



LEASE NEGOTIATION TEAM

David P. Miranda, Chair  
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CONFIDENTIAL

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To: House of Delegates

From: NYSBA Lease Negotiation Team  
David P. Miranda, Chair  
Michael McNamara  
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Re: One Elk Street Lease

The Association leases the Bar Center at One Elk Street from The New York Bar Foundation (Foundation). The current lease, which dates from 1991, and was amended and extended in 2007, expires on December 31, 2021. The expiration of the lease presents an opportunity to reassess the Association's space needs, the fiscal costs of renting and maintaining the Bar Center, and new challenges to Association business operations due to changing demographics and the coronavirus pandemic. In September 2020, President Scott M. Karson appointed a lease negotiation team comprised of David P. Miranda, Michael McNamara, and Sandra Rivera. The lease negotiation team was charged to review the present lease, the current use of the Bar Center, the Association's needs going forward, and to negotiate a long-term facilities lease for the Association. This memorandum outlines issues raised for consideration in our planned review.

**BACKGROUND**

The Association was headquartered at 99 Washington Avenue in the 1960s. The planned building of One Commerce Plaza necessitated the demolition of the building and forced our relocation. The Association proceeded to purchase four townhouses two blocks away on Elk Street. Although the Association originally planned to demolish these buildings in favor of new construction, opposition from historic preservationists ultimately resulted in maintaining the facades of three of

the townhouses with a modern building behind them. The rowhouse designated as 1 Elk St. was not able to be saved and was demolished. The new Bar Center was dedicated in 1971.

There was a need for additional space by the 1980's, as the Association grew in both membership and staff. In 1986 the Bar Center was transferred from the Association to the Foundation. The Foundation acquired the townhouses at 5 and 6 Elk St., and a capital campaign was planned to incorporate those townhouses and additional office space into the existing Bar Center. The expanded Bar Center was rededicated in 1990. No capital fundraising for building improvements has occurred in the 30 years since the rededication ceremony. It was assessed at \$3,237,500.

### **HISTORIC PRESERVATION**

When the Bar Center was expanded, it was agreed, in order to address historic preservation concerns, that some of the ground floor areas of 5 and 6 Elk should maintain their historic character. While the ground floor of 5 Elk had been gutted by fire, the space could serve as a board room, with the current Peck Room featuring wall murals depicting the Elk Street area as it might have appeared at the time of the Association's founding. In 6 Elk, the front parlor was recreated as it appeared in the 1880's, using a painting of the space at the Albany Museum of History and Art as a guide, with a dining room featuring a backlit stained-glass window. When the Foundation acquired 5 and 6 Elk, the latter still had its original four-story winding staircase with a stained-glass skylight at the top. While historic preservationists wanted to maintain the staircase in its entirety, the Albany Fire Department objected on the basis that it would have a chimney effect in the event of a fire. One flight of stairs was retained as a compromise. Historic preservation restrictions remain in these areas of the Bar Center along with the building façade located on Elk Street.

### **ACCESSIBILITY**

Because of the design, construction, and historic preservation restrictions of the building, full access for persons with disabilities has always presented difficulties. The five townhouses do not have street-level access, requiring persons with disabilities to use one of the rear entrances. There is no sidewalk directly behind the building, which means that visitors must park on the street and use the sidewalk and steps to reach an entrance. Any plan to improve street-level access in the front of the building would alter the historic appearance of the townhouses and would be met with opposition. There is limited on-site parking, with a total of 42 spaces allocated to employees.

Inside the building, there are several areas with split levels and stairs impeding access across the floors – this is because the original townhouses did not have floor levels at the same height. As an example, it is difficult for a person with a disability walking to go from the main lobby to the Cromwell Room or the President’s Office because there is a flight of several steps in the hallway. Such a person must instead embark on a circuitous and time-consuming journey, taking the elevator in 5 Elk to the second floor, crossing over to the other side of the building, taking the Spruce Street elevator to the basement, crossing the garage to the 2 Elk elevator, and finally taking that elevator to the first floor next to the President’s Office. Most of the bathrooms and elevators at One Elk were constructed prior to 1991 (when the ADA was passed) and none fully meet current accessibility standards.

