FIRST AMENDED AND RESTATED

PURCHASE AND SALE AGREEMENT

- among -

DOWNSTATE AT LICH HOLDING COMPANY, INC.,

("Seller")

- and -

FPG COBBLE HILL ACQUISITIONS, LLC

("Purchaser")

- and -

NYU HOSPITALS CENTER

("NYUHC")

- and -

FORTIS PROPERTY GROUP, LLC

("Fortis")

Effective: June 30, 2014
## Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1.</td>
<td>Sale of Property; Conveyance of New Medical Site.</td>
<td>2</td>
</tr>
<tr>
<td>Section 2.</td>
<td>Purchase Price</td>
<td>9</td>
</tr>
<tr>
<td>Section 3.</td>
<td>Apportionments</td>
<td>11</td>
</tr>
<tr>
<td>Section 4.</td>
<td>Closing Dates; Conditions to Close.</td>
<td>13</td>
</tr>
<tr>
<td>Section 5.</td>
<td>Title and Permitted Exceptions</td>
<td>25</td>
</tr>
<tr>
<td>Section 6.</td>
<td>Violations; Administrative Code Obligations</td>
<td>30</td>
</tr>
<tr>
<td>Section 7.</td>
<td>Representations and Warranties of Seller</td>
<td>31</td>
</tr>
<tr>
<td>Section 8.</td>
<td>Representations and Warranties of Purchaser, Fortis and NYUHC</td>
<td>34</td>
</tr>
<tr>
<td>Section 9.</td>
<td>&quot;AS IS&quot; Condition; Acknowledgement and Release by Purchaser</td>
<td>37</td>
</tr>
<tr>
<td>Section 10.</td>
<td>Certain Covenants and Obligations of the Parties; Continued Access.</td>
<td>41</td>
</tr>
<tr>
<td>Section 11.</td>
<td>Transaction Costs; Transactional Tax Returns</td>
<td>57</td>
</tr>
<tr>
<td>Section 12.</td>
<td>Seller’s Closing Deliveries</td>
<td>58</td>
</tr>
<tr>
<td>Section 13.</td>
<td>Purchaser’s and NYUHC’s Closing Deliveries</td>
<td>64</td>
</tr>
<tr>
<td>Section 14.</td>
<td>Defaults in Closing and Remedies</td>
<td>68</td>
</tr>
<tr>
<td>Section 15.</td>
<td>Additional Obligations and Covenants of the Parties</td>
<td>79</td>
</tr>
<tr>
<td>Section 16.</td>
<td>Broker</td>
<td>90</td>
</tr>
<tr>
<td>Section 17.</td>
<td>Casualty</td>
<td>90</td>
</tr>
<tr>
<td>Section 18.</td>
<td>Condemnation</td>
<td>91</td>
</tr>
<tr>
<td>Section 19.</td>
<td>Purchaser, Fortis and NYUHC Indemnification Obligations; Seller</td>
<td>92</td>
</tr>
<tr>
<td>Section 20.</td>
<td>Assignment</td>
<td>96</td>
</tr>
<tr>
<td>Section 21.</td>
<td>No Publicity; Confidentiality Agreement</td>
<td>98</td>
</tr>
<tr>
<td>Section 22.</td>
<td>NPL and DOH Consents</td>
<td>99</td>
</tr>
<tr>
<td>Section 23.</td>
<td>Notices</td>
<td>100</td>
</tr>
<tr>
<td>Section 24.</td>
<td>Further Assurances</td>
<td>103</td>
</tr>
<tr>
<td>Section 25.</td>
<td>Certain Rules of Construction and Defined Terms; Governing Law</td>
<td>103</td>
</tr>
<tr>
<td>Section 26.</td>
<td>Miscellaneous</td>
<td>106</td>
</tr>
</tbody>
</table>

INDEX OF SCHEDULES ........................................................................................................ ii
INDEX OF EXHIBITS ........................................................................................................... ii
INDEX OF DEFINED TERMS ............................................................................................... iii
INDEX OF SCHEDULES

<table>
<thead>
<tr>
<th>Item</th>
<th>Section Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schedule &quot;A&quot;</td>
<td>1.1</td>
</tr>
<tr>
<td>Schedule &quot;B&quot;</td>
<td>1.1(b)</td>
</tr>
<tr>
<td>Schedule &quot;C&quot;</td>
<td>1.2</td>
</tr>
<tr>
<td>Schedule &quot;D&quot;</td>
<td>5.2</td>
</tr>
<tr>
<td>Schedule &quot;E&quot;</td>
<td>5.2</td>
</tr>
<tr>
<td>Schedule &quot;F&quot;</td>
<td>5.2(a)</td>
</tr>
<tr>
<td>Schedule &quot;G&quot;</td>
<td>7.2(a), (b)</td>
</tr>
<tr>
<td>Schedule &quot;H&quot;</td>
<td>7.2(d)</td>
</tr>
<tr>
<td>Schedule &quot;I&quot;</td>
<td>10.5</td>
</tr>
</tbody>
</table>

INDEX OF EXHIBITS

<table>
<thead>
<tr>
<th>Item</th>
<th>Section Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit &quot;A&quot;</td>
<td>Preamble</td>
</tr>
<tr>
<td>Exhibit &quot;B&quot;</td>
<td>Preamble</td>
</tr>
<tr>
<td>Exhibit &quot;C&quot;</td>
<td>1.1</td>
</tr>
<tr>
<td>Exhibit &quot;D&quot;</td>
<td>1.3</td>
</tr>
<tr>
<td>Exhibit &quot;E&quot;</td>
<td>1.3</td>
</tr>
<tr>
<td>Exhibit &quot;F&quot;</td>
<td>2.2</td>
</tr>
<tr>
<td>Exhibit &quot;G&quot;</td>
<td>2.3</td>
</tr>
<tr>
<td>Exhibit &quot;H&quot;</td>
<td>5.4(b)(ii)</td>
</tr>
<tr>
<td>Exhibit &quot;I&quot;</td>
<td>7.5</td>
</tr>
<tr>
<td>Exhibit &quot;J&quot;</td>
<td>8.5</td>
</tr>
<tr>
<td>Exhibit &quot;K&quot;</td>
<td>8.6</td>
</tr>
<tr>
<td>Exhibit &quot;L&quot;</td>
<td>8.11</td>
</tr>
<tr>
<td>Exhibit &quot;M&quot;</td>
<td>10.3(a)(x)</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Exhibit &quot;N&quot;</td>
<td>12.1(a)(i)</td>
</tr>
<tr>
<td>Exhibit &quot;O&quot;</td>
<td>12.1(c)(i)</td>
</tr>
<tr>
<td>Exhibit &quot;P&quot;</td>
<td>12.1(c)(ii)</td>
</tr>
<tr>
<td>Exhibit &quot;Q&quot;</td>
<td>12.1(c)(iii)</td>
</tr>
<tr>
<td>Exhibit &quot;R&quot;</td>
<td>12.1(c)(iv)</td>
</tr>
<tr>
<td>Exhibit &quot;S&quot;</td>
<td>12.2(a)(i)</td>
</tr>
<tr>
<td>Exhibit &quot;T&quot;</td>
<td>12.2(b)(i)</td>
</tr>
<tr>
<td>Exhibit &quot;U&quot;</td>
<td>12.3(a)(i)</td>
</tr>
<tr>
<td>Exhibit &quot;V&quot;</td>
<td>12.3(b)</td>
</tr>
<tr>
<td>Exhibit &quot;W&quot;</td>
<td>20.2(c)</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Exhibit &quot;X&quot;</td>
<td>20.7(c)</td>
</tr>
</tbody>
</table>
INDEX OF DEFINED TERMS

