

**Assurance of Discontinuance
Pursuant to Executive Law §63(15)**

Dated November 27 , 2017

WHEREAS the Attorney General of the State of New York (the “Attorney General”), through the Medicaid Fraud Control Unit, and the New York State Department of Health commenced an investigation of circumstances surrounding the closure of two skilled nursing facilities in Manhattan and Brooklyn; and

WHEREAS the Attorney General and the Department of Health have determined that the circumstances of the transactions related to the closure of the two skilled nursing facilities and the disposition and encumbrance of the real property raises public interest concerns; and

WHEREAS the Attorney General and the Department of Health have determined that government processes failed to preserve and promote the public interest in ensuring the continuation of healthcare on the Lower East Side and in the Central Brooklyn communities;

WHEREAS the Attorney General and the Department of Health have determined that redress of the negative consequences of the closure of two skilled nursing facilities in Manhattan and Brooklyn must be found through proactive measures;

WHEREAS Allure Care Management, LLC (“Allure Group”) is a New York limited liability company having its principal place of business at 691 92nd Street, Brooklyn, New York, which provides administrative services to operators of a network of five nursing homes in the metropolitan New York area;

WHEREAS Harlem Center for Nursing and Rehabilitation, LLC, an affiliate of the Allure Group, was appointed by the New York State Department of Health as Receiver of the operations of the Greater Harlem Nursing Home and Rehabilitation Center, Inc., (referred to at times herein as the “Greater Harlem Nursing Home”), a 200-bed skilled nursing facility, located at 30 West 138 Street in Manhattan, which was previously managed by a financially-distressed not-for-profit corporation whose primary charitable purposes were the rendition of nursing home care and related services, and, generally, ensuring “the health and well-being of all residents of the Harlem community”;

said purposes being jeopardized by the declining financial condition of the charity before Allure Group became Receiver;

WHEREAS the Allure Group is committed to the successful operation of Greater Harlem Nursing Home, and has expended in excess of \$6 million as Receiver of Greater Harlem Nursing Home and commits to expending substantial additional sums to revitalize Greater Harlem Nursing Home;

WHEREAS the Allure Group is seeking to establish the successful operation of a healthcare facility in Central Brooklyn and has expended and is committed to expending substantial additional sums to revitalize healthcare in said community;

WHEREAS the Allure Group is seeking to establish the successful operation of a healthcare facility on the Lower East Side of Manhattan and has expended funds and is committed to expending substantial additional sums to revitalize healthcare in said community;

WHEREAS NNRC LLC (“NNRC”) is a New York limited liability company owned in equal shares by its Members, Joel Landau, Marvin Rubin and Solomon Rubin, and obtained operational control of the Brooklyn facility described herein;

WHEREAS NNRC Properties LLC (“NNRC Properties”) is a New York limited liability company owned in equal shares by its Members, Joel Landau, Marvin Rubin and Solomon Rubin, and obtained possession of the real estate of the Brooklyn facility described herein;

WHEREAS New Rivington Properties, LLC is a New York limited liability company owned in equal shares by its Members, Joel Landau and Marvin Rubin, and obtained control of the real estate of the Manhattan facility described herein;

WHEREAS Harlem Center Properties, LLC is a New York limited liability company owned in unequal shares by its Members, Joel Landau, Marvin Rubin and Solomon Rubin formed for the purpose of acquiring real estate at 30 West 138 Street, in the County, City and State of New York;

WHEREAS Harlem Center for Nursing and Rehabilitation, LLC is a New York limited liability company owned in unequal shares by its Members, Joel Landau, Marvin Rubin and Solomon Rubin, and is the Receiver of Greater Harlem Nursing Home and Rehabilitation Center, Inc.;

WHEREAS Joel Landau is the Managing Member of, and owns a one-third interest in NNRC and NNRC Properties, and a one-half interest in New Rivington LLC, and is an agent of the Allure Group;

WHEREAS Marvin Rubin is a Member of and owns a one-third interest in NNRC and NNRC Properties, a half-interest in New Rivington LLC, and is an officer of the Allure Group;

WHEREAS Solomon Rubin is a Member of and owns a one-third interest in NNRC and NNRC Properties and is an officer of the Allure Group;

WHEREAS, each of the facilities within the Allure Group, at all times prior to the Effective Date, have been enrolled in the New York State Medicaid Program (“Medicaid”) as a provider of Medicaid-reimbursed services and provided skilled nursing and rehabilitation care to residents in facilities including: Linden Center for Nursing and Rehabilitation, Crown Heights Center for Nursing and Rehabilitation, Hamilton Park Nursing and Rehabilitation Center, Bedford Center for Nursing and Rehabilitation, and the King David Center for Nursing and Rehabilitation (collectively, the “Allure Facilities”), which have no pending administrative sanctions or proceedings;

WHEREAS the term “Allure Parties” shall include Allure Group, NNRC, NNRC Properties, Rivington Center, LLC, New Rivington Properties, LLC, Harlem Center Properties, LLC, Harlem Center for Nursing and Rehabilitation, LLC, Joel Landau, Marvin Rubin and Solomon Rubin;

WHEREAS, at all times relevant hereto, Allure Group was required to follow all laws, rules and regulations under the Medicaid program that are applicable to providers seeking reimbursement from Medicaid for services and care provided to Medicaid recipients, as well as other laws governing the establishment and operation of skilled nursing facilities in New York State;

WHEREAS the Attorney General, acting through the Charities Bureau and Medicaid Fraud Control Unit of the Office of the Attorney General commenced an investigation into the circumstances recited above (the “OAG Investigation”);

WHEREAS the OAG Investigation determined that the State has potential claims against the Allure Group as a result of the Covered Conduct under Executive Law Sections 63-c and 63(12), the Public Health Law, the Not-for-Profit Corporation Law, and other statutes and common law, for restitution, damages, and equitable relief;

WHEREAS, the OAG Investigation found that the New York State Department of Health, the Charities Bureau of the New York State Attorney General’s Office, and Justices of the Supreme Court of the State of New York in New York County and Kings County exercised their authority to approve transactions concerning the transfer of operating nursing homes to the Allure Group;

WHEREAS, the OAG Investigation revealed no evidence that Allure Group has engaged in improper billing to the Medicaid Program or in acts in violation of the Penal Law or intentionally violated the regulations governing the operation of a skilled nursing facility;

WHEREAS, the Attorney General’s findings from the OAG Investigation are set forth in paragraphs 1- 28 below;

WHEREAS the terms and conditions of this Assurance of Discontinuance will serve the public interest and the health of New Yorkers by, among other things:

- Ensuring continued revitalization of the Greater Harlem Nursing Home to provide continuing skilled nursing care;
- Ensuring continued healthcare to the Central Brooklyn community
- Mitigating the community and healthcare impact of the 45 Rivington Street Real Estate Transactions (described below);

WHEREAS, the Attorney General, on behalf of the State of New York, and the Allure Parties wish to enter into this Agreement, effective as of the date set forth above, to resolve the findings from the MFCU Investigation;

WHEREAS, Allure Parties, the Commissioner of the New York State Department of Health, and the Attorney General (the “Parties”) enter into this Assurance of Discontinuance (“Agreement” or “AOD”) as follows:

Findings and Covered Conduct as to the CABS Nursing Home

1. The CABS Nursing Home, located at 270 Nostrand Avenue, Brooklyn, New York, was established in 1973 by CABS Nursing Home Company, Inc., a not-for-profit corporation, for the purpose of operating a skilled nursing facility in Brooklyn on a non-profit basis. Beginning in 2009, the nonprofit operator of the CABS facility began operating at a substantial loss and received negative findings in DOH surveys.

2. In 2013, the nonprofit operator of CABS determined it was unable to operate independently and sought a buyer for the facility. In 2013, CABS Nursing Home Company, Inc. agreed to sell CABS Nursing Home to NNRC and the property located at 270 Nostrand Avenue to NNRC Properties (the sale of CABS Nursing Home to NNRC and the Nostrand Property to NNRC Properties shall be referred to hereinafter as the “CABS Transaction”).

3. On or about December 21, 2013, Allure affiliate NNRC filed a Certificate of Need application (hereinafter the “CON Application”) with NYS DOH seeking to become the new operator of CABS. New York’s Certificate of Need (CON) process governs establishment, construction, renovation and major medical equipment acquisitions of health care facilities, such as hospitals, nursing homes, home care agencies, and diagnostic and treatment centers. The objectives of the CON process are to promote delivery of high quality health care and ensure that services are aligned with community need.

4. The initial CON application set forth the broad parameters pursuant to which NNRC would initially operate the nursing home, under the name “Nostrand Center for Nursing and Rehabilitation.” NNRC initially projected that it would keep roughly the same number of employees at the facility over the next three years.

5. NYS DOH granted the initial CON application.

6. The Charities Bureau of the Office of the Attorney General did not object to, and the Supreme Court, Kings County, ultimately approved the CABS Transaction in 2015.

7. On or about January 7, 2016, NNRC submitted a closure plan to the DOH to close the CABS facility, which was approved by DOH on or about February 12, 2016.

8. On or about February 12, 2016, NNRC closed the CABS facility.

9. Since on or about December 16, 2016, the Allure Group and CABS Nursing Home Company, Inc. are in litigation of disputes arising from the CABS Transaction.

Findings and Covered Conduct as to Rivington House

10. In early 2014, Rivington House, a not-for-profit nursing home that was primarily devoted to the care of AIDS/HIV patients, located at 45 Rivington Street, New York, New York, submitted a closure plan to DOH to close the facility. The facility, which was founded in the early 1990s to serve the needs of patients with AIDS/HIV, had experienced declining patient census

given the advances in the treatment of AIDS/HIV, reducing or eliminating the need for institutional care specifically designed for AIDS/HIV patients.

11. On April 21, 2014, after being unable to sell the facility, Rivington House submitted a closure plan, which DOH approved. In addition, in accordance with the Worker Adjustment and Retraining Notification (“WARN”) Act, Rivington House gave notice to its employees and the New York State Department of Labor of the pending closure of the facility.

