

**EXHIBIT "S"**

**BARGAIN AND SALE DEED**  
**WITHOUT COVENANT AGAINST GRANTOR'S ACTS**<sup>1</sup>  
(New Medical Site)

**DOWNSTATE AT LICH HOLDING COMPANY, INC.,**  
a New York Not-for-Profit Corporation

("Grantor")

- to -

**NYU HOSPITALS CENTER,**  
a New York Not-for-Profit Corporation

("Grantee")

<b><u>Block:</u></b>	<b><u>Lot:</u></b>	<b><u>County:</u></b>	Kings
284	—	<b><u>City:</u></b>	New York
		<b><u>State:</u></b>	New York

**Premises:** \_\_\_\_\_ Hicks Street  
\_\_\_\_\_ Pacific Street  
Brooklyn, New York 11201

**Dated:** \_\_\_\_\_, 201\_\_

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**RECORD AND RETURN BY MAIL TO:**

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

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<sup>1</sup> Prior to the NMS Closing, the tax lot references and associated street addresses left blank in this form of deed shall be filled in, inserting references to the newly subdivided tax lot that becomes the New Medical Site and the street address(es) associated therewith. Schedule "1" shall also be inserted, being a meets and bounds description of the New Medical Site.

**BARGAIN AND SALE DEED**  
**WITHOUT COVENANT AGAINST GRANTOR'S ACTS**  
(New Medical Site)

**THIS INDENTURE** (this "*Indenture*") is made as of the \_\_\_ day of \_\_\_\_\_, 201\_\_\_, by and between **DOWNSTATE AT LICH HOLDING COMPANY, INC.**, a New York not-for-profit corporation having an office c/o SUNY Downstate Medical Center, 450 Clarkson Avenue, Brooklyn, New York 11203 (the "*Grantor*") and **NYU HOSPITALS CENTER**, a New York not-for-profit corporation having an office at 550 First Avenue, New York, New York 10016 (the "*Grantee*"). Those capitalized terms used, but not otherwise defined, in the body of this Indenture shall have the respective meanings given to such terms on *Schedule "2"* attached to, and by this reference made a part of, this Indenture.

**WITNESSETH**, that the Grantor, in consideration of the sum of TEN (\$10.00) DOLLARS and other valuable consideration paid by the Grantee, does hereby grant, release and assign unto the Grantee, together with the successors and assigns of the Grantee:

**ALL** 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 Indenture (collectively, the "*Land*");

**TOGETHER** with all buildings and improvements situated on the Land;

**TOGETHER** with all right, title and interest, if any, of the Grantor in and to all of the following:

(a) all easements, rights of way, alleys and strips and gores of land appurtenant to the Land, other than any rights to Pacific Street (except pursuant to the Pacific Street Easement) and any rights to strips and gores of land between the Land and the remainder of the New Non-Medical Site and the Interim Medical Site;

(b) the land lying in the bed of any street or highway in front of or adjoining the Land (other than Pacific Street), to the center line thereof, and in and to any unpaid award to be made in lieu thereof;

(c) any unpaid award for any change of grade of any street or highway (other than Pacific Street); and

(d) the rights specified in:

(i) the ZLDA, including the allocation to the Premises of one hundred five thousand (105,000) square feet of floor area, as such term is

defined in the Zoning Resolution of the City of New York, as amended (the "**Zoning Resolution**"), to be used for community uses only;

- (ii) the Roof Easement;
- (iii) the Pacific Street Easement;
- (iv) the Garage Premises Declaration of Covenants and Restrictions; and
- (v) the Medical Use Restriction,

**BEING, AND INTENDED TO BE**, a portion of those same premises conveyed by The Long Island College Hospital, a New York not-for-profit corporation, to the Grantor by deed dated as of May 29, 2011, and recorded in the Kings County Office of the New York City Register on June 17, 2011, as CRFN 2011000214996,

**TO HAVE AND TO HOLD** the premises herein granted (collectively, the "**Premises**") unto the Grantee, and the successors and assigns of the Grantee, forever, *subject, however*, to, and upon, those conditions subsequent more fully set forth in Paragraph 2 below, hereby reserving unto the Grantor, and the successors and assigns of the Grantor, a right of reacquisition as more fully set forth in Paragraphs 2 and 3 below.

**AND** the Grantor, in compliance with Section 13 of the Lien Law, covenants that the Grantor will receive the consideration for this conveyance, and will hold the right to receive such consideration, as a trust fund to be applied first for the purpose of paying the cost of the improvements, and will apply the same first to the payment of the cost of the improvements before using any part of the total of the same for any other purpose.

**THIS CONVEYANCE** is hereby made upon, and subject to, the following terms and conditions:

1. Intentionally omitted.

2. The fee on condition estate in and to the Premises shall cease and terminate, and the right of reacquisition reserved by the Grantor in this Indenture shall ripen into, be and become a fee simple absolute estate in and to the Premises in favor of the then owner of such right of reacquisition (as the case may be, the "**Future Estate Owner**") and its successors and assigns, subject, however, to Paragraph 5 below, without the payment of any compensation or consideration, immediately and automatically upon the occurrence, satisfaction and/or fulfillment of any of the following conditions (collectively, the "**Conditions Subsequent**"):

(a) If both of the following shall have occurred:

(i) at any time during the period (the "**Interim Care Period**") commencing on the date of this Indenture and expiring on the earlier to occur of (x) the day before the opening for business

with the public of an Emergency Department in the New Medical Building or (y) the effective date of a termination of the Interim Sublease pursuant to the provisions of Paragraph 5(b)(i) of the SNDA, **time being of the essence** as to both of the aforesaid commencement and expiration dates, both of the following shall occur (collectively, a “*Failure to Provide Interim Care Operations*”):

(A) the Grantee, as the sublessee of the Interim Medical Premises pursuant to the Interim Sublease, shall fail to comply with the provisions of Section 3.04 of the Interim Sublease, other than by reason of the occurrence of an event set forth or described in Section 3.06 of the Interim Sublease (the “*Interim Care Continuous Operation Requirement*”); and

(B) the Grantee shall fail to cure such default within the time provided therefor in Section 23.02(c) of the Interim Sublease after the Grantee has been given notice of such default by either the then Future Estate Owner or the sublessor under the Interim Sublease; and

(ii) the then Future Estate Owner shall give written notice of the Failure to Provide Interim Care Operations, at any time thereafter during the Interim Care Period (but prior to the date, if any, upon which such Failure to Provide Interim Care Operations shall be cured by the Grantee), to the addressees provided for in Paragraph 12 below, at the addresses and in the manner provided for therein, which written notice shall be deemed to be effective, for all purposes of this Indenture, on the tenth (10<sup>th</sup>) business day after such notice shall be so given.