Additional Community Fund Payment .................. 10
AG .................................................. 100
Agreement ......................................... 1
Amended Interim Lease ................................ 3
Business Day ...................................... 104
Cancer Center Commencement Deadline ............. 81
Cancer Center Services ................................ 81
CERCLA ........................................... 40
Charities Bureau ................................... 99
Clinical Advisory Panel .............................. 86
Closing ............................................. 14
Closing Date ....................................... 14
Closing Location ................................... 13
Code .................................................. 32
Community Foundation ................................ 10
Community Foundation Fund Escrow Agreement 10
Community Fund Escrow Agent ....................... 10
Community Fund Payment ............................ 10
Community Services ................................ 84
Community Services Commencement Deadline ....... 84
Core Premises ..................................... 15
Costs ............................................... 92
Credit ............................................... 48
Credit Balance ..................................... 49
DASNY .............................................. 22
Declarations of Covenants and Restrictions ........... 87
Defeasance Amount .................................. 22
Defeasance Payment .................................. 22
Demolition .......................................... 54
Demolition Activities ................................ 54
DOB ...................................................... 7
DOF ..................................................... 8
DOH Consent ....................................... 100
Downpayment Account .............................. 9
Downpayments ...................................... 9
ED Commencement Date ............................. 24
Emergency Department ............................... 17
Entity ............................................... 10
Environmental Conditions ............................. 40
Environmental Losses ............................... 95
Excluded Personal Property .......................... 3
Execution Date ...................................... 1
Existing Surveys ..................................... 25
Existing Title Commitment ......................... 25
Extension Payment .................................. 21
Final Amount ....................................... 9
Final Closing ....................................... 13
Final Closing Date .................................. 13
Final Closing Deadline ......................... 21, 23
Final Closing Deed .................................. 62
Final Closing Estoppel Certificate ................. 20
Final Closing Premises ............................. 3
Final Closing Release and Indemnification .......... 20
Final ED Deficit Invoice .......................... 48
Final ED Deficit Payment .......................... 49
Final Omnibus Assignment ......................... 62
FIRPTA ............................................... 32
First ED Deficit Payment ......................... 48
Fortis ............................................... 1
Fortis Guarantee ................................... 10
Fortis Payment ..................................... 69
Fortis Proposal ..................................... 1
Fortis’ Closing Certification ......................... 35
FQHC ............................................... 54
Full Net Costs ..................................... 48
Hazardous Materials .............................. 40
Health Premises ................................... 3
Health Property ...................................... 4
HSCB Foundation .................................. 38
Immediate Repair Costs ............................ 91
Improvements ...................................... 2
Incorporated Documents ....................... 103
Initial Closing ...................................... 13
Initial Closing Date ................................ 13
Initial Closing Deadline ..................... 20, 23
Initial Closing Estoppel Certificate ............ 16
Initial Closing Release and Indemnification .... 17
Initial Community Fund Payment ............. 10
Initial Downpayment ............................... 9
Initial ED Deficit Invoice ...................... 48
Initial Omnibus Assignment ................. 59
Initial Purchaser Deed ......................... 58
Insurance Schedule ............................... 32
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interim Closing Premises</td>
<td>3</td>
</tr>
<tr>
<td>Interim Medical Premises</td>
<td>3</td>
</tr>
<tr>
<td>Interim Sublease</td>
<td>4</td>
</tr>
<tr>
<td>Land</td>
<td>2</td>
</tr>
<tr>
<td>Law</td>
<td>104</td>
</tr>
<tr>
<td>Letter of Interest</td>
<td>77</td>
</tr>
<tr>
<td>LFHC</td>
<td>54</td>
</tr>
<tr>
<td>LICH</td>
<td>1</td>
</tr>
<tr>
<td>LICH Transformation Advisory Panel</td>
<td>86</td>
</tr>
<tr>
<td>Limitations Period Expiration Date</td>
<td>47</td>
</tr>
<tr>
<td>Lower Limiting Plane</td>
<td>8</td>
</tr>
<tr>
<td>Malpractice Judgments</td>
<td>47</td>
</tr>
<tr>
<td>Malpractice Net Refund Date</td>
<td>47</td>
</tr>
<tr>
<td>Medical Malpractice Amount</td>
<td>47</td>
</tr>
<tr>
<td>Medical Use Restriction</td>
<td>5</td>
</tr>
<tr>
<td>New Healthcare Services</td>
<td>77</td>
</tr>
<tr>
<td>New Medical Building</td>
<td>80</td>
</tr>
<tr>
<td>New Medical Operations</td>
<td>80</td>
</tr>
<tr>
<td>New Medical Operations Commencement</td>
<td>81</td>
</tr>
<tr>
<td>New Medical Premises</td>
<td>80</td>
</tr>
<tr>
<td>New Medical Site</td>
<td>3</td>
</tr>
<tr>
<td>New Medical Site Declaration</td>
<td>61</td>
</tr>
<tr>
<td>New Medical Site Deed</td>
<td>60</td>
</tr>
<tr>
<td>New Non-Medical Site</td>
<td>3</td>
</tr>
<tr>
<td>NMS Closing</td>
<td>13</td>
</tr>
<tr>
<td>NMS Closing Date</td>
<td>13</td>
</tr>
<tr>
<td>NMS Closing Deadline</td>
<td>20, 23</td>
</tr>
<tr>
<td>notices</td>
<td>100</td>
</tr>
<tr>
<td>NPL Consents</td>
<td>99</td>
</tr>
<tr>
<td>NYU</td>
<td>105</td>
</tr>
<tr>
<td>NYUHC</td>
<td>1</td>
</tr>
<tr>
<td>NYUHC Documents</td>
<td>36</td>
</tr>
<tr>
<td>NYUHC ED Commencement Conditions</td>
<td>24</td>
</tr>
<tr>
<td>NYUHC Failure Notice</td>
<td>77</td>
</tr>
<tr>
<td>NYUHC Indemnitees</td>
<td>93</td>
</tr>
<tr>
<td>NYUHC's Closing Certification</td>
<td>37</td>
</tr>
<tr>
<td>NYUHC's knowledge</td>
<td>36</td>
</tr>
<tr>
<td>Obsolete Personal Property</td>
<td>4</td>
</tr>
<tr>
<td>Offeror</td>
<td>1</td>
</tr>
<tr>
<td>Option</td>
<td>89</td>
</tr>
<tr>
<td>Original PSA</td>
<td>106</td>
</tr>
<tr>
<td>OSC</td>
<td>100</td>
</tr>
<tr>
<td>Pacific Street Easement</td>
<td>5</td>
</tr>
<tr>
<td>Parking Declaration</td>
<td>5</td>
</tr>
<tr>
<td>Parties</td>
<td>1</td>
</tr>
<tr>
<td>Party</td>
<td>1</td>
</tr>
<tr>
<td>Permitted Application Materials</td>
<td>45</td>
</tr>
<tr>
<td>Permitted Applications</td>
<td>45</td>
</tr>
<tr>
<td>Permitted Kestenbaum Entity</td>
<td>104</td>
</tr>
<tr>
<td>Permitted NYUHC Entity</td>
<td>105</td>
</tr>
<tr>
<td>Permitted Purposes</td>
<td>84</td>
</tr>
<tr>
<td>Permitted Section 10.3(d) Inspections</td>
<td>52</td>
</tr>
<tr>
<td>Permitted Title Exceptions</td>
<td>25</td>
</tr>
<tr>
<td>Personal Property</td>
<td>4</td>
</tr>
<tr>
<td>PIT Bond Debt</td>
<td>22</td>
</tr>
<tr>
<td>Premises</td>
<td>2</td>
</tr>
<tr>
<td>Previously Permitted Occupants</td>
<td>43</td>
</tr>
<tr>
<td>Property</td>
<td>4</td>
</tr>
<tr>
<td>Purchase Price</td>
<td>9</td>
</tr>
<tr>
<td>Purchaser</td>
<td>1</td>
</tr>
<tr>
<td>Purchaser Indemnitees</td>
<td>95</td>
</tr>
<tr>
<td>Purchaser Section 14.5 Notice</td>
<td>77</td>
</tr>
<tr>
<td>Purchaser's Closing Certification</td>
<td>35</td>
</tr>
<tr>
<td>Purchaser's Documents</td>
<td>34</td>
</tr>
<tr>
<td>Purchaser's knowledge</td>
<td>35</td>
</tr>
<tr>
<td>RCRA</td>
<td>40</td>
</tr>
<tr>
<td>Reacquisition Notice</td>
<td>90</td>
</tr>
<tr>
<td>Reacquisition Price</td>
<td>89</td>
</tr>
<tr>
<td>Red Hook Location</td>
<td>54</td>
</tr>
<tr>
<td>Remedial Measures</td>
<td>95</td>
</tr>
<tr>
<td>Replacement Agreements</td>
<td>78</td>
</tr>
<tr>
<td>Replacement Provider</td>
<td>77</td>
</tr>
<tr>
<td>Required Vacant Premises</td>
<td>43</td>
</tr>
<tr>
<td>Responsible Affiliate or Contractor</td>
<td>79</td>
</tr>
<tr>
<td>Revocable Consent Agreements</td>
<td>12</td>
</tr>
<tr>
<td>RFP</td>
<td>1</td>
</tr>
<tr>
<td>Roof Easement</td>
<td>5</td>
</tr>
<tr>
<td>Section 10.3(d) Downpayment</td>
<td>9</td>
</tr>
<tr>
<td>Seller</td>
<td>1</td>
</tr>
<tr>
<td>Seller Assistance</td>
<td>42</td>
</tr>
<tr>
<td>Seller Balance</td>
<td>9</td>
</tr>
<tr>
<td>Seller Bill of Sale</td>
<td>59</td>
</tr>
<tr>
<td>Seller Eviction Action Discontinuance Date</td>
<td>44</td>
</tr>
<tr>
<td>Seller Indemnitees</td>
<td>92</td>
</tr>
<tr>
<td>Seller’s Affiliates</td>
<td>38</td>
</tr>
<tr>
<td>Seller’s Closing Certification</td>
<td>33</td>
</tr>
<tr>
<td>Seller’s Documents</td>
<td>31</td>
</tr>
<tr>
<td>Seller’s knowledge</td>
<td>33</td>
</tr>
<tr>
<td>Site Agreements</td>
<td>5</td>
</tr>
<tr>
<td>SPEs</td>
<td>96</td>
</tr>
<tr>
<td>Topic</td>
<td>Page</td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Staffco</td>
<td>38</td>
</tr>
<tr>
<td>Stakeholders</td>
<td>86</td>
</tr>
<tr>
<td>Stipulation and Order</td>
<td>1</td>
</tr>
<tr>
<td>Stolen Personal Property</td>
<td>3</td>
</tr>
<tr>
<td>SUNY</td>
<td>1</td>
</tr>
<tr>
<td>SUNY Bill of Sale</td>
<td>59</td>
</tr>
<tr>
<td>SUNY ED Continuation Period</td>
<td>46</td>
</tr>
<tr>
<td>SUNY Emergency Department</td>
<td>46</td>
</tr>
<tr>
<td>SUNY Lease</td>
<td>14</td>
</tr>
<tr>
<td>SUNY Rejection Notice</td>
<td>78</td>
</tr>
<tr>
<td>Supreme Court</td>
<td>99</td>
</tr>
<tr>
<td>Surviving Obligations</td>
<td>106</td>
</tr>
<tr>
<td>Third Party Claims</td>
<td>95</td>
</tr>
<tr>
<td>Threshold Amount</td>
<td>27</td>
</tr>
<tr>
<td>Title Company</td>
<td>25</td>
</tr>
<tr>
<td>Title Cure Amount</td>
<td>29</td>
</tr>
<tr>
<td>Title Objections</td>
<td>26</td>
</tr>
<tr>
<td>Transactional Tax Returns</td>
<td>58</td>
</tr>
<tr>
<td>Transactional Taxes</td>
<td>57</td>
</tr>
<tr>
<td>Unavoidable Delays</td>
<td>88</td>
</tr>
<tr>
<td>Unavoidable Interruptions</td>
<td>88</td>
</tr>
<tr>
<td>Violations</td>
<td>30</td>
</tr>
<tr>
<td>ZLDA</td>
<td>5</td>
</tr>
<tr>
<td>ZRD1 Determination</td>
<td>7</td>
</tr>
<tr>
<td>ZRD1 Determinations</td>
<td>7</td>
</tr>
</tbody>
</table>
This FIRST AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT (this "Agreement") is effective as of the 30th day of June, 2014 (the "Execution Date"), by and between DOWNSTATE AT LICH HOLDING COMPANY, INC., a New York not-for-profit corporation, having an office c/o the State University of New York Health Science Center at Brooklyn, 450 Clarkson Avenue, Brooklyn, New York 11203 ("Seller"); 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 ("Purchaser"); NYU HOSPITALS CENTER, a New York not-for-profit corporation having an office at 550 Fifth Avenue, New York, NY 10016 ("NYUHC"); and solely with respect to Sections 2.3, 4.3(b), 8.2, 8.4, 8.6, 8.7, 9.1, 9.5, 10.5, 14.1(b), 19.2, 20.1, 20.5, 23 and 26, FORTIS PROPERTY GROUP, LLC, a Delaware limited liability company ("Fortis") (Seller, Purchaser, NYUHC and Fortis (for those sections applicable to Fortis) are each a "Party" and collectively the "Parties").

Those capitalized terms used in this Agreement and not defined before their use shall have the meanings given to such terms in this Agreement after their use. Reference should be made to the "Index of Defined Terms" to this Agreement to locate such definitions.

Statement of Facts

WHEREAS, pursuant to that certain stipulation and order (the "Stipulation and Order") signed on February 24, 2014 by Hon. Carolyn Demarest (relating to case number 9188/2011 before Justice Demarest in the Supreme Court of the State of New York, County of Kings) and Hon. Johnny Lee Baynes (relating to case numbers 5814/13 and 13007/13 before Justice Baynes in the Supreme Court of the State of New York, County of Kings), the State University of New York ("SUNY") issued Request for Proposal X002654, Healthcare Services at Long Island College Hospital and Purchase of Property, attached hereto as Exhibit "A" ("RFP"); and

WHEREAS, Fortis, as the "Offeror" (as such term is defined in the RFP), in collaboration with its healthcare services providers and real estate developers, including NYUHC, timely submitted a proposal in response to the RFP (the "Fortis Proposal") (that portion of which that was previously publicly available, along with the term sheet and lender commitments that were attachments to the Fortis Proposal, are attached hereto as Exhibit "B"), and was awarded the opportunity to enter into a transaction with Seller to arrange to provide healthcare services at the Long Island College Hospital ("LICH") campus described in the RFP and to acquire the premises described below in this Agreement; and

WHEREAS, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, those certain premises described below in this Agreement; and

WHEREAS, Purchaser desires that Seller convey directly to NYUHC a portion of the premises purchased by Purchaser hereunder for the purpose of constructing a new medical building and providing healthcare services at the LICH campus; and
WHEREAS, the Parties now desire to set forth their understandings with regard to such sale, purchase and conveyance and the provision of healthcare services.

