

EXHIBIT "E"

**ZONING LOT DEVELOPMENT
AND EASEMENT AGREEMENT**

BY AND AMONG

DOWNSTATE AT LICH HOLDING COMPANY, INC.,

AND

FPG COBBLE HILL ACQUISITIONS, LLC,

AND

NYU HOSPITALS CENTER

Dated: as of _____, 201_

**BLOCK 284
LOTS [] and 17**

AND

**BLOCK 290
LOT 13**

**RECORD AND RETURN TO:
KRAMER LEVIN NAFTALIS AND FRANKEL LLP
1177 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10036
ATTENTION: ELISE WAGNER, ESQ.**

ZONING LOT DEVELOPMENT AND EASEMENT AGREEMENT

THIS ZONING LOT DEVELOPMENT AND EASEMENT AGREEMENT (this “Agreement”) made as of the ___ day of _____, 201_, by and between [NYU **HOSPITALS CENTER**, a New York not-for-profit corporation having an office at 550 Fifth Avenue, New York, NY 10016 (“NYUHC”)]; **DOWNSTATE AT LICH HOLDING COMPANY, INC.**, a New York not-for-profit corporation with an office c/o the State University of New York Health Science Center at Brooklyn, 450 Clarkson Avenue, Brooklyn, New York 11203 (“DLHC”); and **FPG COBBLE HILL ACQUISITIONS, LLC**, a Delaware limited liability company, having an office c/o Fortis Property Group, LLC, 45 Main Street, Suite 800, Brooklyn, New York 11201 (“Fortis”).¹

WITNESSETH:

WHEREAS, DLHC is the current owner of certain land, with the buildings and improvements thereon, in the City of New York, County of Kings, generally known by street addresses as _____, New York, New York, designated as [**part of Lot 1**] in Block 284 on the Tax Map of the City and State of New York, County of Kings (the “Tax Map”) and more particularly described on **Exhibit A** annexed hereto and made a part hereof (said land being herein collectively called the “New Medical Land,” and the NYUHC Land and said buildings and improvements, together with any future replacements thereof permitted pursuant to the provisions of this Agreement, being herein collectively called the “New Medical Premises”);²

WHEREAS, Fortis is the owner of certain land, with the buildings and improvements thereon, in the City of New York, County of Kings, generally known by the street addresses as _____, designated as [**part of Lot 1**] in Block 284 on the Tax Map], as more particularly described on **Exhibit B** annexed hereto and made a part hereof (such land being herein called the “Fortis Land,” said buildings and improvements, together with any future replacements thereof permitted pursuant to the provisions of this Agreement, being herein called the “Fortis Building,” and the Fortis Land and the Fortis Building being herein collectively called the “Fortis Premises”);³

WHEREAS, DLHC is the owner of certain land, with buildings and improvements thereon, in the City of New York, County of Kings, generally known by the street addresses as 363 Hicks Street and 340 Henry Street, designated as Lot 13 in Block 290 on the Tax Map, as more particularly described in **Exhibit C** annexed hereto and made a part hereof (such land being herein called the “DLHC Land”, each of said buildings and improvements, together with any future replacements thereof permitted pursuant to the provisions of this

¹ To be modified if another purchaser entity is substituted for Fortis.

² The New Medical Premises is the New Medical Site (as defined in the PSA).

³ The Fortis Premises is the New Non-Medical Site (as defined in the PSA).

Agreement, being herein called a “DLHC Building”, and the DLHC Land and the DLHC Building being herein collectively called the “DLHC Premises”);

WHEREAS, NYUHC is the lessee of a portion of the DLHC Premises described as the Interim Medical Premises pursuant to that certain Interim Sublease, dated as of October 3, 2014, between Fortis and NYUHC;

WHEREAS, pursuant to that certain First Amended and Restated Purchase and Sale Agreement among DLHC, Fortis and NYUHC, effective as of June 30, 2014 (the “PSA”), (i) DLHC conveyed the Fortis Premises to Fortis immediately prior to this Agreement, (ii) DLHC agreed to convey the DLHC Premises to Fortis at a Final Closing (as defined in the PSA) pursuant to the terms and conditions of the PSA, and (iii) DLHC agreed to convey the New Medical Premises to NYUHC at an NMS Closing (as defined in the PSA) pursuant to the terms and conditions of the PSA;

WHEREAS, NYUHC desires to construct one or more new buildings or improvements or alter any existing buildings or improvements on the New Medical Land (said buildings or improvements, together with any future replacements thereof permitted by this Agreement, being herein called the “New Medical Building”), utilizing the New Medical Floor Area Development Rights (as hereinafter defined);

WHEREAS, Long Island College Hospital (“LICH”) was the prior owner of the NYUHC Land, the Fortis Land and the premises designated as Tax Lot 17 (f/k/a Tax Lots 17, 18, 19, 21, 23 and 24) in Block 284, as more particularly described in **Exhibit D** (collectively, the “Atlantic Premises”);

WHEREAS, pursuant to a certain Declaration of Zoning Lot Restrictions, dated May 1, 1991 and recorded on May 7, 1991 in Reel 2694 Page 936 in the Office of the City Register, Kings County (the “City Register’s Office”), LICH combined the NYUHC Land, the Fortis Land, the DLHC Land and the Atlantic Premises into a single zoning lot (the “Combined Zoning Lot”);

WHEREAS, subsequently, LICH conveyed the Atlantic Premises to The Atlantic Apartments LLC (“Atlantic Owner”), and retained ownership of the balance of the Combined Zoning Lot, consisting of the NYUHC Land, the Fortis Land and the DLHC Land (collectively, the “Balance Premises”) and in connection with such conveyance to Atlantic Owner, LICH entered into a certain Zoning Lot Development Agreement with Atlantic Owner, dated as of February 15, 2001 and recorded in the City Register’s Office on March 23, 2001 in Reel 5112, Page 544 (the “Atlantic ZLDA”);

WHEREAS, pursuant to the Atlantic ZLDA, 41,250 square feet of Floor Area Development Rights (as defined therein), consisting of 38,250 square feet of Utilized Development Rights (as defined therein) and 3,000 square feet of Transferred Development Rights (as defined therein) were allocated to the Atlantic Premises and all of the Excess Development Rights (as defined therein) and any Additional Rights (as defined therein) were allocated to the Balance Premises;

WHEREAS, DLHC, NYUHC and Fortis now desire to allocate the Floor Area Development Rights appurtenant and/or allocated to the Balance Premises and to otherwise set forth certain agreements with respect to their rights and obligations in and to the Balance Premises and other matters, and wish to provide to the maximum extent possible for each to exercise its rights in the future without having to seek any consent, approval or other action from the other;

WHEREAS, Fortis desires to construct one or more new buildings or alter any existing buildings (individually or collectively, including the Cantilevered Portion (as hereinafter defined), the "Fortis Building") on the Fortis Land, utilizing the Fortis Floor Area Development Rights (as hereinafter defined);

WHEREAS, DLHC does not intend to alter (other than incidentally in connection with the interim use of a portion of a DLHC Building as an emergency department), demolish or reconstruct any of the DLHC Buildings or to construct any new buildings on the DLHC Premises;

WHEREAS, pursuant to the PSA, Fortis has, at its sole expense and in consultation with and with the cooperation of NYUHC, obtained from the Department of Buildings the ZRD1 Determinations (as such term is defined in the PSA) (the "ZRD1 Determinations");

WHEREAS, by execution of an Easement Grant and Agreement of even date and contemporaneously herewith (the "Open Space Easement Agreement"), Fortis has been granted, subject to the terms and provisions of the Open Space Easement Agreement, certain easements in connection with the provision of open space (as such term is defined in the Zoning Resolution) on the New Medical Premises, the use and occupancy of the rooftop of the New Medical Building, and the construction of a portion of the Fortis Building thereover, subject to the terms set forth in the Open Space Easement Agreement; and

WHEREAS, by execution of an Easement Grant and Agreement (Pacific Street) of even date and contemporaneously herewith (the "Pacific Street Easement Agreement"), DLHC has been granted, subject to the terms and provisions of the Pacific Street Easement Agreement, certain easements for access to and ingress and egress over the Benefited Parcel, subject to the terms set forth in the Pacific Street Easement Agreement; and

WHEREAS, all parties in interest (as defined in the Zoning Resolution) to the Balance Premises as shown on the Zoning Lot Certification of [_____ Title Insurance Company] ("Certification"), annexed hereto as **Exhibit E**, have subordinated or are simultaneously herewith subordinating their interest to this Agreement.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

I. Certain Definitions. As used herein:

A. “Additional Floor Area Development Rights” means any additional Floor Area Development Rights (other than Bonus Floor Area Development Rights) that may become available to the New Medical Premises, the Fortis Premises, the DLHC Premises or the Combined Zoning Lot, by application to any Agency (as hereinafter defined) for, without limitation, a special permit, variance or by any other procedure or transfer allowed under the applicable provisions of the Zoning Resolution.

B. “Agency(ies)” shall mean the New York City Planning Commission, the Department of City Planning of the City of New York, the City Council of the City of New York, the New York City Department of Buildings, the New York City Department of Housing Preservation and Development, the Board of Standards and Appeals of the City of New York, the Landmarks Preservation Commission, the Brooklyn Borough President, any community board, any other municipal agencies, court or department, or any department, court or agency of the State of New York or the United States of America or any successor entity to any of the foregoing.

C. “Balance Premises” shall have the meaning set forth in the recitals of this Agreement.

D. “Bonus Floor Area Development Rights” means any bonus floor area and other development rights attributed to the Combined Zoning Lot which may be available for inclusion in a building constructed thereon (i) through the provision of an amenity or public benefit, either on or off the Combined Zoning Lot, and (ii) by way of transfer from a zoning lot that is not included in the Combined Zoning Lot, including bonus floor area generated as-of-right or by special permit, authorization or certification, in accordance with the applicable provisions of the Zoning Resolution.

E. “Building” means, with respect to the New Medical Land, the New Medical Building; with respect to the Fortis Land, the Fortis Building; and, with respect to the DLHC Land, any one or more of the DLHC Buildings.

F. “Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to be closed in the State of New York.

G. “Cantilever Easement” means the perpetual and exclusive easement benefitting and appurtenant to the Fortis Premises, granted pursuant to Section II.A.2.b hereof.

H. “Combined Zoning Lot” shall have the meaning set forth in the recitals of this Agreement.

I. “Community Facility Floor Area Development Rights” shall mean Floor Area Development Rights appurtenant to the Combined Zoning Lot to be used for community facility uses only in accordance with the Zoning Resolution.

J. “Datum Level” shall mean the system known as the Borough Works Datum of the Borough of Brooklyn, which designates as zero an elevation which is 2.547 feet above mean sea level at Sandy Hook, New Jersey.

K. “Easements” means the easements granted pursuant to the terms of this Agreement, including the Light and Air Easement, the Cantilever Easement, the DLHC Open Space Easement and the Construction Easements (as hereinafter defined).

L. “Emergency Situation” means a situation: (i) impairing or imminently likely to impact the structural support of a Building or causing or imminently likely to cause bodily injury to persons or physical damage to such Building or any property in, on, under, within, upon or about such Building, (ii) causing or imminently likely to cause substantial economic loss to DLHC or Fortis or their respective successors and assigns or exposing DLHC or Fortis or their respective successors and assigns to civil or criminal penalties, (iii) causing or imminently likely to cause loss of any utility, elevator or other essential services to a Building, or (iv) causing or imminently likely to cause interference with ingress to or egress from a Building.

M. “Floor Area Development Rights” means the rights, as determined in accordance with the Zoning Resolution, which are appurtenant to a zoning lot, to develop such zoning lot by erecting thereon a structure or structures with (i) a total floor area determined by multiplying the area of the zoning lot by the maximum allowable floor area ratio for structures in the zoning district or districts in which such zoning lot is located, and (ii) bulk, density and other development rights permitted under the Zoning Resolution, including without limitation, to the extent applicable, the permitted number of dwelling units, the maximum lot coverage, and the minimum amount of open space (each as defined in the Zoning Resolution), and (iii) any Bonus Floor Area Development Rights.

N. “Fortis Floor Area Development Rights” means (i) 185,000 square feet of Residential Floor Area Development Rights and 25,000 square feet of Community Facility Floor Area Development Rights appurtenant to the Balance Premises as of the date hereof, (ii) any Bonus Floor Area Development Rights that may be acquired by Fortis, and (iii) any Additional Floor Area Development Rights acquired by Fortis, ((i)-(iii) above shall be subject to adjustment pursuant to Section II.C hereof).⁴

O. “Light and Air Easement” means the perpetual easement benefitting and appurtenant to the Fortis Premises, granted pursuant to Section II.A.2.a hereof.

P. “Lower Limiting Plane” means that certain horizontal plane located above and coincident with the boundaries of the New Medical Premises at an elevation of fifteen (15) feet above the wearing surface of the roof of the New Medical Building, which elevation the parties

⁴ To the extent that the total amount of Floor Area Development Rights appurtenant to the Balance Premises is less than the total of the New Medical Floor Area Development Rights and the Fortis Floor Area Development Rights as defined herein, the amount of Fortis Floor Area Development Rights shall be reduced accordingly so that the amount of New Medical Floor Area Development Rights remains unaffected.

agree is _____ () feet above Datum Level (the “Initial Datum Elevation”).⁵ The Parties further agree that, should NYUHC provide to Fortis on or before October 8, 2015, a different elevation for the wearing surface of the roof (“Amended Datum Elevation”), this Agreement shall be amended so as to substitute the Amended Datum Elevation for the Initial Datum Elevation and the Lower Limiting Plane shall be adjusted accordingly.

Q. “New Medical Floor Area Development Rights” means 105,000 square feet of Community Facility Floor Area Development Rights appurtenant or allocated to the Balance Premises, subject to adjustment pursuant to Section II.C hereof.

R. “NYUHC Forfeiture Date” means the date on which either (i) NYUHC shall no longer have the right to acquire New Medical Premises pursuant to the PSA or (ii) DLHC exercises any of its rights of reacquisition with respect to the New Medical Premises pursuant to the New Medical Site Deed (as defined in the PSA).

S. “Premises” means the New Medical Premises, the Fortis Premises, or the DLHC Premises, as the context requires.

T. “Residential Floor Area Development Rights” shall mean Floor Area Development Rights appurtenant to the Combined Zoning Lot to be used for residential uses only in accordance with the Zoning Resolution.

U. “DLHC Floor Area Development Rights” means (i) all of the Floor Area Development Rights appurtenant or allocated to the Balance Premises in excess of the New Medical Floor Area Development Rights and the Fortis Floor Area Development Rights as of the date hereof, (ii) any Bonus Floor Area Development Rights that may be acquired by DLHC, and (iii) any Additional Floor Area Development Rights acquired by DLHC ((i)-(iii) above shall be subject to adjustment pursuant to Section II.C hereof).

V. “Zoning Resolution” means the Zoning Resolution of the City of New York, effective as of December 15, 1961, as amended from time to time.

W. Undefined terms used in this Agreement which are defined in the Zoning Resolution -- such as, without limitation, the terms “bulk,” “community facility,” “curb level,” “dwelling unit,” “height,” “floor area,” “floor area ratio,” “lot area,” “lot coverage,” “party in interest,” “rooms” and “zoning lot” -- shall be defined and construed as those terms are defined in and construed pursuant to Section 12-10 of the Zoning Resolution

II. Limitations on Premises.

A. Limitations on the New Medical Premises.

⁵ The elevation of the Lower Limiting Plane shall be established by notice as to the elevation of the wearing surface of the roof from NYUHC to Fortis no later than April 8, 2015, subject to adjustment (which adjustment may reduce the elevation by any amount but not increase the elevation by more than ten (10) feet) by notice from NYUHC to Fortis no later than October 8, 2015.

1. Fortis and DLHC hereby agree that the New Medical Floor Area Development Rights are hereby allocated to the New Medical Premises for the exclusive use thereon and benefit thereof and that neither Fortis nor DLHC shall have any rights therein. In accordance with the provisions of this Agreement and, except as otherwise provided herein, at no cost or expense to NYUHC, Fortis and DLHC shall reasonably cooperate with NYUHC in connection with the incorporation into the New Medical Building of the New Medical Floor Area Development Rights.

2. a. DLHC hereby grants to Fortis a permanent and perpetual easement over the portion of the New Medical Premises located above the Lower Limiting Plane (the "Light and Air Easement"), as described in Exhibit F hereto, for (i) light, air and view for the Fortis Building's windows, (ii) the operation, maintenance and use of the Fortis Building's windows, and (iii) within the volume of the Light and Air Easement located within ten (10) feet of the façade of the Fortis Building, for the ordinary and necessary cleaning, maintenance and repair of the façade of the Fortis Building. The Light and Air Easement shall not be obstructed by any structures, equipment, fixtures or furniture except to the extent permitted in subdivision c of this Section II(A)(2). If requested in writing by Fortis, DLHC shall, within ten (10) Business Days after its receipt of such request, execute, acknowledge and deliver to Fortis a form of Light and Air Easement substantially in accordance with the easement form attached hereto as Exhibit G or such alternative form as may be required by the Department of Buildings of the City of New York, together with transfer tax returns required to record such easement. Fortis may record such easement in the City Register's Office at its sole expense.

3. a. DLHC hereby grants, conveys and releases to Fortis, free and clear of all encumbrances, a permanent, perpetual and exclusive easement (the "Cantilever Easement") above the Lower Limiting Plane and within the portion of the New Medical Premises described in Exhibit H hereto (the "Cantilever Easement Area")⁶ for the construction, use, operation, maintenance, repair, replacement and reconstruction of portions of the Fortis Building to be located over and above the New Medical Building (the "Cantilevered Portion"), together with the right to access those portions of the roof of the New Medical Building within thirty (30) feet of the eastern lot line of the New Medical Premises in connection with the maintenance and repair of the Cantilevered Portion and the western wall of the Fortis Building below the Lower Limiting Plane, provided that such access shall not interfere with the NYUHC's access to or use of the roof in connection with any construction, maintenance, repair or other work being performed on the New Medical Building. In no event shall the Cantilevered Portion of the Fortis Building extend over the eastern boundary of the New Medical Premises by more than 19 feet, subject to minor encroachments beyond by reason of normal settlement and shifting.

b. Prior to the NYUHC Forfeiture Date, Fortis shall not commence construction of the Cantilevered Portion or exercise any other rights it has to install projections within or over the New Medical Premises until the earlier to occur of (i) completion by NYUHC of construction of the steel structure of the New Medical Building, as evidenced by a notice from NYUHC to Fortis within ten (10) days of the occurrence thereof, and (ii) thirty (30) months from

⁶ The Cantilever Easement Area shall be limited to the easternmost 19 feet of the New Medical Premises, above the Lower Limiting Plane.

the date on which NYUHC acquires the New Medical Land, subject to Unavoidable Delays (as defined in Section 25 of the Open Space Easement). In the event that Fortis commences construction of the Cantilevered Portion pursuant to clause (ii) of the preceding sentence, Fortis shall reimburse NYUHC for any incremental costs of the construction of the New Medical Building above and over such costs as NYUHC would have occurred absent the construction of the Cantilevered Portion prior to completion by NYUHC of construction of the steel structure of the New Medical Building, such reimbursement to be made in installments of 50% on commencement of construction of the Cantilevered Portion, 25% on 50% completion of the Cantilevered Portion, and 25% on substantial completion of the Cantilevered Portion (such reimbursement obligation of Fortis, the “**Fortis Cantilever Payment**”). In the event that Fortis fails to reimburse NYUHC for the Fortis Cantilever Payment within thirty (30) days after receipt of an invoice and supporting documentation, the unpaid amount shall be treated as a Grantee’s Construction Payment (as defined in Section 2(b)(iv) of the Open Space Easement), and the provisions of Section 13.5 of the Open Space Easement shall govern NYUHC’s right to collect interest on the amount due and to place a lien on the Fortis Premises.

b. Notwithstanding anything herein to the contrary, NYUHC shall have the right at its discretion to install stairs and elevator bulkheads, ventilation equipment, a cooling tower and/or other equipment (each, a “Structure”) on the roof of New Medical Building, portions of which shall be permitted to extend above the Lower Limiting Plane so long as (x) no floor area (as defined in the Zoning Resolution) is allocable to such portions extending above the Lower Limiting Plane, (y) such Structures are not underneath the Cantilevered Portion, and (z) such Structures comply with all applicable legal requirements as to the distance between such equipment and the façade of Fortis’s Building (based on the assumption that Fortis’s Building is a residential building and that the Cantilevered Portion has west-facing windows requiring legal light and air); provided, however, that NYUHC may locate bulkheads, stairs, and equipment related to the bulkheads (e.g. elevator equipment) directly under the Cantilevered Portion, as long as the foregoing comply with all applicable legal requirements.

c. The Parties acknowledge and agree that, from and after such time as NYUHC acquires fee title to the New Medical Premises, the consent of DLHC, in its capacity as owner of the DLHC Premises, shall not be required for any amendment to or termination of the Light and Air Easement or the Cantilever Easement.

4. Fortis and DLHC hereby agree that NYUHC shall have sole discretion with respect to the design of the New Medical Building, subject to the restrictions on the utilization of Floor Area Development Rights set forth herein and the provisions of the Open Space Easement Agreement.

5. NYUHC covenants and agrees that no new buildings, improvements, alterations or additions (each, an “Alteration”) shall be constructed or allowed to exist on the New Medical Premises, and no reconstruction, replacement, or rebuilding of substantially the same building as now exists on the New Medical Land (“Rebuilding”) shall be undertaken of the New Medical Building if such Alteration or Rebuilding or any portion of such Alteration or Rebuilding (a) is used for any use other than community facility use or the use by Fortis of the roof of the New Medical Building as provided in the Open Space Easement Agreement, (b) encroaches over or extends above the Lower Limiting Plane, except as provided in Section

II.A.2.c hereof, (c) creates a Material Violation (as hereinafter defined), (d) utilizes any of the Fortis Floor Area Development Rights or any of the DLHC Floor Area Development Rights, (e) decreases the Fortis Floor Area Development Rights or the DLHC Floor Area Development Rights, and/or (f) creates any new non-compliance or non-conformance, or increase the degree of an existing non-compliance or non-conformance, with the Zoning Resolution. Any Alteration or Rebuilding shall be in accordance with Exhibit J hereto, as it may be modified in accordance with Section II.C below.

6. NYUHC covenants and agrees not to create or permit to exist a Material Violation (hereinafter defined) with respect to the New Medical Premises. “Material Violation” means either of the following (a) a new, or increase in any existing, non-conforming use or non-compliance under the Zoning Resolution which would delay, hinder or prevent issuance of a building or any other permit or approval required by law to alter, repair, maintain, build or rebuild any building or a Certificate of Occupancy for any building on the Combined Zoning Lot and (b) a violation of the Zoning Resolution or any building code, fire code, or other law, ordinance or regulation in effect as described in a notice of violation by an Agency which would delay, hinder or prevent issuance of a building or any other permit or approval required by law to alter, repair, maintain, build or rebuild any building or a Certificate of Occupancy for any building on the Combined Zoning Lot.

a. If at any time hereafter there exists any Material Violation on the New Medical Premises, NYUHC shall commence a cure promptly after receiving notice of the same from Fortis, and shall proceed diligently and continuously to make all commercially reasonable efforts to cure, remove and discharge of record the same as rapidly as possible.

b. In the event that NYUHC does not commence such cure and proceed diligently and continuously with such cure as required by Section II.A.5.a, Fortis shall be permitted to pursue all legal and equitable remedies available to it under law.

B. Limitations on Fortis Premises.

1. The Parties hereby agree that the Fortis Floor Area Development Rights are hereby allocated to the Fortis Premises for the exclusive use and benefit of Fortis and that neither NYUHC nor DLHC shall have any rights therein. In accordance with the provisions of this Agreement and, except as otherwise provided in this Agreement, at no cost or expense to Fortis, NYUHC and DLHC shall reasonably cooperate with Fortis in connection with the incorporation into a Fortis Building of the Fortis Floor Area Development Rights.

2. Fortis covenants and agrees that no Alterations constructed or allowed to exist on the Fortis Premises and no Rebuilding of any Fortis Building, whether following a casualty or otherwise, shall be undertaken if such Alteration or Rebuilding or any portion of such Alteration or Rebuilding (a) is used for any use other than residential, community facility, or, if permitted by applicable laws, rules and regulations, including without limitation the Zoning Resolution, Use Group 6 commercial uses, (b) encroaches or extends below the Lower Limiting Plane, (c) creates a Material Violation (as hereinafter defined), (d) utilizes any of the NYUHC New Medical Floor Area Development Rights or any of the DLHC Floor Area Development Rights, (e) decreases the New Medical Floor Area Development Rights or the DLHC Floor Area

Development Rights, and/or (f) creates any new non-compliance or non-conformance, or increase the degree of an existing non-compliance or non-conformance, with the Zoning Resolution.

3. Fortis shall provide on the Combined Zoning Lot or elsewhere (the “Parking Site”) all parking spaces that are required pursuant to the Zoning Resolution as accessory parking spaces for the existing emergency department facility on the Combined Zoning Lot (which spaces shall be made available without interruption until such time as the emergency department within the New Medical Building is in operation and has received a temporary certificate of occupancy) and for the New Medical Building. DLHC shall pay Fortis parking fees for any parking spaces that Fortis provides to DLHC on the Parking Site in an amount equal to eighty percent (80%) of the fair rental value for such parking spaces for the period leased, as determined based on actual rates charged by comparable parking facilities located in the vicinity of the New Medical Premises, including the sums charged for parking by the general public (if any) for parking spaces on the Parking Site. In the event that such parking spaces are not located on the Combined Zoning Lot, Fortis shall (i) within ten (10) Business Days after its receipt of such request from DLHC, execute, acknowledge, and deliver any declaration or other instrument required by the New York City Department of Buildings to allow such parking spaces to satisfy such requirements under the Zoning Resolution and (ii) obtain all other permits or approvals required by the Department of Buildings for the use of such location for parking spaces. Any parking spaces required for the New Medical Building shall be made available for use beginning on the date such spaces are required to be available for use in order to satisfy the conditions for issuance of a temporary certificate of occupancy for any portion of the New Medical Building (the “Parking Commencement Date”), provided that NYUHC shall not be required to pay compensation for such spaces until the later of (i) the date designated by the sixty (60) day notice referenced below and (ii) the date on which such spaces are actually made available to NYUHC. NYUHC shall seek to minimize the number of parking spaces legally so required, provided that it may make any determinations with respect thereto in its sole discretion. NYUHC shall provide Fortis with written notice of the Parking Commencement Date at least one (1) year prior to such date and shall confirm the Parking Commencement Date at least sixty (60) days prior to such date. Any failure by Fortis to comply with the provisions of this Section II.B.3 shall be deemed a “Material Violation” hereunder.

