

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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In the Matter of the Application of :
 :
DOWNSTATE AT LICH HOLDING COMPANY, : **VERIFIED PETITION**
INC. :
 :
For an Order Approving the Sale of the Assets of : Index No. _____
Downstate at LICH Holding Company, Inc., :
pursuant to Sections 510 and 511 of the :
Not-for-Profit Corporation Law. :
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TO: THE SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Petitioner, Downstate at LICH Holding Company, Inc., by Robert Haelen, President of
Downstate at LICH Holding Company, Inc., for its Verified Petition herein, respectfully alleges:

Introduction

1. Petitioner requests 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 all or 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”).

2. We show below that the proposed Transaction is fair and reasonable to Petitioner and would not only promote Petitioner’s charitable purposes, but is essential to promoting the

charitable, educational, and scientific mission and purposes of its sole member, the State University of New York (the “State University”). *See* N.Y. Not-for-Profit Corp. L. § 511(a)(6).

Downstate at LICH Holding Company, Inc.

3. Petitioner is a not-for-profit corporation formed on March 31, 2011 pursuant to NPCL Section 402. Petitioner has operated since its formation exclusively for charitable, educational, and scientific purposes and has been recognized by the Internal Revenue Service as an organization that is a tax-exempt, public charity within the meaning of Sections 501(c)(3) and 509(a) of the Internal Revenue Code of 1986, as amended. Petitioner, as a charitable organization, is further exempted from certain other taxes by the New York State Department of Taxation and Finance.

4. The State University is the sole member of Petitioner and a public instrumentality of the State of New York, with the corporate power and authority to direct the activities of Petitioner. Petitioner was organized by the State University exclusively as an instrumentality of the State University for the benefit, and in support, of the governmental, charitable, scientific, and educational purposes of the State University.

5. Petitioner’s activities include acquiring, developing, holding, maintaining, and supporting healthcare and educational facilities and their related properties for use by (and for the benefit of) the State University, and, in particular, the State University’s Health Science Center of Brooklyn (“Downstate”), an operating division and State-operated campus of the State University recognized under Section 352 of New York State Education Law and Brooklyn’s only academic medical center. In this petition, actions of Downstate were taken by the State University on behalf of Downstate.

6. Petitioner's organizational documents provide that all assets, income, and net earnings of Petitioner shall inure solely to the benefit of the State University, and, in the event of dissolution of Petitioner, and after the payment of expenses, all remaining net assets and property of Petitioner are to be distributed to the State University in accordance with the Certificate of Incorporation of Petitioner, annexed hereto as **EXHIBIT 1**.

7. Petitioner's principal office is at the State University of New York Health Science Center at Brooklyn, 450 Clarkson Avenue, Brooklyn, New York 11203, in the County of Kings, City and State of New York.

8. Petitioner's Certificate of Incorporation, duly filed with the New York Department of State on March 31, 2011, is annexed hereto as **EXHIBIT 1**. Petitioner was classified as a Type C corporation at the time of its formation under the classification system that existed prior to the implementation of the New York Nonprofit Revitalization Act of 2013. A copy of Petitioner's Bylaws is annexed hereto as **EXHIBIT 2**.

9. A list of Petitioner's directors and principal officers, and their home addresses, is set forth in **EXHIBIT 3**.

10. A copy of Petitioner's most recent annual financial report for years ended June 30, 2014 and June 30, 2013, is annexed hereto as **EXHIBIT 4**. The report includes a description of Petitioner's debts and liabilities and how they are secured.

11. The financial statements of Downstate's University Hospital of Brooklyn ("UHB") include the financial activity of Petitioner with all intercompany activity eliminated. A copy of UHB's most recent annual financial report for years ended December 31, 2013 and December 31, 2012 is annexed hereto as **EXHIBIT 5**. The report includes a description of long-term debt relating to Petitioner, referenced therein as "LICH."

Background

12. On May 29, 2011, Downstate and Petitioner consummated a transaction (the “2011 Transaction”) with a not-for-profit corporation known as the Long Island College Hospital (“Old LICH”), whereby Downstate and Petitioner collectively acquired substantially all of the assets of Old LICH. The principal purpose of the 2011 Transaction was to transfer to Downstate operation of a hospital in the Cobble Hill neighborhood of Brooklyn (the “Hospital”), which was then owned and operated by Old LICH (the Hospital, like its corporate owner, was known as the Long Island College Hospital). Upon consummation of the 2011 Transaction, Downstate became the licensed operator of the Hospital. The Hospital became a second campus of UHB.

13. The real property owned by Old LICH at the time of the 2011 Transaction included the real estate and improvements comprising the Hospital, as well as a parking garage and certain other properties in the adjoining neighborhood (collectively, the “LICH Portfolio”). Substantially all of the properties within the LICH Portfolio were subject to a mortgage that could not, according to its terms, the terms of the bonds that were issued in connection with the mortgage, and provisions of State law applicable to the State University, be transferred to a government entity. Consequently, the State University established Petitioner as a private, not-for-profit corporation for the purpose of acquiring and holding the LICH Portfolio subject to the associated mortgage and assuming the bond debt, as well as some of the personal property used in connection with the Hospital. The value of the personal property was de minimus as compared to the value of the real property. Petitioner did not receive any cash, cash equivalents, or receivables (collectively, “2011 Cash”), or any endowment funds, remaining endowment

funds or any other donor restricted funds (collectively, “2011 Donor Restricted Funds”) in connection with the 2011 Transaction.¹

14. Petitioner’s main corporate purpose was to hold title to the LICH Portfolio acquired from Old LICH in the 2011 Transaction and lease such property to Downstate so that Downstate could (a) occupy and operate the Hospital; and (b) utilize the other non-Hospital properties in support of the Hospital’s operation. A true and correct copy of the 2011 lease together with all amendments thereto between Petitioner and Downstate is annexed hereto as **EXHIBIT 6** (the “Downstate/Petitioner Lease”). The lease payments from Downstate were set to be equal to Petitioner’s carrying costs for the property, including but not limited to Petitioner’s mortgage payments. *See* Downstate/Petitioner Lease at Article VI.

15. The 2011 Transaction was enormously complex and took several years to complete. Negotiations began in 2008 when senior officials of Continuum Health Partners, Inc. (“CHP”), the sole corporate member of Old LICH, approached senior officials of Downstate about the possibility of Downstate acquiring the Hospital. CHP represented (a) that Old LICH was losing significant amounts of money in 2008, and had been operating on a deficit basis for years; (b) that there was no prospect of Old LICH operating the Hospital at a surplus, or even at

¹ All 2011 Donor Restricted Funds transferred from Old LICH in 2011 went to the Health Science Center at Brooklyn Foundation (the “Foundation”), not to Petitioner, and are therefore not part of this Petition. The largest of the 2011 Donor Restricted Funds held by Old LICH in 2011 were restricted funds from an endowment held by Old LICH called the “Othmer Funds.” However, neither Petitioner nor Downstate received any Othmer Funds in the 2011 Transaction. Specifically, in accordance with court Order pursuant to NPCL §555 dated May 13, 2011, the use restrictions applicable to the Othmer Funds were released, and Old LICH used the total amount of the Othmer Funds, comprised of the unencumbered principal of \$26,800,000, plus \$63,000,000 previously pledged as partial security for a HUD mortgage, plus \$22,000,000 in grant funds pursuant to the Health Care Efficiency and Affordability Law for New Yorkers intended to repay the Othmer Funds for prior borrowings, plus \$3,400,000 of income from the Othmer Funds, together with \$50,700,000 of 2011 Cash, to establish an independent trust for the discharge of Old LICH medical malpractice claims and to establish a separate account to pay other Old LICH liabilities. Even though Petitioner and Downstate did not receive any Othmer Funds, as part of the 2011 Transaction, Downstate agreed that it would replenish the Othmer Funds when and if able, with no accrued interest.. The State University and the Foundation will undertake a review of the Old LICH Donor Restricted Funds transferred in 2011 on a case-by-case basis and, where appropriate, seek *cy pres* relief with respect to such funds.

break-even; and (c) that Old LICH had at least two obstacles that precluded it from operating the Hospital successfully: (i) the significant malpractice expenses associated with the Hospital; and (ii) poor and deteriorating relations between Old LICH/CHP and the Hospital's physicians. CHP officials indicated that there were no other viable bidders for the Hospital and that absent a sale to Downstate, Old LICH likely would declare bankruptcy.