NOW, THEREFORE, for and in consideration of the agreements, covenants, representations and warranties hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller, Purchaser, NYUHC and Fortis hereby agree as follows:

Section 1. Sale of Property; Conveyance of New Medical Site.

1.1 Seller agrees to sell, and Purchaser agrees to purchase (subject to the conveyance of the New Medical Site to NYUHC pursuant to Section 1.3 and the other provisions of Section 1.3):

(a) the parcel or parcels of land located in the City of New York, Borough of Brooklyn, County of Kings, and State of New York, and more particularly described in Schedule "A" hereto (the "Land");

(b) all buildings and improvements situated on the Land (collectively, the "Improvements"; the Land and the Improvements collectively, the "Premises"); and

(c) all right, title, and interest of Seller, if any, in and to:

(i) all easements, rights of way, alleys and strips and gores of land adjacent to the Land;

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

(iii) any unpaid award for any change of grade of any street or highway;

(iv) all development rights, if any, appurtenant to the Premises under, or pursuant to, the Zoning Resolution of the City of New York, as amended (except as set forth in Sections 1.3 and 5.7); and

(v) all other appurtenances thereto.

The Premises are also known as and by the following building names and street addresses in Brooklyn, New York, and as the following Block and Lot numbers on the tax map of the Borough of Brooklyn, City of New York:

<table>
<thead>
<tr>
<th>Building</th>
<th>Address</th>
<th>Block/Lot No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;Fuller Pavilion&quot;</td>
<td>339-357 Hicks, 70-76 Atlantic</td>
<td>Block 284 part of Lot 1</td>
</tr>
<tr>
<td>&quot;Othmer Pavilion&quot;</td>
<td>91-95 Pacific</td>
<td>Block 284 part of Lot 1</td>
</tr>
</tbody>
</table>
Those portions of the Polak Pavilion premises and the Henry Street Building premises identified in that certain lease by and between Seller and Purchaser, attached hereto as Exhibit "C" (the "Amended Interim Lease"), which Amended Interim Lease has been executed as of the Execution Date, are hereafter collectively the "Interim Medical Premises." The Polak Pavilion premises and the Henry Street Building premises are hereafter collectively the "Final Closing Premises." The land described in Schedule "B" hereto, which land comprises part of the current Fuller Pavilion and Othmer Pavilion, is hereafter the "New Medical Site" (those portions of the Fuller Pavilion premises and the Othmer Pavilion premises that are not part of the New Medical Site, once subdivided from the New Medical Site tax lot, shall be the "New Non-Medical Site"). The Premises, other than the New Medical Site and the Final Closing Premises, are the "Initial Closing Premises." The Interim Medical Premises and the New Medical Site are hereafter collectively the "Health Premises."

1.2 Attached as Schedule "C" hereto is a list of personal property owned by Seller or by SUNY that is to be removed from the Premises within sixty (60) days following the ED Commencement Date and is not included in the sale hereunder (the "Excluded Personal Property").

(a) Seller shall not be responsible for or required to deliver at Closing, nor shall the Purchase Price be adjusted on account of, any personal property that is stolen or otherwise removed from the Premises without Seller’s authorization prior to the Closing Date (the "Stolen Personal Property").

(b) Seller shall not be responsible for or required to deliver at Closing, nor shall the Purchase Price be adjusted on account of, any personal property that is consumed or becomes obsolete prior to 11:59 p.m. of the date that SUNY ceases entirely to operate any portion of the Health Premises as a campus of its University Hospital of Brooklyn under Article 28 of the New York Public Health Law (the "Obsolete Personal Property").
(c) This sale includes (i) all furniture, fixtures, equipment, machinery, materials and other personal property of any kind or nature owned by Seller as of the Execution Date; and (ii) all furniture, fixtures, equipment, machinery, materials and other personal property owned by SUNY as of the Execution Date that is located on the Premises; provided, that none of the Excluded Personal Property, the Stolen Personal Property or the Obsolete Personal Property shall be included in this sale (the included personal property is hereafter the "Personal Property;" the Premises, the Personal Property and the other items included in this sale under Section 1.1, collectively, the "Property"). The Health Premises, along with all Personal Property attached or appurtenant to the Improvements at the Health Premises or located and used in the operation or maintenance of, or the provision of services at, the Health Premises, is hereafter the "Health Property."

(d) For avoidance of doubt, the Personal Property does not include any furniture, equipment, machinery, materials or supplies owned by Seller’s tenants (other than SUNY) or leased by Seller’s tenants from third parties.

(e) The Parties acknowledge and agree that the value of the Personal Property is immaterial in relation to the value of the Property as a whole.

1.3 With regard to the New Medical Site, the Parties agree as follows:

(a) Although Purchaser shall pay for the New Medical Site as part of the Purchase Price, the New Medical Site will be conveyed by Seller to NYUHC at the NMS Closing:

(i) for no additional consideration from NYUHC or Purchaser to Seller other than the Purchase Price set forth in Section 2.1 and the fulfillment of NYUHC's obligations under Section 15 (or, if applicable, Section 10.6) of this Agreement; and

(ii) for no consideration from NYUHC to Purchaser other than as set forth in that certain interim sublease by and between NYUHC and Purchaser, attached hereto as Exhibit "D" (the "Interim Sublease"), or as set forth in other agreements solely by and between Purchaser and NYUHC.

(b) Pursuant to Section 10.5, the New Medical Site shall be conveyed to NYUHC with all Demolition Activities complete.

(c) The conveyance to NYUHC shall include all right, title and interest of Seller, if any, in and to:

(i) all easements, rights of way, alleys and strips and gores of land appurtenant to the New Medical Site, other than:

(A) any rights to Pacific Street (except pursuant to the Pacific Street Easement);
(B) any rights to strips and gores of land between the New Medical Site and the remainder of the New Non-Medical Site; and

(C) any rights to strips and gores of land between the New Medical Site and the land on which the Polak Pavilion and the Henry Street Building were built;

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

(iii) any unpaid award for any change of grade of any street or highway (other than Pacific Street).

(d) The conveyance to NYUHC shall also include all of the rights of Seller under or pursuant to, and shall be subject to all of the obligations set forth in, the following documents (collectively, the “Site Agreements”), all of which, subject to the provisions of subsection (e) below, shall be in the respective forms attached hereto as Exhibit “E”:

(i) the Zoning Lot Development and Easement Agreement (together with any and all modifications, amendments, additions, replacements, restatements or consolidations, the "ZLDA"), including the allocation to the New Medical Site of 105,000 square feet of floor area (as defined in the Zoning Resolution of the City of New York) to be used for community facility uses only;

(ii) the easement on the roof of the New Medical Building (the "Roof Easement");

(iii) the easement for the use of Pacific Street (the "Pacific Street Easement");

(iv) the declaration of covenants and restrictions for the Parking Garage (the “Parking Declaration”); and

(v) the restriction on the use of the Premises by certain third party health care providers (the "Medical Use Restriction").

(e) Each of the Site Agreements shall be executed, acknowledged and delivered at the Initial Closing, after the execution, acknowledgement and delivery of the Initial Purchaser Deed, and NYUHC shall execute an acknowledgment at the Initial Closing pursuant to which it agrees to be bound, from and after the NMS Closing, by the provisions of any Site Agreement to which it is not a direct signatory. The Parties
acknowledge that, if the NMS Closing shall occur contemporaneously with the Initial Closing, however, then:

(i) the Site Agreements shall be executed, acknowledged and delivered at the joint closing after the execution, acknowledgement and delivery of the Initial Purchaser Deed and the New Medical Site Deed;

(ii) NYUMC shall be the sole grantor of the Roof Easement and the sole grantee of the Pacific Street Easement, and Seller shall be eliminated as a signatory of each document; and

(iii) the Site Agreements shall be revised by Purchaser’s attorneys prior to the joint closing to reflect the changes in parties and the changes in ownership from those set forth in the forms of the Site Agreements attached hereto, which revisions shall be reasonably acceptable to Seller’s attorneys and NYUHC’s attorneys.

(f) The Parties acknowledge and agree that Seller has agreed to execute and deliver the Site Agreements as an accommodation to Purchaser and NYUHC, and that, but for the deferral of the closings of title to parts of the Premises hereunder, all of the Site Agreements would have been executed and delivered solely by Purchaser and NYUHC. As a result:

(i) although the grants of easements pursuant to the provisions of the Roof Easement and the Pacific Street Easement shall be effective as to the New Medical Site and the New Non-Medical Site, respectively, immediately upon the execution and delivery of such documents by all of the parties thereto, none of the covenants and agreements contained in the Roof Easement and the Pacific Street Easement shall be effective and binding as against Seller, other than the easement grants and the rights to use such easements as specified in the Roof Easement and the Pacific Street Easement, unless (and until) either:

(A) this Agreement shall be terminated as to NYUHC prior to the NMS Closing;

(B) Seller shall become the successor to NYUHC as the fee owner of the New Medical Site after the NMS Closing shall have occurred, whether pursuant to the New Medical Site Deed or otherwise; or

(C) solely as to the effectiveness of such covenants and agreements in the Pacific Street Easement, Seller utilizes the easement granted by the Pacific Street
Easement for the use and enjoyment of the New Medical Site;

(ii) the Medical Use Restriction shall apply to the Premises (excluding the New Medical Premises, the Polak Pavilion Premises and the Henry Street Building Premises) only if, as and when the NMS Closing has occurred; and

(iii) the Medical Use Restriction shall not be binding upon Seller or SUNY (as a lessee of the Polak Pavilion and the Henry Street Building) but shall be binding upon Purchaser from and after the Final Closing, or upon any other transferee of the Polak Pavilion Premises and the Henry Street Building Premises if this Agreement is terminated prior to the Final Closing but the NMS Closing has occurred.

1.4 Purchaser shall, on or before November 5, 2014, submit a request on Department of Buildings ("DOB") Form ZRD1, and it shall thereafter diligently prosecute such request in accordance with this Section 1.4 and shall use commercially reasonable efforts to obtain, a determination from DOB as to the correct interpretation (a "ZRD1 Determination" or "ZRD1 Determinations"), of the applicable provisions of the Zoning Resolution with respect to the following:

(a) Whether providing off-site accessory parking on a zoning lot other than the zoning lot on which the Interim Medical Premises or the New Medical Premises is located meets the findings required by ZR 25-532 governing off-site accessory parking and is in accordance with Section 25-55 of the Zoning Resolution.

(b) The permitted locations of rear yard equivalents on the zoning lot of which the New Medical Site is a part.

(c) Whether items not listed in ZR 23-12, such as landscaping, furniture, elevator and stair bulkheads, ducts and flues are permitted obstructions in the rooftop open space, and if so, whether there is a limit as to the areas such permitted obstructions can occupy.

(d) Whether an area must be open to and usable by the building’s residents for a minimum number of hours to qualify as open space.

(e) Whether two buildings that each meet the definition of a building under the Zoning Resolution, that abut and touch each other, and that are deemed one building for purposes of ZR 24-164 of the Zoning Resolution, may be treated as separate buildings for all other purposes under the Zoning Resolution and the Building Code.

