

Effective 5/5/11

ARTICLE 20

NEW YORK STATE CULTURAL RESOURCES ACT

Section 20.01. Short title.

20.03. General definitions.

20.05. Legislative findings and determinations, and statement of purposes.

20.07. Creation and purposes of a trust.

20.09. Administration of a trust.

20.11. General powers of a trust.

20.13. Special powers of a trust.

20.15. Resources of a trust.

20.17. Bonds and notes of a trust.

20.19. Security for bonds or notes.

20.21. Reserve fund.

20.23. State's right to require a redemption of bonds.

20.25. Remedies of bondholders and noteholders.

20.27. State and municipalities not liable on bonds and notes.

20.29. Agreement of the state.

20.31. Bonds and notes as legal investments.

20.33. Exemption from taxation.

20.35. Actions by and against a trust.

20.37. Cooperation with the state, counties and municipalities.

20.39. Annual and other reports.

20.41. Construction.

20.43. Inconsistent provisions of other laws superseded.

20.45. Separability.

20.47. Application of law.

§ 20.01. Short title. This act shall be known and may be cited as the "New York State Cultural Resources Act".

§ 20.03. General definitions. As used or referred to in this article and in any special law creating a trust for cultural resources, except as otherwise provided in such law, the following terms shall have the following meanings:

1. "Board" or "board of trustees" shall mean the board of trustees of a trust for cultural resources.
2. "Bonds and notes" shall mean the bonds and notes issued by a trust for cultural resources.
3. "Combined-use facility" shall mean any structure or improvement and any adjoining structures or improvements that are or are to be designed to be and upon completion are used or occupied in part by a participating cultural institution and in part by other persons who shall pay tax equivalency payments to the trust pursuant to section 20.13 of this article, any real property used or to be used in connection therewith, and any and all recreational, educational, cultural, office, living, rehearsal, parking, restaurant, retail, storage and other facilities necessary or desirable in connection with the activities of the participating cultural institution or such other person.
4. "Convey" shall mean to convey, grant, sell, license, lease, sublease, assign, transfer, or otherwise dispose of real property, and the term "conveyance" shall mean and include the equivalent noun form of each such verb included within the meaning of the verb "to convey." The terms "to convey" or "conveyance" shall not include the creation of a mortgage or other lien on real property unless such mortgage or lien has

been foreclosed or the mortgagee or lienholder of such mortgage or lien has taken possession of such real property.

5. "Cultural facility" shall mean any structure, improvement, furnishing, equipment or other real or personal property that is or is to be used, owned, or occupied in whole or in part by a participating cultural institution, including but not limited to museums, performing arts centers, public television and radio stations, theaters, auditoriums, libraries, exhibition, performance and rehearsal space, galleries, artists' and dancers' studios, recording studios, and any and all recreational, educational, cultural, office, living, rehearsal, parking, restaurant, retail, storage and other facilities necessary or desirable in connection with the activities of the participating cultural institution.

6. "Develop" shall mean to design, construct, acquire, reconstruct, rehabilitate, expand, modernize, repair or otherwise improve real property for use or conveyance, and the term "development" shall mean and include the equivalent noun form of each such verb included within the meaning of the verb "to develop."

7. "Developer" shall mean any person approved by a trust as being qualified and eligible to enter into an agreement with a trust for the development of a combined-use facility or any part or portion thereof or a cultural facility or any part or portion thereof.

8. "Exempt real property" shall mean real property exempt from real property taxation pursuant to section four hundred twenty-a or four hundred twenty-b of the real property tax law.

9. "Governing body" shall mean the board or body in which the general legislative powers of a municipality or county are vested.

10. "Governor" shall mean the governor of the state.

11. "Institutional portion" shall mean the part or portion of a combined-use facility that prior to completion is designed to be and upon completion is used or occupied by a participating cultural institution. The institutional portion shall include the real property used or to be used in connection therewith; any and all recreational, educational, cultural, office, living, rehearsal, parking, restaurant, retail, storage and other facilities necessary or desirable in connection with the activities of the participating cultural institution; and any interest in a combined-use facility which prior to completion is designed to be and upon completion is owned by, or conveyed to, a participating cultural institution jointly or in common with a trust, a developer, or an owner, to the extent of the interest of such participating cultural institution.

12. "Mayor" shall mean the mayor or highest elected official of a municipality.

13. "Municipality" shall mean any city in the state having a population of one million or more people.

14. "County" shall mean any county in the state except a county located wholly within a city.

15. "Non-institutional portion" shall mean the part or portion of a combined-use facility other than the institutional portion. If the non-institutional portion, or any part thereof, consists of a condominium, the consent of the trust which has developed or approved the developer of such condominium shall be required prior to any amendment of the declaration of such condominium pursuant to subdivision nine of section three hundred thirty-nine-n of the real property law and prior to any amendment of the by-laws of such condominium pursuant to paragraph (j) of subdivision one of section three hundred thirty-nine-v of the real property law, and whether or not such trust is a unit owner

of such condominium, it may exercise the rights of the board of managers and an aggrieved unit owner under section three hundred thirty-nine-j of the real property law in the case of a failure of any unit owner of such condominium to comply with the by-laws of such condominium and with the rules, regulations, and decisions adopted pursuant thereto.

16. "Owner" shall mean any person, other than a trust for cultural resources, to whom any real property, consisting of all or any part of the non-institutional portion of a combined-use facility, or in or on which all or any part of such portion prior to completion is designed to be and upon completion is developed, is conveyed.

17. "Participating cultural institution" shall mean a person described in the special law creating a trust.

18. "Not-for-profit cultural organization" shall mean a not-for-profit corporation described in the special law creating a trust in any county and which is able to demonstrate any one of the following three proofs of not-for-profit status: acceptance of non-profit status by the U. S. treasury department under section 501 (c) (3) of the U. S. internal revenue code; filing with the board of regents of the state of New York pursuant to section two hundred sixteen of the education law; or filing with the secretary of state under the registration of charitable organizations, pursuant to section one hundred seventy-two of the executive law; provided that such organization shall have been incorporated or shall have made the appropriate filing at least five years prior to the date on which the trust approves a loan for such organization.

19. "Person" shall mean an individual, a partnership, an association, a joint stock company, an unincorporated organization, a trust (as distinguished from a trust for cultural resources), a corporation, including any public corporation, any corporation formed other than for profit and any corporation formed for profit, all as classified and defined respectively in sections sixty-five and sixty-six of the general construction law, or a government or political subdivision or agency thereof.

20. "Real property" shall mean any land, water, structures, buildings, improvements or any rights or interest therein, including without limitation air, space or development rights, interests in such property less than full title, such as permanent or temporary easements, rights-of-way, franchises, uses, leaseholds, licenses, and all other incorporeal hereditaments in every legal or equitable estate, interest or right, and any and all other things and rights usually included within the term "real property".

21. "Special law" shall mean an act of the legislature creating a trust for cultural resources pursuant to this article.

22. "State" shall mean the state of New York.

23. "Tax-equivalency payments" shall mean the payments required to be made pursuant to subdivision three of section 20.13 of this article.

24. "Trust for cultural resources" or "trust" shall mean a public benefit corporation created by special law.

25. "Trustee" shall mean a member of the board of trustees of a trust for cultural resources.

