



**\$284,545,000**  
**DORMITORY AUTHORITY OF THE STATE OF NEW YORK**  
**MEMORIAL SLOAN KETTERING CANCER CENTER**  
**REVENUE BONDS, 2019 SERIES 1**



Memorial Sloan Kettering  
Cancer Center.

**Dated:** Date of Delivery

**Due:** July 1, as shown on inside cover

**Payment and Security:** The Memorial Sloan Kettering Cancer Center Revenue Bonds, 2019 Series 1 (the "2019 Series 1 Bonds") are special obligations of the Dormitory Authority of the State of New York ("DASNY") payable from and secured by a pledge of (i) certain payments to be made under the Loan Agreement dated as of February 26, 2003, as amended (the "Loan Agreement"), between Memorial Sloan Kettering Cancer Center (the "Center") and DASNY and Guaranties dated as of February 26, 2003 (the "Guaranties"), from the Sloan Kettering Institute for Cancer Research and S.K.I. Realty, Inc. to DASNY (the "Revenues") and (ii) all funds and accounts (excluding the Arbitrage Rebate Fund and any fund established for the payment of the Purchase Price of Option Bonds tendered for purchase) established under DASNY's Memorial Sloan Kettering Cancer Center Revenue Bond Resolution adopted February 26, 2003 (the "General Resolution") and the 2019 Series 1 Resolution, adopted September 11, 2019 (the "Series Resolution" and together with the General Resolution, the "Resolution"). The Loan Agreement is a general, unsecured obligation of the Center and requires the Center to pay, in addition to the fees and expenses of DASNY and the Trustee, amounts sufficient to pay the principal and Redemption Price of and interest on all Bonds issued under the Resolution, including the 2019 Series 1 Bonds, as such payments become due.

The 2019 Series 1 Bonds are not a debt of the State of New York (the "State"), nor is the State liable thereon. DASNY has no taxing power.

**Description:** The 2019 Series 1 Bonds will be issued as fully registered bonds in denominations of \$5,000 and any integral multiple thereof. Interest (due January 1, 2020 and each January 1 and July 1 thereafter) will be payable by check or draft mailed to the registered owners of the 2019 Series 1 Bonds at their addresses as shown on the registration books held by the Trustee or, at the option of a holder of at least \$1,000,000 in principal amount of 2019 Series 1 Bonds, by wire transfer to the holder of such 2019 Series 1 Bonds, each as of the close of business on the fifteenth day of the month next preceding an interest payment date. The principal or Redemption Price of the 2019 Series 1 Bonds will be payable at the principal corporate trust office of The Bank of New York Mellon New York, New York, the Trustee and Paying Agent (as defined herein) or, with respect to Redemption Price, at the option of a holder of at least \$1,000,000 in principal amount of 2019 Series 1 Bonds, by wire transfer to the holders of such 2019 Series 1 Bonds as more fully described herein.

The 2019 Series 1 Bonds will be issued initially under a Book-Entry Only System, registered in the name of Cede & Co., as nominee for The Depository Trust Company ("DTC"). Individual purchases of beneficial interests in the 2019 Series 1 Bonds will be made in Book-Entry form (without certificates). So long as DTC or its nominee is the registered owner of the 2019 Series 1 Bonds, payments of the principal and Redemption Price of and interest on such 2019 Series 1 Bonds will be made directly to DTC or its nominee. Disbursement of such payments to DTC participants is the responsibility of DTC and disbursement of such payments to the beneficial owners is the responsibility of DTC participants. See "PART 3 - THE 2019 SERIES 1 BONDS - Book-Entry Only System" herein.

**Tender for Purchase and Redemption:** *The 2019 Series 1 Bonds are subject to redemption, tender or purchase prior to maturity, as more fully described herein.*

**Tax Exemption:** In the opinion of Orrick, Herrington & Sutcliffe LLP ("Orrick"), based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the 2019 Series 1 Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the "Code"). In the further opinion of Orrick, interest on the 2019 Series 1 Bonds is not a specific preference item for purposes of the federal alternative minimum tax. Orrick is also of the opinion that interest on the 2019 Series 1 Bonds is exempt from personal income taxes imposed by the State of New York and any political subdivision thereof (including The City of New York). Orrick expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the 2019 Series 1 Bonds. See "PART 11 - TAX MATTERS" herein.

*Except as set forth in "PART 3 - THE 2019 SERIES 1 BONDS," this Official Statement does not describe (i) any other interest rate mode into which the 2019 Series 1 Bonds may be converted, (ii) any provision relating to the tender provisions applicable to the 2019 Series 1 Bonds after any such conversion, or (iii) the remarketing of the 2019 Series 1 Bonds upon any such conversion and the application of the proceeds thereof. A remarketing of the 2019 Series 1 Bonds upon any such conversion will be made solely by a separate offering document or through a private placement to a limited number of institutional investors and not by this Official Statement.*

**MATURITY SCHEDULE - See Inside Cover Page**

*The 2019 Series 1 Bonds maturing July 1, 2035 through July 1, 2039, inclusive (the "Negotiated Bonds"), are offered when, as and if issued and received by the Underwriters. The 2019 Series 1 Bonds maturing July 1, 2029 through July 1, 2034, inclusive (the "Competitive Bonds"), are being sold through a competitive auction bid process in accordance with a Notice of Sale dated October 3, 2019. The offer of the 2019 Series 1 Bonds may be subject to prior sale, or may be withdrawn or modified at any time without notice. The offer is subject to the approval of legality by DASNY's Co-Bond Counsel, Orrick, Herrington & Sutcliffe LLP, New York, New York and Marous Law Group, P.C., New York, New York and to certain other conditions. Certain legal matters will be passed upon for the Underwriters of the Negotiated Bonds and the Initial Purchaser of the Competitive Bonds by their counsel, Katten Muchin Rosenman LLP, New York, New York; and for the Center and its related corporations by its counsel, Paul, Weiss, Rifekind, Wharton & Garrison LLP, New York, New York. DASNY expects to deliver the 2019 Series 1 Bonds in definitive form in New York, New York, on or about November 1, 2019.*

**Goldman Sachs & Co. LLC**

**BofA Merrill Lynch**

**J.P. Morgan**

**Morgan Stanley**

**UBS**

**PRINCIPAL AMOUNTS, INTEREST RATES AND YIELDS OR PRICES**

**\$284,545,000 2019 Series 1 Bonds**

<b>Maturity July 1</b>	<b>Principal Amount</b>	<b>Interest Rate</b>	<b>Yield</b>	<b>CUSIP<sup>†</sup></b>
2029 <sup>1</sup>	\$21,775,000	5.000%	1.410%	64990GUW0
2030 <sup>1</sup>	22,865,000	5.000	1.450 <sup>C</sup>	64990GUX8
2031 <sup>1</sup>	24,005,000	4.000	1.650 <sup>C</sup>	64990GUY6
2032 <sup>1</sup>	24,970,000	4.000	1.630 <sup>C</sup>	64990GUZ3
2033 <sup>1</sup>	25,960,000	2.000	2.235	64990GVA7
2034 <sup>1</sup>	26,485,000	3.000	2.130 <sup>C</sup>	64990GVB5
2035 <sup>2</sup>	25,220,000	5.000	1.780 <sup>C</sup>	64990GVC3
2036 <sup>2</sup>	26,475,000	5.000	1.840 <sup>C</sup>	64990GVD1
2037 <sup>2</sup>	27,800,000	4.000	2.100 <sup>C</sup>	64990GVE9
2038 <sup>2</sup>	28,915,000	4.000	2.140 <sup>C</sup>	64990GVF6
2039 <sup>2</sup>	30,075,000	5.000	1.980 <sup>C</sup>	64990GVG4

<sup>†</sup> The CUSIP number has been assigned by an independent company not affiliated with DASNY and is included solely for the convenience of the owners of the 2019 Series 1 Bonds. DASNY is not responsible for the selection or uses of the CUSIP number, and no representation is made as to its correctness on the 2019 Series 1 Bonds or as indicated above. The CUSIP number is subject to being changed after the issuance of the 2019 Series 1 Bonds as a result of various subsequent actions including, but not limited to, a refunding of a portion of the 2019 Series 1 Bonds

<sup>1</sup> Competitive Bond sold to the Initial Purchaser pursuant to the Notice of Sale.

<sup>2</sup> Negotiated Bond sold to the Underwriters.

<sup>C</sup> Priced at the stated yield to the July 1, 2029 optional redemption date at a Redemption Price equal to 100% of the principal amount of the 2019 Series 1 Bonds or portions thereof to be redeemed, plus accrued interest, if any, to the redemption date.

No dealer, broker, salesperson or other person has been authorized by DASNY, MSKCC (defined herein), the Underwriters or the Initial Purchaser to give any information or to make any representations with respect to the 2019 Series 1 Bonds, other than the information and representations contained in this Official Statement. If given or made, any such information or representations must not be relied upon as having been authorized by DASNY, MSKCC, the Underwriters or the Initial Purchaser.

This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be a sale of the 2019 Series 1 Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale.

The information set forth herein relating to DASNY under the heading "PART 8 - DASNY" has been obtained from DASNY. All other information herein has been obtained by the Underwriters and the Initial Purchaser from the Center and other sources deemed to be reliable by the Underwriters and the Initial Purchaser, and is not to be construed as a representation by DASNY, the Underwriters or the Initial Purchaser. In addition, DASNY does not warrant the accuracy of the statements contained herein relating to the Center or MSKCC nor does it directly or indirectly guarantee, endorse or warrant (i) the creditworthiness or credit standing of the Center or MSKCC, (ii) the sufficiency of the security for the 2019 Series 1 Bonds or (iii) the value or investment quality of the 2019 Series 1 Bonds.

The Underwriters and Initial Purchaser have provided the following sentence for inclusion in this Official Statement. The Underwriters and Initial Purchaser have reviewed the information in this Official Statement in accordance with, and as part of, its responsibility to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but neither the Underwriters nor the Initial Purchaser guarantee the accuracy or completeness of such information.

The Center reviewed the parts of this Official Statement describing MSKCC, the Plan of Finance and Appendices B-1 and B-2. The Center shall certify as of the date hereof and as of the date of issuance of the 2019 Series 1 Bonds that such parts do not contain any untrue statements of a material fact and do not omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which the statements are made, not misleading. The Center makes no representations as to the accuracy or completeness of any other information included in this Official Statement.

References in this Official Statement to the Act, the Resolution, the Loan Agreement, the Guaranties, the Inducement Agreement and the Intercreditor Agreement do not purport to be complete. Refer to the Act, the Resolution, the Loan Agreement, the Guaranties, the Inducement Agreement and the Intercreditor Agreement for full and complete details of their provisions. Copies of the Act, the Resolution, the Loan Agreement, the Guaranties, the Inducement Agreement and the Intercreditor Agreement are on file with DASNY and the Trustee.

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

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

References to website addresses herein are for information purposes only and may be in the form of a hyperlink solely for the reader's convenience. Unless specified otherwise, such websites and the information or links contained therein are not incorporated into and are not a part of this Official Statement.

IN CONNECTION WITH THE OFFERING OF THE 2019 SERIES 1 BONDS, THE UNDERWRITERS, WITH RESPECT TO THE NEGOTIATED BONDS, AND THE INITIAL PURCHASER, WITH RESPECT TO THE COMPETITIVE BONDS, MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICES OF THE 2019 SERIES 1 BONDS AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. IN ADDITION, IF THE UNDERWRITERS, WITH RESPECT TO THE NEGOTIATED BONDS, AND THE INITIAL PURCHASER, WITH RESPECT TO THE COMPETITIVE BONDS,

OVERALLOT (THAT IS, SELLS MORE THAN THE AGGREGATE PRINCIPAL AMOUNT OF THE 2019 SERIES 1 BONDS SET FORTH ON THE INSIDE COVER PAGE OF THIS OFFICIAL STATEMENT) AND THEREBY CREATE A SHORT POSITION IN THE 2019 SERIES 1 BONDS IN CONNECTION WITH THE OFFERING, THE UNDERWRITERS, WITH RESPECT TO THE NEGOTIATED BONDS, AND THE INITIAL PURCHASER, WITH RESPECT TO THE COMPETITIVE BONDS, MAY REDUCE THAT SHORT POSITION BY PURCHASING 2019 SERIES 1 BONDS IN THE OPEN MARKET. IN GENERAL, PURCHASES OF A SECURITY FOR THE PURPOSE OF STABILIZATION OR TO REDUCE A SHORT POSITION COULD CAUSE THE PRICE OF A SECURITY TO BE HIGHER THAN IT MIGHT OTHERWISE BE IN THE ABSENCE OF SUCH PURCHASES. NEITHER THE UNDERWRITERS NOR THE INITIAL PURCHASER MAKE ANY REPRESENTATION OR PREDICTION AS TO THE DIRECTION OR THE MAGNITUDE OF ANY EFFECT THAT THE TRANSACTIONS DESCRIBED ABOVE MAY HAVE ON THE PRICE OF THE 2019 SERIES 1 BONDS. IN ADDITION, NEITHER THE UNDERWRITERS NOR THE INITIAL PURCHASER MAKE ANY REPRESENTATION THEY WILL ENGAGE IN SUCH TRANSACTIONS OR THAT SUCH TRANSACTIONS, IF COMMENCED, WILL NOT BE DISCONTINUED WITHOUT NOTICE.

## **CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS IN THIS OFFICIAL STATEMENT**

Certain statements included or incorporated by reference in this Official Statement constitute projections or estimates of future events, generally known as forward-looking statements. These statements are generally identifiable by the terminology used such as “may,” “believe,” “will,” “expect,” “project,” “intend,” “estimate,” “anticipate,” “plan,” “continue,” “budget” or other similar words. These forward looking statements are based on the current plans and expectations of the Center and are subject to a number of known and unknown uncertainties and risks, many of which are beyond the control of the Center, that could significantly affect current plans and expectations and the Center’s future financial position and results of operations. These risk factors include, but are not limited to, (i) the highly competitive nature of the health care business, (ii) the efforts of insurers, health care providers and others to contain health care costs, (iii) possible changes in the Medicare and Medicaid programs that may affect reimbursements to health care providers and insurers, (iv) changes in federal, state or local regulations affecting the health care industry, (v) the implementation of health care reform, (vi) the ability to attract and retain qualified management and other personnel, including affiliated physicians, nurses and medical support personnel, (vii) liabilities and other claims asserted against the Center, (viii) changes in accounting standards and practices, (ix) changes in general economic conditions, (x) future divestitures or acquisitions which may result in additional changes, (xi) changes in revenue mix and the ability to enter into and renew managed care provider arrangements on acceptable terms, (xii) the availability and terms of capital to fund expansion plans of the Center and to provide for ongoing capital expenditure needs, (xiii) changes in business strategy or development plans, (xiv) delays in receiving payments, (xv) the ability to implement shared services and other initiatives and realize decreases in administrative, supply and infrastructure costs, (xvi) the outcome of pending and any future litigation, (xvii) the Center’s continuing efforts to monitor, maintain and comply with appropriate laws, regulations, policies and procedures relating to their status as tax-exempt organizations as well as their ability to comply with the requirements of the Medicare and Medicaid programs, (xviii) the ability to achieve expected levels of patient volumes and control the costs of providing services, (xix) results of reviews of the Center’s cost reports, (xx) the Center’s ability to comply with recently enacted legislation and/or regulations, and (xxi) the risks set forth under the heading “**PART 7 – BONDHOLDERS’ RISKS**” herein. As a consequence, current plans, anticipated actions and future financial position and results of operations may differ from those expressed in any forward looking statements made by or on behalf of the Center. Investors are cautioned not to unduly rely on such forward looking statements when evaluating the information presented in this Official Statement.

The achievement of certain results or other expectations contained in such forward-looking statements involves known and unknown risks, uncertainties and other factors which may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by these forward-looking statements. The Center does not plan to issue any updates or revisions to those forward-looking statements if or when changes in its expectations, or events, conditions or circumstances on which such statements are based, occur.

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**DORMITORY AUTHORITY - STATE OF NEW YORK**  
**PAUL G. KOOPMAN – VICE PRESIDENT**

**515 BROADWAY, ALBANY, N.Y. 12207**  
**ALFONSO L. CARNEY, JR. - CHAIR**

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**OFFICIAL STATEMENT RELATING TO**

**\$284,545,000**

**DORMITORY AUTHORITY  
OF THE STATE OF NEW YORK  
MEMORIAL SLOAN KETTERING CANCER CENTER  
REVENUE BONDS, 2019 SERIES 1**

**PART 1 – INTRODUCTION**

**Purpose of the Official Statement**

The purpose of this Official Statement, including the cover page, the inside cover page and appendices, is to provide information about the Dormitory Authority of the State of New York (“DASNY”) and Memorial Sloan Kettering Cancer Center (the “Center”) and its related corporations (collectively, “MSKCC”) in connection with the offering by DASNY of an aggregate principal amount of \$284,545,000 of its Memorial Sloan Kettering Cancer Center Revenue Bonds, 2019 Series 1 (the “2019 Series 1 Bonds”).

The following is a brief description of certain information concerning the 2019 Series 1 Bonds, DASNY and MSKCC. A more complete description of such information and additional information that may affect decisions to invest in the 2019 Series 1 Bonds is contained throughout this Official Statement, which should be read in its entirety. Certain terms used in this Official Statement are defined in “APPENDIX A – DEFINITIONS” hereto.

**Purpose of the Issue**

The 2019 Series 1 Bonds are being issued for the purpose of (i) paying a portion of the costs of constructing, improving, and equipping an ambulatory care and inpatient facility near East 74th Street in New York, New York; (ii) paying for certain equipment; and (iii) paying costs of issuance on the 2019 Series 1 Bonds. “PART 5 – THE PLAN OF FINANCE.”

**Authorization of Issuance**

The 2019 Series 1 Bonds will be issued pursuant to the Act, DASNY’s Memorial Sloan Kettering Cancer Center Revenue Bond Resolution adopted by DASNY on February 26, 2003, as amended and supplemented (the “General Resolution”), DASNY’s Memorial Sloan Kettering Cancer Center 2019 Series 1 Resolution Authorizing Up To \$345,000,000 2019 Series 1 Bonds (the “Series Resolution”) and DASNY’s Bond Series Certificate relating to the 2019 Series 1 Bonds (the “Bond Series Certificate” and together with the General Resolution and the Series Resolution, the “Resolution”). In addition to the 2019 Series 1 Bonds, the General Resolution authorizes the issuance of other Series of Bonds to (i) pay Costs of one or more Projects, (ii) pay Costs of Issuance of such Series of Bonds and (iii) refund Outstanding Bonds or other notes or bonds of DASNY the proceeds of which were applied to make a loan to the Center, or to refund other indebtedness of the Center. There is no limit on the amount of additional Bonds that may be issued under the Resolution. All Bonds issued under the General Resolution will rank on a parity with each other and will be secured equally and ratably with each other. The 2019 Series 1 Bonds are the seventh Series of Bonds to be issued under the General Resolution. See “PART 2 – SOURCE OF PAYMENT AND SECURITY FOR THE 2019 SERIES 1 BONDS – Additional Bonds.”

## **DASNY**

DASNY is a public benefit corporation of the State of New York (the “State”), created for the purpose of financing and constructing a variety of public-purpose facilities for certain educational and not-for-profit institutions. See “PART 8 – DASNY.”

## **MSKCC**

MSKCC is the oldest and largest privately operated not-for-profit cancer center in the world. The mission of MSKCC is to provide leadership in the prevention, diagnosis, treatment and cure of cancer through excellence, vision and cost effectiveness in patient care, outreach programs, research and education. The corporations related to the Center are Memorial Hospital for Cancer and Allied Diseases (the “Hospital”), Sloan Kettering Institute for Cancer Research (the “Institute”), and S.K.I. Realty, Inc. (“Realty” and together with the Institute, the “Related Corporations”). The Center, the Hospital and the Institute currently have virtually identical officers and Boards of Managers. See “PART 6 – MEMORIAL SLOAN KETTERING CANCER CENTER.”

The Center is the only party obligated under the Loan Agreement. The Institute and Realty have each entered into a Guaranty (collectively, the “Guaranties” and each a “Guaranty”) pursuant to which they guaranty the Center’s payment obligations under the Loan Agreement. The Hospital has entered into an Inducement Agreement with DASNY (the “Inducement Agreement”) containing certain covenants of the Hospital. See “PART 2 – SOURCE OF PAYMENT AND SECURITY FOR THE 2019 SERIES 1 BONDS – Guaranties and Inducement Agreement.”

### **The 2019 Series 1 Bonds**

The 2019 Series 1 Bonds will be issued in the Fixed Rate Mode, will be dated their date of delivery and will bear interest from such delivery date through the final maturity date of the 2019 Series 1 Bonds, payable January 1, 2020 and on each January 1 and July 1 thereafter, at the rates and will mature at the times set forth on the inside cover page of this Official Statement. See “PART 3 – THE 2019 SERIES 1 BONDS.”

The 2019 Series 1 Bonds maturing July 1, 2035 through July 1, 2039, inclusive (the “Negotiated Bonds”), are offered when, as and if issued and received by the Underwriters. The 2019 Series 1 Bonds maturing July 1, 2029 through July 1, 2034, inclusive (the “Competitive Bonds”), are being sold through a competitive auction bid process in accordance with a Notice of Sale dated October 3, 2019.

### **Payment of the 2019 Series 1 Bonds**

The 2019 Series 1 Bonds are special obligations of DASNY payable solely from the Revenues, which consist of certain payments to be made by the Center under the Loan Agreement and by the Institute and/or Realty under the Guaranties. The Loan Agreement will be a general, unsecured obligation of the Center. Pursuant to the Resolution, the Revenues have been pledged to the Trustee for the benefit of the Bondholders. See “PART 2 – SOURCE OF PAYMENT AND SECURITY FOR THE 2019 SERIES 1 BONDS.”

### **Security for the 2019 Series 1 Bonds**

The 2019 Series 1 Bonds are secured on a parity basis with the Outstanding Bonds issued under the General Resolution and with any additional Bonds which may be issued under the General Resolution by the pledge and assignment to the Trustee of the Revenues. The 2019 Series 1 Bonds, and all other Bonds which have been or may be issued under the General Resolution, are also secured by, and each 2019 Series 1 Bond has an equal claim to, the proceeds from the sale of the 2019 Series 1 Bonds (until disbursed as provided by the Resolution) and all funds and accounts established by the Resolution (with the exception of the Arbitrage Rebate Fund and any fund established for the payment of the Purchase Price of Option Bonds tendered for purchase). The Revenues have been pledged by DASNY to the Trustee for the benefit of the Bondholders. See “PART 2 – SOURCE OF PAYMENT AND SECURITY FOR THE 2019 SERIES 1 BONDS – Security for the 2019 Series 1 Bonds.”

The 2019 Series 1 Bonds are not a debt of the State nor is the State liable thereon. DASNY has no taxing power.



## **Guaranties and Inducement Agreements**

The Institute and Realty have each entered into a Guaranty in favor of DASNY pursuant to which they jointly and severally guaranty payment of the Center's obligations under the Loan Agreement. The Guaranties are general, unsecured obligations of the Institute and Realty. The Institute and Realty entered into guaranties similar to the Guaranties with respect to the 2001 Loan Agreement, the 2011 Taxable Indenture and the 2012 Taxable Indenture (the 2011 Taxable Indenture and the 2012 Taxable Indenture, the "Taxable Indentures") and the New Jersey Economic Development Authority Revenue Bond (Memorial Sloan Kettering Project) Series 2016-2 (the "2016-2 Bond"), but not with respect to the 1998 Loan Agreement (as defined herein).

The Hospital has entered into an Inducement Agreement with DASNY whereby the Hospital has agreed to certain limitations on its ability to incur debt or liens on its assets and has agreed that, under certain circumstances, it will pledge certain collateral to secure the Center's obligations under the Loan Agreement. The Hospital entered into an inducement agreement similar to the Inducement Agreement with respect to the 2001 Loan Agreement and the Taxable Indentures, but not with respect to the 1998 Loan Agreement. See "PART 2 – SOURCE OF PAYMENT AND SECURITY FOR THE 2019 SERIES 1 BONDS – Guaranties and Inducement Agreement."

### **PART 2 – SOURCE OF PAYMENT AND SECURITY FOR THE 2019 SERIES 1 BONDS**

*Set forth below is a narrative description of certain contractual provisions relating to the source of payment of and security for the 2019 Series 1 Bonds and certain related covenants. These provisions have been summarized and this description does not purport to be complete. Reference should be made to the Act, the Resolution, the Loan Agreement, the Guaranties, the Inducement Agreement and the Intercreditor Agreement. Copies of the Resolution, the Loan Agreement, the Guaranties, the Inducement Agreement and the Intercreditor Agreement are on file with DASNY and the Trustee. See also "APPENDIX C-1 – SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT," "APPENDIX C-2 – SUMMARY OF CERTAIN PROVISIONS OF THE SPRINGING AMENDMENTS TO THE LOAN AGREEMENT," "APPENDIX D – SUMMARY OF CERTAIN PROVISIONS OF THE GUARANTIES AND THE INDUCEMENT AGREEMENT," "APPENDIX E – SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTION" and "APPENDIX F – SUMMARY OF CERTAIN PROVISIONS OF THE INTERCREDITOR AGREEMENT" for a more complete statement of the rights, duties and obligations of the parties thereto.*

***Certain proposed Loan Agreement amendments will become effective with respect to the 2019 Series 1 Bonds (and any Bonds issued subsequent thereto) when no Bonds issued prior to the date of issuance of the 2019 Series 1 Bonds remain Outstanding. See "APPENDIX C-2 – SUMMARY OF CERTAIN PROVISIONS OF SPRINGING AMENDMENTS TO THE LOAN AGREEMENT" hereto.***

### **Payment of the 2019 Series 1 Bonds**

The 2019 Series 1 Bonds and all other Bonds which have been or may be issued under the General Resolution are or will be special obligations of DASNY. The principal, Sinking Fund Installments, if any, and Redemption Price of and interest on the 2019 Series 1 Bonds, and all other Bonds which have been or may be issued under the Resolution, are payable from the Revenues. The Revenues consist of the payments required to be made by the Center under the Loan Agreement on account of the principal, Sinking Fund Installments and Redemption Price of and interest on the Bonds and the payments made by the Institute and/or Realty under the Guaranties. The Revenues and the right to receive them have been pledged by DASNY to the Trustee for the benefit of the Bondholders.

The Loan Agreement is a general, unsecured obligation of the Center and obligates the Center to make payments on account of the principal, Sinking Fund Installments and Redemption Price of and interest on all Outstanding Bonds under the Resolution. Payments for principal and Sinking Fund Installments are to be made by the Center on June 10 prior to each July 1 on which principal on the Bonds is due by maturity or Sinking Fund Redemption. Payments made by the Center in respect of interest on Outstanding Bonds are to be made on the 10th day of each June and December immediately preceding a July 1 and January 1 interest payment date. The Loan Agreement also obligates the Center to pay, at least 15 days prior to a redemption date for Bonds called for redemption, the amount, if any, required to pay the Redemption Price of such Bonds. DASNY has directed, and the Center has agreed, to make its payments directly to the Trustee.

## **Security for the 2019 Series 1 Bonds**

The 2019 Series 1 Bonds will be secured on a parity basis with the Outstanding Bonds issued under the General Resolution and any additional Bonds which may be issued under the Resolution by the pledge and assignment of the Revenues. The 2019 Series 1 Bonds, and all other Bonds which have been or may be issued under the General Resolution, are also secured by the proceeds from the sale of the 2019 Series 1 Bonds (until disbursed as provided by the Resolution) and all funds and accounts established by the Resolution (with the exception of the Arbitrage Rebate Fund and any fund established for the payment of the Purchase Price of Option Bonds tendered for purchase). The Revenues have been pledged by DASNY to the Trustee for the benefit of the Bondholders. See “Additional Bonds” below.

DASNY has not assigned and is not assigning to the Trustee its rights under the Loan Agreement, other than its pledge of certain payments by the Center under the Loan Agreement. DASNY may assign such rights under the Loan Agreement to the Trustee but has no present intention to do so. Under the Resolution, DASNY is required to assign such rights to the Trustee upon the occurrence of certain events of default under the Resolution, the Loan Agreement or the Inducement Agreement or upon the occurrence of a Funding Event (described below). See “APPENDIX A – DEFINITIONS – Assignment Events” and “APPENDIX E – SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTION – Assignment of Certain Rights and Remedies.”

For a description of the outstanding bonds and certain other indebtedness of MSKCC, see “PART 6—MEMORIAL SLOAN KETTERING CANCER CENTER – FINANCIAL INFORMATION – OUTSTANDING INDEBTEDNESS”, which includes a description of the authorizing resolutions under which outstanding bonds were issued and references certain key documents relating to such outstanding bonds.

## **Guaranties and Inducement Agreements**

The Institute and Realty have each entered into a Guaranty in favor of DASNY pursuant to which they jointly and severally guaranty payment of the Center’s obligations under the Loan Agreement. The Guaranties are general, unsecured obligations of the Institute and Realty. The Institute and Realty entered into guaranties similar to the Guaranties with respect to the 2001 Loan Agreement, the Taxable Indentures and the 2016-2 Bond, but not with respect to the 1998 Loan Agreement.

The Hospital has entered into the Inducement Agreement with DASNY whereby the Hospital has agreed that, upon the occurrence and continuation of a Funding Event (described below), it will pledge certain collateral to secure the Center’s obligations under the Loan Agreement. In addition, the Inducement Agreement includes certain financial covenants of the Hospital described below under “Special Covenants.” The Hospital entered into inducement agreements (the “2001 Inducement Agreement”, the “2011 Inducement Agreement” and the “2012 Inducement Agreement”; the 2011 Inducement Agreement and the 2012 Inducement Agreement are collectively referred to herein as the “Taxable Inducement Agreements”) similar to the Inducement Agreement, with respect to the 2001 Loan Agreement and the Taxable Indentures, but not with respect to the 1998 Loan Agreement (each as hereinafter defined). The material difference between the Inducement Agreement, the 2001 Inducement Agreement and the Taxable Inducement Agreements, is that under the 2001 Inducement Agreement the Hospital agrees to pledge as collateral a portion of the Gross Receipts of the Hospital as well as Hospital Property, while under the Inducement Agreement and the Taxable Inducement Agreements the Hospital agrees to pledge as collateral only Hospital Property.

DASNY has not assigned and is not assigning to the Trustee its rights under the Guaranties and the Inducement Agreement. DASNY may assign such rights under the Guaranties and the Inducement Agreement to the Trustee but has no present intention to do so. Under the Resolution, DASNY is required to assign such rights to the Trustee upon the occurrence of certain events of default under the Resolution, the Loan Agreement or the Inducement Agreement or upon the occurrence of a Funding Event (described below). See “APPENDIX A – DEFINITIONS – Assignment Events” and “APPENDIX E – SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTION – Assignment of Certain Rights and Remedies.”

See “APPENDIX A – DEFINITIONS” and “APPENDIX D – SUMMARY OF CERTAIN PROVISIONS OF THE GUARANTIES AND THE INDUCEMENT AGREEMENT.”

## Special Covenants

The Loan Agreement contains several financial covenants of the Center and the Related Corporations including (i) a requirement that the Center engage a Management Consultant if MSKCC experiences certain levels of operating losses and does not maintain certain ratios of Cash and Investments to Debt; (ii) a requirement that the Center and the Related Corporations provide certain collateral to secure the Center's obligations under the Loan Agreement following the occurrence and continuation of a Funding Event; (iii) limitations on the ability of the Center and the Related Corporations to incur Liens on Property and Debt secured by Liens; and (iv) limitations on the sale of Property by the Center and the Related Corporations and the application of Sale Proceeds from such sale. The Inducement Agreement contains several financial covenants of the Hospital including (i) a requirement that the Hospital provide certain collateral to secure the Center's obligations under the Loan Agreement following the occurrence and continuation of a Funding Event; (ii) limitations on the ability of the Hospital to incur Liens on Property and Debt secured by Liens; and (iii) limitations on the sale of Hospital Property and the application of Sale Proceeds from such sale. *Certain covenants in the Loan Agreement and the Inducement Agreement may be amended, and compliance with certain covenants may be waived, with the consent of DASNY but without the consent of the Holders of the 2019 Series 1 Bonds.*

Definitions for defined terms used under this heading "Special Covenants" are contained in "APPENDIX A – DEFINITIONS." The summary set forth below does not purport to be complete. See "APPENDIX C-1 – SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT – Financial Covenants of the Center," "– Funding Events and Collateral Requirement," "– Limitations on Liens; Secured Debt" and "– Sale of Property" and "APPENDIX D – SUMMARY OF CERTAIN PROVISIONS OF THE GUARANTIES AND THE INDUCEMENT AGREEMENT – The Inducement Agreement."

**Management Consultant.** The Center is required to engage a Management Consultant if either (i) the Debt Ratio on any Measurement Date is less than 1.0:1.0 or (ii) the Debt Ratio on the Measurement Date that is the last day of the fiscal year of the Center is less than 1.2:1.0 and the Adjusted Operating Loss is greater than \$50,000,000. The Adjusted Operating Loss, by which operating losses are adjusted by contributions and an assumed return on investments, is only required to be calculated if the most recently available audited financial statements of the Center and its Affiliates show a decrease in Unrestricted Net Assets of \$50,000,000 or more or the Debt Ratio on the Measurement Date that is the last day of the fiscal year of the Center is less than 1.2:1.0. On a pro forma basis, taking into account the issuance of the 2019 Series 1 Bonds and the incurrence of other long-term debt, as of December 31, 2018 the Debt Ratio would have exceeded 1.2:1.0. See "PART 6 – MEMORIAL SLOAN KETTERING CANCER CENTER – Outstanding Indebtedness – Actual Capitalization as of December 31, 2018" and "– MSKCC – Capitalization Ratio Summary" for information regarding outstanding indebtedness and capitalization of MSKCC.

**Funding Events and Collateral Requirement.** Upon the occurrence and continuation of any of the following "Funding Events," the Center and the Hospital will be required to provide or cause to be provided certain collateral (described below) to secure the Center's obligations under the Loan Agreement. Funding Events include: (i) failure to pay certain amounts due under the Loan Agreement, (ii) failure to engage a Management Consultant when required or act on its recommendation as provided in the Loan Agreement, (iii) for two consecutive fiscal years, a decrease in Unrestricted Net Assets of the Center and its Affiliates of \$50,000,000 or more and an Adjusted Operating Loss in excess of \$50,000,000, (iv) the Debt Ratio on any Measurement Date is less than 0.6:1.0, (v) the senior unsecured or unenhanced Debt of the Center is rated lower than the "A" category by two Rating Services if such Debt is rated by at least three Rating Services or by one Rating Service if such Debt is rated by fewer than three Rating Services, or (vi) the occurrence of an "event of default" under the Inducement Agreement.

The collateral to be provided consists of the Shared Collateral (described below) and the Research Center Property together with rents, profits and issues of the Research Center Property (other than receivables and other income derived by the Center or an Affiliate from its general business activities in the Research Center Property). *Certain proposed Loan Agreement amendments eliminate this requirement to pledge the Research Center Property and will become effective with respect to the 2019 Series 1 Bonds (and any Bonds issued subsequent thereto) when no Bonds issued prior to the date of issuance of the 2019 Series 1 Bonds remain Outstanding. See "APPENDIX C-2 – SUMMARY OF CERTAIN PROVISIONS OF SPRINGING AMENDMENTS TO THE LOAN AGREEMENT" hereto.*

Within 60 days of a Funding Event, the Center and the Hospital, as applicable, are required to grant a lien, mortgage or a security interest in the Shared Collateral (defined below). Collateral will be released from such pledge at such time as no Funding Event or Event of Default (or event which with the passage of time or the giving of notice or both could become an Event of Default) is then continuing. Upon the occurrence of a Funding Event, MSKCC is also required to grant a lien,

mortgage or a security interest in the Shared Collateral to (i) DASNY to secure the Center's obligations under the 2001 Loan Agreement, (ii) the Taxable Bond Trustee to secure the Center's obligations under the Taxable Indentures, and (iii) DNT Asset Trust, as purchaser of the 2016-2 Bond, equally and ratably.

In order to assure that the lien on the Shared Collateral is granted on a parity basis to secure the Center's obligations under the Loan Agreement, the 2001 Loan Agreement, the 2016 Bond Documents and the Taxable Indentures, each of the Center and the Hospital has agreed that it will take the steps necessary to grant the lien on the Shared Collateral to secure the obligations of the Center under the Loan Agreement, 2001 Loan Agreement, the 2016 Bond Documents and Taxable Indentures, within 60 days of the occurrence of a Funding Event under any of the Loan Agreement, 2001 Loan Agreement, the 2016 Bond Documents or Taxable Indentures. Each of the Center and the Hospital have further agreed that such lien shall not be released unless and until such release is permitted under all of the Loan Agreement, 2001 Loan Agreement, the 2016 Bond Documents and Taxable Indentures (collectively, the "Shared Collateral Documents").

"Shared Collateral" means (i) the pledge of or security interest in the Gross Receipts of the Center and the Related Corporations, provided, however, that the rents, profits and issues of the Research Center Property, other than receivables and other income derived by the Center or an Affiliate from its general business activities in the Research Center Property, shall not constitute Shared Collateral and shall only secure the Center's obligations under the Loan Agreement, (ii) the mortgage or mortgages on Restricted Property, Unrestricted Property and Hospital Property (provided that if approval of the Department of Health is required and cannot be obtained after a reasonable effort then a mortgage on Hospital Property is not required), (iii) the security interest in the furnishings and equipment located in and used in connection with any of the Unrestricted Property and Hospital Property, (iv) the pledge of or security interest in any and all Sale Proceeds (except for Sale Proceeds resulting from the sale or other disposition of Research Center Property), (v) in lieu of all or a portion of the collateral described in clauses (i) through (iv) above, such other collateral security to which the Center has obtained prior written consent of DASNY given or made by the Center or a Related Corporation pursuant to a Funding Event, and by the Hospital pursuant to the Inducement Agreement and (vi) any other pledge, security interest or mortgage given or made to DASNY pursuant to the Loan Agreement or pursuant to the Inducement Agreement.

"Shared Collateral" does not include (i) the Research Center Property together with rents, profits and issues of the Research Center Property (other than receivables and other income derived by the Center or an Affiliate from its general business activities in the Research Center Property), which will secure only the Center's obligations under the Loan Agreement (and not under the 2001 Loan Agreement or the Taxable Indentures) and (ii) the Hospital's Gross Receipts, a portion of which will secure only the Center's obligations under the 2001 Loan Agreement (and not under the Loan Agreement or the Taxable Indentures). ***Certain proposed Loan Agreement amendments eliminate this requirement to pledge the Research Center Property and will become effective with respect to the 2019 Series 1 Bonds (and any Bonds issued subsequent thereto) when no Bonds issued prior to the date of issuance of the 2019 Series 1 Bonds remain Outstanding. See "APPENDIX C-2 – SUMMARY OF CERTAIN PROVISIONS OF SPRINGING AMENDMENTS TO THE LOAN AGREEMENT" hereto.***

DASNY, the Taxable Bonds Trustee, DNT Asset Trust, as purchaser of the 2016-2 Bond and the Trustee have entered into the Intercreditor Agreement regarding the application of proceeds resulting from the enforcement and exercise of remedies with respect to the Shared Collateral. The Intercreditor Agreement provides that any cash proceeds realized as a result of the sale of the Shared Collateral are to be held for the equal benefit of all parties to the Intercreditor Agreement, to be applied first to pay costs of collection and second to pay the indebtedness under the Shared Collateral Documents pro rata based on the unpaid principal amount of such indebtedness. The Intercreditor Agreement further provides that any party may commence a foreclosure or enforcement action or proceeding with respect to the Shared Collateral without the consent of the other parties. The Intercreditor Agreement requires that each party give the other parties at least 15 days' notice of any enforcement action it proposes to pursue. In the Intercreditor Agreement, DASNY and the Trustee (but not the Taxable Bonds Trustee or DNT Asset Trust) agree that if DASNY or the Trustee accelerates payment of amounts due under the Loan Agreement, then DASNY or either of such other trustees, to the extent entitled to do so, will accelerate payment of amounts due under the Loan Agreement. The Taxable Bonds Trustee or DNT Asset Trust may, but is not required to, accelerate payment of the Taxable Bonds or the 2016-2 Bond, as applicable, at such time and DASNY and the Trustee may, but are not required to, accelerate the payment of amounts due under the Loan Agreement if the Taxable Bonds Trustee or DNT Asset Trust accelerates payment of amounts due under the Taxable Indentures or the 2016-2 Bond, as applicable. Many, but not all, of the events of default under the Loan Agreement are the same and an event of default under the Loan Agreement is an event of default under the Taxable Indentures and the 2016-2 Bond. See "APPENDIX F – SUMMARY OF CERTAIN PROVISIONS OF THE INTERCREDITOR AGREEMENT."

**Sale of Property.** Unrestricted Property, Restricted Property, Hospital Property, Research Center Property and Mortgaged Property may be sold, for not less than fair market value or to the Center or an Affiliate. Sale Proceeds from the sale of Unrestricted Property, Restricted Property, Research Center Property or Mortgaged Property are generally required to be held by the Center or a Related Corporation separate and apart from other funds and Sale Proceeds from the sale of Hospital Property are required to be held by the Hospital separate and apart from other funds, although for purposes of investment Sale Proceeds may be commingled with other moneys of the Center or an Affiliate similarly invested. Sale Proceeds from the sale of Unrestricted Property may, if no Funding Event is continuing, be used for any corporate purpose of the Center or a Related Corporation. Sale Proceeds from the sale of Restricted Property or Mortgaged Property may only be used to acquire title to other real property of the Center or a Related Corporation, to pay the costs of construction on land owned by the Center or a Related Corporation, or, with the consent of DASNY, for other corporate purposes (including the payment of Bonds). Sale Proceeds from the sale of Hospital Property may only be used to acquire title to other real property of the Hospital, to pay the costs of construction on land owned by the Hospital, or, with the consent of DASNY, for other corporate purposes (including the payment of Bonds).

Restricted Property includes, but is not limited to, the Rockefeller Outpatient Pavilion, the Rockefeller Research Laboratories at the main campus of MSKCC, and property used for administrative purposes at locations in Manhattan other than the main campus. Hospital Property currently includes all property owned by the Hospital, including the patient care facilities at the main campus. Research Center Property includes the Mortimer B. Zuckerman Research Center. Unrestricted Property includes all other properties of MSKCC. See “PART 6 – MEMORIAL SLOAN KETTERING CANCER CENTER – The Facilities and Services.”

*Certain proposed Loan Agreement amendments eliminate the restriction described above on Research Center Property and will become effective with respect to the 2019 Series 1 Bonds (and any Bonds issued subsequent thereto) when no Bonds issued prior to the date of issuance of the 2019 Series 1 Bonds remain Outstanding. See “APPENDIX C-2 – SUMMARY OF CERTAIN PROVISIONS OF SPRINGING AMENDMENTS TO THE LOAN AGREEMENT” hereto.*

**Limitation on Liens and Secured Debt; Collateral Upon Excess Secured Debt.** The Center in the Loan Agreement agrees that it and the Related Corporations, and the Hospital in the Inducement Agreement agrees that it, will not incur Debt secured by Liens on any Property unless either the obligations of the Center under the Loan Agreement are equally and ratably secured or DASNY consents. Notwithstanding the foregoing, the Loan Agreement and the Inducement Agreement list several types of Liens which the Center, the Hospital and the Related Corporations may create or permit including the following: (i) Liens to secure Debt incurred pursuant to the Loan Agreement, (ii) Liens to secure the purchase price of furnishings or equipment or Investment Property, (iii) Liens on Property existing upon its time of acquisition, (iv) with the consent of DASNY, Liens to secure providers of Credit Facilities or Liquidity Facilities, (v) Liens on Collateral to secure Debt to DASNY, (vi) Liens on Property other than Collateral to secure other Debt to DASNY, (vii) extension of existing Liens, (viii) Liens on pledges to make gifts or bequests to secure Debt the proceeds of which is used to acquire real property or furnishings and equipment to be used in and in connection with Research Center Property, Unrestricted Property, Restricted Property, Hospital Property or Mortgaged Property and (ix) Permitted Encumbrances. Furthermore, subject to the limitations described in the next two sentences, the Center, the Hospital and the Related Corporations may create or permit (i) Liens on intangible personal property (other than accounts receivable) to secure Short-Term Debt, (ii) Liens on intangible personal property to secure obligations incurred in connection with Derivative Agreements and (iii) Liens on accounts receivable of the Center or the Related Corporations (but not those of the Hospital). First, the aggregate principal amount of such Debt and the maximum exposure under Derivative Obligations (based on certain assumptions) may not be more than 15% of the Unrestricted Net Assets of the Center and the Affiliates at the time such Debt is incurred or such Derivative Agreements are executed and delivered. Second, (i) Short-Term Debt secured by Liens on intangible personal property may not exceed 15% of Total Operating Revenues of the Center and the Affiliates and must be reduced to not more than 5% of the Total Operating Revenues of the Center and the Affiliates for a period of at least 20 consecutive days each year and (ii) Debt secured by Liens on accounts receivable may not exceed 80% of the accounts receivable subject to such Liens and the accounts receivable securing such Debt may not exceed 25% of the net accounts receivable of the Center and the Affiliates.

*Certain proposed Loan Agreement amendments to the permitted Liens described above will become effective with respect to the 2019 Series 1 Bonds (and any Bonds issued subsequent thereto) when no Bonds issued prior to the date of issuance of the 2019 Series 1 Bonds remain Outstanding. See “APPENDIX C-2 – SUMMARY OF CERTAIN PROVISIONS OF SPRINGING AMENDMENTS TO THE LOAN AGREEMENT” hereto.*

The Center in the Loan Agreement agrees, and the Hospital in the Inducement Agreement agrees, that if, at the time the Center, the Hospital or another Related Corporation creates a Lien to secure Derivative Obligations, the aggregate principal amount of Debt secured by Liens given to secure Short-Term Debt and accounts receivable, together with the aggregate amount of Derivative Obligations then secured, including the Derivative Obligation then to be secured (collectively, the “Limited Secured Debt”), exceeds the Secured Debt Limit, the Center or the Hospital, as applicable, as security for the Center’s obligations under the Loan Agreement, will promptly give or cause to be given to DASNY a Lien or Liens on Property reasonably acceptable to DASNY, the fair market value or, in the case of mortgages on real property, the appraised value of which is at the time such Liens are given at least equal to the amount by which the Limited Secured Debt exceeds the Secured Debt Limit. Notwithstanding the foregoing, no Lien or Liens otherwise described in this paragraph will be required if the obligations of the Center are then secured by Collateral given pursuant to a Funding Event.

### **Events of Default and Acceleration under the Resolution**

The following are events of default under the Resolution: (a) a default in the payment of the principal, Sinking Fund Installments or Redemption Price of or interest on any Bonds; (b) a default by DASNY in the due and punctual performance of its covenant not to take or omit to take or permit any action which would cause interest on the 2019 Series 1 Bonds to no longer be excludable from gross income under Section 103 of the Code; (c) a default by DASNY in the due and punctual performance of any other covenant, condition, agreement or provision contained in the Bonds or in the Resolution which continues for thirty (30) days after written notice thereof is given to DASNY by the Trustee (such notice to be given at the Trustee’s discretion or at the written request of Holders of not less than 25% in principal amount of Outstanding Bonds); or (d) an “event of default,” as defined in the Loan Agreement, shall have occurred and is continuing and all sums payable by the Center under the Loan Agreement shall have been declared immediately due and payable (unless such declaration shall have been annulled). Unless all sums payable by the Center under the Loan Agreement are declared immediately due and payable, an event of default under the Loan Agreement is not an event of default under the Resolution.

The Resolution provides that if an event of default (other than as described in clause (b) of the preceding paragraph) occurs and continues, the Trustee may, and upon the written request of Holders of not less than 25% in principal amount of the Outstanding Bonds shall, by written notice to DASNY, declare the principal of and interest on all the Outstanding Bonds to be due and payable immediately. At the expiration of thirty (30) days from the giving of such notice, such principal and interest shall become immediately due and payable. The Trustee shall with the written consent of the Holders of not less than 25% in principal amount of the Outstanding Bonds, by written notice to DASNY, annul such declaration and its consequences under the terms and conditions specified in the Resolution with respect to such annulment.

Notwithstanding any other provision of the Resolution to the contrary, upon DASNY’s failure to observe, or refusal to comply with, the covenant described in clause (b) of the first paragraph under this subheading, the Trustee may, and upon the direction of the Holders of not less than 25% in principal amount of the Outstanding Bonds of the Series affected thereby, shall exercise the rights and remedies provided to the Holders of the Bonds under the Resolution, other than the right to accelerate the maturity of the Bonds.

The Resolution provides that the Trustee shall give notice, in accordance with the Resolution, of each event of default known to the Trustee to the Center within five (5) days after knowledge of the occurrence thereof and to the Holders within thirty (30) days after knowledge of the occurrence thereof, unless such default has been remedied or cured before the giving of such notice; provided, however, that except in the case of default in the payment of principal, Sinking Fund Installment or Redemption Price of, or interest on, any of the Bonds, the Trustee shall be protected in withholding such notice thereof to the Holders if the Trustee in good faith determines that the withholding of such notice is in the best interests of the Holders of the Bonds.

### **Additional Bonds**

In addition to the 2019 Series 1 Bonds, the Resolution authorizes the issuance of other series of Bonds to pay the Costs of a Project, to pay the Costs of Issuance of Bonds, and to refund Outstanding Bonds or other notes or bonds of DASNY the proceeds of which were applied to make a loan to the Center and to refund other indebtedness of the Center. All Bonds issued under the Resolution will rank on a parity with each other and will be secured equally and ratably with each other, except with respect to any fund or account established under a series resolution for the benefit of the series of bonds authorized pursuant thereto for the payment of the Purchase Price of Option Bonds tendered for purchase. For a more complete description of conditions to issuing additional Bonds, see “APPENDIX E – SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTION.”

## General

The 2019 Series 1 Bonds are not a debt of the State nor will the State be liable thereon. DASNY has no taxing power. DASNY has never defaulted in the timely payment of principal or sinking fund installments of or interest on its bonds or notes. See “PART 8 – DASNY.”

### PART 3 – THE 2019 SERIES 1 BONDS

*Set forth below is a narrative description of certain provisions relating to the 2019 Series 1 Bonds. These provisions have been summarized and this description does not purport to be complete. Reference should be made to the Resolution, the 2019 Series 1 Resolution and the Loan Agreement, copies of which are on file with DASNY and the Trustee. See also “APPENDIX C-1 – SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT,” “APPENDIX C-2 – SUMMARY OF CERTAIN PROVISIONS OF SPRINGING AMENDMENTS TO THE LOAN AGREEMENT” and “APPENDIX E – SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTION” for a more complete description of certain provisions of the 2019 Series 1 Bonds.*

#### Description of the 2019 Series 1 Bonds

**General.** The 2019 Series 1 Bonds will be issued pursuant to the Resolution and the Series Resolution and will be dated and bear interest from their date of delivery (payable January 1, 2020 and on each January 1 and July 1 thereafter) at the rates, and will mature on the dates set forth on the inside cover page of this Official Statement.

The 2019 Series 1 Bonds are being issued in a Fixed Rate Mode maturing on the dates and bearing interest at the rates set forth on the inside cover page hereof through the final maturity date of the 2019 Series 1 Bonds. The 2019 Series 1 Bonds may be subject to mandatory tender for purchase and converted to Daily or Weekly Rates, Commercial Paper Rates, Term Rates, or Fixed Rates at the times and upon the conditions set forth in the Resolution. The 2019 Series 1 Bonds may only be subject to mandatory tender for purchase and converted to another interest rate mode on or after the first date on which the 2019 Series 1 Bonds are subject to optional redemption as described under the caption “Redemption and Tender for Purchase Provisions” below.

*Except as set forth below under “Redemption and Tender for Purchase Provisions”, this Official Statement does not describe (i) any other interest rate mode into which the 2019 Series 1 Bonds may be converted, (ii) any provision relating to the tender provisions applicable to the 2019 Series 1 Bonds after any such conversion, or (iii) the remarketing of the 2019 Series 1 Bonds upon any such conversion and the application of the proceeds thereof. A remarketing of the 2019 Series 1 Bonds upon any such conversion will be made solely by a separate offering document or through a private placement to a limited number of institutional investors and not by this Official Statement.*

The 2019 Series 1 Bonds will be issued as fully registered bonds. The 2019 Series 1 Bonds will be registered in the name of Cede & Co., as nominee of DTC, pursuant to DTC’s Book-Entry Only System. Purchasers of beneficial interests in the 2019 Series 1 Bonds will be made in book-entry form, without certificates. If at any time the Book-Entry Only System is discontinued for the 2019 Series 1 Bonds, the 2019 Series 1 Bonds will be exchangeable for other fully registered 2019 Series 1 Bonds in any other authorized denominations of the same maturity without charge except for the payment of any tax, fee or other governmental charge to be paid with respect to such exchange, subject to the conditions and restrictions set forth in the Resolutions. See “Book-Entry Only System” herein and “APPENDIX E – SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTION.”

Interest on the 2019 Series 1 Bonds will be payable by check mailed to the registered owners thereof. The principal or redemption price of the 2019 Series 1 Bonds will be payable in lawful money of the United States of America at the principal corporate trust office of The Bank of New York, the Trustee and Paying Agent. As long as the 2019 Series 1 Bonds are registered in the name of Cede & Co., as nominee of DTC, such payments will be made directly to DTC. See “Book-Entry Only System” herein.

#### Redemption and Tender for Purchase Provisions

The 2019 Series 1 Bonds are subject to optional and special redemption and mandatory tender for purchase at the election of DASNY as described below.

**Optional Redemption or Mandatory Tender.** The 2019 Series 1 Bonds maturing on or after July 1, 2030 are subject to redemption or mandatory tender for purchase prior to maturity at the election of DASNY, exercised at the direction of or with the consent of the Center, on or after July 1, 2029, in whole or in part, at any time at a redemption price or tender price, as applicable, of 100% of the principal amount of the 2019 Series 1 Bonds to be redeemed or tendered, plus accrued interest to the redemption date or tender date, as applicable.

**Purchase in Lieu of Optional Redemption or Mandatory Tender.** The 2019 Series 1 Bonds maturing on or after July 1, 2030 are also subject to purchase in lieu of optional redemption or mandatory tender prior to maturity at the election of the Center, on or after July 1, 2029, in whole or in part at any time, at a price of 100% of the principal amount of 2019 Series 1 Bonds to be purchased, plus accrued interest to the purchase date (the "Purchase Date").

**Special Redemption.** The 2019 Series 1 Bonds are also subject to redemption prior to maturity at the option of DASNY, in whole or in part, at 100% of the principal amount thereof, on any Interest Payment Date from proceeds of a condemnation or insurance award, which proceeds are not used to repair, restore or replace the projects financed with the 2019 Series 1 Bonds. See "PART 5 – THE PLAN OF FINANCE", "PART 6 – MEMORIAL SLOAN KETTERING CANCER CENTER" and "PART 7 – BONDHOLDERS' RISKS."

**Fixed Rate Mode.** The 2019 Series 1 Bonds are being issued in the Fixed Rate Mode. DASNY may cause a mandatory tender of such 2019 Series 1 Bonds at the purchase price of 100% of the principal amount of the 2019 Series 1 Bonds to be tendered, plus accrued interest to the tender date, on any date such 2019 Series 1 Bonds are subject to optional redemption, subject to DASNY's providing a source of payment therefor in accordance with the Resolution. If notice of mandatory tender has been given and funds prove insufficient, the 2019 Series 1 Bonds not purchased shall continue in the Fixed Rate Mode, without change in interest rate, maturity date or other terms. Other modes to which such 2019 Series 1 may be converted are not described in this Official Statement.

**Selection of 2019 Series 1 Bonds to be Redeemed or Tendered.** In the case of redemption or tender of 2019 Series 1 Bonds, DASNY, at the direction of the Center, will select the maturities of the 2019 Series 1 Bonds to be redeemed or tendered. If less than all of the 2019 Series 1 Bonds of a maturity are to be redeemed or tendered, the 2019 Series 1 Bonds of such maturity to be redeemed or tendered will be selected by the Trustee, by lot, using such method of selection as the Trustee considers proper in its discretion.

**Notice of Redemption or Tender.** The Trustee is to give notice of the redemption or a call for mandatory tender of the 2019 Series 1 Bonds in the name of DASNY, by first class mail, postage prepaid, not less than 30 days nor more than 45 days prior to the redemption date or the tender date, as applicable, to the registered owners of any 2019 Series 1 Bonds which are to be redeemed or tendered, at their last known addresses appearing on the registration books of DASNY and by certified mail to a national information service that disseminates bond redemption or tender notices. If DASNY's obligation to redeem or tender 2019 Series 1 Bonds is subject to conditions, the notice of redemption or call for mandatory tender will contain a statement to such effect that describes the conditions to such redemption or tender. Provided the Trustee has delivered to DASNY a certification that such mailings occurred, such mailing is not a condition precedent to such redemption and failure of any holder or national information service to receive such notice or failure to mail such notice to any such registered owners or national information service or any defect in such notice will not affect the validity of the proceedings for the redemption or tender of the 2019 Series 1 Bonds.

If on the redemption date or tender date moneys for the redemption or tender, as applicable, of the 2019 Series 1 Bonds of like maturity to be redeemed or tendered, together with interest thereon to the redemption date or tender date, as applicable, are held by the Trustee so as to be available for payment of the redemption price or tender price then interest on the 2019 Series 1 Bonds of such maturity to be redeemed or tendered will cease to accrue from and after the redemption date or tender date and such 2019 Series 1 Bonds will no longer be considered to be Outstanding under the Resolution.

For a description of certain other provisions relating to the 2019 Series 1 Bonds, see "APPENDIX E – SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTION."

**Notice of Purchase in Lieu of Redemption and its Effect.** Notice of purchase of the 2019 Series 1 Bonds will be given in the name of the Center to the registered owners of the 2019 Series 1 Bonds to be purchased by first-class mail, postage prepaid, not less than 30 days nor more than 60 days prior to the Purchase Date specified in such notice. The 2019 Series 1 Bonds to be purchased are required to be tendered on the Purchase Date to the Trustee. 2019 Series 1 Bonds to be purchased that are not so tendered will be deemed to have been properly tendered for purchase. In the event the 2019 Series 1 Bonds are called for purchase in lieu of an optional redemption, such purchase will not operate to extinguish the



indebtedness of DASNY evidenced thereby or modify the terms of the 2019 Series 1 Bonds and such 2019 Series 1 Bonds need not be cancelled, but will remain Outstanding under the Resolution and continue to bear interest.

The Center's obligation to purchase a 2019 Series 1 Bond to be purchased or cause it to be purchased is conditioned upon the availability of sufficient money to pay the purchase price for all of the 2019 Series 1 Bonds to be purchased on the Purchase Date. If sufficient money is held by the Trustee on the Purchase Date to pay the purchase price of the 2019 Series 1 Bonds to be purchased, the purchase price of the 2019 Series 1 Bonds called for purchase will become due and payable on the Purchase Date, upon presentation and surrender of such 2019 Series 1 Bonds to be purchased at the office or offices specified in such notice. If sufficient money is not available on the Purchase Date for payment of the purchase price, the 2019 Series 1 Bonds called for purchase will continue to be registered in the name of the registered owners on the Purchase Date, who will be entitled to the payment of the principal of and interest on such 2019 Series 1 Bonds in accordance with their respective terms.

In the event not all of the Outstanding 2019 Series 1 Bonds of a maturity are to be purchased, the 2019 Series 1 Bonds to be purchased will be selected by lot in the same manner as 2019 Series 1 Bonds of a maturity to be redeemed in part are to be selected.

For a description of certain other provisions relating to the 2019 Series 1 Bonds, see "APPENDIX E – SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTION." Also see "Book-Entry Only System" below for a description of the notices of redemption to be given to Beneficial Owners of the 2019 Series 1 Bonds when the Book-Entry Only System is in effect.

### **Book-Entry Only System**

The Depository Trust Company ("DTC"), New York, New York, will act as securities depository for the 2019 Series 1 Bonds. The 2019 Series 1 Bonds will be issued as fully-registered securities in the name of Cede & Co. (DTC's partnership nominee), or such other name as may be requested by an authorized representative of DTC. One fully-registered 2019 Series 1 Bond certificate will be issued for each maturity of each Series of the 2019 Series 1 Bonds, each in the aggregate principal amount of such maturity of such Series, and will be deposited with DTC.

DTC, the world's largest securities depository is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, and trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to its Direct and Indirect Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of the 2019 Series 1 Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the 2019 Series 1 Bonds on DTC's records. The ownership interest of each actual purchaser of each 2019 Series 1 Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the 2019 Series 1 Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their

ownership interests in the 2019 Series 1 Bonds, except in the event that use of the book-entry system for the 2019 Series 1 Bonds is discontinued.

To facilitate subsequent transfers, all 2019 Series 1 Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of 2019 Series 1 Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not affect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the 2019 Series 1 Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such 2019 Series 1 Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

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

Redemption notices shall be sent to DTC. If less than all of the 2019 Series 1 Bonds within a maturity are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the 2019 Series 1 Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to DASNY as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the 2019 Series 1 Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal, redemption premium, if any, and interest payments on the 2019 Series 1 Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from DASNY or the Trustee on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Direct and Indirect Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Underwriters, the Initial Purchaser, the Trustee or DASNY, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, redemption premium, if any, and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of DASNY or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DASNY and the Trustee may treat DTC (or its nominee) as the sole and exclusive registered owner of the 2019 Series 1 Bonds registered in its name for the purposes of payment of the principal and redemption premium, if any, of, or interest on, the 2019 Series 1 Bonds, giving any notice permitted or required to be given to a registered owners under the Resolution, registering the transfer of the 2019 Series 1 Bonds, or other action to be taken by registered owners and for all other purposes whatsoever. DASNY and the Trustee shall not have any responsibility or obligation to any Direct or Indirect Participant, any person claiming a beneficial ownership interest in the 2019 Series 1 Bonds under or through DTC or any Direct or Indirect Participant, or any other person which is not shown on the registration books of DASNY (kept by the Trustee) as being a registered owner, with respect to the accuracy of any records maintained by DTC or any Direct or Indirect Participant; the payment by DTC or any Direct or Indirect Participant of any amount in respect of the principal, redemption premium, if any, or interest on the 2019 Series 1 Bonds; any notice which is permitted or required to be given to registered owners thereunder or under the conditions to transfers or exchanges adopted by DASNY; or other action taken by DTC as registered owner. Interest, redemption premium, if any, and principal will be paid by the Trustee to DTC, or its nominee. Disbursement of such payments to the Direct or Indirect Participants is the responsibility of DTC and disbursement of such payments to the Beneficial Owners is the responsibility of the Direct or Indirect Participants.

DTC may discontinue providing its services as depository with respect to the 2019 Series 1 Bonds at any time by giving reasonable notice to DASNY and the Trustee. Under such circumstances, in the event that a successor depository is not obtained, the 2019 Series 1 Bond certificates are required to be printed and delivered.

DASNY may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, the 2019 Series 1 Bond certificates will be printed and delivered to DTC.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that DASNY believes to be reliable, but DASNY takes no responsibility for the accuracy thereof.

Each person for whom a Direct Participant or Indirect Participant acquires an interest in the 2019 Series 1 Bonds, as nominee, may desire to make arrangements with such Participant to receive a credit balance in the records of such Direct Participant or Indirect Participant, and may desire to make arrangements with such Direct Participant or Indirect Participant to have all notices of redemption or other communications of DTC, which may affect such persons, to be forwarded in writing by such Participant and to have notification made of all interest payments. NONE OF DASNY, THE TRUSTEE, THE CENTER, THE UNDERWRITERS OR THE INITIAL PURCHASER WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO SUCH DIRECT OR INDIRECT PARTICIPANTS OR THE PERSONS FOR WHOM THEY ACT AS NOMINEES WITH RESPECT TO THE 2019 SERIES 1 BONDS.

So long as Cede & Co. is the registered owner of the 2019 Series 1 Bonds, as nominee for DTC, references herein to the Bondholders or registered owners of the 2019 Series 1 Bonds (other than under the caption "PART 11 – TAX MATTERS" herein) shall mean Cede & Co., as aforesaid, and shall not mean the Beneficial Owners of the 2019 Series 1 Bonds.

When reference is made to any action which is required or permitted to be taken by the Beneficial Owners, such reference only relates to those permitted to act (by statute, regulation or otherwise) on behalf of such Beneficial Owners for such purposes. When notices are given, they will be sent by the Trustee to DTC only.

For every transfer and exchange of 2019 Series 1 Bonds, the Beneficial Owner may be charged a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto.

NONE OF DASNY, THE TRUSTEE, THE CENTER, THE UNDERWRITERS OR THE INITIAL PURCHASER WILL HAVE ANY RESPONSIBILITY OR OBLIGATION TO DIRECT PARTICIPANTS, INDIRECT PARTICIPANTS OR ANY BENEFICIAL OWNER WITH RESPECT TO: (I) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC, ANY DIRECT PARTICIPANT OR ANY INDIRECT PARTICIPANT; (II) ANY NOTICE THAT IS PERMITTED OR REQUIRED TO BE GIVEN TO THE OWNERS OF THE 2019 SERIES 1 BONDS UNDER THE RESOLUTIONS; (III) THE SELECTION BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY PERSON TO RECEIVE PAYMENT IN THE EVENT OF A PARTIAL REDEMPTION OF THE 2019 SERIES 1 BONDS; (IV) THE PAYMENT BY DTC OR ANY DIRECT PARTICIPANT OR INDIRECT PARTICIPANT OF ANY AMOUNT WITH RESPECT TO THE PRINCIPAL OR REDEMPTION PREMIUM, IF ANY, OR INTEREST DUE WITH RESPECT TO THE 2019 SERIES 1 BONDS; (V) ANY CONSENT GIVEN OR OTHER ACTION TAKEN BY DTC AS THE OWNER OF THE 2019 SERIES 1 BONDS; OR (VI) ANY OTHER MATTER.

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## Principal and Interest Requirements

The following table sets forth the amounts, after giving effect to the issuance of the 2019 Series 1 Bonds, required to be paid by the Center during each twelve month period ending December 31 of the years shown for the payment of debt service on the currently outstanding long-term indebtedness of the Center, the principal of and interest on the 2019 Series 1 Bonds and the total debt service on all indebtedness of the Center, including the 2019 Series 1 Bonds.

12-Month Period Ending December 31	<u>2019 Series 1 Bonds</u>		Debt Service on Outstanding Indebtedness <sup>(1)</sup>	Total Debt Service
	Principal	Interest		
2020	-	\$7,907,900	\$163,715,697	\$171,623,597
2021	-	11,861,850	161,955,828	173,817,678
2022	-	11,861,850	133,342,208	145,204,058
2023	-	11,861,850	135,780,009	147,641,859
2024	-	11,861,850	100,846,146	112,707,996
2025	-	11,861,850	100,643,674	112,505,524
2026	-	11,861,850	100,436,690	112,298,540
2027	-	11,861,850	134,745,195	146,607,045
2028	-	11,861,850	144,024,726	155,886,576
2029	\$21,775,000	11,861,850	74,134,550	107,771,400
2030	22,865,000	10,773,100	74,133,050	107,771,150
2031	24,005,000	9,629,850	74,135,800	107,770,650
2032	24,970,000	8,669,650	74,131,800	107,771,450
2033	25,960,000	7,670,850	74,135,550	107,766,400
2034	26,485,000	7,151,650	74,132,750	107,769,400
2035	25,220,000	6,357,100	74,132,750	105,709,850
2036	26,475,000	5,096,100	74,134,950	105,706,050
2037	27,800,000	3,772,350	74,133,750	105,706,100
2038	28,915,000	2,660,350	74,133,750	105,709,100
2039	30,075,000	1,503,750	74,130,750	105,709,500
2040	-	-	74,134,500	74,134,500
2041	-	-	74,133,500	74,133,500
2042	-	-	474,131,750	474,131,750
2043	-	-	54,133,000	54,133,000
2044	-	-	54,135,200	54,135,200
2045	-	-	54,133,200	54,133,200
2046	-	-	54,131,400	54,131,400
2047	-	-	54,134,000	54,134,000
2048	-	-	39,600,000	39,600,000
2049	-	-	39,600,000	39,600,000
2050	-	-	39,600,000	39,600,000
2051	-	-	39,600,000	39,600,000
2052	-	-	439,600,000	439,600,000
2053	-	-	23,100,000	23,100,000
2054	-	-	23,100,000	23,100,000
2055	-	-	573,100,000	573,100,000

<sup>(1)</sup> Reflects debt service on the Series 1998, Series 2012, 2012 Series 1 and 2017 Series 1 Bonds issued by DASNY, the privately placed Series 2010 and Series 2016 1 Bonds issued by DASNY, the 2016-2 Bond issued by the New Jersey Economic Development Authority, and the Series 2011A, Series 2012A and Series 2015A Taxable Bonds issued by the Center. Excludes debt service on the portion of the Series 2012 and 2012 Series 1 Bonds that were defeased in September 2019.

For a discussion of MSKCC’s outstanding indebtedness, see “PART 6 – MEMORIAL SLOAN KETTERING CANCER CENTER – Outstanding Indebtedness.”

**PART 4 – ESTIMATED SOURCES AND USES OF FUNDS**

Estimated sources and uses of funds are as follows:

Sources of Funds

Principal Amount of the 2019 Series 1 Bonds .....	\$284,545,000
Net Premium .....	<u>57,703,699</u>
Total Sources of Funds.....	<u>\$342,248,699</u>

Uses of Funds

Deposit for Project Costs.....	\$340,000,000
Costs of Issuance.....	998,301
Underwriters’/Initial Purchaser’s Discount.....	<u>1,250,398</u>
Total Uses of Funds .....	<u>\$342,248,699</u>

**PART 5 – THE PLAN OF FINANCE**

The proceeds of the 2019 Series 1 Bonds will be used for the purpose of (i) paying a portion of the costs of constructing, improving, and equipping an ambulatory care and inpatient facility near East 74th Street in New York, New York; (ii) paying for certain equipment; and (iii) paying costs of issuance on the 2019 Series 1 Bonds. See “PART 6 – MEMORIAL SLOAN KETTERING CANCER CENTER – MSKCC Regional Sites.”

**PART 6 – MEMORIAL SLOAN KETTERING CANCER CENTER**

**Introduction**

MSKCC is the oldest and largest privately-operated not-for-profit cancer center in the world. The mission of MSKCC is to provide leadership in the prevention, diagnosis, treatment and cure of cancer through excellence, vision and cost effectiveness in patient care, outreach programs, research, and education.

MSKCC has devoted more than a century to providing world-class patient care, driving innovative research, and training the future generations of cancer specialists and researchers. The Hospital was founded in 1884 on Manhattan’s Upper West Side by a group that included John J. Astor and his wife, Charlotte. In 1936, the Hospital began a move to its present location on York Avenue, on land donated by John D. Rockefeller, Jr., and the new Hospital opened in 1939. The building, which was reconstructed between 1970 and 1973, stands on that site today. The founding of the Institute dates back to the 1940s, when two former General Motors executives, Alfred P. Sloan and Charles F. Kettering, joined forces to establish MSKCC’s basic research arm. In 1960, a new corporate entity — the Center — was formed to coordinate and guide the overall policy for the Hospital and the Institute, and in 1980 these entities were unified into a single institution, with a single president and CEO.

MSKCC is home to more than 18,000 physicians, scientists, nurses and support staff united by a dedication to conquering cancer. As an independent institution, MSKCC combines 135 years of research and clinical leadership with the freedom to provide highly individualized, exceptional care to each patient. MSKCC’s always-evolving educational programs continue to train new leaders in the field, here and around the world. One of MSKCC’s greatest strengths is the interconnectedness of its physicians and scientists. Their close collaboration enables MSKCC to provide patients with the best care available while working to discover more effective strategies to prevent, control, and ultimately cure cancer. Since their founding, the Hospital and the Institute have pioneered countless discoveries in clinical and basic science research that have led to standard-setting innovations across areas of cancer diagnosis and treatment.

The principal corporations related to the Center are the Hospital, the Institute, MSK Insurance U.S., Inc. (“MSKI”), Realty and the Louis V. Gerstner, Jr. Graduate School of Biomedical Sciences at Memorial Sloan Kettering Cancer Center (“GSK”). The Center, the Hospital and the Institute currently have virtually identical officers and Boards of Managers. The Boards of Realty and MSKI have representatives of the Center’s Board of Managers.

MSKCC owns or leases approximately six million square feet of clinical, research, support and residential space in the metropolitan NYC area.

## **The Center**

The Center provides general administrative, financial management, and other services to the clinical and research enterprises. The clinical and research enterprises share in the cost of these support services with the exception of its fundraising and certain administrative services. The fundraising activities of the Center generate funds in support of the research, clinical, and training needs of MSKCC. In addition, MSKI (described more fully below) is a subsidiary of the Center.

As of June 30, 2019, the Center accounted for 37 percent of the total assets and 71 percent of the unrestricted cash and investments of MSKCC. The 2019 Series 1 Bonds are general unsecured obligations of the Center and are not secured by a pledge of any revenues or assets of the Center. See “PART 1 – INTRODUCTION – Security for the 2019 Series 1 Bonds.”

## **The Clinical Enterprise**

The Hospital, a 514-bed licensed specialized hospital, traces its history to the New York Cancer Hospital, founded in 1884 as the nation’s first cancer hospital. All inpatient activity — from surgery to hospital stays — takes place at the Manhattan campus between 67th and 68th Streets on York Avenue. The Hospital also operates a number of outpatient locations across New York City, as well as treatment centers across Long Island, Westchester County, and New Jersey.

MSKCC has received numerous awards and distinctions for its commitment to exceptional patient care:

- According to *US News & World Report*, Memorial Sloan Kettering has ranked as one of the top two hospitals for cancer care in the country for 30 years, and among the nation’s top hospitals for pediatric cancer care.
- MSKCC has been designated a Comprehensive Cancer Center by the National Cancer Institute, one of only 50 institutions to receive this distinction.
- MSKCC received patient satisfaction scores as reported by Press Ganey that place MSKCC in the 98th percentile of rated hospitals. The likelihood that an MSKCC patient would recommend MSKCC’s outpatient facilities to friends and family was 97 percent.
- Received Magnet® recognition, the nation’s highest honor for excellence in nursing. Granted by the American Nurses Credentialing Center (ANCC), Magnet® recognition is the most prestigious distinction a healthcare organization can receive for nursing excellence and quality patient outcomes. Only about 7 percent of hospitals nationally carry this prestigious designation.
- New York Magazine’s Top Doctors issue included 121 MSKCC doctors in their 2019 listing. The listing includes more cancer physicians from MSKCC than from any other hospital in the tri-state area.
- Inclusion on Becker’s 2019 list as one of the 150 Top Places to Work in Healthcare.
- Glassdoor’s annual list of *Best Places to Work* named MSKCC 66<sup>th</sup> in the United States and one of only seven organizations in New York City selected.
- MSKCC has received the Practice Greenhealth’s Top 25 Environmental Excellence Award for five consecutive years.

To achieve its goals in patient care, the Hospital maintains a broad range of clinical expertise required to provide for the care of patients with cancer and to foster the prevention of cancer. The Hospital strives for excellence in all therapeutic modalities—surgery, chemotherapy, radiotherapy, and the emerging field of biological therapy, notably immunotherapy—with primary emphasis on the cure of cancer. Patient care is provided through the collaborative efforts of the medical staff, registered nurses, and allied health professionals. This multi-modality approach is formalized by the Hospital’s “disease management” program of care. Disease Management Teams include surgical oncologists, medical oncologists, radiation

oncologists, diagnostic radiologists, pathologists, and other healthcare professionals. The approach is reflected in the organization of the Hospital's inpatient floors such that all inpatients with a specific type of cancer receive care from the same team of specialists. MSKCC's experts have an extraordinary breadth and depth of experience in diagnosing and treating all forms of the disease, from the most common to the very rare. Each year, they treat more than 400 different subtypes of the disease. This level of specialization can often have a dramatic effect on a patient's chances for a cure or control of their cancer. In October 2015, a landmark study by MSKCC researchers published in *JAMA Oncology* found that there were large survival differences between different types of hospitals that treat Medicare patients with cancer. They discovered that patients treated at specialized cancer centers such as MSKCC had a significantly higher survival rate over five years compared with cancer patients treated at community hospitals. This also suggests that hospitals' long-term survival outcomes for cancer patients can be assessed without data on tumor stage, by using readily available, unbiased Medicare claims data. The study could be a critical step toward ultimately improving patient care nationwide.