12. On February 9, 2015, Joel Landau and Marvin Rubin, through New Rivington Properties, LLC, obtained control of the Rivington House property, pursuant to an order issued by Supreme Court for New York County.

13. Supreme Court approved this purchase, based on a petition filed with the Court pursuant to the Not-For-Profit Corporation Law section 511 by the then-owner of the nursing home, Rivington House-The Nicholas A. Rango Health Care Facility, a not-for-profit corporation (“Rivington Corp.”) whose sole corporate member was Village Care of New York, Inc. (“VillageCare”). The Rivington House petition filed by Village Care set forth a transaction pursuant to which Marvin Rubin and Landau would obtain ownership of the real property and control of the Rivington House operations. Dissolution of the not-for-profit entity, Rivington Corp. was not sought by the Petition. Rivington Corp. would continue to exist as a not-for-profit entity following the transaction. The petition filed with the Court by VillageCare contained representations about the new owners’ intention to continue use of the facility for skilled nursing care. For example, New Rivington expressly conditioned its purchase upon receiving prior approval from the Department of Health to operate under the existing license. However, New Rivington also contemporaneously notified DOH that it ultimately intended to run the nursing home as a for-profit enterprise. In addition, in a letter dated November 25, 2014 that Village Care included with the Court petition, New Rivington represented to the Department of Health that, upon a requested conversion of nursing beds restricted to AIDS patients to general nursing beds, it would ensure that, over the course of the next two years,

a certain percentage of the nursing home's population would consist of Medicare and Medicaid patients within the facility's planning area. In a separate letter of the same date to the Department of Health, New Rivington made a "commitment" to submit annual reports for the following two years, in which he would demonstrate "substantial progress with the implementation of [a] Medicaid plan . . ." The Department of Health approved the conversion of beds on or about November 25, 2014.

14. On October 7, 2014, Rivington Corp. authorized the sale of the real property and transfer of operational control to New Rivington through a resolution, stating, in part, that: "the Allure Group, through Joel Landau, submitted the most advantageous proposal . . . which would continue . . . [Rivington House's not-for-profit corporate] existence [but with the sole membership transferring from the not-for-profit Village Care of New York to a for-profit entity controlled by the Allure Group] for the purpose of operating a not-for-profit residential health care facility at 45 Rivington Street . . ." Contemporaneously therewith, the above-mentioned Membership Change Agreement was entered into whereby Village Care was replaced as sole corporate member of Rivington Corp., such that the Allure Group could exercise control over Rivington Corp.

15. On December 16, 2014, Supreme Court approved the sale petition by Rivington House-The Nicholas A. Rango Health Care Facility. Following approval from the Supreme Court, the sale closed on February 8, 2015, with New Rivington paying a purchase price of approximately \$28 million. Shortly before the closing of the transactions and transfer of control by Village Care, Rivington Corp.'s charitable assets had been reduced to a small sum of money in a bank account.

16. Prior to and following the February 2015 sale closing, Allure Group sought to have New York City's deed restriction limiting the use to a not-for-profit healthcare facility removed to permit the operation of a for-profit nursing home. City officials advised Allure Group that the fee for the removal of the deed restrictions would be \$16.15 million.

17. Approximately one month after the closing, Allure Group began receiving offers for the building and underlying real estate.

18. In March 2015, Joel Landau told City officials that if Allure Group was required to pay \$16.15 million for the removal of the deed restriction, Allure Group would not be able to operate a nursing home at the property and would be forced to sell the property to a developer.

19. On May 11, 2015, approximately three months after the closing, the Allure Group signed a Purchase and Sale Agreement (“PSA”) to sell the property to Rivington Street Investors LLC (hereinafter, “Rivington Street Investors”), for a price of \$116 million.

20. At the time that New Rivington and Rivington Street Investors signed the PSA the real property was encumbered by two deed restrictions that had been previously imposed by the City of New York. The deed restrictions limited the use of the nursing home building and underlying real estate, in perpetuity, to the operation of a non-profit healthcare facility.

21. On or about November 2, 2015, Allure paid \$16.15 million to the City of New York for the City’s removal of the deed restrictions on the property. As detailed in a report by the New York City Department of Investigation, City officials, including high-level officials at City Hall and DCAS, were aware of the deed restriction removal months in advance, yet raised no objection or took any step to ensure that the property would continue to serve the community or a public purpose. *See*, Report, New York City Department of Investigation, “Examination of the City’s Removal of the Deed Restriction 45 Rivington Street in Manhattan”, July 14, 2016.

22. In December 2015, when the facility had no residents, Rivington House submitted a closure plan to DOH to close the facility, which was approved by DOH on February 16, 2016.

23. The sale of 45 Rivington to Rivington Street Investors closed on or about February 11, 2016. (The sale of the 45 Rivington real estate and concomitant Membership Change Agreement and the subsequent sale of the real property to Rivington Street Investors shall be collectively referred to as the “45 Rivington Street Real Estate Transactions.”)

24. The processes described above permitted the sale of the Rivington Street property to Rivington Street Investors, whose principal investor was the Slate Group, an investment group whose title to the property as a bona fide purchaser is not subject to effective legal challenge.

25. The proceeds of the sale of the Rivington Street property are sufficient to fund projects in the public interest consistent with the approvals of the Court, the Attorney General's Charities Bureau, and the New York State Department of Health in connection with the CABS Transaction and the 45 Rivington Street Real Estate Transactions.

26. The not-for-profit Rivington House entity, which the Allure Group controlled in 2015, did not, as was required under the Not-For-Profit Corporation Law, either seek to dissolve or to obtain approval for disposing of its limited remaining assets.

Findings and Covered Conduct as to the Rivington House Not-for-Profit Corporation

27. The Rivington House transaction provided that Rivington House would remain a charity and have a board of directors consisting of four individuals. To this end, Rivington Center, LLC, the new sole member of Rivington Corp., elected the following individuals to the Rivington Corp. Board of Directors: Tzvi Licht, Aron Porges, Benzion Scharf and Yshaya Altman. Rather than functioning as a charitable board, these individuals did not comply with their duties to Rivington House and were not independent of the Allure Group. The Board did not discharge the duties required of the directors of a New York State Not for Profit Corporation. Under the stewardship of Allure/Rivington Center, LLC, Rivington Corp. did not make all required filings with the Charities Bureau.

28. By way of the foregoing conduct, Rivington Corp. did not operate in compliance with the New York Not-For-Profit Corporation Law, which is addressed and resolved pursuant to the terms of an Assurance of Discontinuance dated November 27, 2017.

29. The Findings set forth in Paragraphs 1 to 28 above are hereinafter referred to as the "Covered Conduct".

Conclusions

30. It is in the public interest to maintain continuity of care of residents and to improve further the quality of care at the Greater Harlem Nursing Home through additional investment, and the existing non-profit corporation, which currently holds title to the facility, is not financially capable of sustaining quality nursing home operations or further investment at that facility.

31. It is in the public interest to provide healthcare services to the Central Brooklyn Community.

32. It is in the public interest to provide healthcare services on the Lower East Side of Manhattan.

33. Allure Group neither admits nor denies the Attorney General's findings with respect to the Covered Conduct.

33. Allure Group agrees that the Attorney General's findings are admissible in an action by the Attorney General to enforce this Assurance of Discontinuance.

34. The Attorney General finds the relief and agreements contained in this Assurance appropriate and in the public interest, and is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding.

35. The New York State Department of Health (i) recognizes that the relief and promises set forth within the AOD benefit the public health, including the interests of the current and future residents of Allure Facilities, and (ii) agrees with the resolution of the Covered Conduct, in consideration for DOH's forbearances herein.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, the Parties agree as follows:

Section I

Revitalization of Greater Harlem Facility

36. The Allure Group will operate the Greater Harlem Nursing Home as a skilled nursing facility subject to the terms of this Agreement and applicable law.

38. The Allure Group will complete its acquisition of the Greater Harlem Nursing Home in accordance with the terms of a court order, requested from New York County Supreme Court by the Greater Harlem Nursing Home in a pending petition.

39. The Allure Group will use commercially reasonable efforts to maintain Greater Harlem Nursing Home at the highest standards of care and services to residents. The Allure Group will submit quarterly reports to the Department of Health describing: a) patient census; b) resident patient case mix; c) patient home community information; d) community outreach efforts; e) payor mix; f) staffing reports; g) and a summary of expenditures on revitalization of healthcare services.

40. The Attorney General will withdraw the objection filed July 27, 2016, in Supreme Court, New York County, to the Petition of Greater Harlem Nursing and Rehabilitation Facility for the sale of the Greater Harlem facility to Harlem Center Properties, LLC and Harlem Center for Nursing and Rehabilitation, LLC, and subject to amendments to be made by the Greater Harlem Nursing Home to its sale petition, and approved by Allure, in satisfaction of the Attorney General's concerns, and provided that Allure Group is in compliance with this Agreement.

Section II

Revitalization of the Former CABS Nursing Home Facility — the Brooklyn Project

41. The Allure Group shall use commercially reasonable efforts to establish (including by purchase of an existing facility from a third party) and operate any of the following in Central Brooklyn: a residential substance abuse treatment facility, a skilled nursing facility or other healthcare facility primarily providing long-term care to the elderly or disabled, or such other

facilities as licensed in the discretion of the Commissioner of Health or such New York State agency with applicable healthcare licensing authority (hereinafter, the “Brooklyn Project”).

42. The Attorney General shall not oppose an application by the Allure Group to the Commissioner of Health to establish the Brooklyn Project. The staff of the Department of Health shall not oppose an application by the Allure Group to establish the Brooklyn Project on the grounds of the Covered Conduct or this Assurance of Discontinuance. The Allure Group acknowledges that certain licensing applications require approval by the Public Health and Health Planning Council (PHHPC) and that neither the Attorney General nor the Department of Health can require PHHPC to approve such applications.

43. The Brooklyn Project shall be within the scope of the ICC’s duties pursuant to Section V, below. The Allure Group shall provide written reports on the status of development of the Brooklyn Project to the DOH every 90 days from the Effective Date of this AOD to the commencement of operations of the Brooklyn Project.