§ 20.05. Legislative findings and determinations, and statement of purposes. 1. The legislature hereby finds, determines and declares: (a) that cultural institutions in the state promote public interest in and knowledge of the arts and other cultural activities; attract artists and others with creative talents who live in proximity to and perform

work related to such institutions; and otherwise vitally contribute to educational, recreational and cultural activities and opportunities of benefit to the people of the state; and that such institutions provide a wealth of specialized educational and cultural activities designed for, among others, students, minority and ethnic populations, senior citizens, the unemployed, consumers and citizens interested in the performing arts; and that it is the sense of the legislature that the contributions of such institutions to the people of New York state have been exceptional;

(b) that such institutions are essential to the existence of cultural centers in the state, contribute to the continued existence and growth in the state of industries related to the arts and other cultural activities, attract residents of and visitors to the state, including patrons of the arts, generate substantial tax and other revenues in and for the state, and otherwise vitally contribute to the economy and tax base of the state;

(c) that recognizing the importance of and public purpose served by such institutions, the state has appropriated and expended substantial funds for and has otherwise supported and assisted such institutions;

(d) that there is a serious shortage of required space and facilities for the continued existence, proper operation and needed growth of such institutions and that there is a serious shortage of required modern equipment, furnishing and installations for the continued existence, proper operation and needed growth of such institutions;

(e) that owing to inflation, increases in the cost of energy and other economic forces, operating expenses of many such institutions exceed revenues from endowments and other sources; sufficient funds to pay operating expenses and the costs of needed expansion, improvement and rehabilitation of the space and facilities of such institutions are not available from the state, municipalities or counties in the state or other past sources of such funds; and unless corrective action is taken, the needed expansion, improvement, equipping, furnishing and rehabilitation of the space and facilities of such institutions will not be undertaken and such institutions will be required to invade their endowments and other capital assets to pay operating expenses, thereby endangering the continued existence and operation of such institutions;

(f) that a public purpose would be served and the interests of the people of the state would be promoted if the collections, endowments and other capital assets of such institutions were preserved and expanded; if continued operation in the state and needed expansion, improvement and rehabilitation of the space and facilities of such institutions were encouraged; and if action were taken to permit such operation and expansion, improvement and rehabilitation without additional funds from or adverse effects on the tax base of the state, counties or municipalities of the state;

(g) that many such institutions own or plan to acquire valuable real property or interests in real property which are unused or underutilized, and such institutions are unable properly to develop or otherwise fully to utilize and realize the value of such real property owing in part to lack of expertise and in part to risks to their endowment, collections and other capital assets;

(h) that appropriate development and utilization of such real property and interest in real property and the purchase of capital equipment and other personal property would foster continued operation in the state and needed expansion, improvement and rehabilitation of the space and facilities of such institutions without additional funds from or adverse effects on the tax base of the state, counties or municipalities of the

state; would help provide suitable housing accommodations, commercial uses and related facilities in proximity to such institutions; and would otherwise promote the interest of the people of the state;

(i) that development of suitable housing accommodations, commercial uses, and related facilities compatible with and complementary to such institutions would help to maintain, strengthen and revitalize the areas in which such institutions are located, that such development would encourage such institutions to continue operation in such areas and permit needed expansion, improvement and rehabilitation of the space and facilities of such institutions, and that a public purpose would be served and the interests of the people of the state would be promoted by the development of such accommodations, uses and facilities in combination with the facilities of such institutions;

(j) that many not-for-profit cultural organizations are in need of development and/or rehabilitation of sufficient and appropriate space to assure their continued existence and benefit for the people of the state; and that sufficient funds to pay the costs of such needed space and facilities of such organizations are not currently available from the state, counties or municipalities; and that a program which would utilize current resources and bring to bear other possible additional resources for the development and rehabilitation of such space is essential to the continued existence and operation of such organizations and is therefore found by the legislature to be in the public interest; and

(k) that based on past experience, the private sector alone will continue to be unable properly to develop such real property and the requirements of such institutions will not be met unless corrective action is taken.

2. The legislature further finds, determines and declares that a public purpose would be served and the interests of the people of the state would be promoted by appropriate development of unused and underutilized real property and interests in real property of such institutions; that appropriate development of such real property includes construction of cultural facilities and of combined-use facilities consisting of institutional portions (including the expansion, improvement or rehabilitation of the space and facilities of such institutions) and non-institutional portions (including suitable housing accommodations, related facilities and other lawful uses compatible with uses of institutional portions of such facilities and embodying architectural and design characteristics acceptable to such institutions); and that construction of cultural facilities and of combined-use facilities often provides the only economically feasible method for utilizing such real property for needed expansion, improvement and rehabilitation of the space and facilities of such institutions.

3. The legislature further finds, determines and declares that a public purpose would be served and the interests of the people of the state would be promoted by the creation pursuant to this article of public benefit corporations, known as trusts for cultural resources, to provide for the appropriate development of unused and underutilized real property and interests in real property of such institutions and for the construction, equipping and furnishing of combined-use facilities, and of cultural facilities in accordance with this article; that it is necessary to grant to trusts for cultural resources the powers, rights and duties provided by this article which include the delegation of part of the sovereign power of the state; that the creation of trusts for cultural resources, the exercise of such powers and rights, the

performance of such duties, and the carrying out of the purposes of trusts for cultural resources are in all respects for the benefit of the people of the state and are and will serve a public purpose; and that in the exercise of such powers and rights, the performance of such duties and the carrying out of such purposes, trusts for cultural resources created under this article will be performing an essential public and governmental function.

§ 20.07. Creation and purposes of a trust. 1. A trust shall be created by a special law as a corporate governmental agency and a public benefit corporation, constituting a political subdivision of the state. A trust and its corporate existence shall continue until terminated by law; provided, however, that no such law shall take effect so long as the trust shall have bonds, notes or other obligations outstanding unless adequate provision has been made for the payment thereof. Upon termination of the existence of a trust, all its rights and properties not otherwise disposed of shall pass to and be vested in the state. Any net earnings of a trust, beyond that necessary to retire any indebtedness of a trust or to implement the purposes set forth in this article and in any special law, may not inure to the benefit of any person other than the state, county or the municipality in which the principal office of the trust is located.

2. A trust shall exercise the powers granted to it by this article and by special law in cooperation with participating cultural institutions solely and exclusively in furtherance of the purposes of this article and such special law. Before entering into any agreement for the construction of a combined-use facility, a facility for a not-for-profit cultural organization, or before making a loan to a not-for-profit cultural organization, the board of trustees shall hold a public hearing and thereafter shall determine that development of such facility or the making of such loan is the most feasible means by which such purposes may be effectuated and that the architectural and design characteristics of the non-institutional portion are compatible with those of the institutional portion of such combined-use facility. Notice of such public hearing shall be published at least once no less than twenty days prior to such hearing in a newspaper of general circulation in the municipality or county in which such facility is located. Notice of such public hearing shall be served by certified mail upon the chairman of the planning board of any county in which such combined-use facility is or is designed to be developed, except that in a municipality, such notice shall be so served upon the chairman of the local community board in the area in which such facility is or is designed to be developed; and notice of such public hearing shall be served upon the chairman of the planning board, or equivalent board, of any county in which a facility for a not-for-profit cultural organization is, or is designed to be, developed, or in which, in the case of a loan, a not-for-profit cultural organization is located.

§ 20.09. Administration of a trust. 1. A trust shall be administered by a board of trustees, all of whom shall be appointed as provided by special law. The number of trustees, their qualifications, and the duration of their respective terms of office shall be set forth in the special law.

2. The special law creating a trust may provide for the appointment of a trustee as chairman of the board of trustees and for the appointment of a trustee as president and chief executive officer of the trust. The

chairman of the board of trustees and the president and chief executive officer of the trust shall have such powers and duties as may be prescribed by special law.

3. No trustee other than the president and chief executive officer shall receive, directly or indirectly, any salary or other compensation from a trust, in any capacity. Each trustee shall be entitled to reimbursement for his actual and necessary expenses incurred in the performance of his duties as a trustee. Each trustee shall be deemed to be a state officer for purposes of sections seventy-three and seventy-four of the public officers law. Notwithstanding anything to the contrary contained in any general, special or local law concerning the holding of dual offices, an officer or employee of the state or any political subdivision of the state, or any agency or instrumentality of the state or any such political subdivision, or any public corporation, may be appointed as president and chief executive officer of a trust, and such officers and employees may be appointed as trustees. No such officer or employee shall forfeit his office or employment by reason of his acceptance or appointment as a trustee, officer, employee or agent of the trust. No more than one person serving on the board of trustees, or equivalent body, of each participating cultural institution with which the trust has entered into a financing agreement shall serve concurrently on the board of trustees of a trust. Any trustee of a trust who is concurrently serving on the board of trustees, or equivalent body, of a participating cultural institution shall refrain from participating in discussions or voting on matters pertaining to such participating cultural institution. Each trustee may be removed for cause as provided by special law.

