

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

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In the Matter of the Application of :  
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DOWNSTATE AT LICH HOLDING COMPANY, : **PROPOSED ORDER**  
INC. : **GRANTING 510/511 PETITION**  
 :  
For an Order Approving the Sale of the Assets of :  
Downstate at LICH Holding Company, Inc., : Index No. \_\_\_\_\_  
pursuant to Sections 510 and 511 of the :  
Not-for-Profit Corporation Law. :  
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WHEREAS, Petitioner requests in its Verified Petition dated April 21, 2015 that the Court grant an Order approving the First Amended and Restated Purchase and Sale Agreement dated as of June 30, 2014 (“PSA”) by and among Downstate at LICH Holding Company, Inc. (“Petitioner” or “Seller”), FPG Cobble Hill Acquisitions, LLC (“FPG” or “Purchaser”), Fortis Property Group, LLC (“Fortis”), and NYU Hospitals Center (“NYUHC”) and thereby permitting the sale of substantially all of the assets of Petitioner (the “Transaction”), a not-for-profit corporation, pursuant to Sections 510 and 511 of the New York Not-for-Profit Corporation Law (“NPCL”); and

WHEREAS, Petitioner’s real estate assets, including the four core hospital buildings known as the Fuller Pavilion, the Othmer Pavilion, the Henry Street Building, and the Polak Pavilion (collectively, the “Hospital”), as well as various non-core properties, are presently subject to a Lease Agreement dated May 29, 2011 (as amended through the date of this Order, the “2011 Lease”) between Petitioner and The State University of New York (the “State University”), the sole member of Petitioner, and will be transferred pursuant to the trifurcated closing schedule set forth in the PSA (consisting of (1) the “Initial Closing”; (2) the “New

Medical Site Closing” (also referred to in the PSA as the “NMS Closing”); and (3) the “Final Closing”); and

WHEREAS, a complete list of Petitioner’s real property that is the subject of the Transaction (collectively, the “LICH Portfolio”) is set forth below, provided that the block and lot numbers and addresses of the Fuller Pavilion and the Othmer Pavilion will change as contemplated under the PSA upon completion of a tax lot subdivision by Purchaser; and

| <b>TABLE A</b>          |                               |                          |
|-------------------------|-------------------------------|--------------------------|
| <b>Building</b>         | <b>Address</b>                | <b>Block/Lot No.</b>     |
| Fuller Pavilion         | 339-357 Hicks, 70-76 Atlantic | Block 284 part of Lot 1  |
| Othmer Pavilion         | 91-95 Pacific                 | Block 284 part of Lot 1  |
| Henry Street Building   | 97 Amity, 340 Henry           | Block 290 part of Lot 13 |
| Polak Pavilion          | 363 Hicks                     | Block 290 part of Lot 13 |
| Polhemus Building       | 348-352 Henry                 | Block 295 Lot 21         |
| 349 Henry Building      | 349 Henry, 115 Amity          | Block 291 Lot 1          |
| Parking Garage          | 350-352 Hicks                 | Block 282 Lot 50         |
| Engineer Building       | 385-389 Hicks                 | Block 295 Lot 3          |
| Cobble Hill Condominium | 124-134 Atlantic              | Block 285 Lot 1001       |
| 94 Amity Residences     | 94 Amity                      | Block 295 Lot 14         |
| 86 Amity                | 86 Amity                      | Block 295 Lot 13         |
| 82 Amity Residence      | 82 Amity                      | Block 295 Lot 11         |
| 78 Amity                | 78 Amity                      | Block 295 Lot 9          |
| 76 Amity                | 76 Amity                      | Block 295 Lot 8          |
| 74 Amity                | 74 Amity, 379-383 Hicks       | Block 295 Lot 7          |
| 113 Congress            | 113 Congress                  | Block 295 Lot 38         |
| 43 Columbia             | 43 Columbia                   | Block 259 Lot 8          |
| 336 Flatbush            | 336 Flatbush                  | Block 1058 Lot 30        |
| 184 Sterling            | 184 Sterling                  | Block 1058 Lot 28        |
| 112 Pacific Street      | 112 Pacific Street            | Block 291 Lot 8          |