Section III
Establishment of the Lower East Side Healthcare Project
and Resolution of Claims from the 45 Rivington Real Estate Transactions
Dissolution of Rivington House Not-for-Profit

44. The Allure Group has tendered, by transmittal of November 27, 2017, the resignations of Heshey Licht, Ben-zion Scharf, and Aaron Porges as Directors of Rivington House, the Charles A. Rango Health Center. Marvin Rubin and Joel Landau, as sole members of Rivington Center, LLC, the sole corporate member of Rivington Corp., have represented to the Attorney General, and the Attorney General finds, that Yeshaya Altman was not effectively designated as a member of the Board of Rivington House.

45. The Allure Group, and Marvin Rubin and Joel Landau, as sole members of Rivington Center LLC, which effectively controls Rivington Corp., shall consent to entry of an order by Supreme Court, New York County, pursuant to the Not for Profit Corporation Law, dissolving Rivington Corp.

46. Within five business days of the dissolution of Rivington Corp., the Allure Group will transfer the sum of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) to one or more charitable organizations, approved by the Attorney General, that provide healthcare services to low income residents of the Lower East Side.

Revitalization of Lower East Side Healthcare Facility

47. The Allure Group shall use commercially reasonable efforts to establish (including by purchase of an existing facility from a third party) and operate a skilled nursing facility or other healthcare facility primarily providing long-term care to the elderly or disabled, or such other facility as licensed in the discretion of the Commissioner of Health, at a location south of East 7th Street and east of Broadway to Houston Street and south of Houston Street and east of West Broadway in the Borough of Manhattan (hereinafter, the “LES Healthcare Project”).

48. The Attorney General shall not oppose an application by the Allure Group to the Commissioner of Health to establish the LES Healthcare Project. The staff of the Department of Health shall not oppose an application by the Allure Group to establish the LES Healthcare Project on the grounds of the Covered Conduct or this Assurance of Discontinuance. The Allure Group acknowledges that certain licensing applications require approval by the Public Health and Health Planning Council (PHHPC) and that neither the Attorney General nor the Department of Health can require PHHPC to approve such applications.

49. The LES Healthcare Project shall be within the scope of the ICC’s duties pursuant to Section V, below. The Allure Group shall provide written reports on the status of development of the LES Healthcare Project to the DOH every 90 days from the Effective Date of this AOD to the commencement of operations of the LES Healthcare Project.

Section IV

**Moratorium on Closure of Greater Harlem Nursing Home,
LES Healthcare Project and Brooklyn Project**

50. The Allure Group will operate the Greater Harlem Nursing Home as a skilled nursing facility for a period of not less than nine (9) years (“Moratorium Period”). Allure Group shall not file, nor suffer to be filed, any application to close the Greater Harlem Nursing Home, nor cause or suffer to be caused, any act or series of acts or omissions to act that would close the Greater Harlem Nursing Home or lead to closure due to financial distress or financial expenditure, decline in patient census, reduction in services, loss of licensure or certifications, or deterioration of physical plant.

51. The Allure Group may apply for waiver of the Moratorium Period in writing to the Attorney General and the Department of Health on grounds solely limited to circumstances beyond the control of the Allure Group. The Moratorium Period will be deemed waived only upon the mutual written consent of both the Attorney General and the Commissioner of Health. The Attorney General and the Commissioner of Health may condition such consent on additional terms in said officials’ sole discretion.

52. Upon commencement of operations of the LES Healthcare Project, the terms of this Moratorium set forth in Pars. 50 to 51 shall apply independently to any facility, including real property, established pursuant to the LES Healthcare Project. The Moratorium Period applicable to the LES Healthcare Project shall be a period of eight (8) years calculated from the commencement of operations of the LES Healthcare Project.

53. Upon commencement of operations of the Brooklyn Project, the terms of this Moratorium set forth in Pars. 50 to 51 shall apply independently to any facility, including real property, established pursuant to the Brooklyn Project. The Moratorium Period applicable to the Brooklyn Project shall be a period of eight (8) years calculated from the commencement of operations of the Brooklyn Project.

Extended Closure Notice at Allure Facilities

54. The Allure Group agrees that, in the event that the closure or cessation of operations at any Allure Facility (excluding GHNH, LES Healthcare Project, and Brooklyn Project) is contemplated by the Allure Group, whether initiated by Allure Group or any other person, engaged in by any owner, officer, Administrator, or financial employee of the Allure Group, it shall provide One Hundred Twenty (120) days' notice in writing to the Department of Health (the "Extended Closure Notice Period"). Said time period shall be independent of any other obligation under nursing home regulations as to notice of closure, including, but not limited to NYSDOH Office of Health Systems Management Facility Closure Plan Guidelines, and 10 NYCRR 401.3(g)-(j), and this obligation shall not supersede or replace any other notice required by law or regulation.

55. Under no circumstances shall any Allure Facility subject to Par. 54 be closed, in whole or in part, during said Extended Closure Notice Period for any reason without the express written consent of the Department of Health and the Attorney General, including, but not limited to financial loss, financial hardship, or lost financial opportunity, to the Allure Group.

56. The Allure Group agrees that, in the event that the transfer of any ownership interest of more than ten percent (10%) in any Allure Facility (excluding GHNH, LES Healthcare Project, and Brooklyn Project) is contemplated by the Allure Group, whether initiated by Allure Group or any other person, engaged in by any owner, officer, Administrator, or financial employee of the Allure Group, it shall provide Ninety (90) days' notice in writing to the Department of Health. Said time period shall be independent of any other obligation under nursing home regulations as to changes of ownership and this obligation shall not supersede or replace any other notice required by law or regulation.

57. Any notice required to be provided pursuant to Pars. 50 to 56 shall include, to the extent known by the Allure Parties, the names of all business entities, related individuals, and the full terms of such transactions.

Section V

Preservation of Care at Allure Facilities

58. The Allure Parties represent that the terms of the Assurance of Discontinuance will not diminish the delivery of quality healthcare to the residents of any of the Allure Facilities.

Independent Compliance Contractor

59. Within forty-five (45) days after the date of this Agreement, Allure Group shall enter into a written agreement with an ICC, as defined below, for a minimum period of three (3) years, to assess and evaluate the Allure Group's compliance with this AOD. The ICC shall be retained by the Allure Group, whose qualifications and contract shall be subject to review and approval in the Attorney General's sole discretion.

60. The ICC's duties and authority shall include:

a) evaluating and assessing draft closure plans and CON applications concerning a reduction of beds or services ("Significant Change Proposals" / "SCP") for GHNH, LES Healthcare Project, and the Brooklyn Project at least 90 days prior to transmission to DOH;

b) Visitation and Inspection rights at GHNH, LES Healthcare Project, and Brooklyn Project regarding the Closure Moratorium in Pars. 50-53, Extended Closure Notices, Certificate of Need Applications, and any Significant Change Proposal/SCP;

c) Assessing whether Allure Group has accountability and processes to ensure compliance with this AOD, including but not limited to, in the event Richard Brum ceases to be Chief Compliance Officer, evaluation of candidates for the position of Chief Compliance Officer;

d) Assessing whether Allure Group has sufficient accurate and timely reporting mechanisms with respect to the Facilities that are subject to the Closure Moratorium to avert any application for a Closing Waiver pursuant to Par. 51.

61. If an SCP is developed for GHNH, LES Healthcare Project, or Brooklyn Project, the ICC will have full access, in the ICC's sole discretion, to any and all: Surveys, I&A Reports;

compliance records; Audit reports and records; Ombudsman/Public complaints; real estate transaction documents; financial records, and any other materials relating to the SCP concerning that facility, on ten (10) days' notice.

62. Allure shall give the ICC notice of and the right to attend any meeting with any New York state government agency concerning an SCP for GHNH, LES Healthcare Project, and the Brooklyn Project, regardless of the designation of meeting by the agency or Allure, and access to any other material or information specified in the ICC engagement contract.

63. The ICC shall produce quarterly reports related to any SCPs and the ICC's activities pursuant to this AOD.

64. Allure Owners shall provide, and shall instruct Allure Facility Staff to provide, complete cooperation with ICC and will not limit access by the ICC with respect to matters set forth herein.

65. Allure Group shall implement all reasonable recommendations made by the ICC to ensure compliance with this AOD. In the event Allure Group determines that a recommendation made by the ICC is not reasonable in connection with ensuring compliance with the AOD, Allure Group shall advise the Attorney General in writing within 10 business days.

Chief Compliance Officer

66. Each Allure Facility shall continue to have a Compliance Officer with responsibility for healthcare compliance at its respective Allure Facility who shall report directly to the Owners of such Allure Facility. In addition, the Allure Group has hired Richard Brum as Chief Compliance Officer, who reports directly to the Owners of each Allure Facility and assists each Allure Facility with its compliance obligations. In the event Mr. Brum ceases to be Chief Compliance Officer for any reason, the Allure Group shall retain another Chief Compliance Officer. Said Chief Compliance Officer shall report directly to the Owners of each Allure Facility, and shall be a full-time, salaried employee who assists each Allure Facility with its compliance

obligations and whose primary duty shall be ensuring healthcare compliance at the Allure Facilities. Any such Chief Compliance Officer shall have a minimum of ten years of healthcare experience as a Skilled Nursing Facility Administrator, healthcare facility Compliance Officer, attorney whose practice focused primarily on the healthcare industry, or Director of Nursing Services at a skilled nursing facility. Any such Chief Compliance Officer shall not be an excluded person under federal and state healthcare programs nor previously subject to any healthcare administrative suspension or sanction in any jurisdiction.