4. Fortis covenants and agrees not to create or permit to exist a Material Violation with respect to the Fortis Premises. “Material Violation” shall have the meaning provided in Section II.A.5 and, with respect to the Fortis Premises, shall also mean a failure to comply with the provisions of Section II.B.3.

a. If at any time hereafter there exists any Material Violation on the Fortis Premises, Fortis shall commence a cure promptly after receiving notice of the same from NYUHC or DLHC or, if the Material Violation is a failure to comply with the provisions of Section II.B.3, shall commence a cure within thirty (30) days after receiving notice of the same from NYUHC or DLHC, and shall proceed diligently and continuously to make all commercially reasonable efforts to cure, remove and discharge of record the same as rapidly as possible.

b. In the event that Fortis does not commence such cure and proceed diligently and continuously with such cure as required by Section II.B.4.a, DLHC and NYUHC shall each be permitted to pursue all legal and equitable remedies available to it under law.

C. Limitations on DLHC Premises.

1. The Parties hereby agree that they shall be bound by all documents currently of record or approved by agencies of the City of New York affecting the Combined Zoning Lot.

2. The Parties hereby agree that the DLHC Floor Area Development Rights are hereby allocated to the DLHC Premises for the exclusive use and benefit of DLHC and that neither NYUHC nor Fortis shall have any rights therein. In accordance with the provisions of this Agreement and, except as otherwise provided in this Agreement, at no cost or expense to DLHC, NYUHC and Fortis shall reasonably cooperate with DLHC in connection with the incorporation into a DLHC Building of the DLHC Floor Area Development Rights.

3. DLHC covenants and agrees that no Alterations constructed or allowed to exist on the DLHC Premises and no Rebuilding of any DLHC Building, whether following a casualty or otherwise, shall be undertaken if such Alteration or Rebuilding or any portion of such Alteration or Rebuilding (a) creates a Material Violation (as hereinafter defined), (b) utilizes any of the New Medical Floor Area Development Rights or any of the Fortis Floor Area Development Rights, (c) decreases the New Medical Floor Area Development Rights or the Fortis Floor Area Development Rights, and/or (d) creates any new non-compliance or non-conformance, or increase the degree of an existing non-compliance or non-conformance, with the Zoning Resolution. Notwithstanding the foregoing or any other provision of this Agreement, DLHC shall not during the period in which it owns or otherwise controls the DLHC Premises undertake any Alterations or Rebuilding of any DLHC Building without the approval of Fortis, which approval may be withheld in Fortis' sole discretion.

4. DLHC covenants and agrees not to create or permit to exist a Material Violation with respect to the DLHC Premises. "Material Violation" shall have the meaning provided in Section II.A.5.

a. If at any time hereafter there exists any Material Violation on the DLHC Premises, DLHC shall commence a cure promptly after receiving notice of the same from NYUHC or Fortis, and shall proceed diligently and continuously to make all commercially reasonable efforts to cure, remove and discharge of record the same as rapidly as possible.

b. In the event that DLHC does not commence such cure and proceed diligently and continuously with such cure as required by Section II.C.4.a, NYUHC and Fortis shall each be permitted to pursue all legal and equitable remedies available to it under law.

c. Notwithstanding anything to the contrary in this Section II(c)(4), the provisions in the PSA governing DLHC's obligations in respect of violations noticed against the DLHC Premises shall govern the cure of all violations, including Material Violations, prior to the conveyance to the DLHC Premises to Fortis.

5. DLHC hereby grants, conveys and releases to Fortis, subject to the provisions of Agreement and Grant of Easement dated November 28, 1994, between the City of New York and LICH and recorded in the City Register's Office in Reel 3551, Page 2375 and an Agreement dated July 16, 1993 between the Department of Parks and Recreation and LICH and recorded in the City Register's Office in Reel 3551, Page 24217 (together, the "Recorded Documents"), a perpetual and non-exclusive easement (the "DLHC Open Space Easement") within the DLHC Open Space Easement Area⁷ (as described on Exhibit I attached hereto) for occupants (and their guests and invitees) of the buildings located on the Combined Zoning Lot, to use the DLHC Open Space Easement Area as Open Space (as defined below). "Open Space" means the number of square feet necessary to fulfill the requirements of Section 12-10 and 23-14 et seq. of the Zoning Resolution for all buildings on the Combined Zoning Lot, but in no event more than the lesser of (i) the number of qualifying square feet (if any) that is actually available in the DLHC Open Space Easement Area and (ii) 9,250 square feet. All of the space subject to the DLHC Open Space Easement shall meet the requirements of Section 12-10 of the Zoning Resolution, as in effect on the date hereof, for "open space" by reason of its physical characteristics and its use pursuant to the DLHC Open Space Easement, and shall otherwise meet all applicable laws, rules and regulations; provided, however, that DLHC shall have no obligation to improve the space in any way that is not required by the Recorded Documents and that, should any further improvements be required to meet the requirements for "open space", such improvements shall be made by Fortis (and DLHC hereby grants Fortis a license to do so) at Fortis' sole cost and expense, pursuant to plans approved by DLHC, which approval shall not be unreasonably withheld, conditioned or delayed. In no event may DLHC reduce the amount of the DLHC Open Space or the DLHC Open Space Easement Area or make any temporary or permanent improvements in or over the DLHC Open Space Easement Area, provided, however, the foregoing shall not prevent or prohibit DLHC from landscaping the DLHC Open Space Easement Area or from erecting any sculpture, statuary, seating areas, garbage enclosures or other objects in the DLHC Open Space Easement Area provided that such objects are permitted obstructions in open space as provided in Sections 12-10 and 23-12 of the Zoning Resolution in effect on the date hereof (or any amendment thereto). Fortis, and the occupants of the Fortis Building (and their guests and invitees) shall not be obligated to pay any consideration to DLHC for the right to access the Open Space Easement Area in accordance with the DLHC Open Space Easement.

5. Fortis shall not cause or permit any mechanic's lien to be filed against the DLHC Open Space Easement Area due to the acts of Fortis or anyone claiming by, through or under Fortis. Fortis shall, at its expense, procure the satisfaction or discharge of record of all such mechanic's liens within thirty (30) days after notice of the filing thereof; or, if acceptable to DLHC, within such thirty (30) day period, Fortis shall procure for DLHC, at Fortis' sole expense, a bond or other protection against any such lien or encumbrance acceptable to DLHC. In the event Fortis has not so performed within such thirty (30) day period, Grantor may, at its option, pay and discharge such liens and Fortis shall reimburse DLHC, within thirty (30) days after demand, for all costs and expenses incurred in connection therewith. Fortis agrees to indemnify, defend and hold harmless DLHC from and against all losses, damages, injuries,

⁷ Includes certain public access easements adjacent to Henry Street, and a portion of the open area adjacent to the south and east walls of the Henry Pavilion and the adjacent sidewalks, all within the DLHC Premises.

claims, demands and expenses, of any nature, including reasonable legal expenses, which may arise out of any such mechanic's lien.

6. The Parties acknowledge and agree that NYUHC's consent shall not be required for any amendment to or termination of the DLHC Open Space Easement.

D. Development Limitations on All Premises.

1. The Parties hereby agree that they shall be bound by all documents currently of record or approved by agencies of the City of New York affecting the Combined Zoning Lot to the extent such documents are applicable to such Party's Premises..

2. If a validly enacted amendment of the Zoning Resolution reduces the Floor Area Development Rights ascribable to the entire or a portion of the Combined Zoning Lot (a "Downzoning"), taking first into account the allocation of Floor Area Development Rights to the Atlantic Premises and the Balance Premises pursuant to the Atlantic ZLDA, the allocation of Floor Area Development Rights appurtenant to the Balance Premises shall be as follows:

a. If, following a Downzoning, only one of the buildings on the Balance Premises suffers a casualty, then, unless otherwise permitted to be restored to its former bulk, pursuant to the provision of the Zoning Resolution governing non-complying buildings, any Rebuilding of such building undertaken on the affected Premises (the "Affected Premises") shall be limited to an amount of Floor Area Development Rights available to the Affected Premises on which such building was located at such time (considered as if such Affected Premises were a separate zoning lot) which would not reduce or otherwise adversely affect the Floor Area Development Rights incorporated into or allocated pursuant to this Agreement to the other buildings on the Balance Premises which did not suffer any casualty.

b. If, following a Downzoning, all of the buildings on the Balance Premises suffer a casualty, then, unless otherwise permitted to be restored to such building or buildings' former bulk, pursuant to the provision of the Zoning Resolution governing non-complying buildings, any Rebuilding undertaken on the Balance Premises shall be limited by such Downzoning such that each Affected Premises shall be entitled to its pro rata share of the Floor Area Development Rights available in accordance with Exhibit J hereto.

c. If, following a Downzoning, more than one but less than all of the buildings on the Balance Premises suffer a casualty, then, unless otherwise permitted to be restored to such buildings' former bulk, pursuant to the provisions of the Zoning Resolution governing non-complying buildings, any Rebuilding undertaken on the Balance Premises shall be limited by such Downzoning such that each Affected Premises shall be entitled to its pro rata share of total Floor Area Development Rights available as of the date hereof to all of the Balance Premises, after taking into account (in accordance with Exhibit J hereto) the Floor Area Development Rights attributable to any buildings remaining on the Balance Premises following such casualty.

3. If a validly enacted amendment of the Zoning Resolution increases the Floor Area Development Rights ascribable to all or a portion of the Balance Premises (an "Upzoning"), then any increase in the Floor Area Development Rights resulting from such

Upzoning shall be allocated to the DLHC Premises; provided however, that if Fortis has applied for an Upzoning and such Upzoning is approved, then any increase in the Floor Area Development Rights resulting from such Upzoning shall be allocated in a manner that is substantially in accordance with the plans approved in connection with such Upzoning.

III. Utilization of Floor Area Development Rights; Cooperation. NYUHC, Fortis and DLHC agree that, subject to Section II hereof, each party may incorporate into its Building all of the Floor Area Development Rights allocated to it, and may otherwise utilize such Floor Area Development Rights at any time hereafter to develop the its Premises in accordance with this Agreement. Consistent with the rights of the parties, each party to this Agreement (a “Cooperating Party”) covenants and agrees to cooperate with the other party in the utilization of such other party’s rights under this Agreement, and to take all reasonable steps requested by any party which seeks to implement development or redevelopment of its Premises (a “Requesting Party”), and, in furtherance thereof, each Cooperating Party covenants that:

A. Subject to Section III.B hereof, the Cooperating Party shall cooperate with the Requesting Party, at the Requesting Party’s sole cost and expense (including, without limitation, payment of the other party’s reasonable attorneys’ fees) and subject to the provisions of the PSA governing “Seller Assistance”, in the making, filing and processing of (i) requests submitted to an Agency for interpretations of the Zoning Resolution and other applicable laws, including without limitation the ZRD1 Determinations, and (ii) applications for work and other permits, certificates, or approvals under the jurisdiction of any Agency, including those issued on a ministerial basis and those issued on a discretionary basis (including without limitation amendments to the map or text of the Zoning Resolution), for the use, development, and/or redevelopment of the Combined Zoning Lot or any portion thereof (“Applications”). The Cooperating Party shall, within ten (10) Business Days of written request therefore, execute, acknowledge, deliver and furnish to the Requesting Party any documents in such Party’s possession which are required for the processing and approval of such applications, statements, certifications, documents, or instruments relating to the development or redevelopment of the buildings located on the Premises of the Requesting Party and/or the transfer and the utilization of Floor Area Development Rights in accordance with this Agreement. In the event that the Requesting Party has forwarded such requests or applications relating to the development or redevelopment of the buildings located on the Premises of the Requesting Party and/or the transfer and the utilization of Floor Area Development Rights in accordance with this Agreement and such other party has not executed, delivered and acknowledged the same, then the Requesting Party shall have the right to make such application in its own name, on behalf of the other party and to execute and deliver to the agency reviewing such application a statement stating that the Requesting Party is authorized to file such application on behalf of such other party. Notwithstanding the foregoing, DLHC shall be permitted to make Applications only for work permits and certificates of occupancy required for the interim use of a portion of a DLHC Building as an emergency department.

B. Fortis shall notify DLHC and NYUHC in advance of making any Application to for a change in or variance from the current zoning or for any other permit, certificate or approval that is discretionary in nature (a “Fortis Rezoning”). Fortis shall be permitted to apply for a Fortis Rezoning only if the Fortis Rezoning would not, in DLHC’s and NYUHC’s reasonable judgment, adversely affect the construction, use or operation of the DLHC Premises

or the New Medical Premises as proposed by NYUHC. For the purposes of the foregoing, DLHC and NYUHC agree that there shall be no adverse effect on the construction, use or operation of the New Medical Premises as proposed by NYUHC to the extent that the Fortis Rezoning (i) consists of a change in or variance from the current zoning of all or any portion of the Premises that would, if approved, permit the development of additional floor area and/or Use Group 6 (as listed in the Zoning Resolution) neighborhood retail and office uses on all or any portion of the Premises and (ii) does not impose conditions on the New Medical Premises or the DLHC Premises unless DLHC or NYUHC (with respect to the New Medical Site) and/or DLHC (with respect to any of the DLHC Premises) seek or apply to utilize the additional floor area or new use made available by such Fortis Rezoning. In connection with any Fortis Rezoning, Fortis shall furnish DLHC and NYUHC with copies of all applications and supporting documents and drawings that are filed with any Agency, shall from time to time furnish DLHC and NYUHC with information as to the status of its Applications and shall, at the request of either DLHC or NYUHC, permit the Party making the request to accompany it to meetings with Agency personnel regarding such applications.

C. Each Cooperating Party agrees, if required by applicable law, rule, regulation or Department of Buildings protocol as a condition to any permit or Certificate of Occupancy for its Building, to cause the Certificate of Occupancy for its Building (or other records in the Department of Buildings) to indicate the existence of the Combined Zoning Lot. In the event that the Cooperating Party has not complied with the foregoing within ten (10) Business Days of its receipt of a request by the Requesting Party, then the Requesting Party shall have the right (but not the obligation) to make such application in its own name, on behalf of the Cooperating Party and to execute and deliver to the Agency reviewing such application a statement stating that the Requesting Party is authorized to file such application on behalf of the Cooperating Party.

D. Except as otherwise provided in this Agreement, or any other document or instrument executed or to be executed between Fortis, NYUHC and DLHC in connection with the transactions described in this Agreement, this Agreement shall not be construed to restrict the operation of the Fortis Premises, the New Medical Premises or the DLHC Premises in any manner as permitted thereon by law.

E. The Cooperating Party shall not at any time voluntarily appear in opposition to the Requesting Party in connection with any of the Applications relating to the incorporation of the Floor Area Development Rights into the Requesting Party's Building, as referred to in this Section, or in any action or hearing brought, sought or defended by any party before any community board, the CPC or Department of City Planning, the Department of Buildings, the City Council of the City of New York, the Board of Standards and Appeals, HPD, the Landmarks Preservation Commission, or any other agency of the City or any state or federal agency, arising out of or in connection with any zoning or variance applications which, qualifying all of the foregoing, may adversely affect the Requesting Party's ability to construct its Building and utilize and incorporate its Floor Area Development Rights in its Building in any manner permitted by this Agreement.

F. In no event shall the Cooperating Party be required to appear and/or make presentations at any community board or before any Agency in support of any Applications.

IV. Representations.

A. Representations of Fortis. Fortis represents and warrants to, and covenants with NYUHC and DLHC that (i) it is seized of the Fortis Premises in fee simple and has the right to enter into the Declaration and this Agreement, (ii) it has not previously sold, leased, transferred, conveyed, or encumbered the Easement areas on the Fortis Premises in any manner whatsoever, and (iii) it is the only party in interest with respect to the Fortis Premises that has not waived or subordinated its right to execute this Agreement.

B. Representations of DLHC. DLHC represents and warrants to, and covenants with NYUHC and Fortis that (i) it is seized of the New Medical Premises and the DLHC Premises in fee simple and has the right to enter into the Declaration and this Agreement, (ii) it has not previously sold, leased, transferred, conveyed, or encumbered the Easement areas on the New Medical Premises or the DLHC Premises in any manner whatsoever, and (iii) it is the only party in interest with respect to the New Medical Premises or the DLHC Premises that has not waived or subordinated its right to execute this Agreement.

V. Floor Area Notice. Notice is hereby given that this Agreement allocates (i) the New Medical Floor Area Development Rights, including lot coverage, to the New Medical Premises as shown on Exhibit J (subject to Section II.C hereof); (ii) the Fortis Floor Area Development Rights, including dwelling units and lot coverage, to the Fortis Premises as shown on Exhibit J (subject to Section II.C hereof); and (iii) the DLHC Floor Area Development Rights, including lot coverage, to the DLHC Premises as shown on Exhibit J (subject to Section II.C hereof). The parties hereto further acknowledge and agree that nothing in this Agreement grants to any party the right or easement of access upon or over the land of any other party, or the right to perform any Alteration or Rebuilding upon the land of any other party, except as specifically provided herein.

VI. Separate Building Plans.

A. The parties agree that all construction plans and specifications for and applications for a certificate of occupancy or any other building, alteration, demolition or other permits for any building on the Combined Zoning Lot, shall be separate and independent from those for any other building on the DLHC Land, the Fortis Land and New Medical Land and shall be filed with the Department of Buildings so as to obtain separate “new building” and “alteration” numbers, as appropriate, so long as permitted by applicable law.

B. Each party shall no more than ten (10) Business Days after submitting an application to the Department of Buildings or any other Agency for an approval affecting the use of Floor Area Development Rights on the Combined Zoning Lot or the envelope of a building on the Combined Zoning Lot, provide written notice to the other party of such application. Each party shall, no more than ten (10) Business Days after receiving a written request from the other party, furnish such party with copies of all zoning analyses and zoning drawings submitted to the Department of Buildings or such other Agency with application.

VII. Separate Tax Lots.

A. The parties acknowledge that (i) the New Medical Premises, the Fortis Premises, and the DLHC Premises are treated for real property tax purposes as separate and independent tax lots, and that the New Medical Floor Area Development Rights shall be treated for real estate tax purposes as the property of NYUHC, the Fortis Floor Area Development Rights shall be treated for real estate tax purposes as the property of Fortis, and that the DLHC Floor Area Development Rights shall be treated for real property tax purposes as the property of DLHC and (ii) the New Medical Premises and New Medical Floor Area Development Rights and the DLHC Premises and DLHC Floor Area Development Rights are exempt from real property taxation under current law. The parties agree not to object to or otherwise oppose the separate status of tax lots described in this Section or the tax assessments resulting therefrom and no party shall be precluded from contesting tax assessments on its own Premises. The parties agree to reasonably cooperate with the other in connection with any application, filings or proceedings related to the assessed valuation of the Premises of another party which may be filed or instituted by the owner of such Premises in furtherance of the foregoing provisions of this Section VII.

B. If because of the incorporation of the Cantilevered Portion into the Fortis Building the NYC Department of Finance (“DOF”) requires that there be separate tax lots for (x) the New Medical land and the New Medical Building and (y) the Fortis Land and the Fortis Building, including the Cantilevered Portion, then, solely at Fortis’s expense, DLHC shall convey a fee above the Lower Limiting Plane to Fortis, free and clear of any mortgages, security interests and liens caused by NYUHC. If and only if DOF does not approve the creation of such separate tax lots by the conveyance of a fee or an easement above the Lower Limiting Plane, DLHC and Fortis shall subject the New Medical Premises and the Fortis Premises to a condominium regime, subject to the terms described in the following paragraph, in which the New Medical Land and the New Medical Building thereon is one unit and the Fortis Land and the Fortis Building is the other unit, provided that, if NYUHC is then the owner of the New Medical Premises (it being understood that this condition shall not be applicable if any other Party, including DLHC, owns the New Medical Premises), the creation of such condominium shall not result in a delay in the construction of the New Medical Building, in issuance of a TCO or PCO for the New Medical Building, or in the commencement of medical operations in the New Medical Building, as reasonably determined by NYUHC, of more than one (1) week in the aggregate. The parties agree that under any of these legal structures, (i) Fortis’s occupancy of the space above the New Medical Premises shall only be for purposes of the Cantilevered Portion and for no other purposes and (ii) NYUHC may place structures on the roof of the New Medical Building in accordance with the provisions of Section II(A)(2)(c) of this Agreement.

C. In the event that New Medical Premises and the Fortis Premises are subjected to a condominium regime in accordance with the foregoing paragraph, the following shall apply: Fortis shall pay all out-of-pocket expenses in connection with the negotiation and creation of the condominium, including all applicable transfer taxes. Each Party shall own its Premises separately until the creation of the condominium. Except for any provisions relating to the open space uses in the Open Space Easement Agreement, the two Buildings shall remain completely separate. Each Party shall be solely responsible for its Building and have no rights or obligations with respect to the other Building directly or as a unit owner. No portion of either Building shall be a general common element. Each Party shall be free to use and occupy its Premises without any consent rights by the other Party or the condominium. Each Party shall retain the right to subdivide its condominium unit into two or more additional condominium units, subject to the

provisions of Section XXIV of this Agreement. Each Party shall indemnify the other for third-party claims made that relate to its Building or operations. Each party shall have a power of attorney to sign all documents required to be signed by the condominium relating to its Building. All condominium documents shall be consistent with the foregoing and subject to the consent of all Parties.

VIII. Subdivision; Enlargement. DLHC, NYUHC or Fortis (each, as applicable, an “Acting Party”) may subdivide or enlarge the Combined Zoning Lot, and Fortis may transfer some or all of its Residential Floor Area Development Rights to, if and to the extent it has any rights thereto, the DLHC Premises (a “Fortis Transfer”) to the extent permitted by the Zoning Resolution and other applicable law, subject to all the other terms of this Agreement, without any additional compensation or consideration by any of the other owners on the Combined Zoning (each, a “Non-Acting Party”), provided that the Acting Party provides ten (10) Business Days’ prior written notice of such proposed subdivision, enlargement or transfer to each Non-Acting Party and, with such notice, a certification by a licensed architect that such subdivision or enlargement does not create a non-compliance on the Combined Zoning Lot with any requirement of the Zoning Resolution, does not diminish the Non-Acting Party’s right to utilize the Floor Area Development Rights allocated to it under this Agreement, and does not adversely affect the use or occupancy of the Non-Acting Party’s Premises as permitted under this Agreement or by law.

A. NYUHC, Fortis and DLHC hereby consent to, and all future parties in interest to the Combined Zoning Lot, are deemed hereby to have consented to, the subdivision and/or enlargement of the Combined Zoning Lot and/or a Fortis Transfer, provided that, such subdivision, enlargement or Fortis Transfer (1) does not create a non-compliance on the Combined Zoning Lot with any requirement of the Zoning Resolution, (2) does not diminish the Non-Acting Party’s right to utilize the Floor Area Development Rights allocated to it under this Agreement, and (3) does not adversely affect the use or occupancy of the Non-Acting Party’s Premises as permitted under this Agreement or by law.

B. Without limiting the generality of subparagraph A. hereof, this Section IX constitutes a waiver by NYUHC, Fortis, DLHC and all present and future parties in interest to the Combined Zoning Lot of their respective right to execute, and their subordination to the following instruments (i) any declaration of zoning lot restrictions or similar instrument required by the Zoning Resolution to subdivide or enlarge any zoning lot including New Medical Premises, the Fortis Premises, or the DLHC Premises or to effect a Fortis Transfer and any zoning lot and development agreement or similar instrument executed in connection with such subdivision, enlargement or transfer and (ii) each additional amendment or replacement to any such declaration of zoning lot restrictions, such zoning lot development agreement and/or this Agreement, whether or not such parties sign any such instruments, provided that all of same are consistent with this Agreement and do not otherwise restrict or adversely affect the Floor Area Development Rights allocated to such party’s Premises under this Agreement or such party’s use thereof.

C. Notwithstanding and without limiting the validity and effectiveness of subparagraph B. above, (i) the Non-Acting Party shall, if requested by the Acting Party, within ten (10) Business Days after such request, execute, acknowledge and deliver any declaration and/or amendments or replacement to this Agreement, and such other instruments as may reasonably be

required for the purposes of subdividing or enlarging the Combined Zoning Lot, subject to all the other terms and conditions of this Agreement, at no additional cost or expense to the Non-Acting Party, and (ii) provided that NYUHC, Fortis and DLHC have executed such declaration and amendment or replacement of this Agreement, each present and future “party in interest” in the Combined Zoning Lot, by waiving by subordinating its interest in the Combined Zoning Lot to this Agreement, or by taking its interest in the Combined Zoning Lot subject to this Agreement, shall be deemed automatically and without any further action on its part to have consented to and waived its right to execute such declaration and to have subordinated its interest in the Combined Zoning Lot to such amendment or replacement of this Agreement, regardless of whether such “party in interest” executes such declaration or waiver thereof or such amendment or replacement of this Agreement or subordination thereto. Notwithstanding and without in any way limiting the validity and effectiveness of the foregoing obligations, each Non-Acting Party shall make reasonable efforts to cause (without incurring any cost) any “party in interest” to the its Premises to execute all documents and instruments required to confirm the subdivision or enlargement of the Combined Zoning Lot or a Fortis Transfer in accordance with the provisions of this Agreement.

IX. Future Transfers. The parties executing this Agreement agree that any party who shall acquire any interest whatsoever in the Combined Zoning Lot or the Balance Premises, whether from a party hereto or its legal representatives, successors or assigns, shall be bound by and subordinate to the provisions of this Agreement, and any future amendments and modifications hereto or restatements hereof without having executed such future modifications, to the same extent that it would have been had it been a signatory to this Agreement, or any such future modifications hereto.

X. Estoppel Certificates. Whenever requested by a party (but not more than twice a year) upon at least twenty (20) Business Days prior written notice, the other party, at the requesting party’s cost and expense, shall furnish to the requesting party a written statement setting forth: (i) whether, to the knowledge of such other party, this Agreement is in full force and effect; (ii) the extent to which, to the knowledge of such other party, this Agreement has been assigned, modified or amended by any instrument, whether or not of record (and if it has, to the knowledge of such other party, then stating the nature thereof); (iii) whether such other party has served any written notice of default under this Agreement, which default, to the knowledge of such other party, remains uncured; and (iv) that, to the knowledge of such other party, there exists no state of facts that, with the giving of notice, the passage of time, or both, would constitute a default by the requesting party under this Agreement. Such certificate shall in no event subject the party furnishing it to any liability whatsoever (except for fraud), notwithstanding the negligent or inadvertent failure of such party to disclose correct or relevant information.

XI. Construction Protection and Construction Easements.

A. For the purposes of this Article XI, a “Constructing Owner” shall mean DLHC (subject, however, to the provisions of Section XXX(B)), NYUHC or Fortis in connection with any Alteration or Rebuilding on such Owner’s Premises, and the Premises undergoing such Rebuilding, a “Premises Under Construction.”