16. Downstate's management believed that it could operate the Hospital without encountering either of the main obstacles that had bedeviled CHP. First, the post-closing malpractice claims of the Hospital, as a State entity, would be defended by the Office of the Attorney General with indemnity or settlement payments made through the Court of Claims, and Downstate, therefore, would not be required to incur malpractice expenses for the Hospital. Second, Downstate officials believed at the time that they could repair the relationships with the Hospital's physicians.

17. Downstate believed it had a further financial advantage in that by operating the facility as a public hospital, it would be eligible for enhanced Medicaid rates and other State support. So, although Downstate anticipated significant *operating losses*, Downstate also anticipated that, after application of expected State support, the Hospital would actually generate a *surplus* in each of its first three years following the 2011 Transaction.

18. Additionally, at the time of the 2011 Transaction, the main campus of UHB was operating at or near inpatient bed capacity and experiencing continued inpatient growth. On numerous occasions, Downstate had to divert ambulances, because UHB had reached full inpatient bed capacity. This volume trend was expected to continue, and officials suspected that it would result in Downstate requiring additional beds. The acquisition of the Hospital addressed that need. Downstate also had obtained approval to expand ambulatory (outpatient) services on

its main campus and had opened ambulatory facilities in southwest Brooklyn. These initiatives were expected to lead to even greater demand for access to inpatient services and, thus, the need for even more beds.

19. Downstate also believed that by virtue of the Hospital's location in a higher income area of Brooklyn than UHB's Main Campus, the Hospital would improve UHB's overall payer mix, thus positively affecting UHB's financial performance. Further, although the Hospital's physical plant was not new or in ideal condition, it was in better condition than the physical plant of UHB's Main Campus, and Downstate officials believed it would be more attractive to patients.

20. Ultimately, the aspirational and aggressive strategy with which the State University acquired the Hospital was unsuccessful. Downstate's anticipation that the average daily census would grow, that the overall payer mix would be improved, and that relationships with staff and local physicians could be repaired did not come to fruition. Downstate's financial advantages did not overcome years of declining performance and low utilization. Indeed, even some of the anticipated positives turned into negatives: for example, as the neighborhood surrounding the Hospital gentrified (which Downstate had hoped would result in a more favorable payer mix), more residents with generous insurance sought treatment across the river in Manhattan, particularly for high-margin, non-emergency procedures. Downstate also underestimated the challenges associated with incorporating a new campus into its operations, and overestimated its ability to effectively integrate the Hospital into UHB.

21. UHB had operated at a loss from calendar year 2007 through calendar year 2010, but those losses dramatically escalated in 2011, the year the Hospital was acquired and became a part of UHB. The Office of the State Comptroller issued an audit report on January 17, 2013

(the “OSC Audit Report”) reporting, among other things, the following fiscal trends (a copy of the OSC Audit Report is annexed hereto as **EXHIBIT 7**):

Summary of Financial Results Calendar Years 2007 through 2011 (in Millions)			
Year	Operating Surplus (Loss)	Non-Operating Surplus (Loss)	Aggregate Surplus (Loss)
2007	(\$70.5)	\$68.7	(\$1.8)
2008	(\$75.6)	\$74.3	(\$1.3)
2009	(\$78.8)	\$68.7	(\$10.1)
2010	(\$49.3)	\$34.3	(\$15.0)
2011	(\$117.3)	(\$158.5)	(\$275.8)
Totals	(\$391.5)	\$87.5	(\$304)

22. Despite the 2011-2012 initial year losses, Downstate hoped that the Hospital’s performance would improve over time. The State University system took steps to help stabilize Downstate’s (including the Hospital’s) finances in the short term while the hoped-for turnaround was in process, including (i) the State University system provided an infusion into Downstate of \$75,000,000 borrowed from the State University’s other campuses in mid-2012; (ii) Petitioner and Downstate were able to refinance the mortgaged bond debt encumbering the LICH Portfolio in October 2012, further described below; and (iii) as recommended in the OSC Audit Report, senior management at Downstate was replaced. Unfortunately, despite these measures, losses at the Hospital continued to mount, which contributed to Downstate’s already precarious financial position.

23. The State of New York issued Series 2012-D Personal Income Tax Bonds, and a portion of the proceeds from that bond series (the “PIT Bonds”) was used to pay off then-existing mortgaged bond debt. As part of the refinancing, a debt premium was taken, thereby reducing the principal balance by over \$20,000,000, and the interest rates were substantially

reduced. Although the LICH Portfolio is no longer pledged to secure the associated PIT Bonds, substantially all of the LICH Portfolio is subject to tax covenants that restrict the use and sale of the properties, unless the PIT Bonds are defeased. Accordingly, the PIT Bond debt must be defeased upon the sale of the LICH Portfolio. Essentially, the sale proceeds from the Transaction must be used to defease the PIT Bond debt used to pay off the prior mortgaged bond debt. The defeasance amount is estimated at \$118,000,000 and will be paid at the Initial Closing (as defined in ¶ 43 below).

24. Downstate incurred substantial losses in the operation of the Hospital, totaling well over \$185,000,000 for the period from May 29, 2011 through October 31, 2014, the date that Downstate exited all healthcare operations at the Hospital (other than a supporting laboratory service function that terminated on or about December 31, 2014).

Sustainability Plan

25. In 2013, after approximately two years of significant Hospital losses that showed no sign of reversing, and faced also with a broader financial crisis at Downstate as identified in the OSC Audit Report, the New York State Legislature, in accordance with Article VII Budget Bill: Health and Mental Hygiene (HMH) (S2606-D/A3006-D), Chapter 56 Part Q of the Laws of 2013-14, authorized the Chancellor of the State University to develop a plan to restructure UHB to achieve continued fiscal viability.

26. Subsequently, and pursuant to the authority provided by the State University Board of Trustees, the Chancellor of the State University submitted a plan to restructure UHB to achieve continued fiscal viability while preserving its status as a teaching hospital. This plan was duly approved by the Commissioner of Health of the State of New York and the Director of the New York State Division of the Budget on June 13, 2013 (“Sustainability Plan”). A copy of

the Sustainability Plan, including the supplement and approval, is attached hereto as **EXHIBIT 8.**

27. The Sustainability Plan included a determination that Downstate must exit the operations of the Hospital as soon as possible. Further, the Sustainability Plan directed: “Any cash flow pressures on Downstate Medical Center in its 2013-2014 fiscal year associated with the exit of UHB operation of Long Island College Hospital (LICH) will be accommodated by accelerated State funding or deferred payments in 2013-14 and, thereafter, will be accommodated by monetization of LICH assets or other revenue resulting from the LICH transaction.” In February 2013, the State University filed a closure plan, prompting litigation and causing the Hospital to experience a significant number of resignations from physicians. Patient volume at the Hospital dropped. As a result, Downstate voluntarily withdrew accreditation for the graduate medical education residency programs as it was unable to find sufficient physician staffing for training and was unable to provide sufficient clinical experience to the residents. In July 2013, the State University took additional actions to ensure patient safety at the Hospital, but temporary restraining orders issued in several actions prevented the State University from closing the Hospital. See paragraph 32 for further discussion.

28. The State University, on behalf of Downstate, issued Request for Information C002521, Downstate Medical Center Long Island College Hospital Campus, on May 1, 2013, requesting expressions of interest from qualified parties who could provide health services at or around the Hospital campus. Thereafter, having determined that pursuing a request for proposal was an appropriate next step, the State University issued Request for Proposal X002539 on July 17, 2013 (“2013 RFP”) to request proposals from qualified parties to provide, or to arrange to

provide, health services at the Hospital campus, consistent with the healthcare needs of the community, and to purchase the Hospital property, plant, and equipment (the “LICH Assets”).