Purchaser shall, prior to submitting such application, and during the prosecution thereof, consult with NYUHC from time to time and NYUHC shall cooperate with Purchaser in connection therewith. All filings made by Purchaser shall be reasonably acceptable to NYUHC. NYUHC shall be provided copies of all material communications between Purchaser and DOB concerning
the ZRDI Determinations, and Purchaser shall provide NYUHC with reasonable prior notice of any meetings or material calls between Purchaser and DOB concerning the ZRDI Determinations, and an opportunity to participate therein.

1.5 Purchaser shall, no later than January 31, 2015, submit to the New York City Department of Finance ("DOF") a request for a determination as to whether DOF will require, as a condition to the treatment of the New Medical Site with NYUHC’s proposed building thereon and the Non-New Medical Site with Purchaser’s proposed building thereon, as the same are being proposed, as separate tax lots: (i) that the New Medical Site with NYUHC’s proposed building thereon and the airspace above such building to an elevation 15 feet above its roof ("Lower Limiting Plane") be treated as one tax lot, and the Non-New Medical Site with Purchaser’s proposed building thereon and the airspace above the Lower Limiting Plane be treated as a second, separate tax lot or (ii), if not, that the New Medical Site with NYUHC’s proposed building thereon and the Non-New Medical Site with Purchaser’s proposed building thereon be subjected to a condominium regime in which the New Medical Site with NYUHC’s proposed building thereon constitute one unit and the Non-New Medical Site with Purchaser’s proposed building thereon, together with all other present and future development rights appurtenant to the condominium, constitute a second, separate unit. Purchaser shall diligently prosecute such request. Prior to their submission to DOF, Purchaser shall deliver all substantive documents to Seller and NYUHC for their respective reviews for accuracy, which review shall be completed promptly. Seller and NYUHC shall each cooperate with Purchaser, at Purchaser’s sole cost and expense, in the execution, acknowledgement and delivery of any required applications or other documents or instruments and the delivery of such other information as may be required by DOF in order to make such determination. The parties agree that, from and after the NMS Closing (or, if there is no NMS Closing, the termination of this Agreement as it relates to NYUHC’s right to acquire the New Medical Site), they will establish an ownership structure consistent with that required by DOF.

1.6 Each of Purchaser and NYUHC acknowledge and agree that their obligations under this Agreement, including without limitation their obligations to close title and consummate their respective portions of the transactions contemplated by this Agreement, shall remain in full force and effect regardless of the timing or substance of DOB's response to Purchaser's request under Section 1.4 and regardless of the timing or substance of DOF's response to Purchaser's request under Section 1.5.

1.7 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.

1.8 No later than November 1, 2014, Purchaser shall retain, at Purchaser's sole cost and expense, a surveyor to verify the legal description of the New Medical Site and provide a survey of the New Medical Site. The Surveyor also shall create a legal description and survey for the New Non-Medical Site, which the Parties acknowledge shall be utilized in connection with Purchaser's efforts to subdivide the New Medical Site and the New Non-Medical Site into separate tax lots. The survey and the surveyor's legal description of the New Medical Site and
the New Non-Medical Site must be consistent with Schedule "B" attached hereto and shall otherwise be reasonably acceptable to Purchaser and NYUHC and their respective title companies.

Section 2. Purchase Price.

2.1 Purchaser hereby agrees to pay Seller a purchase price for the Property of Two Hundred Forty Million Dollars ($240,000,000) less any credits given to Purchaser as described in sub-section (c) and (d) below (the "Purchase Price"), payable as follows:

(a) Twenty Four Million Dollars ($24,000,000) (the "Initial Downpayment"), which the Parties acknowledge was paid by Purchaser on the Execution Date and which Seller has deposited into an account that is segregated from all other Seller accounts (the "Downpayment Account");

(b) Two Million Dollars ($2,000,000) (the "Section 10.3(d) Downpayment," and collectively with the Initial Downpayment, the "Downpayments"), prior to the commencement of any Permitted Section 10.3(d) Inspections, payable to Seller by wire transfer of immediately available funds to the Downpayment Account;

(c) One Hundred Twenty Million Dollars ($120,000,000), minus (i) fifty percent (50%) of the aggregate amount of the Initial Downpayment; minus (ii) if applicable, the Section 10.3(d) Downpayment; minus (iii) the Defeasance Payment, if any; minus (iv) any credits given to Purchaser at or prior to the Initial Closing pursuant to Sections 5.5, 6.2, 7.6 or 10.3(a)(ix) (the "Seller Balance"), subject to adjustment as provided in Section 3, at the Initial Closing, payable by wire transfer of immediately available funds to such account or accounts as Seller directs (provided, that if the Seller Balance is a negative number for any reason, such negative amount shall not be paid to Purchaser at the Initial Closing but shall be applied as a credit to the Final Amount); and

(d) One Hundred Twenty Million Dollars ($120,000,000), minus (i) fifty percent (50%) of the aggregate amount of the Initial Downpayment; minus (ii) any credits given to Purchaser after the Initial Closing and at or prior to the Final Closing pursuant to Sections 5.5, 6.2 or 7.6; minus (iii) the credit given to Purchaser pursuant to Section 2.1(c) in the event that the Seller Balance is a negative number (the "Final Amount"), subject to adjustment as provided in Section 3, at the Final Closing, payable by wire transfer of immediately available funds to such account or accounts as Seller directs.

Any directions by Seller for payments under this Section 2.1 shall be made by notice given to Purchaser at least two (2) Business Days before the corresponding payment is due. The Parties acknowledge and agree that if the Defeasance Payment has not been made prior to the Initial Closing, Seller shall instruct Purchaser to wire the Defeasance Amount at the Initial Closing to DASNY, which Defeasance Amount shall constitute part of the Seller Balance.

2.2 At the Initial Closing, Purchaser, Seller and an escrow agent to be identified by Purchaser and consented to by Seller (which consent shall not be unreasonably withheld) (the "Community Fund Escrow Agent") shall enter into an agreement, substantially in the form
attached hereto as Exhibit "F" (the "Community Foundation Fund Escrow Agreement"), pursuant to which (a) Two Million Five Hundred Thousand Dollars ($2,500,000) (the "Initial Community Fund Payment"), shall be deposited by Purchaser into escrow at the Initial Closing and thereafter transferred to, upon formation and receipt of an exemption from federal income taxation, a tax exempt, not-for-profit foundation ("Community Foundation"); and (b) an additional Two Million Five Hundred Thousand Dollars ($2,500,000) (the "Additional Community Fund Payment", and collectively with the Initial Community Fund Payment, the "Community Fund Payment") shall either be paid by Purchaser into escrow (if the Community Foundation is not yet formed or has not yet received an exemption from federal income taxation) or paid by Purchaser directly to the Foundation (if the Foundation already has been formed and has received an exemption from federal income taxation) at the later of (i) the third anniversary of the Initial Closing Date and (ii) the Final Closing. The Community Fund Payment shall not be refundable to Purchaser under any circumstances whatsoever. The Community Foundation shall be established by Purchaser to make grants and investments to support community health, social services, affordable housing and other needs in the LICH surrounding area, including but not limited to grants in support of the activities of the Clinical Advisory Panel and the LICH Transformation Advisory Panel. The Community Foundation Amount is in addition to, and not part of, the Purchase Price. Purchaser may cause a designee to fulfill some or all of its obligations under this Section 2.2 but Purchaser shall at all times remain liable to Seller and to the Community Foundation for any failure of such designee(s) to fulfill any of such Purchaser obligations.

2.3 At the Initial Closing, in order to secure Purchaser’s obligation to acquire the Final Closing Premises, Fortis shall deliver to Seller a duly executed copy of the Fortis Guarantee, substantially in the form attached hereto as Exhibit "G" (the "Fortis Guarantee"). Pursuant to the Fortis Guarantee, if Purchaser, following the Initial Closing, defaults in its obligation to acquire the Final Closing Premises, Fortis shall pay Three Million Dollars ($3,000,000) to Seller, which amount shall be in addition to Seller's right to retain the Downpayments as its own funds, free and clear of any trust or other further obligations with respect thereto pursuant to this Agreement or otherwise pursuant to Law.

2.4 The Parties acknowledge that because the Purchase Price set forth herein and in the Fortis Proposal is equal to, but does not exceed, Two Hundred Forty Million Dollars ($240,000,000), the "Entity," as defined in Paragraph 2.b.1 of the Stipulation and Order, is not entitled to receive any portion of the Purchase Price. However, Purchaser agrees that it shall consult with the following individual and groups in connection with the establishment of the Community Foundation, the determination of the Community Foundation’s precise purposes and powers, and the composition of the Community Foundation’s board: the Public Advocate for the City of New York, Boerum Hill Association, Brooklyn Heights Association, Carroll Gardens Neighborhood Association, Cobble Hill Association, Riverside Tenants’ Association and Wyckoff Gardens Association, Inc.

2.5 Purchaser and Seller agree that, prior to the Initial Closing or earlier termination of this Agreement, Seller may use up to One Million Dollars ($1,000,000) of the Downpayments to pay Seller's costs and expenses relating to the Premises. Purchaser and Seller further agree that following the Initial Closing and prior to the Final Closing or earlier termination of this Agreement, Seller may use up to Twelve Million Dollars ($12,000,000) of the Downpayments...
(inclusive of the $1,000,000 above) to pay Seller's costs and expenses relating to the Premises. Seller shall otherwise use (and/or apply to the Purchase Price) the Downpayments only as expressly permitted herein. Purchaser and Seller agree that, notwithstanding any other provision of this Agreement: (a) as of the Initial Closing, the first Twelve Million Dollars ($12,000,000) of the Downpayment shall be applied to the Purchase Price and retained by Seller as its own funds and not refunded to Purchaser under any circumstances; and (b) as of the Final Closing, the second Twelve Million Dollars ($12,000,000) of the Downpayment shall be applied to the Purchase Price and retained by Seller as its own funds and not refunded to Purchaser under any circumstances. Seller also agrees that it shall use its reasonable best efforts to ensure that it has sufficient funds to refund any portion of the Downpayments to Purchaser that it may be obligated to refund pursuant to Section 14.2.

Section 3. **Apportionments.**

3.1 The following items with respect to the Premises (other than items (a), (b), (c) and (f) with respect to the Interim Medical Premises and any other amount paid by Purchaser under the Interim Lease with respect to the Interim Medical Premises) shall be apportioned, without duplication, between Purchaser and Seller at the applicable Closing, as of 11:59 p.m. of the night preceding the applicable Closing Date (unless another date is expressly specified in this Section 3.1), and adjusted at the applicable Closing by a credit to the applicable Party, in each case as specified under the succeeding provisions of this Section 3.1:

(a) Water charges and sewer rents (if any) shall be apportioned on the basis of the fiscal period for which assessed. Seller shall endeavor to obtain an estimate of the apportionment at the applicable Closing based on water meter readings as of a date not earlier than thirty (30) days prior to the applicable Closing Date and shall provide evidence of payment at the applicable Closing.

(b) The value of fuel stored at the Premises, if any, shall be credited to Seller at Seller’s cost, including any taxes, on the basis of readings obtained from Seller’s supplier not earlier than fifteen (15) days prior to the applicable Closing Date and invoices from such supplier.