B. Subject to the requirements of this Article XI, including, without limitation, Section XI.G, each of DLHC and Fortis (each, a “Granting Owner”), grants to the other easements (the “Construction Easements”) in the portions of the New Medical Premises and the Fortis Premises, respectively, to use such portions of the Granting Owner’s Premises as are required for the Alteration or Rebuilding of any New Medical Building or Fortis Building (including, without limitation, with respect to the Fortis Building, the construction, Alteration or Rebuilding of the Cantilevered Portion) (the “Construction Measures”). The Construction Measures may include, to the extent required by law or good construction practice, (i) the construction and maintenance of a construction fence, (ii) the attachment of foundation and building supports and shoring and bracing and underpinning of a Building, (iii) the right to inspect and document conditions of the Granting Party’s Buildings via photograph, videotape or any other means then available during Construction, (iv) the attachment of sheds, bridges or other protective covering over the roof, facade and other portions of a Building if required to safeguard such Building from debris during alterations or rebuilding, provided that the manner of attachments shall be in accordance with good construction practice and in a manner customary for improvements of such type and so as not to impose an excessive load on such Building, (v) the maintenance, repair and replacement of such attachments, (vi) the right to construct and maintain temporary scaffolding on a Building during alterations or rebuilding, provided that such scaffolding shall be constructed and maintained in compliance with good construction practice, shall provide for adequate security with respect to the other Owner’s Premises, and shall not unreasonably interfere with ingress and egress to the other Owner’s Building(s), and (vii) temporary projections and/or intrusions extending from the Premises Under Construction over the improved or unimproved portions of the Granting Owner’s Premises which are reasonably required in connection with the Alterations or Rebuilding of any Building on the New Medical Premises or the Fortis Premises, as applicable (and which projections may include cranes or similar equipment).

C. All of the easement and license rights, as applicable, set forth in this Section 11 shall be exercised: (i) after no less than ten (10) days prior written notice to the Granting Owner, which notice shall be accompanied by all appropriate and relevant documentation (including, without limitation, plans and specifications for any Alterations or Rebuilding on the Premises Under Construction) for review by the Granting Owner, (ii) in a prompt, safe and efficient manner and so as not to (a) unreasonably interfere with the use, occupancy, ingress and/or egress of the Granting Owner’s Premises or the Buildings thereon or (b) interfere with or affect the structural integrity of the Granting Owner’s Premises or the Buildings thereon, (iii) in a manner consistent with good construction practice, (iii) taking such precautions as may be necessary or appropriate to prevent damage to the Granting Owner’s Premises or injury to persons, (iv) so as to, on completion of any work, restore the area of any such work to its former condition with all debris removed, (v) with all necessary government approvals and permits, and (vi) in accordance with all laws, rules, regulations and orders of governmental entities having jurisdiction over the Alterations or Rebuilding.

D. During Alterations or Rebuilding on its Premises, each Constructing Owner shall, at its sole cost and expense, obtain and at all times maintain or cause to be obtained and maintained public liability insurance coverage to include personal injury, bodily injury, broad form property damage, operations hazard, independent contractor’s coverage, contractual liability and products and completed operations liability, naming the Granting Owner and its

Mortgagee(s) as an additional insured, in amounts customarily maintained by a prudent contractor/developer/owner performing such work.

E. During any Alterations or Rebuilding on its Premises, a Constructing Owner shall indemnify and hold the Granting Owner harmless and defend from and against all loss, cost, damage, claim, expense and liability (including, without limitation, reasonable attorneys' fees) arising from (A) a breach by the Constructing Owner of its obligations under this Article XI, or (B) any personal injury, death or property damage on the Granting Owner's Premises resulting from the Construction Measures or the use of the Construction Easements.

F. Each Constructing Owner shall obtain all necessary licenses, permits, approvals, or variances to perform the Construction Measures which may be required by any municipal ordinance, state law or regulation or otherwise, and shall pay all fees in connection therewith. Each Granting Owner shall reasonably cooperate with the Constructing Owner in connection therewith, at the Constructing Owner's expense, and shall sign any applications or other documents that require such other Owner's signature to provide for the safety of the occupants of Granting Owner's Premises and the Buildings thereon and to protect the property of all parties during the Alteration or Rebuilding of the Constructing Owner's Building.

G. NYUHC and Fortis agree that, if the construction of a new New Medical Building and the construction of a new Fortis Building is proceeding at the same time, they will reasonably cooperate with each other in order to reduce to the extent commercially reasonable and practicable any conflict between the construction operations of one and the other and the impact that their construction activities will have on surrounding streets and neighboring properties. Notwithstanding the foregoing, but only when the New Medical Premises is owned in fee by NYUHC and NYUHC is constructing the New Medical Building (it being understood that the balance of this Section XI(G) does not apply if any other party, including without limitation DLHC, owns the New Medical Premises in fee), Fortis agrees that, in the event that a conflict has, in NYUHC's reasonable judgment, the potential to delay construction, increase to any material extent the cost of construction, or negatively impact the constructability of any portion of the New Medical Building, the resolution of such conflict shall not result in a delay of construction, an increase to any material extent the cost of construction, or a negative impact on the constructability of any portion of the New Medical Building. Fortis further acknowledges that the construction of the Cantilevered Portion requires special safeguards for the protection of the New Medical Premises, and agrees to implement such construction protection measures in connection therewith that NYUHC may, in its sole discretion, request, including but not limited to the installation of a construction screen for the protection of construction personnel at the New Medical Premises.

XII. Rights of Entry. The exercise of any right of entry pursuant to any of the Easements granted under the terms of this Agreement shall be upon at least five (5) Business Days' notice to the other party, except in an Emergency Situation, in which event the party seeking access shall endeavor to notify the other party of the action taken or proposed to be taken, as the case may be, to cure the Emergency Situation.

XIII. Allocation of Certain Rights and Obligations between DLHC and NYUHC. Any approval or determination right provided to DLHC, in its capacity as owner of the New Medical

Premises, under this Agreement shall, during the period preceding the NYUHC Forfeiture Date, be exercisable solely by NYUHC on behalf of DLHC (regardless of whether at such time NYUHC or DLHC is the fee owner of the New Medical Premises).

XIV. Binding Effect. All of the grants, interests, easements, covenants, agreements and conditions contained in this Agreement:

A. Shall run with the lands, buildings and other improvements affected thereby.

B. Shall inure to the benefit of and be binding upon every party having any right, title or interest therein or any part thereof and the heirs, distributees, successors and assigns of any such party. Without limiting the generality of the foregoing, the rights and obligations contained in this Agreement shall inure to the benefit of and be binding upon each Party and any successor individual or entity only for the period during which such Party or such other individual or entity is the holder of a fee interest in all or a portion of the Balance Premises and then, only to the extent of the rights and obligations appurtenant to such portion, and no Party shall have any obligations with respect to a portion of the Balance Premises once it no longer has an interest in such portion.

C. Shall, to the extent rights hereunder are assigned to the holder of any mortgage encumbering any of the properties affected by this Agreement or any interest therein, be enforceable by any such assignee after a default, past any applicable grace or notice period, in the provisions of such mortgage.

D. Shall be binding upon any other “parties in interest” in and to the Combined Zoning Lot.

XV. Effect of Breach. No breach by any party to this Agreement of this Agreement or any agreement ancillary hereto shall have any effect on the treatment of the Combined Zoning Lot as one zoning lot for purposes of the Zoning Resolution, and the Combined Zoning Lot shall be treated as one zoning lot unless and until such zoning lot is hereafter subdivided in accordance with the provisions of the Zoning Resolution and this Agreement.

XVI. Remedies. In the event of any breach, or threatened breach, of this Agreement by any party hereto, any non-defaulting parties shall only have the right to injunctive relief and specific performance (including, without limitation, any reimbursement of costs pursuant to Sections II.A.4.c and II.B.2.c) and under no circumstances shall the defaulting party be liable for damages, whether consequential, direct, foreseen or unforeseen. Notwithstanding the foregoing, the limitations on damages set forth in this paragraph shall not apply to any liability of NYUHC or Fortis for damage to property or injury to persons resulting from or arising in connection with any demolition or construction activities on the New Medical Premises or the Fortis Premises during their period of ownership.

XVII. Limitation of Liability. No liability under this Agreement shall be enforced by any action or proceeding wherein damages or any money judgment or any deficiency judgment establishing any personal obligation or liability shall be sought, collected or otherwise obtained against any party to this Agreement, or any past, present or future partner, officer, trustee, director or shareholder of such party but shall rather be limited to and enforceable solely against, and each

party agrees to look solely to such other party's interest in the Balance Premises (including rental, insurance, condemnation and sales proceeds attributable to such party's Premises) and no other assets of such party.

XVIII. Lien Law. This Agreement is subject to the provisions of Section 13 of the Lien Law of the State of New York, and each party covenants that it will receive any consideration paid by the other as a trust fund to be applied first for the purpose of paying the cost of the applicable improvement before using any part thereof for any other purpose.

XIX. Notices. All notices, demands, requests or other communications (collectively, "Notices") required to be given or which may be given hereunder shall be in writing and shall be sent by (a) certified or registered mail, return receipt requested, postage prepaid, (b) national overnight delivery service, (c) personal delivery, or (d) facsimile transmission (with confirmation by one of the other methods of notice) addressed as follows (or to such other addressee or addresses as may be designated by any party hereto by notice addressed to each of the other parties listed below):

If to NYUHC:

NYU Hospitals Center
550 First Avenue, 15th fl.
New York, NY 10016
Attn: Vicki Match Suna, Senior Vice President
Telephone: (212) 263-8712

With a copy to:

Annette Johnson, Esq.
Senior Vice President and General Counsel
NYU Hospitals Center
550 First Avenue
New York, NY 10016
Telephone: (212) 263-7921

If to Fortis:

Fortis Property Group, LLC
45 Main Street, Suite 800
Brooklyn, New York 11201
Attention: Joel Kestenbaum
Telephone: (718) 907-7702

With a copy to:

Kramer Levin Naftalis & Frankel LLP
 1177 Avenue of the Americas
 New York, New York 10036
 Attention: Paul D. Selver, Esq.
 Telephone: (212) 715-9199
 Facsimile: (212) 715-8000

If to DLHC:

Downstate at LICH Holding Company, Inc.
 c/o State University of New York
 State University Plaza
 Albany, New York 12246
 Attention: Robert Haelen
 Telephone: (518) 320-1502
 Facsimile: (518) 443-1009

With a copy to:

Cozen O'Connor
 277 Park Avenue – 20th Floor
 New York, New York 10172
 Attention: Marc S. Intriligator, Esq.
 Telephone: (212) 453-3801
 Facsimile: (866) 832-7201

Any Notice sent shall be deemed effective and received by the addressee on the date of actual receipt or refusal by a member of the office of the party's representative who is addressed. The parties may change the addresses of notices, demands, requests or other communications hereunder by giving notice pursuant to this Section XVIII.

XX. No Oral Agreements; Integration. Except as stated in this Agreement, the exhibits and schedules annexed hereto, this Agreement contains all the promises, agreements, conditions, inducements and understandings between parties relative to the matters stated herein and therein, and there are no oral promises, agreements, conditions, understandings, inducements, warranties or representations, expressed or implied, between the parties other than as set forth herein and therein. This Agreement may not be modified, amended or terminated except by an instrument in writing signed by all of the parties hereto, except that any party in interest to any other premises joined to the Combined Zoning Lot shall be deemed to be bound by the provisions of this Agreement upon the execution of a document to that effect.

XXI. Recording. This Agreement shall be recorded in the Conveyances Section of the Office of the City Register for New York County in accordance with the provisions of Section 12-10 of the Zoning Resolution.

XXII. Governing Law. This Agreement, including its performance, termination or enforcement, and the parties' relationship in connection therewith, together with any related claims whether sounding in contract, tort or otherwise, shall be governed, construed and interpreted in all respects in accordance with the internal laws of the State of New York without giving effect to principles of conflicts of law.

XXIII. Non-Merger. The Easements and the Floor Area Development Rights allocated to Fortis, DLHC and the New Medical Premises in this Agreement shall not be destroyed or terminated by the application of the doctrine of merger in the event that, now or in the future, the ownership of or any other interest in the DLHC Premises, the New Medical Premises or the Fortis Premises (or any portion thereof) is or becomes vested in the same entity or entities.

XXIV. Non-Waiver of Performance. Any failure by a party hereto (collectively and/or individually referred to as the "non-waiving party") to insist upon the strict performance by the other party hereto of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the non-waiving party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance by the other party of any and all of the provisions of this Agreement to be performed by the other party.

XXV. Condominium. If a condominium declaration ("Condominium Declaration") for the Fortis Premises or the New Medical Premises under Article 9-B of the Real Property Law of the State of New York, is filed with the Office of the City Register in and for New York County, the Fortis Premises or the New Medical Premises shall hereinafter be deemed to have "become a Condominium" and from and after said date of filing, (a) the Condominium Declaration (as same may be amended, modified, or restated) shall be subject to the provisions of this Agreement (as same may be amended, modified, or restated), and (b) any reference to DLHC, Fortis or NYUHC (as applicable), shall be deemed to be the condominium board of managers (the "Condominium Board") of the condominium association created in connection with the filing of the Condominium Declaration (the "Condominium") and any provision herein then applicable to the DLHC, Fortis or NYUHC (as applicable) may only be enforced by the Condominium Board and not any owner of any condominium unit described in the Condominium Declaration (as same may be amended, modified, or restated). The provisions of this Section XXIV shall not apply to the two unit condominium formed pursuant to the provisions of Section VII(B) of this Agreement or any Condominium Declaration made and recorded in respect of such condominium but shall apply to any further subdivision of either unit of such condominium.

XXVI. Inconsistency Among Agreements. In the event of an inconsistency between the provisions of this Agreement and the express rights and obligations of the parties under the Open Space Easement Agreement or under the Pacific Street Easement Agreement, the Open Space Easement Agreement or the Pacific Street Easement Agreement, as the case may be, shall control.

XXVII. Headings and Exhibits. The Section headings herein are inserted for convenience only and shall not affect the construction of this Agreement. All Exhibits and Schedules to this Agreement are hereby incorporated by reference.

XXVIII. Pronouns, etc. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require. The terms “herein,” “hereof,” or “hereunder” or similar terms used in this Agreement refer to this entire Agreement and not to the particular provision in which the term is used unless a contrary intent is expressly set forth.

XXIX. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

XXX. Special DLHC Provisions.

A. Reverter. By its execution of this Agreement, DLHC hereby acknowledges and agrees (for itself in its capacity of grantor under the New Medical Premises Deed (as defined in the PSA) and on behalf of any Future Estate Holder (as defined in the New Medical Premises Deed) that (i) its rights of reacquisition under the New Medical Premises Deed are subject and subordinate to this Agreement, and (ii) if DLHC or any such Future Estate Holder acquires title to the New Medical Premises pursuant to the right of reacquisition reserved in the New Medical Premises Deed, DLCH or such Future Estate Holder shall take title to such fee interest in the New Medical Premises with all of the rights and benefits of, and subject to all the burdens upon, DLHC, as fee owner of the New Medical Premises, under this Agreement.

B. No DLCH Construction Obligation. The parties hereto acknowledge and agree that DLHC has no present intention to construct, or cause the construction of (other than by NYUHC pursuant to the PSA), any building or other structure on the New Medical Premises, and nothing set forth in this Agreement shall be deemed or construed so as to require DLHC to construct, or cause the construction of, such a building, regardless of whether or not NYUHC complies with its obligations to construct such a building pursuant to the PSA, whether in the absence of a conveyance to NYUHC or after a reacquisition of the New Medical Premises as the holder of a future estate therein. Further, DLHC and its successors (other than NYUHC) will have the right to use the New Medical Premises for any use permitted as a community facility, not limited to medical use.

C. Standard State University of New York Provisions; Priority of Application. The provisions set forth in Exhibit K attached hereto (referred to therein as Exhibit A: Standard Contract Clauses and Exhibit A-1: Affirmative Action Clauses) are expressly incorporated by reference into this Agreement as if set forth at length herein. In the event of any conflict between the terms and conditions set forth in this Agreement and/or any of the Exhibits hereto, and the provisions set forth in Exhibit K, the provisions set forth in Exhibit K shall prevail.

D. Approvals. The Parties hereby acknowledge and agree that this Agreement is subject to the approval of the Attorney General of the State of New York and the Office of the State Comptroller of the State of New York.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written.

NYUHC:

NYU HOSPITALS CENTER

By: _____
Name:
Title:

DLHC:

DOWNSTATE AT LICH HOLDING COMPANY,
INC.

By: _____
Name:
Title:

FORTIS:

FPG COBBLE HILL ACQUISITIONS, LLC

By: _____
Name:
Title:

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

On the ____ day of _____, 201_, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

SCHEDULE OF EXHIBITS
TO ZONING LOT DEVELOPMENT AGREEMENT

<u>Exhibit A</u>	Metes and Bounds Description of the NYUHC Land
<u>Exhibit B</u>	Metes and Bounds Description of the Fortis Land
<u>Exhibit C</u>	Metes and Bounds Description of the DLHC Land
<u>Exhibit D</u>	Metes and Bounds Description of the Atlantic Premises
<u>Exhibit E</u>	Title Company Certification
<u>Exhibit F</u>	Metes and Bounds Description of the Light and Air Easement
<u>Exhibit G</u>	Form of DOB Light and Air Easement
<u>Exhibit H</u>	Metes and Bounds Description of the Cantilever Easement
<u>Exhibit I</u>	Metes and Bounds Description of the DLHC Open Space Easement
<u>Exhibit J</u>	Floor Area Development Rights Chart
<u>Exhibit K</u>	Standard State University of New York Provisions

EXHIBIT A

Metes and Bounds Description of the NYUHC Land

EXHIBIT B

Metes and Bounds Description of the Fortis Land

EXHIBIT C

Metes and Bounds Description of the DLHC Land

EXHIBIT D

Metes and Bounds Description of the Atlantic Premises

EXHIBIT E

Title Company Certification

EXHIBIT F

Metes and Bounds Description of the Light and Air Easement

EXHIBIT G

Form of DOB Light and Air Easement

EASEMENT AGREEMENT made this ____ day of _____, 20____, between _____, hereinafter referred to as the "Grantor," having an office/residing at _____ and _____, hereinafter referred to as the "Grantee," having an office/residing at _____.

WHEREAS, the Grantor is the fee owner of certain land located in the City and State of New York, Borough of _____, designated as Block _____ Lot _____ on the Tax Map of the City of New York, hereinafter referred to as Premises A and more particularly described by a metes and bounds description set forth in Schedule A annexed hereto and by this reference made a part hereof;

WHEREAS, the Grantee is the fee owner of certain land located in the City and State of New York, Borough of _____, designated as Block _____ Lot _____ on the Tax Map of the City of New York, hereinafter referred to as Premises B and more particularly described by a metes and bounds description set forth in Schedule B annexed hereto and by this reference made a part hereof;

WHEREAS, there is an existing/will be constructed a ____-story building erected on Premises B;

WHEREAS, Grantee has requested the New York City Department of Buildings (the "Department of Buildings") to act upon Application No. _____ to construct a new building/to alter floors _____ to _____ for residential use on Premises B; and

WHEREAS, the Department of Buildings may approve the Application upon the condition, *inter alia*, that Grantor create an easement for light and air for the benefit of the present and future owners of Premises B in order to comply with the applicable provisions of Sections 27-732 and 27-746 of the 1968 Building Code or Sections BC1203.4 and BC 1205.2 of the 2008 Building Code, as applicable.⁸

⁸ This easement agreement may be entered into as a means of compliance with the 1968 or 2008 Building Codes by permitting such codes' light and air requirements to be satisfied on an adjacent tax lot. However, this agreement cannot be used to permit the required light and air to be satisfied on an adjacent zoning lot in lieu of compliance with the New York City Zoning Resolution or Section 30 of the Multiple Dwelling Law.

NOW, THEREFORE, good and valuable consideration having been paid, the Grantor for her/himself, her/his heirs, legal representatives, successors and assigns hereby makes the following grant to Grantee, her/his heirs, legal representatives, successors, and assigns and to any future owner of Premises B:

1. The right to unrestricted light and air over Premises A as described herein commencing at a height of _____ () feet above Manhattan datum, such that any construction on Premises A shall never infringe upon the light and air provided to Premises B.
2. This easement agreement may not be modified, amended or terminated without the prior written consent of the Department of Buildings.
3. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.
4. Failure to comply with the terms of this easement agreement may result in the revocation of a building permit or certificate of occupancy.
5. This easement agreement shall be recorded at the city register's (county clerk's) office against all affected Premises of land and the cross-reference number and title of the easement agreement shall be cited on each temporary and permanent certificate of occupancy hereafter issued to buildings located on the affected Premises and in any deed for the conveyance thereof.
6. This easement agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

EXHIBIT H

Metes and Bounds Description of the Cantilever Easement

EXHIBIT I

Metes and Bounds Description of the DLHC Open Space Easement

EXHIBIT J

Floor Area Development Rights Chart*

A. Floor Area Schedule

	DLHC Land (sf)	Fortis Land (sf)	NYUHC Land (sf)	TOTAL (sf)
1. Lot Area	[]	[]	[]	[]
2. Total Floor Area Development Rights Generated by Lot Area	[]	[]	[]	[]
3. Retained Floor Area Development Rights	[]	[]	[]	NA
4. Excess Floor Area Development Rights	[]	[]	[]	NA
5. Allocation of Floor Area Development Rights After Transfer	[]	210,000	105,000	[]
6. Pro Rata (%) Allocation of Floor Area Development Rights After Transfer	[]%	[]%	[]%	100%

* Excluding Bonus Floor Area Development Rights. This **Exhibit J** shall be deemed modified to reflect any change in the amount of Floor Area Development Rights in the Combined Zoning Lot at any time, whether such change is the result of the utilization of Bonus Floor Area Development Rights, the acquisition of additional Floor Area Development Rights by Developer, the subdivision of the Combined Zoning Lot in accordance with the provisions of this Agreement, or any Upzoning or Downzoning of the Combined Zoning Lot. No change in this Exhibit J (such as filling in missing numbers) shall cause the amount of floor area allocated to the New Medical Premises to be less than 105,000 square feet.

EXHIBIT K

Standard State University of New York Provisions

DECLARATION OF COVENANTS AND RESTRICTIONS
(Parking Garage)

a _____,
Declarant

<u>Block:</u>	<u>Lot:</u>	<u>County:</u>	Kings
282	50	<u>City:</u>	New York
		<u>State:</u>	New York

Premises: 350-352 Hicks Street
Brooklyn, New York 11201

Dated: _____, 201__

RECORD AND RETURN BY MAIL TO:

Cozen O'Connor
277 Park Avenue
New York, New York 10172
Attention: Marc S. Intriligator, Esq.

DECLARATION OF COVENANTS AND RESTRICTIONS
(Parking Garage)

THIS DECLARATION (this "**Declaration**") is made as of the ___ day of _____, 201___, by _____, a _____ having an office c/o Fortis Property Group, LLC, 45 Main Street, Suite 800, Brooklyn, New York 11201 (the "**Declarant**").

Statement of Facts

Downstate at Lich Holding Company, Inc., a New York not-for-profit corporation ("**Holding**"), is the owner of those certain plots, pieces, or parcels of land situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, more particularly described in **Schedule "1"** attached to, and by this reference made a part of, this Declaration (collectively, the "**Land**"), together with all buildings and improvements situated on the Land (collectively, the "**Building**" and, together with the Land, the "**Premises**").

Pursuant to the provisions of a certain Purchase and Sale Agreement dated June 30, 2014 (as thereafter amended), by and among Holding, FPG Cobble Hill Acquisitions ("**FCHA**"), LLC, NYU Hospital Centers ("**NYUHC**") and Fortis Property Group, LLC (the "**PSA**"), Holding agreed to convey title to the Premises to FCHA or its designee. Also pursuant to the provisions of the PSA, Holding agreed to convey title to the parcel of land, together with the building or buildings from time to time constructed thereon, constituting, as of the date of this Indenture, Tax Lot ___ in Block 284 on the Tax Map¹ (the "**New Medical Site**") to NYUHC.

Pursuant to the provisions of the PSA, Holding, NYUHC, and _____² ("**Fortis**") have entered into a certain Zoning Lot Development and Easement Agreement of even date and contemporaneously herewith (the "**ZLDA**") concerning the respective rights and obligations of the parties thereto in the zoning lot consisting of the parcels of land constituting, as of the date of this Indenture, the New Medical Site, Tax Lot ___ in Block 284 on the Tax Map³ and Tax Lot 13 in Block 290 on the Tax Map (the "**Zoning Lot**"), which Zoning Lot includes the New Medical Site.

Pursuant to the ZLDA, Fortis is required to provide on the Zoning Lot or in an off-site location all accessory parking spaces that are required pursuant to the Zoning Resolution for the Interim Medical Premises (as hereinafter defined) and for the New Medical Building (as hereinafter defined), at such successive times as each may be in operation, which parking spaces shall comply in all

¹ Insert a reference to the newly subdivided tax lot that becomes the New Medical Site.

² Insert the name of the Grantee of the Non-Medical Site. If the Initial Closing occurs prior to the NMS Closing, delete the reference to NYUHC.

³ Insert a reference to the newly subdivided tax lot that becomes the New Non-Medical Site.

respects with the Zoning Resolution and all other applicable laws (the “**ZLDA Parking Obligation**”).

The Declarant has agreed, in furtherance of Fortis’ satisfaction of the ZLDA Parking Obligation, to provide parking spaces on the Premises, subject to the provisions set forth herein.

NOW, THEREFORE, in consideration of the conveyance of an estate in the Premises by Holding to the Declarant, the Declarant, for itself, as well as its successors and assigns, and intending to bind the Premises, declares as follows:

1. Those capitalized terms used, but not otherwise defined, in the body of this Declaration shall have the respective meanings given to such terms on *Schedule “2”* attached to, and by this reference made a part of, this Declaration.

2. The Declarant hereby declares, covenants and agrees, to, with and for the benefit of Holding, NYUHC, Fortis and their respective successors and assigns, each as a holder of an estate in all or a portion of the Zoning Lot, that the Declarant, and its successors and assigns, shall keep and maintain in the Building, or in any additional or replacement parking structure or parking lot located on the Premises, and make available to the then operator of the Interim Care Operations or the New Medical Operations (as the case may be), as well as such operator’s principals, employees, patients, visitors and invitees, such number of parking spaces as is necessary to satisfy the ZLDA Parking Obligation, which parking spaces shall be kept at all times in good condition and state of repair and shall comply in all respects (including, without limitation, with respect to their size and configuration) with the Zoning Resolution and all other applicable laws and governmental requirements (the “*Minimum Parking Obligation*”).