(b) If both of the following shall have occurred:

(i) as of \_\_\_\_\_<sup>2</sup> (the “*New Medical Operations Deadline*”), as such date may be postponed pursuant to the provisions of Paragraphs 9 and/or 10 below, but otherwise **time being of the essence**, the Commencement of New Medical Operations shall not have occurred (the “*Failure to Commence New Medical Operations*”); and

(ii) the then Future Estate Owner shall give written notice of the Failure to Commence New Medical Operations, at

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<sup>2</sup> Insert the day that is thirty-six (36) months following the NMS Closing Date.

any time on or after the New Medical Operations Deadline (but prior to the date, if any, upon which the Commencement of New Medical Operations thereafter occurs), to the addressees provided for in Paragraph 12 below, at the addresses and in the manner provided for therein, which written notice shall be deemed to be effective, for all purposes of this Indenture, on the tenth (10<sup>th</sup>) business day after such notice shall be so given.

(c) If both of the following shall have occurred:

(i) as of \_\_\_\_\_<sup>3</sup> (the “*Cancer Center Operations Deadline*”), as such date may be postponed pursuant to the provisions of Paragraphs 9 and/or 10 below, but otherwise **time being of the essence**, the Commencement of Cancer Center Operations shall not have occurred (the “*Failure to Commence Cancer Center Operations*”); and

(ii) the then Future Estate Owner shall give written notice of the Failure to Commence Cancer Center Operations, at any time on or after the Cancer Center Operations Deadline (but prior to the date, if any, upon which the Commencement of Cancer Center Operations thereafter occurs), to the addressees provided for in Paragraph 12 below, at the addresses and in the manner provided for therein, which written notice shall be deemed to be effective, for all purposes of this Indenture, on the tenth (10<sup>th</sup>) business day after such notice shall be so given.

(d) If both of the following shall have occurred:

(i) at any time during the period (the “*New Medical Period*”) commencing on the day upon which the Commencement of New Medical Operations occurs and expiring on the Conditions Subsequent Expiration Date, **time being of the essence** as to both of such dates, both of the following shall occur (collectively, a “*Failure to Provide NMP Services*”):

(A) subject to the provisions of Paragraph 9 below, the Grantee or its successor or assign shall fail to continuously conduct the New Medical Operations in and from the New Medical Building, either directly or through LFHC and/or one or more other Responsible Affiliates or Contractors (the “*NMP Continuous Operation Requirement*”), *provided, however*, that, for all purposes of this Indenture, none of the following

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<sup>3</sup> Insert the day that is thirty-six (36) months following the NMS Closing Date.

shall be deemed or construed to constitute a breach of the NMP Continuous Operation Requirement:

(I) any incidental cessation of any of the New Medical Operations, other than the complete cessation of operation of any of the Emergency Department, the ASC, or the FQHC, if such incidental cessation is consistent with the customary operations of the NYUHC ambulatory network;

(II) the closure of any or all of the New Medical Operations, other than the Emergency Department, on holidays recognized by NYUHC, by LFHC and/or by any other applicable health care operators providing services as part of the New Medical Operations;

(III) any partial closure of the Emergency Department, the ASC, the FQHC, or any of the other services required to be provided as part of the New Medical Operations in order to perform work in or to the New Medical Building (or, if the FQHC is operated in whole or in part in the Red Hook Location, to perform work in or to the building(s) in which the FQHC is so operated) that is required: (x) to obtain or maintain any license, permit, authorization and/or approval required under any applicable Law(s) for the conduct of any of the New Medical Operations; (y) for patient health or safety; or (z) to meet the standards of patient care consistent with the customary operations of the NYUHC ambulatory network; and

(IV) with respect only to any Red Hook Location, the closure of such venue in order to relocate the

operations being conducted in such venue to a new venue located either in the Red Hook neighborhood of Brooklyn, New York, or at the Premises; and

(B) the Grantee, or such successor or assign, shall fail to restore the conduct of the full New Medical Operations in and from the New Medical Building within thirty (30) days after written demand therefor given by the Future Estate Owner to the addressees provided for in Paragraph 12 below, at the addresses and in the manner provided for therein, or, if such restoration would reasonably take a longer period of time to effect, such longer period of time as is required, so long as the Grantee, or such successor or assign, commences such restoration within such thirty (30) day period and thereafter continues with diligence and in good faith to effect such restoration; and

(ii) the then Future Estate Owner shall give written notice of the Failure to Provide NMP Services at any time thereafter during the New Medical Period (but prior to the date, if any, upon which the Failure to Provide NMP Services is thereafter cured), to the addressees provided for in Paragraph 12 below, at the addresses and in the manner provided for therein, which written notice shall be deemed to be effective, for all purposes of this Indenture, on the tenth (10<sup>th</sup>) business day after such notice shall be so given.

(e) If both of the following shall have occurred:

(i) at any time during the period (the “*New Medical Period*”) commencing on the day upon which the Commencement of Cancer Center Operations occurs and expiring on the Conditions Subsequent Expiration Date, **time being of the essence** as to both of such dates, both of the following shall occur (collectively, a “*Failure to Provide Cancer Center Services*”):

(A) subject to the provisions of Paragraph 9 below, the Grantee or its successor or assign shall fail to continuously conduct, or to cause the conduct of, the Cancer Center Operations (the “*Cancer Center Continuous Operation Requirement*”), *provided, however*, that, for all purposes of this Indenture, none of the following

shall be deemed or construed to constitute a breach of the Cancer Center Continuous Operation Requirement:

(I) any incidental cessation of any of the Cancer Center Operations, if such incidental cessation is consistent with the customary operations of the NYUHC ambulatory network;

(II) the closure of any or all of the Cancer Center Operations on holidays recognized by NYUHC and/or by any other applicable health care operators providing services as part of the Cancer Center Operations;

(III) any partial closure of any venue in which Cancer Center Operations are being conducted, either as required in any lease thereof and/or in order to perform work in or to such venue that is required (x) to obtain or maintain any license, permit, authorization and/or approval required under any applicable Law(s) for the conduct of any of the Cancer Center Operations; (y) for patient health or safety; or (z) to meet the standards of patient care consistent with the customary operations of the NYUHC ambulatory network; and

(IV) with respect only to a venue or venues not located in the New Medical Building, any closure of such venue(s) in which Cancer Center Operations are being conducted in order to relocate the operations being conducted in such venue(s) to a new venue or venues located no less conveniently to the Premises, generally, than the replaced venue(s); and

(B) the Grantee, or such successor or assign, shall fail to restore the conduct of the full New Medical Operations in and from the New Medical Building within thirty (30) days after written demand therefor given by the Future Estate Owner to the addressees provided for in Paragraph 12 below, at the addresses and in the manner provided for therein, or, if such restoration would reasonably take a longer period of time to effect, such longer period of time as is required, so long as the Grantee, or such successor or assign, commences such restoration within such thirty (30) day period and thereafter continues with diligence and in good faith to effect such restoration; and

(ii) the then Future Estate Owner shall give written notice of the Failure to Provide NMP Services at any time thereafter during the New Medical Period (but prior to the date, if any, upon which the Failure to Provide NMP Services is thereafter cured), to the addressees provided for in Paragraph 12 below, at the addresses and in the manner provided for therein, which written notice shall be deemed to be effective, for all purposes of this Indenture, on the tenth (10<sup>th</sup>) business day after such notice shall be so given.