Section VI

Cooperation with ICC and Attorney General

67. Allure Group will fully cooperate with the ICC. Such cooperation will include, but will not be limited to: i) providing the ICC with access to all books and records of Allure Group within the duties of the ICC; ii) providing the ICC with access to all employees, personal assistants, agents, or contractors of Allure Group reasonably necessary for the ICC to carry out the ICC's responsibilities under this AOD at a convenient time, place and manner that the ICC shall direct, and instructing such persons that responding to all inquiries by the ICC related to the performance of the ICC's duties under this AOD is required by Allure Group; iii) advising the ICC of any significant programmatic or policy changes at Allure Group relating to compliance with or the ICC's responsibilities under this AOD prior to implementation of such changes. If the ICC should find that any action taken by Allure Group may violate this AOD, the ICC will advise Allure Group and Attorney General. The ICC will provide quarterly reports to the Allure Group and to the Attorney General that assess Allure Group's compliance with this AOD. Attorney General may require that the ICC clarify or expand on the matters addressed in such reports, and that Allure Group respond in writing to the Attorney General and the ICC to any aspect of said reports. The ICC and the Attorney General shall have access to copies of all reports required to be prepared pursuant to this

AOD. The ICC may report confidentially to the Attorney General only if the ICC determines that a confidential ex parte report is necessary to ensure compliance with this AOD.

68. In the event that the Attorney General deems the ICC's reports, or Allure Group's responses thereto, to be inadequate, and such inadequacy is not cured by Allure Group within 30 days after written notice thereof, the Attorney General may elect to require Allure Group to extend the term of the ICC for an additional period of up to one year for any such determination, or take any other action authorized by law to remedy the deficiencies identified by the Attorney General.

69. In the event the first-designated ICC resigns or is otherwise unable to complete the duties of the ICC, Allure Group shall engage another person as ICC upon the consent of the Attorney General and the term of such ICC's engagement shall be the later of the remainder of the first-designated ICC's term or the acceptance of the successor ICC's first quarterly report.

70. At the end of the ICC's engagement, if the ICC's final report finds that Allure Group are in compliance, the parties will exchange writings to evidence that the ICC's engagement is completed.

71. The obligations and definitions of Pars. 67 to 70 above may be modified to clarify or ensure efficient operation of the ICC upon recommendation of the ICC and the written consent of the Allure Group, the Department of Health, and the Attorney General.

Section VII

Representation of Use of Proceeds; Assessment; Costs of Investigation

72. The Allure Group has provided to the New York Attorney General a confidential accounting of the proceeds of the 45 Rivington Real Estate Transaction (the "45 Rivington Accounting"). The 45 Rivington Accounting consists of material protected by Public Officers Law §87(2)(d). It is a material breach of this Assurance of Discontinuance by

the Allure Group if the 45 Rivington Accounting, including the tax treatment of the 45 Rivington Real Estate Transaction, is materially false in any respect.

73. The Allure Group shall use commercially reasonable efforts to establish (including by purchase of an existing facility from a third party) and operate one or more facilities in each of the Brooklyn Project and the LES Healthcare Project, and shall expend or encumber for completion and operation of such facilities a minimum of \$10 million within 5 years after the Effective Date. The Brooklyn Project and the LES Healthcare Project shall not include an existing Allure Facility except with the written approval of the Attorney General. For purposes of this Agreement, the term, “commercially reasonable” shall not be deemed to have been satisfied solely by reason of Allure expending or encumbering \$10 million on a single facility in either the Brooklyn Project or the LES Healthcare Project.

Not For Profit Law Assessment

74. The Allure Group shall pay the sum of Four Hundred Thousand Dollars (\$400,000.00) pursuant to Not For Profit Corporation Law §715(f) (hereinafter “NFP Assessment”).

75. The NFP Assessment shall not be included in calculation of the expenditure to be made pursuant to Par. 73.

76. The NFP Assessment shall be tendered to the Office of the Attorney General on or before 60 days from the Effective Date.

Reimbursement of Costs of Investigation

77. The Allure Group shall pay the sum of Three Hundred Fifty Thousand Dollars (\$350,000.00) as reimbursement of the costs of investigation incurred by the Office of the Attorney General (hereinafter “Costs of Investigation”).

78. The Costs of Investigations shall not be included in calculation of the expenditure to be made pursuant to Par. 73.

79. The Costs of Investigation shall be tendered to the Office of the Attorney General on or before 60 days from the Effective Date.

Unallowable Costs

80. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Allure, its present or former officers, directors, employees, shareholders, and agents in connection with:the matters covered by this Agreement; the State’s audit and civil and any criminal Investigation(s) of the matters covered by this Agreement, including actions undertaken by the ICC; Allure’s investigation, defense, and corrective actions undertaken in response to the State’s audit and civil and any criminal investigation(s) and/or in response to findings and recommendations of the ICC in connection with the matters covered by this Agreement (including attorney’s fees); the negotiation and performance of this Agreement; and the payment Allure makes to the Office of the Attorney General pursuant to this Agreement, to wit, the NFP Assessment Payment and the Costs of Investigation; payments made by Allure pursuant to this Agreement, are unallowable costs for government contracting purposes and under the Medicaid Program (hereinafter referred to as “Unallowable Costs”).

81. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for, including in non-reimbursable cost centers, by Allure, and Allure shall not charge such Unallowable Costs directly or indirectly to any New York State or Federal agency or New York State or Federal healthcare program, including Medicaid and Medicare, or seek payment for such Unallowable Costs through any Consolidated Fiscal Report (“CFR”), cost report, cost statement, information statement, or payment request submitted by Allure or any of its subsidiaries or affiliates to the Medicaid or Medicare programs.

82. No portion of the expense of the ICC, nor any payment required under this Assurance of Discontinuance, may be claimed as an expense on any cost report of any Allure Facility.

83. Notwithstanding anything in this AOD to the contrary, Unallowable Costs shall not include (i) project and other costs associated with the GHNH Revitalization, LES Healthcare Project and Brooklyn Project and (ii) any other costs of any Allure Facility, to the extent such costs are otherwise reimbursable by any New York State or Federal agency or New York State or Federal healthcare program, including Medicaid and Medicare.

Bankruptcy Provisions

84. If Allure contemplates commencing any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of Allure’s debts, or seeking to adjudicate Allure as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Allure or for all or any substantial part of Allure’s assets, Allure shall provide notice of any such potential proceeding or action to the ICC, the Department of Health and the Attorney General as soon as practicable, but in any event no later than thirty days prior to the commencement of such proceeding or action.

85. Allure warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and shall remain solvent following payments required by this AOD. Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to Allure, within the meaning of 11 U.S.C. § 547(c)(1), and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which Allure was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

86. If within 91 days of the Effective Date of this Agreement, or of any payment made under this Agreement, Allure or any Allure facility commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of the debts of Allure or an Allure Facility, or seeking to adjudicate Allure or an Allure Facility as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Allure or any Allure Facility, or for all or any substantial part of the assets of Allure or those of an Allure Facility, Allure agrees as follows:

a. Allure's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Allure shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Allure's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Allure was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payments pursuant to this Agreement; or (iii) the mutual promises, covenants, and

obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Allure.

b. If Allure's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the State, at its sole option, may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Allure for the claims that would otherwise be covered by the releases provided in Paragraphs 88 - 92 below. Allure agrees that (i) any such claims, actions, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Allure shall not argue or otherwise contend that the State's claims, actions, or proceedings are subject to an automatic stay; and (ii) Allure shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the State within ninety calendar days of written notification to Allure that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available as of the date of this AOD.

c. Allure acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Assurance of Discontinuance.

Explicit Conditions Precedent to Performance by the State

87. The Allure Group's obligations and representations concerning maintaining healthcare services, establishment of the GHNH Revitalization, LES Healthcare Project, Brooklyn Project, corporate governance and the ICC, and other obligations set forth in Pars. 36-79 are explicit conditions precedent to the administrative forbearances and relief granted by the State and DOH in Pars. 88-92 below, and, in the event the Allure Group violates such conditions, the State and DOH shall be relieved of the obligations set forth in Pars. 88-92, and may pursue all civil, criminal and administrative

remedies otherwise available under the law. Nothing herein shall be deemed an admission by Allure that such claim is valid or that the Attorney General or Department of Health is entitled to any such remedy. Notwithstanding such violations and action by the State or DOH, the Allure Group's obligations hereunder shall remain in full force and effect.

Section VIII

Forbearances and Relief

88. In consideration of the State's entering into this Agreement, Allure Group releases and forever discharges the State, including, but not limited to, MFCU and DOH, and any, past or present employee or agent of the State, from any and all claims, debts, sums of money, contracts, agreements, damages, and liability of any kind or nature whatsoever, in law or in equity, which Allure Group had as of the date of this AOD arising out of the Covered Conduct and the OAG Investigation.

89. Subject to the exceptions set forth in Paragraph 93 and conditioned upon full compliance with the transactions identified in Paragraph 36-79, and upon Allure Group's successful completion of all other terms of this Agreement, including for the duration of any Extended Term, the State will release the Allure Parties and their members, officers, directors, and employees from any and all civil monetary claims the State may have arising from the Covered Conduct under the New York False Claims Act, N.Y. State Fin. Law §§ 187 et seq., N.Y. Executive Law § 63(12), N.Y. Executive Law § 63-c, N.Y. Social Services Law § 145-b, the Not-for-Profit Corporation law, or the common law or equitable theories of payment by mistake, disgorgement, unjust enrichment, and breach of contract.

90. Subject to the Allure Group's successful completion of all terms of this Agreement, including for the duration of any extended term, the Attorney General will not prosecute any

individual named herein or any corporation listed in Pars. 1 to 28, for any crime arising from the Covered Conduct.

91. Subject to the exceptions set forth in Par. 93 and upon Allure Group's successful completion of all other terms of this Agreement, including for the duration of any extended term, the Department of Health will not impose, based on the Covered Conduct, any:

- a) Administrative Financial Penalty;
- b) Administrative Compliance Obligation;
- c) Exclusion from the New York State Medicaid Program.

92. The Attorney General and the staff of the Department of Health shall not oppose an application by the Allure Group or its affiliates for the purchase of any other healthcare facility on the grounds of the Covered Conduct or this Assurance of Discontinuance. The Allure Group acknowledges that certain licensing applications require approval by the Public Health and Planning Council (PHHPC) and that neither the Attorney General nor the Department of Health can require PHHPC to approve such applications.