4. Except as otherwise provided in this article or by special law, (a) a majority of the trustees then in office shall constitute a quorum for the transaction of any business or the exercise of any power by a trust; and (b) the powers of the trust shall be vested in, and be exercised by the affirmative vote of, a majority of the members of the board of trustees present at a meeting at which a quorum is in attendance; provided, however, that any action required or permitted to be taken at a meeting of the board of trustees may be taken without a meeting if all the members of the board of trustees then in office consent thereto in writing and provided further that one or more trustees may participate in a meeting by means of conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time and participation by such means shall constitute presence in person at a meeting. No trustee may vote by proxy. The trust may delegate to one or more of its trustees, officers, agents or employees such powers and duties as it may deem proper.

5. The trustees, officers and employees of a trust shall not be personally liable for any debt, obligation or liability incurred by or imposed upon the trust at any time.

6. A trust may make payments to or on behalf of its trustees, officers and employees in accordance with and to the same extent as authorized by the provisions of sections seven hundred twenty-one through seven hundred twenty-six of the business corporation law as amended from time to time with the same effect as though such sections applied to the trust, its trustees, officers and employees; provided, however, that a trust shall save harmless and indemnify its trustees, officers and employees against any claim, demand, suit or judgment based on allegations that financial loss has been sustained by any person in connection with the acquisition, disposition or holding of bonds, notes, securities or other obligations of a trust, or those of any other public

corporation if such loss allegedly resulted from dealings with the trust, unless such trustee, officer or employee is found by a final judicial determination not to have acted in good faith for a purpose which he reasonably believed to be in the best interests of the trust or not to have had reasonable cause to believe that his conduct was lawful; and provided further than no trustee, officer or employee of the trust shall be liable to any person other than the trust based solely on his or her conduct in the execution of such office, unless the conduct of such trustee, officer or employee with respect to the person asserting liability constituted gross negligence or was intended to cause the resulting harm to the person asserting such liability. A trust may procure insurance or be indemnified with respect to any payment permitted under this subdivision in such amounts and with such insurers or other persons as it deems desirable.

§ 20.11. General powers of a trust. In addition to the other powers conferred by this article and by special law, a trust shall have the following general powers:

1. to sue and be sued,
2. to have a seal and alter the same at pleasure,
3. to make and execute contracts and all other instruments, including without limitation instruments of guarantee and indemnification,
4. to incur liabilities, borrow money at such rates of interest as the trust may determine, issue its notes, bonds and other obligations, and notwithstanding subdivision three of section 20.33 of this article, if in its sole discretion the trust so determines and declares, to issue bonds and notes, the income from and interest on which may be taxed or taxable by the United States, by the state, and if applicable, by any municipality or other political subdivision in the state, or by any of them, and to secure any of its obligations by mortgage or pledge of all or any of its real and personal property or any interest therein, wherever situated,
5. to invest and reinvest any funds held in reserve or sinking funds or any other funds not required for immediate use or disbursement, including proceeds from the sale of any bonds or notes and any revenues, receipts, borrowings and income, in obligations of or guaranteed by the United States, the state or any political subdivision of the state, or any agency or instrumentality of any of them, or certificates of deposit, savings accounts, time deposits or other obligations or accounts of banks or trust companies in the state, secured, if the trust shall so require, in such manner as the trust may so determine,
6. to adopt, amend or repeal by-laws for its organization and internal management, the power to amend, alter or repeal which shall not be abridged by any covenant with bondholders, and rules and regulations governing the exercise of its powers and the fulfillment of its purposes,
7. to acquire or contract to acquire by grant, purchase, or otherwise, any real, personal or mixed property or any interest therein; to own, hold, clear, improve, maintain, develop, operate, employ, use and otherwise deal in, and to sell, assign, exchange, transfer, convey, lease, mortgage, grant a security interest in or otherwise dispose of or encumber the same,
8. to appoint such officers and hire such employees as it may require, to fix and determine their qualifications, duties and compensation and to retain or employ other agents, including but not limited to architects, counsel, auditors, engineers and private consultants on a contract basis or otherwise for rendering professional or technical services and advice,
9. to make plans, surveys, and studies necessary, convenient or desirable to the effectuation of its purposes and powers and to prepare recommendations in regard thereto,



10. to procure insurance against any loss in connection with its property, assets and operations in such amounts and from such insurers as it deems desirable,
11. to enter into agreements with the state, any county or municipality and the United States, or any agency or instrumentality of any of them, or any other person for any lawful purposes,
12. to accept grants, loans or contributions from the state, any county or municipality and the United States, or any agency or instrumentality of any of them, and from any other person or source and to expend the proceeds thereof,
13. to make loans to a participating cultural institution in accordance with an agreement between the trust and the participating cultural institution for the development of cultural facilities or the institutional portion of combined-use facilities, and
14. to do any and all things necessary, convenient or desirable to carry out its purposes and exercise its powers.

§ 20.13. Special powers of a trust. 1. A trust shall have such special powers with respect to assisting participating cultural institutions or other not-for-profit cultural organizations as are provided by special law; provided, that a trust may not develop or cause to be developed a combined-use facility for use or occupancy by a participating cultural institution unless (i) in a municipality such institution shall have had average annual admissions of at least five hundred thousand persons as shown on the records of such institution for a period of at least five years prior to either the effective date of this article or the date on which a trust first enters into an agreement for the development of a combined-use facility for the use or occupancy by such institution, (ii) in a city having a population of one hundred twenty-five thousand or more, such institution shall have had average annual admissions of at least fifty thousand persons as shown on the records of such institution for such period and (iii) in any other city, such institution shall have such minimum average annual admissions as are set forth in the special law creating a trust; provided, however, with respect to a participating cultural institution that is a public television station with respect to which a trust entered an agreement prior to January first, nineteen hundred ninety the foregoing shall not apply and provided further that the decision of the trust in determining such average annual admissions shall be final.

2. A trust may not acquire real property by condemnation, unless otherwise provided by special law.

3. For so long as any real property, consisting of all or any part of the non-institutional portion of a combined-use facility or in or on which all or any part of such portion prior to completion is designed to be and upon completion is developed shall be exempt from real property taxation pursuant to section 20.33 of this article, the owners from time to time of such real property shall pay to the trust which has developed or approved the developer of such facility, annual or other periodic amounts, as tax-equivalency payments, at least equal to the real property taxes that would have otherwise been paid or payable in respect of such real property; provided, however, that the special law creating a trust may provide a method for calculating such real property taxes for purposes of determining the amount of such tax-equivalency payments; and provided further that the special law creating a trust shall specify the purposes for which the trust shall use or expend such tax-equivalency payments, the means for enforcing such payments and the priorities in favor of a trust in connection with such enforcement.

4. A trust and the participating cultural institution with which the trust has entered into an agreement for the development of a combined-use facility, any facility for a not-for-profit cultural organization or a public television facility prior to January first, nineteen hundred ninety shall each have all rights provided by law, as if each were the owner of such facility and the real property in or on

which such facility is or is designed to be developed, to contest in whole or in part any assessment or revised assessment of the value of such facility and property, or any portion thereof, by appropriate legal proceedings, and for purposes of this subdivision four, each shall be deemed to be a person aggrieved. Each owner required to make tax-equivalency payments to a trust shall have all rights provided by law, as if he were the owner of the real property with respect to which he is required to make such payments, to contest in whole or in part any assessment or revised assessment of the value of such real property, and each such owner shall be deemed to be a person aggrieved for purposes of this subdivision.