In order to entitle a Future Estate Owner to trigger its right of reacquisition with respect to the Premises, it shall not be necessary to give any notice to the Grantee and/or any of its successors or assigns, other than the notice specifically provided for in Subparagraph 2(a)(ii), 2(b)(ii), 2(c)(ii), 2(d)(i)(B), 2(d)(ii), 2(e)(i)(B), or 2(e)(ii) above, as applicable. Notwithstanding the foregoing or anything to the contrary provided in this Indenture, although the Future Estate Owner shall have the right to trigger the right of reacquisition, no Future Estate Owner (including, but not limited to, SUNY) nor the State of New York shall have any obligation to do so.

3. If and when a Condition Subsequent shall occur, be satisfied, or be fulfilled (as the case may be), then, and in such event:

(a) The Grantee, or its then successor or assign (as the case may be), shall, without any further notice and without any compensation or consideration, quit and surrender the Premises promptly to the then Future Estate Owner in their then "as is" condition and repair, *provided, however, that*, if such Condition Subsequent shall occur after the Commencement of New Medical Operations, the Grantee, or its then successor or assign (as the case may be), shall be allowed the period of time thereafter necessary to obtain any necessary regulatory approval(s) to cease its health care operations in the Premises, plus thirty (30) days to close such health care operations.

(b) Should the Grantee, or such successor or assign, fail to quit and surrender the Premises as and when provided in subparagraph (a) above, the then Future Estate Owner and its agents and employees may immediately, or at any time thereafter (but in no event prior to the issuance of the aforesaid regulatory approval(s), if required), enter the Premises, or any part thereof, in the name of the whole, either by any suitable action or proceeding at law or in equity, by force, or otherwise, without being liable to indictment, prosecution, or damages therefor, and may take possession of the same, and remove any persons therefrom, to the end that the then Future Estate Owner may have, hold and enjoy the Premises as and of its estate and interest therein.

(c) If such Future Estate Owner shall, at any time after the occurrence, satisfaction, or fulfillment of such Condition Subsequent, proceed to remove the Grantee, or its then successor or assign, from the Premises, such Future Estate Owner shall be entitled to prove and receive from the Grantee, or its successor or assign, both:

(i) damages for the use and occupancy of the Premises during the period after such occurrence, satisfaction, or fulfillment (and, if applicable, after the period of time thereafter necessary for the Grantee or its successor or assign to obtain the aforesaid regulatory approval(s) for the closure of health care operations, plus thirty (30) days thereafter to close such health care operations, provided that the Grantee or such successor or assign shall seek and diligently pursue obtaining such approvals, as well as diligently perform such closure,

(ii) promptly following the date upon which such Condition Subsequent shall occur, be satisfied, or be fulfilled) in an amount equal to two hundred (200%) percent of the then fair market rental value of the Premises; and

(iii) all costs and expenses of every kind and nature whatsoever (including, without limitation, reasonable attorneys' fees and disbursements) incurred by such Future Estate Owner in connection with enforcing, or endeavoring to enforce, any and all rights against the Grantee, and/or such successor or assign, under, or in connection with, this Indenture or pursuant to law or in equity.

For avoidance of doubt, in the event that the right of reacquisition reserved in this Indenture shall become an estate in possession pursuant to the provisions of this Indenture, neither the Grantor, nor SUNY, nor any other Future Estate Owner shall have any obligation to conduct any health care operations on any portion of the Premises thereafter. Additionally, no such transformation shall result in the reacquisition by the Future Estate Owner of any of the personal property, furniture, furnishings, trade fixtures, business equipment and other medical equipment in or servicing the New Medical Building, whether transferred to the Grantee contemporaneously with

the execution and delivery of this Indenture, owned or leased from third parties by Grantee, its successors or assigns, or otherwise. Further, the Grantee, or its successor or assign, shall be permitted to remove any or all medical equipment from the Premises, as the Grantee or such successor or assign shall elect, within thirty (30) days after the closure of the medical services (or, with regard to such removals that are not susceptible of being completed within such thirty (30) day period, commence such removal during such period and thereafter pursue the same diligently and in good faith to completion), provided that:

(x) such removal shall not cause material or structural damage to the New Medical Building, unless, prior to such removal, the Grantee, or its successor or assign, having a reasonably sufficient net worth for the purpose, unconditionally agrees, in a writing reasonably acceptable to the Future Estate Owner, to repair such damage at the sole cost and expense of the Grantee, or such successor or assign, and causes such repairs to be performed diligently and in good faith to completion promptly after such removal is completed;

(y) the Grantee or such successor or assign shall promptly repair any damage to the New Medical Building incurred during, or as a result of, any such removal; and

(z) such removal and repair is completed prior to the surrender of the Premises to the Future Estate Owner or the reentry of the Future Estate Owner onto the Premises (as the case may be).

4. The Grantor and the Grantee irrevocably and unconditionally confirm and agree, for themselves and for their respective successors and assigns (including, without limitation, any successor Future Estate Owner), that:

(a) the Conditions Subsequent have been created, and were intended by the Grantor, both:

(i) for benevolent, charitable and/or educational purposes; and

(ii) to restrict the use of the Premises and the Interim Medical Premises to particular applications or means of carrying out such purposes, as more particularly set forth herein;

(b) the primary purpose of the right of reacquisition created in this Indenture is, and was intended by the Grantor to be, to ensure that the Premises and the Interim Medical Premises themselves, and the estates granted to the Grantee, and its successors and assigns, in this Indenture, shall be, and shall continue until the Conditions Subsequent Expiration Date to be, devoted to, and employed for, specific benevolent, charitable and/or educational purposes in the respective manners described in the Conditions Subsequent, and not merely to ensure that the substantial value of the Premises, the Interim Medical Premises, or such estates be devoted to, or employed for, such purposes; and

(c) SUNY, an agency of the State of New York and the sole member in the Grantor, would not have consented to the conveyance to the Grantee, and its successors and assigns, in and by this Indenture if the reservation of a right of reacquisition, as well as the provisions of Paragraphs 2 and 3 above, were not contained herein.