93. Notwithstanding any term of this Agreement, the State does not release any person or entity from any of the following liabilities:

- a. any civil, criminal or administrative liability arising under state tax laws;
- b. any administrative liability, including mandatory or permissive exclusion from the Medicaid program, except as explicitly stated in Par. 92;
- c. any liability to the State of New York (or its agencies) for any conduct other than the Covered Conduct;
- d. any liability based on the obligations set forth in this Agreement.

Section IX

Prohibition Against Violating New York Law and This Agreement

94. The Allure Group shall not, directly or indirectly, wilfully engage or attempt to engage in violations of Executive Law § 63(12), Social Services Law § 145-b, the Public Health Law, and the rules and regulations governing New York nursing homes and the New York State Medicaid program.

95. The Allure Group shall comply fully with the terms of this Agreement. The Attorney General may make any appropriate application to enforce or interpret the provisions of this Agreement or, in the Attorney General's sole discretion, commence any action or proceeding, either civil or criminal, for such other and further relief as the Attorney General deems proper and necessary for the enforcement of this Agreement or to remedy any breach thereof. A finding of deficiency resulting from the New York State nursing home survey and inspection process shall not be deemed a per se material breach of this Agreement, but may be considered as evidence in a proceeding to enforce this Agreement.

96. DOH may take regulatory action to enforce this Agreement. DOH may investigate or take regulatory action against any current or former The Allure Group employee who is subject to the jurisdiction of DOH, except as provided in Par. 91.

97. The Attorney General retains the right under Executive Law Section 63(15) to compel compliance with this Agreement. Evidence of a breach of this Agreement shall constitute prima facie proof of violation of the applicable law in any civil action or proceeding thereafter commenced by the Attorney General. Should it be determined that a breach or other violation of this Agreement by the Participating Defendants has occurred, said breaching party shall pay the Attorney General the cost, if any, of such determination and of enforcing this Agreement, including without limitation, legal fees, expenses and court costs, including those between the breaching party and the Attorney General.

Section X
Notices, Venue and Other Provisions

Notices

98. All notices required in this Agreement to be provided to the Department of Health shall be available to the Attorney General and the State at the same time. Any notices pursuant to this Agreement shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery, express courier, or electronic mail transmission followed by postage prepaid mail, and shall be addressed as follows:

IF TO THE ATTORNEY GENERAL and the STATE:

Prior to March 31, 2018:

New York State Attorney General
Medicaid Fraud Control Unit
Attn: Chief, Civil Enforcement Division
120 Broadway, 13th Floor
New York, New York 10271

On and After April 1, 2018:

New York State Attorney General
Medicaid Fraud Control Unit
Attn: Chief, Civil Enforcement Division
28 Liberty Street
New York, New York 10271

IF TO THE DEPARTMENT OF HEALTH:

Deputy Counsel
Division of Legal Affairs NYS Department of Health
Corning Tower
Empire State Plaza
Albany, NY 12237

IF TO THE ALLURE PARTIES:

Andrew J. Levander
Neil A. Steiner
Dechert LLP
1095 Avenue of the Americas
New York, New York 10036

Term of This Agreement

99. The Effective Date of this Agreement is November 27, 2017. The obligations under this Agreement that have specific time periods, including Paragraphs 50-57, 59 and 72-73 of this Agreement, shall be governed by those specific time periods. In all other respects, the Term of this Agreement shall be from the Effective Date through November 27, 2020. Unless otherwise specified, the Allure Parties's obligations under this Agreement shall terminate upon the expiration of the Term of the Agreement.

Persons Not Parties to This Agreement

100. Nothing in this Agreement shall relieve the Allure Group's obligations imposed by any applicable state or federal law or regulation or other applicable law, except as specifically set forth herein.

101. This Agreement shall not confer any rights upon any persons or entities other than the State, the Attorney General, DOH, and the Allure Parties. Nothing in this Agreement shall be deemed or interpreted to create any third party beneficiaries or third party rights of action, or confer any rights in any third parties to enforce the terms of this Agreement.

102. Nothing in this Agreement shall be construed as limiting the rights or authority of MFCU, the Department of Health, the Office of the Medicaid Inspector General, or any other State agency to engage in any and all activities to which they are legally entitled with respect to the supervision and investigation of Allure Group's status as Medicaid providers.

103. This Agreement is binding upon all parties and upon the assigns, heirs, transferees, purchasers and any successors-in-interest of the Allure Parties.

Complete Agreement

104. This Agreement contains the entire agreement and understanding of the Parties. There are no additional promises or terms of the Agreement other than those contained herein. The

terms or provisions of this Agreement may not be changed, waived, modified, or varied in any manner whatsoever unless in a writing duly signed by all Parties.

105. The captions in this Agreement are provided for convenience and do not define, limit, extend, or describe the scope or intent of this Agreement. The Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original executed counterparts shall be maintained by the Attorney General.

106 The Allure Group agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Agreement or creating the impression that this Agreement is without factual basis. Nothing in this paragraph affects the Allure Group's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General or the Department of Health is not a party.

107. This Agreement shall be deemed to have been mutually prepared by the Parties hereto and shall not be construed against any of them solely by reason of authorship.

108. Allure Group, through the undersigned agents and officers, acknowledge that they have entered this Agreement freely and voluntarily and upon due deliberation, with the advice of counsel, and without coercion or duress.

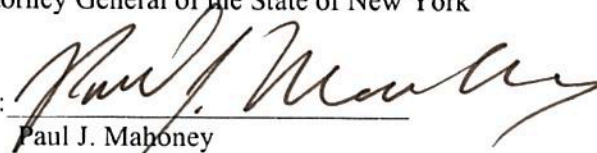
109. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to choice of law or conflict of laws principles. The parties consent to the jurisdiction of the Supreme Court of the State of New York, New York County, in any action to enforce or interpret this Agreement.

WHEREFORE, the parties have read the foregoing Agreement and accept and agree to the provisions contained therein.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on November 27, 2017 (the "Effective Date").

For the People of the State of New York:

ERIC. T. SCHNEIDERMAN
Attorney General of the State of New York

By: 
Paul J. Mahoney
Assistant Attorney General
DEPUTY


For the New York State Department of Health:

By: _____
Deputy Counsel
Division of Legal Affairs


For the Allure Parties:



Joel Landau



Marvin Rubin



Solomon Rubin

WHEREFORE, the parties have read the foregoing Agreement and accept and agree to the provisions contained therein.


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ERIC. T. SCHNEIDERMAN
Attorney General of the State of New York

By: _____
Paul J. Mahoney
Assistant Attorney General

For the New York State Department of Health:

By:  _____
Sally Dreslin, M.S., R.N.
Deputy Counsel
Division of Legal Affairs
Executive Deputy Commissioner

For the Allure Parties:

Joel Landau

Marvin Rubin

Solomon Rubin

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK

In the Matter of
An Investigation by Eric T. Schneiderman,
Attorney General of the State of New York,

of

Rivington House Health Care Facility

Assurance No. 17-209

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“OAG”) has conducted an investigation (the “investigation”), pursuant to the New York Executive Law sec. 63(12), the New York Estates, Powers, and Trusts Law (“EPTL”) sec. 8-1.4, and the New York Not-For-Profit Corporation Law (“NPCL”) sec. 112, which investigation was begun in part for the purpose of deciding whether a proceeding or action should be brought against the current directors of the Rivington House Health Care Facility, also known as the Rivington House-The Nicholas A. Rango Health Care Facility, a New York not-for-profit corporation, formerly located at 41-49 Rivington Street, New York, New York (“Rivington Corp.”).¹ Rivington Corp.’s directors currently are: Yshaya Altman, Tzvi Licht, Aaron Porges, and Benzion Scharf (“Rivington’s directors” or the “four directors”).

The subject matter of OAG’s investigation initially related to: (a) the circumstances of the closing of Rivington Corp.’s nursing home in December 2015, (b) whether Rivington’s directors violated their fiduciary and other legal obligations to Rivington Corp. and its charitable mission, and (c) whether two for-profit corporations—Rivington Center, LLC and New

¹ Rivington House Health Care Facility has also used the name Rivington House-The Nicholas A. Rango Health Care Facility. In this document, the terms “Rivington Corp.” and “Rivington House” refer to this not-for-profit corporation, including its directors, members, officers, agents and key employees. The term excludes, unless otherwise stated, the corporation’s nursing home facilities, equipment, real estate, and other tangible charitable assets. Rivington House’s mailing address was 45 Rivington Street.

Rivington Properties, LLC (the “Rivington LLCs”)—and their owners, Joel Landau and Marvin Rubin, committed violations of law in the operation of Rivington Corp. and in the closure of its nursing facility. Issues related to but broader than those covered by this Assurance of Discontinuance (the “Assurance”) are addressed in a separate Assurance of Discontinuance, bearing OAG number 17-208 (the “Related Assurance”).²

Rivington Corp. has not been dissolved as a not-for-profit corporation, despite its nursing home having been closed by the end of 2015, with no prospect of its opening a new home. Rivington Corp. has not proposed a plan for its dissolution.

This Assurance presents evidence and findings from OAG’s investigation with respect to Rivington’s directors, who were chosen by Landau, Rubin and Solomon Rubin.³ The Assurance then sets forth terms to which OAG and the Respondents have agreed in order to resolve the investigation, with respect to Licht, Porges, Scharf, Rivington Corp., Landau, Rubin, Solomon Rubin, and the Rivington LLCs (all of whom are referred to, collectively, as the “Respondents”).⁴

I. SUMMARY OF FACTUAL FINDINGS

OAG has made factual findings that include the following:

1. Rivington Corp. is a New York not-for-profit membership corporation, exempt from taxation under Internal Revenue Code section 501(c)(3), and having the charitable purpose of

² Any differences between applying this Assurance and the Related Assurance will be resolved by following the latter, except with respect to the operation of the EPTL and the NPCL.