### **ASSOCIATION-FOUNDATION RELATIONSHIP**

As the Association is a 501(c)(6) tax-exempt organization, donations to the Association are not tax-deductible. The Association’s status as a 501(c)(6) organization enables it to engage in governmental relations activities that would otherwise not be permitted. The Foundation is a 501(c)(3) tax-exempt organization, and contributions it receives are tax-deductible. The Foundation was formed in 1950, as “Foundation of the New York Bar Association, Inc.” The purposes set forth in the 1950 Certificate of Incorporation included:

[t]o apply its income ... to the use of the New York State Bar Association for the following charitable purposes ... (1) to facilitate and improve the administration of justice; (2) to facilitate the cultivation and diffusion of knowledge and understanding of the law and the promotion of the study of the law ... through the maintenance of a law library, and the publication of addresses, essays, treatises, reports and other literary works ...; (3) to provide for the acquisition, preservation and exhibition of rare books and documents, sculptures, paintings and other objects of art and historical interest relating to the law, the courts, and the legal profession. In 1975 the Foundation’s Certificate of Incorporation was amended. It was renamed “The New York Bar Foundation,” and its purposes were restated as the following:

to advance legal research and education; to improve the administration of justice; to promote professional ethics and responsibility and service to the public; to cultivate the preservation of the history and traditions of the law, the courts and the legal profession; to encourage better public understanding of our legal heritage; to aid in making legal institutions more responsive to the public interest; and to sponsor studies, conferences, publications, and any and all other means of discourse, communication and exchange of ideas appropriate to the foregoing.

As noted in the January 1975 President's Message of then-President Whitney North Seymour, Jr., the amendment was intended to broaden the Foundation's outreach beyond the Association to serve the profession generally. The connection with the Association is maintained in the membership of the Foundation, which consists of the members of the Association's House of Delegates. Since the 1975 amendment, the Foundation created the Fellows of The New York Bar Foundation, who commit to financially support the Foundation; established memorial gifts and matching gifts programs; and established endowed and restricted funds.

Since the formation of the Foundation, two capital campaigns have been conducted for the Bar Center. From 1967-1971 the Foundation was instrumental in efforts to raise \$1,600,000 to build the Bar Center, and from 1986-90 \$6,800,000 for the Bar Center's expansion – a total of over \$24,000,000 in today's dollars. The historic financial support through the Foundation for building and expanding the Bar Center is important in understanding the basis for the 1991 facilities lease requiring NYSBA to pay the Foundation rent, and all utilities, expenses, upkeep repairs (internal, external and structural), and taxes for premises owned by the Foundation.

### **CURRENT LEASE**

Under the current Foundation-Association lease, the Association pays the Foundation rent calculated based on a percentage increase in the Consumer Price Index for All U.S. Consumers, All Items, U.S. City Average (CPI-U). The current rent is \$302,229 annually, with monthly payments in the amount of \$25,185.75. There is no reduction in rent if there is a decrease in the CPI-U. The Association is responsible for maintaining insurance for physical loss, property damage and personal injury; all maintenance expenses, both exterior and interior, all taxes, and all utilities. For 2020, we estimate these additional costs to be \$800,000. Due to a change in enforcement of the laws of the City of Albany, the Bar Center lost its tax-exempt status in 2019, and in 2020 NYSBA paid approximately \$174,000 in taxes and related legal fees to challenge the assessment on behalf of the Foundation. These total costs are about \$1.1 million for the 2020 fiscal year.