WHEREAS, Petitioner also shall convey to Purchaser all furniture, fixtures, equipment, machinery, materials, and other personal property of any kind or nature owned by Petitioner,

excluding (a) certain personal property, of little or no value to Purchaser, that Petitioner and Purchaser agreed to exclude from the Transaction; (b) personal property stolen or otherwise removed from the real property without Petitioner's authorization; and (c) personal property that was consumed or became obsolete prior to October 31, 2014 (the non-real estate property being conveyed to Purchaser is hereafter the "Personal Property"); and

WHEREAS, the value of the Personal Property is immaterial relative to the value of the real estate assets being conveyed; and

WHEREAS, at the Initial Closing, the 2011 Lease will be deemed amended to remove therefrom the eastern portion of the Othmer Pavilion property, as well as the Parking Garage and all non-Hospital properties owned by Petitioner as indicated in Table B, below, and Petitioner will convey such properties and all the Personal Property wherever located, to Purchaser; and

WHEREAS, Purchaser will demolish the Fuller Pavilion building and the Othmer Pavilion building, and once demolition is complete and certain other conditions are met, the New Medical Site Closing will occur, at which time the 2011 Lease will be deemed amended to remove the New Medical Site therefrom, and Petitioner will convey the fully cleared New Medical Site (comprised of the Fuller Pavilion property and the western portion of the Othmer Pavilion property) to NYUHC, which will then commence construction, at its sole expense, of a "New Medical Building" on the New Medical Site; and

WHEREAS, the New Medical Building will be the permanent location for an emergency department, an ambulatory surgery center, certain cancer center services, and other medical services, in each case to be operated by NYUHC and/or other healthcare providers, and pursuant to the terms of the PSA, once the New Medical Building is complete, it may not be used for any

purpose other than the delivery of health services and activities ancillary thereto for 20 years;  
and

WHEREAS, during construction of the New Medical Building, Petitioner will continue to own the Henry Street Building and the Polak Pavilion (collectively, the “Final Closing Premises”), but a portion of those premises will continue to be leased by Petitioner to Purchaser, and then subleased from the Purchaser to NYUHC, so that NYUHC can continue to operate an interim emergency department in such premises, and the balance of those remaining Hospital buildings will continue to be leased by Petitioner to the State University pursuant to the 2011 Lease until the New Medical Building is complete; and

WHEREAS, once the New Medical Building is complete, NYUHC will move its healthcare operations to the New Medical Building, the 2011 Lease and the leases relating to the interim emergency department will terminate, and the Final Closing will occur, at which time the Final Closing Premises will be conveyed to Purchaser; and

WHEREAS, upon and after the Final Closing, Purchaser (collectively along with any special purpose entities (“SPEs”) established by Purchaser, as described below) will own the entire LICH Portfolio other than the New Medical Site (where the New Medical Building will be constructed) which will be owned by NYUHC; and

WHEREAS, under the PSA, Purchaser may assign all or a portion of its rights to one or more SPEs formed for the purpose of acquiring title to the premises being conveyed to Purchaser at any of the three closings, so long as the Kestenbaum family (the majority owners and principal officers of Purchaser) must also be the direct or indirect majority owners, and day-to-day operators, of each of these SPEs; and

WHEREAS, a complete list of entities to which title to the premises will be conveyed, including the SPEs formed by Purchaser, is set forth below, noting however that the Fuller Pavilion and the Othmer Pavilion will be demolished and the tax lot will be subdivided prior to conveyance; and

