. The designated organization may establish bank accounts. Any such accounts opened must be authorized by the Board of Directors. The Corporation's Treasurer may delegate to elected officers of the volunteer organization (auxiliary) the authority to disburse funds on behalf of the organization. Funds disbursed for the benefit of the Corporation must have the prior approval of the Executive Director.

Section 4. The designated organization shall file annually with the Board of Directors an audited financial statement, a report of the organization's activities during the past year, and a report of proposed activities for the coming year. These reports must be filed within sixty (60) days of the closer of the Corporation's Fiscal Year.

ARTICLE X COMMITTEES OF THE BOARD OF DIRECTORS

Section 1. Standing Committees and Special Committees. Committees of the Board of Directors shall be standing or special. Standing Committees shall be an Executive Committee, a Finance Committee, an Audit and Legal Committee, a Mission and Spiritual Care Committee, a Quality Assurance Committee, and a Nominations Committee. The Board shall appoint the members of all Standing Committees and the Chair shall appoint their chairs. The Chair may appoint the members of Special Committees. No Committee shall have less than three (3) members of the Board. A quorum for the transaction of business of any Committee shall consist of a majority of the members of such Committee. Where a committee has been formed or designated to deliberate issues affecting the discharge of medical staff responsibilities, that committee shall include medical staff members as observers. To the extent provided in the resolution creating the Committees, or as set forth below, the Committees shall have the authority of the Board as provided, except that no such Committee shall have authority as to the following matters: (i) submission to the Member of any action requiring Member's approval under the N-PCL; (ii) filling vacancies in any committee; (iii) amending or repealing the By-Laws or adoption of new By-Laws; and (iv) amending or repealing any resolution of the Board of Directors which by its terms shall not be so amended or repealed.

Section 2. Executive Committee. The Executive Committee shall consist of Chairperson, Vice-Chairperson for Operations, Vice-Chairperson, Secretary and Treasurer of the Board of Directors.

The Executive Committee shall have power to transact all regular business of the Corporation during the interim between the meetings of the Board of Directors provided any action taken shall not conflict with the policies of the Board of Directors, and that it shall report its proceedings to the Board of Directors. It shall be the further duty of the Executive Committee to examine the monthly financial reports. It will also evaluate the performance and salary of the Executive Director on an annual basis.

Section 3. Finance Committee. The Finance Committee shall be composed of a minimum of three (3) members of the Board and shall include the Treasurer. It shall be responsible for the management of all endowment and trust funds of the Corporation. It shall

provide for receiving prompt reports of investments and for seeing that income, after deductions of legitimate expense, is paid into the proper fund of the Corporation, and that both principal and income of any trusts are used in accordance with the terms of such trusts. It shall cause to be prepared and submitted to the Executive Committee in time for review and presentation to the Board of Directors at its last meeting before the end of the fiscal year, a budget showing the expected receipts and income and expense for the ensuing year. It shall submit an annual audit prepared by a Certified Public Accountant to the Board of Directors each year.

Section 4. Audit and Legal Committee. The Audit and Legal Committee shall be composed of a minimum of three (3) independent members of the Board who have no financial relationship, direct or indirect, with the Corporation, and the President and Chief Operating Officer of the Corporation shall not be an ex officio member of the Audit and Legal Committee. The Committee shall: (i) recommend the persons or firm the Corporation should employ as its independent auditors; (ii) consult with the Corporation's independent auditors as to the plan of audit; (iii) review with the independent auditors the results of the audit; (iv) consult periodically with the independent auditors as to the adequacy of the Corporation's and the Board's internal controls; and (v) have responsibility for the functions set forth under N-PCL § 712-a.

Section 5. Quality Assurance Committee. The Quality Assurance Committee shall consist of at least seven (7) members or such other number as may be required from time to time by regulatory requirements. The Committee shall include at least one (1) member of the Board of Directors, the Executive Director, the Director of Nursing Services and one (1) physician. The Committee shall act in an advisory capacity to the Board on matters pertaining to the assessment and assurance of quality care and services to residents. The Committee shall meet at least quarterly and shall report its findings and recommendations to the Board of Directors no less often than quarterly.

Section 6. Nominating Committee. The Nominating Committee shall be composed of a minimum of three (3) members, all of whom shall be members of the Board of Directors. The Chairperson of the Board of Directors shall be the Chair of the Nominating Committee. The members of the Nominating Committee shall be appointed jointly by the Chairperson of the Board of Directors and the Chairperson of the Member. The Nominating Committee shall nominate candidates both for election as members of the Board of Directors and for election as officers of the Board of Directors.

Section 7. Mission Committee. The Mission Committee shall be composed of a minimum of three (3) members. The Committee shall be responsible for working with the Executive Director and submitting recommendations to the Board about policies and programs affecting cultural competence, spiritual care and mission-related activities of the Corporation.

ARTICLE XI AGENTS AND REPRESENTATIVES

The Board may appoint such agents and representatives of the Corporation with such powers and to perform such acts or duties on behalf of the Corporation as the Board may see fit, so far as may be consistent with these By-Laws, and to the extent authorized or permitted by law.

ARTICLE XII CONTRACTS; LOANS; BANKS ACCOUNTS; INVESTMENTS; GIFTS

Section 1. Contracts. The Board, except as otherwise provided in these By-Laws, may authorize any officer or agent to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to a specific instance. Unless authorized by the Board pursuant to this Article X, Section 1, no trustee, officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement, or to pledge its credit, or render it liable pecuniarily, for any purpose or to any amount.

Section 2. Loans. The Corporation shall be allowed to borrow money, whether by issuing notes, bonds or otherwise, upon authorization from the Board.

Section 3. Banks; Checks. The Board shall from time to time and as necessary select such banks or depositories as it shall deem proper for the funds of the Corporation. The Board shall determine who shall be authorized from time to time on the Corporation's behalf to sign checks, drafts or other orders for the payment of money.

Section 4. Investments. The funds of the Corporation may be retained in whole or in part in cash, or may be invested and reinvested from time to time in such property, real, personal or otherwise, or stocks, bonds or other securities.

Section 5. Gifts. The Corporation may accept funds that are given, granted, bequeathed or devised to or otherwise vested in the Corporation for a specific purpose. The Board shall apply all such funds only to such purposes as may be specified in the gift instrument and to the payment of the reasonable and proper expenses of the administration of such funds. The Board shall cause accurate accounts to be kept of such funds separate and apart from the accounts of other assets of the Corporation.

Section 6. Books and Records Generally. The Corporation shall maintain at its principal office such books and records as are necessary for it to comply with all applicable financial reporting, legal and regulatory requirements and to properly carry out its mission and purposes.

Section 7. Policies Relating to Books and Records. The Board shall adopt appropriate policies pertaining to the Corporation's books and records, including record retention and disposition policies, gift administration policies and confidentiality policies.

ARTICLE XIII CONFLICT OF INTERESTS

Section 1. Policy and Procedures. The Board of Directors shall adopt and maintain a conflict of interest policy (the "COI Policy") that complies with applicable New York State law and Internal Revenue Service requirements for Section 501(c)(3) organizations, and that adheres to requirements of N-PCL §§ 715-a–715-b, prohibiting transactions that create conflicts of interest on the part of directors, officers and an employee of the Corporation with substantial influence over the affairs of the Corporation and who is notified of such status by the Corporation ("key employees"), with the interests of the Corporation and the fiduciary and corporate responsibilities of the directors, officers, and key employees. The COI Policy shall be

reviewed at least every three (3) years and updated to reflect evolving practices and law in the area.

ARTICLE XIV DISSOLUTION

In the event of dissolution, all of the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to the Member or its successor in interest provided that the Member or its successor in interest is an organization which is exempt under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, or if neither the corporate member nor its successor in interest is exempt under said 501(c)(3) as amended, then to such organization as shall so qualify under said 501(c)(3) as amended, to be used in such manner as in the judgment of a Justice of the Supreme Court of the State of New York will best accomplish the general purposes for which this Corporation was formed.

ARTICLE XV PROCEDURE

Robert's Rules of Order, latest edition, shall be the governing parliamentary law of the Board of Directors and Committees.

ARTICLE XVI AMENDMENTS

Section 1. The Member shall have the power to add to, amend and/or repeal these By-Laws as may be necessary, provided they are not in conflict with the purposes of this Corporation as expressed herein.

Section 2. Amendments, additions to or repealing of any part of these By-Laws may be proposed in writing to the Board at any meeting of the Board, provided notice of such proposed changes has been sent to the directors at least two (2) weeks prior to such meeting. To become effective, such changes shall require a two-thirds (2/3) affirmative vote of those present at the meeting and thereafter ratification by the Member.

ARTICLE XVII

The following provisions are included in these By-Laws and shall automatically terminate at such time as the Corporation's mortgage loan is no longer insured or held by the federal Department of Housing and Urban Development ("HUD")

Section 1. If any of the provisions of these By-Laws or the Corporation's Certificate of Incorporation conflict with the terms of the HUD-insured Note, mortgage, deed of trust, security deed, security agreement or HUD Regulatory Agreement ("HUD Loan Documents"), the provisions of the HUD Loan Documents shall control.

Section 2. So long as HUD is the insurer or holder of the Note, no provision required by HUD to be inserted into these By-Laws or the Corporation's Certificate of Incorporation may be amended without HUD's prior written approval.

Section 3. None of the following will have any force or effect without the prior written consent of HUD:

- (a) Any amendment that modifies the term of the Corporation;
- (b) Any amendment that activates the requirement that a HUD previous participation certification be obtained from any additional person or entity;
- (c) Any amendment that affects the HUD Loan Documents;
- (d) Any amendment that would authorize any officer or director, other than those previously authorized by HUD, to bind the Corporation for all matters concerning the Project which require HUD's consent or approval;
- (e) Any change in the manager/general partner or pre-approved manager of the Corporation; or
- (f) Any change in a guarantor of any obligation of HUD.

Section 4. Any person or entity must, as a condition of acquiring an ownership interest in the Corporation, agree to be bound by the HUD Loan Documents and all other documents required in connection with the HUD-insured loan to the same extent and on the same terms as the Corporation.

Section 5. Notwithstanding any other provisions, upon any dissolution, no title or right to possession and control of the Project, and no right to collect the rents from the Project, shall pass to any person or entity that is not bound by the Regulatory Agreement in a manner satisfactory to HUD.

Section 6. Each of the officers and directors (or, if applicable, any subsequent individual member or partner) shall be liable in his/her individual capacity to HUD for:

- (a) Funds or property of the Project coming into his/her possession, which by the provisions of the Regulatory Agreement, the person is not entitled to retain;
- (b) His/her own acts and deeds, or acts and deeds of others which he or she has authorized, in violation of the provisions of the Regulatory Agreement;
- (c) The acts and deeds of affiliates, as defined in the Regulatory Agreement, which the individual has authorized in violation of the provisions of the Regulatory Agreement; and
- (d) As otherwise provided by law. The Corporation shall not voluntarily be dissolved or converted to another form of entity without the prior written approval of HUD.

Section 7. The Corporation has designated its Executive Director as its official representative for all matters concerning the Project that require HUD consent or approval. The signature of the Executive Director shall bind the Corporation in all such matters. The Corporation may from time to time appoint a new representative to perform this function, but within three (3) business days of doing so, will provide HUD with written notification of the name of that person and the nature of that person's management authority.

Section 8. Unless otherwise approved in writing by HUD, (i) the Corporation's business and purpose shall consist solely of the acquisition, ownership, operation and maintenance of the project FHA Project No. 012-43138 (the "Project") located in Brooklyn, NY, and activities incidental thereto; (ii) the Corporation shall not engage in any other business or activity; and (iii) the Project shall be the sole asset of the Corporation, which shall not own any other real estate other than the Project.

Section 9. Notwithstanding any provision in these By-Laws or the Corporation's Certificate of Incorporation to the contrary, for so long as the Project is subject to a loan insured by HUD, any obligation of the Corporation to provide indemnification to its officer and directors hereunder shall be limited to (i) proceeds under any liability insurance carried by the Corporation and (ii) distributions of residual receipts or other funds approved by HUD.

ADOPTED: November 22, 1993

AMENDED: January 12, 1998

May 11, 1998

September 13, 1999

March 20, 2013

September 18, 2013

January 1, 2016



April 11, 2018

Shawn Dudley
Health Systems Specialist 4/ Survey Manager
New York State Department of Health
Office of Primary Care and Health Systems Management
Nursing Home Surveillance/ MARO
90 Church Street
New York, NY 10007

BY HAND DELIVERY

RE: Submission of Documents for Closure of Lutheran Augustana Center for Extended Care and Rehabilitation (Op Cert 7001313N)

Ms. Dudley:

Pursuant to your email of March 28, 2018, enclosed please find the following documents to finalize the closure of Lutheran Augustana Center for Extended Care and Rehabilitation:

- Final Resident Disposition Roster
- Original copy of the Operating Certificate
- Copy of the completed 855A

Please also find an additional copy of the documents which are included with the originals delivered to MARO. An electronic copy of the document will also be sent to Shelly Glock, Antoinette Herman and for internal distribution at NYU Langone Health.

Please let me know if you have any questions.

Again, thank you for your ongoing guidance and support during the implementation of the Closure Plan.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeanne Lee", with a long, sweeping underline.

Jeanne Lee
Vice President/Senior Administrator
Senior Care, Home Care, Neurology & Rehabilitation

Cc: Shelly Glock, NYSDOH
Antoinette Herman, NYSDOH
Maxine Simon, NYU Langone Health



Exhibit K: Resident Discharge Tracking

Lutheran Augustana Center - As of 04-10-2018

Line #	Resident's Initials	Room #	Last Name	First Name	Dates of Resident Notification	Date of Family Notification	Name of Accepting Facility	Date of Transfer	Mode of Transportation
99	MP	510P	Payne	Mary	12/8/2017	12/8/2017	Carmel Richmond	4/10/2018	Ambulette
85	JM	503B	Majchrzak	Jaroslav	12/8/2017	12/8/2017	Boro Park	3/29/2018	Ambulette
76	CL	509B	Levy	Carol	12/8/2017	12/8/2017	Discharge home	3/28/2018	Ambulette
23	XC	521A	Chen	Xichang	12/8/2017	12/8/2017	Discharge home	3/23/2018	Ambulette
6	MB	513P	Baer	Margery	12/8/2017	12/8/2017	The Jewish Home of	3/22/2018	Ambulette
68	MWL	516B	Lam	Mou Wan	12/8/2017	12/8/2017	Discharge home	3/16/2018	Ambulette
88	LM	503A	McDonald	Lawrence	12/8/2017	12/8/2017	Menorah	3/16/2018	Ambulette
49	VG	502B	Glowacki	Veronica	12/8/2017	12/8/2017	Kings Adult Care Center	3/15/2018	Ambulette
117	SS	520B	Sampoll	Santos	12/8/2017	12/8/2017	Seagate	3/15/2018	Ambulette
142	MV	304A	Vega	Migdalia	N/A	12/8/2017	Expired	3/12/2018	N/A
2	AA	502A	Allen	Arlene	12/8/2017	12/8/2017	Hillside Manor	3/9/2018	Ambulance
11	AB	504B	Bradica	Ana	12/8/2017	12/8/2017	Cobble Hill	3/6/2018	Ambulette
72	SL	519A	Lee	So	12/8/2017	12/8/2017	Sheepshead	3/5/2018	Ambulette
90	DM	513P	Minis	Daniel	12/8/2017	12/8/2017	Carmel Richmond	3/5/2018	Car
32	JD	312P	Dicostanzo	James	N/A	12/8/2017	Hospital Transfer	3/1/2018	N/A
65	HYK	507A	Kyan	Hpan Yaing	12/8/2017	12/8/2017	Boro Park	3/1/2018	Ambulance
137	SV	514A	Vargas	Serafina	12/8/2017	12/8/2017	Concord	2/28/2018	Ambulance
67	LL	304B	Lacewell	Linda	N/A	12/8/2017	Concord	2/21/2018	Ambulance
132	AT	522B	Torres	Aura	12/8/2017	12/8/2017	Menorah	2/21/2018	Ambulette
42	JF	316B	Fenner	Joann	12/8/2017	12/8/2017	Home w/ Hc	2/16/2018	Ambulance
79	RHL	308B	Liu	Ri Hui	12/8/2017	12/8/2017	Hospital Transfer	2/16/2018	N/A
112	MR	514B	Rivera	Milagros	12/8/2017	12/8/2017	Eger	2/16/2018	Ambulette
77	BL	309A	Licht	Bela	N/A	12/8/2017	Vanderbilt	2/15/2018	Ambulance
8	JB	320A	Bell	John	12/8/2017	12/8/2017	Discharge home	2/9/2018	Ambulette
92	LMC	301A	Mora Cedeno	Luis	12/8/2017	12/8/2017	Concord	2/9/2018	Ambulette
149	YY	319B	Yu	Yiu Chong	12/8/2017	12/8/2017	Discharge home	2/9/2018	Car
16	JC	317A	Caiozzo	James	12/8/2017	12/8/2017	Gouverneur NH	2/8/2018	Ambulette
22	SC	303A	Chen	Sheng	12/8/2017	12/8/2017	Palm Gardens	2/8/2018	Ambulance
61	RJ	506B	Joudeh	Radwan	12/8/2017	12/8/2017	Hamilton Park	2/8/2018	Ambulette
33	AD	320B	Dimino	Anthony	12/8/2017	12/8/2017	Discharge home	2/7/2018	Car
5	SA	510P	Arroyo	Santos	12/8/2017	12/8/2017	Eger	2/6/2018	Ambulette
138	MV	314A	Vasquez	Maria	12/8/2017	12/8/2017	Discharge home	2/3/2018	Ambulance
13	MB	501B	Brophy	Mary	12/8/2017	12/8/2017	Norwegian	2/2/2018	Ambulance
18	GC	520A	Casale	Greta	12/8/2017	12/8/2017	Norwegian	2/2/2018	Ambulance
123	GS	518A	Sina	Gitla	12/8/2017	12/8/2017	Menorah	2/2/2018	Ambulance
135	TF	310P	Togade	Florentino	N/A	12/8/2017	New Vanderbilt	2/2/2018	Ambulance
62	YJB	515A	Joyce Bristol	Yvette	12/8/2017	12/8/2017	Hospital Transfer	2/1/2018	N/A
57	NH	321A	Hun	Nicasio	12/8/2017	12/8/2017	Seagate	1/31/2018	Ambulette
56	VH	504A	Hopkins	Virginia	12/8/2017	12/8/2017	St Joachim	1/30/2018	
15	ZC	314B	Cai	Zuoling	N/A	N/A	Hospital Transfer	1/26/2018	N/A
36	JD	517A	Durkin	John	12/8/2017	12/8/2017	Carmel Richmond	1/26/2018	Ambulette
122	KS	302B	Shaw	Kevin	N/A	12/8/2017	Henry J. Carter	1/26/2018	Ambulance
124	MS	307A	Skylar	Dmitry	12/8/2017	12/8/2017	Rutland	1/25/2018	Ambulance
87	RM	302A	Martinez	Ramon	N/A	12/8/2017	Rutland	1/24/2018	Ambulance
109	SR	519B	Reitz	Sophie	12/8/2017	12/8/2017	St Joachim	1/22/2018	Ambulette
144	XW	612P	Wang	Xin	12/8/2017	12/8/2017	Rutland	1/22/2018	Ambulette
95	PO	508A	Oliveri	Peter	12/8/2017	12/8/2017	Discharge home	1/19/2018	Ambulette
129	ET	N/A	Tannahill	Eva	12/8/2017	12/8/2017	St Joachim	1/18/2018	Ambulette
139	AV	N/A	Vassallo	Anna	12/8/2017	12/8/2017	St Joachim	1/18/2018	Ambulette
147	FW	N/A	Wynn	Freddie	12/8/2017	12/8/2017	St Albans Community	1/17/2018	Ambulette
98	GP	N/A	Parrino	Gaetana	12/8/2017	12/8/2017	Norwegian	1/16/2018	Ambulette
107	AQ	N/A	Quinto	Anna	12/8/2017	12/8/2017	Norwegian	1/16/2018	Ambulette
7	EB	N/A	Bailey	Edna	12/8/2017	12/8/2017	Discharge home	1/13/2018	Car
10	JB	N/A	Bernardo	Jonelle	12/8/2017	12/8/2017	Hopkins	1/12/2018	Ambulance
74	KPL	N/A	Leung	Kwok Pui	12/8/2017	12/8/2017	Gouverneur NH	1/12/2018	Ambulette
75	LL	N/A	Leung	Laifong	12/8/2017	12/8/2017	Gouverneur NH	1/12/2018	Ambulette
30	CD	N/A	Damore	Catherine	12/8/2017	12/8/2017	Sheepshead	1/10/2018	Ambulette
86	HM	N/A	Martinez	Hiram	12/8/2017	12/8/2017	Menorah	1/10/2018	Ambulette
97	AP	N/A	Pacheco	Ada	12/8/2017	12/8/2017	Rutland	1/10/2018	Ambulette
104	LP	N/A	Polniak	Lena	12/8/2017	12/8/2017	Sheepshead	1/10/2018	Ambulette
119	VS	N/A	Scheets	Virginia	12/8/2017	12/8/2017	Assisted Living	1/10/2018	Ambulette
37	JE	N/A	Echie	Joseph	12/8/2017	12/8/2017	SS McKinney	1/9/2018	Ambulette
39	AE	N/A	Ernandez	Alton	12/8/2017	12/8/2017	Sheepshead	1/9/2018	Ambulette
103	AP	N/A	Piotrowski	Alice	12/8/2017	12/8/2017	Eger	1/6/2018	Ambulette
113	GR	N/A	Roccasalvo	Graciana	12/8/2017	12/8/2017	Eger	1/5/2018	Ambulette

Line #	Resident's Initials	Room #	Last Name	First Name	Dates of Resident Notification	Date of Family Notification	Name of Accepting Facility	Date of Transfer	Mode of Transportation
146	LW	N/A	Wolman	Lois	12/8/2017	12/8/2017	Home Hospice	1/3/2018	N/A
12	HB	N/A	Breuer	Horst	12/8/2017	12/8/2017	Discharge home	12/30/2017	Car
41	CF	N/A	Fahmy	Carol	12/8/2017	12/8/2017	Eger	12/30/2017	Ambulette
80	FL	N/A	Lorenti	Filomena	12/8/2017	12/8/2017	Cobble Hill	12/29/2017	Ambulette
134	RT	N/A	Torres	Rosa	12/8/2017	12/8/2017	Sheepshead	12/29/2017	Ambulette
141	JV	314A	Vega	Jamie	12/8/2017	12/8/2017	Concord	12/29/2017	Ambulance
111	NR	N/A	Reyes	Nestor	12/8/2017	12/8/2017	Hospital Transfer	12/28/2017	N/A
101	LP	N/A	Petrone	Louis	12/8/2017	12/8/2017	Eger	12/26/2017	Ambulette
102	RP	N/A	Petrone	Rose	12/8/2017	12/8/2017	Eger	12/26/2017	Ambulette
28	KC	N/A	Connor	Katrina	12/8/2017	12/8/2017	Discharge home	12/23/2017	Car
94	IN	N/A	Nova de Burgos	Irma	12/8/2017	12/8/2017	Discharge home	12/23/2017	Car
96	IO	N/A	Oquendo	Iris	12/8/2017	12/8/2017	Discharge home	12/23/2017	Car
4	JA	N/A	Anderson	Jean	12/8/2017	12/8/2017	Sheepshead	12/22/2017	Ambulette
14	FC	N/A	Caceres	Felipa	12/8/2017	12/8/2017	Discharge home	12/22/2017	Car
45	VG	N/A	Garcia	Victor	12/8/2017	12/8/2017	Discharge home	12/22/2017	Car
47	PG	N/A	Girard	Paul	12/8/2017	12/8/2017	Discharge home	12/22/2017	Car
63	VK	N/A	Kaminski	Veronica	12/8/2017	12/8/2017	Sheepshead	12/22/2017	Ambulette
25	LC	N/A	Ciaffone	Lucy	12/8/2017	12/8/2017	Menorah	12/21/2017	Ambulette
35	CD	N/A	Dolan	Catherine	12/8/2017	12/8/2017	Eger	12/21/2017	Ambulance
60	PJ	N/A	Joshi	Prashant	N/A	12/8/2017	Rutland	12/21/2017	Ambulance
81	MLL	N/A	Lyons	Mary Lou	12/8/2017	12/8/2017	Sheepshead	12/21/2017	Ambulette
44	WG	N/A	Gallagher	William	12/8/2017	12/8/2017	St Joachim	12/20/2017	Ambulette
150	XXY	N/A	Yuan	Xue X	12/8/2017	12/8/2017	Sheepshead	12/20/2017	Ambulette
19	RC	N/A	Centeno	Rosalina	12/8/2017	12/8/2017	Sheepshead	12/19/2017	Ambulette
31	AD	N/A	Davis	Albert	12/8/2017	12/8/2017	Discharge home	12/19/2017	Car
125	RS	N/A	Steingold	Rubin	12/8/2017	12/8/2017	Sheepshead	12/19/2017	Ambulance
128	CT	N/A	Tan	Chun	12/8/2017	12/8/2017	Discharge home	12/19/2017	Car
131	PT	N/A	Tobin	Patrick	12/8/2017	12/8/2017	Hospital Transfer	12/19/2017	N/A
40	AE	N/A	Estrella	Astelia	12/8/2017	12/8/2017	Sheepshead	12/18/2017	Ambulette
52	HH	N/A	Hansen	Hans	12/8/2017	12/8/2017	Eger	12/18/2017	Ambulette
55	NH	N/A	Holston	Naford	12/8/2017	12/8/2017	Concord	12/18/2017	Ambulette
121	ES	N/A	Serposs	Emile	12/8/2017	12/8/2017	N/A	12/17/2017	N/A
83	FM	N/A	Mackey	Frank	12/8/2017	12/8/2017	Sheepshead	12/16/2017	Ambulette
3	EA	N/A	Anagnostakos	Ekateri	12/8/2017	12/8/2017	Sheepshead	12/15/2017	Ambulette
24	WSC	N/A	Chow	Wan Seto	12/8/2017	12/8/2017	Discharge home	12/15/2017	Car
48	CG	N/A	Glasgow	Carl	12/8/2017	12/8/2017	Cobble Hill	12/15/2017	Ambulette
73	NL	N/A	Leonardatos	Niki	12/8/2017	12/8/2017	Gouverneur NH	12/15/2017	Ambulance
130	AT	N/A	Tietgen	AnnMarie	12/8/2017	12/8/2017	Concord	12/15/2017	Ambulette
1	EA	N/A	Aglione	Evelyn	12/8/2017	12/8/2017	Eger	12/14/2017	Ambulette
136	ST	N/A	Tse	Siu	12/8/2017	12/8/2017	Discharge home	12/13/2017	Ambulette
140	FV	514A	Vecchiarelli	Frank	12/8/2017	12/8/2017	Discharge home	12/13/2017	Ambulette
21	DC	N/A	Chen	Danming	N/A	N/A	Discharge home	12/11/2017	Car
64	AK	N/A	Kirschner	Anita	N/A	N/A	Discharge home	12/8/2017	Car
78	SL	N/A	Lin	Suzhen	N/A	N/A	Discharge home	12/8/2017	Car
108	CR	N/A	Ramirez	Camille	N/A	N/A	Discharge home	12/8/2017	Ambulette
20	LCC	N/A	Chan	Lin C	N/A	11/29/2017	Cobble Hill	12/7/2017	Ambulette
26	AC	N/A	Classen	Aida	N/A	11/29/2017	Concord	12/7/2017	Ambulette
27	RC	N/A	Connelly	Ruth	N/A	N/A	Discharge home	12/7/2017	Car
54	PH	N/A	Harrison	Patrick	N/A	N/A	Discharge home	12/7/2017	Car
69	ML	N/A	Latorre	Mireya	N/A	N/A	Discharge home	12/7/2017	Ambulette
84	FM	N/A	Magrino	Frank	12/6/2017	12/6/2017	Concord	12/7/2017	Ambulette
51	RH	N/A	Hallin	Rosemary		11/29/2017	Cobble Hill	12/6/2017	Ambulette
71	FL	N/A	Lee	Francis	N/A	11/29/2017	Cobble Hill	12/6/2017	Ambulette
133	ET	N/A	Torres	Edna	N/A	N/A	Cobble Hill	12/6/2017	Ambulette
93	SN	N/A	Noriega	Sandy	N/A	N/A	N/A	12/5/2017	N/A
126	JS	N/A	Sullivan	Joseph	N/A	N/A	N/A	12/5/2017	N/A
34	MD	N/A	Doble	Madeline	N/A	N/A	Discharge home	12/1/2017	Car
59	DJ	N/A	Johnson	Della	N/A	N/A	N/A	12/1/2017	N/A
106	SQ	N/A	Quinga	Segundo	N/A	N/A	Discharge home	12/1/2017	Ambulette
43	JF	N/A	Froot	Jacob	N/A	N/A	Discharge home	11/30/2017	Car
66	KL	N/A	Laandi	Kirsti	N/A	N/A	Discharge home	11/30/2017	Ambulette
38	ME	N/A	Elgatami	Muna	N/A	N/A	Discharge home	11/29/2017	Ambulette
46	MG	N/A	Gelfo	Mary	N/A	N/A	Discharge home	11/29/2017	Car
148	TTY	N/A	Yee	Tom Tsui	N/A	N/A	Gouverneur NH	11/29/2017	Ambulette
143	DV	N/A	Vielman	Dora	N/A	N/A	Discharge home	11/27/2017	Ambulette
50	AH	N/A	Habib	Anne	N/A	N/A	Discharge home	11/26/2017	Car
70	JL	N/A	Lathey	Janet	N/A	N/A	Discharge home	11/25/2017	Ambulette
53	AH	N/A	Hanvey	Anne	N/A	N/A	Discharge home	11/24/2017	Car
58	AI	N/A	Itri	Anthony	N/A	N/A	Discharge home	11/24/2017	Car
115	PR	N/A	Rogers	Phyllis	N/A	N/A	Discharge home	11/24/2017	Ambulance
89	AM	N/A	Mendez	Alicia	N/A	N/A	Discharge home	11/23/2017	Car

Line #	Resident's Initials	Room #	Last Name	First Name	Dates of Resident Notification	Date of Family Notification	Name of Accepting Facility	Date of Transfer	Mode of Transportation
9	AB	N/A	Benck	Alice	N/A	N/A	Discharge home	11/22/2017	Car
17	GC	N/A	Calise	Grace	N/A	N/A	Discharge home	11/22/2017	Car
91	SM	N/A	Mohsin	Sharaf	N/A	N/A	Discharge home	11/22/2017	Car
105	MP	N/A	Pryce	Mary	N/A	N/A	Discharge home	11/22/2017	Car
116	JR	N/A	Russo	John	N/A	N/A	Discharge home	11/22/2017	Ambulette
118	CS	N/A	Scarciotta	Camille	N/A	N/A	Discharge home	11/22/2017	Car
120	JS	N/A	Schwab	Joseph	N/A	N/A	Discharge home	11/22/2017	Car
82	AM	N/A	Macchiarella	Anna	N/A	N/A	Discharge home	11/21/2017	Car
100	VP	N/A	Pazmino	Victor	N/A	N/A	Calvary Hospice	11/21/2017	N/A
110	ER	N/A	Remache	Edgar	N/A	N/A	Discharge home	11/21/2017	Car
114	AR	N/A	Rodriguez	Ana	N/A	N/A	Discharge home	11/21/2017	Car
127	PS	N/A	Sweeney	Patricia	N/A	N/A	Discharge home	11/21/2017	Ambulette
145	CWT	612P	Whitehorne-Tillett	Constance	N/A	N/A	Discharge home	11/21/2017	Ambulette
29	GC	N/A	Cort	Grace	N/A	N/A	Discharge home	11/20/2017	Car

Facility Id. 1372
Certificate No. 7001313N

Certified Beds - Total 240
RHC 228
Ventilator Dependent 12

State of New York
Department of Health
Office of Primary Care and Health Systems Management



OPERATING CERTIFICATE
Residential Health Care Facility - SNF

Effective Date: 07/10/2014
Expiration Date: NONE

Lutheran Augustana Center for Extended Care & Rehabilitation, Inc
5434 Second Avenue
Brooklyn, New York 11204

Operator: Lutheran Augustana Center for Extended Care & Rehabilitation, Inc.
Operator Class: Voluntary Not for Profit Corporation

Has been granted this Operating Certificate pursuant to Article 28 of the Public Health Law for the service(s) specified.

Baseline Clinical Laboratory Service Radiology - Diagnostic Ventilator Dependent

Keith W. Lewis

20140710 Deputy Director Office of Primary Care and Health Systems Management

Howard Zucker M.D.

Acting Commissioner

This certificate must be conspicuously displayed on the premises.

AWAITING PROCESSING MEDICARE APPLICATION

This is a report of your current Medicare application in PECOS.
Note: This report is for your records only, please do not upload this report to your electronic submission or mail it to your Fee-For-Service Contractor.
[View Medicare ID Report](#)
 Report Date: 04/10/2018

Application Summary	
Enrollment ID:	O20051021000730
Tracking ID:	T041020180003623
Enrollment Status:	AWAITING PROCESSING

Medicare Application Fee Required? No	Medicare Application Fee Paid? No
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FROM SECTION 1: BASIC INFORMATION SUMMARY

WITHDRAWAL

Identifying Information

Termination Date	Legal Business Name	Tax ID Number (TIN)	Provider Type
04/11/2018	LUTHERAN AUGUSTANA CENTER FOR EXTENDED CARE AND REHABILITATION	11-2150953 (EIN)	SKILLED NURSING FACILITY

Physical Location Information

Location Name	Address	Tax ID Number(TIN)	Medicare ID	NPI
LUTHERAN AUGUSTANA CENTER FOR EXTEN	5434 2ND AVE BROOKLYN, NY 112202606-2606	11-2150953 (EIN)	335521	1144215203

APPLICATION SIGNATURE(S) Signature Status: All Signatures Complete

AUTHORIZED SIGNER: LEE, JEANNE Status: Complete

Document: Authorized Official Certification Statement For Institutional Providers
 Role: Authorized Official Tax ID Number(TIN): XXX-XX-XXXX (SSN)
 Date Signed: 04/10/2018 Signature Type: Electronic
 Phone Number: (718) 630-6125 IP Address: 10.35.251.27
 E-mail Address: jeanne.lee@nyumc.org

FROM SECTION 6: OWNERSHIP INTEREST & MANAGING CONTROL INFO (INDIVIDUALS)

INDIVIDUAL CONTROL

INDIVIDUAL WITH OWNERSHIP INTEREST AND/OR MANAGING CONTROL: CLAVIN, PETER

Identifying Information

Name	Date of Birth	State of Birth	Country of Birth
PETER CLAVIN	11/15/XXXX		
Tax ID Number(TIN) XXX-XX-XXXX (SSN)		NPI	

Ownership/Managing Control Information

Role	Effective Date	Exact Percentage	Title	Types of services furnished
OFFICER	04/01/2007	100%	VICE CHAIRPERSON	

Indicate if individual is Authorized or Delegated official: Neither Telephone Number Is the delegated official a W-2 employee?