### **TAX ASSESSMENT**

Under the current lease, the Association is responsible for the payment of taxes on the Bar Center. Until 2011, the Association paid regular property tax assessments to the City of Albany, having been advised that the property was not entitled to an exemption. In 2011, the Foundation submitted an application to the city for exemption from taxes pursuant to RPTL §420-a (mandatory exemption for property used for charitable purposes); the exemption was granted. In 2019, the City of Albany applied an ordinance providing that property being used for a bar

association is not tax exempt, and determined that the property is not entitled to an exemption based on RPTL §420-b (permissive exemption for not-for-profits). That determination is the subject of a current RPTL Article 7 proceeding in Supreme Court, Albany County. When asked to share in the Association's cost of the legal challenge the Foundation chose not to, noting correctly, they had no obligation to do so under the current lease. The Association is now paying property taxes of approximately \$165,000 per year, and incurring all costs related to the legal challenge.

### **NYSBA STAFFING**

In 2017, NYSBA had approximately 125 full time employees, and there were no remote employees. Currently, NYSBA has 84 full time employees (including 6 at the print shop in Green Island, NY). Several of these positions are remote. NYSBA expects to have a full-time staff of 95 by the end of 2021. However, some will be located outside of the Albany area and continue remote working permanently. Remote capabilities enable NYSBA to obtain employees with expertise necessary to its future success and also improve the diversity of its workforce.

In 2018, NYSBA outsourced its entire IT department to a Maryland-based company whose employees – working remotely – handled the entire data migration of NYSBA's antiquated member data system to Salesforce, the new Association Management System ("AMS"). Having the flexibility to acquire talent from outside its immediate geographic area made the transition easier and provided NYSBA with some security in that it had retained a group with the required expertise to implement the data migration and technological transition. NYSBA also retained a Chicago based website company to redesign the website. The locations where the staff of these respective companies worked was not an impediment to the projects, and in fact, the retention of these companies enabled NYSBA to ensure it was able to receive the best possible services for its money, uninhibited by the personnel confines of the Capital Region or New York State boundaries.

As a result of the pandemic, the traditional workday and in-person office requirements have been upended. According to some studies and reports, the pre-pandemic model will not return – perhaps ever – as many employees prefer at the very least a hybrid model of virtual and in-person work and have demonstrated that productivity has not been negatively impacted as a result. In fact, productivity has improved as workers are able to fit their work around their personal and familial responsibilities. As a result of this seismic shift, NYSBA has an opportunity to reconsider and redesign how and where it operates.

## **FACILITY SPACE**

The Bar Center has 60,119 square feet of available space, including the basement and the garage. There is about 42,000 square feet of above ground, professional work and office space. Of the 60,119 square feet, 40% is not fully utilized and within the remaining 60% of the leased space, much of it is oversized even for pre-pandemic usage. Office space of approximately 300 square feet is allocated to the Foundation in the building.

Flexible work from home models (or some combination of work at the office and work from home) have grown and even when the pandemic ends will likely become more common. As a result of this trend, and considering the significant challenges presented by the current buildings, the role of the Bar Center and NYSBA's physical footprint should be examined. It is estimated that needs of the NYSBA workforce will require approximately 23,000-27,000 square feet professional office space.

NYSBA holds two of its four House of Delegates meetings in Albany. The Great Hall of Elk Street is utilized for these two meetings and for other large gatherings. The Great Hall has never proved an ideal meeting space for House meetings, with the need to utilize overflow space including the Hinman Library. The Great Hall also suffers from poor acoustics, and a cramped catering space that impedes access to the restrooms on the Great Hall level. However, as NYSBA now offers attendance at meetings both live and virtually, a larger space may no longer be necessary. It is conceivable that NYSBA could host all of its House meetings at outside facilities, as it already does for its June (Cooperstown) and January (NYC) meetings. Renting space in outside venues is feasible for the few events that are held annually at the Bar Center in Albany.