3. If at any time Fortis, or its successor or assign, elects to satisfy the ZLDA Parking Obligation by the provision of parking spaces on a Permitted Parking Premises, then, upon the commencement of operation of such parking spaces and written notice thereof from a Declaration Beneficiary to the Declarant, or its successor or assign, those declarations, covenants and agreements set forth in Paragraph 2 above shall be deemed to be terminated, and of no further force or effect.

4. On the date upon which the declarations, covenants and agreements set forth in Paragraph 2 above shall be terminated pursuant to the provisions of Paragraph 3 above, the then Declaration Beneficiaries shall execute and deliver (with signatures acknowledged) documents confirming such expiration or termination (which documents, if requested by the Declarant, or its successor or assign, shall be in recordable form). Such documents shall be executed and delivered by the Declaration Beneficiaries promptly following the delivery to the Declaration Beneficiaries of any and all such documents by the Declarant or its successor or assign (which delivery shall not be made prior to the date of such expiration or termination, as the case may be), which documents shall be subject to the approval of the Declaration Beneficiaries (which approvals shall not be unreasonably withheld, delayed, or conditioned). All reasonable, out of pocket, costs and expenses incurred by any of the Declaration Beneficiaries in connection with such confirmation (including, without limitation, all reasonable attorneys’ fees and disbursements in connection therewith) shall be reimbursed by the Declarant, or by its then

successor or assign, to such Declaration Beneficiary within thirty (30) days after written demand therefor, which demands may be made from time to time at reasonable intervals.

5. In the event of a breach or threatened breach by the Declarant, and/or by any of its successors or assigns, of any of the terms, covenants and/or conditions set forth in this Declaration, the Declarant or such successor or assign shall commence a cure within thirty (30) days after receiving notice of the same from a Declaration Beneficiary, and shall proceed diligently and continuously to make all commercially reasonable efforts to cure, remove and discharge of record the same as rapidly as possible. In the event that the Declarant, or such successor or assign, does not commence such cure and proceed diligently and continuously with such cure as required by this Section, the Declaration Beneficiaries, together or individually, shall be permitted to pursue all remedies available to them at law or in equity.

6. Notwithstanding the foregoing or anything to the contrary provided in this Declaration, although each Declaration Beneficiary shall have the right to enforce the terms, covenants and conditions set forth in this Declaration (including, without limitation, in Paragraph 2 above), neither NYUHC, Holding, any Holding Affiliate, nor the State of New York shall have the obligation to do so. Notwithstanding anything in this Declaration to the contrary, the Declarant, both for itself and its successors and assigns, acknowledges and agrees that Holding's (or its assignee's or designee's) exercise of the rights granted to it pursuant to this Declaration shall not be considered an act of eminent domain or condemnation.

7. In no event shall a Declaration Beneficiary be obligated to compensate the Declarant, or its successor or assign, for the provision of parking spaces on the Premises other than by the payment in an amount equal to or less than eighty percent (80%) of the fair rental value for such parking spaces for the period leased, as determined based on actual sums charged by comparable parking facilities located in the vicinity of the New Medical Premises, including the sums charged for parking by the general public (if any) for parking spaces in any garage on the Premises.

8. Any notice, demand, or other communication required or permitted to be given, rendered, or made between or among any parties to this Declaration, and/or their respective successors or assigns, shall be in writing (whether or not so stated elsewhere in this Declaration), and shall be deemed to have been properly given, rendered, or made if sent by nationally recognized overnight courier service providing for receipted delivery, addressed as set forth below:

- (a) with respect to notices to Holding or its successor or assign, to:

Downstate at LICH Holding Company, Inc.
 c/o State University of New York
 State University Plaza
 Albany, New York 12246
 Attention: Mr. Robert Haelen

- with a copy to -

Cozen O'Connor
277 Park Avenue – 20th Floor
New York, New York 10172
Attention: Marc S. Intriligator, Esq.

(b) with respect to notices to the Declarant or its successor or assign,
to:

c/o Fortis Property Group LLC
45 Main Street, Suite 800
Brooklyn, New York 11201
Attention: Mr. Joel Kestenbaum

- with a copy to -

Tannenbaum Helpern Syracuse & Hirschtritt LLP
900 Third Avenue
New York, New York 10022
Attention: Robert E. Helpern, Esq.

(c) with respect to notices to NYUHC or its successor or assign, to:

NYU Hospitals Center
550 First Avenue
New York, NY 10016
Attention: Vicki Match Suna, Senior Vice President-Real Estate

- with copies to -

NYU Hospitals Center
550 First Avenue
New York, NY 10016
Attention: Annette Johnson, Esq., Senior Vice President, General Counsel

NYU Hospitals Center
1 Park Avenue
New York, NY 10016
Attention: Director of Real Estate

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: Andrew J. Weiner, Esq.

Any notice, statement, demand, or other communication so sent shall be deemed to have been given, rendered, or made on the date of receipt or refusal thereof, as set forth in the business records of such overnight courier service. Either party may, by notice as aforesaid, designate a different address, and/or up to two (2) additional addresses, for notices, statements, demands, or other communications intended for it. Any notice, statement, demand, or other communication required or permitted to be given, rendered, or made by either party to the other hereunder may be given by the attorney for such party, with the same force and effect as if given, rendered, or made by the party itself.

9. From time to time, upon not less than thirty (30) days' written notice to the Declarant, or its successor or assign (which request may not be made more than three (3) times in any calendar year), the Declarant or such successor or assign shall, upon request, execute and deliver to the Declaration Beneficiaries, and to any party to whom a Declaration Beneficiary requests, an estoppel certificate, certifying:

(a) that this Declaration is unmodified and in full force and effect (or, if there has been modifications, that the same is in full force and effect as so modified, and stating with reasonable specificity the modifications);

(b) whether any notice of default has been received by the Declarant, or such successor or assign, pursuant to Paragraph 5 above, as to which the default or defaults set forth therein has or have not been fully remedied or cured;

(c) whether any breach or default of any of the provisions of this Declaration has occurred and, if applicable, remains uncured; and

(d) as to such other matters that a Declaration Beneficiary may reasonably request,

which certifications made pursuant to subparagraphs (c) and (d) above may, in the sole discretion of the Declarant or such successor or assign, be upon its knowledge in whole or in part.

10. From time to time, upon not less than thirty (30) days' written notice to the Declaration Beneficiaries (which request may not be made more than three (3) times in any calendar year), each Declaration Beneficiary shall, upon request, execute and deliver to the Declarant or its successor or assign, and to any party to whom the Declarant or such successor or assign requests, an estoppel certificate, certifying:

(a) that this Declaration is unmodified and in full force and effect (or, if there has been modifications, that the same is in full force and effect as so modified, and stating with reasonable specificity the modifications);

(b) whether any notice of default has been sent by Holding, or such successor or assign, pursuant to Paragraph 5 above, as to which the default or defaults set forth therein has or have not been fully remedied or cured;

(c) whether any breach or default of any of the provisions of this Declaration has occurred and, if applicable, remains uncured; and

(d) as to such other matters as the Declarant or such other requesting party may reasonably request,

which certifications made pursuant to subparagraphs (c) and (d) above may, in the sole discretion of the Declaration Beneficiary making them, be upon its knowledge in whole or in part.

11. The foregoing terms, covenants and conditions shall run with the Land, shall be binding upon the Declarant and its successors and assigns and shall benefit the Declaration Beneficiaries. Any transferee of the Premises shall be deemed automatically, by acceptance of title to, or an estate in, the Premises, to have assumed, and become bound in all respects by, all of the terms, covenants and conditions contained in this Declaration, with such force and effect as if such transferee had been a signatory of this Declaration. However, any transferor of the Premises shall, upon the completion of such transfer, automatically be relieved of all further liability under this Declaration, except for any liability with respect to matters that may have arisen during its period of ownership of the Premises that remain unsatisfied.

12. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Premises to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto and their successors and assigns that nothing in this Declaration, expressed or implied, shall confer upon any person, other than the Declaration Beneficiaries, any rights or remedies under or by reason of this Declaration.

13. If any provision of this Declaration, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent, be held to be invalid, inoperative, or unenforceable, the remainder of this Declaration, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby. It shall not be deemed that any such invalid provision affects the consideration for this Declaration, and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by Law.

14. This Declaration shall be construed in accordance with the Laws of the State of New York.

15. This Declaration may be amended, modified, or terminated only by an instrument in writing, executed and acknowledged by both the Declarant and the Declaration Beneficiaries, or their respective successors or assigns.

[Signatures begin at the top of the next page.]

IN WITNESS WHEREOF, the Declarant has duly executed this Declaration as of the day and year first above written.

_____, a _____

By: _____
Name:
Title:

Downstate at LICH Holding Company, Inc., hereby joins in the execution and delivery of this Declaration for the limited purposes of agreeing to the provisions of Paragraphs 3, 4 and 8 hereof.

DOWNSTATE AT LICH HOLDING COMPANY, INC., a New York not-for-profit corporation

By: _____
Name:
Title:

NYU Hospitals Center hereby joins in the execution and delivery of this Declaration for the limited purposes of agreeing to the provisions of Paragraphs 3, 4 and 8 hereof.

NYU HOSPITALS CENTER, a New York not-for-profit corporation

By: _____
Name:
Title:

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

On the ___ day of _____, in the year 201__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and (s)he acknowledged to me that (s)he executed the same in (his)(her) capacity described thereon, and that by (his)(her) signature upon the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

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

On the ___ day of _____, in the year 201__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and (s)he acknowledged to me that (s)he executed the same in (his)(her) capacity described thereon, and that by (his)(her) signature upon the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

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

On the ___ day of _____, in the year 201__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and (s)he acknowledged to me that (s)he executed the same in (his)(her) capacity described thereon, and that by (his)(her) signature upon the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

Schedule "1"
to
Declaration of Covenants and Restrictions

Legal Description of the Land

**350-352 Hicks Street
Brooklyn, New York**

Block 282, Lot 50, on the Tax Map of the Borough of Brooklyn

ALL THAT CERTAIN plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of Atlantic Avenue with the westerly side of Hicks Street;

RUNNING THENCE southerly along the westerly side of Hicks Street, a distance of 190.00 feet;

RUNNING THENCE westerly parallel with Atlantic Avenue, along a line which forms an angle of 90 degrees 11 minutes 14 seconds on its northerly side with the westerly side of Hicks Street, a distance of 127.53 feet to the easterly side of the Brooklyn-Queens Expressway;

RUNNING THENCE northerly along the easterly side along the Brooklyn-Queens Expressway along a curve to the right having a radius of 351.50 feet, a distance of 111.83 feet to a point of compound curve;

RUNNING THENCE northerly along the southerly side of the Brooklyn-Queens Expressway, along a curve to the right having a radius of 101.33 feet, a distance of 96.18 feet to a point on the southerly side of Atlantic Avenue;

RUNNING THENCE easterly along the southerly side of Atlantic Avenue, a distance of 89.41 feet to the point and place of **BEGINNING**.

**Schedule “2”
to
Declaration of Covenants and Restrictions**

Certain Definitions

“*Declaration Beneficiaries*” means, collectively:

- (a) Holding and its successors and assigns; and
- (b) NYUHC and its successors and assigns.

“*Holding Affiliates*” shall mean:

- (a) the State University of New York, any entity within the State University of New York and any direct or indirect subsidiaries thereof;
- (b) the Health Science Center at Brooklyn Foundation and any direct or indirect subsidiaries thereof;
- (c) Staffco of Brooklyn, LLC and any direct or indirect subsidiaries thereof;
- (d) any affiliates, agents, representatives, employees, consultants, counsel and other professional advisors of or to Holding or any entity described in subsections (a), (b) and (c) above; and
- (e) any officers, directors, trustees, shareholders, partners, members, managers, or principals of Holding or of any of the foregoing.

“*Interim Care Operations*” means those medical services provided by NYUHC from time to time in or from the Interim Medical Premises.

“*Interim Medical Premises*” means, collectively, those certain portions of the buildings known as the Polak Pavilion and the Henry Street Building, located on that certain parcel of land constituting, as of the date of this Indenture, Tax Lot 13 in Block 290 on the Tax Map, sublet by FCHA to NYUHC as of the date of this Declaration.

“*New Medical Building*” means a new building or buildings to be constructed by NYUHC, or its successor or assign, on the New Medical Site, containing not less than one hundred five (105,000) rentable square feet of space suitable to conduct, at a minimum, the New Medical Operations.

“*New Medical Operations*” has the meaning given to such term in the NMP Deed.

“*NMP Deed*” means that certain deed dated contemporaneously with this Declaration (including, without limitation, in any exhibit or schedule thereto), by and between Holding and NYUHC, pursuant to which Holding conveyed an estate in the New Medical Site to NYUHC.

“Permitted Parking Premises” means the Zoning Lot or any other premises that shall satisfy the ZLDA Parking Obligation, provided, however, that any such premises, other than the Zoning Lot, shall qualify as Permitted Parking Premises only if and when the fee owner thereof shall execute, acknowledge and cause to be recorded a declaration of covenants and restrictions, in form and content substantially similar to this Declaration.

“Zoning Resolution” means the Zoning Resolution of the City of New York, effective as of December 15, 1961, as amended from time to time.

EASEMENT GRANT AND AGREEMENT (PACIFIC STREET)

This document prepared by
 Andrew Weiner, Esq.
 Dentons US LLP
 1221 Avenue of the Americas
 New York, New York 10020

After recording returned to:
 Andrew Weiner, Esq.
 Dentons US LLP
 1221 Avenue of the Americas
 New York, New York 10020

This space reserved for Recorder.

EASEMENT GRANT AND AGREEMENT(PACIFIC STREET)

THIS EASEMENT GRANT AND AGREEMENT (PACIFIC STREET) (this “Grant” or this “Agreement”) is made and entered into as of the ___ day of _____, 201____, by and between **FPG COBBLE HILL ACQUISITIONS, LLC**, a Delaware limited liability company with offices c/o Fortis Property Group, LLC, 45 Main Street, Suite 800, Brooklyn, New York 11201 (hereinafter referred to, together with its successors and assigns, as “Grantor”), **DOWNSTATE AT LICH HOLDING COMPANY, INC.**, a New York not-for-profit corporation with an office c/o The State University of New York Health Science Center at Brooklyn, 450 Clarkson Avenue, Brooklyn, New York 11203 (“DLHC”) and **NYU HOSPITALS CENTER**, a New York not-for-profit corporation with an address of 550 First Avenue, New York, New York 10016 (“NYUHC”; DLHC and NYUHC

hereinafter referred to, as applicable during their respective ownership of the Benefited Parcel, together with its successors and assigns, as “**Grantee**”) as follows:

RECITALS:

(a) Grantor is the owner of fee title to certain real estate in the City of New York, New York, which is legally described in **Exhibit A**¹ attached hereto and made part hereof (the “**Easement Parcel**”).

(b) DLHC is the owner of fee title to that certain parcel of real estate in the City of New York, New York adjoining and abutting the Easement Parcel, which is legally described on **Exhibit B** attached hereto and made part hereof (the “**Benefited Parcel**”).²

(c) NYUHC is the contract vendee of the Benefited Parcel pursuant to that certain First Amended and Restated Purchase and Sale Agreement among Downstate at LICH Holding Company, Inc., FPG Cobble Hill Acquisitions, LLC, Fortis Property Group, LLC, and NYU Hospitals Center, effective as of June 30, 2014 (as amended from time to time, the “**PSA**”);

(d) Pursuant to a certain Declaration of Zoning Lot Restrictions, dated May 1, 1991 and recorded on May 7, 1991 in Reel 2694 Page 936 in the Office of the City Register, Kings County, the Easement Parcel, the Benefited Parcel, and certain other parcels have been combined into a single zoning lot, as such term is defined in the Zoning Resolution of the City of New York, effective as of December 15, 1961, as amended from time to time (the “**Zoning Lot**”).

(e) Grantee desires ingress and egress and other rights for the Benefited Parcel by means of the Easement Parcel, from and to Hicks Street in the County of Kings, City of New York, and Grantor has agreed to grant such easement rights on the terms and conditions contained herein:

PROVISIONS:

NOW, THEREFORE, in consideration of the covenants herein made, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Grantor and Grantee agree as follows:

1. **Recitals.** The Recitals above are incorporated herein as though fully set forth in this **Section 1.**

2. **Grant of Ingress and Egress Easement.** Grantor hereby grants and conveys to Grantee, its successors and assigns, the following perpetual, non-exclusive easement appurtenant to the Benefited Parcel, over, upon, and across the Easement Parcel as described in **Exhibit A** for ingress and egress to and from the Benefited Parcel to provide access (a) for motor vehicle traffic (including trucks but excluding ambulances) to and from the loading dock in Grantee’s building

¹ To cover all of former Pacific Street not owned by Grantee west of the southerly prolongation of the eastern property line of the Benefited Parcel.

² Legal description to indicate that the property line of the Benefited Parcel runs to the borders of Atlantic Avenue, Hicks Street, and the north side of the public pedestrian access easement on former Pacific Street, a north-south distance of 184.4 feet.

(including pick-up and drop-off, deliveries, loading, trash disposal and pick-up), but no vehicular access shall be permitted on the sidewalks except to the extent reasonably necessary to enter into the loading dock and pursuant to Section 3 hereof, (b) for pedestrian traffic to any other entrances or exits on the Benefited Parcel, (c) for pedestrian traffic for any lawful purpose, from all portions of the Benefited Parcel abutting the Easement Parcel to and from the public street commonly known as Hicks Street, and (d) for the installation, operation, maintenance, repair and replacement of subsurface utilities which serve the Benefited Parcel. Grantee's right to utilize the Easement Parcel for subsurface utilities is subject to the requirement that Grantee first obtains the prior written consent of Grantor to Grantee's final plans and specifications for the same, which Grantor's consent shall not be unreasonably withheld or delayed. In the event Grantor's consent or refusal to consent is not given within thirty (30) days after the delivery of Grantee's request for consent, the consent of Grantor shall be deemed given. Grantee's rights hereunder shall be subject and subordinate to any documents recorded prior to the date of this Agreement affecting the Easement Parcel, including, without limitation, the Agreement and Grant of Easements, dated November 28, 1994, between the City of New York and Long Island College Hospital ("LICH") and recorded in the City Register's Office in Reel 3551 Page 2375, the Agreement, dated July 16, 1993, between the Department of Parks and Recreation and LICH and recorded in the City Register's Office in Reel 3551 Page 2417 (collectively, the "**Recorded Documents**"). In addition to the foregoing, it is acknowledged and agreed that, with respect to any portions of Pacific Street located between the eastern boundary of the Easement Parcel and Henry Street, Grantee shall have such rights of pedestrian access as are enjoyed by other residents or occupants of the Zoning Lot pursuant to and in accordance with the Recorded Documents. Notwithstanding anything to the contrary in this Agreement, the parties hereto acknowledge and agree that DLHC shall neither use the easements granted herein nor have any affirmative obligations under this Agreement in connection therewith unless and until the date that either (i) NYUHC shall no longer have the right to acquire New Medical Premises pursuant to the PSA or (ii) DLHC exercises any of its rights of reacquisition with respect to the New Medical Premises pursuant to the New Medical Site Deed (as defined in the PSA) (such date, the "**NYUHC Forfeiture Date**").

3. **Temporary Construction Easement.** In addition to the foregoing, Grantor hereby grants and conveys to Grantee, its successors and assigns, an easement over, on and across the Easement Parcel for activities typically conducted on sidewalks and streets in Brooklyn, New York in connection with construction on adjacent properties including the placement and operation of construction trailers and appurtenances thereto, construction equipment, construction vehicles, and construction materials and supplies, access for staging construction material and vehicles transporting material and equipment, placing and operation of cranes, hoists and similar equipment, during the period of initial construction of the building and other improvements Grantee intends to construct on the Benefitted Parcel ("**Grantee's New Building**"), or subsequent alterations or additions to, or repair, maintenance or demolition of Grantee's New Building, which such subsequent work may include but shall not be limited to façade maintenance, cleaning, roof access for future mechanical equipment replacement, reroofing and similar activities, during any period when such construction, alteration, addition, repair, maintenance or demolition is being organized or conducted (hereinafter, the "**Construction Period**"), subject to receipt by Grantee of any necessary governmental permit or approval, and compliance by Grantee with the terms and conditions of any such permit or approval. The foregoing easement shall be effective only during the period commencing on the

date that Grantee shall have obtained all required permits in connection with any such construction and terminate on the date that such easement shall not be further necessary in connection with such construction.

4. **No Blocking of Access; Cooperation.** Under no circumstances shall the Grantor's or Grantee's use of the easements granted under Sections 2 and 3 hereof or the Construction Equipment or Grantor's or Grantee's use of the Easement Parcel block access, ingress or egress on and over the Easement Parcel by Grantor or Grantee or any emergency vehicles of the City of New York or utility companies (blockage not being deemed to have occurred if at least one (1) lane is open for such access, ingress or egress). Grantor and Grantee shall cooperate in good faith in the construction process to effect the provisions of this Agreement and work together to coordinate any simultaneous construction activities. Notwithstanding the foregoing, but only when the Benefited Parcel is owned in fee by NYUHC and NYUHC is constructing Grantee's New Building (it being understood that the balance of this Section 4 does not apply if any other party, including without limitation DLHC, owns the Benefited Parcel in fee), Grantor agrees that, in the event that a conflict has, in NYUHC's reasonable judgment, the potential to delay construction, increase to any material extent the cost of construction, or negatively impact the constructability of any portion of Grantee's New Building, the resolution of such conflict shall not result in a delay of construction, an increase to any material extent the cost of construction, or a negative impact on the constructability of any portion of Grantee's New Building.

5. **Grantor's Reservation.** Notwithstanding anything to the contrary contained in this Grant, including Section 6 below, Grantor reserves the perpetual, non-exclusive right to use the Easement Parcel for the benefit of properties adjacent to the Easement Parcel for any and all purposes, provided that the exercise of Grantor's aforesaid reservations do not interfere in any material respect with Grantee's use and enjoyment of the Easement Parcel for ingress and egress and for subsurface utilities as set forth in Section 2 above, or as a construction easement as provided in Section 3 above.

6. **Improvements and Maintenance.**

(a) Grantee accepts the current state of the Easement Parcel in its "as-is" condition. All of Grantee's actions pursuant to this Agreement shall be conducted in accordance with all applicable laws. Grantor shall maintain, repair and replace all improvements on the Easement Parcel to keep the same in a good, usable condition in compliance with applicable laws and the requirements of all recorded agreements to which the Easement Panel is subject.

(b) After completion of construction by Grantee of Grantee's New Building, the issuance of a full temporary certificate of occupancy with respect thereto by the New York City Department of Buildings and commencement of substantially all of the operations contemplated by Grantee, Grantor, at its expense and option, may install a gate across the portion of the Easement Parcel used for vehicular traffic (but not the sidewalks), provided that such gate (i) can be controlled by both Grantor and Grantee (in Grantee's case, from the loading dock in Grantee's New Building), (ii) permits entrance and exit by vehicles serving Grantee's New Building, and (iii) is located fifty (50) feet east of the western boundary of the Easement Area. If Grantor elects to install a gate, the installation, repair, maintenance and any replacement thereof

shall be in compliance with applicable law, including any binding open space requirements, and restrictions of record and shall be at Grantor's expense. Grantor shall install, repair, maintain and replace, at Grantee's request, video monitors, both at the gate and in the security post on Grantee's loading dock, together with 2-way audio communication between such locations and remote control allowing operation of the gate from such security post.

(c) Grantee shall reimburse Grantor for fifty (50%) percent of the costs to maintain, repair and replace all improvements in the Easement Parcel (other than gates and the related infrastructure described in subsection (b) of this Section, which shall be installed, repaired, maintained and replaced by Grantor at Grantor's expense), after the initial construction of any such improvements by Grantor, within thirty (30) days after submission by Grantor to Grantee of an invoice therefor accompanied by reasonable evidence of the amounts incurred. Grantee, at its request, shall have the right to audit such expenditures from time to time. For the avoidance of doubt, if Grantor elects to change the nature of the sidewalks or street surfaces in the Easement Parcel existing as of the date hereof (for example, by installing cobblestone surfaces, planters or plantings, or specialty lighting fixtures) or otherwise install or materially upgrade improvements within the Easement Parcel, the cost of such initial installation or upgrade shall be at Grantor's expense. Notwithstanding the foregoing, if and to the extent any such maintenance, repair or replacement is necessary as a result of Grantor's or Grantee's acts, such party shall be solely responsible for the cost of repair thereof. All real estate taxes and assessments levied against the Easement Parcel shall be paid by Grantor.

(d) Grantee agrees that (i) the entrance to the loading dock of Grantee's New Building and (ii) all entrances and exits serving Grantee's New Building shall be no less than 30 feet from the eastern boundary of the Benefitted Parcel, except that Grantee shall be permitted to locate one (1) exit providing emergency egress from the roof and/or other portions of Grantee's New Building within 30 feet of such eastern boundary. The Easement Parcel shall be used by trucks and other vehicles solely as provided in this Easement, and shall not be used for standing or parking by such vehicles, except for vehicles waiting in a queue to the west of any gate installed by Grantor pursuant to Section 4(b), and pursuant to the construction easement set forth in Section 3 hereof. There will otherwise be no size, frequency or other limitations on the vehicles that can enter and use the Easement Area or on the entrances to Grantee's New Building. Grantor and Grantee shall each be responsible for the maintenance of the other public open space on their respective properties.

(e) Grantee covenants to (i) take such measures reasonably necessary to avoid or prevent any damage to property or injury to persons within the Easement Parcel, (ii) keep the Easement Parcel free and clear of all debris caused by Grantee, (iii) repair any and all damage to the Easement Parcel caused by Grantee, and (iv) comply with all Recorded Documents.

7. **Prohibited Acts.** Subject to the terms of Sections 1, 2 and 3, above, neither Grantor nor Grantee shall materially obstruct, impede or interfere with the use of the Easement Parcel for vehicular and pedestrian ingress and egress, except for incidental periods in connection with customary practices for uses of this kind on reasonable prior notice to the other party and except for Grantee's rights under Section 3 hereof; provided that installation of a fence or gate by Grantor at its expense in accordance with Section 5(b) hereof shall not be deemed a breach of this Section.

8. **Mechanic's Liens.** Grantee shall not cause or permit any mechanic's lien to be filed against the Easement Parcel or any parcel owned by Grantor due to the acts of Grantee or anyone claiming by, through or under Grantee. Grantee shall, at its expense, procure the satisfaction or discharge of record of all such mechanic's liens within thirty (30) days after notice of the filing thereof; or within such thirty (30) day period, Grantee shall procure for Grantor, at Grantee's sole expense, a bond or other protection against any such lien or encumbrance sufficient to remove same of record. In the event Grantee has not so performed within such thirty (30) day period, Grantor may, at its option, pay and discharge such liens and Grantee shall reimburse Grantor, within thirty (30) days after demand, for all costs and expenses incurred in connection therewith. Grantee agrees to indemnify, defend and hold harmless Grantor, the Easement Parcel and any other parcel owned by Grantor from and against all losses, damages, injuries, claims, demands and expenses, of any nature, including reasonable legal expenses, which may arise out of any such mechanic's lien.