5. Subject to any agreement with holders of its notes or bonds, a trust may enter into an agreement to pay or cause to be paid, by means which may include an agreement with a participating cultural institution in a municipality or a not-for-profit cultural institution in a county, a developer or an owner, annual sums in lieu of taxes to any municipality or political subdivision of the state, in respect of any real property which is exempt from taxation pursuant to section 20.33 of this article and is located in such municipality or political subdivision, or the special law creating a trust may provide for such payments in lieu of taxes.

§ 20.15. Resources of a trust. 1. A trust may receive, accept, invest, administer, expend and disburse for its corporate purposes, including without limitation the operation and administration of the trust, any revenues and monies made available or to be made available to it from any or all sources, including gifts, grants, loans and payments from the state, any county or municipality and the United States, and any agency or instrumentality of any of them, and from any other person.

2. A trust shall keep separate books and records of account in connection with each combined-use facility and each cultural facility and shall not spend or commingle any monies received by it in connection with such facility with any other monies received by it in connection with any other facility; provided, however, the trust may charge each such facility its costs of administration and operation allocable to each such facility, and establish or maintain such reserves for the payment of such costs as the trust deems necessary.

3. The comptroller of the state or his legally authorized representative and the chief fiscal officer of the municipality or county in which a trust shall develop or cause to be developed any combined-use facility or a facility for a not-for-profit cultural organization or any cultural facility or his legally authorized representative shall be authorized from time to time to examine the books and accounts of the trust including its receipts, disbursements, contracts, reserves, investments, and any other matters relating to its financial standing. Such an examination shall be conducted by each such officer at least once in every three years; each such officer is authorized, however, to accept from the trust, in lieu of such an examination, an external examination of its books and accounts made by a certified public accountant acceptable to such officer.

§ 20.17. Bonds and notes of a trust. 1. A trust shall have the power and is hereby authorized to issue from time to time its bonds and notes in such principal amounts as the trust shall determine to be necessary for achieving any of its corporate purposes, including: (a) the payment of all or any part of the cost of developing cultural facilities or the institutional portion of combined-use facilities; (b) developing facilities for not-for-profit cultural organizations; (c) the making of loans pursuant to this article to not-for-profit cultural organizations and to participating cultural institutions; (d) the payment of interest on bonds and notes of the trust; (e) the establishment of reserves to secure such bonds and notes of the trust; (f) the payment of expenses

incurred in connection with the issuance of the bonds and notes of the trust; and (g) during the period of development of a combined-use facility or a cultural facility or other facility authorized by this article, the payment of other expenses but, except in the case of a trust created prior to the effective date of this section, such expenses shall not include operating expenses of the participating cultural institution. All bonds or notes and the interest coupons applicable thereto whether or not in negotiable form are hereby made and shall be construed to be negotiable instruments and investment securities under article eight of the uniform commercial code.

2. A trust shall have the power to issue from time to time (a) notes to renew notes, (b) bonds to pay notes, including the interest thereon and redemption premium, if any, (c) bonds to refund any bonds of the trust then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the earliest or subsequent date of redemption, purchase or maturity of such bonds. The refunding bonds may be exchanged for the bonds to be refunded or sold and the proceeds applied to the purchase, redemption or payment of such bonds, and pending such purchase, redemption or payment, such proceeds may be invested and reinvested in obligations of or guaranteed by the United States, the state, or any political subdivision of the state, or any agency or instrumentality of any of them, secured in such manner as the trust shall determine, maturing at such time or times as shall be appropriate to assure the prompt payment, as to the principal, interest and redemption premium, if any, on the outstanding bonds to be refunded. A trust shall have power out of any funds available therefor to purchase (as distinguished from the power of redemption herein provided) any bonds or notes of the trust, and all bonds so purchased shall be cancelled.

3. With respect to notes or bonds issued or renewed on and after the effective date of this title, no note or renewal thereof shall mature more than five years from and after the date of the original issue of such note, and no bond or bond issued to refund such bond shall mature more than thirty years from and after the date of the original issue of such bond, provided, however, no bond issued to refund bonds issued prior to the effective date of this section shall mature more than fifty years from and after the date of the original issue of any such bond. Notwithstanding the foregoing, notes issued by a trust for the purpose of repaying advances from a participating cultural institution which uses or occupies the institutional portion of a combined-use facility the cost of development of which was paid with the proceeds of bonds of the trust which were issued prior to September first, nineteen hundred ninety-one, shall mature no later than seven years from and after the date of original issue of such note, and bonds issued by a trust for such purpose, including bonds issued to refund such notes, shall mature no later than fifty years from and after the date of original issue of such bonds.

4. The issuance of bonds and notes by a trust shall be authorized by resolution of the trust without further authorization or approval, which resolution shall be a part of the contract with the holders of the bonds or notes thereby authorized. Such resolution may provide that such bonds and notes may be registered or registrable as to principal and interest or as to interest alone and that such bonds and notes may be payable at such place or places, within or without the state, may bear interest at such rate or rates, may be payable and mature at such time or times, may be in such form and evidenced in such manner, may be in such denominations, and may contain such other provisions not inconsistent with this article, including provisions as to reserve or sinking funds, payment, redemption or refunding of bonds or notes, security therefor, events of default, remedies of bondholders or noteholders, appointment of trustees, as distinguished from members of the board of trustees of a trust for cultural resources, or fiscal agents, custody, collection, securing, investment and payment of any money and amendment or

abrogation of such provisions, all as the trust may determine; provided that such resolution may provide for the manner of determining any or all of the foregoing provisions for such bonds and notes in lieu of determining such provisions.

5. Bonds may be issued in one or more series as serial bonds, or as term bonds, or as a combination thereof. Any signature, manual or facsimile, of an officer of the trust appearing on bonds or notes or coupons shall be valid and sufficient for all purposes whether or not such officer shall then be in office. The trust may also provide for the authentication of the bonds or notes by a trustee (as distinguished from a member of the board of trustees of a trust for cultural resources) or fiscal agent.

6. The bonds or notes of a trust may be sold at such prices at a public or private sale, in such manner and from time to time, as may be determined by the trust, and the trust may pay all expenses, premiums and commissions which it may deem necessary or advantageous in connection with the issuance and sale thereof. No bonds or notes of a trust may be sold at a private sale unless such sale and the terms thereof have been approved in writing by the comptroller of the state and the chief fiscal officer of the municipality or county in which the combined-use facility or cultural facility for which such bonds or notes are issued is located.

7. Neither the trustees, officers or employees of a trust, nor any participating cultural institution or the members, directors, trustees, officers or employees of such institution, nor any person executing or authenticating the bonds or notes of the trust shall be liable on the bonds or notes or be subject to any personal or other liability or accountability by reason of the issuance thereof.

§ 20.19. Security for bonds or notes. 1. The principal of and interest on any bonds or notes issued by a trust may be secured by a pledge of any revenues and receipts of the trust, including without limitation the receipt of sums as tax-equivalency payments or loan repayments, and may be secured by a lease, loan agreement, mortgage, pledge, security interest or other instrument covering all or any part of a combined-use facility or cultural facility as authorized by this article, including any additions, improvements, extensions to or enlargements of such a facility thereafter made. Bonds or notes issued for a combined-use facility or cultural facility as authorized by this article may also be secured by an assignment of any lease of such combined-use facility or cultural facility as authorized by this article and by an assignment of the revenues and receipts of a trust from any such lease and by the assignment of any loan agreement with a participating cultural institution and by an assignment of the revenues and receipts of a trust from any such loan agreement and by the assignment of any mortgage, pledge, security interest or other instrument covering a combine-use facility or cultural facility.

2. A trust may provide in any proceedings under which bonds or notes may be authorized for the time and manner of and the requisites for disbursements for the cost of a combined-use facility or cultural facility authorized by this article, and for all certificates and approvals of construction and disbursements as the trust shall deem necessary.