(c) Utility accounts (including telephone, steam, electric, and gas, as applicable) shall be terminated by Seller at the applicable Closing and Purchaser shall obtain its own utility accounts; provided, that the Parties agree that Seller shall arrange for the utilities for the Fuller Pavilion premises and the Othmer Pavilion premises to be shut off prior to Purchaser's commencement of the Demolition (Purchaser and Seller agree to coordinate the date of such shut-off). Seller shall be responsible for, and shall pay, all utility charges incurred before the applicable Closing Date, and Purchaser shall be responsible for, and shall pay, all utility charges incurred on and after the applicable Closing Date.

(d) Common charges and assessments in connection with the condominium formed pursuant to the Declaration of Condominium and By-Laws dated 07/03/1984 recorded in the office of the Register's/Clerk's Office of Kings Court in Reel 1523 P258.
(e) Charges under the following documents (collectively, the "Revocable Consent Agreements"):

1. Revocable Consent Agreement CRFN 2006000407481, Assignment CRFN 2012000150117.

2. Revocable Consent Agreement CRFN 2006000407482, Assignment CRFN 2012000140446.

3. Revocable Consent Agreement CRFN 2006000407483, Assignment CRFN 2012000140246.

4. Revocable Consent Agreement CRFN 2007000228689, Assignment CRFN 2012000208513.

5. Revocable Consent Agreement CRFN 2012000208942.


(f) Such other items of income and expense as are customarily apportioned between sellers and purchasers of real properties that are located in the Borough of Brooklyn and are similar to the Premises shall be apportioned, to the extent applicable to the Premises.

3.2 Each of Purchaser and Seller shall be given reasonable access during normal business hours after the applicable Closing, on reasonable prior notice to the other, to those portions of the books and records maintained by the other with respect to the Premises as are reasonably necessary to enable the inquiring Party to determine the inquiring Party’s rights to any apportionments to be paid to such Party after the applicable Closing under this Section 3. Any information obtained by a Party from the exercise of such right of access shall be treated as confidential by such Party, subject to the New York State Freedom of Information Law (FOIL) contained in Article 6 of the New York State Public Officer’s Law.

3.3 If Seller shall, in the past, have made any overpayments with respect to water or sewer charges or similar items, which overpayments were not otherwise apportioned hereunder, then any refunds with respect to such overpayments shall remain the sole property of Seller, and Purchaser hereby relinquishes all claims thereto. If and to the extent any overpayments of such items were apportioned at the applicable Closing, then the corresponding refunds shall be similarly apportioned. Any refunds arising from any such overpayments received by Purchaser after the applicable Closing and payable to Seller pursuant to this Section 3 shall be held by Purchaser in trust for Seller and remitted forthwith to Seller.

3.4 If any item subject to apportionment under this Section 3 cannot be apportioned at the applicable Closing because of the unavailability of the information necessary to compute such apportionment, or if any errors or omissions in computing apportionments at the applicable Closing shall be discovered subsequent to the applicable Closing, then such item shall be apportioned or reapportioned (as the case may be), such errors and omissions corrected and the
proper party paid or reimbursed (as the case may be) promptly after the previously unavailable information becomes available or such error or omission is discovered.

3.5 The obligations of Purchaser and Seller under this Section 3 shall survive the applicable Closing for a period of twelve (12) months, and thereafter as to any claims asserted by either party against the other by notice to the other given before the expiration of such period.

Section 4. Closing Dates; Conditions to Close.

4.1 (a) Subject to the satisfaction or waiver by the appropriate Party of the conditions precedent set forth in Sections 4.2(a) and 4.2(b), the delivery of the Deed for the Premises (other than the New Medical Site and the Final Closing Premises), and the delivery of the other Closing instruments and the consummation of the purchase and sale of the Property (other than the New Medical Site and the Final Closing Premises) contemplated by this Agreement (the "Initial Closing"), shall take place at the offices of Cozen O'Connor, 277 Park Avenue, 20th Floor, New York, New York 10172, or at the offices of Purchaser's lending institution or such institution's counsel, in the City of New York, or at such other location as Purchaser and Seller may mutually designate in writing (the "Closing Location"). The Initial Closing shall occur on a date to be mutually agreed by Purchaser and Seller, in writing, after all conditions to Initial Closing set forth in Sections 4.2(a) and 4.2(b) have been satisfied or waived in writing (the "Initial Closing Date"); provided, that Purchaser shall not be required to agree to an Initial Closing Date that is prior to the Initial Closing Deadline; and provided, further, that NYUHC shall receive at least ten (10) Business Days' advance notice of the Initial Closing Date.

(b) Subject to the satisfaction or waiver by the appropriate Party of the conditions precedent set forth in Sections 4.2(c) and 4.2(d), the delivery of the Deed for the New Medical Site and other Closing instruments and the consummation of the conveyance of the New Medical Site from Seller to NYUHC contemplated by this Agreement (the "NMS Closing") shall take place at the Closing Location. Provided that all other conditions precedent set forth in Sections 4.2(c) and 4.2(d) have been satisfied or waived, the NMS Closing shall occur on the date that is thirty (30) days after Purchaser has completed the Demolition Activities and has notified Seller and NYUHC of such completion (the "NMS Closing Date"), unless the Parties mutually agree to another date.

(c) Subject to the satisfaction or waiver by the appropriate Party of the conditions precedent set forth in Sections 4.2(e) and 4.2(f), the delivery of the Deed for the Final Closing Premises and other Closing instruments and the consummation of the purchase and sale of the Final Closing Premises contemplated by this Agreement (the "Final Closing") shall take place at the Closing Location. Provided that all conditions precedent set forth in Sections 4.2(e) and 4.2(f) have been satisfied or waived, the Final Closing shall occur on the earlier of (i) thirty (30) days after the New Medical Operations Commencement Deadline; and (ii) sixty (60) days after the date that NYUHC commences operation of the Emergency Department on the New Medical Premises (the "Final Closing Date").
(d) The Initial Closing, the NMS Closing and the Final Closing are each a "Closing" and the Initial Closing Date, the NMS Closing Date and the Final Closing Date are each a "Closing Date."

(e) The Parties acknowledge that if the Demolition Activities are complete at least thirty (30) days prior to the Initial Closing, the Initial Closing and the NMS Closing may occur simultaneously.

(f) References in this Section 4.1, or elsewhere in this Agreement, to Purchaser's lending institutions, to mortgage title insurance, or to terms of like import shall not be deemed to imply that Purchaser's obligation to close title hereunder and pay the Purchase Price is subject to, or contingent in any way upon, Purchaser's obtaining mortgage or other financing.

4.2 (a) The obligations of Purchaser to consummate the purchase of the Premises (other than the Final Closing Premises), to take title to the Premises (other than the Final Closing Premises and the New Medical Site) and to pay the Seller Balance on the Initial Closing Date are subject to the satisfaction of the following conditions unless waived in writing by Purchaser:

(i) The NPL Consents and the DOH Consent have been obtained and remain in effect (the Parties also acknowledge and agree that the additional governmental approvals set forth in Section 22.4 are required for this Agreement to be effective).

(ii) That certain lease agreement dated May 29, 2011 by and between Seller, as landlord, and SUNY, as tenant, demising the Premises to SUNY (the "SUNY Lease") has been modified by agreement of the parties thereto such that only the New Medical Site and the Final Closing Premises shall be leased from Seller to SUNY on and after the Initial Closing Date, and SUNY has waived any rights thereunder to acquire any other portion of the Property (or any material portion thereof) other than the New Medical Site and the Final Closing Premises from Seller.

(iii) Between the Execution Date and the Initial Closing Date, neither Seller nor any Seller Affiliate has taken an affirmative action (or voluntarily consented to the affirmative action by third parties) to encumber the Property through a mortgage or other encumbrance, except (A) as expressly permitted hereunder; (B) as mandated by Law or court order; (C) in connection with securing the defeasance of the PIT Bond Debt (if required by DASNY); or (D) if the encumbrance is removed at Initial Closing by Seller (with proceeds from the Seller Balance or otherwise).
(iv) The representations and warranties of Seller set forth in Sections 7.1 and 7.2 remain true and current as of the Initial Closing Date.

(v) The representations and warranties of NYUHC set forth in Section 8.8 remain true and current as of the Initial Closing Date.

(vi) There shall have been no taking by eminent domain or condemnation (and no pending taking by eminent domain or condemnation that has not been consummated) of a material part of the Fuller Pavilion, the Othmer Pavilion, the Henry Street Building or the Polak Pavilion (collectively, the "Core Premises") or the Garage (unless Purchaser (or NYUHC, as applicable) has elected, pursuant to Section 18, not to terminate this Agreement upon such a taking).

(vii) In the event of a casualty with respect to any part of the Premises (other than the New Medical Site and the Final Closing Premises), insurance required to be maintained by Seller shall be in full force and effect and the proceeds thereof assigned to Purchaser.

(viii) Seller shall have complied with Sections 10.1(a) and 10.1(c), and Section 10.2(a).

(ix) NYUHC shall have complied with Section 10.2(b).

(x) Seller shall be ready, willing and able to deliver each of the Initial Closing deliverables set forth in Section 12.1.

(xi) NYUHC shall be ready, willing and able to deliver the NYUHC Initial Closing Deliverables set forth in Section 13.3.

(xii) Purchaser shall have obtained a demolition permit from the New York City Department of Buildings to conduct the Demolition on the New Medical Site.

(b) The obligation of Seller to sell the Premises to Purchaser (other than the Final Closing Premises) and to convey to Purchaser title to the Premises (other than title to the New Medical Site and the Final Closing Premises) on the Initial Closing Date is subject to the satisfaction of the following conditions unless waived in writing by Seller:

(i) The representations and warranties of Purchaser and Fortis set forth in Sections 8.1 and 8.2 remain true and current as of the Initial Closing Date.

(ii) The NPL Consents and the DOH Consent have been obtained and remain in effect.
(iii) Purchaser shall be current on the payment of all of its obligations under Section 10.3(a) and any indemnification obligations under Section 10.3(e).

(iv) The Clinical Advisory Panel and the LICH Transformation Advisory Panel each shall have been established, and the Ombudsperson shall have been appointed.

(v) The New Medical Site has been subdivided into its own tax lot (the Parties agree that Purchaser shall be responsible, at its sole cost and expense, for preparing all applications and similar materials necessary for the separation of the New Medical Site into its own tax lot, but Seller shall provide the Seller Assistance as needed with respect to the signing of such application and similar materials).

(vi) All of the following shall have occurred (but these conditions shall not apply if Section 14.5 has been triggered and the Initial Closing is proceeding pursuant to Section 14.5): (A) SUNY shall have fully exited all health operations on the Premises; and (B) NYUHC shall have commenced operation of the Emergency Department on the Interim Medical Premises.

(vii) Purchaser shall be ready, willing and able to deliver the Seller Balance, the Initial Community Fund Payment, the Medical Malpractice Amount and each of the other Initial Closing deliverables set forth in Section 13.1.

(viii) NYUHC shall be ready, willing and able to deliver each of the NYUHC Initial Closing Deliverables set forth in Section 13.3 (but subject to Section 14.5 if NYUHC does not deliver any of the NYUHC Initial Closing Deliverables and such condition of Closing is not waived by Seller).