9. **Compliance with Laws.**

(a) Grantee shall comply with all applicable laws, orders, rules, ordinances, regulations and requirements of all public authorities now or hereafter affecting the Easement Parcel or Grantee's use of the same, or Grantee's construction, maintenance, alteration, modification, replacement or removal of the same (collectively, "**Applicable Laws**"). As used herein, (i) "**Environmental Law**" means any applicable federal, state or local environmental, health or safety, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards concerning or in connection with hazardous, toxic or dangerous wastes, substances, material, gas or particulate matter as now or at any time hereinafter in effect; (ii) "**Hazardous Materials**" includes, without limitation, any hazardous or toxic material, substance, irritant, chemical, or waste, including without limitation (A) any material defined, classified, designated, listed or otherwise considered under any Environmental Law as a "hazardous waste," "hazardous substance," "hazardous material," "extremely hazardous waste," "acutely hazardous waste," "radioactive waste," "biohazardous waste," "pollutant," "toxic pollutant," "contaminant," "restricted hazardous waste," "infectious waste," "toxic substance," or any other term or expression intended to define, list, regulate or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment, (B) any material, substance or waste which is toxic, ignitable, corrosive, reactive, explosive, flammable, infectious, radioactive, carcinogenic or mutagenic, and which is or becomes regulated by any local, state or federal governmental authority, any agency of the State of New York or any agency of the United States Government, (C) any oil, petroleum, petroleum based products, petroleum additives, and/or derived substances of breakdown product, (D) asbestos, (E) petroleum and petroleum based products, (F) urea formaldehyde foam insulation, (G) polychlorinated biphenyls ("**PCBs**"), (H) freon and other chlorofluorocarbons, (I) any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources, (J) lead-based paint, (K) solvents, and (L) Infectious Waste and medical waste. The term "**Infectious Waste**" means any solid waste capable of producing an infectious disease, including all bulk blood, blood products; cultures of specimens from medical, pathological, pharmaceutical, research, commercial and industrial laboratories; human tissues; organs, body parts, secretions, blood and body fluids removed during surgery and autopsies; the carcasses and body parts of all animals exposed to pathogens in research, used in the vivo testing of pharmaceuticals or that died of known or

suspected infectious diseases; needles, syringes and scalpel blades. The term “**Environmental Laws**” shall include all Laws pertaining to health, industrial hygiene, Hazardous Materials or the environment, including, but not limited to each of the following, as enacted as of the date hereof or as hereafter amended: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq.; the Toxic Substance Control Act, 15 U.S.C. §2601 et seq.; the Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; and the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; and

(b) “**Environmental Condition**” means the presence, release, or migration of any Hazardous Materials or the violation of any Environmental Law.

(c) Grantee represents that there will be no asbestos or asbestos containing materials or other Hazardous Materials incorporated by Grantee into any improvements on the Easement Parcel or any modifications or alterations thereto, except as may be expressly consented by Grantor in writing.

(d) Grantee covenants that, from and after the date that NYUHC shall become the owner of a fee on condition estate with respect to the Benefited Parcel, its use of the Easement Parcel shall comply with Environmental Laws.

(e) The provisions of this Section 8 shall survive any expiration or termination of this Agreement.

10. **Indemnification and Limitation of Liability.**

(a) Grantee (but specifically excluding DLHC and its affiliates and subsidiaries, the State of New York and any agency and subsidiary thereof, and any other governmental agency or instrumentality and subsidiary thereof (collectively, the “**Excluded Parties**”)) and its successors and assigns (collectively the “**Grantee Indemnifying Parties**”) shall defend, indemnify and hold harmless Grantor, its successors and assigns, and its and their directors, officers, agents, employees and tenants (collectively the “**Grantor Indemnified Parties**”) from any and all loss, damages, claims or actions of every kind and nature, including those enumerated below in this Section and reasonable attorneys’ fees and court costs (collectively, “**Loss**”) directly or indirectly arising out of or in connection with Grantee Indemnifying Parties’ contractors’, agents, employees, principals, officers or invitees’ breach of this Agreement, use of the Easement Parcel or negligent act or omission on the Easement Parcel, except to the extent such Loss results from Grantor’s negligence or wrongful conduct. The Indemnifying Parties shall promptly pay all such costs and expenses from time to time with thirty (30) days after demand made by the Indemnified Parties. For purposes of clarification, nothing contained in this Section 10(a) shall be binding on the Excluded Parties, but shall be binding on NYUHC and any of its successors and assigns (other than the Excluded Parties).

(b) In any and all claims against Grantor Indemnified Parties by any employee (or the survivor or personal representative of any employee) of any Grantee Indemnifying Party, any of its contractors, any subcontractor, any supplier, or any person or organization directly or

indirectly employed by any of them to perform or furnish any of the construction, installation, operation, replacement, inspection, alteration, reconstruction, repair or maintenance of the Easement Parcel or anyone for whose acts any of them may be liable, the indemnification obligation under this Agreement shall not be limited in any way based on the amount or type of damages, compensation or benefits payable by or for any Grantee Indemnifying Party, its contractors or any such subcontractor, supplier or other person or organization under workers' compensation acts, disability benefit acts or other employee benefit acts.

(c) Notwithstanding anything to the contrary contained herein, each of the Grantee Indemnifying Parties and Grantor hereby waives claims against the other for punitive, special, indirect, consequential and exemplary damages arising out of or relating to this Agreement; provided, however, that nothing in this Section 10 shall be construed to constitute a waiver by either party of indemnification for punitive, special, indirect, consequential and exemplary damages awarded to a third party to the extent such waiver is prohibited by law.

(d) Grantee Indemnifying Parties' and Grantor's obligations under this Section shall survive any termination of this Agreement.

11. **Enforcement.**

(a) If either Grantor or Grantee permits a condition to exist on the Easement Parcel which is in violation or breach of any covenant, condition, restriction or easement herein contained or granted (including without limitation a violation or breach comprising Prohibited Acts pursuant to the terms of Section 4, above), and such violation or breach, or failure remains uncured for ten (10) business days after written notice from the complaining party (provided, however, that no notice shall be required in the event of an emergency or a violation, breach or failure that would constitute a danger to life, safety or property or a material continuous obstruction, impediment or interference with the passage of either pedestrian or vehicular traffic on the Easement Parcel), then the complaining party shall have the right, but not the obligation, to summarily abate and/or remove such condition (including resort to towing), or to prosecute a proceeding, at law or in equity, against the entity or entities, person or persons who are violating or attempting to violate this Agreement, to enjoin or prevent them from doing so, to cause the violation to be remedied, or to recover damages for said violation. In addition, and without waiving any of the foregoing rights, the complaining party, if so injured by such violation, shall also be entitled to reimbursement from the party in violation for the complaining party's expenses incurred in remedying, abating or removing such condition as aforesaid, including without limitation towing costs and fees and any repairs and replacements to the Easement Parcel.

(b) Grantor and/or Grantee may enforce this Agreement by an action at law or in equity (excluding consequential damages). All remedies provided for herein or at law or in equity shall be cumulative and not exclusive.

(c) The failure of either Grantor or Grantee to enforce any covenant, condition, restriction or easement herein contained shall in no event be deemed a waiver of the right to do so thereafter or the right to enforce any other covenant, condition, restriction or easement contained herein.

(d) In the event that the party in violation fails to reimburse the complaining party for amounts due under this Agreement within thirty (30) days after receipt of said invoice and supporting documentation, the unpaid amount shall accrue interest (herein, the “**Default Rate**”) equal to the lesser of (i) 4% per annum plus the prime rate (or corporate base rate) from time to time published in the *Wall Street Journal* (or, if the *Wall Street Journal* is no longer published, then another nationally-recognized publication selected by Grantor), or (ii) the maximum rate permitted by law, whichever is less, and (iii) with respect to DLHC or any successor or assign thereof that is a governmental agency or instrumentality (including, without limitation, SUNY, the State of New York, or any subsidiary or agency thereof), the rate determined pursuant to Article 11-A of the State Finance Law, and the unpaid amount together with such interest at the Default Rate shall constitute a lien on the party in violation’s parcel adjacent to the Easement Parcel. As evidence and notice of such lien, the complaining party may prepare a written notice of such lien setting forth the amount of delinquent indebtedness. Said lien shall be subordinate to any bona fide mortgage held by the lender unaffiliated to either Grantor or Grantee, as the case may be, prior to the filing of such lien. Such notice of lien shall be signed by the complaining party and shall be recorded in the Office of the City Register, Kings County, New York or such other place as may be required by law for the recording of liens affecting real property at the time such notice is recorded. Such lien shall attach to the party in violation’s parcel adjacent to the Easement Parcel as of the date payment becomes delinquent and may be enforced after recording said notice by foreclosure of such lien on the party in violation’s parcel adjacent to the Easement Parcel and any improvements thereon in like manner as a mortgage on real property, or by suit against the party in violation.

12. **No DLHC Construction Obligation.** The parties hereto acknowledge and agree that DLHC has no present intention to construct, or cause the construction of (other than by NYUHC pursuant to the PSA), any building or other structure on the New Medical Premises, and nothing set forth in this Agreement shall be deemed or construed so as to require DLHC to construct, or cause the construction of, such a building, regardless of whether or not NYUHC complies with its obligations to construct such a building pursuant to the PSA, whether in the absence of a conveyance to NYUHC or after a reacquisition of the Grantor’s Fee Parcel as the holder of a future estate therein. Further, DLHC and its successors (other than NYUHC) will have the right to use the New Medical Site for any use permitted as a community facility, not limited to medical use.

13. **Benefited Parties/Owners; Cooperation.**

(a) The easement granted herein shall bind Grantor and all future owners, lessees, sublessees, occupants, licensees and invitees of all or any part of the Easement Parcel, and shall benefit Grantee and all future owners, lessees, sublessees, occupants, licensees and invitees of all or any portion of the Benefited Parcel. If fee title to any portion of the Easement Parcel or the Benefited Parcel (hereinafter, a “**Parcel**” or “**Parcels**” as the context requires) is hereinafter transferred to one or more persons or entities, then all of the fee owners of the Easement Parcel and the Benefited Parcel (or any portion thereof) (hereinafter individually referred to as an “**Owner**” and collectively as the “**Owners**”), as applicable, shall be entitled to the benefits of and burdened by the easements, rights, privileges, covenants, indemnities, conditions and restrictions granted or contained hereunder, provided that in the event that the Benefited Parcel becomes subject to the New York Condominium Act, the rights of Grantee

shall be exercised solely through the lawful authorized act of the resulting condominium association rather than through individual unit owners. The term “**Owners**” as used herein shall be deemed to include any and all successors, grantees, and assigns of such parties and their respective successors, grantees, and assigns.

(b) Promptly upon Grantee’s request and at Grantee’s expense, Grantor shall sign such application for, or other documentation relating to, any permits or licenses necessary or useful in order for Grantee to exercise its rights hereunder.

14. **Covenants Run with the Land; Successors and Assigns.** The easement granted herein and all other rights, privileges, covenants, conditions, and restrictions contained herein shall be deemed to be covenants running with the land. An Owner who conveys its interest in its Parcel (the “**Transferring Parcel Owner**”) shall be released from all obligations arising or accruing under this Agreement after the date of such conveyance, but shall remain liable under this Agreement for all obligations arising or accruing under this Agreement prior to the date of such conveyance, and the party to whom such Transferring Parcel Owner conveys its interest in its Parcel shall be automatically liable for the obligations of the Transferring Parcel Owner of such Parcel accruing hereunder from and after the date of such conveyance, and shall not be liable for obligations accruing prior to the date of such conveyance.

15. **Notices.** Unless otherwise provided herein, all notices, requests, demands and other communications required or permitted under this Grant shall be in writing and shall be served on the parties at the following addresses:

If to DLHC: Downstate at LICH Holding Company, Inc.
c/o State University of New York
State University Plaza
Albany, New York 12246
Attn: Robert Haelen

With a Copy to: Cozen O’Connor
277 Park Avenue – 20th Floor
New York, NY 10172
Attn: Marc S. Intriligator, Esq.

If to NYUHC: NYU Hospitals Center
550 First Avenue, 15th fl.
New York, NY 10016
Attn: Senior Vice President, Real Estate Design & Facilities

With a Copy to: NYU Hospitals Center
550 First Avenue, 15th fl.
New York, NY 10016
Attn: General Counsel

If to Grantor: FPG Cobble Hill Acquisitions, LLC
c/o Fortis Property Group, LLC
45 Main Street, Suite 800
Brooklyn, New York 11201
Attn: Joel Kestenbaum

With a copy to: Fortis Property Group, LLC
45 Main Street, Suite 800
Brooklyn, New York 11201
Attn: Joel Kestenbaum

With a copy to: Tannenbaum Helpern Syracuse & Hirschtritt LLP
900 Third Avenue
New York, NY 10022
Attn: Robert E. Helpern, Esq.

With a copy to: Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036
Attn: Paul D. Selver, Esq.

Any such notices shall be either (i) sent by certified mail return receipt requested and postage pre-paid, in the United States Mail, (ii) sent by overnight delivery using a nationally recognized courier, or (iii) by personal hand delivery. Notices shall be deemed effective and received by Grantor on the date of actual receipt or refusal by a member of the office of the Grantor representative who is addressed, and shall be deemed effective and received by Grantee on the date of actual receipt or refusal by a member of the office of the Grantee representative who is addressed.

16. **Estoppel Certificates.** Whenever requested by a party (but not more than twice a year) upon at least twenty (20) Business Days prior written notice, the other party, at the requesting party's cost and expense, shall furnish to the requesting party a written statement setting forth: (i) whether, to the knowledge of such other party, this Agreement is in full force and effect; (ii) the extent to which, to the knowledge of such other party, this Agreement has been assigned, modified or amended by any instrument, whether or not of record (and if it has, to the knowledge of such other party, then stating the nature thereof); (iii) whether such other party has served any written notice of default under this Agreement, which default, to the knowledge of such other party, remains uncured; and (iv) that, to the knowledge of such other party, there exists no state of facts that, with the giving of notice, the passage of time, or both, would constitute a default by the requesting party under this Agreement. Such certificate shall in no event subject the party furnishing it to any liability whatsoever (except for fraud), notwithstanding the negligent or inadvertent failure of such party to disclose correct or relevant information.

17. **Entire Agreement.** Any negotiations, correspondence, or understandings relative to the subject matter hereof shall be deemed to be merged in this Grant and shall be of no force or effect. This Grant may not be amended, modified or terminated except in writing executed by all parties hereto (it being understood and agreed that from and after the NYUHC Forfeiture Date, any such amendment, modification or termination shall not require the execution or consent of NYUHC). In addition, any consent or waiver by Grantee prior to the NYUHC Forfeiture Date shall require the consent of NYUHC.

18. **Interpretation.** Whenever the context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, any gender shall include both other genders, and the term "Grantee" shall include the Grantee herein named and any and all assignees or successors of Grantee and their assignees and successors. The section headings contained in this Grant are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any provisions of this Grant. This Grant shall bind and inure to the benefit of the parties hereto and their respective permitted successors and assigns. Time is of the essence of this Agreement. Any exhibits attached hereto are by this reference incorporated herein and made a part hereof.

19. **Counterparts.** This Grant may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which shall together constitute one and the same instrument.

20. **No Waiver.** Acceptance by either party of any performance less than required hereby shall not be deemed to be a waiver of the rights of such party to enforce all of the terms and conditions hereof. Except as otherwise expressly provided herein, no waiver of any such right hereunder shall be binding unless reduced to writing and signed by the party to be charged therewith.

21. **Invalidity of Provision.** If any provisions of this Grant as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction or other qualified tribunal to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permitted by applicable law) any other provision of this Grant, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Grant as a whole.

22. **Governing Law, Jurisdiction and Venue.** This Grant shall be governed by, and construed in accordance with, the laws of the State of New York, and the parties hereto (i) agree that any action or proceeding that is brought to enforce or interpret this Grant or that concerns or is in any way related to this Grant shall only be commence in the courts of the State of New York and (ii) consent to venue and personal jurisdiction in the courts specified in the foregoing subpart (i) of this subsection.

23. **Waiver of Trial by Jury.** To the extent permitted by law, each party hereby waives, irrevocably and unconditionally, trial by jury in any action brought on, under or by virtue of or relating in any way to this Grant or any of the documents executed in connection therewith, the property, or any claims, defenses, rights of set-off or other actions pertaining hereto or to any of the foregoing.

24. **Insurance.** The owners of each of the Easement Parcel and the Benefited Parcel, or any portion thereof, shall at all times maintain liability and casualty insurance in force with respect to the Parcels, in amounts and with coverages as are commercially reasonable for properties of similar types in the New York, New York area, naming one another as additional insureds on liability policies, and shall annually, upon policy renewals, provide certificates of insurance to each other evidencing compliance with this Section.

25. **Force Majeure.** Whenever performance is required by any Owner hereunder, such Owner shall use reasonable due diligence to perform, and take all necessary measures in good faith to perform, its obligations; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, terrorism, civil commotion, riots, strikes, picketing or other labor disputes of third parties, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, inclement weather which delays or precludes construction, action or non-action of public utilities or of local, state or federal governments, condemnation, or other conditions similar to those listed above which are beyond the reasonable control of such Owner, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this Section shall not operate to excuse any Owner from the prompt payment of any monies required by this Agreement.

26. **Captions – Singular, Plural, Gender.** The Section headings herein are for convenience only and shall not be construed with any substantive effect in this Agreement. Words used herein shall be deemed to include singular and plural, and any gender as the context requires.

27. **Standard State University of New York Provisions; Priority of Application.** The provisions set forth in **Exhibit C** attached hereto (referred to therein as Exhibit A: Standard Contract Clauses and Exhibit A-1: Affirmative Action Clauses) are expressly incorporated by reference into this Agreement as if set forth at length herein. In the event of any conflict between the terms and conditions set forth in this Agreement and/or any of the Exhibits hereto, and the provisions set forth in **Exhibit C**, the provisions set forth in **Exhibit C** shall prevail.

28. **Approvals.** The Parties hereby acknowledge and agree that this Agreement is subject to the approval of the Attorney General of the State of New York and the Office of the State Comptroller of the State of New York.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE(S)]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Grant as of the date first above written.

GRANTOR:

[FPG Cobble Hill Acquisitions, LLC],
a [Delaware limited liability company]

By: _____

Its: _____

DLHC:

DOWNSTATE AT LICH HOLDING COMPANY,
INC.
a New York not-for-profit corporation

By: _____

Its: _____

NYUHC:

NYU HOSPITALS CENTER,
a New York not-for-profit corporation

By: _____

Its: _____

Approval as to Form
Eric T. Scheiderman
Attorney General

By: _____

Name: _____

Date: _____

Approved:
Thomas P. DiNapoli
State Comptroller

By: _____

Name: _____

Date: _____

STATE OF _____)
) SS
COUNTY OF _____)

I, _____, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT _____ and _____, personally known to me to be the _____ and _____, respectively, of FPG Cobble Hill Acquisitions, LLC, a Delaware limited liability company, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such they signed and delivered the said instrument pursuant to proper authority given by said trust, as their free and voluntary act, and as the free and voluntary act and deed of said limited liability company for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, _____.

Notary Public

STATE OF NEW YORK)
)
COUNTY OF _____)

I, _____, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that _____, as _____ of Downstate At LICH Holding Company, Inc., a New York not-for-profit corporation, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said University for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, _____.

Notary Public

STATE OF NEW YORK)
)
COUNTY OF _____)

I, _____, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that _____, as _____ of NYU Hospitals Center, an New York not-for-profit corporation, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said University for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, _____.

Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF EASEMENT PARCEL

EXHIBIT B
LEGAL DESCRIPTION OF BENEFITED PARCEL

EXHIBIT C
STANDARD CONTRACT CLAUSES

NEW YORK COUNTY, NEW YORK

This document prepared by
 Andrew Weiner, Esq.
 Dentons US LLP
 1221 Avenue of the Americas
 New York, New York 10020

After recording returned to:

Andrew Weiner, Esq.
 Dentons US LLP
 1221 Avenue of the Americas
 New York, New York 10020

EASEMENT GRANT AND AGREEMENT

This Easement Grant and Agreement (“**Agreement**” or “**Grant**”) entered into this ____ day of _____, _____ (“**Effective Date**”) is between DOWNSTATE AT LICH HOLDING COMPANY, INC., a New York not-for-profit corporation with an office c/o The State University of New York Health Science Center at Brooklyn, 450 Clarkson Avenue, Brooklyn, New York 11203 (“**DLHC**”), NYU HOSPITALS CENTER, a New York not-for-profit corporation (“**NYUHC**”) (DLHC and NYUHC, as applicable during their respective periods of ownership of, and to the extent of their interests in, the Grantor’s Fee Parcel, “**Grantor**”), with an address at 550 First Avenue, New York, New York 10016, and FPG COBBLE HILL ACQUISITIONS, LLC, a Delaware limited liability company (“**Grantee**”) with offices c/o Fortis Property Group, LLC, 45 Main Street, Suite 800, Brooklyn, New York 11201.

WITNESSETH:

WHEREAS, DLHC is the fee owner of the property commonly known as 339-357 Hicks Avenue and a portion of 91-95 Pacific Street in Brooklyn, New York, as more particularly described on **Exhibit A** attached hereto and incorporated herein by reference (the “**Grantor’s Fee Parcel**”);

WHEREAS, NYUHC is the contract vendee of the Grantor’s Fee Parcel pursuant to that certain First Amended and Restated Purchase and Sale Agreement among Downstate at LICH Holding Company, Inc., FPG Cobble Hill Acquisitions, LLC, Fortis Property Group, LLC, and NYU Hospitals Center, effective as of June 30, 2014 (as amended from time to time, the “**PSA**”);

WHEREAS, although NYUHC is a party to this Agreement based on its intended acquisition and ownership of Grantor’s Fee Parcel, such right of acquisition or continued ownership may be forfeited (i) in the event that the NYUHC shall no longer have the right to acquire Grantor’s Fee Parcel pursuant to the PSA or (ii) in the event that DLHC exercises any of its rights of reacquisition with respect to Grantor’s Fee Parcel pursuant to the New Medical Site Deed (as defined in the PSA) (the date on which either (i) or (ii) shall occur, the “**NYUHC Forfeiture Date**”);

WHEREAS, NYUHC presently intends to construct a building on Grantor’s Fee Parcel (the “**New Medical Building**”);

WHEREAS, Grantee is the fee owner of the property commonly known as Block 284, Lot ____, as more particularly described on **Exhibit B** attached hereto and incorporated herein by reference (the “**New Non-Medical Site**”);

WHEREAS, DLHC is the fee owner, and pursuant to the PSA, Grantee is the contract vendee, of the property commonly known as Block 290, Lot 13, as more particularly described

on **Exhibit C** attached hereto and incorporated herein by reference (the “**Final Closing Premises**”); the New Non-Medical Site and the Final Closing Premises, individually or collectively (as permitted by the Zoning Resolution) the “**Benefited Parcel**”¹, which Benefited Parcel is adjacent to Grantor’s Fee Parcel;

WHEREAS, Grantor’s Parcel and the Benefited Parcel are part of a single zoning lot, as such term is defined in the Zoning Resolution of the City of New York, effective as of December 15, 1961, as amended from time to time (the “**Zoning Resolution**”) with other parcels (the “**Zoning Lot**”), which Zoning Lot is the subject of certain agreements, including that certain Zoning Lot Development and Easement Agreement, dated as of even date and contemporaneously herewith, among Downstate at LICH Holding Company, Inc., FPG Cobble Hill Acquisitions, LLC, and NYU Hospitals Center (as amended from time to time, the “**ZLDA**”); and

WHEREAS, Grantee intends to build (i) a residential building on the New Non-Medical Premises (“**Initial Grantee’s Building**”) and (ii) one or more residential buildings on the Final Closing Premises after Grantee shall have acquired same from DLHC (the “**Subsequent Grantee’s Building**”); the Initial Grantee’s Building and the Subsequent Grantee’s Building, individually, or collectively, as applicable, the “**Grantee’s Building**”);

WHEREAS, Grantee seeks to obtain an easement on and above a portion of the New Medical Building or at grade outside the New Medical Building for purposes herein specified;

WHEREAS, Grantor and Grantee desire to enter into other agreements relating to Grantor's Fee Parcel, the New Medical Building, the Benefited Parcel, and Grantee's Building.

¹ The Benefited Parcel is the New Non-Medical Site and the Final Closing Premises, to the extent permitted by the Zoning Resolution.

NOW THEREFORE, in consideration of the covenants herein made, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Recitals**. The Recitals above are incorporated herein as though fully set forth in Section 1.

2. **Grant of Easement**.

(a) Subject to the further terms and provisions hereof,

(i) Effective upon the date hereof, but subject to the restrictions

below, Grantor hereby grants to Grantee and Grantee's occupants and guests, a permanent and perpetual non-exclusive easement for use of 23,000 square feet of outdoor space at grade on the Grantor's Fee Parcel ("**Grantor's Open Space Easement**"), it being understood that it shall be Grantee's responsibility to initially render the Grantor's Open Space Easement at grade level usable by demolishing the existing buildings on the Grantor's Fee Parcel and removing any debris resulting from such demolition. Grantor's Open Space Easement shall be in locations determined, during such period preceding the NYUHC Forfeiture Date, by NYUHC in its sole discretion and may be obstructed with structures, equipment, fixtures or furniture that have been determined by the New York City Department of Buildings ("**DOB**") not to reduce the area of "open space" available for Grantee's use in generating residential floor area (as such terms are defined in the Zoning Resolution of the City of New York (the "**Zoning Resolution**") to an amount below that which is required hereunder. It is understood and agreed that, notwithstanding the grant of Grantor's Open Space Easement hereunder, Grantor shall be permitted to construct the New Medical Building. It is further understood and agreed

that, prior to the Roof Completion Date (as hereinafter defined), Grantor shall have no obligation to prepare the Grantor's Open Space Easement located at-grade so as to make it usable or accessible by Grantee or Grantee's occupants and guests, except that, upon and after the NYU Forfeiture Date, if applicable, Grantee shall have the right to prepare Grantor's Open Space Easement located at-grade so as to make it so usable or accessible, and DLHC shall cooperate with Grantee in connection therewith.