| <b>TABLE B</b>                              |   |                          |                           |
|---|---|--------------------------|---------------------------|
| <b>Current Building</b>                     | <b>Address</b>  | <b>Closing</b>           | <b>Purchaser SPE Name</b> |
| Fuller Pavilion                             | 339-357 Hicks, 70-76 Atlantic                             | New Medical Site Closing | NYU Hospitals Center      |
| Western portion of Othmer Pavilion property | 91-95 Pacific, subject to change upon tax lot subdivision | New Medical Site Closing | NYU Hospitals Center      |
| Eastern portion of Othmer Pavilion property | 91-95 Pacific, subject to change upon tax lot subdivision | Initial Closing          | FPG CH 91 Pacific, LLC    |
| Henry Street Building                       | 340 Henry   | Final Closing            | FPG CH 340 Henry, LLC     |
| Polak Pavilion                              | 363 Hicks   | Final Closing            | FPG CH 363 Hicks, LLC     |
| Polhemus Building                           | 348-352 Henry   | Initial Closing          | FPG CH 350 Henry, LLC     |
| 349 Henry                                   | 349 Henry, 115 Amity                                      | Initial Closing          | FPG CH 349 Henry, LLC     |
| Parking Garage                              | 350-352 Hicks   | Initial Closing          | FPG CH 350 Hicks, LLC     |
| Engineer Building                           | 385-389 Hicks   | Initial Closing          | FPG CH 385 Hicks, LLC     |
| Cobble Hill Condominium                     | 124-134 Atlantic  | Initial Closing          | FPG CH 124 Atlantic, LLC  |
| 94 Amity Residences                         | 94 Amity  | Initial Closing          | FPG CH 94 Amity, LLC      |
| 86 Amity                                    | 86 Amity  | Initial Closing          | FPG CH 86 Amity, LLC      |
| 82 Amity Residence                          | 82 Amity  | Initial Closing          | FPG CH 82 Amity, LLC      |
| 78 Amity                                    | 78 Amity  | Initial Closing          | FPG CH 78 Amity, LLC      |
| 76 Amity                                    | 76 Amity  | Initial Closing          | FPG CH 76 Amity, LLC      |
| 74 Amity                                    | 74 Amity  | Initial Closing          | FPG CH 74 Amity, LLC      |
| 113 Congress                                | 113 Congress  | Initial Closing          | FPG CH 113 Congress, LLC  |
| 43 Columbia                                 | 43 Columbia Pl  | Initial Closing          | FPG CH 43 Columbia, LLC   |
| 336 Flatbush                                | 336 Flatbush  | Initial Closing          | FPG CH 336 Flatbush, LLC  |
| 184 Sterling                                | 184 Sterling  | Initial Closing          | FPG CH 184 Sterling, LLC  |
| 112 Pacific Street                          | 112 Pacific Street  | Initial Closing          | FPG CH 112 Pacific, LLC   |

WHEREAS, the Initial Closing is scheduled to occur on or around April 30, 2015, if all required approvals are obtained by that date; the New Medical Site Closing is scheduled to occur

no later than June 30, 2016, but the parties hope and expect that it will occur earlier; and the Final Closing is scheduled to occur no later than 36 months after the New Medical Site Closing, but in all cases, these deadlines are subject to possible extensions for unavoidable delays and under certain other circumstances as set forth in the PSA; and

WHEREAS, total cash consideration to be received by Petitioner for the assets of Petitioner is \$240,000,000; and

WHEREAS, a ten percent (10%) downpayment of \$24,000,000 was paid by Purchaser to Petitioner on June 30, 2014, and a second downpayment of \$2,000,000 is payable to Petitioner if Purchaser's lender requires certain minimal soil and other testing at the LICH site; and

WHEREAS, approximately \$118,000,000 (the "PIT Bond Defeasance Amount") of the \$240,000,000 in sale proceeds will be used to defease certain Personal Income Tax Bond debt ("PIT Bond Debt") associated with the LICH Portfolio; and

WHEREAS, at the Initial Closing, Purchaser will pay half of the total consideration for the LICH assets, or \$120,000,000, less all of the following (a) half of the downpayment, or \$12,000,000; (b) the \$2,000,000 additional downpayment, if Purchaser has paid this additional downpayment prior to the Initial Closing; and (c) the PIT Bond Defeasance Amount, if Purchaser is required to and has paid the PIT Bond Defeasance Amount prior to the Initial Closing; and

WHEREAS, if the amount owed by Purchaser at the Initial Closing is a negative number, as is possible, the negative amount will be credited to the amount that Purchaser will otherwise pay at the Final Closing; and

WHEREAS, at the Final Closing, a second payment of \$108,000,000 will be made to Petitioner equaling the remaining half of the total Purchase Price (\$120,000,000), less the remaining half of the downpayment (\$12,000,000); and