As a comprehensive cancer center, MSKCC is also committed to caring for the whole person. MSKCC patients have access to a wide range of support services, including nutrition, dermatology, sexual health and fertility, rehabilitation, psychology, integrative medicine, art and music therapy, and many others. The popular Integrative Medicine program offers techniques for nurturing the body, mind, and spirit to enhance patients' and family members' quality of life. In addition, MSKCC is committed to supporting patients *after* the completion of their care. To ensure the highest quality of life for cancer survivors, MSKCC established a cancer survivorship program, a comprehensive service for survivors of adult-onset cancers, which includes follow-up care clinics, research, education and training. The first such program in the nation, MSKCC's Survivorship Program has become a model of cancer support programs for cancer centers around the country. In addition, MSKCC's Department of Pediatrics runs a Long-Term Follow-Up Program that helps children and families navigate and manage the chronic medical conditions often experienced by pediatric cancer patients.

The Hospital also has developed cancer prevention and screening programs. The purpose of these screening services is to 1) detect disease in its earliest, most curable stages and 2) identify for more intensive monitoring those individuals who, for genetic or environmental reasons, are at increased risk of developing cancer.

The **Barbara White Fishman Women's Outpatient Center** ("**Women's Outpatient Center**") provides screening for women at increased risk for cervical, ovarian and endometrial cancer. The Women's Outpatient Center also conducts programs for hormone replacement, osteoporosis prevention, and psychological and nutritional counseling.

The **John and Maxine Bendheim and Robert Bendheim Prostate Cancer Diagnostic Services** ("**PDS**") is part of the Urology program at the Sidney Kimmel Center for Prostate and Urologic Cancers. The PDS provides prostate cancer screening services for adult men at high risk for developing the disease. Services provided include digital rectal exams, blood tests for prostate specific antigen, and ultrasound-guided biopsies of the prostate.

The **Breast Examination Center of Harlem** ("**BECH**") offers screening services for breast and cervical cancers at no out-of-pocket expense to patients in the community. BECH offers breast physical exams, mammography, instruction in breast self-exams, pelvic exams, Pap smears, education on colorectal cancer screening, and smoking cessation counseling.

The **Ralph Lauren Center for Cancer Care and Prevention** ("**RLC**") is a community-based center located in Harlem, for the prevention, diagnosis and treatment of cancer through models of patient care, research, education and outreach designed to address the unique needs of the community. RLC provides care to approximately 4,000 people annually.

MSKCC also sponsors numerous programs and initiatives to empower community residents to achieve optimal health and advocate for their needs. To address behavioral risk factors for cancer such as obesity and smoking, MSKCC engages with thousands of individuals annually through Immigrant Health and Cancer Disparities Service as well as a Tobacco Treatment Program.

## **Growth and Expansion**

The shift in the delivery of cancer care to the outpatient setting over the past fifteen years required that the Hospital look beyond the immediate campus for space and convenient access for its patients. In response to this change, MSKCC opened and expanded a number of diagnostic and treatment centers in New York City. Major milestones are listed here:

- 1992 The Evelyn H. Lauder Breast Center and its companion Iris Cantor Diagnostic Center open at 205 East 64th Street
- 1999 The Laurance S. Rockefeller Outpatient Pavilion opens at 160 East 53rd Street
- 2002 The Sidney Kimmel Center for Prostate and Urologic Cancers opens at 353 East 68th Street
- 2003 The Ralph Lauren Center opens at 1919 Madison Avenue
- 2009 The Breast and Imaging Center opens at 300 East 66th Street along with the relocated Evelyn H. Lauder Breast Center
- 2010 The Center for Rehabilitation opens at 515 Madison Avenue
- 2010 The Brooklyn Infusion Center opens at 557 Atlantic Avenue
- 2014 The 60th Street Outpatient Center opens at 16 East 60th Street
- 2015 The Josie Robertson Surgery Center opens at 1133 York Avenue, helping to increase conversion of inpatient stays to ambulatory surgery through its specialized approach
- 2017 The Center for Laboratory Medicine opens at 327 East 64th Street, consolidating all MSKCC laboratory medicine programs

A major project slated to open in early 2020 is the **David H. Koch Center for Cancer Care**, a 750,000-gross-square-foot ambulatory care center at 74th Street along the FDR Drive. This state-of-the-art facility will accommodate the latest treatments for patients with hematologic cancers, such as leukemia and lymphoma, head and neck cancers, and thoracic cancers, as well as radiation therapy, early-stage clinical trials, and several other programs. This will also include the transition to performing lifesaving bone marrow transplants on an outpatient basis and the increased use of interventional radiology, the minimally invasive, image-guided therapy that destroys cancer without the need for an incision. The facility will support two of MSKCC's strategic objectives. First, it provides enough additional space to accommodate new patient access, including the addition of 16 inpatient beds. This will allow MSKCC to continue to maintain a leadership role in the treatment and cure of cancer. Second, it will permit MSKCC to create an intensive outpatient environment that supports transfer of care from an inpatient to an ambulatory care setting, thereby allowing MSKCC to increase efficiency as care is moved to lower cost facilities.

MSKCC continues to expand its services throughout the tri-state area with its network of regional locations. These include outpatient facilities in Hauppauge, New York; Commack, New York; Nassau County, New York; Basking Ridge, New Jersey; Monmouth, New Jersey; Bergen County, New Jersey; and Westchester, New York. Patients will be able to receive much of their treatment — including chemotherapy, radiation, and immunotherapy — at these facilities. The Hospital also has affiliations with several international medical centers in Europe, South America, and Asia, which provide training for their staff and referrals to the Hospital.

Beyond New York City and the surrounding areas, the MSK Cancer Alliance is an initiative designed to collaboratively guide community providers toward state-of-the-art cancer care. In 2014, Hartford HealthCare Cancer Institute in Connecticut became the first member of the MSK Cancer Alliance. Lehigh Valley Health Network, a multisite healthcare system in eastern Pennsylvania, became the second member in March 2016, and the Miami Cancer Institute, part of Baptist Health South Florida, joined the MSK Cancer Alliance in January 2017. Since announcing the MSK Cancer Alliance in 2014, MSKCC has seen MSK Cancer Alliance members adopt pioneering surgical and radiation techniques at an accelerated pace compared with other community providers. Alliance members have access to MSKCC clinical trials as well as MSK-IMPACT, a genetic sequencing tool that looks for genomic abnormalities and can open up new avenues of care through precision medicine.

In 2017, MSKCC and Norwalk Hospital launched MSK Physicians at Norwalk Hospital, a new cancer care collaboration that integrates MSKCC medical and radiation oncologists and care practices with the existing cancer program at the C. Anthony and Jean Whittingham Cancer Center at Norwalk Hospital. For the first time, MSKCC doctors began leading cancer services within another hospital's cancer program outside of New York State. This is a unique model of



collaboration through which Norwalk Hospital's current team of oncologists, nurses, surgeons, and pathologists practice alongside MSKCC doctors.

MSKCC is also collaborating with two other New York City-based medical institutions on the operation of a new facility for proton therapy in Harlem, which opened in June 2019. Proton therapy is an advanced form of radiation therapy designed to kill cancer cells using charged particles called protons rather than x-rays. Proton therapy reduces the risk of treatment-related side effects due to radiation damage to normal tissues. It may also allow the use of a higher radiation dose to the tumor, maximizing the chance of destroying it. MSKCC is a financial and clinical partner in this collaboration and is not subject to obligations exceeding its financial commitment. MSKCC's commitment to purchase is now complete.

In 2017, MSKCC joined forces with Hackensack Meridian Health in a new partnership to begin changing the face of cancer care in New Jersey. Currently, MSKCC and Hackensack Meridian treat one in five New Jersey residents who are diagnosed with cancer. Combined, the two organizations annually will serve the most patients with cancer in the region, and many of their shared programs will be among the largest in the country. One of the main goals of the partnership is to bring both MSKCC's and Hackensack Meridian's portfolios of hundreds of clinical trials to more patients, increasing the ability to find new treatments for cancer faster.

MSKCC maintains a leading market position in its primary service area, the New York metropolitan area. In addition, MSKCC draws patients from other areas of the United States as well as from overseas. MSKCC's brand recognition is very strong, as evidenced by a demand for MSKCC's clinical services that exceeds MSKCC's current capacities. Approximately 32 percent of the Hospital's patients come from New York City, 32 percent come from other New York State areas, 23 percent come from New Jersey, 12 percent come from other parts of the country, and 1 percent from foreign countries. The Hospital, according to its analysis, had a 15.5% market share of the cancer patients in New York City. In addition, the Hospital has higher five-year survival rates for cancer patients as compared to other institutions. Management attributes this to the quality of its physicians and its high volume of patients and the fact that, within their specialties, each doctor treats significantly more patients than most other physicians practicing at other hospitals.

As of June 30, 2019 the Hospital (which includes all the clinical entities of MSKCC) accounted for approximately 84 percent of the total operating revenues and 39 percent of the total assets of MSKCC.

## **The Research Enterprise**

MSKCC is one of the nation's leading centers for biomedical research, bringing together scientists and clinicians to solve critical problems in cancer biology and human health. The patient care given at MSKCC provides benefits from innovative programs in basic, translational, and clinical research. Between 1980 and 2018, the US Food and Drug Administration approved ten drugs developed in MSKCC laboratories for marketing.

The Institute, established in 1945, is the primary laboratory research arm of the Center. The Institute is dedicated to understanding the biology of cancer through nine major research programs: Molecular Biology, Cell Biology, Immunology, Cancer Biology and Genetics, Developmental Biology, Structural Biology, Computational and Systems Biology, Molecular Pharmacology, and Chemical Biology. The Institute's research staff includes more than 120 laboratory investigators, 325 research fellows, and 275 graduate students (both PhD and MD/PhD candidates). SKI boasts many National Academy of Sciences members and Howard Hughes Medical Institute investigators. Located in the research corridor of Manhattan's Upper East Side, the Institute enjoys a close collaboration with neighbors Cornell University, Weill Cornell Medical College, and The Rockefeller University.

The Institute maintains an extensive research program, including the Human Oncology and Pathogenesis Program, which bridges basic and clinical science to transform cancer care and address major scientific challenges in the era of precision medicine. Many scientists lead research laboratories within the Institute, including physician-scientists who apply insights from the clinic to their laboratory work. MSKCC investigators conduct research ranging from analyzing genetic changes in patient tumor samples to developing new imaging techniques to studying the best ways to optimize radiation therapy delivery. In addition, the Institute actively initiates and participates in clinical trials to identify more-effective cancer therapies. In 2019, MSKCC physicians lead more than 1,000 clinical research protocols for pediatric and adult cancers.

One of the greatest research strengths of MSKCC is the close collaboration among clinical and basic science researchers. MSKCC has more than 24 collaborative research centers that bring together laboratory investigators and

clinicians from different disciplines to focus on strategically important areas of cancer science, including programs dedicated to the study of nanotechnology, immunotherapy, and experimental therapeutics. The proximity of research laboratories to patient care facilities further strengthens the integration of basic science with clinical research, helping to speed the translation of basic science discoveries into clinical applications and, conversely, facilitate the swift application of knowledge gained in the clinic back to the laboratory.

Over the last several years, MSKCC's research enterprise has received prominent recognition for its achievements in advancing the way we understand and treat cancer. For example, Nature Publishing Group once again ranked MSKCC first among all cancer centers in the world for the high-quality research output in 2016. Also in 2016, MSKCC hosted a roundtable conversation with Vice President Joe Biden that brought together leaders from a variety of areas of cancer research and treatment. Mr. Biden's Cancer Moonshot Initiative helped galvanize Congress to pass the 21<sup>st</sup> Century Cures Act, which increased funding for the National Institutes of Health and provided significant benefit to MSKCC.

Here are just a few recent accomplishments in areas of research MSKCC is most intensively pursuing:

**Precision Medicine:** MSKCC conducts genetic testing of patient tumors in order to provide more personalized treatment. Since 2014, MSKCC has used MSK-IMPACT<sup>®</sup>, a powerful diagnostic test, in order to determine if tumors carry clinically useful mutations so patients can be matched with therapies or clinical trials that will benefit them. The study published in Nature Medicine in March 2017 found that 37% of patients had at least one actionable mutation, enabling MSKCC physicians to recommend a therapy targeted to their precise genetic abnormality. By November 2017, MSK-IMPACT was looking for alterations in 468 genes and had sequenced tumors from 20,000 patients. The US Food and Drug Administration announced authorization of MSK-IMPACT on November 15, 2017. The experts at the FDA considered MSK-IMPACT to be a best-in-class genomic test and chose to partner with MSKCC to help determine how these kinds of tests are evaluated.

Additionally, MSKCC is collaborating with Cota Inc., a healthcare data and analytics company, bridging precision medicine to population health. As part of the collaboration, MSKCC will provide Cota with anonymized clinical data. Through its unique classification system, Cota will construct optimized clinical and genomic datasets from the MSKCC records, and the resulting datasets will help MSKCC improve patient care and advance its world-leading research efforts. These datasets will also further enable Cota to expand its real-world evidence database with the intention of improving clinical outcomes, reducing total cost of care in the field of oncology and gleaming actionable insights to advance cancer treatment discoveries and health outcomes. MSKCC and Cota will also form a technology collaboration focused on advanced analytics to enable more consistent disease classification within oncology, which could help drive further insights for both researchers and physicians.

**Immunotherapy:** This exciting field of discovery represents a substantial opportunity to advance and personalize cancer treatment, and MSKCC scientists are generating unprecedented insights. For example, MSKCC researchers pioneered an exciting form of immunotherapy called chimeric antigen receptor ("CAR") T cell therapy. In this approach, immune cells are removed from a patient, armed with new proteins that allow them to recognize cancer, and given back to the patient in large numbers. These cells persist in the body, becoming "living drugs." In 2017, the FDA granted the first approvals for CAR T cell therapy to treat leukemia and non-Hodgkin lymphoma. MSKCC researchers and clinicians also have played a leading role in developing and testing checkpoint inhibitors, which work by releasing a natural brake on the immune system so that immune cells recognize and attack tumors. Additionally, MSKCC researchers helped lead several clinical trials showing that checkpoint inhibitors can be effective against melanoma and lung cancer, and these drugs are being tested at MSKCC against sarcoma, lymphoma, and several other cancers. MSKCC's immunotherapy leadership was further solidified in 2016 when it became one of the six founding members of the newly created Parker Institute for Cancer Immunotherapy ("PICI"), established by tech entrepreneur Sean Parker. PICI will be geared toward accelerating breakthrough immunotherapy treatments for patients.

**Nanotechnology:** MSKCC researchers have developed several promising nanotechnology applications for imaging or drug delivery. One approach uses nanoparticles made from a seaweed extract that have a natural affinity for tumor blood vessels. These nanoparticles could be filled with drugs to selectively kill tumors. Another is a kind of "fitness tracker" for disease in which a small, wearable device could send light into the tiny implantable sensors made up of carbon nanotubes and analyze the signals that come back.

**Basket Studies:** MSKCC researchers pioneered the concept of a basket study, which harnesses the power of precision medicine by assigning treatments to patients based on the genetic alterations driving their cancers rather than where their tumors originated in the body. Since August 2015, when MSKCC experts published initial results of the first

basket study, histology-agnostic clinical trials have emerged as one important means of systematically testing a targeted therapy across a variety of tumor types. In 2017, the FDA approved the drug vemurafenib for the treatment of patients with *BRAF V600*-mutant Erdheim-Chester disease (“ECD”). This is the first approval of a targeted therapy based on a basket study and the first-ever drug approved for ECD, a rare blood disorder.

**Liquid Biopsy:** MSKCC investigators are developing a less invasive way to analyze tumor cells or tumor cell DNA that has entered the bloodstream simply by drawing blood samples from patients. Studies led by MSKCC researchers show liquid biopsies can reveal essential information about how a cancer may be growing or shrinking or how well a drug is working.

**Hereditary Cancer Genes:** MSKCC’s Robert and Kate Niehaus Center for Inherited Cancer Genomics, established in 2015, is using the latest in gene sequencing technologies to discover the inherited causes of cancer. The ultimate goal is to develop new approaches for prevention as well as earlier detection and treatment of cancer.

**Artificial Intelligence in Pathology:** MSKCC researchers are using a type of artificial intelligence called machine learning to train supercomputers to recognize cancer on digitized microscope slides. In 2019, the initiative reached a milestone with the publication of a study analyzing more than 44,000 digitized glass slide images from more than 15,000 people with cancer. The results show that this advanced machine-learning approach identifies nearly 100% of the cancer-containing biopsies. Speeding the process of analyzing samples could enable pathologists to focus their attention on the most relevant slides.

Other significant research collaborations include:

- MSKCC researchers have collaborated with the American Association for Cancer Research to create Project GENIE (Genomics Evidence Neoplasia Information Exchange), an initiative that pulls together genomic data and clinical information from patients treated at MSKCC and seven other leading cancer research institutions. The Project GENIE database already includes information on 59 major cancer types. This unique effort enables investigators from around the world to ask and answer questions about the link between genes, treatments, and outcomes.

The founding of Juno Therapeutics, a biotechnology company, among whose co-founders were three prominent MSKCC immunology researchers. Juno Therapeutics is pioneering efforts to speed the development of CAR T cell therapies for cancer based on groundbreaking discoveries by scientists at MSKCC, Fred Hutchinson Cancer Center, and the Seattle Children’s Research Institute.

A collaboration between MSKCC and Quest Diagnostics to utilize MSKCC’s clinical and research insights into gene mutations associated with solid tumors. The goal is to use molecular laboratory testing to improve physicians’ ability to treat patients with breast, prostate, colon, lung, and a variety of other solid tumor cancers by giving them a better understanding of the genomic underpinnings of their patients’ illnesses. Quest Diagnostics is a leading provider of diagnostic information services for patients and physicians.

The establishment of the Tri-Institutional Therapeutics Discovery Institute (“Tri-I TDI”). A unique partnership between MSKCC, Weill Cornell Medical College, and The Rockefeller University, the Tri-I TDI has entered into an initial partnership with Takeda Pharmaceuticals International, Japan’s largest pharmaceutical company, to assist investigators at the three institutions in developing small-molecule therapeutic agents and molecular probes for the treatment and diagnosis of cancer and other human diseases.

The majority of MSKCC research takes place in the Zuckerman Research Center, named in recognition of a \$100 million gift from Memorial Sloan Kettering Board member Mortimer B. Zuckerman. This 23-story building is uniquely designed to provide researchers with an inspiring, interactive, and efficient environment in which they can collaborate. ZRC strengthens the connections among structural biologists, cell biologists, chemists, computer scientists and clinicians, all of whom have joined forces to capitalize on new and promising opportunities in cancer research. In addition, it is a “green building,” employing energy-saving technologies and strategies.

#### **MSK Insurance U.S., Inc.**

MSKI is the primary insurance company for certain insurable risks of MSKCC. The primary insurance policies provided by MSKI to MSKCC are health care professional liability, warranty coverage for healthcare equipment, terrorism,

assumed coverage for workers' compensation, general liability and certain employee benefits such as long-term disability and life insurance. MSKI relies on ceded reinsurance to limit its insurance risks.

**S.K.I. Realty, Inc.**

Realty was organized primarily to develop and manage staff housing.

**Allocation of Revenues, Assets, Cash and Investments**

A summary of MSKCC's allocation of operating revenue, total assets and unrestricted cash and investments as of June 30, 2019 is as follows:

	<b><u>% of Operating Revenue</u></b>	<b><u>% of Total Assets</u></b>	<b><u>% of Unrestricted Cash and Investments</u></b>
Center	1%	37%	71%
Hospital	84%	39%	4%
Institute	13%	17%	20%
Realty	1%	3%	0%
MSKI	1%	4%	5%

**Academic Environment**

Education is a vital part of MSKCC's mission. MSKCC training programs prepare the next generation of physicians, scientists, and other healthcare professionals for leadership roles in life sciences and medicine, especially as related to cancer. Educational collaborations with The Rockefeller University, Cornell University, and Weill Cornell Medical College offer PhD programs in chemical biology, computational biology and medicine, and the medical sciences. MSKCC also partners with Weill Cornell Medical College and The Rockefeller University to offer an MD/PhD program for aspiring physician-scientists.

In 2004, MSKCC established a PhD program in cancer biology through the GSK. This novel program, which offers a PhD degree in cancer biology and enrolled its first class in 2006, trains gifted basic laboratory scientists to work in research areas directly relevant to cancer and other human diseases. GSK now boasts nearly 70 graduates.

MSKCC also offers postgraduate clinical fellowships to train physicians who seek special expertise in a particular type of cancer, as well as postgraduate research fellowships that provide physicians and scientists with advanced laboratory research training. With faculty appointments at the Weill Cornell Medical College, MSKCC clinical staff members train residents and medical students as well.

MSKCC is committed to improving the quality of care for cancer patients through the professional development of nurses. MSKCC provides an excellent environment in which nurses can learn from professionals who are highly specialized in cancer care and nursing education. MSKCC values their efforts to achieve advanced degrees and national certifications in their specialty practices, keep pace with technological and scientific advances in oncology nursing, and play leadership roles in the ongoing development of the profession.

In addition, MSKCC offers a variety of educational and training programs for high school and college students who aspire to careers in medicine and science.

In 2018, MSKCC trained

- 1,714 residents and clinical fellows
- 575 postdoctoral research fellows, research scholars, and research associates
- 288 PhD and MD/PhD candidates
- 512 nursing students
- 524 medical students

## Strategic Direction

The management of MSKCC believes that there is a substantial opportunity to expand its clinical activities. During the next ten-year period, government projections of population changes and the age-adjusted cancer incidence rate indicates that there will be significant growth in new cancer cases. MSKCC leadership recognizes that it needs to plan now for expanded capacity in order to meet the projected growth rate and longer-term treatments for cancer patients. MSKCC provides the highest quality of care as demonstrated by its clinical outcomes and patient satisfaction levels and is uniquely suited to continue to provide this level of service and transition care towards less expensive services.

In order to meet this need, management has identified several goals that include:

- continuing to provide the highest quality treatment, research, and training programs,
- hiring, training, and retaining the highest quality professional and support staff,
- demonstrating MSKCC’s “Value Proposition,”
- continuing to “Bend the Cost Curve” by redesigning the patient care process to improve outcomes and deliver care in a lower cost setting, including ambulatory care activities previously performed in inpatient settings,
- responding to increasing demand for services by providing outpatient services closer to patients’ homes and in a manner that is less disruptive to patients at lower cost to MSKCC,
- establishing strategic partnerships with other regional providers,
- maintaining financial strength and the ability to implement innovative programs, and
- leveraging digital tools to develop new products and services and reach new markets that were previously inaccessible to MSKCC.

MSKCC is executing on its digital strategy to reinforce its position at the forefront of cancer research, care, and education. By unifying the robust data resources of its clinical and research enterprises MSKCC is able to accelerate its ability to discover and advance care. Through the creation of new cross functional teams and collaborations MSKCC is building tools that will transform how MSKCC works and extend MSKCC’s ability to learn from patients and inform cancer care beyond its physical footprint.

MSK Direct protects MSKCC’s pipeline of commercially insured patients from exclusionary tactics including provider consolidation and narrow networks by partnering directly with employers and unions to deliver solutions to their cancer-related challenges and to ensure direct access to care at MSKCC. The program is currently available to 3.2 million people through 78 employers and labor unions.

## Capital Spending

During the three-year period ended December 31, 2018, MSKCC spent approximately \$2.07 billion for property, plant and equipment in order to maintain and improve the quality of facilities and information systems necessary to support and expand clinical, research and educational programs. Capital spend was funded through a combination of debt proceeds, philanthropy, and internal resources.

MSKCC is in the final stage of its Clinical Expansion program, which, when complete, will expand access to MSKCC and increase patient capacity both in Manhattan and the surrounding regional network. The original Clinical Expansion program needed to be flexible and has been modified and expanded. These changes are the result of increased patient demand, highly successful launch of several outpatient sites, changing technology and patient treatments, and other financial opportunities. MSKCC estimates that all planned facilities will be open early in 2020. In addition to the Clinical Expansion, MSKCC incurs routine capital expenditures, which have averaged approximately \$220.3 million over the past three years.

## Governance

The Center, the Institute, and the Hospital are separately incorporated, consistent with their corporate charters. Each corporation is governed by a Board of Managers. With few exceptions the Managers of the Center, the Institute, and the Hospital are identical. Each Board of Managers is to consist of not more than 30 members. The current membership is 29 for the Center and 29 each for the Hospital and the Institute. The Board of Managers of the Center is selected by the Board of Overseers, a body of not more than 60 people whose essential function is to elect the members of the Center's Board of Managers. Nomination for Overseers and Managers for the Center, the Institute, and the Hospital is reserved to the Joint Nominating Committee consisting of selected Managers of all three corporations. Overseers elect their replacements from among those nominated by the Joint Nominating and Governance Committee. The Boards of Managers of the Institute and the Hospital elect their successors from among those nominated by the Joint Nominating Committee. Approximately one-third of the members of the Board of Overseers are elected each year for a three-year term. The Boards of Managers are elected each year and meet periodically during the year. The current members of the Boards of Managers and their principal occupations are:

Richard I. Beattie, Esq. <sup>(3)(9)</sup>	Senior Chairman, Simpson Thacher and Bartlett, LLP
Ian Cook <sup>(3)</sup>	Executive Chairman, Colgate-Palmolive Company
Stanley F. Druckenmiller	Chairman and CEO, Duquesne Family Office, LLC
Anthony B. Evnin, Ph.D.	Partner, Venrock
Roger W. Ferguson, Jr.	President and CEO, TIAA
Henry A. Fernandez <sup>(3)</sup>	Chairman and CEO, MSCI Inc.
William E. Ford	CEO, General Atlantic, LLC
Richard N. Foster	Managing Partner, Investment & Advisory Services, LLC
Stephen Friedman	Chairman, Stone Point Capital, LLC
Ellen V. Futter	President, American Museum of Natural History
Louis V. Gerstner, Jr. <sup>(3)(9)</sup>	Retired Chairman and CEO, IBM Corporation
Jonathan N. Grayer <sup>(3)</sup>	Chairman and CEO, Weld North LLC
Benjamin W. Heineman, Jr.	Belfer Center for Science & International Affairs, Harvard University – John F. Kennedy School of Government
Marie-Josée Kravis <sup>(2)(3)(5)(8)</sup>	Senior Fellow, Hudson Institute, Inc.
Jamie C. Nicholls <sup>(1)(3)(5)(8)</sup>	Former Chairman of the Board, Cold Spring Harbor Laboratory, Former General Partner, Forstmann Little & Co.
James G. Niven <sup>(9)</sup>	Former Chairman, Sotheby's, The Americas
Bruce C. Ratner	Chairman, Forest City New York
Clifton S. Robbins <sup>(3)(9)</sup>	CEO, Blue Harbour Group, L.P.
Alexander Robertson	President and COO, Tiger Management LLC
James D. Robinson III	Founding General Partner, RRE Ventures, LLC
Virginia M. Rometty	Chair, President, and CEO IBM Corporation
Stephen C. Sherrill <sup>(10)</sup>	Managing Director, Bruckmann, Rosser, Sherrill & Co., Inc.
Peter J. Solomon	Chairman, Peter J. Solomon Company, L.P.
John R. Strangfeld <sup>(3)</sup>	Former Chairman and CEO, Prudential Financial, Inc.
Scott M. Stuart <sup>(3)(4)(6)(9)</sup>	Co-Founder, Managing Partner, Sageview Capital, L.P.
Craig B. Thompson, M.D. <sup>(3)</sup>	President and CEO, Memorial Sloan Kettering Cancer Center
Douglas A. Warner III <sup>(3)(7)(9)</sup>	Former Chairman of the Board, J.P. Morgan Chase & Co. *
Peter A. Weinberg <sup>(3)</sup>	Founding Partner, Perella Weinberg Partners

- (1) Chairman of the Board, Memorial Hospital
- (2) Chairman of the Board, Sloan Kettering Institute
- (3) Member of the Executive Committee
- (4) Chairman of the Executive Committee
- (5) Vice Chairman of the Executive Committee
- (6) Chairman of the Board, Center Corporation
- (7) Honorary Chairman of the Board, Center Corporation

- (8) Vice Chairman of the Board, Center Corporation
- (9) Member of the Board of Directors, S.K.I. Realty, Inc.
- (10) Chairman, MSK Insurance U.S., Inc.

\* J.P. Morgan Securities LLC, an Underwriter for the 2019 Series 1 Bonds, is an affiliate of JPMorgan Chase & Co.

The Boards of Managers of the Center, the Institute, and the Hospital have established joint committees. The committees of the Boards of Managers include the Executive Committee, the Joint Audit and Compliance Committee, the Joint Conflict of Interest Committee, the Joint Human Resources Committee, the Joint Finance and Funding Committee, the Joint Investment Committee, the Joint Nominating and Governance Committee, and the Technology Transfer Committee.

Realty is governed by a Board of Directors consisting of six people (see footnote 9 above).

MSKCC, in the course of its business, engages in transactions and does business with firms with which Board members may be affiliated. Such business arrangements are made on an arms-length basis and, in the opinion of the management of MSKCC, on terms not less favorable to MSKCC than those that could be obtained through arms-length transactions with unaffiliated third parties.

### Management

MSKCC is managed by the officers of MSKCC, who are elected at each annual meeting of the Board of Managers and who hold office until the next annual meeting of the Board of Managers, or until their respective successors have been elected. The officers have general and active management responsibilities for operations, see that the policies and resolutions approved or adopted by the Board of Managers are carried out, and are charged with and are responsible for all executive, administrative, and financial matters. The current officers of MSKCC are:

Scott M. Stuart <i>Chairman of the Board, Memorial Sloan Kettering</i>	Douglas A. Warner III <i>Honorary Chairman, Memorial Sloan Kettering</i>
Marie-Josée Kravis <i>Vice Chair of the Board &amp; Chair, Sloan Kettering Institute</i>	Louis V. Gerstner, Jr. <i>Honorary Chair, Sloan Kettering Institute</i>
Jamie C. Nicholls <i>Vice Chair of the Board &amp; Chair, Memorial Hospital</i>	Richard I. Beattie, Esq. <i>Honorary Chair, Memorial Hospital</i>
Kathryn Martin <i>Chief Operating Officer</i>	Clifton S. Robbins <i>Treasurer</i>
Joan Massagué, Ph.D. <i>Director, Sloan Kettering Institute</i>	Craig B. Thompson, M.D. <i>President &amp; Chief Executive Officer</i>
Frederick Groves <i>Executive Vice President &amp; Chief Hospital Operating Officer</i>	Lisa DeAngelis, M.D. <i>Physician-in-Chief &amp; Chief Medical Officer, Memorial Hospital</i>
Kerry C. Bessey <i>Senior Vice President, Human Resources &amp; Chief Human Resources Officer</i>	Michael P. Harrington <i>Executive Vice President &amp; Chief Financial Officer</i>
Jason Klein <i>Senior Vice President &amp; Chief Investment Officer</i>	Jorge Lopez, Jr. <i>Executive Vice President &amp; General Counsel</i>

Patricia C. Skarulis  
*Senior Vice President, Information Systems &  
Chief Information Officer*

Eric Cottingham, Ph.D.  
*Senior Vice President,  
Research and Technology Management*

Debra Berns  
*Senior Vice President & Chief Risk Officer*

Edward J. Mahoney  
*Senior Vice President,  
Facilities Management and Construction*

Mark Svenningson  
*Senior Vice President, Finance*

Kenneth Manotti  
*Senior Vice President,  
Development*

Carolyn B. Levine, Esq.  
*Deputy General Counsel &  
Corporate Secretary*

The principal full-time executive officers of MSKCC and its related entities are Craig B. Thompson, M.D.; Kathryn Martin; Lisa DeAngelis, M.D.; Joan Massagué, Ph.D; and Michael P. Harrington.

**Craig B. Thompson, M.D.** (age 66) became the President and the Chief Executive Officer of MSKCC on November 2, 2010. He came to MSKCC from the University of Pennsylvania, where he had served since 2006 as Director of the Abramson Cancer Center and Associate Vice President for Cancer Services of the University of Pennsylvania Health System. Dr. Thompson joined the University of Pennsylvania in 1999 as a Professor of Medicine, Scientific Director of the Leonard and Madlyn Abramson Family Cancer Research Institute, and the first Chairman of the Department of Cancer Biology. Dr. Thompson is a board-certified internist and medical oncologist with extensive research experience in cancer, immunology, and translational medicine. His current research focuses on the role that metabolic changes play in the origin and progression of cancer. He holds a number of patents related to immunotherapy and apoptosis, and his work has contributed to the development of innovative treatments for autoimmune diseases and leukemia. Dr. Thompson is a member of the National Academy of Medicine, the National Academy of Sciences, the American Academy of Arts and Sciences, and the Medical Advisory Board of the Howard Hughes Medical Institute. He has published 428 peer-reviewed manuscripts and more than 100 reviews. Dr. Thompson has received many prestigious awards, including the Drexel Prize in Cancer Biology, the American College of Physicians Award for Medical Science, and the Stanley N. Cohen Biomedical Research Award.

**Kathryn Martin** (age 64) joined MSKCC in 1999 as Executive Vice President and Hospital Administrator. She oversaw the development of the clinical expansion plan, the MSK Cancer Alliance, and the opening of several new facilities, including the Breast and Imaging Center, MSK Commack, MSK Basking Ridge, and MSK West Harrison. In January 2015 she was appointed Chief Operating Officer. In that role, she assumed responsibility for several MSKCC functions, including Human Resources, Information Services, Facilities Management, Compliance, Revenue Management, Legal Affairs, and Research and Technology Management, while continuing to oversee Memorial Hospital operations and Strategy and Innovation. Before joining MSKCC, Mrs. Martin served in a variety of senior leadership posts at the NewYork-Presbyterian Hospital, the New York Hospital Cornell Medical Center, and the New York City Health and Hospitals Corporation. She currently serves on the Greater New York Hospital Association Board of Governors, the American Hospital Association Regional Policy Board 2, and the United Healthcare Executive Advisory Council.

**Lisa DeAngelis, M.D.** (age 64) is Physician-in-Chief and Chief Medical Officer at MSKCC where she oversees all clinical services, research, medical education, and multi-center collaborations for Memorial Hospital. Dr. DeAngelis has chaired the Department of Neurology at MSKCC since 1997, and her research focuses on primary brain tumors and the neurological complications of cancer. A leading figure in developing the current standard regimen to treat primary CNS lymphoma, Dr. DeAngelis is well known for work on the neurologic complications of cancer therapy, including cognitive impairment and stroke. She is the author of more than 300 peer-reviewed manuscripts and 130 book chapters and has also written or edited eight books. Dr. DeAngelis is an elected member of the National Academy of Medicine, a fellow of the American Neurological Association and the American Academy of Neurology, which in 2018 awarded her the organization's highest honors, the Wartenberg lecture and the Lifetime Achievement Award.

**Joan Massagué, Ph.D.** (age 66) assumed the role of Director of the Institute in 2013. He joined MSKCC in 1989 as Chair of SKI's Cell Biology Program and in 2003 was named inaugural Chair of the Cancer Biology and Genetics Program. With a research career spanning more than 40 years, Dr. Massagué is a world leader on investigating the mechanisms by



which growth factors, signaling pathways, and gene expression programs regulate normal cell proliferation as well as cancer metastasis. The research advances that he has produced are described in over 300 publications in scholarly scientific journals and ranks one of the most highly cited investigators in biomedical sciences. Dr. Massagué is a member of the National Academy of Medicine and the National Academy of Sciences, and has been the recipient of many awards and honors including the King Juan Carlos I Research Award, the Prince of Asturias Award in Science and Technology, the Vilcek Prize for Biomedical Research, the Pasarow Award for Cancer Research and Pezcoller Foundation-AACR International Award for Cancer Research and Fellow, AACR Academy. He has also been invested as Doctor Honoris Causa, the highest honorary academic degree, at the University Ramon Llull in Barcelona, Spain.

**Michael P. Harrington** (age 50) joined MSKCC in June 2019 and is the Executive Vice President Finance and Chief Financial Officer. Mr. Harrington has more than 25 years of financial and leadership experience with health systems. He spent the last 12 years at the Cleveland Clinic as the Associate Chief Financial Officer for the health system.

## Manhattan locations

1. Main Campus
2. Sidney Kimmel Center for Prostate and Urologic Cancers
3. Evelyn H. Lauder Breast Center and MSKCC Imaging Center
4. Bendheim Integrative Medicine Center
5. Employee Health Services
6. 64th Street Outpatient Center
7. Epidemiology and Biostatistics
8. 301 E 55th St. Imaging Center
9. Rockefeller Outpatient Pavilion
10. Counseling Center, Psychiatry
11. Sillerman Center for Rehabilitation
12. Breast Examination Center of Harlem
13. 60th St. Outpatient Center
14. Josie Robertson Surgical Center
15. 64th St. Laboratory Building
16. Koch Center at 74th St. <sup>(1)</sup>



<sup>(1)</sup> Expected to open in early 2020.

# MSK Suburban Locations



## **Manhattan Campus**

MSKCC's Manhattan campus (approximately 2.86 million square feet) occupies the entire square block from 67th to 68th Streets between York and First Avenues in Manhattan, as well as several buildings in the immediate vicinity. This property is divided among inpatient operations, ambulatory services, and research facilities.

The inpatient operations consist of medical/surgical units, a pediatrics unit, and adult and pediatric intensive care units. The adult ICU is comprised of 20 patient beds and two treatment rooms; the pediatric ICU has 5 beds. All 20 of the adult ICU beds are enclosed isolation rooms including two negative pressure rooms. This design reduces the risk of nosocomial spread of infection and affords greater patient privacy.

In addition to the inpatient care units of the Hospital, the Manhattan campus also houses several other clinical activities including outpatient chemotherapy infusion services, and the Urgent Care Center, where patients undergoing outpatient cancer treatment can come for immediate attention 24 hours a day. The Enid A. Haupt, Bobst and Howard Pavilions house doctors' clinical practice space and academic offices, support facilities, diagnostic and treatment suites equipped with the most advanced medical technology and the Radiation Oncology Center. Radiation services include General Radiology, Fluoroscopy, Ultrasound, CT, MRI, Mammography, Interventional Radiology, and Nuclear Medicine. Radiation Oncology services include three-dimensional tumor imaging and planning, intensity-modulated radiation therapy, hypofractionated and adaptive therapies, brachytherapy, and stereotactic radiotherapy. The Manhattan campus also contains laboratory facilities, including a blood donor room.

In 2006, a five-story addition to the main campus was completed. The addition houses three distinct programs: Pediatrics, described below, Pathology, and Perioperative Services, which includes 21 state-of-the-art operating rooms, pre-operative patient processing and a post-anesthesia care unit and adjacent support spaces. The increased space allowed for expansion and modernization of the Pathology labs, offices, and support services to accommodate growing demand as a result of increased surgical volume and new outpatient visits. The space is designed to facilitate and improve workflow processes, levels of staffing, and the introduction of new equipment and technologies. The larger operating rooms ensure an optimally safe and aseptic environment and one of the rooms will soon house the Brain Suite Integration System, an intraoperative neurosurgical imaging suite, which fully integrates relevant surgical and diagnostic tools, including intraoperative MRI, magnification, and navigation equipment.

The Claire Tow Pediatric Pavilion contains a 33-bed inpatient unit, the ambulatory care unit, the Pediatric Ambulatory Care Center, and a five-bed Pediatric Intensive Care Unit. The Pediatric Ambulatory Care Center provides over 90 percent of the care for young patients, including prolonged chemotherapy treatments, minor procedures and blood transfusions, eliminating the need for overnight hospitalizations. More than 24,000 pediatric outpatient visits are handled at this facility. The Claire Tow Pediatric Pavilion also includes a New York City Department of Education-certified Hospital School, with four full-time teachers, grades K-12.

The second floor and a portion of the third floor of the main hospital building were reconstructed to house the Center for Image-Guided Intervention and an expanded operating and endoscopy unit. This is a multidisciplinary facility where image-guided treatments and interventions, (including minimally invasive surgery, interventional radiologic procedures, and interventional endoscopy procedures) are consolidated into a single program. The program has resulted in the emergence of innovative approaches to diagnosis and treatment, reductions in operating room time, shorter hospital stays, minimization of risks and complications, improvement in patient outcomes, decreases in costs, and facilitation of the translation of advanced technologies to the community setting.

## **Ambulatory Facilities Operating in New York City**

**The Laurance S. Rockefeller Outpatient Pavilion** is located at 160 East 53rd Street and delivers outpatient cancer care including state-of-the-art diagnostic imaging, chemotherapy, immunotherapy, retail and specialty pharmacy services, early drug development, pre-admission testing, cardiology, pulmonary, and laboratory services. Outpatient practice, diagnostic, and treatment programs include medical oncology for gastrointestinal, gynecologic, thoracic, neurologic, sarcoma and melanoma cancers. Diagnostic imaging services offered at this site include CT, MRI, ultrasound, and bone densitometry. Programs in patient education, women's health, Integrative Medicine, survivorship, and social work are also available. Multidisciplinary Disease Management Teams work to advance the goals of the disease-management system, facilitating both high-quality as well as cost-effective cancer care. The Bobst International Center is located at 53rd Street for the convenience of MSKCC's international patients and their caregivers. A separate and privately-owned hotel located on the building's upper floors is available to accommodate patients who need to stay in New York City overnight or longer.

**Memorial Sloan Kettering Breast and Imaging Center** located at 300 East 66th Street houses the Evelyn H. Lauder Breast Center, offering patients the most advanced outpatient services for the diagnosis and treatment of breast cancer, such as medical and surgical oncology, and chemotherapy. In addition, the 16-story building is home to an imaging center that provides leading-edge diagnostic and treatment planning services for many types of cancer. Diagnostic imaging services available at this site include mammography, bone densitometry, x-ray, ultrasound, stereotactic biopsy, CT, PET/CT, and MRI. The center also offers support services to patients and their families, including survivorship programs, social work, nutrition and dietary counseling, Integrative Medicine, and genetic counseling. The facility was built to offer state-of-the-art care and to pioneer new and more-effective ways to diagnose, treat, and prevent breast and other cancers.

**The Bendheim Integrative Medicine Center** located at 1429 First Avenue is an outpatient facility offering complementary therapies to manage patients' symptoms and to improve quality of life for both the patients and their families. A full range of services is available at this location, including many types of massage, meditation, acupuncture, guided imagery and visualization, yoga, a variety of private and group fitness classes, and more. Integrative medicine services are also available to the public regardless of their hospital affiliation.

**The Counseling Center** located at 641 Lexington Avenue, 7th floor is an outpatient facility offering psychiatric and psychological services to adult and pediatric cancer patients and their families. The services offered there include: diagnostic assessment and treatment of psychiatric complications of cancer and cancer treatment, neuropsychological testing and cognitive remediation, crisis intervention, medical management of psychiatric drug therapies, individual, family, couples, caregivers and group psychotherapy for patients with cancer and allied diseases, tobacco cessation interventions and cognitive behavioral therapy.

**The Sidney Kimmel Center for Prostate and Urologic Cancers** located at 353 East 68th Street offers comprehensive, multidisciplinary care of genitourinary cancers under one roof, including medical oncology, chemotherapy, developmental therapeutics, surgical consults and minor procedures like cystoscopy and ultrasound guided prostate biopsies. This approach is convenient for patients seeking diagnosis and treatment for cancers of the prostate, testes, kidney and bladder, and it also fosters valuable research collaborations that are advancing the standard of care for these cancers. Programs in patient education, rehabilitation, Social Work, and survivorship support the comprehensive care of patients.

**The Brooklyn Infusion Center** is located at 557-1 Atlantic Avenue. The site provides chemotherapy, infusion therapy, injections, disconnects, vaccines, hydration, and laboratory specimen collection to current patients of Memorial Sloan Kettering in a convenient and comfortable setting in downtown Brooklyn. The facility is easily accessible by train, bus, and car, and features private treatment bays with accommodations for friends, family members, and caregivers. In addition to its role as a treatment center for Solid Tumor, Neurology, Lymphoma, Myeloma, Leukemia, BMT, and Hematology services, the Brooklyn Infusion Center serves as a community resource and neighborhood partner, providing cancer education and wellness promotion.

**The MSK Center for Rehabilitation** located at 515 Madison Avenue has greatly expanded MSKCC's capacity to help patients with cancer regain physical function and a sense of well-being. Within walking distance of the Rockefeller Outpatient Pavilion, the facility provides outpatient physical medicine services to all MSKCC patients who experience musculoskeletal/neurological impairments, and/or pain management issues. Treatment plans focus on enhancing the quality of life of cancer survivors by reducing or eliminating common symptoms such as weakness, functional deficits, pain, fatigue, and depression, through education, exercise, and other evidence-based therapeutic modalities. Specialists include physiatrists (physicians who manage neuromuscular, musculoskeletal, and cardiopulmonary disorders) as well as physical therapists, occupational therapists, and lymphedema therapists.

**The Ralph Lauren Center for Cancer Care and Prevention** located at 1919 Madison Avenue provides high quality cancer screening and treatment services to the medically underserved. In addition to providing prevention and treatment services for colon, prostate, cervical, and breast cancers, RLC offers its patients personalized attention and community outreach services as well as pain management and palliative care. RLC also provides prevention education and health information to the Harlem community and beyond.

**The 60th Street Outpatient Center** located at 16 East 60th Street opened in September 2014. The facility offers care from MSKCC experts in cytopathology, dermatology (including Mohs surgery), general internal medicine, geriatrics, head and neck surgery, interventional and general radiology, ophthalmic oncology, orthopedics, plastic and reconstructive surgery, uro-sexual medicine, and presurgical testing. Imaging services on site include x-ray, ultrasound, and Panorex. The location also provides space for two innovative new clinics: a Melanoma High-Risk Surveillance Clinic for patients with

a personal or family history of melanoma; and a multidisciplinary Advanced Skin Cancer Program for patients with nonmelanoma skin cancers who may require specialized follow-up care.

**The 64<sup>th</sup> Street Outpatient Center** located at 205 E. 64<sup>th</sup> Street offers endocrine, lymphoma, myeloma, head and neck, dermatology, urology, neurosurgery, leukemia, and BMT services in an outpatient setting. Clinical services include chemotherapy, immunotherapy, and minor procedures like biopsies and endoscopies. Patients also have access to support services on site, like social work, patient education, survivorship, and clinical dietetics.

**The Josie Robertson Surgery Center** located at 1133 York Avenue opened in December 2015. This 179,000 square-foot building has 12 operating rooms to provide technologically sophisticated surgical care on an outpatient basis for breast, dental, gastric mixed tumor, gynecology, head and neck, plastic and reconstructive, and urology surgery. Forty-six universal rooms are designed for pre-anesthesia, post-anesthesia, extended recovery, central sterile processing, pharmacy, pathology, radiology, and select point of care lab tests. Diagnostic imaging services at this location include portable x-ray and ultrasound imaging. The facility expanded MSKCC's robotic, minimally invasive, and general surgery capacities, and advanced MSKCC's objective to transition patients from inpatient to ambulatory care.

**Memorial Sloan Kettering Laboratory Medicine Building** located at 327 East 64th Street opened in October 2017. This approximately 90,000 square-foot facility houses a new state-of-the-art, highly flexible clinical laboratory building that consolidates all complex and specialized testing, including hematology, chemistries, microbiology, and flow cytometry. The building also includes a blood bank, cell therapy, and tumor procurement services. The uniting of these activities in one location reduces the duplication of staff and equipment and increase efficiency.

## **MSKCC Regional Sites**

MSKCC's network of regional programs brings MSKCC's high-quality cancer care to communities outside New York City at sites that it leases or owns. MSKCC's physicians provide patient care at the regional facilities and offer the same quality standards found at MSKCC's Manhattan facilities.

**Memorial Sloan Kettering Skin Cancer Center Hauppauge** in Long Island, New York, contains state-of-the-art technology for the treatment of dermatologic cancers, including Mohs Surgery, and head and neck services.

**Memorial Sloan Kettering Commack** in Commack, Long Island, offers a full range of services at this 94,000-gross-square-foot facility, including cancer diagnosis, chemotherapy, medical and surgical oncology, neuro-oncologic care, radiation therapy, medical, surgical and radiation therapy consultations, and diagnostic screening. Imaging capabilities include CT, MRI, PET-CT scanner, digital x-ray, mammography, ultrasound, bone densitometry, and interventional radiology. Support services offered at this location include social work, physical rehabilitation, clinical dietetics, and genetic counseling. This facility has been recently expanded to accommodate projected growth in patient volume.

**Memorial Sloan Kettering Basking Ridge** is located in Basking Ridge, New Jersey. Phase I of this complex is an 85,000-square-foot facility and is designed to accommodate a doubling in its square footage. A full range of services is offered at the facility, including cancer diagnosis, medical and surgical oncology, chemotherapy, immunotherapy, radiation therapy, medical, surgical, and radiation therapy consultations, and diagnostic screening. The full range of dermatologic oncology services, including Mohs surgery, is also available at Basking Ridge. Imaging technology includes CT scanner, PET-CT, MRI, digital x-ray, mammography, and ultrasound. Patients can also receive rehabilitation services, genetic counseling, clinical dietetics, social work, and survivorship programs at this location. This facility has recently been expanded to accommodate projected growth in patient volume and provide new services.

**Memorial Sloan Kettering Westchester** located in West Harrison, New York, opened in October 2014. The complex is a 114,000-square-foot facility offering a broad range of ambulatory diagnostic and treatment services for cancer. This location includes medical and surgical oncology, chemotherapy, immunotherapy, neuro-oncologic care, radiation therapy, medical, surgical, and radiation therapy consultations, dermatologic oncology services including Mohs surgery, and interventional radiology. Patients also have access to genetics counseling, pain management, clinical dietetics, physical rehabilitation, and individual and group psychosocial counseling. The facility also offers a full array of diagnostic imaging services including CT scanner, PET-CT, MRI, digital x-ray, mammography, bone densitometry, and ultrasound.

**Memorial Sloan Kettering Monmouth** located in Middletown, Monmouth County, New Jersey, was opened in December 2016. The nearly 289,000 total gross-square-foot complex contains a 120,000-gross-square foot ambulatory care

and ambulatory surgery facility offering a broad range of diagnostic and treatment services for cancer, including medical and surgical oncology, low-risk ambulatory surgery, chemotherapy, radiation therapy, medical, surgical, and radiation therapy consultations, and a full array of diagnostic imaging services. Radiology services include x-ray, CT, PET/CT, MRI, ultrasound, DEXA, and mammography. In addition to treatment and diagnostic services, this location also offers pain management, rehabilitation, genetics counseling, clinical dietetics, individual and group psychosocial counseling, and Integrative Medicine. MSK Monmouth also contains a 50,000-gross-square-foot data center and additional administrative space.

**Memorial Sloan Kettering Bergen** located in Montvale, New Jersey is a two-story 110,000-square-foot outpatient center opened in July 2018. Located near the Garden State Parkway and minutes from the New York State border, the site handles visits from cancer patients living in northern New Jersey as well as New York's Rockland and Orange counties. The facility houses outpatient services for medical and surgical oncology, medical, surgical, and radiation therapy consultations, neurology, neurosurgery, radiation therapy, and radiology. Radiology services include general radiology, mammography, ultrasound, MRI, CT, DEXA and PET imaging. For patients who experience treatment side effects such as pain or problems with coordination and/or balance, a gym with specialized equipment, staffed by specially trained physical and occupational therapists. The site also offers nutritional support, Social Work, genetic counseling, and Integrative Medicine.

**Memorial Sloan Kettering Nassau** located in Uniondale, Long Island, New York, is a two -story 114,000 square-foot outpatient facility opened in April 2019. Nearly 22% of current MSKCC patients reside in Nassau, Suffolk, and eastern Queens counties. MSK Nassau will serve as Long Island's most comprehensive cancer care program and provide a local option to the area residents. The facility offers services similar to the other regional sites including medical, surgical, radiation, and neuro oncology, medical, surgical, and radiation therapy consultations, immunotherapy, chemotherapy, and radiology imaging services, including mammography, ultrasound, x-ray, MRI, CT, and PET. Patients also have access to genetic counseling, pain management, social work, psychiatric counseling, clinical dietetics, and rehabilitation.

## Utilization

Below is a summary of key utilization metrics for MSKCC.

	Key Patient Statistics and Other Data			Six-Months Ended	
	Year Ended December 31,			June 30,	
	2016	2017	2018	2018	2019
Beds in Service	473	473	498	498	498
Admissions	23,078	23,506	24,243	12,133	12,869
Average Length of Stay	6.9	6.9	7.1	7.1	6.6
Occupancy Rate <sup>(1)</sup>	92.5%	94.3%	95.2%	94.1%	94.6%
Patient Days	159,872	161,661	171,798	84,260	85,239
Surgical Cases	23,066	25,330	27,919	13,875	15,594
Inpatient	9,633	9,786	10,016	5,107	5,453
Outpatient	13,433	15,544	17,903	8,769	10,141
Total Outpatient Visits	665,495	722,329	776,546	383,924	414,764
Manhattan	512,142	526,006	541,146	272,375	281,272
Regional Network	153,353	196,323	235,400	111,549	133,492
Chemotherapy treatments	224,225	247,496	266,503	130,070	140,015
Manhattan	140,764	137,515	140,343	70,137	71,065
Regional Network	83,461	109,981	126,160	59,933	68,950
Radiology	427,192	468,125	493,595	245,428	262,291
Manhattan	321,441	322,472	317,140	162,294	158,255
Regional Network	105,751	145,653	176,455	83,134	104,036
Radiology Oncology	118,413	137,579	146,293	71,073	79,493
Manhattan	58,928	60,187	59,436	29,891	30,480
Regional Network	59,485	77,392	86,857	41,182	49,013
Full Time Equivalent Employees	15,460	16,434	17,893	17,065	18,803

(1) Based on adjusted bed count. MSKCC has 514 licensed beds for all periods shown above.



## Financial Information

The following Combined Statements of Activities Without Donor Restrictions of MSKCC for each of the three years ended December 31, are derived from the audited combined financial statements. Financial data for the six-month periods ended June 30, 2019 and 2018 are derived from unaudited combined financial statements. The information should be read in conjunction with the audited combined financial statements for the years ended December 31, 2018 and 2017 together with the Report of Independent Auditors, which is included in “APPENDIX B 1 – COMBINED FINANCIAL STATEMENTS AS OF DECEMBER 31, 2018 AND 2017, AND FOR THE YEARS THEN ENDED, WITH INDEPENDENT AUDITORS’ REPORT.”

### Memorial Sloan Kettering Cancer Center and Affiliated Corporations Combined Statements of Activities Without Donor Restrictions (Dollars in Thousands)

	Year Ended December 31,			Six-Months Ended June 30,	
	2016	2017	2018	2018	2019
				[unaudited]	
<b>Operating Revenues</b>					
Hospital Care and Services Revenue	\$ 3,068,587	\$ 3,536,976	\$ 3,973,778	\$ 1,961,371	\$ 2,213,642
Grants and Contracts	257,893	296,493	334,536	158,103	177,700
Contributions	161,245	191,843	168,226	97,642	96,513
Net Assets Released from Restrictions	86,850	86,800	122,701	48,412	42,038
Royalty and other income	242,934	159,458	159,140	64,888	64,076
Investment Return Allocated to Operations	136,979	137,750	151,473	74,886	77,823
Total Operating Revenues	<u>3,954,488</u>	<u>4,409,320</u>	<u>4,909,854</u>	<u>2,405,302</u>	<u>2,671,792</u>
<b>Operating Expenses</b>					
Compensation & Fringe Benefits	2,131,071	2,335,132	2,587,336	1,241,788	1,384,038
Purchased Supplies & Services	1,320,892	1,501,935	1,756,174	833,831	948,121
Depreciation & Amortization	263,964	287,145	300,239	146,619	158,659
Interest	48,724	45,343	47,045	27,654	19,254
Total Operating Expenses	<u>3,764,651</u>	<u>4,169,555</u>	<u>4,690,794</u>	<u>2,249,892</u>	<u>2,510,072</u>
<b>Income from Operations</b>	<u>189,837</u>	<u>239,765</u>	<u>219,060</u>	<u>155,410</u>	<u>161,720</u>
<b>Non-Operating Income (Expense)</b>					
Net Assets Released from Restrictions – Capital	22,001	15,000	25,000	-	-
Investment Return Net of Allocation to Operations and amounts recorded in net assets with donor restrictions	29,713	219,440	(112,061)	4,461	256,816
Pension settlement costs	-	(33,480)	(40,414)	-	-
Other non-operating costs	(61,372)	(53,581)	(34,927)	(15,378)	(13,789)
Total Non-Operating Income (Expense)	<u>(9,658)</u>	<u>147,379</u>	<u>(162,402)</u>	<u>(10,917)</u>	<u>243,027</u>
Change in postretirement benefit obligation to be recognized in future periods	(30,222)	(120,481)	114,966	(2,197)	(2,125)
Increase in undesignated net assets	149,957	266,663	171,624	142,296	402,622
<b>Board-Designated</b>					
Board-designated philanthropy	-	-	114,132	13,801	2,511
Board-designated investment return	1,468	3,004	30,626	391	9,645
Board-designated other additions	-	15,000	82,295	70,000	38,925
Total Board-Designated Income	<u>1,468</u>	<u>18,004</u>	<u>227,053</u>	<u>84,192</u>	<u>51,081</u>
<b>Increase in net assets without donor restrictions</b>	<u>\$ 151,425</u>	<u>\$ 284,667</u>	<u>\$ 398,677</u>	<u>\$ 226,488</u>	<u>\$ 453,703</u>

## Management's Discussion and Analysis of Combined Statements of Activities Without Donor Restrictions

### For the Three-Year Period (2016 – 2018)

**Operating Revenues:** During the period 2016 to 2018, total operating revenues experienced a compound annual growth rate (CAGR) of 7.5%, led by patient care revenue. Hospital care and services revenue for the three year period increased by over \$900 million and averaged 9.0% CAGR driven by strong demand for patient services and increased market share. Additionally, MSKCC has expanded its capacity through its current major capital expansion. Recent outpatient site openings include Monmouth, NJ which opened in 2016 and MSK Bergen, located in Montvale, NJ, which opened in 2018. This is in line with the Hospital's overall strategy to shift patient care to an outpatient setting.

On average, approximately 63.5% of the Hospital's annual net hospital care and services revenue is from managed care organizations with which the Hospital has contracts. The Hospital continues to negotiate with those companies with which it does not currently have contracts and bills the patients directly.

### MSKCC – Payor Mix Summary

	<u>2016</u>	<u>2017</u>	<u>2018</u>
Medicare	27.8%	25.6%	27.1%
Medicaid	3.0	3.1	1.7
Managed Care (Non-Contracted), Commercial & Self Pay	7.2	7.8	6.1
Managed Care (Contracted)	62.0	63.5	65.1
Total	100%	100%	100%

MSKCC is exempt from the Medicare inpatient Prospective Payment System ("PPS") under what is known as the "cancer hospital exemption." Payment from Medicare is made on a cost-based system subject to an annual rate of increase limit. Under this method, a Medicare operating cost per discharge is established based on a cancer hospital's historic costs. This cost per discharge excludes approved direct medical education costs and capital-related costs, which are currently reimbursed on a per-resident amount for Graduate Medical Education and on an actual basis for capital-related costs. MSKCC also has a special payment status under the Medicare outpatient PPS. See "PART 7 – BONDHOLDERS' RISKS – Medicare and Medicaid" for further discussion.

Grants and Contracts revenue has increased from 2016 to 2018 at a CAGR of 9.06%. In addition to Federal funding, the Institute has developed new sources of research revenue, such as industrial sponsored research, philanthropic grants, and private agency grants. Royalty revenues declined from 2016 to 2018 due to a royalty contract that expired in the second quarter of 2017.

MSKCC has a policy of supporting operations and routine capital spending with philanthropy and a portion of investment returns. On average, philanthropy included in operations has been \$272.5 million each year for the three year period 2016 to 2018.

**Operating Expenses:** Salaries, fringe and purchased supplies expense growth was driven by an increase in staffing and supplies necessary to support increased patient volumes, new clinical facilities, and growth in clinical and bench research. Additionally, pharmaceutical expenses increased due largely to volume growth, costs for newly approved drugs and market price increases.

**Non-Operating Income (Expense):** Non-operating revenues are subject to significant year-to-year variation depending, in large measure, on the performance of the markets in which the funds are invested.

MSKCC relies on fund raising and investment performance to bolster operating income and capital needs. As a result, a material long-term reduction in contributions or in investment performance could adversely affect the financial condition of MSKCC.

In October 2017 and June 2018, MSKCC entered into a contract and sold approximately \$100 million and \$214.1 million, respectively, of its accumulated benefit obligation to an insurance company via an annuity buy-out resulting in settlement costs of approximately \$33.5 million in 2017 and \$40.4 million in 2018.

MSKCC generated \$227.1 million of Board Designated Unrestricted Income in 2018. In prior years, this type of non-recurring revenue was generally included in Operating Revenue.

**For the Two-Year Period (2018 and 2017)**

For the years ended December 31, 2018 and 2017, MSKCC had Income from Operations of approximately \$219.1 million and \$239.8 million, respectively. MSKCC also had net non-operating income (expense) of (\$47.4) million, as compared to \$26.9 million for the years ended December 31, 2018 and 2017, respectively. MSKCC's balance sheet strengthened during the two-year period and net assets increased \$322.3 million. At December 31, 2018, MSKCC's net assets were \$6.4 billion compared with total liabilities of \$4.2 billion.

**Operating Revenues** in 2018 increased by 11.4% from the prior year. Patient revenues increased by \$436.8 million or 12.3% driven by strong demand for patient services and increased market share. Additionally, MSKCC has expanded its capacity through its current major capital expansion. Recent outpatient site openings include MSK Bergen, located in Montvale, NJ, which opened in 2018. Grants and Contracts revenue increased 12.8% and is due to an increased volume of industrial sponsored research, philanthropic grants and private agency grants.

**Operating Expenses** increased by 12.5% in 2018 compared to 2017. Salaries, fringe and purchased supplies expense growth was driven by an increase in staffing and supplies necessary to support increased patient volumes, new clinical facilities, and growth in clinical and bench research.

**Non-Operating Income (Expense)** 2018 reflected negative investment returns of (\$112.1) million due to unfavorable financial market conditions in 2018 down from \$219.4 million in gains in 2017. Additionally, MSKCC incurred post-retirement benefit obligation changes to be recognized in future periods of \$115.0 million and (\$120.5) million for the years ended December 31, 2018 and 2017, respectively. The change year over year was due to changes in the discount rate used to value pension liabilities.

MSKCC generated \$227.1 million of Board Designated Unrestricted Income in 2018. In prior years, this type of non-recurring revenue was generally included in Operating Revenue.

MSKCC's broadly diversified investment portfolio was approximately \$5.0 billion at December 31, 2018. See "Investment Management" herein.

**For the Six-Month Periods Ended June 30, 2019 and 2018**

For the six-month periods ended June 30, 2019 and 2018, MSKCC had Income from Operations of approximately \$161.7 million and \$155.4 million, respectively. MSKCC also had net Non-Operating Income of \$240.9 million, as compared to (\$13.1) million of Non-Operating Expense for the periods ended June 30, 2019 and 2018, respectively.

**Operating Revenues** increased by 11.1% for the six-month period ended June 30, 2019 compared to the corresponding period in 2018. The increases can mainly be attributed to increases in Patient Care Revenue, and Grants and Contracts Revenue. Patient Care Revenues were up 12.9% driven by strong demand for patient services, increased market share, and increased capacity. Recent outpatient site openings include MSK Bergen, located in Montvale, NJ, which opened in 2018 and Nassau, NY which opened in 2019. The increase in Grants and Contracts Revenue is due to an increased volume of industrial sponsored research, philanthropic grants and private agency grants.

**Operating Expenses** increased by 11.6% for the six-month period ended June 30, 2019 compared to the corresponding period in 2018. Salaries, fringe and purchased supplies expense growth was driven by an increase in staffing and supplies necessary to support increased patient volumes, new clinical facilities, growth in clinical and bench research, and increased depreciation expense due to capitalization of completed building projects and purchased equipment.

**Non-Operating Income** increased in 2019 compared to 2018, primarily attributable to \$256.8 million in investment returns due to favorable financial market conditions.

## Budgeting and Financial Control

MSKCC operates under a Board-mandated budget guideline that provides support for operational and routine capital needs. The objective of the guideline is to procure a stabilized source of support and to preserve the purchasing power of MSKCC's investment portfolio. A detailed long-range planning process is updated annually.

The annual budget is prepared at the departmental level after overall budget objectives are prepared by management. Each departmental budget is reviewed by the appropriate Divisional Vice President or Director. Divisional Budgets are then reviewed and approved by Executive Management. Combined Divisional Budgets are then reviewed by the Joint Finance and Funding Committee, and ultimately by the Board of Managers for final approval.

Monthly financial statements are prepared comparing budget and actual performance. These financial statements are reviewed by management and with the Joint Finance and Funding Committee at each meeting. Significant departmental variances are reviewed with responsible supervisory personnel and corrective action is taken where appropriate.

## Liquidity Information

The following table sets forth MSKCC's days cash and investments on hand for the years ended December 31, 2016, 2017, and 2018 and at the period ended June 30, 2019. MSKCC's portfolio strategy has been defensive in recent periods, with an emphasis on larger-capitalization equities and shorter-duration fixed income. Approximately 52% of MSKCC's investment portfolio could be converted into cash within ninety days. In addition, MSKCC currently maintains a \$200.0 million committed undrawn revolving line of credit that can be utilized to meet liquidity needs.

### MSKCC – Days Unrestricted Cash and Investments on Hand

(\$ in Thousands)	December 31,			June 30,
	2016	2017	2018	2019
				[unaudited]
Unrestricted Cash and Investments	\$4,443,426	\$4,515,008	\$4,044,256	\$4,308,489
Total Operating Expenses	3,764,651	4,169,555	4,690,794	2,510,072
Less Depreciation and Amortization	<u>263,964</u>	<u>287,145</u>	<u>300,239</u>	<u>158,659</u>
Adjusted Total Operating Expenses	3,500,687	3,882,410	4,390,555	2,351,413
<b>Days Unrestricted Cash and Investments on Hand</b>	<b>463</b>	<b>424</b>	<b>336</b>	<b>334*</b>

\*Annualized

## Investment Management

Investment policy is determined by the Investment Committee of the Board of Managers, a group of seasoned investment professionals that provide strategic oversight to the MSKCC investment office. The MSKCC investments office consists of 8 full time investment professionals, 4 investment operations and reporting professionals, and 2 administrative professionals. MSKCC has a diversified investment program which includes conventional and alternative investments.

MSKCC currently utilizes the services of an independent custodian for substantially all conventional equity and fixed income investment portfolios. The services of multiple domestic and foreign investment advisors are utilized for equity, fixed income and cash equivalent investments.

MSKCC receives detailed reports of investment activities and security positions which are reviewed by MSKCC's investment office on a periodic basis. The Investment Committee of the Board of Managers meets quarterly to review investment performance and to evaluate investment policy options, such as the allocation of funds among asset classes or investment advisors. The Investment Committee has the authority to approve asset allocation changes as well as investment advisors.

MSKCC invests in a series of alternative investments that include equity hedge funds, distressed securities, event arbitrage, private equity, real assets, and venture capital. These investments are valued at market value or fair value (for non-publicly traded securities). The value of MSKCC's investments may be negatively affected by adverse events in the financial markets. MSKCC's investment asset allocation (excluding employee benefit funds) was as follows:

	<u>December 31, 2018</u>	<u>June 30, 2019</u>
Cash and Fixed Income	13%	9%
US Equity	13%	14%
International Equity	16%	16%
Hedge Funds	30%	31%
Real Assets	5%	8%
Private Equity & Venture Capital	23%	22%

The value of the combined investments in securities for MSKCC by type of fund is presented as follows:

**Combined Investments in Securities**  
**(at Market Value, includes Cash)**  
**(in Thousands of Dollars)**

	<u>December 31,</u>			<u>June 30,</u>	
	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>[unaudited]</u>	
	<u>2018</u>	<u>2019</u>			
<b>Assets Whose Use is Limited</b>	\$ 195,979	\$ 351,197	\$ 289,439	\$ 675,443	\$ 264,439
<b>Donor Permanently Restricted*</b>	647,694	653,541	674,476	717,913	683,171
<b>Unrestricted</b>	<u>4,443,426</u>	<u>4,515,008</u>	<u>4,044,256</u>	<u>4,054,504</u>	<u>4,308,489</u>
<b>Total</b>	<u><u>\$5,287,099</u></u>	<u><u>\$5,519,746</u></u>	<u><u>\$5,008,171</u></u>	<u><u>\$5,447,860</u></u>	<u><u>\$5,256,099</u></u>

\*Represents permanently restricted funds that have been received under arrangements stipulated by the donor that prohibit spending the original gift.

## Outstanding Indebtedness

The following schedules show (i) the outstanding principal amount of long-term debt at June 30, 2019 and (ii) the outstanding principal amount of long-term debt of MSKCC and ratios of debt to capitalization and cash-to-debt:

### Debt principal as of June 30, 2019 (\$ in thousands) (unaudited)

	<u>Actual</u>	<u>Pro Forma</u>
2019 Series 1 Bonds	\$ -	\$ 284,545
2017-1 Series Tax-Exempt Bonds	290,420	290,420
Series 2016-1 Tax-Exempt Bonds	100,583	100,583
NJEDA Series 2016-2 Tax-Exempt Bonds	105,125	105,125
Series 2015A Taxable Bonds	550,000	550,000
Dormitory Authority of the State of New York 2012 Series 1 Bonds	262,265	49,045 <sup>(2)</sup>
Series 2012A Taxable Bonds	400,000	400,000
Series 2011A Taxable Bonds	400,000	400,000
Dormitory Authority of the State of New York 2012 Bonds	80,380	4,355 <sup>(2)</sup>
Dormitory Authority of the State of New York 2010 Bonds <sup>(1)</sup>	34,000	34,000
Dormitory Authority of the State of New York 1998 Bonds	122,900	122,900
Unamortized Bond Premium	40,900	84,225 <sup>(3)</sup>
Total Long-Term Debt	<u>2,386,573</u>	<u>2,425,198</u>

(1) Currently held by JPMorgan Chase Bank, N.A., an affiliate of JPMS, an Underwriter for the 2019 Series 1 Bonds.

(2) In September 2019, the Center defeased a portion of tax-exempt Series 2012 and 2012 Series 1 Bonds.

(3) Includes unamortized bond premium on the 2019 Series 1 Bonds.

It is MSKCC’s practice to keep in place at least \$200.0 million in available lines of credit, of which zero has been drawn as of June 30, 2019. Currently, MSKCC has no interest rate swap transactions outstanding. All of MSKCC’s outstanding debt is fixed rate.

<b>MSKCC – Capitalization Ratio Summary</b>					
	<b>December 31,</b>			<b>June 30,</b>	<b>Pro Forma</b>
	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2019</b>
<i>(\$ in Thousands)</i>				[unaudited]	[unaudited]
Total Long-Term Debt	2,615,956	2,789,048	2,401,371	2,386,573	2,425,198 <sup>(1)</sup>
Net Assets Without Donor Restrictions	4,346,307	4,630,974	5,029,651	5,483,354	5,483,354
<b>Debt to Capitalization (%)</b>	<b>37.57%</b>	<b>37.59%</b>	<b>32.32%</b>	<b>30.33%</b>	<b>30.67%</b>
Unrestricted Cash and Investments	4,443,426	4,515,008	4,044,256	4,308,489	4,339,420 <sup>(1)</sup>
<b>Unrestricted Cash to Debt (%)</b>	<b>169.86%</b>	<b>161.88%</b>	<b>168.41%</b>	<b>180.53%</b>	<b>178.93%</b>

<sup>(1)</sup> Reflects the defeasance of the Series 2012 and 2012 Series 1 Tax Exempt Bonds that the Center defeased in September 2019. Also reflects the issuance of the 2019 Series 1 Bonds and receipt of the bond proceeds thereof.

### **Fund Raising and Development**

MSKCC has a robust fundraising program that combines a classic relationship-building approach with a multichannel marketing effort. Fundraising generates significant resources to support MSKCC’s research, training, and clinical needs. MSKCC’s Development Department includes a full-time professional staff of more than 200; it also relies on volunteers and members of its Board of Managers and the Board of Overseers to maximize fundraising. The Development Department is strategically organized to solicit contributions from individuals and families (through direct mail and personal requests in all fifty states and many countries worldwide), trusts, corporations, and foundations. It also operates several national peer-to-peer fundraising events, including Cycle for Survival. MSKCC ranked fifth among all hospitals and medical centers nationally in the Chronicle of Philanthropy’s America’s Favorite Charities 2018.

A summary of the combined fundraising history for MSKCC by donor type is presented on the following page:

**Memorial Sloan Kettering Cancer Center  
Combined Philanthropic History  
(in Thousands of Dollars)**

	<u>Year Ended December 31,</u>			<u>Six-Months Ended June 30,</u>	
	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2018</u>	<u>2019</u>
				<u>[unaudited]</u>	
<b><u>Cash and Donated Securities</u></b>					
Individuals	\$188,753	\$196,258	\$195,807	\$77,469	\$64,593
Corporations	19,813	21,583	31,377	14,989	12,915
Foundations	60,710	64,402	70,187	32,089	27,507
Bequests	60,920	48,100	131,395	40,873	66,965
Total	<u>\$330,196</u>	<u>\$330,343</u>	<u>\$428,766</u>	<u>\$165,420</u>	<u>\$171,980</u>
<b><u>GAAP Basis Philanthropy</u></b>					
Net Assets Without Donor Restrictions	\$270,096	\$293,643	\$430,059	\$159,855	\$141,062
Time Restricted, net of release	8,187	(20,059) <sup>(a)</sup>	(78,897) <sup>(a)</sup>	(14,747) <sup>(a)</sup>	(18,874) <sup>(a)</sup>
Purpose Restricted, net of release	20,000	7,000	6,492	-	(397) <sup>(b)</sup>
Endowments	18,986	37,800	25,687	8,378	6,209
Total	<u>\$317,269</u>	<u>\$318,384</u>	<u>\$383,341</u>	<u>\$153,486</u>	<u>\$128,000</u>
Fundraising Cost	<u>\$64,067</u>	<u>\$65,076</u>	<u>\$70,521</u>	<u>\$34,042</u>	<u>\$35,611</u>
Total	<u>20.2%</u>	<u>20.4%</u>	<u>18.4%</u>	<u>22.2%</u>	<u>27.8%</u>

<sup>(a)</sup> Includes payments against existing pledges greater than the amount of recording new pledges.

<sup>(b)</sup> Includes satisfaction of restrictions on funds greater than the amount of recording new purpose restricted funds



The GAAP basis philanthropic history for each of the three years ended December 31 is presented in the audited combined financial statements for each of those years. The cash basis philanthropic history is representative of the moneys available for use by MSKCC. The GAAP and cash bases differ primarily for two reasons: the annual change in the value of trusts and estates until they are ultimately settled and payments on pledges (the cash basis includes payments on pledges whereas the GAAP basis reflects the discounted value of pledges when made).

### **Pension Plans**

MSKCC supports a defined contribution 403(b) plan in which all MSKCC employees are eligible to make voluntary employee contributions (salary deferrals), subject to IRS limits. The 403(b) plan provides eligible staff members with retirement income through individual deferred annuity contracts purchased in each participant's name. MSKCC makes base contributions to eligible employees, which will depend on the employee's age (determined as of the preceding December 31). Additionally, MSKCC matches contributions for voluntary employee contributions made by eligible employees, with such match made on a dollar for dollar basis up to 3% of eligible pay. Employer contributions are subject to a vesting schedule and become fully vested after three years of service.

Additionally, MSKCC offers a defined benefit plan ("DB Plan") which was for full time employees not covered by the 403(b) 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 DB Plan was amended and limited to participants hired before December 16, 2012 who have met or will meet the participation requirements.

A valuation was performed and recorded for December 31, 2018 and will be performed for the year ended December 31, 2019 and will be included in the audited financial statements when issued.

### **Post-retirement Health Plans**

MSKCC offers its retirees and their spouses hospital and basic medical coverage which supplements any available Medicare coverage. Employees hired after 2006 are required to pay 100% of the coverage cost. Effective January 1, 2016, MSKCC 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 MSKCC's hospital and basic medical coverage for all Medicare-eligible participants who retire subsequent to December 31, 2006.