³ Solomon Rubin is Marvin Rubin’s brother. Both brothers are associated with one another, and with Joel Landau and others, in nursing home-related businesses in New York. In this Assurance, Solomon Rubin is identified by his full name, and Marvin Rubin by his surname only.

⁴ Altman is a not a Respondent, as is explained in paragraph 25 and footnote 29, below.

operating a nursing home, pursuant to New York Public Health Law Article 28-A.⁵ Rivington Corp. was formed in 1990, in anticipation of the development of a nursing home facility, specializing in care for AIDS and HIV patients, to be located at 45 Rivington Street, in a building, erected in 1900, previously occupied by a public school. In 1992, Rivington Corp. received a deed from New York City for the real property at that address. In return, Rivington Corp. paid the City approximately \$360,000, and gave a mortgage to the City in the amount of \$1.2 million. Additional loans, amounting to at least \$29 million, financed by tax-exempt bonds from a New York State public authority, were then made available to Rivington Corp. for constructing and equipping the nursing home. In recognition of the substantial public investments made for this charitable public purpose, the deed from the City to Rivington Corp. stipulated that “use and development of the subject property is limited in perpetuity to a not-for-profit residential health care facility.”

2. Rivington Corp. began operating its nursing home in 1995. It cared for as many as 219 residential patients at a time,⁶ establishing a reputation for delivering outstanding care to patients with AIDS or HIV.

3. Rivington Corp. was originally governed solely by its board of directors, several of whom were also directors of a larger related not-for profit entity, Village Care of New York (“Village Care”). Rivington Corp.’s directors subsequently agreed to a change in the corporation’s governance whereby Rivington Corp. became a membership corporation, with Village Care gaining the right, as its sole member, to appoint Rivington Corp.’s directors. Despite this change,

⁵ The corporate purposes in Article 3 of Rivington Corp.’s original certificate of incorporation included additional purposes related to construction and operation of a nursing home. Rivington Corp. subsequently added to its purposes the provision of adult day treatment and services to persons with HIV/AIDS.

⁶ In 2015, after the purchase of Rivington Corp. and its assets by two limited liability companies, Rivington Center and New Rivington Properties, the New York Department of Health approved reductions in the maximum number of nursing home beds. The Department of Health also permitted the home’s AIDS-related beds to be converted to general nursing beds.

Village Care was obligated not to interfere with Rivington Corp.’s board of directors in the latter’s discharge of its duties to Rivington Corp.⁷

4. In or about 2012, representatives of Village Care/Rivington Corp. began exploring a sale of Rivington Corp. and its real estate.⁸ In order to facilitate a sale and to maximize the proceeds from a sale, Village Care/Rivington Corp. asked representatives of New York City to remove one or both of the deed restrictions confining use of the property to a not-for-profit residential health care facility.⁹

5. By July 2014, not having reached an agreement with the City for removing the restrictions, Village Care/Rivington Corp. solicited bids for the nursing home with the restrictions in place.

6. In October 2015, Village Care/Rivington Corp. accepted a bid from Allure Health Care, LLC (“Allure”).¹⁰ Allure, incorporated in New York State in 2012, was known by Village Care

⁷ See NPCL Article 6. Since its inception, Rivington House was affiliated closely with Village Care, which is a separate not-for-profit corporation, previously known as Village Nursing Home, established in 1977. Pursuant to NPCL Article 6, a not-for-profit organization may have a member or members with certain rights, most notably the right to choose the organization’s directors. The rights of a member are nevertheless limited and cannot be inconsistent with other statutory provisions, such as the obligations of directors. NPCL sec. 602(f). In its filing with OAG’s Charities Bureau in November 2015 of its Internal Revenue Code Form 990 for fiscal year 2014-15, Village Care described its purpose as “to support, benefit and assist with planning and consulting services to its various related entities and other health care organizations.”

⁸ The term “Village Care/Rivington Corp.” refers to the combination of Rivington Corp. and Village Care when both entities acted in concert together. Village Care/Rivington Corp. explained its reasons for selling the nursing home and real estate as follows:

“[Rivington House] was established . . . to address the burgeoning HIV/AIDS epidemic. There is no longer a need to maintain separate and distinct facilities for HIV/AIDS patients due to the advancement in the treatment of HIV/AIDS, as such treatment has become fully integrated into the sub-acute and long-term continuum of care. As a result, [Rivington House] has experienced a significant decline in its HIV/AIDS census over time, causing financial burdens to [Rivington House].”

In the Matter of the Petition of Rivington House-The Nicholas A. Rango Health Care Facility, Verified Petition, par. 3, New York County Supreme Court, index number 162246 of 2014.

⁹ The City considered the deed covenant to have two separate use restrictions: one requiring use of the property by a not-for-profit organization, and another requiring use as a residential health care facility. City officials considered releasing only one or the other use restriction, each at approximately half the price of releasing both restrictions together, but by 2015 the City held the position that the release of one use restriction would not be sold without the other.

¹⁰ Rivington Corp. described the offer as originating from “The Allure Group, through Joel Landau.” Rivington House-the Nicholas A. Rango Health Care Facility, Resolutions of the Board of Directors at its Special Meeting,

to be affiliated with a small group of for-profit nursing homes in New York City. Landau and Rubin were then, and are now, among the principals of the nursing homes operating under the Allure name. Solomon Rubin is another principal.

7. Allure and Village Care/Rivington Corp. signed a contract, dated October 9, 2014, structuring Allure's purchase of Rivington Corp. and its assets into two segments: one involving the real estate on Rivington Street; the other involving the not-for-profit corporation, which was holding a license from the New York Department of Health to operate an AIDS/HIV nursing home at that location. New Rivington Properties, LLC,¹¹ created by Landau and Rubin, would become the named buyer, for a price of \$28 million, of Rivington Corp.'s real estate, including its large limestone and red-brick six-story building, and the nursing home's equipment, fixtures and furniture. Rivington Center, LLC,¹² another newly formed for-profit company owned by Landau and Rubin, agreed to pay Village Care a nominal amount (\$1,000) for the right to replace Village Care as Rivington Corp.'s sole member. Upon closing the transaction, the Allure-controlled Rivington Corp. would no longer have title to real estate at 45 Rivington Street, or anywhere else; instead, it would become a tenant at 45 Rivington Street, subject to its landlord, New Rivington Properties, LLC, owned by Landau and Rubin. For its part, Village Care/Rivington Corp. represented both to New York County Supreme Court, which had the responsibility of approving the sale, and to OAG's Charities Bureau, which reviewed the terms of the sale before Village

October 7, 2014. In this Assurance, the term, "Allure Group," refers to the corporation that provides administrative services to a group of nursing homes in the New York City metropolitan area.

¹¹ New Rivington Properties, LLC, a New York corporation with an address of 199 Lee Avenue #182, Brooklyn, New York, registered with the New York Department of State on October 8, 2014, for the purpose of conducting business in New York State. This entity was dissolved two months later, on December 8, 2014. On December 10, 2014, a Delaware limited liability company with the same name and address registered as a foreign company with the New York Department of State. The Delaware entity has remained registered in New York. In this Assurance, the term, "New Rivington Properties, LLC," refers to both companies.

¹² Rivington Center, LLC is a New York corporation with an address of 199 Lee Avenue #182, Brooklyn, New York, registered with the New York Department of State on October 6, 2014, for the purpose of conducting business in New York State. It is still registered to conduct business in New York.

Care/Rivington Corp. presented it to the Court, that Rivington Corp. would continue to operate a not-for-profit skilled nursing care facility at 45 Rivington Street.¹³

8. On December 16, 2014, Supreme Court gave Village Care/Rivington Corp. authorization to proceed with its proposed sale.¹⁴

9. Although the proposed sale and purchase did not require removal of the deed restrictions on 45 Rivington Street, the New York City Department of Citywide Administrative Services (“DCAS”) continued its efforts to market the deed restrictions, based on earlier requests, made to DCAS by Village Care and Allure, for removal of both deed restrictions.¹⁵ On January 9, 2015, DCAS sent Village Care a letter, approving removal of both restrictions at a price of \$16.15 million. Approval was subject to final review by the Office of the Mayor, following a public hearing.

10. On January 29, 2015, the New York State Department of Health formally consented to the purchase of Rivington Corp.’s nursing home by the Rivington LLCs.

11. On February 9, 2015, New Rivington Properties, LLC bought Rivington Corp.’s real estate. The deed to New Rivington Properties, LLC contained the same use restrictions that existed prior to the purchase. Of the \$28 million purchase price, \$24.7 million was secured by a mortgage loan, signed by Landau on behalf of New Rivington Properties, LLC.

¹³ See the verified petition of Emma DeVito, Rivington House’s president and chief executive officer, dated Dec. 2, 2014, filed with New York County Supreme Court under index number 162246 of 2014. Landau and Rubin, Solomon Rubin, and the Rivington LLCs were not parties to the sale petition in Supreme Court, and they did not make any representations to the Court or OAG.

¹⁴ The Court determined, based on its review of DeVito’s petition, that “the interests of Rivington House will be promoted by the sale of the Premises” (i.e., the land, building and fixtures at 45 Rivington Street).

¹⁵ The New York City Comptroller’s report on the sale of the deed restrictions found that DCAS’s primary concern was whether the real estate would satisfy current zoning regulations. See *Report of the City Comptroller on the Sale of Two Deed Restrictions Governing Property Located at 45 Rivington Street*, p. 17, issued August 1, 2016, viewed at http://comptroller.nyc.gov/wp-content/uploads/documents/Rivington_Report_8-1-16.pdf.