Final Adverse Legal Actions No Data Provided

No Data Provided

INDIVIDUAL WITH OWNERSHIP INTEREST AND/OR MANAGING CONTROL: DIGIOVANNA, LAWRENCE

Identifying Information

Name	Date of Birth	State of Birth	Country of Birth
LAWRENCE DIGIOVANNA	02/23/XXXX	NY	United States
		NPI	

Tax ID Number(TIN) XXX-XX-XXXX (SSN)				
Ownership/Managing Control Information				
Role	Effective Date	Exact Percentage	Title	Types of services furnished
DIRECTOR	03/01/2015	100%	BOARD MEMBER	
Indicate if individual is Authorized or Delegated official: Neither		Telephone Number	Is the delegated official a W-2 employee?	
Final Adverse Legal Actions				
				No Data Provided
No Data Provided				
INDIVIDUAL WITH OWNERSHIP INTEREST AND/OR MANAGING CONTROL: EL'YATEEM, KHADER				
Identifying Information				
Name	Date of Birth	State of Birth	Country of Birth	
KHADER EL'YATEEM	10/20/XXXX			
Tax ID Number(TIN) XXX-XX-XXXX (SSN)	NPI			
Ownership/Managing Control Information				
Role	Effective Date	Exact Percentage	Title	Types of services furnished
DIRECTOR	11/29/2005	100%	BOARD MEMBER	
Indicate if individual is Authorized or Delegated official: Neither		Telephone Number	Is the delegated official a W-2 employee?	
Final Adverse Legal Actions				
				No Data Provided
No Data Provided				
INDIVIDUAL WITH OWNERSHIP INTEREST AND/OR MANAGING CONTROL: ENG, DONALD				
Identifying Information				
Name	Date of Birth	State of Birth	Country of Birth	
DONALD ENG	10/28/XXXX			
Tax ID Number(TIN) XXX-XX-XXXX (SSN)	NPI			
Ownership/Managing Control Information				
Role	Effective Date	Exact Percentage	Title	Types of services furnished
DIRECTOR	09/29/2005	100%	BOARD MEMBER	
Indicate if individual is Authorized or Delegated official: Neither		Telephone Number	Is the delegated official a W-2 employee?	
Final Adverse Legal Actions				
				No Data Provided
No Data Provided				
INDIVIDUAL WITH OWNERSHIP INTEREST AND/OR MANAGING CONTROL: GOLDSTEIN, WENDY Z				
Identifying Information				
Name	Date of Birth	State of Birth	Country of Birth	
WENDY Z GOLDSTEIN	03/06/XXXX	NY	United States	
Tax ID Number(TIN) XXX-XX-XXXX (SSN)	NPI			
Ownership/Managing Control Information				
Role	Effective Date	Exact Percentage	Title	Types of services furnished
OFFICER	11/28/2005	100%	VICE CHAIRPERSON OF OPERATIONS	

Indicate if individual is Authorized or Delegated official: Neither		Telephone Number	Is the delegated official a W-2 employee?	
Final Adverse Legal Actions				No Data Provided
No Data Provided				
INDIVIDUAL WITH OWNERSHIP INTEREST AND/OR MANAGING CONTROL: GRANDELL, BRENDA A				
Identifying Information				
Name BRENDA A GRANDELL	Date of Birth 08/15/XXXX	State of Birth	Country of Birth	
Tax ID Number(TIN) XXX-XX-XXXX (SSN)	NPI			
Ownership/Managing Control Information				
Role OFFICER	Effective Date 11/29/2005	Exact Percentage 100%	Title SECRETARY	Types of services furnished
Indicate if individual is Authorized or Delegated official: Neither		Telephone Number	Is the delegated official a W-2 employee?	
Final Adverse Legal Actions				No Data Provided
No Data Provided				
INDIVIDUAL WITH OWNERSHIP INTEREST AND/OR MANAGING CONTROL: LEE, CHESTER				
Identifying Information				
Name CHESTER LEE	Date of Birth 11/20/XXXX	State of Birth NY	Country of Birth United States	
Tax ID Number(TIN) XXX-XX-XXXX (SSN)	NPI			
Ownership/Managing Control Information				
Role DIRECTOR	Effective Date 03/01/2015	Exact Percentage 100%	Title BOARD MEMBER	Types of services furnished
Indicate if individual is Authorized or Delegated official: Neither		Telephone Number	Is the delegated official a W-2 employee?	
Final Adverse Legal Actions				No Data Provided
No Data Provided				
INDIVIDUAL WITH OWNERSHIP INTEREST AND/OR MANAGING CONTROL: LEE, JEANNE				
Identifying Information				
Name JEANNE LEE	Date of Birth 04/24/XXXX	State of Birth DC	Country of Birth United States	
Tax ID Number(TIN) XXX-XX-XXXX (SSN)	NPI			
Ownership/Managing Control Information				
Role AUTHORIZED OFFICIAL OPERATIONAL/MANAGERIAL CONTROL	Effective Date 05/26/2015 11/07/2011	Exact Percentage 100%	Title President/Administrator	Types of services furnished
Indicate if individual is Authorized or Delegated official: AUTHORIZED OFFICIAL		Telephone Number (718) 630-6125	Is the delegated official a W-2 employee?	
Final Adverse Legal Actions				No Data Provided
No Data Provided				

INDIVIDUAL WITH OWNERSHIP INTEREST AND/OR MANAGING CONTROL: PAGANO, MICHAEL J				
Identifying Information				
Name MICHAEL J PAGANO	Date of Birth 07/25/XXXX	State of Birth NY	Country of Birth United States	
Tax ID Number(TIN) XXX-XX-XXXX (SSN)		NPI		
Ownership/Managing Control Information				
Role AUTHORIZED OFFICIAL OFFICER	Effective Date 05/25/2015 09/18/2000	Exact Percentage 100%	Title SVP-FinanceCFO	Types of services furnished
Indicate if individual is Authorized or Delegated official: AUTHORIZED OFFICIAL		Telephone Number (718) 630-6014	Is the delegated official a W-2 employee?	
Final Adverse Legal Actions				No Data Provided
No Data Provided				
INDIVIDUAL WITH OWNERSHIP INTEREST AND/OR MANAGING CONTROL: ROMMEREIM, DAVID H				
Identifying Information				
Name DAVID H ROMMEREIM	Date of Birth 01/07/XXXX	State of Birth	Country of Birth	
Tax ID Number(TIN) XXX-XX-XXXX (SSN)		NPI		
Ownership/Managing Control Information				
Role OFFICER	Effective Date 11/29/2005	Exact Percentage 100%	Title CHAIRPERSON	Types of services furnished
Indicate if individual is Authorized or Delegated official: Neither		Telephone Number	Is the delegated official a W-2 employee?	
Final Adverse Legal Actions				No Data Provided
No Data Provided				
INDIVIDUAL WITH OWNERSHIP INTEREST AND/OR MANAGING CONTROL: SMITH, HOWARD, JR.				
Identifying Information				
Name HOWARD SMITH, JR.	Date of Birth 07/12/XXXX	State of Birth NY	Country of Birth United States	
Tax ID Number(TIN) XXX-XX-XXXX (SSN)		NPI		
Ownership/Managing Control Information				
Role OFFICER	Effective Date 12/01/2012	Exact Percentage 100%	Title TREASURER	Types of services furnished
Indicate if individual is Authorized or Delegated official: Neither		Telephone Number	Is the delegated official a W-2 employee?	
Final Adverse Legal Actions				No Data Provided
No Data Provided				
INDIVIDUAL WITH OWNERSHIP INTEREST AND/OR MANAGING CONTROL: SULLIVAN, FLORENCE				
Identifying Information				
Name FLORENCE SULLIVAN	Date of Birth 01/20/XXXX	State of Birth	Country of Birth	
Tax ID Number(TIN) XXX-XX-XXXX (SSN)		NPI		

Ownership/Managing Control Information				
Role	Effective Date	Exact Percentage	Title	Types of services furnished
DIRECTOR	12/15/2005	100%	BOARD MEMBER	
Indicate if individual is Authorized or Delegated official:		Telephone Number	Is the delegated official a W-2 employee?	
Neither				
Final Adverse Legal Actions				No Data Provided
No Data Provided				

FROM SECTION 13: ENROLLMENT APPLICATION CONTACT PERSON	
CONTACT PERSON	Updated
Contact Person: Robert Toso	Edited
Name Robert Toso Address 1 PARK AVE NEW YORK, NY 10016-5802	Relationship/Affiliation to Provider/Supplier Delegated Official Telephone Number: (212) 404-4165 Fax Number: E-mail Address robert.toso@nyumc.org

FROM ELECTRONIC REQUIRED/SUPPORTING DOCUMENTATION	
REQUIRED AND/OR SUPPORTING DOCUMENTATION	No Data Provided
No Data Provided	
REQUIRED AND/OR SUPPORTING DOCUMENTATION CHECKLIST INFORMATION	
Documentation Other Documentation requested by your Medicare Contractor(s) Authorized Official Certification Statement for Institutional Providers [PDF]	Delivery <input type="checkbox"/> Mail <input type="checkbox"/> Upload
Comment	

**ACTION BY UNANIMOUS WRITTEN CONSENT OF THE BOARD OF DIRECTORS
OF LUTHERAN AUGUSTANA CENTER FOR EXTENDED CARE AND
REHABILITATION, INC.**

The undersigned, being all of the members of the Board of Directors of Lutheran Augustana Center for Extended Care and Rehabilitation, Inc. (the "Corporation"), hereby consent in accordance with Section 708(b) of the New York State Not-For-Profit Corporation Law, to the adoption of the following Resolutions and the taking of the actions contemplated thereby without a meeting:

WHEREAS, the Corporation no longer conducts any operations, has no assets and wishes to dissolve.

NOW, THEREFORE, BE IT:

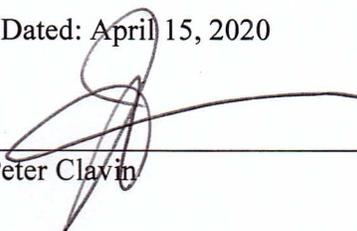
RESOLVED, that the dissolution of the Corporation and the distribution of its assets is hereby approved pursuant to the Plan of Dissolution attached hereto as Exhibit A, with such changes therein and additions thereto as the President and the Treasurer of the Corporation (each, an "Authorized Officer") shall approve, such approval to be conclusively evidenced by such execution and

RESOLVED, that each Authorized Officer is hereby authorized to cause the Corporation to execute any documents and take such other and further action to accomplish the intention of these resolutions; and

RESOLVED, that this Consent may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The facsimile or PDF copies showing the signatures of the directors will constitute originally signed copies of the same Consent requiring no further execution.

IN WITNESS, WHEREOF, the undersigned, constituting all of the directors of the Corporation, do hereby execute this Consent as of the date specified below.

Dated: April 15, 2020



Peter Clavin

Brenda Grandell

Robert Kassenbrock

Cristal Rivera

Bret Rudy, MD

Howard Smith, Jr.

**ACTION BY UNANIMOUS WRITTEN CONSENT OF THE BOARD OF DIRECTORS
OF LUTHERAN AUGUSTANA CENTER FOR EXTENDED CARE AND
REHABILITATION, INC.**

The undersigned, being all of the members of the Board of Directors of Lutheran Augustana Center for Extended Care and Rehabilitation, Inc. (the "Corporation"), hereby consent in accordance with Section 708(b) of the New York State Not-For-Profit Corporation Law, to the adoption of the following Resolutions and the taking of the actions contemplated thereby without a meeting:

WHEREAS, the Corporation no longer conducts any operations, has no assets and wishes to dissolve.

NOW, THEREFORE, BE IT:

RESOLVED, that the dissolution of the Corporation and the distribution of its assets is hereby approved pursuant to the Plan of Dissolution attached hereto as Exhibit A, with such changes therein and additions thereto as the President and the Treasurer of the Corporation (each, an "Authorized Officer") shall approve, such approval to be conclusively evidenced by such execution and

RESOLVED, that each Authorized Officer is hereby authorized to cause the Corporation to execute any documents and take such other and further action to accomplish the intention of these resolutions; and

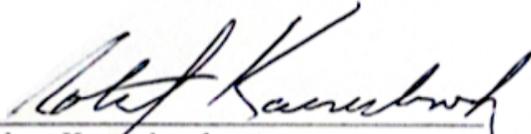
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IN WITNESS, WHEREOF, the undersigned, constituting all of the directors of the Corporation, do hereby execute this Consent as of the date specified below.

Dated: April 15, 2020

Peter Clavin

Brenda Grandell



Robert Kassenbrock

Cristal Rivera

Bret Rudy, MD

Howard Smith, Jr.

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Chester Lee

Rev. Khader El'Yatee

Daniel Widawsky

David Dibner

Joseph Lhota

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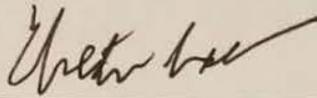


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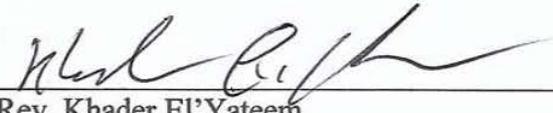
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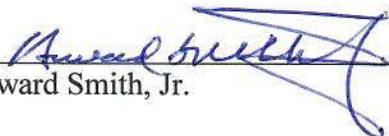
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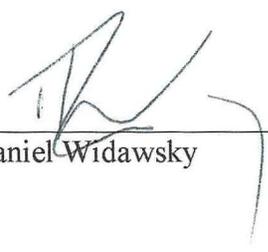


Howard Smith, Jr.

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Daniel Widawsky

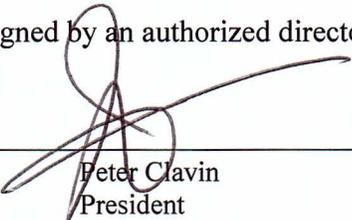
David Dibner

Joseph Lhota

PLAN OF DISSOLUTION OF
LUTHERAN AUGUSTANA CENTER FOR EXTENDED
CARE AND REHABILITATION, INC.

The Board of Directors of Lutheran Augustana Center for Extended Care and Rehabilitation, Inc. "Corporation") has considered the advisability of voluntarily dissolving the Corporation and has determined that dissolution is in the best interest of the Corporation.

1. The Corporation has no assets or liabilities.
2. In addition to Attorney General approval, approval from the New York State Department of Health is required, and a copy of the approval will be attached to the Verified Petition submitted to the Attorney General.
3. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.



Peter Clavin
President

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Jacob K. Javits Federal Building, Room 37-130
26 Federal Plaza
New York, New York 10278-0063



NORTHEAST DIVISION OF SURVEY & CERTIFICATION

June 4, 2018

CMS Certification Number (CCN) # 33-5521

Administrator
Lutheran Augustana Center
5434 2nd Avenue
Brooklyn, NY 11204

Dear Administrator:

Based on the information sent to our office by the New York State Department of Health, we are approving, **effective April 11, 2018** voluntary termination for Lutheran Augustana Center.

We will send a copy of this letter to the Medicaid State Agency and your fiscal intermediary.

If you have any questions, please contact Mitzi Zambrano of my staff at (212) 616-2225.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lauren D. Reinertsen".

Lauren D. Reinertsen, MPA, PhD, NHA
Associate Regional Administrator
Northeast Division Survey & Certification

**RESOLUTIONS OF THE BOARD OF TRUSTEES OF
NYU LANGONE HEALTH SYSTEM**

Approve Dissolution of Lutheran Augustana Center for Extended Care and Rehabilitation, Inc.

May 1, 2020

WHEREAS, NYU Langone Health System (the "System") is the sole member of Lutheran Augustana Center for Extended Care and Rehabilitation, Inc. ("Augustana"); and

WHEREAS, Augustana ceased operations and in 2018 conveyed its assets to NYU Langone Hospitals; and

WHEREAS, the Board of Directors of Augustana has authorized the dissolution of Augustana.

NOW, THEREFORE, BE IT:

RESOLVED, that the Board of Trustees of the System, acting in its capacity as sole member of the System, approves the dissolution of Augustana; and be it further

RESOLVED, that the Chief Executive Officer and the Executive Vice President of Finance/Chief Financial Officer of the System (an "Authorized Officer") are each authorized to take any and all such actions that such Authorized Officer deems necessary or appropriate to effect the dissolution, including, without limitation, preparing and submitting any and all governmental, regulatory, judicial and/or third party filings necessary to obtain consents or approvals required to consummate the dissolution.

**PLAN OF DISSOLUTION OF
OHP PHPS, INC.**

Under Section 1001 of the Not-For-Profit Corporation Law

The Board of Directors (the “Directors”) of OHP PHPS, Inc. (the “Corporation”) does hereby resolve and recommend to NYU Langone Hospitals, the member of the Corporation (the “Member”) for approval that the Corporation be dissolved. The Directors agreed to this Plan pursuant to a Unanimous Written Consent dated October 2, 2018, wherein they adopted the following Plan of Dissolution:

1. Upon resolution of the Directors adopting this Plan of Dissolution, the Directors shall submit this Plan of Dissolution to the Member for approval.
2. Approval of the dissolution must be obtained from the New York State Department of Health, Office of Health Insurance Programs-Managed Care, whose approval is attached.
3. The Corporation has no assets or liabilities.
4. Within two hundred seventy days after the date on which the Attorney General approved the Plan of Dissolution, the Corporation shall carry out the Plan of Dissolution.



MEMORANDUM

To: Public Health and Health Planning Council

From: Michael Bass, Deputy General Counsel *MG-B*

Date: November 3, 2020

Subject: Proposed Dissolution of Ralph Lauren Center for Cancer Care and Prevention

Ralph Lauren Center for Cancer Care and Prevention ("RLCC") requests Public Health and Health Planning Council ("PHHPC") approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law § 1002(c) and § 1003, as well as 10 NYCRR Part 650.

RLCC is a New York not-for-profit corporation incorporated on January 31, 2002 under the name of Ralph Lauren Center for Cancer Care and Prevention Foundation and ultimately approved to operate a diagnostic and treatment center specializing in oncology services at 1879 Madison Avenue, New York, NY 10035. RLCC ceased operation of the D&TC on April 1, 2019 when it sold substantially all its assets to Memorial Sloan-Kettering Cancer Center pursuant to an approval of the New York State Supreme Court, New York County and Asset Purchase Agreement dated November 12, 2018. Memorial Sloan-Kettering Cancer Center ("MSK") is an original sponsor and the sole corporate member of RLCC.

RLCC first received a limited life approval in 2011. This approval was extended in 2015 and RLCC was granted indefinite life in 2017. To remain operational, RLCC required substantial financial assistance from MSK such that it was no longer financially feasible for RLCC to continue operations. For this reason, the Board of Trustees of RLCC has determined that its in the best interests of RLCC to sell its assets and dissolve.

The Board of Trustees of RLCC approved and authorized dissolution and authorized the filing of the Certificate of Dissolution by unanimous written consent dated September 12, 2019. The Executive Committee of the Board of Managers of MSK, as sole corporate member of RLCC, approved and authorized the dissolution of RLCC by unanimous written consent dated October 23, 2019.

As of March 31, 2019, RLCC assets totaled \$1,642,831.61; its liabilities totaled \$1,021,006.94. RLCC will distribute upon dissolution any remaining assets after payment of all liabilities to MSK, as a corporation engaged in charitable purposes and activities substantially similar to those of RLCC.

The required documents: a proposed Verified Petition to the Attorney General, a Plan of Dissolution, and a proposed Certificate of Dissolution, with supporting organizational documents of RLCC and MSK and resolution of the board of trustees authorizing the dissolution, are included for PHHPC's review. A letter from RLCC's counsel, Ropes & Gray LLP, advocating for dissolution, is also enclosed.

- f. A copy of the Plan of Dissolution and Distribution of Assets of Ralph Lauren Center for Cancer Care and Prevention. The Plan of Dissolution and Distribution of Assets includes the following:
 - i. A copy of the Certificate of Incorporation of Memorial Sloan-Kettering Cancer Center dated April 13, 1960;
 - ii. A copy of the Certificate of Type of Not-For-Profit Corporation of Memorial Sloan-Kettering Cancer Center dated September 22, 1971.
 - iii. A copy of the Certificate of Amendment of the Certificate of Incorporation of Memorial Sloan-Kettering Cancer Center dated December 19, 1978;
 - iv. A copy of the Certificate of Amendment of the Certificate of Incorporation of Memorial Sloan-Kettering Cancer Center dated January 12, 1988;
 - v. A copy of the Unanimous Written Consent of the Board of Trustees of Ralph Lauren Center for Cancer Care and Prevention dated September 12, 2019; and
 - vi. A copy of the Unanimous Written Consent of the Executive Committee off the Board of Managers of Memorial Sloan-Kettering Cancer Center dated October 23, 2019; and

5) A proposed Certificate of Dissolution of Ralph Lauren Center for Care and Prevention.

Attachments.

cc: B. DelCogliano
C. Jolicoeur

[Type here]

Attachment 1

Memorandum to PHHPC

Attachment 2

Attorney Letter



ROPE & GRAY LLP
1211 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-8704
WWW.ROPEGRAY.COM

September 2, 2020

Stephen A. Warnke
T +1 212 841 0681
stephen.warnke@ropesgray.com

BY EMAIL

Public Health and Health Planning Council
New York State Department of Health
Empire State Plaza, Corning Tower, Room 1805
Albany, NY 12237
Attention: Colleen Leonard, Executive Secretary

Re: **The Ralph Lauren Center for Cancer Care and Prevention:
Approval for Dissolution**

Dear Ms. Leonard:

We write to request written approval from the New York State Department of Health (“DOH”) and the Public Health and Health Planning Council (“PHHPC”) for the dissolution of the Ralph Lauren Center for Cancer Care and Prevention (“RLCC”). Pursuant to New York Not-for Profit Corporation Law (“N-PCL”) § 404(o), the Public Health Council, as the precursor body to PHHPC, approved the incorporation of RLCC. Accordingly, it is our understanding that, under N-PCL § 1002(c), PHHPC approval is now required as a condition to effectuating RLCC’s dissolution.

Established as a diagnostic and treatment center certified under Article 28 of the Public Health Law on January 31, 2002, RLCC has worked to fight health disparities in East Harlem, a traditionally underserved part of New York, providing its patients with access to high-quality oncology diagnostic and treatment services. RLCC has determined, however, that the deteriorating reimbursement environment for its services makes it increasingly infeasible to operate a freestanding diagnostic and treatment center that furnishes high-quality cancer care to medically underserved patients in the Harlem community. RLCC has faced serious financial challenges from the outset, requiring considerable assistance to remain operational—first from its initial corporate members, the Memorial Sloan-Kettering Cancer Center (“MSK”) and North General Hospital (“NGH”), and then from MSK alone after NGH’s bankruptcy and dissolution in 2011. RLCC carefully evaluated its options and determined that MSK, a charitable organization with complementary corporate purposes, is best positioned to continue RLCC’s mission of fighting health disparities in the Harlem community.

Accordingly, effective April 1, 2019, RLCC transferred substantially all of its assets to MSK pursuant to an Asset Purchase Agreement, dated November 12, 2018, as approved under an Order

Granting Leave to Sell Certain Assets of a Charitable Corporation by the Supreme Court of the State of New York, dated March 28, 2019, which is enclosed with this letter as Exhibit A. RLCC now wishes to proceed with its dissolution. Upon dissolution, all remaining assets of RLCC will be transferred to MSK and MSK will use those assets to continue RLCC's charitable purposes.

Enclosed with this letter as Exhibit B please find a draft copy of the petition for dissolution, to be submitted to the Attorney General of the State of New York, the exhibits of which include:

- RLCC's Certificate of Incorporation;
- RLCC's current Bylaws;
- The Plan of Dissolution for RLCC (the "Plan");
- Unanimous written consent by the Corporation's trustees eligible to vote approving and authorizing the dissolution of the Corporation in accordance with the Plan;
- Unanimous written consent by MSK as the sole member approving and adopting the Plan, and approving and authorizing the dissolution of the Corporation in accordance with the Plan; and
- A proposed Attorney General's Approval.

Additionally, enclosed with this letter as Exhibit C please find a proposed draft Certificate of Dissolution.

Thank you for your consideration. Please contact me if you have any questions or comments.

Very truly yours,



Stephen A. Warnke

Enclosures

Attachment 3

Order by the Supreme Court of the State of New York

Order Granting Leave to Sell Certain Assets of Charitable Corporation

Sparte

At a Special Term, ~~Part II~~, of the
Supreme Court of the State of
New York, County of New York,
held at the Supreme Court House

60 Canal St New York, on
March 28, 2019

(Handwritten mark)

Present: Honorable **Shlomo Hagler**

-----X

Application of :
RALPH LAUREN CENTER FOR :
CANCER CARE AND :
PREVENTION, :
Petitioner, :

ORDER

INDEX NO. *153023/19*

For an order approving the sale of :
Substantially all of Petitioner's assets :

-----X

Upon the Verified Petition of Lewis J Kampel, M.D., the Chief Executive Officer of
Petitioner, RALPH LAUREN CENTER FOR CANCER CARE AND PREVENTION
("Petitioner"), having moved this Court for an order, pursuant to Sections 510 and 511 of the
Not-for-Profit Corporation Law, granting leave for Petitioner to sell substantially all of its assets
as further specified below (the "Assets") to Memorial Sloan-Kettering Cancer Center (the
"Purchaser"), which shall continue the charitable purposes of Petitioner, providing cancer
prevention, diagnosis and treatment services to the East Harlem community for the foreseeable
future at its clinic located at 1879 Madison Avenue, New York, New York 10035, and Petitioner
will use the consideration received first to pay any ancillary expenses incurred in connection
with the transfer of Acquired Assets to Purchaser and Petitioner's wind-down operations and
then, if any proceeds remain thereafter, the remainder will be transferred to the Purchaser for
continuance of Petitioner's charitable purpose in a manner consistent with Petitioner's mission
and exclusively for the charitable and educational purposes for which Petitioner was formed,
pursuant to a plan of dissolution to be submitted for approval to the Attorney General and/or this

Court (the "Plan of Dissolution"), by which it appears to the satisfaction of the Attorney General and/or this Court that the consideration is fair and reasonable and the interests of Petitioner will be promoted by the sale of the aforementioned Assets, it is ORDERED that:

1. Petitioner, RALPH LAUREN CENTER FOR CANCER CARE AND PREVENTION, is granted leave to sell, convey, transfer and assign to Purchaser substantially all of its tangible personal property; leases, leasehold interests or other contractual rights relating to the personal property used in the operation of the Petitioner to which Petitioner is a party; real property leases, leasehold interests or other contractual rights, interests, easements and appurtenances to which Petitioner is a Party; all books, records, files and other documents used in, or relating in any way to the Petitioner or the Assets, including all medical records, financial records, patient lists and employment records; workforce in place; net working capital; and all rights to telephone numbers, certificates of exemption, accreditations, surveys, licenses, permits, franchises, governmental approvals and similar rights of the Petitioner, to Purchaser for the sum of two million two hundred ninety-two thousand dollars (\$2,292,000.00), payable in full at closing.
2. For the purpose of transferring the Assets, Petitioner is given leave and permission to execute and deliver to Purchaser the necessary documents to effectuate the transfer.
3. The net proceeds from the dissolution of Petitioner will first be used to pay any ancillary expenses incurred in connection with the transfer and wind-down operations and then, if any proceeds remain thereafter, the remainder will be transferred to Purchaser for continuance of Petitioner's charitable purpose, as approved by Petitioner's Board of Trustees and consistent with Petitioner's Certificate of Incorporation and the anticipated Plan of Dissolution approved by the Attorney General and/or this Court authorizing the distribution of assets after dissolution to another charitable organization having similar purposes and missions to that of the Petitioner.
4. The transfer documents may be in such form and contain such terms, provisions, conditions, stipulations and agreements as shall be required to convey the Assets to Purchaser as contemplated by this Order.

5. A copy of the signed Order shall be served on the Attorney General, and the Attorney General shall receive written notice that the transaction has been completed (i.e., upon closing), if the transaction has been abandoned, or if it is still pending 90 days after Court approval.

Enter,

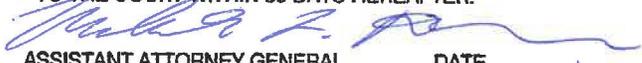


J.S.C.



Date

THE ATTORNEY GENERAL HEREBY APPEARS HEREIN,
HAS NO OBJECTION TO THE GRANTING OF
JUDICIAL APPROVAL HEREON, ACKNOWLEDGES
RECEIPT OF STATUTORY NOTICE, AND DEMANDS
SERVICE OF ALL PAPERS SUBMITTED HEREIN
INCLUDING ALL ORDERS, JUDGMENTS AND
ENDORSEMENTS OF THE COURT. SAID NO OBJECTION
IS CONDITIONED ON SUBMISSION OF THE MATTER
TO THE COURT WITHIN 30 DAYS HEREAFTER.


ASSISTANT ATTORNEY GENERAL DATE 3/21/19


Attachment 4

Draft Petition for Dissolution

ATTORNEY GENERAL
28 Liberty Street
New York, NY 10005

COUNTY OF NEW YORK

----- X
 In the Matter of the Application of : **VERIFIED PETITION**

The Ralph Lauren Center for Cancer Care and : AG# _____
 Prevention :

For Approval of Plan of Dissolution and :
 Distribution of Assets pursuant to :
 Section 1002 of the Not-for-Profit :
 Corporation Law

----- X

TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Petitioner, The Ralph Lauren Center for Cancer Care and Prevention (the “**Corporation**”), by and through Lewis J. Kampel, M.D., the Chief Executive Officer of the Corporation, states the following in support of this petition (the “**Petition**”) for approval of the Corporation’s Plan of Dissolution and Distribution of Assets (the “**Plan**”):

1. The Corporation, whose principal address is 1919 Madison Avenue, New York, NY 10035, and is located in the County of New York, was incorporated pursuant to the New York Not-for-Profit Corporation Law (the “**N-PCL**”) on January 31, 2002. A copy of the Certificate of Incorporation, and any amendments thereto, is attached here as Exhibit A. A copy of the complete and current Bylaws of the Corporation is attached as Exhibit B.
2. The names and addresses of the Corporation’s trustees are as follows:

Name	Address
James G. Niven	28 East 73rd Street New York, NY 10021
Gordon P. Bell	51 Orchard Place New Rochelle, NY 10801
Avery Fischer	25 Wiltshire Road Scarsdale, NY 10583
Charles B. Patton	12715 Via Donada Del Mar, CA 92014

Carol Brown, M.D.	250 West 89th Street PH1C New York, NY 10024
Cynthia McCollum	1520 York Avenue, Apt. 8D New York, NY 10028
Tnyetta Mitchell	316 West 115th Street New York, NY 10026
David Lauren	659 Madison Avenue New York, NY 10022
Harold P. Freeman, M.D.	57 Sprain Valley Road Scarsdale, NY 10583

The names and addresses of the Corporation's principal officers are as follows:

Name	Title	Address
James G. Niven	Chairman	28 East 73rd Street New York, NY 10021
Gordon Bell	Acting Treasurer & Secretary	51 Orchard Place New Rochelle, NY 10801
Lewis J. Kampel, M.D.	Chief Executive Officer	250 West 90th Street New York, NY 10024-1123

3. The purposes for which the Corporation was organized are set forth in its Restated Certificate of Incorporation, as amended by the Certificate of Amendment, dated June 30, 2014, at paragraph 4(b) thereof and are as follows:
 - a. establishing, operating and maintaining a hospital as defined in Article 28 of the New York Public Health Law to provide oncology diagnostic and treatment services without regard to creed, color or nationality;
 - b. engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the N-PCL in furtherance of accomplishing the foregoing charitable purpose; and
 - c. not operating for the purpose of carrying on a trade or business for profit.
4. The Corporation is a charitable corporation, for purposes of the N-PCL.
5. The Corporation plans to dissolve and distribute its assets and pay its liabilities in accordance with the Plan attached hereto as Exhibit C.

6. The Corporation is dissolving due to a determination that it can no longer feasibly operate a freestanding diagnostic and treatment center that furnishes high-quality cancer care to medically underserved patients in the Harlem community, due to the deteriorating reimbursement environment for its services and support. The Corporation faced serious financial challenges from the outset, requiring considerable assistance from its sole corporate member, the Memorial Sloan-Kettering Cancer Center (“**MSK**”), to remain operational. Concerns over the financial sustainability of the Corporation led the New York State Department of Health (“**DOH**”) to extend the Corporation’s operating certificate on a time-limited basis, rather than granting it a permanent operating certificate, in order to monitor its financial health on a regular basis. The Corporation carefully evaluated its options and determined that MSK is best positioned to continue the Corporation’s mission. Accordingly, effective April 1, 2019, the Corporation transferred substantially all of its assets to MSK pursuant to an Asset Purchase Agreement, dated November 12, 2018, and as approved pursuant to an Order Granting Leave to Sell Certain Assets of a Charitable Corporation by the Supreme Court of the State of New York, dated March 28, 2019. Having transferred substantially all of its assets and operations to MSK, the Corporation wishes to proceed with dissolution.
7. All nine trustees of the Board of Trustees of the Corporation eligible to vote, by written consent effective September 12, 2019, approved resolutions approving and authorizing dissolution of the Corporation in accordance with the Plan, and authorizing the filing of a Certificate of Dissolution. Such written consent is attached hereto as Exhibit D.
8. After the Board of Directors approved the Plan, all thirteen members of the Executive Committee of MSK, representing both (a) a quorum of the Board of Managers of MSK and (b) MSK, in its capacity as the sole member of the Corporation, received and reviewed the Plan and, by unanimous written consent effective October 23, 2019, approved and adopted the Plan, and approved and authorized the dissolution of the Corporation in accordance with the Plan. Such unanimous written consent is attached hereto as Exhibit E.
9. The Corporation sought the written approval of its closure from the DOH and the Public Health and Planning Council, as the successor body to the Public Health Council. Such approval is attached hereto as Exhibit F.
10. The Corporation is registered with the Charities Bureau of the Office of the Attorney General and its registration number is 20-95-52. The Corporation is up-to-date with its filings and most recently filed its annual report with the Charities Bureau for its fiscal year ended 2017.
11. The following documents are attached to this Petition:
 - a. The Corporation’s certificate of incorporation with all amendments (Exhibit A);
 - b. The Corporation’s current Bylaws (Exhibit B);
 - c. The Plan with all attachments (Exhibit C);

- d. Unanimous written consent by the Corporation's trustees eligible to vote approving and authorizing the dissolution of the Corporation in accordance with the Plan (Exhibit D);
- e. Unanimous written consent by MSK as the sole member approving and adopting the Plan, and approving and authorizing the dissolution of the Corporation in accordance with the Plan (Exhibit E);
- f. Written approval of the Corporation's closure plan from the DOH and the Public Health and Planning Council pursuant to N-PCL §§ 1002(c) and 404(o) (Exhibit E); and
- g. A proposed Attorney General's Approval (Exhibit G).

12. No previous application for approval of the Plan has been made.

WHEREFORE, the Corporation requests that the Attorney General approve the Plan of Dissolution and Distribution of Assets of The Ralph Lauren Center for Cancer Care and Prevention, a not-for-profit corporation, pursuant to the Not-for-Profit Corporation Law Section 1002.

IN WITNESS WHEREFORE, the Corporation has caused this Petition to be executed this ___ day of ____, 2020 by

Lewis J. Kampel, M.D., Chief Executive Officer
(646) 422-4474
kampell@mskcc.org

Exhibit A

**Certificate of Incorporation of
Ralph Lauren Center for Cancer Care and Prevention**

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy for RALPH LAUREN CENTER FOR CANCER CARE AND PREVENTION, File Number 020131000322 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on August 31, 2020.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

Rev. 06/07

Authentication Number: 2008311046 To verify the authenticity of this document you may access the Division of Corporation's Document Authentication Website at <http://ecorp.dos.ny.gov>

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CERTIFICATE OF INCORPORATION

OF

RALPH LAUREN CENTER FOR CANCER AND PREVENTION FOUNDATION

**Under Section 402 of the
New York Not-For-Profit Corporation Law**

The undersigned, desiring to form a corporation pursuant to the provisions of the New York Not-For-Profit Corporation Law ("NPCL"), does hereby certify:

FIRST: The name of the corporation is RALPH LAUREN CENTER FOR CANCER AND PREVENTION FOUNDATION. (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

THIRD: The Corporation shall be a Type B corporation as defined in Section 201 of the NPCL.

FOURTH: The members of the Corporation shall be North General Hospital and Memorial Sloan Kettering Cancer Center.

FIFTH: (a) The Corporation is organized, and shall be operated, exclusively for charitable, scientific and educational purposes in the United States and abroad within the meaning of Sections 170(c)(2)(B) and 501(c)(3) of the Code, including, in particular, for the purposes of:

(i) facilitating and supporting collaborative research relating to cancer and related diseases, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, in furtherance of accomplishing the foregoing charitable purposes; and

(ii) The Corporation shall not operate for the purpose of carrying on a trade or business for profit.

(b) Notwithstanding any other provision of this certificate of incorporation to the contrary, the Corporation shall not operate a health facility or deliver direct patient care, and nothing contained herein shall authorize the Corporation to establish, operate, construct, lease or maintain a hospital or to provide hospital services or health-related services or to operate a drug maintenance program, a certified home health agency, or a hospice as defined and covered by Articles 28, 33, 36 and 40, respectively, of the Public Health Law, or to solicit,

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collect or otherwise raise or obtain funds, contributions, or grants from any source for the establishment or operation of any hospital.

SIXTH: In furtherance of the foregoing purposes, the Corporation shall have all the general rights, powers and privileges enumerated in Section 202 of the NPCL, together with the power to solicit contributions, grants and/or bequests for the purposes of the Corporation and the power to maintain a fund or funds of real or personal property in furtherance of the Corporation's purposes. The Corporation shall have the right to exercise all other powers which are, or hereafter may be, conferred by law upon a corporation organized for the above purposes or incidental to the conferred powers. Notwithstanding the foregoing, the Corporation shall not have the power to engage in any activities that are not in furtherance of its purposes as set forth in Article FIFTH hereof.