29. Proposals received in response to the 2013 RFP were reviewed and evaluated in accordance with the provisions set forth in the 2013 RFP, including a determination of the financial sufficiency of each such proposal based on appraisals provided by third party appraisers of the highest and best use of each parcel of the LICH Assets.

Litigation

30. No award was made under the 2013 RFP due to continuing litigation brought (in two instances) and revived (in another instance) in the Supreme Court of the State of New York, County of Kings, styled, *New York State Nurses Association, et al., vs. New York State Department of Health, et al.* (Index Number 5814/13; the “NYSNA Action”), *Boerum Hill Association, et al., vs. State University of New York, et al.* (Index Number 13007/13; the “Boerum Hill Action”), and *In the Matter of the Application of The Long Island College Hospital* (Index Number 9188/2011; the “2011 LICH Petition”).

31. The NYSNA Action was brought in April 2013 by 1199 SEIU United Healthcare Workers East (“1199”), the New York State Nurses Association (“NYSNA”), and Concerned Physicians of LICH, LLC (“CPL”). The Boerum Hill Action was brought in July 2013, initially by the New York City Public Advocate and then joined by various community groups, each of which opposed Downstate’s proposed exit from the operation of the Hospital. The 2011 LICH Petition was re-opened in August 2013, by Justice Carolyn Demarest, *sua sponte*.

32. Temporary restraining orders issued in the NYSNA Action and the Boerum Hill Action prevented the State University from closing the Hospital, prevented the New York State Department of Health from approving the closure plan for the Hospital, and required the State

University to continue operating the Hospital with services as they existed as of 4:00 pm on July 19, 2013. At that time, all inpatient and outpatient procedures and surgeries had been discontinued and all of the inpatient units other than the intensive care unit consisting of 15 beds, the medicine unit consisting of 30 beds, and the Emergency Department, were not in service. The State University, however, was prohibited from reducing staff at the Hospital. As a result, operating losses at the Hospital increased from approximately \$3,000,000 per month to approximately \$13,000,000 per month.

33. In settlement of the aforesaid litigation, the State University and all other parties thereto entered into a Stipulation and Proposed Order that was filed with the Kings County Clerk's Office on February 25, 2014 ("Stipulation"). A copy of the Stipulation is annexed hereto as **EXHIBIT 9**. The Stipulation was "so ordered" by Justices Johnny Lee Baynes and Carolyn Demarest. Pursuant to the Stipulation, the State University was authorized and directed to issue a new request for proposals from qualified parties to provide, or to arrange to provide, health services at the LICH campus, consistent with the healthcare needs of the community, and to purchase the LICH Assets. Stipulation at ¶ 1. Also pursuant to the Stipulation, the State University was authorized to discontinue providing medical services on the Hospital premises at any time on or after May 22, 2014. Stipulation at ¶ 6. Importantly, the State University was authorized to make appropriate staffing reductions thereby reducing the monthly operating losses to less than \$3,000,000.

2014 Request for Proposals

34. In accordance with the Stipulation, the State University issued Request for Proposal X002654, dated February 26, 2014, titled "Healthcare Services at Long Island College Hospital and Purchase of Property" (the "2014 RFP"). A copy of the 2014 RFP is annexed hereto as

EXHIBIT 10. Proposals were received and scored according to the methodology set forth in the Stipulation and the 2014 RFP. The State University thereafter entered into negotiations with the offeror whose proposal received the highest score, Brooklyn Health Partners Development Group, LLC (“BHP”), but those negotiations were terminated in accordance with the process set forth in the Stipulation and the 2014 RFP when it became apparent, among other things, that BHP had not secured commitments from its healthcare partners and was not in a position to fulfill its obligations as set forth in its response to the 2014 RFP.

35. The State University next entered into negotiations with the offeror whose proposal received the second highest score, The Peebles Corporation (“Peebles”), but those negotiations were terminated in accordance with the process set forth in the Stipulation and the 2014 RFP when, among other things, Peebles declined to provide the State University, Petitioner, and the State of New York with an uncapped indemnity for environmental liabilities relating to the LICH Portfolio property (such uncapped indemnity was an absolute requirement under the terms of the 2014 RFP). *See* 2014 RFP at Exhibit D, ¶ C.2.

36. The State University next entered into negotiations with the offeror whose proposal received the third highest score, Fortis Property Group, LLC (“Fortis”). Those negotiations were successful and, ultimately, Fortis and a special purpose entity established by Fortis, FPG Cobble Hill Acquisitions, LLC (“FPG”), entered into a Purchase and Sale Agreement (as amended and restated through the date of this Petition, the “PSA”) with Petitioner regarding, *inter alia*, the sale of the LICH Assets to FPG and the commitment by FPG to use parts of the LICH Assets to provide, or to cause its affiliates and/or contractors to provide, health services to the community in which the LICH Assets are located after execution of, and in accordance with, the PSA. A copy of the PSA is annexed hereto as **EXHIBIT 11**.

37. NYU Hospitals Center (“NYUHC”), Fortis’s healthcare provider, also is a signatory to the PSA and, as part of the Transaction, has committed to providing various health services on a portion of the Hospital’s premises. PSA Section 15.

38. In conformity with the terms of the Stipulation, Downstate discontinued providing most medical services at the Hospital on or about May 22, 2014, but, as a service to the community, Downstate elected to keep its emergency department on the Hospital Premises (the “LICH ED”) open and operating on a temporary, voluntary basis until such time as NYUHC was able to commence operation of its own emergency department on the Hospital premises in accordance with the terms of the PSA.

39. On or about October 28, 2014, the PSA and other Transaction documents received necessary government and regulatory approvals from the New York State Office of the Attorney General (“AG”), the New York State Office of the State Comptroller (“OSC”), the Dormitory Authority of the State of New York (“DASNY”), and the New York State Executive Department’s Division of the Budget (“DOB”). Additionally, the New York State Department of Health (“DOH”) approved the certificate of need and issued the operating certificate for NYUHC to commence operating the emergency department at the Hospital. A copy of the NYUHC DOH Certificate of Need Approvals and Operating Certificate is annexed hereto as **EXHIBIT 20**. A copy of each approval to the PSA and other Transaction documents annexed to this Petition is annexed hereto as **EXHIBIT 12**.

40. On October 31, 2014, Downstate ceased operating the LICH ED and, pursuant to the provisions of the Stipulation and Downstate’s closure plan approved by DOH, Downstate fully and finally exited healthcare operations at the Hospital site (other than, as noted, the operation of a supporting laboratory service function that terminated on or about December 31,

2014). The Downstate/Petitioner Lease was amended to remove a portion of the Hospital (the “Interim Emergency Department”) from the leased premises, and Petitioner, pursuant to the Amended Interim Lease, defined below, leased the Interim Emergency Department to FPG who, in turn, subleased it to NYUHC. On the same day, in accordance with the provisions of the PSA, the Amended Interim Lease and the Interim Sublease, defined below, NYUHC commenced operations of an emergency department at the Hospital site under the name NYU Langone-Cobble Hill. *See* **EXHIBIT 25** at ¶ 4. If the PSA and Transaction are approved by this Court, NYUHC will continue operating the emergency department on an interim basis until its permanent medical building, also to be located on the Hospital site, is constructed, at which time the emergency department and other health services will commence operations in the new building. PSA Section 15.1(a).

41. A more detailed description of the Transaction is provided below.

The Transaction

42. Petitioner proposes to sell substantially all of its assets to FPG pursuant to the PSA. These assets include (to the extent assignable and/or permitted by law) all real property owned by Petitioner and all personal property, including all furniture, fixtures, equipment, machinery, materials, and other personal property of any kind or nature owned by Petitioner as of June 30, 2014, but excluding the following: (a) all items described in Schedule “C” to the PSA (most of which are equipment owned by clinical departments of Downstate that neither FPG nor NYUHC needs and that Petitioner and Downstate wished to retain to be used by Downstate’s clinical departments); (b) stolen personal property no longer in Petitioner’s possession; and (c) obsolete personal property, as defined in the PSA. PSA Sections 1.1, 1.2(c).