A valuation was performed and recorded for December 31, 2018 and will be performed for the year ended December 31, 2019 and will be included in the audited financial statements when issued.

### **Insurance**

MSKCC carries policies covering property damage and loss, and liability for directors, officers and employees in amounts that MSKCC believes to be appropriate for institutions of its size and character.

Malpractice liability insurance and other lines of commercial insurance are provided by a captive insurance company, MSKI. The captive insurance company fully reserves for risks retained and reinsures excess exposures with several highly-rated reinsurance companies. See Note 8 to the combined financial statements of Memorial Sloan Kettering Cancer Center and Affiliated Corporations attached as "APPENDIX B 1 – COMBINED FINANCIAL STATEMENTS AS OF DECEMBER 31, 2018 AND 2017, AND FOR THE YEARS THEN ENDED, WITH INDEPENDENT AUDITORS' REPORT" hereto.

### **Litigation**

MSKCC has no litigation or proceedings pending or, to its knowledge, threatened against any of the corporations, which, in the opinion of management, would materially adversely affect MSKCC's results of operations or financial condition.

## **PART 7 – BONDHOLDERS' RISKS**

*MSKCC is subject to risks relating not only to the provision of health care and research related services, but also to charitable giving and its investment portfolio performance. MSKCC's non-operating revenues are highly dependent on charitable giving and the performance of the investment portfolio. Significant changes in these factors could adversely*

*affect MSKCC's revenues and its ability to conduct its operations in its current configuration. In addition, MSKCC is subject to many changing developments in the health care environment which could adversely affect its financial performance, including, without limitation, changes in federal and state laws and regulations relating to reimbursement; changes in contracting with private insurance companies and managed care companies; cost overruns in its capital expenditures program; funding reductions in existing grant programs; and increased costs of inpatient and outpatient care, physician fees and costs of graduate medical education. The discussion of risks to holders of the 2019 Series 1 Bonds contained in this section is not intended to be exhaustive, but rather to summarize certain matters that could adversely affect payment of the 2019 Series 1 Bonds, in addition to other risks described throughout this Official Statement. In addition to matters discussed elsewhere herein, the following factors may have a material effect on the operations of MSKCC to the extent that cannot be determined at this time.*

## **General**

The financial information contained in "PART 6 – MEMORIAL SLOAN KETTERING CANCER CENTER" reflects the combined revenues and expenses and assets and liabilities of the Center, the Hospital, the Institute, MSKI and Realty. As described above, only the Center is obligated under the Loan Agreement and the Institute and Realty are jointly and severally liable under the Guaranties. The Hospital will not be obligated to make any payments with respect to the 2019 Series 1 Bonds, although the ability of the Hospital to incur debt or to permit liens on its property is limited under the Inducement Agreement and the Hospital is required to pledge certain collateral to secure the Center's obligations under the Loan Agreement under certain circumstances described herein. While the Center, the Institute, the Hospital and Realty are four separate corporations, the four entities are managed as an enterprise and the revenues and assets of each supports the operation of the enterprise as a whole. Patient Care Revenue is primarily revenues of the Hospital, while Grants and Contracts, Royalty Income and Other Income are primarily revenues of the Institute. Residential property used to house faculty, staff and students is owned by Realty and therefore related income and expense is attributable to Realty. (See "PART 6 – MEMORIAL SLOAN KETTERING CANCER CENTER – "Introduction" "– The Center," "– The Clinical Enterprise," "– The Research Enterprise," "– MSK Insurance U.S., Inc." and "– S.K.I. Realty," and "– Academic Environment.")

A significant amount of MSKCC's non-operating revenues is derived from contributions, investment income and gains on investments. The level of contributions and bequests varies depending on economic conditions, timing of major gifts, and other factors. Adverse economic conditions and/or changes in the tax code related to deductibility of charitable contributions could adversely affect the level of contributions and bequests received by MSKCC. The majority of the liquid assets of MSKCC are invested in marketable securities, the value of and returns on which are largely dependent on the performance of the financial markets in which such funds are invested. A downturn in the economy or the financial markets could adversely affect the magnitude of investment income and the value of investments. A portion of the investment portfolio is in alternative investments, which may not be readily marketable. A decrease in the value of investments and investment income could adversely affect the financial condition of MSKCC.

The receipt of future revenues by MSKCC is subject to, among other factors, federal and state laws, regulations and policies affecting the health care industry and the policies and practices of managed care providers, private insurers and other third-party payors, and private purchasers of health care services. The ultimate impact on MSKCC of recent changes in law and policy, health reform and other future changes in federal, state, and private payor policies cannot be determined at this time. Loss of established managed care contracts by MSKCC; the growth of narrow networks, which may not include MSKCC, as a cost containment strategy; reductions in hospital payments through "site neutral" policies (i.e., payer initiatives that seek to pay hospitals at physician office rates, regardless of the cost of care or complexity of the patient) and other reimbursement reductions; and the expansion of value-based payment arrangements that create incentives to keep patients within the same system for both primary and specialty care could also adversely affect the future revenues of MSKCC.

Although management believes that MSKCC's quality, highly skilled professional staff and strong financial resources place it in a position to respond to changes in the evolving health care market, there is no assurance that MSKCC will be successful. In addition, management cannot necessarily anticipate all events and circumstances that could occur. These unforeseen events and circumstances could cause material variations in future financial results.

Approximately 7% of MSKCC's operating revenues in fiscal year 2018 resulted from grants and contracts. MSKCC is a direct and pass-through recipient of National Institutes of Health ("NIH") funding, which represented approximately 4% of operating revenues. NIH falls under the auspices of the United States Department of Health and Human Services ("HHS"). MSKCC is also the recipient of other grants and contracts from the NIH and other agencies of the U.S. Government. Grants and contracts support basic, translational and clinical research. MSKCC makes no assurance that it

will continue to receive funding at current levels. The Trump Administration proposed significant cuts to overall NIH funding in its FY 2018 budget proposal and floated changes to the award formula that would have significantly reduced support for facilities and administrative costs. While Congress has rejected both of these proposed cuts and instead supported increased NIH funding, the near-term prospects for significant increases in U.S. Government grants and contracts are doubtful. If these near-term prospects do not improve over the longer term and MSKCC does not increase its share of awards, or obtain other funds to support these activities, the operating losses associated with the research activities could increase materially.

Future economic conditions, which may include an inability to control expenses in periods of inflation, and other factors may adversely affect revenues and expenses and, consequently, MSKCC's ability to make payments under the 2019 Series 1 Bonds. Such factors include: demand for health care services; the capability of the management of MSKCC; the receipt of grants and contributions; the ability to rebuild a declining stream of intellectual property revenues, referring physicians' and self-referred patients' confidence in MSKCC; increased use of health maintenance organizations ("HMOs") and preferred provider organizations ("PPOs") with discounted payment schedules; payor mix changes; exclusions from narrowing insurer networks; economic and demographic developments in the United States and in the service areas in which facilities of MSKCC are located; competition from other health care institutions, including the growth of entities formed to facilitate value-based payment; changes in rates, costs, third-party payments and governmental regulations concerning payment; and consequences of the implementation of the Affordable Care Act (the "ACA") and the Medicare and CHIP Reauthorization Act.

### **Construction and Project Risk**

Construction is planned on several clinical buildings which are part of MSKCC's strategic plan, and MSKCC is currently engaged in other projects outlined herein under "PART 6-MEMORIAL SLOAN KETTERING CANCER CENTER". Any of the foregoing projects may become subject to uncontrollable delays, which may be caused by various factors beyond MSKCC's control, including, without limitation, adverse weather events, strikes or unavailability of materials. Such factors may not only delay the completion of projects, but can in some cases result in increased costs, budget overruns or even prevent completion.

### **Increased Enforcement Affecting Academic Research**

The federal government has increased enforcement of laws and regulations governing the conduct of clinical trials at hospitals. Federal agencies which monitor federally funded research have grown and/or strengthened and the NIH has significantly increased the number of facility inspections performed by such agencies. The Food and Drug Administration ("FDA") has authority over clinical trials of investigational drugs. In addition, FDA asserts authority over laboratory developed tests ("LDTs"), although the agency currently exercises enforcement discretion over most LDTs. The Office of Inspector General ("OIG") of HHS, in past "Work Plans" has included several enforcement initiatives related to reimbursement for experimental drugs and devices (including kickback concerns) and has issued compliance program guidance directed at recipients of extramural research awards from the NIH and other agencies of the United States Public Health Service. MSKCC receives payments from grants administered by such agencies and is subject to complex regulation regarding clinical trials funded by governmental agencies and private sponsors (e.g., billing rules). For violations of applicable rules and regulations, MSKCC could have to pay substantial fines or penalties, or even suspend or terminate research programs or certain employees' involvement in certain programs. In the case of Medicare patients participating in a clinical trial, MSKCC could be subject to sanctions and repayment obligations as a result of billing errors.

### **Legislative, Regulatory, and Contractual Matters Affecting Revenue**

The health care industry is heavily regulated by the federal and state governments. A substantial portion of revenue of health care providers is derived from governmental sources such as Medicare, Medicaid, and research funding from NIH. Governmental revenue sources are subject to statutory and regulatory changes, administrative rulings, policy interpretations, determinations by the Medicare Program, and funding limitations, all of which may materially increase or decrease the rates of payment and cash flow to hospitals. There have been frequent and significant changes to the methods and standards used by the government to reimburse and regulate the operation of hospitals, and MSKCC anticipates that substantial additional changes will occur in the future. There is no guarantee that payments made under such programs will remain at levels comparable to the present levels or that they will be sufficient to cover all existing costs. The Trump Administration has proposed a number of policies significantly reducing payments to providers and is anticipated to continue to do so in the future.

Legislation is periodically introduced in Congress and in the New York legislature that could result in limitations on MSKCC's revenue, third-party payments, and costs or charges, or that could result in increased competition or an increase in the level of indigent care required to be provided by MSKCC. From time to time, legislative proposals are made at the federal and state level to engage in broader reform of the health care industry, including proposals to promote competition in the health care industry; to contain health care costs; to provide greater access to care; and to impose additional requirements and restrictions on health care insurers, providers, and other health care entities. Most significantly, the implementation of the ACA and MACRA have led to a number of significant changes for patients and providers, as described in more detail later in this section. Government and private payers are currently focused on ways to reduce the cost of drugs, which could also result in reduced payments to providers, reduced investment in innovation, and reduced revenue from future intellectual property. In addition to direct changes in reimbursement, changes to the procedures, products, or patients that are covered by insurance plans could impact reimbursement.

### **Managed Care and Other Private Initiatives**

Managed care programs, which include various payment methodologies and utilization controls through the use of primary care physicians, are increasingly being offered by traditional insurance companies and managed care organizations in the State. Payment methodologies include per diem rates, per discharge rates, discounts from established charges, fee schedules, "site neutral" payments, bundled rates and capitation payments. Enrollment in managed care programs has increased, and managed care programs are expected to have a greater influence on the manner in which health care services are delivered and paid for in the future. Managed care programs are expected to reduce significantly the utilization of health care services generally, and inpatient services in particular. The financial condition of MSKCC may be adversely affected by these trends.

### **Medicare and Medicaid**

Medicare is the federal health insurance system under which physicians, hospitals and other health care providers are reimbursed for services provided to eligible elderly and disabled individuals. Medicare is administered by the Centers for Medicare & Medicaid Services ("CMS"), which delegates to the states the process for certifying hospitals to which CMS will make payment. In order to achieve and maintain Medicare certification, hospitals must meet CMS's "Conditions of Participation" on an ongoing basis through surveys performed by the state in which the provider is located and/or The Joint Commission, a national accreditation organization for hospitals and other health care entities. The requirements for Medicare certification are subject to change and, therefore, it may be necessary for hospitals to effect changes from time to time in their facilities, equipment, personnel, billing, policies and services. Such changes that may be required could significantly impact reimbursement rates or costs that could have a material adverse impact on MSKCC's financial performance.

Hospitals generally are paid for inpatient and outpatient services provided to Medicare beneficiaries under a prospective payment system ("IPPS" for inpatient services and "OPPS" for outpatient services). Under IPPS or OPPS (collectively "PPS"), a fixed payment is made to hospitals based on the average cost of care incurred in providing various kinds of services.

Such systems are based on the law of averages (i.e., hospitals typically treat a wide array of conditions and diseases, where payments for some services offset payments for other services). Additionally, prospective payment systems typically have a significant lag time before new services and treatments are able to be integrated into payment rates. Because PPS payments assume that hospitals provide a wide array of services, institutions such as MSKCC, which focus exclusively on cancer, are not adequately compensated for their Medicare costs under this system. Recognizing this, Congress has on several occasions protected MSKCC and ten other institutions specializing in cancer care (collectively, the "Cancer Centers") from the shortfalls that would arise from the application of PPS to a single-specialty institution.

The Cancer Centers are exempt from inpatient IPPS and are instead paid under a system that was established under the Tax Equity and Fiscal Responsibility Act ("TEFRA") of 1982. Under the TEFRA system, the Cancer Centers are paid on the basis of costs incurred in a historic base year, trended forward for inflation and subject to cost limits. In addition, Cancer Centers are protected under OPPS. First, under the Balanced Budget Refinement Act ("BBRA") of 1999, a floor was set on the Cancer Centers' outpatient payments so that each Cancer Center's reimbursement for outpatient services did not fall below a pre-determined percentage of its reasonable costs. This payment floor is the ratio of the Cancer Center's payments for its cost reporting period ending in 1996 to its reasonable costs in that period. Second, in 2010, the ACA required CMS to conduct a study comparing Cancer Center outpatient costs to the costs incurred by all PPS hospitals. To the extent that CMS found that the costs incurred by Cancer Centers exceeded the costs incurred by PPS hospitals, CMS was to recommend

an adjustment to reflect those higher costs. After conducting the study, CMS determined that outpatient payments to the Cancer Centers should be increased so that the payment-to-cost ratio (“PCR”) of each Cancer Center equaled the average PCR of all PPS hospitals in the country. As part of the study, CMS was given the authority to annually reset the rate to better achieve parity for the Cancer Centers with PPS hospitals. The PCR floor on Medicare outpatient payments to the Cancer Centers is 88% in 2019, and is expected to be 89% in 2020.

The unique health care delivery model of the Cancer Centers has also resulted in their exemption from recent changes to Medicare payment for services delivered at new, off-campus hospital outpatient provider departments (“HOPDs”). There are a significant number of medical procedures that can be furnished either in the physician office or HOPD setting, but these services are paid under separate payment systems depending upon the location in which the services are delivered. Given the more onerous regulatory requirements and additional services that must be available in HOPD settings, reimbursement rates are generally higher in the HOPD setting than the physician office setting. Over time, this payment differential drove the acquisition of physician practices by some hospitals, which often designated the physician offices as HOPD settings in order to bill at the higher rate. To put an end to this practice, Congress included a provision in the Bipartisan Budget Act of 2015 that excluded services provided at any new, off-campus HOPD (i.e., HOPDs that started billing after November 2, 2015) from the OPPI and directed the HHS Secretary to designate another payment system, such as the Physician Fee Schedule (which has a lower payment rate). As a result of the way the law was drafted, it also eliminated the outpatient payment protection of the Cancer Centers for services provided at any new, off-campus HOPD. If implemented, this provision would have had a disproportionately negative impact on the Cancer Centers, given the relatively high percentage of cancer care that is delivered in the hospital outpatient setting and the sophisticated nature of the facilities that would have been impacted. When alerted to the impact on the Cancer Centers, Congress acted to exempt the Cancer Centers from the new payment methodology with the passage of the 21<sup>st</sup> Century Cures Act in 2016. The exclusion of the Cancer Centers from the lower payment for services at new, off-campus HOPDs was offset by a one percentage point reduction in the PCR that would have otherwise applied to the Cancer Centers’ outpatient payment adjustment. As a result of these provisions, the Cancer Centers have been excluded to date from CMS efforts to further reduce reimbursement for services provided at off-campus HOPDs, as well as efforts to limit the expansion of services at off-campus HOPDs exempt from these statutory changes.

While MSKCC does not anticipate changes to these payment protections, both Medicare inpatient and outpatient payments are always subject to future revision by Congress and CMS. Congress and the Administration routinely seek ways to achieve savings in certain programs to pay for other high priority programs. As such, there is no guarantee that statutory or regulatory changes that would eliminate or greatly reduce the protections currently in place will not be enacted.

Unlike on the hospital side, MSKCC does not receive any Cancer Center adjustments to Medicare payments for physician and other professional services. The 2015 repeal of the Medicare Sustainable Growth Rate (“SGR”) formula for updating payments under the Medicare Physician Fee Schedule (“PFS”) has created moderate uncertainty with respect to future payment levels for professional services. In the Medicare and CHIP Reauthorization Act (“MACRA”) of 2015, Congress repealed the SGR and replaced it with a two-track system for reimbursement under the PFS that is designed to slow spending growth by speeding the transition to value-based payment. Under this system, physicians and other eligible clinicians, such as nurse practitioners and physician assistants, will either qualify to participate under the advanced alternative payment model (“APM”) track in recognition of their receipt of a certain percentage of payments under qualifying value-based payment arrangements, or they will continue to receive fee-for-service (“FFS”) reimbursement that will be adjusted by as much as plus or minus nine percent by the year 2022 based on performance on quality, resource use, and other metrics.

In either track, physicians and other eligible clinicians have some level of payment at risk under MACRA. In the advanced APM track, qualifying value-based payment models require a minimum financial risk by definition. In the FFS track, adjustments to payment made based on performance metrics are budget neutral, meaning that the “losers pay the winners.” While CMS has estimated that specialty and large-group providers, e.g., MSKCC, will fare relatively well under MACRA, it is nevertheless difficult to predict the exact level of payments to a particular provider or provider group under the Medicare PFS going forward. More broadly, MACRA creates new reputational risk for providers, whose performance on certain quality and resource use metrics will be publicly reported. In addition, MACRA’s incentives to participate in risk-sharing, value-based payment arrangements may increase the number of health systems and provider groups that will have a disincentive to refer patients to external specialty providers.

There are many other factors that may also impact Medicare payments. Sequestration—automatic across the board cuts to federal programs instituted as a result of “pay-as-you-go” (or “pay-go”) requirements in legislation passed by Congress and established by the Budget Control Act of 2011, and modified by subsequent budget legislation,— currently

reduces Medicare payments by two percent during the years 2014 through 2021. Subsequent legislation enacted by Congress extended these reductions through 2027. While Congress has the option to exempt a particular bill or bills from the “pay-go” requirements by passing legislation to that effect, it is not guaranteed that sufficient members of Congress would support such a bill. Consequently, the passage of legislation that would increase the deficit could trigger significant, additional sequestration cuts resulting in lower Medicare payment rates.

Audits performed by CMS can change the amount of Medicare reimbursement MSKCC receives and/or may be required to refund; likewise, state audits of Medicaid reimbursement could also change future receipts and/or repayments.

Medicaid, like Medicare, is a government program to provide health care services to individuals below a certain income or assets threshold that is paid for in part by the federal government and in part by the state. Medicaid is administered at the state level. While a higher percentage of MSKCC patients are insured by Medicare than Medicaid, both programs have the potential to financially impact MSKCC. One trend seen in both programs is that they are encouraging and facilitating the development of managed care products (“Medicare Advantage” for Medicare and “Medicaid managed care programs” for the Medicaid program) and encouraging Medicare beneficiaries to enroll in these programs. Enrollment in a Medicare managed care product is voluntary and enrollees may disenroll and reenroll in the traditional Medicare fee-for-service system at specified times. Commercial insurers and HMOs typically offer managed care products for the Medicare population. In order to control Medicaid expenditures, the State requires most Medicaid patients to join Medicaid managed care programs. Experience in other states has shown that inpatient utilization is reduced for Medicaid recipients who are enrolled in such programs. MSKCC has not entered into contracts with many of the Medicaid managed care programs in New York.

Medicare enrollees in managed care products have their health care managed and paid for by the applicable insurer, HMO or PPO (the “managed care plan”). The managed care plan is reimbursed by the Medicare program with a monthly per-beneficiary amount for each Medicare enrollee. The managed care plan is at financial risk for cost overruns that exceed the per-beneficiary amounts paid to it by Medicare. Consequently, the managed care plan and its participating hospitals, physicians and other providers seek to reduce utilization and otherwise control the costs of providing care to Medicare beneficiaries. These financial considerations may contribute to reduced per patient revenues for MSKCC Medicare patients. Enrollment in Medicare managed care plans has increased in recent years, and is expected to increase in the future. The Trump administration has pursued efforts to allow Medicare managed care plans to implement more stringent prior authorization requirements on expensive treatments; these changes could increase the impact of the expansion of Medicare managed care plans. It is uncertain what, if any, impact this may have on Medicare payments from these payors to MSKCC. In general, Medicare Advantage plans have lower rates than traditional Medicare.

Future actions by the federal and state governments are expected to continue the trend toward more restrictive limits on reimbursement for hospital services. The management of MSKCC cannot assess or predict the ultimate effect of any such legislation or regulation, if enacted or adopted, on its operations.

## **National Health Care Reform**

The ACA was enacted in March of 2010 and included substantial changes to the United States health care system. The law included provisions affecting the delivery of health care services, the financing of health care costs, reimbursement of health care providers, including reductions to hospital payments, and the legal obligations of health insurers, providers, employers and consumers. Scheduled implementation of these provisions was staggered over the decade following enactment. Many of these changes took effect for the first time in 2014. The full impact of the ACA and its consequences for the health care industry continue to unfold. Regulatory and policy adjustments, judicial interpretations, and actions by Congress have all changed the course of implementation, and they remain possible avenues for further changes in course. The Trump Administration has made repeated attempts to repeal and replace the law, generally calling for a repeal of the individual mandate and a substantial reduction in federal spending, primarily achieved by terminating or substantially decreasing the expanded eligibility for Medicaid coverage by states provided for in the ACA. If successful, hospitals and providers serving large Medicaid populations will be deeply impacted by the cuts. These efforts to repeal the ACA have been narrowly defeated thus far. However, a significant number of lawmakers remain strongly committed to repealing the ACA, and new attempts at repealing and replacing it are possible.

Despite the legislative defeat of Repeal and Replace efforts to date, Republicans have pursued other avenues to repealing and/or weakening the ACA. For one, a number of states, supported by the Department of Justice under President Trump, have renewed legal challenges to the constitutionality of the ACA. These efforts have been successful in lower courts; although the impact of the decision may be limited to those states, the suit could invalidate the ACA. *See Texas v.*

*United States*, No. 4:18-cf-00167-O, Memorandum Opin. and Order (N.D. Tex. Dec. 14, 2018), *appeal docketed*, No. 19-10011 (5th Cir. argued July 9, 2019). Additionally, the Trump Administration has taken a number of regulatory steps to weaken the ACA's market reforms, namely issuing rules to allow a broaden availability of Association Health Plans and Short-term limited-duration plans, both of which may draw healthier individuals to less robust coverage and result in an insurance "death spiral" that drives down enrollment gains under the ACA and thwart access to high quality providers. As a result of these ongoing efforts, there remains great uncertainty regarding the long-term viability of the ACA, and the inability of health care providers to develop strategic and tactical plans presents a real business risk.

To date, the changes in the health care industry brought about by the ACA have had both positive and negative effects, directly and indirectly, on the nation's hospitals and other health care providers, including MSKCC. Positive changes have accrued due to expanded coverage and enhanced consumer protections on coverage, but providers have also experienced increased downward pressure on payments and the growth of narrow networks.

As of 2014, all individuals were required to have health insurance. Although this mandate has been loosely enforced, the uninsured rate has dropped substantially since implementation. To promote enrollment, the ACA provides that subsidies be made available to individuals making between 133 and 400 percent of the federal poverty level ("FPL") for the purchase of a qualified health plan ("QHP"), and it mandated the payment of cost-sharing reductions ("CSRs") to health plans to reduce out-of-pocket costs for certain categories of individuals. The State elected to implement a state-based exchange. The State also chose to launch a "Basic Health Program" as authorized by Section 1331 of the Affordable Care Act to cover low-income individuals (making between 133 and 200 percent of the FPL) who would otherwise be eligible for subsidies to purchase a QHP through the marketplace.

As noted above, a number of legal challenges were brought against these key provisions, including challenges to the individual mandate, the provision of tax subsidies, and the authority of the executive branch to make CSR payments to health plans. The courts have ruled to uphold both the individual mandate and the tax subsidy provisions of the ACA. However, the challenge to the authority of the executive branch to make the CSR payments has not been definitively resolved, and President Trump announced an end to the payments in late 2017. In most states, health plans offering QHPs on the health insurance exchanges factored the end of CSR payments into their 2018 rates, resulting in what appears to be relatively minimal disruption to the individual and small group marketplaces. The impact on New York and Minnesota, which both elected to implement the Basic Health Program option could be far more disruptive. New York's Basic Health Program, known as the Essential Plan, which covers more than half a million individuals, is funded in part by directing the dollars that would otherwise have been made to those individuals in the form of tax subsidies and CSR payments to New York State. As a result of the end of CSR payments under President Trump, the State's Essential Plan stood to lose more than \$800 million in CSR payments in 2018. Following litigation, CMS walked back reductions for 2018, but has proposed smaller reductions (estimated to be \$300 million) in 2020. Should these reductions take place, major health care reforms at the State level, including new fees or cuts to provider payments, could be targeted as a result.

In addition to provisions designed to expand coverage, the ACA established a new "floor" on coverage and introduced new consumer protections that apply to QHPs—and in some cases, to all health plans. One of the most significant changes under the health law is that no insurer may discriminate on the basis of health status and must therefore enroll individuals who apply for coverage with preexisting conditions. Other insurance reforms include annual and lifetime cost-sharing limits. Plans must also provide essential health benefits, i.e., ACA-defined categories of services, to all enrollees. These provisions have helped to ensure more individuals have adequate coverage and have reduced the ranks of the uninsured, as well as the under-insured.

However, the proliferation of insurance reforms has increasingly led insurers to look for other ways to control costs. Without an ability to exclude the sickest patients, raise cost-sharing amounts, and modify premiums based on health status, one of the few tools left to insurers is to create narrow networks of providers with lower negotiated rates. Under the ACA, services received from out-of-network providers are not subject to annual and lifetime cost-sharing limits. Insurers are also concerned about the effect of adverse selection if specialty providers, particularly such providers with national reputations for high-quality care, are included in their networks, which may result in large numbers of severely or chronically ill patients being attracted to these plans. Actions taken by plans to exclude specialty providers from their networks in order to avoid a higher number of enrollments by medically complex patients, known as adverse selection, can have a negative impact on hospitals such as MSKCC. Unfortunately, policymakers have struggled to define requirements for network adequacy that satisfy all stakeholders. Some efforts to enhance risk adjustment mechanisms to address these issues have been proposed, but federal action to require the inclusion of additional provider types by health plans is unlikely as the Trump Administration has moved to enhance – rather than limit – flexibility for health plans. Future legislative or regulatory action in this area could positively or negatively impact patients' ability to access specialty providers such as MSKCC.

The ACA also contemplated new payment models, which may impact federal Medicare reimbursement, such as bundling and patient-centered medical homes. Many of these models are being proposed or tested by the federal Centers for Medicare and Medicaid Innovation (“CMMI”) and some specifically focus on cancer services. Bundled payments may impact reimbursement by, for instance, including drug costs in a global payment for an episode of care (rather than separately reimbursing for drugs) so that providers are disadvantaged if they use newer, potentially more expensive products. CMMI seeks to align private payers with such initiatives. To date, these initiatives have had minimal impact in terms of application to the Cancer Centers, but future developments could have a significant impact on provider payments and could be applied to Cancer Centers.

The ACA contains amendments to existing criminal, civil and administrative anti-fraud statutes and increases funding for enforcement and efforts to recoup prior federal health care payments to providers. Under the ACA, a broad range of providers, suppliers and physicians are required to adopt compliance and ethics programs. While the government has already increased its enforcement efforts, failure to implement certain core compliance program features provide new opportunities for regulatory and enforcement scrutiny, as well as potential liability if an organization fails to prevent or identify improper federal health care program claims and payments.

Finally, the ACA enhanced the requirements for nonprofit charitable hospitals, including the requirement to conduct a community needs assessment every three years and to establish more robust financial assistance policies. These provisions arose from persistent critiques of non-profit hospitals spending on charitable care. Additional scrutiny of non-profit hospitals or proposals relating to further conditions placed on tax-exempt status are possible, including potential challenges to exemptions from state and local real estate taxes.

As mentioned above, the ACA is highly politicized. Continued initiatives to repeal it in whole or in part, to delay elements of implementation or funding, and to offer amendments or supplements to modify its provisions continue to be proposed. While the provisions of the various proposals to repeal and replace the ACA have varied wildly in terms of their content, reductions in federal Medicaid funding to states with higher than average expenditures have been a recurring feature of these bills. Based upon all of the above, it is more difficult for management of MSKCC to project future performance than it has been in the past.

Several provisions of the ACA are of particular note as they relate to MSKCC. Among those is a provision for Cancer Centers to publicly report on quality measures, which began in 2014. In addition, the ACA called for implementation of a value-based purchasing pilot for Cancer Centers, which was to begin no later than January 1, 2016. This value-based purchasing pilot has not been implemented. Under a value-based purchasing pilot, it is possible that MSKCC’s performance on the selected quality measures could result in lower Medicare reimbursement. MSKCC is currently working with other Cancer Centers to develop measures that will demonstrate the true value of high-quality cancer care more accurately than the measures that currently exist (for example, by focusing on outcomes for patients such as survival and functional status). CMS may incorporate such measures into the federal requirements.

### **Future Federal Legislation**

Future legislation, regulation, or other actions by the federal government are expected to continue the trend toward more restrictive limitations on reimbursement for health care services. Legislation is periodically introduced in Congress which could result in limitations on health care revenues, reimbursement, and costs or charges. At present, no determination can be made concerning whether, or in what form, such legislation could be introduced and enacted into law. Similarly, the impact of future cost control programs and future regulations upon MSKCC’s forecasted financial performance cannot be determined at this time.

Any future changes to the Medicare and Medicaid programs could result in substantial reductions in the amounts of Medicare and Medicaid payments to health care providers in the future which could substantially reduce the revenues available to MSKCC, and any reduction in the levels of payment in these government payment programs could substantially adversely affect MSKCC’s financial condition and ability to fulfill its obligations with respect to the 2019 Series 1 Bonds.

From time to time, Congress considers the issue of organizations exempt from federal income taxation, such as MSKCC. As noted earlier, such studies may result in additional requirements that MSKCC must meet in order to maintain its tax-exempt status. One proposal that has been made is that tax-exempt organizations that are hospitals be required to provide a certain level of indigent care. Congress can at any time impose additional requirements on tax-exempt organizations. Should Congress impose any new requirements on tax-exempt organizations, such as MSKCC, including any requirements relating to indigent care, it is not certain that (i) MSKCC would be able to meet such requirements, or



(ii) if it should meet such requirements, it would not suffer adverse economic consequences in doing so. See “-Internal Revenue Code Limitations” below.

### **Reimbursement of Hospital Capital Costs**

Under TEFRA, MSKCC’s capital costs apportioned to Medicare inpatient usage (including depreciation and interest) are treated as pass through costs and are fully reimbursed by the Medicare program. Outpatient capital costs are apportioned to the Medicare programs and are paid at the PCR in effect for a given period. There can be no assurance that future capital-related payments will be sufficient to cover the actual capital-related costs of MSKCC applicable to Medicare patient stays and visits or will provide flexibility for MSKCC to meet changing capital needs.

### **Reimbursement of Graduate Medical Education Costs**

MSKCC receives a fixed payment amount from Medicare for Graduate Medical Education costs related to the direct costs of interns, residents and fellows and applicable teaching costs from MSKCC’s faculty. The amount was determined based on an audit of base period costs dating back to the 1980’s, adjusted for inflation via annual consumer price index (“CPI”) adjustments from CMS. The fixed payment includes a cap on the number of trainees as well as a cap on the reimbursement rate per trainee. There is no assurance that payments for Graduate Medical Education activities will continue at the current rate and/or that actual costs will not be significantly more than reimbursement. Similarly, MSKCC receives payment for Graduate Medical Education through the State’s Health Care Reform Act funding mechanism, whose continuation and amount also cannot be assured.

### **Department of Health Regulations**

MSKCC is subject to the laws and regulations of the State. Compliance with such laws and regulations, including but not limited to, the State Department of Health regulations may require substantial expenditures for administrative or other costs. MSKCC’s ability to add services or beds and to modify existing services materially is also subject to Department of Health review and approval. Approvals can be highly discretionary, may involve substantial delay, and may require substantial changes in the proposed request. Accordingly, MSKCC’s ability to make changes to its service offerings and respond to changes in the environment may be limited.

### **Other Governmental Regulation**

MSKCC is subject to regulatory actions and policy changes by various federal, state, and local government agencies and other entities delegated authority by government agencies including, among others, the National Labor Relations Board; applicable professional review organizations; The Joint Commission; the various federal, state and local agencies created by the National Health Planning and Resources Development Act; the Occupational Safety Health Act; the act creating the Environmental Protection Agency; and the Internal Revenue Service. Such entities may enact legislation or impose requirements that present significant new burdens on the operations of MSKCC. There can be no assurance that such entities will not make policy changes that have adverse effects on the ability of MSKCC to generate revenues or utilize its facilities. Like many other medical centers throughout the nation, MSKCC is frequently subject to audits and other investigations relating to various segments of its operations. Although MSKCC endeavors to comply with all applicable laws and regulations and has an active and robust compliance program, MSKCC’s ability to comply in all instances is uncertain and non-compliance could subject MSKCC to fines, penalties, and litigation, among other possible sanctions.

### **Cyber security**

MSKCC relies on computer and other digital technology to conduct its customary operations. At an ever increasing rate, a number of entities and individuals have sought to gain unauthorized access to digital systems of large organizations for the purposes of misappropriating assets or information or causing operational disruption. Such attempts include highly sophisticated efforts to electronically circumvent network security as well as more traditional intelligence gathering and social engineering aimed at obtaining information necessary to gain access. MSKCC maintains a network security system designed to stop “cyber-attacks” by third parties and unauthorized individuals, and minimize its impact on operations; however, no assurances can be given that such system will be completely successful.

## **Competition**

The health care industry is changing rapidly, triggered by reforms of the acute care hospital reimbursement system, and by vertical and horizontal integration of health care (and non-healthcare) entrants who are interested in diversifying their businesses, controlling patient access, and adding shareholder value. The growing national strength of managed care plans, fueled by mergers and acquisitions and diversification are creating new relationships between insurers and providers. The growth of the managed care industry is being driven in part by increasing pressures from employers and other purchasers who are seeking to reduce their health care premium costs. In New York, integrated delivery systems are developing in order to provide adequate geographical coverage for major purchasers of health care and to provide a system through which potential cost savings may become available. The rise of accountable care organizations and medical home models are creating more barriers for patients seeking care at tertiary providers, like MSKCC, by making it more expensive for patients to obtain care outside of their network. New entrants, like Amazon, are making major investments to penetrate and disrupt existing pharmaceutical distribution channels, triggering other competitors to rethink their business strategy. Mergers such as Aetna and CVS or the involvement of Walgreen's in the oncology space are case in point. The effect of the changing competitive landscape is not known at this point. However, there is no assurance that these new alliances will enable MSKCC to continue to grow market share and/or not disrupt its operations.

MSKCC faces and will continue to face competition from other hospitals and integrated delivery systems. According to the State Department of Health, the number of inpatient beds in the State as a whole exceeds the demand for such beds. In addition, alternative modes of health care delivery offering lower priced services to the same population – such as ambulatory surgery centers, private laboratories, private radiology services, skilled and specialized nursing facilities, and home care – compete with MSKCC.

Management believes that sustained growth in patient volume, together with firm cost controls and continued superior outcomes, will be increasingly important as the health care environment becomes more competitive. There are many limitations on the ability of a hospital to increase volume and control costs, and there can be no assurance that volume increases or expense reductions needed to maintain the financial stability of MSKCC will occur.

As described previously, MSKCC, along with other Cancer Centers, has begun submitting quality reporting data to CMS. Data on the first measures (adjuvant chemotherapy and combination chemotherapy) was posted on CMS's website, Hospital Compare, for the first time at the end of 2014. Additional measures have continued to be added through annual rulemaking, and new publicly reported measures will continue to be developed for use by the public in making choices in health care. It is unclear what the impact of such public reporting will be on public perception of MSKCC and MSKCC's competitiveness in the market.

MSKCC also competes for trained staff. Historically, MSKCC has been successful in recruiting and retaining skilled professional staff. However, MSKCC's ability to continue to recruit and retain skilled staff will be dependent on their availability, changing economic dynamics, and other events which may be beyond the control of MSKCC. In recent years, the health care industry has suffered from a general scarcity of physician specialists and sub-specialists, physician assistants and nurse practitioners, nurses, therapists, pharmacists and other trained health care technicians. The number of people entering such professions has decreased relative to historical levels, and this trend may continue, thereby increasing the possibility of a specific shortage at MSKCC. The retirement of current MSKCC physicians could intensify the effects of any such shortage, and may adversely impact recruitment efforts and/or MSKCC's revenues. Although to date MSKCC has been successful in retaining and recruiting faculty and staff needed to grow market share and has implemented several strategies to do so, there remains a possibility that, during the next several years, it may experience a shortage of key faculty and staff in nursing, pharmacy, and medicine that could impact its ability to execute on its growth projection.

## **Growing Importance of New Drugs, Drug Therapy and Specialty Drugs**

New cancer therapies such as immunotherapy and targeted therapies are radically changing the clinical management of patients, and traditional reimbursement mechanisms for drugs may be inadequate to cover hospitals' costs to acquire and deliver these novel, high-cost therapies. Unlike other forms of chemotherapy, these new therapies utilize the patient's own immune system to search and destroy the cancer cells. In 2017, two new CAR T-cell therapy drugs received FDA approval for use in patients with late stage cancers who have exhausted other treatment options. The drug therapies have great promise, but are extraordinarily expensive resulting in exponential increases in pharmaceutical costs. While pharmaceuticals for the treatment of cancer have historically been modestly reimbursed, the new therapies challenge traditional reimbursement structures and make it more difficult to deliver without special arrangements.

The new classes of drugs entering the markets are routinely delivered through specialty pharmacy distribution channels that make it difficult to negotiate payment terms. Given the significant cost associated with the new therapies, insurers including government payers, are seeking ways to better manage the utilization of these expensive therapies. In particular, MSKCC's reimbursement for inpatient care provided to Medicare patients fails to take into account significant and expensive new treatments, such as CAR T-cell therapy. At present, Medicare pays only a fraction of the cost of CAR T-cell therapy costs. Although the Medicare statute requires CMS to account for such distortions in cost, and MSKCC has worked proactively to ensure CMS addresses this issue, it is possible that Medicare will not address these costs in a timely manner. On the whole, there is no assurance that MSKCC will achieve appropriate reimbursements for these expensive therapies and as a result, such economics could have an adverse impact on operating margins and its ability to service the debt.

### **Employment and Labor Issues**

As a large employer, MSKCC is exposed to a wide variety of risks in connection with its employees, including, but not limited to, contract disputes, recruitment issues, discrimination claims, personal tort actions, work related injuries, exposure to hazardous materials, benefit plan issues and other risks that may arise out of MSKCC's employer/employee relations or those between physicians, patients and employees. These risks may not be possible to discover or prevent, and may not be covered by insurance. At this time, management is not aware of any organized labor union activity at MSKCC.

MSKCC depends on a large international post-doc and graduate student pool to support the research laboratories at MSK. In recent months, the Trump Administration has made it more challenging to obtain visas to enable foreign students to work in the US. If there were policy changes impacting the ability to bring foreign post-docs to MSKCC, research operations could be disrupted, making it more expensive and difficult to recruit research technicians to assist with the important work done in the research laboratories at MSKCC.

### **Considerations Relating to Additional Debt**

Management projects significant capital spending over the next two years (see "PART 6 – MEMORIAL SLOAN KETTERING CANCER CENTER – Capital Spending"). MSKCC's long-term capital spending projects include items which will not be financed with the proceeds of the 2019 Series 1 Bonds. Some or all of MSKCC's future capital expenditures may be financed with the issuance of new bonds.

The Loan Agreement does not restrict MSKCC's ability to incur additional indebtedness. Such indebtedness if incurred would increase MSKCC's debt service and repayment requirements and may adversely affect debt service coverage on the 2019 Series 1 Bonds. It is also possible that changes in the financial markets, including changes in interest rates or developments in the municipal bond market, could significantly increase the cost to MSKCC of issuing new debt. Some or all of the new debt that may be issued will be on a parity or equal basis to the 2019 Series 1 Bonds, thereby potentially resulting in a dilution of the security for the 2019 Series 1 Bonds.

It is MSKCC's practice to keep in place at least \$200 million in available lines of credit and MSKCC currently has committed lines of credit for \$200 million with several commercial banks. MSKCC has not historically borrowed against these lines of credit, and while it is not anticipated that this capacity will be routinely used, the lines may be utilized to provide a source of funds in lieu of liquidating investments to pay for certain expenditures.

### **Affiliation, Merger, Acquisition and Divestiture**

As part of its ongoing planning and property management functions, MSKCC reviews the use, compatibility and financial viability of many of its operations and, from time to time, may pursue changes in the use of, or disposition of, its facilities. Likewise, MSKCC may receive offers from or conduct discussions with third parties about the potential acquisition of operations or properties that may become part of MSKCC in the future, or about the potential sale of some of MSKCC's operations and properties. Discussions with respect to affiliation, merger, acquisition, disposition, or change of use, including those that may affect MSKCC, are held on an intermittent, and usually confidential, basis. As a result, it is possible that the assets currently owned by MSKCC may change from time to time, subject to the provisions in the financing documents that apply to merger, sale, disposition or purchase of assets.

In 2016, MSKCC and Hackensack Meridian Health announced a partnership to collaborate in opportunities in New Jersey to mutually grow each provider's collective market share. While the partnership is in the formation stage and no joint facilities have yet been opened, it is possible that other healthcare providers that have had informal collaborative relationships with MSKCC may view this expansion as a competitive threat and jeopardize such collaborative service

relationships. MSKCC management believes the collaboration with Hackensack Meridian Health makes good sense for existing and future MSKCC patients, by enabling greater access to care closer to home in New Jersey.

### **Private Third-Party Reimbursement**

A significant portion of the patient service revenue of the Hospital is received from private entities, such as insurance companies that provide third-party reimbursement for patient care on the basis of negotiated payments or make payments based on MSKCC's charges. Renegotiations of such negotiated payments and changes in such reimbursement systems and methods may reduce this category of revenue or prevent MSKCC from receiving adequate reimbursement for its costs.

### **High Cost Deductible Plans**

Given the overall rise in health insurance costs, employers have had to incentivize employees enrolled in employer sponsored medical plans to be cognizant of utilization of medical services. In recent years, many employers have redesigned medical benefit packages and in many cases, have incorporated high deductibles aimed to reduce unnecessary utilization. The effect of these redesigned plans has greatly increased the employee/patients coinsurance and deductibles and as a result, the level of charity care and bad debt has increased. As these plans proliferate, hospitals will inevitably see an increase in uncompensated and charity care.

### **Accreditation**

MSKCC is subject to periodic review by The Joint Commission and various federal, state, local and voluntary agencies. MSKCC last received full accreditation from The Joint Commission for the Hospital effective June 2019. MSKCC last received full accreditation for its laboratory effective June 2019. The Gerstner Graduate School of Biomedical Sciences is accredited by the New York State Board of Regents. No assurance can be given as to the effect on future operations of existing laws, regulations and standards for certification or accreditation or of any future changes in such laws, regulations and standards.

### **Patient Privacy**

The Health Insurance Portability and Accountability Act ("HIPAA") and the regulations promulgated thereunder extensively regulate the use and disclosure of patient identifiable health information by "covered entities." Hospitals are included in the definition of "covered entities" under HIPAA and are required to implement administrative, physical and technical safeguards to protect the privacy and security of such information. Information relating to diagnoses and treatments of cancer patients may be viewed as especially sensitive under the HIPAA regulations. Violations of the HIPAA regulations may result in civil and criminal penalties.

The Health Information Technology for Economic and Clinical Health ("HITECH") Act (enacted as part of the American Recovery and Reinvestment Act of 2009) and an implementing Omnibus Rule issued in 2013 significantly expanded privacy protections under HIPAA and strengthened the law in a number of ways to facilitate enforcement. Changes included: increasing the civil monetary penalties for violations; and providing for collected monetary penalties to fund additional enforcement efforts. In addition, the law extended the application of certain provisions of the privacy and security regulations to business associates (entities that handle identifiable health information on behalf of covered entities) and subjects business associates to civil and criminal penalties for violation of the regulations.

Covered entities are also required to report data breaches of protected health information to affected individuals without unreasonable delay but not to exceed 60 days after discovery of the breach by a covered entity or its agents. Notification must also be made to HHS and, in certain situations involving large breaches, to the media. HHS is required to publish on its website a list of all covered entities that report a breach involving more than 500 individuals. State law and regulations may also contain privacy protections, and in some cases may be more stringent than the federal law.

MSKCC currently has a robust HIPAA compliance program, which MSKCC believes fully complies with the federal and New York State laws governing the privacy and security of patient identifiable information. MSKCC continues to implement and revise its HIPAA policies and procedures to monitor and ensure MSKCC's compliance with these laws and regulations. Given HIPAA's complexity, however, and the possibility that the regulations may be subject to changing and perhaps conflicting interpretations, MSKCC's ability to comply with the HIPAA regulations in all instances is uncertain.

## **Federal Anti-Kickback Statute**

A section of the Social Security Act known as the Anti-Kickback Statute (the “Anti-Kickback Statute”) makes it a felony to knowingly and willfully offer, pay, solicit or receive remuneration in return for referring or recommending services or items payable under a federal health care program, including Medicare and Medicaid. Convictions under the Anti-Kickback Statute can lead to criminal penalties, including fines of up to \$25,000 and five years imprisonment, substantial civil monetary penalties, and mandatory exclusion from Medicare, Medicaid, and other federal health care programs. Violations of the Anti-Kickback Statute may also serve as a basis for liability under the federal False Claims Act. The scope of prohibited activity under the Anti-Kickback Statute is broad and potentially could implicate many economic arrangements involving hospitals, physicians and other health care providers. In addition, federal case law and the OIG have interpreted the language of the Anti-Kickback Statute very broadly to cover any arrangement where even one purpose of the remuneration is to induce referrals.

Because the language of the Anti-Kickback Statute is so broad, Congress enacted, and the OIG implemented in regulations, safe harbors that describe certain arrangements that are deemed not to pose a significant risk of fraud and abuse, and are therefore conclusively protected from prosecution under the Anti-Kickback Statute. These safe harbors, as described in the regulations, are narrow and do not cover a wide range of economic relations that many health industry participants consider to be legitimate business arrangements permitted under the Anti-Kickback Statute.

Significantly, failure to satisfy the conditions of a safe harbor does not necessarily result in a violation of the Anti-Kickback Statute. Arrangements that do not satisfy all elements of a safe harbor are only potentially subject to scrutiny under the Anti-Kickback Statute if there is the requisite intent to induce referrals. Activities that fall outside of the safe harbors potentially include a wide range of activities frequently engaged in between and among hospitals, physicians, and other third parties. Activities that potentially implicate the Anti-Kickback Statute include hospital-physician joint ventures; purchases of physician practices; physician recruitment activities; various forms of hospital assistance to individual physicians and medical practices or physician contracting entities; physician referral services; hospital-physician personal services and management contracts; and space or equipment rentals between hospitals and physicians. MSKCC conducts activities of these general types or similar activities.

MSKCC believes that its current practices comply with the Anti-Kickback Statute. However, because of the breadth of the Anti-Kickback Statute and the government’s interpretation of the statute, the foregoing activities pose varying degrees of risk. Much of that risk cannot be assessed with certainty in light of the narrowness of the safe harbors and the relatively limited body of case law interpreting the Anti-Kickback Statute. Thus, there can be no assurance that MSKCC will not be found to have violated the Anti-Kickback Statute, nor, if so, that any sanction imposed would not have a material adverse effect on the operations or the financial condition of MSKCC.

## **Civil Monetary Penalties Law**

The federal Civil Monetary Penalty Act (“CMPA”) provides for administrative sanctions against health care providers for a broad range of billing and other abuses. A health care provider is liable under the CMPA if it knowingly presents, or causes to be presented, improper claims for reimbursement under Medicare, Medicaid, and other federal health care programs. A hospital that participates in arrangements known as “gainsharing” by paying a physician to limit or reduce services to Medicare fee-for-service beneficiaries also would be subject to CMPA penalties. Further, a health care provider that furnishes benefits to Medicare or Medicaid beneficiaries that the provider knows or should know are likely to induce the beneficiaries to choose the provider for their care would be subject to CMPA penalties. The CMPA authorizes imposition of a civil monetary penalty and treble damages.

Health care providers may be found liable under the CMPA even when they did not have actual knowledge of the impropriety of their action. Knowingly undertaking the action is sufficient. Ignorance of the Medicare regulations is no defense. The imposition of civil monetary penalties on a health care provider could have a material adverse impact on the provider’s financial condition. The ACA also amended the CMPA laws to establish various new grounds for exclusion and civil monetary penalties, as well as increased penalty thresholds for existing civil monetary penalties.

## **False Claims Act**

The federal civil False Claims Act prohibits anyone from submitting or causing to be submitted an intentionally or recklessly false or incorrect claim for payment from a federal program, including federal health care programs such as Medicare and Medicaid. A violation of the False Claims Act can result in civil penalties of \$10,957 to \$21,916 for each

claim filed, plus three times the actual damages found to have been sustained by the government. With thousands of claims submitted by hospitals like MSKCC each year, potential liabilities for violations of the False Claims Act can be enormous. Other federal and state laws also prohibit false, reckless or fraudulent billing to non-governmental third-party payors for medical services, and can impose civil and/or criminal penalties for such activities.

In certain instances, private individuals, known as “relators” or “whistleblowers,” may bring suit under the qui tam provisions of the False Claims Act and may be eligible for incentive payments for providing information that leads to recoveries or sanctions. MSKCC, through its compliance program, routinely monitors institutional billing practices to promote compliance with applicable law. Nonetheless, if determined adversely to MSKCC, a False Claims Act enforcement or qui tam action could have a material adverse effect on the operations or the financial condition of MSKCC.

On May 20, 2009, the Fraud Enforcement and Recovery Act of 2009 (“FERA”) was signed into law. It included significant amendments to the False Claims Act. Among other items, FERA expanded the scope of potential False Claims Act liability, increased the Attorney General’s power to delegate authority to investigate a False Claims Act case prior to intervening in a False Claims Act action, and increased protections for whistleblower plaintiffs beyond employees. The ACA also amended the False Claims Act by expanding the numbers of activities that are subject to enforcement as violations of the False Claims Act, including, among other actions, failure to report and return to a federal health care program a known overpayment within 60 days of having identified the overpayment or, for cost-reporting entities, the date (if later) on which a hospital cost report is due.

### **Stark Law**

The Federal Ethics in Patient Referrals Act (known as the “Stark Law”) prohibits a physician (or an immediate family member of such physician) with a financial relationship with an entity from referring a Medicare or Medicaid patient to such entity for the furnishing of designated health services, and it prohibits such entity from presenting or causing to be presented a claim for payment under the Medicare or Medicaid program for designated health services furnished pursuant to a prohibited referral, unless one or more of a number of specified exceptions apply. Sanctions for violating the Stark Law include exclusion from the Medicare program, civil penalties of up to \$24,253 per claim submitted in violation of the law and \$161,692 for entering into a scheme to circumvent the Stark Law. Like the Anti-Kickback Statute, violations of the Stark Law may also serve as a basis for liability under the federal False Claims Act. The designated health services subject to these prohibitions are clinical laboratory services; physical and occupational therapy services; radiology (including magnetic resonance imaging, computerized tomography and ultrasound) services; radiation therapy services; durable medical equipment, parenteral and enteral nutrients (including equipment and supplies); orthotic and prosthetic devices; home health services; outpatient prescription drugs; and inpatient and outpatient hospital services. Under the Stark Law, physician is defined to include a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the state in which he or she performs that function or action. The definition also includes a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, and a chiropractor.

For purposes of the Stark Law, a financial relationship can be direct or indirect and is defined as either an ownership or investment interest in the entity or a compensation arrangement between the physician (or immediate family member) and the entity. An ownership or investment interest may be through equity, debt, or other means and includes an interest in an entity that holds an ownership or investment interest in an entity providing the designated health services.

The Stark Law provisions provide certain exceptions to these restrictions. If the physician has a financial relationship with an entity that provides one of the designated health services, the Stark Law prohibitions will apply unless one or more of the specified exceptions are available. Unlike the Anti-Kickback Statute safe harbors discussed above (where the failure to meet a safe harbor does not necessarily mean the referral is prohibited), failure to satisfy an exception to the Stark Law provisions means (i) that the referral itself is prohibited, and (ii) the entity receiving the referral is prohibited from seeking payment for such service. The Stark Law is only violated if (i) a financial relationship exists, (ii) a referral for designated services is made, and (iii) no relevant exception is available. To the extent a relationship is found to exist, an applicable exception under the Stark Law is necessary in order for the entity receiving the referral to accept such referral (for a designated service) and to bill for the designated service generated by such referral.

The exceptions under the Stark Law provisions can be broken down into three categories, based upon the nature of the financial relationship between the referring provider and the referral entity. The three categories of exception include: (i) exceptions related to ownership arrangements; (ii) exceptions related to compensation arrangements; and (iii) exceptions related to both compensation and ownership arrangements.

If a financial relationship (which would include, for example, an employment or other professional services relationship) between a physician and the hospital cannot fit within one or more exceptions, the hospital would not be permitted to accept referrals for designated health services from the physician. As with the Anti-Kickback Statute provisions discussed above, failure to comply with the Stark Law can potentially result in substantial liability in connection with business relationships between the hospital and physicians. In addition to being required to refund Medicare or Medicaid overpayments resulting from prohibited referrals, an entity found to have violated the Stark Law could be held liable for civil and criminal penalties and possible exclusion from the Medicare and Medicaid programs. Also, billing Medicare or Medicaid for designated health services provided as a result of prohibited referrals could result in a violation of the federal False Claims Act, which itself would potentially entail additional substantial penalties and possible exclusion from federal health care programs. Acting through CMS, the Secretary of HHS has issued final regulations implementing the requirements of the Stark Law. These regulations may be subject to varying interpretations, the government's interpretation for enforcement purposes is constantly evolving, and case law interpreting the Stark Law and its regulations may be limited. Thus, there can be no assurance that a third party reviewing the existing activities of MSKCC would find such activities to be in full compliance with the Stark Law provisions, the State Provisions, and related regulations. If determined adversely to MSKCC, a Stark Law enforcement action or a False Claims Act action based on the Stark Law could have a materially adverse effect on the operations or the financial condition of MSKCC.

### **State Fraud and Abuse Laws**

In addition to the federal Anti-Kickback Statute, New York state law also prohibits kickbacks and other types of exchanges of remuneration for referrals of Medicaid patients and provides criminal and civil penalties for licensed facilities and individuals who make or receive such payments for referrals of patients for health care services. Entities and individuals found to have violated this provision are subject to loss of licensure, fines and/or imprisonment.

The New York Health Care Practitioner Referral Law, like the federal Stark Law, prohibits practitioners from referring a patient to a health care provider for clinical laboratory services, x-ray imaging services, radiation therapy services, physical therapy, or pharmacy services if the referring practitioner (or an immediate family member) has a financial interest in the health care provider. Unlike the Stark Law, the State law applies to referrals of all patients (irrespective of payor).

New York also has a state false claims act that closely tracks the federal civil False Claims Act. It imposes penalties and fines on individuals and entities that file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. Like the federal law, the state false claims act also permits individuals to initiate actions on behalf of the government in qui tam actions.

### **Internal Revenue Code Limitations**

The Code contains restrictions on the issuance of tax-exempt bonds for the purpose of financing and refinancing different types of health care facilities for not-for-profit organizations, including facilities generating taxable income. During consideration of the Tax Cuts and Jobs Act of 2017, Congress considered, but ultimately did not include in the legislation, an elimination of the tax exemption for interest paid on bonds issued by not-for-profit health care facilities. Consequently, future amendments to the Code could adversely affect MSKCC's ability to finance its future capital needs and could have other adverse effects on MSKCC, which cannot be predicted at this time. The Code continues to subject unrelated business income of nonprofit organizations to taxation.

As a tax-exempt organization, MSKCC is limited with respect to the use of practice income guarantees, reduced rent on medical office space, below market rate interest loans, joint venture programs, and other means of recruiting and retaining physicians. The Internal Revenue Service ("IRS") scrutinizes a broad variety of contractual relationships commonly entered into by hospitals and affiliated entities and has issued detailed hospital audit guidelines suggesting that field agents scrutinize numerous activities of hospitals in an effort to determine whether any action should be taken with respect to limitations on, or revocation of, their tax-exempt status or assessment of additional tax. The IRS also conducts intensive audits of select health care providers to determine whether the activities of these providers are consistent with their continued tax-exempt status. The IRS has indicated that, in certain circumstances, violation of the fraud and abuse statutes could constitute grounds for revocation of a hospital's tax-exempt status. MSKCC may enter into arrangements with physicians that are of the kind that the IRS has indicated that it will examine in connection with audits of tax-exempt hospitals.

Section 501(c)(3) of the Code specifically conditions the continued exemption of all Section 501(c)(3) organizations upon the requirement, among others, that no part of the net earnings of the organization inure to the benefit of any private

individual. While management believes that MSKCC's arrangements with private persons and entities are generally consistent with guidance by IRS and do not constitute private inurement, there can be no assurance concerning the outcome of an audit or other investigation given the lack of clear authority interpreting the range of activities undertaken by MSKCC.

Intermediate sanctions legislation enacted in 1996 imposes excise taxes in cases where an exempt organization is found to have engaged in an "excess benefit transaction" with a "disqualified person," defined generally to include directors and senior management. The tax is imposed both on the disqualified person receiving such excess benefit and on any officer, director, trustee or other person having similar powers or responsibilities who participated in the transaction willfully or without reasonable cause, knowing it will involve "excess benefit," but it is not imposed on the exempt organization. However, U.S. Treasury Regulations discuss the possibility of an organization engaged in "excess benefit transactions" having its tax-exempt status revoked upon a consideration of all facts and circumstances. "Excess benefit transactions" include transactions in which a disqualified person receives unreasonable compensation for services or receives other economic benefit from the organization that either exceeds fair market value or, to the extent provided in regulations yet to be promulgated, is determined in whole or in part by the revenues of one or more activities of such organization. The legislative history sets forth Congress' intent that compensation of disqualified persons shall be presumed to be reasonable if certain procedures are followed.

The imposition of excise tax, or the loss of exempt status, based upon a finding that an exempt organization engaged in an "excess benefit transaction" could result in negative publicity and other consequences that could have a material adverse effect on the operations, property, or assets of the organization or on the market for its debt obligations.

In addition, enactment of the ACA has led to greater IRS scrutiny of the community benefits provided by non-profit hospitals, which are required in order for such hospitals to maintain 501(c)(3) tax-exempt status. Due to a lack of uniformity in definitions of community benefit used by reporting hospitals, the IRS has created four new, standardized requirements necessary to maintain tax-exempt status, which include: conducting and implementing a community health needs assessment; adopting, implementing, and publicizing financial assistance policies; limiting the charges for emergency or necessary care; and refraining from engaging in extraordinary collection activities before making a reasonable effort to determine whether an individual is eligible for financial assistance. In February of 2019, the Senate Finance Committee request additional information from the IRS regarding its oversight of tax-exempt hospitals and compliance with the new requirements imposed by the ACA. The resulting IRS reviews and reports to Congress on community benefit activities may increase the likelihood that Congress will require such hospitals to provide a minimum level of charity care in order to retain their tax-exempt status.

## **Antitrust**

Enforcement of the antitrust laws against health care providers is becoming more common. Antitrust liability may arise in a wide variety of circumstances including medical staff privilege disputes; payor contracting; physician relations; joint ventures; merger, affiliation and acquisition activities; and certain pricing and salary setting activities. Actions can be brought by federal and state enforcement agencies seeking criminal and civil penalties and, in some instances, by private litigants seeking damages for harm from allegedly anticompetitive behavior. Common areas of antitrust risk include joint action among providers with respect to payor contracting, medical staff credentialing, and issues relating to conduct of providers with large market share. Antitrust claims can involve substantial damages, depending on the facts and circumstances of each case, and damages for violations of the federal Sherman Act and many state laws are subject to automatic trebling. With respect to payor contracting, MSKCC may, from time to time, be involved in joint contracting activity with hospitals or other providers. The degree to which these or similar joint contracting activities may expose a participant to antitrust risk from governmental or private sources are dependent on a myriad of factors, which may change from time to time. If any provider with which MSKCC is or becomes affiliated is determined to have violated the antitrust laws MSKCC may face risk as a joint actor.

Some judicial decisions have permitted physicians who are subject to disciplinary or other adverse actions by a hospital at which they practice, including denial or revocation of medical staff privileges, to seek treble damages from the hospital under the federal antitrust laws. The Federal Health Care Quality Improvement Act of 1986 provides immunity from liability for discipline of physicians by hospitals under certain circumstances, but courts have differed over the nature and scope of this immunity. In addition, hospitals occasionally indemnify medical staff members who incur costs as defendants in lawsuits involving medical staff privilege decisions. Some court decisions have also permitted recovery by competitors claiming harm from a hospital's use of its businesses. Antitrust liability in any of these contexts can be substantial, depending upon the facts and circumstances involved. There can be no assurances that a third party reviewing actions of MSKCC would find such activities in full compliance with antitrust laws.



## State Budget and Medicaid Reform

The FY 2020 New York State budget, enacted in April of 2019, is expected to continue to present challenges for hospitals and other health care providers, particularly for those more highly dependent on Medicaid revenue than MSKCC. Specifically, while the final budget did not include a set of across the board Medicaid and other health care spending cuts proposed in the Executive's revised budget proposal, authority was included within the budget for the Executive to implement similar savings, authorizing the New York State Division of Budget to unilaterally implement up to \$190 million in each of the next two years for "across the board" Medicaid reductions. The possible implications of this new authority are noteworthy in light of recent Office of the State Comptroller reports, which indicate state funded Medicaid expenditures are outpacing projected spending by \$665M in Q1, compounded by the State's decision to postpone \$1.7B in Medicaid payments from the last State fiscal year to this one. These downward fiscal pressures will ensure that the policy changes implemented as a result of the Medicaid Redesign Team ("MRT") established by Executive Order in January 2011 to reduce Medicaid costs and improve patient care will continue and it is possible that a new Medicaid Redesign Team may be convened to identify additional cost reductions. The MRT's previous cost-saving proposals, such as: programmatic reforms to Medicaid payments and program structures; the elimination of annual statutory inflation factors for hospitals, nursing homes and home health, and personal care providers; and a health care industry-led effort to generate additional savings have continued, and additional reforms or other spending reductions are likely in the event that expenditures continue to outpace budgeted projections.

In addition to the MRT, the FY 2011-2012 budget instituted a two-year cap on Medicaid state share spending by DOH, known as the Medicaid Global Cap. The Medicaid Global Cap is based on a ten-year rolling average of increases in the Medical CPI. When the cap is exceeded, reductions are triggered. Since its inception, the cap has been repeatedly renewed. DOH's Medicaid spending has been below this cap every year since its creation, and it is anticipated that the global cap will be extended when it requires its next statutory renewal in the FY 2022 state budget. The FY 2020 enacted budget extended the Medicaid Global Cap through March 2020, and, as renewed, the cap amount is \$19.4 billion. As noted above, the most recent analysis released by the Comptroller indicates that State spending through the first quarter of FY 2020 exceeded projected spending by \$665 million, stemming from unanticipated growth in the managed long-term care program, other long-term care spending, and certain non-institutional spending, including pharmacy costs. There are a number of challenges that will test the ability of the State to stay within the Medicaid Global Cap without making significant policy changes.

In April 2014, New York finalized terms and conditions with CMS for its Medicaid waiver, allowing the state to reinvest over five years \$8 billion of the \$17.1 billion that recent changes to the Medicaid program saved the federal government. The reinvestment was allocated in the following ways: (1) Delivery System Reform Incentive Payments ("DSRIP") (\$6.42 billion), which are incentive payments to public hospitals and safety-net providers for engaging in projects designed to achieve delivery system transformation; (2) Interim Access Assurance Fund (\$500 million) to provide temporary, time-limited funding to protect against degradation of current access to Medicaid safety net providers; and (3) Non-DSRIP Medicaid redesign activities (\$1.8 billion) to support health home development, behavioral health support services, and long-term care workforce. The goals of the largest component of the funding, the DSRIP program, are: (1) safety-net system transformation; (2) accountability for reducing avoidable hospital use and improvements in other health and public health measures; and (3) efforts to ensure sustainability of delivery system transformation through leveraging managed care payment reform. DSRIP funding is available to "Performing Provider Systems." Performing Provider Systems are providers that form partnerships and collaborate in a DSRIP project plan. Performing Provider Systems include both major public and not-for-profit hospitals and safety-net providers with a designated lead provider for the group. MSKCC is not considered a safety net provider based on the definition developed by CMS and New York State. However, MSKCC is eligible to participate in a Performing Provider System with other providers who do qualify as safety net providers, but has not participated to date. Although state Medicaid waivers have come under scrutiny by the Trump Administration, the New York State Medicaid waiver authorizing DSRIP and the associated federal funding was renewed through March 31, 2021 in December of 2016.

The State's decision to establish a Basic Health Plan ("BHP"), known in New York as the Essential Plan ("EP"), as authorized by the ACA had become a source of significant additional fiscal pressure. Authorized by the FY 2014-2015 budget, DOH, with the approval of the Division of the Budget, established a BHP for: (1) individuals whose incomes are between 133% and 200% of the federal poverty level and (2) lawfully present immigrants whose incomes are under 133% of the federal poverty level, but who are not eligible for Medicaid due to immigration status. Over 790,000 New Yorkers were enrolled in the EP in 2019, including a significant number of individuals who previously would have been enrolled in state-only Medicaid, i.e., individuals not otherwise eligible to draw down matching federal Medicaid dollars. The Trump administration ceased payments of CSRs to states as a part of efforts to dismantle the ACA in 2017,

and while these reductions were subsequently restored as a result of litigation by New York, the Federal Government continues to attempt to curtail expenditures to support these plans. The most recent proposed payment methodology from CMS projects a reduction of 3% in expenditures to underwrite these programs in 2019 and 2020.

The reductions in Medicaid Disproportionate Share Hospital (“DSH”) payments authorized by the ACA are also creating fiscal pressure on the State. While Congress has repeatedly delayed the implementation of these cuts, they were most recently postponed to October 1, 2020. If Congress does not act to reverse or further delay the cuts at that time, the State will incur a significant reduction in DSH payments. Under the current distribution methodology in the State, those cuts would be disproportionately concentrated on New York City Health and Hospitals providers. The asymmetry of this significant cut in DSH payments makes it likely that there will be changes to the distribution methodology that would redistribute the cuts across other providers. Even apart from the potential impact of these DSH reductions, advocacy groups have urged a redistribution of indigent care funding in New York, which, if adopted, would adversely impact MSKCC.

Finally, the Legislature is considering the adoption of a single payor plan for New York, which is embodied in a legislative proposal known as the “New York Health Act”. Versions of this legislation have repeatedly passed in the State Assembly and the newly Democratic State Senate is giving the legislation serious consideration. While the legislation may not be passed or enacted in the immediate future, the possibility cannot be completely discounted. Implementation of the legislation in its current form would have far-reaching impacts on the healthcare payment and delivery systems of New York state, including but not limited to the elimination of private health insurance plans and a significant reduction in hospital reimbursement to facilities, like MSKCC, that receive substantial commercial insurance payments.

### **Environmental Matters**

MSKCC’s operations are subject to a wide variety of federal, state and local environmental laws, rules and regulations. These requirements govern, among other things, medical and toxic or hazardous waste management (including radiological materials), air and water quality control, notices to employees and the public and training requirements for employees. MSKCC is subject to potentially material liability for costs of investigating and remedying the releases of any such substances either on MSKCC’s properties or that have migrated from MSKCC’s properties or have been improperly disposed of off-site and the harm to person or property caused by such releases. At the present time, MSKCC management is not aware of any pending or threatened environmental claim, investigation or enforcement action, which, if determined adversely to MSKCC, would have material adverse consequences.

### **Provider-Specific Taxes**

The Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 established certain standards and limits on a state’s ability to impose and use provider-specific taxes to fund the state’s share of Medicaid expenditures. In general, states are allowed to impose broad-based, provider-specific taxes that are redistributive and are limited in their ability to hold providers harmless from the financial effect of such taxes. Accordingly, the State could expand the taxes imposed on certain kinds of health care providers, such as MSKCC, to help fund the State’s share of Medicaid expenditures, and is limited in its ability to hold providers, such as MSKCC, harmless from the financial effect of such taxes.

### **Secondary Market**

There can be no assurance that there will be a secondary market for the purchase or sale of the 2019 Series 1 Bonds. From time to time there may be no market for the 2019 Series 1 Bonds depending upon prevailing market conditions, including the financial condition or market position of firms who may make the secondary market, the evaluation MSKCC’s capabilities and the financial conditions and results of operations of MSKCC.

### **Matters Relating to Security Interests in Shared Collateral**

The effectiveness of any security interest that may be granted, following a Funding Event, in the Shared Collateral of the Center, the Institute or Realty may be limited by a number of factors, including: (i) provisions prohibiting the direct payment of amounts due to health care providers from Medicare, Medicaid and certain other programs to persons other than such providers; (ii) present or future prohibitions against assignments contained in any applicable statutes or regulations; (iii) commingling of proceeds of Shared Collateral with other monies which are not subject to the security interests in Shared Collateral; (iv) statutory liens; (v) rights arising in favor of the United States or any agency thereof, (vi) federal bankruptcy laws which may affect the enforceability of the Loan Agreement, the Guaranties or the Inducement Agreement or the security interest in the Shared Collateral; (vii) rights of third parties converted to cash and not in the possession of

the Trustee or DASNY and (viii) claims that might arise if appropriate financing or continuation statements are not filed or extended in accordance with the applicable Uniform Commercial Code in effect from time to time. If it were necessary to foreclose on a mortgage, the recovery may be limited since the mortgaged property may not be a general purpose building and therefore it may be difficult to find a buyer or lessee. In addition, operating the mortgaged property as a health care or research facility may require obtaining certain licenses and approvals, which may be difficult to obtain. In addition, there may be liens on the property senior or equal to those of the Bondholders.

### **Certain Matters Affecting the Enforceability of the Loan Agreement, the Guaranties and the Inducement Agreement**

Counsel to MSKCC will deliver an opinion concurrently with the delivery of the 2019 Series 1 Bonds that the Loan Agreement, the Guaranties and the Inducement Agreement are enforceable in accordance with their terms. Such opinion will be qualified, however, as to enforceability by limitations imposed by bankruptcy, insolvency, fraudulent conveyance, reorganization or other laws affecting the enforceability of creditors' rights generally and by the application of equitable principles if equitable remedies are sought.

The state of insolvency, fraudulent conveyance, fraudulent transfer and bankruptcy laws relating to the enforceability of guaranties or obligations issued by affiliates for the benefit of each other is somewhat unsettled.

There is no clear and controlling precedent in the law as to whether the giving of collateral or the making of payments by one corporation (i.e., the Hospital, Realty, or the Institute) on behalf of another (i.e., the Center) may be voided by the corporation or a trustee in bankruptcy in the event of a bankruptcy of such corporation or by other third-party creditors in an action brought pursuant to state fraudulent conveyance or fraudulent transfer statutes. Under the United States Bankruptcy Code the debtor or a trustee in bankruptcy and, under state fraudulent conveyance or fraudulent transfer statutes, a creditor of a related guarantor, may avoid a transfer of any obligation incurred by a related guarantor if, among other reasons, (i) the guarantor did not receive fair consideration or reasonably equivalent value in exchange for the guarantee and (ii) the guarantee renders the guarantor "insolvent," as defined in the United States Bankruptcy Code or state fraudulent conveyance or fraudulent transfer statutes, or (iii) the guarantor is undercapitalized or intended to incur debts beyond its ability to pay as they mature. Application by courts of the tests of "insolvency," "reasonably equivalent value" and "fair consideration" has resulted in a conflicting body of case law. It is possible that, in an action to enforce the guaranties against the Institute or Realty or the obligation to provide collateral pursuant to the Guaranties or the Loan Agreement or to force the Hospital to provide collateral pursuant to the Inducement Agreement, a court might not enforce such a provision in the event it is determined that sufficient consideration for such entity's obligation was not received or that the incurrence of such obligation has rendered or will render such entity insolvent. It is also possible that under state or federal fraudulent conveyance or fraudulent transfer statutes the transfer of collateral to secure these guarantees could be voided.

Furthermore, should the filing of a bankruptcy case occur within 90 days after the transfer of collateral pursuant to the Guaranty and the Inducement Agreement, there is a risk that the debtor or a trustee in bankruptcy could seek to avoid the transfer of the collateral as a preference. The 90 day period would be extended to one year if the beneficiary of the transfer were an insider of the transfer.

Payment or the giving of security also may not be enforceable to the extent payments are requested to be made from any monies or assets which are donor restricted or which are subject to a direct, express or charitable trust which does not permit the use of such monies or assets for such payment or which are otherwise excluded from the definition of Gross Receipts. Due to the absence of clear legal precedent in this area, the extent to which the assets constitute monies or assets which are so restricted or subject to such trusts cannot now be determined. The amount of such assets could be substantial.

## **PART 8 – DASNY**

### **Background, Purposes and Powers**

DASNY is a body corporate and politic constituting a public benefit corporation. DASNY was created in 1944 to finance and build dormitories at State teachers' colleges to provide housing for the large influx of students returning to college on the G.I. Bill following World War II. Over the years, the State Legislature has expanded DASNY's scope of responsibilities. Today, pursuant to the Dormitory Authority Act, DASNY is authorized to finance, design, construct or rehabilitate facilities for use by a variety of public and private not-for-profit entities.

DASNY provides financing services to its clients in three major areas: public facilities; not-for-profit healthcare; and independent higher education and other not-for-profit institutions. DASNY issues State-supported debt, including State

Personal Income Tax Revenue Bonds and State Sales Tax Revenue Bonds, on behalf of public clients such as The State University of New York, The City University of New York, the Departments of Health and Education of the State, the Office of Mental Health, the Office of People with Developmental Disabilities, the Office of Alcoholism and Substance Abuse Services, the Office of General Services, and the Office of General Services of the State on behalf of the Department of Audit and Control. Other public clients for whom DASNY issues debt include Boards of Cooperative Educational Services (“BOCES”), State University of New York, the Workers’ Compensation Board, school districts across the State and certain cities and counties that have accessed DASNY for the purpose of providing court facilities. DASNY’s private clients include independent colleges and universities, private hospitals, certain private secondary schools, special education schools, facilities for the aged, primary care facilities, libraries, museums, research centers and government-supported voluntary agencies, among others.

To carry out its programs, DASNY is authorized to issue and sell negotiable bonds and notes to finance the construction of facilities for such institutions, to issue bonds or notes to refund outstanding bonds or notes and to lend funds to such institutions. At September 30, 2019, DASNY had approximately \$56 billion aggregate principal amount of bonds and notes outstanding. DASNY also is authorized to make tax-exempt leases, with its Tax-Exempt Leasing Program (TELP). As part of its operating activities, DASNY also administers a wide variety of grants authorized by the State for economic development, education and community improvement and payable to both public and private grantees from proceeds of State Personal Income Tax Revenue Bonds issued by DASNY.

DASNY is a conduit debt issuer. Under existing law, and assuming continuing compliance with tax law, interest on most bonds and notes issued by DASNY has been determined to be excludable from gross income for federal tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended. All of DASNY’s outstanding bonds and notes, both fixed and variable rate, are special obligations of DASNY payable solely from payments required to be made by or for the account of the client institution for which the particular special obligations were issued. DASNY has no obligation to pay its special obligations other than from such payments. DASNY has always paid the principal of and interest on all of its obligations on time and in full; however, as a conduit debt issuer, payments on DASNY’s special obligations are solely dependent upon payments made by DASNY’s client for which the particular special obligations were issued and the security provisions relating thereto.