5. The Grantor, and its successors and assigns as the Future Estate Owner, may each freely convey, pursuant to the provisions of Section 6-5.1 of the New York Estates, Powers and Trusts Law, at any time and from time to time, any or all of the right of reacquisition reserved in this Indenture. However, except with the prior written consent of the Grantee or its then successor or assign (which consent shall not be unreasonably withheld, delayed, or conditioned with respect to any conveyance to a governmental agency, any office, division, or department thereof, any agency or instrumentality thereof, or any direct or indirect parent, affiliate, or subsidiary thereof), such right of reacquisition may be conveyed only to any one or more of the following:

(a) SUNY, any entity within SUNY, or any direct or indirect subsidiary of either of the foregoing; or

(b) the State of New York, any agency thereof, or any direct or indirect subsidiary of either of the foregoing.

6. The Grantor, and its successors and assigns as the Future Estate Owner, acknowledge and agree that the right of reacquisition reserved in this Indenture is unconditionally subject and subordinate, in all respects and without the payment of any compensation or consideration, to the ZLDA, the Roof Easement and the Pacific Street Easement. Upon any exercise of the right of reacquisition, the Future Estate Owner shall take title to the Premises subject to the terms of the ZLDA, the Roof Easement and the Pacific Street Easement and shall be entitled to the benefits thereof.

7. Effective upon, and as of, the Reverter Subordination Date, the right of reacquisition reserved in this Indenture shall immediately, automatically and unconditionally be deemed to be subject and subordinate, in all respects and without the payment of any compensation or consideration, to the lien of any mortgage theretofore or thereafter given by the Grantee, or its successor or assign, encumbering the Premises, and all renewals, modifications, consolidations, replacements and extensions thereof (collectively, the "*Superior Mortgage*"), provided, and on the conditions, that:

(a) none of the Conditions Subsequent shall have occurred, been satisfied, or been fulfilled on or prior to the Reverter Subordination Date; and

(b) the Superior Mortgage shall be made to, and shall at all times thereafter be held by, an Institutional Lender.

Provided that the foregoing conditions are satisfied, the then Future Estate Owner shall execute and deliver (with signatures acknowledged) documents confirming such subordination (which documents, if requested by the Grantee, shall be in recordable form), promptly following the delivery to such Future Estate Owner of any and all such documents by the Grantee (which

delivery shall not be made prior to the Reverter Subordination Date), which documents shall be subject to the approval of the Future Estate Owner (which approval shall not be unreasonably withheld, delayed, or conditioned). All reasonable, out of pocket costs and expenses incurred by such Future Estate Owner in connection with such confirmation (including, without limitation, all reasonable attorneys' fees and disbursements in connection therewith) shall be reimbursed by the Grantee, or by its then successor or assign, to the then Future Estate Owner within thirty (30) days after written demand therefor, which demands may be made from time to time at reasonable intervals. For sake of clarification, the Grantor, on behalf of itself and any and all other Future Estate Owners, acknowledges and agrees that, from and after the Reverter Subordination Date, the foreclosure of the lien of any Superior Mortgage will, if the conditions set forth in subparagraphs (a) and (b) above are satisfied, extinguish such right of reacquisition.

8. If, as of the Conditions Subsequent Expiration Date, neither of the Conditions Subsequent set forth in Paragraphs 2(e) and 2(f) shall have occurred and is continuing beyond the expiration of the cure and remedy period provided for in Paragraph 5 above after the giving of the notice of default provided for therein (or, if the Declarant or such successor or assign is in uncured default as of the Declaration Expiration Date, and such cure or remedy is of a nature that is susceptible of cure under the circumstances, then as of the day thereafter, if any, during such cure or remedy period when such default is fully cured and remedied), the right of reacquisition reserved in this Indenture shall immediately, automatically and unconditionally be deemed to be extinguished and of no further force or effect, and the right, title and estate of the Grantee, and its successors and assigns, in and to the Premises shall immediately and automatically be and become a fee simple absolute estate therein, without the payment of any compensation or consideration. Provided that the foregoing condition is satisfied, the then Future Estate Owner shall execute and deliver (with signatures acknowledged) documents confirming such extinguishment (which documents, if requested by the Grantee, shall be in recordable form), promptly following the delivery to such Future Estate Owner of any and all such documents by the Grantee (which delivery shall not be made prior to the Conditions Subsequent Expiration Date), which documents shall be subject to the approval of the Future Estate Owner (which approval shall not be unreasonably withheld, delayed, or conditioned). All reasonable, out of pocket costs and expenses incurred by such Future Estate Owner in connection with such confirmation (including, without limitation, all reasonable attorneys' fees and disbursements in connection therewith) shall be reimbursed by the Grantee, or by its then successor or assign, to the then Future Estate Owner within thirty (30) days after written demand therefor, which demands may be made from time to time at reasonable intervals.

9. For all purposes of Paragraph 2 above, the New Medical Operations Deadline and the Cancer Center Operations Deadline shall each be subject to postponement, and the Interim Care Continuous Operation Requirement, the NMP Continuous Operation Requirement and the Cancer Center Continuous Operation Requirement shall each be subject to suspension, as a result of an Unavoidable Delay or an Unavoidable Interruption. The New Medical Operations Deadline and/or the Cancer Center Operations Deadline (as the case may be) shall be postponed, or the Interim Care Continuous Operation Requirement, the NMP Continuous Operation Requirement and/or the Cancer Center Continuous Operation Requirement shall be suspended, in each case only as a result of, and then only for the period of delay in construction or interruption of operations reasonably caused by, an Unavoidable Delay or Unavoidable Interruption. The Grantee, or its successor or assign, shall give the Future Estate Owner, or its successor or assign,

notice of such Unavoidable Delay or Unavoidable Interruption promptly following the Grantee's, or such successor's or assign's, having obtained factual knowledge of the occurrence of same.

10. In addition to any right of postponement to which the Grantee, or its successor or assign, shall be entitled pursuant to Paragraph 9 above, the Grantee, or such successor or assign, shall be entitled to a postponement, by not more than twelve (12) months in the aggregate, of the New Medical Operations Deadline and/or the NMB Cancer Center Operations Deadline if, as indicated in a certificate issued by the architect retained by the Grantee, or such successor or assign, to supervise the construction of the New Medical Building, or, in the absence of such certificate, in the reasonable opinion of the Future Estate Owner set forth in writing to the Grantee, or its then successor or assign, that:

(c) as of the initial New Medical Operations Deadline or the initial Cancer Center Operations Deadline, as the same may have been postponed from time to time pursuant to Paragraph 9 above, the construction of the New Medical Building shall be more than eighty (80%) percent completed; and

(d) the Grantee or such successor or assign is diligently pursuing the completion of construction of the New Medical Building.