43. 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, as well as various non-core properties, 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”). PSA Section 4.1. A complete list of Petitioner’s real property is set forth below and in Section 1.1 of the PSA, and legal descriptions of the property are set forth in Schedules A and B to the PSA.

Building	Notes	Address	Block/Lot No.
Fuller Pavilion	1, 3, 6	339-357 Hicks, 70-76 Atlantic	Block 284 part of Lot 1
Western portion of Othmer Pavilion property	1, 3, 6	91-95 Pacific	Block 284 part of Lot 1
Eastern portion of Othmer Pavilion property	1, 2, 6	91-95 Pacific	Block 284 part of Lot 1
Henry Street Building	1, 4	97 Amity, 340 Henry	Block 290 part of Lot 13
Polak Pavilion	1, 4, 5	363 Hicks	Block 290 part of Lot 13
Polhemus Building	2	348-352 Henry	Block 295 Lot 21
349 Henry Building	2	349 Henry, 115 Amity	Block 291 Lot 1
Parking Garage	2	350-352 Hicks	Block 282 Lot 50
Engineer Building	2	385-389 Hicks	Block 295 Lot 3
Cobble Hill Condominium	2	124-134 Atlantic	Block 285 Lot 1001
94 Amity Residences	2	94 Amity	Block 295 Lot 14
86 Amity	2	86 Amity	Block 295 Lot 13
82 Amity Residence	2	82 Amity	Block 295 Lot 11
78 Amity	2	78 Amity	Block 295 Lot 9
76 Amity	2	76 Amity	Block 295 Lot 8
74 Amity	2	74 Amity, 379-383 Hicks	Block 295 Lot 7
113 Congress	2	113 Congress	Block 295 Lot 38
43 Columbia	2	43 Columbia	Block 259 Lot 8
336 Flatbush	2	336 Flatbush	Block 1058 Lot 30
184 Sterling	2	184 Sterling	Block 1058 Lot 28
112 Pacific Street	2	112 Pacific Street	Block 291 Lot 8

Notes: 1) Hospital Building

2) Conveyed at Initial Closing to FPG special purpose entities identified below

- 3) Conveyed at NMS Closing to NYU, Site of New Medical Building
- 4) Conveyed at Final Closing to FPG special purpose entities identified below
- 5) Location of Interim Medical Services
- 6) Block 284 Lot 1 will be divided into separate tax lots

44. Under the PSA, and as is common in real estate transactions, FPG may assign to one or more special purpose entities (“SPEs”) all or a portion of its rights to acquire title to the premises being conveyed to FPG at either of the Initial Closing or the Final Closing. PSA Section 20.2. The Kestenbaum family (the majority owners and principal officers of FPG) must also be the direct or indirect majority owners, and day-to-day operators, of each of these SPEs. PSA Section 25.11.

45. At the Initial Closing, the Downstate/Petitioner Lease will be deemed amended to remove the eastern portion of the Othmer Pavilion property, as well as the Hospital’s garage and all non-Hospital properties owned by Petitioner from such lease, and such property will be conveyed by Petitioner to the various SPEs formed by FPG to take title to the properties identified in **EXHIBIT 27** annexed hereto. PSA Section 4.1(a) and Exhibit N (Initial Purchaser Deed). Following the Initial Closing, Petitioner shall continue to own only the remaining western portion of the Othmer Pavilion property, the Fuller Pavilion property, the Henry Street Building, and the Polak Pavilion. Except for the Interim Emergency Department, such property will remain subject to the Downstate/Petitioner Lease.

46. In accordance with the PSA, FPG shall, at its sole cost, demolish the Fuller Pavilion building and the Othmer Pavilion building. PSA Section 10.5. The Fuller Pavilion property and the western portion of the Othmer Pavilion property are collectively referred to as the “New Medical Site.” Once demolition is complete and certain other conditions, including environmental remediation at FPG's sole expense, are met, the New Medical Site Closing (i.e., the second closing) will occur, at which time the Downstate/Petitioner Lease will be deemed

amended to remove the New Medical Site from the lease, and Petitioner shall convey the fully cleared New Medical Site to NYUHC. PSA Section 4.2(d)(viii) and Exhibit S (New Medical Site Deed). NYUHC will then commence construction, at its sole expense, of a “New Medical Building” on the New Medical Site. PSA Sections 10.6, 15.1. The exact legal description of the New Medical Site is currently unknown due to the pending tax lot division, but it will encompass land sufficient to house the New Medical Building. 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. The PSA provides that once the New Medical Building is complete, it may not be used for any purpose other than the delivery of health services for 20 years. If the building is not used for medical purposes for the first five years after opening, title to the New Medical Site, including the New Medical Building, reverts to Seller without payment of any consideration. PSA Section 15.3(b) and Exhibit T (New Medical Site Declaration).

47. Following the New Medical Site Closing, Petitioner shall continue to own only two of the four core Hospital properties: the Henry Street Building and the Polak Pavilion (collectively the “Final Closing Premises”). PSA Section 1.1. During construction of the New Medical Building, Petitioner will continue to own the Final Closing Premises, but the Interim Emergency Department already has been (and will continue to be) leased by Petitioner to FPG, and then subleased from FPG to NYUHC, so that NYUHC can operate its interim emergency department in those remaining Hospital buildings until the New Medical Building is complete. *See* PSA Exhibit C (“Amended Interim Lease”) and Exhibit D (“Interim Sublease”). As noted, NYUHC has been operating its interim emergency department on the Final Closing Premises in the Interim Emergency Department since October 31, 2014. Once the New Medical Building is

complete, NYUHC will move its healthcare operations to the New Medical Building, the Downstate/Petitioner Lease, the Amended Interim Lease and the Interim Sublease will terminate, and the Final Closing will occur, at which time the Final Closing Premises will be conveyed to the SPEs formed by FPG to take title to the Final Closing Premises identified in **EXHIBIT 27**. PSA Section 4.1(c) and Exhibit U (Final Closing Deed).

48. Thus, at the end of the Transaction, FPG (collectively along with the SPEs established by FPG) will own the entire LICH Portfolio other than the New Medical Site where the New Medical Building will be constructed and which will be owned by NYUHC.

49. The Initial Closing is scheduled to occur on or around April 30, 2015, if final approvals are obtained by that date. PSA Section 4.3(a). 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 much earlier. PSA Section 4.3(b). The Final Closing is scheduled to occur no later than 36 months after the New Medical Site Closing. PSA Sections 4.3(c), 15.1(c). In all cases, these deadlines are subject to possible extensions for unavoidable delays and under certain other circumstances set forth in the PSA.

50. Total cash consideration to be received by Petitioner for the LICH Assets is \$240,000,000. PSA Section 2.1.

51. A ten percent (10%) downpayment of \$24,000,000 was paid by FPG on June 30, 2014, and is being held in a segregated account by Petitioner. PSA Section 2.1(a). The downpayment is subject to refund only under very limited circumstances, such as the failure of the parties to obtain any necessary regulatory/judicial approvals for the Transaction. PSA Section 14.2.

52. A second downpayment of \$2,000,000 is payable to Petitioner if FPG's lender requires minimal testing at the LICH site, specifically borings or soil testing. PSA Sections 2.1(b), 10.3(d).

53. It is possible that Petitioner will be required by DASNY to defease the PIT Bond debt associated with the LICH Portfolio prior to the Initial Closing. One circumstance that might require defeasance prior to the Initial Closing would be the failure to obtain all regulatory and judicial approvals for the Transaction before the expiration of nine months after NYUHC commenced operation of the interim emergency department, or July 31, 2015. Should this be required, FPG is obligated under the PSA to pay the defeasance amount (approximately \$118,000,000) on Petitioner's behalf to DASNY. PSA Sections 4.4(c).