WHEREAS, Petitioner will use the Transaction proceeds as set forth in that certain Grant and Distribution Agreement (“GDA”), effective as of June 30, 2014, by and between Petitioner and the State University, and specifically, on the closing date of the Initial Closing, Petitioner shall, (i) if not previously retired or defeased, retire or defease the PIT Bond Debt, (ii) pay that certain mortgage in the original principal amount of \$1,600,000 granted by Long Island College Hospital to AIP Associates and currently held by The Health Science Center at Brooklyn Foundation, Inc., pursuant to Assignment of Mortgage from U.S. Bank National Association encumbering the Cobble Hill Condominium (the “Condo Debt”), and (iii) if sufficient funds exist after the payment of the PIT Bond Debt and the Condo Debt, set aside a reasonable reserve (the “Reserve”), not to exceed \$2,000,000, for payment of payables, debts, and liabilities of Petitioner including any that are not known or have not yet accrued as of the closing date of the Initial Closing, and on the closing date of the Final Closing, Petitioner shall (iv) pay all then-known outstanding debts and liabilities of Petitioner, including any debts and liabilities that are Petitioner’s obligation then to pay under the PSA, and (v) set aside such funds as are necessary to fully fund the Reserve at a level of \$2,000,000, for payment of payables, debts, and liabilities of Petitioner that are not known or have not yet accrued as of the closing date of the Final Closing and to fund Petitioner’s costs of wind-down and eventual dissolution; and

WHEREAS, (i) any remaining proceeds from the Transaction (after paying the PIT Bond Debt, the Condo Debt, all other debts and known liabilities, including paying for any required building upgrade in the interim medical space and any other obligation of Petitioner under the

terms of the PSA, and setting aside the Reserve), which Petitioner and the State University estimate to be approximately \$110,000,000, and (ii) upon the eventual dissolution of Petitioner, any remaining portion of the Reserve, will be transferred by Petitioner to its sole member, the State University, in accordance with Petitioner’s corporate purpose and the terms of the GDA; and

WHEREAS, Petitioner has presented three separate appraisals provided by third party appraisers of the highest and best use of each parcel of the LICH assets; and

WHEREAS, the appraisals support the reasonableness of the consideration to be paid by Purchaser to Petitioner for the transferring assets; and

WHEREAS, Petitioner has shown that the proposed Transaction is fair and reasonable to Petitioner, and will promote Petitioner’s charitable purposes in addition to the charitable, educational, and scientific mission and purposes of its sole member, the State University as required by section 511(a)(6) of the NPCL; and

WHEREAS, Petitioner having proceeded on notice to:

| <b>Entity/Individual</b>  | <b>Address for Notice</b>  |
|---|--|
| Boerum Hill Association,<br>Brooklyn Heights Association,<br>Carroll Gardens Neighborhood Association,<br>Cobble Hill Association,<br>Riverside Tenants’ Association,<br>Wyckoff Gardens Association, Inc., and<br>Kate Mackenzie | Gibson, Dunn & Crutcher<br>200 Park Avenue<br>New York, NY 10166                               |
| Concerned Physicians of LICH, LLC   | Toomas Mihkel Sorra, M.D., F.A.C.G.<br>554 Henry Street<br>Brooklyn, NY 11231                  |
| Letitia James, Public Advocate for the City of New York   | M. Umair Kahn<br>One Centre Street, 15th Floor<br>New York, NY 10007                           |
| New York State Nurses Association and<br>Carl Biers   | Richard M. Seltzer<br>Cohen, Weiss and Simon LLP<br>330 West 42nd Street<br>New York, NY 10036 |