DASNY also offers a variety of construction services to certain educational, governmental and not-for-profit institutions in the areas of project planning, design and construction, monitoring project construction, purchasing of furnishings and equipment for projects, interior design of projects and designing and managing projects to rehabilitate older facilities.

In connection with the powers described above, DASNY has the general power to acquire real and personal property, give mortgages, make contracts, operate certain facilities and fix and collect rentals or other charges for their use, contract with the holders of its bonds and notes as to such rentals and charges, borrow money and adopt a program of self-insurance.

DASNY has a staff of approximately 536 employees located in three main offices (Albany, New York City and Buffalo) and at approximately 47 field sites across the State.

## **Governance**

DASNY is governed by an eleven-member board. Board members include the Commissioner of Education of the State, the Commissioner of Health of the State, the State Comptroller or one member appointed by him or her who serves until his or her successor is appointed, the Director of the Budget of the State, one member appointed by the Temporary President of the State Senate, one member appointed by the Speaker of the State Assembly and five members appointed by the Governor, with the advice and consent of the Senate, for terms of three years. The Commissioner of Education of the State, the Commissioner of Health of the State and the Director of the Budget of the State each may appoint a representative to attend and vote at DASNY meetings. The members of DASNY serve without compensation, but are entitled to reimbursement of expenses incurred in the performance of their duties.

The Governor of the State appoints a Chair from the members appointed by him or her and the members of DASNY annually choose the following officers, of which the first two must be members of DASNY: Vice-Chair, Secretary, Treasurer, Assistant Secretaries and Assistant Treasurers.

The current members of DASNY are as follows:

ALFONSO L. CARNEY, JR., *Chair*, New York.

Alfonso L. Carney, Jr. was reappointed as a Member of DASNY by the Governor on June 19, 2013. Mr. Carney is a principal of Rockwood Partners, LLC, which provides medical consulting services in New York City. He has served as Acting Chief Operating Officer and Corporate Secretary for the Goldman Sachs Foundation in New York where, working with the President of the Foundation, he managed the staff of the Foundation, provided strategic oversight of the administration, communications and legal affairs teams, and developed selected Foundation program initiatives. Mr. Carney has held senior level legal positions with Altria Group Inc., Philip Morris Companies Inc., Philip Morris Management Corporation, Kraft Foods, Inc. and General Foods Corporation. Mr. Carney holds a Bachelor's degree in philosophy from Trinity College and a Juris Doctor degree from the University of Virginia School of Law. His term expired on March 31, 2016 and by law he continues to serve until a successor shall be chosen and qualified.

JOHN B. JOHNSON, JR., *Vice-Chair*, Watertown.

John B. Johnson, Jr. was reappointed as a Member of DASNY by the Governor on June 19, 2013. Mr. Johnson is Chairman of the Board of the Johnson Newspaper Corporation, which publishes the Watertown Daily Times, Batavia Daily News, Malone Telegram, Catskill Daily Mail, Hudson Register Star, Ogdensburg Journal, Massena-Potsdam Courier Observer, seven weekly newspapers and three shopping newspapers. He holds a Bachelor's degree from Vanderbilt University, and Master's degrees in Journalism and Business Administration from the Columbia University Graduate School of Journalism and Business. Mr. Johnson was awarded an Honorary Doctor of Science degree from Clarkson University. Mr. Johnson's term expired on March 31, 2016 and by law he continues to serve until a successor shall be chosen and qualified.

PAUL S. ELLIS, ESQ., *Secretary*, New York.

Paul S. Ellis was appointed as a Member of DASNY by the Speaker of the State Assembly on September 19, 2016. Mr. Ellis is the Managing Member of Paul Ellis Law Group LLC, a law firm with a corporate/ securities/capital markets practice with emphasis on private placements, mergers and acquisitions, venture capital/ private equity transactions and joint ventures. He previously worked for Donovan Leisure Newton & Irvine and Winston & Strawn and served in staff positions in the U.S. Senate and the Massachusetts House of Representatives. He co-founded the New York Technology Council and serves on the Board of the NY Tech Alliance and as Chairman of the Housing Committee of Bronx Community Board 8. He holds a Bachelor of Arts degree from Harvard University and a Juris Doctor degree from Georgetown University Law Center.

JONATHAN H. GARDNER, ESQ., Buffalo.

Jonathan H. Gardner was appointed as a Member of DASNY by the Governor on June 17, 2014. Mr. Gardner is a partner of the law firm Kavinoky Cook, LLP in Buffalo, New York. His practice areas include corporate and securities law, commercial transactions, private placements, venture capital financing and business combinations representing private and public companies. Mr. Gardner is also an adjunct professor at the University of Buffalo Law School. He holds a Bachelor of Arts degree from Brown University and a Juris Doctor degree from the University of Chicago Law School. Mr. Gardner's term expired on March 31, 2015 and by law he continues to serve until a successor shall be chosen and qualified.

WELLINGTON Z. CHEN, Queens.

Wellington Z. Chen was appointed as a Member of DASNY by the Governor on June 20, 2018. Mr. Chen is the Executive Director of the Chinatown Partnership Development Corporation. In this capacity, he leads the Chinatown Partnership in implementing initiatives in infrastructure, post 9/11 rebuilding and public space improvements in a comprehensive effort to improve the environmental and the business conditions. He is a graduate of the School of Architecture and Environmental Studies at The City College of New York. Mr. Chen's term expires on March 31, 2020.

BERYL L. SNYDER, J.D., New York.

Beryl L. Snyder was reappointed as a member of DASNY by the Governor on June 19, 2013. Ms. Snyder is a principal in HBJ Investments, LLC, an investment company where her duties include evaluation and analysis of a wide variety of

investments in, among other areas: fixed income, equities, alternative investments and early stage companies. She holds a Bachelor of Arts degree in History from Vassar College and a Juris Doctor degree from Rutgers University. Her current term expired on August 31, 2016 and by law she continues to serve until a successor shall be chosen and qualified.

JOAN M. SULLIVAN, Slingerlands.

Joan M. Sullivan was appointed as a Member of DASNY by the New York State Comptroller on March 26, 2019. Ms. Sullivan is President of On Wavelength Consulting LLC, a firm that assists governmental entities with development of public procurements and private companies with the preparation of effective responses to government solicitations. She possesses over 40 years of experience working in and for the government of New York State, including an expansive career at the NYS Office of State Comptroller where she last served as Executive Deputy Comptroller before accepting an appointment as Executive Director of The NYS Forum, Inc. Ms. Sullivan holds a Bachelor of Arts degree in Business Administration (Accounting) from Siena College.

GERARD ROMSKI, ESQ., Mount Kisco.

Gerard Romski was reappointed as a Member of DASNY by the Temporary President of the State Senate on May 9, 2016. He is Counsel and Project Executive for “Arverne by the Sea,” where he is responsible for advancing and overseeing all facets of “Arverne by the Sea,” one of New York City’s largest mixed-use developments located in Queens, New York. Mr. Romski is also of counsel to the New York City law firm of Rich, Intelisano & Katz, LLP. Mr. Romski holds a Bachelor of Arts degree from the New York Institute of Technology and a Juris Doctor degree from Brooklyn Law School.

ELIZABETH BERLIN, *Interim Commissioner of Education of the State of New York*, Bethlehem; *ex-officio*.

Elizabeth Berlin assumed the role of Interim Commissioner of the New York State Education Department on September 1, 2019. Ms. Berlin was appointed in January 2013 to serve as Executive Deputy Commissioner of the New York State Education Department. In that role, Ms. Berlin manages the day-to-day operations and administration of the State Education Department, part of the University of the State of New York. In that capacity, Ms. Berlin oversees the work of an interconnected system of educational entities including school districts; libraries; and museums; as well as a variety of licensed professions. Interim Commissioner Berlin has an extensive background in the delivery of social and human service programs including service as the Executive Deputy Commissioner of the New York State Office of Temporary and Disability Assistance and Commissioner of the Department of Social Services in Albany County. Ms. Berlin holds a Bachelor of Arts degree from Siena College.

ROBERT F. MUJICA, JR., *Budget Director of the State of New York*, Albany; *ex-officio*.

Robert F. Mujica Jr. was appointed Director of the Budget by the Governor and began serving on January 14, 2016. He is responsible for the overall development and management of the State’s fiscal policy, including overseeing the preparation of budget recommendations for all State agencies and programs, economic and revenue forecasting, tax policy, fiscal planning, capital financing and management of the State’s debt portfolio. Prior to his appointment, Mr. Mujica was Chief of Staff to the Temporary President and Majority Leader of the Senate and concurrently served as the Secretary to the Senate Finance Committee. For two decades, he advised various elected and other government officials in New York on State budget, fiscal and policy issues. Mr. Mujica received his Bachelor of Arts degree in Sociology from Brooklyn College at the City University of New York. He received his Master’s degree in Government Administration from the University of Pennsylvania and holds a Juris Doctor degree from Albany Law School.

HOWARD A. ZUCKER, M.D., J.D., *Commissioner of Health of the State of New York*, Albany; *ex-officio*.

Howard A. Zucker, M.D., J.D., was appointed Commissioner of Health on May 5, 2015 after serving as Acting Commissioner of Health since May 5, 2014. Prior to that, he served as First Deputy Commissioner leading the State Department of Health’s preparedness and response initiatives in natural disasters and emergencies. Before joining the State Department of Health, Dr. Zucker was professor of Clinical Anesthesiology at Albert Einstein College of Medicine of Yeshiva University and a pediatric cardiac anesthesiologist at Montefiore Medical Center. He was also an adjunct professor at Georgetown University Law School where he taught biosecurity law. Dr. Zucker earned his medical degree from George Washington University School of Medicine. He also holds a Juris Doctor degree from Fordham University School of Law and a Master of Laws degree from Columbia Law School.

The principal staff of DASNY are as follows:

***The office of President and chief executive officer is currently vacant. The Vice President will perform the duties of the President until such time as a new President is appointed and confirmed.***

PAUL G. KOOPMAN is the Vice President of DASNY and assists the President in the administration and operation of DASNY. Mr. Koopman joined DASNY in 1995 managing the Accounts Payable and Banking and Investment Units followed by management positions in the Construction Division including Managing Senior Director of Construction where he was the primary relationship manager for some of DASNY's largest clients and provided oversight of DASNY's construction administration functions. Most recently, Mr. Koopman served as Managing Director of Executive Initiatives of DASNY where he worked closely with executive staff on policy development, enterprise risk management, and strategic planning. His career in public service began in 1985 with the NYS Division of the Budget, and then continued as Chief Budget Analyst for the New York State Facilities Development Corporation. A graduate of the Rockefeller College of Public Affairs, he holds a Master of Arts degree in Public Administration with a Public Finance concentration, and a Bachelor of Arts degree in Political Science from the State University of New York, University at Albany.

KIMBERLY J. NADEAU is the Chief Financial Officer and Treasurer of DASNY. As Chief Financial Officer and Treasurer, Ms. Nadeau is responsible for supervising DASNY's investment program, general accounting, accounts payable, accounts receivable, financial reporting functions, budget, payroll, insurance and information services, as well as the development and implementation of financial policies, financial management systems and internal controls for financial reporting. She previously was Vice President-Accounting and Controller for US Light Energy. Prior to that she was Vice President-Accounting and Controller for CH Energy Group, Inc. and held various positions culminating in a director level position at Northeast Utilities. Ms. Nadeau also held various positions with increasing responsibility at Coopers & Lybrand LLP. She holds a Bachelor of Science degree in Accounting, a Master of Business Administration with a concentration in Management and a Juris Doctor degree from the University of Connecticut. She is licensed to practice law in New York and Connecticut.

MICHAEL E. CUSACK is General Counsel to DASNY. Mr. Cusack is responsible for all legal services including legislation, litigation, contract matters, and the legal aspects of all DASNY financings. In addition, he is responsible for the supervision of DASNY's environmental affairs unit. He is licensed to practice law in the State of New York and the Commonwealth of Massachusetts, as well as the United States District Court for the Northern District of New York. Mr. Cusack has over twenty years of combined legal experience, including management of an in-house legal department and external counsel teams (and budgets) across a five-state region. He most recently served as of counsel to the Albany, New York law firm of Young/Sommer, LLC, where his practice included representation of upstate New York municipalities, telecommunications service providers in the siting of public utility/personal wireless service facilities and other private sector clients. He holds a Bachelor of Science degree from Siena College and a Juris Doctor degree from Albany Law School of Union University.

PORTIA LEE is the Managing Director of Public Finance and Portfolio Monitoring. She is responsible for supervising and directing DASNY bond issuance in the capital markets, implementing and overseeing financing programs, overseeing DASNY's compliance with continuing disclosure requirements and monitoring the financial condition of existing DASNY clients. Ms. Lee previously served as Senior Investment Officer at the New York State Comptroller's Office where she was responsible for assisting in the administration of the long-term fixed income portfolio of the New York State Common Retirement Fund, as well as the short-term portfolio, and the Securities Lending Program. From 1995 to 2005, Ms. Lee worked at Moody's Investors Service where she most recently served as Vice President and Senior Credit Officer in the Public Finance Housing Group. She holds a Bachelor of Arts degree from the State University of New York at Albany.

STEPHEN D. CURRO is the Managing Director of Construction. Mr. Curro is responsible for DASNY's construction groups, including design, project management, resource acquisition, contract administration, interior design, real property, sustainability and engineering, as well as other technical services. Mr. Curro joined DASNY in 2001 as Director of Technical Services, and most recently served as Director of Construction Support Services. He is a registered Professional Engineer in New York and has worked in the construction industry for more than 30 years. He holds a Bachelor of Science in Civil Engineering from the University of Rhode Island, a Master of Engineering in Structural Engineering from Rensselaer Polytechnic Institute and a Master of Business Administration from Rensselaer Polytechnic Institute's Lally School of Management.

CAROLINE V. GRIFFIN is the Chief of Staff of DASNY. She is responsible for overseeing intergovernmental relations and managing the Communications & Marketing Department, as well as coordinating policy and operations across

DASNY's multiple business lines. Ms. Griffin most recently served as the Director of Intergovernmental Affairs for Governor Andrew M. Cuomo where she worked as the Governor's liaison with federal, state and local elected officials and managed staff serving in various capacities in the Governor's Office. Prior to that she served as the Assistant Executive Deputy Secretary for Governor Andrew M. Cuomo overseeing the operations staff and Assistant Secretary for Intergovernmental Affairs for both Governor David A. Paterson and Governor Eliot Spitzer. She holds a Bachelor of Arts degree in Communications from Boston College.

### **Claims and Litigation**

Although certain claims and litigation have been asserted or commenced against DASNY, DASNY believes that such claims and litigation either are covered by insurance or by bonds filed with DASNY, or that DASNY has sufficient funds available or the legal power and ability to seek sufficient funds to meet any such claims or judgments resulting from such matters.

### **Other Matters**

#### *New York State Public Authorities Control Board*

The New York State Public Authorities Control Board (the "PACB") has authority to approve the financing and construction of any new or reactivated projects proposed by DASNY and certain other public authorities of the State. The PACB approves the proposed new projects only upon its determination that there are commitments of funds sufficient to finance the acquisition and construction of the projects. DASNY obtains the approval of the PACB for the issuance of all of its bonds and notes.

#### *Legislation*

From time to time, bills are introduced into the State Legislature which, if enacted into law, would affect DASNY and its operations. DASNY is not able to represent whether such bills will be introduced or become law in the future. In addition, the State undertakes periodic studies of public authorities in the State (including DASNY) and their financing programs. Any of such periodic studies could result in proposed legislation which, if adopted, would affect DASNY and its operations.

#### *Environmental Quality Review*

DASNY complies with the New York State Environmental Quality Review Act and with the New York State Historic Preservation Act of 1980, and the respective regulations promulgated thereunder to the extent such acts and regulations are applicable.

#### *Independent Auditors*

The accounting firm of KPMG LLP audited the financial statements of DASNY for the fiscal year ended March 31, 2019. Copies of the most recent audited financial statements are available upon request at the offices of DASNY.

## **PART 9 – LEGALITY OF THE 2019 SERIES 1 BONDS FOR INVESTMENT AND DEPOSIT**

Under New York State law, the 2019 Series 1 Bonds are securities in which all public officers and bodies of the State and all municipalities and municipal subdivisions, all insurance companies and associations, all savings banks and savings institutions, including savings and loan associations, administrators, guardians, executors, trustees, committees, conservators and other fiduciaries in the State may properly and legally invest funds in their control.

The 2019 Series 1 Bonds may be deposited with the State Comptroller to secure deposits of State moneys in banks, trust companies and industrial banks.

## **PART 10 – NEGOTIABLE INSTRUMENTS**

As provided in the Act, the 2019 Series 1 Bonds are negotiable instruments subject to the provisions for registration and transfer contained in the Resolution and in the 2019 Series 1 Bonds.



## PART 11 – TAX MATTERS

In the opinion of Orrick, based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the 2019 Series 1 Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Code. Orrick is of the further opinion that interest on the 2019 Series 1 Bonds is not a specific preference item for purposes of the federal alternative minimum tax. Orrick is also of the opinion that interest on the 2019 Series 1 Bonds is exempt from personal income taxes imposed by the State of New York and any political subdivision thereof (including The City of New York). A complete copy of the proposed form of opinion of Orrick is set forth in “APPENDIX G - FORMS OF APPROVING OPINIONS OF CO-BOND COUNSEL” hereto.

To the extent the issue price of any maturity of the 2019 Series 1 Bonds is less than the amount to be paid at maturity of such 2019 Series 1 Bonds (excluding amounts stated to be interest and payable at least annually over the term of such 2019 Series 1 Bonds), the difference constitutes “original issue discount,” the accrual of which, to the extent properly allocable to each beneficial owner thereof, is treated as interest on the 2019 Series 1 Bonds which is excluded from gross income for federal income tax purposes. For this purpose, the issue price of a particular maturity of the 2019 Series 1 Bonds is the first price at which a substantial amount of such maturity of the 2019 Series 1 Bonds is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). The original issue discount with respect to any maturity of the 2019 Series 1 Bonds accrues daily over the term to maturity of such 2019 Series 1 Bonds on the basis of a constant interest rate compounded semiannually (with straight-line interpolations between compounding dates). The accruing original issue discount is added to the adjusted basis of such 2019 Series 1 Bonds to determine taxable gain or loss upon disposition (including sale, redemption, or payment on maturity) of such 2019 Series 1 Bonds. Beneficial owners of the 2019 Series 1 Bonds should consult their own tax advisors with respect to the tax consequences of ownership of 2019 Series 1 Bonds with original issue discount, including the treatment of beneficial owners who do not purchase such 2019 Series 1 Bonds in the original offering to the public at the first price at which a substantial amount of such 2019 Series 1 Bonds is sold to the public.

2019 Series 1 Bonds purchased, whether at original issuance or otherwise, for an amount higher than their principal amount payable at maturity (or, in some cases, at their earlier call date) (“Premium Bonds”) will be treated as having amortizable bond premium. No deduction is allowable for the amortizable bond premium in the case of bonds, like the Premium Bonds, the interest on which is excluded from gross income for federal income tax purposes. However, the amount of tax-exempt interest received, and a beneficial owner’s basis in a Premium Bond, will be reduced by the amount of amortizable bond premium properly allocable to such beneficial owner. Beneficial owners of Premium Bonds should consult their own tax advisors with respect to the proper treatment of amortizable bond premium in their particular circumstances.

The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the 2019 Series 1 Bonds. DASNY and the Institutions (as defined below) have made certain representations and covenanted to comply with certain restrictions, conditions and requirements designed to ensure that interest on the 2019 Series 1 Bonds will not be included in federal gross income. Inaccuracy of these representations or failure to comply with these covenants may result in interest on the 2019 Series 1 Bonds being included in gross income for federal income tax purposes, possibly from the date of original issuance of the 2019 Series 1 Bonds. The opinion of Orrick assumes the accuracy of these representations and compliance with these covenants. Orrick has not undertaken to determine (or to inform any person) whether any actions taken (or not taken), or events occurring (or not occurring), or any other matters coming to Orrick’s attention after the date of issuance of the 2019 Series 1 Bonds may adversely affect the value of, or the tax status of interest on, the 2019 Series 1 Bonds. Accordingly, the opinion of Orrick is not intended to, and may not, be relied upon in connection with any such actions, events or matters.

In addition, Orrick has relied, among other things, on the opinion of Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel to the Center, the Hospital, the Institute, Realty, and Louis V. Gerstner, Jr. Graduate School of Biomedical Sciences, Memorial Sloan Kettering Cancer Center (collectively, the “Institutions”), regarding the current qualification of the Institutions as organizations described in Section 501(c)(3) of the Code. Such opinion is subject to a number of qualifications, limitations and exceptions. Orrick has also relied upon representations of the Institutions concerning the Institutions’ “unrelated trade or business” activities as defined in Section 513(a) of the Code. Neither Orrick nor Counsel to the Institutions has given any opinion or assurance concerning Section 513(a) of the Code and neither Orrick nor Counsel to the Institutions can give or has given any opinion or assurance about the future activities of the Institutions, or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or the resulting changes in enforcement thereof by the Internal Revenue Service (the “IRS”). Failure of any of the Institutions to be organized and

operated in accordance with the IRS's requirements for the maintenance of their status as organizations described in Section 501(c)(3) of the Code, or to operate the facilities financed or refinanced by the 2019 Series 1 Bonds in a manner that is substantially related to the Institutions' charitable purpose under Section 513(a) of the Code, may result in interest payable with respect to the 2019 Series 1 Bonds being included in federal gross income, possibly from the date of the original issuance of the 2019 Series 1 Bonds.

Although Orrick is of the opinion that interest on the 2019 Series 1 Bonds is excluded from gross income for federal income tax purposes and is exempt from personal income taxes imposed by the State of New York and any political subdivision thereof (including The City of New York), the ownership or disposition of, or the accrual or receipt of interest on, the 2019 Series 1 Bonds may otherwise affect a Beneficial Owner's federal, state or local tax liability. The nature and extent of these other tax consequences depends upon the particular tax status of the Beneficial Owner or the Beneficial Owner's other items of income or deduction. Orrick expresses no opinion regarding any such other tax consequences.

Current and future legislative proposals, if enacted into law, clarification of the Code or court decisions may cause interest on the 2019 Series 1 Bonds to be subject, directly or indirectly, in whole or in part, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent Beneficial Owners from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such legislative proposals or clarification of the Code or court decisions may also affect, perhaps significantly, the market price for, or marketability of, the 2019 Series 1 Bonds. Prospective purchasers of the 2019 Series 1 Bonds should consult their own tax advisors regarding the potential impact of any pending or proposed federal or state tax legislation, regulations or litigation, as to which Orrick is expected to express no opinion.

The opinion of Orrick is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Orrick's judgment as to the proper treatment of the 2019 Series 1 Bonds for federal income tax purposes. It is not binding on the IRS or the courts. Furthermore, Orrick cannot give and has not given any opinion or assurance about the future activities of DASNY or the Institutions or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS. DASNY and the Institutions covenanted, however, to comply with the requirements of the Code.

Orrick's engagement with respect to the 2019 Series 1 Bonds ends with the issuance of the 2019 Series 1 Bonds, and, unless separately engaged, Orrick is not obligated to defend DASNY, the Institutions or the Beneficial Owners regarding the tax-exempt status of the 2019 Series 1 Bonds in the event of an audit examination by the IRS. Under current procedures, parties other than DASNY, the Institutions and their appointed counsel, including the Beneficial Owners, would have little, if any, right to participate in the audit examination process. Moreover, because achieving judicial review in connection with an audit examination of 2019 Series 1 Bonds is difficult, obtaining an independent review of IRS positions with which DASNY or an Institution legitimately disagrees may not be practicable. Any action of the IRS, including but not limited to selection of the 2019 Series 1 Bonds for audit, or the course or result of such audit, or an audit of bonds presenting similar tax issues may affect the market price for, or the marketability of, the 2019 Series 1 Bonds, and may cause DASNY, the Institutions or the Beneficial Owners to incur significant expense.

## **PART 12 – STATE NOT LIABLE ON THE 2019 SERIES 1 BONDS**

The Act provides that notes and bonds of DASNY are not a debt of the State, that the State will not be liable on them, and that such notes or bonds are not payable out of any funds other than those of DASNY. The Resolution specifically provides that the 2019 Series 1 Bonds are not a debt of the State and that the State is not liable on them.

## **PART 13 – COVENANT BY THE STATE**

The Act states that the State pledges and agrees with the holders of DASNY's notes and bonds that the State will not limit or alter the rights vested in DASNY to provide projects, to establish and collect rentals therefrom and to fulfill agreements with the holders of DASNY's notes and bonds or in any way impair the rights and remedies of the holders of such notes or bonds until such notes or bonds and interest thereon and all costs and expenses in connection with any action or proceeding by or on behalf of the holders of such notes or bonds are fully met and discharged. Notwithstanding the State's pledges and agreements contained in the Act, the State may in the exercise of its sovereign power enact or amend its laws which, if determined to be both reasonable and necessary to serve an important public purpose, could have the effect of impairing these pledges and agreements with DASNY and with the holders of DASNY's notes or bonds.

## **PART 14 – UNDERWRITING**

Goldman Sachs & Co. LLC is acting as representative of the underwriters (the “Underwriters”) with respect to the Negotiated Bonds. The Underwriters have agreed, subject to certain conditions, to purchase the Negotiated Bonds from DASNY at an aggregate purchase price of \$169,410,730.57 (which represents the par amount of the Negotiated Bonds, less the Underwriters’ discount of \$859,039.13, plus a premium of \$31,784,769.70), and to make a public offering of the Negotiated Bonds at prices that are not in excess of the public offering prices stated on the inside cover page of this Official Statement. The Underwriters will be obligated to purchase all the Negotiated Bonds if any are purchased.

The Competitive Bonds are being purchased by Morgan Stanley & Co. LLC, as initial purchaser (the “Initial Purchaser”) of such Competitive Bonds, pursuant to a Notice of Sale dated October 3, 2019, at an aggregate purchase price of \$171,587,570.53 (which represents the par amount of the Competitive Bonds, less the purchaser’s discount of \$391,358.72, plus a net premium of \$25,918,929.25).

The 2019 Series 1 Bonds may be offered and sold to certain dealers (including the Underwriters and the Initial Purchaser) at prices lower than such public offering prices, and such public offering prices may be changed, from time to time, by the Underwriters and the Initial Purchaser.

BofA Securities, Inc., an underwriter of the 2019 Series 1 Bonds, has entered into a distribution agreement with its affiliate Merrill Lynch, Pierce, Fenner & Smith Incorporated (“MLPF&S”). As part of this arrangement, BofA Securities, Inc. may distribute securities to MLPF&S, which may in turn distribute such securities to investors through the financial advisor network of MLPF&S. As part of this arrangement, BofA Securities, Inc. may compensate MLPF&S as a dealer for their selling efforts with respect to the 2019 Series 1 Bonds.

J.P. Morgan Securities LLC, an underwriter of the 2019 Series 1 Bonds, has entered into negotiated dealer agreements (each, a “Dealer Agreement”) with Charles Schwab & Co., Inc. (“CS&Co.”) and LPL Financial LLC (“LPL”) for the retail distribution of certain securities offerings at the original issue prices. Pursuant to each Dealer Agreement, each of CS&Co. and LPL may purchase 2019 Series 1 Bonds from J.P. Morgan Securities LLC at the original issue price less a negotiated portion of the selling concession applicable to any 2019 Series 1 Bonds that such firm sells.

Morgan Stanley & Co. LLC, an underwriter of the 2019 Series 1 Bonds, has entered into a retail distribution arrangement with its affiliate Morgan Stanley Smith Barney LLC. As part of this arrangement, Morgan Stanley & Co. LLC may distribute securities to retail investors through the financial advisor network of Morgan Stanley Smith Barney LLC. As part of this arrangement, Morgan Stanley & Co. LLC may compensate Morgan Stanley Smith Barney LLC for its selling efforts with respect to the 2019 Series 1 Bonds.

The Underwriters, the Initial Purchaser and their respective affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. Certain of the Underwriters, the Initial Purchaser and their respective affiliates have provided, and may in the future provide, a variety of these services to the issuer and to persons and entities with relationships with the issuer, for which they received or will receive customary fees and expenses.

In the ordinary course of their various business activities, the Underwriters, the Initial Purchaser and their respective affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of the issuer (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with the issuer. The Underwriters, the Initial Purchaser and their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

## **PART 15 – LEGAL MATTERS**

Certain legal matters incidental to the authorization and issuance of the 2019 Series 1 Bonds by DASNY are subject to the approval of Orrick, Herrington & Sutcliffe LLP, New York, New York and Marous Law Group, P.C., New York, New York, Co-Bond Counsel, whose approving opinions will be delivered with the 2019 Series 1 Bonds. The proposed

forms of Co-Bond Counsel's opinions are set forth in "APPENDIX G - FORMS OF APPROVING OPINIONS OF CO-BOND COUNSEL" hereto.

Certain legal matters will be passed upon for MSKCC by its special counsel, Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, New York, and for the Underwriters and the Initial Purchaser by their counsel, Katten Muchin Rosenman LLP, New York, New York.

There is not now pending any litigation restraining or enjoining the issuance or delivery of the 2019 Series 1 Bonds or questioning or affecting the validity of the 2019 Series 1 Bonds or the proceedings and authority under which they are to be issued.

#### **PART 16 – CONTINUING DISCLOSURE**

In order to assist the Underwriters and the Initial Purchaser in complying with Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended ("Rule 15c2-12"), the Center will enter into a written agreement (the "Continuing Disclosure Agreement") for the benefit of the Holders of the 2019 Series 1 Bonds with Digital Assurance Certification LLC, as disclosure dissemination agent and the Trustee. The proposed form of the Continuing Disclosure Agreement is attached as "APPENDIX H - FORM OF AGREEMENT TO PROVIDE CONTINUING DISCLOSURE" hereto.

The Center has not failed in the past five years to comply in any material respect with any prior undertaking pursuant to the Rule 15c2-12.

#### **PART 17 – RATINGS**

Moody's Investors Service ("Moody's") has assigned a rating of "Aa3" (stable outlook) to the long-term obligations of the Center, S&P Global Ratings, a business unit of Standard & Poor's Financial Services LLC ("S&P") has assigned a rating of "AA-" (stable outlook) to the long-term obligations of the Center and Fitch Ratings has assigned a rating of "AA" (stable outlook) to the long-term obligations of the Center. Such ratings reflect only the views of such organizations and any desired explanation of the significance of such ratings should be obtained from the rating agencies at the following addresses: S&P, 55 Water Street, New York, New York 10041; Moody's, 7 World Trade Center, 250 Greenwich Street, New York, New York 10007; and Fitch Ratings, One State Street Plaza, New York, New York 10004. There is no assurance that such ratings will prevail for any given period of time or that they will not be revised downward or withdrawn entirely by any or all of such rating agencies if, in the judgment of any or all of them, circumstances so warrant. Any such downward revision or withdrawal of such rating or ratings may have an adverse effect on the market price of the 2019 Series 1 Bonds.

#### **PART 18– FINANCIAL ADVISOR**

Melio & Company, LLC, Chicago, Illinois ("Melio"), was engaged by the Center to provide financial advisory services for the development and implementation of a capital financing plan for the Center. Melio has not been engaged by the Center to compile, create, or interpret any information in this Official Statement relating to the Center, including without limitation any of the Center's financial and operating data, whether historical or projected. Any information contained in this Official Statement concerning the Center has not been independently verified by Melio and inclusion of such information is not, and should not be construed as, a representation by Melio as to its accuracy or completeness or otherwise. Melio is not a public accounting firm and has not been engaged by the Center to review or audit any information in this Official Statement in accordance with auditing standards generally accepted in the United States

#### **PART 19 – MISCELLANEOUS**

Reference in this Official Statement to the Act, the Resolution, the Loan Agreement, the Guaranties, the Inducement Agreement and the Intercreditor Agreement do not purport to be complete. Refer to the Act, the Resolution, the Loan Agreement, the Guaranties, the Inducement Agreement and the Intercreditor Agreement for full and complete details of their provisions. Copies of the Resolution, the Loan Agreement, the Guaranties, the Inducement Agreement and the Intercreditor Agreement are on file with DASNY and the Trustee.

The agreements of DASNY with Holders of the 2019 Series 1 Bonds are fully set forth in the Resolution. Neither any advertisement of the 2019 Series 1 Bonds nor this Official Statement is to be construed as a contract with purchasers of the 2019 Series 1 Bonds.

Any statements in this Official Statement involving matters of opinion, whether or not expressly stated, are intended merely as expressions of opinion and not as representations of fact.

The information regarding MSKCC was supplied by the Center.

The information set forth herein relating to DASNY under the heading “PART 8 - DASNY” has been obtained from DASNY. All other information herein has been obtained by the Underwriters and the Initial Purchaser from the Center and other sources deemed to be reliable by the Underwriters and the Initial Purchaser, and is not to be construed as a representation by DASNY, the Underwriters or the Initial Purchaser. In addition, DASNY does not warrant the accuracy of the statements contained herein relating to the Center or MSKCC nor does it directly or indirectly guarantee, endorse or warrant (i) the creditworthiness or credit standing of the Center or MSKCC, (ii) the sufficiency of the security for the 2019 Series 1 Bonds or (iii) the value or investment quality of the 2019 Series 1 Bonds.

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

“APPENDIX A – DEFINITIONS,” “APPENDIX C-1 – SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT,” “APPENDIX C-2 – SUMMARY OF CERTAIN PROVISIONS OF THE SPRINGING AMENDMENTS TO THE LOAN AGREEMENT,” “APPENDIX D – SUMMARY OF CERTAIN PROVISIONS OF THE GUARANTIES AND THE INDUCEMENT AGREEMENT,” “APPENDIX E – SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTION,” “APPENDIX F – SUMMARY OF CERTAIN PROVISIONS OF THE INTERCREDITOR AGREEMENT” and “APPENDIX G – FORMS OF APPROVING OPINIONS OF CO-BOND COUNSEL” have been prepared by Orrick, Herrington & Sutcliffe LLP and Marous Law Group, P.C., Co-Bond Counsel.

“APPENDIX B-1 – COMBINED FINANCIAL STATEMENTS AS OF DECEMBER 31, 2018 AND 2017 AND FOR THE YEARS THEN ENDED, WITH INDEPENDENT AUDITORS’ REPORT” contains the combined financial statements of MSKCC as of December 31, 2018 and 2017 and for the years then ended, which have been audited by Ernst & Young LLP, independent auditors, as stated in their report therein.

“APPENDIX B-2 – UNAUDITED INTERIM COMBINED FINANCIAL STATEMENTS FOR THE SIX-MONTHS ENDED JUNE 30, 2019” contains unaudited interim combined financial statements of MSKCC for the six-months ended June 30, 2019.

The Center has reviewed the parts of this Official Statement describing MSKCC, the Plan of Finance and Appendices B-1 and B-2. The Center shall certify as of the date of delivery of the 2019 Series 1 Bonds that such parts of this Official Statement do not contain any untrue statement of a material fact and do not omit any material fact necessary to make the statements made therein, in the light of the circumstances under which the statements are made, not misleading.

MSKCC has agreed to indemnify DASNY, the Underwriters, the Initial Purchaser and certain others against losses, claims, damages and liabilities arising out of any untrue statements or omissions of statements of any material fact as described in the preceding paragraph.

In the Loan Agreement the Center has agreed to furnish, or cause to be furnished, among other things, to (1) DASNY, (2) each Repository and (3) the Trustee, no later than sixty (60) days subsequent to the last day of each of the first three quarters in each fiscal year, the following information: the interim, comparative cumulative combined financial statements of the Center and the Affiliates, including therein, without limitation, a balance sheet, a statement of changes in net assets and a statement of activities.

The execution and delivery of this Official Statement by an Authorized Officer have been duly authorized by DASNY.

DORMITORY AUTHORITY OF  
THE STATE OF NEW YORK

By:           /s/ Authorized Officer            
Authorized Officer

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**DEFINITIONS**

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## DEFINITIONS

The following are definitions of certain terms used in this Official Statement.

*1998 Loan Agreement* means the Loan Agreement dated as of July 12, 1998, as amended and restated as of February 25, 1998, by and between the Authority and the Center.

*2001 Guaranty* means each of the Guaranty, dated as of January 24, 2002, made by S.K.I Realty Inc. in favor of the Authority, and the Guaranty, dated as of January 24, 2002, made by Sloan Kettering Institute for Cancer Research in favor of the Authority, each of which was made in connection with the 2001 Loan Agreement.

*2001 Inducement Agreement* means the Inducement Agreement, dated as of December 5, 2001, by and between Memorial Hospital for Cancer and Allied Diseases and the Authority made to induce the Authority to issue Bonds to make loans to the Center pursuant to the Loan Agreement.

*2001 Loan Agreement* means the Loan Agreement, dated as of December 5, 2001, by and between the Authority and the Center in connection with the issuance of Bonds, as the same shall have been amended, supplemented or otherwise modified as permitted by the Resolution and by the Loan Agreement.

*2001 Resolution* means the “Memorial Sloan Kettering Cancer Center Revenue Bond Resolution” of the Authority, adopted on December 5, 2001, as the same may be amended, supplemented or otherwise modified pursuant to the terms thereof.

*2001 Resolution Trustee* means The Bank of New York Mellon in its capacity as trustee under the Authority’s 2001 Resolution.

*2003 Guaranty* means each of the Guaranty, dated as of May 14, 2003, made by S.K.I Realty Inc. in favor of the Authority, and the Guaranty, dated as of May 14, 2003, made by Sloan Kettering Institute for Cancer Research in favor of the Authority, each of which was made in connection with the 2003 Loan Agreement.

*2011 Guaranty* means each of the Guaranty, dated as of December 8, 2011, made by S.K.I Realty Inc. in favor of the 2011 Taxable Indenture Trustee, and the Guaranty, dated as of December 8, 2011, made by Sloan Kettering Institute for Cancer Research in favor of the 2011 Taxable Indenture Trustee, each of which was made in connection with the Indenture.

*2011 Inducement Agreement* means the Inducement Agreement, dated as of December 8, 2011, by and between the Hospital and the 2011 Taxable Indenture Trustee, as amended or supplemented.

*2011 Taxable Indenture* means the Indenture of Trust, dated as of December 1, 2011, as supplemented by the Supplemental Indenture of Trust, dated January 11, 2012, by and between the Center and the 2011 Taxable Indenture Trustee, as the same may be amended, supplemented or otherwise modified.

*2011 Taxable Indenture Trustee* means The Bank of New York Mellon in its capacity as trustee under the Indenture of Trust, dated as of December 1, 2011, between the Center and The Bank of New York Mellon.

*2012 Guaranty* means each of the Guaranty, dated as of December 5, 2012, made by S.K.I Realty Inc. in favor of the 2011 Taxable Indenture Trustee, and the Guaranty, dated as of December 5, 2012, made

by Sloan Kettering Institute for Cancer Research in favor of the 2012 Taxable Indenture Trustee, each of which was made in connection with the Indenture, each as amended or supplemented.

*2012 Inducement Agreement* means the Inducement Agreement, dated as of November 1, 2012, by and between the Hospital and the 2012 Taxable Indenture Trustee, as amended or supplemented.

*2012 Taxable Indenture* means the Indenture of Trust, dated as of November 1, 2012, between the Center and the 2012 Taxable Indenture Trustee, as amended or supplemented.

*2012 Taxable Indenture Trustee* means The Bank of New York Mellon in its capacity as trustee under the Indenture of Trust, dated as of November 1, 2012, between the Center and The Bank of New York Mellon.

*2015 Continuing Covenant Agreement* means the Continuing Covenant Agreement, dated as of July 16, 2015, by and between the DNT Asset Trust and the Center.

*2016 Bond Agreement* means an agreement dated September 9, 2016, by and among the New Jersey Economic Development Authority, the 2016 Purchaser and the Center.

*2016 Bond Document* or *2016 Bond Documents* means, individually, each of the 2016-2 Bond, the 2016 Bond Agreement or and the 2016-2 Continuing Covenant Agreement, and, collectively, all 2016-2 Bond, the 2016 Bond Agreement and the 2016-2 Continuing Covenant Agreement.

*2016 Purchaser* means DNT Asset Trust, in its capacity as purchaser of the 2016-2 Bond.

*2016 Guaranty* means each of the Guaranty Agreements dated as of September 9, 2016 in favor of the 2016 Purchaser, made by each of S.K.I Realty Inc., Sloan Kettering Institute for Cancer Research and MSKCC Properties, LLC, each as amended or supplemented.

*2016-1 Continuing Covenant Agreement* means the Continuing Covenant Agreement, dated April 28, 2016, by and between the Center and TD Bank, N.A.

*2016-2 Bond* means the New Jersey Economic Development Authority Revenue Bond (Memorial Sloan Kettering Project) Series 2016-2.

*2016-2 Continuing Covenant Agreement* means the Continuing Covenant Agreement, dated September 9, 2016, by and between the Center and the 2016 Purchaser.

*2019 Series 1 Bonds* means the Authority's Memorial Sloan Kettering Cancer Center Revenue Bonds, 2019 Series 1, issued under the Series Resolution.

*Accreted Value* means with respect to any Capital Appreciation Bond (i) as of any Valuation Date, the amount set forth for such date in the Series Resolution authorizing such Capital Appreciation Bond or the Bond Series Certificate relating thereto and (ii) as of any date other than a Valuation Date, the sum of (a) the Accreted Value on the preceding Valuation Date and (b) the product of (1) a fraction, the numerator of which is the number of days having elapsed from the preceding Valuation Date and the denominator of which is the number of days from such preceding Valuation Date to the next succeeding Valuation Date, calculated based on the assumption that Accreted Value accrues during any semiannual period in equal daily amounts on the basis of a year of twelve (12) thirty-day months, and (2) the difference between the Accreted Values for such Valuation Dates.

*Act* means the Dormitory Authority Act being Chapter 524 of the Laws of 1944 of the State, as amended, and constituting Title 4 of Article 8 and Title 4-B of the Public Authorities Law of the State, as amended.

*Adjusted Operating Loss* means for any Fiscal Year of the Center an amount equal to the loss from operations of the Center and the Affiliates for such Fiscal Year, less the sum of (i) any unrestricted contributions, pledges and bequests to the Center or the Affiliates for such Fiscal Year, and (ii) eight percent (8%) of the average of the aggregate unrestricted investments of the Center and the Affiliates for the three immediately preceding Fiscal Years of the Center, calculated in accordance with generally accepted accounting principles applicable to the Center in effect on the date of the Loan Agreement, which calculation shall be made substantially as set forth in the Loan Agreement.

*Affiliate* means each of the Related Corporations and the Hospital, their respective successors and assigns, and all entities now existing or hereafter formed or acquired whose financial statements are required under generally accepted accounting principles to be combined with those of the Center.

*Annual Administrative Fee* means the fee payable during each Bond Year for the general administrative and supervisory expenses of the Authority in the amount or amounts as more particularly described in the Loan Agreement.

*Appreciated Value* means with respect to any Deferred Income Bond (i) as of any Valuation Date, the amount set forth for such date in the Series Resolution authorizing such Deferred Income Bond or the Bond Series Certificate relating thereto and (ii) as of any date other than a Valuation Date, the sum of (a) the Appreciated Value on the preceding Valuation Date and (b) the product of (1) a fraction, the numerator of which is the number of days having elapsed from the preceding Valuation Date and the denominator of which is the number of days from such preceding Valuation Date to the next succeeding Valuation Date, calculated based on the assumption that Appreciated Value accrues during any semiannual period in equal daily amounts on the basis of a year of twelve (12) thirty-day months, and (2) the difference between the Appreciated Values for such Valuation Dates, and (iii) as of any date of computation on and after the Interest Commencement Date, the Appreciated Value on the Interest Commencement Date.

*Arbitrage Rebate Fund* means the fund so designated, created and established pursuant to the Resolution.

*Assignment Event* means any one of the following:

- (i) A failure by the Authority to pay the principal, Sinking Fund Installment Redemption Price of or interest on the Bonds under the Resolution has occurred;
- (ii) The Center fails to pay, when due, any amount required to be paid on the Bonds by it pursuant to the Loan Agreement and such failure continues beyond any applicable grace period;
- (iii) The occurrence and continuance of one or more of the Funding Events set forth in clauses (a)(ii), (a)(iii), (a)(iv), (a)(v) or (a)(vi) of the provisions of the Loan Agreement summarized in Appendix C to this Official Statement under the caption "Funding Events and Collateral Requirements."
- (iv) The occurrence and continuance of certain Events of Default under the Loan Agreement occurred;

(v) The occurrence and continuance of certain Events of Default under the Inducement Agreement.

*Authority* means the Dormitory Authority of the State of New York, a body corporate and politic constituting a public benefit corporation of the State created by the Act, or any body, agency or instrumentality of the State which shall succeed to the rights, powers, duties and functions of the Authority.

*Authority Fee* means the fee payable to the Authority consisting of all of the Authority's internal costs and overhead expenses attributable to the issuance of the Bonds and the construction of the Projects, as more particularly described in the Loan Agreement.

*Authorized Newspaper* means The Bond Buyer or any other newspaper of general circulation printed in the English language and customarily published at least once a day for at least five (5) days (other than legal holidays) in each calendar week in the Borough of Manhattan, City and State of New York, designated by the Authority.

*Authorized Officer* means (i) in the case of the Authority, the Chair, the Vice-Chair, the Treasurer, an Assistant Treasurer, the Secretary, an Assistant Secretary, the Executive Director, the Deputy Executive Director, the Chief Financial Officer, the Managing Director of Public Finance, the Managing Director of Construction, the Managing Director of Policy and Program Development, and the General Counsel, and when used with reference to any act or document also means any other person authorized by a resolution or the by-laws of the Authority to perform such act or execute such document; (ii) in the case of the Center, when used with respect to any act or document to be performed or executed on behalf of an Affiliate, the person or persons authorized by any provision of the certificate of incorporation, charter, the by-laws, other organizational document or resolution of such Affiliate to perform such act or execute such document, and (iii) in the case of the Trustee, the President, a Vice President, an Assistant Vice President, a Corporate Trust Officer, an Authorized Signatory, an Assistant Corporate Trust Officer, a Trust Officer or an Assistant Trust Officer of the Trustee, and when used with reference to any act or document also means any other person authorized to perform any act or sign any document by or pursuant to a resolution of the Board of Directors of the Trustee or the by-laws of the Trustee.

*Bond* or *Bonds* means any of the bonds of the Authority authorized and issued pursuant to the Resolution and to a Series Resolution.

*Bond Counsel* means Nixon Peabody LLP, or an attorney or other law firm appointed by the Authority, having a national reputation in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds.

*Bond Series Certificate* means the certificate of an Authorized Officer of the Authority fixing terms, conditions and other details of Bonds in accordance with the delegation of power to do so under the Resolution or under a Series Resolution.

*Bond Year* means a period of twelve (12) consecutive months beginning July 1 in any calendar year and ending on June 30 of the succeeding calendar year.

*Bondholder, Holder of Bonds* or *Holder* or any similar term, when used with reference to a Bond or Bonds, means the registered owner of any Bond.

*Book-Entry Bond* means a Bond authorized to be issued, and issued to and registered in the name of, a Depository for the participants in such Depository or the beneficial owner of such Bond.

*Business Day* means, unless otherwise defined in connection with any particular Bonds, any day which is not a Saturday. Sunday or a day on which the Trustee or banking institutions chartered by the State or the United States of America are legally authorized to close in The City of New York.

*Capital Appreciation Bond* means any Bond as to which interest is compounded on each Valuation Date for such Bond and is payable only at the maturity or prior redemption thereof.

*Cash and Investments* means, collectively, all cash and investments of the Center and the Affiliates, other than (i) those that are permanently restricted and (ii) the nominal value of cash and the fair market value of investments that have been encumbered by Liens given pursuant to the Loan Agreement to secure obligations that do not constitute Debt.

*Center* means Memorial Sloan Kettering Cancer Center, a corporation duly organized and existing under the Not-For-Profit Corporation Law of the State, and its successors and assigns.

*Code* means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

*Collateral\** means (i) the pledge of or security interest in the Gross Receipts of the Center and the Related Corporations, (ii) the mortgage or mortgages on Research Center Property, Restricted Property, Unrestricted Property and Hospital Property, (iii) the security interest in the furnishings and equipment located in and used in connection with any of the Research Center Property, Restricted Property, Unrestricted Property and Hospital Property, (iv) the pledge of or security interest in any and all Sale Proceeds, (v) such other collateral security to which the Center has obtained the Insurers' Consent and the prior written consent of the Authority, in each case given or made by the Center or a Related Corporation in accordance with the Loan Agreement, and by the Hospital pursuant to the Inducement Agreement and (vi) any other pledge, security interest or mortgage given or made to the Authority pursuant to the Loan Agreement or pursuant to the Inducement Agreement.

*Collateral Assignment* means, when used in connection with the 2003 Resolution or 2003 Loan Agreement, an assignment by the Authority of all of its rights in and under the 2003 Loan Agreement, the 2003 Inducement Agreement, the 2003 Guaranty or any Collateral Document related thereto made by the Authority to the 2003 Resolution Trustee pursuant to the 2003 Resolution.

*Collateral Documents* means all documents which may be entered into, recorded or filed in connection with the Loans or the Taxable Bonds or which further evidence or secure the indebtedness under the 2003 Loan Agreement, the 2016 Bond Agreement or the Taxable Indentures secured by the Shared Collateral, but such term does not include the 2003 Loan Agreement, the 2016 Bond Documents, the Taxable Indentures, the Inducement Agreements or the Guaranties.

*Contract Documents* means any general contract or agreement for the construction of a Project or any component thereof, notice to bidders, information for bidders, form of bid, general conditions, supplemental general conditions, general requirements, supplemental general requirements, bonds, plans and specifications, addenda, change orders, and any other documents entered into or prepared by or on behalf of the Center relating to the construction of a Project, and any amendments to the foregoing.

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\* This definition will be amended upon the effectiveness of the amendments to the Loan Agreement described in "APPENDIX C-2 – SUMMARY OF CERTAIN PROVISIONS OF SPRINGING AMENDMENTS TO THE LOAN AGREEMENT."

*Construction Fund* means the fund so designated, created and established pursuant to the Resolution.

*Cost or Costs of Issuance* means the items of expense incurred in connection with the authorization, sale and issuance of the Bonds, which items of expenses shall include, but not be limited to, document printing and reproduction costs, filing and recording fees, costs of credit ratings, initial fees and charges of the Trustee or a Depository, legal fees and charges, professional consultants' fees, fees and charges for execution, transportation and safekeeping of Bonds, premiums, fees and charges for insurance on Bonds, commitment fees or similar charges relating to a Credit Facility, a Liquidity Facility, an Interest Rate Exchange Agreement or a Remarketing Agent, costs and expenses in connection with the refunding of Bonds or other bonds or notes of the Authority, costs and expenses incurred pursuant to a remarketing agreement and other costs, charges and fees, including those of the Authority, in connection with the foregoing.

*Cost or Costs of the Project* means when used in relation to a Project the costs and expenses or the refinancing of costs and expenses determined by the Authority to be necessarily or appropriately incurred in connection with the Project, including, but not limited to, (i) costs and expenses of the acquisition of the title to or other interest in real property, including easements, rights-of-way and licenses, (ii) costs and expenses incurred for labor and materials and payments to contractors, builders and materialmen, for the acquisition, construction, reconstruction, rehabilitation, repair and improvement of the Project, (iii) the cost of surety bonds and insurance of all kinds, including premiums and other charges in connection with obtaining title insurance, that may be required or necessary prior to completion of the Project, which is not paid by a contractor or otherwise provided for, (iv) the costs and expenses for design, environmental inspections and assessments, test borings, surveys, estimates, plans and specifications and preliminary investigations therefor, and for supervising construction of the Project, (v) costs and expenses required for the acquisition and installation of equipment or machinery, (vi) all other costs which the Center shall be required to pay or cause to be paid for the acquisition, construction, reconstruction, rehabilitation, repair, improvement and equipping of the Project, (vii) any sums required to reimburse the Center or the Authority for advances made by them for any of the above items or for other costs incurred and for work done by them in connection with the Project (including interest on moneys borrowed from parties other than the Center), (viii) interest on the Bonds, bonds, notes or other obligations of the Authority issued to finance Costs of the Project prior to, during and for a reasonable period after completion of the acquisition, construction, reconstruction, rehabilitation, repair, improvement or equipping of the Project, and (ix) fees, expenses and liabilities of the Authority incurred in connection with the Project or pursuant to the Resolution or to the Loan Agreement, a Credit Facility, a Liquidity Facility or a Remarketing Agreement in connection with Option Bonds or Variable Interest Rate Bonds.

*Credit Facility* means an irrevocable letter of credit, surety bond, loan agreement, or other agreement issued or extended by a bank, a trust company, a national banking association, an organization subject to registration with the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956 or any successor provisions of law, a federal branch pursuant to the International Banking Act of 1978 or any successor provisions of law, a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, a savings bank or saving and loan association chartered or organized under the laws of any state of the United States of America, the Government National Mortgage Association or any successor thereto, the Federal National Mortgage Association or any successor thereto, or any other federal agency or instrumentality approved by the Authority, pursuant to which shall entitle the Authority or the Trustee to obtain moneys to pay at maturity or earlier redemption the principal and Redemption Price of and, when due, the interest on Outstanding Bonds, and may entitle the Authority, the Trustee or a tender agent to obtain moneys to pay the purchase price of Option Bonds tendered for purchase or redemption in

accordance with the Resolution and with the Series Resolution authorizing such Bonds or the Bond Series Certificate relating thereto.

*Debt* means (i) when used in the Loan Agreement, in connection with any person, indebtedness for borrowed money incurred or guaranteed by such person, whether or not evidenced by notes, bonds, debentures or other similar evidences of indebtedness, including indebtedness under purchase money mortgages, capital leases, installment sales agreements and similar security arrangements which appear as debt on the audited balance sheet of such person in accordance with generally accepted accounting principles and (ii) when used in the Resolution in connection with the Center, as of any particular date of calculation, the principal amount of Bonds issued that are then Outstanding.

*Debt Ratio* means as of any Measurement Date of calculation a ratio of the Cash and Investments of the Center and the Affiliates to the aggregate principal amount of outstanding Debt of the Center and the Affiliates, as determined by the chief financial officer of the Center based upon the unaudited combined financial statements of the Center and the Affiliates if the Measurement Date is not the last day of the Center's Fiscal Year, and based upon the audited combined financial statements of the Center and the Affiliates for such Fiscal Year if the Measurement Date is the last day of such Fiscal Year; *provided, however*, that for purposes of calculation of the Debt Ratio, Option Bonds held by or on behalf of the Center or an Affiliate (and the correlative obligations under the Loan Agreement) shall not be considered Debt.

*Debt Service Fund* means the fund so designated, created and established pursuant to the Resolution.

*Defeasance Security* means (a) a Government Obligation of the type described in clauses (i), (ii), (iii) or (iv) of the definition of Government Obligations, (b) Federal Agency Obligations described in clauses (i) or (ii) of the definition of Federal Agency Obligations and (c) an Exempt Obligation, provided such Exempt Obligation (i) is not subject to redemption prior to maturity other than at the option of the holder thereof or as to which irrevocable instructions have been given to the trustee of such Exempt Obligation by the obligor thereof to give due notice of redemption and to call such Exempt Obligation for redemption on the date or dates specified in such instructions and such Exempt Obligation is not otherwise subject to redemption prior to such specified date other than at the option of the holder thereof, (ii) is secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or Government Obligations, which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such Exempt Obligation on the maturity date thereof or the redemption date specified in the irrevocable instructions referred to in clause (i) above, (iii) as to which the principal of and interest on the direct obligations of the United States of America which have been deposited in such fund, along with any cash on deposit in such fund, are sufficient to pay the principal of and interest and redemption premium, if any, on such Exempt Obligation on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in clause (i) above, and (iv) is rated by at least two nationally recognized rating services in the highest rating category for such Exempt Obligation; *provided, however*, that (1) such term shall not include any interest in a unit investment trust or mutual fund or (2) any obligation that is subject to redemption prior to maturity other than at the option of the holder thereof.

*Deferred Income Bond* means any Bond as to which interest accruing thereon prior to the Interest Commencement Date of such Bond is compounded on each Valuation Date for such Deferred Income Bond, and as to which interest accruing after the Interest Commencement Date is payable semiannually on July 1<sup>st</sup> and January 1<sup>st</sup> of each Bond Year.

*Depository* means The Depository Trust Company, New York, New York, a limited purpose trust company organized under the laws of the State, or its nominee, or any other person, firm, association or

corporation designated in the Series Resolution authorizing a Series of Bonds or a Bond Series Certificate relating to a Series of Bonds to serve as securities depository for the Bonds of such Series.

*Derivative Agreement* means an interest rate or currency exchange agreement, an interest rate cap or collar, an agreement for the purchase of debt securities to be delivered in the future or any other similar hedge or derivative arrangement.

*Derivative Obligation* means, as of any particular date of calculation: (i) when used in the Loan Agreement, with respect to a Derivative Agreement in connection with which the Center or an Affiliate has given a Lien pursuant to the Loan Agreement or the Inducement Agreement, the amount that is or may be payable to the counter-party thereunder that is then secured by Liens on Property of the Center or an Affiliate; and (ii) solely when used in paragraph (b)(i) of the provisions of the Loan Agreement summarized in Appendix C of this Official Statement under the caption “*Liens; Secured Debt*” with respect to a Derivative Agreement that is not then secured by Liens on Property of the Center or an Affiliate, but for which the Center or an Affiliate is obligated upon the occurrence of a future event to give such security, the maximum amount that may be payable to the counter-party thereunder assuming that (A) in the case of an arrangement based upon interest rates, the relevant interest rates have changed by two hundred (200) basis points from the rates at the time such agreement or arrangement was entered into, and (B) in the case of an arrangement based upon currency rates, that the relevant exchange rates have risen or fallen by twenty-five percent (25%) from those existing at the time such agreement or arrangement was entered into, in each case so as to increase the amount that may be payable thereunder by the Center or an Affiliate.

*Event of Default* means any or the respective events of default under and as defined in the Loan Agreements, any of the Bond Documents, the Taxable Indentures, the Inducement Agreements, the Guaranties or the Collateral Documents.

*Exempt Obligation* means (i) an obligation of any state or territory of the United States of America, any political subdivision of any state or territory of the United States of America, or any agency, authority, public benefit corporation or instrumentality of such state, territory or political subdivision, the interest on which is excludable from gross income under Section 103 of the Code, which is not a “specified private activity bond” within the meaning of Section 57(a)(5) of the Code and which, at the time an investment therein is made or such obligation is deposited in any fund or account under the Resolution, is rated, without regard to qualification of such rating by symbols such as “+” or “-” and numerical notation, no lower than the second highest rating category for such obligation by at least two nationally recognized rating services, (ii) a certificate or other instrument which evidences the beneficial ownership of, or the right to receive all or a portion of the payment of the principal of or interest on any of the foregoing and (iii) a share or interest in a mutual fund, partnership or other fund wholly comprised of any of the foregoing obligations.

*Federal Agency Obligation* means (i) an obligation issued by any federal agency or instrumentality approved by the Authority, (ii) an obligation the principal of and interest on which are fully insured or guaranteed as to payment by a federal agency approved by the Authority, (iii) a certificate or other instrument which evidences the beneficial ownership of, or the right to receive all or a portion of the payment of the principal of or interest on any of the foregoing and (iv) a share or interest in a mutual fund, partnership or other fund wholly comprised of any of the foregoing obligations.

*Fiscal Year* means a twelve month period beginning January 1<sup>st</sup> of a year and ending on December 31<sup>st</sup> of such year, or such other twelve month period as the Center may elect as its fiscal year.

*Fixed Rate* means the rate at which a 2019 Series 1 Bond bears interest to its maturity during the Fixed Rate Period, as established in accordance with the Bond Series Certificate.



*Fixed Rate Mode* means a Rate Mode in which a 2019 Series 1 Bond in such Rate Mode bears interest at a Fixed Rate.

*Foreclose* means to foreclose upon or to exercise any power of sale or otherwise to foreclose or realize upon the Shared Collateral or any part thereof.

*Funding Event* means any one of the events set forth in the provisions of the Loan Agreement summarized in Appendix C to this Official Statement under the caption “*Funding Events and Collateral Requirement*”.

*Government Obligation* means (i) a direct obligation of the United States of America, (ii) an obligation the principal of and interest on which are fully insured or guaranteed as to payment of principal and interest by the United States of America, (iii) an obligation to which the full faith and credit of the United States of America are pledged, (iv) a certificate or other instrument which evidences the beneficial ownership of, or the right to receive all or a portion of the payment of the principal of or interest on any of the foregoing and (v) a share or interest in a mutual fund, partnership or other fund wholly comprised of any of the foregoing obligations.

*Governmental Requirements* means any present and future laws, rules, orders, ordinances, regulations, statutes, requirements and executive orders applicable to a Project of the United States, the State and any political subdivision thereof, and any agency, department, commission, board, bureau or instrumentality of any of them, now existing or hereafter created, and having or asserting jurisdiction over a Project or any part of either.

*Gross Receipts*<sup>\*</sup> means, when used in connection with any person (i) accounts, contract rights, chattel paper, instruments, general intangibles and other obligation of any kind of such, now or hereafter existing, whether or not arising out of or in connection with the sale or lease of goods or the rendering of services, whether or not such services have been performed, and all rights now or hereafter existing in and to all security agreements, leases and other contracts securing or otherwise relating to any such accounts, contract rights, chattel paper, instruments, general intangibles or obligations, (ii) the rents, profits and issues of the Research Center Property and (iii) all proceeds of any and all of the foregoing collateral, including without limitation any amounts received from the sale, exchange, lease or other disposition of any of the foregoing collateral and, to the extent not otherwise included, all payments under insurance (whether or not the Authority is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing collateral; exclusive, however, of (A) any and all gifts, grants, bequests, donations and contributions received by such person before or after the date of the Loan Agreement, whether unrestricted or restricted by the donor or maker thereof, and (B) any and all income and earnings on investments of such person, including, but not limited to, interest income, dividends and realized or unrealized gains.

*Guarantor* means Sloan Kettering Institute for Cancer Research or S.K.I. Realty, Inc., as the maker of a Guaranty.

*Guaranty* means each guaranty of payment of the Center’s obligations under the Loan Agreement made by Sloan Kettering Institute for Cancer Research and S.K.I. Realty, Inc.

*Hospital* means Memorial Hospital for Cancer and Allied Diseases, and its successors and assigns.

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\* This definition will be amended upon the effectiveness of the amendments to the Loan Agreement described in “APPENDIX C-2 – SUMMARY OF CERTAIN PROVISIONS OF SPRINGING AMENDMENTS TO THE LOAN AGREEMENT.”

*Hospital Property* means all of the right, title and interest of the Hospital in and to (i) the land now owned by it, and the buildings and improvements thereon, regardless of when acquired or erected, in the City, County and State of New York, more particularly described in the Loan Agreement and (ii) any and all land hereafter acquired by the Hospital, and the buildings and improvements thereon, regardless of when acquired or erected, exclusive of the Research Center Property, which for purposes of the Loan Agreement is considered Restricted Property.

*Inducement Agreement* or 2003 Inducement Agreement means the Inducement Agreement, dated as of May 14, 2003, by and between Memorial Hospital for Cancer and Allied Diseases and the Authority made to induce the Authority to issue Bonds to make loans to the Center pursuant to the Loan Agreement.

*Inducement Agreements* means, collectively, the 2003 Inducement Agreement, the 2011 Inducement Agreement and the 2012 Inducement Agreement.

*Insured Bond* means an Outstanding Bond for which the Authority or the Center obtained from an Insurer at the time of initial issuance a financial guaranty insurance policy pursuant to which the Insurer is obligated to pay the Holder of such Bond the principal or Sinking Fund Installments of and interest on such Bond not otherwise paid by the Authority in accordance with the terms of such Bond and of the Resolution.

*Insurer* or *Insurers* means the provider of any municipal bond insurance policy relating to any bonds issued under and outstanding within the meaning of the applicable Resolution.

*Insurers' Consent* means the written consent of the Insurers of a majority in principal amount of the Insured Bonds.

*Intercreditor Agreement* means the Amended and Restated Intercreditor Agreement, as the same may be amended, supplemented or otherwise modified.

*Interest Commencement Date* means, with respect to any particular Deferred Income Bond, the date prior to the maturity date thereof specified in the Series Resolution authorizing such Bond or the Bond Series Certificate relating to such Bond, after which interest accruing on such Bond shall be payable on the interest payment date immediately succeeding such Interest Commencement Date and semiannually thereafter on July 1 and January 1 of each Bond Year.

*Interest Rate Exchange Agreement* means (i) an agreement entered into by the Authority or the Center in connection with the issuance of or which relates to Bonds of one or more Series which provides that during the term of such agreement the Authority or the Center is to pay to the counter-party thereto interest accruing at a fixed or variable rate per annum on an amount equal to a principal amount of such Bonds and that such counter-party is to pay to the Authority an amount based on the interest accruing on a principal amount equal to the same principal amount of such Bonds at a fixed or variable rate per annum, in each case computed according to a formula set forth in such agreement, or that one shall pay to the other any net amount due under such agreement or (ii) interest rate cap agreements, interest rate floor agreements, interest rate collar agreements and any other interest rate related hedge agreements or arrangements.

*Investment Agreement* means a repurchase agreement or other agreement for the investment of moneys with a Qualified Financial Institution.

*Investment Property* means any (i) common or preferred stock, note, bond or debenture of any corporation, (ii) interest in a unit investment trust, mutual fund, hedge fund, limited partnership or limited liability company, and (iii) investment agreement or other investment property, held as part of the Cash and Investments of the Center or a Related Corporation, but such term shall not include any Sale Proceeds.

*Lien* means any mortgage, pledge, lien, charge or security interest in the nature thereof (including any conditional sales agreement, equipment trust agreement, or other title retention agreement) or other encumbrance of whatsoever nature.

*Liquidity Facility* means an irrevocable letter of credit, surety bond, loan agreement, Standby Purchase Agreement, line of credit or other agreement or arrangement issued or extended by a bank, a trust company, a national banking association, an organization subject to registration with the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956 or any successor provisions of law, a federal branch pursuant to the International Banking Act of 1978 or any successor provisions of law, a savings bank, a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, a savings and loan association, an insurance company or association chartered or organized under the laws of any state of the United States of America, the Government National Mortgage Association or any successor thereto, the Federal National Mortgage Association or any successor thereto, or any other federal agency or instrumentality approved by the Authority, pursuant to which moneys may be obtained by the Authority, the Trustee or a tender agent upon the terms and conditions contained therein for the purchase or redemption of Option Bonds tendered for purchase or redemption in accordance with the terms of the Resolution and of the Series Resolution authorizing such Bonds or the Bond Series Certificate relating to such Bonds.

*Loan Agreement or 2003 Loan Agreement* means the Loan Agreement, dated as of February 26, 2003, by and between the Authority and the Center in connection with the issuance of Bonds, as the same shall have been amended, supplemented or otherwise modified as permitted by the Resolution and by the Loan Agreement.

*Management Consultant* means a nationally recognized accounting firm or management consulting firm or other similar firm, experienced in reviewing and assessing hospital operations (which may include a firm of independent public accountants that, when appointed as Management Consultant, is then serving as the Center's auditor), selected by the Center and acceptable to the Authority and the Insurers in the exercise of their respective reasonable judgment.

*Mandatory Tender Date* means any date on which a 2019 Series 1 Bond is required to be purchased in accordance with the Bond Series Certificate.

*Maximum Interest Rate* means, with respect to any particular Variable Interest Rate Bond, the numerical rate of interest, if any, set forth in the Series Resolution authorizing such Bond or the Bond Series Certificate relating to such Bond as the maximum rate at which such Bond may bear interest at any time.

*Measurement Date* means June 30<sup>th</sup> and December 31<sup>st</sup> of each Fiscal Year of the Center; *provided, however,* that, if the Center's Fiscal Year does not end on December 31<sup>st</sup> of a calendar year, the Measurement Dates shall be the last day of the second quarter of the Center's Fiscal Year and last day of such Fiscal Year.

*Minimum Interest Rate* means, with respect to any particular Variable Interest Rate Bond, a numerical rate of interest, if any, set forth in the Series Resolution authorizing such Bond or the Bond Series Certificate relating to such Bonds as the minimum rate at which such Bond may bear interest at any time.

*Mortgaged Property* means the real property mortgaged to the Authority pursuant to the provisions of the Loan Agreement summarized in Appendix C of this Official Statement under the captions "*Funding Events and Collateral Requirement*" and "*Limitation on Liens; Secured Debt*" or the provisions of the

Inducement Agreement summarized in Appendix D of the Official Statement under the caption “*Collateral*”, including all fixtures.

*Officer’s Certificate* means, when used in connection with a Guarantor or the Hospital, a certificate signed by an individual authorized by any provision of the certificate of incorporation, charter, by-laws or other organizational document or resolution of the Guarantor or the Hospital, respectively.

*Official Statement* means an official statement or other offering document relating to and in connection with the sale, remarketing or reoffering of Bonds.

*Option Bond* means any Bond which by its terms may be or is required to be tendered by and at the option of the Holder thereof for redemption by the Authority prior to the stated maturity thereof or purchase by the Authority prior to the stated maturity thereof or the maturity of which may be extended by and at the option of the Holder thereof in accordance with the Series Resolution authorizing such Bonds or the Bond Series Certificate related to such Bonds.

*Outstanding*, when used in reference to Bonds, means, as of a particular date, all Bonds authenticated and delivered under the Resolution and under any applicable Series Resolution except: (i) any Bond canceled by the Trustee at or before such date; (ii) any Bond deemed to have been paid in accordance with the Resolution; (iii) any Bond in lieu of or in substitution for which another Bond shall have been authenticated and delivered pursuant to the Resolution; and (iv) any Option Bond tendered or deemed tendered in accordance with the provisions of the Series Resolution authorizing such Bond or the Bond Series Certificate relating to such Bond on the applicable adjustment or conversion date, if interest thereon shall have been paid through such applicable date and the purchase price thereof shall have been paid or amounts are available for such payment as provided in the Resolution and in the Series Resolution authorizing such Bond or the Bond Series Certificate relating to such Bond.

*Paying Agent* means, with respect to the Bonds of any Series, the Trustee and any other bank or trust company and its successor or successors, appointed pursuant to the provisions of the Resolution or of a Series Resolution, a Bond Series Certificate or any other resolution of the Authority adopted prior to authentication and delivery of the Series of Bonds for which such Paying Agent or Paying Agents shall be so appointed.

*Permitted Collateral* means (i) Government Obligations described in clauses (i), (ii) or (iii) of the definition of Government Obligations, (ii) Federal Agency Obligations described in clauses (i) or (ii) of the definition of Federal Agency Obligations, (iii) commercial paper that (a) matures within two hundred seventy (270) days after its date of issuance, (b) is rated in the highest short term rating category by at least one nationally recognized rating service and (c) is issued by a domestic corporation whose unsecured senior debt is rated by at least one nationally recognized rating service no lower than in the second highest rating category or (iv) financial guaranty agreements, surety or other similar bonds or other instruments of an insurance company that has an equity capital of at least \$125,000,000 and is rated by Bests Insurance Guide or a nationally recognized rating service in the highest rating category.

*Permitted Encumbrance*\* means when used in connection with any Research Center Property, Restricted Property, Unrestricted Property or Hospital Property, any of the following:

- (i) The lien of taxes and assessments which are not delinquent;

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\* This definition will be amended upon the effectiveness of the amendments to the Loan Agreement described in “APPENDIX C-2 – SUMMARY OF CERTAIN PROVISIONS OF SPRINGING AMENDMENTS TO THE LOAN AGREEMENT.”

(ii) The lien of taxes and assessments which are delinquent but the validity of which is being contested in good faith unless thereby the property or the interest of the Authority therein may be in danger of being lost or forfeited;

(iii) Minor defects and irregularities in the title to the such property which do not in the aggregate materially impair the use of such property for the purposes for which it is or may be reasonably be expected to be held;

(iv) Easements, exceptions or reservations for the purpose of pipelines, telephone lines, telegraph lines, power lines and substations, roads, streets, alleys, highways, railroad purposes, drainage and sewerage purposes, dikes, canals, laterals, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, which do not materially impair the use of such property for the purposes for which it is or may be reasonably be expected to be held; and

(v) Such other encumbrances, defects, and irregularities to which the Insurers' Consent and the prior written consent of the Authority have been obtained.

*Permitted Investments* means any of the following:

(i) Government Obligations;

(ii) Federal Agency Obligations;

(iii) Exempt Obligations;

(iv) Uncollateralized certificates of deposit that are fully insured by the Federal Deposit Insurance Corporation and issued by a banking organization authorized to do business in the State;

(v) Collateralized certificates of deposit that are (a) issued by a banking organization authorized to do business in the State that has an equity capital of not less than \$125,000,000, whose unsecured senior debt, or debt obligations fully secured by a letter or credit, contract, agreement or surety bond issued by it, are rated by at least one nationally recognized rating service in at least the second highest rating category, and (b) are fully collateralized by Permitted Collateral; and

(v) Investment Agreements that are fully collateralized by Permitted Collateral.

*Project* means a "dormitory" as defined in the Act, which may include more than one part, financed in whole or in part from the proceeds of the sale of Bonds, as more particularly described in the Resolution or in or pursuant to a Series Resolution.

*Property* means when used in connection with a person, the assets of such person, whether consisting of real property, tangible or intangible personal property, or an interest or estate in any such property.

*Provider* means the issuer of a Credit Facility or a Liquidity Facility.

*Provider Payments* means the amount, certified by a Provider to the Trustee, payable to such Provider by the Center on account of amounts advanced by it under a Credit Facility or a Liquidity Facility, including interest on amounts advanced and fees and charges with respect thereto.

*Qualified Financial Institution* means any of the following entities that has an equity capital of at least \$125,000,000 or whose obligations are unconditionally guaranteed by an affiliate or parent having an equity capital of at least \$125,000,000:

(i) a securities dealer, the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation, and (a) that is on the Federal Reserve Bank of New York list of primary government securities dealers and (b) whose senior unsecured long term debt is at the time an investment with it is made is rated by at least one nationally recognized rating service no lower than in the second highest rating category, or, in the absence of a rating on long term debt, whose short term debt is rated by at least one nationally recognized rating service no lower than in the highest rating category for such short term debt; *provided, however*, that no short term rating may be utilized to determine whether an entity qualifies under this paragraph as a Qualified Financial Institution if the same would be inconsistent with the rating criteria of any Rating Service or credit criteria of an entity that provides a Credit Facility or financial guaranty agreement in connection with Outstanding Bonds;

(ii) a bank, a trust company, a national banking association, a corporation subject to registration with the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956 or any successor provisions of law, a federal branch pursuant to the International Banking Act of 1978 or any successor provisions of law, a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, a savings bank, a savings and loan association, an insurance company or association chartered or organized under the laws of the United States of America, any state of the United States of America or any foreign nation, whose senior unsecured long term debt is at the time an investment with it is made is rated by at least one nationally recognized rating service no lower than in the second highest rating category, or, in the absence of a rating on long term debt, whose short term debt is rated by at least one nationally recognized rating service no lower than in the highest rating category for such short term debt; *provided, however*, that no short term rating may be utilized to determine whether an entity qualifies under this paragraph as a Qualified Financial Institution if the same would be inconsistent with the rating criteria of any Rating Service or credit criteria of an entity that provides a Credit Facility or financial guaranty agreement in connection with Outstanding Bonds;

(iii) a corporation affiliated with or which is a subsidiary of any entity described in (i) or (ii) above or which is affiliated with or a subsidiary of a corporation which controls or wholly owns any such entity, whose senior unsecured long term debt is at the time an investment with it is made is rated by at least one nationally recognized rating service no lower than in the second highest rating category, or, in the absence of a rating on long term debt, whose short term debt is rated by at least one nationally recognized rating service no lower than in the highest rating category for such short term debt; *provided, however*, that no short term rating may be utilized to determine whether an entity qualifies under this paragraph as a Qualified Financial Institution if the same would be inconsistent with the rating criteria of any Rating Service or credit criteria of an entity that provides a Credit Facility or financial guaranty agreement in connection with Outstanding Bonds;

(iv) the Government National Mortgage Association or any successor thereto, the Federal National Mortgage Association or any successor thereto, or any other federal agency or instrumentality approved by the Authority; or

(v) a corporation whose obligations, including any investments of any moneys held under the Resolution purchased from such corporation, are insured by an insurer that meet the applicable rating requirements set forth above.