(ii) Promptly after the date upon which Grantor obtains its first temporary certificate of occupancy for the whole of the New Medical Building (such date, the "**Roof Completion Date**"), Grantor shall relocate the Grantor's Open Space Easement (or any portion thereof) from grade level to the roof of the New Medical Building (the "**Roof**") and/or at grade outside of the New Medical Building, as designated by Grantor in its sole discretion, in locations determined by Grantor in its sole discretion and with permitted obstructions as Grantor may, subject to the approval of the New York City Department of Buildings, determine in its sole discretion. If Grantor so elects, the parties shall execute and record an amendment to this Agreement confirming such relocation; provided that at no time shall Grantor's Open Space Easement encompass less than the amount of "open space" which is required hereunder. Access under this grant to the Grantor's Open Space Easement located on the Roof shall be available only to occupants and guests of the Initial Grantee's Building, commencing on the Roof Completion Date. Access under this grant to the Grantor's Open Space Easement located at grade level shall be available only to occupants and guests of both the Initial Grantee's Building and the Subsequent Grantee's Building, commencing on the sooner to occur of the Roof Completion Date and the NYUHC Forfeiture Date.

(iii) Notwithstanding the provisions of clauses (i) and (ii) above, Grantee shall not use or occupy, nor shall it apply to DOB for or accept from DOB any work permit, TCO, or PCO for, any residential floor area in the Initial Grantee's Building, that is in excess of the amount of residential floor area that is permitted based on the amount of "open space" on the Zoning Lot other than the open space in Grantor's Open Space Easement or that assumes, represents or relies upon the provision of open space on Grantor's Fee Parcel prior to a date which is the earlier to occur of (A) the issuance of the first TCO for the whole of the New Medical Building and (B) the NYUHC Forfeiture Date. In addition, notwithstanding the provisions of clauses (i) and (ii) above, Grantee shall not use or occupy, nor shall it apply to DOB for or accept from DOB any work permit, TCO, or PCO for, any residential floor area in the Subsequent Grantee's Building, that is in excess of the amount of residential floor area that is permitted based on the amount of "open space" on the Zoning Lot other than the open space in Grantor's Open Space Easement or that assumes, represents or relies upon the provision of open space on Grantor's Fee Parcel prior to a date which is the earlier to occur of (A) the issuance of the first TCO for the whole of the New Medical Building; (B) the NYUHC Forfeiture Date; (C) four (4) years following the commencement of construction of the New Medical Building, as extended by Unavoidable Delays; and (D) the date which is two (2) years from the date of acquisition of the Grantor's Fee Parcel by NYUHC if NYUHC shall not have commenced construction of the New Medical Building by such date, as extended by Unavoidable Delays; provided that, in the case of clauses (B), (C) and (D) above, Grantee shall have first obtained from DOB a determination confirming, to the satisfaction of NYUHC or DLHC (as the case may be)

in its sole discretion, that DOB would not refuse to grant or approve an application for or to issue any work permit, TCO or PCO for the development, alteration, enlargement or occupancy of the New Medical Building for reasons that include the disruption of access to, or the temporary elimination or modification of, the open space on Grantor's Fee Parcel (the “**Open Space Changes**”), and that DOB would not seek to rescind any such work permit, TCO or PCO based on Open Space Changes, notwithstanding that either (X) Grantee had filed an application for a work permit, TCO or PCO that relied on such open space to support the residential floor area on the Benefitted Parcel (an “**Open Space Filing**”), (Y) DOB had issued a work permit pursuant to such Open Space Filing, or (Z) DOB had issued a TCO or PCO pursuant to such Open Space Filing.

(iv) Notwithstanding anything to the contrary in this Agreement, the parties hereto acknowledge and agree that DLHC shall not have any affirmative obligations or any rights hereunder with respect to the New Medical Building or the Roof (other than the grant of the at-grade easements herein) unless and until the NYUHC Forfeiture Date occurs. In such event, Grantee shall cooperate with DLHC in obtaining a determination from DOB that the open space at grade level may become unavailable during construction of a new building by DLHC (or any successor to or other party designated by DLHC) on Grantor's Fee Parcel and may, upon completion of such building, be relocated to the roof thereof.

(v) Except as specifically provided herein, Grantor shall retain an unrestricted right of access to Grantor's Open Space Easement for the installation, maintenance, repair, replacement and operation of facilities on the Roof of and in the New Medical Building or at grade level outside the New Medical Building. All of the

space subject to Grantor's Open Space Easement shall meet the requirements of Section 12-10 of the Zoning Resolution of the City of New York as in effect on October 8, 2014, for "open space" by reason of its physical characteristics and its use pursuant to Grantor's Open Space Easement, and shall otherwise meet all applicable codes (such zoning and code requirements shall be referred to herein as "**Code**"), subject to the terms of this Agreement, except that Grantor shall have no responsibility for compliance with respect to matters that are outside Grantor's control, including but not limited to window locations of Grantee's Building, or changes in laws or interpretations of laws by the agency with jurisdiction thereover from and after the date hereof. Grantor's Open Space Easement for space on the Roof of the New Medical Building shall include a limited easement for emergency egress through the emergency egress stairs and corridors in the New Medical Building. Access by Grantee and others pursuant to this Easement shall be from Grantee's Building, except for such emergency egress. Grantor's Open Space Easement shall be used by Grantee only for passive recreation and, in furtherance of such purpose, shall be used in accordance with the rules attached as **Exhibit D** or such other rules as the parties shall mutually agree upon.

(b) Subject to compliance with the terms of this Agreement,

(i) Grantor shall have sole design control over the New Medical Building and its appurtenances, provided such design is not inconsistent with this Agreement.

(ii) Grantor shall have the right to install stairs and elevator bulkheads, ventilation equipment, a cooling tower and other equipment on the Roof of the New Medical Building (the "**Roof Appurtenances**") that, in Grantor's sole judgment,

satisfy its operational requirements, subject only to the locational restrictions set forth in Section 2(b)(v) hereof.

(iii) Grantor may design the Roof of the New Medical Building and the grade level outside the New Medical Building consistent with its needs and in its sole discretion (provided that in no event shall the Grantor's Open Space Easement comprise less than 23,000 square feet of "open space," unless such amount of space is not available if the Grantor's Open Space Easement is provided at grade level), and shall cooperate with Grantee to incorporate changes to such design requested by Grantee in connection with the use of the Roof as "open space" (such as the integration of increased loading, water distribution and drainage infrastructure, infrastructure required to bring utilities and services from the Initial Grantee's Building to the Roof, and other infrastructure) that do not adversely affect Grantor's use and/or operation of the New Medical Building. Grantor shall determine in its sole discretion, but following consultation with Grantee, the appropriate manner in which to incorporate such changes (such as whether or not insulation, waterproofing, structural reinforcement or other modifications are required). Without limiting the foregoing, Grantor shall not be required to incorporate any changes into the design of the Roof if doing so would impede Grantor's ability to satisfy its obligations with respect to timing under the PSA. Grantor agrees that the design of the New Medical Building shall accommodate use of the Roof pursuant to Grantor's Open Space Easement for an occupancy not to exceed 766 persons. Grantor shall construct on the Roof up to three means of legally compliant emergency egress with stairways with dimensions and locations at Grantor's sole discretion, based on its operational needs, subject to compliance with Code ("**Grantor's Egress Stairs**"). In addition, Grantee shall

construct within the Initial Grantee's Building, at its expense, at least one means of legally compliant egress serving the Roof in addition to Grantor's Egress Stairs, and any additional means of legally compliant egress as may be required by Code.

(iv) Grantor shall be responsible for and shall pay for the construction and maintenance of the New Medical Building, including without limitation the structure, the Roof slab and its wearing surface, and emergency egress stairs and passageways that comply with Code and meet the standards for a medical building of the type being constructed, except that Grantee shall reimburse Grantor in installments in advance (50% on commencement of construction, 25% on 50% completion, and 25% on substantial completion) for that portion of Grantor's costs which are in excess of the costs of building a medical facility comparable to that proposed by Grantor but without the roof loading and any other additional expenses arising from Grantee's installations on and use of the Roof on the New Medical Building as "open space," including, without limitation, expenses arising from the incorporation of any changes to the design of the Roof requested by Grantee pursuant to Section 2(b)(iii) hereof (such reimbursement obligation of Grantee, the "**Grantee Roof Payment**"). In the event that three egress stairs are required by Code within the New Medical Building solely based on Grantee's use of Grantor's Open Space Easement (i.e. not if a third egress stair would be required regardless of Grantee's use of Grantor's Open Space Easement), Grantee shall pay for the costs to construct, operate, maintain and repair one of Grantor's Egress Stairs (such reimbursement obligation of Grantee, the "**Grantee Egress Stair Payment**"). (The Grantee Roof Payment, the Grantee Egress Stair Payment, and the Fortis Cantilever Payment (as set forth and defined in Section II.A.2.b of the ZLDA) shall hereinafter

collectively be referred to as “**Grantee’s Construction Payments**”). All costs to be reimbursed by Grantee pursuant to this Section (but, for the avoidance of doubt, not the Fortis Cantilever Payment) shall be determined on an “open book” basis based on bids received from Grantor’s contractors, construction managers, or subcontractors.

(v) Grantee shall be responsible for installing, at its expense, all pavers, fixtures, furnishings, equipment and landscaping above the wearing surface of the Roof, other than the Rooftop Appurtenances; provided, however, that Grantor shall have the option to install any of the foregoing at Grantee’s expense. The foregoing improvements installed by or for Grantee are herein called the "**Open Space Improvements**". In addition to Grantee’s obligation to pay for the costs to construct, operate, maintain and repair one of Grantor’s Egress Stairs under Section 2(b)(iv) hereof, Grantee shall maintain, repair, insure and replace the components of the Roof above the wearing surface other than the Rooftop Appurtenances and, if reasonably agreed to by Grantor, may make alterations to such roof components (except that Grantor shall have the option to perform any of the foregoing at Grantee's expense), and shall provide utilities and services from Grantee's Building, except as required for the Rooftop Appurtenances, and shall reimburse Grantor for repairs and replacements of the other portions of the Roof to the extent required due to Grantee's improvements (including improvements installed for Grantee by Grantor) or use of the Roof. Grantor shall provide Grantee with a plan for Grantor's Open Space Easement showing the location of all Rooftop Appurtenances. Grantee shall provide Grantor with a plan for the Open Space Improvements (the “**Grantee Plan**”) that is in accordance with the Grantor Plan and which shall comply with Code, shall take into account, among other things, the need to

avoid leakage from Grantee's water distribution and drainage infrastructure, and shall be subject to approval by Grantor, which approval shall not be unreasonably withheld, conditioned or delayed. The Grantee Plan shall show 75% of the open space on the Roof as "not occupiable" pursuant to Code, and the parties shall use commercially reasonable efforts to convince DOB to approve the Grantee Plan. If DOB requires changes in the Grantee Plan that allows less than 50% of the open space on the Roof to be "not occupiable" (i.e., with the effect that occupancy would be considered more than 766 persons), this shall not affect Grantor's obligations under this agreement and Grantor shall have no obligation to provide additional outdoor space beyond what Grantor would have to provide if DOB had allowed 50% or more of the open space to be "not occupiable". Grantor will make good faith efforts to identify possibilities for additional "open space," so long as the creation of the additional "open space" does not adversely affect the design, functionality, constructability, construction timing or operations, or any other aspect, of the New Medical Building, in Grantor's discretion, and provided that in no event shall Grantor be required to accommodate an occupancy in excess of 766 persons on the Roof of the New Medical Building and that all incremental costs incurred by Grantor in effecting the modifications or thereafter in connection with the modifications will be paid by Grantee. Grantee's construction shall comply with the requirements of the ZLDA. Alterations to the Roof and installation thereon shall be subject to the same approval, performance and cost allocation rules as are prescribed herein for initial construction thereof.

(vi) The provisions of the ZLDA shall be complied with by the parties. Grantor and Grantee shall cooperate in good faith in the construction process to effect the

provisions of this Agreement. However, Grantor shall not have to delay to any material extent its construction schedule or the timing for obtaining a TCO or PCO for the New Medical Building in order to accommodate Grantee's installations on the Roof. Access of Grantee or its contractors to the Roof during the construction period shall be subject to Grantee not adversely affecting Grantor's constructing (including cost or timing of Grantor's construction), or delaying the issuance of a TCO or PCO for the New Medical Building. Subject to compliance with the preceding three sentences, the parties will work together to coordinate the timing of the preparation, review and approval of Grantee's plans for its installations on the Roof, and the construction of Grantee's installations on the Roof, or installations required to accommodate Grantee's installations. Any contractor engaged by Grantee to perform work on the Roof of the New Medical Building shall, unless otherwise agreed by Grantor, be union labor, and Grantee acknowledges that Grantor may use union labor for any work performed in connection with the New Medical Building.

(vii) Grantee and its contractors shall be obligated to maintain and provide evidence to Grantor that it is maintaining property, liability, workers' compensation and other insurance, naming Grantor and its designees as additional insureds as required by Grantor, both during the construction period and during any period in which Grantee is using the Roof or benefitting from this Agreement that is prescribed by Grantor consistent with the customary requirements of Grantor for tenants and/or contractors performing work at medical properties of Grantor, taking into account the nature of Grantee's use. Grantor shall have the right to refuse access to Grantor or its contractors at any time during which such insurance is not in effect.

(c) Grantee shall accept possession of the installations on the Roof in their “as is” condition (provided the Roof complies with the provisions of this Agreement relating to the Grantor’s Open Space Easement and the design of the Roof) without warranty from Grantor at such time that Grantor has substantially completed the Grantor Building and obtained the first TCO for the whole of the New Medical Building (the “**Commencement Date**”), provided that Grantee may exercise, at its sole expense, any rights it has against other persons, including Grantor’s contractors, under applicable warranties. Grantor shall obtain reasonable and customary warranties for any Open Space Improvements installed by Grantor as requested by Grantee and shall assign any such warranties to Grantee. Unless otherwise agreed by Grantor, Grantee shall not enter upon or begin construction of the Open Space Improvements prior to the Commencement Date.

(d) Except in the event of an emergency, no Roof repair or alteration shall be undertaken by Grantee unless and until Grantor has obtained the prior written consent of Grantee thereto, which consent shall not be unreasonably withheld, delayed or conditioned. If Grantee receives any written request for consent or approval under this subsection, and if such request shall include a complete and fully coordinated set of plans and specifications for such Roof repair or alteration if plans and specifications are required in order to perform such Roof repair in accordance with sound construction practice, then Grantee shall respond to such request within thirty (30) days after Grantee’s receipt thereof (together with such plans and specifications, if applicable). If Grantee fails to respond to such request within such 30-day period, Grantor shall have the right to give to Grantee a second notice. If Grantee fails to respond to such second notice within five (5) business days after Grantee’s receipt thereof, then Grantee shall be deemed to have consented to the proposed Roof repair and to such plans and specifications therefor.

(e) Grantor shall provide Grantee with reasonable prior notice of any access to the Roof of the New Medical Building for maintenance or repair work (except in the event of an emergency) where such access requires a closure of a material portion of the Roof for more than one (1) day.

3. **Compliance with Laws.**

(a) From and after the date that Grantee shall have access to the Grantor's Open Space Easement pursuant to this Agreement (the "**Access Date**"), Grantee shall comply with all applicable laws, orders, rules, ordinances, regulations and requirements of all public authorities to the extent now or hereafter affecting the Grantor's Open Space Easement and the Open Space Improvements, or Grantee's use of the same, or Grantee's construction, maintenance, alteration, modification, replacement or removal of the same, (collectively, "**Applicable Laws**"). As used herein, (i) "**Environmental Law**" means any applicable federal, state or local environmental, health or safety, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards concerning or in connection with hazardous, toxic or dangerous wastes, substances, material, gas or particulate matter as now or at any time hereinafter in effect; (ii) "**Hazardous Materials**" includes, without limitation, any hazardous or toxic material, substance, irritant, chemical, or waste, including without limitation (A) any material defined, classified, designated, listed or otherwise considered under any Environmental Law as a "hazardous waste," "hazardous substance," "hazardous material," "extremely hazardous waste," "acutely hazardous waste," "radioactive waste," "biohazardous waste," "pollutant," "toxic pollutant," "contaminant," "restricted hazardous waste," "infectious waste," "toxic substance," or any other term or expression intended to define, list, regulate or classify substances by reason of properties harmful to health, safety or the indoor or outdoor

environment, (B) any material, substance or waste which is toxic, ignitable, corrosive, reactive, explosive, flammable, infectious, radioactive, carcinogenic or mutagenic, and which is or becomes regulated by any local, state or federal governmental authority, any agency of the State of New York or any agency of the United States Government, (C) any oil, petroleum, petroleum based products, petroleum additives, and/or derived substances of breakdown product, (D) asbestos, (E) petroleum and petroleum based products, (F) urea formaldehyde foam insulation, (G) polychlorinated biphenyls (“PCBs”), (H) freon and other chlorofluorocarbons, (I) any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources, (J) lead-based paint, (K) solvents, and (L) Infectious Waste and medical waste. The term “**Infectious Waste**” means any solid waste capable of producing an infectious disease, including all bulk blood, blood products; cultures of specimens from medical, pathological, pharmaceutical, research, commercial and industrial laboratories; human tissues; organs, body parts, secretions, blood and body fluids removed during surgery and autopsies; the carcasses and body parts of all animals exposed to pathogens in research, used in the vivo testing of pharmaceuticals or that died of known or suspected infectious diseases; needles, syringes and scalpel blades. The term “**Environmental Laws**” shall include all Laws pertaining to health, industrial hygiene, Hazardous Materials or the environment, including, but not limited to each of the following, as enacted as of the date hereof or as hereafter amended: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §6901 et seq.; the Toxic Substance Control Act, 15 U.S.C. §2601 et seq.; the Water Pollution Control Act (also known as the Clean Water Act), 33 U.S.C. §1251 et seq.; the

Clean Air Act, 42 U.S.C. §7401 et seq.; and the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; and

(b) “**Environmental Condition**” means the presence, release, or migration of any Hazardous Materials or the violation of any Environmental Law.

(c) Grantee represents that there will be no asbestos or asbestos containing materials or other Hazardous Materials incorporated by Grantee into the construction of the Open Space Improvements or any modifications or alterations thereto, except as may be expressly consented by Grantor in writing.

(d) Grantee covenants that, from and after the Access Date, Grantee (1) shall comply with, and Grantee’s use of the Grantor’s Open Space Easement or the Open Space Improvements and the Roof shall comply with all Environmental Laws applicable to the Grantor’s Open Space Easement, (2) shall not use, and shall prohibit the use of the portion of the Grantor’s Open Space Easement or the Open Space Improvements for the generation, manufacture, storage, handling, transfer, treatment, recycling, transportation, processing, production, refinement or disposal (each, a “**Regulated Activity**”) or for the storage, handling or disposal of Hazardous Materials (other than as is reasonable and customary in connection with the operation and maintenance of the Grantor’s Open Space Easement or the Open Space Improvements for the Permitted Use and in commercially reasonable quantities, subject to compliance with Applicable Laws), (3) will not install or permit the installation on the Grantor’s Open Space Easement or Open Space Improvements of any storage tanks or surface impoundments in violation of Applicable Laws and shall not permit there to exist any petroleum contamination in violation of applicable Environmental Laws originating on the Grantor’s Open Space Easement, and with respect to any petroleum contamination on the Grantor’s Open Space

Easement or the Open Space Improvements which originates, from and after the Access Date, from a source off the Grantor's Open Space Easement or the Open Space Improvements, Grantee shall notify all responsible third parties and appropriate government agencies (collectively, "**Third Parties**") and shall utilize commercially reasonable efforts to prosecute the cleanup of the Grantor's Open Space Easement or Open Space Improvements to be performed by such Third Parties, including, without limitation, undertaking legal action, if necessary, to enforce the cleanup obligations of such Third Parties and, to the extent not done so by such Third Parties and to the extent technically feasible and commercially practicable, Grantee shall remediate such petroleum contamination, and (4) shall cause any alterations of the Grantor's Open Space Easement or Open Space Improvements to be done in a way which complies with Applicable Laws relating to exposure of persons working on or visiting the Grantor's Open Space Easement or Open Space Improvements to Hazardous Materials and, in connection with any such alterations, shall remove any Hazardous Materials present upon the Grantor's Open Space Easement or Open Space Improvements which are not in compliance with applicable Environmental Laws or which present a danger to persons working on or visiting the Grantor's Open Space Easement.

The provisions of this Section 3 shall survive any expiration or termination of this Agreement.

4. **Indemnification and Limitation of Liability.**

(a) Grantee, its successors and assigns (collectively the "**Grantee Indemnifying Parties**") shall defend, indemnify and hold harmless (i) DLHC, the Health Science Center at Brooklyn Foundation, Staffco of Brooklyn, LLC, their direct or indirect subsidiaries, and its and their respective officers, directors, trustees, shareholders, partners,

members, managers and principals, (ii) the State of New York, and (iii) NYUHC and its officers, directors, trustees, shareholders, partners, members, managers and principals (collectively the “**Grantor Indemnified Parties**”) from any and all loss, damages, claims or actions of every kind and nature, including those enumerated below in this Section and reasonable attorneys’ fees and court costs (collectively, “**Loss**”) directly or indirectly arising out of or in connection with Grantee’s or Grantee’s contractors’ or invitees’ breach of this Agreement or negligent act or omission on the Grantor’s Fee Parcel or Grantor’s Open Space Easement, except to the extent such Loss results from Grantor’s and/or the Grantor Indemnified Parties’ negligence or wrongful conduct. The Indemnifying Parties shall promptly pay all such costs and expenses from time to time with thirty (30) days after demand made by the Indemnified Parties.

(b) In any and all claims against Grantor Indemnified Parties by any employee (or the survivor or personal representative of any employee) of Grantee, any of its contractors, any subcontractor, any supplier, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the construction, installation, operation, replacement, inspection, alteration, reconstruction, repair or maintenance of the Improvements or anyone for whose acts any of them may be liable, the indemnification obligation under this Agreement shall not be limited in any way based on the amount or type of damages, compensation or benefits payable by or for Grantee, its contractors or any such subcontractor, supplier or other person or organization under workers’ compensation acts, disability benefit acts or other employee benefit acts.

(c) Notwithstanding anything to the contrary contained herein, each of Grantor and Grantee hereby waives claims against the other for punitive, special, indirect, consequential and exemplary damages arising out of or relating to this Easement; provided,

however, that nothing in this Section 4 shall be construed to constitute a waiver by either party of indemnification for punitive, special, indirect, consequential and exemplary damages awarded to a third party to the extent such waiver is prohibited by law.

(d) Grantee's and Grantor's obligations under this Section shall survive any termination of this Agreement.

5. **Condition of Access Grantor's Open Space Easement.** This instrument incorporates and describes all of the grants, undertakings, conditions and considerations of the parties. Grantee, in executing and delivering this instrument, represents that it has not relied upon any promises, inducements or representations of the Grantor or its agents or employees, other than specifically provided in this Agreement. Grantee is acquiring the Grantor's Open Space Easement granted herein and delivery of the Roof on an "AS-IS-WHERE-IS AND WITH ALL FAULTS" basis, provided the Grantor's Open Space Easement otherwise complies with this Agreement. Subject to the foregoing, Grantee shall accept the Grantor's Open Space Easement and Roof in an "AS IS" condition WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER BY GRANTOR, INCLUDING BUT NOT LIMITED TO THE EXPRESS WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR CONFORMITY WITH MODELS, including the physical condition of the Grantor's Open Space Easement and the Roof and any defects thereof, and the presence of any Hazardous Materials located in, on or under the Grantor's Open Space Easement, subject to Grantee's rights under Section 2(c) hereof. Except as otherwise provided in this Agreement, Grantee has not relied on any representations or warranties, and neither Grantor nor any of its agents or representatives has or is willing to make any representations or warranties, express or implied, other than as may be expressly set forth herein, as to (i) the future real

estate tax liability, assessment or valuation of the Grantor's Open Space Easement; (ii) the potential qualification of the Grantor's Open Space Easement for any and all benefits conferred by any laws whether for subsidies, special real estate tax treatment, insurance, mortgages or any other benefits, whether similar or dissimilar to those enumerated; (iii) the availability of any financing for the purchase, alteration, rehabilitation or operation of Grantor's Open Space Easement from any source, including, without limitation, any government authority or any lender; (iv) the current or future use of the Grantor's Open Space Easement; (v) the present and future condition and operating state of the Grantor's Open Space Easement and the present or future structural and physical condition and operating state of the Grantor's Open Space Easement; or (vi) the actual or projected operating expenses of the Grantor's Open Space Easement.

6. **Payments.** Costs and expenses payable by either Party pursuant to this Agreement for work performed by the other Party shall consist of all reasonable costs including cost of labor and material in effect at the time the cost is incurred. All payments required under this Agreement shall be made within forty five (45) days of its receipt invoice.

7. **Estoppel Certificates.** Whenever requested by a party (but not more than twice a year) upon at least twenty (20) Business Days prior written notice, the other party, at the requesting party's cost and expense, shall furnish to the requesting party a written statement setting forth: (i) whether, to the knowledge of such other party, this Agreement is in full force and effect; (ii) the extent to which, to the knowledge of such other party, this Agreement has been assigned, modified or amended by any instrument, whether or not of record (and if it has, to the knowledge of such other party, then stating the nature thereof); (iii) whether such other party has served any written notice of default under this Agreement, which default, to the knowledge

of such other party, remains uncured; and (iv) that, to the knowledge of such other party, there exists no state of facts that, with the giving of notice, the passage of time, or both, would constitute a default by the requesting party under this Agreement. Such certificate shall in no event subject the party furnishing it to any liability whatsoever (except for fraud), notwithstanding the negligent or inadvertent failure of such party to disclose correct or relevant information.

8. **Entire Agreement.** This grant contains all the terms and conditions of this Agreement, express or implied between the parties hereto and shall be binding upon and inure to the benefit of, Grantor and Grantee and their respective legal representatives, heirs, successors, assigns, lessees and licensees and comprise covenants which touch and run with the land. Amendments, modifications and waivers to this Agreement shall be made only by written instrument signed by both parties.

9. **Interpretation.** The rule of strict construction does not apply to this grant. This grant shall be given a reasonable construction so that the intention of the parties to confer a commercially usable right of enjoyment on Grantee is carried out.

10. **Utilities and Security.** From and after the Access Date, Grantee shall directly contract with, and pay all charges of, the companies (“**Service Providing Companies**”) providing utilities and security services to the Grantor’s Open Space Easement and Open Space Improvements, including, without limitation, water, gas, heat, light, power, sewer, electricity, telephone or other service metered and security, chargeable or provided to the Grantor’s Open Space Easement and Open Space Improvements. Grantor shall not be liable in damages or otherwise for any failure or interruption of any utility or other service furnished to the Grantor’s Open Space Easement and Open Space Improvements. No such failure or interruption shall

entitle Grantee to terminate this Easement and Grantee hereby waives the provisions of any applicable existing or future law, ordinance or regulation permitting the termination of this Agreement due to an interruption, failure or inability to provide any services.