(ix) Each of Purchaser and NYUHC shall have delivered to Seller an estoppel certificate confirming that neither party to the Interim Sublease is in material default as of the Initial Closing Date (the "Initial Closing Estoppel Certificate"); provided, that in lieu of the Initial Closing Estoppel Certificate executed by each of Purchaser and NYUHC, Purchaser may deliver to Seller at the Initial Closing a written release and indemnification, in form and content reasonably acceptable to Seller, which (X) releases Seller, SUNY, the State of New York and their respective affiliates from any liability for claims by Purchaser arising out of or relating to the Interim Sublease; and (Y) indemnifies and holds harmless Seller, SUNY, the State of New York and their respective affiliates from all Costs arising from any claims by...
NYUHC arising out of or relating to the Interim Sublease (the "Initial Closing Release and Indemnification"), and if Purchaser provides the Initial Closing Release and Indemnification, the conditions set forth in this Section 4.2(b)(ix) shall be deemed to have been satisfied.

(x) Purchaser shall have complied with Section 10.2(c).

(c) The obligation of Seller to convey the New Medical Site to NYUHC on the NMS Closing Date is subject to the satisfaction of the following conditions unless waived in writing by Seller:

(i) NYUHC shall have become the licensed operator of a freestanding emergency department, licensed under Article 28 of the New York State Public Health Law (operating 24 hours/day, 7 days/week), with all supportive services required under Article 28 of the New York State Public Health Law (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) ("Emergency Department") and, pursuant to the Amended Interim Lease and the Interim Sublease, shall have used good faith diligent efforts to operate the Emergency Department on the Interim Medical Premises continuously (except for interruptions or delays permitted under Sub-Section 15.1(e) of this Agreement) from the ED Commencement Date through the NMS Closing Date.

(ii) The representations and warranties of NYUHC set forth in Section 8.8 remain true and current as of the NMS Closing Date.

(iii) The NPL Consents and the DOH Consent have been obtained and remain in effect.

(iv) The New Medical Site has been subdivided into its own tax lot (the Parties agree that Purchaser shall be responsible, at its sole cost and expense, for preparing all applications and similar materials necessary for the separation of the New Medical Site into its own tax lot, but Seller shall provide the Seller Assistance as needed with respect to the signing of such application and similar materials).

(v) NYUHC shall be ready, willing and able to deliver the NYUHC NMS Closing deliverables set forth in Section 13.4.

(vi) SUNY shall have fully exited all health operations on the Premises and shall not be subject to any court order or regulatory obligation requiring it to recommence health operations on any portion of the Premises at any future date.
(vii) The Initial Closing shall have occurred (unless this Agreement has been terminated with respect to Purchaser and the New Medical Site is being conveyed to NYUHC pursuant to Section 5.4, 10.3, 14.1, 14.2 or 14.4).

(d) The obligation of NYUHC to accept the conveyance of the New Medical Site on the NMS Closing Date is subject to the satisfaction of the following conditions unless waived in writing by NYUHC:

(i) The representations and warranties of Seller set forth in Sections 7.1 and 7.2 remain true and current as of the NMS Closing Date;

(ii) The NPL Consents and DOH Consent have been obtained and remain in effect.

(iii) The New Medical Site has been subdivided into its own tax lot.

(iv) The SUNY Lease has been modified by agreement of the parties thereto such that the buildings located on the New Medical Site shall not be leased from Seller to SUNY on or after the NMS Closing Date, and SUNY has waived any rights thereunder to acquire any other portion of the New Medical Site (or the buildings located thereon).

(v) Other than as provided in or contemplated by the Site Agreements, between the Execution Date and the NMS Closing Date neither Seller nor any Seller Affiliate has taken an affirmative action (or voluntarily consented to the affirmative action by third parties) to encumber the New Medical Site (or the buildings located thereon) through a mortgage or other encumbrance, except if the encumbrance is removed at or prior to the NMS Closing by Seller (with proceeds from the Seller Balance or otherwise).

(vi) There shall have been no taking by eminent domain or condemnation (and no pending taking by eminent domain or condemnation that has not been consummated) of the New Medical Site (or the buildings located thereon) (unless NYUHC has elected, pursuant to Section 18, not to terminate this Agreement upon such a taking).

(vii) Seller shall be ready, willing and able to deliver each of the NMS Closing deliverables set forth in Section 12.2.

(viii) The Demolition Activities shall have been completed.

(ix) Purchaser shall have complied with Section 10.2(c).
(e) The obligations of Purchaser to consummate the purchase of the Final Closing Premises and pay the Final Amount on the Final Closing Date are subject to the satisfaction of the following conditions unless waived in writing by Purchaser:

(i) The SUNY Lease has been terminated by agreement of the parties thereto and SUNY has waived any rights thereunder to acquire the Final Closing Premises (or any material portion thereof) from Seller.

(ii) Between the Initial Closing Date and the Final Closing Date, neither Seller nor any Seller Affiliate has taken an affirmative action (or voluntarily consented to the affirmative action by third parties) to encumber the Final Closing Premises through a mortgage or other encumbrance, except (A) as expressly permitted hereunder; (B) as mandated by Law or court order; or (C) if the encumbrance is removed at Final Closing by Seller (with proceeds from the Final Amount or otherwise).

(iii) The representations and warranties of Seller set forth in Sections 7.1 and 7.2 remain true and current as of the Final Closing Date.

(iv) There shall have been no taking by eminent domain or condemnation (and no pending taking by eminent domain or condemnation that has not been consummated) of a material part of the Final Closing Premises (unless Purchaser has elected, pursuant to Section 18, not to terminate this Agreement upon such a taking).

(v) In the event of a casualty with respect to any part of the Final Closing Premises, insurance required to be maintained by Seller shall be in full force and effect and the proceeds thereof assigned to Purchaser.

(vi) Seller shall have complied with Sections 10.1(b) and (with respect to the Final Closing Premises) Sections 10.1(c) and 10.2(a).

(vii) NYUHC shall have vacated the Interim Medical Premises pursuant to the terms of the Interim Sublease.

(viii) NYUHC shall have complied with Section 10.2(b).

(ix) Seller shall be ready, willing and able to deliver each of the Final Closing deliverables set forth in Section 12.3.

(f) The obligation of Seller to sell the Final Closing Premises on the Final Closing Date is subject to the satisfaction of the following conditions unless waived in writing by Seller:
(i) The representations and warranties of Purchaser and Fortis set forth in Sections 8.1 and 8.2 remain true and current as of the Final Closing Date.

(ii) Purchaser shall be current on the payment of all of its obligations under Section 10.3(a) and any indemnification obligations under Section 10.3(e), and current on all obligations under the Amended Interim Lease.

(iii) Each of Purchaser and NYUHC shall have delivered to Seller an estoppel certificate confirming that neither party to the Interim Sublease is in material default as of the Final Closing Date (the "Final Closing Estoppel Certificate"); provided, that in lieu of the Final Closing Estoppel Certificate executed by each of Purchaser and NYUHC, Purchaser may deliver to Seller at the Final Closing a written release and indemnification, in form and content reasonably acceptable to Seller, which (X) releases Seller, SUNY, the State of New York and their respective affiliates from any liability for claims by Purchaser arising out of or relating to the Interim Sublease; and (Y) indemnifies and holds harmless Seller, SUNY, the State of New York and their respective affiliates, from all Costs arising from any claims by NYUHC arising out of or relating to the Interim Sublease (the "Final Closing Release and Indemnification"), and if Purchaser provides the Final Closing Release and Indemnification, the conditions set forth in this Section 4.2(f)(iii) shall be deemed to have been satisfied.

(iv) Purchaser shall be ready, willing and able to deliver the Final Amount and each of the other Final Closing deliverables set forth in Section 13.2.

4.3 (a) Subject to Section 4.4, Purchaser and NYUHC acknowledge and agree that the Initial Closing shall occur no later than ten (10) months following the Execution Date (the "Initial Closing Deadline"). In the event that the Initial Closing has not occurred as of the Initial Closing Deadline, as same may be extended pursuant to this Agreement, Seller may terminate this Agreement at any time thereafter upon notice to Purchaser and NYUHC. This Agreement shall automatically terminate if the Initial Closing has not occurred by December 31, 2015, unless Purchaser, Seller and NYUHC mutually agree, in writing, to an extension.

(b) NYUHC's obligations hereunder shall terminate if (i) the NMS Closing has not occurred as of June 30, 2016; (ii) NYUHC gives notice to Purchaser and Seller any time after June 30, 2016 of NYUHC's desire to be relieved from its obligations hereunder; and (iii) the NMS Closing does not occur within thirty (30) days of Purchaser's and Seller's receipt of NYUHC's notice (the "NMS Closing Deadline"). If Purchaser has diligently pursued the Demolition Activities, such termination by NYUHC
shall have no effect on Purchaser’s rights under this Agreement; provided, that Purchaser shall fully comply with the provisions of Section 14.5. If the Demolition Activities are not complete by December 31, 2015, and if, in Seller's reasonable judgment, the Demolition Activities are proceeding too slowly, Seller shall have the right, but not the obligation, to take over the completion of the Demolition Activities (directly or through any designee) upon notice to Purchaser and NYUHC and in that event Purchaser shall reimburse Seller or such designee, within thirty (30) days after demand, for Seller’s or such designee's reasonable and documented costs in connection with such Demolition Activities. Fortis hereby guarantees the payment of any such amounts owed by Purchaser to Seller or its designee pursuant to this Section 4.3(b).

(c) Subject to Section 4.4(e) and Section 14.5, Purchaser acknowledges and agrees that the Final Closing shall occur no later than thirty (30) days after the New Medical Operations Commencement Deadline (as such may be extended pursuant to Sections 15.12 and 15.13) (the "Final Closing Deadline"). In the event that the Final Closing has not occurred as of the Final Closing Deadline, as same may be extended pursuant to this Agreement, Seller may terminate this Agreement at any time thereafter upon notice to Purchaser. Upon termination, neither Purchaser nor Seller shall have any further obligations or liabilities to one another under this Agreement, except for the Surviving Obligations.

(d) Upon termination of this Agreement, no Party shall have any further obligations or liabilities to any other Party under this Agreement, except for the Surviving Obligations. For avoidance of doubt, termination of this Agreement after the Initial Closing or after the NMS Closing, as applicable, shall not unwind, void or otherwise affect the transactions consummated at the Initial Closing and, as applicable, the NMS Closing.

(e) Except as otherwise expressly set forth in this Agreement, in the event of any termination of this Agreement for any reason, no costs, expenses, fees and/or charges paid or incurred by Purchaser or NYUHC in connection with this Agreement and/or the Premises shall be refunded to Purchaser or NYUHC, and the Downpayments shall not be refunded to Purchaser but shall be retained by Seller as its own funds, free and clear of any trust or other further obligations with respect thereto pursuant to this Agreement or otherwise pursuant to Law.

4.4 Notwithstanding the provisions of Section 4.3:

(a) Purchaser shall be entitled to up to one (1) one-month extension of the Initial Closing Deadline upon notice to Seller and NYUHC and payment by Purchaser to Seller (by wire transfer of immediately available funds to an account or accounts designated by Seller) of the "Extension Payment." The Extension Payment amount for the one month extension of the Initial Closing Deadline shall be One Hundred Seventy Thousand Dollars ($170,000). The Extension Payment shall not be refunded under any circumstances and shall be in addition to, and not credited against, the Purchase Price. In order to effectuate each such extension, Purchaser must provide notice to Seller and NYUHC of the extension and deliver the Extension Payment no later than three (3)
Business Days prior to the original or previously extended Initial Closing Deadline. Purchaser shall not be entitled to the extension unless the Amended Interim Lease and Interim Sublease are extended through the extended Initial Closing Deadline.