*Rating Service* means each of Moody's Investors Service, Inc., Standard & Poor's Rating Services, and Fitch, Inc., in each case, which has assigned a rating to Outstanding Bonds at the request of the Authority, or their respective successors and assigns.

*Record Date* means, unless the Series Resolution authorizing Variable Interest Rate Bonds or Option Bonds or the Bond Series Certificate relating thereto provides otherwise with respect to such Variable Rate Bonds or Option Bonds, the fifteenth (15<sup>th</sup>) day (whether or not a Business Day) of the calendar month next preceding an interest payment date.

*Redemption Price*, when used with respect to a Bond, means the principal amount of such Bond plus the applicable premium, if any, payable upon redemption prior to maturity thereof pursuant to the Resolution or to the applicable Series Resolution or Bond Series Certificate.

*Refunding Bonds* means all Bonds, whether issued in one or more Series of Bonds, authenticated and delivered on original issuance pursuant to the Resolution, and any Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to the Resolution.

*Related Agreements* means each of the Guaranties, the Inducement Agreement, the Intercreditor Agreement, each Remarketing Agreement, each Interest Rate Exchange Agreement, each Broker-Dealer Agreement, the Auction Agent Agreement and each agreement entered into in connection with a Credit Facility or Liquidity Facility, to which the Center is a party.

*Related Corporation* means each of Sloan Kettering Institute for Cancer Research and S.K.I. Realty, Inc., each of which is a corporation incorporated and existing pursuant to the Not-For-Profit Corporation Law of the State, their successors and assigns, and all entities now existing (other than the Hospital) or formed or acquired whose financial statements are required under generally accepted accounting principles to be combined with those of the Center.

*Remarketing Agent* means the person appointed by or pursuant to a Series Resolution authorizing the issuance of Option Bonds to remarket such Option Bonds tendered or deemed to have been tendered for purchase in accordance with such Series Resolution or the Bond Series Certificate relating to such Option Bonds.

*Remarketing Agreement* means, with respect to Option Bonds of a Series, an agreement either between the Authority and the Remarketing Agent, or among the Authority, the Center and the Remarketing Agent, relating to the remarketing of such Bonds.

*Research Center Property* means each and all of the parcels of real property included in the definition of such term contained in the 2003 Loan Agreement, the 2011 Taxable Indenture, the 2012 Taxable Indenture and the 2016 Bond Agreement.

*Resolution* or *2003 Resolution* means the Memorial Sloan Kettering Cancer Center Revenue Bond Resolution, adopted by the Authority on February 26, 2003, as from time to time amended or supplemented by Supplemental Resolutions or Series Resolutions in accordance with the terms and provisions of the Resolution.

*Restricted Gift* means, when used in connection with a Project, any gift, grant or bequest of money or other property made or given by any person the use of which has been restricted by such person to paying any cost or expense that constitutes a Cost of a Project.

*Restricted Property* means all of the right, title and interest of the Center and each Related Corporation in and to: (i) the land now owned or hereafter acquired by any of them, and the building and improvements thereon, regardless of when acquired or erected, more particularly described in the Loan Agreement; (ii) any real property acquired by any of the Center or a Related Corporation in exchange for other Restricted Property or acquired with Sale Proceeds derived from the sale or other disposition of Restricted Property; (iii) the Sale Proceeds derived from the sale or other disposition of any Restricted Property; (iv) any building or improvement erected or constructed with Sale Proceeds derived from the sale or other disposition of Restricted Property, and the land on which it is erected or constructed; (v) any real property acquired by the Center or a Related Corporation from the Hospital; and (vi) any real property acquired by any of the Center or a Related Corporation with cash or the proceeds of the disposition of any other Property paid or delivered to any of them by the Hospital in full or partial satisfaction of any Debt of the Hospital to any of them or of any account payable by or receivable from the Hospital to any of them.

*Revenues* means all payments received or receivable by the Authority pursuant to the Loan Agreement or a Guaranty, which are required to be paid to the Trustee (except payments to the Trustee for the administrative costs and expenses or fees of the Trustee and payments to the Trustee for deposit to the Arbitrage Rebate Fund), and all amounts received as a consequence of the enforcement of the Loan Agreement, a Guaranty or the Inducement Agreement, including, but not limited to amounts derived from the foreclosure, sale or other realization upon any of the Collateral.

*Sale Proceeds\** means when used in connection with any Unrestricted Property, Restricted Property, Research Center Property or Mortgaged Property (i) the cash proceeds of the sale or other disposition of such property remaining after deducting therefrom the reasonable costs and expenses incurred by the seller in connection with such sale or disposition, including but not limited to, amounts received as deferred payment of the purchase price pursuant to any purchase money mortgage or otherwise, (ii) any intangible personal property received by the Center or an Affiliate in exchange for and as the whole or partial consideration for the sale or other disposition of such property, (iii) any insurance, condemnation or eminent domain proceeds that the Center or a Related Corporation elects to treat as Sale Proceeds in accordance with the Loan Agreement, and (iv) any and all investments in which such cash proceeds may from time to time be invested and the investment income or earnings thereon, *provided, however*, that when used in the Loan Agreement in connection with the Sale Proceeds derived from the sale or other disposition of Unrestricted Property, Sale Proceeds shall mean only the cash proceeds, the investment thereof and the investment income or earnings thereon that as of the date Funding Event occurs are then unspent.

*Secured Debt Limit* means as of any date of calculation an amount equal to fifteen percent (15%) of the Unrestricted Net Assets of the Center and the Affiliates, as reflected on the audited combined financial statements of the Center and the Affiliates for the most recent Fiscal Year for which audited combined financial statements are available.

*Security Agreements* means the Loan Agreements, the Bond Documents, the Resolutions and the Taxable Indentures and each other agreement functioning as a security agreement under the Uniform Commercial Code of the State of New York.

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\* This definition will be amended upon the effectiveness of the amendments to the Loan Agreement described in "APPENDIX C-2 – SUMMARY OF CERTAIN PROVISIONS OF SPRINGING AMENDMENTS TO THE LOAN AGREEMENT."



*Serial Bonds* means the Bonds so designated in a Series Resolution or a Bond Series Certificate.

*Series* means all of the Bonds authenticated and delivered on original issuance and pursuant to the Resolution and to the Series Resolution authorizing such Bonds as a separate Series of Bonds or a Bond Series Certificate, and any Bonds thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to the Resolution, regardless of variations in maturity, interest rate, Sinking Fund Installments or other provisions.

*Series Resolution* means a resolution of the Authority authorizing the issuance of a Series of Bonds adopted by the Authority pursuant to the Resolution.

*Shared Collateral\** means the property in which the Center or a Related Corporation pursuant to the 2003 Loan Agreement, the Taxable Indentures, or the Continuing Covenant Agreement or the Hospital pursuant to any of the Inducement Agreements, has given a pledge of, security interest in or mortgage on the same, *other than* the Research Center Property, the furnishings and equipment located in or used in connection with the Research Center Property and the Gross Receipts derived from the use or operation of the Research Center Property, the lien of any mortgage thereon or security interest therein shall solely secure the loans made to the Center from the proceeds of Bonds.

*Short-term Debt* means any Debt incurred in the ordinary course of business the principal of which is payable on demand or within three hundred sixty-five (365) days after such Debt was incurred.

*Sinking Fund Installment* means, as of any date of calculation, when used with respect to any Bonds of a Series, other than Option Bonds or Variable Interest Rate Bonds, so long as any such Bonds are Outstanding, the amount of money required by the Resolution or by the Series Resolution pursuant to which such Bonds were issued or by the Bond Series Certificate relating thereto to be paid on a single future July 1 for the retirement of any Outstanding Bonds of said Series which mature after said future July 1, but does not include any amount payable by the Authority by reason only of the maturity of a Bond, and said future July 1 is deemed to be the date when a Sinking Fund Installment is payable and the date of such Sinking Fund Installment and said Outstanding Bonds are deemed to be Bonds entitled to such Sinking Fund Installment, and when used with respect to Option Bonds or Variable Interest Rate Bonds of a Series, so long as such Bonds are Outstanding, the amount of money required by the Series Resolution pursuant to which such Bonds were issued or by the Bond Series Certificate relating thereto to be paid on a single future date for the retirement of any Outstanding Bonds of said Series which mature after said future date, but does not include any amount payable by the Authority by reason only of the maturity of a Bond, and said future date is deemed to be the date when a Sinking Fund Installment is payable and the date of such Sinking Fund Installment and said Outstanding Option Bonds or Variable Interest Rate Bonds of such Series are deemed to be Bonds entitled to such Sinking Fund Installment.

*Standby Purchase Agreement* means an agreement by and between the Authority and another person or by and among the Authority, the Center and another person, pursuant to which such person is obligated to purchase an Option Bond tendered for purchase.

*State* means the State of New York.

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\* The requirement to pledge the Research Center Property will be eliminated upon the effectiveness of the amendments to the Loan Agreement described in "APPENDIX C-2 – SUMMARY OF CERTAIN PROVISIONS OF SPRINGING AMENDMENTS TO THE LOAN AGREEMENT."

*Sub-series* means the grouping of the Bonds of a Series established by the Authority by the Series Resolution authorizing the issuance of the Bonds of such Series or the Bond Series Certificate related to such Series of Bonds.

*Supplemental Resolution* means any resolution of the Authority amending or supplementing the Resolution, any Series Resolution or any Supplemental Resolution adopted and becoming effective in accordance with the terms and provisions of the Resolution.

*Tax Certificate* means the Tax Certificate and Agreement executed in connection with the issuance of the 2019 Series 1 Bonds.

*Taxable Indenture Trustee* or *Taxable Bonds Trustee* means The Bank of New York Mellon, in its capacity as trustee under the Taxable Indentures.

*Taxable Indentures* means, collectively, the 2011 Taxable Indenture and the 2012 Taxable Indenture.

*Tender Date* means the date on which an Option Bond is required to be purchased from the Holder thereof upon a tender for purchase or redemption at the option of the Holder or upon a mandatory tender for purchase, in each case in accordance with the terms of the Resolution and such Option Bond.

*Tender Price* means the purchase price or Redemption Price payable on the Tender Date to the holder of an Option Bond that has been tendered or deemed tendered for purchase or redemption at the option of the Holder or upon a mandatory tender for purchase, in each case in accordance with the terms of the Resolution and such Option Bond.

*Term Bonds* means the Bonds so designated in a Series Resolution or a Bond Series Certificate and payable from Sinking Fund Installments.

*Term Option Bond* means an Option Bond that is subject to mandatory tender by the Holder thereof for purchase on a date that is not less than three hundred sixty-five (365) days after either the immediately preceding Tender Date or the date of initial issuance.

*Total Operating Revenues* means, as to any period of time, total operating revenues of the Center and the affiliates, less all deductions from revenues, as determined in accordance with generally accepted accounting principles consistently applied.

*Trustee* means The Bank of New York Mellon, as trustee under the Resolution, and any successor thereto appointed and serving as trustee thereunder, as assignee of the Authority.

*Unrestricted Net Assets* means for any Fiscal Year the unrestricted net assets of the Center and the affiliates as determined in accordance with generally accepted accounting principles consistently applied and reported in the audited combined financial statements of the Center and the affiliates for such Fiscal Year.

*Unrestricted Property* means all of the right, title and interest of the Center and each Related Corporation in and to the land owned or acquired by any of them, and the buildings and improvements thereon, regardless of when acquired or erected, that is not Research Center Property or Restricted Property.

*Valuation Date* means (i) with respect to any Capital Appreciation Bond, each date set forth in the Series Resolution authorizing such Capital Appreciation Bond or in the Bond Series Certificate relating to

such Bond on which a specific Accreted Value is assigned to such Capital Appreciation Bond, and (ii) with respect to any Deferred Income Bond, the date or dates prior to the Interest Commencement Date and the Interest Commencement Date set forth in the Series Resolution authorizing such Bond or in the Bond Series Certificate relating to such Bond on which specific Appreciated Values are assigned to such Deferred Income Bond.

*Variable Interest Rate* means the rate or rates of interest to be borne by a Series of Bonds or any one or more maturities within a Series of Bonds which is or may be varied from time to time in accordance with the method of computing such interest rate or rates specified in the Series Resolution authorizing such Bonds or the Bond Series Certificate relating to such Bonds and which shall be based on (i) a percentage or percentages or other function of an objectively determinable interest rate or rates (e.g., a prime lending rate) which may be in effect from time to time or at a particular time or times; *provided, however*, that such variable interest rate may be subject to a Maximum Interest Rate and a Minimum Interest Rate and that there may be an initial rate specified, in each case, as provided in such Series Resolution or Bond Series Certificate or (ii) a stated interest rate that may be changed from time to time as provided in such Series Resolution or Bond Series Certificate; *provided, further*, that such Series Resolution or Bond Series Certificate shall also specify either (x) the particular period or periods of time or manner of determining such period or periods of time for which each variable interest rate shall remain in effect or (y) the time or times at which any change in such variable interest rate shall become effective or the manner of determining such time or times.

*Variable Interest Rate Bond* means any Bond which bears a Variable Interest Rate; *provided, however*, that a Bond the interest rate on which shall have been fixed for the remainder of the term thereof shall no longer be a Variable Interest Rate Bond.

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**COMBINED FINANCIAL STATEMENTS AS OF DECEMBER 31, 2018 AND 2017 AND FOR THE  
YEARS THEN ENDED, WITH INDEPENDENT AUDITORS' REPORT**

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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

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## 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.

*Ernst + Young LLP*

April 5, 2019

Memorial Sloan Kettering Cancer Center  
and Affiliated Corporations

Combined Balance Sheets

	December 31	
	2018	2017
	<i>(In Thousands)</i>	
<b>Assets</b>		
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	1,673,374	1,937,783
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	289,439	351,197
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	8,950,193	8,698,229
Total assets	\$ 10,623,567	\$ 10,636,012
<b>Liabilities and net assets</b>		
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	1,047,774	950,902
Noncurrent liabilities:		
Long-term debt, less current portion	2,348,600	2,715,704
Other noncurrent liabilities	799,780	864,303
Total liabilities	4,196,154	4,530,909
Net assets:		
Without donor restrictions:		
Undesignated	4,608,791	4,437,167
Board-designated	420,860	193,807
Total without donor restrictions	5,029,651	4,630,974
With donor restrictions	1,397,762	1,474,129
Total net assets	6,427,413	6,105,103
Total liabilities and net assets	\$ 10,623,567	\$ 10,636,012

See notes to combined financial statements.

Memorial Sloan Kettering Cancer Center  
and Affiliated Corporations

Combined Statements of Activities Without Donor Restrictions

	<b>Year Ended December 31</b>	
	<b>2018</b>	<b>2017</b>
	<i>(In Thousands)</i>	
<b>Undesignated operating revenues</b>		
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	<u>4,909,854</u>	<u>4,409,320</u>
<b>Operating expenses</b>		
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	<u>4,690,794</u>	<u>4,169,555</u>
Income from operations	<u>219,060</u>	<u>239,765</u>
<b>Nonoperating income and expenses, net</b>		
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	<u>(162,402)</u>	<u>147,379</u>
Change in postretirement benefit obligation to be recognized in future periods	114,966	(120,481)
Increase in undesignated net assets	<u>171,624</u>	<u>266,663</u>
<b>Board-designated</b>		
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	<u>227,053</u>	<u>18,004</u>
Increase in net assets without donor restrictions	<u>\$ 398,677</u>	<u>\$ 284,667</u>

*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>	
<b>Operating activities</b>		
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>
<b>Investing activities</b>		
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>
<b>Financing activities</b>		
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:

	<b>2018</b>	<b>2017</b>
	<i>(In Thousands)</i>	
Investment income	\$ 54,900	\$ 8,385
Realized gains	172,297	165,244
Unrealized (losses) gains	<b>(189,477)</b>	251,283
Total	<b>\$ 37,720</b>	<b>\$ 424,912</b>



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:

	<b>Without Donor Restrictions</b>	<b>Time Restricted</b>	<b>Endowments</b>
	<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

	<b>Without Donor Restrictions</b>	<b>Time Restricted</b>	<b>Endowments</b>
	<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  
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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:

	<b>Year Ended December 31</b>	
	<b>2018</b>	<b>2017</b>
	<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.

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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.

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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:

	<b>2018</b>	<b>2017</b>
Medicare	27%	26%
Medicaid	2	3
Contracted managed care	65	63
Non-contracted managed care and self-pay	6	8
	<b>100%</b>	<b>100%</b>

Memorial Sloan Kettering Cancer Center  
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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):

	<b>2018</b>	<b>2017</b>
Hospital	<b>\$ 3,203,428</b>	\$ 2,901,401
Physician services	<b>625,887</b>	563,661
Retail and specialty pharmacy	<b>144,463</b>	71,914
	<b>\$ 3,973,778</b>	\$ 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

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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  
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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  
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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  
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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  
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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  
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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>			
<b>Investments measured at fair value</b>				
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
	<b>\$ 1,504,182</b>	<b>\$ 891,906</b>	<b>\$ —</b>	<b>2,396,088</b>
<b>Investments measured at NAV as a practical expedient</b>				
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				<b>\$ 5,008,171</b>

Memorial Sloan Kettering Cancer Center  
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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>			
<b>Investments measured at fair value</b>				
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
	\$ 2,134,489	\$ 875,430	\$ —	3,009,919
<b>Investments measured at NAV as a practical expedient</b>				
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				\$ 5,507,845

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  
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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:

	<b>December 31</b>	
	<b>2018</b>	<b>2017</b>
	<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
	<b>\$ 4,617,163</b>	<b>\$ 5,213,715</b>

Memorial Sloan Kettering Cancer Center  
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Notes to Combined Financial Statements (continued)

**5. Property and Equipment**

Property and equipment consists of the following:

	<b>December 31</b>	
	<b>2018</b>	<b>2017</b>
	<i>(In Thousands)</i>	
Land	<b>\$ 380,703</b>	\$ 380,703
Buildings and leasehold improvements	<b>3,962,458</b>	3,754,578
Equipment	<b>1,720,147</b>	1,563,597
Construction-in-progress	<b>1,411,505</b>	1,058,869
	<b>7,474,813</b>	6,757,747
Less accumulated depreciation and amortization	<b>3,190,475</b>	2,902,215
	<b>\$ 4,284,338</b>	\$ 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  
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Notes to Combined Financial Statements (continued)

**6. Long-Term Debt**

Long-term debt consists of the following:

	<b>December 31</b>	
	<b>2018</b>	<b>2017</b>
	<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%	<b>\$ 122,900</b>	\$ 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%	<b>38,000</b>	46,000
Series 2011A taxable bonds maturing in 2042 at a fixed interest rate of 5.00%	<b>400,000</b>	400,000
DASNY Series 2012, tax-exempt bonds maturing through 2041 at various fixed interest rates ranging from 3.00% to 5.00%	<b>80,380</b>	82,350
DASNY 2012 Series 1, tax-exempt bonds maturing through 2034 at various fixed interest rates ranging from 4.00% to 5.00%	<b>262,265</b>	262,265
Series 2012A taxable bonds maturing in 2052 at a fixed interest rate of 4.125%	<b>400,000</b>	400,000
Series 2015A taxable bonds maturing in 2055 at a fixed interest rate of 4.20%	<b>550,000</b>	550,000
DASNY Series 2016-1, tax-exempt bonds repaid through 2028 at a fixed interest rate of 1.97%	<b>102,389</b>	105,944
NJEDA Series 2016-2, tax-exempt bonds maturing through 2026 at a fixed rate interest rate of 1.43%	<b>112,375</b>	130,500
DASNY Series 2017-1, tax-exempt bonds maturing through 2047 at various fixed interest rates ranging from 4.00% to 5.00%	<b>290,420</b>	294,420
Unamortized bond premiums, discounts and issuance costs	<b>42,642</b>	48,439
	<b>2,401,371</b>	2,789,048
Less current portion	<b>52,771</b>	73,344
	<b>\$ 2,348,600</b>	\$ 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.

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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.



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Notes to Combined Financial Statements (continued)

**7. Other Noncurrent Liabilities**

Other noncurrent liabilities consist of the following:

	<b>December 31</b>	
	<b>2018</b>	<b>2017</b>
	<i>(In Thousands)</i>	
Pension obligations <i>(Note 8)</i>	<b>\$ 265,433</b>	\$ 301,464
Postretirement obligation <i>(Note 8)</i>	<b>125,551</b>	134,738
Insurance reserves <i>(Note 9)</i>	<b>279,617</b>	292,601
Deferred compensation <i>(Note 8)</i>	<b>65,895</b>	70,299
Asset retirement obligations <i>(Note 13)</i>	<b>38,868</b>	38,621
Deferred gift annuity	<b>17,268</b>	19,187
All other	<b>7,148</b>	7,393
	<b>\$ 799,780</b>	\$ 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.

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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:

	<b>Pension Benefits</b>		<b>Postretirement Health</b>	
	<b>December 31</b>		<b>December 31</b>	
	<b>2018</b>	<b>2017</b>	<b>2018</b>	<b>2017</b>
	<i>(In Thousands)</i>			
<b>Reconciliation of benefit obligations</b>				
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>			
<b>Reconciliation of fair value of plan assets</b>				
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	<b>1,162,368</b>	1,386,428	–	–
Unfunded status at end of year	<b>\$ (265,433)</b>	\$ (301,464)	<b>\$ (129,159)</b>	\$ (139,171)
Current portion of obligation	\$ –	\$ –	\$ (3,608)	\$ (4,433)
Noncurrent portion of obligation	(265,433)	(301,464)	(125,551)	(134,738)
Total	<b>\$ (265,433)</b>	\$ (301,464)	<b>\$ (129,159)</b>	\$ (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>			
<b>Components of net periodic benefit cost</b>				
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		December 31	
	2018	2017	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:

	<b>Pension Benefits</b>		<b>Postretirement Health</b>	
	<b>December 31</b>		<b>December 31</b>	
	<b>2018</b>	<b>2017</b>	<b>2018</b>	<b>2017</b>
Discount rate	<b>4.50%</b>	4.75%	<b>3.80%</b>	4.30%
Rate of compensation increase	<b>3.83</b>	3.83	—	—
Expected long-term return on plan assets	<b>5.65</b>	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:

	<b>2018</b>	<b>2017</b>
Health care cost trend rate assumed for next year	<b>7.00%</b>	7.25%
Rate to which the cost trend rate is assumed to decline (the ultimate trend rate)	<b>5.00</b>	5.00
Year that the rate reaches the ultimate trend rate	<b>2025</b>	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>			
<b>Investments measured at fair value</b>				
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
	\$ 59,600	\$ –	\$ 11,343	70,943
 <b>Investments measured at NAV as a practical expedient</b>				
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				\$ 1,162,368

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>			
<b>Investments measured at fair value</b>				
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
	\$ 103,816	\$ –	\$ 7,528	111,344
 <b>Investments measured at NAV as a practical expedient</b>				
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				\$ 1,386,428

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:

	<b>2018</b>	<b>2017</b>
	<i>(In Thousands)</i>	
Fair value at beginning of year	\$ 7,528	\$ 3,199
Acquisitions	–	3,523
Unrealized gains	<b>3,815</b>	806
Fair value at end of year	<b>\$ 11,343</b>	<b>\$ 7,528</b>

**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:

	<b>Pension Benefits</b>	<b>Postretirement Health</b>
	<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:

	<b>Year Ended December 31</b>	
	<b>2018</b>	<b>2017</b>
	<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
	<b>\$ 159,140</b>	<b>\$ 159,458</b>

**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):

	<b>Patient Care</b>	<b>Research</b>	<b>Education</b>	<b>Fundraising</b>	<b>Management and General</b>	<b>2018 Total</b>
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
<b>Total</b>	<b>\$ 3,680,073</b>	<b>\$ 655,043</b>	<b>\$ 244,845</b>	<b>\$ 70,520</b>	<b>\$ 40,313</b>	<b>\$ 4,690,794</b>

	<b>Patient Care</b>	<b>Research</b>	<b>Education</b>	<b>Fundraising</b>	<b>Management and General</b>	<b>2017 Total</b>
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
<b>Total</b>	<b>\$ 3,218,534</b>	<b>\$ 615,995</b>	<b>\$ 234,132</b>	<b>\$ 65,073</b>	<b>\$ 35,821</b>	<b>\$ 4,169,555</b>

**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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**UNAUDITED INTERIM COMBINED FINANCIAL STATEMENTS AS OF AND FOR THE SIX MONTH  
PERIOD ENDED JUNE 30, 2019**

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Memorial Sloan Kettering Cancer Center  
and Affiliated Corporations

Combined Balance Sheets

	<b>June 30, 2019 (unaudited)</b>	<b>December 31, 2018 (audited)</b>
<i>(In Thousands)</i>		
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 624,481	\$ 677,079
Short-term investments – at fair value	94,448	89,184
Accounts receivable, net	666,093	615,885
Pledges, trusts and estates receivable	144,264	170,148
Other current assets	138,878	121,078
Total current assets	<b>1,668,164</b>	<b>1,673,374</b>
Noncurrent assets:		
Assets whose use is limited:		
Construction, debt service and repair reserve funds	119,636	149,799
Captive insurance funds	56,491	59,572
Employee benefit funds	88,312	80,068
Total investments in marketable securities whose use is limited	<b>264,439</b>	<b>289,439</b>
Investments – at fair value	3,809,136	3,343,092
Investments internally designated for major capital projects	463,595	609,377
Property and equipment – net	4,354,355	4,284,338
Pledges, trusts and estates receivable	290,029	321,621
Right-of-use-assets – operating leases, net	212,249	-
Other noncurrent assets	111,030	102,326
Total noncurrent assets	<b>9,504,833</b>	<b>8,950,193</b>
Total assets	<b>\$ 11,172,997</b>	<b>\$ 10,623,567</b>
<b>Liabilities and net assets</b>		
Current liabilities:		
Accounts payable	\$ 422,540	\$ 580,598
Accrued expenses	398,884	414,405
Current portion of operating lease liability	34,446	-
Current portion of long-term debt	52,801	52,771
Total current liabilities	<b>908,671</b>	<b>1,047,774</b>
Noncurrent liabilities:		
Long-term debt, less current portion	2,333,772	2,348,600
Operating lease liability, net of current portion	178,310	-
Other noncurrent liabilities	835,174	799,780
Total liabilities	<b>4,255,927</b>	<b>4,196,154</b>
Net assets:		
Without donor restrictions:		
Undesignated	5,011,413	4,608,791
Board-designated	471,941	420,860
Total without donor restrictions	<b>5,483,354</b>	<b>5,029,651</b>
With donor restrictions	1,433,716	1,397,762
Total net assets	<b>6,917,070</b>	<b>6,427,413</b>
Total liabilities and net assets	<b>\$ 11,172,997</b>	<b>\$ 10,623,567</b>

*See notes to combined financial statements.*

Memorial Sloan Kettering Cancer Center  
and Affiliated Corporations

Combined Statements of Activities without Donor Restrictions

	<b>Six Months Ended</b>	
	<b>June 30,</b>	
	<b>2019</b>	<b>2018</b>
	<b>(unaudited)</b>	
	<i>(In Thousands)</i>	
<b>Undesignated operating revenues</b>		
Hospital care and services	\$ 2,213,642	\$ 1,961,371
Grants and contracts	177,700	158,103
Contributions	96,513	97,642
Net assets released from restrictions	42,038	48,412
Royalty and other income	64,076	64,888
Investment returns allocated to operations	77,823	74,886
Total operating revenues	2,671,792	2,405,302
<b>Operating expenses</b>		
Compensation and fringe benefits	1,384,038	1,241,788
Purchased supplies and services	948,121	833,831
Depreciation and amortization	158,659	146,619
Interest	19,254	27,654
Total operating expenses	2,510,072	2,249,892
Income from operations	161,720	155,410
<b>Nonoperating income and expenses, net</b>		
Investment returns, net of expenses, allocation to operations and amounts recorded in net assets with donor restrictions	256,816	4,461
Other nonoperating income and expenses, net	(13,789)	(15,378)
Total nonoperating income and expenses, net	243,027	(10,917)
Change in postretirement benefit obligation to be recognized in future periods	(2,125)	(2,197)
Increase in undesignated net assets	402,622	142,296
<b>Board-designated</b>		
Board-designated philanthropy	2,511	13,801
Board-designated investment return	9,645	391
Board-designated other additions	38,925	70,000
Increase in Board-designated net assets	51,081	84,192
Increase in net assets without donor restrictions	\$ 453,703	\$ 226,488

*See notes to combined financial statements.*

Memorial Sloan Kettering Cancer Center  
and Affiliated Corporations

Combined Statements of Changes in Net Assets

Six Months Ended June 30, 2019 and 2018  
(Unaudited)

	Total Without		With Donor Restrictions		Total With		Total Net Assets
	Donor Restrictions	Time Restricted	Purpose Restricted	Endowments	Donor Restrictions		
	<i>(In Thousands)</i>						
Net assets at January 1, 2018	\$ 4,630,974	\$ 771,880	\$ 27,000	\$ 675,249	\$ 1,474,129	\$ 6,105,103	
Increase in net assets without donor restrictions	226,488	–	–	–	–	226,488	
Contributions, pledges, and bequests	–	33,665	–	8,378	42,043	42,043	
Investment return on endowments	–	14,915	–	1,371	16,286	16,286	
Net assets released from restrictions	–	(48,412)	–	–	(48,412)	(48,412)	
Net assets at June 30, 2018	<u>4,857,462</u>	<u>772,048</u>	<u>27,000</u>	<u>684,998</u>	<u>1,484,046</u>	<u>6,341,508</u>	
Net assets at January 1, 2019	<b>5,029,651</b>	<b>661,963</b>	<b>33,492</b>	<b>702,307</b>	<b>1,397,762</b>	<b>6,427,413</b>	
Increase in net assets without donor restrictions	<b>453,703</b>	–	–	–	–	<b>453,703</b>	
Contributions, pledges, and bequests	–	<b>26,700</b>	<b>67</b>	<b>6,209</b>	<b>32,976</b>	<b>32,976</b>	
Investment return on endowments	–	<b>45,016</b>	–	–	<b>45,016</b>	<b>45,016</b>	
Net assets released from restrictions	–	<b>(42,023)</b>	<b>(15)</b>	–	<b>(42,038)</b>	<b>(42,038)</b>	
Transfers of net assets	–	<b>(3,551)</b>	<b>(449)</b>	<b>4,000</b>	–	–	
Net assets at June 30, 2019	<u><b>\$ 5,483,354</b></u>	<u><b>\$ 688,105</b></u>	<u><b>\$ 33,095</b></u>	<u><b>\$ 712,516</b></u>	<u><b>\$ 1,433,716</b></u>	<u><b>\$ 6,917,070</b></u>	

Memorial Sloan Kettering Cancer Center  
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Combined Statements of Cash Flows

	Six Months Ended June 30,	
	2019	2018
	(unaudited)	
	(In Thousands)	
<b>Operating activities</b>		
Change in net assets	\$ 489,657	\$ 236,405
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation and amortization	158,659	146,619
Equity in earnings of investment, net	(6,236)	(491)
Unrealized net (gains) losses	(259,658)	16,970
Realized net gains	(113,977)	(79,039)
Amortization of bond premium and issuance costs	(1,741)	-
Donor restricted contributions, pledges and bequests transferred to investing activities	(32,961)	(42,043)
Change in postretirement benefit obligation to be recognized in future Periods	2,125	2,197
Changes in assets:		
Accounts receivable, net	(50,208)	(202,986)
Pledges, trusts and estates receivable	57,476	27,062
Other current assets	(17,800)	(34,933)
Other noncurrent assets	(214,717)	214
Changes in liabilities:		
Accounts payable and accrued expenses	(54,139)	53,915
Other noncurrent liabilities	211,331	28,463
Net cash provided by operating activities	167,811	152,353
<b>Investing activities</b>		
Net acquisitions of property and equipment	(313,422)	(313,418)
Decrease (increase) in investments, net	73,109	(17,618)
Donor restricted contributions, pledges and bequests transferred from operating activities	32,961	42,043
Net cash used in investing activities	(207,352)	(288,993)
<b>Financing activities</b>		
Repayment of debt	(13,057)	(14,932)
Net cash used in financing activities	(13,057)	(14,932)
Net change in cash and cash equivalents	(52,598)	(151,572)
Cash and cash equivalents at beginning of period	677,079	900,411
Cash and cash equivalents at end of period	\$ 624,481	\$ 748,839

See notes to combined financial statements.



Memorial Sloan Kettering Cancer Center  
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Notes to Unaudited Interim Combined Financial Statements

June 30, 2019

**Note A - Basis of Presentation**

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, Memorial Hospital for Cancer and Allied Diseases (the “Hospital”), Sloan Kettering Institute for Cancer Research, S.K.I. Realty, Inc., MSK Insurance US, Inc., MSK Proton, Inc., Prostate Cancer Clinical Trials Consortium, LLC, Ralph Lauren Center for Cancer Care and Prevention, and the Louis V. Gerstner Jr. Graduate School of Biomedical Sciences. All of these entities are collectively referred to as the “Institution”.

The accompanying unaudited combined financial statements have been prepared in accordance with U.S. generally accepted accounting principles applied on a basis consistent with that of the 2018 audited combined financial statements of the Institution. The Institution presumes that users of this unaudited interim combined financial information have read or have access to the Institution’s audited combined financial statements and that the adequacy of additional disclosures needed for a fair presentation may be determined in that context. Information contained in the Institution’s audited combined financial statements for the years ended December 31, 2018 and 2017 is incorporated herein. Footnotes and other disclosures that would substantially duplicate the disclosures contained in the Institution’s most recent audited combined financial statements have been omitted. Accordingly, these unaudited interim combined financial statements do not include all the information and footnotes required by U.S. generally accepted accounting principles for complete financial statements. In the opinion of management, all transactions considered necessary for a fair presentation of the results have been included in the accompanying unaudited interim combined financial statements.

Patient volumes and net operating revenue and results are subject to variations caused by a number of factors. Monthly and periodic operating results are not necessarily representative of operations for a full year for various reasons, including the level of occupancy and other patient volumes, interest rates, fluctuations in financial markets, unusual or infrequent items and other seasonal fluctuations. These same considerations apply to year-to-year comparisons.

Certain amounts in the accompanying unaudited interim combined financial statements are projections based on amounts that are only updated annually and are therefore projected for interim financial reporting purposes. Such amounts and estimates are subject to change and are evaluated by the Institution periodically and on an annual basis.

Memorial Sloan Kettering Cancer Center  
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Notes to Unaudited Interim Combined Financial Statements (continued)

**Note B – 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.

**Note C - 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.

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.

Memorial Sloan Kettering Cancer Center  
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Notes to Unaudited Interim Combined Financial Statements (continued)

**Note C – Hospital Care and Services Revenue (continued)**

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.

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 periods ended June 30, 2019 and 2018 was not significant.

Memorial Sloan Kettering Cancer Center  
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Notes to Unaudited Interim Combined Financial Statements (continued)

**Note C – Hospital Care and Services Revenue (continued)**

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 periods ended June 30, 2019 and 2018, by payor, is as follows:

	<b>2019</b>	<b>2018</b>
Medicare	<b>25%</b>	22%
Medicaid	<b>2</b>	3
Contracted managed care	<b>67</b>	61
Non-contracted managed care and self-pay	<b>6</b>	14
	<b>100%</b>	<b>100%</b>

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 periods ended June 30, 2019 and 2018 by line of business is as follows (in thousands):

	<b>2019</b>	<b>2018</b>
Hospital	<b>\$ 1,798,605</b>	\$ 1,594,783
Physician services	<b>338,663</b>	309,316
Retail and specialty pharmacy	<b>76,374</b>	57,272
	<b>\$ 2,213,642</b>	<b>\$ 1,961,371</b>

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

Memorial Sloan Kettering Cancer Center  
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Notes to Unaudited Interim Combined Financial Statements (continued)

**Note C – Hospital Care and Services Revenue (continued)**

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 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.

Memorial Sloan Kettering Cancer Center  
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Notes to Unaudited Interim Combined Financial Statements (continued)

**Note C – Hospital Care and Services Revenue (continued)**

**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.

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. 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.

Memorial Sloan Kettering Cancer Center  
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Notes to Unaudited Interim Combined Financial Statements (continued)

**Note C – Hospital Care and Services Revenue (continued)**

Significant concentrations of accounts receivable at June 30, 2019 include 28% from government-related programs, 25% from Empire Health Choice and 15% from UnitedHealthcare (28%, 19% and 15%, respectively, at December 31, 2018).

**Note D - Recent Accounting Pronouncement**

In February 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update No. (ASU) 2016-02, *Leases*, which requires lessees to report a most leases on their statements of financial position, but recognize expenses on their income statements in a manner similar to the prior accounting. The guidance also eliminates current real estate-specific provisions. Lessors in operating leases continue to recognize the underlying asset and recognize lease income on either a straight-line basis or another systematic and rational basis. The provisions of ASU 2016-02 became effective for the Institution for annual periods beginning after December 15, 2018. The Institution adopted ASU 2016-02 effective January 1, 2019. The Institution adopted ASU 2016-02 following the modified retrospective method of application. As such, the prior period unaudited combined interim financial statement amounts and disclosures have not been adjusted to reflect the provisions of the new standard. There was no cumulative-effect adjustment to the prior period combined net assets as a result of the adoption. The Institution has made the transition-specific election to apply the package of practical expedients which allows for the carryforward of historical assessments of (1) whether contracts are or contain leases, (2) lease classification and (3) initial direct costs. Additionally, for operating leases entered into prior to January 1, 2019, the Institution has elected to utilize the operating leases' initial lease term as of the date of adoption to determine the discount rate used to initially measure the liability. Certain other accounting policy elections and quantitative and qualitative information pertaining to the Institution's adoption of ASU 2016-02 are described in Note G.

In November 2016, the FASB issued ASU 2016-18, *Statement of Cash Flows – Restricted Cash*, which requires that the statement of cash flows explain the change during the period in the total of cash, cash equivalents, and amounts generally described as restricted cash or restricted cash equivalents. Therefore, amounts generally described as restricted cash and restricted cash equivalents should be included with cash and cash equivalents when reconciling the beginning-of period and end-of-period total amounts shown on the statement of cash flows. The provisions of ASU 2016-18 are effective for the Institution for annual periods beginning after December 15, 2018 and interim periods thereafter. Early adoption is permitted. The Institution does not believe the impact of ASU 2016-18 will be significant on its combined financial statements.

Memorial Sloan Kettering Cancer Center  
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Notes to Unaudited Interim Combined Financial Statements (continued)

**Note E – 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 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 equity securities* 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  
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Notes to Unaudited Interim Combined Financial Statements (continued)

**Note E – Cash, Cash Equivalents and Investments at Fair Value (continued)**

*Fixed income investments* 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 June 30, 2019, the Institution had outstanding commitments to provide additional capital of approximately \$687.1 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  
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Notes to Unaudited Interim Combined Financial Statements (continued)

**Note E – 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  
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Notes to Unaudited Interim Combined Financial Statements (continued)

**Note E – Cash, Cash Equivalents and Investments at Fair Value (continued)**

Financial instruments, other than pension plan assets, carried at fair value as of June 30, 2019, are classified in the table below as described above:

	Level 1	Level 2	Level 3	Total
	<i>(In Thousands)</i>			
<b>Investments measured at fair value</b>				
Cash, cash equivalents and short-term investments	\$ 807,591	\$ –	\$ –	\$ 807,591
Mutual funds	88,312	–	–	88,312
United States-based equity securities	171,129	246,686	–	417,815
International equity securities	323,232	10,194	–	333,426
Fixed income investments:				
Corporate bonds	–	494,830	–	494,830
U.S. Government and other	131,196	71,981	–	203,177
	<b>\$ 1,521,460</b>	<b>\$ 823,691</b>	<b>\$ –</b>	<b>2,345,151</b>
<b>Investments measured at NAV as a practical expedient</b>				
Commingled funds:				
United States-based equity				199,950
International equity				313,988
Alternative investments:				
Marketable:				
Absolute return funds				286,485
Long/short funds				720,490
Global macro funds				228,552
Inflation hedging funds				147,140
Nonmarketable:				
Venture capital				485,588
Private equity				256,126
Opportunistic funds				124,088
Hard assets				148,541
<b>Total investments at fair value</b>				<b>\$ 5,256,099</b>

Memorial Sloan Kettering Cancer Center  
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Notes to Unaudited Interim Combined Financial Statements (continued)

**Note E – Cash, Cash Equivalents and Investments at Fair Value (continued)**

Financial instruments, other than pension plan assets, carried at fair value as of December 31, 2018, are classified in the table below as described above:

	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Total</u>
	<i>(In Thousands)</i>			
<b>Investments measured at fair value</b>				
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>
<b>Investments measured at NAV as a practical expedient</b>				
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
<b>Total investments at fair value</b>				<u>\$ 5,008,171</u>

Memorial Sloan Kettering Cancer Center  
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Notes to Unaudited Interim Combined Financial Statements (continued)

**Note E – Cash, Cash Equivalents and Investments at Fair Value (continued)**

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.

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, 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:

	<b>June 30 2019</b>	<b>December 31 2018</b>
	<i>(In Thousands)</i>	
Cash and cash equivalents	\$ 624,481	\$ 677,079
Short-term investments – at fair value	94,448	89,184
Accounts receivable, net	666,093	615,885
Pledges, trusts and estates receivable, current portion	144,264	170,148
Investments internally designated for major capital projects	463,595	609,377
Investments – at fair value	2,410,513	2,205,490
Undrawn lines of credit	200,000	250,000
	<b>\$ 4,603,394</b>	<b>\$ 4,617,163</b>

Memorial Sloan Kettering Cancer Center  
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Notes to Unaudited Interim Combined Financial Statements (continued)

**Note F – Long-Term Debt**

Long-term debt consists of the following:

	<b>June 30, 2019</b>	<b>December 31, 2018</b>
	<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	\$ 122,900
DASNY Series 2010, tax-exempt bonds maturing through 2023 at a fixed interest rate of 2.18%	34,000	38,000
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	80,380
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%	100,583	102,389
NJEDA Series 2016-2 tax-exempt bonds maturing through 2026 at a fixed rate interest rate of 1.43%	105,125	112,375
DASNY Series 2017-1, tax-exempt bonds maturing through 2047 at a various fixed interest rates ranging from 4.00% to 5.00%	290,420	290,420
Unamortized bond premiums, discounts and issuance costs	40,900	42,642
	<b>2,386,573</b>	<b>2,401,371</b>
Less current portion	<b>52,801</b>	<b>52,771</b>
	<b>\$ 2,333,772</b>	<b>\$ 2,348,600</b>

Memorial Sloan Kettering Cancer Center  
and Affiliated Corporations

Notes to Unaudited Interim Combined Financial Statements (continued)

**Note G– Leases**

As described in Note D, the Institution adopted ASU 2016-02 effective January 1, 2019. The Institution leases certain property and equipment under finance and operating leases. Leases are classified as either finance or operating leases based on the underlying terms of the agreement and certain criteria, such as the term of the lease relative to the useful life of the asset and the total lease payments to be made as compared to the fair value of the asset, amongst other criteria. Finance leases result in an accounting treatment similar to an acquisition of the asset.

For leases with initial terms greater than a year (or initially, greater than one year remaining under the lease at the date of adoption of ASU 2016-02), the Institution records the related right-of-use assets and liabilities at the present value of the lease payments to be paid over the life of the related lease. The Institution's leases may include variable lease payments and renewal options. Variable lease payments are excluded from the amounts used to determine the right-of-use assets and liabilities unless the variable lease payments depend on an index or rate or are in substance fixed payments. Lease payments related to periods subject to renewal options are also excluded from the amounts used to determine the right-of-use assets and liabilities unless the Institution is reasonably certain to exercise the option to extend the lease. The present value of lease payments is calculated by utilizing the discount rate stated in the lease, when readily determinable. For leases for which this rate is not readily available, the Institution has elected to use a risk-free discount rate determined using a period comparable with that of the lease term. The Institution has made an accounting policy election not to separate lease components from nonlease components in contracts when determining its lease payments for its asset classes. As such, the Institution accounts for the applicable nonlease components together with the related lease components when determining the right-of-use assets and liabilities.

The Institution has made an accounting policy election not to record leases with an initial term of less than a year as right-of-use assets and liabilities.

As of June 30, 2019, the Institution has not recorded any finance leases.

Memorial Sloan Kettering Cancer Center  
and Affiliated Corporations

Notes to Unaudited Interim Combined Financial Statements (continued)

**Note G – Leases (continued)**

The following schedule summarizes information related to the lease assets and liabilities as of and for the six month period ended June 30, 2019 (in thousands):

Lease cost for the six month period ended June 30, 2019:	
Operating lease cost	\$20,330
Right-of-use assets and liabilities as of June 30, 2019:	
Right-of-use assets – operating leases	212,249
Lease liability – operating leases	212,756
Other information:	
Cash paid for amounts included in the measurement of lease liabilities (six month period ended June 30, 2019):	
Operating cash flows from operating leases	(19,823)
Right-of-use assets obtained in exchange for new operating lease liabilities (six month period ended June 30, 2019)	
Weighted-average remaining lease term – operating leases	8.08 years
Weighted-average discount rate – operating leases	2.60%

For operating leases, right-of-use assets are recorded in right of use assets – operating leases, net and lease liabilities are recorded in current portion of operating lease liability and operating lease liability, net of current portion in the accompanying combined balance sheet.



Memorial Sloan Kettering Cancer Center  
and Affiliated Corporations

Notes to Unaudited Interim Combined Financial Statements (continued)

**Note G – Leases (continued)**

The following table reconciles the undiscounted lease payments to the lease liabilities recorded on the accompanying combined statement of financial position at June 30, 2019 (in thousands):

	<b>Operating leases</b>
2019	\$ 19,927
2020	40,172
2021	36,814
2022	33,911
2023	25,848
Thereafter	80,870
Total lease payments	237,542
Less imputed interest	24,786
Total lease obligation	212,756
Less current portion	34,446
Long-term portion	\$ 178,310

**Note H– 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 will be 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 Unaudited Interim Combined Financial Statements (continued)

**Note H – 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 \$49.9 million and \$42.7 million for the six months ended June 30, 2019 and 2018, 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.

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.

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.

Memorial Sloan Kettering Cancer Center  
and Affiliated Corporations

Notes to Unaudited Interim Combined Financial Statements (continued)

**Note H – Retiree Pension and Health Plans (continued)**

The following table provides the components of the net periodic cost for pension and postretirement benefit cost for the plans for the six-month period ended June 30:

	<b>Pension Benefits</b>		<b>Postretirement Health</b>	
	<b>2019</b>	<b>2018</b>	<b>2019</b>	<b>2018</b>
	<i>(In Thousands)</i>			
<b>Components of net periodic cost</b>				
Service cost	\$ 36,029	\$ 40,920	\$ 1,689	\$ 1,918
Interest cost	32,192	33,345	2,876	2,680
Expected return on assets	(33,426)	(39,388)	–	–
Amortization of net loss	4,621	7,366	374	962
Amortization of prior service cost (credit)	144	144	(4,655)	(4,655)
Total net periodic cost	<b>\$ 39,560</b>	<b>\$ 42,387</b>	<b>\$ 284</b>	<b>\$ 905</b>

*Contributions:* During the six months ended June 30, 2019, the Institution contributed \$25.0 million to the Plan.

**Note I – 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.

**Note J – Subsequent Events**

Subsequent events have been evaluated subsequent to June 30, 2019, through October 3, 2019. In September 2019, the Institution legally defeased approximately \$213.2 million of the DASNY 2012 Series 1 tax-exempt bonds (the “2012 Series 1 Bonds”) and \$74.0 million of the DASNY Series 2012 tax-exempt bonds (the “Series 2012 Bonds”). Amounts sufficient to meet future principal and interest requirements of the 2012 Series 1 Bonds and the Series 2012 Bonds have been irrevocably deposited into an escrow account. Both defeasance transactions combined resulted in an extinguishment loss of approximately \$7.5 million which will be included in non-operating income and expenses, net. No other subsequent events have occurred that require disclosure in or adjustment to the unaudited interim combined financial statements.

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**SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT**

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## SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT

The following is a summary of certain provisions of the Loan Agreement pertaining to the Bonds and the Project. This summary does not purport to be complete and reference is made to the Loan Agreement for a full and complete statement of its provisions. Defined terms used in this Appendix have the meanings ascribed to them in Appendix A.

### Termination

The Loan Agreement shall remain in full force and effect until no Bonds are Outstanding and until all other payments, expenses and fees payable under the Loan Agreement by the Center shall have been made or provision made for the payment thereof; *provided, however*, that certain liabilities and obligations of the Center under the Loan Agreement to provide reimbursement for or indemnification against expenses, costs or liabilities made or incurred pursuant to the Loan Agreement shall nevertheless survive any such termination. Upon such termination, an Authorized Officer of the Authority shall promptly deliver such documents as may be reasonably requested by the Center to evidence such termination and the discharge of the Center's duties under the Loan Agreement, and the release or surrender of any security interests granted by the Center to the Authority pursuant to the Loan Agreement.

(Section 43)

### Project Financing

(a) The Authority agrees to use its best efforts from time to time to authorize, issue, sell and deliver Bonds in the aggregate principal amount sufficient, together with other moneys available therefor, to pay the Costs of the Project and Costs of Issuance. The proceeds of the Bonds shall be applied as specified in the Series Resolution authorizing the issuance thereof or the Bond Series Certificate relating to such Bonds.

(b) The Center agrees that, upon the request of an Authorized Officer of the Authority and as a condition to the issuance of a Series of Bonds, it shall deliver to the Authority a certificate of an Authorized Officer of the Center satisfactory to an Authorized Officer of the Authority setting forth and representing (i) the amount of Restricted Gifts theretofore received by the Center and each Affiliate in connection with the Project financed thereby, (ii) that all of such amount has been or will be spent on such Project or will be otherwise applied in a manner acceptable to an Authorized Officer of the Authority, (iii) that such amount will not be reimbursed from the proceeds of the sale of such Bonds, (iv) whether the Center reasonably expects that additional Restricted Gifts in connection with such Project will be received by the Center or an Affiliate while such Bonds are Outstanding, and (v) such other matters as may be required by an Authorized Officer of the Authority to determine whether issuance of such Bonds will comply with the requirements of the Code.

(c) If, prior to completion of construction of a Project, the Center or an Affiliate receives any Restricted Gift therefor, the Center shall, to the extent not inconsistent with the terms of such Restricted Gift, either (i) to the extent necessary to complete the Project, apply such amount in a manner acceptable to an Authorized Officer of the Authority, or (ii) to the extent such moneys will exceed the amount necessary to complete the Project, pay such amount to the Trustee for deposit to the Debt Service Fund. If, after completion of the construction of the Project, the Center receives any Restricted Gift which prior to such completion it reasonably expected to receive, the Center shall deliver a like amount to the Trustee for deposit to the Debt Service Fund.

(d) The Center represents, warrants and covenants that it and the Affiliates have expended or will expend on each Project, from sources other than the proceeds of the issuance of Bonds, an amount equal to

the amount of Restricted Gifts received and reasonably expected to be received by it and the Affiliates in the future from pledges or otherwise, and no such moneys will be pledged as collateral for the Bonds or is otherwise expected to be used to pay the principal of or interest on Bonds. For purposes of this paragraph, it is understood that all or any part of a Project may be named in honor of a donor or donors in recognition of pledges, contributions or services of the donor or donors that are unrelated to the Costs of such Project, and amounts pledged or contributed by the donor or donors for purposes unrelated to the Costs of such Project will not be considered to have been raised for purposes of constructing or equipping such Project.

*(Section 4)*

### **Construction of Projects**

The Center agrees that, whether or not there are sufficient moneys available to it under the provisions of the Resolution, the Series Resolution and the Loan Agreement, the Center shall complete the acquisition, design, construction, reconstruction, rehabilitation and improving or otherwise providing and furnishing and equipping of the Project, substantially in accordance with the Contract Documents related to such Project. Subject to the conditions of the Loan Agreement, the Authority will, to the extent of moneys available in the Construction Fund, cause the Center to be reimbursed for, or pay, any costs and expenses incurred by the Center which constitute Costs of the Project, provided such costs and expenses are approved by an Authorized Officer of the Authority, which approval shall not be unreasonably withheld.

*(Section 5)*

### **Amendment of Projects**

The Center, with the prior written consent of an Authorized Officer of the Authority, which consent will not be unreasonably withheld, may amend a Project to decrease, increase or otherwise modify the scope thereof. Any such increase may provide for the addition of any further acquisition, design, construction, reconstruction, rehabilitation, renovation, improving, or otherwise providing, furnishing and equipping of a Project which the Authority is authorized to undertake.

*(Section 6)*

### **Financial Obligations of the Center**

(a) Except to the extent that moneys are available therefor under the Resolution or the Loan Agreement, including moneys in the Debt Service Fund (other than moneys required to pay, the Redemption Price or purchase price of Outstanding Bonds theretofore called for redemption or contracted to be purchased, plus interest accrued to the date of redemption or purchase), and excluding interest accrued but unpaid on investments held in the Debt Service Fund, the Center pursuant to the Loan Agreement unconditionally agrees to pay, so long as Bonds are Outstanding, to or upon the order of the Authority, from its general funds or any other moneys legally available to it:

(i) On or before the date of delivery of the Bonds of a Series, the Authority Fee agreed to by the Authority and the Center in connection with the issuance of the Bonds of such Series;

(ii) On or before the date of delivery of the Bonds of a Series, such amount, if any, as is required, in addition to the proceeds of such Bonds, available therefor, to pay the Costs of Issuance of such Bonds and other costs in connection with the issuance of Bonds of such Series;



(iii) Five Business Days prior to an interest payment date on Outstanding Variable Interest Rate Bonds, the interest coming due on such Variable Interest Rate Bonds on such interest payment date, assuming that such Bonds will, from and after the next succeeding date on which the rates at which such Bonds bear interest are to be determined, bear interest at a rate per annum equal to the rate per annum for such Bonds on the immediately preceding Business Day, plus one percent (1%) per annum;

(iv) On December 10<sup>th</sup> and June 10<sup>th</sup> of each Bond Year, the interest on Outstanding Bonds that are not Variable Interest Rate Bonds payable on the next succeeding January 1<sup>st</sup> and July 1<sup>st</sup>, respectively;

(v) On June 10<sup>th</sup> of each Bond Year, the principal and Sinking Fund Installments of Outstanding Bonds payable during the next succeeding Bond Year;

(vi) Except as provided below, by 1:30 p.m., New York City time, on the day on which payment of the purchase price of an Option Bond tendered for purchase which has not been remarketed and for which there is no Liquidity Facility then in effect, is due, the purchase price of such Option Bond, which shall be paid in immediately available funds; *provided, however*, that (A) if the Center has received notice that such payment is due given by or on behalf of the Authority after 10:00 a.m., New York City time, but prior to 3:00 p.m., New York City time, on such day, then payment by the Center shall be made by 5:00 p.m., New York City time on such day, and (B) if such notice is given after 3:00 p.m., New York City time, on such day, then payment by the Center shall be made by 10:00 a.m. on the next succeeding Business Day;

(vii) At least thirty (30) days with respect to Bonds other than Option Bonds and Variable Interest Rate Bonds and fifteen (15) days with respect to Option Bonds and Variable Interest Rate Bonds prior to any date on which the Redemption Price or purchase price of Bonds previously called for redemption or contracted to be purchased, other than the Purchase Price, is to be paid, the amount required to pay the Redemption Price or purchase price of such Bonds;

(viii) On December 10<sup>th</sup> of each Bond Year one-half ( $\frac{1}{2}$ ) of the Annual Administrative Fee payable during such Bond Year in connection with each Series of Bonds, and on June 10<sup>th</sup> of each Bond Year the balance of the Annual Administrative Fee payable during such Bond Year; *provided, however*, that the Annual Administrative Fee with respect to a Series of Bonds payable during the Bond Year during which such Annual Administrative Fee became effective shall be equal to the Annual Administrative Fee with respect to such Series of Bonds multiplied by a fraction the numerator of which is the number of calendar months or parts thereof remaining in such Bond Year and the denominator of which is twelve (12);

(ix) Promptly after notice from the Authority, but in any event not later than fifteen (15) days after such notice is given, the amount set forth in such notice as payable to the Authority (A) for the Authority Fee then unpaid, (B) to reimburse the Authority for payments made by it pursuant to the Loan Agreement and any expenses or liabilities incurred by the Authority pursuant to the Loan Agreement, (C) to reimburse the Authority for any external costs or expenses incurred by it attributable to the issuance of a Series of Bonds or the financing or construction of a Project, including but not limited to any fees or other amounts payable by the Authority under a Remarketing Agreement, a Credit Facility or a Liquidity Facility, (D) for the costs and expenses incurred by the Authority to compel

full and punctual performance by the Center of all the provisions of the Loan Agreement or of the Resolution in accordance with the terms thereof and (E) for the fees and expenses of the Trustee and any Paying Agent in connection with performance of their duties under the Resolution;

(x) Promptly upon demand by an Authorized Officer of the Authority (a copy of which shall be furnished to the Trustee), all amounts required to be paid by the Center as a result of an acceleration pursuant to the Loan Agreement;

(xi) Promptly upon demand by an Authorized Officer of the Authority, the difference between the amount on deposit in the Arbitrage Rebate Fund available to be rebated in connection with the Bonds of a Series or otherwise available therefor under the Resolution and the amount required to be rebated to the Department of the Treasury of the United States of America in accordance with the Code in connection with the Bonds of such Series;

(xii) Promptly upon demand by an Authorized Officer of the Authority, all amounts required to be paid by the Authority to a Counterparty in accordance with an Interest Rate Exchange Agreement or to reimburse the Authority for any amounts paid to a Counterparty in accordance with an Interest Rate Exchange Agreement; and

(xiii) Not less than fifteen (15) days prior to the day a premium installment is payable to an Insurer for a financial guaranty insurance policy in connection with the Bonds, the amount thereof.

Subject to the provisions of the Loan Agreement and of the Resolution, the Center shall receive a credit against the amount required to be paid by the Center during a Bond Year pursuant to paragraph (a)(v) above on account of any Sinking Fund Installments if, prior to the date notice of redemption is given pursuant to the Resolution with respect to Bonds to be redeemed through any Sinking Fund Installments during the next succeeding Bond Year, either (i) the Center delivers to the Trustee for cancellation one or more Bonds of the Series and maturity to be so redeemed or (ii) the Trustee, at the direction of the Authority, has purchased one or more Bonds of the maturity to be so redeemed from amounts on deposit in the Debt Service Fund in accordance with the Resolution during such Bond Year. The amount of the credit shall be equal to the principal amount of the Bonds so delivered.

The Authority pursuant to the Loan Agreement directs the Center, and the Center pursuant to the Loan Agreement agrees, to make the payments required by paragraphs (a)(iii), (a)(iv), (a)(v), (a)(vii) and (a)(x) above directly to the Trustee for deposit and application in accordance with the Resolution; the payments required by paragraph (a)(ii) above directly to the Trustee for deposit in the Construction Fund or other fund established under the Resolution, as directed by an Authorized Officer of the Authority; the payments required by paragraphs (a)(i), (a)(viii) and (a)(ix) above directly to the Authority; and the payments required by paragraphs (a)(vi), (a)(xi), (a)(xii) and (a)(xiii) above to or upon the written order of the Authority.

(b) Notwithstanding any provisions in the Loan Agreement or in the Resolution to the contrary (except as otherwise specifically provided for in this paragraph), all moneys paid by the Center to the Trustee pursuant to the Loan Agreement or otherwise held by the Trustee shall be applied in reduction of the Center's indebtedness to the Authority under the Loan Agreement, first, with respect to interest and, then, with respect to the principal amount of such indebtedness, but only to the extent that, with respect to interest on such indebtedness, such moneys are applied by the Trustee for the payment of interest on Outstanding Bonds, and, with respect to the principal of such indebtedness, such moneys have been applied

to, or are held for, payments in reduction of the principal amount of Outstanding Bonds and as a result thereof Bonds have been paid or deemed to have been paid in accordance with the Resolution. Except as otherwise provided in the Resolution, the Trustee shall hold such moneys in trust in accordance with the applicable provisions of the Resolution for the sole and exclusive benefit of the Holders of Bonds, regardless of the actual due date or applicable payment date of any payment to the Holders of Bonds.

(c) The obligations of the Center to make payments or cause the same to be made under the Loan Agreement shall be absolute and unconditional and the amount, manner and time of making such payments shall not be decreased, abated, postponed or delayed for any cause or by reason of the happening or non-happening of any event, irrespective of any defense or any right of set-off, recoupment or counterclaim which the Center may otherwise have against the Authority, the Trustee, or any Bondholder for any cause whatsoever including, without limiting the generality of the foregoing, failure of the Center to complete any Project or the completion thereof with defects, failure of the Center to occupy or use any Project, any declaration or finding that the Bonds of any Series are or the Resolution is invalid or unenforceable or any other failure or default by the Authority or the Trustee; *provided, however*, that nothing in the Loan Agreement shall be construed to release the Authority from the performance of any agreements on its part contained in the Loan Agreement or any of its other duties or obligations, and in the event the Authority shall fail to perform any such agreement, duty or obligation, the Center may institute such action as it may deem necessary to compel performance or recover damages for non-performance. Notwithstanding the foregoing, the Authority shall have no obligation to perform its obligations under the Loan Agreement to cause advances to be made to reimburse the Center for, or to pay, the Costs of any Project beyond the extent of moneys in the Construction Fund established for such Project available therefor.

The Loan Agreement and the obligation of the Center to make payments under the Loan Agreement are general obligations of the Center.

(d) An Authorized Officer of the Authority, for the convenience of the Center, shall furnish to the Center statements of the due date, purpose and amount of payments to be made pursuant to the Loan Agreement. The failure to furnish such statements shall not excuse non-payment of the amounts payable under the Loan Agreement at the time and in the manner provided in the Loan Agreement. The Center shall notify the Authority as to the amount and date of each payment made to the Trustee by the Center.

(e) The Authority shall have the right in its sole discretion to make on behalf of the Center any payment required pursuant to the Loan Agreement which has not been made by the Center when due. No such payment by the Authority shall limit, impair or otherwise affect the rights of the Authority under the Loan Agreement arising out of the Center's failure to make such payment and no payment by the Authority shall be construed to be a waiver of any such right or of the obligation of the Center to make such payment.

(f) The Center, if it is not in default under the Loan Agreement, shall have the right to make voluntary payments in any amount to the Trustee. In the event of a voluntary payment, the amount so paid shall be deposited in the Debt Service Fund and applied in accordance with the Resolution or held by the Trustee for the payment of Bonds in accordance with the Resolution. Upon any voluntary payment by the Center, the Authority agrees to direct the Trustee to purchase or redeem Bonds in accordance with the Resolution or to give the Trustee irrevocable instructions in accordance with the Resolution; *provided, however*, that in the event such voluntary payment is in the sole judgment of the Authority sufficient to pay all amounts then due under the Loan Agreement and under the Resolution, including the purchase or redemption of all Bonds Outstanding, or to pay or provide for the payment of all Bonds Outstanding in accordance with the Resolution, the Authority agrees, in accordance with the instructions of the Center, to direct the Trustee to purchase or redeem all Bonds Outstanding, or to cause all Bonds Outstanding to be paid or to be deemed paid in accordance with the Resolution.

(g) As soon as practicable after the later of the date a Project is deemed to be complete pursuant to the Loan Agreement or the issuance of the Bonds of a Series, the Authority shall determine, and notify the Center of, the actual Authority Fee incurred by the Center in connection with such Project to the date of such notice. The balance, if any, of such Authority Fee then unpaid, to the extent not paid from the Construction Fund, shall be paid by the Center pursuant to paragraph (a)(ix) above. If upon such determination the actual amount of the Authority Fee incurred by the Center in connection with such Project to the date of such notice is less than the amount paid theretofore, the Authority shall promptly refund to the Center the amount paid in excess of such actual amount. The Authority agrees to provide the Center with a copy of each certificate delivered by the Authority to the Trustee in connection with payments to be made pursuant to the Resolution with respect to the Costs of Issuance of Bonds.

(Section 9)

### **Financial Covenants of the Center**

The Center covenants and agrees pursuant to the Loan Agreement as follows:

(i) **Adjusted Operating Loss Calculation.** If (A) the most recently available audited combined financial statements of the Center and the Affiliates show a decrease in Unrestricted Net Assets of \$50,000,000 or more or (B) the Debt Ratio on any Measurement Date that is the last day of the Center's Fiscal Year, as shown on the certificate delivered in accordance with the Loan Agreement, is less than 1.2 : 1.0, the Center will promptly, but in no event more than thirty (30) days after such financial statements became available, cause the Adjusted Operating Loss to be calculated and a copy of such calculation, certified by an Authorized Officer of the Center, delivered to the Authority and each Insurer.

(ii) **Management Consultant.** If either (A) the Debt Ratio on any Measurement Date, as shown on the certificate delivered in accordance with the Loan Agreement, is less than 1.0 : 1.0 or (B) the Debt Ratio on any Measurement Date that is the last day of the Center's Fiscal Year, as shown on the certificate delivered in accordance with the Loan Agreement, is less than 1.2 : 1.0 and the Adjusted Operating Loss for such Fiscal Year, calculated as required by paragraph (i) above, is greater than \$50,000,000, the Center will:

(1) Within sixty (60) days thereafter, unless a Management Consultant report has been delivered during the preceding one hundred eighty (180) days, engage at its own expense a Management Consultant to review the operations and management of the Center and the Affiliates and any other matter deemed appropriate by the Authority and to make such recommendations with respect to such operations, management and other matters as it considers reasonably required for the Center and the Affiliates to establish and maintain a Debt Ratio of not less than 1.0 : 1.0 and to eliminate the Adjusted Operating Loss;

(2) Promptly after the report and recommendations of the Management Consultant are available, but in no event more than one hundred twenty (120) days after the Management Consultant is engaged, deliver or cause to be delivered to the Authority and each Insurer a copy of the Management Consultant's report and recommendations;

(3) Within sixty (60) days after the Management Consultant's report and recommendation were delivered to the Center, (a) deliver to the Authority and each Insurer (i) a certified copy of a resolution adopted by the Board of Managers of the Center accepting both the Management Consultant's report and the report delivered pursuant to clause (ii) below, and (ii) a written report of the Center's Board of Managers and of an Authorized Officer of the Center setting forth in reasonable detail the actions taken and proposed to be taken by the Center and the Affiliates to

implement the recommendations of the Management Consultant, and (b) commence and diligently prosecute all reasonable actions necessary to implement the recommendations of the Management Consultant, other than those that are inconsistent with any federal or State law, rule or regulation or judicial or governmental administrative order applicable to the Center's or an Affiliate's property or operations; and

(4) Within thirty (30) days after the end of each calendar quarter ending more than sixty (60) days after the report required by clause (a)(ii) of the preceding paragraph is delivered, deliver to the Authority and each Insurer a written report of the Center's Board of Managers and of an Authorized Officer of the Center setting forth in reasonable detail the actions taken and proposed to be taken by the Center and the Affiliates to implement the recommendations of such Management Consultant.

(iii) **Liquidity for Tender Option Obligations.** The Center will not, without the prior written consent of the Insurers, authorize the Authority to issue or convert, or consent to the issuance or conversion by the Authority of, any Option Bonds, unless upon such issuance or conversion a Liquidity Facility has been provided. Notwithstanding the foregoing, the Center may authorize the Authority to issue or convert, or consent to the issuance or conversion by the Authority of, any Term Option Bonds without a Liquidity Facility; *provided, however*, that if on a date that is three hundred sixty-five days prior to the Tender Date of a Term Option Bond either:

(1) the Cash and Investments of the Center and the Affiliates, as reflected on the unaudited combined financial statements of the Center and the Affiliates for the most recent fiscal quarter for which unaudited combined financial statements are then available, are less than one hundred twenty percent (120%) of the Tender Price payable on the Tender Date of such Option Bond; or

(2) the senior unsecured Debt of the Center or any senior unenhanced debt obligation issued on behalf of the Center and payable from unsecured payments to be made by the Center is rated either (x) by any two of the following below the following respective ratings: "A" by Fitch, Inc.; "A-2" by Moody's Investors Service, Inc.; or "A" by Standard & Poor's Rating Service; or (y) by any one of the following below the following respective ratings: "A-" by Fitch, Inc.; "A-3" by Moody's Investors Service, Inc.; or "A-" by Standard & Poor's Rating Service;

then the Center shall do or cause to be done any of the following:

(1) obtain a Liquidity Facility for such Term Option Bond from a Provider whose unsecured senior debt, or the unsecured senior debt of any guarantor of the Provider's obligations under such Liquidity Facility, is rated by at least one Rating Service in either the second highest long-term rating category or such lower long-term rating category to which the Authority and the Insurers have given their prior written consent;

(2) make provision for payment by the Center or an Affiliate of the Tender Price of such Term Option Bond on such terms and conditions as may be required by the Authority and the Insurers or establish to the satisfaction of the Authority and the Insurers that the Center and the Affiliates have sufficient liquidity to pay the Tender Price; or

(3) convert such Term Option Bond from and after the Tender Date such that the Term Option Bond will no longer be an Option Bond.

Except as provided in the succeeding paragraph, any Option Bond purchased on a Tender Date by or on behalf of the Center may, in the sole discretion of the Center, be remarketed or surrendered to the Authority for cancellation.

The Center, promptly after notice from the Authority or the Trustee that an event of default under the Resolution has occurred and is continuing, shall deliver or cause to be delivered to the Authority for cancellation all Option Bonds held by or on behalf of the Center or an Affiliate that were tendered for purchase by the Holders thereof, not remarketed and, as a consequence thereof, acquired by the Center or an Affiliate.

(Section 10)

### **Funding Events and Collateral Requirement**

(a) **Funding Events**. Each of the following events will be a “Funding Event”:

(i) The Center fails to pay, when due, any amount required to be paid by it pursuant to clauses (a)(iii), (a)(iv), (a)(v), (a)(vi), (a)(vii) or (a)(x) of the provisions of the Loan Agreement summarized above under the caption “*Financial Obligations of the Center*” and such failure continues beyond any applicable grace period;

(ii) The Center fails to pay, when due, any amount in excess of \$25,000,000 required to be paid by it pursuant to clause (a)(xii) of the provisions of the Loan Agreement summarized above under the caption “*Financial Obligations of the Center*” and such failure continues beyond any applicable grace period;

(iii) The Center fails to comply with the provisions of the Loan Agreement summarized above under the caption “*Financial Covenants of the Center*” and such failure continues uncured for a period of thirty (30) days or within such longer period to which the Center has obtained the Insurers’ Consent and the prior written consent of the Authority;

(iv) For each of two consecutive Fiscal Years, the Unrestricted Net Assets of the Center and the Affiliates have decreased by \$50,000,000 or more and the Adjusted Operating Loss has exceeded \$50,000,000, as determined based upon the audited combined financial statements of the Center and the Affiliates for such Fiscal Years;

(v) The Debt Ratio on any Measurement Date, as shown on the certificate delivered in accordance with the Loan Agreement, is less than .60 : 1.0;

(vi) The senior unsecured Debt of the Center or any senior unenhanced debt obligation issued on behalf of the Center and payable from unsecured payments to be made by the Center is not rated in at least the “A” category by either two Rating Services, if such Debt or debt obligation is rated by three Rating Services, or by one Rating Service if such Debt or debt obligation is rated by less than three Rating Services; or

(vii) An Event of Default has occurred under the Inducement Agreement.

(b) ***Collateral Upon Funding Event.***\* Except as otherwise expressly provided in this paragraph (b), the Center covenants and agrees that, as soon as practicable after the occurrence of a Funding Event, but in no event more than sixty (60) days thereafter:

(i) It will give or cause to be given to the Authority a pledge of or perfected security interest in Gross Receipts of the Center and the Related Corporations; and

(ii) It will make and deliver or cause to be made and delivered to the Authority a mortgage or mortgages in recordable form on all Research Center Property, Unrestricted Property and Restricted Property; and

(iii) It will cause the Hospital to make and deliver to the Authority a mortgage or mortgages in recordable form on all Hospital Property in accordance with the Inducement Agreement; *provided, however*, that, if the consent or approval of the Department of Health of the State of New York is required by law to be obtained prior to making or delivering any such mortgage, the Center will take or cause the Hospital to take all actions reasonably necessary to obtain such consent or approval and will make and deliver such mortgage promptly after such consent or approval is obtained, but in no event more than sixty (60) days thereafter; *provided, further*, that no default under the Loan Agreement shall result from a failure to make and deliver any such mortgage if the same is solely due to the inability of the Center or the Hospital to obtain any consent thereto or approval thereof required by law after diligent effort has been made to obtain such consent or approval; and

(iv) It will give or cause to be given to the Authority a perfected security interest in the furnishings and equipment located in and used in connection with the property to be mortgaged in accordance with the Loan Agreement; and

(v) It will give or cause to be given to the Authority a pledge of or perfected security interest in the Sale Proceeds of the sale or disposition of any Hospital Property, Research Center Property, Restricted Property or Unrestricted Property, including, but not limited to a pledge of or security interest in the right to receive any Sale Proceeds payable thereafter that are deferred payments of any portion of the purchase price of such property pursuant to a purchase money mortgage or otherwise, and the proceeds of such right; or

(vi) In lieu of all or any of clauses (i) through (v) above, inclusive, it will give or cause to be given to the Authority such other Collateral to which the Center has obtained the Insurers' Consent and the prior written consent of the Authority.

The Authority agrees that, if no Funding Event or Event of Default is then continuing, and if there has not occurred any event, which with the passage of time or the giving of notice, or both, will constitute an Event of Default, it will as soon as practicable after the written request of the Center release any and all Collateral from any pledge, security interest or mortgage made or given pursuant to the Loan Agreement, and execute such instruments as the Center may reasonably require to effect or evidence such release.

(c) ***Collateral Upon Excess Secured Debt.*** The Center covenants and agrees that, if at the time the Center or a Related Corporation gives a Lien to secure an obligation incurred pursuant to clause (a)(v) of the provisions of the Loan Agreement summarized below under the caption "Liens; Secured Debt" the aggregate principal amount of Debt secured by Liens given pursuant to clauses (a)(viii) and (a)(ix) of the

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\* This provision will be amended upon the effectiveness of the amendments to the Loan Agreement described in "APPENDIX C-2 – SUMMARY OF CERTAIN PROVISIONS OF SPRINGING AMENDMENTS TO THE LOAN AGREEMENT."

provisions of the Loan Agreement summarized below under the caption “*Liens; Secured Debt*”, together with the aggregate amount of Derivative Obligations then secured by Liens given pursuant to clause (a)(v) of the provisions of the Loan Agreement summarized below under the caption “*Liens; Secured Debt*”, including the Derivative Obligation then to be secured (collectively, the “*Limited Secured Debt*”), exceeds the Secured Debt Limit, the Center, as security for its obligations under the Loan Agreement, will promptly give or cause to be given to the Authority a Lien or Liens on Property reasonably acceptable to the Authority and the Insurers, the fair market value or, in the case of mortgages on real property, the appraised value of which is at the time such Liens are given at least equal to the amount by which the Limited Secured Debt exceeds the Secured Debt Limit. Notwithstanding the foregoing, no Lien or Liens otherwise required by this paragraph (c) to be given will be required if the obligations of the Center under the Loan Agreement are then secured by Collateral given pursuant to paragraph (b) immediately above.

The Authority agrees that, if no Event of Default or any event which with the passage of time or the giving of notice, or both, would constitute an Event of Default is then continuing, it will as soon as practicable after the written request of the Center (which may be made no more frequently than once each calendar quarter) and receipt of evidence satisfactory to it and the Insurers that the Limited Secured Debt no longer exceeds the Secured Debt Limit release any and all Collateral from any pledge, security interest, or mortgage made or given pursuant to this paragraph (c), and execute such instruments as the Center may reasonably require to effect or evidence such release.

(d) ***Lien Priority; Required Documents.*** Except as otherwise permitted in the Loan Agreement and except with regard to the Shared Collateral, the pledge and lien on which is of equal priority with the pledge or lien securing the 2001 Loan Agreement, each mortgage, pledge and security interest made or given pursuant to this section shall be a first lien on the affected Property subject to only Permitted Encumbrances.