3. Any pledge by a trust of, or security interest granted in, earnings, revenues or other monies, including tax-equivalency payments, accounts, contract rights, general intangibles or other personal property shall be valid and binding from the time when the pledge is made; the earnings, revenues or other monies so pledged and thereafter received by the trust shall immediately be subject to the lien of such pledge or other security interest, without any physical delivery of the collateral thereof or further act, and the lien of any such pledge or other security interest shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against

the trust irrespective of whether such parties have notice thereof. No resolution or any other instrument by which a pledge or other security interest is created need be recorded, and no notice thereof need be filed in any public office.

4. In the discretion of a trust, the bonds may be secured by a trust indenture, which may contain any lawful provisions for protecting and enforcing the rights and remedies of the bondholders, by and between the trust and a corporate trustee, as distinguished from a member of the board of trustees of a trust, which may be any trust company or bank having the powers of a trust company in the state. A trust may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues of a combined-use facility or cultural facility authorized by this article to the trustee under such trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. If the bonds shall be secured by a trust indenture the bondholders shall have no authority to appoint a separate trustee to represent them.

§ 20.21. Reserve fund. A trust may create and establish a reserve fund to secure the bonds of a trust and may pay into such reserve fund any monies which may be made available to the trust for the purposes of such fund from any source, including without limitation tax-equivalency payments. The monies held in or credited to any such reserve fund shall be used only in accordance with the proceedings under which the bonds shall be issued or as provided by special law.

§ 20.23. State's right to require a redemption of bonds. Notwithstanding and in addition to any provisions for the redemption of bonds which may be contained in any contract with the holders of the bonds of a trust, the state may, upon furnishing sufficient funds therefor, require the trust to redeem, prior to maturity, as a whole, any issue of bonds on any interest payment date not less than twenty years after the date of the bonds of such issue at one hundred five per centum of their face value and accrued interest or at such lower redemption price as may be provided in the bonds in case of the redemption thereof as a whole on the redemption date. Notice of such redemption shall be published at least twice in at least two newspapers publishing and circulating respectively in the cities of Albany and New York, the first publication to be at least thirty days before the date of redemption.

§ 20.25. Remedies of bondholders and noteholders. 1. The supreme court shall have jurisdiction of any suit, action or proceeding by or on behalf of the holders of any bonds or notes issued by a trust. The venue of any such suit, action, or proceeding shall be laid in the county in which the principal office of the trust is located. 2. Before the principal of notes or bonds of a trust is declared due and payable by or on behalf of bondholders and noteholders thereof, thirty days notice shall first be given in writing to the governor, to the attorney general of the state, to the mayor of the municipality or chief executive officer of the county in which the principal office of the trust is located and to the trust.

§ 20.27. State and municipalities not liable on bonds and notes. The bonds, notes and other obligations of the trust shall not be a debt of the state or of any municipality or county in the state, and neither the state nor any municipality or county shall be liable thereon.

§ 20.29. Agreement of the state. The state does hereby pledge to and agree with the holders of any bonds or notes of a trust that the state will not limit or alter the rights vested in a trust by this article or by special law to fulfill the terms of any agreements made with the

holders thereof, or in any way impair the rights and remedies of such holders until such bonds or notes together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of such holders, are fully met and discharged. A trust is authorized to include this pledge and agreement of the state in any agreement with the holders of such bonds or notes.

§ 20.31. Bonds and notes as legal investments. The bonds and notes of a trust are hereby made securities in which all public officers and bodies of this state and all municipalities and political subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. The bonds and notes are also hereby made securities which may be deposited with and may be received by all public officers and bodies of this state and all municipalities and political subdivisions for any purpose for which the deposit of bonds or other obligations of this state is now or may hereafter be authorized.

§ 20.33. Exemption from taxation. 1. It is hereby determined that the creation of a trust pursuant to this article and the carrying out of its corporate purposes are in all respects for the benefit of the people of the state, for the improvement of their health and welfare, and for the promotion of the economy; that said purposes are public purposes; and that a trust will perform an essential governmental function by exercising the powers conferred upon it by this article and by special law.

2. Notwithstanding any other provision of any other law to the contrary, the income, monies, operations and properties of a trust shall be exempt from taxation, including without limitation any and all state and local income, franchise, occupancy, transfer, recording, real property, sales and compensating use taxation. Any combined-use facility, including the non-institutional portion thereof, any facility for a not-for-profit cultural organization and any public television facility with respect to which a trust entered an agreement prior to January first, nineteen hundred ninety which has been developed by or on behalf of, or pursuant to an agreement with, or in whole or in part with the proceeds of a loan from a trust and any real property in or on which all or any part of any such facility prior to completion is designed to be and upon completion is developed shall be exempt from real property taxation from and after the date on which such real property has first been conveyed to the trust, or in the case of the development of a public television facility with respect to which a trust entered an agreement prior to January first, nineteen hundred ninety by a public television station or a facility for a not-for-profit cultural organization in whole or in part with proceeds of a loan from a trust, from and after the date on which such real property has first been conveyed to such station. In the case of a combined-use facility for a performing arts center with respect to which a trust entered an agreement prior to January first, nineteen hundred ninety, the non-institutional portion shall not be exempt from real property taxation from and after the date a trust conveys such non-institutional portion to any non-exempt third party.

3. The state covenants with all holders and transferees of bonds and notes issued by a trust, in consideration of the acceptance of and

payment for the bonds and notes, that the bonds and notes of the trust, and the interest thereon and income therefrom and all its properties, income, fees, charges, gifts, grants, revenues, receipts, and other monies received or to be received, shall at all times be free from income and other taxation, except for estate or gift taxes on such bonds and notes and taxes on transfers.

§ 20.35. Actions by and against a trust. 1. The supreme court shall have exclusive jurisdiction of any action, suit or special proceeding brought by or against or involving a trust. The venue of any action, suit or special proceeding brought against a trust shall be laid in the city and county in which its principal office is located.

2. Any action or proceeding to which a trust or the people of the state, a county or a municipality may be parties, in which any question arises as to the validity of this article or the special law creating the trust, shall be preferred over all other civil causes except election causes in all courts of the state and shall be heard and determined in preference to all other civil business pending therein except election causes, irrespective of position on the calendar. The same preference shall be granted upon application of counsel to a trust in any action or proceeding in which the trust is a party or in which such counsel may be allowed to intervene.

3. Except as otherwise expressly provided by a lease, sublease, or other agreement to which it is a party, a participating cultural institution or not-for-profit cultural organization shall not be liable to any person for any claim, loss, cost or damage arising from or in connection with the development of a combined-use facility, a facility for a not-for-profit cultural organization or a public television facility with respect to which a trust entered an agreement prior to January first, nineteen hundred ninety, or any part or portion thereof.

§ 20.37. Cooperation with the state, counties and municipalities. Any agency or department of the state, of the county or of any municipality may render such services to a trust as may be requested by the trust. Upon request of a trust, any such agency or department is hereby authorized and empowered to transfer to the trust such officers and employees as the trust may deem necessary from time to time to assist the trust in carrying out its functions. Officers and employees so transferred shall not lose their civil service status or rights. A trust may enter into an agreement to pay, or cause to be paid by means which may include an agreement with a participating cultural institution or not-for-profit cultural organization, a developer or an owner, compensation to the state, a county or a municipality for services rendered to the trust.

§ 20.39. Annual and other reports. 1. A trust shall submit to the governor and to the mayor or chief executive officer and the governing body of the municipality or county in which its principal office is located, within ninety days after the end of each fiscal year, a complete and detailed report setting forth: (a) its operations and accomplishments; (b) its receipts and expenditures, in accordance with the categories or classifications established by the trust for its own operating and capital outlay purposes; (c) its assets and liabilities at the end of its fiscal year including the status of reserve, depreciation, special or other funds; and (d) a schedule of its bonds and other obligations outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year.