As a condition to any postponement of the New Medical Operations Deadline or the Cancer Center Operations Deadline pursuant to this Paragraph 10, the Grantee, or its then successor or assign, shall give written notice of postponement to the addressees provided for in Paragraph 13 of this Indenture, at the addresses and in the manner provided for therein, promptly following the day upon which the Grantee, or such successor or assign, first obtained knowledge of the necessity for the same.

11. The triggering of the right of reacquisition shall be the sole right and remedy of the Future Estate Owner pursuant to this Indenture as a result or consequence of the occurrence of any of the Conditions Subsequent, *provided, however*, that nothing herein contained shall be deemed or construed to limit any of the rights or remedies that the Future Estate Owner may have under any other document or agreement (including, without limitation, the Interim Sublease, the Declaration of Covenants and Restrictions and/or the PSA (to the extent of those provisions of the PSA that have survived the closing of title to the Premises)). Neither the existence of the rights and remedies afforded to the Grantor, its successor and assigns, pursuant to the Interim Sublease, the Declaration of Covenants and Restrictions and/or the PSA (to the extent of those provisions of the PSA that have survived the closing of title to the Premises), nor the exercise or attempted exercise of any one or more of such rights or remedies, shall affect or impair in any way the rights of the Future Estate Owner pursuant to this Indenture. No delay or omission to trigger the right of reacquisition shall be construed to be a waiver thereof. Notwithstanding anything to the contrary contained in this Indenture, the Grantee acknowledges and agrees, for itself and for its successors and assigns, that the triggering of the right of reacquisition in favor of the Future Estate Owner shall not be considered to be an act of eminent domain or condemnation.

12. All notices to be given by the Grantor, its successors and assigns, pursuant to Paragraph 2 above, pursuant to Paragraph 13 below, or pursuant to any other provision of this

Indenture shall be deposited for overnight delivery with a reputable overnight courier (such as FedEx, UPS, or DHL) addressed to each of the following:

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

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

(c) NYU Hospitals Center, 1 Park Avenue, New York, NY 10016, Attention: Director of Real Estate; and

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

Any such notice shall be deemed to have been given one (1) business day after depositing such notice with such overnight courier. The Grantee, or any successor or assign thereto, shall have the right to change the aforesaid addressee(s) and/or address(es) by giving written notice thereof to the addressees provided for in Paragraph 13 below, at the addresses and in the manner provided for therein, *provided, however*, that such notice shall have no force or effect until the receipt or refusal of delivery thereof by such addressees, as shown in the business records of the overnight courier. The aforesaid addressees and addresses, or the most recently designated replacement(s) therefor (as the case may be), shall continue to be the addressees and addresses to which notices to be given by the Grantor, its successors and assigns, pursuant to Paragraph 2 above, pursuant to Paragraph 13 below, or pursuant to any other provision of this Indenture shall be sent, notwithstanding any interim conveyance of the fee on condition estate granted in this Indenture and/or any notice or knowledge thereof obtained by the Grantor, or its successor or assign.

13. All notices to be given by the Grantee, its successors and assigns, pursuant to Paragraph 12 above, pursuant to *Exhibit "B"* hereto, or pursuant to any other provision of this Indenture shall be deposited for overnight delivery with a reputable overnight courier (such as FedEx, UPS, or DHL) addressed to each of the following:

(a) Downstate at LICH Holding Company, Inc., c/o SUNY Downstate Medical Center, 450 Clarkson Avenue, Brooklyn, New York 11203; and

(b) Cozen O'Connor, 277 Park Avenue, New York, New York 10172, Attn.: Marc S. Intriligator, Esq.

Any such notice shall be deemed to have been given one (1) business day after depositing such notice with such overnight courier. The Grantor, or any successor or assign thereto, shall have the right to change the aforesaid addressee(s) and/or address(es) by giving written notice thereof to the addressees provided for in Paragraph 12 above, at the addresses and in the manner provided for therein, *provided, however*, that such notice shall have no force or effect until the receipt or refusal of delivery thereof by such addressees, as shown in the business records of the overnight courier. The aforesaid addressees and addresses, or the most recently designated replacement(s) therefor (as the case may be), shall continue to be the addressees and addresses to

which notices to be given by the Grantee, its successors and assigns, pursuant to Paragraph 12 above, pursuant to *Exhibit "B"* hereto, or pursuant to any other provision of this Indenture shall be sent, notwithstanding any interim conveyance of the right of reacquisition estate reserved in this Indenture and/or any notice or knowledge thereof obtained by the Grantee, or its successor or assign.

**14.** From time to time, upon not less than thirty (30) days' written notice to the then Future Estate Owner (which request may not be made more than three (3) times in any calendar year), such Future Estate Owner shall, upon request, execute and deliver to the Grantee, and to any party to whom the Grantee requests, an estoppel certificate, certifying:

(a) that this Indenture 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 has been given to the Grantee, or to any successor or assign thereof, pursuant to Subparagraph 2(a)(ii), 2(b)(ii), 2(c)(ii), 2(d)(i)(B), 2(d)(ii), 2(e)(i)(B), or 2(e)(ii) above, and attaching copies of such notices;

(c) whether any Failure to Provide Interim Care Operations, Failure to Commence New Medical Operations, Failure to Commence Cancer Center Operations, Failure to Provide NMP Services and/or Failure to Provide Cancer Care Services has occurred, and/or whether any breach or default of any of the provisions of this Indenture, other than the provisions of Paragraph 2 above, has occurred, which remains uncured; and

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

which certifications made pursuant to subparagraph (c) and/or (d) above may, in the sole discretion of the Future Estate Owner, be upon its knowledge in whole or in part.

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

(a) that this Indenture is 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 has been received by the Grantee, or to by successor or assign thereof, pursuant to Subparagraph 2(a)(ii), 2(b)(ii), 2(c)(ii), 2(d)(i)(B), 2(d)(ii), 2(e)(i)(B), or 2(e)(ii) above, and attaching copies of such notices;

(c) whether any Failure to Provide Interim Care Operations, Failure to Commence New Medical Operations, Failure to Commence Cancer Center Operations, Failure to Provide NMP Services and/or Failure to Provide Cancer Care Services has occurred, and/or whether any breach or default of any of the provisions of this Indenture, other than the provisions of Paragraph 2 above, has occurred, which remains uncured; and

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

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

**16.** The foregoing terms and conditions shall run with the Land, shall be binding upon the Grantee and its successors and assigns and shall benefit the Grantor and its successors and assigns.