11. **Americans with Disabilities**. The Grantor's Open Space Easement and Open Space Improvements are subject to the Americans with Disabilities Act ("ADA"), a federal law codified at 42 USC Section 12101 et seq. Among other requirements of the ADA that could apply, Title III of the Act requires owners and tenants of "public accommodations" to remove barriers to access by disabled persons and provide auxiliary aids and services for hearing, vision or speech impaired persons. The regulations under Title III of the ADA are codified at 28 CFR Part 36. Grantee shall be responsible for assuring that access to the Grantor's Open Space Easement and Open Space Improvements from the Grantee's Building and any stairwell within the Grantee's Building shall comply with the ADA and will be responsible, at its sole cost and expense, for maintaining such ADA compliance for the same throughout the term.

12. **Mechanic's Liens**. Grantee shall not cause or permit any mechanic's lien to be filed against Grantor's Fee Parcel or the New Medical Building due to the acts of Grantee or anyone claiming by, through or under Grantee. Grantee shall, at its expense, procure the satisfaction or discharge of record of all such mechanic's liens within thirty (30) days after notice of the filing thereof; or within such thirty (30) day period, Grantee shall procure for Grantor, at Grantee's sole expense, a bond or other protection against any such lien or encumbrance sufficient to remove same of record. In the event Grantee has not so performed within such thirty (30) day period, Grantor may, at its option, pay and discharge such liens and Grantee shall reimburse Grantor, within thirty (30) days after demand, for all costs and expenses incurred in connection therewith. Grantee agrees to indemnify, defend and hold harmless Grantor, the

Grantor's Open Space Easement and any other parcel owned by Grantor from and against all losses, damages, injuries, claims, demands and expenses, of any nature, including reasonable legal expenses, which may arise out of any such mechanic's lien.

13. **Enforcement.**

13.1. If either Grantor or Grantee permits a condition to exist which is in violation or breach of any covenant, condition, restriction or easement herein contained or granted, and such violation or breach, or failure remains uncured for ten (10) business days after written notice from the complaining party (provided, however, that no notice shall be required in the event of an emergency or a violation, breach or failure that would constitute a danger to life, safety or property or a material continuous obstruction, impediment or interference with the passage of either pedestrian or vehicular traffic on Grantor's Fee Parcel or the New Medical Building), then the complaining party shall have the right, but not the obligation, to summarily abate and/or remove such condition (including resort to towing), or to prosecute a proceeding, at law or in equity, against the entity or entities, person or persons who are violating or attempting to violate this Agreement, to enjoin or prevent them from doing so, to cause the violation to be remedied, or to recover damages for said violation. In addition, and without waiving any of the foregoing rights, the complaining party, if so injured by such violation, shall also be entitled to reimbursement from the party in violation for the complaining party's expenses incurred in remedying, abating or removing such condition as aforesaid, including without limitation towing costs and fees and any repairs and replacements of the New Medical Building.

13.2. In the event of any breach or threatened breach of this Agreement by any party hereto, the other party shall have the right to any remedy available at law, in equity or under this Agreement, including but not limited to injunctive relief, specific performance, damages (excluding consequential damages) and the right to cure such breach (after notice and

opportunity to cure) at the expense of the breaching party (and the breaching party shall, to the extent necessary be deemed to have granted a license for access to its parcel for the purpose of effecting such cure). The other party shall have a lien on the property of the breaching party in the amount of all such sums and interest not reimbursed by the breaching party in accordance with this section.

13.3. All such remedies shall be cumulative and not exclusive. Notwithstanding the provisions of Section 13.2 and this Section 13.3, no breach by any party to this Agreement of this Agreement shall result in a termination of this Agreement or the Grantor's Open Space Easement.

13.4. The failure of either Grantor or Grantee to enforce any covenant, condition, restriction or easement herein contained shall in no event be deemed a waiver of the right to do so thereafter or the right to enforce any other covenant, condition, restriction or easement contained herein.

13.5. In the event that the party in violation fails to reimburse the complaining party for amounts due under this Agreement within thirty (30) days after receipt of said invoice and supporting documentation, the unpaid amount shall accrue interest (herein, the "**Default Rate**") equal to the lesser of (i) 4% per annum plus the prime rate (or corporate base rate) from time to time published in the *Wall Street Journal* (or, if the *Wall Street Journal* is no longer published, then another nationally-recognized publication selected by Grantor), (ii) the maximum rate permitted by law, whichever is less, and (iii) with respect to DLHC or any successor or assign thereof that is a governmental agency or instrumentality (including, without limitation, SUNY, the State of New York, or any subsidiary or agency thereof), the rate determined pursuant to Article 11-A of the State Finance Law, and the unpaid amount together with such

interest at the Default Rate shall constitute a lien (the “**Unpaid Reimbursement Lien**”) on the party in violation’s parcel adjacent to the Grantor’s Open Space Easement. As evidence and notice of such Unpaid Reimbursement Lien, the complaining party may prepare a written notice of such lien setting forth the amount of delinquent indebtedness. Said lien (except for Unpaid Reimbursement Liens based on Grantee’s failure to pay Grantee’s Construction Payments under Section 2(b)(iv) hereof) shall be subordinate to any bona fide mortgage held by the lender unaffiliated to either Grantor or Grantee, as the case may be, prior to the filing of such lien. Such notice of Unpaid Reimbursement Lien shall be signed by the complaining party and shall be recorded in the Office of the City Register, Kings County, New York or such other place as may be required by law for the recording of liens affecting real property at the time such notice is recorded. Such Unpaid Reimbursement Lien shall attach to the party in violation’s parcel as of the date payment becomes delinquent and may be enforced after recording said notice by foreclosure of such Unpaid Reimbursement Lien on the party in violation’s parcel and any improvements thereon in like manner as a mortgage on real property, or by suit against the party in violation.

14. **Allocation of Certain Grantor and Grantee Rights and Obligations.**

14.1. Any approval or determination right provided to Grantor under this Agreement shall, during the period preceding the NYUHC Forfeiture Date, be exercisable solely by NYUHC on behalf of Grantor (regardless of whether at such time NYUHC or DLHC is the fee owner of Grantor’s Fee Parcel).

14.2. Any approval or determination right provided to Grantee under this Agreement with respect to the Open Space Easement at grade level or on the Roof shall be

exercisable solely by the Grantee entity constituting the owner of the New Non-Medical Site (the “**New Non-Medical Site Grantee**”).

14.3. With respect to the Grantor Open Space Easement located on the Roof, Grantee’s rights and obligations under this Agreement shall be solely allocated to the New Non-Medical Site Grantee.

14.4. With respect to the Grantor Open Space Easement located at grade level, the Grantee entity constituting the owner of the Final Closing Premises (the “**Final Closing Premises Grantee**”) and the New Non-Medical Site Grantee shall jointly and severally have all of Grantee’s rights and shall be jointly and severally liable for Grantee’s obligations under this Agreement.

14.5. During any period during which the Final Closing Premises Grantee and the New Non-Medical Site Grantee are different entities, the Final Closing Premises Grantee and the New Non-Medical Site Grantee shall designate one such entity (and shall notify Grantor of such designation) for purposes of providing to Grantor any approvals, determinations, notifications or other communications that this Agreement contemplates shall be provided by Grantee, and Grantor shall be permitted to rely on such designated party with respect to the foregoing.

15. Benefited Parties/Owners; Cooperation.

15.1. The easement granted herein shall bind Grantor and all future owners, lessees, sublessees, occupants, licensees and invitees of all or any part of the Grantor's Fee Parcel or the New Medical Building, and shall benefit Grantee and all future owners, lessees, sublessees, occupants, licensees and invitees of all or any portion of the Benefited Parcel or Grantee's Building. If fee title to any portion of Grantor's Fee Parcel or the New Medical

Building or the Benefited Parcel or Grantee's Building (hereinafter, a “**Parcel**” or “**Parcels**” as the context requires) is hereafter transferred to one or more persons or entities, then all of the fee owners thereof (or any portion thereof) (hereinafter individually referred to as an “**Owner**” and collectively as the “**Owners**”), as applicable, shall be entitled to the benefits of and burdened by the easements, rights, privileges, covenants, indemnities, conditions and restrictions granted or contained hereunder, provided that in the event that Grantor's Fee Parcel or the Benefited Parcel becomes subject to the New York Condominium Act (a “**Condominium Formation**”), the rights of Grantor or Grantee shall be exercised solely through the lawful authorized act of the resulting condominium association or condominium board rather than through individual unit owners. The term “**Owners**” as used herein shall be deemed to include any and all successors, grantees, and assigns of such parties and their respective successors, grantees, and assigns.

15.2. Promptly upon Grantor's or Grantee's request and at Grantor's or Grantee's expense, Grantee or Grantor shall sign such application for, or other documentation relating to, any permits or licenses necessary or useful in order for Grantee to exercise its rights hereunder.

16. **Covenants Run with the Land; Successors and Assigns.** The easement granted herein and all other rights, privileges, covenants, conditions, and restrictions contained herein shall be deemed to be covenants running with the land. An Owner who conveys its interest in its Parcel (the “**Transferring Parcel Owner**”) shall be released from all obligations arising or accruing under this Agreement after the date of such conveyance, but shall remain liable under this Agreement for all obligations arising or accruing under this Agreement prior to the date of such conveyance (and, with respect to Grantee, for the payment of Grantee's Construction Payments). The party to whom such Transferring Parcel Owner conveys its interest in its Parcel

(except for SUNY, the State of New York, or any subsidiary or agency thereof) (the “**Transferee**”) shall execute and deliver to the other party(ies) an instrument pursuant to which the Transferee assumes all of the obligations of the Transferring Parcel Owner, but whether or not the Transferee complies with the foregoing, the Transferee shall be automatically liable for and be deemed to have assumed the obligations of the Transferring Parcel Owner accruing hereunder from and after the date of such conveyance. It is understood and agreed that in the event an Owner effectuates a Condominium Formation, such Owner and/or the resulting condominium association or condominium board shall remain liable under this Agreement (notwithstanding the creation of the condominium or the sale or transfer of any condominium units), including, without limitation, with respect to any payment or reimbursement obligations.

17. **Notices.** Unless otherwise provided herein, all notices, requests, demands and other communications required or permitted under this Grant shall be in writing and shall be served on the parties at the following addresses:

If to DLHC: Downstate at LICH Holding Company, Inc.
 c/o State University of New York
 State University Plaza
 Albany, New York 12246
 Attn: Robert Haelen

With a Copy to: Cozen O’Connor
 277 Park Avenue – 20th Floor
 New York, NY 10172
 Attn: Marc S. Intriligator, Esq.

If to NYUHC: NYU Hospitals Center
550 First Avenue, 15th fl.
New York, NY 10016
Attn: Senior Vice President, Real Estate Design & Facilities

With a Copy to: NYU Hospitals Center
550 First Avenue, 15th fl.
New York, NY 10016
Attn: Senior Vice President and General Counsel

If to Grantee: FPG Cobble Hill Acquisitions, LLC
c/o Fortis Property Group, LLC
45 Main Street, Suite 800
Brooklyn, New York 11201
Attn: Joel Kestenbaum

With a copy to: Fortis Property Group, LLC
45 Main Street, Suite 800
Brooklyn, New York 11201
Attn: Joel Kestenbaum

With a copy to: Tannenbaum Helpern Syracuse & Hirschtritt LLP
900 Third Avenue
New York, NY 10022
Attn: Robert E. Helpern, Esq.

With a copy to: Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036
Attn: Paul D. Selver, Esq.

Any such notices shall be either (i) sent by certified mail return receipt requested and postage pre-paid, in the United States Mail, (ii) sent by overnight delivery using a nationally recognized courier, or (iii) sent by personal hand delivery. Notices shall be deemed effective and received by Grantor on the date of actual receipt or refusal by a member of the office of the Grantor representative who is addressed, and shall be deemed effective and received by Grantee on the date of actual receipt or refusal by a member of the office of the Grantee representative who is addressed.

18. **Entire Agreement.** Any negotiations, correspondence, or understandings relative to the subject matter hereof shall be deemed to be merged in this Agreement and shall be of no force or effect. This Agreement may not be amended or modified except in writing executed by both parties hereto.

19. **Interpretation.** Whenever the context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, any gender shall include both other genders, and the term "Grantee" shall include the Grantee herein named and any and all assignees or successors of Grantee and their assignees and successors. The section headings contained in this Grant are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any provisions of this Grant. This Grant shall bind and inure to the benefit of the parties hereto and their respective permitted successors and assigns. Time is of the essence of this Agreement. Any exhibits attached hereto are by this reference incorporated herein and made a part hereof.

20. **Counterparts.** This Grant may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which shall together constitute one and the same instrument.

21. **No Waiver.** Acceptance by either party of any performance less than required hereby shall not be deemed to be a waiver of the rights of such party to enforce all of the terms and conditions hereof. Except as otherwise expressly provided herein, no waiver of any such right hereunder shall be binding unless reduced to writing and signed by the party to be charged therewith.

22. **Invalidity of Provision.** If any provisions of this Grant as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction or other qualified

tribunal to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permitted by applicable law) any other provision of this Grant, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Grant as a whole.

23. **Governing Law, Jurisdiction and Venue.** This Grant shall be governed by, and construed in accordance with, the laws of the State of New York, and the parties hereto (i) agree that any action or proceeding that is brought to enforce or interpret this Grant or that concerns or is in any way related to this Grant shall only be commence in the courts of the State of New York and (ii) consent to venue and personal jurisdiction in the courts specified in the foregoing subpart (i) of this subsection.

24. **Waiver of Trial by Jury.** To the extent permitted by law, each party hereby waives, irrevocably and unconditionally, trial by jury in any action brought on, under or by virtue of or relating in any way to this Grant or any of the documents executed in connection therewith, the property, or any claims, defenses, rights of set-off or other actions pertaining hereto or to any of the foregoing.

25. **Unavoidable Delays; Unavoidable Interruption.** Whenever performance is required by any party hereunder, such party shall use reasonable due diligence to perform, and take all necessary measures in good faith to perform, its obligations; provided, however, that completion of performance shall be subject to postponement and/or suspension (as applicable), as a result of an Unavoidable Delay or an Unavoidable Interruption. For purposes of this Agreement, the terms “**Unavoidable Delay**” or “**Unavoidable Interruption**” means delays or service interruptions incurred by the Grantor, Grantee, or their respective successors or assigns, or their respective affiliates, contractors, permitted successors, or permitted assigns, due to

strikes, lockouts, or other labor disputes, severe weather conditions, earthquakes or other acts of God, inability to obtain labor or materials due to restrictions of governmental authorities, enemy action, civil commotion, fire or other casualty, Environmental Conditions (as defined in the New Medical Site Deed) at the Grantor's Fee Parcel (and the need to remediate them), acts or omissions of FPC Cobble Hill Acquisitions, LLC (and its successors and assigns as owner of the Interim Medical Site (as defined in the New Medical Site Deed), the Garage Premises (as defined in the New Medical Site Deed) and the New Non-Medical Site, and demolition and construction activities thereon) that delay the performance of the obligations of Grantor, Grantee, or their respective successors or assigns, hereunder, condemnation or act of eminent domain, acts of war or terrorism, any action by third parties (including members or representatives of the general public or the community to receive the applicable service(s)), delays in obtaining or maintaining any required license reliant on other governmental approval, any other action by any governmental agency with jurisdiction that adversely affects the ability of Grantor, Grantee or their respective successors or assigns, to satisfy their obligations to meet such deadlines or continuously provide such services, or court orders not resulting from any unlawful action by Grantor, Grantee or their respective successors or assigns, or any of their respective affiliates or contractors. The provisions of this Section shall not operate to excuse any party from the prompt payment of any monies required by this Agreement.

26. **Captions – Singular, Plural, Gender.** The Section headings herein are for convenience only and shall not be construed with any substantive effect in this Agreement. Words used herein shall be deemed to include singular and plural, and any gender as the context requires.

27. **Casualty.** In the event of casualty or condemnation of the New Medical Building, Grantor shall either (at its election) (i) use diligent efforts to rebuild the New Medical Building to the extent permitted by applicable law, in which case the New Medical Building (as so rebuilt) will provide for the Grantor's Open Space Easement on the Roof in a manner that the Roof it is directly accessible from the Grantee's Building, or (ii) not rebuild and provide the Grantor's Open Space Easement at grade level.

28. **Reverter.** By its execution of this Agreement, DLHC hereby acknowledges and agrees (for itself in its capacity of grantor under the New Medical Site Deed (as defined in the PSA) and on behalf of any Future Estate Holder (as defined in the New Medical Site Deed) that (i) its rights of reacquisition under the New Medical Site Deed are subject and subordinate to this Agreement, and (ii) if DLHC or any such Future Estate Holder acquires title to the Grantor's Fee Parcel pursuant to the right of reacquisition reserved in the New Medical Site Deed, DLCH or such Future Estate Holder shall take title to such fee interest in the Grantor's Fee Parcel with all of the rights and benefits of, and subject to all the burdens upon, Grantor under this Agreement.

29. **No DLCH Construction Obligation.** The parties hereto acknowledge and agree that DLHC has no present intention to construct, or cause the construction of (other than by NYUHC pursuant to the PSA), any building or other structure on the New Medical Premises, and nothing set forth in this Agreement shall be deemed or construed so as to require DLHC to construct, or cause the construction of, such a building, regardless of whether or not NYUHC complies with its obligations to construct such a building pursuant to the PSA, whether in the absence of a conveyance to NYUHC or after a reacquisition of the Grantor's Fee Parcel as the holder of a future estate therein. Further, DLHC and its successors (other than NYUHC) will

have the right to use the New Medical Site for any use permitted as a community facility, not limited to medical use.

30. **Standard State University of New York Provisions; Priority of Application.**

The provisions set forth in **Exhibit D** attached hereto (referred to therein as Exhibit A: Standard Contract Clauses and Exhibit A-1: Affirmative Action Clauses) are expressly incorporated by reference into this Agreement as if set forth at length herein. In the event of any conflict between the terms and conditions set forth in this Agreement and/or any of the Exhibits hereto, and the provisions set forth in **Exhibit D**, the provisions set forth in **Exhibit D** shall prevail.

31. **Approvals.** The Parties hereby acknowledge and agree that this Agreement is subject to the approval of the Attorney General of the State of New York and the Office of the State Comptroller of the State of New York.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE(S)]

EXECUTED the day and year first above written.

GRANTOR

NYU HOSPITALS CENTER, a New York
not-for-profit corporation

By: _____

Name: _____

Title: _____

DOWNSTA'
COMPANY,

ATTEST: _____

By: _____

Name: _____

Title: _____

GRANTEE

FPG COBBLE HILL ACQUISITIONS,
LLC, a Delaware limited liability
company

By: _____

Name: _____

Title: _____

ATTEST: _____

By: _____

Name: _____

Title: _____

Approval as to Form
Eric T. Scheiderman
Attorney General

By: _____
Name: _____
Date: _____

Approved:
Thomas P. DiNapoli
State Comptroller

By: _____
Name: _____
Date: _____

ACKNOWLEDGMENT

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO
HEREBY CERTIFY that _____ and _____
personally known to be the _____ and _____ of NYU HOSPITALS
CENTER, and personally known to me to be the same persons whose names are subscribed to
the foregoing instrument, appeared before me this day in person and acknowledged that they
signed and delivered the said instrument, as their own free and voluntary act and as the free and
voluntary act of said corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of _____.

Notary Public

My commission expires:_____

ACKNOWLEDGMENT

STATE OF NEW YORK)
) SS
COUNTY OF NEW YORK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO
HEREBY CERTIFY that _____, personally known to be the _____
of FPG Cobble Hill Acquisitions, LLC, a Delaware limited liability company, and personally
known to me to be the same person whose name is subscribed to the foregoing instrument,
appeared before me this day in person and acknowledged that he signed and delivered the said
instrument, as his own free and voluntary act and as the free and voluntary act of said
corporation, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this _____ day of _____.

Notary Public

My commission expires: _____

LIST OF EXHIBITS

- Exhibit A - Grantor's Fee Parcel
- Exhibit B - New Non-Medical Site
- Exhibit C - Final Closing Premises
- Exhibit D - Rules

EXHIBIT A
GRANTOR'S FEE PARCEL

EXHIBIT B
NEW NON-MEDICAL SITE

EXHIBIT C
FINAL CLOSING PREMISES

EXHIBIT D**RULES FOR ROOFTOP OPEN SPACE**

1. The open space shall be used only by residents of buildings on the zoning lot and their accompanying guests.
2. There shall be no cooking or barbequing or other activities that create fire or odors.
3. There shall be no amplified speaking or music.
4. Smoking shall not be allowed.
5. Pets shall not be allowed.
6. There shall be no activities constituting a nuisance, and all activities shall be in accordance with law.
7. The open space shall be used for passive recreation only; events, meetings, ceremonies, assemblies, parties or other gatherings shall not be permitted unless non-commercial in nature and limited to thirty (30) people in size and unless the same otherwise comply with clauses (1) through (6) and (8) of this Exhibit D.
8. There shall be established hours of operation, which hours shall be the minimum allowed by the Department of Buildings.

DECLARATION OF COVENANTS AND RESTRICTIONS

DOWNSTATE AT LICH HOLDING COMPANY, INC.,
a New York not-for-profit corporation

And

FPG COBBLE HILL ACQUISITIONS, LLC,
a Delaware limited liability company

DECLARANTS

And

NYU HOSPITALS CENTER,
a New York not-for-profit corporation

Fortis Land:

County:	Kings	City & State:	New York
Block:	Lots:	Block:	Lots:
259	8	291	1, 8
282	50	295	3, 7, 8, 9, 11, 13, 14, 21, 38
285	1001	1058	28, 30
284	_____		

Premises: 74, 76, 78, 82, 86 94 & 115 Amity Street
70-76 & 124-134 Atlantic Avenue
43 Columbia Street
113 Congress Street
336 Flatbush Avenue
348-352 & 349 Henry Street
350-352, 379-383 & 385-389 Hicks Street
112 Pacific Street
184 Sterling Street
Brooklyn, New York 11201
_____, 201__

DLHC Land:

County:	Kings	City & State:	New York
Block:	Lots:		

290 13

Street Addresses:

**363 Hicks Street
340 Henry Street
[97 Amity Street]
Brooklyn, New York 11201**

_____, 201__

NYUHC Land:

County: Kings City & State: New York

Block: Lots:
284 []

RECORD AND RETURN BY MAIL TO:

Dentons US LLP
1221 Avenue of the Americas
New York, New York 10020
Attention: Andrew J. Weiner, Esq.

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION (this "**Declaration**") is made as of the ___ day of _____, 201__ (the "**Declaration Date**"), by NYU HOSPITALS CENTER, a New York not-for-profit corporation having an office at 550 Fifth Avenue, New York, NY 10016 ("NYUHC"); DOWNSTATE AT LICH HOLDING COMPANY, INC., a New York not-for-profit corporation with an office c/o the State University of New York Health Science Center at Brooklyn, 450 Clarkson Avenue, Brooklyn, New York 11203 ("DLHC"); and FPG COBBLE HILL ACQUISITIONS, LLC, a Delaware limited liability company, having an office c/o Fortis Property Group, LLC, 45 Main Street, Suite 800, Brooklyn, New York 11201 ("Fortis") [**Note: To be changed if any of the parties change under the PSA.**]; DLHC and Fortis are each herein sometimes individually called a "**Declarant**" and collectively the "**Declarants**".

Statement of Facts

WHEREAS, DLHC is the current owner of certain land, with the buildings and improvements thereon, in the City of New York, County of Kings, generally known by street addresses as _____, New York, New York, designated as Lot _ in Block 284 on the Tax Map of the City and State of New York, County of Kings (the "**Tax Map**") and more particularly described on Exhibit A annexed hereto and made a part hereof (said land being herein collectively called the "**NYUHC Land**," and the NYUHC Land and said buildings and improvements, together with any future replacements thereof, being herein collectively called the "**NYUHC Premises**");

WHEREAS, Fortis is the owner of certain land, with the buildings and improvements thereon, in the City of New York, County of Kings, generally known by the street addresses as _____, designated as Lots _ in Blocks ___ on the Tax Map [**Note: To be conformed to the properties conveyed at the Initial Closing.**], as more particularly described on Exhibit B annexed hereto and made a part hereof (such land being herein called the "**Fortis Land**," said buildings and improvements, together with any future replacements thereof, being herein called the "**Fortis Building**," and the Fortis Land and the Fortis Building being herein collectively called the "**Fortis Premises**");

WHEREAS, DLHC is the owner of certain land, with buildings and improvements thereon, in the City of New York, County of Kings, generally known by the street addresses as 363 Hicks Street and 340 Henry Street, designated as Lot 13 in Block 290 on the Tax Map, as more particularly described in Exhibit C annexed hereto and made a part hereof (such land being herein called the "**DLHC Land**", each of said buildings and improvements, together with any future replacements thereof, being herein called a "**DLHC Building**", and the DLHC Land and the DLHC Building being herein collectively called the "**DLHC Premises**");

WHEREAS, NYUHC is the lessee of a portion of the DLHC Premises described as the Interim Medical Premises pursuant to that certain Interim Sublease, dated as of October 3, 2014, between Fortis and NYUHC;

WHEREAS, pursuant to that certain First Amended and Restated Purchase and Sale Agreement among DLHC, Fortis, Fortis Property Group LLC and NYUHC, effective as of June 30, 2014 (the "PSA"), (i) DLHC conveyed the Fortis Premises to Fortis immediately prior to this Agreement, (ii) DLHC agreed to convey the DLHC Premises to Fortis at a Final Closing (as defined in the PSA) pursuant to the terms and conditions of the PSA, and (iii) DLHC agreed to convey the NYUHC Premises to NYUHC at an NMS Closing (as defined in the PSA) pursuant to the terms and conditions of the PSA;

WHEREAS, pursuant to the PSA, Declarants now desire to set forth certain covenants and restrictions with regard to the DLHC Premises and the Fortis Premises, and otherwise, for the benefit of the NYUHC Premises, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, and intending to be legally bound, each of the Declarants, for itself, as well as its successors and assigns (subject to the last sentence of Section 1 hereof), and intending to bind the FPG Premises and the DLHC Premises, declares as follows:

1. Each Declarant, for itself and its successors and assigns, hereby declares, covenants and agrees, to, with and for the benefit of NYUHC and its successors and assigns, that, subject to the provisions of this Paragraph and Paragraph 9 below, from and after the date hereof, so long as the building to be constructed on the NYUHC Premises (excluding its roof) is being primarily used (and, prior to construction of such building, so long as such building is required under the PSA to be primarily used) for the operation and/or delivery of health services (which can include, incidentally thereto, general offices, the operation of a pharmacy servicing the clinical programs and other uses typically found in conjunction with the operation and delivery of health services), and each Declarant and its successors and assigns shall not use, lease, license, grant occupancy rights to, or allow others to use, sublease, sublicense, grant occupancy rights, in all or any portion of the DLHC Premises or FPG Premises, as the case may be, for the provision of health services, including physician's offices or medical clinics, hospital services (including emergency services), surgical (including ambulatory or office-based surgical) services or procedures, primary, secondary or preventive care (including pediatrics, ambulatory medical practices (including such specialties as cardiology, gastroenterology, pulmonology, rheumatology, neurology, urology, orthopedics and/or rehabilitation medicine), internal medicine, obstetrics/gynecology, physical therapy, dialysis services, psychiatric, dental, medical oncology and infusion services, radiation therapy, imaging services and other cancer care medical services, but excluding (i) operation of a pharmacy, (ii) ancillary medical services performed at a senior or assisted living facility for its occupants and not for the general public, (iii) ancillary medical services performed at a health club, exercise facility or similar facility for its members or users, (iv) home health care provided to patients at their residences, (v) retail sales of vitamins and health foods, (vi) diet programs, (vii) massage, (viii) retail sales of

eyewear and optometry services related thereto, (ix) the sale of medical devices, (x) acupuncture, (xi) chiropractic services, (xii) social services and consulting services, (xiii) administrative offices of pharmaceutical, insurance, and other businesses in or related to the healthcare business as long as health services are not dispensed to the public from such administrative offices, and (xiv) the operations of NYUHC or its affiliates pursuant to the Interim Lease and Interim Sublease (as defined in the PSA). Notwithstanding anything in this Declaration to the contrary, this Declaration shall not become effective unless and until NYUHC, New York University or any subsidiary or affiliate of NYUHC or New York University, acquires title to the NYUHC Land, and shall remain effective only so long thereafter as NYUHC, New York University or any subsidiary or affiliate of NYUHC or New York University remains owner of the NYUHC Land, or a lessee of all or substantially all of the building located on the NYUHC Land (excluding the roof and any grade-level open space). Moreover, notwithstanding anything in this Declaration to the contrary, this Declaration shall not bind the owner of the DLHC Premises so long as such owner is DLHC, the State University of New York ("SUNY"), or any subsidiary or affiliate of DLHC and SUNY, or the State of New York or any agency thereof; provided, however, that this Declaration shall bind any person or entity that leases all or substantially all of any building constituting part of the DLHC Premises from DLHC, SUNY, or any subsidiary or affiliate thereof. If this Declaration shall cease to be in effect, the then owner of the NYUHC land shall, at the requesting Declarant's expense, execute and deliver an instrument, in recordable form, to the effect that this Declaration has ceased to be in effect for that reason.