2. A trust shall submit to the governor and to the mayor or chief executive officer and the governing body of the municipality or county in which its principal office is located, within thirty days after receipt thereof, a copy of the report of every external examination of

the books and accounts of the trust, other than reports of examinations by any state, county or municipal official.

§ 20.41. Construction. This article and each special law enacted pursuant to this article, being necessary for the welfare of the state and its inhabitants, shall be liberally construed so as to effectuate its purposes.

§ 20.43. Inconsistent provisions of other laws superseded. Insofar as the provisions of this article and each special law enacted pursuant to this article are inconsistent with the provisions of any other law, general, special or local, the provisions of this article and each such special law shall be controlling.

§ 20.45. Separability. If any provision of any section of this article and each special law enacted pursuant to this article or the application thereof to any person or circumstance shall be judged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered, and shall not affect or invalidate the remainder of any provision of any section of this article and each such special law or the application thereof to any other person or circumstances, and to this end each provision of this article and each such special law is hereby declared to be severable.

§ 20.47. Application of law. Any other provision of any other law to the contrary notwithstanding, all of the applicable provisions of the general municipal law, or of any other law, shall apply to the New York state cultural resources act herein continued in the same manner as if the language of such law had been incorporated in full into this article, except to the extent that such provisions are inconsistent with the provisions of this article. For the purposes of article fifteen-A of the executive law only, a trust shall be deemed a state agency as that term is used in such article, and its contracts for design, construction, services and materials shall be deemed state contracts within the meaning of that term as set forth in such article.



Effective 5/5/11  
ARTICLE 21

TRUST FOR CULTURAL RESOURCES OF THE CITY OF NEW YORK

- Section 21.01. Special definitions.  
21.03. Legislative findings and statement of purposes.  
21.05. Creation and administration of the trust.  
21.07. Special powers of the trust relating to assisting participating cultural institutions.  
21.09. Special provisions relating to the acquisition of real property.  
21.11. Special provisions relating to tax-equivalency payments.  
21.13. Special provisions relating to the financing and development of combined-use facilities or public television facilities.  
21.15. Application of law.

§ 21.01. Special definitions. As used or referred to in this article, all terms shall have the meanings set forth in section 20.03 of this chapter, except that the following terms shall have the following meanings:

1. "City" shall mean the city of New York.
2. "Mayor" shall mean the mayor of the city.
3. "Participating cultural institution" shall mean any person formed other than for profit which operates or makes available a cultural facility in the city, including but not limited to museums, performing arts centers, public television and radio stations, theaters, auditoriums, libraries, exhibition, performance and rehearsal space, galleries, artists' and dancers' studios, recording studios, and recreational, educational, office, living, parking, restaurant, retail or storage space related to any of the foregoing. The decision of the trust in determining that a person is a participating cultural institution shall be final and conclusive. The annual average admissions of each person which would itself qualify as a participating cultural institution and which leases or licenses space in a performing arts center from another participating cultural institution (the "lessor") shall be attributed to the lessor for purposes of this article and article twenty of this chapter.
4. "Trust for cultural resources" or "trust" shall mean the trust for cultural resources of the city of New York created by this article.

§ 21.03. Legislative findings and statement of purposes. 1. The legislature hereby finds, determines and declares:

(a) that it is essential for the general and economic welfare of the people of the state for the city to remain a unique national and international center for cultural activities and affairs;

(b) that the city's position as such a unique national and international cultural center is essential to its position as a center for national and international finance, communications, publishing, entertainment, conventions, transportation, shipping and other enterprises, as well as philanthropic and educational activities and institutions;

(c) that certain areas of the city will be strengthened and revitalized by, and the city's reputation and position as a unique national and international center will be enhanced by, the development

of combined-use facilities and cultural facilities in the city as provided by this article and by article twenty of this title;

(d) that certain cultural institutions located in the city are invaluable cultural, educational and recreational resources of the state and the continued operation of such institutions in the city is for the benefit of the people of the state;

(e) that by reason of the severe economic and fiscal problems facing both the state and city, neither the state nor the city is able adequately to support the cultural institutions of the city in their efforts both to provide cultural, recreational and educational opportunities to the people of the state and to maintain the position of the city as a unique national and international cultural center; and

(f) that it is in the interest of the people of the state and for their benefit and welfare to encourage the creative and innovative use of public and private resources in order to preserve and protect the cultural resources of the city and otherwise to effectuate the purposes of this article and article twenty of this chapter by the creation of the trust for cultural resources of the city of New York.

2. The legislature hereby further finds, determines and declares that the creation of the trust for cultural resources of the city of New York and the delegation to the trust of part of the sovereign power of the state are in all respects for the benefit of the people of the state and constitute a governmental, state, municipal and public purpose; and that the exercise by the trust of the functions and powers granted to it under this article constitutes the performance of an essential public and governmental function.

§ 21.05. Creation and administration of the trust. 1. There is hereby created the trust for cultural resources of the city of New York which shall have all the powers, rights, privileges and exemptions of a trust for cultural resources described in article twenty of this chapter and this article.

2. The board of trustees of the trust shall consist of nine trustees, as follows: the deputy mayor of finance and economic development of the city of New York, the chairperson of the New York city industrial development agency, the commissioner of cultural affairs of the city of New York and six trustees to be appointed by the mayor. The mayor shall designate one of the trustees appointed by the mayor as chairman of the board of trustees. The chairman shall preside over all meetings of the board of trustees, and after consultation with the mayor, the chairman may appoint a trustee who may be the chairman as president and chief executive officer of the trust. The chairman and the president and chief executive officer shall have such powers and duties as are set forth in the by-laws of the trust. Trustees appointed by the mayor shall be appointed for a term of six years from the effective dates of their appointments; provided, however, that the term of office of two trustees first appointed shall be five years, and the term of office of one trustee first appointed shall be four years. All trustees shall continue to hold office until their successors have been appointed. If at any time there is a vacancy in the membership of the board of trustees, by reason of death, resignation, disqualification or otherwise, such vacancy shall be filled for the unexpired term in the same manner as the original appointment. The mayor may remove any trustee from office for cause.

3. The deputy mayor for economic development and rebuilding of the city of New York, the chairperson of the New York city industrial

development agency and the commissioner of cultural affairs of the city of New York each may designate a person from his or her staff or agency to represent him or her at all meetings of the board of trustees of the trust for cultural resources for the city of New York from which such trustee may be absent. Any representatives so designated shall have the power to attend and to vote at any meeting of the board of trustees of said trust from which the trustee so designating him or her is absent, with the same force and effect as if the trustee designating such representative were present and voting. Such designation shall be by written notice signed by the trustee making the designation and delivered to the chairman of the board of trustees of the trust for cultural resources for the city of New York. The designation of each such person shall continue until revoked at any time by written notice signed by the trustee making the designation or his or her successor in office. Such designation shall not limit the power of the trustee making the designation to attend and vote in person at any meeting of the board of trustees of the trust for cultural resources for the city of New York.

4. Notwithstanding any other provision of law, any person serving as an ex officio member of the board of trustees of the trust for cultural resources for the city of New York, may also serve as an ex officio member of the board of trustees, or equivalent body, of any participating cultural institution. Notwithstanding any other provision of law, the trust for cultural resources for the city of New York may enter into a financing agreement with a participating cultural institution if more than one person serving on the board of trustees, or the equivalent body, of such participating cultural institution serves concurrently on the board of trustees of the trust for cultural resources for the city of New York, provided, however, that no more than one such person serves other than in an ex officio capacity. Any trustee of the trust for cultural resources for the city of New York who is concurrently serving on the board of trustees, or equivalent body, of a participating cultural institution shall refrain from participating in discussions or voting on matters pertaining to such participating cultural institution, except that any such trustee of the trust for cultural resources for the city of New York who is serving concurrently as an ex officio member of the board of trustees of such trust and as an ex officio member of the board of trustees, or the equivalent body, of such participating cultural institution may participate in discussions and voting on matters pertaining to such participating cultural institutions while attending any regularly scheduled meeting or duly called special meeting of the board of directors for the trust for cultural resources for the city of New York.