12. Upon transfer of title to New Rivington Properties, LLC, resignations of Rivington Corp.'s entire board of directors, appointed by Village Care, became effective. A new group of directors was named by Rivington Center, LLC to Rivington Corp.'s board: Yshaya Altman, Tzvi Heshy Licht, Aaron Porges, and Benzion Scharf. Landau, Rubin, and Solomon Rubin selected these four candidates months before the sale occurred, providing ample time and opportunity for the new directors to become prepared for their duties.¹⁶

13. As part of its investigation, OAG questioned Altman, Licht, Porges and Scharf, under oath. On the basis of these examinations, supplemented by documentary evidence, OAG found that Licht, Porges and Scharf lacked training, experience and education in the not-for-profit sector; lacked awareness or understanding of their duties as Rivington's directors; and they failed to perform their duties as directors with a level of care that any prudent person serving as a director of Rivington Corp. would have exercised. Rather than independently overseeing Rivington Corp.'s operations, Licht, Porges, and Scharf, who had strong personal and/or business ties to Landau and the Rubins, allowed them to control Rivington Corp. OAG further found that, when Rivington Corp.'s nursing home was closed at the end of 2015, the decision to close was made by Landau and the Rubins, who had a contractual right to cause the landlord, New Rivington Properties, LLC, to terminate the lease at 45 Rivington Street. Licht, Porges, and Scharf failed to exercise their legal duty to evaluate independently and to document

¹⁶ The membership change agreement that anticipated the appointment by Rivington Center, LLC of Rivington Corp.'s new directors is dated October 9, 2014, and is signed by Landau. Attached to the agreement was the full text, consisting of sixteen pages, of Rivington House's revised by-laws, which would govern Rivington House and its new directors. DeVito's petition of Dec. 2, 2014 to New York Supreme Court identified the new directors by name and position: "The following individuals will be elected to the Board of Rivington House . . . and will serve as officers of Rivington House as indicated: Benzion Scharf (President); Tzvi H. Licht (Treasurer); Aaron Porges (Secretary) and Yshaya Altman." Petition, par. 8. Notwithstanding DeVito's petition, no document establishes the specific dates on which the four directors first received actual notice of their appointments. Scharf, for example, stated that he did not recall being informed of his appointment until in or about February or March 2015, and Altman stated that he was unaware of his appointment until 2016.

The revised by-laws set forth numerous obligations of the directors, which the directors did not meet.

contemporaneously that the closing of the nursing home at 45 Rivington Street would be in Rivington Corp.'s best interests, and the terms of the closing were fair and reasonable for Rivington Corp. and would promote Rivington Corp.'s charitable purposes.¹⁷

14. Immediately following the purchase of Rivington Corp. and its real estate by the Rivington LLCs, Allure resumed negotiations with New York City officials over the deed restrictions. The City insisted on a price of \$16.15 million for removing both restrictions, despite Allure's request for removal of only the not-for-profit use restriction, and Allure's assertion that the cost of both restrictions—instead of a lower (by half) cost for removing only the not-for-profit use restriction—would undermine the nursing home's financial viability and would cause it to be sold.¹⁸ On May 1, 2015, New Rivington Properties, LLC agreed to the City's terms and price. A written agreement between New Rivington Properties, LLC and New York City conditioned removal of the restrictions upon "the rights, if any, of tenants and persons in possession." The building's sole tenant was Rivington House with its nursing home, holding a ninety-nine-year lease to the premises.¹⁹

15. On May 6, 2015, New Rivington Properties, LLC agreed to sell the real estate at 45 Rivington Street to a group of real estate investors, at a price of \$116 million. The new purchasers, affiliated with the Slate Property Group, based in New York City, and using the name

¹⁷ See NPCL secs. 715 and 511(d).

¹⁸ DCAS calculated the value of removing the two-part deed covenant as twenty-five percent of the property's fair market value. DCAS's appraiser estimated fair market value to be \$64.6 million, resulting in a valuation of the covenant at \$16.15 million. DCAS initially considered the two use restrictions in the covenant to be severable, pricing them at approximately \$8.075 million each but ultimately refused to allow New Rivington Properties to extinguish only one of the restrictions.

¹⁹ The lease, dated February 10, 2015, between Rivington House and New Rivington Properties, LLC contained a clause giving New Rivington Properties, LLC the right to cancel and terminate the lease in the event that the City's deed restrictions were to expire or to be terminated. The term of the lease was ninety-nine years, with a base rent of \$4.5 million annually. The lease was executed on behalf of Rivington House by Marvin Rubin, who identified himself in the document as an "authorized signatory" as well as "director" and "sole shareholder" of Rivington Center, LLC. Landau, using the title "manager," signed for New Rivington Properties, LLC. Rivington's directors, none of whom signed the lease, made no efforts to negotiate the terms of this lease before it was signed, or to secure another lease at a different location.

Rivington Street Investors, LLC, planned to take possession after all the patients and the deed restrictions were removed, and to build condominium apartments at luxury-market rates. The existence of the contract remained closely held until the sale was completed, nine months later.

16. New Rivington Properties, LLC made its payment of \$16.15 million to the City for the use restrictions at 45 Rivington Street in November 2015.²⁰ By the end of that month, four patients were living in the nursing home. (In February 2015, just before New Rivington Properties, LLC and Rivington Center, LLC took control of the nursing home, only two patients resided there.) Under the new owners, the number of patients increased to a maximum of seventeen in June 2015, but thereafter steadily diminished. By mid-December 2015, the last patient had been discharged. Rivington Corp. then submitted to the New York Department of Health a plan to close the nursing home.²¹ Closure was not based on a lack of demand for residential skilled care in Manhattan; throughout 2015, and continuing to the present, the supply of residential beds in skilled nursing care facilities in Manhattan has been less than the demand for such beds. There was, however, a lack of demand for facilities dedicated to the treatment of patients with HIV or AIDS.

17. In early 2016, New Rivington Properties, LLC terminated Rivington Corp.'s ninety-nine year lease of 45 Rivington Street. Its remaining charitable assets consist of a small sum of money in a bank account(s).

18. On February 11, 2016, New Rivington Properties, LLC closed on its sale of the real property at 45 Rivington Street.

²⁰ On November 12, 2015, the City filed with the City Register a modified deed that omitted the covenant requiring use of the real estate for a not-for-profit residential health care facility.

²¹ The Department of Health formally accepted the closure plan in February 2016.

19. By March 2016, as the sale became publicly known, a number of governmental investigations were commenced, including OAG’s investigation.²²

20. To date, the building at 45 Rivington Street has remained vacant. The New York City Department of Buildings has issued a partial stop-work order, limiting demolition and construction at the site.²³

II. TESTIMONY BY RIVINGTON’S DIRECTORS

21. Rivington’s directors—Altman, Licht, Porges and Scharf—all had close personal and/or business ties to Landau or the Rubins before their appointments to the board of Rivington Corp. in early 2015. The testimony of Licht, Porges, and Scharf before OAG established that they failed to perform their duties, or to perceive their duties, to Rivington Corp. and its charitable mission. Licht, Porges, and Scharf did not express any concern that conflicts might exist between their obligations as directors of Rivington Corp. and their personal/business obligations to Landau, the Rubins, and Allure.²⁴

22. Scharf, who was appointed Rivington Corp.’s president, is Solomon Rubin’s brother-in-law. As president, Scharf had several significant responsibilities, including the following, listed in the organization’s by-laws: carrying out policies set by the board of directors and advising the

²² The deed to the buyer, New Rivington Investors LLC, was not recorded by the New York City Department of Finance until March 15, 2016, but in an application, dated February 12, 2016, to the New York City Department of Buildings (“DOB”), New Rivington Investors LLC, as owner of the property, applied for a permit to demolish interior portions of the nursing home. DOB posted the permit on its public website on or about February 16, 2016. The permit was later rescinded, before any demolition had begun. See DOB’s website, at <http://a810-bisweb.nyc.gov/bisweb/PropertyProfileOverviewServlet?boro=1&block=420&lot=47&go3=+GO+&requestid=0>.

²³ In May and July 2017 DOB issued permits allowing the new owner to perform limited exploratory work on portions of the building’s structure, masonry and interior surfaces. *Id.*

²⁴ Article IX of Rivington House’s revised by-laws contain a conflict-of-interest policy, applicable to all of the Respondents with respect to the decisions to close Rivington House’s nursing home and to abandon its lease to 45 Rivington Street. Under the by-laws, any potential conflict-of-interest was required to be disclosed to Rivington House’s audit committee. The audit committee was then required to “approve only those . . . transactions in which the terms are fair and reasonable to the Corporation [i.e., Rivington Corp.] and the arrangements are consistent with the best interests of the Corporation, having considered alternative transactions. . . . The audit committee board shall set forth the basis for its decision in the minutes of the meeting at which the decision is made . . .” Licht, Porges, and Scharf never established an audit committee, and did not develop an alternate method of addressing conflicts.

board about formulating policies; recommending an annual operating plan and budget; developing human resources policies; hiring and discharging employees; assisting professional staff in performing their responsibilities; signing checks and contracts; and appointing qualified administrators for the nursing home.²⁵ Nevertheless, in testimony before OAG, Scharf professed ignorance about his position and duties at Rivington Corp., and could not describe any substantive action that he took or directed be taken in his capacities as president and director.

23. Licht, appointed Rivington Corp.'s treasurer, has been employed as Allure's controller, one of the company's highest-paid positions. As treasurer, Licht was required to serve as chairman of the organization's Finance Committee, and to ensure that independent audit reports were submitted to the board of directors.²⁶ However, under Licht, Porges, and Scharf, a finance committee was never established, and audit reports were never prepared or submitted. In his role as Allure's controller, Licht reported directly to Landau and the Rubins.

24. Porges, appointed Rivington Corp.'s secretary, has been employed in Allure's billing department, where he reported to Licht. As secretary, he was responsible for supervising the recording of minutes of all board meetings and for keeping custody of those minutes.²⁷ Porges testified that he relied on Licht to manage the nursing home, and on Allure to close it.

25. Altman has been employed as a truck driver for a food-delivery business. He had no prior experience or training in supervising nursing homes, or as a corporate director or officer. He was unaware of his appointment as a director of Rivington Corp. until he was notified by Licht, following OAG's issuance of subpoenas to Rivington's directors in 2016, months after Rivington House's nursing home had been closed.

²⁵ Revised by-laws, Art. IV, sec. 6.

²⁶ Id., sec. 4.

²⁷ Id., sec. 5.