## **PRINT SHOP**

NYSBA also leases a 19,612 square foot print facility in Green Island, NY. The lease began on April 23, 2009 and will expire on December 31, 2024. The annual rent for the facility is \$231,814. Since 2015, NYSBA full time staff at the print shop has been reduced from 14 to 6. During that period printing for CLE and section events was reduced by 42% from 2015 – 2020 and direct mail was reduced by 37%.

Digital platforms have disrupted the print industry and NYSBA has invested a significant sum to acquire the technological tools necessary to improve the speed and accessibility of our content to our members. Print will remain an important communication tool, but the reduction in the amount of print will necessitate

eliminating the print shop space when the lease ends in 2024. It is expected that by the time the print shop lease expires, NYSBA will be able to incorporate a more modest print shop into its main facility in Albany, or other smaller space.

## **NEED FOR RENOVATIONS**

In anticipation of the need to transition the NYSBA print shop capabilities out of the current print facility in Green Island, NYSBA retained the services of Synthesis Architects, LLP of Schenectady, New York, to see if it was possible to reconfigure the basement at One Elk Street to accommodate the necessary print shop equipment. Synthesis also noted that the building's heating and ventilation systems were outdated and in need of renovation and that the building's restrooms and elevators are in need of repair and renovation in order to increase accessibility. Because the One Elk Street facility consists of multiple, interconnected, independent buildings, it is challenging to easily provide access throughout the building to persons with difficulty walking. This challenge is further compounded by historical preservation requirements that prohibit any major structural changes to the front facade of the building on Elk Street.

Synthesis advised that accessibility would be improved if the main entranceway to the building were located off Eagle Street, with a central system of elevators and restrooms, creating a new center hub of the building off of the new Eagle Street entrance. Synthesis provided initial architectural drawings and cost estimates of renovations required on Elk Street, to consolidate print shop operations, improve handicap accessibility, have appropriately accessible restrooms, upgrade the ventilation, heating and cooling systems and provide a centralized ADA compliant elevator system. Synthesis estimates that the cost of these renovations to be more than \$6 million dollars. NYSBA has looked into whether the renovations could be performed in phases and we estimate that the most urgent needs, in a phase 1- HVAC repairs, basement/print shop reconfiguration, roof repairs, and modest accessibility improvements, will cost about \$2.6 million.

## **FUTURE OF NYSBA**

NYSBA serves members both domestically and internationally. Of the 330,000 New York admitted attorneys, 140,000 reside outside of the state, and more than 26,000 live outside the United States. The Association has members in 50 states and over 100 countries worldwide. NYSBA's International Section includes 65 chapters located in other countries. Most of our members will never set foot in the Bar Center.

Serving our members who live and work across the nation and around the globe is something NYSBA is working on daily – ensuring they are a click away from

connecting with colleagues around the world and getting the CLE, information and tools they need.

In 2017, MCI, a company that provides marketing and consulting services to NYSBA, surveyed international members and non-members and found international members to be an area of potential exponential growth for NYSBA. Of the 26,000 New York attorneys out of the country only 3,600 were NYSBA members. MCI interviewed attorneys in Canada, Britain, Germany, France, China, Japan, Hong Kong, and Korea. The key finding was that NYSBA has no significant competition and considered as the global leader of bar associations.

NYSBA underwent a digital transformation during 2019 and 2020. Over \$2,000,000 was invested in technology and the personnel expertise to move the Association to new platforms. The completion of the initial stage of this transformation, the result of the vision of Past President Hank Greenberg, occurred just weeks before the COVID crisis hit New York. As a result, the Association has been able seamlessly continue to serve its members, to reach its members digitally and provide them with real-time information about developments related to the pandemic and other news pertinent to the legal community throughout this crisis. Additionally, NYSBA was able to quickly adapt to Zoom remote conferencing. The April 2020 House of Delegates meeting, which was held completely virtually, had the highest attendance of a House meeting in recent memory.