§ 21.07. Special powers of the trust relating to assisting participating cultural institutions. In addition to such powers as are conferred elsewhere in article twenty of this chapter and this article, the trust shall have the following powers which may be exercised, at the discretion of the board of trustees, solely and exclusively in furtherance of its corporate purposes with or without public auction or bidding:

1. to undertake surveys of the present and anticipated needs of cultural institutions in the city, including without limitation the need for development of the facilities of such institutions, in order to determine whether or not the trust may effectively exercise its powers and fulfill its purposes in cooperation with any such institution;

2. to acquire, construct, install, equip, furnish, renovate, modernize, and otherwise develop combined-use facilities and cultural facilities or cause such combined-use facilities and cultural facilities to be so developed, in accordance with this article and article twenty of this title, to acquire in connection therewith real property or interests in real property of a participating cultural institution or of the city, or of the developer or other persons whose participation the trust deems necessary for the development of any such combined-use facility or cultural facility, subject (if applicable) to the retention or creation by any such parties of any future or remainder interests in such property, all of which shall be valid notwithstanding any rule against perpetuities, and in connection therewith, to install or cause to be installed water, fuel, gas, electrical, telephone, heating, air-conditioning and other utility services, including appropriate connections;

3. to maintain, repair, keep up, manage and operate its real property and any combined-use facility or part thereof or any cultural facility or part thereof developed by or pursuant to an agreement with it, by means which may include the enforcement of its rules and regulations in the manner described in subdivision d of section two hundred two of the not-for-profit corporation law with the same effect as though such subdivision applied to the trust and to such property and combined-use facility or cultural facility;

4. to offer to convey and to convey all or any part of the non-institutional portion of a combined-use facility or any interest therein, and to take any and all actions deemed necessary or appropriate by the trust to advertise, promote, encourage, and effect such conveyances, all future or remainder interests created or retained by the trust in connection therewith which shall be valid notwithstanding any rule against perpetuities;

5. to convey with or without consideration, to a participating cultural institution the institutional portion of a combined-use facility or a cultural facility developed in cooperation with such institution and any real property held by the trust in connection with such development;

6. to enter into a partnership, joint venture or other enterprise in any capacity deemed by it to be appropriate, for the purpose of developing and operating a combined-use facility or any part thereof or a cultural facility or any part thereof;

7. to convey, without public auction or bidding, any real property to a developer for the purpose of developing therein or thereon a combined-use facility, or a part or portion thereof, or a cultural facility, or any part or portion thereof, subject to the creation or retention by the trust and/or a participating cultural institution of such future or remainder interests in such property as it deems appropriate, all of which shall be valid notwithstanding any rule against perpetuities;

8. to purchase or lease the institutional portion of a combined-use facility or all or any portion of a cultural facility from the developer thereof for use and occupancy by a participating cultural institution;

9. to furnish cultural institutions with advice and with technical and other assistance; to act as liaison with federal, state and municipal and other local authorities and with users and occupants of combined-use facilities and cultural facilities with respect to the cultural, recreational and educational activities provided by cultural institutions; and otherwise to foster and encourage greater public knowledge of, and participation in, the cultural, recreational and

educational activities of such institutions;

10. to organize one or more wholly-owned subsidiary corporations under any applicable provision of law and to perform through such subsidiaries or cause such subsidiaries to perform all or any part of its powers and functions;

11. to establish and promulgate such rules and regulations as the trust may deem necessary, convenient or desirable for the use and operation of any combined-use facility, or part thereof, or cultural facility, or part thereof, and for the use of any real property developed or to be developed by or pursuant to an agreement with it, including but not limited to rules and regulations governing the conduct and safety of the public on such premises;

12. to make and execute such agreements, including without limitation, instruments of conveyance and agreements with participating cultural institutions with respect to the architectural and design characteristics of any combined-use facility or cultural facility, as are necessary or convenient for the exercise of its corporate powers and the fulfillment of its purposes; and

13. to make loans in accordance with article twenty of this chapter.

§ 21.09. Special provisions relating to the acquisition of real property. 1. Subject to subdivision two of this section, the trust may acquire real property by condemnation pursuant to the provisions of the eminent domain procedure law where not inconsistent with this article. Prior to the commencement of any condemnation proceedings pursuant to this section, the trust shall cause a survey and map of the property to be condemned to be made and filed in its office and to be annexed thereto a certificate, executed by such officer or employee as the trust may designate, stating that the acquisition of the property described in such survey and map has been determined by the unanimous vote of its board of trustees to be necessary for the fulfillment of its corporate purposes. All condemnation proceedings brought by the trust pursuant to this section shall be brought in supreme court, New York county, and the compensation to be paid shall be determined by the court without a jury and without the appointment of commissioners. The court shall decree that title to any real property subject to condemnation proceedings brought pursuant to this section shall vest in the trust upon the entry and filing of an order of immediate possession, granted pursuant to the provisions of the eminent domain procedure law and providing for the deposit required by such section; provided that the trust shall have first complied with chapter one thousand one hundred sixty-one of the laws of nineteen hundred seventy-one and the deposit or payment made thereunder shall be credited against the deposit required under eminent domain procedure law. No award of compensation shall be increased by reason of any increase in the value of real property caused by the actual or proposed acquisition, use, development or disposition by the trust of any other real property.

2. The trust shall have the power to acquire by condemnation only the real property described as follows:

Any real property situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of 53rd Street distant 306 feet 9 inches easterly from the corner formed by the intersection of the northerly side of 53rd Street and the easterly side of Avenue of the Americas (formerly Sixth Avenue); running thence northerly, parallel

with Avenue of the Americas, 100 feet 5 inches to the center line of the block between 53rd and 54th Streets; thence easterly, along said center line of the block, 78 feet 3 inches; thence southerly, again parallel with Avenue of the Americas, 100 feet 5 inches to the northerly side of 53rd Street; and thence westerly along the northerly side of 53rd Street, 78 feet 3 inches to the point or place of Beginning.

3. All real property, other than the real property described in subdivision two of this section, in or on which all or any part of a combined-use facility is or is designed to be developed (i) shall have been owned in fee by a participating cultural institution for a period of at least five years prior to the date on which the trust first enters into an agreement for the development of such facility; or (ii) shall have been owned by the city prior to the date on which the trust or a participating cultural institution first enters into an agreement for the development of such facility; or (iii) the proposed use of such real property for all or any part of the combined use facility developed or designed to be developed on such real property shall have been approved by the mayor by written instrument delivered to the trust and the participating cultural institution; or (iv) with respect to a public television station with respect to which a trust entered an agreement prior to January first, nineteen hundred ninety such real property shall exceed one hundred thousand square feet in area, and shall have been owned or leased by such public television station for a period of at least five years prior to the date on which the trust first enters into an agreement for the development of a combined-use facility or such public television facility or makes a loan to such station.