2. In the event of a breach or threatened breach by any Declarant, and/or by any of its successors or assigns, of any of the terms, covenants and/or conditions set forth in this Declaration (including, without limitation, in Paragraph 1 above), NYUHC, and its successors or assigns, shall have the right to give a written notice of default to such Declarant or its successors or assigns in the manner set forth in Paragraph 6 below. From and after the effective date of such notice, such Declarant or such successor or assign shall be allowed thirty (30) days to discontinue, or cause the discontinuation of, the improper use.

3. In the event of a breach or threatened breach by any Declarant, and/or by any of its successors or assigns, of any of the terms, covenants and/or conditions set forth in this Declaration (including, without limitation, in Paragraph 1 above), which shall not be cured and remedied with the applicable period provided in Paragraph 2 above after the giving of the notice of default provided for therein, the sole remedy of NYUHC, and its successors and assigns, shall be the right of injunction. Notwithstanding anything to the contrary set forth in this Declaration, in no event shall any holder of title to the FPG Premises or the DLHC Premises be subject to any damages, including consequential or special damages, or subject to any right of rescission or reacquisition.

4. No delay or omission to exercise any right or remedy accruing upon any default shall be construed to be a waiver thereof, but any such right or remedy may be exercised from time to time and as often as may be deemed expedient.

5. Notwithstanding the foregoing or anything to the contrary provided in this Declaration, although NYUHC and/or its successors or assigns (as the case may be) shall have the right to enforce the terms, covenants and conditions set forth in this Declaration (including, without limitation, in Paragraph 2 above), NYUHC shall have no obligation to do so.

6. Any notice, demand, or other communication required or permitted to be given, rendered, or made by either NYUHC or its successor or assign to the Declarant or its successor or assign, or by the Declarant or its successor or assign to NYUHC or its successor or assign, shall be in writing (whether or not so stated elsewhere in this Declaration), and shall be deemed to have been properly given, rendered, or made if sent by nationally recognized overnight courier service providing for receipted delivery, addressed as set forth below:

(a) with respect to notices to the Declarant or its successor or assign,
to:

[FPG COBBLE HILL ACQUISITIONS, LLC]

[]

[]

[]

- with a copy to -

[DLA Piper]

[]

[]

[]

(b) with respect to notices to NYUHC or its successor or assign, to:

NYU Hospitals Center
550 First Avenue
New York, NY 10016
Attention: Vicki Match Suna, Senior Vice President-Real Estate

- with copies to -

NYU Hospitals Center
550 First Avenue
New York, NY 10016
Attention: Annette Johnson, Esq., Senior Vice President, General Counsel

NYU Hospitals Center
1 Park Avenue
New York, NY 10016
Attention: Director of Real Estate

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: Andrew J. Weiner, Esq.

(c) [Add SUNY Addresses]

Any notice, statement, demand, or other communication so sent shall be deemed to have been given, rendered, or made on the date of receipt or refusal thereof, as set forth in the business records of such overnight courier service. Either party may, by notice as aforesaid, designate a different address, and/or up to two (2) additional addresses, for notices, statements, demands, or other communications intended for it. Any notice, statement, demand, or other communication required or permitted to be given, rendered, or made by either party to the other hereunder may be given by the attorney for such party, with the same force and effect as if given, rendered, or made by the party itself.

7. From time to time, upon not less than thirty (30) days' written notice to a Declarant, or its successor or assign (which request may not be made more than three (3) times in any calendar year), such Declarant or such successor or assign shall, upon request, execute and deliver to NYUHC or its successor or assign, and to any party to whom NYUHC or such successor or assign requests, an estoppel certificate, certifying:

(a) that this Declaration is unmodified and in full force and effect (or, if there has been modifications, that the same is in full force and effect as so modified, and stating with reasonable specificity the modifications);

(b) whether any notice of default has been received by such Declarant, or such successor or assign, pursuant to Paragraph 2 above, as to which the default or defaults set forth therein has or have not been fully remedied or cured;

(c) whether, to such Declarant's actual knowledge, any breach or default of any of the provisions of this Declaration has occurred and, if applicable, remains uncured; and

(d) as to such other matters as NYUHC or such other requesting party may reasonably request,

which certifications made pursuant to subparagraphs (c) and (d) above may, in the sole discretion of the Declarant or such successor or assign, be upon its knowledge in whole or in part.

8. From time to time, upon not less than thirty (30) days' written notice to NYUHC, or its successor or assign (which request may not be made more than three (3) times in any calendar year), NYUHC or such successor or assign shall, upon request, execute and deliver to any Declarant or its successor or assign, and to any party to whom such Declarant or such successor or assign requests, an estoppel certificate, certifying:

(a) that this Declaration is unmodified and in full force and effect (or, if there has been modifications, that the same is in full force and effect as so modified, and stating with reasonable specificity the modifications);

(b) whether any notice of default has been sent by NYUHC, or such successor or assign, pursuant to Paragraph 2 above, as to which the default or defaults set forth therein has or have not been fully remedied or cured;

(c) whether, to NYUHC's actual knowledge, any breach or default of any of the provisions of this Declaration has occurred and, if applicable, remains uncured; and

(d) as to such other matters as such Declarant or such other requesting party may reasonably request,

which certifications made pursuant to subparagraphs (c) and (d) above may, in the sole discretion of NYUHC or such successor or assign, be upon its knowledge in whole or in part.

9. The foregoing terms, covenants and conditions shall run with the FPG Land and the DLHC Land, respectively, shall be binding upon the Declarants and their respective successors and assigns and shall benefit NYUHC and its successors and assigns. Any transferee of the FPG Premises or the DLHC Premises shall be deemed automatically, by acceptance of title to, or an estate in, the FPG Premises or the DLHC Premises, respectively to have assumed, and become bound in all respects by, all of the terms, covenants and conditions contained in this Declaration, with such force and effect as if such transferee had been a signatory of this Declaration. However, any transferor of the FPG Premises or the DLHC Premises shall, upon the completion of such transfer, automatically be relieved of all further liability under this Declaration, except for any liability with respect to matters that may have arisen during its period of ownership of the FPG Premises or the DLHC Premises that remain unsatisfied.

10. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the FPG Premises or the DLHC Premises to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto and their successors and assigns that nothing in this Declaration, expressed or implied, shall confer upon any person, other than NYUHC and its successors and assigns, any rights or remedies under or by reason of this Declaration.

11. If any provision of this Declaration, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent, be held to be invalid, inoperative, or unenforceable, the remainder of this Declaration, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby. It shall not be deemed that any such invalid provision affects the consideration for this Declaration, and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by Law.

12. This Declaration shall be construed in accordance with the Laws of the State of New York.

13. This Declaration may be amended, modified, or terminated only by an instrument in writing, executed and acknowledged by both the Declarants and NYUHC, or their respective successors or assigns.

IN WITNESS WHEREOF, the Declarants have duly executed this Declaration as of the day and year first above written.

FPG COBBLE HILL ACQUISITIONS, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

**DOWNSTATE AT LICH HOLDING
COMPANY, INC.**

By: _____
Name:
Title:

NYU HOSPITALS CENTER hereby joins in the execution and delivery of this Declaration for the limited purposes of agreeing to the provisions of Paragraphs 6, 8 and 13 hereof.

NYU HOSPITALS CENTER, a New York not-for-profit corporation

By: _____
Name:
Title:

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

On the ___ day of _____, in the year 201__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and (s)he acknowledged to me that (s)he executed the same in (his)(her) capacity described thereon, and that by (his)(her) signature upon the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

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

On the ___ day of _____, in the year 201__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and (s)he acknowledged to me that (s)he executed the same in (his)(her) capacity described thereon, and that by (his)(her) signature upon the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

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

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Notary Public

Schedule "A"
to
Declaration of Covenants and Restrictions

Legal Description of the NYUHC Land

(attached)

Schedule "B"
to
Declaration of Covenants and Restrictions

Legal Description of the Fortis Land

(attached)

Schedule "C"
to
Declaration of Covenants and Restrictions

Legal Description of the DLHC Land

(attached)

DECLARATION OF COVENANTS AND RESTRICTIONS

DOWNSTATE AT LICH HOLDING COMPANY, INC.,
a New York not-for-profit corporation

And

FPG COBBLE HILL ACQUISITIONS, LLC,
a Delaware limited liability company

DECLARANTS

And

NYU HOSPITALS CENTER,
a New York not-for-profit corporation

Fortis Land:

County:	Kings	City & State:	New York
Block:	Lots:	Block:	Lots:
259	8	291	1, 8
282	50	295	3, 7, 8, 9, 11, 13, 14, 21, 38
285	1001	1058	28, 30
284	_____		

Premises: 74, 76, 78, 82, 86 94 & 115 Amity Street
70-76 & 124-134 Atlantic Avenue
43 Columbia Street
113 Congress Street
336 Flatbush Avenue
348-352 & 349 Henry Street
350-352, 379-383 & 385-389 Hicks Street
112 Pacific Street
184 Sterling Street
Brooklyn, New York 11201
_____, 201__

DLHC Land:

County:	Kings	City & State:	New York
Block:	Lots:		

290 13

Street Addresses:

**363 Hicks Street
340 Henry Street
[97 Amity Street]
Brooklyn, New York 11201**

_____, 201__

NYUHC Land:

County: Kings City & State: New York

**Block: Lots:
284**

RECORD AND RETURN BY MAIL TO:

Dentons US LLP
1221 Avenue of the Americas
New York, New York 10020
Attention: Andrew J. Weiner, Esq.

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION (this "**Declaration**") is made as of the ___ day of _____, 201__ (the "**Declaration Date**"), by NYU HOSPITALS CENTER, a New York not-for-profit corporation having an office at 550 Fifth Avenue, New York, NY 10016 ("NYUHC"); DOWNSTATE AT LICH HOLDING COMPANY, INC., a New York not-for-profit corporation with an office c/o the State University of New York Health Science Center at Brooklyn, 450 Clarkson Avenue, Brooklyn, New York 11203 ("DLHC"); and FPG COBBLE HILL ACQUISITIONS, LLC, a Delaware limited liability company, having an office c/o Fortis Property Group, LLC, 45 Main Street, Suite 800, Brooklyn, New York 11201 ("Fortis") [**Note: To be changed if any of the parties change under the PSA.**]; DLHC and Fortis are each herein sometimes individually called a "**Declarant**" and collectively the "**Declarants**".

Statement of Facts

WHEREAS, DLHC is the current owner of certain land, with the buildings and improvements thereon, in the City of New York, County of Kings, generally known by street addresses as _____, New York, New York, designated as Lot _ in Block 284 on the Tax Map of the City and State of New York, County of Kings (the "**Tax Map**") and more particularly described on Exhibit A annexed hereto and made a part hereof (said land being herein collectively called the "**NYUHC Land**," and the NYUHC Land and said buildings and improvements, together with any future replacements thereof, being herein collectively called the "**NYUHC Premises**");

WHEREAS, Fortis is the owner of certain land, with the buildings and improvements thereon, in the City of New York, County of Kings, generally known by the street addresses as _____, designated as Lots _ in Blocks ___ on the Tax Map [**Note: To be conformed to the properties conveyed at the Initial Closing.**], as more particularly described on **Exhibit B** annexed hereto and made a part hereof (such land being herein called the "**Fortis Land**," said buildings and improvements, together with any future replacements thereof, being herein called the "**Fortis Building**," and the Fortis Land and the Fortis Building being herein collectively called the "**Fortis Premises**");

WHEREAS, DLHC is the owner of certain land, with buildings and improvements thereon, in the City of New York, County of Kings, generally known by the street addresses as 363 Hicks Street and 340 Henry Street, designated as Lot 13 in Block 290 on the Tax Map, as more particularly described in Exhibit C annexed hereto and made a part hereof (such land being herein called the "**DLHC Land**", each of said buildings and improvements, together with any future replacements thereof, being herein called a "**DLHC Building**", and the DLHC Land and the DLHC Building being herein collectively called the "**DLHC Premises**");

WHEREAS, NYUHC is the lessee of a portion of the DLHC Premises described as the Interim Medical Premises pursuant to that certain Interim Sublease, dated as of October 3, 2014, between Fortis and NYUHC;

WHEREAS, pursuant to that certain First Amended and Restated Purchase and Sale Agreement among DLHC, Fortis, Fortis Property Group LLC and NYUHC, effective as of June 30, 2014 (the "PSA"), (i) DLHC conveyed the Fortis Premises to Fortis immediately prior to this Agreement, (ii) DLHC agreed to convey the DLHC Premises to Fortis at a Final Closing (as defined in the PSA) pursuant to the terms and conditions of the PSA, and (iii) DLHC agreed to convey the NYUHC Premises to NYUHC at an NMS Closing (as defined in the PSA) pursuant to the terms and conditions of the PSA;

WHEREAS, pursuant to the PSA, Declarants now desire to set forth certain covenants and restrictions with regard to the DLHC Premises and the Fortis Premises, and otherwise, for the benefit of the NYUHC Premises, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, and intending to be legally bound, each of the Declarants, for itself, as well as its successors and assigns (subject to the last sentence of Section 1 hereof), and intending to bind the FPG Premises and the DLHC Premises, declares as follows:

1. Each Declarant, for itself and its successors and assigns, hereby declares, covenants and agrees, to, with and for the benefit of NYUHC and its successors and assigns, that, subject to the provisions of this Paragraph and Paragraph 9 below, from and after the date hereof, so long as the building to be constructed on the NYUHC Premises (excluding its roof) is being primarily used (and, prior to construction of such building, so long as such building is required under the PSA to be primarily used) for the operation and/or delivery of health services (which can include, incidentally thereto, general offices, the operation of a pharmacy servicing the clinical programs and other uses typically found in conjunction with the operation and delivery of health services), and each Declarant and its successors and assigns shall not use, lease, license, grant occupancy rights to, or allow others to use, sublease, sublicense, grant occupancy rights, in all or any portion of the DLHC Premises or FPG Premises, as the case may be, for the provision of health services, including physician's offices or medical clinics, hospital services (including emergency services), surgical (including ambulatory or office-based surgical) services or procedures, primary, secondary or preventive care (including pediatrics, ambulatory medical practices (including such specialties as cardiology, gastroenterology, pulmonology, rheumatology, neurology, urology, orthopedics and/or rehabilitation medicine), internal medicine, obstetrics/gynecology, physical therapy, dialysis services, psychiatric, dental, medical oncology and infusion services, radiation therapy, imaging services and other cancer care medical services, but excluding (i) operation of a pharmacy, (ii) ancillary medical services performed at a senior or assisted living facility for its occupants and not for the general public, (iii) ancillary medical services performed at a health club, exercise facility or similar facility for its members or users, (iv) home health care provided to patients at their residences, (v) retail sales of vitamins and health foods, (vi) diet programs, (vii) massage, (viii) retail sales of

eyewear and optometry services related thereto, (ix) the sale of medical devices, (x) acupuncture, (xi) chiropractic services, (xii) social services and consulting services, (xiii) administrative offices of pharmaceutical, insurance, and other businesses in or related to the healthcare business as long as health services are not dispensed to the public from such administrative offices, and (xiv) the operations of NYUHC or its affiliates pursuant to the Interim Lease and Interim Sublease (as defined in the PSA). Notwithstanding anything in this Declaration to the contrary, this Declaration shall not become effective unless and until NYUHC, New York University or any subsidiary or affiliate of NYUHC or New York University, acquires title to the NYUHC Land, and shall remain effective only so long thereafter as NYUHC, New York University or any subsidiary or affiliate of NYUHC or New York University remains owner of the NYUHC Land, or a lessee of all or substantially all of the building located on the NYUHC Land (excluding the roof and any grade-level open space). Moreover, notwithstanding anything in this Declaration to the contrary, this Declaration shall not bind the owner of the DLHC Premises so long as such owner is DLHC, the State University of New York ("SUNY"), or any subsidiary or affiliate of DLHC and SUNY, or the State of New York or any agency thereof; provided, however, that this Declaration shall bind any person or entity that leases all or substantially all of any building constituting part of the DLHC Premises from DLHC, SUNY, or any subsidiary or affiliate thereof. If this Declaration shall cease to be in effect, the then owner of the NYUHC land shall, at the requesting Declarant's expense, execute and deliver an instrument, in recordable form, to the effect that this Declaration has ceased to be in effect for that reason.

2. In the event of a breach or threatened breach by any Declarant, and/or by any of its successors or assigns, of any of the terms, covenants and/or conditions set forth in this Declaration (including, without limitation, in Paragraph 1 above), NYUHC, and its successors or assigns, shall have the right to give a written notice of default to such Declarant or its successors or assigns in the manner set forth in Paragraph 6 below. From and after the effective date of such notice, such Declarant or such successor or assign shall be allowed thirty (30) days to discontinue, or cause the discontinuation of, the improper use.

3. In the event of a breach or threatened breach by any Declarant, and/or by any of its successors or assigns, of any of the terms, covenants and/or conditions set forth in this Declaration (including, without limitation, in Paragraph 1 above), which shall not be cured and remedied with the applicable period provided in Paragraph 2 above after the giving of the notice of default provided for therein, the sole remedy of NYUHC, and its successors and assigns, shall be the right of injunction. Notwithstanding anything to the contrary set forth in this Declaration, in no event shall any holder of title to the FPG Premises or the DLHC Premises be subject to any damages, including consequential or special damages, or subject to any right of rescission or reacquisition.

4. No delay or omission to exercise any right or remedy accruing upon any default shall be construed to be a waiver thereof, but any such right or remedy may be exercised from time to time and as often as may be deemed expedient.

5. Notwithstanding the foregoing or anything to the contrary provided in this Declaration, although NYUHC and/or its successors or assigns (as the case may be) shall have the right to enforce the terms, covenants and conditions set forth in this Declaration (including, without limitation, in Paragraph 2 above), NYUHC shall have no obligation to do so.

6. Any notice, demand, or other communication required or permitted to be given, rendered, or made by either NYUHC or its successor or assign to the Declarant or its successor or assign, or by the Declarant or its successor or assign to NYUHC or its successor or assign, shall be in writing (whether or not so stated elsewhere in this Declaration), and shall be deemed to have been properly given, rendered, or made if sent by nationally recognized overnight courier service providing for receipted delivery, addressed as set forth below:

(a) with respect to notices to the Declarant or its successor or assign,
to:

[FPG COBBLE HILL ACQUISITIONS, LLC]

[]

[]

[]

- with a copy to -

[DLA Piper]

[]

[]

[]

(b) with respect to notices to NYUHC or its successor or assign, to:

NYU Hospitals Center
550 First Avenue
New York, NY 10016
Attention: Vicki Match Suna, Senior Vice President-Real Estate

- with copies to -

NYU Hospitals Center
550 First Avenue
New York, NY 10016
Attention: Annette Johnson, Esq., Senior Vice President, General Counsel

NYU Hospitals Center
1 Park Avenue
New York, NY 10016
Attention: Director of Real Estate

Dentons US LLP
1221 Avenue of the Americas
New York, NY 10020
Attention: Andrew J. Weiner, Esq.

(c) [Add SUNY Addresses]

Any notice, statement, demand, or other communication so sent shall be deemed to have been given, rendered, or made on the date of receipt or refusal thereof, as set forth in the business records of such overnight courier service. Either party may, by notice as aforesaid, designate a different address, and/or up to two (2) additional addresses, for notices, statements, demands, or other communications intended for it. Any notice, statement, demand, or other communication required or permitted to be given, rendered, or made by either party to the other hereunder may be given by the attorney for such party, with the same force and effect as if given, rendered, or made by the party itself.

7. From time to time, upon not less than thirty (30) days' written notice to a Declarant, or its successor or assign (which request may not be made more than three (3) times in any calendar year), such Declarant or such successor or assign shall, upon request, execute and deliver to NYUHC or its successor or assign, and to any party to whom NYUHC or such successor or assign requests, an estoppel certificate, certifying:

(a) that this Declaration is unmodified and in full force and effect (or, if there has been modifications, that the same is in full force and effect as so modified, and stating with reasonable specificity the modifications);

(b) whether any notice of default has been received by such Declarant, or such successor or assign, pursuant to Paragraph 2 above, as to which the default or defaults set forth therein has or have not been fully remedied or cured;

(c) whether, to such Declarant's actual knowledge, any breach or default of any of the provisions of this Declaration has occurred and, if applicable, remains uncured; and

(d) as to such other matters as NYUHC or such other requesting party may reasonably request,

which certifications made pursuant to subparagraphs (c) and (d) above may, in the sole discretion of the Declarant or such successor or assign, be upon its knowledge in whole or in part.

8. From time to time, upon not less than thirty (30) days' written notice to NYUHC, or its successor or assign (which request may not be made more than three (3) times in any calendar year), NYUHC or such successor or assign shall, upon request, execute and deliver to any Declarant or its successor or assign, and to any party to whom such Declarant or such successor or assign requests, an estoppel certificate, certifying:

(a) that this Declaration is unmodified and in full force and effect (or, if there has been modifications, that the same is in full force and effect as so modified, and stating with reasonable specificity the modifications);

(b) whether any notice of default has been sent by NYUHC, or such successor or assign, pursuant to Paragraph 2 above, as to which the default or defaults set forth therein has or have not been fully remedied or cured;

(c) whether, to NYUHC's actual knowledge, any breach or default of any of the provisions of this Declaration has occurred and, if applicable, remains uncured; and

(d) as to such other matters as such Declarant or such other requesting party may reasonably request,

which certifications made pursuant to subparagraphs (c) and (d) above may, in the sole discretion of NYUHC or such successor or assign, be upon its knowledge in whole or in part.

9. The foregoing terms, covenants and conditions shall run with the FPG Land and the DLHC Land, respectively, shall be binding upon the Declarants and their respective successors and assigns and shall benefit NYUHC and its successors and assigns. Any transferee of the FPG Premises or the DLHC Premises shall be deemed automatically, by acceptance of title to, or an estate in, the FPG Premises or the DLHC Premises, respectively to have assumed, and become bound in all respects by, all of the terms, covenants and conditions contained in this Declaration, with such force and effect as if such transferee had been a signatory of this Declaration. However, any transferor of the FPG Premises or the DLHC Premises shall, upon the completion of such transfer, automatically be relieved of all further liability under this Declaration, except for any liability with respect to matters that may have arisen during its period of ownership of the FPG Premises or the DLHC Premises that remain unsatisfied.

10. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the FPG Premises or the DLHC Premises to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto and their successors and assigns that nothing in this Declaration, expressed or implied, shall confer upon any person, other than NYUHC and its successors and assigns, any rights or remedies under or by reason of this Declaration.

11. If any provision of this Declaration, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent, be held to be invalid, inoperative, or unenforceable, the remainder of this Declaration, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby. It shall not be deemed that any such invalid provision affects the consideration for this Declaration, and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by Law.

12. This Declaration shall be construed in accordance with the Laws of the State of New York.

13. This Declaration may be amended, modified, or terminated only by an instrument in writing, executed and acknowledged by both the Declarants and NYUHC, or their respective successors or assigns.

IN WITNESS WHEREOF, the Declarants have duly executed this Declaration as of the day and year first above written.

FPG COBBLE HILL ACQUISITIONS, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

**DOWNSTATE AT LICH HOLDING
COMPANY, INC.**

By: _____
Name:
Title:

NYU HOSPITALS CENTER hereby joins in the execution and delivery of this Declaration for the limited purposes of agreeing to the provisions of Paragraphs 6, 8 and 13 hereof.

NYU HOSPITALS CENTER, a New York not-for-profit corporation

By: _____
Name:
Title:

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

On the ___ day of _____, in the year 201__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and (s)he acknowledged to me that (s)he executed the same in (his)(her) capacity described thereon, and that by (his)(her) signature upon the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

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

On the ___ day of _____, in the year 201__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and (s)he acknowledged to me that (s)he executed the same in (his)(her) capacity described thereon, and that by (his)(her) signature upon the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

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Notary Public

Schedule "A"
to
Declaration of Covenants and Restrictions
Legal Description of the NYUHC Land
(attached)

Schedule "B"
to
Declaration of Covenants and Restrictions

Legal Description of the Fortis Land

(attached)

Schedule "C"
to
Declaration of Covenants and Restrictions

Legal Description of the DLHC Land

(attached)