| <b>Entity/Individual</b>   | <b>Address for Notice</b>  |
|--|--|
| 1199SEIU United Healthcare Workers East  | Susan Cameron<br>Levy Ratner, PC<br>80 Eighth Avenue<br>New York, NY 10011                                   |
| NAACP New York State Conference<br>Attn: Dr. Hazel N. Dukes, President                         | 1065 Avenue of the Americas, Suite 300<br>New York, NY 10018   |
| Mobilizing Preachers & Communities<br>Attn: Rev. Dr. Johnnie M. Green Jr.                      | c/o Mt Neboh Baptist Church<br>77 Saint Nicholas Avenue<br>New York, NY 10027                                |
| One Hundred Black Men of New York, Inc.<br>Attn: Michael Garner, President                     | 105 East 22nd Street, Suite 911<br>New York, NY 10010  |
| Senator Daniel Squadron  | 250 Broadway, Suite 2011<br>New York, NY 10007   |
| Assemblywoman JoAnne Simon   | 341 Smith Street<br>Brooklyn, NY 11231   |
| Councilmember Brad Lander  | 456 Fifth Avenue, 3rd Floor<br>Brooklyn, NY 11215  |
| Councilmember Stephen Levin  | 410 Atlantic Avenue<br>Brooklyn, NY 11217  |
| Councilmember Carlos Menchaca  | 4471 4th Avenue, Ground Floor<br>Brooklyn, NY 11220  |
| Attorney General of the State of New York<br>Attn: Paula Gellman                               | Office of the New York State Attorney General<br>Charities Bureau<br>120 Broadway<br>New York, NY 10271-0332 |
| Dormitory Authority of the State of New York<br>Attn: Michael E. Cusack, Esq., General Counsel | 515 Broadway<br>Albany, NY 12207   |

NOW, upon Petitioner’s showing that the consideration and the terms of the Transaction are fair and reasonable to Petitioner and that the purposes of Petitioner and interests of the sole member, the State University, will be promoted,

NOW, upon a review of the information set forth in three separate appraisals of the highest and best use of each parcel of the LICH assets,

NOW, upon review of the Verified Petition dated April 21, 2015 and supporting documents, including the Affirmation of Ruth E. Booher dated April 9, 2015, the Affirmation of Kevin O’Mara dated April 1, 2015, the Affidavit of Richard Miller dated April 8, 2015, the

Affidavit of Vicki Match Suna dated January 12, 2015, and the Affidavit of Joel Kestenbaum dated April 13, 2015, it is hereby

ORDERED, that the First Amended and Restated Purchase and Sale Agreement dated as of June 30, 2014 and the Transaction contemplated thereunder, including the sale of all or substantially all of Petitioner's assets, by Downstate at LICH Holding Company, Inc., a not-for-profit corporation, pursuant to the Not-for-Profit Corporation Law Sections 510 and 511 be and hereby are approved; and it is further

ORDERED, that the conveyance of all of Petitioner's real estate property to the special purpose entities created by Purchaser FPG Cobble Hill Acquisitions, LLC to take title to the real property in accordance with the PSA, at the closings indicated in Table B, above be and hereby is approved; and it is further

ORDERED, that, upon the completion of demolition and certain other conditions set forth in the PSA, the conveyance of the New Medical Site by Petitioner to NYUHC be and hereby is approved; and it is further

ORDERED, that the proceeds of the sale, after making the defeasance payment on the PIT Bonds Debt, paying the Condo Debt, paying all debts and known liabilities of Petitioner, paying for any required building upgrade in the interim medical space and any other obligation of Petitioner under the terms of the PSA, and setting aside the Reserve, shall be transferred by Petitioner to its sole member, the State University, in accordance with Petitioner's corporate purpose and the terms of the Grant and Distribution Agreement effective as of June 30, 2014 and upon the eventual dissolution of the Petitioner, any remaining portion of the Reserve after paying all debts and liabilities of Petitioner, shall be transferred by Petitioner to its sole member, the State University, in accordance with Petitioner's corporate purpose; and it is further

ORDERED, that Petitioner shall serve a copy of the signed Order on the Attorney General of the State of New York, and that this Court and the Attorney General shall receive written notice (i) of the completion of each of the Initial Closing, the New Medical Site Closing and the Final Closing, (ii) if the Transaction has been abandoned, or (iii) if the Initial Closing and the balance of the Transaction are still pending 90 days after the Court's approval.

**IT IS SO ORDERED.**

Dated:

\_\_\_\_\_  
Hon. \_\_\_\_\_