54. At the Initial Closing, FPG 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 FPG has paid this additional downpayment prior to the Initial Closing; and (c) the PIT Bond defeasance amount, if FPG has paid the defeasance amount prior to the Initial Closing. PSA Section 2.1(c). Thus, it is possible that the amount owed by FPG at the Initial Closing will be a negative number, and, if so, that negative amount will be credited to the amount owed to Petitioner at the Final Closing.

55. At the New Medical Site Closing, no money will change hands, because the property conveyed to NYUHC at that Closing will already have been paid for by FPG at the Initial Closing (essentially, FPG is contributing the property to NYUHC to support the construction of the New Medical Building and the provision of health services on the site). PSA Section 1.3(a); *see* ¶ 70 and **EXHIBIT 16**, referenced therein, for a discussion of the value of the Fuller Pavilion when it becomes part of the New Medical Site.

56. At the Final Closing, a last payment of \$108,000,000 will be made to Petitioner. This amount equals the remaining half of the total Purchase Price (\$120,000,000), less the remaining half of the downpayment (\$12,000,000). If any carryover credit is earned by FPG at the Initial Closing, that amount will be subtracted from the \$108,000,000 payment. PSA Section 2.1(d).

57. As noted, approximately \$118,000,000 of the \$240,000,000 in sale proceeds will be used to defease the PIT Bond debt. If FPG makes the defeasance payment prior to the Initial Closing, it will receive a credit for that payment at the Initial Closing. PSA Section 4.4(c). If DASNY does not require the defeasance payment to be made prior to the Initial Closing, then Petitioner will defease the PIT Bond debt at the Initial Closing from the proceeds it receives from FPG.

58. Petitioner will use the Transaction proceeds as set forth in that certain Grant and Distribution Agreement (“GDA”) (a copy of which is annexed hereto as **EXHIBIT 13**), effective as of June 30, 2014, by and between Petitioner and the State University. After defeasing the PIT Bond debt, (or crediting FPG with the defeasance amount, if FPG makes the defeasance payment), Petitioner will use the remaining Transaction proceeds to pay its then-outstanding debts, if any, including an additional mortgage liability with an original principal amount of \$1,600,000 relating to the property referred to as the Cobble Hill Condominium located at 124-134 Atlantic Avenue. *See* Schedule of Properties in ¶ 43. Petitioner also will set aside a reasonable reserve, not to exceed \$2,000,000, for future debts, unknown liabilities, and wind-down costs. GDA Section 2. Other debts and liabilities of Petitioner include the continuing cost of property insurance, including liability insurance for the property prior to conveyance. A portion of the property is subject to public access easements and open space maintenance

obligations. Some of these obligations will remain with Petitioner until the Final Closing. These include the costs of maintaining certain recreation areas.

59. In addition, pursuant to a lease agreement between Petitioner and FPG, if an upgrade must be made in or to the building being leased by FPG (and subleased to NYUHC to use as interim medical space) to allow NYUHC to continue its healthcare operations in such building, Petitioner may be required to absorb those costs up to \$5,000,000. PSA at Exhibit C, Section 13.03(d).

60. Any remaining proceeds from the Transaction (after making the defeasance payment, paying all debts and known liabilities, setting aside the reserve and paying for any required building upgrade in the interim medical space), which Petitioner and the State University estimate to be approximately \$110,000,000, will be transferred by Petitioner to the State University in accordance with Petitioner's corporate purposes as an instrumentality of the State University that exists for the benefit of and to support the State University. GDA Sections 3, 4. Thus, the State University, Petitioner's sole corporate member, will ultimately receive the financial benefit of the Transaction in order to support the State University's ongoing educational and research missions.

61. Pursuant to the GDA, the State University may use the transferred funds to pay any pension withdrawal liability incurred by the staffing agency that provided staff to the Hospital, StaffCo of Brooklyn, LLC, in connection with Downstate's exit from healthcare operations on the LICH campus and otherwise as may be approved by DOB. GDA Section 6. The net sale proceeds transferred to the State University are not expected to equal or exceed the State University's losses arising out of the operation of LICH during the period that the State University operated the Hospital.

62. The dissolution of Petitioner is being contemplated and would occur sometime after the Final Closing and after Petitioner has fully paid its liabilities and otherwise wound down its affairs. Petitioner exists solely for the purpose of holding the LICH Portfolio, and it therefore will have no reason for remaining in existence after such property is fully conveyed to FPG and NYUHC.

The Appraisals and the Reasonableness of the Purchase Price

63. Petitioner, through its counsel, requested two appraisal reports be completed in order to determine the fair market value of the LICH Portfolio. Petitioner requested proposals for the appraisals and interviewed companies who submitted proposals. Petitioner then engaged Landauer Valuation and Advisory (“Landauer”) and Cushman & Wakefield, Inc. (“Cushman”) to appraise the LICH Portfolio. The purpose of each appraisal was to estimate the fair market value of each property comprising the LICH Portfolio based on its highest and best use. A copy of the Landauer Appraisal, consisting of Volumes I, II, and III, is annexed hereto as **EXHIBIT 14**. A copy of the Cushman Appraisal is annexed hereto as **EXHIBIT 15**.

64. After review of all pertinent information pertaining to the subject properties, analysis of all the available data, and based on its experience in appraising similar properties in the New York City area, Landauer determined that the aggregate current market value of the four core Hospital properties as of October 1, 2013 was \$155,200,000, and, together with the Polhemus Building at 350 Henry Street, 349 Henry Street, and the Parking Garage at 352 Hicks Street as of October 1, 2013, was \$212,800,000. Landauer Appraisal at Volume I, page 2.

65. Additionally, Landauer determined that the aggregate current market value of the non-core properties as of October 1, 2013 was \$48,200,000. Landauer Appraisal at Volume II, page 2.

66. Thus, the total fair value of the LICH Portfolio as of October 1, 2013, based on the highest and best use of the properties, was \$261,000,000, according to the Landauer Appraisal.

67. After review of all pertinent information pertaining to the subject properties, analysis of all the available data, and based on its experience in appraising similar properties in the New York City area, Cushman determined that the aggregate current market value of the four core Hospital properties as of October 1, 2013, was \$141,000,000. Cushman Appraisal at Document Nos. 02334-02403 (Othmer Pavilion); 02750-02819 (Fuller Pavilion); 02820- 02886 (340 Henry Street); 03027-03092 (363 Hicks Street).

68. Additionally, Cushman determined that the aggregate current market value of the non-core properties as of October 1, 2013 was \$92,900,000. Cushman Appraisal at Document Nos. 01836-02333; 02404-02749; 02887-03026; 03093-03158; Cushman Appraisal of Parking Garage located at 350 Hicks Street annexed hereto as **EXHIBIT 19**.

69. Thus, the total fair value of the LICH Portfolio as of October 1, 2013, based on the highest and best use of the properties, was \$234,000,000, according to the Cushman Appraisal.

70. To determine whether the terms of the Transaction, specifically, the trifurcated closings, affected the fair and reasonable analysis of the consideration to be paid in the Transaction, Petitioner engaged Cushman to reconsider the valuation of the Fuller Pavilion assuming the completion of the demolition, the remediation of all environmental issues, the reallocation of development rights leaving only 105,000 square feet of zoning floor area, the subdivision of the tax lot and the imposition of the 20-year healthcare restrictive use covenant . A copy of the Fuller Pavilion Appraisal by Cushman is annexed hereto as **EXHIBIT 16**. After

review of all pertinent information pertaining to the subject properties, analysis of all the available data, and based on its experience in appraising similar properties in the New York City area, Cushman determined that the market value of the Fuller Pavilion, subject to the above conditions as of September 1, 2014, was \$4,500,000. Fuller Pavilion Appraisal by Cushman at page 5. This particular appraisal was obtained to demonstrate the additional value going to NYUHC (for which Petitioner will receive adequate compensation from FPG as part of the Purchase Price). The value removed by the demolition of the Fuller Pavilion will be transferred to the Henry Street Building and Polak Pavilion due to the reallocation of developments rights.