## **STATUS OF LEASE NEGOTIATIONS**

In September 2020 President Scott Karson of Melville appointed the NYSBA lease negotiation team to coordinate the facilities lease. After consultation with the lease negotiation team, on September 29, 2020, President Karson sent a letter to the President of the Bar Foundation outlining the cost to NYSBA of rent, upkeep, and taxes at the Bar Center. As outlined in President Karson's letter, in addition to rent of approximately \$300,000 per year, NYSBA pays all maintenance repairs and utilities for the building, estimated at \$800,000 for 2020, including \$174,000 in taxes and related attorney's fees to challenge the assessment imposed by the City of Albany on the building. The total cost to NYSBA for rent and related costs is about \$1.1 million dollars in 2020.

On October 20, 2020, the President of the Foundation advised President Karson that David Schraver, John Horan, and Bruce Lawrence are the Foundation's team regarding lease negotiations. David Miranda and David Schraver, as leaders of the respective negotiation teams, have had multiple communications via telephone conference and written communications. In addition, Association leadership, including President Karson, President-elect Brown and Executive Director McDevitt communicate directly with Foundation leadership discussing common



goals and concerns of our organizations. President Karson has extended an offer to address the Foundation Board to discuss relevant financial issues between the two organizations.

As part of the discussion between the Foundation and NYSBA lease negotiation teams, NYSBA raised the need for substantial renovations to the Bar Center in order for it to continue to function as the long-term home of NYSBA. In order for the Foundation to understand the nature of the renovations and costs required, the Foundation lease negotiation team and Foundation officers were provided with confidential copies of the Synthesis architectural plans and estimates. Additional confidential information was provided regarding NYSBA's cost of maintenance, repairs and utilities for the building, as well as supporting documentation for the free services that previously had been provided to the Foundation. On December 3, 2020, NYSBA asked the Foundation to provide its position regarding raising the funds necessary to keep the Bar Center viable as the Association's long term home.