SEVENTH: No part of the Corporation's assets, net earnings, income or profit shall inure to the benefit of, or be distributable to, any member, director, officer or employee of the Corporation or other private person; provided, however, that the Corporation shall be authorized and empowered to pay reasonable compensation to any person for services rendered to or for the Corporation in furtherance of one or more of its purposes. No director, officer or employee of the Corporation or any private person shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

EIGHTH: No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except to the extent permitted by Section 501(h) of the Code if the Corporation makes an election thereunder), and the Corporation shall not participate in or intervene in (including the publishing or the distributing of statements in connection with) any political campaign on behalf of or in opposition to any candidate for public office.

NINTH: Notwithstanding anything to the contrary in this Certificate, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status: (a) as a corporation which is exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code, or (b) as a corporation contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code.

TENTH: Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or to include among its purposes any of the activities mentioned in Section 404(a) through (v) of the NPCL, without the Corporation first having obtained the consent or approval from the appropriate governmental authority with respect thereto.

ELEVENTH: In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to one or more such other charitable, scientific or educational organizations having similar purposes and missions to that

of the Corporation and as are then in existence and qualifying under Section 501(c)(3) of the Code, or to the Federal, State and/or local governments for a related public purpose, in such proportions as the Board of Directors of the Corporation shall determine, subject to compliance with an order of a Justice or the Supreme Court of the State of New York

TWELFTH: The office of the Corporation shall be located in the County of New York, State of New York.

THIRTEENTH: In accordance with Section 508(e) of the Code, if in any taxable year the Corporation is a private foundation as defined in Section 509(a) of the Code, then in such year:

(a) The Corporation shall distribute such amounts for each taxable year at such time and in such manner so as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(b) The Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941(d) of the Code;

(c) The Corporation shall not retain any excess business holdings which are subject to tax under Section 4943(c) of the Code,

(d) The Corporation shall not make any investments in such manner so as to subject the Corporation to tax under Section 4944 of the Code; and

(e) The Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Code.

FOURTEENTH: No director or officer of the Corporation shall have any personal liability to the Corporation or its members for damage resulting from any breach of such director's or officer's duties as a director or officer of the Corporation; provided, however, that this Article FOURTEENTH shall not eliminate or limit the liability of any director or officer: (a) if a judgment or other final adjudication adverse to such director or officer establishes that his or her acts or omissions (i) were in bad faith or involved intentional misconduct or a knowing violation of law or that such director or officer personally gained in fact a financial profit or other advantage to which he or she was not legally entitled, or (ii) violated Section 719 of the NPCL, unless the NPCL is amended or supplemented to so limit or eliminate such liability, or (b) to the extent that such personal liability is otherwise required by, or can not otherwise be eliminated in accordance with, the NPCL.

FIFTEENTH: The Corporation shall, to the fullest extent permitted by the NPCL, indemnify any present or former director, officer, employee or agent of the Corporation or the personal representatives thereof, made or threatened to be made a party in any civil or criminal action or proceeding by reason of the fact that such director, officer,

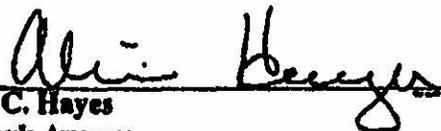
employee or agent, or his or her testator or intestate, is or was a director, officer, employee or agent of the Corporation or, at the request of the Corporation, served any other organization, entity or other enterprise in any capacity, to the full extent and in all such circumstances as shall be permitted under the NPCL, and all such indemnified costs and expenses incurred shall be advanced by the Corporation pending the final disposition of such action or proceeding. Such required indemnification shall be subject only to the exception that no indemnification may be made to or on behalf of any director, officer, employee or agent in the event and to the extent that a judgment or other final adjudication adverse to the director, officer, employee or agent establishes that such director's, officer's, employee's or agent's acts were committed in bad faith or involved intentional misconduct or a knowing violation of law or that such director, officer, employee or agent personally gained in fact a financial profit or other advantage to which he or she was not legally entitled (provided, however, that indemnification shall be made upon any successful appeal of any such adverse judgment or final adjudication). The Corporation shall have the power to purchase and maintain insurance to indemnify the Corporation, its members, directors, officers, employees and agents of the Corporation, and other persons otherwise entitled to indemnification, to the full extent and in such circumstances as is permitted under the NPCL. No indemnification shall be made under this Article FIFTEENTH if such indemnification would be inconsistent with the provisions of the Corporation's Bylaws, a resolution of Corporation's member(s) or Board of Directors or other proper corporate action, or, the provisions of Sections 4941 through 4945 or Section 4958 of the Code, as any such of the foregoing may be in effect at the time of the accrual of the alleged cause of action asserted in the threatened or pending action or proceeding, which prohibits or otherwise limits such indemnification

SIXTEENTH: All references herein to the Code are to the Internal Revenue Code of 1986, and shall be deemed to include both amendments thereto and corresponding statutory provisions of future United States Internal Revenue Laws which supercede the Code or particular provisions thereof.

SEVENTEENTH: The Secretary of State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation that is served upon him is:
250 Park Avenue, New York, New York 10177.

EIGHTEENTH: The Incorporator is at least eighteen (18) years of age.

INTENDING TO BE BOUND, this Certificate has been signed and the statements made herein affirmed as true under penalties of perjury this 30th day of January, 2002.



Alicia C. Hayes
250 Park Avenue
New York, NY 10177

F 020131000 322

CERTIFICATE OF INCORPORATION

OF

RALPH LAUREN CENTER FOR CANCER AND PREVENTION FOUNDATION

Under Section 402 of the Not-For-Profit Corporation Law

ADD / SB

type B

DRAWDOWN

NCR-26

JCC
STATE OF NEW YORK
DEPARTMENT OF STATE

JAN 31 2002

FILED
TAXS

BY:

MHR

ny

**FILED BY:
EPSTEIN BECKER & GREEN, P.C.
250 PARK AVENUE
NEW YORK, NY 10177-1211**

6

020131000 328

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy for RALPH LAUREN CENTER FOR CANCER CARE AND PREVENTION, File Number 020326000167 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on August 31, 2020.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

Rev. 06/07

Authentication Number: 2008311047 To verify the authenticity of this document you may access the Division of Corporation's Document Authentication Website at <http://ecorp.dos.ny.gov>

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F02032600067

CERTIFICATE OF CORRECTION
OF THE CERTIFICATE OF INCORPORATION

OF

RALPH LAUREN CENTER FOR CANCER AND PREVENTION FOUNDATION

Under Section 105 of the Not-For-Profit Corporation Law (the "N-PCL")

THE UNDERSIGNED, being the Chairman of the corporation named herein, does hereby certify the following pursuant to Section 105 of the Not-For-Profit Corporation Law:

1. The name of the corporation is Ralph Lauren Center for Cancer and Prevention Foundation (the "Corporation").

2. The Corporation's Certificate of Incorporation, which is being corrected hereby, was filed by the New York State Department of State on January 31, 2002.

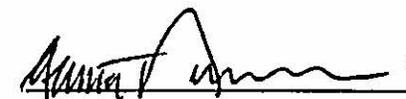
3. The Corporation's Certificate of Incorporation did not include the names and addresses of the Corporation's initial directors, as required for a Type B corporation by Section 402(a)(4) of the Not-For-Profit Corporation Law. That error, apparent on the face of the Corporation's Certificate of Incorporation, is hereby corrected by the addition of the following Article NINETEENTH, reading as follows:

NINETEENTH: The names and addresses of the initial directors of the Corporation, each of whom is at least eighteen (18) years of age, are as follows:

1

<u>Name</u>	<u>Address</u>
Norman Selby	205 Wood Road, Mount Kisco, NY 10549
Jack Rudin	241 Central Park West, New York, NY 10024
Richard Beattie	1136 Park Avenue, New York, NY 10128
Roger Farah	35 Beverly Road, Purchase, NY 10577
Antonio Perez	199 Chambers Street, New York, NY 1007
Richard Eaddy	1270 Fifth Avenue, New York, NY 10029
Gene Norman	7 Fordham Hill Oval, Bronx, NY 10468

IN WITNESS WHEREOF, I have signed this certificate on the 21st day of March, 2002 and I affirm the statements contained therein as true under penalties of perjury.


Gene Norman
Chairman

F020326000167

	<p>CERTIFICATE OF CORRECTION OF THE CERTIFICATE OF INCORPORATION OF RALPH LAUREN CENTER FOR CANCER AND PREVENTION FOUNDATION</p>	<p>KALKINES, ARRY, ZALL & BERNSTEIN LLP 121 STATE STREET, 3RD FLOOR ALBANY, NEW YORK 12207 (518) 432-5990</p>
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HT

I.C.C.
 STATE OF NEW YORK
 DEPARTMENT OF STATE
 FILED MAR 26 2002
 BY _____
 NY

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020326000177

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy for RALPH LAUREN CENTER FOR CANCER CARE AND PREVENTION, File Number 021203000680 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on August 31, 2020.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

Rev. 06/07

Authentication Number: 2008311048 To verify the authenticity of this document you may access the Division of Corporation's Document Authentication Website at <http://ecorp.dos.ny.gov>

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RESTATED CERTIFICATE OF INCORPORATION

OF

**RALPH LAUREN CENTER FOR CANCER
AND PREVENTION FOUNDATION**

**Under Section 805 of the
New York Not-For-Profit Corporation Law**

The undersigned, being the Chairman of the Board of the Ralph Lauren Center for Cancer and Prevention Foundation, does hereby certify:

(1) The name of the Corporation is Ralph Lauren Center for Cancer and Prevention Foundation.

(2) The Certificate of Incorporation of the Corporation was filed on January 31, 2002. A Certificate of Correction to the Certificate of Incorporation was filed on March 26, 2002.

(3) The Corporation is a corporation as defined in subparagraph (5) of paragraph (a) of section 102 of the Not-For-Profit Corporation Law (the "NPCL") and is a Type B corporation under paragraph (b) of section 201 of said law. The Corporation shall continue to be a Type B Corporation under paragraph (b) of section 201 of the NPCL.

(4) The Certificate of Incorporation of the Corporation is amended to effect the following amendments authorized by the NPCL:

(a) The name of the Corporation is changed to Ralph Lauren Center for Cancer Care and Prevention.

(b) Paragraphs (a)(i),(ii) and (b) of Article FIFTH, pertaining to the purposes of the Corporation, are deleted and replaced with:

"(i) establishing, operating and maintaining a hospital as defined in Article 28 of the New York Public Health Law to provide oncology diagnostic and treatment services without regard to creed, color or nationality; and

(ii) subject to the limitations set forth herein, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit

corporations organized under the NPCL, in furtherance of accomplishing the foregoing charitable purposes; and

(b) The Corporation shall not operate for the purpose of carrying on a trade or business for profit."

- (c) Article TENTH, pertaining to the activities listed in NPCL Section 404, is deleted and replaced with the following:

"Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or to include among its purposes any of the activities mentioned in Section 404(a) through (v) of the NPCL, excluding (o) and (t), without the Corporation first having obtained the consent or approval from the appropriate governmental authority with respect thereto."

- (d) Article SEVENTEENTH, pertaining to the designation of an agent of the Corporation, is deleted and replaced with the following:

"The Secretary of State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation that is served upon him is: 1919 Madison Avenue, New York, New York 10035."

- (e) Article EIGHTEENTH, pertaining to subventions, is deleted and replaced with the following:

"The Corporation shall be authorized, by resolution of its Board of Directors, to accept subventions from members and/or non-members on terms and conditions not inconsistent with the Not-for-Profit Corporation Law of the State of New York, and to issue Certificates therefor."

- (5) The text of the certificate of incorporation is hereby restated, as amended, to read as herein set forth in full:

FIRST: The name of the corporation is RALPH LAUREN CENTER FOR CANCER CARE AND PREVENTION (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5)

of Section 102 of the NPCL.

THIRD: The Corporation shall be a Type B corporation as defined in Section 201 of the NPCL.

FOURTH: The members of the Corporation shall be North General Hospital and Memorial Sloan Kettering Cancer Center.

FIFTH: (a) The Corporation is organized, and shall be operated, exclusively for charitable, scientific and educational purposes in the United States and abroad within the meaning of Section 170(c)(2)(B) and 501(c)(3) of the Code, including, in particular, for the purposes of:

(i) establishing, operating and maintaining a hospital as defined in Article 28 of the New York Public Health Law to provide oncology diagnostic and treatment services without regard to creed, color or nationality; and

(ii) subject to the limitations set forth herein, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, in furtherance of accomplishing the foregoing charitable purposes; and

(b) The Corporation shall not operate for the purpose of carrying on a trade or business for profit.

SIXTH: In furtherance of the foregoing purposes, the Corporation shall have all the general rights, powers and privileges enumerated in section 202 of the NPCL, together with the power to solicit contributions, grants and/or bequests for the purposes of the Corporation and the power to maintain a fund or funds of real or personal property in furtherance of the Corporation's purposes. The Corporation shall have the right to exercise the other powers which are, or hereafter may be, conferred by law upon a corporation organized for the above purposes or incidental to the conferred powers. Notwithstanding the foregoing the Corporation shall not have the power to engage in any activities that are not in furtherance of its purposes as set forth in Article FIFTH hereof.

SEVENTH: No part of the Corporation's assets, net earnings, income or profit shall inure to the benefit of, or be distributable to, any member, director, officer or employee of the Corporation or other private person; provided, however, that the Corporation shall be authorized and empowered to pay reasonable compensation to any person for services rendered to or for the Corporation in furtherance of one or more of its purposes. No director, officer or employee of the Corporation or any private person shall

be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

EIGHTH: No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except to the extent permitted by Section 501(h) of the Code if the Corporation makes an election thereunder), and the Corporation shall not participate in or intervene in (including the publishing or the distributing of statements in connection with) any political campaign on behalf of or in opposition to any candidate for public office.

NINTH: Notwithstanding anything to the contrary in this Certificate, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status: (a) as a corporation which is exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code, or (b) as a corporation contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code.

TENTH: Nothing herein shall authorize the Corporation, directly or indirectly, to engage in or to include among its purposes any of the activities mentioned in Section 404(a) through (v) of the NPCL, excluding (o) and (t), without the Corporation first having obtained the consent or approval from the appropriate governmental authority with respect thereto.

ELEVENTH: In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to one or more such other charitable, scientific or educational organizations having similar purposes and missions to that of the Corporation and as are then in existence and qualifying under Section 501(c)(3) of the Code, or to the Federal, State and/or local governments for a related public purpose, in such proportions as the Board of Directors of the Corporation shall determine, subject to compliance with an order of a Justice of the Supreme Court of the State of New York.

TWELFTH: The office of the Corporation shall be located in the County of New York, State of New York.

THIRTEENTH: In accordance with section 508 (e) of the Code, if in any taxable year the Corporation is a private foundation as defined in Section 509(a) of the Code, then in such year:

(a) The Corporation shall distribute such amounts for each taxable year at such time and in such manner so as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(b) The Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941(d) of the Code;

(c) The Corporation shall not retain any excess business holdings which are subject to tax under Section 4943(c) of the Code;

(d) The Corporation shall not make any investments in such manner so as to subject the Corporation to tax under Section 4944 of the Code; and

(e) The Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Code.

FOURTEENTH: No director or officer of the Corporation shall have any personal liability to the Corporation or its members for damage resulting from any breach of such director's or officer's duties as director or officer of the Corporation; provided, however, that this Article FOURTEENTH shall not eliminate or limit the liability of any director or officer: (a) if a judgment or other final adjudication adverse to such director or officer establishes that his or her acts or omissions (i) were in bad faith or involved intentional misconduct or a knowing violation of the law or that such director or officer personally gained in fact a financial profit or other advantage to which he or she was not legally entitled, or (ii) violated Section 719 of the NPCL, unless the NPCL is amended or supplemented to so limit or eliminate such liability, or (b) to the extent that such personal liability is otherwise required by, or can not otherwise be eliminated in accordance with, the NPCL.

FIFTEENTH: The Corporation shall, to the fullest extent permitted by the NPCL, indemnify any present or former director, officer, employee or agent of the Corporation or the personal representatives thereof, made or threatened to be made a party in any civil or criminal action or proceeding by the reason of the fact that such director, officer, employee or agent, or his or her testator or intestate, is or was a director, officer, employee or agent of the Corporation or, at the request of the Corporation, served any other organization, entity or other enterprise in any capacity, to the full extent and in all such circumstances as shall be permitted under the NPCL, and all such indemnified costs and expenses incurred shall be advanced by the Corporation pending the final disposition of such action or proceeding. Such required indemnification shall be subject only to the exception that no indemnification may be made to or on the behalf of any director, officer, employee or agent in the event and to the extent that a judgment or other final adjudication adverse to the director, officer, employee or agent establishes that such director's, officer's, employee's or agent's acts were committed in bad faith or involved intentional misconduct or a knowing violation of law or that such director, officer, employee or agent personally gained in fact a financial profit or other advantage to which he or she was not legally entitled (provided, however, that indemnification shall be made

upon any successful appeal of any such adverse judgement or final adjudication). The Corporation shall have the power to purchase and maintain insurance to indemnify the Corporation, its members, directors, officers, employees and agents of the Corporation, and other persons otherwise entitled to indemnification, to the full extent and in such circumstances as is permitted under the NPCL. No indemnification shall be made under this article FIFTEENTH if such indemnification would be inconsistent with the provisions of the Corporation's Bylaws, a resolution of Corporation's member(s) or Board of Directors or other proper corporate action, or, the provisions of Sections 4941 through 4945 or Section 4958 of the Code, as any such of the foregoing may be in effect at the time of the accrual of the alleged cause of action asserted in the threatened or pending action or proceeding, which prohibits or otherwise limits such indemnification.

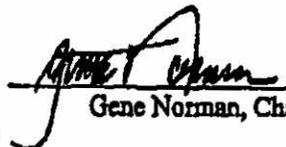
SIXTEENTH: All references herein to the Code are to the Internal Revenue Code of 1986, and shall be deemed to include both amendments thereto and corresponding statutory provisions of the future United States Internal Revenue Laws which supercede the Code of particular provision thereof.

SEVENTEENTH: The Secretary of State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation that is served upon him is: 1919 Madison Avenue, New York, New York 10035.

EIGHTEENTH: The Corporation shall be authorized, by resolution of its Board of Directors, to accept subventions from members and/or non-members on terms and conditions not inconsistent with the Not-for-Profit Corporation Law of the State of New York, and to issue Certificates therefor.

(6) This restatement of the certificate of incorporation of Ralph Lauren Center for Cancer and Prevention Foundation and its change of name to Ralph Lauren Center for Cancer Care and Prevention was authorized by a unanimous vote of the members of the Corporation.

IN WITNESS WHEREOF, I have signed this certificate and hereby affirm it as true
under the penalties of perjury this 16th day of October, 2002.


Gene Norman, Chair

THE UNDERSIGNED HAS NO OBJECTION
TO THE GRANTING OF JUDICIAL
APPROVAL HERBON AND WAIVES
STATUTORY NOTICE

THE ATTORNEY GENERAL HAS NO OBJECTION
TO THE GRANTING OF JUDICIAL APPROVAL
AND WAIVES STATUTORY NOTICE AND DEMANDS SERVICE
IF FILED CERTIFICATE SAID NO OBJECTION
CONDITIONED ON SUBMISSION OF THE
CASE TO COURT WITHIN 30 DAYS HEREAFTER.

ELIOT L. SPITZER

ATTORNEY GENERAL
STATE OF NEW YORK

by Lucindo Suarez
Asst. Atty. Gen.
November 21,
2002

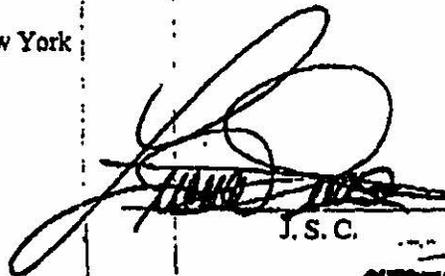
By: _____

Dated: _____

LUCINDO SUAREZ

I, _____, the undersigned Justice of the
Supreme Court of the State of New York, County of New York, do hereby approve the
foregoing Restated Certificate of Incorporation of RALPH LAUREN CENTER FOR CANCER
AND PREVENTION FOUNDATION pursuant to Section 804(a)(ii) of the Not-For-Profit
Corporation Law and consent that the same be filed.

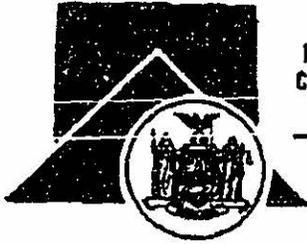
At the Ex Parte Term of the Supreme
Court of the State of New York,
held in and for the County of New York
at 60 Centre Street,
on NOV 27 2002, 2002.



J. S. C.

JUSTICE
SUPREME COURT OF THE STATE OF NY
FIRST JUDICIAL DISTRICT

LUCINDO SUAREZ



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

November 5, 2002

Mr. Matthew L. Hosford, Esq.
Kalkines, Arky, Zall & Bernstein, LLP
121 State Street - 3rd Floor
Albany, New York 12207

Re: Restated Certificate of Incorporation of Ralph Lauren Center for Cancer and Prevention Foundation

Dear Mr. Hosford:

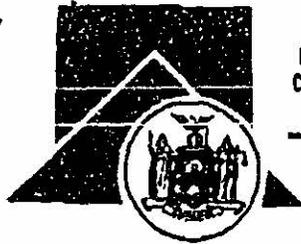
AFTER INQUIRY and INVESTIGATION, and in accordance with action taken at a meeting of the Public Health Council held on the 16th day of November, 2001, I hereby certify that the Public Health Council consents to the filing of the Restated Certificate of Incorporation of Ralph Lauren Center for Cancer and Prevention Foundation, dated October 16, 2002.

This consent is granted on the basis that the Public Health Council authorized the corporation to establish, operate and maintain a hospital as defined in Article 28 of the New York Public Health Law to provide oncology diagnostic and treatment services for a three year period coterminous with the term of the demonstration project as outlined in the corporation's Article 28 of the Public Health Law establishment application (#011190) and as considered by the Public Health Council at its meeting of November 16, 2001.

Sincerely,

Karen S. Westervelt
Executive Secretary

9



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N. Y. 12237

PUBLIC HEALTH COUNCIL

October 3, 2002

OCT 07 2002

Ms. Cynthia McCollum
Associate Hospital Administrator
Memorial Sloan Kettering Cancer Center
1275 York Avenue
New York, New York 10021

Re: Application No. 011190 – Ralph Lauren Center for Cancer Care and Prevention
(New York County)

Dear Ms. McCollum:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Ralph Lauren Center for Cancer Care and Prevention is APPROVED, the contingencies having now been fulfilled satisfactorily. Approval is for a limited period of three years – coterminous with the term of the demonstration project (assumed to be three years from the date of issuance of the corporation's operating certificate). The Public Health Council had considered this application and imposed the contingencies at its meeting of November 16, 2001.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

To complete the requirements for certification approval, please contact the Metropolitan Area/Regional Office of the New York State Office of Health Systems Management, 5 Penn Plaza, 8th Avenue between W. 33rd and W. 34th Streets, New York, New York 10001 or (212) 268-7001, within 30 days of receipt of this letter.

Sincerely,

Karen S. Westervelt
Executive Secretary

F021203000680

RESTATED CERTIFICATE OF INCORPORATION

OF

RALPH LAUREN CENTER FOR CANCER AND PREVENTION FOUNDATION

PURSUANT TO SECTION 805 OF THE NOT-FOR-PROFIT CORPORATION LAW

DRAWDOWN
DELANEY-30

lcc
STATE OF NEW YORK
DEPARTMENT OF STATE

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BY: *Imb*
New York

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2002 DEC -3 PM 1:56

FILED BY:

KALKINES, ARKY, ZALL & BERNSTEIN LLP
1675 BROADWAY, 27TH FLOOR
NEW YORK, NEW YORK 10019

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STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy for RALPH LAUREN CENTER FOR CANCER CARE AND PREVENTION, File Number 140725000432 has been compared with the original document in the custody of the Secretary of State and that the same is true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on August 31, 2020.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

Rev. 06/07

Authentication Number: 2008311049 To verify the authenticity of this document you may access the Division of Corporation's Document Authentication Website at <http://ecorp.dos.ny.gov>

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF**

RALPH LAUREN CENTER FOR CANCER CARE AND PREVENTION

Under Section 803 of the Not-for-Profit Corporation Law of the State of New York

FIRST: The name of the corporation is Ralph Lauren Center for Cancer Care and Prevention (hereinafter referred to as the "Corporation"). The name under which the Corporation was formed is Ralph Lauren Center for Cancer and Prevention Foundation.

SECOND: The date of filing of the Corporation's Certificate of Incorporation with the Department of State is January 31, 2002.

THIRD: The law the Corporation was formed under is the Not-for-Profit Corporation Law of the State of New York (the "N-PCL").

FOURTH: The Corporation is a corporation as defined in Section 102(a)(5) of the N-PCL.

FIFTH: Article **FOURTH** of the Certificate of Incorporation, which addresses the membership of the Corporation, is hereby amended to read in its entirety as follows:

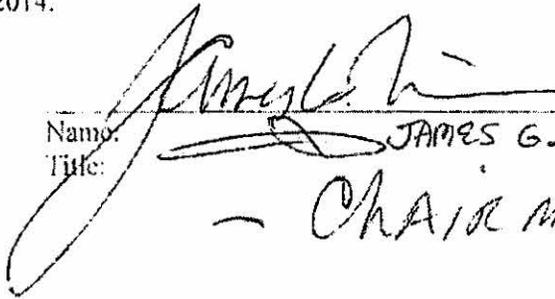
"FOURTH: The Corporation shall have one member, Memorial Sloan-Kettering Cancer Center, a New York not-for-profit corporation."

SIXTH: The Secretary of State is designated as the agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

Ralph Lauren Center for Cancer Care and Prevention
1919 Madison Avenue
New York, NY 10035
Attention: Chief Executive Officer

SEVENTH: This Certificate of Amendment was authorized by the unanimous written consent of the members of the Corporation dated as of March 1, 2011.

IN WITNESS WHEREOF, I have signed this certificate and hereby affirm it as true under penalties of perjury this 30 day of June, 2014.


Name: JAMES G. NIVEN
Title: CHAIRMAN

NCR-26

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CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

RALPH LAUREN CENTER FOR CANCER CARE AND PREVENTION

UNDER SECTION 803 OF THE
NOT-FOR-PROFIT CORPORATION LAW

MSK

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2014 JUL 24 AM 9:11
2014 JUL 25 AM 11:13

Manatt, Phelps & Phillips, LLP
7 Times Square, 24th Floor
New York, NY 10036

ICC

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JUL 25 2014

TAX S. _____

BY: *[Signature]*

Drawdown

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Exhibit B

**Bylaws of
Ralph Lauren Center for Cancer Care and Prevention**

BYLAWS
OF THE
RALPH LAUREN CENTER FOR
CANCER CARE AND PREVENTION

**A NOT-FOR-PROFIT CORPORATION ORGANIZED UNDER
THE LAWS OF THE STATE OF NEW YORK**

ADOPTED BY THE RALPH LAUREN CENTER FOR
CANCER CARE AND PREVENTION BOARD OF TRUSTEES ON
MAY 15, 2002

TABLE OF CONTENTS

Article I – Purpose and Offices	3
Article II – Membership	3
Article III – Board of Trustees	4
Article IV – Committees of the Board	7
Article V – Officers	8
Article VI – Conflicts of Interest	11
Article VII – Books and Records	12
Article VIII – General	13
Article IX – Annual Review, Self-Evaluation, and Certification	14

**ARTICLE I
PURPOSE AND OFFICES**

Section 1.1 **Name.** The name of this corporation shall be the Ralph Lauren Center for Cancer Care and Prevention (hereinafter the "Corporation").

Section 1.2 **Purpose.** The purposes for which the Corporation is organization are set forth in the Corporation's Certificate of Incorporation as it may be amended from time to time.

Section 1.3 **Not-For-Profit Status; Section 501(c)(3) Status.** The Corporation is a New York not-for-profit corporation. It is the intention of the Corporation to quality and remain qualified as an exempt organization under Section 501(c)(3) of the Internal Revenue Code (hereinafter the "Code"). Accordingly, no part of the net earnings of the Corporation shall inure to the benefit of, or be distributed to, its Members, Trustees, Officers, or other private person, except that the Corporation shall be authorized and empowered to pay, reasonable compensation for services rendered or to make payments and distributions in furtherance of the purposes set forth in the Certificate of Incorporation as it may be amended from time to time.

Section 1.4 **Principal Office.** The Corporation's principal office shall be located and continuously maintained in the State of New York. The Corporation may have other offices, as determined by the Board of Trustees (hereinafter sometimes referred to as the "Board").

**ARTICLE II
MEMBERSHIP**

Section 2.1 **Membership.** The sole Member of the Corporation shall be Memorial Sloan-Kettering Cancer Center ("MSKCC"). The CEO of MSKCC shall have the authority to act on behalf of MSKCC in such capacity. The Member is an organization exempt from federal taxation under Section 501(c)(3) of the Code.

Section 2.2 **Annual Meeting.** The Corporation shall hold an Annual Meeting of the Member for the election of Trustees, and for the transaction of general business each year at a time and place designated by the Member or on such other date and at such time and place as shall be designated by the Member in its sole discretion. If the day fixed for the annual meeting is a legal holiday, a Saturday, or a Sunday, the meeting shall be held on the next succeeding business day not a legal holiday, a Saturday, or a Sunday.

Section 2.3 **Special Meetings.** A special meeting of the Member may be called by the Chairperson, by any two (2) Trustees, or by the Member upon written petition stating the purpose for such meeting. Business at special meetings shall be limited to the purposes stated in the notice of such meeting. The Chairperson shall determine the date, time and place for special meetings. The Chairperson may reschedule a special meeting for cause but shall not cancel a special meeting without the written concurrent of the persons requesting the meeting if such meeting was not called by the Chairperson.

Section 2.4 Notice. Written or printed notice stating the place, date, and hour of a Member meeting shall be provided to the Member. Unless the meeting is the Annual Meeting, the notice shall indicate at whose direction the meeting has been called. Notice of a special meeting shall state the purpose or purposes for which the meeting is called. Notice shall be delivered personally or by first class mail no less than ten (10) nor more than fifty (50) days before the date set for the meeting; by any other class of mail notice shall be given not less than thirty (30) nor more than sixty (60) days before such date.

Section 2.5 Waiver of Notice. Notice of meeting need not be given to the Member if it submits a signed waiver of notice, in person or by proxy, whether before or after the meeting. The attendance of the Member at the meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice by the Member.

Section 2.6 Action by Written Consent in Lieu of Meeting. Any action required by law to be taken at a meeting of the Member, or any action which may be taken at a meeting of the Member, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by the Member and is filed with the Secretary of the Corporation. Actions taken pursuant to written consent shall be treated as a vote of the Member for all purposes.

Section 2.7 Reserved Powers. No action of the Corporation, its Board or any Officer with respect to any of the following shall be effective without the prior approval of the Member:

- a. Capital Contributions. A determination regarding the amount and timing of any capital contribution by the Member;
- b. Board of Trustees. The amendment, repeal or adoption of any provision inconsistent with the purpose or intent of provisions regarding the number and qualifications of the Trustees of the Corporation;
- c. Tax-Exempt Status and Bond Financing of Members. The approval of any action that could adversely affect the tax-exempt status or bond financing of the Member; and
- d. Addition of Members. The addition of new Members.

ARTICLE III BOARD OF TRUSTEES

Section 3.1 Management Powers Vested. Subject to limitation set forth in the Certification of Incorporation and these Bylaws, the activities and affairs of the Corporation shall be conducted, and all corporate powers shall be exercised, by or under the direction of the Board.

Section 3.2 Number. The Board shall consist of nine (9) persons. Four (4) of the Trustees shall be Trustees recommended by the Polo Ralph Lauren Corporation.

Section 3.3 Term and Election.

- a. Term. Trustees shall be elected for two (2) year terms. In any event, each Trustee shall continue in office until his or her successor shall have been elected and qualified, or until his or her death, resignation or removal. Trustees recommended

- by Polo Ralph Lauren Corporation shall serve for the terms determined by Polo Ralph Lauren Corporation.
- b. Election of Trustees. Trustees shall be elected by the Member and shall include the four (4) Trustees recommended by the Polo Ralph Lauren Corporation.
 - c. Term Limit. Trustees shall be eligible for reelection without limitation on the number of terms they may serve.

Section 3.4 Removal and Resignation. A Trustee (other than the Polo Ralph Lauren Trustees) may be removed by the Member, for cause or without cause. Polo Ralph Lauren Corporation may remove its recommended Trustees at any time, for cause or without cause. A Trustee (including Polo Ralph Lauren Trustees) may be removed by the affirmative vote of the Board, at any meeting at which a quorum is present, but only for cause, and any Trustee proposed to be removed by the Board shall be given reasonable advance written notice of the cause for removal, and a reasonable opportunity to defend. A Trustee may resign at any time by giving written notice to the Chairperson, Secretary or Treasurer of the Corporation, or to the Board. The resignation will take effect upon receipt or at the time specified in the notice. Acceptance of a resignation will not be necessary to make it effective. If the resignation is effective at a future time, a successor may be selected in advance to take office at the time the resignation is effective.

Section 3.5 Vacancies. The Member shall appoint Trustees to fill the unexpired terms of any Trustees (other than the Polo Ralph Lauren Trustees) whose positions become vacant for any reason. Polo Ralph Lauren Corporation shall appoint a replacement Trustee in the case of a vacancy in any of the positions of the Polo Ralph Lauren Trustees arising for any reason. A Trustee elected or appointed to fill a vacancy shall hold office until the next annual meeting of the Member at which there would be elections of Trustees, and until his or her successor is elected or appointed and qualified.

Section 3.6 Place of Meetings. The Board may meet at any place that the Board designated from time to time. In the absence of such designation, meetings will be held at the principal office of the Corporation.

Section 3.7 Regular Meetings. The Board may establish a schedule for regular meetings to be held during the fiscal year. There shall be no more than one regular meeting in any thirty-day period.

Section 3.8 Annual Meetings. The Board shall hold an Annual Meeting for the purposes of organization and transaction of all other business. Annual Meetings of the Board will be held upon at least ten (10) days prior written notice.

Section 3.9 Special Meetings. Special Meetings of the Board for any purpose or purposes may be called at any time by the Chairperson or by written request of a majority of the Trustees then in office. Special Meetings of the Board shall be held upon at least forty-eight (48) hours' notice.

Section 3.10 Quorum. Except as provided in this section and in Section 6.4, a quorum for the transaction of business shall be a simple majority of the total number of Trustees, plus one (1). For any matter set forth in Section 3.11, a quorum shall be a simple majority of the total number of Trustees, plus two (2). For any matter in which there are Interested Trustees, as set forth in Section 6.3, a quorum for the transaction of business shall be a simple majority of the total number of Trustees. The Chairperson may adjourn and reschedule any meeting at which a quorum is not obtained.

Section 3.11 Voting. Except as otherwise required by law, the Certificate of Incorporation, or these Bylaws, at all meetings of the Board at which a quorum is present, the affirmative vote of a simple majority of the Trustees shall be the act of the Board. Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, at all meetings of the Board at which a quorum is present, as set forth in Section 3.10, at which action is proposed to be taken on a matter in which there are Interested Trustees who are not permitted to vote, as set forth in Section 6.3, the affirmative vote of a simple majority of the Trustees shall be the act of the Board.

Section 3.12 Action by Written Consent in Lieu of Meeting. Any action required by these Bylaws to be taken at a meeting of the Board, or any action which may be taken at any meeting of the Board, may be taken without a meeting if consent in writing, setting forth the action so taken, shall be signed by all of the Trustees of the Corporation.

Section 3.13 Conference Telephone. Meetings of the Board may be held by conference call, provided that each person participating may hear and be heard by each other participant in the meeting.

Section 3.14 Notice of Meeting. The Corporation shall give each Trustee written notice of the date, time, and place of each meeting. Written notice shall include notice sent by e-mail. Such notice shall be given not less than two (2) nor more than fifty (50) days before the date of the meeting and will be addressed and delivered to the mailing or email address given to the Corporation by the Trustee. Neither the business to be transacted nor the purpose of any regular or Special Meeting of the Trustees need be specified in any written notice.

Section 3.15 Waiver of Notice. Any written waiver of notice, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute waiver of notice of such meeting except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. All such waivers will be made a part of the minutes of the meeting.

Section 3.16 Adjournment. A majority of the Trustees present, whether or not a quorum is present, may adjourn a Board meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given to absent Trustees at the time and place fixed at the meeting adjourned, provided, however, that if the meeting is adjourned for more than forty-eight (48) hours, notice of any adjournment to another time and place shall be given prior to the time of the adjourned meeting to the Trustees who are not present at the time of the adjournment.