71. Of course, the two appraisals valued each property at its “highest and best use,” which, from a purely monetary standpoint, did not include use as a healthcare facility. In consideration of the termination of the NYSNA Action and the Boerum Hill Action, and resolution of the issues raised in 2013 in the 2011 LICH Petition and release of all claims raised in such litigation, the State University and Petitioner agreed that a portion of the LICH Portfolio would be sold subject to the restriction that it be used to provide health services, thus diminishing its value. *See* Stipulation at ¶ 2.a. Moreover, any proposer proposing to provide healthcare on portions of the property would be required to incur the cost of major renovations to meet the use restriction. Indeed, NYUHC determined that renovating the existing Hospital buildings is not feasible and that an entirely new facility needs to be constructed. Thus, under the terms of the PSA, FPG will be required to spend millions of dollars demolishing the existing buildings on the New Medical Site, and NYUHC will spend tens of millions of dollars constructing its New Medical Building on that site. PSA Sections 10.5, 10.6, 15.1. All of these required costs necessarily affect the price Petitioner will receive for the property, but will benefit the community by ensuring that healthcare is available at the former Hospital site in a new, state-

of-the-art facility. Petitioner and the State University, therefore, consider the agreement of FPG and NYUHC to incur these costs and to accept the healthcare use restriction to be additional significant consideration for the Transaction in support of the charitable missions of both the State University and Petitioner.

72. Following execution of the PSA, Petitioner, through its counsel, requested an additional appraisal report from Landauer to estimate the fair market value of each property comprising the LICH Portfolio as of October 8, 2014, the date the First Amended and Restated Purchase and Sale Agreement was signed by the parties, based on its highest and best use but subject to certain assumptions described below (“2014 Landauer Appraisal”). A copy of the 2014 Landauer Appraisal, consisting of Volumes I, II, and III, is annexed hereto as **EXHIBIT 28**.

73. For purposes of the 2014 Landauer Appraisal, the LICH Portfolio was appraised subject to assumptions reflecting several Transaction agreements, including the PSA, the Zoning Lot Development and Easement Agreement, and the First Amended and Restated Interim Lease (the “Transaction Assumptions”). 2014 Landauer Appraisal at Volume I, page 4.

74. After review of all pertinent information pertaining to the subject properties, analysis of all the available data, and based on its experience in appraising similar properties in the New York City area, Landauer determined that the aggregate current market value of the four core Hospital properties as of October 8, 2014 was \$161,100,000, and, together with the Polhemus Building at 350 Henry Street, 349 Henry Street, and the Parking Garage at 352 Hicks Street as of October 8, 2014, was \$215,200,000. 2014 Landauer Appraisal at Volume I, Summary of Values—Core Properties, PDF page 5.

75. Additionally, Landauer determined that the aggregate current market value of the non-core properties as of October 8, 2014 was \$53,450,000. 2014 Landauer Appraisal at Volume I, Summary of Values—Non-Core Properties, PDF page 6; *see* 2014 Landauer Appraisal at Volume II for each individual non-core property appraisal.

76. Thus, the total fair value of the LICH Portfolio as of October 8, 2014, based on the highest and best use of the properties but subject to the Transaction Assumptions, was \$268,650,000. 2014 Landauer Appraisal at Volume I, PDF pages 6, 8.

77. It also should be noted that in addition to the Purchase Price, FPG is required to contribute \$5,000,000 to a new community foundation, which will be established for the purpose of making grants and investments to support community health, social services, affordable housing, and other needs in the area surrounding the LICH Portfolio properties. PSA Section 2.2. The Stipulation required that twenty-five percent (25%) of any amount received as Purchase Price in the sale of the LICH Assets in excess of \$240,000,000 be given to the community foundation. The Fortis proposal provided an alternative by setting the Purchase Price at \$240,000,000 and paying an additional \$5,000,000 directly to the community foundation. This alternative benefits the community in support of the charitable missions of the State University and Petitioner and obviates the need to apportion costs such as utilities and other closing expenses between Petitioner and the community foundation.

78. The total Purchase Price of \$240,000,000 represents 92% of the Landauer Appraisal, 103% of the Cushman Appraisal, and 89% of the 2014 Landauer Appraisal. As described in this Petition, however, the Purchase Price does not reflect the total consideration provided in the Transaction. By recognizing the additional consideration already being provided by NYUHC through its operation of the interim emergency department with emergency medical

ambulance service receiving status, by its commitment to construct the New Medical Building, and by its commitment to provide significant health services in the New Medical Building, and the additional consideration to be provided by FPG and Fortis to demolish the existing Fuller Pavilion and perform all environmental remediation, and by Fortis to fund the community foundation with \$5,000,000, the total consideration exceeds the fair market value of the LICH Assets and is, therefore, fair and reasonable to Petitioner.

79. The RFP evaluation, scoring and negotiation process was mandated by the Stipulation that was agreed to by the various litigation parties and approved by two Justices of the Kings County Supreme Court. Once BHP and Peebles had been disqualified, determined to be appropriate by both OSC and this Court, Petitioner was obligated under the terms of the Stipulation to negotiate a transaction with the offeror whose proposal received the next highest score at the submitted price offered by that offeror, so long as the price was at or above the \$210,000,000 minimum set forth in the Stipulation. Stipulation at ¶¶ 2.b.i and 2.d.i. Having judicially approved the Stipulation and the process followed by the State University and Petitioner with respect to the 2014 RFP, it would not be appropriate for this Court to later reject as unfair the price that resulted from the process mandated by that Stipulation.

The Transaction Meets the Section 511 Standards for Approval

80. Section 511(d) of the Not-For-Profit Corporation Law states that a court should approve a petition for a sale of substantially all of a corporation's assets where (a) the consideration and the terms of the terms of the transaction are fair and reasonable to the corporation; and (b) the purpose of the corporation or the interest of its members will be promoted by the sale. The proposed Transaction meets both prongs of this test.

The Terms of the Transaction are Fair and Reasonable

81. With respect to the first prong, the consideration and the terms of the Transaction clearly are fair and reasonable to the Petitioner. As discussed above, Petitioner will be receiving cash consideration that is within the range of the appraised value of the property, particularly taking into account the restrictions on use of portions of the property mandated by the Stipulation and imposed under the PSA. The consideration is well above the \$210,000,000 floor price established in the Stipulation, and it also has been approved by OSC, the independent agency charged with overseeing the fairness of transactions to the State.

82. In addition to the cash consideration, the charitable missions of the State University and Petitioner are supported by the Transaction in a number of ways, including: (i) the Stipulation that imposed use restrictions on a portion of the LICH Portfolio ended costly litigation and permitted the State University to reduce operating expenses and exit from the operations of the Hospital; (ii) the community has been provided with health services without a gap in service that will continue for many years; and (iii) FPG and NYUHC will make significant investment in the community for the provision of health services.

83. The Stipulation provides that “If the State University shall enter into an agreement with any Offeror and the Offeror is unable for any reason to close the transaction in accordance with the terms of the [2014 RFP] and the agreement within six (6) months, then the State University shall be entitled to dispose of the [LICH Assets] without further compliance with this Stipulation and Order.” Stipulation at 2.d(i). The failure to obtain regulatory and judicial approval for the Transaction would prevent FPG from closing the Transaction in a timely fashion as contemplated by the Stipulation. Thus, under the terms of the Stipulation, if this Court does not approve the Transaction, the process set forth in the Stipulation to allow the State University

to exit operations of the Hospital, to provide health services for the community, and to sell the LICH Assets for a Purchase Price at or above the minimum price of \$210,000,000 will have failed. Moreover, if the Transaction is not approved, NYUHC will be required to close its emergency department on the Hospital property immediately. Until the PIT Bond debt is defeased, no other healthcare operator will be permitted to use the Hospital property to provide any health services or for any other non-State purpose. Such an outcome would be far less fair and reasonable on an overall basis – to the Petitioner, to the State University and to the community – than approval of the instant Transaction.

84. In short, a rejection of the Transaction would place Petitioner at square one with respect to its disposition of the LICH Portfolio as anticipated by the Sustainability Plan, with no assurance of reaching agreement with a new buyer any time soon, no assurance that any such agreement would be approved by regulators, and no assurance that the price it would receive would be higher than in the present Transaction. The only assurance is that health services will not be provided on the Hospital property. Thus, not only is the consideration in this instance “fair and reasonable” on its face, it is also more than fair when viewed in the light of the alternative.