26. In addition to their administrative duties under Rivington Corp.'s by-laws, Rivington's directors had significant responsibilities with respect to the nursing home's medical staff and services, including: appointing medical staff, including doctors; granting and renewing professional privileges to medical staff in accordance with New York Public Health Law sec. 2805-k; overseeing medical staff; and approving rules and regulations that governed the medical staff.²⁸ Nevertheless, in their testimony, Licht, Porges, and Scharf could not describe any substantive actions that they took involving medical staff and the medical care of the nursing home's patients.

III. LEGAL CONCLUSIONS

Evidence from OAG's investigation establishes the following conclusions of law.

27. When the Rivington LLCs acquired Rivington Corp. and its real estate, Respondents understood, or should have understood, that Rivington's directors had a duty to ensure that Rivington Corp. complied with all applicable laws and regulations governing not-for-profit organizations, as well as its own by-laws.²⁹ Respondents further understood, or were negligent in failing to understand, that the Rivington LLCs and their principals could not overbear or supplant Rivington's directors in the performance of the directors' duties to Rivington Corp.

28. Licht, Porges, and Scharf, acting in concert with one another and with the other Respondents in their capacities as key employees and *de facto* officers and trustees of Rivington Corp., breached the duties that they all owed to Rivington Corp., violated statutory rules for the proper governance of Rivington Corp. and its charitable assets, and ignored Rivington Corp.'s by-laws. When the prospect of the closure of Rivington Corp.'s nursing facility and the loss of its lease to 45 Rivington Street arose, Rivington's directors failed in their responsibilities to ensure

²⁸ Id., Art. VI.

²⁹ The conclusions stated in paragraphs 28, 29, 34 and 36 do not apply to Altman, who was unaware of his appointment to Rivington Corp. until 2016 and was not involved in these events.

independently and to document contemporaneously that each of the proposed transactions were “fair, reasonable and in the best interest” of Rivington Corp. (sec. 715[a]), notwithstanding the “substantial financial interest” (sec. 715 [b]) of Landau and Rubin, Solomon Rubin, and the Rivington LLCs.

29. Pursuant to NPCL secs. 510-511-a, Licht, Porges, and Scharf were obligated to obtain approval from either New York Supreme Court or OAG before disposing of all or substantially all of Rivington Corp.’s assets.

30. Pursuant to NPCL secs. 706(d) and 714(c), OAG can commence actions to remove for cause Rivington’s directors and officers. Pursuant to NPCL sec. 720(a)(1), OAG may also bring claims against the directors, officers and key employees for: “(A) the neglect of, or failure to perform, or other violation of [their] duties in the management and disposition of corporate assets committed to [their] charge” or “(B) the acquisition by [themselves], transfer to others, loss or waste of corporate assets due to any neglect of, or failure to perform, or other violation of [their] duties.” Pursuant to NPCL sec. 112(a)(7), OAG can commence an action or special proceeding to enforce any right given to members, directors of officers of charitable corporations. Pursuant to EPTL sec. 8-1.4, OAG may bring an action “to secure the proper administration of any trust,” which includes not-for-profit organizations holding charitable assets. Pursuant to NPCL sec. 112(a)(7) and NPCL § 1102(a)(2), OAG may bring a proceeding to dissolve a not-for-profit corporation where, as here, “[t]he corporation is no longer able to carry out its purposes” (NPCL sec. 1102(a)(2)(E)).

IV. RELIEF

WHEREAS, Respondents neither admit nor deny OAG's findings of fact, recited in paragraphs 1 through 26 above;

WHEREAS, Respondents have cooperated with OAG to resolve violations found by OAG;

WHEREAS, OAG is willing to accept the terms of this Assurance pursuant to New York Executive Law sec. 63(15); and

WHEREAS, OAG and Respondents believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and among OAG and Respondents that:

31. Respondents shall cause to be filed, on behalf of Rivington Corp., all reports currently and past due to OAG's Charities Bureau, the Internal Revenue Service and to any other governmental entity, within forty-five days of the Effective Date of this Assurance.

32. Respondents shall submit to OAG's Charities Bureau a detailed financial report(s) of all Rivington Corp.'s charitable assets since the closure of the skilled care facility at 45 Rivington Street in December 2015, within forty-five days of the Effective Date of this Assurance.

33. Respondents shall submit in writing to OAG's Charities Bureau a detailed description of all charitable assets still being held by Rivington Corp., including bank accounts and other financial instruments, within forty-five days of the Effective Date of this Assurance.

34. In consideration of the foregoing, Respondents collectively shall give OAG a certified check or checks totaling \$1.25 million, payable as restitution on behalf of Rivington Corp.'s

charitable beneficiaries.³⁰ OAG will hold the check(s), pending the identification of a distributee(s), which will be a not-for-profit organization(s) whose charitable mission(s) is/are determined by OAG to be substantially similar to that of Rivington Corp. in providing health care services to residents in the general area of the Lower East Side of Manhattan. OAG will determine the appropriate distributee(s) of the \$1.25 million. Respondents and the Allure Group agree not to make any claims against the \$1.25 million distribution.

35. Rivington Corp. agrees to move expeditiously to dissolve itself in accordance with NPCL Article 10 and in consultation with OAG's Charities Bureau.³¹ Rivington Corp. will submit to OAG its petition for dissolution, with all required supporting documentation and exhibits. OAG may itself determine the dissolution petition, or OAG may in its discretion require Rivington Corp. to submit the dissolution petition directly to New York Supreme Court.

36. For five years from the effective date of the Assurance, Rivington directors Scharf, Licht and Porges are barred from accepting appointments as officers, directors or trustees of any not-for-profit or charitable organization incorporated, registered, operating or soliciting contributions in New York State. Following this five-year period, these directors may accept such appointments, provided that the director accepting such appointment has successfully completed a training program substantially equivalent to the training required to obtain a Certificate of Non-Profit Board Education from BoardSource (www.boardsource.org).

V. NOTICES, VENUE AND OTHER PROVISIONS

37. OAG has agreed to the terms of this Assurance based in part on representations made to OAG by Respondents and their counsel. To the extent that any material representation made by

³⁰ This payment is identical to, and not duplicative of, that referenced in the Related Assurance. In the Related Assurance, Respondent Allure Group has also agreed to pay a separate assessment of \$400,000, in relation to NPCL sec. 715(f), and to reimburse OAG for costs related to OAG's investigation, in the amount of \$350,000.

³¹ Guidance for the dissolution of non-for-profit corporations has been issued by the Charities Bureau on its website, at <https://charitiesnys.com>.

any Respondents during the course of the investigation is later found to be inaccurate or misleading, this Assurance is voidable by OAG, in its sole discretion.

38. Acceptance of this Assurance by OAG shall not be deemed approval by OAG of any of the actions referenced herein, and Respondents shall make no representation to the contrary. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Respondents in agreeing to this Assurance.

39. Respondents acknowledge that each has been duly represented by counsel in agreeing to this Assurance.

40. Respondents shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing any view that this Assurance is without a factual basis. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability or fact by Respondents.

41. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of OAG.

42. In the event that one or more provisions contained in this Assurance shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision(s) of this Assurance.

43. If this Assurance is voided or breached, Respondents agree that any statute of limitations or other time-related defenses applicable to the subject of this Assurance and any claims arising from or related thereto are tolled from and after the date of this Assurance. In the event that this Assurance is voided or breached, Respondents expressly agree and acknowledge that this

Assurance shall in no way bar or otherwise preclude OAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to this Assurance, or from using in any way any statements, documents or other materials produced or provided by Respondents prior to or after the date of this Assurance.

44. To the extent not already provided in this Assurance, Respondents shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance with this Assurance.

45. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

To the Attorney General:

Paul Mahoney, Esq.
Assistant Deputy Attorney General, Medicaid Fraud Control Unit
New York Office of the Attorney General
120 Broadway, 13th Floor
New York, New York 10271
Email: paul.mahoney@ag.ny.gov
c.: sean.courtney@ag.ny.gov

To Respondents Joel Landau, Marvin Rubin, Solomon Rubin, Rivington Center, LLC, and New Rivington Properties, LLC:

Andrew J. Levander, Esq.
Dechert LLP
1095 Avenue of the Americas
New York, NY 10036
Email: andrew.levander@dechert.com

To Respondents Tzvi Licht, Aaron Porges, and Benzion Scharf:


Susan Brune, Esq.
Brune Law P.C.
450 Park Avenue, Suite 1901
New York, NY 10022
sbrune@brunelaw.com

46. All correspondence, notices and payments related to this Assurance must reference Assurance Number 17-209.

47. Pursuant to New York Executive Law §63(15), evidence of a violation of this Assurance shall constitute prima facie proof of violation of the applicable law in any action or proceeding thereafter commenced by OAG.
48. If a court of competent jurisdiction determines that any Respondent has breached this Assurance, such party shall pay to OAG the cost of such determination and the cost of enforcing this Assurance including, without limitation, legal fees, expenses, and court costs.
49. OAG finds this relief and the agreements contained in this Assurance appropriate and in the public interest. Accordingly, OAG accepts this Assurance, pursuant to Executive Law §63(15), in lieu of commencing a statutory proceeding.
50. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.
51. Respondents agree to bear their own fees, costs and expenses of this matter.
52. Nothing contained herein shall be construed to deprive any person of any private right under the law.
53. This Assurance may be executed in counterparts, each of which shall be deemed an original and all or which taken together shall constitute one and the same agreement. Delivery by facsimile or electronic transmission in portable document format (PDF) of an executed counterpart of this Assurance is as effective as delivery of an originally executed counterpart.
54. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on November 27, 2017 (the “Effective Date”).

ERIC. T. SCHNEIDERMAN
Attorney General of the State of New York
120 Broadway
New York, New York 10271

By: 
Paul Mahoney
Asst. Deputy Attorney General

RESPONDENTS:



Joel Landau



Marvin Rubin



Solomon Rubin



Marvin Rubin member
Rivington Center, LLC, by [name]



Marvin Rubin member
New Rivington Properties, LLC, by [name]

Rivington House Health Care Facility, by [name]

Yshaya Altman

Tzvi Licht