Section 3.17 Subsidiary and Affiliated Organizations. Except at otherwise required by law, the Certificate of Incorporation, or these Bylaws, all actions required to be taken by the Corporation in its capacity as a shareholder, partner or corporate member of any subsidiary or affiliate corporation or organization, may be effected by the affirmative vote of a simple majority of the Trustees present with voting privileges at a meeting of the Board at which a quorum is present. The Board may authorize an Office of the Corporation to act on its behalf with respect to such affiliate or subsidiary organizations.

ARTICLE IV COMMITTEES OF THE BOARD

Section 4.1 Committees. The Board, by resolution adopted by a majority of the Board, may designate one or more committees of the Board. With the exception of the Executive Committee as provided in Section 4.2 below, each such committee shall have a minimum of five (5) Trustees. Furthermore, to the extent provided in such resolution, each such committee shall have and may exercise all of the authority of the Board that is delegated to said committee by the Board. The standing committees of the Corporation shall be the Executive Committee and the Finance Committee. The membership of each committee may vary in number (with a minimum of three (3) Trustees). Committee members shall be designated by the Chairperson of the Board, at whose pleasure they shall serve, and such appointments shall be ratified by the Board. Unless otherwise provided, the chairs of the committees of the Board shall be appointed for two (2) year terms by the Chairperson of the Board and ratified by the Board. Standing committee chairpersons and committee members may be appointed to succeed themselves without limitation of a number of years of service.

Section 4.2 Executive Committee. The Executive Committee shall be comprised of the Chairperson, the Secretary and the Treasurer. The Executive Committee shall be constituted for the transaction of such business of the corporation as may be required between meetings of the Board of the Corporation. All business transacted by such committee shall be communicated to the Board at its next regular meeting. The Board shall not be required to ratify any action of the Executive Committee unless the Executive Committee expressly determines with respect to any particular action or decision that full Board approval shall be required. Accordingly, the Executive Committee shall have all the power and authority of the Board, provided that the Executive Committee shall not have the authority to take the following actions: (i) the submission of the Member of any action requiring the Member's approval under the Not-For-Profit Corporation Law or these Bylaws, (ii) the filling of vacancies in the Board or in any committee of the Board, (iii) the fixing of compensation of the Trustees for serving on the Board or in any committee of the Board, (iv) the amendment or repeal of these Bylaws or adoption of new Bylaws, (v) the amendment or repeal of any resolution of the Board which by its terms shall

not be so amendable or repeal-able, or (vi) any action that requires the affirmative vote of the entire Board (i.e., the number of Trustees without regard to any vacancies).

Section 4.3 Finance Committee. The Finance Committee shall advise the Board and its Committees on the objectives, policies and controls relative to the financial operation of the Corporation. The Finance Committee shall review and recommend to the Board operating and capital budgets and fiscal policies for the Corporation; review and approve budgeting processes for the Corporation; and monitor and evaluate the financial performance of the Corporation; and review the annual audit of the Corporation. The Finance Committee shall be responsible for establishing the financial policy for the Corporation, upon approval of the Board. Recommendations of the Finance Committee shall be presented to either the Board or the Executive Committee. The Finance Committee shall respond to such questions relating to the financial condition of the Corporation as may be submitted to it by the Board or the Executive Committee. The Treasurer of the Corporation shall serve as the Chairperson of the Finance Committee.

Section 4.4 Committees of the Corporation. The Board may create committees of the Corporation, which shall function as advisory committees for the Board, as the Board deems necessary. Such committees shall be created for limited terms and limited purposes. The Chairperson of the Board shall appoint members of all advisory committees. Advisory committees are not required to be comprised exclusively of Trustees, although Trustees may serve on such committees. Committees of the Corporation may not act on behalf of the Corporation or bind it to any action, but may make recommendations to the Board or to the Officers.

Section 4.5 Meetings of the Committees. The meetings of each committee shall be governed by the same policies and procedures regarding quorum and voting requirements as meetings of the Board. Such policies and procedures may be amended by the Board in its sole discretion.

ARTICLE V OFFICERS

Section 5.1 Titles and Compensation. The principal officers of the Corporation (each an "Officer," and collectively, the "Officers") shall be the Chairperson, Secretary, Treasurer, Chief Executive Officer and Medical Director. Each Officer shall be appointed by the Board and shall serve until his or her successor shall have been appointed and qualified or until his or her death, resignation or removal. The Chairperson, Secretary and Treasurer each shall be a person that is a Trustee of the Corporation. Except for the Chief Executive Officer and Medical Director, Officers will serve without compensation for services rendered on behalf of the Corporation. Except for the Chairperson and Secretary, any two or more offices may be held by the same person; provided, however, that a person who holds more than one (1) office in the Corporation may not act in more than one capacity to execute, acknowledge, or verify an instrument required by law to be executed, acknowledged, or verified by more than one Officer.

Section 5.2 Chairperson. The Chairperson shall preside at all meetings of the Board and the Member, and shall carry out such other duties as the Board may from time to time prescribe.

Except where, by law, the Chief Executive Officer's signature is required, the Chairperson shall possess the same power as the Chief Executive Officer to sign all certificates, contracts, and other instruments of the Corporation which may be authorized by the Board. The Chairperson may serve as an ex officio member of all committees of the Board, with a vote.

Section 5.3 Secretary. The Secretary shall attend all meetings of the Board and record, or make arrangements to record, all proceedings of the meetings of the Board in a book to be kept for that purpose and shall perform like duties for the committees, if any, when required. The Secretary shall give, or cause to be given, notice of all meetings and Special Meetings of the Board, and shall perform such other duties as may be prescribed by the Board or Chairperson, under whose supervision he/she shall be. The Secretary shall keep a register of the mailing address and email address of each Trustee, which shall be furnished to the Secretary by such Trustee. The Secretary shall keep the original or a conformed copy of the Certificate of Incorporation and Bylaws, as amended to date, and all earlier versions thereof; other organizational documents and governing instruments; records of any tax exemptions, licenses and permits except those which may be given by the Chief Executive Officer into the custody of the Treasurer, contracts and affiliation agreements to which the Corporation is a party; and other valuable papers of the Corporation. The Secretary shall have custody of the corporate seal of the Corporation and the Secretary, or an Assistant Secretary, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his/her signature or by the signature of such Assistant Secretary. The Board may, however, give general authority to any other Officer to affix the seal of the Corporation and to attest the affixing by his/her signature. The Secretary shall be responsible for making any attestations or certifications required of the Corporation Secretary. The Board, in its discretion, may delegate any such duties of the Secretary.

Section 5.4 Treasurer.

- a. **General Responsibilities.** The Treasurer of the Corporation shall maintain accounts of the business transactions of the Corporation, which shall at all times be open to inspection. The Treasurer shall consult with the Finance Committee with regard to the development of the annual budget for presentation to the Board. The Treasurer shall promptly deposit or cause to be deposited all moneys to the credit of the Corporation with such institutions as may be designated by the Board, and shall not permit any of the funds of the Corporation to be co-mingled with his or her own funds or those of any other organization. The Treasurer shall disburse or cause to be disbursed the funds of the Corporation as may be properly authorized by the Board, shall render an account to the Board of all financial transactions as Treasurer and the financial condition of the Corporation annually, or upon the request of the Board or the Chief Executive Officer, and shall perform all other duties usual and incidental to the office. The Treasurer shall prepare or have prepared any tax returns or other reports to governmental authorities concerning finances as may be required by law or by the Board. Whenever an individual relinquishes the office of Treasurer, the outgoing Treasurer shall turn over all records in his or her possession to the successor in the office and execute all documents as may be necessary to effect the transfer of signature rights to accounts of the Corporation. If desired by the Board, such records shall be

examined at that time by an independent outside auditor. Nothing herein shall limit the authority of the Board to authorize an audit or review of the financial records at any other time. The Board, in its discretion, may delegate any such duties of the Treasurer.

- b. Annual Report. As required by Section 519 of the Not-for-Profit Corporation Law, the Treasurer shall develop an annual report (the "Annual Report") on the business affairs of the Corporation to be presented to the Board at the annual meeting of the Member. The Annual Report shall be verified as being true and complete prior to such presentation by: (i) a majority of the Board or (ii) the Chief Executive Officer and the Treasurer. Alternatively, the Annual Report shall be certified by an independent public or independent certified public accounting firm retained by the Board, and shall show, in appropriate detail: (i) the assets and liabilities of the Corporation, including trust funds, as of the end of a twelve month fiscal period terminating not more than six months prior to the meeting, (ii) the principal changes in assets and liabilities, including trust funds, during said fiscal period, (iii) the revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes during said fiscal period, and (iv) the expenses or disbursements of the Corporation, for both general and restricted purposes, during said fiscal period, and (v) the number of members of the Corporation as of the date of the report, together with a statement of increase or decrease in such number during said fiscal period, and a statement of the place where the names and addresses of the current members may be found.

Section 5.5 Chief Executive Officer. The Chief Executive Officer shall be the chief administrative officer and shall have general and active management of the business of the Corporation, shall see that all orders and resolutions of the Board are carried into effect, and shall assume all responsibilities as the Board may from time to time prescribe. The Chief Executive Officer shall be responsible for carrying out the programs and policies established by the Board, shall be authorized to sign all contracts authorized by the Board, shall be authorized to speak for and represent the Corporation, and shall be authorized to make appointments and terminations to all appointive officers. The Chief Executive Officer shall attend, in an advisory capacity, all meetings of all Committees of the Board (except as may be otherwise determined by the Board). The Chief Executive Officer shall keep or arrange for the safekeeping of any personal property belonging to the Corporation. The Chief Executive Officer is authorized to perform all other duties usual and incidental to the office.

Section 5.6 Medical Director. The Medical Director shall be the Corporation's chief officer for medical affairs and shall be responsible for the quality of medical care and the management and performance of the medical staff of the Corporation. Within this general area of responsibility, the Medical Director shall perform such specific duties as may be assigned from time to time by the Board, and shall report to the Board on all matters. The Medical Director shall receive notice of, and is authorized to attend all meetings of, the Board, unless, on a meeting by meeting basis, the Board instructs the Medical Director otherwise. The Medical Director shall have the right to attend Board meetings, but shall not have the power to vote at meetings of the Board.

Section 5.7 Term and Election.

- a. Term. Except when a longer term is expressly provided in an employment agreement authorized and approved by the Board, all offices shall be elective, and all Officers shall serve a term of two (2) years.
- b. Election Generally. Election shall be by majority vote of the Trustees present and voting at the annual meeting of the Board held in years in which Board elections take place, or at a special meeting of the Board called for the purpose of electing Officers. Each Officer shall continue in office until his or her successor shall have been elected and qualified or until his or her death, resignation or removal. Subject to the qualification requirements of Section 5.7.3, all Officers may be reelected to serve additional terms, without limitation.

Section 5.8 Vacancies. A vacancy in any office shall be filled, by a majority vote of members of the Board. An Officer elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office.

Section 5.9 Removal and Resignation. Except where governed by contract, any Officer may be removed by a two-thirds (2/3) vote of the Board, with or without cause. An Officer may resign at any time by giving written notice to the Chairperson, Chief Executive Officer, Secretary of the Corporation, or Board. The resignation will take effect upon receipt or at the time specified in the notice. Acceptance of a resignation will not be necessary to make it effective. If the resignation is effective at a future time, a successor may be selected in advance, to take office at the time the resignation is effective.

**ARTICLE VI
CONFLICTS OF INTEREST**

Section 6.1 Disclosure of All Conflicts. All Trustees and all Officers, agents, and employees of the Corporation shall disclose all real or apparent conflicts or dualities of interest which they discover or have been brought to their attention in connection with the Corporation's activities. "Disclosure" as used in these Bylaws shall mean providing to the Chairperson of the Board a written description of the facts compromising the real or apparent conflict or duality of interest. An annual disclosure statement shall be circulated to Trustees, Officers, and certain identified agents and employees to assist them in considering such disclosures, but disclosure is appropriate whenever conflicts of interest may occur. The written notices of disclosure of conflicts shall be filed with the Chairperson or any other person designated by him or her from time to time to receive such notifications. All disclosures of real or apparent conflicts of interest received hereunder shall be noted for record in the minutes of a meeting of the Board.

Section 6.2 Conflicts of Interest. As required by Section 715 of the Not-for-Profit Corporation Law, no contract or other transaction between the Corporation and one of its Trustees or Officers, or between the Corporation and any other corporation, firm, association or other entity in which one or more of the Corporation's Trustees or Officers are directors or officers, or have a substantial financial interest, shall either be void or voidable for this reason alone or by reason alone that such Trustee or Trustees or Officers are present at the meeting of the Board or committee thereof that authorizes such contract or transaction, or that his or her or

their votes were counted for such purposes: (i) if the material facts as to such Trustee's or Officer's interest in such contract or transaction and as to any such common directorship, officership or financial interest are disclosed in good faith or known to the Board or committee, and the Board or committee authorizes such contract or transaction by a vote sufficient for such purpose without counting the vote of any such interested Trustee or Officer; or (ii) if the material facts as to such Trustee's or Officer's interest in such contract or transaction and as to any such common directorship, officership, or financial interest are disclosed in good faith or known to the Member entitled to vote thereon, if any, and such contract or transaction is authorized by vote of the Member.

If such good faith disclosure of the material facts as to the Trustee's or Officer's interest in the contract or transaction and as to any such common directorship, officership or financial interest is made to the Trustees or the Member, or known to the Board or committee or Member authorizing such contract or transaction as provided above, the contract or transaction may not be voided by the Corporation for the reasons set forth above. If there was no such disclosure or knowledge, or if the vote of such interested Trustee or Officer was necessary for the authorization of such contract or transaction at a meeting of the Board or committee at which it was authorized, the Corporation may avoid the contract or transaction unless the party or parties thereto shall establish affirmatively that the contract was fair and reasonable to the Corporation at the time it was authorized by the Board, the committee or the Member.

Section 6.3 Voting in the case of Interested Trustees. As required by New York State Department of Health regulations applicable to Diagnostic and Treatment Centers, no Trustee may vote on any transaction between the Corporation and another corporation, firm, association or entity in which such Trustee is an officer or director or has a direct or indirect substantial financial interest (as "Interested Trustee").

Section 6.4 Quorum in the case of Interested Trustees. As required by New York State Department of Health regulations applicable to Diagnostic and Treatment Centers, the presence of an Interested Trustee (as defined in Section 6.3) may be counted in determining whether there is a quorum generally for a meeting of the Board or a committee of the Board, but may not be counted in determining whether a quorum is present when the Board or a committee of the Board specifically takes action on a transaction involving an Interested Trustee.

ARTICLE VII BOOKS AND RECORDS

Section 7.1 Maintenance of Records. The Corporation shall keep correct and complete books and records of account and other records of activities of the Corporation in accordance with commonly accepted good business standards or as necessary for compliance with legal requirements.

Section 7.2 Form of Records. Any records maintained by the Corporation in the regular course of its business, including its membership ledger, books of account and minute books, may be kept on, or be in the form of, punch cards, magnetic tape, photographs, microphotographs or

any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

Section 7.3 Right to Inspect. In accordance with and subject to the terms and conditions of Section 621 of the Not-for-Profit Corporation Law, all books and records of the Corporation may be inspected by the Member, upon written demand under oath stating the purpose thereof, during the usual hours for business.

ARTICLE VIII GENERAL

Section 8.1 Amendments. The Member may amend or repeal these Bylaws at any meeting of the Member. The Board also may amend or repeal these Bylaws at any meeting of the Board upon a majority affirmative vote of the Trustees, provided that notice of the proposed amendment is submitted to the Trustees in writing at least ten (10) business days prior to the meeting at which such action is being requested and provided further that the Board may not amend any provision of these By-Laws relating to the Member.

Section 8.2 Fiscal Year. The fiscal year of the Corporation shall coincide with the calendar year.

Section 8.3 Indemnification and Advancement of Expenses. The Corporation shall indemnify its Officers, Trustees and other agents, and advance expenses for the defense by such persons of suits, claims and actions, to the fullest extent permitted by law.

Section 8.4 Insurance. The Corporation shall purchase and maintain insurance on behalf of any Trustee, Officer or agent of the Corporation against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Corporation would have the power to indemnify the Trustee, Officer or agent against such liability under the provisions of these Bylaws; provided, however, that the Corporation may not purchase insurance that would provide for payment, other than the cost of defense, to or on behalf of any Trustee or Officer (i) if a judgement or other final adjudication adverse to the insured Trustee or Officer establishes that his or her acts of active and deliberate dishonesty were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled or (ii) in relation to any risk that insurance of which is prohibited under New York State Insurance Law.

Section 8.5 Checks, Signatures Required. All bills payable, notes, checks, drafts, warrants or other negotiable instruments of the Corporation shall be made in the name of the Corporation and shall be signed by such Officer or Officers of the Corporation or by such other person or persons as the Board may designate.

Section 8.6 Employees. The Corporation may, from time to time, hire employees to assist in carrying out its purposes and may pay reasonable compensation to such employees.

Section 8.7 Counsel. The Board shall be authorized to retain legal counsel for the Corporation.

Section 8.8 Accounting Firm, Auditors. The Board shall be authorized to retain an accounting firm and auditors for the Corporation.

Section 8.9 Dissolution. The Corporation shall not be dissolved, nor all or substantially all of its assets sold, unless the Member adopts a resolution approving the dissolution or sale at a meeting called for that purpose at which a quorum is present.

Section 8.10 Integration. These Bylaws shall supersede all Bylaws previously adopted by the Corporation.

**ARTICLE IX
ANNUAL REVIEW, SELF-EVALUATION, AND CERTIFICATION**

Section 9.1 Annual Review. The Executive Committee of the Board shall review these Bylaws on an annual basis and prepare a report to be presented at the annual meeting of the Member, which report shall propose any revision of these Bylaws to the Member.

Section 9.2 Self-Evaluation. The Board shall adopt and maintain a program for review and evaluation of its performance on an annual basis. The Executive Committee shall prepare a report to be presented at the annual meeting of the Board which report shall propose any revision to the operating procedures of the Board. The Board shall consider, adopt, or reject such recommendations at the annual meeting of the Board or as soon thereafter as is practical.

Section 9.3 Officer Certification. The undersigned Officer of the Corporation hereby certified that the foregoing is a true, complete, and accurate copy of the Bylaws of the Corporation, as duly adopted by the Members on May 15, 2002.

Approved By:



Signature



Printed Name



Title



Date

Exhibit C

Plan of Dissolution and Distribution of Assets

Plan of Dissolution and Distribution of Assets of

THE RALPH LAUREN CENTER FOR CANCER CARE AND PREVENTION

The Board of Trustees of the Ralph Lauren Center for Cancer Care and Prevention (the "Corporation") has considered the advisability of voluntarily dissolving the Corporation and has determined that dissolution is in the best interest of the Corporation.

1. The assets of the Corporation and their fair market values, as of March 31, 2019, were as follows:

<u>Asset</u>	<u>Value</u>
Checking and Savings Accounts	\$ 1,401,847.32
Accounts Receivable	\$ 552,120.10
Undeposited Funds	\$ (400,000.00)
Furniture and Equipment	\$ 8,713.16
Other Assets	\$ 80,151.03
Total Assets	\$ 1,642,831.61

2. The liabilities of the Corporation, as of March 31, 2019, were as follows.

<u>Liability</u>	<u>Value</u>
Payroll Liabilities	\$ 224,350.89
Accrued Expenses	\$ 767,867.63
Other Liabilities	\$ 28,788.42
Total Liabilities	\$ 1,021,006.94

3. Memorial Sloan Kettering Cancer Center ("MSK"), the sole organization proposed to receive the Corporation's assets, is a charitable organization engaged in activities substantially similar to the Corporation's activities and will receive the Corporation's remaining assets consistent with Corporation's dissolution requirements that all remaining assets of the Corporation be distributed to one or more charitable, scientific or educational organizations having similar purposes and missions to that of the Corporation.

The following documents of MSK are attached hereto:

- the certificate of incorporation, with all amendments (Exhibit A);
- most recent financial report (Exhibit B); and
- an affidavit from a director or officer stating the purposes of the organization, that it is currently exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, that it is up to date in its registration and annual financial filings with the Charities Bureau or is exempt from registration with the Charities Bureau, and a statement that restricted assets will be held in accordance with the restrictions (Exhibit C).

4. In addition to approval by the New York Attorney General, the New York Department of Health must approve the closure of the Corporation and a copy of the approval will be attached to the Verified Petition submitted to the Attorney General.
5. Within two hundred seventy (270) days after the date on which the Attorney General approves the Plan, the Corporation shall carry it out. After the Plan is carried out, a Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.


Lewis J. Kampel, M.D.
Chief Executive Officer
Date: 7/22/19

Exhibit A

**Certificate of Incorporation of
Memorial Sloan Kettering Cancer Center**

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on July 14, 2015.



Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

MYLES B. AMEND
CHAIRMAN
STATE BOARD OF SOCIAL WELFARE



STATE OF NEW YORK
DEPARTMENT OF SOCIAL WELFARE
112 STATE STREET
ALBANY

RAYMOND W. HOUSTON
COMMISSIONER

FELIX INFAUSTO
COUNSEL AND BOARD SECRETARY

March 18, 1960

Roy Richardson, Esq.
Dewey, Ballantine, Busby, Palmer & Wood
40 Wall Street
New York 5, New York

Re: MEMORIAL SLOAN-KETTERING CANCER
CENTER

Dear Mr. Richardson:

The draft certificate of incorporation of the above you submitted has been given careful consideration and I am of the opinion that an executed original certificate containing such a statement of purposes would not require the approval of the State Board of Social Welfare under the provisions of the statutes. If otherwise in proper form, such an executed original certificate should be received for filing by the Secretary of State, provided the approval of a Justice of the Supreme Court is endorsed thereupon or annexed thereto. The proposed wording of the purposes is set forth in your draft certificate as follows:

"2. The purposes for which the corporation is to be formed are to undertake and carry on public relations, public information and fund raising activities in connection with the work conducted and to be conducted by Memorial Center for Cancer and Allied Diseases (hereinafter called Memorial), a corporation incorporated by Special Act of the Legislature of the State of New York, and Sloan-Kettering Institute for Cancer Research, a corporation incorporated under the Membership Corporations Law of the State of New York, to allocate between said corporations the funds so raised, and to promote cooperation between said corporations.

In furtherance of the foregoing purposes the corporation shall have the following powers, to the extent permitted by law:

210621-1

Roy Richardson, Esq.#2

(a) To solicit, collect and receive funds, securities and other contributions, to take and receive by gift, deed, purchase, legacy, bequest or devise and otherwise to acquire money and property of every kind and description, either absolutely or in trust, for any of its purposes, or upon any other terms and conditions, without limitation as to amount or value except such limitations, if any, as may now or hereafter be imposed by law, and to hold and administer all the aforesaid property, both as to principal and income, and voluntarily to expend, distribute, contribute or dispose of the same for the purposes for which the corporation is to be formed;

(b) To disseminate information with respect to cancer and allied diseases and to encourage a greater public interest in such matters;

(c) To sell, convey, mortgage, lease or otherwise dispose of any or all of its property, whether real or personal, at such times and upon such terms and conditions as shall be deemed advisable by the board of directors of the corporation, subject to such limitations as may be prescribed by law;

(d) To invest, reinvest, use or license others to use, and deal with the property of the corporation and to collect and receive the rents, issues, income and profits therefrom;

(e) To make contracts, to borrow money, to create obligations for money so borrowed and to give security for such obligations;

(f) To decline to accept any gift, deed, legacy, bequest or devise or any offer of a loan; and

(g) In general to exercise any and all powers and to do any and all things which are not forbidden by law and which may be necessary, suitable, convenient or appropriate for or incidental to the accomplishment of the above-mentioned purposes;

provided, however, that none of the foregoing powers shall be exercised by the corporation except exclusively for charitable, scientific or educational purposes.

210021-2

Roy Richardson, Esq.#3

Nothing herein contained shall authorize this corporation to undertake or carry on any of the activities specified in Section 11 of the Membership Corporations Law or Section 35 of the Social Welfare Law.

No part of the net earnings, contributions, or any other corporate funds shall inure to the benefit of any member or individual, and no substantial part of the activities of the corporation shall consist in carrying on propaganda or otherwise attempting to influence legislation; and the corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

The corporation is not organized for pecuniary profit and no subscriber, member, officer, director or employee of the corporation shall receive any pecuniary profit from the operations thereof except reasonable compensation for services in effecting or carrying out one or more of its activities.

Subject to the order of the Supreme Court as provided by law, upon any dissolution of the corporation, all of its property and assets, tangible and intangible, after payment, satisfaction and discharge of all its then existing liabilities and obligations, shall, at the option of Memorial be vested in and transferred to Memorial, provided that if Memorial shall elect not to accept all or any part of such property and assets, or if Memorial shall not then qualify for tax exemption under section 501(c)(3) of the Internal Revenue Code of 1954, or corresponding provisions of subsequent laws, the same shall be distributed to such one or more corporations, trusts, community chests, funds or foundations organized and operating exclusively for scientific, charitable or educational purposes, no part of the net earnings, contributions or any other corporate funds of which shall inure to the benefit of any private shareholder, member or individual, no substantial part of the activities

Roy Richardson, Esq.#4

of which shall consist in carrying on propaganda or otherwise attempting to influence legislation, and which shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, as the board of directors of the corporation may select with the written consent of Memorial."

This letter is not to be construed as an approval by the State Board of Social Welfare, the State Department of Social Welfare, the Commissioner of Social Welfare or any officer of the Board or of the Department, but as a statement that the approval of the State Board of Social Welfare would not be required for a certificate of incorporation containing the foregoing statement of purposes. When it is apparent that approval of the Board would not be required under the statutes, it has been the policy of the Board to have the Department indicate neither approval nor disapproval.

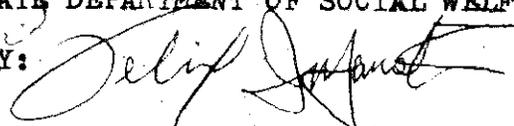
You may send the executed original certificate of incorporation to the Secretary of State together with this letter, or if you prefer a similar letter relating specifically to the executed original certificate, I will be happy to furnish one, provided the executed original certificate and two conformed copies are submitted.

Enclosed herewith is copy of Article 10-A of the Social Welfare Law and Article 24 of the Rules of the State Board of Social Welfare with respect to the registration of charitable organizations for the solicitation of contributions, together with a form letter addressed to Charitable Organizations and related forms.

Very truly yours,

STATE DEPARTMENT OF SOCIAL WELFARE

BY:



FELIX INFAUSTO
Board Secretary

Encs.

210621-4

CERTIFICATE OF INCORPORATION

of

MEMORIAL SLOAN-KETTERING CANCER CENTER.

Pursuant to the Membership Corporations Law

We, the undersigned, for the purpose of forming a membership corporation pursuant to the Membership Corporations Law of the State of New York, hereby certify:

1. The name of the proposed corporation (which is hereinafter referred to as the corporation) is Memorial Sloan-Kettering Cancer Center. 210621

2. The purposes for which the corporation is to be formed are to undertake and carry on public relations, public information and fund raising activities in connection with the work conducted and to be conducted by Memorial Center for Cancer and Allied Diseases, (hereinafter called Memorial), a corporation incorporated by Special Act of the Legislature of the State of New York, and Sloan-Kettering Institute for Cancer Research, a corporation incorporated under the Membership Corporations Law of the State of New York, to allocate between said corporations the funds so raised, and to promote cooperation between said corporations.

In furtherance of the foregoing purposes the corporation shall have the following powers, to the extent permitted by law:

210621-5

(a) To solicit, collect and receive funds, securities and other contributions, to take and receive by gift, deed, purchase, legacy, bequest or devise and otherwise to acquire money and property of every kind and description, for any of its purposes, or upon any other terms and conditions, without limitation as to amount or value except such limitations, if any, as may now or hereafter be imposed by law, and to hold and administer all the aforesaid property, both as to principal and income, and voluntarily to expend, distribute, contribute or dispose of the same for the purposes for which the corporation is to be formed;

(b) To disseminate information with respect to cancer and allied diseases and to encourage a greater public interest in such matters;

(c) To sell, convey, mortgage, lease or otherwise dispose of any or all of its property, whether real or personal, at such times and upon such terms and conditions as shall be deemed advisable by the board of directors of the corporation, subject to such limitations as may be prescribed by law;

(d) To invest, reinvest, use or license others to use, and deal with the property of the corporation and to collect and receive the rents, issues, income and profits therefrom;

(e) To make contracts, to borrow money, to create obligations for money so borrowed and to give security for such obligations;

(f) To decline to accept any gift, deed, legacy, bequest or devise or any offer of a loan, and

(g) In general to exercise any and all powers and to do any and all things which are not forbidden by law and which may be necessary, suitable, convenient or appropriate for or incidental to the accomplishment of the above-mentioned purposes;

provided, however, that none of the foregoing powers shall be exercised by the corporation except exclusively for charitable, scientific or educational purposes.

Nothing herein contained shall authorize this corporation to undertake or carry on any of the activities specified in Section 11 of the Membership Corporations Law or Section 35 of the Social Welfare Law.

No part of the net earnings, contributions, or any other corporate funds shall inure to the benefit of any member or individual, and no substantial part of the activities of the corporation shall consist in carrying on propaganda or otherwise attempting to influence legislation; and the corporation shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

The corporation is not organized for pecuniary profit and no subscriber, member, officer, director or employee of the corporation shall receive any pecuniary profit from the operations thereof except reasonable compensation for services in effecting or carrying out one or more of its activities.

Subject to the order of the Supreme Court as provided by law, upon any dissolution of the corporation, all of its property and assets, tangible and intangible, after payment, satisfaction and discharge of all its then existing liabilities and obligations, shall, at the option of Memorial, be vested in and transferred to Memorial, provided that if Memorial shall elect not to accept all or any part of such property and assets, or if Memorial shall not then qualify for tax exemption under

8

210671-7

section 501(c)(3) of the Internal Revenue Code of 1954, or corresponding provisions of subsequent laws, the same shall be distributed to such one or more corporations, trusts, community chests, funds or foundations organized and operating exclusively for scientific, charitable or educational purposes, no part of the net earnings, contributions or any other corporate funds of which shall inure to the benefit of any private shareholder, member or individual, no substantial part of the activities of which shall consist in carrying on propaganda or otherwise attempting to influence legislation, and which shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office, as the board of directors of the corporation may select with the written consent of Memorial.

3. The territory in which its operations are principally to be conducted is the United States of America.

4. The city and county in which its office is to be located are the City of New York and the County of New York.

5. The number of its directors (who shall be known as trustees) shall be not less than fifteen nor more than twenty-five, as shall be provided from time to time in its by-laws.

6. The names and residences of the directors until the first annual meeting are:

210621-8

NAMESRESIDENCES

Albert Bradley	Mayfair Lane, Greenwich, Connecticut
Detlev W. Bronk	President's House, Rockefeller Institute, 68th Street and York Avenue, New York, New York
Reginald G. Coombe	305 Lake Avenue, Greenwich, Connecticut
J. R. Heller	3913 Dunell Lane, Kingston, Maryland
Joseph C. Hinsey	156 Brewster Road, Scarsdale, New York
Frank L. Horsfall, Jr.	8 Center Drive, Malba 57, New York
Frank A. Howard	920 Fifth Avenue, New York, New York
B. Brewster Jennings	P. O. Box 666, Glen Head, Long Island, New York
Eugene W. Kettering	348 East 3rd Street, Hinsdale, Illinois
Deane W. Malott	205 Oak Hill Road, Ithaca, New York
Elmore C. Patterson	Chestnut Ridge Road, Mt. Kisco, New York
Henry T. Randall	133 East 64th Street, New York, New York
Laurance S. Rockefeller	834 Fifth Avenue, New York, New York
Alfred P. Sloan, Jr.	820 Fifth Avenue, New York, New York
C. Chester Stock	One Gracie Terrace, New York 28, New York
Lewis L. Strauss	Brandy Rock Farm, Brandy Station, Virginia
Robert E. Strawbridge, Jr.	580 Park Avenue, New York, New York
Richard D. Vanderwarker	Memorial Center for Cancer and Allied Diseases, 444 East 68th Street, New York 21, New York
Warren Weaver	Second Hill Box 177, New Milford, Connecticut
Ogden White	149 East 73rd Street, Apt. 6B, New York, New York

5
2 10621-9

7. All of the subscribers to this certificate are of full age; at least two-thirds of them are citizens of the United States; and at least one of them is a resident of the State of New York. Of the persons named as directors, at least one is a citizen of the United States and a resident of the State of New York.

IN WITNESS WHEREOF we have made, subscribed and acknowledged this certificate as of the ^{thirty} ~~first~~ day of ^{March} ~~April~~, 1960.

Reginald G. Coombe
Reginald G. Coombe

Frank A. Howard
Frank A. Howard

B. Brewster Jennings
B. Brewster Jennings

Elmore C. Patterson
Elmore C. Patterson

Laurance S. Rockefeller
Laurance S. Rockefeller

Alfred P. Sloan, Jr.
Alfred P. Sloan, Jr.

Warren Weaver
Warren Weaver

2-10621-10

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

On this 31st day of March, 1960, before me personally came Reginald G. Coombe, to me known and known to me to be one of the individuals named in and who subscribed the foregoing Certificate of Incorporation, and duly acknowledged to me that he subscribed the same.

Richard L. Meneley

RICHARD L. MENELEY
Notary Public, State of New York
No. 41-7896550
Qualified in Queens County
Certificate filed with N.Y. Co. Clerk
Term Expires March 30, 1962



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

Reginald G. Coombe, being duly sworn, deposes and says that he is one of the persons named in and who subscribed the foregoing Certificate of Incorporation; that he is also named in such Certificate as a director; and that he is of full age and a citizen of the United States.

Reginald G. Coombe

Subscribed and sworn to before me this 31st day of March, 1960.

Richard L. Meneley

RICHARD L. MENELEY
Notary Public, State of New York
No. 41-7896550
Qualified in Queens County
Certificate filed with N.Y. Co. Clerk
Term Expires March 30, 1962



210627-11

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

On this 31st day of March, 1960, before me personally came Frank A. Howard, to me known and known to me to be one of the individuals named in and who subscribed the foregoing Certificate of Incorporation, and duly acknowledged to me that he subscribed the same.

Richard L. Meneeley

RICHARD L. MENEeley
Notary Public, State of New York
No. 41-7896550
Qualified in Queens County
Certificate filed with N.Y. Co. Clerk
Term Expires March 30, 1962

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

Frank A. Howard, being duly sworn, deposes and says that he is one of the persons named in and who subscribed the foregoing Certificate of Incorporation; that he is also named in such Certificate as a director; and that he is of full age and a citizen of the United States and a resident of the State of New York.

Frank A. Howard

Subscribed and sworn to before me this 31st day of March, 1960.

Richard L. Meneeley

RICHARD L. MENEeley
Notary Public, State of New York
No. 41-7896550
Qualified in Queens County
Certificate filed with N.Y. Co. Clerk
Term Expires March 30, 1962



210621-12

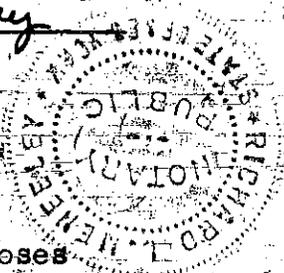
STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On this 4th day of April, 1960, before me personally came B. Brewster Jennings, to me known and known to me to be one of the individuals named in and who subscribed the foregoing Certificate of Incorporation, and duly acknowledged to me that he subscribed the same.

Richard L. Meneeley

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

RICHARD L. MENEeley
Notary Public, State of New York
No. 41-7896550
Qualified in Queens County
Certificate filed with N.Y. Co. Clerk
Term Expires March 30, 1962



B. Brewster Jennings, being duly sworn, deposes and says that he is one of the persons named in and who subscribed the foregoing Certificate of Incorporation; that he is also named in such Certificate as a director; and that he is of full age and a citizen of the United States and a resident of the State of New York.

B. Brewster Jennings

Subscribed and sworn to before me this 4th day of April, 1960.

Richard L. Meneeley

RICHARD L. MENEeley
Notary Public, State of New York
No. 41-7896550
Qualified in Queens County
Certificate filed with N.Y. Co. Clerk
Term Expires March 30, 1962



210621-13

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

On this 5th day of April, 1960, before me personally came Laurance S. Rockefeller, to me known and known to me to be one of the individuals named in and who subscribed the foregoing Certificate of Incorporation, and duly acknowledged to me that he subscribed the same.