Simultaneously with delivery of any Collateral, the Center shall also (i) deliver to the Authority and each Insurer such certificates and opinions of counsel to the Center and the Affiliates with respect to such Collateral as the Authority or an Insurer may reasonably require in connection with the delivery of such Collateral, including but not limited to such matters as the Center’s or an Affiliate’s corporate power and authority, the due authorization to execute and deliver documents and instruments, and the execution and delivery and the valid, binding and enforceable nature of the pledges, security interests or mortgages made or given and of the documents and instruments executed by the Center or an Affiliate, (ii) take the necessary steps to create, perfect and protect the lien on such Collateral, including but not limited to execution of security agreements and other instruments and the authorization of financing statements, (iii) deliver, to the Authority such title insurance policies as the Authority may reasonably require in connection with any mortgage, (iv) pay all fees, taxes, charges and other expenses incurred in connection with the delivery of such Collateral, (v) make such representations, warranties and covenants with respect to such Collateral as the Authority may reasonably require, and (vi) take such other actions as the Authority may request pursuant to the Loan Agreement.

*(Section 11)*

### **Consent to Pledge and Assignment**

The Center consents to and authorizes the assignment, transfer or pledge by the Authority to the Trustee of (i) the Authority’s rights to receive any or all of the payments required to be made pursuant to the Loan Agreement, (ii) any or all pledges, security interests and mortgages made or given by the Center or an Affiliate pursuant to the Loan Agreement or pursuant to the Inducement Agreement, and (iii) all funds and accounts established by the Resolution and pledged thereby, in each case to secure any payment or the performance of any obligation of the Center under the Loan Agreement or arising out of the transactions



contemplated by the Loan Agreement whether or not the right to enforce such payment or performance shall be specifically assigned by the Authority to the Trustee. The Center further agrees that the Authority may pledge and assign to the Trustee any and all of the Authority's rights and remedies under the Loan Agreement or under any Related Agreement. Upon any pledge, transfer or assignment by the Authority to the Trustee authorized by the Loan Agreement, the Trustee shall be fully vested with all of the rights of the Authority so assigned and pledged and may thereafter exercise or enforce, by any remedy provided therefor by the Loan Agreement or by law, any of such rights directly in its own name. Any such pledge and assignment shall be limited to the Authority's rights (i) to receive payments required to be made pursuant to the Loan Agreement, (ii) to receive payments required to be made by a Guarantor under its Guaranty, (iii) in and under any pledge, security interest or mortgage made or given pursuant to the Loan Agreement and (iv) to enforce all other obligations required to be performed by the Center under the Loan Agreement. Any realization upon any pledge, security interest or mortgage made or given pursuant to the Loan Agreement shall not, by operation of law or otherwise, result in cancellation or termination of the Loan Agreement or of the obligations of the Center or a Guarantor under the Loan Agreement or under any Guaranty.

(Section 12)

### **Liens; Secured Debt**

(a) **Permitted Liens.**\* The Center covenants and agrees that neither it nor any Related Corporation will incur, issue, assume or guaranty any Debt secured by Liens on any Property unless either (A) the Center or such Related Corporation effectively provides by documents reasonably satisfactory to the Authority that the Center's indebtedness under the Loan Agreement (together with, if the Center so determines, any other indebtedness or obligation thereafter created that is not subordinate in right of payment to the Center's indebtedness under the Loan Agreement) shall be secured equally and ratably with or prior to all other obligations secured thereby as long as such Debt shall be so secured, or (B) the Center or the Related Corporation has obtained the Insurers' Consent and the prior written consent of the Authority thereto. Notwithstanding the foregoing provisions of the Loan Agreement, the Center or a Related Corporation may create or suffer the existence of:

(i) Liens to secure Debt incurred pursuant to the Loan Agreement;

(ii) Liens to secure all or any part of the purchase price of furnishings or equipment acquired by the Center or a Related Corporation, provided (A) the principal amount of the Debt secured thereby does not exceed ninety-five percent (95%) of the purchase price, (B) such Debt and related Lien are incurred at the time of or within one hundred and eighty (180) days after the acquisition thereof, and (C) such Lien relates only to the Property so acquired;

(iii) Liens to secure all or any part of the purchase price of Investment Property acquired by the Center or a Related Corporation, provided (A) the principal amount of the Debt secured thereby does not exceed ninety-five percent (95%) of the purchase price, (B) such Debt and related Lien are incurred at the time of or within one hundred and eighty (180) days after the acquisition thereof, and (C) such Lien relates only to the Property so acquired;

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\* This provision will be amended upon the effectiveness of the amendments to the Loan Agreement described in "APPENDIX C-2 – SUMMARY OF CERTAIN PROVISIONS OF SPRINGING AMENDMENTS TO THE LOAN AGREEMENT."

(iv) Liens heretofore existing on Property or existing thereon at the time such Property was acquired by the Center or a Related Corporation, provided the principal amount of the Debt secured by any such Lien does not exceed ninety-five percent (95%) of the fair market value (in the opinion of an Authorized Officer of the Center) of such Property;

(v) Subject to the limitations set forth in paragraph (b) below, Liens on intangible personal property to secure obligations incurred by the Center or a Related Corporation to the counter-party in connection with a Derivative Agreement;

(vi) With the prior written consent of each Insurer, Liens on any of the Collateral to secure Debt incurred to the Authority (other than pursuant to the Loan Agreement) or to secure bonds, notes or other obligations issued by the Authority (other than Bonds);

(vii) With the Insurers' Consent, Liens on Property other than the Collateral to secure Debt incurred to the Authority (other than pursuant to the Loan Agreement) or to secure bonds, notes or other obligations issued by the Authority (other than Bonds);

(viii) Subject to the limitations set forth in paragraph (b) below, Liens on intangible personal property, other than accounts receivable, to secure Short-term Debt;

(ix) Subject to the limitations set forth in paragraph (b) below, Liens on accounts receivable;

(x) Liens on pledges to make gifts or bequests to secure Debt provided that the proceeds of such Debt is applied by the Center or an Affiliate to acquire real property or furnishings and equipment to be used in and in connection with Research Center Property; Unrestricted Property, Restricted Property, Hospital Property or Mortgaged Property;

(xi) With the Insurers' Consent and the prior written consent of the Authority Liens on Property to secure obligations incurred by the Center or a Related Corporation to a counter-party in connection with a Credit Facility or a Liquidity Facility; and

(xii) Any extension, renewal or replacement (or successive extensions, renewals or replacements), in whole or in part, of any Lien referred to in the foregoing clauses (i) through (xi) inclusive or of any Debt or other obligation secured thereby; *provided, however,* that in the case of Liens given to secure Debt (A) the principal amount of Debt or secured thereby shall not exceed the greater of (1) the principal amount of Debt so secured at the time of such extension, renewal or replacement or (2) ninety-five percent (95%) of the original purchase price or cost of construction of the Property subject to such Lien, and (B) such extension, renewal or replacement Lien shall be limited to all or part of substantially the same property to which the Lien that was extended, renewed or replaced applied (plus improvements on such property).

Except for Liens permitted by this section and Permitted Encumbrances, the Center and each Related Corporation shall keep their respective Property free and clear of Liens.

(b) **Limitations on Secured Debt.** The Center covenants and agrees that neither it nor any Related Corporation will:

(i) Incur, issue, assume or guaranty (A) Debt secured by Liens given pursuant to clauses (viii) or (ix) of paragraph (a) above, (B) obligations secured by Liens given pursuant to clause (v) of paragraph (a) above or (C) any extension, renewal or replacement (or successive extensions, renewals or replacements), in whole or in part, of any such Debt or obligation, if at the time such Debt or Derivative Obligation secured by such Liens is incurred, issued, assume or guaranteed, the aggregate principal amount of Debt and Derivative Obligations of the Center and the Affiliates so secured and then outstanding, inclusive of any secured Short-term Debt or Debt secured by accounts receivable permitted by clauses (ii) and (iii) below, respectively, together with the aggregate principal amount of such Debt or Derivative Obligation, then to be so secured, would exceed fifteen percent (15%) of the Unrestricted Net Assets of the Center and the Affiliates, as reflected on the audited combined financial statements of the Center and the Affiliates for the most recent Fiscal Year for which audited combined financial statements are available; or

(ii) Incur, issue, assume or guaranty Short-term Debt secured by Liens given pursuant to clause (viii) of paragraph (a) of above, if the aggregate principal amount of Short-term Debt of the Center and the Affiliates so secured and then outstanding, together with the aggregate principal amount of Short-term Debt then to be so secured, would exceed fifteen percent (15%) of the Total Operating Revenues of the Center and the Affiliates, as reflected on the audited combined financial statements of the Center and the Affiliates for the most recent Fiscal Year for which audited combined financial statements are available; *provided, however*, that, unless the Authority and the Insurers otherwise agree in writing after either (x) a Funding Event has occurred and is continuing or (y) a Management Consultant has been engaged and is then serving in accordance with the Loan Agreement, for a period of at least twenty (20) consecutive calendar days during each Fiscal Year of the Center the aggregate principal amount of Short-term Debt so secured shall not exceed five percent (5%) of the Total Operating Revenues of the Center and the Affiliates as reflected on the audited combined financial statements of the Center and the Affiliates for the most recent Fiscal Year for which audited combined financial statements are available, or

(iii) Incur, issue, assume or guaranty Debt secured by Liens on accounts receivable given pursuant to clause (ix) of paragraph (a) above, if (A) the aggregate principal amount of Debt of the Center and the Affiliates so secured and then outstanding, together with the aggregate principal amount of Debt then to be so secured, would be less than eighty percent (80%) of the accounts receivable subject to such Liens or (B) the accounts receivable securing such Debt would exceed twenty-five percent (25%) of the net accounts receivable of the Center and the Affiliates, as reflected on the audited combined financial statements of the Center and the Affiliates for the most recent Fiscal Year for which audited combined financial statements are available.

(Section 14)

### **Sale of Property**\*

The Center covenants that neither it nor a Related Corporation will transfer, sell, convey or otherwise dispose of any Unrestricted Property, Restricted Property, Research Center Property or

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\* This provision will be amended upon the effectiveness of the amendments to the Loan Agreement described in "APPENDIX C-2 – SUMMARY OF CERTAIN PROVISIONS OF SPRINGING AMENDMENTS TO THE LOAN AGREEMENT."

Mortgaged Property, or any interest therein, for less than fair market value unless such transfer sale, conveyance or other disposition is to the Center or an Affiliate. No Unrestricted Property, Restricted Property, Research Center Property or Mortgaged Property that is any part of a Project may be transferred, sold, conveyed or otherwise disposed of unless, in the opinion of Bond Counsel, the same will not adversely affect the exclusion of interest on any Bonds from gross income for purposes of federal income taxation. All Sale Proceeds of the Center or a Related Corporation shall, until expended as permitted by the Loan Agreement, be held by the Center or a Related Corporation separate and apart from, and not commingled with, any other cash, investments or other assets of any of them and shall be separately identified as Sale Proceeds on the books of the Center and the Related Corporation except that for purposes of investments of Sale Proceeds permitted by the Loan Agreement, the Sale Proceeds may be commingled with other moneys of the Center or an Affiliate similarly invested. Sale Proceeds in the form of cash may, nevertheless, be invested and reinvested from time to time in fixed income debt securities that at the time such investment is made (i) are rated by at least one Rating Service in the third highest rating category for such securities, (ii) mature no more than thirty-six (36) months thereafter and (iii) are not securities (other than Government Obligations or Federal Agency Obligations) of an issuer or obligor in which more than ten percent (10%) of the principal amount of Sale Proceeds are invested after giving effect to the investment then to be made.

Except as otherwise provided below, the Center or an Affiliate may, prior to the occurrence of a Funding Event or if no Funding Event is then continuing, in its or their sole discretion, apply the Center's or a Related Corporation's Sale Proceeds derived from the sale or other disposition of Unrestricted Property to any corporate purpose of the Center or a Related Corporation. The Center or a Related Corporation may, in its or their sole discretion, apply the Sale Proceeds derived from the sale or other disposition of Restricted Property, Research Center Property or Mortgaged Property to any one or more of the following:

- (i) To acquire title to other real property;
- (ii) To pay the costs of constructing buildings and improvements on land theretofore owned or thereafter acquired by any of them;
- (iii) With the consent of the Insurers and the Authority, to pay or make provision for payment of Outstanding Bonds, either at their respective maturity or redemption dates; and
- (iv) To such other corporate purpose or purposes of the Center or a Related Corporation to which the Center has obtained the Insurers' Consent and the prior written consent of the Authority.

Notwithstanding the foregoing, no Sale Proceeds derived from the sale of any Unrestricted Property, Restricted Property, Research Center Property, or Mortgaged Property that is any part of a Project shall be applied to any of the foregoing purposes unless, in the opinion of Bond Counsel, such application will not adversely affect the exclusion of interest on any Bonds from gross income for purposes of federal income taxation.

*(Section 15)*

### **Tax-Exempt Status**

The Center represents that it, the Hospital, the Sloan Kettering Institute for Cancer Research and S.K.I. Realty Inc. (i) are organizations described in Section 501(c)(3) of the Code, or corresponding provisions of prior law, and not "private foundations," as such term is defined under Section 509(a) of the

Code, (ii) have received a letter or other notification from the Internal Revenue Service to that effect and such letter or other notification has not been modified, limited or revoked, (iii) are in compliance with all terms, conditions and limitations, if any, contained in such letter or other notification, (iv) the facts and circumstances which form the basis of such letter or other notification as represented to the Internal Revenue Service continue to exist, and (v) are exempt from federal income taxes under Section 501(a) of the Code.

*(Section 16)*

### **Restrictions on Religious Use**

The Center agrees that with respect to any Project or portion thereof, so long as such Project or portion thereof exists and is owned by the Center or an Affiliate unless and until such Project or portion thereof is sold for the fair market value thereof, such Project or portion thereof owned by the Center or an Affiliate shall not be used for sectarian religious instruction or as a place of religious worship or in connection with any part of a program of a school or department of divinity for any religious denomination; *provided, however*, that the foregoing restriction shall not prohibit the free exercise of any religion; and, *provided, further*, that if at any time after the date of the Loan Agreement, in the opinion of Bond Counsel, the then applicable law would permit a Project or a portion thereof to be used without regard to the above stated restriction, said restriction shall not apply to such Project and each portion thereof. The Authority and its agents may conduct such inspections as an Authorized Officer of the Authority deems necessary to determine whether any Project or any portion of real property thereof financed by Bonds is being used for any purpose proscribed by the Loan Agreement. The Center pursuant to the Loan Agreement further agrees that prior to any disposition of any portion of a Project for less than fair market value, it shall execute and record in the appropriate real property records an instrument subjecting, to the satisfaction of the Authority, the use of such portion of such Project to the restriction that (i) so long as such portion of such Project (and, if included in the Project, the real property on or in which such portion of such Project is situated) shall exist and (ii) until such portion of such Project is sold or otherwise transferred to a person who purchases the same for the fair market value thereof at the time of such sale or transfer, such portion of such Project shall not be used for sectarian religious instruction or as a place of religious worship or used in connection with any part of the program of a school or department of divinity of any religious denomination. The instrument containing such restriction shall further provide that such restriction may be enforced at the insistence of the Authority or the Attorney General of the State, by a proceeding in any court of competent jurisdiction, by injunction, mandamus or by other appropriate remedy. The instrument containing such restriction shall also provide that if at any time thereafter, in the opinion of Bond Counsel, the then applicable law would permit such portion of such Project, or the real property on or in which such portion is situated, to be used without regard to the above stated restriction, then said restriction shall be without any force or effect. For the purposes of this paragraph an involuntary transfer or disposition of a Project or a portion thereof, upon foreclosure or otherwise, shall be considered a sale for the fair market value thereof.

*(Section 21)*

### **Insurance\***

(a) The Center, at its sole cost and expense, shall procure and maintain, or cause to be procured and maintained, to the extent reasonably obtainable, from responsible insurers reasonably acceptable to an Authorized Officer of the Authority, insurance of the type and in the amounts customarily maintained by

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\* This provision will be amended upon the effectiveness of the amendments to the Loan Agreement described in "APPENDIX C-2 – SUMMARY OF CERTAIN PROVISIONS OF SPRINGING AMENDMENTS TO THE LOAN AGREEMENT."

institutions providing services similar to those provided by the Center or the Affiliates. All policies of insurance required by this paragraph shall be primary to any insurance maintained by the Authority.

(b) The Center, at the times specified in the following paragraphs, shall procure and maintain, or cause each Related Corporation to procure and maintain, to the extent reasonably obtainable, from responsible insurers acceptable to the Authority, including self-insurance, the following insurance:

(i) prior to the completion of construction of any building that constitutes Unrestricted Property, Research Center Property or Restricted Property or that is part of any Project, and until insurance is procured pursuant to subparagraph (ii) below, all risk builders' risk insurance against direct physical loss or damage, or with respect to the acquisition and installation of equipment or machinery, in lieu of all risk builders' risk, an installation floater on an all risk basis. The amount of such insurance shall be on a one hundred per centum (100%) completed value basis on the insurable portion;

(ii) at all times (except during a period when builders' risk insurance is in effect as required by subparagraph (i) above), all risk property insurance against direct physical loss or damage to a Project, Unrestricted Property, Restricted Property, Research Center Property and the Mortgaged Property, in an amount equal to not less than eighty percent (80%) of the replacement value thereof using commercial insurance, captive insurance or other forms of self-insurance or any combination thereof (such replacement value to be determined on the basis of replacement costs without allowance for depreciation), exclusive of excavations and foundations and similar property normally excluded under New York standard forms; *provided, however*, that the inclusion of such property under a blanket insurance policy or policies of the Center insuring against the aforesaid hazards in an amount aggregating at least eighty percent (80%) of the insurable value of the insured property, exclusive of excavations and foundations and similar property normally excluded under New York standard forms, shall constitute complete compliance with the provisions of this paragraph with respect to such property; *provided, further*, that in any event, each such policy shall be in an amount sufficient to prevent the Center and the Authority from becoming co-insurers under the applicable terms of such policy;

(iii) at all times (except during a period when builders' risk insurance is in effect as required by subparagraph (i) above), all risk property insurance against direct physical loss or damage to the Hospital Property located at 1275 York Avenue in the City and State of New York currently used for in-patient services (and such other additional property or replacement property at which the Hospital may hereafter provide in-patient services), and the research facility to be located at 405-415 East 68th Street in the City and State of New York in an amount equal to not less than one hundred percent (100%) of the replacement value thereof using commercial insurance, captive insurance or other forms of self-insurance or any combination thereof (such replacement value to be determined on the basis of replacement costs without allowance for depreciation), exclusive of excavations and foundations and similar property normally excluded under New York standard forms; *provided, however*, that the inclusion of the such property under a blanket insurance policy or policies of the Center or an Affiliate insuring against the aforesaid hazards in an amount aggregating at least one hundred percent (100%) of the insurable value of the insured property, exclusive of excavations and foundations and similar property normally excluded under New York standard forms, shall constitute complete compliance with the provisions of this paragraph with respect to such property; *provided, further*, that in any event, each

such policy shall be in an amount sufficient to prevent the Center and the Authority from becoming co-insurers under the applicable terms of such policy;

(iv) at all times, statutory workers' compensation insurance, covering loss resulting from injury, sickness, disability or death of employees and employer's liability insurance with limits of at least \$1,000,000 for each accident, each sickness, and aggregate occupational illness or sickness;

(v) at all times, statutory disability benefits;

(vi) at all times, commercial general liability insurance protecting the Authority, the Center and each Related Corporation against loss or losses from liabilities arising from bodily injury of persons or damage to the property of others caused by accident or occurrence, with limits of not less than \$1,000,000 per accident or occurrence on account of injury to persons or property damage with \$2,000,000 policy aggregate, excluding liability imposed upon the Authority, the Center or a Related Corporation by any applicable workers' compensation law;

(vii) commencing with the date on which construction of any building that constitutes Unrestricted Property, Research Center Property or Restricted Property or that is part of any Project, or any part thereof is completed or first occupied, or any equipment, machinery, fixture or personal property covered by comprehensive boiler and machinery coverage is accepted, whichever occurs earlier, insurance providing comprehensive boiler and machinery coverage in an amount considered adequate by the Authority, which insurance may include deductible provisions approved by the Authority; and

(viii) each other form of insurance which the Center and a Related Corporation is required by law to provide and such other kinds of insurance in such amounts as from time to time may be reasonably required by the Authority.

Any insurance procured and maintained pursuant to the Loan Agreement, including any blanket insurance policy, may include deductible provisions reasonably satisfactory to the Authority. In determining whether or not any insurance required by this section is reasonably obtainable or if the deductible on any such insurance is a reasonable deductible, the Authority may rely solely and exclusively upon the advice and judgment of any insurance consultant chosen by the Center and approved by the Authority, and any such decision by the Authority, based upon such advice and judgment, shall be conclusive.

In lieu of any insurance coverage required by the Loan Agreement, the Center or a Related Corporation may, upon the recommendation of an independent insurance consultant or actuary reasonably acceptable to the Authority, self-insure against any risk provided the Center or such Related Corporation funds such self-insurance at the level recommended by such insurance consultant or actuary.

Each policy maintained pursuant to the Loan Agreement shall provide that the insurer writing such policy shall give at least thirty (30) days' notice in writing to the Authority of the cancellation or non-renewal or material change in the policy unless a lesser period of notice is expressly approved in writing by the Authority. The Center, not later than July 15<sup>th</sup> of each year, shall provide (i) with respect to each policy of insurance maintained by the Center as of the preceding June 30<sup>th</sup>, a certificate of insurance that sets forth the name of the insurer, the insured parties or loss payees, the level of coverage, the deductible and such other information as the Authority may reasonably request, and (ii) with respect to each self-

insurance plan maintained by the Center as of the preceding June 30<sup>th</sup>, a written statement describing such plan, the risks insured thereby and the then current level of funding.

All policies of insurance shall be open to inspection by the Authority, each Insurer and the Trustee or their representatives at all reasonable times. If any change shall be made in any such insurance, a description and notice of such change shall be furnished to the Authority, each Insurer and the Trustee at the time of such change. The Center covenants and agrees not to make any change in any policy of insurance which would reduce the coverages or increase the deductible thereunder without the prior written consent of the Authority and each Insurer.

All policies of insurance maintained pursuant to the Loan Agreement, other than policies of workers' compensation insurance, shall include the Authority, as an additional insured or as mortgagee or loss payee as appropriate.

In the event the Center or a Related Corporation fails to provide the insurance required by the Loan Agreement, the Authority may elect at any time thereafter to procure and maintain the insurance required by the Loan Agreement at the expense of the Center and shall give written notice thereof to each Insurer. The policies procured and maintained by the Authority shall be open to inspection by the Center and each Insurer at all reasonable times, and, upon request of the Center, a complete list describing such policies as of the June 30<sup>th</sup> preceding the Authority's receipt of such request shall be furnished to the Center by the Authority.

(Section 23)

#### **Reporting Requirements; Access to Records\***

(a) **Reporting Requirements.** The Center shall furnish or cause to be furnished to the Authority, the Trustee, each Insurer and such other persons as the Authority may designate:

(i) within sixty (60) days after the end of each of the first three quarters of the Center's Fiscal Year (A) a copy of the interim, comparative cumulative combined financial statements of the Center and the Affiliates, including therein, without limitation, a balance sheet, a statement of changes in net assets and a statement of activities, duly certified by the chief financial officer of the Center as having been prepared in accordance with generally accepted accounting principles, and, (B) if an Event of Default under the Loan Agreement, or, to the best of the Center's knowledge, an event that, with the giving of notice or the passage of time, or both, would constitute such an Event of Default, has occurred and is continuing, a certificate of an Authorized Officer of the Center stating the nature thereof and the action that the Center or an affected Affiliate proposes to take with respect thereto;

(ii) annually, within one hundred twenty (120) days after the end of the Center's Fiscal Year, (A) a copy of (1) the annual audited combined financial statements of the Center and the Affiliates for such Fiscal Year, (2) the annual audited financial statement of the Center for such Fiscal Year, if separate audited financial statements for the Center have been prepared for such Fiscal Year, and (3) the audited consolidated financial statements of the Center and the Affiliates, if audited such audited consolidated statements have been prepared for such Fiscal Year, in each case including therein without limitation, a balance

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\* This provision will be amended upon the effectiveness of the amendments to the Loan Agreement described in "APPENDIX C-2 – SUMMARY OF CERTAIN PROVISIONS OF SPRINGING AMENDMENTS TO THE LOAN AGREEMENT."



sheet as of the end of such Fiscal Year, a statement of changes in net assets and a statement of activities for such Fiscal Year or such other financial statements then required in accordance with generally accepted accounting principles applicable to the Center, in each case audited by a firm of independent public accountants of recognized standing as may be reasonably acceptable to the Authority and the Insurers, (B) a copy of any management letter prepared by the auditors, (C) a certificate or other instrument signed by the Center's auditors stating whether an Event of Default, or, to the best of the auditors' knowledge, an event that, with the giving of notice or the passage of time, or both, would constitute such an Event of Default, has occurred and is continuing, and, if such an Event of Default or such an event has occurred and is continuing, a statement as to the nature thereof, and (D) if such an Event of Default or such an event has occurred and is continuing, a certificate of an Authorized Officer of the Center setting forth the action that the Center or the affected Affiliate proposes to take with respect thereto,

(iii) within sixty (60) days after each Measurement Date that is not the last day of the Center's Fiscal Year, and within one hundred twenty (120) days after each Measurement Date that is the last day of the Center's Fiscal Year, a certificate executed by an Authorized Officer of the Center (A) setting forth the Cash and Investments and outstanding Debt of the Center and the Affiliates and (B) calculating the Debt Ratio, each as of the applicable Measurement Date;

(iv) within one hundred twenty (120) days after the end of each of the Center's Fiscal Years, a certificate of an Authorized Officer of the Center setting forth (i) the Unrestricted Net Assets for the two most recently ended Fiscal Years, and (ii) if then required by the provisions of the Loan Agreement summarized above under the caption "*Financial Covenants of the Center*", the Adjusted Operating Loss for such Fiscal Years;

(v) promptly after, but in no event more than thirty (30) days after, the Center or a Related Corporation either incurs, issues, assumes or guarantees (A) a Debt secured by Liens given pursuant to clause (a)(viii) of the provisions of the Loan Agreement summarized above under the caption "*Liens; Secured Debt*", (B) an obligation secured by Liens given pursuant to clause (a)(v) of the provisions of the Loan Agreement summarized above under the caption "*Liens; Secured Debt*", or (C) any extension, renewal or replacement (or any successive extensions, renewals or replacements) in whole or in part of any such Debt or obligation, a certificate of an Authorized Officer of the Center (1) setting forth in reasonable detail the Debt or obligation then incurred, issued, assumed or guaranteed, (2) containing a statement to the effect that, after giving effect thereto, the Center and the Related Corporations are in compliance with each limitation applicable thereto and to each of them set forth in paragraph (c) of the provisions of the Loan Agreement summarized above under the caption "*Funding Events and Collateral Requirement*" and (3) setting forth in reasonable detail the calculation of each such limitation.

(vi) promptly after, but in no event more than thirty (30) days after, the Center or a Related Corporation gives a Lien to secure an obligation incurred pursuant to clause (a)(v) of the provisions of the Loan Agreement summarized above under the caption "*Liens; Secured Debt*", a certificate of an Authorized Officer of the Center setting forth in reasonable detail the calculation of the Secured Debt Limit, the amount of Limited Secured Debt then outstanding and the amount, if any, by which the Limited Secured Debt exceeds the Secured Debt Limit.

(vii) prompt written notice, but in no event more than thirty (30) days after commencement, of any adverse litigation (A) seeking damages in excess of the lesser of (1) \$25,000,000 over the applicable insurance coverage and (2) two and one-half percent (2 ½%) of the value of the Center’s and the Affiliate’s Unrestricted Net Assets or (B) in which an adverse determination may have a material adverse effect on the combined financial or operating condition of the Center and the Affiliates;

(viii) prompt written notice of, but in no event more than ten (10) days after, a failure by the Center or a Guarantor to pay any amount payable by the Center pursuant to clauses (a)(iii), (a)(iv), (a)(v), (a)(vi), (a)(vii), (a)(x) or (a)(xii) of the provisions of the Loan Agreement summarized above under the caption “*Financial Obligations of the Center*”;

(ix) prompt written notice to the Authority and each Insurer of the loss or change in the chief executive officer, the chief operating officer, president, or chief financial officer of the Center, the Hospital or Sloan Kettering Institute for Cancer Research;

(x) prompt written notice of any pending formation, acquisition, merger, consolidation, change in ownership or dissolution of or by the Center or an Affiliate and, within ten (10) days after any of the foregoing become effective;

(xi) such reports with respect to the condition of, and repairs, replacements, renovations, and maintenance, to one or more Projects as the Authority or an Insurer may from time to time reasonably request; and

(xii) such other information respecting the business, property or the condition or operations, financial or otherwise, of the Center and the Related Corporations as the Authority or an Insurer may from time to time reasonably request (other than information the Center of such Related Corporation is required by law to keep confidential), including, but not limited to, such information as, in the reasonable judgment of the Authority, may be necessary in order to ensure compliance with applicable federal securities laws in effect from time to time or to maintain a market for or enable securities dealers to offer the Bonds for sale.

(b) ***Access to Records.*** At any and all reasonable times and from time to time, permit the Authority, the Trustee and each Insurer, or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account (other than those books and records that by law must be treated as confidential) of, and visit the properties of the Center and each Related Corporation and to discuss the affairs, finances and accounts of the Center and the Related Corporations with any of their respective officers.

(Section 26)

## **Defaults and Remedies**

(a) As used in the Loan Agreement the term “Event of Default” shall mean:

(i) the Center shall (A) default in the timely payment of any amount payable pursuant to the paragraph (a) of the provisions of the Loan Agreement summarized above under the caption “*Financial Obligations of the Center*” (other than pursuant to clauses (iii) and (xi) of such paragraph) or in the delivery of Exempt Obligations or Government Obligations or the payment of any other amounts required to be delivered or paid by or on

behalf of the Center in accordance with the Loan Agreement or with the Resolution and such default continues for a period in excess of seven (7) days or (B) default in the timely payment of any amount payable pursuant to clause (a)(iii) of the provisions of the Loan Agreement summarized above under the caption “*Financial Obligations of the Center*” and such default continues for a period in excess of one (1) Business Day or (C) default in the timely payment of any amount pursuant to clause (a)(xi) of the provisions of the Loan Agreement summarized above under the caption “*Financial Obligations of the Center*”;

(ii) the Center or a Related Corporation that qualifies as an organization described in Section 501(c)(3) of the Code or that is entitled to tax-exempt status pursuant to Section 501(a) of the Code shall no longer be qualified as organizations described in Section 501(c)(3) of the Code or entitled to tax-exempt status pursuant to Section 501(a) of the Code, or shall become a “private foundation” as defined under Section 509(a) of the Code or shall otherwise fail to comply with the provisions of the Loan Agreement;

(iii) the Center or a Related Corporation incurs, issues, assumes or guarantees Debt or other obligation secured by Liens inconsistent with the limitations contained in the Loan Agreement or otherwise fails to comply with the provisions of the Loan Agreement summarized above under the captions “*Funding Events and Collateral Requirement*,” “*Liens; Secured Debt*” or “*Sale of Property*” and the same continues uncured for ten (10) days after written notice thereof shall have been given to the Center;

(iv) the Center fails to duly and punctually observe any other covenant or agreement contained in the Loan Agreement and such failure continues for thirty (30) days after written notice thereof shall have been given to the Center; *provided, however*, that if, in the determination of the Authority, such failure cannot be cured within such thirty (30) day period but can be cured by appropriate action, it shall not constitute an Event of Default under the Loan Agreement if the Center within such thirty (30) day period initiates corrective action and thereafter diligently pursues the same;

(v) as a result of any default in payment or performance required of the Center or any Event of Default under the Loan Agreement, whether or not declared, continuing or cured, the Authority shall be in default in the payment or performance of any of its obligations under the Resolution or an “event of default” (as defined in the Resolution) shall have been declared under the Resolution so long as such default or event of default shall remain uncured or the Trustee, a Facility Provider or Holders of the Bonds shall be seeking the enforcement of any remedy under the Resolution as a result thereof;

(vi) the Center or an Affiliate shall be in default under any Related Agreement (which default has not been waived or cured) if the Center’s or such Affiliate’s obligations thereunder are secured by a lien upon or pledge which is equal or prior to the lien created by the Loan Agreement thereon or the pledge thereof made by the Loan Agreement and, upon such default, (A) the principal of any indebtedness thereunder may be declared to be due and payable or (B) the lien upon or pledge may be foreclosed or realized upon;

(vii) the Center or an Affiliate shall (A) be generally not paying its debts as they become due, (B) file, or consent by answer or otherwise to the filing against it of, a petition under the United States Bankruptcy Code or under any other bankruptcy or insolvency law of any jurisdiction, (C) make a general assignment for the benefit of its creditors, (D) consent to the appointment of a custodian, receiver, trustee or other officer with similar

powers of itself or of any substantial part of its property, (E) be adjudicated insolvent or be liquidated or (F) take corporate action for the purpose of any of the foregoing;

(viii) a court or governmental authority of competent jurisdiction shall enter an order appointing, without consent by the Center or an Affiliate, a custodian, receiver, trustee or other officer with similar powers with respect to the Center or such Affiliate or with respect to any substantial part of its property, or an order for relief shall be entered in any case or proceeding for liquidation or reorganization or otherwise to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Center or such Affiliate, or any petition for any such relief shall be filed against the Center or such Affiliate and such petition shall not be dismissed within ninety (90) days;

(ix) the charter of the Center or an Affiliate shall be suspended or revoked;

(x) a petition to dissolve the Center or an Affiliate or to revoke its license to operate its facilities shall be filed by the Center or such Affiliate with the legislature of the State or other governmental authority having jurisdiction over the Center or such Affiliate;

(xi) an order of dissolution of the Center or an Affiliate shall be made by the legislature of the State or other governmental authority having jurisdiction over the Center or such Affiliate, which order shall remain undismissed or unstayed for an aggregate of thirty (30) days;

(xii) a petition shall be filed with a court having jurisdiction for an order directing the sale, disposition or distribution of all or substantially all of the property belonging to the Center or an Affiliate, which petition shall remain undismissed or unstayed for an aggregate of ninety (90) days;

(xiii) an order of a court having jurisdiction shall be made directing the sale, disposition or distribution of all or substantially all of the property belonging to the Center or an Affiliate, which order shall remain undismissed or unstayed for the earlier of (A) three (3) Business Days prior to the date provided for in such order for such sale, disposition or distribution or (B) an aggregate of thirty (30) days from the date such order shall have been ordered;

(xiv) a judgment for the payment of money in amount in excess of the lesser of (A) \$25,000,000 over the insured risk and (B) two and one-half percent (2½%) of the value of the Center's and the Affiliates' Unrestricted Net Assets, if, in the reasonable judgment of the Authority or the Holders of a majority in principal amount of the Outstanding Bonds, the same will materially adversely affect the rights of the Holders of Outstanding Bonds and such judgment has not been vacated, discharged or stayed within sixty (60) days after entry thereof;

(xv) an Event of Default under the Inducement Agreement has occurred;

(xvi) any representation or warranty made by the Center in the Loan Agreement or in an any Related Agreement to which it is a party or in any certificate, agreement, instrument or statement made in connection with the Loan Agreement or with the sale and issuance of Bonds shall prove to have been false or misleading in any material respect;

(xvii) any representation or warranty made by an Affiliate in any Related Agreement to which it is a party or in any certificate, agreement, instrument or statement made in connection with the Loan Agreement or with the sale and issuance of Bonds shall prove to have been false or misleading in any material respect;

(xviii) a Related Agreement or any material provision of the Loan Agreement or a Related Agreement shall cease for any reason to be valid and binding, or the Center or an Affiliate shall initiate legal proceedings or assert in legal proceedings that (A) the Loan Agreement or a Related Agreement or any material provision of the Loan Agreement or a Related Agreement is invalid or (B) the Center has no liability under the Loan Agreement or any Related Agreement to which it is a party or (C) an Affiliate has no liability on any Related Agreement to which it is a party; or

(xix) a “Notice Event”, as defined in either of the Guaranties, has occurred and is continuing.

(b) Upon the occurrence of an Event of Default the Authority may take any one or more of the following actions:

(i) declare all sums payable by the Center under the Loan Agreement immediately due and payable;

(ii) direct the Trustee to withhold any and all payments, advances and reimbursements from the proceeds of Bonds or the Construction Fund or otherwise to which the Center may otherwise be entitled under the Loan Agreement and in the Authority’s sole discretion apply any such proceeds or moneys for such purposes as are authorized by the Resolution;

(iii) withhold any or all further performance under the Loan Agreement;

(iv) maintain an action against the Center under the Loan Agreement to recover any sums payable by the Center or to require its compliance with the terms of the Loan Agreement;

(v) assign to or otherwise deliver to the Trustee all its rights to and interests to the Collateral;

(vi) to the extent permitted by law, (A) enter upon any Project and complete the construction of any Project in accordance with the plans and specifications with such changes therein as the Authority may deem appropriate and employ watchmen to protect the Project, all at the risk, cost and expense of the Center, consent to such entry being given under the Loan Agreement by the Center, (B) at any time discontinue any work commenced in respect of the construction of any Project or change any course of action undertaken by the Center and not be bound by any limitations or requirements of time whether set forth in the Loan Agreement or otherwise, (C) assume any construction contract made by the Center in any way relating to the construction of any Project and take over and use all or any part of the labor, materials, supplies and equipment contracted for by the Center, whether or not previously incorporated into the construction of such Project, and (D) in connection with the construction of a Project undertaken by the Authority pursuant to the provisions of this clause (vi), (1) engage builders, contractors, architects, engineers and others for the purpose of furnishing labor, materials and equipment in

connection with the construction of such Project, (2) pay, settle or compromise all bills or claims which may become liens against any Project or against any moneys of the Authority applicable to the construction of a Project, or which have been or may be incurred in any manner in connection with completing the construction of a Project or for the discharge of liens, encumbrances or defects in the title to a Project or against any moneys of the Authority applicable to the construction of a Project, and (3) take or refrain from taking such action under the Loan Agreement as the Authority may from time to time determine. The Center shall be liable to the Authority for all sums paid or incurred for construction of any Project whether the same shall be paid or incurred pursuant to the provisions of this clause (vi) or otherwise, and all payments made or liabilities incurred by the Authority under the Loan Agreement of any kind whatsoever shall be paid by the Center to the Authority upon demand. For purposes of exercising the rights granted by this clause (vi) during the term of the Loan Agreement, the Center pursuant to the Loan Agreement irrevocably constitutes and appoints the Authority its true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and to do and perform any acts in the name and on behalf of the Center;

(vii) take any and all action available under the Loan Agreement or under the Inducement Agreement or by law to realize on the Collateral and the Liens securing the Debt under the Loan Agreement; and

(viii) take any and all other action or proceeding permitted by the terms of the Loan Agreement, or by law.

(c) All rights and remedies in the Loan Agreement given or granted to the Authority are cumulative, non-exclusive and in addition to any and all rights and remedies that the Authority may have or may be given by reason of any law, statute, ordinance or otherwise, and no failure to exercise or delay in exercising any remedy shall effect a waiver of the Authority's right to exercise such remedy thereafter.

(d) At any time before the entry of a final judgment or decree in any suit, action or proceeding instituted on account of any Event of Default or before the completion of the enforcement of any other remedies under the Loan Agreement, the Authority may annul any declaration made or action taken pursuant to paragraph (a) above and its consequences if such Events of Default shall be cured. No such annulment shall extend to or affect any subsequent default or impair any right consequent thereto.

*(Section 29)*

**SUMMARY OF CERTAIN PROVISIONS OF SPRINGING AMENDMENTS TO THE LOAN  
AGREEMENT**

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## SUMMARY OF CERTAIN PROVISIONS OF THE LOAN AGREEMENT

The following is a brief summary of certain proposed Loan Agreement amendments to become effective with respect to the 2019 Series 1 Bonds (and any Bonds issued subsequent thereto) when no Bonds issued prior to the date of issuance of the 2019 Series 1 Bonds remain Outstanding. Unless otherwise indicated, references to section numbers in this summary refer to sections in the Loan Agreement. Defined terms used herein have the meanings ascribed to them in Appendix A. Such amendments would be as follows (with deletions being evidenced by a strikethrough and additions being underlined):

1. **Amended Definition – Collateral.** The definition of “Collateral” in Section 1.01 of the Loan Agreement would be deleted in its entirety and replaced as follows:

*Collateral* means ~~(i) the pledge of or security interest in the Gross Receipts of the Center and the Related Corporations, (ii) the mortgage or mortgages on Research Center Property, Restricted Property, Unrestricted Property and Hospital Property, (iii) the security interest in the furnishings and equipment located in and used in connection with any of the Research Center Property, Restricted Property, Unrestricted Property and Hospital Property, (iv) the pledge of or security interest in any and all Sale Proceeds, (v) such other collateral security to which the Center has obtained the Insurers' Consent and the prior written consent of the Authority, in each case given or made by the Center or a Related Corporation in accordance with Section 11 hereof, and by the Hospital pursuant to Section 3.10 of the Inducement Agreement and (vi) any other pledge, security interest or mortgage given or made to the Authority pursuant to Section 14 hereof or pursuant to Section 3.08 of the Inducement Agreement~~**Shared Collateral.**

2. **Amended Definition – Gross Receipts.** The definition of “Gross Receipts” in Section 1.01 of the Loan Agreement would be amended as follows:

*Gross Receipts* means, when used in connection with any person (i) accounts, contract rights, chattel paper, instruments, general intangibles and other obligation of any kind of such, now or hereafter existing, whether or not arising out of or in connection with the sale or lease of goods or the rendering of services, whether or not such services have been performed, and all rights now or hereafter existing in and to all security agreements, leases and other contracts securing or otherwise relating to any such accounts, contract rights, chattel paper, instruments, general intangibles or obligations, ~~(ii) the rents, profits and issues of the Research Center Property and (iii)~~ **(ii) all proceeds of any and all of the foregoing collateral, including without limitation any amounts received from the sale, exchange, lease or other disposition of any of the foregoing collateral and, to the extent not otherwise included, all payments under insurance (whether or not the Authority is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing collateral; exclusive, however, of (A) the rents, profits and issues of the Research Center Property, other than receivables and other income derived by the Center or an Affiliate from its general business activities in the Research Center Property, (B) any and all gifts, grants, bequests, donations and contributions heretofore or hereafter received by such person, whether unrestricted or restricted by the donor or maker thereof, and (C) any and all income and earnings on investments of such person, including, but not limited to, interest income, dividends and realized or unrealized gains.**

3. **Amended Definition – Permitted Encumbrance.** The definition of “Permitted Encumbrance” would be amended as follows:

*Permitted Encumbrance* means when used in connection with any ~~Research Center Property, Restricted Property, Unrestricted Property or Hospital Property~~ any of the following:

(ii)(i) The lien of taxes and assessments which are not delinquent;

(iii)(ii) The lien of taxes and assessments which are delinquent but the validity of which is being contested in good faith unless thereby the property or the interest of the Authority therein may be in danger of being lost or forfeited;

(iv)(iii) Minor defects and irregularities in the title to the such property which do not in the aggregate materially impair the use of such property for the purposes for which it is or may be reasonably be expected to be held;

(v)(iv) Easements, exceptions or reservations for the purpose of pipelines, telephone lines, telegraph lines, power lines and substations, roads, streets, alleys, highways, railroad purposes, drainage and sewerage purposes, dikes, canals, laterals, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, which do not materially impair the use of such property for the purposes for which it is or may be reasonably be expected to be held; and

(v) Such other encumbrances, defects, and irregularities to which the Insurers' Consent and the prior written consent of the Authority have been obtained.

4. **Amended Definition – Sale Proceeds.** The definition of “Sale Proceeds” would be amended as follows:

*Sale Proceeds* means when used in connection with any Unrestricted Property, Restricted Property, ~~Research Center Property~~ or Mortgaged Property:

(i) the cash proceeds of the sale or other disposition of such property remaining after deducting therefrom the reasonable costs and expenses incurred by the seller in connection with such sale or disposition, including but not limited to, amounts received as deferred payment of the purchase price pursuant to any purchase money mortgage or otherwise;

(ii) any intangible personal property received by the Center or an Affiliate in exchange for and as the whole or partial consideration for the sale or other disposition of such property;

(iii) any insurance, condemnation or eminent domain proceeds that the Center or a Related Corporation elects to treat as Sale Proceeds in accordance with Section 24 hereof; and

(vii)(iv) any and all investments in which such cash proceeds may from time to time be invested and the income or earnings on such investments;

*provided, however,* that when used in Section 11(b) hereof in connection with the Sale Proceeds derived from the sale or other disposition of Unrestricted• Property, Sale Proceeds shall mean only the cash proceeds, the investment thereof and the investment income or earnings thereon that as of the date a Funding Event occurs are then unspent.

5. **Amended Definition – Shared Collateral.** The definition of “Shared Collateral” would be amended as follows:

*Shared Collateral* mean:

(i) the pledge of or security interest in the Gross Receipts of the Center and the Related Corporations, provided, however, that the rents, profits and issues of the Research Center Property, other than receivables and other income derived by the Center or an Affiliate from its general business activities in the Research Center Property, shall not constitute Shared Collateral;

(ii) the mortgage or mortgages on Restricted Property, Unrestricted Property and Hospital Property;

(iii) the security interest in the furnishings and equipment located in and used in connection with any of the Unrestricted Property and Hospital Property;

(iv) the pledge of or security interest in any and all Sale Proceeds (~~except for Sale Proceeds resulting from the sale or other disposition of Research Center Property~~);

~~(viii)~~(v) such other collateral security to which the Center has obtained the Insurers' Consent and the prior written consent of the Authority, in each case given or made by the Center or a Related Corporation in accordance with Section 11 hereof, and by the Hospital pursuant to Section 3.10 of the Inducement Agreement; and

(vi) any other pledge, security interest or mortgage given or made to the Authority pursuant to Section 14 hereof or pursuant to Section 3.08 of the Inducement Agreement.

6. **Requests for Disbursement of Proceeds from Project Fund.** Section 5(b)(2) of the Loan Agreement, relating to requests for disbursements of proceeds from the Project Fund, would be deleted in its entirety and replaced as follows. In addition, a form of request for disbursement of proceeds from the Project Fund would be attached to the Loan Agreement:

Section 5(b)(2). **Prior to making and delivering any certificate required pursuant to Section 5.04(b) of the Resolution to be delivered to the Trustee in connection with payment of any Cost of the Project, other than interest on the Outstanding Bonds, the Authority shall have received a certificate of the Center in the form of Exhibit B hereto, with only such changes as may be acceptable to the Authority in its sole discretion.**~~Prior to making and delivering any certificate required pursuant to Section 5.04(c) of the Resolution to be delivered to the Trustee in connection with payments to be made pursuant to Section 5.04(b) of the Resolution, the Center shall have submitted to the Authority, and have received Authority approval with respect to, the form and substance of, the Project budget and shall deliver to the Authority in connection with the delivery of each certificate required pursuant to Section 5.04(e) of the Resolution the following:~~

~~(i) — a list of invoices, whether paid or unpaid, including, with respect to each invoice, the name of the vendor, a brief description of the goods or services, the amount of the invoice, a description of the building or buildings to which such payment relates, and, if such invoice has been paid, the date paid, the check number and the amount of the payment;~~

~~(ii) — copies of architect's certification(s), if any, relating to the invoices listed pursuant to subsection (2)(i) above;~~

~~(iii) — a reconciliation of the approved budget with funds already disbursed together with funds requested for disbursement currently; all enclosed with~~

~~(iv) — a certificate executed by two Authorized Officers of the Center, or by their designees identified to the Authority as such, certifying that:~~

~~(A) — The enclosed architect's certification(s) is (are) a true and correct copy of the architect's certification(s) received by the Center of the work to which it relates;~~

~~(B) — The enclosed reconciliation of the approved budget with funds already disbursed together with funds requested for disbursement currently is true and correct;~~

~~(C) — Expenses or monies for which payment is requisitioned have been incurred or expended for items which constitute Costs of the Project, as that term is defined in the Resolution, which Project has not been modified except as permitted by this Loan Agreement.~~

~~(D) — Each amount contained therein has not been the basis of any prior disbursement from the Construction Fund;~~

~~(E) — The payments being requisitioned are within the project budget submitted to and approved by the Authority in accordance with the provisions of Section 2(b) of the Loan Agreement, and to the best of the Authorized Officers' knowledge, the Project can be completed within budget; and,~~

~~(F) — Except as otherwise disclosed and agreed to by the Authority in writing, the Center has complied with all provisions of the Loan Agreement and the tax certificate, including, but not limited to those related to the use of the Project and certain prohibitions against use for sectarian religious instruction or religious worship and certain non tax exempt purposes.~~

~~In addition to the foregoing requirements, the Authority, in its sole and absolute discretion, may require the Center to deliver copies of all invoices, paid or unpaid, and copies of the front and back of canceled checks, if any, relating to payments for the Costs of a Project. The Authority, in its sole and absolute discretion, may waive, from time to time, any of the provisions of paragraph (b) of this Section. No such waiver shall be deemed a waiver by the Authority of its right to thereafter require compliance with the provisions of this Section.~~

7. **Retention of Documents Relating to Costs of the Project.** Section 5(d) of the Loan Agreement, relating to retention of documents by the Center relating to expenditures for Costs of the Project, would be amended as follows:

Section 5(d). The Center shall permit the Authority and each Insurer, and their respective authorized representatives, at any time during normal business hours, to enter upon the property of the Center and the Project to inspect the Project and all materials, fixtures and articles used or to be used in construction of such Project, and to examine all Contract Documents. The Center shall furnish to the Authority and each Insurer and its authorized representatives, when requested, copies of such Contract Documents. In the event that, after such inspection or examination, after consultation with the Center, the Authority, may in the reasonable exercise of its discretion, engage an independent consultant, such as an accounting firm, or to implement or increase its project management oversight, such action may be taken at the Center's expense. The Center

shall retain all **original** documents pertaining to expenditures for items which constitute Costs of the Project for at least ~~seven (7)~~ **three (3)** years after the ~~date of completion of the Project to which such documents relate~~ **last of the Bonds or any refunding bonds are retired**. All such documents shall be made available to the Authority and each Insurer, and their respective authorized representatives, for inspection, upon reasonable prior notice.

8. **Contract Documents**. Section 6(a) of the Loan Agreement, relating to Authority approval of entering into and amending certain Contract Documents, would be amended as follows:

Section 6(a). The Center, with the prior written consent of an Authorized Officer of the Authority, which consent will not be unreasonably withheld, may amend a Project to decrease, increase or otherwise modify the scope thereof. Any such increase may provide for the addition of any further acquisition, design, construction, reconstruction, rehabilitation, renovation, improving, or otherwise providing, furnishing and equipping of a Project which the Authority is authorized to undertake. ~~After the date hereof, the Center shall not enter into, amend or modify, by change order or otherwise, any Contract Document that materially affects the scope or nature of a Project, without the prior written approval of an Authorized Officer of the Authority, which approval shall not be unreasonably withheld. The Center shall deliver to the Authority copies of such changes orders as the Authority may from time to time request.~~

9. **Collateral Upon Funding Events**. Section 11(b) of the Loan Agreement, relating to provision of Collateral upon a Funding Event, would be amended as follows:

Section 11(b). *Collateral Upon Funding Event*. Except as otherwise expressly provided in this paragraph (b), the Center covenants and agrees that, as soon as practicable after the occurrence of a Funding Event, but in no event more than sixty (60) days thereafter

(i) It will give or cause to be given to the Authority a pledge of or perfected security interest in Gross Receipts of the Center and the Related Corporations; and

(ii) It will make and deliver or cause to be made and delivered to the Authority a mortgage or mortgages in recordable form on all ~~Research Center Property~~, Unrestricted Property and Restricted Property, **other than Research Center Property**; and

(iii) It will cause the Hospital to make and deliver to the Authority a mortgage or mortgages in recordable form on all Hospital Property in accordance with Section 3.04 of the Inducement Agreement; provided, however, that, if the consent or approval of the Department of Health of the State of New York is required by law to be obtained prior to making or delivering any such mortgage, the Center will take or cause the Hospital to take all actions reasonably necessary to obtain such consent or approval and will make and deliver such mortgage promptly after such consent or approval is obtained, but in no event more than sixty (60) days thereafter; provided, further, that no default hereunder shall result from a failure to make and deliver any such mortgage if the same is solely due to the inability of the Center or the Hospital to obtain any consent thereto or approval thereof required by law after diligent effort has been made to obtain such consent or approval; and

(iv) It will give or cause to be given to the Authority a perfected security interest in the furnishings and equipment located in and used in connection with the property to be mortgaged in accordance with this Section; and

(v) It will give or cause to be given to the Authority a pledge of or perfected security interest in the Sale Proceeds of the sale or disposition of any Hospital Property, ~~Research Center Property~~, Restricted Property or Unrestricted Property, including, but not limited to a pledge of or security interest in the right to receive any Sale Proceeds payable thereafter that are deferred payment of any portion of the purchase price of such property pursuant to a purchase money mortgage or otherwise, and the proceeds of such right; or

(vi) In lieu of all or any of clauses (i) through and (v) above, inclusive, it will give or cause to be given to the Authority such other Collateral to which the Center has obtained the Insurers' Consent and the prior written consent of the Authority.

The Authority agrees that, if no Funding Event or Event of Default is then continuing, and if there has not occurred any event, which with the passage of time or the giving of notice, or both, will constitute an Event of Default, it will as soon as practicable after the written request of the Center release any and all Collateral from any pledge, security interest or mortgage made or given pursuant to this Section, and execute such instruments as the Center may reasonably require to effect or evidence such release.

10. **Permitted Liens.** Section 14(a) of the Loan Agreement, relating to Permitted Liens, would be amended as follows:

Section 14(a). *Permitted Liens.* The Center covenants and agrees that neither it nor any Related Corporation will incur, issue, assume or guaranty any Debt secured by Liens on any Property unless either (A) the Center or such Related Corporation effectively provides by documents reasonably satisfactory to the Authority that the Center's indebtedness hereunder (together with, if the Center so determines, any other indebtedness or obligation thereafter created that is not subordinate in right of payment to the Center's indebtedness hereunder) shall be secured equally and ratably with or prior to all other obligations secured thereby as long as such Debt shall be so secured, or (B) the Center or the Related Corporation has obtained the Insurers' Consent and the prior written consent of the Authority thereto. Notwithstanding the foregoing provisions of this Section, the Center or a Related Corporation may create or suffer the existence of:

(i) Liens to secure Debt incurred pursuant to this Loan Agreement;

(ii) Liens to secure all or any part of the purchase price of furnishings or equipment acquired by the Center or a Related Corporation, provided (A) the principal amount of the Debt secured thereby does not exceed ninety-five percent (95%) of the purchase price, (B) such Debt and related Lien are incurred at the time of or within one hundred and eighty (180) days after the acquisition thereof, and (C) such Lien relates only to the Property so acquired;

(iii) Liens to secure all or any part of the purchase price of Investment Property acquired by the Center or a Related Corporation, provided (A) the principal amount of the Debt secured thereby does not exceed ninety-five percent (95%) of the purchase price, (B) such Debt and related Lien are incurred at the time of or within one hundred and eighty (180) days after the acquisition thereof, and (C) such Lien relates only to the Property so acquired;

(iv) Liens heretofore existing on Property or existing thereon at the time such Property was acquired by the Center or a Related Corporation, provided the principal amount of the Debt secured by any such Lien does not exceed ninety-five percent (95%) of the fair market value (in the opinion of an Authorized Officer of the Center) of such Property;

(v) Subject to the limitations set forth in paragraph (b) of this Section, Liens on intangible personal property to secure obligations incurred by the Center or a Related Corporation to the counter-party in connection with a Derivative Agreement;

(vi) With the prior written consent of each Insurer, Liens on any of the Collateral to secure Debt incurred to the Authority (other than pursuant to the Loan Agreement) or to secure bonds, notes or other obligations issued by the Authority (other than Bonds);

(vii) With the Insurers' Consent, Liens on Property other than the Collateral to secure Debt incurred to the Authority (other than pursuant to this Loan Agreement) or to secure bonds, notes or other obligations issued by the Authority (other than Bonds);

(viii) Subject to the limitations set forth in paragraph (b) of this Section, Liens on intangible personal property, other than accounts receivable, to secure Short-term Debt;

(ix) Subject to the limitations set forth in paragraph (b) of this Section, Liens on accounts receivable;

(x) Liens on pledges to make gifts or bequests to secure Debt, provided that the proceeds of such Debt is applied by the Center or an Affiliate to acquire real property or furnishings and equipment to be used in and in connection with Research Center Property, Unrestricted Property, Restricted Property, Hospital Property or Mortgaged Property;

(xi) With the Insurers' Consent and the prior written consent of the Authority Liens on Property to secure obligations incurred by the Center or a Related Corporation to a counter-party in connection with a Credit Facility or a Liquidity Facility; and

**(xii) Liens on the Research Center Property, the proceeds of the sale or disposition thereof and the rents, profits and issues thereof;**

**(xiii) Liens on the Gross Receipts of the Hospital;**

**(xiv) Liens relating to any non-recourse debt of the Center, a Related Corporation or the Hospital (subject to customary requirements for recourse indemnifications and representations); and**

(xv) Any extension, renewal or replacement (or successive extensions, renewals or replacements), in whole or in part, of any Lien referred to in the foregoing clauses (i) through (xiv) inclusive or of any Debt or other obligation secured thereby; *provided, however*, that in the case of Liens given to secure Debt (A) the principal amount of Debt or secured thereby shall not exceed the greater of (1) the principal amount of Debt so secured at the time of such extension, renewal or replacement or (2)

ninety-five percent (95%) of the original purchase price or cost of construction of the Property subject to such Lien, and (B) such extension, renewal or replacement Lien shall be limited to all or part of substantially the same property to which the Lien that was extended, renewed or replaced applied (plus improvements on such property).

11. **Sale of Property.** Section 15 of the Loan Agreement, relating to Sale of Property, would be amended as follows:

Section 15. **Sale of Property.** The Center covenants that neither it nor a Related Corporation will transfer, sell, convey or otherwise dispose of any Unrestricted Property, Restricted Property, ~~Research Center Property~~ or Mortgaged Property, or any interest therein, for less than fair market value unless such transfer sale, conveyance or other disposition is to the Center or an Affiliate. No Unrestricted Property, Restricted Property, ~~Research Center Property~~ or Mortgaged Property that is any part of a Project may be transferred, sold, conveyed or otherwise disposed of unless, in the opinion of Bond Counsel, the same will not adversely affect the exclusion of interest on any Bonds from gross income for purposes of federal income taxation. All Sale Proceeds of the Center or a Related Corporation shall, until expended as permitted hereby, be held by the Center or a Related Corporation separate and apart from, and not commingled with, any other cash, investments or other assets of any of them and shall be separately identified as Sale Proceeds on the books of the Center and the Related Corporation, *except* that for purposes of investments of Sale Proceeds permitted by this Section, the Sale Proceeds may be commingled with other moneys of the Center or an Affiliate similarly invested. Sale Proceeds in the form of cash may, nevertheless, be invested and reinvested from time to time in fixed income debt securities that at the time such investment is made (i) are rated by at least one Rating Service in the third highest rating category for such securities, (ii) mature no more than thirty-six (36) months thereafter and (iii) are not securities (other than Government Obligations or Federal Agency. Obligations) of an issuer or obligor in which more than ten percent (10%) of the principal amount of Sale Proceeds are invested after giving effect to the investment then to be made.

Except as otherwise provided below, the Center or an Affiliate may, prior to the occurrence of a Funding Event or if no Funding Event is then continuing, in its or their sole discretion, apply the Center's or a Related Corporation's Sale Proceeds derived from the sale or other disposition of Unrestricted Property to any corporate purpose of the Center or a Related Corporation. The Center or a Related Corporation may, in its or their sole discretion, apply the Sale Proceeds derived from the sale or other disposition of Restricted Property, ~~Research Center Property~~ or Mortgaged Property to any one or more of the following:

- (i) To acquire title to other real property;
- (ii) To pay the costs of constructing buildings and improvements on land theretofore owned or thereafter acquired by any of them;
- (iii) With the consent of the Insurers and the Authority, to pay or make provision for payment of Outstanding Bonds, either at their respective maturity or redemption dates; and
- (iv) To such other corporate purpose or purposes of the Center or a Related Corporation to which the Center has obtained the Insurers' Consent and the prior written consent of the Authority.



Notwithstanding the foregoing, no Sale Proceeds derived from the sale of any Unrestricted Property, Restricted Property, ~~Research Center Property~~ or Mortgaged Property that is any part of a Project shall be applied to any of the foregoing purposes unless, in the opinion of Bond Counsel, such application will not adversely affect the exclusion of interest on any Bonds from gross income for purposes of federal income taxation.

12. **Insurance.** Section 23 of the Loan Agreement, relating to requirements for insurance to be maintained by the Center and each Related Corporation, which requirements are summarized in Appendix C-1 under “Insurance,” would be deleted in its entirety and replaced as follows:

Section 23. **Insurance.** (a) The Center agrees to maintain or cause each Related Corporation to maintain insurance with insurance companies or by means or self-insurance, insurance of such type, against such risks and in such amounts as are customarily carried by institutions providing services similar to those provided by the Center or the Affiliates, which insurance shall include property damage, fire and extended coverage, public liability and property damage liability insurance in amounts estimated to indemnify the reasonably anticipated damage, loss or liability, subject to reasonable deductible provisions. The Center shall at all times also maintain worker’s compensation coverage and disability benefits insurance coverage as required by the laws of the State.

(b) If the Authority shall so request in writing, the Center shall provide to the Authority summaries or other evidence of its insurance coverage and shall obtain endorsements reasonably requested by the Authority.

(c) In the event the Center fails to provide the insurance required by paragraph (a) of this Section, the Authority may elect at any time thereafter to procure and maintain the insurance required by this Section at the expense of the Center. The policies procured and maintained by the Authority shall be open to inspection by the Center at all reasonable times, and, upon request of the Center, a complete list describing such policies as of the June 30th preceding the Authority’s receipt of such request shall be furnished to the Center by the Authority.

13. **Damage or Condemnation.** Section 24 of the Loan Agreement, relating to application of proceeds derived from a taking of property or property casualty insurance, would be amended as follows:

Section 24. In the event of a taking of a Project, Hospital Property, ~~Research Center Property~~, Restricted Property or Mortgaged Property, or any portion thereof, by eminent domain or condemnation, or of damage or destruction affecting all or part thereof, all property casualty insurance, condemnation or eminent domain proceeds shall, if in excess of \$1,000,000 and not applied to reimburse the Center or an Affiliate for costs incurred to repair or restore the same, be paid to the Trustee for deposit in the Construction Fund. All proceeds derived from an award for such taking or from property casualty insurance shall be applied as provided below.

14. **Reporting.** Certain sections of Section 26 of the Loan Agreement, relating to reporting requirements, which requirements are summarized in Appendix C-1 under “Reporting Requirements; Access to Records,” would be amended as follows:

(ii) annually, within ~~one hundred twenty (120)~~ **one hundred sixty-five (165)** days after the end of the Center’s Fiscal Year, (A) a copy of (1) the annual audited combined financial statements of the Center and the Affiliates for such Fiscal Year, (2) the annual audited financial

statement of the Center for such Fiscal Year, if separate audited financial statements for the Center have been prepared for such Fiscal Year, and (3) the audited consolidated financial statements of the Center and the Affiliates, if audited such audited consolidated statements have been prepared for such Fiscal Year, in each case including therein without limitation, a balance sheet as of the end of such Fiscal Year, a statement of changes in net assets and a statement of activities for such Fiscal Year or such other financial statements then required in accordance with generally accepted accounting principles applicable to the Center, in each case audited by a firm of independent public accountants of recognized standing as may be reasonably acceptable to the Authority and the Insurers, (B) a copy of any management letter prepared by the auditors, (C) a certificate or other instrument signed by the Center's auditors stating whether an Event of Default, or, to the best of the auditors' knowledge, an event that, with the giving of notice or the passage of time, or both, would constitute such an Event of Default, has occurred and is continuing, and, if such an Event of Default or such an event has occurred and is continuing, a statement as to the nature thereof, and (D) if such an Event of Default or such an event has occurred and is continuing, a certificate of an Authorized Officer of the Center setting forth the action that the Center or the affected Affiliate proposes to take with respect thereto;

(iii) within sixty (60) days after each Measurement Date that is not the last day of the Center's Fiscal Year, and within ~~one hundred twenty (120)~~ **one hundred sixty-five (165)** days after each Measurement Date that is the last day of the Center's Fiscal Year, a certificate executed by an Authorized Officer of the Center (A) setting forth the Cash and Investments and outstanding Debt of the Center and the Affiliates and (B) calculating the Debt Ratio, each as of the applicable Measurement Date;

(iv) within ~~one hundred twenty (120)~~ **one hundred sixty-five (165)** days after the end of each of the Center's Fiscal Years, a certificate of an Authorized Officer of the Center setting forth (i) the Unrestricted Net Assets for the two most recently ended Fiscal Years, and (ii) if then required by Section 10 hereof, the Adjusted Operating Loss for such Fiscal Years;

**SUMMARY OF CERTAIN PROVISIONS OF THE GUARANTIES AND THE INDUCEMENT  
AGREEMENT**

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## SUMMARY OF CERTAIN PROVISIONS OF THE GUARANTIES AND THE INDUCEMENT AGREEMENT

The following are summaries of certain provisions of the Guaranties and the Inducement Agreement. These summaries do not purport to be complete and reference is made to the Guaranties and the Inducement Agreement for full and complete statements of their respective provisions. Defined terms used in this Appendix D and not otherwise defined herein shall have the respective meanings ascribed to them in Appendix A.

### THE GUARANTIES

#### Guaranty

Under the Guaranties, each Guarantor unconditionally guarantees to the Authority the punctual payment, when due, of (i) the amounts payable by the Center pursuant to the Loan Agreement, on account of the principal, Redemption Price and Sinking Fund Installments of and interest on the Outstanding Bonds (the “*Debt*”), including, upon acceleration thereof and (ii) the fees and expenses of the Authority and the Trustee, when due (collectively with the Debt, the “*Obligations*”). Each Guarantor agrees to pay in addition to the Obligations any and all expenses (including counsel fees and expenses) incurred by the Authority or the Trustee in enforcing any rights under the respective Guaranties promptly upon demand by the Authority or the Trustee, as the case may be. Each Guarantor further agrees that its Guaranty constitutes a guaranty of payment when due and not of collection and that its obligations under such Guaranty are joint and several with those of the other respective Guarantor, that has unconditionally guaranteed the punctual payment, when due, of the Obligations.

(Section 2)

#### Guaranty Absolute

The liability of each Guarantor under its Guaranty shall be absolute and unconditional irrespective of:

(i) any lack of validity or enforceability of the Loan Agreement, the Resolution, any Bond, any Related Agreement or any other guaranty or agreement or instrument related thereto.

(ii) any amendment, modification, alteration or waiver of any provision of the Resolution, the Loan Agreement or a Related Agreement, other than any change in the time, manner or place of payment of all or any of the Obligations made without the prior written consent of the Guarantor;

(iii) any taking and holding of collateral or additional guarantees for all or any of the Obligations; or any amendment, alteration, exchange, substitution, transfer, enforcement, waiver, subordination, termination or release of any collateral or such guarantees, or any non-perfection of any collateral, or any consent to departure from any such guaranty;

(iv) any manner of application of collateral, or proceeds thereof, to all or any of the Obligations, or the manner of sale of any collateral;

(v) any consent by the Authority to the change, restructure or termination of the corporate structure or existence of the Center or a Related Corporation;

(vi) any modification, compromise, settlement or release, by operation of law, of collection or other liquidation of the Obligations or the liability of the Center or a Related Corporation, by the Authority, operation of law or otherwise, of any other guarantor, or of any collateral, in whole or in part, from any obligor or guarantor in connection with any of the Obligations, whether or not with notice to, or further assent by, or any reservation of rights against, the Guarantors;

(vii) the Center's or a Related Corporation's discharge in bankruptcy or adjustment of such debts, liabilities and obligations in insolvency proceedings or pursuant to some other compromise with creditors; or

(viii) any other circumstances (including, but not limited to, any statute of limitations) that might otherwise constitute a defense available to, or a discharge of, the Center, a Related Corporation or a guarantor other than indefeasible payment in full of the Obligations.

Each Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or is otherwise returned by the Authority upon the insolvency, bankruptcy or reorganization of the Center, a Related Corporation or other guarantor, or otherwise, all as though such payment had not been made other than demands or notices required by the Guaranties or the Loan Agreement.

(Section 3)

### **Representations and Warranties**

Under the Guaranties, each Guarantor represents and warrants to the Authority as follows:

(a) **Existence.** The Guarantor is a validly existing not-for-profit corporation under the laws of the State of New York, with all requisite corporate power and authority to execute, deliver and perform its obligations under the Guaranty, to conduct its business and to own its property.

(b) **Federal Tax Status.** The Guarantor (i) is an organization described in Section 501(c)(3) of the Code, (ii) has received the written determination to that effect of the federal Internal Revenue Service, which determination has not been rescinded or revoked, and (iii) is not a "private foundation" as defined in Section 509(a) of the Code.

(c) **Authorization.** The Guarantor has duly authorized by all necessary corporate action the execution and delivery of the Guaranty and the Related Agreements to which it is a party, and the performance of its obligations under the Guaranty and under the Related Agreements.

(d) **Binding Effect.** The Guaranty and the Related Agreements to which it is a party constitute valid and binding agreements of the Guarantor, enforceable in accordance with their respective terms, except as (i) enforceability of the Guaranty may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and (ii) the availability of equitable remedies may be limited by equitable principles of general applicability.

(e) **Litigation.** Except as disclosed in the Official Statement or in either the audited combined financial statements of the Guarantor, the Center and the Related Corporations for the Fiscal Year ended December 31, 2016, there is no action, suit, proceeding or investigation pending or (to the best knowledge of the Guarantor) overtly threatened against the Guarantor or (to the best knowledge of the Guarantor, no independent investigation having been made) any other Person in any court or before any governmental authority (i) seeking to restrain or enjoin the execution and delivery of the Guaranty, or in any way

contesting the validity of the Guaranty, or contesting the power and authority of the Guarantor to execute and deliver the Guaranty or to perform its obligations under the Guaranty or (ii) in which a final adverse decision would materially adversely affect performance by the Guarantor of its obligations under the Guaranty or, singly or in the aggregate, would materially adversely affect the business, property, earnings or condition (financial or otherwise) of the Guarantor.

(f) **No Default.** The Guarantor is not in default under the Guaranty or under the provisions of any indenture, loan or credit agreement or any other agreement, lease or instrument, to which the Guarantor is subject or by which it or any of its property is bound, where such default would have a material adverse effect on the Guarantor's ability to perform its obligations under the Guaranty. The Guarantor is not in violation of or default under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award as currently in effect to which the Guaranty or any of its property is subject.

(g) **No Conflict.** The execution, delivery and performance by the Guarantor of the Guaranty do not and will not (i) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination or award as currently in effect to which the Guarantor or any of its property is subject, (ii) result in a breach of or constitute a default under the provisions of any indenture, loan or credit agreement or any other agreement, lease or instrument, to which the Guarantor is subject or by which it or any of its property is bound, or (iii) result in, or require, the creation or imposition of any mortgage, deed of trust, assignment, pledge, lien, security interest or other charge or encumbrance of any nature or with respect to any of the property of the Guarantor.

(h) **Governmental Approvals.** The Guarantor has obtained all authorizations, consents, approvals, licenses, exemptions of or filing and registrations with, all commissions, boards, bureaus, agencies and instrumentalities, domestic and foreign, necessary for the due execution, delivery and performance by the Guarantor of the Guaranty.

(i) **Accuracy of Information.** All information, including financial information, supplied by the Guarantor to the Authority relating to the Guarantor, and all information concerning the Guarantor in the Official Statement, is true and accurate in all material respects and there has been no omission of information or misstatements of information which in light of the circumstances under which such information is to be used would make such information misleading or inaccurate in a material respect. Except as described in the Official Statement, there has been no material adverse change in the financial condition of the Guarantor since December 31, 2016.

In addition to the representations and warranties made by the Guarantors in the Guaranties, all statements contained in any agreement, document, instrument, report or certificate delivered by the Guarantors, or on behalf of the Guarantors by any of their respective officers, directors or agents, to the Authority in connection with the transactions contemplated by the Guaranties, the Loan Agreement or the Resolution shall constitute representations and warranties made by the Guarantors under the respective Guaranties. All representations and warranties made by or on behalf of the Guarantors in the Guaranties or thereunder shall survive the delivery of such Guaranties.

(Section 6)

## **Covenants**

Each Guarantor covenants and agrees that, so long as any part of the Obligations shall remain unpaid or unperformed, such Guarantor will, unless the Authority and the Insurers shall otherwise consent in writing:

(a) ***Preservation of Existence, Etc.*** Preserve and maintain its corporate existence and all material rights, privileges and franchises necessary in the conduct of its business and in the performance of its obligations under the Guaranty and not dissolve or otherwise discontinue its existence or operations.

(b) ***Compliance with Laws, Etc.*** Comply with any law, statute, ordinance, decree, requirement, order, judgment, rule or regulation (or interpretation of any of the foregoing) of, and the terms of any license or permit issued by the United States of America, any state of the United States and any political subdivision of any of the foregoing, and any agency, department, commission, board, bureau or court or other judicial or administrative tribunal having jurisdiction over the Guarantor or any of its property (collectively, the “*Governmental Authority*”) applicable to the Guarantor noncompliance with which could have a material adverse impact on the business, assets, operations or financial condition of the Guarantor.

(c) ***Payment of Taxes, Etc.*** Pay and discharge, before the same shall become delinquent (i) all taxes, assessments and governmental charges or levies imposed upon it or upon its property, and (ii) all lawful claims that, if unpaid, might by law become a lien upon its property; *provided, however*, that the Guarantor shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment, governmental charge, or claim to the extent that the amount, applicability, or validity thereof shall currently be contested in good faith by appropriate proceedings, so long as no forced sale can occur during such proceedings and the Guarantor shall have established and shall maintain adequate reserves on its books for the payment of such amounts.

(d) ***Access to Records.*** At any reasonable time and from time to time (and to the extent not prohibited by law), upon reasonable prior notice, permit the Authority and each of the Insurers or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of the Guarantor and to discuss the affairs, finances and accounts of the Guarantor with any of its officers.

(e) ***Keeping of Books.*** Keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Guarantor in accordance with generally accepted accounting principles consistently applied.

(f) ***Maintenance of Properties, Etc.*** Maintain and preserve all of its properties that are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted.

(g) ***Maintenance of Insurance.*** Maintain (i) insurance and self-insurance against risks as required by the Loan Agreement and comply with all other provisions thereof as though it were a party to the Loan Agreement and (ii) such other insurance with responsible and reputable insurance carriers or self-insurance in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Guarantor operates.

(h) ***Further Assurances.*** To execute and deliver to the Authority all documents and instruments and do all other acts and things as may be reasonably necessary or required by the Center or the Authority to enable the Center to comply with its obligations under the Loan Agreement and to enable the Authority to exercise and enforce its rights under the Guaranty and under the Related Agreements to which it is a party and to record and file and re-record and re-file all documents and instruments, at such time or times, in such manner and at such place or places, all as may be reasonably necessary or required to validate, preserve, perfect, defend and protect the rights of the Authority under the Guaranty and under the Loan Agreement and the Related Agreements to which it is a party and in the Collateral.