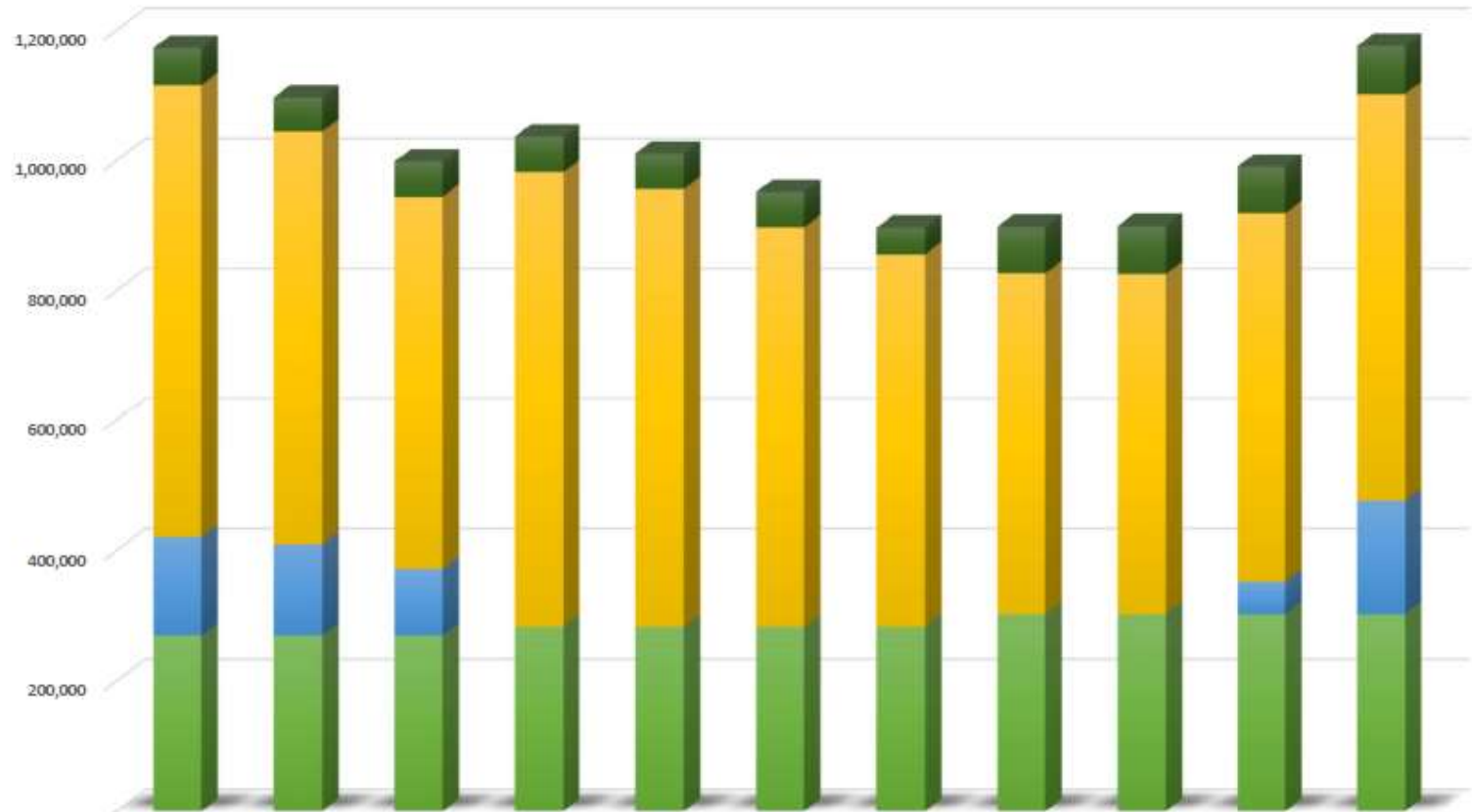
On December 31, 2020, the Foundation advised that it is not capable of leading such an ambitious capital campaign and suggested beginning discussions regarding a possible joint capital campaign to raise necessary funds. With the understanding that the Bar Foundation is not in a position to provide necessary funding for the renovations, NYSBA sought estimates for the cost of performing only the most immediate and necessary repairs, identified above, and determined such Phase 1 costs to be about \$2.6 million. Before taking further action, NYSBA must take a serious inventory of the fiscal realities of maintaining the building at One Elk, post-pandemic staffing needs, and how to serve our members with the resources it has.

In order to properly prepare for lease negotiations, the lease negotiation team recommended hiring CBRE real estate brokers of Albany to assist NYSBA in assessing the current state of the market for suitable space in Albany for the anticipated facilities needs of NYSBA. Based on informal discussions, CBRE has estimated that NYSBA could obtain suitable space for approximately \$550,000-650,000 per year, which would include landlord responsibility for regular maintenance and taxes.

The pandemic, coupled with the timing of the current lease expiration, permits leadership to examine and transform the way NYSBA does business, consider how NYSBA can maximize its reach, and most importantly, how NYSBA can best attract and serve its members in the next decade.

## 2010-2020 Renting and Maintaining Bar Center

TOTAL per Yr	
2010	1,172,164
2011	1,096,315
2012	997,633
2013	1,036,214
2014	1,010,208
2015	950,952
2016	896,039
2017	897,522
2018	898,694
2019	990,092
2020	1,175,131



	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Commercial Insurance	57,053	52,531	53,922	55,095	54,717	54,417	41,025	71,597	74,020	71,888	73,838
Utilities, Building Maintenance & Repairs	694,981	634,583	572,565	698,619	672,991	614,035	572,514	523,696	522,445	566,700	625,502
Taxes	151,130	140,201	102,146	-	-	-	-	-	-	49,275	173,562
Rent	269,000	269,000	269,000	282,500	282,500	282,500	282,500	302,229	302,229	302,229	302,229

## NYSBA Services and Support provided to TNYBF