Ruth A. Giriat

RUTH A. GIRIAT
NOTARY PUBLIC, State of New York
Qualified in New York County
No. 31-1443050
Certificate filed with City Reg. N.Y. County
Commission Expires March 30, 1961



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

Laurance S. Rockefeller, being duly sworn, deposes and says that he is one of the persons named in and who subscribed the foregoing Certificate of Incorporation; that he is also named in such Certificate as a director; and that he is of full age and a citizen of the United States and a resident of the State of New York.

Laurance S. Rockefeller

Subscribed and sworn to before me this 5th day of April, 1960.

Ruth A. Giriat

RUTH A. GIRIAT
NOTARY PUBLIC, State of New York
Qualified in New York County
No. 31-1443050
Certificate filed with City Reg. N.Y. County
Commission Expires March 30, 1961



210621-15

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

ROY M. D. RICHARDSON, being duly sworn, deposes and says that he is an attorney at law and a member of the firm of Dewey, Ballantine, Bushby, Palmer & Wood, the attorneys for the subscribers of the annexed Certificate of Incorporation, and that no previous application for the approval of said Certificate of Incorporation has ever been made to any Justice of the Supreme Court of the State of New York.

Roy M. D. Richardson

Subscribed and sworn to before me this 6th day of April, 1960.

John P. Cione
Notary Public

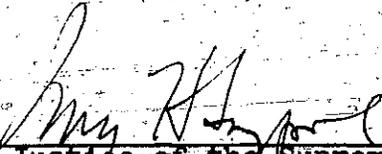
JOHN P. CIONE
Notary Public, State of New York
No. 24-5698750
Qualified in Kings County
Filed with Clerk of N. Y. County
Term Expires March 30, 1962

NOTARY PUBLIC
KINGS COUNTY
NEW YORK

2106 21-77

I, IRVING H. SAYPOL, a Justice of the Supreme Court of the First Judicial District, hereby approve the foregoing Certificate of Incorporation of MEMORIAL SLOAN-KETTERING CANCER CENTER.

Dated, April 12th 1960.



Justice of the Supreme Court of
the State of New York

4/8/60

The attorney general has no objection to the approval of the foregoing certificate, and waives notice of application therefor.

Tony Berman
assistant attorney general
New York State

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210621-19

H

OK

OK on Re

RD

4-13-60

210621

OK on Re

CERTIFICATE OF INCORPORATION

OF

MEMORIAL SLOAN-KETTERING CANCER CENTER.

Pursuant to the Membership Corporations Law

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED APR 13 1960

TAX \$ None

FILING FEE \$ 40

Caroline K. Simon

Secretary of State

By *[Signature]*

DEWEY, BALLANTINE, BUSHBY, PALMER & WOOD
40 WALL STREET
NEW YORK 5

APR 1 1960

210621-20

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 14, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

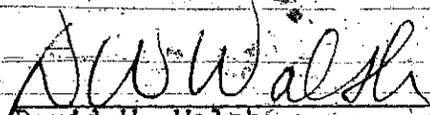
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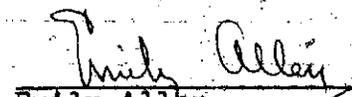
CERTIFICATE OF TYPE OF NOT-FOR-PROFIT CORPORATION
OF MEMORIAL SLOAN-KETTERING CANCER CENTER UNDER
SECTION 113 OF THE NOT-FOR-PROFIT CORPORATION LAW.

We, David W. Walsh and Emily Allen, Acting President and Assistant Secretary, respectively, of MEMORIAL SLOAN-KETTERING CANCER CENTER, hereby certify that:

1. The name of the Corporation is MEMORIAL SLOAN-KETTERING CANCER CENTER.
2. The date the Corporation's Certificate of Incorporation was filed by the Department of State is April 13, 1960. The Corporation was formed under the Membership Corporations Law.
3. The Post Office address within the state to which the Secretary of State shall mail a copy of any notice required by law is: 444 East 68th Street, New York, New York 10021.
4. Under Section 201 of the Not-For-Profit Corporation Law, the Corporation is a Type B Not-For-Profit Corporation.

IN WITNESS WHEREOF, we have made and subscribed this Certificate this 7th day of June, 1971 and we affirm the statements contained herein as true under penalties of perjury.


David W. Walsh
Acting President


Emily Allen
Assistant Secretary

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MEMORIAL SLOAN-KETTERING CANCER CENTER

CERTIFICATE OF TYPE OF NOT-FOR-PROFIT CORPORATION
UNDER SECTION 113 OF THE NOT-FOR-PROFIT CORPORATION LAW.

Memo
210621
4/13/60
N.Y.

D

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED SEP 22 1971

TAX \$ none
FILING FEE \$ 10

no B

John P. Long

Secretary of State

31-ny

Type B

DEWEY, BALLANTINE, BUSHBY, PALMER & WOOD

140 BROADWAY

NEW YORK 10005

212 Dlgay 4-8000

2

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 14, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

CERTIFICATE OF AMENDMENT
OF THE CERTIFICATE OF INCORPORATION

OF

MEMORIAL SLOAN-KETTERING CANCER CENTER
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

* * * * *

WE, THE UNDERSIGNED, Lewis Thomas, M.D. and William Rockefeller, being respectively the president and chief executive officer and the secretary of Memorial Sloan-Kettering Cancer Center hereby certify:

1. The name of the corporation is Memorial Sloan-Kettering Cancer Center.

2. The certificate of incorporation of said corporation was filed by the Department of State on the 13th day of April, 1960 and the law under which it was formed was the Membership Corporations Law which has been repealed and replaced by the Not-for-Profit Corporation Law.

3. The corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-for-Profit Corporation Law.

4. (a) The certificate of incorporation is amended in Article 5 to increase the maximum number of directors of the corporation from twenty-five to thirty. Article 5 is further amended to refer to the directors of the corporation as managers rather than trustees.

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(b) To effect the foregoing, Article 5 relating to the number of directors and to their designation as trustees is amended to read as follows:

"5. The number of its directors (who shall be known as managers) shall not be less than fifteen nor more than thirty, as shall be provided from time to time in its bylaws."

5. The amendments were adopted by an affirmative vote of a majority of the entire board of trustees and approved by an affirmative vote in favor of the amendments cast by a majority of the members entitled to vote thereon at a meeting held December 19, 1978 at which a quorum was present.

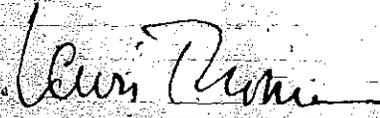
6. The post office address within or without the state to which the Secretary of State shall mail a copy of any notice required by law is 1275 York Avenue, New York, New York 10021.

7. The type of corporation which this corporation is under section 201 of the Not-for-Profit Corporation Law is type B.

8. The approval which was annexed to the corporation's Certificate of Incorporation was the approval of Irving H. Saypol, Justice of the Supreme Court of the First Judicial District, dated April 12, 1960.

9. No approvals or consents are required to be attached to this Certificate of Amendment of the Certificate of Incorporation.

IN WITNESS WHEREOF, we have signed this certificate on the 19th day of December, 1978 and we affirm the statements contained therein as true under penalties of perjury.



Lewis Thomas, M.D., President
and Chief Executive Officer



William Rockefeller, Secretary

CERTIFICATE OF AMENDMENT
OF THE CERTIFICATE OF INCORPORATION
OF

MEMORIAL SLOAN-KETTERING CANCER CENTER

Under Section 803 of the Not-for-Profit Corporation Law

NFP
4/13/60
NY Co.

210621
Type B

no add: 444 E. 68th St.
NY, NY 10021

A538618

John Carter Rice, Esq.
90 State Street
Albany, NY 12207

STATE OF NEW YORK
DEPARTMENT OF STATE
TAX 1 None
FILING FEE 2 30

FILED DEC 19 1978

Handwritten signature

Secretary of State

NY
Type B

STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on July 14, 2015.



Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

CERTIFICATE OF AMENDMENT

PH

OF

PH

CERTIFICATE OF INCORPORATION

OF

MEMORIAL SLOAN-KETTERING CANCER CENTER

(UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW)

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* * * * *

WE, THE UNDERSIGNED, Paul A. Marks, M.D. and William Rockefeller, being respectively President and Secretary of Memorial Sloan-Kettering Cancer Center, hereby certify that:

1. The name of the corporation is Memorial Sloan-Kettering Cancer Center (the "Corporation").

2. The certificate of incorporation of the Corporation was filed by the Department of State on April 13, 1960 and the law under which it was formed was the Membership Corporations Law, which has been repealed and replaced by the Not-for-Profit Corporation Law.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.

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4. The type of corporation which the Corporation is under Section 201 of the Not-for-Profit Corporation Law, and the type of corporation it shall be upon the effectiveness of the amendments described herein, is Type B.

5. The certificate of incorporation is amended in Article 2 to clarify the purposes of the Corporation and to make it clear that the purposes of the Corporation generally include all activities reasonably related to the support, benefit and assistance of the Corporation's related entities (now existing or hereafter formed or organized), to change the reference in Article 2 from "Memorial Center for Cancer and Allied Diseases" to "Memorial Hospital for Cancer and Allied Diseases" to reflect the change in the name of such institution, to clarify the Corporation's powers, to delete obsolete references to statutory provisions that have been repealed, and to update the limitations on the Corporation's activities in accordance with and to reflect the current text and interpretation of relevant provisions of the Internal Revenue Code of 1954, as amended (the "Code"), and the regulations and rulings promulgated thereunder.

6. The following amendments to Article 2 of the certificate of incorporation shall be effected hereby:

(a) The first paragraph of Article 2, relating to the purposes of the Corporation, is amended to read as follows:

"2. The purposes for which the corporation is to be formed are to undertake and carry on public relations, public information, fund raising, administrative and other activities and services in support of or in connection with the activities conducted and to be conducted by Memorial Hospital for Cancer and Allied Diseases, a corporation incorporated by Special Act of the Legislature of the State of New York (hereinafter called "Memorial"), Sloan-Kettering Institute for Cancer Research, a corporation incorporated under the Membership Corporations Law of the State of New York (hereinafter called the "Institute"), and any other entities (whether or not incorporated) now existing or hereafter formed or organized to engage in activities in support of or in connection with the activities conducted and to be conducted by the corporation, Memorial or the Institute, to promote cooperation among said corporations and entities, and otherwise to engage in any other activities and perform services reasonably related to the support, benefit and assistance of said corporations and entities and their respective purposes."

(b) In the second paragraph of Article 2 (i) the word "and" appearing as the last word in subparagraph (f) shall be deleted, (ii) subparagraph (g) shall be re-numbered as new

subparagraph (h), and (iii) there shall be a new subparagraph (g), which shall read as follows:

~~"g. To receive grants and other awards from governmental and non-governmental entities, to enter into, perform and arrange for performance under agreements relating thereto, and to hold and administer any funds received in connection therewith; and"~~

(c) The third paragraph of Article 2 is deleted and replaced in its entirety by the following:

"Nothing herein contained shall authorize this corporation to undertake or carry on any of the activities prohibited, or without the requisite consents or approvals required, by the laws of the State of New York."

(d) The final three paragraphs of Article 2 are deleted and replaced in their entirety by the following:

"Notwithstanding anything herein to the contrary, the corporation may not exercise any power, either express or implied, in such a manner as to disqualify the corporation from exemption from Federal income tax under Sections 501(a) and 501(c)(3) of the Code. It is the intention of the corporation at all times to qualify and remain qualified as exempt from Federal income tax under Sections 501(a) and 501(c)(3) of the Code. Accordingly:

(1) The corporation shall receive, administer, maintain, use and employ its funds, net earnings, and real

and personal property exclusively for charitable, scientific and educational purposes, within the meaning of Section 501(c)(3) of the Code, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under Section 501(c)(3) of the Code;

(ii) No part of the net earnings of the corporation shall inure to the benefit of any officer, trustee, director, member, employee or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation and to make payments and distributions in furtherance of one or more of its purposes). No officer, trustee, director, member or employee of the corporation or any private individual shall be entitled to share in the distribution of any corporate assets upon dissolution of the corporation or in any other event;

(iii) The corporation shall not carry on propaganda or otherwise attempt to influence legislation to an extent that would disqualify it from exemption from Federal income tax under Section 501(a) of the Code by reason of attempting to influence legislation, and the corporation shall not participate or intervene (including the publishing or distributing of statements or otherwise) in any political campaign on behalf of or in opposition to any candidate for public office; and

(iv) In the event of liquidation, dissolution or winding up of the business and affairs of the corporation, whether voluntary or involuntary or by operation of law, upon approval of a Justice of the Supreme Court of the State of New York, the board of directors shall, after paying or making provision for payment of all liabilities of the corporation, transfer all of its assets to Memorial, provided that if Memorial shall elect not to accept all or part of such assets, or if Memorial shall not then qualify for tax exemption under Section 501(c)(3) of the Code or corresponding provisions of subsequent laws, the same shall be distributed to one or more corporations or organizations located in the United States as shall at the time qualify as exempt under Section 501(a) of the Code pursuant to Section 501(c)(3) of the Code, in such manner as the board of directors shall determine."

7. The amendments described herein were adopted and authorized by the affirmative vote of a majority of the board of managers present at a meeting held March 26, 1986 at which a quorum was present and by the affirmative vote of at least a quorum and majority of the members present at a meeting held March 26, 1986.

8. The Corporation hereby designates the Secretary of State as agent of the Corporation upon whom process against it may be served, and the post office address within or without this state to which the Secretary of State shall mail a copy of any process against it served upon him is:

1275 York Avenue
New York, New York 10021
(Attention: President)

IN WITNESS WHEREOF, we have signed this certificate on the 26th day of March, 1986 and we affirm the statements contained therein as true under penalties of perjury.

Paul A. Marks
Paul A. Marks, M.D., President

William Rockefeller
William Rockefeller, Secretary

7

The undersigned has no objection to the granting of Judicial approval hereon and waives statutory notice.

December 3, 1987

THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE.

ROBERT ABRAMS
ATTORNEY GENERAL
STATE OF NEW YORK

by:

ROBERT ABRAMS ATTORNEY GENERAL
STATE OF NEW YORK

Date: *By Robert R. Molic*
~~ROBERT R. MOLIC~~
Assistant Attorney General

I, **THOMAS J. HUGHES**, a Justice

of the Supreme Court of the State of New York for the
Judicial District do hereby approve the foregoing Certificate of

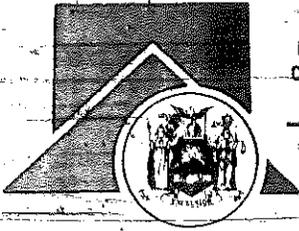
Amendment of the Certificate of Incorporation of *Memorial Sloan-Kettering
Cancer Center* and consent that the same be filed.

Date: DEC 11 1987
NEW YORK COUNTY

Thomas J. Hughes
JUSTICE OF THE SUPREME COURT
OF THE STATE OF NEW YORK

THOMAS J. HUGHES

8



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

Morton P. Hyman
Chairman

September 21, 1987

Ms. Natalie Abrams
Paul, Weiss, Rifkind, Wharton
& Garrison
1285 Avenue of the Americas
New York, NY 10019

Re: Certificate of Amendment of the Certificate of Incorporation - Memorial
Sloan-Kettering Cancer Center

Dear Ms. Abrams:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 18th day of September, 1987, I hereby certify that the Certificate of Amendment to the Certificate of Incorporation of Memorial Sloan-Kettering Cancer Center dated March 26, 1986 is APPROVED.

Sincerely,

Karen S. Westervelt
Acting Executive Secretary

Attachment

9

RESOLVED, that the Public Health Council, on this 18th day of September, 1987, approves the filing of the Certificate of Amendment of the Certificate of Incorporation of the Memorial Sloan-Kettering Cancer Center, dated March 26, 1986.

10

AFFIDAVIT

The undersigned, being duly sworn according to law, depose and say that they are officers of Memorial Sloan-Kettering Cancer Center, a corporation formed under § 803 of the Not-For-Profit Corporation Law of the State of New York, that they are authorized to make this Affidavit and that the following representation is true and correct:

The affirmation of the statements contained in the Certificate of Amendment of Certificate of Incorporation of Memorial Sloan-Kettering Cancer Center dated March 26, 1986 has not been abandoned or rescinded.

Paul A. Marks

Paul A. Marks, M.D.
President

William Rockefeller

William Rockefeller
Secretary

Sworn to and subscribed before me this 6th day of January, 1988.

Belya J. Hoff
Notary Public in and for
The State of New York

My Commission Expires: 8/31/88

BELYA J. HOFF
Notary Public, State of New York
No. 473168 Qualified in Nassau Co.
Certificate Filed in New York County
Commission Expires August 31, 1988

11

589882

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
MEMORIAL SLOAN-KETTERING
CANCER CENTER

UNDER SECTION 803 OF THE
NOT-FOR-PROFIT CORPORATION LAW

PH

PH

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JAN 12 1988

AMT. OF CHECK \$ JD
FILING FEE \$ 33
TAX \$ _____
COUNTY FEE \$ _____
COPIES 10
CERT \$ _____
RECORD \$ _____
SPIC HANDLE \$ 10

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BILLED

typed

Paul, Weiss, Rifkind, Wharton & Garrison
ATTORNEYS AT LAW
345 PARK AVENUE, NEW YORK, N. Y. 10154

Exhibit B

**Financial Report of
Memorial Sloan Kettering Cancer Center**

COMBINED FINANCIAL STATEMENTS

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations
Years Ended December 31, 2018 and 2017
With Report of Independent Auditors

Ernst & Young LLP



Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Combined Financial Statements

Years Ended December 31, 2018 and 2017

Contents

Report of Independent Auditors.....	1
Combined Balance Sheets.....	3
Combined Statements of Activities Without Donor Restrictions	4
Combined Statements of Changes in Net Assets.....	5
Combined Statements of Cash Flows	6
Notes to Combined Financial Statements.....	7



Ernst & Young LLP
5 Times Square
New York, NY 10036-6530

Tel: +1 212 773 3000
Fax: +1 212 773 6350
ey.com

Report of Independent Auditors

Board of Managers
Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

We have audited the accompanying combined financial statements of Memorial Sloan Kettering Cancer Center and Affiliated Corporations (the Institution), which comprise the combined balance sheets as of December 31, 2018 and 2017, and the related combined statements of activities without donor restrictions, changes in net assets, and cash flows for the years then ended, and the related notes to the combined financial statements.

Management's Responsibility for the Financial Statements

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

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We did not audit the financial statements of MSK Insurance US, Inc., a wholly owned subsidiary, which statements reflect total assets constituting 2.4% in 2018 and 2.6% in 2017, total liabilities constituting 6.8% in 2018 and 2017, and total revenues constituting 0.2% in 2018 and 0.1% in 2017 of the related combined totals. Those statements were audited by other auditors whose report has been furnished to us, and our opinion, insofar as it relates to the amounts included for MSK Insurance US, Inc., is based solely on the report of the other auditors. We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to

design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

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

Opinion

In our opinion, based on our audits and the report of the other auditors, the financial statements referred to above present fairly, in all material respects, the combined financial position of the Institution at December 31, 2018 and 2017, and the combined results of its operations, changes in its net assets and its cash flows for the years then ended in conformity with U.S. generally accepted accounting principles.

Adoption of ASU No. 2014-09, *Revenue from Contracts with Customers*, and ASU No. 2016-14, *Not-for-Profit Entities: Presentation of Financial Statements of Not-for-Profit Entities*

As discussed in Note 1 to the combined financial statements, Memorial Sloan Kettering Cancer Center changed its method of revenue recognition as a result of the adoption of the amendments to the FASB Accounting Standards Codification resulting from Accounting Standards Update No. 2014-09, *Revenue from Contracts with Customers*, effective January 1, 2018 and adopted the amendments to the FASB Accounting Standards Codification resulting from Accounting Standards Update No. 2016-14, *Not-for-Profit Entities: Presentation of Financial Statements of Not-for-Profit Entities*, effective December 31, 2018. Our opinion is not modified with respect to these matters.



April 5, 2019

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Combined Balance Sheets

	December 31	
	2018	2017
	<i>(In Thousands)</i>	
Assets		
Current assets:		
Cash and cash equivalents	\$ 677,079	\$ 900,411
Short-term investments – at fair value	89,184	239,472
Accounts receivable, net	615,885	497,547
Pledges, trusts and estates receivable	170,148	170,567
Other current assets	121,078	129,786
Total current assets	<u>1,673,374</u>	<u>1,937,783</u>
Noncurrent assets:		
Assets whose use is limited:		
Investments in marketable securities – at fair value:		
Construction, debt service and repair reserve funds	149,799	212,581
Captive insurance funds	59,572	54,770
Employee benefit funds	80,068	83,846
Total investments in marketable securities whose use is limited	<u>289,439</u>	<u>351,197</u>
Investments – at fair value	3,343,092	3,149,107
Investments internally designated for major capital projects	609,377	867,658
Investments in nonmarketable securities	–	11,900
Property and equipment – net	4,284,338	3,855,532
Pledges, trusts and estates receivable	321,621	361,550
Other noncurrent assets	102,326	101,285
Total noncurrent assets	<u>8,950,193</u>	<u>8,698,229</u>
Total assets	<u>\$ 10,623,567</u>	<u>\$ 10,636,012</u>
Liabilities and net assets		
Current liabilities:		
Accounts payable	\$ 580,598	\$ 489,603
Accrued expenses	414,405	387,955
Current portion of long-term debt	52,771	73,344
Total current liabilities	<u>1,047,774</u>	<u>950,902</u>
Noncurrent liabilities:		
Long-term debt, less current portion	2,348,600	2,715,704
Other noncurrent liabilities	799,780	864,303
Total liabilities	<u>4,196,154</u>	<u>4,530,909</u>
Net assets:		
Without donor restrictions:		
Undesignated	4,608,791	4,437,167
Board-designated	420,860	193,807
Total without donor restrictions	<u>5,029,651</u>	<u>4,630,974</u>
With donor restrictions	1,397,762	1,474,129
Total net assets	<u>6,427,413</u>	<u>6,105,103</u>
Total liabilities and net assets	<u>\$ 10,623,567</u>	<u>\$ 10,636,012</u>

See notes to combined financial statements.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Combined Statements of Activities Without Donor Restrictions

	Year Ended December 31	
	2018	2017
	<i>(In Thousands)</i>	
Undesignated operating revenues		
Hospital care and services	\$ 3,973,778	\$ 3,536,976
Grants and contracts	334,536	296,493
Contributions	168,226	191,843
Net assets released from restrictions	122,701	86,800
Royalty and other income	159,140	159,458
Investment returns allocated to operations	151,473	137,750
Total operating revenues	4,909,854	4,409,320
Operating expenses		
Compensation and fringe benefits	2,587,336	2,335,132
Purchased supplies and services	1,756,174	1,501,935
Depreciation and amortization	300,239	287,145
Interest	47,045	45,343
Total operating expenses	4,690,794	4,169,555
Income from operations	219,060	239,765
Nonoperating income and expenses, net		
Net assets released from restrictions for capital purposes	25,000	15,000
Investment returns, net of expenses, allocation to operations and amounts recorded in net assets with donor restrictions	(112,061)	219,440
Pension settlement cost	(40,414)	(33,480)
Other nonoperating income and expenses, net	(34,927)	(53,581)
Total nonoperating income and expenses, net	(162,402)	147,379
Change in postretirement benefit obligation to be recognized in future periods	114,966	(120,481)
Increase in undesignated net assets	171,624	266,663
Board-designated		
Board-designated philanthropy	114,132	—
Board-designated investment return	30,626	3,004
Board-designated other additions	82,295	15,000
Increase in Board-designated net assets	227,053	18,004
Increase in net assets without donor restrictions	\$ 398,677	\$ 284,667

See notes to combined financial statements.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Combined Statements of Cash Flows

	Year Ended December 31	
	2018	2017
	<i>(In Thousands)</i>	
Operating activities		
Change in net assets	\$ 322,310	\$ 374,126
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation and amortization	300,239	287,145
Equity in earnings of investments, net	707	545
Unrealized net losses (gains)	189,477	(251,283)
Realized net gains	(172,297)	(165,244)
(Amortization) accretion of bond premium and issuance costs	(5,799)	37,132
Donor restricted contributions, pledges and bequests transferred to investing activities	(100,983)	(126,541)
Pension settlement cost	40,414	33,480
Change in postretirement benefit obligation to be recognized in future periods	(114,966)	120,481
Changes in assets:		
Accounts receivable, net	(118,338)	1,737
Pledges, trusts and estates receivable	40,348	18,571
Other current assets	8,708	(17,700)
Other noncurrent assets	(1,748)	(18,842)
Changes in liabilities:		
Accounts payable and accrued expenses	89,475	103,083
Other noncurrent liabilities	9,781	(105,106)
Net cash provided by operating activities	<u>487,328</u>	<u>291,584</u>
Investing activities		
Net acquisitions of property and equipment	(700,827)	(737,965)
Decrease in investments, net	271,062	385,419
Donor restricted contributions, pledges and bequests transferred from operating activities	100,983	126,541
Net cash used in investing activities	<u>(328,782)</u>	<u>(226,005)</u>
Financing activities		
Proceeds from financing	-	294,420
Repayment of debt	(381,878)	(158,460)
Net cash (used in) provided by financing activities	<u>(381,878)</u>	<u>135,960</u>
Net change in cash and cash equivalents	(223,332)	201,539
Cash and cash equivalents at beginning of year	900,411	698,872
Cash and cash equivalents at end of year	<u>\$ 677,079</u>	<u>\$ 900,411</u>

See notes to combined financial statements.

Memorial Sloan Kettering Cancer Center and Affiliated Corporations

Notes to Combined Financial Statements

December 31, 2018

1. Organization and Significant Accounting Policies

The mission of Memorial Sloan Kettering Cancer Center and Affiliated Corporations is to provide leadership in the prevention, treatment and cure of cancer through excellence, vision and cost effectiveness in patient care, outreach programs, research and education. The accompanying financial statements are presented on a combined basis and include the accounts of the following tax exempt, Section 501(c)(3), incorporated affiliates: Memorial Sloan Kettering Cancer Center (the Center), Memorial Hospital for Cancer and Allied Diseases (the Hospital), Sloan Kettering Institute for Cancer Research (the Institute), S.K.I. Realty, Inc., MSK Insurance US, Inc. (MSKI), the Louis V. Gerstner Jr. Graduate School of Biomedical Sciences, Prostate Cancer Clinical Trials Consortium, LLC, Ralph Lauren Center for Cancer Care and Prevention, and MSK Proton, Inc. All of these entities are collectively referred to as the “Institution”.

The following is a summary of the Institution’s significant accounting policies:

Cash and Cash Equivalents

The Institution considers as cash and cash equivalents, all current investments, cash and certain highly liquid investments with original maturities of less than three months.

Investments

Investments in marketable securities are carried at fair value, based on quoted market prices.

Alternative investments are stated in the accompanying combined balance sheets at fair value, which is estimated using the net asset values (NAV), a practical expedient, of each alternative investment. Financial information used by the Institution to evaluate its alternative investments is provided by the investment manager or general partner and may include fair value valuations (quoted market prices and values determined through other means) of underlying securities and other financial instruments held by the investee, and estimates that require varying degrees of judgment. The financial statements of the investee companies are audited annually by independent auditors, although the timing for reporting the results of such audits does not always coincide with the Institution’s annual financial statement reporting.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

1. Organization and Significant Accounting Policies (continued)

Realized gains or losses on investments sold or redeemed, together with unrealized appreciation or depreciation on investments and investment income, are distributed to all categories of net assets, as appropriate. The total investment return (investment income and realized and unrealized gains and losses) is reflected in the accompanying combined statements of activities without donor restrictions in two portions. The investment return allocated to operating revenues is determined by application of a 4% normal return to a three-year average market value of investments, excluding certain endowment assets and certain other funds. In addition, actual investment earnings on short-term fixed income funds are included in investment returns allocated to operations. The investment return classified as nonoperating represents the difference between the actual total investment return and the amount allocated to operating revenues less amounts recorded in net assets with donor restrictions for endowments. Investment expenses, other than fees paid directly to investment managers, amounted to \$8.1 million and \$8.4 million in 2018 and 2017, respectively, and are included in the combined statements of activities without donor restrictions in investment returns, net of expenses, allocation to operations and amounts recorded in net assets with donor restrictions.

Investment returns, net of investment expenses, consist of the following:

	2018	2017
	<i>(In Thousands)</i>	
Investment income	\$ 54,900	\$ 8,385
Realized gains	172,297	165,244
Unrealized (losses) gains	(189,477)	251,283
Total	\$ 37,720	\$ 424,912

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

1. Organization and Significant Accounting Policies (continued)

Grants and Contracts Revenues

Grants and contracts revenues represent reimbursements of costs incurred in direct support of research and other sponsored activities related to the prevention and treatment of cancer. The Institution contracts with federal, state, and private agencies which are recorded as conditional contributions for approximately \$209.0 million and \$199.1 million for 2018 and 2017, respectively. The Institution records conditional contribution revenue upon performance of the conditions stated in the contracts. Additionally, the Institution contracts with industry sponsors which are recorded as exchange transactions for approximately \$125.5 million and \$97.4 million for 2018 and 2017, respectively. Exchange transactions are recognized as revenue at the amount that reflects the consideration to which the Institution expects to be entitled in exchange for performance under the contract.

Contributions and Unconditional Promises to Give

Contributions represent the utilization of donor funds which are intended to support the current period's operations. Contributions of cash and other assets are reported at fair value at the date the assets are received. Unconditional promises to give are recorded at fair value when the gift intent is made known in writing. A receivable has been established and net assets with donor restrictions have been increased by the time-discounted value of the promises. Irrevocable trusts are recorded at the point of notification and are recorded as net assets with donor restrictions as determined by the trust instruments. Estates are estimated and recorded at the conclusion of probate.

Total contributions, pledges, trusts and estates raised through fund raising efforts were approximately \$383.4 million and \$318.4 million for 2018 and 2017, respectively.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

1. Organization and Significant Accounting Policies (continued)

The Institution is aware of numerous unconditional promises to give and estimates the year of receipt to the extent possible. The anticipated present value of the receivable is as follows (in thousands):

2019	\$ 170,148
2020	86,721
2021	58,188
2022	41,973
2023	34,741
Thereafter	99,998
	<u>\$ 491,769</u>

The present value discount and allowance for doubtful accounts on unconditional promises to give is approximately \$50.8 million and \$56.5 million at December 31, 2018 and 2017, respectively.

Net Assets Without Donor Restrictions

Net assets that are not subject to donor-imposed restrictions may be expended for any purpose in fulfilling the Institution's mission. These net assets may be used at the discretion of the Institution's management and Board of Managers (the Board).

The Institution's governing Board, through specific action, has created self-imposed limits on certain net assets without donor restrictions. As of December 31, 2018 and 2017, funds have been established for \$420.8 million and \$193.8 million, respectively, to support various strategic initiatives. All board-designated net assets function as endowments and follow the Institution's policy of appropriating for spending an annualized percentage of each funds' value. However, unlike endowments, all board-designated net assets are available for general expenditures with Board approval and will not accumulate investment returns in excess or deficit of the spending rate.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

1. Organization and Significant Accounting Policies (continued)

Net Assets With Donor Restrictions

Gifts are reported as net assets with donor restrictions if they are received with donor stipulations that limit the use of the donated assets. Some donor restrictions are temporary in nature; those restrictions will be met by the actions of the Institution, or by the passage of time. Other donor restrictions are perpetual in nature, whereby the donor has stipulated the funds be maintained in perpetuity. When a donor restriction expires, that is, when a stipulated time restriction ends or a purpose restriction is accomplished, net assets are reclassified as net assets without donor restrictions and reported in the combined financial statements as net assets released from restrictions or as net assets released from restrictions for capital purposes. Donor restricted contributions whose restrictions are met within the same year as received are reflected as contributions in the accompanying combined statements of activities without donor restrictions.

Gifts that have been restricted by donors to be maintained by the Institution in perpetuity are reflected in the accompanying combined statements of changes in net assets as endowments within the net assets with donor restrictions.

The Institution follows the New York Prudent Management of Institutional Funds Act (NYPMIFA) which was enacted on September 17, 2010. The Institution has adopted investment and spending policies for endowment assets that attempt to provide a predictable stream of funding to programs supported by its endowment while maintaining the historic dollar value of endowment contributions. The Institution classifies as endowments (a) the original value of the gifts donated, (b) the original value of subsequent gifts, (c) the net realizable value of future payments in accordance with the donor's gift instrument (outstanding pledges, net of applicable discount) and (d) appreciation (depreciation), gains (losses) and income earned on the fund when the donor states that such increases or decreases are to be treated as changes in endowments. The endowment assets are pooled with assets without donor restrictions and invested in various diversified asset classes.

The Institution has a policy of appropriating for spending an annualized percentage of each endowment fund's value, with certain exceptions. In establishing this policy, the Institution considered the long-term expected return on its investment portfolio and the impact of inflation. The spending rate appropriated by the Institution was 4% in 2018 and 2017.

The Institution's endowment investment returns in excess or deficit of the spending rate will be accumulated and added to the endowment fund's value in order to calculate the appropriation for spending.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

1. Organization and Significant Accounting Policies (continued)

To satisfy its long-term rate-of-return objectives, the Institution relies on a total return strategy in which investment returns are achieved through both capital appreciation (realized and unrealized) and current yield (interest and dividends). The Institution targets a diversified asset allocation (see Note 4) to achieve its long-term return objectives within prudent risk constraints. As a result of fluctuations in the investment markets, from time to time, the fair value of assets associated with individual donor restricted endowment funds may fall below the level that the donor requires the Institution to retain as a fund of perpetual duration. There were no deficiencies of this nature as of December 31, 2018 and 2017.

Changes in donor endowment funds for the years ended December 31, 2018 and 2017 consisted of the following:

	Without Donor Restrictions	Time Restricted	Endowments
	<i>(In Thousands)</i>		
Balance at December 31, 2017	\$ —	\$ 279,210	\$ 675,249
Investment return on endowments	49,354	(31,020)	1,371
Contributions	—	—	25,687
Appropriations	(49,354)	—	—
Balance at December 31, 2018	\$ —	\$ 248,120	\$ 702,307

	Without Donor Restrictions	Time Restricted	Endowments
	<i>(In Thousands)</i>		
Balance at January 1, 2017	\$ —	\$ 201,323	\$ 626,945
Investment return on endowments	47,972	77,887	10,504
Contributions	—	—	37,800
Appropriations	(47,972)	—	—
Balance at December 31, 2017	\$ —	\$ 279,210	\$ 675,249

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

1. Organization and Significant Accounting Policies (continued)

Included in endowments are amounts that represent the Institution's beneficial interest in certain perpetual trusts which are held by third-party trustees. The underlying assets of the perpetual trusts are included in other noncurrent assets on the combined balance sheets and consist of equity securities and mutual funds. The fair value at December 31, 2018 and 2017 was approximately \$19.6 million and \$20.5 million, respectively. The change in fair value of the beneficial interest in perpetual trusts held by third parties is included in the change in net assets with donor restrictions.

Property and Equipment

Property and equipment is carried at cost, less accumulated depreciation and amortization. Depreciation on building components and equipment is computed on the straight-line method over the estimated useful service lives. Leasehold improvements are being amortized over the lesser of the term of the lease or estimated useful service life, based on the straight-line method.

The carrying amount of assets and the related accumulated depreciation or amortization are removed from the accounts when such assets are disposed of and any resulting gain or loss is included in operations.

All eligible costs incurred for the development of computer software for internal use are capitalized and carried at cost, less accumulated amortization. Amortization of capitalized internal use software cost is based on the straight-line method over the estimated useful life of the software.

Use of Estimates

The preparation of the combined financial statements in conformity with U.S. generally accepted accounting principles requires management to make prudent and conservative estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the combined financial statements. Estimates also affect the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

1. Organization and Significant Accounting Policies (continued)

Tax Status

The entities comprising the Institution are Section 501(c)(3) organizations exempt from Federal income taxes under Section 501(a) of the Internal Revenue Code. The entities are also exempt from New York State and City income taxes.

The Tax Cuts and Jobs Act (TCJA) was enacted on December 22, 2017. For tax-exempt entities, TCJA requires organizations to categorize certain fringe benefit expenses as a source of unrelated business income subject to tax, pay an excise tax on compensation above certain thresholds, and record income or losses for tax determination purposes from unrelated business activities on an activity-by-activity basis, among other provisions. Regulations necessary to implement certain aspects of TCJA are expected to be promulgated by the Internal Revenue Service (IRS) in 2019. As of and for the year ended December 31, 2018, the Institution has made reasonable estimates of the provision for income taxes, the compensation excise tax, and the effects on existing deferred tax balances based on accounting guidance included in Accounting Standards Codification 740, *Income Taxes*. The Institution will continue to refine its calculations in future periods as additional regulations and guidance are issued by the IRS.