(b) Seller may extend the Initial Closing Deadline and/or adjourn the Initial Closing at its sole discretion at any time, and from time to time, and for any period of time, up to December 31, 2015, upon notice to Purchaser and NYUHC. Seller agrees that it shall extend the Initial Closing Deadline, as same may have been extended pursuant to Section 4.4(a), for up to three (3) extensions of two (2) months each if (i) all conditions set forth in Section 4.2(b) other than the conditions set forth in Section 4.2(b)(ii) have been satisfied as of the original or previously extended Initial Closing Deadline; (ii) Seller reasonably believes that the conditions set forth in Section 4.2(b)(ii) ultimately may be satisfied if the Initial Closing Deadline is so extended; and (iii) Purchaser shall have paid the Defeasance Payment (if so required by DASNY) and extended the Amended Interim Lease through the extended Initial Closing Deadline.

(c) The Parties acknowledge that Dormitory Authority of the State of New York ("DASNY") may require, at some juncture prior to the Initial Closing Date, that Seller’s allocated share of any debt associated with the State Personal Income Tax Revenue Bonds (General Purpose), Series 2012D, issued by the State of New York (the "PIT Bond Debt") be defeased. Notwithstanding any other provision of this Section 4.4, at such time as defeasance of the PIT Bond Debt is required by DASNY, Purchaser, upon at least five (5) Business Days advance notice from Seller of the date that such defeasance is required, shall pay to DASNY the full defeasance amount (the "Defeasance Amount") as determined by DASNY (the "Defeasance Payment"), which Defeasance Payment shall be in addition to the Downpayments and (if applicable) the Extension Payment, but shall be credited against the Purchase Price as set forth in Section 2.1. If Purchaser pays the Defeasance Payment and this Agreement later terminates without the Initial Closing having occurred, then Purchaser, even if it is in default under this Agreement (unless Purchaser is in default with respect to the payment of Seller’s and SUNY’s Full Net Costs pursuant to Section 10.3(a), or unless Purchaser is in default with respect to the payment of any indemnity pursuant to Section 10.3(e) or 19.1(a)), shall be entitled to a refund of the Defeasance Payment, without interest, but only at such time as Seller subsequently sells all or any substantial part of the Premises to another purchaser (the Parties acknowledge and agree that repayment of the Defeasance Payment shall be made solely from the proceeds of any such subsequent sale or sales). If the Premises are subsequently sold in multiple sales, the proceeds from any such sales shall be disbursed in the following priority: first, to pay any of the Seller’s direct costs in connection with such sales; second, to repay Purchaser for any part of the Defeasance Payment that has not yet been repaid to Purchaser; and third, to Seller as remaining proceeds from the sales.

(d) The NMS Closing Deadline shall be extended only upon the mutual written consent of Purchaser, NYUHC and Seller.

(e) The Final Closing Deadline shall be extended only upon the mutual written consent of Seller and Purchaser.
(f) In the event of any extension of the Initial Closing Deadline, the NMS Closing Deadline or the Final Closing Deadline pursuant to this Section 4.4, the Purchase Price shall not be adjusted. For avoidance of doubt, neither rent paid to Seller pursuant to the Amended Interim Lease nor any amount paid to Seller or SUNY pursuant to Sections 10.3(a), 10.3(e) or 19.1(a) shall be credited against the Purchase Price.

(g) The provisions of Section 4.4(c) shall survive the termination of this Agreement.

4.5 (a) In the event of any permitted extension of the initial or any previously-extended Initial Closing Deadline, the term "Initial Closing Deadline" shall mean the then extended, actual date of the Initial Closing Deadline. TIME SHALL BE OF THE ESSENCE FOR THE PARTIES TO CONDUCT THE INITIAL CLOSING ON OR BEFORE THE INITIAL CLOSING DEADLINE.

(b) In the event of any permitted extension of the initial or any previously extended NMS Closing Deadline, the term "NMS Closing Deadline" shall mean the then-extended actual date of the NMS Closing Deadline. TIME SHALL BE OF THE ESSENCE FOR THE PARTIES TO CONDUCT THE NMS CLOSING ON OR BEFORE THE NMS CLOSING DEADLINE.

(c) In the event of any permitted extension of the Initial or any previously-extended Final Closing Deadline, the term "Final Closing Deadline" shall mean the then-extended, actual date of the Final Closing Deadline. TIME SHALL BE OF THE ESSENCE FOR THE PARTIES TO CONDUCT THE FINAL CLOSING ON OR BEFORE THE FINAL CLOSING DEADLINE.

4.6 Notwithstanding any other provision of this Agreement, in the event that the conditions set forth in Section 4.2(b)(vi) have not been satisfied as of October 31, 2014, any Party other than Fortis may thereafter (but only until such time as the conditions set forth in Section 4.2(b)(vi) are fully satisfied), by notice to the other Parties, terminate this Agreement. In that event, except as set forth below in subsections (a) and (b), below, no Party will have any further obligation to any other Party except for the Surviving Obligations.

(a) With respect to NYUHC, if any Party terminates this Agreement pursuant to this Section 4.6, no costs or expenses shall be returned or refunded to NYUHC, NYUHC shall not be entitled to proceed to the NMS Closing, and NYUHC shall have no rights (under Sections 5.4(b), 10.3(a)(xii) and (xiii), 14.1(a)(iv), 14.1(b)(iv), 14.2(A), 14.2(B) or 14.4 or under any other provisions of this Agreement) with respect to the New Medical Site.

(b) With respect to Purchaser:

(i) If Purchaser terminates this Agreement pursuant to this Section 4.6, the Downpayments shall promptly be refunded to Purchaser, no other costs or expenses shall be returned or refunded to Purchaser, Purchaser shall not be entitled to proceed to the Initial Closing or the Final Closing, and Purchaser shall have no rights...
(under Section 14.5 or under any other provisions of this Agreement) with respect to the Premises.

(ii) If NYUHC or Seller terminates this Agreement pursuant to this Section 4.6, the provisions set forth in Section 14.5 shall apply and Seller’s and Purchaser’s obligations as set forth in Section 14.5 shall be Surviving Obligations.

(iii) Upon termination of this Agreement pursuant to this Section 4.6, Purchaser shall not be obligated to conduct the Demolition Activities except (A) as set forth in Section 14.5 if either Seller or NYUHC is the Party that has terminated this Agreement; or (B) if Purchaser has commenced any on-site Demolition Activities as of such termination date (Purchaser agrees that it shall not commence any on-site Demolition Activities until the earlier of (X) the date the conditions set forth in Section 4.2(b)(vi) have been satisfied; or (Y) the date this Agreement has been terminated by NYUHC or Seller pursuant to this Section 4.6 and Purchaser shall have timely delivered a Purchaser Section 14.5 Notice).

4.7 The following collectively constitute the “NYUHC ED Commencement Conditions”: (a) any and all litigation challenging or seeking to restrain this Agreement or the transactions contemplated hereunder (including but not limited to the transaction contemplated under the Interim Sublease or NYUHC’s ability to operate the Emergency Department on the Interim Medical Premises), or seeking to impose conditions or restrictions on the manner in which NYUHC can or must operate the Emergency Department in the Interim Medical Premises (including the litigation pursuant to which a temporary restraining order was put in place as of September 10, 2014) shall have been resolved or dismissed (with no appeal of any such litigation having been initiated which is then pending or which has been upheld); (b) the resolution or dismissal of any such litigation shall have not resulted in any judicial order or judgment that affects this Agreement or the transactions contemplated hereunder, or that imposes any such conditions or restrictions on the manner in which NYUHC can or must operate the Emergency Department on the Interim Medical Premises; (c) NYUHC shall have received formal and final approval from DOH to operate the Emergency Department on the Interim Medical Premises, with all Certificate of Need contingencies satisfied or lifted and no conditions imposed (beyond those conditions codified in statute or regulation and applicable to all similarly-situated Emergency Departments); and (d) the AG and OSC approvals described in Section 22.4 have been obtained. NYUHC shall commence operation of its Emergency Department on the Interim Medical Premises no later than the date (the “ED Commencement Date”) that is two (2) Business Days after all of the NYUHC ED Commencement Conditions have been (and remain) satisfied.
Section 5. **Title and Permitted Exceptions.**

5.1  (a) Seller shall convey, at the Initial Closing, and Purchaser shall accept, fee simple absolute title to the Premises other than the New Medical Site and the Final Closing Premises, subject only to the Permitted Title Exceptions.

(b)  Seller shall convey at the NMS Closing, and NYUHC shall accept, a fee on condition estate in and to the New Medical Site, subject only to the Permitted Title Exceptions and to those certain future estates reserved to Seller in the Deed for the New Medical Site;

(c)  Seller shall convey, at the Final Closing, and Purchaser shall accept, fee simple absolute title to the Final Closing Premises, subject only to the Permitted Title Exceptions.

(d)  As used in this Agreement, the terms "estate in possession" and "future estate" shall have the respective meanings given to such terms in Sections 6-4.1 and 6-4.2 of the New York Estates, Powers and Trusts Law.

5.2  Purchaser and NYUHC acknowledge receipt of the title reports listed on Schedule "D" (collectively, the "Existing Title Commitment"), issued by Stalwart Title Agency, L.P., 1125 Ocean Avenue, Lakewood, New Jersey 08701 (the "Title Company"). Purchaser and NYUHC further acknowledge receipt of electronic copies of the surveys of the Premises listed on Schedule "E" (the "Existing Surveys"). As used in this Agreement, the term "Permitted Title Exceptions" shall mean, collectively:

(a)  those exceptions to title relating to the Premises set forth on Schedule "F".

(b)  the contents of any survey reading relating to the Premises set forth in the Existing Title Commitments;

(c)  any state of facts shown on the Existing Surveys;

(d)  any encumbrances recorded after the date of the applicable Existing Title Commitment which Seller is not obligated to cure pursuant to the terms of this Agreement and which do not materially adversely affect the as of right development of any of the Core Properties or the Parking Garage;

(e)  any documents of record not shown on Schedule "B" of the Existing Title Commitments or on Schedule "F" of this Agreement and recorded prior to the dates of such Existing Title Commitments;

(f)  any encumbrances caused by Purchaser, Fortis or NYUHC, including but not limited to any encumbrances on the New Medical Site resulting from the Demolition Activities, which encumbrances arising from the Demolition Activities shall be Purchaser’s sole obligation to cure; and
(g) any title objections or defects specifically waived in writing by Purchaser (or, with respect to the New Medical Site only, by NYUHC).

Any defects in or exceptions to title that are not Permitted Title Exceptions are herein collectively called the "Title Objections."

5.3 Purchaser and NYUHC each shall cause the Title Company to deliver a copy of any subsequent continuations of the Existing Title Commitments, together with copies of any instruments of record disclosed thereby that may constitute Title Objections, to Seller’s and NYUHC’s or Purchaser’s counsel promptly after issuance thereof. Seller shall be entitled to one or more adjournments of the applicable Closing in order to dispose of any Title Objections noted in such title commitment and any other Title Objections that may be disclosed on or prior to the applicable Closing Date. Purchaser’s and NYUHC’s obligation to close title hereunder shall remain in full force and effect during such adjournment period or periods.