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

**IN WITNESS WHEREOF**, the Grantor and the Grantee have duly executed this Indenture as of the day and year first above written.

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

By: \_\_\_\_\_  
Name:  
Title:

**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**

**Schedule "1"  
to  
Deed**

**Legal Description of the Land**

**New Medical Site**

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**Brooklyn, New York**

**Block 284, Lot \_\_\_\_ on the Tax Map of the Borough of Brooklyn**

**Schedule “2”  
to  
Deed**

**Certain Definitions**

“*Advisory Panels*” means, collectively, the Clinical Advisory Panel and the LICH Transformation Advisory Panel (as such terms are defined in the PSA) established by FCHA pursuant to the provisions of the PSA on or prior to the date of this Indenture, *provided, however*, that, if and when either or both of such panels shall be disbanded, such disbanded panel shall no longer be considered an Advisory Panel for purposes of this Indenture.

“*ASC*” means an ambulatory surgery center, licensed under Article 28 of the New York Public Health Law, offering such services as are approved by the New York State Department of Health (the “*DOH*”), operated directly by NYUHC or an affiliate of NYUHC, *provided, however*, that a facility shall qualify as an ASC hereunder, at and after the Commencement of New Medical Operations, only if, in the initial application for a Certificate of Need covering such facility, the Grantee, or its then successor or assign, shall request approval for the full range of ambulatory surgical procedures then performed by NYUHC, generally, at its ambulatory surgical sites in the New York City metropolitan area.

“*Cancer Center Operations*” means the operation of all of the following services, as well as such other services as the Grantee, or its successors and assigns, shall elect, by the Grantee, or by its successor or assign, in the respective venues set forth below, collectively as a full service satellite of the NYU Laura and Isaac Perlmutter Cancer Center (currently a National Cancer Institute designated Cancer Center), and thus licensed under Article 28 of the New York Public Health Law:

(a) medical oncology and infusion services in the New Medical Building;

(b) radiation therapy at NYU Laura and Isaac Perlmutter Cancer Center (160 East 34<sup>th</sup> Street, New York, New York) and at the following additional locations (or other locations similarly convenient to the Premises): Lutheran Medical Center Department of Radiation Oncology (150 55<sup>th</sup> Street, Brooklyn, New York) and a satellite Cancer Center operated by or through the Grantee in the Midwood neighborhood of Brooklyn, all of which radiation therapy shall follow the treatment protocols of the NYUHC Department of Radiation Oncology;

(c) advanced imaging services at the following locations (or at other locations similarly convenient to the Premises): Premier-NYU Imaging (348 13<sup>th</sup> Street, Suite 101, Brooklyn, New York) and Lutheran Medical Center, Department of Radiology (150 East 55<sup>th</sup> Street, Brooklyn, New York), all of which imaging tests shall be interpreted by faculty physicians of NYUHC; and

(d) transportation at the request of Cancer Center patients from the New Medical Building to the radiation oncology and advanced imaging locations set forth above that are in Brooklyn, New York,

all of which services shall be provided between the hours of 8:00 AM and 7:00 PM, Mondays through Fridays (excluding holidays recognized generally by the Grantee's medical facilities), together with such additional hours as the Grantee shall elect (which requirement regarding minimum operating hours, however, shall be suspended during the first year after the Commencement of Cancer Center Operations). Notwithstanding the foregoing, if any of the venues set forth above shall close or otherwise no longer be suitable or available to provide the services required herein, the services theretofore provided in such venue shall be provided by the Grantee to the patients of the New Medical Building in another venue or venues located no less conveniently to the Premises, generally, than the replaced venue.

***"Commencement of Cancer Center Operations"*** means the commencement by the Grantee, or its successor or assign, either directly or through one or more Responsible Affiliates and/or Contractors, of substantially all of the Cancer Center Operations with and to the public in the New Medical Building and the other venues referred to in the definition of Cancer Center Operations above, with all licenses, permits, authorizations and approvals therefor required by all applicable Laws (including, without limitation, a temporary or permanent certificate of occupancy allowing the use and occupancy of a portion of the New Medical Building for certain of the Cancer Center Operations).

***"Commencement of Health Care Operations"*** means the Commencement of New Medical Operations or the Commencement of Cancer Care Operations, whichever shall be the later to occur.

***"Commencement of New Medical Operations"*** means the commencement by the Grantee, or its successor or assign, either directly or through LFHC and/or one or more other Responsible Affiliates and/or Contractors, of substantially all of the New Medical Operations with and to the public at the New Medical Building (or, with respect to the FQHC only, at the Red Hook Location), with all licenses, permits, authorizations and approvals therefor required by all applicable Laws (including, without limitation, a temporary or permanent certificate of occupancy allowing the use and occupancy of the New Medical Building for the New Medical Operations, excluding, however, the FQHC, if the same is being conducted exclusively at the Red Hook Location).

***"Conditions Subsequent Expiration Date"*** means the day that is five (5) years after the Commencement of Health Care Operations.

***"Declaration of Covenant and Restrictions"*** means that certain declaration of covenants and restrictions dated contemporaneously with this Indenture, made by the Grantee, to be recorded against the Premises.

***"Emergency Department"*** means a freestanding emergency department, licensed under Article 28 of the New York State Public Health Law, with all supportive services (which shall include on-site or off-site laboratory services, radiology, on-site or off-site pharmacy services,

social work services and outgoing ambulance transport) required under Article 28 of the New York State Public Health Law, operated directly by NYUHC or an affiliate of NYUHC, ***provided, however***, that a facility shall qualify as an Emergency Department hereunder, at and after the Commencement of New Medical Operations, only if such facility includes, without limitation, not less than four (4), and as many as twelve (12), observation beds, on an as-needed basis (and, if NYUHC determines in its professional discretion, after the New Medical Operations commence, that additional observation beds are medically necessary, the Grantee, or its then successor or assign, shall ensure that the observation bed capacity is expanded to up to twenty (20) observation beds upon the receipt of DOH and all other appropriate regulatory approvals).

***“Environmental Conditions”*** means, collectively, the environmental conditions affecting the Premises, including, without limitation, the presence or absence of any substance, material or waste which is subject to and/or regulated by any Environmental Law, including, without limitation, any material or substance that is defined as a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste,” “toxic substance,” “source material,” “special nuclear material,” “byproduct material,” “radioactive waste,” “petroleum,” “aboveground and/or underground storage tanks,” “asbestos,” “asbestos-containing materials,” “lead paint,” “mercury,” “polychlorinated biphenyls” or any other “pollutants,” “contaminants,” hazardous or toxic materials or substances under Environmental Laws in, beneath or about the Premises, or the release or discharge of any materials from or onto the Premises, including in soil, groundwater or improvements on the Premises or contiguous or adjacent property.