(i) **Reporting Requirements.** Furnish to the Authority, the Trustee, each of the Insurers and such other persons as the Authority may designate the following:

(i) as soon as practicable, but in no event later than five (5) Business Days after the occurrence of any Notice Event, or any event that, with the giving of notice or passage of time, or both, would constitute such a Notice Event, an Officer's Certificate setting forth details of such Notice Event or such event and the action that the Guarantor proposes to take with respect thereto;

(ii) as soon as practicable, but in no event later than five (5) Business Days after the occurrence of any event that could have a material adverse effect on the business, assets, operations or financial condition of the Guarantor, an Officer's Certificate setting forth details of such material adverse event and the action that the Guarantor proposes to take with respect thereto;

(iii) within sixty (60) days after the end of each of the first three quarters of each Fiscal Year of the Guarantor, (A) a copy of interim, comparative, cumulative quarterly combined financial statements of the Guarantor, the Center and the Related Corporations, including therein, without limitation, a balance sheet, a statement of changes in net assets, and a statement of activities, duly certified by the chief financial officer of the Guarantor as having been prepared in accordance with generally accepted accounting principles, and, (B) if a Notice Event, or, to the best of the Guarantor's knowledge, an event that, with the giving of notice or the passage of time, or both, would constitute such a Notice Event, has occurred and is continuing, an Officer's Certificate stating the nature thereof and the action that the Guarantor proposes to take with respect thereto;

(iv) annually, within one hundred twenty (120) days after the end of each Fiscal Year of the Guarantor, (A) a copy of the annual audit combined financial statements of the Guarantor, the Center and the Related Corporations for such Fiscal Year, including therein a balance sheet as at the end of such Fiscal Year, a statements of changes in net assets and a statement of activities for such Fiscal Year (or such other finance statements then required in accordance with generally accepted accounting principles applicable to the Guarantor), in each case audited by a firm of independent public accountants of recognized standing as may be reasonably acceptable to the Authority and the Insurers, (B) a copy of any management letter prepared by the auditors, (C) a certificate or other instrument signed by the auditors stating whether any Notice Event, or, to the best of the auditors' knowledge, an event that, with the giving of notice or the passage of time, or both, would constitute such a Notice Event, has occurred and is continuing, and, if such a Notice Event or such an event has occurred and is continuing, setting forth a statement as to the nature thereof and the action that the Guarantor proposes to take with respect thereto, and (D) if such a Notice Event or such an event has occurred and is continuing, an Officer's Certificate setting forth the action the Guarantor proposes to take with respect thereto;

(v) prompt written notice of any adverse litigation (A) seeking damages in excess of the lesser of (1) \$25,000,000 over the applicable insurance coverage and (2) two and one-half percent (2 ½%) of the value of the Guarantor's, the Center's and the Related Corporation's Unrestricted Net Assets and (B) in which an adverse determination may have a material adverse effect on the combined financial or operating conditions of the Guarantor, the Center and the Related Corporations;

(vi) prompt written notice of the pending formation, acquisition, merger, consolidation or dissolution of or by the Guaranty, the Center or a Related Corporation; and

(vii) such other information respecting the business, property or the condition or operations, financial or otherwise, of the Guarantor as the Authority or any of the Insurers may

from time to time reasonably request (other than information the Guarantor is required by law to keep confidential), including, but not limited to, such information as, in the reasonable judgment of the Authority, may be necessary in order to ensure compliance with applicable federal securities laws in effect from time to time or to maintain a market for or enable securities dealers to offer the Bonds for sale.

(j) **Related Agreements.** Not to enter into or consent to any amendment or modification of any Related Agreement to which it is a party or for which its consent to such amendment or modification is required, without obtaining the Insurers' Consent and the prior written consent of the Authority.

(Section 7)

## THE INDUCEMENT AGREEMENT

### Federal Tax Status

The Hospital (i) is an organization described in Section 501(c)(3) of the Code, (ii) has received the written determination to that effect of the federal Internal Revenue Service, which determination has not been rescinded or revoked, and (iii) is not a "private foundation" as defined in Section 509(a) of the Code.

(Section 2.02)

### Authorization

The Hospital has duly authorized by all necessary corporate action the execution and delivery of the Inducement Agreement and each of the Related Agreements and Related Documents to which it is a party and the performance of its obligations under the Inducement Agreement and Related Documents.

(Section 2.03)

### No Default

The Hospital is not in default under the Inducement Agreement, under any Related Agreement to which it is a party or under the provisions of any indenture, loan or credit agreement or any other agreement, lease or instrument, to which the Hospital is subject or by which it or any of its property is bound, where such default would have a material adverse effect on the Hospital's ability to perform its obligations under the Inducement Agreement or under any Related Agreement to which it is a party. The Hospital is not in violation of or default under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award as currently in effect to which the Hospital or any of its property is subject.

(Section 2.06)

### No Liens

There is no Lien existing on any of the Hospital Property.

(Section 2.11)

### Maintenance of Corporate Existence

The Hospital will (i) maintain its corporate existence as a not-for-profit hospital corporation under the laws of New York State, (ii) not take any action or omit to take any action if the same will result in a

modification or revocation of its status as an organization described in Section 501(c)(3) of the Code which is not a “private foundation” as defined in Section 509(a) of the Code, (iii) obtain, maintain and keep in full force and effect such governmental approvals, consents, licenses, permits and accreditation as may be necessary for the Hospital to continue to operate its business, including its accreditation with the Joint Commission on Accreditation of Health Care Organizations, its licenses as a “hospital” by the State of New York, and its eligibility for reimbursement under Title XVIII and XIX of the Social Security Act of 1935, as amended, (iv) except as expressly otherwise permitted by the Inducement Agreement, not dissolve or otherwise dispose of all or substantially all of its assets or consolidate with or merge into another person or permit one or more persons to consolidate with or merge into it. The Hospital may, in its sole discretion, dispose of all or substantially all of its assets to, or consolidate with or merge into, the Center or a Guarantor. In addition, with the Insurers’ Consent and the prior written consent of the Authority, may (A) sell or otherwise transfer all or substantially all of its assets to, or consolidate with or merge into, another organization or corporation which qualifies as an organization described in Section 501(c)(3) of the Code, or any successor provision of federal income tax law, (B) permit one or more corporations or any other organization to consolidate with or merge into it, or (C) acquire all or substantially all of the assets of one or more corporations or other organizations. Notwithstanding the foregoing provisions, no disposition, transfer, consolidation or merger otherwise permitted by the Inducement Agreement shall be permitted unless (1) the same would not in the opinion of Bond Counsel adversely affect the exclusion of interest on any Bond from gross income for purposes of federal income taxation, (2) neither the Hospital will as a result thereof be in default under the Inducement Agreement or under any Related Agreement to which it is a party, nor the Center or a Related Corporation will as a result thereof be in default under the Loan Agreement or any Related Agreement to which it is a party, (3) the surviving, resulting or transferee corporation is incorporated under the laws of the State and is qualified as an organization described in Section 501(c)(3) of the Code or any successor provision of federal income tax law, and (4) the surviving, resulting or transferee corporation assumes in writing all of the obligations of and restrictions on the Hospital under the Inducement Agreement and under the Related Agreements to which it is a party and furnishes to the Authority and each Insurer (x) a certificate to the effect that upon such sale, transfer, consolidation, merger or acquisition such corporation will be in compliance with each of the provisions of the Inducement Agreement and of the Related Agreements to which it is a party, and will meet the requirements of the Act and (y) such other certificates and documents as the Authority or an Insurer may reasonably require to establish compliance with the Inducement Agreement.

*(Section 3.01)*

### **Compliance with Laws**

The Hospital will comply with any law, statute, ordinance, decree, requirement, order, judgment, rule or regulation (or interpretation of any of the foregoing) of, and the terms of any license or permit issued by the United States of America, any state of the United States of America and any political subdivision or any of the foregoing, and any agency, department, commission, board, bureau or court or other judicial or administrative tribunal having jurisdiction over the Hospital or any of its property applicable to the Hospital noncompliance with which could have a material adverse impact on the business, assets, operations or financial condition of the Hospital.

*(Section 3.02)*

### **Payment of Taxes, Etc.**

The Hospital will pay and discharge, before the same shall become delinquent (i) all taxes, assessments and governmental charges or levies imposed upon it or upon its property, and (ii) all lawful claims that, if unpaid, might by law become a lien upon its property; *provided, however*, that the Hospital

shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment, governmental charge or claim to the extent that the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings, so long as no forced sale can occur during such proceeding and the Hospital shall have established and shall maintain adequate reserves on its books for the payment of such amount.

*(Section 3.03)*

### **Access to Records**

At any reasonable time and from time to time, upon reasonable prior notice, the Hospital will permit the Authority, the Trustee and each of the Insurers or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account (other than those books and records that by law must be treated as confidential) of, and visit the properties of the Hospital and to discuss the affairs, finances and accounts of the Hospital with any of its officers.

*(Section 3.04)*

### **Books and Records**

The Hospital will keep proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Hospital in accordance with generally accepted accounting principles consistently applied.

*(Section 3.05)*

### **Maintenance of Properties**

The Hospital will maintain and preserve all of its properties that are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted.

*(Section 3.06)*

### **Maintenance of Insurance**

The Hospital will maintain insurance or self-insure against risks as required by the Loan Agreement and comply with all other provisions thereof as though it were a party to the Loan Agreement. In addition, the Hospital will maintain such other insurance with responsible and reputable insurance carriers or self-insurance, including against professional liability, in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general area in which the Hospital operates.

*(Section 3.07)*

### **Liens; Secured Debt**

(a) ***Permitted Liens.*** The Hospital covenants and agrees that it will not incur, issue, assume or guaranty any Debt secured by Liens on any Property unless either (A) the Hospital effectively provides by documents reasonably satisfactory to the Authority that the Center's indebtedness under the Loan Agreement (together with, if the Center so determines, any other indebtedness or obligation thereafter created that is not subordinate in right of payment to the Center's indebtedness under the Loan Agreement)

shall be secured equally and ratably with or prior to all other obligations secured thereby as long as such Debt shall be so secured, or (B) the Hospital has obtained the Insurers' Consent and the prior written consent of the Authority thereto.

Notwithstanding the foregoing provisions, the Hospital may create or suffer the existence of:

- (i) Liens to secure Debt incurred pursuant to the Loan Agreement;
- (ii) Liens to secure all or any part of the purchase price of furnishings or equipment acquired by the Hospital, provided (A) the principal amount of the Debt secured thereby does not exceed ninety-five percent (95%) of the purchase price, (B) such Debt and related Lien are incurred at the time of or within one hundred and eighty (180) days after the acquisition thereof, and (C) such Lien relates only to the Property so acquired;
- (iii) Liens to secure all or any part of the purchase price of Investment Property acquired by the Hospital, provided (A) the principal amount of the Debt secured thereby does not exceed ninety-five percent (95%) of the purchase price, (B) such Debt and related Lien are incurred at the time of or within one hundred and eighty (180) days after the acquisition thereof, and (C) such Lien relates only to the Property so acquired;
- (iv) Liens heretofore existing on Property or existing thereon at the time such Property was acquired by the Hospital, provided the principal amount of the Debt secured by any such Lien does not exceed ninety-five percent (95%) of the fair market value (in the opinion of an Authorized Officer of the Hospital) of such Property;
- (v) Subject to the limitations set forth in paragraph (b) below, Liens on intangible personal property to secure obligations incurred by the Hospital to the counter-party in connection with a Credit Facility, Liquidity Facility or a Derivative Agreement;
- (vi) Liens on any of the Collateral to secure Debt incurred to the Authority (other than pursuant to the Loan Agreement) or to secure bonds, notes or other obligations issued by the Authority (other than Bonds) provided either (A) the express terms of such Debt or of an intercreditor agreement by and among the Trustee, the Authority and the person secured thereby provide that any Lien on any Collateral or the secured party's rights therein will be equal or subordinate, but not be prior to any Lien thereon thereafter given pursuant to the Inducement Agreement to secure the Center's obligations under the Loan Agreement or (B) the Insurers have consented thereto in writing;
- (vii) With the Insurers' Consent, Liens on Property other than the Collateral to secure Debt incurred to the Authority (other than pursuant to the Loan Agreement) or to secure bonds, notes or other obligations issued by the Authority (other than Bonds);
- (viii) Subject to the limitations set forth in paragraph (b) below, Liens on intangible personal property, other than accounts receivable, to secure Short-term Debt;
- (ix) Liens on pledges to make gifts or bequests to secure Debt provided the proceeds of such Debt is applied by the Hospital to acquire real property or furnishings and equipment to be used in and in connection with Hospital Property; and
- (x) Any extension, renewal or replacement (or successive extensions, renewals or replacements), in whole or in part, of any Lien referred to in the foregoing clauses (i) through

(viii) inclusive of or of any Debt or other obligation secured thereby; *provided, however*, that in the case of Liens given to secure Debt (A) the principal amount of Debt or secured thereby shall not exceed the greater of (1) the principal amount of Debt so secured at the time of such extension, renewal or replacement or (2) ninety-five percent (95%) of the original purchase price or cost of construction of the Property subject to such Lien, and (B) such extension, renewal or replacement Lien shall be limited to all or part of substantially the same property to which the Lien that was extended, renewed or replaced applied (plus improvements on such property).

Except for Liens permitted by the Inducement Agreement and Permitted Encumbrances, the Hospital shall keep its Property free and clear of Liens.

(b) ***Limitations on Secured Debt.*** The Hospital covenants and agrees that it will not:

(i) Incur, issue, assume or guaranty (A) Debt secured by Liens given pursuant to clause (viii) of paragraph (a) above, (B) obligations secured by Liens given pursuant to clause (v) of paragraph (a) above or (C) any extension, renewal or replacement (or successive extensions, renewals or replacements), in whole or in part, of any such Debt or obligation, if at the time such Debt or Derivative Obligation secured by such Liens is incurred, issued, assumed or guaranteed, the aggregate principal amount of Debt and Derivative Obligations of the Hospital, the Center and the Related Corporations so secured and then outstanding, inclusive of any secured Short-term Debt permitted by clause (viii) of paragraph (a) above, together with the aggregate principal amount of such Debt or Derivative Obligation then to be so secured, would exceed fifteen percent (15%) of the Unrestricted Net Assets of the Hospital, the Center and the Related Corporations, as reflected on the audited combined financial statements of the Hospital, the Center and the Related Corporations for the most recent Fiscal Year for which audited combined financial statements are available; or

(ii) Incur, issue, assume or guaranty Short-term Debt secured by Liens given pursuant to clause (viii) of paragraph (a) above, if the aggregate principal amount of Short-term Debt of the Hospital, the Center and the Related Corporations so secured and then outstanding, together with the aggregate principal amount of Short-term Debt then to be so secured, would exceed fifteen percent (15%) of the Total Operating Revenues of the Hospital, the Center and the Related Corporations, as reflected on the audited combined financial statements of the Hospital, the Center and the Related Corporations for the most recent Fiscal Year for which audited combined financial statements are available; *provided, however*, that either after (x) a Funding Event as defined in the Loan Agreement has occurred and is continuing or (y) a Management Consultant has been engaged and is then serving in accordance with the Loan Agreement, for a period of at least twenty (20) consecutive calendar days during each Fiscal Year of the Hospital the aggregate principal amount of Short-term Debt so secured shall not exceed five percent (5%) of the Total Operating Revenues of the Hospital, the Center and the Related Corporations as reflected on the audited combined financial statements of the Hospital, the Center and the Related Corporations for the most recent Fiscal Year for which audited combined financial statements are available, except to the extent the foregoing reduction requirement is amended, modified or waived in writing by the Authority with the written consent of the Insurers.

(Section 3.08)

### **Sale of Hospital Property**

The Hospital will not transfer, sell, convey or otherwise dispose of any Hospital Property or any interest therein for less than fair market value unless such transfer sale, conveyance or other disposition is

to the Center or a Related Corporation. No Hospital Property that is any part of a Project will be transferred, sold, conveyed or otherwise disposed of unless, in the opinion of Bond Counsel, the same will not adversely affect the exclusion of interest on any Bonds from gross income for purposes of federal income taxation. All Sale Proceeds shall, until expended as permitted by the Inducement Agreement, be held by the Hospital separate and apart from, and not commingled with, any other cash, investments or other assets of Hospital, the Center or any Related Corporation and shall be separately identified as Sale Proceeds on the books of the Hospital except that for purposes of investments of Sale Proceeds permitted by the Inducement Agreement, the Sale Proceeds may be commingled with other moneys of the Hospital, the Center or a Related Corporation similarly invested. Sale Proceeds in the form of cash may, nevertheless, be invested and reinvested from time to time in fixed income debt securities that at the time such investment is made (i) are rated by at least one Rating Service in the third highest category for such securities, (ii) mature no more than thirty-six (36) months thereafter and (iii) are not securities (other than Government Obligations or Federal Agency Obligations) of an issuer or obligor in which more than ten percent (10%) of the principal amount of Sale Proceeds are invested after giving effect to the investment then to be made.

Except as otherwise provided below, the Hospital may, in its sole discretion, apply the Sale Proceeds to any one or more of the following:

- (i) To acquire title to other real property;
- (ii) To pay the costs of constructing buildings and improvements on land theretofore owned or thereafter acquired by the Hospital;
- (iii) With the consent of the Insurers and the Authority, to pay or make provision for payment of Outstanding Bonds, either at their respective maturity or redemption dates; and
- (iv) To such other corporate purpose or purposes of the Hospital to which the Hospital has obtained the Insurers' Consent and the prior written consent of the Authority.

Notwithstanding the foregoing, no Sale Proceeds derived from the sale of any Hospital Property that is any part of a Project shall be applied to any of the foregoing purposes unless, in the opinion of Bond Counsel, such application will not adversely affect the exclusion of interest on any Bonds from gross income for purposes of federal income taxation.

(Section 3.09)

### **Collateral**

(a) ***Upon Funding Event.*** Except as otherwise expressly provided in the Inducement Agreement, the Hospital, as soon as practicable after the occurrence of a Funding Event, but in no event more than sixty (60) days thereafter, will, as collateral security for the Center's obligations under the Loan Agreement:

- (i) Make and deliver to the Authority a mortgage or mortgages in recordable form on all Hospital Property; *provided, however,* that if the consent or approval of the Department of Health of the State of New York is required by law to be obtained prior to making or delivering any such mortgage, the Hospital will take all actions reasonably necessary to obtain such consent or approval and will make and deliver such mortgage promptly after such consent or approval is obtained, but in no event more than sixty (60) days thereafter; *provided, further,* that no default under the Inducement Agreement shall result from a failure of the Hospital to make and deliver any such mortgage if the same is solely due to the inability of the Hospital to obtain any consent thereto

or approval thereof required by law after diligent effort has been made to obtain such consent or approval;

(ii) Give to the Authority a security interest in the furnishings and equipment located in and used in connection with the Hospital Property; and

(iii) Give to the Authority a pledge of or security interest in the Sale Proceeds, including, but not limited to, a pledge of or security interest in the Hospital's right to receive any Sale Proceeds payable thereafter as the deferred payment of any part of the purchase price pursuant to any purchase money mortgage or otherwise, and the proceeds of such right; or

(iv) In lieu of all or any of clauses (i) through and (iv) above, inclusive, it will give or cause to be given to the Authority such other Collateral to which the Hospital has obtained the Insurers' Consent and the prior written consent of the Authority.

The Authority agrees that, if no Funding Event or Event of Default under the Loan Agreement is then continuing, and if there has not occurred any event, which with the passage of time or the giving of notice, or both, will constitute an Event of Default under the Inducement Agreement, it will as soon as practicable after the written request of the Hospital release any and all Collateral from any pledge, security interest or mortgage made or given pursuant to this section, and execute such instruments as the Hospital may reasonably require to effect or evidence such release.

(b) ***Upon Excess Secured Debt.*** The Hospital covenants and agrees that, if at the time the Hospital gives a Lien to secure an obligation incurred pursuant to clause (a)(v) of the provisions of the Inducement Agreement summarized above under the caption "*Liens; Secured Debt*", the aggregate principal amount of Debt secured by Liens given pursuant to clause (a)(vii) of the provisions of the Inducement Agreement summarized above under the caption "*Liens; Secured Debt*", together with the aggregate amount of Derivative Obligations then secured by Liens given pursuant to clause (a)(v) of the provisions of the Inducement Agreement summarized above under the caption "*Liens; Secured Debt*", including the Derivative Obligation then to be secured (collectively, the "*Limited Secured Debt*"), exceeds the Secured Debt Limit, the Hospital, to secure the Center's obligations under the Loan Agreement, will promptly give or cause to be given to the Authority a Lien or Liens on Property reasonably acceptable to the Authority and the Insurers, the fair market value or, in the case of mortgages on real property, the appraised value of which is at the time such Liens are given at least equal to the amount by which the Limited Secured Debt exceeds the Secured Debt Limit. Notwithstanding the foregoing, no Lien or Liens otherwise required by this paragraph (b) to be given will be required if the obligations of the Center under the Loan Agreement are then secured by Collateral given by the Hospital pursuant to paragraph (a) of this section or by the Center or a Related Corporation pursuant to the Loan Agreement.

The Authority agrees that, if no Event of Default or any event which with the passage of time or the giving of notice, or both, would constitute an Event of Default is then continuing, it will as soon as practicable after the written request of the Hospital (which may be made no more frequently than once each calendar quarter) and receipt of evidence satisfactory to it and the Insurers that the Limited Secured Debt no longer exceeds the Secured Debt Limit release any and all Collateral from any pledge, security interest, or mortgage made or given pursuant to this paragraph (b), and execute such instruments as the Hospital may reasonably require to effect or evidence such release.

(c) ***Lien Priority; Required Documents.*** Each mortgage, pledge and security interest made or given pursuant to this section shall be a first lien on the affected Property, subject to only Permitted Encumbrances; *provided, however*, that to the extent such mortgage, pledge or security interest is on property which constitutes Shared Collateral under the Loan Agreement, the pledge and lien granted under



the Inducement Agreement shall be of equal priority with the pledge or lien securing the 2001 Resolution Bonds.

Simultaneously with delivery of any Collateral, the Hospital shall also (i) deliver to the Authority and each Insurer such certificates and opinions of counsel to the Hospital with respect to such Collateral as the Authority or an Insurer may reasonably require in connection with delivery of such Collateral, including but not limited to such matters as the Hospital's corporate power and authority, the due authorization to execute and deliver documents and instruments, and the execution and delivery and the valid, binding and enforceable nature of the pledges, security interests or mortgages made or given and of the documents and instruments executed by the Hospital, (ii) take the necessary steps to create, perfect and protect the lien on such Collateral, including but not limited to execution of security agreements and other instruments and the authorization of financing statements, (iii) deliver to the Authority such title insurance policies as the Authority may reasonably require in connection with any mortgage, (iv) pay all fees, taxes, charges and other expenses incurred in connection with the delivery of such Collateral, and (v) make such representations, warranties and covenants with respect to such Collateral as the Authority may reasonably require.

*(Section 3.10)*

### **Damage or Condemnation**

In the event of a taking of Hospital Property, or any portion thereof, by eminent domain or condemnation, or of damage or destruction affecting all or part thereof, all property casualty insurance, condemnation or eminent domain proceeds shall, if in excess of \$1,000,000 and not applied to reimburse the Hospital, the Center or a Related Corporation for costs incurred to repair or restore the same, be paid to the Trustee for deposit in the Construction Fund. All proceeds derived from an award for such taking or from property casualty insurance shall be applied as provided below.

(i) If within one hundred twenty (120) days (or such longer period as the Authority and the Center may agree) after the Authority receives actual notice or knowledge of the taking or damage, the Hospital and the Authority agree in writing that the property or the affected portion thereof shall be repaired, replaced or restored, the Hospital shall proceed to repair, replace or restore the same, or the affected portion thereof, including all fixtures, furniture, equipment and effects, to its original condition insofar as possible with such changes and additions as shall be appropriate to the needs of the Hospital and approved in writing by an Authorized Officer of the Authority. The funds required for such repair, replacement or restoration shall be paid, subject to such conditions and limitations as the Authority may impose, from the proceeds of insurance, condemnation or eminent domain awards received by reason of such occurrence and to the extent such proceeds are not sufficient, from funds to be provided by the Hospital, the Center or a Related Corporation.

(ii) If no agreement for the repair, restoration or replacement shall have been reached by the Authority and the Hospital within such period, either (A) if an Officer's Certificate is filed with the Authority, each Insurer and the Trustee in which the officer executing the same certifies that the failure to repair, restore or replace such property will not cause the Hospital, the Center or a Related Corporation to be in violation of any covenant or agreement of the Inducement Agreement or of the Loan Agreement, a Guaranty or Related Agreement to which any one of them is a party, the Hospital in its sole discretion may, by written notice to the Authority and each Insurer given within thirty (30) days after the expiration of such period, irrevocably elect to consider and treat the proceeds as Sale Proceeds, whereupon the Authority shall cause any proceeds then held in the Construction Fund to be paid to the Center, or (B) if an election is not timely made, the proceeds then held by the Hospital, the Center or a Related Corporation shall be paid the Trustee for deposit in the Debt Service Fund and the proceeds then held in the Construction Fund shall be

transferred to the Debt Service Fund, whereupon such proceeds shall be applied to the purchase or redemption of Outstanding Bonds.

*(Section 3.11)*

### **Further Assurances**

The Hospital will execute and deliver to the Authority all documents and instruments and do all other acts and things as may be reasonably necessary or required by the Center or the Authority to enable the Center to comply with its obligations under the Loan Agreement and to enable the Authority to exercise and enforce its rights under the Inducement Agreement and under the Related Agreements to which it is a party and to record and file and re-record and re-file all documents and instruments, at such time or times, in such manner and at such place or places, all as may be necessary or required by the Authority to validate, preserve, perfect, defend and protect the rights of the Authority under the Inducement Agreement and under the Related Agreements to which the Hospital, the Center or a Related Corporation is a party and in the Collateral.

*(Section 3.12)*

### **Reporting Requirements**

The Hospital will furnish or cause to be furnished to the Authority, the Trustee, each Insurer and such other persons as the Authority shall designate:

(i) as soon as practicable, but in no event later than five (5) Business Days after the occurrence of any Event of Default, or any event that, with the giving of notice or passage of time, or both, would constitute such an Event of Default continuing on the date of such statement, an Officer's Certificate setting forth details of such Event of Default or event and the action that the Hospital proposes to take with respect thereto.

(ii) as soon as practicable, but in no event later than five (5) Business Days after the occurrence of any event that could have a material adverse effect on the business, assets, operations or financial condition of the Hospital, an Officer's Certificate setting forth details of such material adverse event and the action that the Hospital proposes to take with respect thereto;

(iii) within sixty (60) days after the end of each of the first three quarters of each Fiscal Year of the Hospital, (A) a copy of interim, comparative, cumulative quarterly combined financial statements of the Hospital, the Center and the Related Corporations, including therein, without limitation, a balance sheet, a statement of activities and changes in net assets, duly certified by the chief financial officer of the Hospital as having been prepared in accordance with generally accepted accounting principles, and, (B) if an Event of Default, or, to the best of the Hospital's knowledge, an event that, with the giving of notice or the passage of time, or both, would constitute such an Event of Default, has occurred and is continuing, an Officer's Certificate stating the nature thereof and the action that the Hospital proposes to take with respect thereto;

(iv) annually, within one hundred twenty (120) days after the end of each Fiscal Year of the Hospital, (A) a copy of (1) the annual audited combined financial statements of the Hospital, the Center and the Related Corporations for such Fiscal Year, (2) the annual audited financial statements of the Hospital for such Fiscal Year, if separate audited financial statements of the Hospital for such Fiscal Year have been prepared, and (3) the annual consolidated financial statements of the Hospital, the Center and the Related Corporations for such Fiscal Year, if such audited consolidated financial statements for such Fiscal Year have been prepared, in each case including therein a balance sheet as at the end of such Fiscal Year,

a statement of activities and changes in net assets for such Fiscal Year (or such other financial statements then required in accordance with generally accepted accounting principles applicable to the Hospital), in each case audited by a firm of independent public accountants of recognized standing as may be reasonably acceptable to the Authority and the Insurers, (B) a copy of any management letter prepared by the auditors, (C) a certificate or other instrument signed by the auditors stating whether any Event of Default, or, to the best of the auditors' knowledge, an event that, with the giving of notice or the passage of time, or both, would constitute such an Event of Default, has occurred and is continuing, and, if such an Event of Default or such an event has occurred and is continuing, a statement as to the nature thereof, and (D) if such an Event of Default or such an event has occurred and is continuing, an Officer's Certificate setting forth the action that the Hospital proposes to take with respect thereto;

(v) annually, within one hundred twenty (120) days after the end of each Fiscal Year of the Hospital, payor mix and operating statistics of the type and in the form required by the Inducement Agreement;

(vi) promptly after, but in no event more than thirty (30) days after, the Hospital either incurs, issues, assumes or guarantees (A) a Debt secured by Liens given pursuant to clauses (a)(vii) or (a)(viii) of the provisions of the Inducement Agreement summarized above under the caption "*Liens; Secured Debt*", (B) an obligation secured by Liens given pursuant to clause (a)(v) of the provisions of the Inducement Agreement summarized above under the caption "*Liens; Secured Debt*", or (C) any extension, renewal or replacement (or any successive extensions, renewals or replacements) in whole or in part a of any such Debt or obligation, an Officer's Certificate (1) setting forth in reasonable detail the Debt or obligation then incurred, issued, assumed or guaranteed, (2) containing a statement to the effect that, after giving effect thereto, the Hospital is in compliance with each limitation applicable thereto and to each of them set forth in paragraph (b) of the provisions of the Inducement Agreement summarized above under the caption "*Liens; Secured Debt*" and (3) setting forth in reasonable detail the calculation of each such limitation.

(vii) promptly after, but in no event more than thirty (30) days after, the Hospital gives a Lien to secure an obligation incurred pursuant to clause (a)(v) of the provisions of the Inducement Agreement summarized above under the caption "*Liens; Secured Debt*", an Officer's Certificate setting forth in reasonable detail the calculation of the Secured Debt Limit, the amount of Limited Secured Debt then outstanding and the amount, if any, by which the Limited Secured Debt exceeds the Secured Debt Limit.

(viii) prompt written notice, but in no event more than thirty (30) days after the occurrence, of any adverse litigation (A) seeking damages in excess of the lesser of (A) \$25,000,000 over the applicable insurance coverage and (B) two and one-half percent (2 ½%) of the value of the Unrestricted Net Assets of the Hospital, the Center and the Related Corporations or (B) in which an adverse determination may have a material adverse effect on the combined financial or operating condition of the Hospital, the Center and the Related Corporations;

(ix) prompt written notice of the loss or change in the chief executive officer, the chief operating officer, president or chief financial officer of the Hospital, the Center or Sloan Kettering Institute for Cancer Research;

(x) prompt written notice of the pending formation, acquisition, merger, consolidation or dissolution of or by the Hospital, the Center or a Related Corporation and, within ten (10) days after any of the foregoing become effective, written notice thereof;

(xi) such reports with respect to the condition of, and repairs, replacements, renovations, and maintenance to, the Hospital Property as the Authority or an Insurer may from time to time reasonably request; and

(xii) such other information respecting the business, property or the condition or operations, financial or otherwise, of the Hospital as the Authority or any of the Insurers may from time to time reasonably request (other than information the Hospital is required by law to keep confidential), including, but not limited to, such information as, in the reasonable judgment of the Authority, may be necessary in order to ensure compliance with applicable federal securities laws in effect from time to time or to maintain a market for or enable securities dealers to offer the Bonds for sale.

(Section 3.13)

### **Events of Default**

It shall be an Event of Default under the Inducement Agreement if one or more of the following events shall have occurred:

(i) The Hospital shall fail to duly and punctually observe a covenant or agreement set forth in any of the provisions of the Inducement Agreement summarized above under the captions “*Liens; Secured Debt*”, “*Sale of Hospital Property*” or “*Collateral*” and such failure continues for ten (10) days after written notice thereof shall have been given to the Hospital;

(ii) the Hospital shall fail to duly and punctually observe any other covenant or agreement contained in the Inducement Agreement and such failure continues for thirty (30) days after written notice thereof shall have been given to the Hospital; *provided, however*, that if, in the determination of the Authority, such failure cannot be cured within such thirty (30) day period but can be cured by appropriate action, it shall not constitute an Event of Default under the Inducement Agreement if the Hospital within such thirty (30) day period initiates corrective action and thereafter diligently pursues the same;

(iii) any representation or warranty made by the Hospital in the Inducement Agreement or in any Related Agreement to which it is a party or Related Document shall prove to have been false or misleading in any material respect;

(iv) a Related Agreement to which it is a party or any material provision of the Inducement Agreement or a Related Agreement to which it is a party shall cease for any reason to be valid and binding, or the Hospital shall initiate legal proceedings or assert in legal proceedings that (A) the Inducement Agreement or a Related Agreement to which it is a party or any material provision of the Inducement Agreement or Related Agreement is invalid, or (B) the Hospital has no liability on the Inducement Agreement or Related Agreement;

(v) the Hospital shall (A) be generally not paying its debts as they become due, (B) file, or consent by answer or otherwise to the filing against it of, a petition under the United States Bankruptcy Code or any other bankruptcy or insolvency law of any jurisdiction, (C) make a general assignment for the benefit of its creditors, (D) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers over itself or any substantial part of its property, (E) be adjudicated insolvent or be liquidated, or (F) take corporate action for the purpose of any of the foregoing; or

(vi) a judgment for the payment of money is rendered against the Hospital in excess of the lesser of (A) \$25,000,000 over the applicable insurance coverage and (B) two and one-half percent (2½%) of the value of the Hospital’s, the Center’s and the Related Corporations’ Unrestricted Net Assets, if, in the reasonable judgment of the Authority or the Holders of a majority in principal amount of Outstanding Bonds, the same will materially adversely affect the rights of Holders of Outstanding Bonds and such judgment has not been vacated, discharged or stayed within sixty (60) days after the entry thereof.

(Section 4.01)

## **Remedies**

Upon the occurrence of an Event of Default under the Inducement Agreement, the Authority may liquidate or foreclose on any or all of the Collateral theretofore delivered by the Hospital pursuant to the Inducement Agreement and apply the proceeds to payment of the Center's indebtedness under the Loan Agreement. In addition, the Authority may, upon the occurrence of an Event of Default under the Inducement Agreement, take any actions permitted by applicable law. All rights and remedies in the Inducement Agreement given or permitted by applicable law are cumulative, non-exclusive. No failure to exercise or delay in exercising any remedy shall effect a waiver of the Authority's right to exercise such remedy thereafter.

*(Section 4.02)*

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**SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTION**

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## SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTION

The following is a brief summary of certain provisions of the Resolution pertaining to the Bonds and the Project. Such summary does not purport to be complete and reference is made to the Resolution for full and complete statements of such and all provisions. Defined terms used herein shall have the respective meanings ascribed to them in Appendix A.

### **Contract with Bondholders**

With respect to the Bonds, in consideration of the purchase and acceptance of any and all of the Bonds authorized to be issued under the Resolution by those who shall hold or own the same from time to time, the Resolution shall be deemed to be and shall constitute a contract among the Authority, the Trustee and the Holders from time to time of such Bonds, and the pledge and assignment to the Trustee made in the Resolution and the covenants and agreements set forth to be performed by or on behalf of the Authority shall be for the equal and ratable benefit, protection and security of the Holders of any and all of such Bonds, all of which, regardless of the time or times of their issue or maturity, shall be of equal rank without preference, priority or distinction of any such Bonds, over any other Bonds except as expressly provided in or permitted by the Resolution.

*(Section 1.03)*

### **Assignment of Certain Rights and Remedies**

As security for the payment of the principal and Redemption Price of and interest on the Outstanding Bonds and for the performance of each other obligation of the Authority under the Resolution, the Authority may, and if an Assignment Event has occurred shall, grant, pledge and assign to the Trustee all of the Authority's estate, right, title, interest and claim in, to and under the Loan Agreement, the Guaranties, the Inducement Agreement and the Collateral, together with all rights, powers, security interests, privileges, options and other benefits of the Authority thereunder, including, without limitation, the immediate and continuing right to receive, enforce and collect (and to apply the same in accordance herewith) all Revenues, insurance proceeds, sale proceeds and other payments and other security payable to or receivable by the Authority under the Loan Agreement, each Guaranty, the Inducement Agreement and the Collateral, and the right to make all waivers and agreements in the name and on behalf of the Authority, as Trustee for the benefit of the Bondholders, and to perform all other necessary and appropriate acts under the Loan Agreement, each Guaranty, the Inducement Agreement and the Collateral, including, but not limited to the right to declare the indebtedness under the Loan Agreement immediately due and payable and to foreclose, sell or otherwise realize upon the Collateral, subject to the following conditions: (i) that the Holders of the Bonds, if any, shall not be responsible or liable in any manner or to any extent for the performance of any of the covenants or provisions thereof to be performed by the Authority; and (ii) that unless and until the grant, pledge and assignment contemplated by this section shall have been made, the Trustee shall not be responsible or liable in any manner or to any extent for the performance of any of the covenants or provisions contained in the Loan Agreement, a Guaranty or the Inducement Agreement to be performed by the Authority (except to the extent of actions undertaken by the Trustee in the course of its performance of any such covenant or provision), the Authority, however, to remain liable to observe and perform all the conditions and covenants, in the Loan Agreement, the Guaranties and the Inducement Agreement provided to be observed and performed by it. Upon any such grant, pledge or assignment contemplated by this paragraph the Authority may retain the right to (i) the payment of the fees, costs and expenses of the Authority payable pursuant to the Loan Agreement or a Guaranty, (ii) the indemnities provided thereby and payments made pursuant to such indemnities and (iii) the exercise any of the remedies available under the Loan Agreement or a Guaranty for the enforcement of the obligations of the Center and the Guarantors to which the Authority has retained such rights.

Any grant, pledge or assignment made pursuant to this section shall be made by instruments in form and substance reasonably satisfactory to the Trustee executed and delivered by the Authority within thirty (30) days after the Collateral is delivered to the Authority upon the occurrence of a Funding Event, but in no event more than ninety (90) days after the Assignment Event has occurred if the same is then continuing. The Trustee shall accept such grant, pledge and assignment by written instrument signed by an Authorized Officer of the Trustee in form and substance reasonably satisfactory to the Authority.

If for a period of one year no Assignment Event has occurred or is continuing, then, if there is no event of default under the Resolution, the Trustee as soon as practicable after the written request of the Authority, re-grant and reassign to the Authority, and release from the pledge made by the Authority pursuant to the Resolution, all of the Authority's estate, right, title, interest and claim in, to and under the Loan Agreement, the Guaranties, the Inducement Agreement and the Collateral, together with all rights, powers, security interests, privileges, options and other benefits of the Authority thereunder, theretofore granted, pledged or assigned to the Trustee pursuant to this section and execute such instruments as the Authority may reasonably require to effect or evidence such regrant, reassignment of release.

*(Section 1.04)*

### **Pledge of Revenues**

The proceeds from the sale of the Bonds, the Revenues and all funds and accounts, excluding the Arbitrage Rebate Fund and any fund or account established to pay the purchase price of Option Bonds tendered for purchase, established by the Resolution and any Series Resolution, are pledged and assigned to the Trustee as security for the payment of the principal and Redemption Price of and interest on the Bonds and as security for the performance of any other obligation of the Authority under the Resolution and any Series Resolution, all in accordance with the provisions of the Resolution and any Series Resolution. The pledge made by the Resolution is valid, binding and perfected from the time when the pledge attaches and the proceeds from the sale of the Bonds, the Revenues and the funds and accounts established by the Resolution and any Series Resolution and pledged thereby shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid, binding and perfected as against all parties having claims of any kind in tort, contract or otherwise against the Authority irrespective of whether such parties have notice thereof. No instrument by which such pledge is created, nor any financing statement need be recorded or filed. The Bonds shall be special obligations of the Authority payable solely from and secured by a pledge of the proceeds from the sale of the Bonds, the Revenues and the funds and accounts established by the Resolution and pledged as provided in the Resolution, which pledge shall constitute a first lien thereon.

*(Section 5.01)*

### **Establishment of Funds and Accounts**

The following funds and separate accounts within funds are established by the Resolution and shall be held and maintained by the Trustee:

Construction Fund;  
Debt Service Fund; and  
Arbitrage Rebate Fund

In addition to the accounts and subaccounts, if any, required to be established by the Resolution or by any Series Resolution or any Bond Series Certificate, the Authority may establish such other accounts and subaccounts as it considers necessary or desirable. All moneys at any time deposited in any fund, account or subaccount created and pledged by the Resolution or by any Series Resolution or required

thereby to be created shall be held in trust for the benefit of the Holders of Bonds, but shall nevertheless be disbursed, allocated and applied solely for the uses and purposes provided in the Resolution; *provided, however,* that the proceeds derived from the remarketing of Option Bonds tendered or deemed to have been tendered for purchase in accordance with the Series Resolution authorizing the issuance of such Bonds or the Bond Series Certificate relating to such Bonds or derived from a Credit Facility or a Liquidity Facility relating to such Bonds, and any fund or account established by or pursuant to such Series Resolution for the payment of the purchase price or of Option Bonds so tendered or deemed to have been tendered, shall not be held in trust for the benefit of the Holders of the Bonds other than such Option Bonds and are pledged by the Resolution for the payment of the purchase price of such Option Bonds.

*(Section 5.02)*

### **Application of Bond Proceeds and Allocation Thereof**

Upon the receipt of the proceeds from the sale of a Series of Bonds, the Authority shall apply such proceeds as specified in the Resolution and in the Series, Resolution authorizing such Series or in the Bond Series Certificate relating to such Series.

Accrued interest, if any, received upon the delivery of a Series of Bonds shall be deposited in the Debt Service Fund unless all or any portion of such amount is to be otherwise applied as specified in the Series Resolution authorizing such Series or the Bond Series Certificate relating to such Series.

*(Section 5.03)*

### **Application of Moneys in the Construction Fund**

As soon as practicable after the delivery of each Series of Bonds, the Trustee shall deposit in the Construction Fund or Funds established for the Project or Projects in connection with which such Series of Bonds was issued the amount required to be deposited therein pursuant to the Series Resolution authorizing the issuance of such Series or the Bond Series Certificate relating to such Series. Except as otherwise provided in the Resolution and in any applicable Series Resolution or Bond Series Certificate, moneys deposited in the Construction Fund shall be used only to pay the Costs of Issuance of the Bonds and the Costs of the Projects for which such fund was established.

Upon receipt by the Trustee of a certificate relating to the completion of a Project, the moneys, if any, then remaining in the Construction Fund relating to such Project, after making provision in accordance with the direction of an Authorized Officer of the Authority for the payment of any Costs of Issuance and Costs of such Project then unpaid, shall be paid or applied by the Trustee as follows and in the following order of priority:

First: Upon the direction of an Authorized Officer of the Authority, to the Arbitrage Rebate Fund, the amount set forth in such direction; and

Second: To the Debt Service Fund, to be applied in accordance with the Resolution, any balance remaining.

*(Section 5.04)*

## **Deposit and Allocation of Revenues**

The Revenues and any other moneys, which, by any of the provisions of the Loan Agreement, the Inducement Agreement or a Guaranty, are required to be paid to the Trustee, shall upon receipt by the Trustee be deposited or paid by the Trustee as follows and in the following order of priority:

First: To the Debt Service Fund (i) in the case of Revenues received during the period from the beginning of each Bond Year until December 31 thereof, the amount, if any, necessary to make the amount in the Debt Service Fund equal to (a) the interest on Outstanding Bonds payable on or prior to the next succeeding January 1, including the interest estimated by the Authority to be payable on any Variable Interest Rate Bond on and prior to the next succeeding January 1, assuming that such Variable Interest Rate Bond will bear interest, from and after the next date on which the rate at which such Variable Interest Rate Bond bears interest is to be adjusted, at a rate per annum equal to the rate per annum at which such Bonds then bear interest, plus one percent (1%) per annum, (b) the Sinking Fund Installments of Outstanding Option Bonds and Variable Interest Rate Bonds payable on or prior to the next succeeding January 1 and (c) the purchase price or Redemption Price of Outstanding Bonds theretofore contracted to be purchased or called for redemption pursuant to the Resolution on or prior to the next succeeding January 1, plus accrued interest thereon to the date of purchase or redemption; and (ii) in the case of Revenues received thereafter and until the end of such Bond Year, the amount, if any, necessary to make the amount in the Debt Service Fund equal to (a) the interest on and the principal and Sinking Fund Installments of Outstanding Bonds payable on and prior to the next succeeding July 1, including the interest estimated by the Authority to be payable on any Variable Interest Rate Bond on and prior to the next succeeding July 1, assuming that such Variable Interest Rate Bond will bear interest, from and after the next date on which the rate at which such Variable Interest Rate Bond bears interest is to be adjusted, at a rate per annum equal to the rate per annum at which such Bonds then bear interest, plus one percent (1%) per annum and (b) the purchase price or Redemption Price of Outstanding Bonds theretofore contracted to be purchased or called for redemption pursuant to the Resolution on or prior to the next succeeding July 1, plus accrued interest thereon to the date of purchase or redemption;

Second: To reimburse, pro rata, each Provider for Provider Payments which are then unpaid, in proportion to the respective Provider Payments then unpaid to each Provider; and

Third: Upon the direction of an Authorized Officer of the Authority, to the Arbitrage Rebate Fund the amounts set forth in such direction; and

Fourth: To the Authority, unless otherwise paid, such amounts as are payable to the Authority for: (i) any expenditures of the Authority for fees and expenses of auditing, and fees and expenses of the Trustee and Paying Agents, all as required by the Resolution, (ii) all other expenditures reasonably and necessarily incurred by the Authority in connection with the financing of the Projects, including expenses incurred by the Authority to compel full and punctual performance of all the provisions of the Loan Agreement in accordance with the terms thereof, and (iii) any fees of the Authority; but only upon receipt by the Trustee of a certificate signed by an Authorized Officer of the Authority, stating in reasonable detail the amounts payable to the Authority pursuant to this paragraph Fourth.

The Trustee shall notify the Authority and the Center promptly after making the payments of any balance of Revenues then remaining on the immediately succeeding July 1. After making the above required payments, the balance, if any, of the Revenues then remaining shall, upon the direction of an Authorized Officer of the Authority, be paid by the Trustee to the Construction Fund or the Debt Service Fund, or paid to the Center, in the respective amounts set forth in such direction. Any amounts paid to the Center shall be free and clear of any pledge, lien, encumbrance or security interest created by the Resolution or by the Loan Agreement.

*(Section 5.05)*

## Debt Service Fund

The Trustee shall on or before the Business Day preceding each interest payment date pay to itself and any other Paying Agent out of the Debt Service Fund:

- (a) the interest due and payable on all Outstanding Bonds on such interest payment date;
- (b) the principal amount due and payable on all Outstanding Bonds on such interest payment date; and
- (c) the Sinking Fund Installments or other amounts related to a mandatory redemption, if any, due and payable on all Outstanding Bonds on such interest payment date.

The amounts paid out pursuant to this subdivision shall be irrevocably pledged to and applied to such payments.

Notwithstanding the provisions of this subdivision, the Authority may, at any time subsequent to July 1 of any Bond Year but in no event less than forty-five (45) days prior to the succeeding date on which a Sinking Fund Installment is scheduled to be due, direct the Trustee to purchase, with moneys on deposit in the Debt Service Fund, at a price not in excess of par plus interest accrued and unpaid to the date of such purchase, Term Bonds to be redeemed from such Sinking Fund Installment. Notwithstanding the provisions of subdivision (a) above, the Center pursuant to the Loan Agreement may deliver, at any time subsequent to July 1 of any Bond Year, but in no event less than forty-five (45) days prior to the next succeeding date on which a Sinking Fund Installment is scheduled to be due, to the Trustee for cancellation one or more Term Bonds of the Series and maturity to be so redeemed on such date from such Sinking Fund Installment. Any Term Bond so purchased, and any Term Bond purchased by the Center and delivered to the Trustee in accordance with the Loan Agreement shall be canceled upon receipt thereof by the Trustee and evidence of such cancellation shall be given to the Authority. The principal amount of each Term Bond so canceled shall be credited against the Sinking Fund Installment due on such date; *provided, however*, that such Term Bond is canceled by the Trustee prior to the date on which notice of redemption is given.

Moneys in the Debt Service Fund in excess of the amount required to pay the principal and Sinking Fund Installments of Outstanding Bonds payable on and prior to the next succeeding July 1, the interest on Outstanding Bonds payable on and prior to the earlier of the next succeeding interest payment date assuming that a Variable Interest Rate Bond will bear interest, from and after the next date on which the rate at which such Variable Interest Rate Bond bears interest is to be adjusted, at a rate per annum equal to the rate per annum at which such Bonds then bear interest, plus one percent (1%) per annum, and the purchase price or Redemption Price of Outstanding Bonds theretofore contracted to be purchased or called for redemption, plus accrued interest thereon to the date of purchase or redemption, shall be applied by the Trustee in accordance with the direction of an Authorized Officer of the Authority to the purchase of Outstanding Bonds of any Series at purchase prices not exceeding the Redemption Price applicable on the next interest payment date on which such Bonds are redeemable, plus accrued and unpaid interest to such date, at such times, at such purchase prices and in such manner as an Authorized Officer of the Authority shall direct. If sixty (60) days prior to the end of a Bond Year an excess, calculated as aforesaid, exists in the Debt Service Fund, such moneys shall be applied by the Trustee in accordance with the direction of an Authorized Officer of the Authority given pursuant to the Resolution to the redemption of Bonds as provided in the Resolution, at the Redemption Prices specified in the applicable Series Resolution authorizing the issuance of the Bonds to be redeemed or the Bond Series Certificate relating to such Bonds.

(Section 5.06)

## **Arbitrage Rebate Fund**

The Trustee shall deposit to the Arbitrage Rebate Fund any moneys delivered to it by the Center for deposit therein and, notwithstanding any other provisions of the Resolution, shall transfer to the Arbitrage Rebate Fund, in accordance with the directions of an Authorized Officer of the Authority, moneys on deposit in any other funds held by the Trustee under the Resolution at such times and in such amounts as set forth in such directions.

Moneys on deposit in the Arbitrage Rebate Fund shall be applied by the Trustee in accordance with the direction of an Authorized Officer of the Authority to make payments to the Department of the Treasury of the United States of America at such times and in such amounts as the Authority shall determine to be required by the Code to be rebated to the Department of the Treasury of the United States of America. Moneys which an Authorized Officer of the Authority determines to be in excess of the amount required to be so rebated shall, first, be applied to reimburse pro rata, each Provider for moneys advanced under a Credit Facility or a Liquidity Facility, including interest thereon, which is then unpaid in proportion to the respective amounts advanced by each such Provider, and, then be deposited to any fund or account established under the Resolution in accordance with the directions of such Authorized Officer.

The Authority shall periodically determine the amount which may be required by the Code to be rebated to the Department of the Treasury of the United States of America with respect to each Series of Bonds and direct the Trustee to (i) transfer from any other of the funds and accounts held by the Trustee under the Resolution and deposit to the Arbitrage Rebate Fund such amount as the Authority shall have determined to be necessary in order to enable it to comply with its obligation to rebate moneys to the Department of the Treasury of the United States of America with respect to each Series of Bonds and (ii) if and to the extent required by the Code, pay out of the Arbitrage Rebate Fund to the Department of the Treasury of the United States of America the amount, if any, required by the Code to be rebated thereto.

*(Section 5.07)*

## **Application of Moneys in Certain Funds for Retirement of Bonds**

Notwithstanding any other provisions of the Resolution, if at any time the amounts held in the Debt Service Fund are sufficient to pay the principal or Redemption Price of all Outstanding Bonds and the interest accrued and unpaid and to accrue on such Bonds to the next date of redemption when all such Bonds are redeemable, or to make provision pursuant to the Resolution for the payment of the Outstanding Bonds at the maturity or redemption dates thereof, the Trustee shall so notify the Authority, each Insurer and the Center. Upon receipt of such notice, the Authority may (i) direct the Trustee to redeem all such Outstanding Bonds, whereupon the Trustee shall proceed to redeem or provide for the redemption of such Outstanding Bonds in the manner provided for redemption of such Bonds by the Resolution and by each Series Resolution as provided in the Resolution, or (ii) give the Trustee irrevocable instructions in accordance with the Resolution and make provision for the payment of the Outstanding Bonds at the maturity or redemption dates thereof in accordance therewith.

*(Section 5.08)*

## **Investment of Funds and Accounts**

Moneys held under the Resolution by the Trustee, if permitted by law, shall, as nearly as may be practicable, be invested by the Trustee, upon direction of the Authority given or confirmed in writing, signed by an Authorized Officer of the Authority (which direction shall specify the amount thereof to be so invested), in Government Obligations, Federal Agency Obligations, Exempt Obligations, and, if not inconsistent with the investment guidelines of an Insurer or a Rating Service applicable to the funds held

under the Resolution, any other Permitted Investment; *provided, however*, that each such investment shall permit the moneys so deposited or invested to be available for use at the times at which the Authority reasonably believes such moneys will be required for the purposes of the Resolution; *provided, further*, that (x) any Permitted Collateral required to secure any Permitted Investment shall have a market value determined by the Trustee or its agent periodically, but no less frequently than weekly, at least equal to the amount deposited or invested including interest accrued thereon, (y) the Permitted Collateral shall be deposited with and held by the Trustee or an agent of the Trustee approved by an Authorized Officer of the Authority, and (z) the Permitted Collateral shall be free and clear of claims of any other person.

Permitted Investments purchased as an investment of moneys in any fund or account held by the Trustee under the provisions of the Resolution shall be deemed at all times to be a part of such fund or account and the income or interest earned, profits realized or losses suffered by a fund or account due to the investment thereof shall be retained in, credited or charged, as the case may be, to such fund or account.

In computing the amount in any fund or account held by the Trustee under the provisions of the Resolution, each Permitted Investment shall be valued at par or the market value thereof, plus accrued interest, whichever is lower.

Notwithstanding anything to the contrary in the Resolution, the Authority, in its discretion, may direct the Trustee to, and the Trustee upon receipt of such direction shall, sell, present for redemption or exchange any investment held by the Trustee pursuant to the Resolution and the proceeds thereof may be reinvested as provided in this section. Except as otherwise provided in the Resolution, the Trustee shall sell at the best price obtainable, or present for redemption or exchange, any investment held by it pursuant to the Resolution whenever it shall be necessary in order to provide moneys to meet any payment or transfer from the fund or account in which such investment is held. The Trustee shall advise the Authority, the Center, and, upon the written request of an Insurer, such Insurer, on or before the fifteenth (15th) day of each calendar month, of the amounts required to be on deposit in each fund and account under the Resolution and of the details of all investments held for the credit of each fund and account in its custody under the provisions of the Resolution as of the end of the preceding month and as to whether such investments comply with the first and second paragraphs of this section. The details of such investments shall include the par value, if any, the cost and the current market value of such investments as of the end of the preceding month. The Trustee shall also describe all withdrawals, substitutions and other transactions occurring in each such fund and account in the previous month.

*(Section 6.02)*

### **Refunding Bonds and Additional Obligations**

All or any portion of one or more Series of Refunding Bonds may be authenticated and delivered upon original issuance to refund all Outstanding Bonds, one or more Series of Outstanding Bonds, a portion of a Series of Outstanding Bonds or a portion of a maturity of a Series of Outstanding Bonds. The Authority may issue Refunding Bonds in an aggregate principal amount sufficient, together with other moneys available therefor, to accomplish such refunding and to make such deposits required by the provisions of the Resolution and of the Series Resolution authorizing such Series of Refunding Bonds.

The proceeds, including accrued interest, of Refunding Bonds shall be applied simultaneously with the delivery of such Refunding Bonds in the manner provided in or as determined in accordance with the Series Resolution authorizing such Refunding Bonds or the Bond Series Certificate relating to such Series of Refunding Bonds.

The Authority reserves the right to issue bonds, notes or any other obligations or otherwise incur indebtedness pursuant to other and separate resolutions or agreements of the Authority, so long as such bonds, notes or other obligations are not, or such other indebtedness is not, except as provided in the Resolution, entitled to a charge, lien or right prior or equal to the charge or lien created by the Resolution, or prior or equal to the rights of the Authority and Holders of Bonds as provided by the Resolution.

*(Sections 2.04 and 2.05)*

### **Creation of Liens**

Except as permitted by the Resolution, the Authority shall not create, cause to be created or suffer or permit the creation of any lien or charge prior or equal to that of the Bonds on the proceeds from the sale of the Bonds, the Revenues, the rights of the Authority to receive payments to be made under the Loan Agreement or the Guaranties that are to be deposited with the Trustee or the funds and accounts established by the Resolution or by any Series Resolution which are pledged by the Resolution; *provided, however*, that nothing contained in the Resolution shall prevent the Authority from incurring obligations with respect to a Credit Facility or a Liquidity Facility which are secured by a lien upon and pledge of the Revenues which lien and pledge is of equal priority with the lien created and the pledge made by the Resolution.

*(Section 7.06)*

### **Tax Exemption; Rebates**

In order to maintain the exclusion from gross income for purposes of federal income taxation of interest on the Bonds of such Series as the Authority may designate, the Authority shall comply with the provisions of the Code applicable to the Bonds of such Series necessary to maintain such exclusion, including without limitation the provisions of the Code which prescribe yield and other limits within which proceeds of the Bonds of such Series are to be invested, and which, in certain circumstances, require the rebate of certain earnings on such amounts to the Department of the Treasury of the United States of America. In furtherance of the foregoing, the Authority shall comply with the provisions of the Tax Certificate with respect to such Series of Bonds.

The Authority shall not take any action or fail to take any action which would cause the 2017 Series 1 Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code; nor shall any part of the proceeds of the 2017 Series 1 Bonds or any other funds of the Authority be used directly or indirectly to acquire any security or obligation the acquisition of which would cause any 2017 Series 1 Bond to be an “arbitrage bond” within the meaning of Section 148(a) of the Code.

*(Section 5.01, 2017 Series 1 Resolution)*

### **Event of Default**

Each of the following constitutes an “event of default” under the Resolution and each Series Resolution if:

- (a) Payment of the principal, Sinking Fund Installments or Redemption Price of any Bond shall not be made by the Authority when the same shall become due and payable, either at maturity or by proceedings for redemption or otherwise; or
- (b) Payment of an installment of interest on any Bond shall not be made when the same shall become due and payable; or



(c) The Authority shall default in the due and punctual performance of the rebate covenants contained in the Resolution, and, as a result thereof, the interest on the Bonds of a Series shall no longer be excludable from gross income under Section 103 of the Code; or

(d) The Authority shall default in the due and punctual performance of any other of the covenants, conditions, agreements and provisions contained in the Resolution or in the Bonds or in any Series Resolution on the part of the Authority to be performed and such default shall continue for thirty (30) days after written notice specifying such default and requiring same to be remedied shall have been given to the Authority by the Trustee, which may give such notice in its discretion and shall give such notice at the written request of the Holders of not less than twenty-five percent (25%) in principal amount of the Outstanding Bonds, or, if such default is not capable of being cured within thirty (30) days, if the Authority fails to commence to cure such default within said thirty (30) days and diligently prosecutes the cure thereof; or

(e) The Authority shall have notified the Trustee that an “Event of Default”, as defined in the Loan Agreement shall have occurred and is continuing and all sums payable by the Center under the Loan Agreement shall have been declared to be immediately due and payable, which declaration shall not have been annulled and the Authority shall have notified the Trustee of such “Event of Default.”

(Section 11.02)

### **Acceleration of Maturity**

Upon the happening and continuance of any event of default (other than under paragraph (c) of the provisions of the Resolution summarized above under the caption “*Event of Default*” above), then and in every such case the Trustee may, and upon the written request of the Holders of not less than twenty-five percent (25%) in principal amount of the Outstanding Bonds shall, by a notice in writing to the Authority, declare the principal of and interest on all of the Outstanding Bonds to be due immediately and payable. At the expiration of thirty (30) days from the giving of notice of such declaration, such principal and interest shall become and be immediately due and payable, anything in the Resolution or in the Bonds or any Series Resolution to the contrary notwithstanding. At any time after the principal of the Bonds shall have been so declared to be due and payable, and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under the Resolution, the Trustee shall with the written consent of the Holders of not less than twenty-five percent (25%) in principal amount of the Bonds not then due by their terms and then Outstanding and by written notice to the Authority, annul such declaration and its consequences if: (i) moneys shall have accumulated in the Debt Service Fund sufficient to pay all arrears of interest, if any, upon all of the Outstanding Bonds (except the interest accrued on such Bonds since the last interest payment date); (ii) moneys shall have accumulated and be available sufficient to pay the charges, compensation, expenses, disbursements, advances and liabilities of the Trustee and any Paying Agent; (iii) all other amounts then payable by the Authority under the Resolution and under each Series Resolution (other than principal amounts payable only because of a declaration and acceleration under the Resolution) shall have been paid or a sum sufficient to pay the same shall have been deposited with the Trustee; and (iv) every other default known to the Trustee in the observance or performance of any covenant, condition or agreement contained in the Resolution or in the Bonds or any Series Resolution (other than a default in the payment of the principal of such Bonds then due only because of a declaration under this section) shall have been remedied to the satisfaction of the Trustee. No such annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

(Section 11.03)

## **Enforcement of Remedies**

Upon the happening and continuance of any event of default, then and in every such case, the Trustee may proceed, and, upon the written request of the Holders of not less than twenty-five percent (25%) in principal amount of the Outstanding Bonds or, in the case of the happening and continuance of an event of default described in paragraph (c) of the provisions of the Resolution summarized above under the caption "*Event of Default*", upon the written request of the Holders of not less than twenty-five percent (25%) in principal amount of the Outstanding Bonds of the Series affected thereby, shall proceed (subject to the provisions of the Resolution regarding indemnification of the Trustee), to protect and enforce its rights and the rights of the Holders of the Bonds under the laws of the State or under the Resolution or under any Series Resolution by such suits, actions or special proceedings in equity or at law, either for the specific performance of any covenant contained under the Resolution and under any Series Resolution or in aid or execution of any power therein granted, or for an accounting against the Authority as if the Authority were the trustee of an express trust, or for the enforcement of any proper legal or equitable remedy as the Trustee shall deem most effectual to protect and enforce such rights, including the foreclosure of any Collateral assigned to the Trustee.

In the enforcement of any remedy under the Resolution and under each Series Resolution the Trustee shall be entitled to sue for, enforce payment of, and receive any and all amounts then, or during any default becoming, and at any time remaining, due from the Authority for principal or interest or otherwise under any of the provisions of the Resolution or of any Series Resolution or of the Bonds, with interest on overdue payments of the principal of or interest on the Bonds at the rate or rates of interest specified in such Bonds, together with any and all costs and expenses of collection and of all proceedings under the Resolution and under any Series Resolution and under such Bonds, without prejudice to any other right or remedy of the Trustee or of the Holders of such Bonds, and to recover and enforce judgment or decree against the Authority but solely as provided in the Resolution and in any Series Resolution and in such Bonds, for any portion of such amounts remaining unpaid, with interest, costs and expenses, and to collect in any manner provided by law, the moneys adjudged or decreed to be payable.

*(Section 11.04)*

## **Priority of Payments After Default**

If at any time the moneys held by the Trustee under the Resolution and under each Series Resolution shall not be sufficient to pay the principal of and interest on the Bonds as the same become due and payable (either by their terms or by acceleration of maturity under the provisions of the Resolution), such moneys together with any moneys then available or thereafter becoming available for such purpose, whether through exercise of the remedies provided for in the Resolution or otherwise, shall be applied (after first depositing in the Arbitrage Rebate Fund all amounts to be deposited therein and then paying all amounts owing to the Trustee under the Resolution) as follows:

(a) Unless the principal of all the Bonds has become or been declared due and payable, all such moneys shall be applied:

First: To the payment to the persons entitled thereto of all installments of interest then due, in the order of the maturity of the installments of such interest, and, if the amount available shall not be sufficient to pay in full any installment, then to the payment thereof ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference; and

Second: To the payment to the persons entitled thereto of the unpaid principal, Sinking Fund Installments or Redemption Price of any of the Bonds which shall have become due whether at maturity or

by call for redemption, in the order of their due dates, and, if the amount available shall not be sufficient to pay in full all amounts due on any date, then to the payment thereof ratably, according to the amount of principal, Sinking Fund Installments or Redemption Price due on such date, to the persons entitled thereto, without any discrimination or preference.

(b) If the principal of all of the Bonds shall have become or been declared due and payable, all such money shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto, without any discrimination or preference except as to the difference in the respective rates of interest specified in the Bonds.

The provisions of this subdivision are in all respects subject to the provisions of the Resolution prohibiting the extension of payment of Bonds.

Whenever moneys are to be applied by the Trustee pursuant to the provisions of this section, such moneys shall be applied by the Trustee at such times, and from time to time, as the Trustee in its sole discretion shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. The setting aside of such moneys in trust for application in accordance with the Resolution shall constitute proper application by the Trustee, and the Trustee shall incur no liability whatsoever to the Authority, to any Holder of Bonds or to any other person for any delay in applying any such moneys so long as the Trustee acts with reasonable diligence, having due regard to the circumstances, and ultimately applies the same in accordance with such provisions of the Resolution as may be applicable at the time of application by the Trustee. Whenever the Trustee shall exercise such discretion in applying such moneys, it shall fix the date (which shall be on an interest payment date unless the Trustee shall deem another date more suitable) upon which such application is to be made, and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the fixing of any such date. The Trustee shall not be required to make payment to the Holder of any Bond unless such Bond shall be presented to the Trustee for appropriate endorsement.

*(Section 11.05)*

### **Termination of Proceedings**

In case any proceedings taken by the Trustee on account of any default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee, then and in every such case the Authority, the Trustee, each Provider, the Center and the Bondholders shall be restored to their former positions and rights under the Resolution, respectively, and all rights, remedies, powers and duties of the Trustee shall continue as though no such proceeding had been commenced.

*(Section 11.06)*

### **Bondholders' Direction of Proceedings**

Anything in the Resolution to the contrary notwithstanding, the Holders of a majority in principal amount of the Outstanding Bonds or, in the case of an event of default as specified under paragraph (c) of the provision of the Resolution summarized above under the caption "*Event of Default*", the Holders of a majority in principal amount of the Outstanding Bonds of the Series affected thereby shall have the right, by an instrument in writing executed and delivered to the Trustee, to direct the method and place of conducting all remedial proceedings to be taken by the Trustee under the Resolution and under each Series

Resolution, provided such direction shall not be otherwise than in accordance with law and the provisions of the Resolution and of each Series Resolution, and that the Trustee shall have the right to decline to follow any such direction which in the opinion of the Trustee would be unjustly prejudicial to Bondholders not parties to such direction.

*(Section 11.07)*

### **Limitation of Rights of Individual Bondholders**

No Holder of any of the Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust under the Resolution, or for any other remedy under the Resolution unless such Holder previously shall have given to the Trustee written notice of the event of default on account of which such suit, action or proceeding is to be instituted, and unless also the Holders of not less than twenty-five per centum (25%) in principal amount of the Outstanding Bonds, or, in the case of an event of default under paragraph (c) of the provision of the Resolution summarized above under the caption "*Event of Default*", the Holders of not less than twenty-five per centum (25%) in principal amount of the Outstanding Bonds of the Series affected thereby, shall have made written request to the Trustee after the right to exercise such powers or right of action, as the case may be, shall have accrued, and shall have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers granted by the Resolution or to institute such action, suit or proceeding in its or their name, and unless, also, there shall have been offered to the Trustee reasonable security and indemnity against the costs, expenses, and liabilities to be incurred therein or thereby, and the Trustee shall have refused or neglected to comply with such request within a reasonable time. Such notification, request and offer of indemnity are by the Resolution declared in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of the Resolution or for any other remedy under the Resolution and in equity or at law. It is understood and intended that no one or more Holders of the Bonds secured by the Resolution shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of the Resolution or to enforce any right under the Resolution except in the manner provided in the Resolution, and that all proceedings at law or in equity shall be instituted and maintained for the benefit of all Holders of the Outstanding Bonds. Notwithstanding any other provision of the Resolution, the Holder of any Bond shall have the right which is absolute and unconditional to receive payment of the principal of (and premium, if any) and interest on such Bond on the stated maturity expressed in such Bond (or, in the case of redemption, on the redemption date) and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder.

*(Section 11.08)*

### **Modification and Amendment Without Consent**

Notwithstanding any other provisions of the Resolution, the Authority may adopt at any time or from time to time Series Resolutions or Supplemental Resolutions for any one or more of the following purposes, and any such Series Resolution or Supplemental Resolution shall become effective in accordance with its terms upon the filing with the Trustee of a copy thereof certified by an Authorized Officer of the Authority:

(a) To provide for the issuance of a Series of Bonds pursuant to the provisions of the Resolution and to prescribe the terms and conditions pursuant to which such Bonds may be issued, paid or redeemed;

(b) To add additional covenants and agreements of the Authority for the purpose of further securing the payment of the Bonds, provided such additional covenants and agreements are not contrary to or inconsistent with the covenants and agreements of the Authority contained in the Resolution;

(c) To prescribe further limitations and restrictions upon the issuance of Bonds and the incurring of indebtedness by the Authority which are not contrary to or inconsistent with the limitations and restrictions thereon theretofore in effect;

(d) To surrender any right, power or privilege reserved to or conferred upon the Authority by the terms of the Resolution, provided that the surrender of such right, power or privilege is not contrary to or inconsistent with the covenants and agreements of the Authority contained in the Resolution; *provided, however,* that if the same would adversely affect the rights of an Insurer or a Provider in a material respect, no Series or Supplemental Resolution providing therefor shall become effective until consented to in writing by the Insurer and the Provider affected thereby;

(e) To confirm, as further assurance, any pledge under the Resolution, and the subjection to any lien, claim or pledge created or to be created by the provisions of the Resolution, of the Revenues or of any other moneys, securities or funds;

(f) To modify any of the provisions of the Resolution or of any previously adopted Series Resolution or Supplemental Resolution in any other respects, provided that such modifications shall not be effective until after all Bonds of any Series of Bonds Outstanding as of the date of adoption of such Supplemental Resolution or Series Resolution shall cease to be Outstanding, and all Bonds issued under such resolutions shall contain a specific reference to the modifications contained in such subsequent Resolutions; or

(g) To modify or amend a Project; or

(h) With the consent of the Trustee, to cure any ambiguity or defect or inconsistent provision in the Resolution or to insert such provisions clarifying matters or questions arising under the Resolution as are necessary or desirable in the event any such modifications are not contrary to or inconsistent with the Resolution as theretofore in effect, or to modify any of the provisions of the Resolution or of any previously adopted Series Resolution or Supplemental Resolution in any other respect, provided that such modification shall not adversely affect the interests of the Holders in any material respect.

*(Section 9.01)*

### **Supplemental Resolutions Effective with Consent of Bondholders**

The provisions of the Resolution may also be modified or amended at any time or from time to time by a Supplemental Resolution, subject to the consent of Bondholders in accordance with and subject to the provisions of the Resolution, such Supplemental Resolution to become effective upon the filing with the Trustee of a copy thereof certified by an Authorized Officer of the Authority.

*(Section 9.02)*

### **Powers of Amendment**

Any modification or amendment of the Resolution and of the rights and obligations of the Authority and of the Holders of the Bonds under the Resolution, in any particular, may be made by a Supplemental Resolution, with the written consent given as provided in the Resolution, (i) of the Holders of at least a majority in principal amount of the Bonds Outstanding at the time such consent is given, or (ii) in case less

than all of the several Series of Bonds then Outstanding are affected by the modification or amendment, of Holders of at least a majority in principal amount of the Bonds of each Series so affected and Outstanding at the time such consent is given, or (iii) in case the modification or amendment changes the amount or date of any Sinking Fund Installment, of the Holders of at least a majority in principal amount of the Bonds of the particular Series, maturity and interest rate entitled to such Sinking Fund Installment, Outstanding at the time such consent is given; *provided, however*, that if such modification or amendment will, by its terms, not take effect so long as any Bonds of any specified like Series and maturity remain Outstanding, the consent of the Holders of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under the Resolution. No such modification or amendment shall permit a change in the terms of redemption or maturity of the principal of any Outstanding Bond or of any installment of interest thereon or a reduction in the principal amount or the Redemption Price thereof, or in the rate of interest thereon without the consent of the Holder of such Bond, or shall reduce the percentages or otherwise affect the classes of Bonds the consent of the Holders of which is required to effect any such modification or amendment. For the purposes of this paragraph, a Series shall be deemed to be affected by a modification or amendment of the Resolution if the same adversely affects or diminishes the rights of the Holders of Bonds of such Series in any material respect. The Trustee may in its discretion determine whether or not, in accordance with the foregoing provisions, the Bonds of any particular Series or maturity would be affected by any modification or amendment of the Resolution and any such determination shall be binding and conclusive on the Authority and all Holders of Bonds. The Trustee may receive an opinion of counsel, including an opinion of Bond Counsel, as conclusive evidence as to whether Bonds of any particular Series or maturity would be so affected by any such modification or amendment of the Resolution.

*(Section 10.01)*

### **Consent of Bondholders**

The Authority may at any time adopt a Supplemental Resolution making a modification or amendment permitted by the provisions of the Resolution to take effect when and as provided in the Resolution. A copy of such Supplemental Resolution (or brief summary thereof or reference thereto in form approved by the Trustee) together with a request to the Holders for their consent thereto in form satisfactory to the Trustee, is required, promptly after adoption, to be mailed by the Authority to the Holders (but failure to mail such copy and request will not affect the validity of the Supplemental Resolution when consented to as provided in the Resolution). Such Supplemental Resolution shall not be effective unless and until (i) there shall have been filed with the Trustee (a) the written consent of Holders of the percentages of Outstanding Bonds specified in the Resolution and (b) an opinion of Bond Counsel stating that such Supplemental Resolution has been duly and lawfully adopted and filed by the Authority in accordance with the provisions of the Resolution, is authorized or permitted by the Resolution, and is valid and binding upon the Authority and enforceable in accordance with its terms, and (ii) a notice shall have been mailed as provided in the Resolution. Each such consent shall be effective only if accompanied by proof of the holding or owning at the date of such consent, of the Bonds with respect to which such consent is given, which proof shall be such as is permitted by the Resolution. A certificate or certificates by the Trustee filed with the Trustee that it has examined such proof and that such proof is sufficient in accordance with the Resolution shall be conclusive that the consents have been given by the Holders described in such certificate or certificates of the Trustee. Any consent shall be binding upon the Holder of the Bonds giving such consent and, anything in the Resolution to the contrary notwithstanding, upon any subsequent Holder of such Bonds and of any Bonds issued in exchange therefor (whether or not such subsequent Holder thereof has notice thereof), unless such consent is revoked in writing by the Holder of such Bonds giving such consent or a subsequent Holder thereof by filing with the Trustee, prior to the time when the written statement of the Trustee provided for in the Resolution is filed, such revocation. The fact that a consent has not been revoked may likewise be proved by a certificate of the Trustee filed with the Trustee to the

effect that no revocation thereof is on file with the Trustee. At any time after Holders of the required percentages of Bonds shall have filed their consents to the Supplemental Resolution, the Trustee shall make and file with the Authority and the Trustee a written statement that the Holders of such required percentages of Bonds have filed such consents. Such written statement shall be conclusive that such consents have been so filed. At any time thereafter notice, stating in substance that the Supplemental Resolution (which may be referred to as a Supplemental Resolution adopted by the Authority on a stated date, a copy of which is on file with the Trustee) has been consented to by the Holders of the required percentages of Bonds and will be effective as provided in the Resolution, shall be given to the Bondholders by the Authority by mailing such notice to the Bondholders and, at the discretion of the Authority, by publishing the same at least once not more than ninety (90) days after the Holders of the required percentages of Bonds shall have filed their consents to the Supplemental Resolution and the written statement of the Trustee provided for above is filed (but failure to publish such notice shall not prevent such Supplemental Resolution from becoming effective and binding as in this paragraph provided). The Authority shall file with the Trustee proof of the mailing of such notice, and, if the same shall have been published to the Bondholders, of the publication thereof. A transcript, consisting of the papers required or permitted by the Resolution to be filed with the Trustee, shall be proof of the matters therein stated. Such Supplemental Resolution making such amendment or modification shall be deemed conclusively binding upon the Authority, the Trustee, each Paying Agent and the Holders of all Bonds at the expiration of thirty (30) days after the filing with the Trustee of the proof of the mailing of the first publication of such last mentioned notice, except in the event of a final decree of a court of competent jurisdiction setting aside such Supplemental Resolution in a legal action or equitable proceeding for such purpose commenced within such thirty (30) day period; *provided, however*, that the Authority, the Trustee and any Paying Agent during such thirty (30) day period and any such further period during which any such action or proceeding may be pending shall be entitled in their reasonable discretion to take such action, or to refrain from taking such action, with respect to such Supplemental Resolution as they may deem expedient.

(Section 10.02)

### **Modifications by Unanimous Consent**

The terms and provisions of the Resolution and the rights and obligations of the Authority and of the Holders of the Bonds under the Resolution may be modified or amended in any respect upon the adoption and filing with the Trustee by the Authority of a copy of a Supplemental Resolution certified by an Authorized Officer of the Authority and the consent of the Holders of all of the Bonds then Outstanding, such consent to be given as provided in the Resolution, except that no notice to Bondholders either by mailing or publication shall be required.