Recent Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) 2014-09, *Revenue from Contracts with Customers*. The core principle of ASU 2014-09 is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The provisions of ASU 2014-09 became effective for the Institution for annual reporting periods beginning after December 15, 2017. The Institution adopted ASU 2014-09 effective January 1, 2018 for its combined financial statements as of and for the years ended December 31, 2018 and 2017, following the full retrospective method of application. As a result of implementing ASU 2014-09, certain patient activity where collection is uncertain (representing approximately \$35.1 million and \$43.5 million for the years ended December 31, 2018 and 2017, respectively) previously reported within the provision for bad debts and regulatory assessments in the Institution's combined statements of activities without donor restrictions, no longer meets the criteria for revenue recognition and, accordingly, the provision for bad debts and regulatory assessments after the adoption date is significantly reduced, with a

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

1. Organization and Significant Accounting Policies (continued)

corresponding reduction to hospital care and services revenue. Such patient activity is now classified as an implicit price concession (see Note 3). Additionally, regulatory assessments and bad debt expenses arising from adverse changes in a party's ability to pay have been included within purchased supplies and services (representing approximately \$12.2 million and \$10.8 million for the years ended December 31, 2018 and 2017, respectively) in the combined statements of activities without donor restrictions. Other aspects of the Institution's implementation of ASU 2014-09 impacting hospital care and services revenue, which include judgments regarding collection analyses and estimates of variable consideration and the addition of certain qualitative and quantitative disclosures, are reflected in Note 3. The adoption of ASU 2014-09 in relation to other applicable revenue activity did not have a material impact to the Institution's accompanying combined financial statements.

In August 2016, the FASB issued ASU 2016-14, *Not-for-Profit Entities: Presentation of Financial Statements of Not-for Profit Entities*, which eliminates the requirement for not-for-profits (NFPs) to classify net assets as unrestricted, temporarily restricted and permanently restricted. Instead, NFPs are required to classify net assets as net assets with donor restrictions or without donor restrictions. Among other things, the guidance also modifies required disclosures and reporting related to net assets, investment expenses and qualitative information regarding liquidity. NFPs are also required to report all expenses by both functional and natural classification in one location. The provisions of ASU 2016-14 are effective for the Institution for annual periods beginning after December 15, 2017 and interim periods thereafter. As such, the Institution adopted ASU 2016-14 for the year ended December 31, 2018. The effects of the adoption of ASU 2016-14 were applied retrospectively. As a result of the adoption of ASU 2016-14, the net asset categories have been updated as described above. Additionally, the addition of quantitative and qualitative disclosures related to the analysis of expenses by both natural and functional classifications and liquidity and availability of resources can be found in Notes 4 and 14. The adoption of ASU 2016-14 had no impact on the total net assets previously reported by the Institution as of December 31, 2017.

In June 2018, the FASB issued ASU 2018-08, *Not-for-Profit Entities (Topic 958); Clarifying the Scope and the Accounting Guidance for Contributions Received and Contributions Made* (ASU 2018-08). ASU 2018-08 clarifies existing guidance in order to address diversity in practice in classifying grants (including governmental grants) and contracts received by not-for-profit entities, and requires entities to evaluate whether the resource provider receives commensurate value. In addition, the standard clarifies the guidance on how entities determine when a contribution is conditional, including whether the agreement includes a barrier (or barriers) that must be overcome for the recipient to be entitled to the transferred assets and a right of return of the transferred assets

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

1. Organization and Significant Accounting Policies (continued)

(or a right of release of the promisor's obligation to transfer the assets). The standard should be applied on a modified prospective basis to agreements that are not completed as of the effective date and to agreements entered into after the effective date. Retrospective application is permitted. The Institution early adopted ASU 2018-08 in the combined financial statements for the year ended December 31, 2018 on a modified prospective basis without significant impact to its combined financial statements.

In January 2016, the FASB issued ASU 2016-01, *Recognition and Measurement of Financial Assets and Financial Liabilities*, which addresses certain aspects of recognition, measurement, presentation and disclosure of financial instruments. This guidance allows an entity to choose, investment-by-investment, to report an equity investment that neither has a readily determinable fair value, nor qualifies for the practical expedient for fair value estimation using net asset value (NAV), at its cost minus impairment (if any), plus or minus changes resulting from observable price changes in orderly transactions for the identical or similar investment of the same issue. Impairment of such investments must be assessed qualitatively at each reporting period. Entities must disclose their financial assets and liabilities by measurement category and form of asset either on the face of the balance sheet or in the accompanying notes. The ASU is effective for annual reporting periods beginning after December 15, 2018 or for the year ended December 31, 2019 for the Institution. Early adoption is permitted for annual periods beginning after December 15, 2017. Additionally, immediate early application of certain provisions are permitted. The Institution early applied the provision to eliminate the requirement to disclose the fair value of debt during the year ended December 31, 2018.

In February 2016, the FASB ASU 2016-02, *Leases (Topic 842)*. ASU 2016-02 requires the rights and obligations arising from the lease contracts, including existing and new arrangements, to be recognized as assets and liabilities on the balance sheets. ASU 2016-02 will require disclosures to help the financial statement users better understand the amount, timing, and uncertainty of cash flows arising from leases. The recognition, measurement and presentation of expenses and cash flows arising from a lease will primarily depend on its classification as a finance or operating lease. ASU 2016-02 is effective for the Institution beginning January 1, 2019 and will be applied using a modified retrospective approach. The Institution is currently in the process of evaluating its lease contracts, as well as certain service contracts that may include embedded leases. Additionally, the Institution is finalizing its analysis of certain key assumptions that will be utilized at the transition date, including the incremental borrowing rate. The primary effect of the new standard will be to record right-of-use assets and obligations for current operating leases, which will have a material

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

1. Organization and Significant Accounting Policies (continued)

impact on the combined balance sheets and significant incremental disclosures in the notes to the combined financial statements. The transition adjustment is not expected to have a material impact on the combined statements of activities without donor restrictions.

Reclassifications

Certain reclassifications have been made to the 2017 amounts previously reported in order to conform to updated methodology utilized in the current year presentation. These reclassifications have no impact on the net assets previously reported.

2. Community Benefit Programs

Consistent with its mission, the Institution invests significant amounts for the benefit of the worldwide community that is served through its patient care, education and research activities. Listed below are quantifiable benefits provided.

Charity care represents the cost of services provided to patients who cannot afford health care services due to inadequate resources and/or are uninsured or underinsured. A patient is classified as a charity care patient in accordance with the Institution's established policies and where insufficient payment for such services is anticipated. For the periods presented, the Institution considers patients for charity care if household income is less than 500% of the federal poverty guidelines. Services provided as charity care are not reported as revenue in the combined statements of activities without donor restrictions. Costs of providing charity care are estimated by multiplying the total charges incurred by patients that qualify for charity care by a ratio of historical expenses to charges as derived from the Institution's accounting records. The Institution receives payments from the New York State Public Goods Pool for charity care and such amounts totaled approximately \$11.3 million and \$11.9 million for the years ended December 31, 2018 and 2017, respectively. Payments made into the pool by the Institution were approximately \$9.9 million and \$8.3 million for the years ended December 31, 2018 and 2017, respectively.

The Institution provides services to patients who participate in government-sponsored health programs, such as Medicare and Medicaid. Payments received by the Institution for patient services provided under these programs are less than the actual cost of providing such services. Therefore, to the extent Medicare and Medicaid payments are less than the cost of care provided, the uncompensated cost of that care is considered to be a community benefit.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

2. Community Benefit Programs (continued)

Research community benefit costs represent the Institution's costs for basic, translational and clinical research.

The Institution is a preeminent provider of health training to health professionals who desire training in the skills necessary to treat cancer patients. The Institution trains physicians, radiology students, nursing students, social work students and individuals looking to create a career in the field of cancer research. The amounts shown below represent costs in excess of amounts reimbursed by third-party payors such as training grant revenues and direct medical education payments from the Medicare and Medicaid program.

The following is a summary of the Institution's estimated costs of providing community benefit program services:

	Year Ended December 31	
	2018	2017
	<i>(In Thousands)</i>	
Charity care	\$ 21,342	\$ 21,652
Unpaid cost of government sponsored health care	490,085	440,052
Research supported by governmental/voluntary agencies	208,987	193,933
Other research	446,056	422,518
Health training	233,401	224,158
Other	21,664	21,607
Community benefit programs	<u>\$ 1,421,535</u>	<u>\$ 1,323,920</u>

3. Hospital Care and Services Revenue

Hospital Care and Services Revenue and Accounts Receivable

Hospital care and services revenue is reported at the amount that reflects the consideration to which the Hospital expects to be entitled in exchange for providing patient care. These amounts are due from patients, third-party payors (including health insurers and government programs), and others and includes variable consideration (reductions to revenue) in determining a transaction price.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

3. Hospital Care and Services Revenue (continued)

The Hospital uses a portfolio approach to account for categories of patient contracts as a collective group, rather than recognizing revenue on an individual contract basis. The portfolios consist of major payor classes for inpatient revenue and major payor classes and types of services provided for outpatient revenue. Based on historical collection trends and other analyses, the Hospital believes that revenue recognized by utilizing the portfolio approach approximates the revenue that would have been recognized if an individual contract approach were used.

The Hospital's initial estimate of the transaction price for services provided to patients subject to revenue recognition is determined by reducing the total standard charges related to the patient services provided by various elements of variable consideration, including contractual allowances, discounts, implicit price concessions, and other reductions to the Hospital's standard charges. The Hospital determines the transaction price associated with services provided to patients who have third-party payor coverage on the basis of contractual or formula-driven rates for the services rendered (see description of third-party payor payment programs below). The estimates for contractual allowances and discounts are based on contractual agreements, the Hospital's discount policies and historical experience. For uninsured and under-insured patients who do not qualify for charity care, the Hospital determines the transaction price associated with services on the basis of charges reduced by implicit price concessions. Implicit price concessions included in the estimate of the transaction price are based on the Hospital's historical collection experience for applicable patient portfolios. Patients who meet the Hospital's criteria for charity care are provided care without charge; such amounts are not reported as revenue.

Generally, the Hospital bills patients and third-party payors several days after the services are performed and/or the patient is discharged. Hospital care and services revenue is recognized as performance obligations are satisfied. Performance obligations are determined based on the nature of the services provided by the Hospital. Hospital care and services revenue for performance obligations satisfied over time is recognized based on actual charges incurred in relation to total charges. The Hospital believes that this method provides a reasonable depiction of the transfer of services over the term of the performance obligation based on the services needed to satisfy the obligation. Generally, performance obligations satisfied over time relate to patients receiving inpatient acute care services or patients receiving services in the Hospital's outpatient and ambulatory care centers. The Hospital measures the performance obligation from admission into the hospital or the commencement of an outpatient service to the point when it is no longer required to provide services to that patient, which is generally at the time of discharge or the completion of the outpatient visit.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

3. Hospital Care and Services Revenue (continued)

As substantially all of its performance obligations relate to contracts with a duration of less than one year, the Hospital has elected to apply the optional exemption provided in ASU 2014-09 and, therefore, is not required to disclose the aggregate amount of the transaction price allocated to performance obligations that are unsatisfied or partially unsatisfied at the end of the reporting period. The unsatisfied or partially unsatisfied performance obligations referred to above are primarily related to inpatient acute care services at the end of the reporting period for patients who remain admitted at that time (in-house patients). The performance obligations for in-house patients are generally completed when the patients are discharged, which for the majority of the Hospital's in-house patients occurs within days or weeks after the end of the reporting period.

Subsequent changes to the estimate of the transaction price (determined on a portfolio basis when applicable) are generally recorded as adjustments to patient service revenue in the period of the change (see third-party payment programs below). Portfolio collection estimates are updated monthly based on collection trends. Subsequent changes that are determined to be the result of an adverse change in the patient's ability to pay (determined on a portfolio basis when applicable) are recorded as bad debt expense. Bad debt expense for the years ended December 31, 2018 and 2017 was not significant.

The Hospital has determined that the nature, amount, timing and uncertainty of revenue and cash flows are affected by the following factors: payors, lines of business and timing of when revenue is recognized. Tables providing details of these factors are presented below.

The percent of hospital care and services revenue for the years ended December 31, 2018 and 2017, by payor, is as follows:

	2018	2017
Medicare	27%	26%
Medicaid	2	3
Contracted managed care	65	63
Non-contracted managed care and self-pay	6	8
	100%	100%

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

3. Hospital Care and Services Revenue (continued)

Deductibles, copayments and coinsurance under third-party payment programs which are the patient's responsibility are included within the non-contracted managed care and self-pay category above.

The Hospital provides pharmaceuticals and related support services to patients through a retail and specialty pharmacy. Revenue is recognized at the point in time of the transaction.

Hospital care and services revenue for the years ended December 31, 2018 and 2017 by line of business is as follows (in thousands):

	2018	2017
Hospital	\$ 3,203,428	\$ 2,901,401
Physician services	625,887	563,661
Retail and specialty pharmacy	144,463	71,914
	\$ 3,973,778	\$ 3,536,976

The Hospital has elected the practical expedient allowed under ASU 2014-09 and does not adjust the expected amount of consideration from patients and third-party payors for the effects of a significant financing component due to the Hospital's expectation that the period between the time the service is provided to a patient and the time that the patient or a third-party payor pays for that service will be one year or less. However, the Hospital does, in certain instances, enter into payment agreements with patients that allow payments in excess of one year. For those cases, the financing component is not deemed to be significant to the contract.

Third-Party Payment Programs

Settlements with third-party payors for cost report filings and retroactive adjustments due to ongoing and future audits, reviews or investigations are considered variable consideration and are included in the determination of the estimated transaction price for providing patient care. These settlements are estimated based on the terms of the payment agreement with the payor, correspondence from the payor and the Hospital's historical settlement activity (for example, cost report final settlements or repayments related to recovery audits), including an assessment to ensure that it is probable that a significant reversal in the amount of cumulative revenue recognized

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

3. Hospital Care and Services Revenue (continued)

will not occur when the uncertainty associated with the retroactive adjustment is subsequently resolved. Such estimates are determined through either a probability-weighted estimate or an estimate of the most likely amount, depending on the circumstances related to a given estimated settlement item. Estimated settlements are adjusted in future periods as adjustments become known (that is, new information becomes available), or as years are settled or are no longer subject to such audits, reviews, and investigations.

Non-Medicare Reimbursement

In New York State, hospitals and all non-Medicare payors, except Medicaid, workers' compensation and no-fault insurance programs, negotiate hospitals' payment rates. If negotiated rates are not established, payors are billed at hospitals' established charges. Medicaid pays hospital rates promulgated by the New York State Department of Health. Payments to the Hospital for Medicaid inpatient services are based on a prospective payment system, with retroactive adjustments. Outpatient services are paid based on a statewide prospective system. Medicaid rate methodologies are subject to approval at the Federal level by the Centers for Medicare & Medicaid Services (CMS), which may routinely request information about such methodologies prior to approval. Revenue related to specific rate components that have not been approved by CMS are not recognized until the Hospital is reasonably assured that such amounts are realizable. Adjustments to the current and prior years' payment rates for those payors will continue to be made in future years.

Medicare Reimbursement

The Hospital is exempt from the national prospective payment system used to reimburse hospitals for inpatient services provided to Medicare beneficiaries and instead is paid using a cost-based methodology. These payments are subject to a limit that is based on costs from the mid 2000s for rate years beginning on or subsequent to January 1, 2007, which are then updated based on annual trend factors calculated by CMS. Prior to January 1, 2007, the limit was based on costs from the early 1990s. The Hospital is paid for outpatient services under the national prospective payment system and other methodologies of the Medicare program for certain other services. The outpatient payments are subject to a floor that ensures the Hospital receives a percentage of its Medicare defined allowable outpatient costs equal to all non-exempt hospitals reimbursed under the national prospective payment system. Federal regulations provide for certain adjustments to current and prior years' payment rates, based on hospital-specific data.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

3. Hospital Care and Services Revenue (continued)

The Hospital has established estimates, based on information presently available, of amounts due to or from Medicare and non-Medicare payors for adjustments to current and prior years' payment rates. The current Medicaid, Medicare and other third-party payor programs are based upon extremely complex laws and regulations that are subject to interpretation. Medicare cost reports, which serve as the basis for final settlement with the Medicare program, have been audited by the Medicare fiscal intermediary and settled through the year ended December 31, 2013. Other years remain open for audit and subsequent settlement, as are numerous issues related to the New York State Medicaid program for prior years. As a result, there is at least a reasonable possibility that recorded estimates will change by a material amount when open years are settled, audits are completed and additional information is obtained. Changes in these estimates could also affect the amounts reported as the unpaid cost of government sponsored health care (see Note 2). Approximately 1.07% of operating revenues in 2018 and (0.16)% of operating revenues in 2017 are due to adjustments of prior year operating revenues. Additionally, noncompliance with such laws and regulations could result in fines, penalties and exclusion from such programs. The Hospital is not aware of any allegations of noncompliance that could have a material adverse effect on the combined financial statements and believes that it is in compliance with all applicable laws and regulations.

There are various Federal and State proposals that could, among other things, reduce payment rates or modify payment methods. The ultimate outcome of these proposals and other market changes, including the potential effects of health care reform by the Federal or State government, cannot presently be determined. Future changes in Medicare and Medicaid programs could have an impact, positive or negative, on the Hospital. Additionally, Medicare payment rates for various years have been appealed by the Hospital. If the appeals are successful, additional income applicable to those years might be realized.

Significant concentrations of accounts receivable at December 31, 2018 include 28% from government-related programs, 19% from Empire Health Choice and 15% from UnitedHealthcare (24%, 17% and 16%, respectively, at December 31, 2017).

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

4. Cash, Cash Equivalents, and Investments at Fair Value

For assets and liabilities required to be measured at fair value, the Institution measures fair value based on the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value measurements are applied based on the unit of account from the Institution's perspective. The unit of account determines what is being measured by reference to the level at which the asset or liability is aggregated (or disaggregated) for purposes of applying other accounting pronouncements.

The Institution follows a valuation hierarchy that prioritizes observable and unobservable inputs used to measure fair value into three broad levels, which are described below:

- *Level 1:* Quoted prices (unadjusted) in active markets that are accessible at the measurement date for identical assets or liabilities. The fair value hierarchy gives the highest priority to Level 1 inputs.
- *Level 2:* Observable inputs are based on inputs not quoted in active markets, but corroborated by market data.
- *Level 3:* Unobservable inputs are used when little or no market data is available. The fair value hierarchy gives the lowest priority to Level 3 inputs.

A financial instrument's categorization within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement. In determining fair value, the Institution uses valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible and considers nonperformance risk in its assessment of fair value. Any investments valued based upon the NAV are not subject to classification in the valuation hierarchy.

Mutual funds are valued based on the quoted market prices of the securities as reported on national securities exchanges.

United States-based and international equities consist of individually held securities and commingled funds. Individual securities and certain commingled funds are valued based on the quoted market prices of the securities as reported on national securities exchanges. Commingled funds primarily are valued based on the NAV of shares held by the Institution at year end.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

4. Cash, Cash Equivalents, and Investments at Fair Value (continued)

Fixed income securities include corporate bonds, U.S. government securities, and commingled funds. Corporate bonds and U.S. government securities are valued based on readily available market quotations received from commercial pricing services. Such pricing services and brokers will generally provide bid-side quotations. Commingled funds are valued based on quoted market prices as reported on national securities exchanges, if applicable, or the NAV of shares held by the Institution at year end.

Alternative investments include absolute return funds, long/short funds, global macro funds, inflation hedging funds, opportunistic funds, hard assets, private equity funds and venture capital. Alternative investment interests generally are structured such that the Institution holds a limited partnership interest. The Institution's ownership structure does not provide for control over the related investees and the Institution's financial risk is limited to the funded and unfunded commitment for each investment. As of December 31, 2018, the Institution had outstanding commitments to provide additional capital of approximately \$529.5 million to various alternative investment managers.

Individual investment holdings within the alternative investments include nonmarketable and market-traded debt and equity securities and interests in other alternative investments. The Institution may be exposed indirectly to securities lending, short sales of securities and trading in futures and forward contracts, options and other derivative products. Alternative investments often have liquidity restrictions under which the Institution's capital may be divested only at specified times. The Institution's liquidity restrictions range from several months to ten years for certain private equity investments. Liquidity restrictions may apply to all or portions of a particular invested amount.

There is uncertainty in determining fair values of alternative investments arising from factors such as lack of active markets (primary and secondary), lack of transparency into underlying holdings, time lags associated with reporting by the investee companies and the subjective evaluation of liquidity restrictions. As a result, the estimated fair values reported in the accompanying combined balance sheets might differ from the values that would have been used had a ready market for the alternative investment interests existed and there is at least a reasonable possibility that those estimates will change.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

4. Cash, Cash Equivalents, and Investments at Fair Value (continued)

The following is a description of the Institution's valuation methodologies for assets measured at fair value. Fair value for Level 1 is based upon quoted market prices. Fair value for Level 2 is based on quoted prices for similar instruments in active markets, quoted prices for identical or similar instruments in markets that are not active, and model-based valuation techniques for which all significant assumptions are observable in the market or can be corroborated by observable market data for substantially the full term of the assets. Fair value for Level 3 is based on unobservable inputs when little or no market data is available, which include estimates and risk-adjusted value ranges. Inputs are obtained from various sources, including market participants, dealers and brokers. The methods described above may produce a fair value that may not be indicative of net realizable value or reflective of future fair values. Furthermore, while the Institution believes its valuation methods are appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different estimate of fair value at the reporting date.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

4. Cash, Cash Equivalents, and Investments at Fair Value (continued)

Financial instruments, other than pension plan assets (see Note 8), carried at fair value as of December 31, 2018, are classified in the table below as described above:

	Level 1	Level 2	Level 3	Total
	<i>(In Thousands)</i>			
Investments measured at fair value				
Cash, cash equivalents, and short-term investments	\$ 895,346	\$ —	\$ —	\$ 895,346
Mutual funds	80,068	—	—	80,068
United States-based equity securities	92,680	204,757	—	297,437
International equity securities	285,381	9,585	—	294,966
Fixed income investments:				
Corporate bonds	—	609,480	—	609,480
U.S. government and other	150,707	68,084	—	218,791
	<u>\$ 1,504,182</u>	<u>\$ 891,906</u>	<u>\$ —</u>	<u>2,396,088</u>
Investments measured at NAV as a practical expedient				
Commingled funds:				
United States-based equity				211,618
International equity				270,031
Alternative investments:				
Marketable:				
Absolute return funds				282,402
Long/short funds				609,691
Global macro funds				216,583
Inflation hedging funds				43,768
Nonmarketable:				
Venture capital				474,313
Private equity				224,717
Opportunistic funds				131,297
Hard assets				147,663
Total investments at fair value				<u>\$ 5,008,171</u>

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

4. Cash, Cash Equivalents, and Investments at Fair Value (continued)

Financial instruments, other than pension plan assets (see Note 8), carried at fair value as of December 31, 2017, are classified in the table below as described above:

	Level 1	Level 2	Level 3	Total
	<i>(In Thousands)</i>			
Investments measured at fair value				
Cash, cash equivalents, and short-term investments	\$ 1,588,348	\$ —	\$ —	\$ 1,588,348
Mutual funds	83,846	—	—	83,846
United States-based equity securities	40,256	244,803	—	285,059
International equity securities	220,744	11,261	—	232,005
Fixed income investments:				
Corporate bonds	—	554,541	—	554,541
U.S. government and other	201,295	64,825	—	266,120
	<u>\$ 2,134,489</u>	<u>\$ 875,430</u>	<u>\$ —</u>	<u>3,009,919</u>
Investments measured at NAV as a practical expedient				
Commingled funds:				
United States-based equity				239,488
International equity				242,905
Alternative investments:				
Marketable:				
Absolute return funds				327,030
Long/short funds				569,650
Global macro funds				201,228
Inflation hedging funds				72,785
Nonmarketable:				
Venture capital				343,531
Private equity				206,402
Opportunistic funds				143,002
Hard assets				151,905
Total investments at fair value				<u>\$ 5,507,845</u>

Other financial instruments that are not required to be carried at fair value include debt, pledges and mortgages receivable. Debt, pledges and mortgages receivable are recorded at carrying value, net of applicable discounts in the accompanying combined balance sheets which approximates fair value.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

4. Cash, Cash Equivalents, and Investments at Fair Value (continued)

As part of the Institution's liquidity management, it has a practice to structure its financial assets to be available for its operating and capital needs. Working capital requirements are held in cash and cash equivalents and short-term investments. Accounts receivable, net and the current portion of pledges, trusts and estates receivable on the combined balance sheets represent amounts expected to be collected within one year. Investments internally designated for major capital projects represent assets set aside for capital expenditures, but could be made available immediately if necessary. Additionally, to help manage unanticipated liquidity needs, the Institution has committed lines of credit which it could draw upon.

Additionally, the Institution invests in a diversified long-term investment portfolio (the Unified Pool). Although the Institution does not intend to spend from the Unified Pool other than amounts appropriated for spending as part of its annual budget approval and appropriation process discussed in Note 1, amounts from the Unified Pool could be made available if necessary. However, the Unified Pool contains investments with lock-up provisions that would reduce the total investments that could be made available.

The following represents assets that could be made available within one year:

	December 31	
	2018	2017
	<i>(In Thousands)</i>	
Cash and cash equivalents	\$ 677,079	\$ 900,411
Short-term investments – at fair value	89,184	239,472
Accounts receivable, net	615,885	497,547
Pledges, trusts and estates receivable, current portion	170,148	170,567
Investments internally designated for major capital projects	609,377	867,658
Investments – at fair value	2,205,490	2,238,060
Undrawn lines of credit	250,000	300,000
	\$ 4,617,163	\$ 5,213,715

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

5. Property and Equipment

Property and equipment consists of the following:

	December 31	
	2018	2017
	<i>(In Thousands)</i>	
Land	\$ 380,703	\$ 380,703
Buildings and leasehold improvements	3,962,458	3,754,578
Equipment	1,720,147	1,563,597
Construction-in-progress	1,411,505	1,058,869
	7,474,813	6,757,747
Less accumulated depreciation and amortization	3,190,475	2,902,215
	\$ 4,284,338	\$ 3,855,532

The Institution disposed of approximately \$16.3 million and \$27.4 million of fully depreciated assets in 2018 and 2017, respectively.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

6. Long-Term Debt

Long-term debt consists of the following:

	December 31	
	2018	2017
	<i>(In Thousands)</i>	
DASNY Series 1998, tax-exempt bonds maturing through 2023 at various fixed interest rates ranging from 5.50% to 5.75%	\$ 122,900	\$ 135,400
DASNY Series 2008, tax-exempt bonds maturing through 2036 at various fixed interest rates ranging from 4.00% to 5.00%	—	333,730
DASNY Series 2010, tax-exempt bonds maturing through 2023 at a fixed interest rate of 2.18%	38,000	46,000
Series 2011A taxable bonds maturing in 2042 at a fixed interest rate of 5.00%	400,000	400,000
DASNY Series 2012, tax-exempt bonds maturing through 2041 at various fixed interest rates ranging from 3.00% to 5.00%	80,380	82,350
DASNY 2012 Series 1, tax-exempt bonds maturing through 2034 at various fixed interest rates ranging from 4.00% to 5.00%	262,265	262,265
Series 2012A taxable bonds maturing in 2052 at a fixed interest rate of 4.125%	400,000	400,000
Series 2015A taxable bonds maturing in 2055 at a fixed interest rate of 4.20%	550,000	550,000
DASNY Series 2016-1, tax-exempt bonds repaid through 2028 at a fixed interest rate of 1.97%	102,389	105,944
NJEDA Series 2016-2, tax-exempt bonds maturing through 2026 at a fixed rate interest rate of 1.43%	112,375	130,500
DASNY Series 2017-1, tax-exempt bonds maturing through 2047 at various fixed interest rates ranging from 4.00% to 5.00%	290,420	294,420
Unamortized bond premiums, discounts and issuance costs	42,642	48,439
	2,401,371	2,789,048
Less current portion	52,771	73,344
	\$ 2,348,600	\$ 2,715,704

In July 2018, the Institution redeemed the remaining balance of the outstanding Dormitory Authority of the State of New York (DASNY) Series 2008 tax-exempt bonds for approximately \$333.7 million.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

6. Long-Term Debt (continued)

In December 2017, the Institution issued \$294.4 million of Series 2017-1 tax-exempt bonds (the 2017 Bonds) through the DASNY. The 2017 Bonds mature between 2018 and 2047 at fixed interest rates ranging from 4.00% to 5.00%. A portion of the proceeds were used to advance refund the DASNY 2015 Series 1 tax-exempt bonds. The remaining proceeds will be used to pay costs for ambulatory care expansion, equipment and to pay for costs of issuance of the 2017 Bonds. The new debt was issued at a premium of approximately \$41.1 million, which lowered the Institution's effective interest rates and the all-in yield.

Annual maturities on all long-term debt as of December 31, 2018 for the years 2019 through 2023 are as follows (in thousands):

2019	\$	52,771
2020		78,823
2021		80,198
2022		83,234
2023		88,951

Total interest paid in 2018 and 2017 (including portions supporting capitalized costs) was approximately \$105.2 million and \$104.1 million, respectively. Interest expense related to the Series 2011A, the Series 2012A and the 2015 Bonds will be included in other nonoperating income and expenses, net until the related capital projects are placed into service. Nonoperating interest expense was approximately \$18.2 million and \$30.2 million during 2018 and 2017, respectively. The Institution capitalized interest of approximately \$40.4 million and \$29.8 million during 2018 and 2017, respectively.

Certain of the above debts are secured by a pledge of revenues from certain facilities, bond insurance and springing collateral, which would require the Institution to mortgage a substantial portion of real property if certain financial covenants and ratios are not maintained. The Institution was in compliance with all such financial requirements during 2018 and 2017.

At December 31, 2018 and 2017, the Institution had unsecured lines of credit available with banks totaling \$250.0 million and \$300.0 million, respectively, with varying renewable terms and interest. There were no amounts drawn at December 31, 2018 and 2017.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

7. Other Noncurrent Liabilities

Other noncurrent liabilities consist of the following:

	December 31	
	2018	2017
	<i>(In Thousands)</i>	
Pension obligations <i>(Note 8)</i>	\$ 265,433	\$ 301,464
Postretirement obligation <i>(Note 8)</i>	125,551	134,738
Insurance reserves <i>(Note 9)</i>	279,617	292,601
Deferred compensation <i>(Note 8)</i>	65,895	70,299
Asset retirement obligations <i>(Note 13)</i>	38,868	38,621
Deferred gift annuity	17,268	19,187
All other	7,148	7,393
	\$ 799,780	\$ 864,303

8. Retiree Pension and Health Plans

The Institution has a retirement annuity plan which provides eligible staff members with retirement income through individual deferred annuity contracts purchased in each participant's name. In addition, the Institution maintains a nonqualified deferred compensation plan which is used for employer contributions in excess of those allowed by the retirement annuity plan. The effective date of this plan was January 1, 1983, and it has been grandfathered from the changes made by the Tax Reform Act of 1986. The plans' assets are included in assets whose use is limited in the combined balance sheets and consist of money market and mutual funds. The Institution contributes a fixed percentage of an individual's compensation to these plans.

Effective January 1, 2013, the Institution amended an existing 403(b) plan (composed of the basic plan and the voluntary plan) to have a new plan design and be renamed as the Memorial Sloan Kettering Cancer Center Retirement Savings Plan (the RSP). Under the RSP, all Institution employees are eligible to make voluntary employee contributions (salary deferrals), subject to IRS limits. Mandatory employee contributions are not required.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

8. Retiree Pension and Health Plans (continued)

The Institution makes base contributions to the RSP for eligible employees, which depend on the employee's age (determined as of the preceding December 31). Additionally, the Institution matches contributions for voluntary employee contributions made by eligible employees. The Institution's cost for these plans was approximately \$83.6 million and \$72.9 million in 2018 and 2017, respectively.

The Institution also maintains a trustee defined benefit plan (the Plan) for employees not covered by the above retirement annuity plan. The benefits are based on years of service, the employee's average compensation during the highest five of the last ten years of employment and a pension formula. The Plan has been amended and is frozen to new participants hired on or after December 16, 2012.

In October 2017, the Institution entered into a contract and sold approximately \$100.0 million of its anticipated defined benefit pension liabilities to an insurance company via an annuity buy-out. The funding was paid from the Plan assets and only impacted a select group of retirees. These affected participants had no impact to their retirement benefits. In addition, certain participants of the Plan were offered the opportunity to receive the present value of their accrued plan benefits in a single lump-sum payment. The payments reflected a full settlement of all plan liabilities to such participants. These combined activities resulted in a reduction of the Plan liability of approximately \$149.6 million and an approximate \$33.5 million settlement cost for 2017.

In June 2018, the Institution entered into a contract and sold approximately \$214.1 million of its anticipated defined benefit pension liabilities to an insurance company via an annuity buy-out. The funding was paid from the Plan assets and only impacted a select group of retirees. These affected participants had no impact to their retirement benefits. This resulted in a reduction of the Plan liability of approximately \$238.0 million and an approximate \$40.4 million settlement cost for 2018.

The Institution offers retirees and their spouses hospital and basic medical coverage which supplements any available Medicare coverage. The plan pays the balance of charges not paid by Medicare up to Medicare allowable charges. All employees become eligible for postretirement health care if they retire at age 60 or older, with at least 10 years of service, or under age 60 with 30 years of service. The accounting for the health care plans anticipates future retiree contributions increasing by annual health care cost increases plus 2%. Employees hired after December 31, 2006 are required to pay 100% of the coverage cost.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

8. Retiree Pension and Health Plans (continued)

Effective January 1, 2016, the Institution provides each Medicare-eligible retiree and spouse with a defined contribution amount that can be used to purchase individual Medicare supplemental coverage. This defined contribution replaces the Institution's hospital and basic medical coverage for all Medicare-eligible participants who retire subsequent to December 31, 2006.

The Institution recognizes the funded status (i.e., the difference between the fair value of plan assets and the projected benefit obligations) of the defined benefit plans in its combined balance sheets. Net unrecognized actuarial losses and the net unrecognized prior service costs at the reporting date will be subsequently recognized in the future as net periodic benefit cost pursuant to the Institution's accounting policy for amortizing such amounts. Further, actuarial gains and losses that arise in subsequent periods and are not recognized as net periodic benefit cost in the same periods will be recognized as a component of net assets without donor restrictions. Included in net assets without donor restrictions at December 31, 2018 and 2017 are the following amounts that have not yet been recognized in net periodic benefit cost: unrecognized prior service credit of \$47.7 million and \$56.7 million, respectively, and unrecognized actuarial losses of \$296.2 million and \$420.2 million, respectively. The prior service credit and actuarial loss included in net assets without donor restrictions and expected to be recognized in net periodic benefit cost during the year ending December 31, 2019 are approximately \$9.0 million and \$10.0 million, respectively.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

8. Retiree Pension and Health Plans (continued)

The following tables provide a reconciliation of the change in the benefit obligations and fair value of plan assets and funded status of the Institution's pension and postretirement plans:

	Pension Benefits		Postretirement Health	
	December 31 2018	2017	December 31 2018	2017
	<i>(In Thousands)</i>			
Reconciliation of benefit obligations				
Benefit obligations at beginning of year	\$ 1,687,892	\$ 1,443,274	\$ 139,171	\$ 146,486
Service cost	76,543	65,762	3,835	3,997
Interest cost	64,302	67,477	5,361	6,023
Plan participants' contributions	682	625	1,565	1,582
Actuarial (gains) losses	(148,271)	291,469	(16,859)	(14,399)
Plan amendment	–	(2,143)	–	–
Plan settlements	(238,020)	(149,613)	–	–
Benefits paid	(13,992)	(26,630)	(3,914)	(4,518)
Expenses paid	(1,335)	(2,329)	–	–
Benefit obligations at end of year	\$ 1,427,801	\$ 1,687,892	\$ 129,159	\$ 139,171

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

8. Retiree Pension and Health Plans (continued)

	Pension Benefits		Postretirement Health	
	December 31		December 31	
	2018	2017	2018	2017
	<i>(In Thousands)</i>			
Reconciliation of fair value of plan assets				
Fair value of plan assets at beginning of year	\$ 1,386,428	\$ 1,186,178	\$ –	\$ –
Actual return on plan assets	(21,395)	193,197	–	–
Employer contributions	50,000	185,000	2,349	2,936
Plan participants' contributions	682	625	1,565	1,582
Plan settlements	(238,020)	(149,613)	–	–
Benefits paid	(13,992)	(26,630)	(3,914)	(4,518)
Expenses paid	(1,335)	(2,329)	–	–
Fair value of plan assets at end of year	1,162,368	1,386,428	–	–
Unfunded status at end of year	\$ (265,433)	\$ (301,464)	\$ (129,159)	\$ (139,171)
Current portion of obligation	\$ –	\$ –	\$ (3,608)	\$ (4,433)
Noncurrent portion of obligation	(265,433)	(301,464)	(125,551)	(134,738)
Total	\$ (265,433)	\$ (301,464)	\$ (129,159)	\$ (139,171)

The accumulated benefit obligation for the plans as of December 31, 2018 and 2017 was approximately \$1.20 billion and \$1.45 billion, respectively.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

8. Retiree Pension and Health Plans (continued)

The following table provides the components of the net periodic benefit cost for pension and postretirement benefit cost for the plans for the years ended December 31:

	Pension Benefits		Postretirement Health	
	2018	2017	2018	2017
	<i>(In Thousands)</i>			
Components of net periodic benefit cost				
Service cost	\$ 76,543	\$ 65,762	\$ 3,835	\$ 3,997
Interest cost	64,302	67,477	5,361	6,023
Expected return on assets	(72,825)	(73,141)	–	–
Settlement cost	40,414	33,480	–	–
Amortization of net loss	10,741	7,132	1,923	2,431
Amortization of prior service cost (credit)	288	657	(9,310)	(9,310)
Total net periodic benefit cost	\$ 119,463	\$ 101,367	\$ 1,809	\$ 3,141

Actuarial Assumptions

Weighted-average assumptions used to determine benefit obligations are as follows:

	Pension Benefits		Postretirement Health	
	December 31 2018	2017	December 31 2018	2017
Discount rate	4.55%	4.00%	4.40%	3.80%
Rate of compensation increase	3.83	3.83	–	–

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

8. Retiree Pension and Health Plans (continued)

Weighted-average assumptions used to determine net periodic benefit cost are as follows:

	Pension Benefits		Postretirement Health	
	December 31		December 31	
	2018	2017	2018	2017
Discount rate	4.50%	4.75%	3.80%	4.30%
Rate of compensation increase	3.83	3.83	–	–
Expected long-term return on plan assets	5.65	5.90	–	–

The expected return of the portfolio was arrived at using the weighted-average of the expected returns of the underlying benchmark asset classes.