***“Environmental Laws”*** means any applicable Laws pertaining to the protection or improvement of natural resources, human health or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 1251 et seq.), the Clean Air Act (42 U.S.C. Section 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), and the New York Environmental Conservation Law Articles 15, 17 and 19.

***“FCHA”*** means FPC Cobble Hill Acquisitions, LLC, a New York limited liability company.

***“FQHC”*** means a federally qualified health center, licensed under Article 28 of the New York State Public Health Law.

***“Garage Premises”*** means that certain parcel of land constituting, as of the date of this Indenture, Tax Lot 50 in Block 282 on the Tax Map.

***“Garage Premises Declaration of Covenants and Restrictions”*** means that certain declaration of covenants and restrictions, dated \_\_\_\_\_, 201\_\_\_\_, by and between

\_\_\_\_\_ and \_\_\_\_\_, relating to the use of parking spaces in the Garage Premises.<sup>4</sup>

**“Institutional Lender”** means:

(a) a savings bank, savings and loan association, commercial bank, or trust company (whether acting individually or in a fiduciary capacity), or an affiliate of any of the foregoing;

(b) an insurance company organized and existing under the laws of the United States or any state thereof;

(c) a real estate investment trust;

(d) a trustee or issuer of collateralized mortgage obligations, a loan conduit, or other similar investment entity that:

(i) is regularly engaged in the business of providing debt financing; and

(ii) acts through an institutional trustee,

(e) a religious, educational or eleemosynary institution, a federal, state, or municipal employee’s welfare, benefit, pension or retirement fund, any governmental agency or entity insured by a governmental agency, a credit union, or a trust or endowment fund;

(f) any brokerage or investment banking organization regularly engaged in the business of providing debt financing;

(g) any institutional trustee, servicer, or fiduciary for the holders of bonds, notes, commercial paper, or other evidence of indebtedness as part of a securitization of rated single or multi-class securities secured by, or evidencing ownership interests in, such debt; or

(h) any combination of the foregoing entities, or any entity directly or indirectly controlled by any of the foregoing entities,

**provided, however,** that each entity satisfying one or more of the foregoing criteria shall qualify as an **“Institutional Lender”** only if such entity shall be subject to service of process within the State of New York and such entity (or the direct or indirect controlling parent entity thereof shall have) have a net worth of not less than Seven Hundred Fifty Million (\$750,000,000.00) Dollars.

<sup>4</sup> Insert the date of the Declaration of Covenants and Restrictions for the Parking Garage and the names of the parties thereto.

**“Interim Medical Premises”** means, collectively, those certain portions of the buildings known as the Polak Pavilion and the Henry Street Building, located on the New Medical Site, sublet to the Grantee pursuant to the Interim Sublease.

**“Interim Medical Site”** means that certain parcel of land constituting, as of the date of this Indenture, Tax Lot 13 in Block 290 on the Tax Map.

**“Interim Sublease”** means that certain sublease, dated \_\_\_\_\_, 2014, by and between FCHA, as sublessor, and the Grantee, as sublessee, subleasing the Interim Medical Premises to the Grantee.

**“Law”**, and other similar words (whether or not capitalized), means:

(a) any law, statute, resolution, code, ordinance and/or the like of any or all of the federal, state, city, county and/or borough governments;

(b) any rule, regulation, order, directive, requirement and/or the like of any or all departments, subdivisions, bureaus, agencies, or offices of any or all of the federal, state, city, county and/or borough governments, or of any other governmental, public, or quasi-public authorities, having jurisdiction over the Premises and/or the use or operation thereof (including, without limitation, the conduct of the New Medical Operations therein);

(c) the lawful direction of any public officer within the scope of his or her authority; and/or

(d) the provisions of any applicable resolution, permit, special permit, license and/or the like pertaining to the Premises and/or the use or operation thereof (including, without limitation, the conduct of the New Medical Operations therein).

**“LFHC”** means Sunset Park Health Council d/b/a Lutheran Family Health Center.

**“Medical Use Restriction”** means that certain restrictive declaration, dated \_\_\_\_\_, 201\_\_\_\_, by and between \_\_\_\_\_ and \_\_\_\_\_, restricting the use by medical providers of certain premises, including, without limitation, the New Non-Medical Site, the Garage Premises and the Interim Medical Site.<sup>5</sup>

**“New Medical Building”** means a new building or buildings to be constructed by the Grantee, or its successor or assign, on the Premises, containing not less than one hundred thousand (100,000) square feet of floor area (as defined in the Zoning Resolution), suitable to conduct, at a minimum, the New Medical Operations and in which substantially all of the usable area is devoted to Permitted Uses.

**“New Medical Operations”** means the operation of all of the following services, as well as such other services as the Grantee, or its successors and assigns, shall elect, by the Grantee, or

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<sup>5</sup> Insert the date of the Medical Use Restriction and the names of the parties thereto.

by its successor or assign, in the New Medical Building, either directly or through LFHC and/or one or more other Responsible Affiliates or Contractors, which services shall be provided in a manner consistent with the customary operations of the NYUHC ambulatory network:

(a) an Emergency Department operating on a twenty-four (24) hours per day, seven (7) days per week, basis;

(b) an ASC operating between the hours of 7:00 AM and 5:00 PM, Mondays through Fridays, together with such additional hours as the Grantee, or its successor or assign, shall elect;

(c) an FQHC operating between the hours of 8:00 AM and 7:00 PM, Mondays through Fridays, together with such additional hours as the Grantee, or its successor or assign, shall elect, *provided, however*, that the Grantee, and its successors and assigns, shall not be required to operate an FQHC in the New Medical Building if and when the Grantee, or such successor or assign, is operating an FQHC in the Red Hook Location, either directly or through one or more Responsible Affiliates or Contractors; and

(d) the following additional services (collectively, the “*Initial Additional Health Care Services*”), together with such additional services as the Grantee, or its successor or assign, shall elect, operated between the hours of 8:00 AM and 7:00 PM, Mondays through Fridays (except as otherwise noted below with regard to particular services), together with such additional hours as the Grantee, or its successor or assign, shall elect:

(iv) office based surgical procedures, including, without limitation, GI/endoscopy, bronchoscopy and dermatology;

(v) primary and preventive care, including, without limitation, internal medicine and obstetrics/gynecology;

(vi) comprehensive women’s services, including, without limitation, perinatal care;