(Section 10.03)

### **Amendment of Loan Agreement, Inducement Agreement or Guaranties**

Except as otherwise provided in the Resolution, the Loan Agreement or the Inducement Agreement, neither the Loan Agreement, the Inducement Agreement nor a Guaranty may be amended, changed, modified, altered or terminated, nor may any provision thereof be waived, without the consent of the Holders of Outstanding Bonds and the Insurers as provided in the Resolution, if such amendment, change, modification, termination or waiver (i) reduces the amount payable by the Center under the Loan Agreement or a Guarantor under a Guaranty on any date or delays the date on which payment is to be made, (ii) amends, changes or modifies in any material respect, or waives compliance with any material provision of the Loan Agreement or amends, changes or modifies in any material respect, or waives compliance with any material provision of the Guaranty or the Inducement Agreement, (iii) modifies the events which constitute events of default under the Loan Agreement or the Inducement Agreement, (iv) modifies the

events that constitute Notice Events under a Guaranty, (v) diminishes, limits or conditions the rights or remedies of the Authority under the Loan Agreement, the Inducement Agreement or a Guaranty upon the occurrence of an event of default or a notice event under the Loan Agreement, the Inducement Agreement or a Guaranty, or (vi) adversely affects the rights of the Bondholders or an Insurer in any material respect *unless* any of the foregoing (A) adds an additional covenant or agreement for the purpose of further securing the payment of the Center's obligations under the Loan Agreement that is not contrary to or inconsistent with the covenants and agreements of the Center or an Affiliate contained in the Loan Agreement, the Inducement Agreement or a Guaranty, (B) prescribes further limitations and restrictions upon the Center's or the Hospital's right to incur, issue, assume or guaranty indebtedness that are not contrary to or inconsistent with the limitations and restrictions thereon theretofore in effect, (C) surrenders any right, power or privilege reserved to or conferred upon the Center, the Hospital or a Guarantor, provided that the surrender of such right, power or privilege is not contrary to or inconsistent with the covenants and agreements of Center, the Hospital or a Guarantor contained in the Loan Agreement, the Inducement Agreement or the applicable Guaranty; *provided, however*, that if the same would adversely affect the rights of an Insurer or a Provider, no amendment, change, modification, termination or waiver shall become effective until consented to in writing by the Insurer and the Provider affected thereby, (D) limits the security for Bonds issued after the date such amendment, change, modification, termination or waiver takes effect, or (E) cures any ambiguity or defect or inconsistent provision in the Loan Agreement, the Inducement Agreement or a Guaranty or inserts such provisions clarifying matters or questions arising under the Resolution as are necessary or desirable, provided that any such modifications are not contrary to or inconsistent therewith as theretofore in effect, or to modify any of the provisions thereof in any other respect, provided that the same shall not adversely affect the interests of the Bondholders or the Insurers in any material respect.

No such amendment, change, modification, termination or waiver shall take place without the prior written consent of (a) the Holders of at least a majority in aggregate principal amount of the Bonds then Outstanding and the Insurers, or (b) in case less than all of the several Series of Bonds then Outstanding are affected by the amendment, change, modification, termination or waiver, the Holders of not less than a majority in aggregate principal amount of the Bonds of each Series so affected then Outstanding and the Insurers of such Bonds; *provided, however*, that if such amendment, change, modification, termination or waiver, will, by its terms, not take effect so long as any Bonds of any specified Series remain Outstanding, the consent of the Holders or the Insurers of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Bonds under this section.

The Loan Agreement, Inducement Agreement or a Guaranty may be amended, changed, modified or altered or any provision thereof waived in any other respect without the consent of the Holders of Outstanding Bonds or the Insurers, except that no amendment, change, modification or alteration thereof to cure any ambiguity or defect or inconsistent provision therein or to insert such provisions clarifying matters or questions arising thereunder as are necessary or shall be made unless such amendment, change, modification or waiver is not contrary to or inconsistent with the provisions contained in the Loan Agreement, the Inducement Agreement or the Guaranty and unless consented to by the Trustee.

No amendment, change, modification or termination of the Loan Agreement, the Inducement Agreement or a Guaranty or waiver or a provision thereof shall be made other than pursuant to a written instrument signed by the parties thereto. No such amendment, change, modification or waiver shall become effective unless there has been delivered to the Trustee an opinion of Bond Counsel to the effect that the same is not inconsistent with the Resolution and will not adversely affect the exclusion of interest on any Bond from gross income for purposes of federal income taxation. A copy of each such amendment, change, modification, termination or waiver shall be filed with the Trustee and a copy thereof shall be sent to each Insurer.



For the purposes of this section, the purchasers of the Bonds of a Series, whether purchasing as underwriters, for resale or otherwise, upon such purchase, may consent to an amendment, change, modification, alteration or termination permitted by this section with the same effect as a consent given by the Holder of such Bonds.

For the purposes of this section, a Series shall be deemed to be adversely affected by an amendment, change, modification or alteration of the Loan Agreement if the same adversely affects or diminishes the rights of the Holders of the Bonds of such Series in any material respect. The Trustee may in its discretion determine whether or not, in accordance with the foregoing provisions, Bonds of any particular Series would be adversely affected in any material respect by any amendment, change, modification or alteration, and any such determination shall be binding and conclusive on the Center, the Authority and all Holders of Bonds.

For the purposes of this section, the Trustee shall be entitled to rely upon an opinion of counsel, which counsel shall be satisfactory to the Trustee, with respect to whether any amendment, change, modification or alteration adversely affects the interests of any Holders or Insurers of Bonds then Outstanding in any material respect.

(Section 7.11)

### **Defeasance**

If the Authority shall pay or cause to be paid to the Holders of the Bonds of a Series the principal, Sinking Fund Installments, if any, or Redemption Price of and interest thereon, at the times and in the manner stipulated therein, in the Resolution, and in the applicable Series Resolution and Bond Series Certificate, then the pledge of the Revenues or other moneys and securities pledged to such Bonds and all other rights granted by the Resolution to such Bonds shall be discharged and satisfied. In such event, the Trustee shall, upon the request of the Authority, execute and deliver such documents to evidence such discharge and satisfaction as may be reasonably required by the Authority, and all moneys or other securities held by it pursuant to the Resolution and to the applicable Series Resolution which are not required for the payment or redemption of Bonds of such Series shall be paid or delivered by the Trustee as follows: first, to the Arbitrage Rebate Fund, the amount required to be deposited therein in accordance with the direction of an Authorized Officer of the Authority; second, to each Provider, the Provider Payments which have not been repaid, pro rata, based upon the respective Provider Payments then unpaid to each Provider; third, to the Authority the amount certified by an Authorized Officer of the Authority to be then due or past due pursuant to the Loan Agreement for fees and expenses of the Authority or pursuant to any indemnity; and, then, the balance thereof to the Center. The securities so paid or delivered shall be released from any trust, pledge, lien, encumbrance or security interest created by the Resolution or by the Loan Agreement.

Bonds for the payment or redemption of which moneys shall have been set aside and shall be held in trust by the Trustee (through deposit of moneys for such payment or redemption or otherwise) at the maturity or redemption date thereof shall be deemed to have been paid within the meaning and with the effect expressed in the preceding paragraph. All Outstanding Bonds of any Series or any maturity within a Series or a portion of a maturity within a Series shall prior to the maturity or redemption date thereof be deemed to have been paid within the meaning and with the effect expressed in the preceding paragraph if (a) in case any of such Bonds are to be redeemed on any date prior to their maturity, the Authority shall have given to the Trustee, in form satisfactory to it, irrevocable instructions to give as provided in the Resolution notice of redemption on such date of such Bonds, (b) there shall have been deposited with the Trustee either moneys in an amount which shall be sufficient, or Defeasance Securities the principal of and interest on which when due will provide moneys which, together with the moneys, if any, deposited with

the Trustee at the same time, shall be sufficient to pay when due the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, and interest due and to become due on such Bonds on and prior to the redemption date or maturity date thereof, as the case may be, (c) there has been delivered to the Trustee and the Insurer of such Bonds a letter or other written report of a firm of independent certified public accountants verifying the accuracy of the arithmetical computations which establish the adequacy of such money and Defeasance Securities deposited with the Trustee for such purpose, (d) the Trustee shall have received the written consent to such defeasance of each Provider which has given written notice to the Trustee and the Authority that amounts advanced under a Credit Facility or Liquidity Facility issued by it or the interest thereon have not been repaid to such Provider, (e) the Insurer and any Provider of a Credit Facility or Liquidity Facility for such Bonds shall have received such documents and opinions as may be required to be delivered to it pursuant to the Bond Series Certificate related to such Bonds or the agreement pursuant to which such Credit Facility or Liquidity Facility was made available and (f) in the event such Bonds are not by their terms subject to redemption within the next succeeding sixty (60) days, the Authority shall have given the Trustee, in form satisfactory to it irrevocable instructions to give, as soon as practicable, by first class mail, postage prepaid, to the Holders of said Bonds at their last known addresses appearing on the registration books, and, if directed by an Authorized Officer of the Authority, by publication, at least twice, at an interval of not less than seven (7) days between publications, in an Authorized Newspaper, a notice to the Holders of such Bonds that the deposit required by (b) above has been made with the Trustee and that such Bonds are deemed to have been paid in accordance with this section and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, of and interest on such Bonds. The Authority shall give written notice to the Trustee of its selection of the Series and maturity the payment of which shall be made in accordance with this section. The Trustee shall select the Bonds of like Series and maturity payment of which shall be made in accordance with this section in the manner provided in the Resolution. Neither the Defeasance Securities nor moneys deposited with the Trustee pursuant to the Resolution nor principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, of and interest on such Bonds; *provided, however*, that any moneys received from such principal or interest payments on such Defeasance Securities deposited with the Trustee, if not then needed for such purpose, shall, to the extent practicable, be reinvested in Defeasance Securities maturing at times and in amounts sufficient to pay when due the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, of and interest to become due on such Bonds on and prior to such redemption date or maturity date thereof, as the case may be; and *provided, further*, that moneys and Defeasance Securities may be withdrawn and used by the Authority for any purpose upon (i) the simultaneous substitution therefor of either moneys in an amount which shall be sufficient, or Defeasance Securities the principal of and interest on which when due will provide moneys which without regard to reinvestment, together with the moneys, if any, held by or deposited with the Trustee at the same time, shall be sufficient to pay when due the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, and interest due and to become due on such Bonds on and prior to the redemption date or maturity date thereof, as the case may be, and (ii) receipt by the Trustee and the Insurer of the affected Bonds of a letter or other written report of a firm of independent certified public accountants verifying the accuracy of the arithmetical computations which establish the adequacy of such moneys and Defeasance Securities for such purpose. Any income or interest earned by, or increment to, the investment of any such moneys so deposited, shall, to the extent certified by the Trustee to be in excess of the amounts required by the Resolution to pay the principal, Sinking Fund Installments, if any, or Redemption Price, if applicable, of and interest on such Bonds, as realized, be paid by the Trustee as follows: first, to the Arbitrage Rebate Fund, the amount required to be deposited therein in accordance with the direction of an Authorized Officer of the Authority; second, to each Provider, the Provider Payments which have not been repaid, pro rata, based upon the respective Provider Payments then unpaid to each Provider; third, to the Authority the amount certified by an Authorized Officer of the Authority to be then due or past due pursuant to the Loan Agreement for fees and expenses of the Authority or pursuant to any indemnity; and, then, the balance

thereof to the Center, and any such moneys so paid by the Trustee shall be released of any trust, pledge, lien, encumbrance or security interest created by the Resolution or by the Loan Agreement.

For purposes of determining whether Variable Interest Rate Bonds shall be deemed to have been paid prior to the maturity or redemption date thereof, as the case may be, by the deposit of moneys, or Defeasance Securities and moneys, if any, in accordance with the Resolution, the interest to come due on such Variable Interest Rate Bonds on or prior to the maturity date or redemption date thereof, as the case may be, shall be calculated at the Maximum Interest Rate permitted by the terms thereof; *provided, however*, that if on any date, as a result of such Variable Interest Rate Bonds having borne interest at less than such Maximum Interest Rate for any period, the total amount of moneys and Defeasance Securities on deposit with the Trustee for the payment of interest on such Variable Interest Rate Bonds is in excess of the total amount which would have been required to be deposited with the Trustee on such date in respect of such Variable Interest Rate Bonds in order to satisfy clause (b) of the preceding paragraph, the Trustee shall, if requested by the Authority, pay the amount of such excess to the Authority free and clear of any trust, pledge, lien, encumbrance or security interest created by the Resolution or by the Loan Agreement.

Option Bonds shall be deemed to have been paid in accordance with the Resolution only if, in addition to satisfying the requirements of clauses (a) and (c) above, there shall have been deposited with the Trustee moneys in an amount which shall be sufficient to pay when due the maximum amount of principal of and premium, if any, and interest on such Bonds which could become payable to the Holders of such Bonds upon the exercise of any options provided to the Holders of such Bonds; *provided, however*, that if, at the time a deposit is made with the Trustee pursuant to the Resolution, the options originally exercisable by the Holder of an Option Bond are no longer exercisable, such Bond shall not be considered an Option Bond for purposes of this paragraph. If any portion of the moneys deposited with the Trustee for the payment of the principal of and premium, if any, and interest on Option Bonds is not required for such purpose, the Trustee shall, if requested by the Authority, pay the amount of such excess to the Authority free and clear of any trust, pledge, lien, encumbrance or security interest created by the Resolution or by the Loan Agreement.

Anything in the Resolution to the contrary notwithstanding, any moneys held by the Trustee or a Paying Agent in trust for the payment and discharge of any of the Bonds of a Series or the interest thereon which remain unclaimed for one (1) year after the date when all of the Bonds of such Series have become due and payable either at their stated maturity dates or by call for earlier redemption, if such moneys were held by the Trustee or Paying Agent at such date, or for one (1) year after the date of deposit of such moneys if deposited with the Trustee or Paying Agent after such date when all of the Bonds of such Series become due and payable, shall, at the written request of the Authority, be repaid by the Trustee or Paying Agent to the Authority as its absolute property and free from trust, and the Trustee or Paying Agent shall thereupon be released and discharged and the Holders of Bonds shall look only to the Authority for payment of such Bonds; *provided, however*, that, before being required to make any such payment to the Authority, the Trustee or Paying Agent may, at the expense of the Authority cause to be published in an Authorized Newspaper a notice that such moneys remain unclaimed and that, after a date named in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after the date of publication of such notice, the balance of such moneys then unclaimed shall be returned to the Authority.

(Section 12.01)

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**SUMMARY OF CERTAIN PROVISIONS OF THE INTERCREDITOR AGREEMENT**

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## **SUMMARY OF CERTAIN PROVISIONS OF THE INTERCREDITOR AGREEMENT**

The following is a summary of certain provisions of the Intercreditor Agreement. The summary does not purport to be complete and reference is made to the Intercreditor Agreement for a full and complete statement of its provisions. Defined terms used in this Appendix have the meanings ascribed to them in Appendix A.

### **Priority of Liens and Indebtedness**

All Liens on the Shared Collateral made and given by the Center, a Related Corporation or the Hospital to the Authority, the 2003 Resolution Trustee, the 2011 Taxable Indenture Trustee, the 2012 Taxable Indenture Trustee or the 2016 Purchaser pursuant to the 2003 Loan Agreement, the Taxable Indentures, the 2016 Bond Documents or the Inducement Agreements, and the indebtedness secured by such Liens, shall be of equal priority. None of the Authority, the 2003 Resolution Trustee, the 2011 Taxable Indenture Trustee, the 2012 Taxable Indenture Trustee or the 2016 Purchaser shall have a priority of payment over or be subordinate to either of the others with respect to payments under the 2003 Loan Agreement, the 2016 Bond Documents, the Resolutions or the Taxable Indentures, except as expressly provided in the Intercreditor Agreement and in the 2003 Loan Agreement, the 2016 Bond Documents, the Resolutions and the Taxable Indentures. The priorities specified above shall be applicable irrespective of the time or order in which Loans are made or Bonds are issued, the time or order of attachment or perfection of the security interests or other interests referred to therein and in the Intercreditor Agreement, the time or order of recording or filing of mortgages or financing statements or knowledge by any of the parties hereto of the making or giving of any pledge, security interest, mortgage or other interest referred to in the Intercreditor Agreement.

*(Section 2)*

### **Foreclosure**

Any party to the Intercreditor Agreement may, without the consent of the other parties to the Intercreditor Agreement, commence an action or proceeding to Foreclose, and Foreclose, the Lien on any of the Shared Collateral whenever, and to the extent, such party is permitted to do so under the 2003 Loan Agreement and 2003 Resolution, the 2016 Bond Documents, the 2011 Taxable Indenture or the 2012 Taxable Indenture. Each other party to the Intercreditor Agreement may, if it is then entitled to independently commence an action or proceeding to Foreclose on the Shared Collateral, join in any action or proceeding commenced by another party to the Intercreditor Agreement to Foreclose on any of the Shared Collateral.

*(Section 3)*

### **Other Actions**

The Authority and, from and after the date a Collateral Assignment is made and is continuing, the 2003 Resolution Trustee, the 2011 Taxable Indenture Trustee, the 2012 Taxable Indenture Trustee and the 2016 Purchaser shall each have the right, without the consent of any other party to the Intercreditor Agreement, to commence an action or proceeding to enforce any of their respective rights under, to compel compliance with or enjoin a breach of any covenant or agreement of the Center, a Guarantor or the Hospital contained in:

(i) in the case of the 2003 Resolution Trustee, the 2003 Loan Agreement, the 2003 Guaranty, the 2003 Inducement Agreement and any Collateral Document related thereto;

(ii) in the case of the Authority, any of the foregoing documents described in (i) above;

(iii) in the case of the 2011 Taxable Indenture Trustee, the 2011 Taxable Indenture, the 2011 Guaranty, the 2011 Inducement Agreement and any Collateral Document related thereto;

(iv) in the case of the 2012 Taxable Indenture Trustee, the 2012 Taxable Indenture, the 2012 Guaranty, the 2012 Inducement Agreement and any Collateral Document related thereto; and;

(v) in the case of the 2016 Purchaser, the 2016 Bond Documents and any Collateral Document related thereto;

***provided, however,*** that, from and after the date a Collateral Assignment is made and while it is continuing, the Authority shall not commence any such action or proceeding unless the same is to enforce the rights reserved to it upon such Collateral Assignment.

*(Section 4)*

#### **Notice of Default and Actions**

Each party to the Intercreditor Agreement agrees to give each other party to the Intercreditor Agreement prompt written notice of the occurrence of a Funding Event, an Assignment Event (as such term is defined in the respective Resolution) or an Event of Default known to it under any of the Resolutions, the 2003 Loan Agreement, a 2016 Bond Document, the Taxable Indentures, the Inducement Agreements or the Guaranties to which it is a party, including by assignment, or made for its benefit or by which it is benefited. In addition, each party to the Intercreditor Agreement agrees to give each other party to the Intercreditor Agreement not less than fifteen (15) days prior notice of its intention to commence any action or proceeding based on an Event of Default under any of the 2003 Loan Agreement, a 2016 Bond Document, the Taxable Indentures, the Inducement Agreements, the Guaranties or the Collateral Documents. The failure of a party to give any such notice shall not nullify or otherwise adversely affect or impair the validity of any notice or declaration of default under any of the 2003 Loan Agreement, a 2016 Bond Document, the Taxable Indentures, the Inducement Agreements, the Guaranties or the Collateral Documents given by such party to the Center, the Hospital or a Guarantor.

*(Section 5)*

#### **Cash Proceeds**

Any cash proceeds realized by any of the parties to the Intercreditor Agreement as a consequence of the sale of, collection out of or other realization upon all or any part of the Shared Collateral or otherwise, including receipt of any payment of or on account of indebtedness under the 2003 Loan Agreement, the 2016 Bond Agreement or the Taxable Indentures, shall be held for the equal benefit of all of the parties to the Intercreditor Agreement and, as soon as reasonably practicable, shall be applied to the costs and expenses incurred in connection with the collection thereof and then the balance remaining shall be applied:



First, to payment to the 2003 Resolution Trustee, the 2011 Taxable Indenture Trustee, the 2012 Taxable Indenture Trustee and the 2016 Purchaser, *pro rata* based on the unpaid principal amount of the indebtedness under the 2003 Loan Agreement, the 2016 Bond and the Taxable Indentures, but not in excess of the principal of and interest on such indebtedness then due and unpaid;

Second, to payment to the Authority, the 2003 Resolution Trustee, the 2011 Taxable Indenture Trustee, the 2012 Taxable Indenture Trustee and the 2016 Purchaser, *pro rata*, based on, but not in excess of, the fees and expenses of the Authority, the 2003 Resolution Trustee, the 2011 Taxable Indenture Trustee, the 2012 Taxable Indenture Trustee and the 2016 Purchaser then due and unpaid; and

Third, to payment to the Authority, the 2003 Resolution Trustee, the 2011 Taxable Indenture Trustee, the 2012 Taxable Indenture Trustee and the 2016 Purchaser, *pro rata*, based on, but not in excess of, all other amounts owing under the 2003 Loan Agreement, the 2016 Bond Documents, the Resolutions and the Taxable Indentures then due and unpaid.

Any surplus of cash proceeds remaining after payment in full of all of the Center's obligations under the 2003 Loan Agreement, the 2016 Bond Documents, the Resolutions and the Taxable Indentures shall be paid over to the Center or to whomever may be lawfully entitled to receive such surplus.

The Authority, the 2003 Resolution Trustee, the 2011 Taxable Indenture Trustee, the 2012 Taxable Indenture Trustee and the 2016 Purchaser agree to appoint a security agent at the expense of the Center (which may be The Bank of New York Mellon) within 10 days of the occurrence of a Funding Event and such security agent will hold the cash proceeds described in this Section on behalf of, and as agent for, and in order to perfect a security interest in favor of, the parties to the Intercreditor Agreement).

(Section 6)

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**FORMS OF APPROVING OPINIONS OF CO-BOND COUNSEL**

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\_\_\_\_\_, 2019

Dormitory Authority of the State of New York  
515 Broadway  
Albany, New York 12207

Re: \$284,545,000 Dormitory Authority of the State of New York  
Memorial Sloan Kettering Cancer Center Revenue Bonds, 2019  
Series 1

---

Ladies and Gentlemen:

We have acted as co-bond counsel to the Dormitory Authority of the State of New York (the “Authority”) in connection with its issuance of \$284,545,000 aggregate principal amount of its Memorial Sloan Kettering Cancer Center Revenue Bonds, 2019 Series 1 (the “2019 Series 1 Bonds”), issued pursuant to the provisions of the Dormitory Authority Act, as amended, constituting Chapter 524 of the Laws of 1944 of New York, as amended (constituting Title 4 of Article 8 of the New York Public Authorities Law), including, without limitation, as amended by the Health Care Financing Consolidation Act, constituting Chapter 83 of the Laws of 1995 of New York (constituting Title 4-B of Article 8 of the New York Public Authorities Law), and the Authority’s Memorial Sloan Kettering Cancer Center Revenue Bond Resolution, adopted February 26, 2003, as supplemented and amended (the “Resolution”), the Memorial Sloan Kettering Cancer Center 2019 Series 1 Resolution Authorizing Up To \$345,000,000 2019 Series 1 Bonds, adopted September 11, 2019, and the Bond Series Certificate executed and delivered concurrently with the issuance of the 2019 Series 1 Bonds related thereto (together, the “Series Resolution”). The Resolution and the Series Resolution are herein collectively referred to as the “Resolutions.” Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Resolutions.

The 2019 Series 1 Bonds are being issued to finance a loan by the Authority to Memorial Sloan Kettering Cancer Center (the “Center”). The Authority and the Center have entered into a Loan Agreement, dated as of February 26, 2003, as amended (the “Loan Agreement”), by which the Center is required to make payments sufficient to pay the principal and Redemption Price of and interest on Outstanding Bonds, including the 2019 Series 1 Bonds, as well as the Authority’s annual administrative expenditures and costs. All amounts payable under the Loan Agreement which are required to be paid to the Trustee under the Resolution for payment of the principal or Redemption Price of and interest on the Bonds have been pledged by the Authority to the Trustee for the benefit of the Owners of the Bonds, including the Series 2019 Bonds.

Sloan Kettering Institute for Cancer Research (the “Institute”) and S.K.I. Realty, Inc. (“S.K.I.”) have each entered into a guaranty (the “Guaranties”) in favor of the Authority pursuant to which they jointly and severally guaranty payment of the Center’s obligations under the Loan Agreement. Memorial Hospital for

Cancer and Allied Diseases (the “Hospital”) has entered into an Inducement Agreement (the “Inducement Agreement”) with the Authority pursuant to which the Hospital has agreed to certain limitations on its ability to incur debt or liens on its assets and agrees that, under certain circumstances, it will pledge certain of its assets to secure the Center’s obligations under the Loan Agreement.

In such connection, we have reviewed the Resolutions, the Loan Agreement, the Guaranties, the Inducement Agreement, the Tax Certificate and Agreement dated as of the date hereof (the “Tax Certificate”) between the Authority and the Institutions (as hereinafter defined), opinions of counsel to the Authority, the Trustee and the Institutions, certificates of the Authority, the Trustee, the Institutions, and others, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein.

We have relied on the opinion of Paul, Weiss, Rifkind, Wharton & Garrison LLP, special counsel to the Center, the Hospital, the Institute, S.K.I. and Louis V. Gerstner, Jr. Graduate School of Biomedical Sciences, Memorial Sloan Kettering Cancer Center (collectively, the “Institutions”) regarding, among other matters, the current qualifications of the Institutions as organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986 (the “Code”). We note that such opinion is subject to a number of qualifications and limitations. We have also relied upon representations of the Institutions regarding the use of the facilities financed with the proceeds of the Bonds in activities that are not considered unrelated trade or business activities of the Institutions within the meaning of Section 513 of the Code. We note that the opinion of counsel to the Institutions does not address Section 513 of the Code. Failure of the Institutions to be organized and operated in accordance with the Internal Revenue Service’s requirements for the maintenance of their status as organizations described in Section 501(c)(3) of the Code, or use of the bond-financed facilities in activities that are considered unrelated trade or business activities of the Institutions within the meaning of Section 513 of the Code, may result in interest on 2019 Series 1 Bonds being included in gross income for federal income tax purposes, possibly from the date of issuance of the 2019 Series 1 Bonds.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the date hereof. Accordingly, this letter speaks only as of its date and is not intended to, and may not, be relied upon or otherwise used in connection with any such actions, events or matters. Our engagement with respect to the 2019 Series 1 Bonds has concluded with their issuance, and we disclaim any obligation to update this letter. We have assumed the genuineness of all documents and signatures presented to us (whether as originals or as copies) and the due and legal execution and delivery thereof by, and validity against, any parties other than the Authority. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents and of the legal conclusions contained in the opinions, referred to above. Furthermore, we have assumed compliance with all covenants and agreements contained in the Resolutions, the Loan Agreement, the Guaranties, the Inducement Agreement and the Tax Certificate, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause interest on the 2019 Series 1 Bonds to be included in gross income for federal income tax purposes. We call attention to the fact that the rights and obligations under the 2019 Series 1 Bonds, the Resolutions, the Loan Agreement, the Guaranties, the Inducement Agreement and the Tax Certificate and their enforceability may be subject to bankruptcy, insolvency, receivership, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors’ rights, to the application of equitable principles and to the exercise of judicial discretion in appropriate cases. We express no opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute a penalty), right of set-off, arbitration, choice of law, choice of forum, choice of venue,

non-exclusivity of remedies, waiver or severability provisions contained in the foregoing documents, nor do we express any opinion with respect to the state or quality of title to or interest in any of the real or personal property described in or subject to the lien of the Resolutions, the Loan Agreement, the Guaranties or the Inducement Agreement or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such property. Our services did not include financial or other non-legal advice. Finally, we undertake no responsibility for the accuracy, completeness or fairness of the Official Statement, dated October 8, 2019, as supplemented on October 10, 2019 (the “Official Statement”) or other offering material relating to the 2019 Series 1 Bonds and express no opinion with respect thereto.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The Authority has been duly created and is validly existing as a body corporate and politic constituting a public benefit corporation of the State of New York.

2. The 2019 Series 1 Bonds have been duly and validly authorized to be issued and constitute the valid and binding special obligations of the Authority enforceable in accordance with their terms and the terms of the Resolutions, will be payable solely from the sources provided therefor in the Resolutions and will be entitled to the benefit of the Resolutions and the Act.

3. The Resolutions are in full force and effect, have been duly adopted by, and constitute the valid and binding obligations of, the Authority. The Resolutions create a valid pledge, to secure the payment of the principal of and interest on the 2019 Series 1 Bonds, of the Revenues and any other amounts (including the proceeds of the sale of the 2019 Series 1 Bonds) held by the Trustee in any fund or account established pursuant to the Resolutions, except the Arbitrage Rebate Fund and the Bonds Purchase and Remarketing Fund, subject to the provisions of the Resolutions permitting the application thereof for the purposes and on the terms and conditions set forth in the Resolutions.

4. The Loan Agreement and the Inducement Agreement have been duly executed and delivered by the Authority and, assuming due execution and delivery thereof by the Center, constitute the valid and binding agreements of the Authority in accordance with their terms.

5. Interest on the 2019 Series 1 Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Code. Interest on the 2019 Series 1 Bonds is not a specific preference item for purposes of the federal alternative minimum tax. Interest on the 2019 Series 1 Bonds is exempt from personal income taxes imposed by the State of New York and any political subdivision thereof (including The City of New York). We express no opinion regarding other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the 2019 Series 1 Bonds.

Very truly yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP

\_\_\_\_\_, 2019

Dormitory Authority of the State of New York  
515 Broadway  
Albany, New York 12207

Re: \$284,545,000 Dormitory Authority of the State of New York  
Memorial Sloan Kettering Cancer Center Revenue Bonds, 2019  
Series 1

---

Ladies and Gentlemen:

We have acted as co-bond counsel to the Dormitory Authority of the State of New York (the “Authority”) in connection with its issuance of \$284,545,000 aggregate principal amount of its Memorial Sloan Kettering Cancer Center Revenue Bonds, 2019 Series 1 (the “2019 Series 1 Bonds”), issued pursuant to the provisions of the Dormitory Authority Act, as amended, constituting Chapter 524 of the Laws of 1944 of New York, as amended (constituting Title 4 of Article 8 of the New York Public Authorities Law), including, without limitation, as amended by the Health Care Financing Consolidation Act, constituting Chapter 83 of the Laws of 1995 of New York (constituting Title 4-B of Article 8 of the New York Public Authorities Law), and the Authority’s Memorial Sloan Kettering Cancer Center Revenue Bond Resolution, adopted February 26, 2003, as supplemented and amended (the “Resolution”), the Memorial Sloan Kettering Cancer Center 2019 Series 1 Resolution Authorizing Up To \$345,000,000 2019 Series 1 Bonds, adopted September 11, 2019, and the Bond Series Certificate executed and delivered concurrently with the issuance of the 2019 Series 1 Bonds related thereto (together, the “Series Resolution”). The Resolution and the Series Resolution are herein collectively referred to as the “Resolutions.” Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Resolutions.

The 2019 Series 1 Bonds are being issued to finance a loan by the Authority to Memorial Sloan Kettering Cancer Center (the “Center”). The Authority and the Center have entered into a Loan Agreement, dated as of February 26, 2003, as amended (the “Loan Agreement”), by which the Center is required to make payments sufficient to pay the principal and Redemption Price of and interest on Outstanding Bonds, including the 2019 Series 1 Bonds, as well as the Authority’s annual administrative expenditures and costs. All amounts payable under the Loan Agreement which are required to be paid to the Trustee under the Resolution for payment of the principal or Redemption



Price of and interest on the Bonds have been pledged by the Authority to the Trustee for the benefit of the Owners of the Bonds, including the Series 2019 Bonds.

Sloan Kettering Institute for Cancer Research (the “Institute”) and S.K.I. Realty, Inc. (“S.K.I.”) have each entered into a guaranty (the “Guaranties”) in favor of the Authority pursuant to which they jointly and severally guaranty payment of the Center’s obligations under the Loan Agreement. Memorial Hospital for Cancer and Allied Diseases (the “Hospital”) has entered into an Inducement Agreement (the “Inducement Agreement”) with the Authority pursuant to which the Hospital has agreed to certain limitations on its ability to incur debt or liens on its assets and agrees that, under certain circumstances, it will pledge certain of its assets to secure the Center’s obligations under the Loan Agreement.

In such connection, we have reviewed the Resolutions, the Loan Agreement, the Guaranties, the Inducement Agreement, the Tax Certificate and Agreement dated as of the date hereof (the “Tax Certificate”) between the Authority and the Institutions (as hereinafter defined), opinions of counsel to the Authority, the Trustee and the Institutions, certificates of the Authority, the Trustee, the Institutions, and others, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the date hereof. Accordingly, this letter speaks only as of its date and is not intended to, and may not, be relied upon or otherwise used in connection with any such actions, events or matters. Our engagement with respect to the 2019 Series 1 Bonds has concluded with their issuance, and we disclaim any obligation to update this letter. We have assumed the genuineness of all documents and signatures presented to us (whether as originals or as copies) and the due and legal execution and delivery thereof by, and validity against, any parties other than the Authority. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents and of the legal conclusions contained in the opinions, referred to above. Furthermore, we have assumed compliance with all covenants and agreements contained in the Resolutions, the Loan Agreement, the Guaranties, the Inducement Agreement and the Tax Certificate, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause interest on the 2019 Series 1 Bonds to be included in gross income for federal income tax purposes. We call attention to the fact that the rights and obligations under the 2019 Series 1 Bonds, the Resolutions, the Loan Agreement, the Guaranties, the Inducement Agreement and the Tax Certificate and their enforceability may be subject to bankruptcy, insolvency, receivership, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors’ rights, to the application of equitable principles and to the exercise of judicial discretion in appropriate cases. We express no opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute a penalty), right of set-off, arbitration, choice of law, choice of forum, choice of venue, non-exclusivity of remedies, waiver or severability provisions contained in the foregoing documents, nor do we express any opinion with respect to the state or quality of title to or interest in any of the real or personal property described in or subject to the lien of the Resolutions,

the Loan Agreement, the Guaranties or the Inducement Agreement or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such property. Our services did not include financial or other non-legal advice. Finally, we undertake no responsibility for the accuracy, completeness or fairness of the Official Statement, dated October 8, 2019, as supplemented on October 10, 2019 (the “Official Statement”) or other offering material relating to the 2019 Series 1 Bonds and express no opinion with respect thereto.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The Authority has been duly created and is validly existing as a body corporate and politic constituting a public benefit corporation of the State of New York.

2. The 2019 Series 1 Bonds have been duly and validly authorized to be issued and constitute the valid and binding special obligations of the Authority enforceable in accordance with their terms and the terms of the Resolutions, will be payable solely from the sources provided therefor in the Resolutions and will be entitled to the benefit of the Resolutions and the Act.

3. The Resolutions are in full force and effect, have been duly adopted by, and constitute the valid and binding obligations of, the Authority. The Resolutions create a valid pledge, to secure the payment of the principal of and interest on the 2019 Series 1 Bonds, of the Revenues and any other amounts (including the proceeds of the sale of the 2019 Series 1 Bonds) held by the Trustee in any fund or account established pursuant to the Resolutions, except the Arbitrage Rebate Fund and the Bonds Purchase and Remarketing Fund, subject to the provisions of the Resolutions permitting the application thereof for the purposes and on the terms and conditions set forth in the Resolutions.

4. The Loan Agreement and the Inducement Agreement have been duly executed and delivered by the Authority and, assuming due execution and delivery thereof by the Center, constitute the valid and binding agreements of the Authority in accordance with their terms.

Very truly yours,

MAROUS LAW GROUP, P.C.

**FORM OF AGREEMENT TO PROVIDE CONTINUING DISCLOSURE**

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**FORM OF AGREEMENT TO PROVIDE CONTINUING DISCLOSURE**

**DORMITORY AUTHORITY OF THE STATE OF NEW YORK  
MEMORIAL SLOAN KETTERING CANCER CENTER REVENUE BONDS,  
2019 SERIES 1**

This **AGREEMENT TO PROVIDE CONTINUING DISCLOSURE** (the “Disclosure Agreement”), dated as of November 1, 2019, is executed and delivered by Memorial Sloan Kettering Cancer Center (the “Obligated Person”), The Bank of New York Mellon, as Trustee (the “Trustee”) and Digital Assurance Certification, L.L.C. (“DAC”), as exclusive Disclosure Dissemination Agent (the “Disclosure Dissemination Agent”) for the benefit of the Holders (hereinafter defined) of the Bonds (hereinafter defined) issued by the Dormitory Authority of the State of New York (the “Issuer” or “DASNY”) and in order to provide certain continuing disclosure with respect to the Bonds in accordance with Rule 15c2-12 of the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time (the “Rule”).

The services provided under this Disclosure Agreement solely relate to the execution of instructions received from the parties hereto through use of the DAC system and are not intended to constitute “advice” within the meaning of the United States Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act”). DAC is not obligated hereunder to provide any advice or recommendation to the Issuer, the Obligated Person or anyone on the Issuer’s or the Obligated Person’s behalf regarding the “issuance of municipal securities” or any “municipal financial product” as defined in the Act and nothing in this Disclosure Agreement shall be interpreted to the contrary.

**SECTION 1. Definitions.** Capitalized terms not otherwise defined in this Disclosure Agreement shall have the meaning assigned in the Rule or, to the extent not in conflict with the Rule, in the Resolution (hereinafter defined). The capitalized terms shall have the following meanings:

“Annual Filing Date” means the date, set in Sections 2(a) and 2(f) of this Disclosure Agreement, by which the Annual Report is to be filed with the MSRB.

“Annual Financial Information” means annual financial information as such term is used in paragraph (b)(5)(i) of the Rule and specified in Section 3(a) of this Disclosure Agreement.

“Annual Report” means an Annual Report described in and consistent with Section 3 of this Disclosure Agreement.

“Audited Financial Statements” means the financial statements prepared in accordance with generally accepted accounting principles, as such term is used in paragraph (b)(5)(i) of the Rule and specified in Section 3(ii) of this Disclosure Agreement.

“Bonds” means the bonds as listed on the attached Exhibit A, with the 9-digit CUSIP numbers relating thereto.

“Certification” means a written certification of compliance signed by the Disclosure Representative stating that the Annual Report, Audited Financial Statements, Voluntary Financial Disclosure, Notice Event notice, Failure to File Event notice or Voluntary Event Disclosure delivered to the Disclosure Dissemination Agent is the Annual Report, Audited Financial Statements, Voluntary Financial Disclosure, Notice Event notice, Failure to File Event notice or Voluntary Event Disclosure required to be or voluntarily submitted to the MSRB under this Disclosure Agreement. A Certification shall accompany each such document submitted to the Disclosure Dissemination Agent by the Obligated

Person and include the full name of the Bonds and the 9-digit CUSIP numbers for all Bonds to which the document applies.

“Disclosure Dissemination Agent” means Digital Assurance Certification, L.L.C., acting in its capacity as Disclosure Dissemination Agent hereunder, or any successor Disclosure Dissemination Agent designated in writing by the Issuer pursuant to Section 9 hereof.

“Disclosure Representative” means the chief financial officer of the Obligated Person or his or her designee, or such other person as the Obligated Person shall designate in writing to the Disclosure Dissemination Agent from time to time as the person responsible for providing Information to the Disclosure Dissemination Agent.

“Failure to File Event” means the Obligated Person’s failure to file an Annual Report on or before the Annual Filing Date.

“Financial Obligation” means a (i) a debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term Financial Obligation shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule.

“Fiscal Year” means the 12-month period beginning on January 1 and ending on December 31 or any other 12-month period selected by the Obligated Person as the Fiscal Year of the Obligated Person for financial reporting purposes.

“Force Majeure Event” means: (i) acts of God, war or terrorist action; (ii) failure or shutdown of the Electronic Municipal Market Access System maintained by the MSRB; or (iii) to the extent beyond the Disclosure Dissemination Agent’s reasonable control, interruptions in telecommunications or utilities services, failure, malfunction or error of any telecommunications, computer or other electrical, mechanical or technological application, service or system, computer virus, interruptions in Internet service or telephone service (including due to a virus, electrical delivery problem or similar occurrence) that affect Internet users generally, or in the local area in which the Disclosure Dissemination Agent or the MSRB is located, or acts of any government, regulatory or any other competent authority the effect of which is to prohibit the Disclosure Dissemination Agent from performance of its obligations under this Disclosure Agreement.

“Holder” means any person (a) having the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries) or (b) treated as the owner of any Bonds for federal income tax purposes.

“Information” means collectively, the Annual Reports, the Audited Financial Statements (if any), the Notice Event notices, the Failure to File Event notices, the Voluntary Event Disclosures and the Voluntary Financial Disclosures.

“Issuer” means the Dormitory Authority of the State of New York, as conduit issuer of the Bonds.

“MSRB” means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the United States Securities Exchange Act of 1934, as amended.

“Notice Event” means any of the events enumerated in paragraph (b)(5)(i)(C) of the Rule and listed in Section 4(a) of this Disclosure Agreement.

“Obligated Person” means any person who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all, or part of the obligations on the Bonds (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities), as shown on Exhibit A.

“Official Statement” means that Official Statement prepared by the Issuer and the Obligated Person in connection with the Bonds, as listed on Exhibit A.

“Resolution” means DASNY’s bond resolution(s) pursuant to which the Bonds were issued.

“Trustee” means The Bank of New York Mellon and its successors and assigns.

“Voluntary Event Disclosure” means information of the category specified in any of subsections (e)(vi)(1) through (e)(vi)(11) of Section 2 of this Disclosure Agreement that is accompanied by a Certification of the Disclosure Representative containing the information prescribed by Section 7(a) of this Disclosure Agreement.

“Voluntary Financial Disclosure” means information of the category specified in any of subsections (e)(vii)(1) through (e)(vii)(9) of Section 2 of this Disclosure Agreement that is accompanied by a Certification of the Disclosure Representative containing the information prescribed by Section 7(b) of this Disclosure Agreement.

## SECTION 2. Provision of Annual Reports.

(a) The Obligated Person shall provide, annually, an electronic copy of the Annual Report and Certification to the Disclosure Dissemination Agent, together with a copy for the Trustee, not later than 165 days after the end of each fiscal year of the Obligated Person’s Fiscal Year (or any time thereafter following a Failure to File Event as described in this Section), commencing with the Fiscal Year ending December 31, 2019, such date and each anniversary thereof, the “Annual Filing Date.” Promptly upon receipt of an electronic copy of the Annual Report and the Certification, the Disclosure Dissemination Agent shall provide the Annual Report to the MSRB through its Electronic Municipal Market Access (“EMMA”) System for municipal securities disclosures. The Annual Financial Information and Audited Financial Statements may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 3 of this Disclosure Agreement.

(b) If on the fifteenth (15th) day prior to the Annual Filing Date, the Disclosure Dissemination Agent has not received a copy of the Annual Report and Certification, the Disclosure Dissemination Agent shall contact the Disclosure Representative by telephone and in writing (which may be by e-mail), to remind the Obligated Person of its undertaking to provide the Annual Report pursuant to Section 2(a). Upon such reminder, the Obligated Person shall, not later than two (2) business days prior to the Annual Filing Date, either: (i) provide the Disclosure Dissemination Agent with an electronic copy of the Annual Financial Information, Audited Financial Statements, if available, and unaudited financial statements, if Audited Financial Statements are not available in accordance with subsection (d) below and the Certification, or (ii) instruct the Disclosure Dissemination Agent in writing, with a copy to the Issuer and the Trustee, that a Failure to File Event may occur, state the date by which the Annual Financial Information and Audited Financial Statements for such year are expected to be provided, and, at the election of the Obligated Person, instruct the Disclosure Dissemination Agent to send a notice to the MSRB in substantially the form attached as Exhibit B on the Annual Filing Date, accompanied by a cover sheet completed by the Disclosure Dissemination Agent in the form set forth in Exhibit C-1.

(c) If the Disclosure Dissemination Agent has not received an Annual Report and Certification by 6:00 p.m. Eastern time on the Annual Filing Date (or, if such Annual Filing Date falls on a Saturday, Sunday or holiday, then the first business day thereafter) for the Annual Report, a Failure to File Event shall have occurred and the Obligated Person hereby irrevocably directs the Disclosure Dissemination Agent to immediately send a notice to the MSRB in substantially the form attached as Exhibit B without reference to the anticipated filing date for the Annual Report, accompanied by a cover sheet completed by the Disclosure Dissemination Agent in the form set forth in Exhibit C-1.

(d) If Audited Financial Statements of the Obligated Person are prepared but not available prior to the Annual Filing Date, the Obligated Person shall provide unaudited financial statements for filing prior to the Annual Filing Date in accordance with Section 3(b) hereof and, when the Audited Financial Statements are available, provide in a timely manner an electronic copy to the Disclosure Dissemination Agent, accompanied by a Certification, together with a copy each for the Issuer and the Trustee, for filing with the MSRB.

(e) The Disclosure Dissemination Agent shall:

- (i) verify the filing specifications of the MSRB each year prior to the Annual Filing Date;
- (ii) upon receipt, promptly file each Annual Report received under Section 2(a) and 2(b) with the MSRB;
- (iii) upon receipt, promptly file each Audited Financial Statement received under Section 2(d) with the MSRB;
- (iv) upon receipt, promptly file the text of each Notice Event received under Sections 4(a) and 4(b)(ii) with the MSRB, identifying the Notice Event as instructed pursuant to Section 4(a) or 4(b)(ii) (being any of the categories set forth below) when filing pursuant to the Section 4(c) of this Disclosure Agreement:
  - 1. Principal and interest payment delinquencies;
  - 2. Non-Payment related defaults, if material;
  - 3. Unscheduled draws on debt service reserves reflecting financial difficulties;
  - 4. Unscheduled draws on credit enhancements reflecting financial difficulties;
  - 5. Substitution of credit or liquidity providers, or their failure to perform;
  - 6. Adverse tax opinions, IRS notices or events affecting the tax status of the securities;
  - 7. Modifications to rights of securities holders, if material;
  - 8. Bond calls, if material;



9. Defeasances;
  10. Release, substitution, or sale of property securing repayment of the securities, if material;
  11. Ratings changes;
  12. Tender offers;
  13. Bankruptcy, insolvency, receivership or similar event of the Obligated Person;
  14. Merger, consolidation, or acquisition of the Obligated Person, if material;
  15. Appointment of a successor or additional trustee, or the change of name of a trustee, if material;
  16. Incurrence of a Financial Obligation of the Obligated Person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Obligated Person, any of which affect security holders, if material; and
  17. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Obligated Person, any of which reflect financial difficulties.
- (v) upon receipt (or irrevocable direction pursuant to Section 2(c) of this Disclosure Agreement, as applicable), promptly file a completed copy of Exhibit B to this Disclosure Agreement with the MSRB, identifying the filing as “Failure to provide annual financial information as required” when filing pursuant to Section 2(b)(ii) or Section 2(c) of this Disclosure Agreement;
- (vi) upon receipt, promptly file the text of each Voluntary Event Disclosure received under Section 7(a) with the MSRB, identifying the Voluntary Event Disclosure as instructed by the Issuer or the Obligated Person pursuant to Section 7(a) (being any of the categories set forth below) when filing pursuant to Section 7(a) of this Disclosure Agreement:
1. “amendment to continuing disclosure undertaking;”
  2. “change in obligated person;”
  3. “notice to investors pursuant to bond documents;”
  4. “certain communications from the Internal Revenue Service;”
  5. “secondary market purchases;”
  6. “bid for auction rate or other securities;”

7. “capital or other financing plan;”
  8. “litigation/enforcement action;”
  9. “change of tender agent, remarketing agent, or other on-going party;”
  10. “derivative or other similar transaction;” and
  11. “other event-based disclosures;”
- (vii) upon receipt, promptly file the text of each Voluntary Financial Disclosure received under Section 7(b) with the MSRB, identifying the Voluntary Financial Disclosure as instructed by the Obligated Person pursuant to Section 7(b) (being any of the categories set forth below) when filing pursuant to Section 7(b) of this Disclosure Agreement:
1. “quarterly/monthly financial information;”
  2. “change in fiscal year/timing of annual disclosure;”
  3. “change in accounting standard;”
  4. “interim/additional financial information/operating data;”
  5. “budget;”
  6. “investment/debt/financial policy;”
  7. “information provided to rating agency, credit/liquidity provider or other third party;”
  8. “consultant reports;” and
  9. “other financial/operating data;”
- (viii) provide the Obligated Person and the Issuer evidence of the filings of each of the above when made, which shall be by means of the DAC system, for so long as DAC is the Disclosure Dissemination Agent under this Disclosure Agreement.

(f) The Obligated Person may adjust the Annual Filing Date upon change of its fiscal year by providing written notice of such change and the new Annual Filing Date to the Disclosure Dissemination Agent, the Issuer, the Trustee and the MSRB, provided that the period between the existing Annual Filing Date and new Annual Filing Date shall not exceed one year.

(g) Any Information received by the Disclosure Dissemination Agent before 6:00 p.m. Eastern time on any business day that it is required to file with the MSRB pursuant to the terms of this Disclosure Agreement and that is accompanied by a Certification and all other information required by the terms of this Disclosure Agreement will be filed by the Disclosure Dissemination Agent with the MSRB no later than 11:59 p.m. Eastern time on the same business day; provided, however, the

Disclosure Dissemination Agent shall have no liability for any delay in filing with the MSRB if such delay is caused by a Force Majeure Event provided that the Disclosure Dissemination Agent uses reasonable efforts to make any such filing as soon as possible.

SECTION 3. Content of Annual Reports.

- (i) Each Annual Report shall contain Annual Financial Information with respect to the Obligated Person which shall include operating data and financial information of the Institution, Sloan Kettering Institute for Cancer Research, S.K.I. Realty Inc. and Memorial Hospital for Cancer and Allied Diseases (the “Related Corporations”) which includes (1) utilization statistics of the type included in the Official Statement with respect to the Bonds under “PART 6 — MEMORIAL SLOAN KETTERING CANCER CENTER — Utilization”, (2) fundraising data of the type included in the Official Statement with respect to the Bonds under “PART 6 — MEMORIAL SLOAN KETTERING CANCER CENTER — Fund Raising and Development”, (3) days cash on hand and investments of the type included in the Official Statement with respect to the Bonds under “PART 6 — MEMORIAL SLOAN KETTERING CANCER CENTER — Liquidity Information”, (4) information on investments of the type included in the Official Statement under “PART 6 — MEMORIAL SLOAN KETTERING CANCER CENTER — Liquidity Information”, (5) information on the outstanding indebtedness of the Institution of the type included in the Official Statement under “PART 6 — MEMORIAL SLOAN KETTERING CANCER CENTER — Outstanding Indebtedness”, (6) a summary of annual revenues of and expenses of the type included in the Official Statement under “PART 6 — MEMORIAL SLOAN KETTERING CANCER CENTER — Financial Information”, (7) information on patient statistics and payor revenues and a comparison of annual revenues and expenses of the type included in the Official Statement under “PART 6 — MEMORIAL SLOAN KETTERING CANCER CENTER — Management’s Discussion and Analysis of Combined Statements of Activities Without Donor Restrictions”, except to the extent such information is included in the audited financial statements of the Institution; together with a narrative explanation as may be necessary to avoid misunderstanding regarding the presentation of such Annual Financial Information concerning the Obligated Person; and
- (ii) Each Annual Report shall also contain Audited Financial Statements prepared in accordance with generally accepted accounting principles (“GAAP”) or alternate accounting principles as described in the Official Statement will be included in the Annual Report. If Audited Financial Statements are not available, the Obligated Person shall be in compliance under this Disclosure Agreement if unaudited financial statements, prepared in accordance with GAAP or alternate accounting principles as described in the Official Statement, are included in the Annual Report. In such event, Audited Financial Statements (if any) shall be provided pursuant to Section 2(d).
- (iii) Any or all of the items listed above may be included by specific reference from other documents, including official statements of debt issues with respect to which the Obligated Person is an “obligated person” (as defined by the Rule), which have been previously filed with the Securities and Exchange Commission or are available from the MSRB Internet Website. If the document incorporated

by reference is a Final Official Statement, it must be available from the MSRB. The Obligated Person will clearly identify each such document so incorporated by reference.

- (iv) Any Annual Financial Information containing modified operating data or financial information shall include an explanation, in narrative form, of such modifications.

**SECTION 4. Reporting of Notice Events.**

- (a) The occurrence of any of the following events with respect to the Bonds constitutes a Notice Event:
  - 1. Principal and interest payment delinquencies;
  - 2. Non-payment related defaults, if material;
  - 3. Unscheduled draws on debt service reserves reflecting financial difficulties;
  - 4. Unscheduled draws on credit enhancements reflecting financial difficulties;
  - 5. Substitution of credit or liquidity providers, or their failure to perform;
  - 6. Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices and determinations with respect to the tax status of the securities or other material events affecting the tax status of the securities;
  - 7. Modification to rights of the security holders, if material;
  - 8. Bond calls, if material;
  - 9. Defeasances;
  - 10. Release, substitution, or sale of property securing repayment of the Bonds, if material;
  - 11. Rating changes;
  - 12. Tender Offers;
  - 13. Bankruptcy, insolvency, receivership or similar event of the Obligated Person;

**Note to subsection (a)(13) of this Section 4:** For the purposes of the event described in subsection (a)(13) of this Section 4, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for an Obligated Person in a

proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Obligated Person, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Obligated Person.

14. The consummation of a merger, consolidation or acquisition involving the Obligated Person, or the sale of all or substantially all of the assets of the Obligated Person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
15. Appointment of a successor or additional trustee or the change of name of a trustee, if material. The Obligated Person shall, in a timely manner not in excess of ten business days after its occurrence, notify DASNY, the Trustee and the Disclosure Dissemination Agent in writing upon the occurrence of a Notice Event. Upon actual knowledge of the occurrence of a Notice Event, the Trustee shall promptly notify the Obligated Person and also may notify the Disclosure Dissemination Agent in writing of the occurrence of such Notice Event. Each notice to the Disclosure Dissemination Agent shall instruct it to report the occurrence pursuant to subsection (c) and shall be accompanied by a Certification. Such notice or Certification shall identify the Notice Event that has occurred (which shall be any of the categories set forth in Section 2(e)(iv) of this Disclosure Agreement), include the desired text of the disclosure, the written authorization for the Disclosure Dissemination Agent to disseminate such information, and identify the desired date for the Disclosure Dissemination Agent to disseminate the information (provided that such date is not later than the tenth business day after the occurrence of the Notice Event);
16. Incurrence of a Financial Obligation of the Obligated Person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Obligated Person, any of which affect security holders, if material; and
17. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Obligated Person, any of which reflect financial difficulties.

The Obligated Person shall, in a timely manner not in excess of ten business days after its occurrence, notify the Trustee and the Disclosure Dissemination Agent in writing upon the occurrence of a Notice Event. Upon actual knowledge of the occurrence of a Notice Event, the Trustee shall promptly notify the Obligated Person and also may notify the Disclosure Dissemination Agent in writing of the occurrence of such Notice Event. Each such notice shall instruct the Disclosure Dissemination Agent to report the occurrence pursuant to subsection (c) and shall be accompanied by a Certification. Such notice or Certification shall identify the Notice Event that has occurred (which shall be any of the categories set forth in Section 2(c)(iv) of this Disclosure Agreement), include the desired text of the disclosure, the

written authorization for the Disclosure Dissemination Agent to disseminate such information, and identify the desired date for the Disclosure Dissemination Agent to disseminate the information (provided that such date is not later than the tenth business day after the occurrence of the Notice Event).

(b) The Disclosure Dissemination Agent is under no obligation to notify the Obligated Person or the Disclosure Representative of an event that may constitute a Notice Event. In the event the Disclosure Dissemination Agent so notifies the Obligated Person or the Disclosure Representative, such notified party will within two business days of receipt of such notice (but in any event not later than the tenth business day after the occurrence of the Notice Event, if the Issuer or the Obligated Person determines that a Notice Event has occurred), instruct the Disclosure Dissemination Agent that (i) a Notice Event has not occurred and no filing is to be made or (ii) a Notice Event has occurred and the Disclosure Dissemination Agent is to report the occurrence pursuant to subsection (c) of this Section 4, together with a Certification. Such Certification shall identify the Notice Event that has occurred (which shall be any of the categories set forth in Section 2(c)(iv) of this Disclosure Agreement), include the text of the disclosure that the Obligated Person desires to make, contain the written authorization of the Obligated Person for the Disclosure Dissemination Agent to disseminate such information, and identify the date the Obligated Person desires for the Disclosure Dissemination Agent to disseminate the information (provided that such date is not later than the tenth business day after the occurrence of the Notice Event).

(c) If the Disclosure Dissemination Agent has been instructed as prescribed in subsection (a) or as prescribed in subsection (b) of this Section 4 to report the occurrence of a Notice Event, the Disclosure Dissemination Agent shall promptly file a notice of such occurrence with MSRB, in accordance with Section 2(e)(iv) hereof. This notice will be filed with a cover sheet completed by the Disclosure Dissemination Agent in the form set forth in Exhibit C-1.

#### SECTION 5. CUSIP Numbers.

Whenever providing information to the Disclosure Dissemination Agent, including but not limited to Annual Reports, documents incorporated by reference in the Annual Reports, Audited Financial Statements, Notice Event notices and Voluntary Event Disclosure, the Obligated Person shall indicate the full name of the Bonds and the 9-digit CUSIP numbers for the Bonds as to which the provided information relates.

#### SECTION 6. Additional Disclosure Obligations.

The Obligated Person acknowledges and understands that other state and federal laws, including but not limited to the United States Securities Act of 1933, as amended, and Rule 10b5 promulgated under the United States Securities Exchange Act of 1934, as amended, may apply to the Obligated Person, and that the duties and responsibilities of the Disclosure Dissemination Agent under this Disclosure Agreement do not extend to providing legal advice regarding such laws. The Obligated Person acknowledges and understands that the duties of the Disclosure Dissemination Agent relate exclusively to execution of the mechanical tasks of disseminating information as described in this Disclosure Agreement.

#### SECTION 7. Voluntary Filing.

(a) The Obligated Person, may instruct the Disclosure Dissemination Agent to file Voluntary Event Disclosure with the MSRB from time to time pursuant to a Certification of the Disclosure Representative. Such Certification shall identify the Voluntary Event Disclosure (which shall be any of the categories set forth in Section 2(e)(vi) of this Disclosure Agreement), include the text of the

disclosure that the Issuer or Obligated Person desires to make, contain the written authorization of the Issuer for the Disclosure Dissemination Agent to disseminate such information, if applicable, and identify the date the Issuer or Obligated Person desires for the Disclosure Dissemination Agent to disseminate the information. If the Disclosure Dissemination Agent has been instructed by the Issuer or Obligated Person as prescribed in this Section 7(a) to file a Voluntary Event Disclosure, the Disclosure Dissemination Agent shall promptly file such Voluntary Event Disclosure with the MSRB in accordance with Section 2(c)(vi) hereof. This notice will be filed with a cover sheet completed by the Disclosure Dissemination Agent in the form set forth in Exhibit C-2.

(b) The Obligated Person, may instruct the Disclosure Dissemination Agent to file Voluntary Financial Disclosure with the MSRB from time to time pursuant to a Certification of the Disclosure Representative. Such Certification shall identify the Voluntary Financial Disclosure (which shall be any of the categories set forth in Section 2(e)(vii) of this Disclosure Agreement), include the desired text of the disclosure, contain the written authorization for the Disclosure Dissemination Agent to disseminate such information, if applicable, and identify the desired date for the Disclosure Dissemination Agent to disseminate the information. If the Disclosure Dissemination Agent has been instructed by the Issuer or Obligated Person as prescribed in this Section 7(b) to file a Voluntary Financial Disclosure, the Disclosure Dissemination Agent shall promptly file such Voluntary Financial Disclosure with the MSRB in accordance with Section 2(e)(vii) hereof. This notice will be filed with a cover sheet completed by the Disclosure Dissemination Agent in the form set forth in Exhibit C-3.

(c) The parties hereto acknowledge that neither the Issuer nor the Obligated Person is obligated pursuant to the terms of this Disclosure Agreement to file any Voluntary Event Disclosure pursuant to Section 7(a) hereof or to file any Voluntary Financial Disclosure pursuant to Section 7(b) hereof.

(d) Nothing in this Disclosure Agreement shall be deemed to prevent the Obligated Person from disseminating any other information through the Disclosure Dissemination Agent using the means of dissemination set forth in this Section 7, or including any other information in any Annual Report, Failure to File Event notice or Notice Event notice in addition to that which is specifically required or mentioned in this Disclosure Agreement. If the Obligated Person chooses to include any information in any Annual Report, Failure to File Event notice or Notice Event notice in addition to that which is specifically required by this Disclosure Agreement or to file Voluntary Event Disclosure or Voluntary Financial Disclosure, the Obligated Person shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report, Voluntary Financial Disclosure, Voluntary Event Disclosure, Failure to File Event Notice or Notice Event notice.

#### SECTION 8. Termination of Reporting Obligation.

The obligations of the Obligated Person and the Disclosure Dissemination Agent under this Disclosure Agreement shall terminate with respect to the Bonds upon the legal defeasance, prior redemption or payment in full of all of the Bonds, when the Obligated Person is no longer an Obligated Person with respect to the Bonds, or upon delivery by the Disclosure Representative to the Disclosure Dissemination Agent of an opinion of nationally recognized bond counsel to the effect that continuing disclosure is no longer required.

#### SECTION 9. Disclosure Dissemination Agent.

The Obligated Person appoints DAC as exclusive Disclosure Dissemination Agent under this Disclosure Agreement. The Obligated Person may, upon thirty days written notice to the Disclosure Dissemination Agent and the Trustee, replace or appoint a successor Disclosure Dissemination Agent.

Upon termination of DAC's services as Disclosure Dissemination Agent, whether by notice of the Obligated Person or DAC, the Obligated Person agrees to appoint a successor Disclosure Dissemination Agent or, alternatively, agrees to assume all responsibilities of the Disclosure Dissemination Agent under this Disclosure Agreement for the benefit of the Holders of the Bonds. Notwithstanding any replacement or appointment of a successor, the Obligated Person shall remain liable until payment in full for any and all sums owed and payable to the Disclosure Dissemination Agent. The Disclosure Dissemination Agent may resign at any time by providing thirty days' prior written notice to the Obligated Person.

#### SECTION 10. Remedies in Event of Default.

In the event of a failure of the Obligated Person or the Disclosure Dissemination Agent to comply with any provision of this Disclosure Agreement, the Holders' rights to enforce the provisions of this Disclosure Agreement shall be limited solely to a right, by action in mandamus or for specific performance, to compel performance of the parties' obligation under this Disclosure Agreement. Any failure by a party to perform in accordance with this Disclosure Agreement shall not constitute a default on the Bonds or under any other document relating to the Bonds, and all rights and remedies shall be limited to those expressly stated herein.

#### SECTION 11. Duties Immunities and Liabilities of Disclosure Dissemination Agent.

(a) The Disclosure Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement. The Disclosure Dissemination Agent's obligation to deliver the information at the times and with the contents described herein shall be limited to the extent the Obligated Person has provided such information to the Disclosure Dissemination Agent as provided in this Disclosure Agreement. The Disclosure Dissemination Agent shall have no duty with respect to the content of any disclosures or notice made pursuant to the terms hereof. The Disclosure Dissemination Agent shall have no duty or obligation to review or verify any Information, or any other information, disclosures or notices provided to it by the Issuer or the Obligated Person and shall not be deemed to be acting in any fiduciary capacity for the Issuer, the Obligated Person, the Holders of the Bonds or any other party. The Disclosure Dissemination Agent shall have no responsibility for the Obligated Person's failure to report to the Disclosure Dissemination Agent a Notice Event or a duty to determine the materiality thereof. The Disclosure Dissemination Agent shall have no duty to determine or liability for failing to determine whether the Obligated Person has complied with this Disclosure Agreement. The Disclosure Dissemination Agent may conclusively rely upon certifications of the Obligated Person at all times.

THE OBLIGATED PERSON AGREES TO INDEMNIFY AND SAVE THE DISCLOSURE DISSEMINATION AGENT, THE ISSUER AND THE TRUSTEE AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS, HARMLESS AGAINST ANY LOSS, EXPENSE AND LIABILITY WHICH THEY MAY INCUR ARISING OUT OF OR IN THE EXERCISE OR PERFORMANCE OF THEIR POWERS AND DUTIES HEREUNDER, INCLUDING THE COSTS AND EXPENSES (INCLUDING ATTORNEYS FEES) OF DEFENDING AGAINST ANY CLAIM OF LIABILITY, BUT EXCLUDING LOSSES, EXPENSES AND LIABILITIES DUE TO THE DISCLOSURE DISSEMINATION AGENT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AND THE TRUSTEE'S (AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS') NEGLIGENCE OR WILLFUL MISCONDUCT.

The obligations of the Obligated Person under this Section shall survive resignation or removal of the Disclosure Dissemination Agent and defeasance, redemption or payment of the Bonds.



(b) The Disclosure Dissemination Agent may, from time to time, consult with legal counsel (either in-house or external) of its own choosing in the event of any disagreement or controversy, or question or doubt as to the construction of any of the provisions hereof or its respective duties hereunder, and it shall not incur any liability and shall be fully protected in acting in good faith upon the advice of such legal counsel. The fees and expenses of such counsel shall be payable by the Obligated Person.

(c) All documents, reports, notices, statements, information and other materials provided to the MSRB under this Disclosure Agreement shall be provided in an electronic format through the EMMA System and accompanied by identifying information as prescribed by the MSRB.

#### SECTION 12. No Issuer or Trustee Responsibility.

The Obligated Person and the Disclosure Dissemination Agent acknowledge that neither the Issuer nor the Trustee have undertaken any responsibility, and shall not be required to undertake any responsibility, with respect to any reports, notices or disclosures required by or provided pursuant to this Disclosure Agreement, and shall have no liability to any person, including any Holder of the Bonds, with respect to any such reports, notices or disclosures. DASNY (as conduit issuer) is not, for purposes of and within the meaning of the Rule, (i) committed by contract or other arrangement to support payment of all, or part of, the obligations on the Bonds, or (ii) a person for whom annual financial information and notices of material events will be provided. The Trustee shall be indemnified and held harmless in connection with this Disclosure Agreement to the same extent provided in the Resolution for matters arising thereunder.

#### SECTION 13. Amendment; Waiver.

Notwithstanding any other provision of this Disclosure Agreement, the Obligated Person, the Trustee and the Disclosure Dissemination Agent may amend this Disclosure Agreement and any provision of this Disclosure Agreement may be waived, if such amendment or waiver is supported by an opinion of counsel expert in federal securities laws acceptable to each of the Obligated Person, the Trustee and the Disclosure Dissemination Agent to the effect that such amendment or waiver does not materially impair the interests of Holders of the Bonds and would not, in and of itself, cause the undertakings herein to violate the Rule if such amendment or waiver had been effective on the date hereof but taking into account any subsequent change in or official interpretation of the Rule; provided none of the Obligated Person, the Trustee or the Disclosure Dissemination Agent shall be obligated to agree to any amendment modifying their respective duties or obligations without their consent thereto.

Notwithstanding the preceding paragraph, the Obligated Person, the Trustee and the Disclosure Dissemination Agent shall have the right to amend this Disclosure Agreement for any of the following purposes:

- (v) to comply with modifications to and interpretations of the provisions of the Rule as announced by the Securities and Exchange Commission from time to time;
- (vi) to add or change a dissemination agent for the information required to be provided hereby and to make any necessary or desirable provisions with respect thereto;
- (vii) to evidence the succession of another person to the Obligated Person or the Trustee and the assumption by any such successor of the covenants of the Obligated Person or the Trustee hereunder;

- (viii) to add to the covenants of the Obligated Person or the Disclosure Dissemination Agent for the benefit of the Holders, or to surrender any right or power herein conferred upon the Obligated Person or the Disclosure Dissemination Agent;
- (ix) for any purpose for which, and subject to the conditions pursuant to which, amendments may be made under the Rule, as amended or modified from time to time, or any formal authoritative interpretations thereof by the Securities and Exchange Commission.

SECTION 14. Beneficiaries.

This Disclosure Agreement shall inure solely to the benefit of the Obligated Person, the Issuer, the Trustee, the Disclosure Dissemination Agent, the underwriter, and the Holders from time to time of the Bonds, and shall create no rights in any other person or entity.

SECTION 15. Governing Law.

This Disclosure Agreement shall be governed by the laws of the State of New York (without regard to its conflicts of laws provisions).

SECTION 16. Counterparts.

This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[remainder of page left intentionally blank]

The Disclosure Dissemination Agent, the Trustee and the Obligated Person have caused this Disclosure Agreement to be executed, on the-date first written above, by their respective officers duly authorized.

**DIGITAL ASSURANCE CERTIFICATION,  
L.L.C., as Disclosure Dissemination Agent**

By: \_\_\_\_\_  
Name:  
Title:

**MEMORIAL SLOAN KETTERING CANCER  
CENTER, as Obligated Person**

By: \_\_\_\_\_  
Name:  
Title:

**THE BANK OF NEW YORK MELLON, as Trustee**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

**NAME AND CUSIP NUMBERS OF BONDS**

Name of Issuer: Dormitory Authority of the State of New York  
Obligated Person(s): Memorial Sloan Kettering Cancer Center  
Name of Bond Issue: Memorial Sloan Kettering Cancer Center Revenue Bonds, 2019 Series 1  
Date of Issuance: November 1, 2019  
Date of Official Statement: October 8, 2019 as supplemented on October 10, 2019

<u>Maturity (July 1)</u>	<u>CUSIP No.</u>
2029	64990GUW0
2030	64990GUX8
2031	64990GUY6
2032	64990GUZ3
2033	64990GVA7
2034	64990GVB5
2035	64990GVC3
2036	64990GVD1
2037	64990GVE9
2038	64990GVF6
2039	64990GVG4

**EXHIBIT B**

**NOTICE TO MSRB OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: Obligated           Dormitory Authority of the State of New York  
Person(s): Name of Bond           Memorial Sloan Kettering Cancer Center  
Issue:                                    Memorial Sloan Kettering Cancer Center Revenue Bonds, 2019 Series 1  
  
Date of Issuance:                   November 1, 2019  
  
CUSIP Numbers:

NOTICE IS HEREBY GIVEN that the Obligated Person has not provided an Annual Report with respect to the above-named Bonds as required by the Agreement to Provide Continuing Disclosure, dated as of November 1, 2019, by and among the Obligated Person, The Bank of New York Mellon, as Trustee and Digital Assurance Certification, L.L.C., as Disclosure Dissemination Agent. The Obligated Person has notified the Disclosure Dissemination Agent that it anticipates that the Annual Report will be filed by \_\_\_\_\_

Dated: \_\_\_\_\_

**Digital Assurance Certification, L.L.C.**, as  
Disclosure Dissemination Agent, on behalf of the  
Obligated Person

\_\_\_\_\_

cc:        Issuer  
          Obligated Person

**EXHIBIT C-1  
EVENT NOTICE COVER SHEET**

This cover sheet and accompanying "event notice" will be sent to the MSRB, pursuant to Securities and Exchange Commission Rule 15c2-12(b)(5)(i)(C) and (D).

Issuer's and Obligated Person's Names:

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Issuer's Six-Digit CUSIP Number:

---

---

or Nine-Digit CUSIP Number(s) of the bonds to which this event notice relates:

---

Number of pages attached: \_\_\_\_\_

Description of Notice Events (Check One):

1. \_\_\_\_\_ "Principal and interest payment delinquencies;"
2. \_\_\_\_\_ "Non-Payment related defaults, if material;"
3. \_\_\_\_\_ "Unscheduled draws on debt service reserves reflecting financial difficulties;"
4. \_\_\_\_\_ "Unscheduled draws on credit enhancements reflecting financial difficulties;"
5. \_\_\_\_\_ "Substitution of credit or liquidity providers, or their failure to perform;"
6. \_\_\_\_\_ "Adverse tax opinions, IRS notices or events affecting the tax status of the security;"
7. \_\_\_\_\_ "Modifications to rights of securities holders, if material;"
8. \_\_\_\_\_ "Bond calls, if material;"
9. \_\_\_\_\_ "Defeasances;"
10. \_\_\_\_\_ "Release, substitution, or sale of property securing repayment of the securities, if material;"
11. \_\_\_\_\_ "Rating changes;"
12. \_\_\_\_\_ "Tender offers;"
13. \_\_\_\_\_ "Bankruptcy, insolvency, receivership or similar event of the obligated person;"
14. \_\_\_\_\_ "Merger, consolidation, or acquisition of the obligated person, if material;"
15. \_\_\_\_\_ "Appointment of a successor or additional trustee, or the change of name of a trustee, if material;"
16. \_\_\_\_\_ "Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material;" and
17. \_\_\_\_\_ "Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties."

\_\_\_\_\_ Failure to provide annual financial information as required.

I hereby represent that I am authorized by the issuer or its agent to distribute this information publicly:

Signature:

---

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Digital Assurance Certification, L.L.C.  
315 East Robinson Street, Suite 300  
Orlando, FL 32801  
407-515-1100

Date: \_\_\_\_\_

**EXHIBIT C-2**  
**VOLUNTARY EVENT DISCLOSURE COVER SHEET**

This cover sheet and accompanying "voluntary event disclosure" will be sent to the MSRB, pursuant to the Agreement to Provide Continuing Disclosure dated as of November 1, 2019 by and among the Obligated Person, the Trustee and DAC.

Issuer's and Obligated Person's Names:

\_\_\_\_\_

Issuer's Six-Digit CUSIP Number:

\_\_\_\_\_

\_\_\_\_\_

or Nine-Digit CUSIP Number(s) of the bonds to which this notice relates:

\_\_\_\_\_

Number of pages attached: \_\_\_\_\_

Description of Voluntary Event Disclosure (Check One):

1. \_\_\_\_\_ "amendment to continuing disclosure undertaking;"
2. \_\_\_\_\_ "change in obligated person;"
3. \_\_\_\_\_ "notice to investors pursuant to bond documents;"
4. \_\_\_\_\_ "certain communications from the Internal Revenue Service;"
5. \_\_\_\_\_ "secondary market purchases;"
6. \_\_\_\_\_ "bid for auction rate or other securities;"
7. \_\_\_\_\_ "capital or other financing plan;"
8. \_\_\_\_\_ "litigation/enforcement action;"
9. \_\_\_\_\_ "change of tender agent, remarketing agent, or other on-going party;"
10. \_\_\_\_\_ "derivative or other similar transaction;" and

I hereby represent that I am authorized by the obligated person or its agent to distribute this information publicly:

Signature:

\_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Digital Assurance Certification, L.L.C.  
315 East Robinson Street, Suite 300  
Orlando, FL 32801  
407-515-1100

Date: \_\_\_\_\_



**EXHIBIT C-3**  
**VOLUNTARY FINANCIAL DISCLOSURE COVER SHEET**

This cover sheet and accompanying "voluntary financial disclosure" will be sent to the MSRB, pursuant to the Continuing Disclosure Agreement dated as of November 1, 2019 by and among the Issuer, the Obligated Person, the Trustee and DAC.

Issuer's and Obligated Person's Names:

\_\_\_\_\_

Issuer's Six-Digit CUSIP Number:

\_\_\_\_\_

\_\_\_\_\_

or Nine-Digit CUSIP Number(s) of the bonds to which this notice relates:

\_\_\_\_\_

Number of pages attached:

Description of Voluntary Financial Disclosure (Check One):

1.     \_\_\_\_\_     "quarterly monthly financial information;"
2.     \_\_\_\_\_     "change in fiscal year/timing of annual disclosure;"
3.     \_\_\_\_\_     "change in accounting standard;"
4.     \_\_\_\_\_     "interim/additional financial information/operating data;"
5.     \_\_\_\_\_     "budget;"
6.     \_\_\_\_\_     "investment/debt/financial policy;"
7.     \_\_\_\_\_     "information provided to rating agency, credit/liquidity provider or other third party;"
8.     \_\_\_\_\_     "consultant reports;" and
9.     \_\_\_\_\_     "other financial/operating data."

I hereby represent that I am authorized by the issuer or its agent to distribute this information publicly:

Signature:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Digital Assurance Certification, L.L.C.  
315 East Robinson Street, Suite 300  
Orlando, FL 32801  
407-515-1100

Date: \_\_\_\_\_

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