The health care cost trend rate assumptions for the postretirement hospital and basic medical coverage plan at December 31 are as follows:

	2018	2017
Health care cost trend rate assumed for next year	7.00%	7.25%
Rate to which the cost trend rate is assumed to decline (the ultimate trend rate)	5.00	5.00
Year that the rate reaches the ultimate trend rate	2025	2025

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

8. Retiree Pension and Health Plans (continued)

Effect of Change in Health Care Trends

Assumed health care cost trend rates have a significant effect on the postretirement health amounts reported. A 1% change in assumed health care cost trend rates would have the following effects on postretirement benefit costs:

	2018		2017	
	1% Increase	1% Decrease	1% Increase	1% Decrease
	<i>(In Thousands)</i>			
Effect on total of service and interest cost components of net periodic postretirement health care benefit cost	\$ 1,942	\$ (1,508)	\$ 2,215	\$ (1,720)
Effect on the health care component of the accumulated postretirement benefit obligation	21,848	(17,510)	24,718	(19,591)

Plan Assets

The following table presents the weighted-average long-term target asset allocations and the percentages of the fair value of pension plan assets as of December 31:

	Target Allocation 2018	Percentage of Plan Assets	
		2018	2017
U.S.-based equity securities	25%	27%	25%
International equity investments	10	11	19
Fixed income investments	25	28	33
Alternative investments	40	34	23

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

8. Retiree Pension and Health Plans (continued)

The Plan assets consist of cash and cash equivalents, U.S. equities, fixed income securities, commingled funds, and alternative investments. Alternative investments are listed by their corresponding strategy and holdings include relative value funds, long/short equity funds, merger arbitrage/event driven funds, real estate, credit funds, private debt, and private equity. These investments pursue multiple strategies to diversify risk and reduce volatility.

Equities and real estate investment trusts are valued based on the quoted market prices of the securities as reported on national securities exchanges. Fixed income securities are valued based on readily available market quotations received from commercial pricing services. Such pricing services and brokers will generally provide bid-side quotations. Commingled funds are valued based on the NAV of shares held by the pension plan at year end. Alternative investments are stated at fair value as determined by Morgan Guaranty Trust Company of New York or by the investees. Value may be based on historical cost, appraisals, or other estimates that require varying degrees of judgment. Generally, fair value is stated at NAV, which reflects net contributions to the investee and an ownership share of realized and unrealized investment income and expenses.

The financial statements of the investees are audited annually by independent auditors. These investments may indirectly expose the pension plan to securities lending, short sales of securities, and trading in futures and forward contracts, options, swap contracts and other derivative products. While these financial instruments may contain varying degrees of risk, the pension plan's risk with respect to such transactions is limited to its capital balance in each investment.

Certain Plan assets could have liquidity restrictions that range from several months to ten years for certain alternative investments. Liquidity restrictions may apply to all or portions of a particular invested amount. Unfunded commitments for the alternative investments in the pension plan at December 31, 2018 are approximately \$298.3 million.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

8. Retiree Pension and Health Plans (continued)

Financial instruments of the Plan of the Institution, carried at fair value as of December 31, 2018, are classified in the table below as described in Note 4:

	Level 1	Level 2	Level 3	Total
	<i>(In Thousands)</i>			
Investments measured at fair value				
Cash, cash equivalents, and money market funds	\$ 18,610	\$ –	\$ –	\$ 18,610
U.S. equity investments:				
Equity securities	30,958	–	–	30,958
Real estate investment trusts	2,274	–	–	2,274
Fixed income investments:				
U.S. government and other	7,758	–	–	7,758
Private equity funds	–	–	11,343	11,343
	<u>\$ 59,600</u>	<u>\$ –</u>	<u>\$ 11,343</u>	<u>70,943</u>
Investments measured at NAV as a practical expedient				
Commingled funds:				
U.S. equity				265,296
International equity				132,767
Fixed income				312,575
Alternative investments:				
Relative value funds				2,042
Long/short equity funds				34,170
Merger arbitrage/event driven funds				47
Real estate				21,043
Credit funds				169,635
Private debt				20,180
Private equity funds				133,670
Total investments at fair value				<u>\$ 1,162,368</u>

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

8. Retiree Pension and Health Plans (continued)

Financial instruments of the Plan of the Institution, carried at fair value as of December 31, 2017, are classified in the table below as described in Note 4:

	Level 1	Level 2	Level 3	Total
	<i>(In Thousands)</i>			
Investments measured at fair value				
Cash, cash equivalents, and money market funds	\$ 31,972	\$ –	\$ –	\$ 31,972
U.S. equity investments:				
Equity securities	55,933	–	–	55,933
Real estate investment trusts	2,811	–	–	2,811
Fixed income investments:				
U.S. government and other	13,100	–	–	13,100
Private equity funds	–	–	7,528	7,528
	<u>\$ 103,816</u>	<u>\$ –</u>	<u>\$ 7,528</u>	<u>111,344</u>
Investments measured at NAV as a practical expedient				
Commingled funds:				
U.S. equity				261,536
International equity				268,575
Fixed income				440,986
Alternative investments:				
Relative value funds				4,233
Long/short equity funds				36,208
Merger arbitrage/event driven funds				7,323
Real estate				18,743
Credit funds				121,758
Private debt				17,096
Private equity funds				98,626
Total investments at fair value				<u>\$ 1,386,428</u>

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

8. Retiree Pension and Health Plans (continued)

The following table represents a rollforward of the total plan assets classified by the Institution within Level 3 of the valuation hierarchy defined in Note 4:

	2018	2017
	<i>(In Thousands)</i>	
Fair value at beginning of year	\$ 7,528	\$ 3,199
Acquisitions	–	3,523
Unrealized gains	3,815	806
Fair value at end of year	\$ 11,343	\$ 7,528

Plan Objectives and Guidelines

The overall investment objective of the pension trust fund is to outperform a composite benchmark (an asset-weighted series of market indices used to measure the performance of each asset class) over a market cycle, while maintaining similar risk to the benchmark.

The portfolio is diversified to reduce the impact of losses in individual investments in a manner that is responsive to fiduciary standards. Single issuers are limited to 5% of the portfolio's aggregate market value at time of purchase, with the exception of U.S. government and agency securities and commingled funds. The underlying products that comprise a diversified portfolio may have exposure to derivatives which are managed and controlled.

Cash Flows

Contributions: The Institution expects to contribute \$25.0 million to its pension plan in 2019.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

8. Retiree Pension and Health Plans (continued)

Estimated future benefit payments: The Institution expects to pay the following benefit payments, which reflect expected future service, as appropriate:

	Pension Benefits	Postretirement Health
	<i>(In Thousands)</i>	
2019	\$ 23,567	\$ 3,608
2020	27,938	4,400
2021	33,920	4,941
2022	38,209	5,531
2023	43,955	5,998
2024 to 2028	309,485	35,614

9. Insurance Programs

MSKI, a domestic tax-exempt corporation, is the primary insurance company for certain insurable risks of the Institution. The primary coverages provided by MSKI to the Institution are health care professional liability, warranty coverage for covered health care equipment, terrorism and assumed coverage for workers' compensation, general liability and certain employee benefits of long-term disability and life insurance. The Institution's liability is limited, with catastrophic risk insured by commercial insurance carriers, or in the case of terrorism risk, by the U.S. Government under a formula established by Federal law.

Insurance reserves of MSKI represent estimated unpaid losses and loss adjustment expenses. Such amounts are established using management's estimates on the basis of claims records and independent actuarial reviews and include an amount for the adverse development of reported claims. Adjustments to the estimate of the liability for losses are reflected in earnings in the period in which the adjustment is determined. The insurance reserves are necessarily based on estimates and, while management believes that the amount is adequate, the ultimate liability may vary significantly from the amount provided. The estimated unpaid professional liability losses and loss adjustment expenses, including losses incurred but not reported at December 31, 2018 and 2017, were approximately \$251.7 million and \$262.2 million, respectively, and are recorded at the actuarially determined present value of approximately \$228.4 million and \$245.9 million, respectively, based on a discount rate of 2.1% in each year.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

10. Operating Leases

The Institution leases certain facilities and equipment which are accounted for as operating leases. Total rent expense for operating leases aggregated approximately \$37.5 million and \$37.0 million for 2018 and 2017, respectively. The future minimum lease commitments for noncancelable leases in excess of one year are as follows (in thousands):

2019	\$ 40,768
2020	38,614
2021	35,360
2022	32,450
2023	25,124
Thereafter	79,516
	<u>\$ 251,832</u>

There are provisions in certain leases which provide for rent escalation for inflation and other items.

In August 2017, the Institution entered into an agreement to lease a building for a 30-year term. The Institution will become liable to make payments upon possession, which is expected to take place in 2019. Total lease payments are approximately \$250.1 million and are excluded from the table above.

11. Grant Awards

The accompanying combined financial statements do not include amounts related to research grants (or portions thereof) that have been awarded to the Institute for which expenditures have not been incurred or cash has not been received. Such grant awards approximated \$113.5 million and \$116.2 million at December 31, 2018 and 2017, respectively.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

12. Royalty and Other Income

Royalty and other income consists of the following:

	Year Ended December 31	
	2018	2017
	<i>(In Thousands)</i>	
Royalty income	\$ 75,679	\$ 81,491
Housing and parking	38,021	38,425
Cafeteria and food service	7,376	6,339
Services provided	4,987	5,776
Other	33,077	27,427
	\$ 159,140	\$ 159,458

13. Commitments and Contingencies

The Institution is involved in various litigation and claims that are not considered unusual given the complexity and size of the Institution's business. Management believes that the ultimate resolution of these matters will not have a material impact on the Institution's combined financial statements.

The Institution recognizes a liability for the future cost of conditional asset retirement obligations, including building modifications and lease end costs. The Institution removes contained asbestos and any applicable radioactive materials from facilities as facilities are being repaired and/or replaced. The Institution has recorded the estimated liability for the cost of asbestos remediation and radiation decommissioning for the Institution's current plans for building modifications and lease end costs of approximately \$38.9 million and \$38.6 million at December 31, 2018 and 2017, respectively.

Memorial Sloan Kettering Cancer Center
and Affiliated Corporations

Notes to Combined Financial Statements (continued)

14. Functional Expenses

The functional expenses related to the fulfillment of the Institution's mission for the years ended December 31, 2018 and 2017 are as follows (in thousands):

	Patient Care	Research	Education	Fundraising	Management and General	2018 Total
Compensation and fringe benefits	\$ 2,012,926	\$ 332,338	\$ 197,111	\$ 33,676	\$ 11,285	\$ 2,587,336
Purchased supplies and services	1,429,456	236,147	37,229	35,627	17,715	1,756,174
Depreciation and amortization	206,478	76,368	10,505	1,217	5,671	300,239
Interest	31,213	10,190	–	–	5,642	47,045
Total	\$ 3,680,073	\$ 655,043	\$ 244,845	\$ 70,520	\$ 40,313	\$ 4,690,794

	Patient Care	Research	Education	Fundraising	Management and General	2017 Total
Compensation and fringe benefits	\$ 1,801,427	\$ 306,223	\$ 187,002	\$ 31,005	\$ 9,475	\$ 2,335,132
Purchased supplies and services	1,193,363	221,796	37,688	32,631	16,457	1,501,935
Depreciation and amortization	195,753	75,493	9,442	1,437	5,020	287,145
Interest	27,991	12,483	–	–	4,869	45,343
Total	\$ 3,218,534	\$ 615,995	\$ 234,132	\$ 65,073	\$ 35,821	\$ 4,169,555

15. Subsequent Events

Subsequent events have been evaluated through April 5, 2019, which is the date the combined financial statements were issued. No subsequent events have occurred that require disclosure in or adjustment to the combined financial statements.

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EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

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ey.com

Exhibit C

**Affidavit of Director or Officer of
Memorial Sloan Kettering Cancer Center**

**AFFIDAVIT CONFIRMING CHARITABLE PURPOSE AND TAX STATUS OF
MEMORIAL SLOAN-KETTERING CANCER CENTER**

I, Kathryn Martin having been duly sworn, deposes and says:

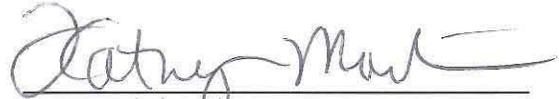
1. I am a duly authorized officer of Memorial Sloan-Kettering Cancer Center, a New York not-for-profit corporation having its principal place of business at 1275 York Ave, New York, New York, 10065 ("MSK").
2. MSK is a not-for profit charitable corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law of the State of New York ("NPCL") and is a charitable corporation under Section 201 of the NPCL. The business of MSK is to provide, exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, leadership in the prevention, treatment and cure of cancer through excellence, vision and cost effectiveness in patient care, outreach programs, research, and education.
3. MSK is exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code.
4. MSK is up-to-date in its registration and annual financial filings with the Office of the New York State Attorney General Charities Bureau.
5. MSK is the sole corporate member of the Ralph Lauren Center for Cancer Care and Prevention ("RLCC") pursuant to Article VI of the NPCL. RLCC will transfer its operations to MSK, along with its remaining assets, properties and rights, to continue

RLCC's mission and purpose. Following the transfer of Assets to MSK, RLCC will dissolve in accordance with its Plan of Dissolution.

6. All Assets will be used by MSK shall continue to provide cancer prevention, diagnosis and treatment services to the Harlem community for the foreseeable future.

IN WITNESS WHEREOF, the undersigned has executed this affidavit as of this 9 day of July, 2019.

**MEMORIAL SLOAN-KETTERING
CANCER CENTER**



Name: Kathryn Martin

Title: Chief Operating Officer

Exhibit D

**Resolution of the Board of Trustees of the
Ralph Lauren Center for Cancer Care and Prevention**

**CERTIFICATION OF UNANIMOUS WRITTEN
CONSENT OF THE BOARD BY SECRETARY OF
RALPH LAUREN CENTER FOR CANCER CARE AND
PREVENTION**

September 12, 2019

I, Gordon Bell, hereby certify that I am the duly elected and qualified acting Treasurer and Secretary of the Ralph Lauren Center of Cancer Care and Prevention (“Corporation”), and that as such, I am authorized to execute and deliver this certification on behalf of the Corporation. I further certify, in my capacity as Secretary of the Corporation, that:

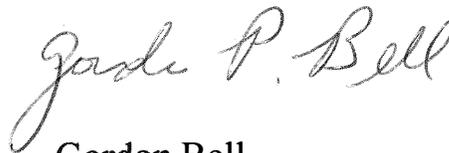
1. Attached hereto as Exhibit A is the unanimous written consent (the “Consent”), ratified September 12, 2019 by the members of the Board of Trustees of the Corporation (the “Board”) then eligible to vote, pursuant to which the Board approved the adoption of the Plan of Dissolution, dated July 22, 2019, and the authorization of all other actions by the officers of the Corporation in connection with the foregoing.

2. Of the nine members of the Board, nine members were eligible to vote and approved the Consent unanimously. One Board member was not entitled to vote and abstained from participating in the Consent.

IN WITNESS WHEREOF, I have executed and delivered this certification as of the date first written above.

RALPH LAUREN CENTER FOR
CANCER CARE AND PREVENTION

By: _____



Name: Gordon Bell

Title: Acting Treasurer and Secretary

Exhibit A

**Unanimous Written Consent
of**

The Board of Trustees of the Ralph Lauren Center for Cancer Care and Prevention

RALPH LAUREN CENTER FOR CANCER CARE AND PREVENTION

UNANIMOUS WRITTEN CONSENT

Pursuant to Section 708 of the Not-For-Profit Corporation Law of
the State of New York

In lieu of a separate meeting of the Board of Trustees (the “Board”) of the Ralph Lauren Center for Cancer Care and Prevention, a New York not-for-profit corporation (the “Corporation”), and in accordance with the Corporation’s By-laws (the “By-Laws”), the eligible trustees hereby unanimously consent to the adoption of the following resolutions and declare them to be in full force and effect as if they were adopted at a meeting duly convened and held:

WHEREAS, the Corporation has determined that it can no longer feasibly operate as a freestanding diagnostic and treatment center that furnishes high-quality cancer care to patients in the Harlem community (the “Community”) because of the deteriorating reimbursement environment for its services and supports;

WHEREAS, the Corporation has a longstanding relationship with Memorial Sloan Kettering Cancer Center (“MSKCC”), as an original sponsor of the Corporation and its current sole corporate member, as defined in the By-laws;

WHEREAS, based on this current relationship with MSKCC, the Board has determined that MSKCC is best positioned to preserve the mission of the Corporation and continue its commitment to the Community;

WHEREAS, pursuant to an Asset Purchase Agreement with MSKCC, and following approval on March 28, 2019 by the Supreme Court of New York, County of New York, the Corporation on April 1, 2019, has sold, conveyed, or transferred substantially all of its assets to MSKCC;

WHEREAS, consistent with Section 6.3 of the By-laws, Mr. James G. Niven has been recused from consideration and approval of this consent due to his role on the Board of Overseers and Managers of MSKCC;

THEREFORE, BE IT RESOLVED that, the Board hereby approves and authorizes the Corporation to be dissolved as a legal entity in accordance with the Plan of Dissolution and Distribution of Assets attached hereto as Exhibit A;

BE IT ALSO RESOLVED, that the Board hereby approves and authorizes the conveyance, transfer, and assignment to MSKCC of all of the Corporation's remaining assets, properties and rights following completion of Corporation's wind-down operations;

BE IT ALSO RESOLVED, that MSKCC shall continue the Corporation's mission and purpose, and shall continue to provide cancer prevention, diagnosis and treatment services to the Community for the foreseeable future; and

BE IT ALSO RESOLVED, that the Board hereby approves that the Corporation undertake all necessary steps to seek all necessary regulatory approvals, including but not limited to the filing of a Petition for Approval of Plan of Dissolution and Distribution of Assets, a Certificate of Dissolution, and any other petitions with the New York State Office of the Attorney General; and

BE IT ALSO RESOLVED, that the Secretary of the Corporation and all other officers of the Corporation, were and remain authorized to cause the Corporation to execute and cause to be delivered further consents and other documents, certificates, or agreements as may be required to consummate and fully carry out the intention of the resolutions in this consent.

The trustees have approved this consent through electronic mail as of the date on which the last trustee indicates his or her authorization.

Written Consent

of

James G. Nevin

Wadman, Whitney

From: McCollum, Cynthia/Hospital Administration
Sent: Monday, September 09, 2019 5:04 PM
To: Levine, Carolyn B./Office of General Counsel; Aristodemou, Eleni/Office Of General Counsel
Subject: FW: [EXTERNAL] Re: Reminder: RLC Board - one more task

From: Jamie Niven
Sent: Monday, September 09, 2019 3:56 PM
To: McCollum, Cynthia/Hospital Administration
Subject: [EXTERNAL] Re: Reminder: RLC Board - one more task

I approve of all of these measures Warmest regards Jamie Niven

PLEASE NOTE NEW EMAIL ADDRESS

Jamie Niven
jamiagniven@gmail.com

On Sep 9, 2019, at 11:05 AM, mccolluc@mskcc.org wrote:

Dear All – as of today I have heard only from Tnyetta, and I am afraid that the regulations compel responses from all trustees. I apologize for this, but would be grateful for a response at your earliest convenience.

Warm regards,
Cindy

From: McCollum, Cynthia/Hospital Administration
Sent: Monday, August 19, 2019 10:43 AM
To: Avery Fischer <Avery.Fischer@RalphLauren.com>; Brown, Carol L./Surgery <brown4@mskcc.org>; Charles B. Patton <charlespatton06@gmail.com>; David Lauren <David.Lauren@RalphLauren.com>; Gordon P. Bell <gordobell@gmail.com>; 'Gordon Bell' <gbell@restorationplaza.org>; Harold P. Freeman, MD <hpfnow@gmail.com>; RLC Board Chairman, James G. Niven (jamiagniven@gmail.com) <jamiagniven@gmail.com>; Tnyetta Mitchell <tnyetta.mitchell@ustrust.com>; Tnyetta Mitchell <Tnyetta@gmail.com>; Wilson, Joelle M./Compliance and Internal Audit <wilsonj@mskcc.org>
Cc: Levine, Carolyn B./Office of General Counsel <levinec@mskcc.org>; Aristodemou, Eleni/Office Of General Counsel <aristode@mskcc.org>; Ryan, Christopher/Hospital Administration <ryanc1@mskcc.org>
Subject: RLC Board - one more task
Importance: High

Dear All –

Although we thought the last of the legal steps in transfer of the RLC had been completed, one more has arisen requiring action

by the Board of Trustees of RLC with regard to certain post-transfer matters—most notably finalizing the dissolution of RLC, which still continues as a separate legal entity, notwithstanding the transfer of operations and assets to MSK.

Attached is the plan of dissolution for your review and a written consent for your approval of this document so that we can finalize the dissolution of RLC. Once you have reviewed this, please respond to this e-mail with the wording “I approve.”

Thanks in advance for your assistance with this task, and I hope you have enjoyed the summer.

All my best,
Cindy

=====

Please note that this e-mail and any files transmitted from Memorial Sloan Kettering Cancer Center may be privileged, confidential, and protected from disclosure under applicable law. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying, or other use of this communication or any of its attachments is strictly prohibited. If you have received this communication in error, please notify the sender immediately by replying to this message and deleting this message, any attachments, and all copies and backups from your computer.

Written Consent

of

Gordon P. Bell

Wadman, Whitney

From: McCollum, Cynthia/Hospital Administration
Sent: Monday, September 09, 2019 5:03 PM
To: Levine, Carolyn B./Office of General Counsel; Aristodemou, Eleni/Office Of General Counsel
Subject: FW: [EXTERNAL] Re: RLC Board - one more task

From: Gordon Bell
Sent: Monday, September 09, 2019 4:06 PM
To: McCollum, Cynthia/Hospital Administration
Cc: Avery Fischer (Avery.Fischer@RalphLauren.com) ; Brown, Carol L./Surgery ; Charles Patton ; David Lauren ; Gordon Bell ; Harold Freeman ; jamiagniven@gmail.com; Mitchell, Tnyetta ; Tnyetta Mitchell ; wilsonj@mskcc.org; Levine, Carolyn B./Office of General Counsel ; Aristodemou, Eleni/Office Of General Counsel ; Ryan, Christopher/Hospital Administration
Subject: [EXTERNAL] Re: RLC Board - one more task

Cindy,

I, Gordon Bell, am in receipt of and have reviewed the Plan of Dissolution and the RLCC Dissolution. My vote has been requested as per duty of my service to the RLCC board. **I approve.**

**Best,
Gordon Bell**

PS I certainly hope that an Advisory Group will be formed to keep MSK connected to the Harlem community and beyond.

On Mon, Aug 19, 2019 at 10:42 AM <mccolluc@mskcc.org> wrote:

Dear All –

Although we thought the last of the legal steps in transfer of the RLC had been completed, one more has arisen requiring action

by the Board of Trustees of RLC with regard to certain post-transfer matters—most notably finalizing the dissolution of RLC, which still continues as a separate legal entity, notwithstanding the transfer of operations and assets to MSK.

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Thanks in advance for your assistance with this task, and I hope you have enjoyed the summer.

All my best,

Cindy

=====
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--

Gordon Bell
914-830-4339

Written Consent

of

Avery Fischer

Wadman, Whitney

From: McCollum, Cynthia/Hospital Administration
Sent: Monday, September 09, 2019 7:20 PM
To: Levine, Carolyn B./Office of General Counsel; Aristodemou, Eleni/Office Of General Counsel
Subject: Fwd: [EXTERNAL] RE: Reminder: RLC Board - one more task

I think this is 6

Sent from my iPhone

Begin forwarded message:

From: "Fischer, Avery (US)" <Avery.Fischer@RalphLauren.com>
Date: September 9, 2019 at 6:35:22 PM EDT
To: "mccolluc@MSKCC.ORG" <mccolluc@MSKCC.ORG>
Cc: "Lauren, David (US)" <David.Lauren@RalphLauren.com>
Subject: [EXTERNAL] RE: Reminder: RLC Board - one more task

Hi Cindy,
I approve.
Thank you,
Avery

From: mccolluc@MSKCC.ORG <mccolluc@MSKCC.ORG>
Sent: Monday, September 9, 2019 11:06 AM
To: Fischer, Avery (US) <Avery.Fischer@RalphLauren.com>; brown4@MSKCC.ORG; charlespatton06@gmail.com; Lauren, David (US) <David.Lauren@RalphLauren.com>; gordobell@gmail.com; gbell@restorationplaza.org; hpfnow@gmail.com; jamiegniven@gmail.com
Cc: levinec@mskcc.org; aristode@mskcc.org; ryanc1@MSKCC.ORG
Subject: Reminder: RLC Board - one more task
Importance: High

WARNING: This email originated from outside of Ralph Lauren. **DO NOT CLICK** on links or attachments unless you know the content to be safe.

Dear All – as of today I have heard only from Tnyetta, and I am afraid that the regulations compel responses from all trustees. I apologize for this, but would be grateful for a response at your earliest convenience.

Warm regards,
Cindy

From: McCollum, Cynthia/Hospital Administration
Sent: Monday, August 19, 2019 10:43 AM
To: Avery Fischer <Avery.Fischer@RalphLauren.com>; Brown, Carol L./Surgery <brown4@mskcc.org>; Charles B. Patton <charlespatton06@gmail.com>; David Lauren <David.Lauren@RalphLauren.com>; Gordon P. Bell <gordobell@gmail.com>; 'Gordon Bell' <gbell@restorationplaza.org>; Harold P. Freeman, MD <hpfnow@gmail.com>; RLC Board Chairman, James G. Niven (jamiegniven@gmail.com) <jamiegniven@gmail.com>; Tnyetta Mitchell <tnyetta.mitchell@ustrust.com>; Tnyetta Mitchell <Tnyetta@gmail.com>; Wilson, Joelle M./Compliance and Internal Audit <wilsonj@mskcc.org>
Cc: Levine, Carolyn B./Office of General Counsel <levinec@mskcc.org>; Aristodemou, Eleni/Office Of General Counsel <aristode@mskcc.org>; Ryan, Christopher/Hospital Administration

[<ryanc1@mskcc.org>](mailto:ryanc1@mskcc.org)

Subject: RLC Board - one more task

Importance: High

Dear All –

Although we thought the last of the legal steps in transfer of the RLC had been completed, one more has arisen requiring action

by the Board of Trustees of RLC with regard to certain post-transfer matters—most notably finalizing the dissolution of RLC, which still continues as a separate legal entity, notwithstanding the transfer of operations and assets to MSK.

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Thanks in advance for your assistance with this task, and I hope you have enjoyed the summer.

All my best,

Cindy

=====

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Written Consent

of

Charles B. Patton

Wadman, Whitney

From: McCollum, Cynthia/Hospital Administration
Sent: Monday, September 09, 2019 5:28 PM
To: Levine, Carolyn B./Office of General Counsel; Aristodemou, Eleni/Office Of General Counsel
Subject: FW: [EXTERNAL] RE: RLC Board - one more task

From: Charles Patton
Sent: Monday, September 09, 2019 5:25 PM
To: McCollum, Cynthia/Hospital Administration ; Avery.Fischer@RalphLauren.com; Brown, Carol L./Surgery ; David.Lauren@RalphLauren.com; gordobell@gmail.com; gbell@restorationplaza.org; hpfnow@gmail.com; jamiagniven@gmail.com; tnyetta.mitchell@ustrust.com; Tnyetta@gmail.com; wilsonj@mskcc.org
Cc: Levine, Carolyn B./Office of General Counsel ; Aristodemou, Eleni/Office Of General Counsel ; Ryan, Christopher/Hospital Administration
Subject: [EXTERNAL] RE: RLC Board - one more task

I approve.

Regards,

Charles

Charles Patton
Email: charlespatton06@gmail.com
Cel: (650) 353-0984

From: mccolluc@MSKCC.ORG <mccolluc@MSKCC.ORG>
Sent: Monday, August 19, 2019 7:43 AM
To: Avery.Fischer@RalphLauren.com; brown4@MSKCC.ORG; charlespatton06@gmail.com; David.Lauren@RalphLauren.com; gordobell@gmail.com; gbell@restorationplaza.org; hpfnow@gmail.com; jamiagniven@gmail.com; tnyetta.mitchell@ustrust.com; Tnyetta@gmail.com; wilsonj@mskcc.org
Cc: levinec@mskcc.org; aristode@mskcc.org; ryanc1@MSKCC.ORG
Subject: RLC Board - one more task
Importance: High

Dear All –

Although we thought the last of the legal steps in transfer of the RLC had been completed, one more has arisen requiring action by the Board of Trustees of RLC with regard to certain post-transfer matters—most notably finalizing the dissolution of RLC, which still continues as a separate legal entity, notwithstanding the transfer of operations and assets to MSK.

Attached is the plan of dissolution for your review and a written consent for your approval of this document so that we can finalize the dissolution of RLC. Once you have reviewed this, please respond to this e-mail with the wording "I approve."

Thanks in advance for your assistance with this task, and I hope you have enjoyed the summer.

All my best,
Cindy

=====

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Written Consent
of
Carol Brown, M.D.

Wadman, Whitney

From: McCollum, Cynthia/Hospital Administration
Sent: Monday, September 09, 2019 5:02 PM
To: Levine, Carolyn B./Office of General Counsel; Aristodemou, Eleni/Office Of General Counsel
Subject: FW: RLC Board - one more task

From: Brown, Carol L./Surgery
Sent: Monday, September 09, 2019 4:53 PM
To: McCollum, Cynthia/Hospital Administration ; Avery Fischer ; Charles B. Patton ; David Lauren ; Gordon P. Bell ; 'Gordon Bell' ; Harold P. Freeman, MD ; RLC Board Chairman, James G. Niven (jamiagniven@gmail.com) ; Tnyetta Mitchell ; Tnyetta Mitchell ; Wilson, Joelle M./Compliance and Internal Audit
Cc: Levine, Carolyn B./Office of General Counsel ; Aristodemou, Eleni/Office Of General Counsel ; Ryan, Christopher/Hospital Administration
Subject: RE: RLC Board - one more task

I approve. It was a pleasure working with all of you.

Best

Carol L. Brown MD, FACS

Associate Cancer Center Director for Diversity & Health Equity
Director, Office of Diversity Programs
Attending Surgeon, Gynecology Service, Department of Surgery

Memorial Sloan Kettering Cancer Center

1275 York Avenue, M110, New York, NY 10065
T 212-639-3294 F 212-717-3398

brown4@mskcc.org

From: McCollum, Cynthia/Hospital Administration
Sent: Monday, August 19, 2019 10:43 AM
To: Avery Fischer <Avery.Fischer@RalphLauren.com>; Brown, Carol L./Surgery <brown4@MSKCC.ORG>; Charles B. Patton <charlespatton06@gmail.com>; David Lauren <David.Lauren@RalphLauren.com>; Gordon P. Bell <gordobell@gmail.com>; 'Gordon Bell' <gbell@restorationplaza.org>; Harold P. Freeman, MD <hpfnow@gmail.com>; RLC Board Chairman, James G. Niven (jamiagniven@gmail.com) <jamiagniven@gmail.com>; Tnyetta Mitchell <tnyetta.mitchell@ustrust.com>; Tnyetta Mitchell <Tnyetta@gmail.com>; Wilson, Joelle M./Compliance and Internal Audit <wilsonj@mskcc.org>
Cc: Levine, Carolyn B./Office of General Counsel <levinec@mskcc.org>; Aristodemou, Eleni/Office Of General Counsel <aristode@mskcc.org>; Ryan, Christopher/Hospital Administration <ryanc1@MSKCC.ORG>
Subject: RLC Board - one more task
Importance: High

Dear All –

Although we thought the last of the legal steps in transfer of the RLC had been completed, one more has arisen requiring action

by the Board of Trustees of RLC with regard to certain post-transfer matters—most notably finalizing the dissolution of RLC, which still continues as a separate legal entity, notwithstanding the transfer of operations and assets to MSK.

Attached is the plan of dissolution for your review and a written consent for your approval of this document so that we can finalize the dissolution of RLC. Once you have reviewed this, please respond to this e-mail with the wording “I approve.”

Thanks in advance for your assistance with this task, and I hope you have enjoyed the summer.

All my best,
Cindy

Written Consent
of
Cynthia McCollum

Wadman, Whitney

From: McCollum, Cynthia/Hospital Administration
Sent: Monday, September 09, 2019 10:22 PM
To: Levine, Carolyn B./Office of General Counsel; Aristodemou, Eleni/Office Of General Counsel
Subject: Fwd: [EXTERNAL] Re: Reminder: RLC Board - one more task

Carolyn - I believe this is the last one. What do you need from me to note my assent as well? Will this email serve?
Thanks for compiling
Cindy

Sent from my iPhone

Begin forwarded message:

From: "Harold Freeman" <hpfnow@gmail.com>
Date: September 9, 2019 at 6:53:26 PM EDT
To: mccolluc@mskcc.org
Subject: [EXTERNAL] Re: Reminder: RLC Board - one more task

I write to indicate my approval of the plan for dissolution of the current Ralph Lauren Center as stated below.

Harold Freeman
Sent from my iPad

On Sep 9, 2019, at 5:23 PM, mccolluc@mskcc.org wrote:

Yes I would be happy to do so and hope to get an update to you shortly. In the meantime I would be grateful for your approval of the plan of dissolution

From: Harold Freeman <hpfnow@gmail.com>
Sent: Monday, September 09, 2019 3:41 PM
To: McCollum, Cynthia/Hospital Administration <mccolluc@MSKCC.ORG>
Cc: Avery.Fischer@ralphlauren.com; Brown, Carol L./Surgery <brown4@MSKCC.ORG>; charlespatton06@gmail.com; David.Lauren@ralphlauren.com; gordobell@gmail.com; gbell@restorationplaza.org; jamiagniven@gmail.com; Levine, Carolyn B./Office of General Counsel <levinec@mskcc.org>; Aristodemou, Eleni/Office Of General Counsel <aristode@mskcc.org>; Ryan, Christopher/Hospital Administration <ryanc1@MSKCC.ORG>

Subject: [EXTERNAL] Re: Reminder: RLC Board - one more task

DoLauren

Cindy,

Are you able to give us an update on the previously discussed consideration of whether or not selected members of the current Ralph Lauren Center Board (which is being discontinued) will have an advisory role to the MSKCC Board in the future.