85. Further, beyond the amount of the Purchase Price, the other terms of the Transaction are fair and reasonable to the Petitioner. For example, FPG has agreed to fully indemnify Petitioner, as well as the State University and the State of New York, from any liability relating to environmental conditions on the property, *even if caused by Petitioner or the State University*, a highly unusual and seller-friendly provision that inures to the benefit of the citizens of this State. PSA Sections 19.1(a) through (c). FPG’s parent company, Fortis, has unconditionally guaranteed this obligation. PSA Section 19.2. This almost assures Petitioner

that it will have no significant unknown trailing liabilities after the sale of the property is complete.

86. In addition, as noted, FPG has agreed to pay as part of the Purchase Price the \$118,000,000 defeasance costs associated with the PIT Bond debt attached to the LICH Portfolio, even if DASNY requires that defeasance amount to be paid prior to the Initial Closing, i.e., prior to the time that FPG will own any of the property. PSA Section 4.4(c). By agreeing to do so, FPG has ensured that Petitioner will not be required to make the defeasance payment before it has the \$118,000,000 in cash to do so. It is, again, highly unusual for a buyer to agree to make such an enormous payment in advance of actually taking possession of (and title to) the property it is acquiring.

87. To the extent that Petitioner and the State University were tasked with meeting the goals of the Stipulation and the 2014 RFP by requiring that any agreement ensure future health services in the community, the PSA and the other Transaction documents have achieved that purpose, and therefore are fair and reasonable on that basis as well. For example, the purchaser, FPG, has agreed not only to pay the Purchase Price, but also to contribute the New Medical Site land to NYUHC in support of a new, state-of-the-art medical building on that site. To facilitate the construction of the New Medical Building, FPG also has agreed to demolish the existing buildings on the New Medical Site at its sole cost and expense, something that was not contemplated in its initial proposal. PSA Section 10.5. As noted, FPG is also contributing \$5,000,000 to a new community foundation that will support community health, social services, affordable housing, and other needs of the area surrounding the property. PSA Section 2.2.

88. Also, FPG is establishing, at its sole expense: (a) a “Clinical Advisory Panel” to provide input to NYUHC as it establishes and expands its healthcare operations on the site,

collaborate in an effort to develop a more integrated system of care in the community, and monitor health data and information to identify and prioritize opportunities for improvements; and (b) a “LICH Transformation Advisory Panel” to provide input to NYUHC as to whether its planned health services are responsive to community needs and support the broader goals of delivery system transformation in Brooklyn. PSA Sections 15.4, 15.5.

89. FPG also has agreed to appoint a “Ombudsperson,” no later than the date of the Initial Closing, who will act as a community representative to seek input as to whether the healthcare operations at the site are meeting community needs. The Ombudsperson will be a direct contact through whom community members and other stakeholders can provide input to the leadership of NYUHC. Any costs, fees, and expenses associated with the Ombudsperson (including, without limitation, any compensation to the Ombudsperson) will be paid solely by FPG. PSA Section 15.6.

90. NYUHC, for its part, has committed in the PSA to construct a new medical building that is larger and will have greater capacity than initially contemplated in the Fortis proposal (100,000 square feet vs. 65,000 square feet in the Fortis proposal), and will incur a much larger expense in constructing the building than it initially contemplated. (NYUHC estimates that its construction costs will total approximately \$200,000,000). *See* **EXHIBIT 25** at ¶ 3. The PSA also provides for NYUHC to commence its operation of an interim emergency department starting from the day Downstate closed its emergency department on the site, and NYUHC has lived up to that obligation, thus ensuring continuity of needed emergency services in the community with no gap in service and with emergency ambulance receiving status, despite NYUHC’s forecast that the interim emergency department will operate at a loss. *See id.* at ¶ 5.

91. Additionally, NYUHC has agreed to provide, directly or through contractors, community health services for a period of 20 years, including: (i) dialysis services in the community surrounding the New Medical Site; and (ii) home health services within the borough of Brooklyn.

92. In order to assure that health services will be available at the site for the foreseeable future, the PSA also contains various covenants and restrictions regarding future activity on the site, including: (a) restrictions on NYUHC's ability to sell or lease the New Medical Building after it is completed; (b) a requirement that FPG provide adequate parking to patients and staff of the New Medical Building; and (c) most significantly, as noted, a requirement that, once completed, the New Medical Site may not be used for any purpose other than the delivery of health services for 20 years. PSA Section 15.3. The Deeds for the property, and a Declaration of Covenants and Restrictions for the New Medical Site, also reflect these restrictions. PSA at Exhibits N, S, T, and U.

The Sale Will Promote the Purposes of Petitioner and the Interests of Petitioner's Member

93. With respect to the second prong of the Section 511(d) and 511(a)(6) analysis, the Transaction will promote the mission and purposes of Petitioner. Petitioner was formed for the purpose of acquiring, developing, holding, maintaining, and supporting healthcare and educational facilities and their related properties for use by (and for the benefit of) the State University, and, in particular, Downstate. **EXHIBIT 1** at ¶ 3. As set forth in its Certificate of Incorporation, Petitioner's objective is to support the operation of healthcare facilities by the State University and Downstate and to support them in carrying out the governmental purposes of healthcare education and research. *Id.* Petitioner was organized as an instrumentality of the State University and exists for the sole purpose of supporting and benefitting the State University

and Downstate. **EXHIBIT 1** at ¶ 5. The closure of the State University hospital operations on the site has meant that continued ownership of the Property by Petitioner will not support the State University in any way, and thus is not in furtherance of Petitioner's mission and corporate purposes. By contrast, approving the sale of the Property will allow Petitioner to support the State University, in furtherance of Petitioner's mission and corporate purposes, by transferring the sale proceeds to the State University and thus helping alleviate some of the State University's losses incurred in operating the Hospital.

94. Further, under Sections 511(d) and 511(a)(6), there is no question that the Transaction will promote the interests not only of Petitioner, but also of Petitioner's sole corporate member, the State University. As noted, the State University lost more than \$185,000,000 operating the Hospital between May 2011 and October 2014. This Transaction has facilitated the State University's exit as the Hospital's operator, which clearly is in the State University's interest and consistent with the legislatively mandated Sustainability Plan. Moreover, the State University's Downstate campus could ill afford additional losses. That campus is the only medical school in Brooklyn and trains a significant percentage of New York State's minority physicians, as well as a significant percentage of all physicians who practice following residency in the non-Manhattan boroughs of New York City. For those reasons among others, Downstate is a treasured New York resource, and its continued operation of the Hospital has placed its financial viability in doubt. By facilitating the State University's exit from the Hospital, the Transaction already has helped Downstate to devote its resources, and its full attention, on its core charitable missions of medical education and research.

95. Of course, the net proceeds of the Transaction, which are expected to be in the neighborhood of \$110,000,000 after payment of the PIT Bond debt and other existing Petitioner

liabilities and wind-down costs, will also help the State University enormously. That amount will not cover the State University's losses during the period that it operated the Hospital, but it will allow the State University to recoup a portion of those losses during a period of increasing student need.

96. Finally, although an evaluation of the community's interest is not part of the Section 511(d) and Section 511(a)(6) analysis, there is also no question that approval of the Transaction is in the best interests of the community stakeholders. The State University has exited healthcare operations on the healthcare site. Rejection of the Transaction by this Court cannot and would not result in the State University resuming operations at that location. In accordance with the Stipulation and the Sustainability Plan, the State University has surrendered its operating certificate relating to the Hospital to the New York State Department of Health and the UHB Medicare provider number no longer includes the Hospital. The State University has no ability to obtain approval from the various State and federal agencies to issue the necessary operating certificate, Medicare participation provider number, and other approvals that would need to be obtained as a prerequisite to resume operations. Consequently, rejection of the Transaction would not result in the State University returning to healthcare operations on the site.