(vii) a multi-specialty ambulatory medical practice including, without limitation, such specialties as cardiology; gastroenterology; pulmonology; rheumatology; neurology; urology; orthopedics; and rehabilitation medicine, the rehabilitation medicine operating between the hours of 8:00 AM and 5:00 PM, Mondays through Fridays, together with such additional hours as the Grantee, or its successor or assign, shall elect;

(viii) a medical office and/or clinic specializing in care for patients with HIV/AIDS (which service(s) may, if so elected by the Grantee, or its successor or assign, be provided through the FQHC);

(ix) dental services, operating between the hours of 9:00 AM and 7:00 PM, Mondays through Fridays, together with such additional hours as the Grantee, or its successor or assign, shall elect (which service may, if so elected by the Grantee, or its successor or assign, be provided through the FQHC);

(x) pediatrics, operating between the hours of 9:00 AM and 7:00 PM, Mondays through Fridays, together with such additional hours as the Grantee, or its successor or assign, shall elect (which service may, if so elected by the Grantee, or its successor or assign, be provided through the FQHC); and

(xi) behavioral health services, operating between the hours of 9:00 AM and 7:00 PM, Mondays through Fridays, together with such additional hours as the Grantee, or its successor or assign, shall elect (which service may, if so elected by the Grantee, or its successor or assign, be provided through the FQHC),

*provided, however*, that, if NYUHC determines, from time to time after the Commencement of New Medical Operations, in the exercise of its reasonable professional judgment made after consultation with the Advisory Panels and the Ombudsperson, or if the DOH determines in writing, that any of the Initial Additional Health Care Services is no longer necessary or appropriate due to changes in medical technology, care delivery methods, significant demographic shifts, or other similar grounds, the Grantee, and its successors and assigns, thereafter shall not be obligated to provide the service(s) so determined to be unnecessary or inappropriate, but the Grantee shall use its good faith, diligent professional efforts to replace such service(s) with other health care services that are or become appropriate to provide in lieu thereof in the reasonable professional judgment of NYUHC made after consultation with the Advisory Panels and the Ombudsperson.

For purposes of the foregoing, the requirements regarding minimum operating hours for the ASC, the FQHC and the Initial Additional Health Care Services (or, as applicable, any replacement(s) therefor as aforesaid) shall be suspended during the first year after the Commencement of New Medical Operations.

*“New Non-Medical Site”* means that certain parcel of land constituting, as of the date of this Indenture, Tax Lot \_\_\_ in Block 284 on the Tax Map.<sup>6</sup>

*“NMB Cancer Center Operations Deadline”* means the Commencement of Cancer Center Operations with regard to those Cancer Center Operations to be performed in the New Medical Building.

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<sup>6</sup> Insert a reference to the tax lot number of the newly subdivided tax lot that becomes the New Non-Medical Site.

“**NYUHC**” means NYU Hospitals Center, a New York not for profit corporation and the Grantee of this Indenture (but not any successor or assign thereof).

“**Ombudsperson**” means that certain community representative (or replacement thereof) appointed by FCHA on or prior to the date of this Indenture pursuant to the provisions of the PSA to act as the Ombudsperson (as such term is defined in the PSA), *provided, however*, that, if and when the then Ombudsperson shall resign or be dismissed, without a replacement thereof appointed by FCHA, there shall no longer be deemed to be an Ombudsperson for purposes of this Indenture.

“**Pacific Street Easement**” means that certain easement agreement, dated \_\_\_\_\_, 201\_\_\_\_, by and between \_\_\_\_\_ and \_\_\_\_\_, relating to the use of Pacific Street.<sup>7</sup>

“**Permitted Uses**” means use primarily for the New Medical Operations (as the same may be changed, from time to time, pursuant to the applicable provisions of, and/or the definitions contained in, this Indenture) and, incidentally thereto, for:

- (a) the operation and/or delivery of additional health services;
- (b) general offices in connection with the operations being conducted at the Premises;
- (c) the operation of a pharmacy servicing the clinical programs; and
- (d) other uses typically found in conjunction with the operation and delivery of health services.

“**PSA**” means that certain First Amended and Restated Purchase and Sale Agreement effective June 30, 2015, by and among the Grantor, FCHA, the Grantee and Fortis Property Group, LLC.

“**Red Hook Location**” one or more facilities located in the Red Hook neighborhood of Brooklyn, New York.

“**Responsible Affiliate or Contractor**” means one or more affiliates of the Grantee, or its successor or assign, or one or more contractors therewith, each of whom shall have been determined by SUNY, in accordance with standards and guidelines issued by the New York State Office of State Comptroller, to be responsible vendors. SUNY has determined that LFMC is a Responsible Affiliate or Contractor.

“**Reverter Subordination Date**” means the day upon which occurs the later to occur of:

- (a) the Commencement of New Medical Operations; and
- (b) the Commencement of Cancer Center Operations.

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<sup>7</sup> Insert the date of the Pacific Street Easement and the names of the parties thereto.

“*SNDA*” means that certain subordination, non-disturbance and attornment agreement dated \_\_\_\_\_, 2014, by and between the Grantor, as landlord, and the Grantee, as subtenant, with regard to the Interim Sublease.

“*SUNY*” means the State University of New York, a corporation within the New York State Education Department.

“*Roof Easement*” means that certain easement agreement, dated \_\_\_\_\_, 201\_\_\_\_, by and between \_\_\_\_\_ and \_\_\_\_\_, relating to the roof of the New Medical Building.<sup>8</sup>

“*Tax Map*” means the digital tax map of the Borough of Brooklyn, County of Kings and City and State of New York.

“*Unavoidable Delay*” or “*Unavoidable Interruption*” means delays or service interruptions incurred by the Grantee, its successor or assign, 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 at the Premises (and the need to remediate them), acts or omissions of FCHA (and its successors and assigns as owner of the Interim Medical Site, the Garage Premises and the New Non-Medical Site, and demolition and construction activities thereon) that delay the performance of the obligations of the Grantee, or its 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 the Grantee, or its successors or assigns, to satisfy its obligations to meet such deadlines or continuously provide such services, or court orders not resulting from any unlawful action by the Grantee, its successors or assigns, or any of their respective affiliates or contractors.

“*ZLDA*” means that certain [zoning lot development agreement][amendment to zoning lot development agreement], dated \_\_\_\_\_, 201\_\_\_\_, by and among \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, with regard to the Premises, the Interim Medical Site, the New Non-Medical Site and other premises.<sup>9</sup>

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<sup>8</sup> Insert the date of the Roof Easement and the names of the parties thereto.

<sup>9</sup> Insert the date of the ZLDA or ZLDA Amendment, as applicable, and the names of the parties thereto, as well as delete the inapplicable bracketed language.