§ 21.11. Special provisions relating to tax-equivalency payments. 1. The trust shall use and apply in the following order the tax-equivalency payments it receives in respect of each combined-use facility:

(a) the trust shall first pay the costs of administration of the trust allocable to such combined-use facility in accordance with generally accepted accounting principles consistently applied, including without limitation, the costs of collecting such tax-equivalency payments, and establish or maintain such reserves for the payment of such costs as the trust deems necessary;

(b) the trust shall then pay to the city, from and after the date on which the trust acquires any real property described in subdivision two of section 21.09 of this article or any other real property in or on which all or any part of a combined use facility is or is designed to be developed after January first, nineteen hundred ninety-seven, as nearly as practicable in accordance with the applicable schedule for making real property tax payments to the city with respect to such property, annual amounts equal to the total assessed valuation, for the fiscal year of such acquisition, of any such acquired real property with respect to which real property taxes were paid to the city during the fiscal year immediately preceding such acquisition, multiplied by the real property tax rate applicable to such acquired property during each fiscal year in which such amounts are required to be paid; provided that the amount paid by the trust pursuant to this paragraph during any fiscal year shall not be less than the amount paid by the trust pursuant to this paragraph during the immediately preceding fiscal year;

(c) if, for any fiscal year of the city up to and including the fiscal year ending ten years after the taxable status date next following the completion of construction of the non-institutional portion of such

facility, the amount required to be paid by the trust pursuant to paragraph (b) of this subdivision is less than ten per centum of the aggregate amount of tax-equivalency payments received by the trust in respect of such portion during the same fiscal year, then the trust shall pay to the city, in lieu of the amount required to be paid by the trust pursuant to paragraph (b) of this subdivision, an amount equal to ten per centum of the aggregate amount of such tax-equivalency payments;

(d) the trust shall then pay to the city an amount equal to fifty per centum of the increase in the amount of tax-equivalency payments received by the trust in respect of the non-institutional portion of such facility, during each fiscal year of the city following the fiscal year beginning ten years after the taxable status date next following the completion of construction of such portion, above the amount of the tax-equivalency payments received by it during the fiscal year beginning ten years after such taxable status date, such payments to be made by the trust at the end of each fiscal year of the city for which they are required to be made; to the extent that such increase has resulted from a change in the assessed valuation or the real property tax rate applied to such portion;

(e) with remaining amounts, to pay principal and interest on bonds, notes and other obligations of the trust issued to finance development of all or any part of the institutional portion of such combined-use facility, and establish or maintain reserves to pay or secure such bonds, notes or other obligations equal to no more than the sum required to be paid to such reserves so that the moneys then held in such reserves equal the aggregate amount of the then outstanding principal of such bonds plus any redemption premium thereon and any interest to accrue thereon to the earliest or subsequent date of payment or redemption thereof;

(f) unless otherwise provided by a resolution of the board of estimate of the city, or successor body, beginning with the fiscal year of the trust in which the trust has paid, redeemed or otherwise retired or provided a reserve to redeem or otherwise retire all bonds, notes and obligations of the trust issued to finance development of all or any part of the institutional portion of such combined-use facility, the trust shall then pay from time to time the costs of operating and maintaining the institutional portion, developed by or on behalf of the trust, of such combined-use facility, including without limitation, the costs of lighting, heating, cooling, security, maintenance, repairs and necessary replacements; provided that at the end of each fiscal year of the city after commencement of payment of such costs, the trust shall have sufficient funds to make the payments then required under paragraphs (b), (c) and (d) of this subdivision; and

(g) the trust shall then pay to the city the entire remaining balance at the end of each fiscal year of the trust.

The provisions of paragraphs (b), (c) and (d) of this subdivision shall be subject to any agreement under subdivision five of section 20.13 of article twenty of this chapter.

2. Solely for purposes of determining the amount of the tax-equivalency payments required to be paid in respect of the real property, consisting of the non-institutional portion, or any part thereof, of a combined-use facility or in or on which all or any part of such portion prior to completion is designed to be and upon completion is developed for residential use, such real property shall be deemed to be exempt from real property taxation as follows: during the period of construction of such portion, such exemption shall consist of full exemption, and for a period not to exceed ten years in the aggregate

after the taxable status date in the city next following the completion of such construction, such exemption shall consist of two years of full exemption, followed by two years of exemption from eighty percent of such taxation, followed by two years of exemption from sixty percent of such taxation, followed by two years of exemption from forty percent of such taxation, followed by two years of exemption from twenty percent of such taxation; provided that during such period of construction and such ten-year period tax-equivalency payments shall be made with respect to such real property at least equal to the amount computed by multiplying (a) the amount which bears the same ratio to the assessed valuation, for the fiscal year of the city prior to the commencement of such construction, of the land comprising the zoning lot or lots, exclusive of the real property described in subdivision two of section 21.09 of this article on which all or any part of such combined-use facility is or is designed to be developed as the floor area used or designed to be used in the non-institutional portion of such facility for residential use bears to the aggregate floor area permitted to be constructed on such lot or lots under applicable zoning regulations in effect at the time of commencement of such construction by (b) the real property tax rate in the city for such fiscal year.

3. The exercise of the power granted to the trust by this article and article twenty of this chapter to collect tax-equivalency payments from owners is in all respects for the general welfare and benefit of the people of the state, and with respect to such owners, has the same effect as though such tax-equivalency payments were taxes as defined in the real property tax law which had been duly levied and imposed upon such owners by the city.

4. If any owner shall fail to make tax-equivalency payments as required by this article and article twenty of this chapter, the trust shall have a lien on the real property in respect of which such payments were required to be made as if the tax-equivalency payments were real property taxes and the trust were a tax district within the meaning of the real property tax law. Such lien shall have all the priorities of a lien for taxes of such real property in favor of the city and shall be enforceable by the trust in the manner provided for the collection of tax liens in title two of such article eleven; provided that in place of any period of redemption provided by law no judgment of foreclosure shall be entered until three years after the date on which such owner first failed to make such payments; and provided further that from such date interest shall accrue on such lien at the rate for late payment of real property taxes in the city.

§ 21.13. Special provisions relating to the financing and development of combined-use facilities or public television facilities. 1. Notwithstanding any of the powers granted to the trust by this article or by article twenty of this title, the trust shall neither convey nor cause to be conveyed any real property that is part of a combined-use facility unless the instrument of such conveyance, or an agreement relating thereto, contains a provision that no person other than the trust or a participating cultural institution may acquire, directly or indirectly, an interest in the institutional portion of a combined-use facility developed or designed to be developed for use or occupancy by such institution, at any time prior to the date on which all bonds and notes of the trust issued to finance construction of such portion have been fully paid, which interest would entitle such person to a deduction



for depreciation with respect to such interest under the provisions of the United States internal revenue code of 1986, as amended, or any successor federal tax or revenue act, if the development of any part of such portion has been financed in whole or in part by bonds or notes issued by the trust.

2. No individual who serves on the board of trustees, or equivalent body, of a participating cultural institution shall be a developer of, or share in any profits arising from the development of, the non-institutional portion of a combined-use facility developed or designed to be developed for use or occupancy by such institution; provided that: (a) a person in which such individual has a financial interest not exceeding five per centum of the equity of such person may be a developer of, and may share in any profits arising from the development of, such non-institutional portion, if such individual refrains from voting at any meeting of the board of trustees, or equivalent body, of such institution on any matter relating to the approval by the trust of such person as a developer of such portion and the terms and conditions of any agreement relating thereto; (b) a person in which such individual has a financial interest may make a loan to the trust, to a developer or to any other person in the ordinary course of business in connection with such development; and (c) any such individual may purchase or rent an apartment, or any interest therein, in such portion, for fair market value.

3. No trustee of the trust and no person in which such trustee has a financial interest shall be a developer of the non-institutional portion of any combined-use facility.

§ 21.15. Application of law. Any other provision of any other law to the contrary notwithstanding:

1. All of the applicable provisions of the general municipal law or of any other law shall apply to the trust herein continued in the same manner as if the language of such law had been incorporated in full into this article, except to the extent that such provisions are inconsistent with the provisions of this article.

2. The repeal of article thirteen-F of the general municipal law, and the enactment of this article with modifications as to the general reference of sections within this article, shall not be construed to take away, impair, or affect any right, remedy, responsibility or authority acquired or given by the provisions so repealed, including any covenants with bondholders or any legal contracts or agreements with any person or political subdivision of this state; and all existing suits or proceedings may be continued and completed; and all offenses committed or penalties or forfeitures incurred shall continue and remain in force with the same effect as if this article had not become law.