97. Moreover, and understandably, if this Transaction is not approved by this Court, NYUHC will not be contractually obligated to continue any healthcare operations on the site. Under PSA Sections 4.2(d)(ii) and 4.3(b), if the consent of this Court has not been obtained so that the New Medical Site Closing does not occur, all of NYUHC's obligations under the PSA, including its obligation to operate the interim emergency department, will terminate. NYUHC will be investing tens of millions of dollars into its New Medical Building if the Transaction is

approved, but it cannot be expected to continue to operate the interim emergency department at a loss if it is deprived of the benefits it negotiated – the ability to build and operate a state-of-the-art facility that it projects to be successful both operationally and financially. Thus, if this Court does not approve the Transaction, the community will be deprived of the benefit of the emergency department currently operating on the site.

98. Moreover, as noted, rejection of the Transaction would place the State University and Petitioner at square one with respect to a negotiated deal for the property. There is no assurance that the State University would be able to strike a deal that meets the requirements of the RFP with the proposer whose proposal received the next highest score, or with any other proposer or new party. Moreover, the rejection by the Court of this Transaction likely would make it even more difficult for the State University to strike a new deal, particularly one involving a healthcare component, because other potential providers may well be wary of investing time, energy, and money into a protracted negotiation and planning process that may ultimately be rejected again.

99. Of course, as noted, the State University would not be required to include a healthcare component in any new transaction if the State University determines, pursuant to the Stipulation, that it is no longer reasonable to proceed with the 2014 RFP process.

100. Thus, if the Transaction is not approved, it is not clear when, or if, a new provider would be in a position to assume any healthcare operations on the site. In the interim, the property would lie vacant and fall into decrepitude, reducing property values in the community, and the community would be without any health services at that location.

101. Petitioner and the State University followed rigidly the process set forth in the Stipulation. That process has resulted in a Transaction that is fair, reasonable, and beneficial to

Petitioner, to the State University, and to the community. It involves fair consideration for the property and assurance of continued healthcare on the site for years to come, by one of the nation's leading healthcare institutions that is making a significant financial investment in its new facility.

102. The Transaction has been approved by Petitioner's Board. All three members of Petitioner's Board of Directors gave unanimous written consent without a meeting to adopt the resolution authorizing the sale of all or substantially all of its assets and approving all of the Transaction documents. A copy of the June 30, 2014 resolution of the Petitioner Board of Directors is annexed hereto as **EXHIBIT 17**. To better reflect the current Transaction, Petitioner's Board of Directors unanimously approved a second resolution authorizing the sale. A copy of the second resolution is annexed hereto as **EXHIBIT 21**.

103. No director, officer, or key employee of Petitioner will benefit financially or otherwise, either directly or indirectly, as a result of the Transaction. Additionally, no director, officer, or key employee of Petitioner has any relationship with a person or has any related party that will benefit financially or otherwise, either directly or indirectly, as a result of the Transaction.

104. The Transaction has been approved by the Board of Petitioner's Member, the State University,² by OSC, by the Office of the New York State Attorney General, and by other various government and regulatory agencies. A copy of the June 25, 2014 the State University Board of Trustees resolution is annexed hereto as **EXHIBIT 18**.

² Twelve of the sixteen members of the State University Board of Trustees were present at the June 25, 2014 Board of Trustees meeting, and they unanimously approved the resolution to sell substantially all of Petitioner's assets. The meeting minutes providing the list of attendees accompanies **EXHIBIT 18**.

105. The Court therefore should grant the Petition for the approval of the sale of substantially all assets of Downstate at LICH Holding Company, Inc.

106. No previous application for the relief requested for herein has been made.

107. The following supporting documents are attached as additional exhibits: (1) Affirmation of Ruth E. Booher, Deputy Counsel for Health Affairs in the State University Office of General Counsel, annexed hereto as **EXHIBIT 22**; (2) Affirmation of Kevin O’Mara, Senior Managing Counsel in the State University Office of General Counsel, assigned to Downstate Medical Center, annexed hereto as **EXHIBIT 23**; (3) Affidavit of Richard Miller, Chief Financial Officer of Downstate’s University Hospital of Brooklyn, annexed hereto as **EXHIBIT 24**; (4) Affidavit of Vicki Match Suna, Senior Vice President and Vice Dean for Real Estate Development and Facilities for NYU Langone Medical Center (which includes NYUHC), annexed hereto as **EXHIBIT 25**; and (5) Affidavit of Fortis Property Group, LLC, annexed hereto as **EXHIBIT 26**.

108. Petitioner is proceeding by order to show cause with notice to the following:

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

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

Notice will be provided by service of the order to show cause which will include the time and place of the return date and instructions on how to access the Petition through the State University website at <http://www.suny.edu/hospitals/Petition/>.

WHEREFORE, Petitioner requests that the Court grant an Order approving the Purchase and Sale Agreement 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.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed this

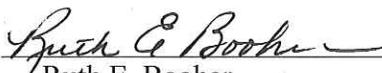
21st day of April, 2015

DOWNSTATE AT LICH HOLDING COMPANY, INC.

By: _____


Robert Haelen
President

By: _____

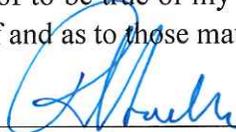

Ruth E. Booher
Deputy Counsel for Health Affairs
Office of General Counsel
The State University of New York
State University Plaza
Albany, New York 12246
Tel: 518-320-1830
Ruth.booher@suny.edu

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

Robert Haelen, being duly sworn, deposes and says:

I am the President of Downstate at LICH Holding Company, Inc., the corporation in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.



Robert Haelen
President

Sworn to before me this
21 day of April, 2015



Notary Public

Lori A. Aldi
Notary Public in the state of New York
Qualified in Schenectady County
Reg. No. O1AL6003477
My commission Expires
Marh 2, 2018

LIST OF EXHIBITS TO VERIFIED PETITION OF

ROBERT HAELEN, PRESIDENT

DOWNSTATE AT LICH HOLDING COMPANY, INC.

	Page No.
1) Petitioner's Certificate of Incorporation	00001
2) Petitioner's Bylaws	00009
3) List of Petitioner's Directors and Principle Officers	00023
4) Petitioner's Annual Financial Reports	00025
5) University Hospital of Brooklyn's Annual Financial Reports	00038
6) 2011 Downstate/Petitioner Lease	00088
7) OSC Audit Report	00024
8) Sustainability Plan	00228
9) Stipulation and Proposed Order	00309
10) 2014 RFP	00382
11) Purchase and Sale Agreement	00429
o Key Schedules	
• Schedule A: Legal Description	00554
• Schedule B: Legal Description of New Medical Site	00569
o Key Exhibits	
• Exhibit C: Amended Interim Lease	00850
• Exhibit D: Interim Sublease	00942
o Deeds	
• Exhibit N: Initial Purchaser Deed	01260
• Exhibit S: New Medical Site Deed	01291
• Exhibit U: Final Closing Deed	01339
12) Government and Regulatory Approvals	01354
13) Grant and Distribution Agreement	01379
14) Landauer Appraisal	01397
• Volume I	01397
• Volume II	01570
• Volume III	01752
15) Cushman Appraisal	01836
16) Cushman Appraisal of Fuller Pavilion	03159

	Page No.
17) Petitioner's Board of Directors Resolution	03185
18) The State University Board of Directors Resolution and Meeting Minutes	03194
19) Cushman Appraisal of Parking Garage	03217
20) NYUHC DOH Certificate of Need Approvals and Operating Certificate	03283
21) Petitioner's Board of Directors Second Resolution	03290
22) Affirmation of Ruth E. Booher	03301
23) Affirmation of Kevin O'Mara	03390
24) Affidavit of Richard Miller	03397
25) Affidavit of Vicki Match Suna	03402
26) Affidavit of Fortis Property Group, LLC	03405
27) List of FPG Special Purpose Entity Names	03408
28) 2014 Landauer Appraisal	03410
• Volume I	03410
• Volume II	03531
• Volume III	03684