In my opinion, such an advisory role could be of considerable value in this transition.

I have a sense that other members of the outgoing RLC Board would also appreciate such an update.

Best wishes,

Harold

Sent from my iPhone

On Sep 9, 2019, at 11:05 AM, mccolluc@mskcc.org wrote:

Dear All – as of today I have heard only from Tnyetta, and I am afraid that the regulations compel responses from all trustees. I apologize for this, but would be grateful for a response at your earliest convenience.
Warm regards,
Cindy

From: McCollum, Cynthia/Hospital Administration
Sent: Monday, August 19, 2019 10:43 AM
To: Avery Fischer <Avery.Fischer@RalphLauren.com>; Brown, Carol L./Surgery <brown4@mskcc.org>; Charles B. Patton <charlespatton06@gmail.com>; David Lauren <David.Lauren@RalphLauren.com>; Gordon P. Bell <gordobell@gmail.com>; 'Gordon Bell' <gbell@restorationplaza.org>; Harold P. Freeman, MD <hpfnow@gmail.com>; RLC Board Chairman, James G. Niven (jamiagniven@gmail.com) <jamiagniven@gmail.com>; Tnyetta Mitchell <tnyetta.mitchell@ustrust.com>; Tnyetta Mitchell <Tnyetta@gmail.com>; Wilson, Joelle M./Compliance and Internal Audit <wilsonj@mskcc.org>
Cc: Levine, Carolyn B./Office of General Counsel <levinec@mskcc.org>; Aristodemou, Eleni/Office Of General Counsel <aristode@mskcc.org>; Ryan, Christopher/Hospital Administration <ryanc1@mskcc.org>
Subject: RLC Board - one more task
Importance: High

Dear All –
Although we thought the last of the legal steps in transfer of the RLC had been completed, one more has arisen requiring action by the Board of Trustees of RLC with regard to certain post-transfer matters—most notably finalizing the dissolution of RLC, which still continues as a separate legal entity, notwithstanding the transfer of operations and assets to MSK.
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Thanks in advance for your assistance with this task, and I hope you have enjoyed the summer.
All my best,
Cindy

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responsible for delivering this message to the intended recipient, you are hereby notified that any reading, dissemination, distribution, copying, or other use of this communication or any of its attachments is strictly prohibited. If you have received this communication in error, please notify the sender immediately by replying to this message and deleting this message, any attachments, and all copies and backups from your computer.

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Written Consent

of

Tnyetta Mitchell

Wadman, Whitney

From: McCollum, Cynthia/Hospital Administration
Sent: Monday, September 09, 2019 5:02 PM
To: Levine, Carolyn B./Office of General Counsel; Aristodemou, Eleni/Office Of General Counsel
Subject: FW: RLC Board - one more task [Sent To: tnyetta.mitchell@ustrust.com]

From: Mitchell, Tnyetta
Sent: Friday, September 06, 2019 4:16 PM
To: McCollum, Cynthia/Hospital Administration
Subject: [EXTERNAL] RE: RLC Board - one more task [Sent To: tnyetta.mitchell@ustrust.com]

Hi Cindy,

I hope you are doing well and had a good summer.

I approve.

Tnyetta Mitchell

Senior Vice President
Private Client Manager

PRIVATE BANK

114 West 47th Street, 6th Floor, New York, NY 10036
T: 212.449.1855 F: 804.262.9388
NMLS ID: 918020

PLEASE NOTE MY NEW EMAIL ADDRESS Tnyetta.mitchell@bofa.com

Office of Supervisory Jurisdiction
Merrill Lynch, Pierce, Fenner & Smith Inc
114 W 47th Street
New York, NY 10036

BANK OF AMERICA 

From: mccolluc@MSKCC.ORG [<mailto:mccolluc@MSKCC.ORG>]
Sent: Monday, August 19, 2019 10:43 AM
To: Avery.Fischer@RalphLauren.com; brown4@MSKCC.ORG; charlespatton06@gmail.com;
David.Lauren@RalphLauren.com; gordobell@gmail.com; gbell@restorationplaza.org; hpfnow@gmail.com;
jamiagniven@gmail.com; Mitchell, Tnyetta <tnyetta.mitchell@bofa.com>; Tnyetta@gmail.com; wilsonj@mskcc.org
Cc: levinec@mskcc.org; aristode@mskcc.org; ryanc1@MSKCC.ORG
Subject: RLC Board - one more task [Sent To: tnyetta.mitchell@ustrust.com]
Importance: High

Dear All –

Although we thought the last of the legal steps in transfer of the RLC had been completed, one more has arisen requiring action by the Board of Trustees of RLC with regard to certain post-transfer matters—most notably finalizing the dissolution of RLC, which still continues as a separate legal entity, notwithstanding the transfer of operations and assets to MSK.

Attached is the plan of dissolution for your review and a written consent for your approval of this document so that we can finalize the dissolution of RLC. Once you have reviewed this, please respond to this e-mail with the wording “I approve.”

Thanks in advance for your assistance with this task, and I hope you have enjoyed the summer.

All my best,
Cindy

=====

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This message, and any attachments, is for the intended recipient(s) only, may contain information that is privileged, confidential and/or proprietary and subject to important terms and conditions available at <http://www.bankofamerica.com/emaildisclaimer>. If you are not the intended recipient, please delete this message.

*** Only open attachments or links from trusted senders. Report phishing to infosec@mskcc.org ***

Written Consent

of

David Lauren

Wadman, Whitney

From: McCollum, Cynthia/Hospital Administration
Sent: Monday, September 09, 2019 10:21 PM
To: Levine, Carolyn B./Office of General Counsel; Aristodemou, Eleni/Office Of General Counsel
Subject: Fwd: [EXTERNAL] Re: Reminder: RLC Board - one more task

Sent from my iPhone

Begin forwarded message:

From: "Lauren, David (US)" <David.Lauren@RalphLauren.com>
Date: September 9, 2019 at 7:25:53 PM EDT
To: "Fischer, Avery (US)" <Avery.Fischer@RalphLauren.com>
Cc: "mccolluc@MSKCC.ORG" <mccolluc@mskcc.org>
Subject: [EXTERNAL] Re: Reminder: RLC Board - one more task

I approve as well. Best, David

Sent from my iPhone

On Sep 9, 2019, at 6:35 PM, Fischer, Avery (US) <Avery.Fischer@ralphlauren.com> wrote:

Hi Cindy,
I approve.
Thank you,
Avery

From: mccolluc@MSKCC.ORG <mccolluc@MSKCC.ORG>
Sent: Monday, September 9, 2019 11:06 AM
To: Fischer, Avery (US) <Avery.Fischer@RalphLauren.com>; brown4@MSKCC.ORG; charlespatton06@gmail.com; Lauren, David (US) <David.Lauren@RalphLauren.com>; gordobell@gmail.com; gbell@restorationplaza.org; hpfnow@gmail.com; jamiagniven@gmail.com
Cc: levinec@mskcc.org; aristode@mskcc.org; ryanc1@MSKCC.ORG
Subject: Reminder: RLC Board - one more task
Importance: High

WARNING: This email originated from outside of Ralph Lauren. **DO NOT CLICK** on links or attachments unless you know the content to be safe.

Dear All – as of today I have heard only from Tnyetta, and I am afraid that the regulations compel responses from all trustees. I apologize for this, but would be grateful for a response at your earliest convenience.

Warm regards,
Cindy

From: McCollum, Cynthia/Hospital Administration
Sent: Monday, August 19, 2019 10:43 AM
To: Avery Fischer <Avery.Fischer@RalphLauren.com>; Brown, Carol L./Surgery

<brown4@mskcc.org>; Charles B. Patton <charlespatton06@gmail.com>; David Lauren <David.Lauren@RalphLauren.com>; Gordon P. Bell <gordobell@gmail.com>; 'Gordon Bell' <gbell@restorationplaza.org>; Harold P. Freeman, MD <hpfnw@gmail.com>; RLC Board Chairman, James G. Niven (jamiagniven@gmail.com) <jamiagniven@gmail.com>; Tnyetta Mitchell <tnyetta.mitchell@ustrust.com>; Tnyetta Mitchell <Tnyetta@gmail.com>; Wilson, Joelle M./Compliance and Internal Audit <wilsonj@mskcc.org>

Cc: Levine, Carolyn B./Office of General Counsel <levinec@mskcc.org>; Aristodemou, Eleni/Office Of General Counsel <aristode@mskcc.org>; Ryan, Christopher/Hospital Administration <ryanc1@mskcc.org>

Subject: RLC Board - one more task

Importance: High

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Thanks in advance for your assistance with this task, and I hope you have enjoyed the summer.

All my best,
Cindy

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Written Consent

of

Harold P. Freeman, M.D.

Wadman, Whitney

From: "Harold Freeman" <hpfnw@gmail.com>
Date: September 9, 2019 at 6:53:26 PM EDT
To: mccolluc@mskcc.org
Subject: [EXTERNAL] Re: Reminder: RLC Board - one more task

I write to indicate my approval of the plan for dissolution of the current Ralph Lauren Center as stated below.

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Sent from my iPad

On Sep 9, 2019, at 5:23 PM, mccolluc@mskcc.org wrote:

Yes I would be happy to do so and hope to get an update to you shortly. In the meantime I would be grateful for your approval of the plan of dissolution

From: Harold Freeman <hpfnw@gmail.com>
Sent: Monday, September 09, 2019 3:41 PM
To: McCollum, Cynthia/Hospital Administration <mccolluc@MSKCC.ORG>
Cc: Avery.Fischer@ralphlauren.com; Brown, Carol L./Surgery <brown4@MSKCC.ORG>; charlespatton06@gmail.com; David.Lauren@ralphlauren.com; gordobell@gmail.com; gbell@restorationplaza.org; jamiagniven@gmail.com; Levine, Carolyn B./Office of General Counsel <levinec@mskcc.org>; Aristodemou, Eleni/Office Of General Counsel <aristode@mskcc.org>; Ryan, Christopher/Hospital Administration <ryanc1@MSKCC.ORG>

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Cindy,

Are you able to give us an update on the previously discussed consideration of whether or not selected members of the current Ralph Lauren Center Board (which is being discontinued) will have have an advisory role to the MSKCC Board in the future.

In my opinion, such an advisory role could be of considerable value in this transition. I have a sense that other members of the outgoing RLC Board would also appreciate such an update.

Best wishes,

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Sent from my iPhone

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Sent: Monday, August 19, 2019 10:43 AM
To: Avery Fischer <Avery.Fischer@RalphLauren.com>; Brown, Carol L./Surgery <brown4@mskcc.org>; Charles B. Patton <charlespatton06@gmail.com>; David Lauren <David.Lauren@RalphLauren.com>; Gordon P. Bell <gordobell@gmail.com>; 'Gordon Bell' <gbell@restorationplaza.org>; Harold P. Freeman, MD <hpfnow@gmail.com>; RLC Board Chairman, James G. Niven (jamiagniven@gmail.com) <jamiagniven@gmail.com>; Tnyetta Mitchell <tnyetta.mitchell@ustrust.com>; Tnyetta Mitchell <Tnyetta@gmail.com>; Wilson, Joelle M./Compliance and Internal Audit <wilsonj@mskcc.org>
Cc: Levine, Carolyn B./Office of General Counsel <levinec@mskcc.org>; Aristodemou, Eleni/Office Of General Counsel <aristode@mskcc.org>; Ryan, Christopher/Hospital Administration <ryanc1@mskcc.org>
Subject: RLC Board - one more task
Importance: High

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All my best,
Cindy

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Exhibit E

**Resolution of the Board of Directors of the
Memorial Sloan-Kettering Cancer Center**

**CERTIFICATION OF UNANIMOUS WRITTEN CONSENT OF THE EXECUTIVE
COMMITTEE OF THE BOARD BY SECRETARY OF
MEMORIAL SLOAN KETTERING CANCER CENTER**

October 23, 2019

I, Carolyn B Levine, hereby certify that I am the Deputy General Counsel and Corporate Secretary of the Memorial Sloan Kettering Cancer Center (“Corporation”), and that as such, I am authorized to execute and deliver this certification on behalf of the Corporation. I further certify, in my capacity as Corporate Secretary of the Corporation, that:

1. Attached hereto as Exhibit A is the unanimous written consent (the “Consent”), ratified October 23, 2019 by the members of the Executive Committee as a quorum of the full Board of Managers of the Corporation (the “Board”) then eligible to vote, pursuant to which the Board, in its capacity as the sole member of the Ralph Lauren Center for Cancer Care and Prevention, approved the adoption of the Plan of Dissolution, dated July 22, 2019, and the authorization of all other actions by the officers of the Corporation in connection with the foregoing.

2. Of the 13 members of the Executive Committee, 13 members were eligible to vote and approved the Consent unanimously, representing both (a) a quorum of the Board of Managers of the Corporation and (b) the Corporation, in its capacity as the sole member of the Ralph Lauren Center for Cancer Care and Prevention.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, I have executed and delivered this certification as of the date first written above.

MEMORIAL SLOAN KETTERING CANCER CENTER

By: Carolyn B Levine

Name: Carolyn B Levine
Title: Deputy General Counsel and Corporate Secretary

Exhibit A

**Unanimous Written Consent
of
The Board of Managers of the Memorial Sloan Kettering Cancer Center**

September 20, 2019

CONFIDENTIAL

MEMORIAL SLOAN KETTERING CANCER CENTER

UNANIMOUS WRITTEN CONSENT

Pursuant to Section 708 of the Not-For-Profit Corporation Law of
the State of New York

The undersigned members of the Executive Committee of the Board of Managers (the “Board”) of Memorial Sloan Kettering Cancer Center, a New York not-for-profit corporation (the “Corporation”), represent, when acting by unanimous consent, both (a) a quorum of the full Board, and (b) the Corporation, in its capacity as the sole member of the Ralph Lauren Center for Cancer Care and Prevention (“RLC”). In accordance with the Corporation’s By-laws (the “By-Laws”), the undersigned hereby unanimously consent to the adoption of the following resolutions and declare them to be in full force and effect as if they were adopted at a meeting duly convened and held:

WHEREAS, the Corporation currently serves as the sole corporate member of the RLC; and

WHEREAS, by vote of its Board of Trustees, RLC has determined that it can no longer feasibly operate as a freestanding diagnostic and treatment center that furnishes high-quality cancer care to patients in the Harlem community (the “Community”) because of the deteriorating reimbursement environment for its services and supports;

WHEREAS, the Board of Trustees of RLC, by unanimous written consent on September 12, 2019 recommended the dissolution of RLC and transfer of its remaining assets following wind-down to the Corporation;

WHEREAS, the Corporation has a longstanding relationship with RLC, as an original sponsor of RLC and its current sole corporate member, as defined in the RLC By-laws; and

WHEREAS, based on this current relationship with RLC, the Board of Trustees of RLC has determined, and the undersigned concur with such determination, that the Corporation is best positioned to preserve the mission of RLC and continue its commitment to the Community;

WHEREAS, pursuant to an Asset Purchase Agreement with RLC, and following approval on March 28, 2019 by the Supreme Court of New York, County of New York, RLC on April 1, 2019, has sold, conveyed, or transferred substantially all of its assets to the Corporation;

THEREFORE, BE IT RESOLVED, that the Board hereby approves and adopts the Plan of Dissolution, dated July 22, 2019 (the “Dissolution Plan”) and attached here to as Exhibit A, and approves and authorizes RLC to be dissolved as a legal entity in accordance with such Dissolution Plan; and

BE IT ALSO RESOLVED, that the Board hereby approves and authorizes the conveyance, transfer, and assignment to Corporation of all of RLC’s remaining assets, properties and rights following completion of RLC’s wind-down operations;

BE IT ALSO RESOLVED, that the Corporation shall continue RLC’s mission and purpose, and shall continue to provide cancer prevention, diagnosis and treatment services to the Community for the foreseeable future; and

BE IT ALSO RESOLVED, that the Secretary of the Corporation and all other officers of the Corporation, were and remain authorized to cause the Corporation to execute and cause to be delivered further consents and other documents, certificates, or agreements as may be

required to consummate and fully carry out the intention of the resolutions in this consent.

The undersigned have approved this consent through electronic mail as of the date on which the last undersigned indicates his or her authorization.

EXECUTIVE COMMITTEE OF
THE BOARD OF MANAGERS

MEMORIAL SLOAN KETTERING
CANCER CENTER

Written Consent

of

Richard Beattie

Wadman, Whitney

From: Levine, Carolyn B./Office of General Counsel
Sent: Monday, September 23, 2019 10:10 AM
To: Aristodemou, Eleni/Office Of General Counsel
Subject: FW: Action by Written Consent- Ralph Lauren Center

From: Beattie, Dick
Sent: Monday, September 23, 2019 10:09 AM
To: Levine, Carolyn B./Office of General Counsel
Subject: [EXTERNAL] Re: Action by Written Consent- Ralph Lauren Center

I approve.
Dick

On Sep 23, 2019, at 9:42 AM, "levinec@mskcc.org" <levinec@mskcc.org> wrote:

*** External Email ***

To the members of the Executive Committee:

Thank you for your recent support in allowing us to reach the significant milestone of integrating the operations of the Ralph Lauren Center for Cancer Care (RLC) into Memorial Sloan Kettering Cancer Center (MSK), which took effect on April 1. Through this integration, MSK is better able to ensure that RLC's communities have access to critical cancer care and prevention services into the foreseeable future.

Although the operational transfer has occurred, we now require some additional assistance and support from the Executive Committee with regard to certain post-transfer matters—most notably finalizing the dissolution of RLC, which still continues as a separate legal entity of which MSK has been the sole corporate member, notwithstanding the transfer of operations and assets to MSK.

Attached is the plan of dissolution for your review and a written consent for your approval of this document so that we can finalize the dissolution of RLC. Once you have reviewed, I ask that you kindly respond to this e-mail, "I approve."

Thanks in advance for your assistance. Please don't hesitate to reach out if you have any questions.

Carolyn

Carolyn B. Levine
Deputy General Counsel and Corporate Secretary
Memorial Sloan Kettering Cancer Center
1275 York Avenue
New York, N.Y. 10065

levinec@mskcc.org

212 639 7652(o)

917 689 7564(m)

Written Consent

of

Ian Cook

Wadman, Whitney

From: Levine, Carolyn B./Office of General Counsel
Sent: Monday, September 23, 2019 8:21 PM
To: Aristodemou, Eleni/Office Of General Counsel
Subject: Fwd: [EXTERNAL] Re: Action by Written Consent- Ralph Lauren Center

Begin forwarded message:

From: "Ian Cook" <ian_cook@colpal.com>
Date: September 23, 2019 at 7:57:28 PM EDT
To: levinec@mskcc.org
Subject: [EXTERNAL] Re: Action by Written Consent- Ralph Lauren Center

I approve. Confirm receipt.
Best,
Ian

On Mon, Sep 23, 2019 at 9:42 AM <levinec@mskcc.org> wrote:

To the members of the Executive Committee:

Thank you for your recent support in allowing us to reach the significant milestone of integrating the operations of the Ralph Lauren Center for Cancer Care (RLC) into Memorial Sloan Kettering Cancer Center (MSK), which took effect on April 1. Through this integration, MSK is better able to ensure that RLC's communities have access to critical cancer care and prevention services into the foreseeable future.

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Thanks in advance for your assistance. Please don't hesitate to reach out if you have any questions.

Carolyn

Carolyn B. Levine

Deputy General Counsel and Corporate Secretary

Memorial Sloan Kettering Cancer Center

[1275 York Avenue](#)

[New York, N.Y. 10065](#)

levinec@mskcc.org

212 639 7652(o)

917 689 7564(m)

*** Only open attachments or links from trusted senders. Report phishing to infosec@mskcc.org ***

Written Consent
of
Henry Fernandez

Wadman, Whitney

From: Levine, Carolyn B./Office of General Counsel
Sent: Wednesday, October 23, 2019 4:43 PM
To: Aristodemou, Eleni/Office Of General Counsel
Subject: FW: Action by Written Consent- Ralph Lauren Center

From: Fernandez, Henry
Sent: Wednesday, October 23, 2019 4:37 PM
To: Levine, Carolyn B./Office of General Counsel
Subject: [EXTERNAL] Action by Written Consent- Ralph Lauren Center

I approve.

Henry

From: levinec@mskcc.org <levinec@mskcc.org>
Sent: Friday, October 18, 2019 12:04 PM
To: Fernandez, Henry <henry.fernandez@msci.com>
Subject: Action by Written Consent- Ralph Lauren Center

Hi Henry, just circling back on this, would you kindly let me know if you approve by responding to this email, or let me know if you have any questions. Many thanks, Carolyn

From: levinec@mskcc.org
To: levinec@mskcc.org
Cc: melichac@mskcc.org, aristode@mskcc.org, jlopez@mskcc.org
Date: 09/23/2019 09:53 AM
Subject: Action by Written Consent- Ralph Lauren Center

To the members of the Executive Committee:

Thank you for your recent support in allowing us to reach the significant milestone of integrating the operations of the Ralph Lauren Center for Cancer Care (RLC) into Memorial Sloan Kettering Cancer Center (MSK), which took effect on April 1. Through this integration, MSK is better able to ensure that RLC's communities have access to critical cancer care and prevention services into the foreseeable future.

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Attached is the plan of dissolution for your review and a written consent for your approval of this document so

that we can finalize the dissolution of RLC. Once you have reviewed, I ask that you kindly respond to this e-mail, "I approve."

Thanks in advance for your assistance. Please don't hesitate to reach out if you have any questions.

Carolyn

Carolyn B. Levine
Deputy General Counsel and Corporate Secretary
Memorial Sloan Kettering Cancer Center
1275 York Avenue
New York, N.Y. 10065
levinec@mskcc.org
212 639 7652(o)
917 689 7564(m)

=====
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Written Consent

of

Louis Gerstner

Wadman, Whitney

From: Levine, Carolyn B./Office of General Counsel
Sent: Monday, September 23, 2019 11:50 AM
To: Aristodemou, Eleni/Office Of General Counsel
Subject: FW: [EXTERNAL] Re: Action by Written Consent- Ralph Lauren Center
Attachments: RLC - Plan of Dissolution - Execution Version 9.19.19 .pdf; RLC Dissolution - Consent of MSK (9.20.2019) - Execution Version.DOCX; mg_info.txt

From: Louis Gerstner
Sent: Monday, September 23, 2019 11:33 AM
To: Levine, Carolyn B./Office of General Counsel
Subject: [EXTERNAL] Re: Action by Written Consent- Ralph Lauren Center

I approve.

LVG

From: levinec@mskcc.org
To: levinec@mskcc.org
Cc: melichac@mskcc.org, aristode@mskcc.org, jlopez@mskcc.org
Date: 09/23/2019 09:53 AM
Subject: [EXTERNAL] Action by Written Consent- Ralph Lauren Center

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levinec@mskcc.org
212 639 7652(o)
917 689 7564(m)

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Written Consent

of

Jonathan Grayer

Wadman, Whitney

From: Levine, Carolyn B./Office of General Counsel
Sent: Wednesday, October 23, 2019 4:15 PM
To: Aristodemou, Eleni/Office Of General Counsel
Subject: FW: Action by Written Consent- Ralph Lauren Center

Making sure I sent this to you.

-----Original Message-----

From: Jonathan Grayer <jg@weldnorth.com>
Sent: Friday, October 18, 2019 3:20 PM
To: Levine, Carolyn B./Office of General Counsel <levinec@mskcc.org>
Subject: [EXTERNAL] Re: Action by Written Consent- Ralph Lauren Center

sorry for my delay.

i approve.

> On Oct 18, 2019, at 9:01 AM, "levinec@mskcc.org" <levinec@mskcc.org> wrote:

>

This E-mail and the information contained herein is confidential and is intended for the addressee only. It may also be legally privileged. If you are not the addressee you may not copy, forward, disclose or use any part of it. If you have received this message in error, please delete it and all copies from your system and notify the sender immediately by return E-mail. Internet communications cannot be guaranteed to be timely or secure, error or virus-free. The sender does not accept liability for any errors or omissions or for direct, special, indirect or consequential damages arising from alteration of the contents of this message by a third party or as a result of any virus being passed on.

Written Consent of

Marie-Josée Kravis

Sandi D'Andrea

From: Marie-Josée Kravis
Sent: Monday, September 23, 2019 9:59 AM
To: Sandi D'Andrea
Subject: Fwd: Action by Written Consent- Ralph Lauren Center
Attachments: RLC - Plan of Dissolution - Execution Version 9.19.19 .pdf; RLC Dissolution - Consent of MSK (9.20.2019) - Execution Version.DOCX

Please print.

Sent from my iPad

Begin forwarded message:

From: <levinec@mskcc.org>
Date: September 23, 2019 at 9:42:39 AM EDT
To: <levinec@mskcc.org>
Cc: <melichac@mskcc.org>, <aristode@mskcc.org>, <jlopez@mskcc.org>
Subject: Action by Written Consent- Ralph Lauren Center

EXTERNAL

To the members of the Executive Committee:

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Thanks in advance for your assistance. Please don't hesitate to reach out if you have any questions.

Carolyn

Carolyn B. Levine
Deputy General Counsel and Corporate Secretary
Memorial Sloan Kettering Cancer Center
1275 York Avenue

I approve
Marie-Josée Kravis

Written Consent

of

Jamie Nicholls

Wadman, Whitney

From: Jamie Nicholls <JNicholls@frostmill.com>
Sent: Monday, September 23, 2019 3:42 PM
To: Levine, Carolyn B./Office of General Counsel
Cc: Aristodemou, Eleni/Office Of General Counsel; Lopez, Jorge/Office of General Counsel
Subject: [EXTERNAL] RE: Action by Written Consent- Ralph Lauren Center

I approve.

Two questions

- what is the un-deposited fund \$400k deduct?
- Were we supposed to receive exhibits – mine are all blank

From: levinec@mskcc.org [mailto:levinec@mskcc.org]
Sent: Monday, September 23, 2019 9:43 AM
To: levinec@mskcc.org
Cc: melichac@mskcc.org; aristode@mskcc.org; jlopez@mskcc.org
Subject: Action by Written Consent- Ralph Lauren Center

To the members of the Executive Committee:

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Carolyn

Carolyn B. Levine
Deputy General Counsel and Corporate Secretary
Memorial Sloan Kettering Cancer Center
1275 York Avenue
New York, N.Y. 10065
levinec@mskcc.org
212 639 7652(o)
917 689 7564(m)

Written Consent

of

Cliff Robbins

Wadman, Whitney

From: Cliff Robbins <crobbs@bhgrp.com>
Sent: Thursday, September 26, 2019 9:06 AM
To: Levine, Carolyn B./Office of General Counsel
Cc: Melichar, Catherine/Office Of General Counsel; Aristodemou, Eleni/Office Of General Counsel; Lopez, Jorge/Office of General Counsel
Subject: [EXTERNAL] RE: Action by Written Consent- Ralph Lauren Center

[I Approve](#)

From: levinec@mskcc.org [mailto:levinec@mskcc.org]
Sent: Monday, September 23, 2019 9:43 AM
To: levinec@mskcc.org
Cc: melichac@mskcc.org; aristode@mskcc.org; jlopez@mskcc.org
Subject: Action by Written Consent- Ralph Lauren Center

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Carolyn

Carolyn B. Levine

Deputy General Counsel and Corporate Secretary

Memorial Sloan Kettering Cancer Center

1275 York Avenue

New York, N.Y. 10065

levinec@mskcc.org

212 639 7652(o)

917 689 7564(m)

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Written Consent

of

John Strangfeld

Wadman, Whitney

From: JRS <j.strangfeld@aol.com>
Sent: Tuesday, September 24, 2019 5:10 AM
To: Levine, Carolyn B./Office of General Counsel
Cc: Melichar, Catherine/Office Of General Counsel; Aristodemou, Eleni/Office Of General Counsel; Lopez, Jorge/Office of General Counsel
Subject: [EXTERNAL] Re: Action by Written Consent- Ralph Lauren Center

I approve..

John strangfeld

On Sep 23, 2019, at 9:42 AM, levinec@mskcc.org wrote:

To the members of the Executive Committee:

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Carolyn

Carolyn B. Levine

Deputy General Counsel and Corporate Secretary

Memorial Sloan Kettering Cancer Center

1275 York Avenue

New York, N.Y. 10065

levinec@mskcc.org

212 639 7652(o)

917 689 7564(m)

Written Consent

of

Scott Stuart

Wadman, Whitney

From: Levine, Carolyn B./Office of General Counsel
Sent: Friday, September 20, 2019 6:55 PM
To: Aristodemou, Eleni/Office Of General Counsel
Subject: FW: Action by Written Consent- DRAFT email to Executive Committee
Attachments: mg_info.txt

So we are good to go on Monday. Thanks for finalizing this.

From: Scott Stuart
Sent: Friday, September 20, 2019 6:54 PM
To: Levine, Carolyn B./Office of General Counsel
Cc: Lopez, Jorge/Office of General Counsel
Subject: [EXTERNAL] Re: Action by Written Consent- DRAFT email to Executive Committee

Ok

Scott M. Stuart

Sageview Capital LP
55 Railroad Avenue, 1st Floor
Greenwich, CT 06830

(T) [203.625.4250](tel:203.625.4250)

(F) [203.625.4251](tel:203.625.4251)

scott@sageviewcapital.com

On Sep 20, 2019, at 4:52 PM, "levinec@mskcc.org" <levinec@mskcc.org> wrote:

Scott, we are going to be forwarding a request for signatures to the members of the executive committee and wanted to give you a quick heads up before dispatching the email. This asks for a routine approval of an action relating to the dissolution of the corporate entity that was the Ralph Lauren Center before the integration of its operations into MSK. Carolyn

To the members of the Executive Committee:

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Thanks in advance for your assistance with this task, and I hope you have enjoyed the summer.

All my best,

Carolyn B. Levine
Deputy General Counsel and Corporate Secretary

=====

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Written Consent of
Craig B. Thompson

Wadman, Whitney

From: Levine, Carolyn B./Office of General Counsel
Sent: Monday, September 23, 2019 12:10 PM
To: Aristodemou, Eleni/Office Of General Counsel
Subject: FW: Action by Written Consent- Ralph Lauren Center

From: Thompson, Craig B./Office of the President
Sent: Monday, September 23, 2019 12:04 PM
To: Levine, Carolyn B./Office of General Counsel
Subject: Re: Action by Written Consent- Ralph Lauren Center

I approve.

Sent from my iPhone

On Sep 23, 2019, at 9:42 AM, Levine, Carolyn B./Office of General Counsel <levinec@mskcc.org> wrote:

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Carolyn

Carolyn B. Levine
Deputy General Counsel and Corporate Secretary
Memorial Sloan Kettering Cancer Center
1275 York Avenue
New York, N.Y. 10065

levinec@mskcc.org

212 639 7652(o)

917 689 7564(m)

Written Consent

of

Douglas Warner

Wadman, Whitney

From: Levine, Carolyn B./Office of General Counsel
Sent: Tuesday, September 24, 2019 9:09 AM
To: Aristodemou, Eleni/Office Of General Counsel
Subject: FW: Action by Written Consent- Ralph Lauren Center

From: Warner, Douglas A.
Sent: Tuesday, September 24, 2019 9:09 AM
To: Levine, Carolyn B./Office of General Counsel
Subject: [EXTERNAL] RE: Action by Written Consent- Ralph Lauren Center

I approve

Sent with BlackBerry Work
(www.blackberry.com)

From: levinec@mskcc.org <levinec@mskcc.org>
Date: Monday, Sep 23, 2019, 9:42 AM
To: levinec@mskcc.org <levinec@mskcc.org>
Cc: melichac@mskcc.org <melichac@mskcc.org>, aristode@mskcc.org <aristode@mskcc.org>, jlopez@mskcc.org <jlopez@mskcc.org>
Subject: Action by Written Consent- Ralph Lauren Center

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Written Consent

of

Peter Weinberg

Wadman, Whitney

From: Levine, Carolyn B./Office of General Counsel
Sent: Monday, September 23, 2019 11:50 AM
To: Aristodemou, Eleni/Office Of General Counsel
Subject: FW: Action by Written Consent- Ralph Lauren Center

From: Peter Weinberg
Sent: Monday, September 23, 2019 11:37 AM
To: Levine, Carolyn B./Office of General Counsel
Subject: [EXTERNAL] RE: Action by Written Consent- Ralph Lauren Center

I approve

From: levinec@mskcc.org [<mailto:levinec@mskcc.org>]
Sent: Monday, September 23, 2019 9:43 AM
To: levinec@mskcc.org
Cc: melichac@mskcc.org; aristode@mskcc.org; jlopez@mskcc.org
Subject: Action by Written Consent- Ralph Lauren Center

[External Email]

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Exhibit F

Approval of the New York Department of Health

Exhibit G

Proposed Attorney General's Approval

----- X
 In the Matter of the Application of : ATTORNEY GENERAL'S
 The Ralph Lauren Center for Cancer Care and : APPROVAL OF PLAN OF
 Prevention for : DISSOLUTION AND
 : DISTRIBUTION OF ASSETS
 APPROVAL OF PLAN OF DISSOLUTION :
 AND DISTRIBUTION OF ASSETS : OAG No.
 :
 pursuant to Section 1002 of
 the Not-for-Profit Corporation Law
 ----- X

1. By Petition verified on [REDACTED], The Ralph Lauren Center for Cancer Care and Prevention applied to the Attorney General pursuant to section 1002 of the Not-for-Profit Corporation Law for approval of a Plan of Dissolution and Distribution of Assets.
2. Based on a review of the Petition and its attachments, and the verification and certification of Lewis J. Kampel, M.D. of The Ralph Lauren Center for Cancer Care and Prevention, the Attorney General has determined that The Ralph Lauren Center for Cancer Care and Prevention has complied with the provisions of section 1002 of the Not-for-Profit Corporation Law applicable to the dissolution of not-for-profit corporations with assets.
3. The Plan of Dissolution and Distribution of Assets is approved.

 Attorney General of the State of New York

By: _____
 Assistant Attorney General

Dated _____

Attachment 5

Proposed Certificate of Dissolution



CERTIFICATE OF DISSOLUTION OF

Ralph Lauren Center for Cancer Care and Prevention

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is:

Ralph Lauren Center for Cancer Care and Prevention

If the name of the corporation has been changed, the name under which it was formed is:

SECOND: The certificate of incorporation was filed with the Department of State on:

January 31, 2002

THIRD: The name and address of each officer and director of the corporation is:

Table with 7 columns: Officer Name, Title, Address, Trustee Name, Address, Trustee Name, Address. Lists officers like James G. Niven, Gordon Bell, Lewis J. Kampel, M.D. and trustees like Cynthia McCollum, Tnyetta Mitchell, David Lauren, Harold P. Freeman, M.D., Charles B. Patton, Carol Brown, M.D.

FOURTH: The corporation is a: (check the appropriate box)

- Charitable corporation (checked) non-charitable corporation

FIFTH: At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets as provided in Not-for-Profit Corporation Law §1002, the corporation holds:

(Check the appropriate statement)

- assets which are legally required to be used for a particular purpose. (checked) no assets which are legally required to be used for a particular purpose.

SIXTH: The corporation elects to dissolve.

SEVENTH: *(Check the appropriate statement)* The dissolution was authorized by:

- a vote of a majority of the board of directors. The corporation has no members.
- the majority vote of the board of directors, followed by two-thirds vote of the members.

EIGHTH: *(Check the appropriate statement)*

- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by the Attorney General. A copy of the approval of the Attorney General is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by a Justice of the Supreme Court. A copy of the Court's Order is attached.
- The corporation is a charitable corporation with no assets. Prior to the delivery of the Certificate of Dissolution to the Department of State for filing a copy of the Plan of Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.
- The corporation is a non-charitable corporation with no assets. The corporation's Plan of Dissolution is not required to contain the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law and is not required to be filed with Attorney General.

X _____
(Signature)

Lewis J. Kampel, M.D.

(Print or Type Name of Signer)

Chief Executive Officer

(Capacity of Signer)

**CERTIFICATE OF DISSOLUTION
OF**

Ralph Lauren Center for Cancer Care and Prevention

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

Filer's Name: _____

Company, if applicable: _____

Address: _____

City, State and Zip Code: _____

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at www.dos.ny.gov.
2. This Certificate of Dissolution must be signed by an officer, director or duly authorized person.
3. Attach the consent of the New York State Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. Attach a copy of the approval of the Attorney General or Order of the Supreme Court, if required.
6. The Certificate of Dissolution must include the approval of the Attorney General if the corporation is a charitable corporation or if the corporation is a non-charitable corporation and holds assets at the time of dissolution legally required to be used for a particular purpose.
7. Attach any other consent or approval required by law.
8. The fee for filing this certificate is **\$30**, made payable to the Department of State.

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