5.4 (a) If Seller shall be unable (subject to Sections 5.2 and 5.5) to convey title to the Premises (other than the New Medical Site or any buildings located thereon) at the applicable Closing in accordance with this Agreement, then Purchaser may elect only to either:

(i) terminate this Agreement by notice given to Seller and NYUHC on or before the deadline for the applicable Closing or, if earlier, five (5) Business Days after Seller notifies Purchaser and NYUHC of Seller’s election either not to cure one or more Title Objections (other than those that Seller is obligated to cure pursuant to this Agreement) and/or not to spend more than is required to be spent by Seller hereunder to cure Title Objections, as the case may be; or

(ii) accept such title as Seller is able to convey at the applicable Closing, without any credit against, or reduction of, the Purchase Price, other than a credit for any liquidated sum Title Objections that Seller has elected not to discharge; provided, that in no event shall such credit exceed the Title Cure Amount less the amount of any payments made by Seller to discharge any Title Objections.

(b) If Purchaser shall elect to give notice terminating this Agreement under Section 5.4(a) above, then upon the giving of such notice, this Agreement shall be terminated, no costs, expenses, fees and/or charges paid or incurred by Purchaser or NYUHC in connection with this Agreement and/or the Premises shall be refunded to Purchaser or NYUHC, and, except as set forth in Section 14.2(i) with respect to a breach by Seller of its obligations under Section 5.5, neither the Downpayments nor the Full Net Costs shall be refunded to Purchaser, and the Downpayments shall be retained by Seller, as its own funds, free and clear of any trust or other further obligations with respect thereto pursuant to this Agreement or otherwise pursuant to Law. Upon such occurrence:
if prior to the Initial Closing, or if the Initial Closing has not occurred by December 31, 2015 and SUNY and Purchaser have not both agreed to extend the term of this Agreement, then the Amended Interim Lease and the Interim Sublease shall terminate and, at NYUHC's option, the New Medical Site shall be conveyed directly by Seller to NYUHC for no additional consideration beyond any retention hereunder of the Downpayments by Seller. If NYUHC elects to take conveyance of the New Medical Site, it must so notify Seller within thirty (30) Business Days of NYUHC's receipt of notice of the termination of this Agreement. If Seller timely receives notice of NYUHC's election to take the conveyance of the New Medical Site, such conveyance shall occur within thirty (30) days after the Demolition Activities are complete and Seller has received sale proceeds from another buyer for the remainder of the Premises (or portions thereof) at least equal to the appraised value of the Premises being conveyed to such new buyer plus the appraised value of the New Medical Site and sufficient to permit Seller to make the Defeasance Payment or, if applicable, repay Purchaser for the Defeasance Payment (the “Threshold Amount”) (which sale proceeds shall constitute the consideration to Seller for the conveyance of the New Medical Site to NYUHC). Such conveyance shall be on all of the terms and conditions of this Agreement relating to the conveyance of the New Medical Site to NYUHC, except those that are personal to Purchaser (other than the obligation to perform the Demolition Activities). In the event of termination pursuant to this Section 5.4(b), Purchaser shall be obligated (as a Surviving Obligation) to promptly complete all Demolition Activities pursuant to Section 10.5 at Purchaser's sole expense (even if such Demolition Activities have not commenced as of the termination date of this Agreement) and if Purchaser does not diligently pursue the Demolition Activities, NYUHC, Seller or their respective designees, as applicable, may perform such Demolition Activities at Purchaser’s sole expense pursuant to Section 10.5. Notwithstanding the foregoing, neither Seller nor NYUHC shall be obligated to consummate the conveyance of the New Medical Site to NYUHC if Seller has not received sale proceeds at least equal to the Threshold Amount from another buyer, and/or the conveyance of the New Medical Site to NYUHC has not occurred, within two (2) years following the termination of this Agreement, or if the Demolition Activities are not complete as of June 30, 2016 (unless NYUHC, at its option, agrees to extend the date for completion of the Demolition Activities to the end of such two (2) year period).
(ii) if after the Initial Closing but prior to the NMS Closing, the provisions of Section 5.4(b)(i), above, shall apply, except that (X) the conveyance of the New Medical Site will occur within thirty (30) days after the Demolition Activities are complete (and shall not be dependent on Seller finding another buyer for any portion of the Premises or on Seller obtaining a Threshold Amount for any portion of the Premises); (Y) the Interim Sublease shall not terminate if NYUHC elects to take conveyance of the New Medical Site but shall remain in effect, subject to that certain Subordination, Non-Disturbance and Attornment Agreement, dated October 8, 2014, by and between Seller and NYUHC, attached hereto as Exhibit "H"; (Z) the Interim Sublease shall then terminate at such time, if any, as either Seller or NYUHC later elects, pursuant to the last sentence of Section 5.4(a)(i), not to consummate the conveyance of the New Medical Site because the conveyance of the New Medical Site to NYUHC has not occurred within two (2) years following termination of this Agreement or the Demolition Activities are not complete as of June 30, 2016 (unless NYUHC, at its option, agrees to extend the date for completion of the Demolition Activities to the end of such two (2) year period).

Upon termination pursuant to this Section 5.4(b), neither Purchaser nor Seller shall have any further obligations or liabilities to the other or to NYUHC under this Agreement, except for the Surviving Obligations. Upon such termination, if NYUHC elects to take conveyance of the New Medical Site, and such conveyance is effected, NYUHC's obligations under Section 15 and Section 19.3 shall be Surviving Obligations; if NYUHC elects not to take conveyance of the New Medical Site, NYUHC shall have no further obligations to Purchaser or Seller hereunder.

(c) If Seller shall be unable (subject to Sections 5.2 and 5.5) to convey title to the New Medical Site at the NMS Closing or, if the Demolition Activities are not completed as of the NMS Closing Deadline, in accordance with this Agreement, then NYUHC may elect only to either:

(i) terminate this Agreement solely as it relates to the New Medical Site by notice given to Seller and Purchaser on or before the deadline for the Initial Closing or, if earlier, five (5) Business Days after Seller notifies Purchaser and NYUHC of Seller’s election either not to cure one or more Title Objections (other than those that Seller is obligated to cure pursuant to this Agreement) and/or not to spend more than is required to be spent by Seller hereunder to cure Title Objections, as the case may be; or

(ii) accept such title as Seller is able to convey at the NMS Closing, without any credit or payment from Seller or Purchaser, other
than payment of any liquidated sum for Title Objections that Seller has elected not to discharge; provided, that in no event shall such payment exceed the Title Cure Amount less the amount of any payments made by Seller to discharge any Title Objections.

If NYUHC shall elect to give notice terminating this Agreement under this Section 5.4(c), then upon the giving of such notice, this Agreement shall be terminated solely as it relates to NYUHC's rights and obligations hereunder and to the New Medical Site, no costs, expenses, fees and/or charges paid or incurred by NYUHC in connection with this Agreement and/or the Premises shall be refunded to NYUHC, and, Seller and Purchaser shall proceed with the remainder of the Agreement as provided in Section 14.5 below. Subject to the provisions of Section 14.5 below, upon termination pursuant to this Section 5.4(c), no Party shall have any further obligations or liabilities to any other Party under this Agreement with respect to the New Medical Site, except for the Surviving Obligations.

5.5 Notwithstanding anything to the contrary in this Section 5, Seller shall not be obligated to bring any action or proceeding, to make any payments, or otherwise to incur any expense in order to eliminate any Title Objections, provided, however, that Seller shall be required to satisfy or discharge prior to or at the applicable Closing:

(a) the following: (i) any mortgages recorded against the Premises, including, in particular, but without limitation, that certain mortgage in the original principal amount of $1,600,000 granted by Long Island College Hospital to AIP Associates and currently held by The Health Sciences Center at Brooklyn Foundation, Inc., pursuant to Assignment of Mortgage from U.S. Bank National Association in CFRN 201300049540, but excluding; (X) that certain mortgage in the original principal amount of $400,000 granted by the Long Island College Hospital to V.M. Realty Co., Inc. in Reel 1472 Page 443; and (Y) that certain mortgage in the original principal amount of $265,000 granted by The Long Island College Hospital to V.M. Realty Co., Inc. in Reel 1472 Page 451; and (ii) other encumbrances and other monetary liens caused or consented to in writing by Seller after the dates of the Existing Title Commitment;

(b) the Defeasance Amount;

(c) any liens recorded against the Premises for labor or materials furnished to the Premises at Seller's instance (other than any liens recorded in connection with the Seller Assistance); and

(d) any judgments, liens, or encumbrances filed or recorded against the Premises, other than as described in subsection (a), (b) or (c) above, that can be satisfied by the payment of a liquidated sum or sums not exceeding Two Hundred Fifty Thousand Dollars ($250,000.00) in the aggregate for all the Premises (such aggregate amount, the "Title Cure Amount").
Purchaser and NYUHC acknowledge and agree that Seller may at its option satisfy or discharge any obligations described in this Section 5.5 at the applicable Closing, with proceeds from the Seller Balance or the Final Amount, as applicable.

5.6 If, on the applicable Closing Date, there shall be any items constituting Title Objections that Seller either elects or is required hereunder to eliminate, and if Seller shall deliver to the Title Company proper instruments of satisfaction, termination, or discharge, or appropriate affidavits or undertakings, or if Seller shall deposit funds with the Title Company, sufficient in any event to permit the Title Company to omit such items from Purchaser’s (and/or NYUHC’s, as applicable) fee (and, if applicable, mortgage) title insurance policy without payment of any special premium by Purchaser, then such items shall not constitute Title Objections. Furthermore, if, on the applicable Closing Date, there shall be any other items that would constitute Title Objections, but which the Title Company shall nonetheless be willing to omit from Purchaser’s (and/or NYUHC’s, as applicable) fee (and, if applicable, mortgage) title insurance policy without payment of any special premium by Purchaser or NYUHC, then none of such items shall constitute Title Objections.

5.7 (a) At the Initial Closing, each of Seller, Purchaser and NYUHC, as applicable, shall execute any Site Agreement to which it is a party, acknowledge and agree to be bound by (in the case of NYUHC, on and after the NMS Closing Date) any Site Agreement to which it is not a direct party, and, as applicable, deliver to the Title Company for recording, each of the Site Agreements, with any changes as to which all of the Parties have mutually agreed in a signed writing.

(b) The Site Agreements shall be recorded immediately after the recordation of any deed to be delivered at the Initial Closing (and if the Initial Closing and the NMS Closing are contemporaneous, after the recordation of any deed to be delivered at the NMS Closing), and prior to any mortgage or other agreement proposed to be recorded by any of the parties hereto at the Initial Closing or the NMS closing.

Section 6. Violations; Administrative Code Obligations.

6.1 Except to the extent otherwise provided in Section 6.2, the Premises shall be conveyed, and Purchaser and NYUHC, as applicable, shall accept the Premises and close title thereto, subject to all violations of Laws, ordinances, orders and regulations, if any, noted in or issued by any governmental agency or authority having jurisdiction in the matter against or affecting the Premises ("Violations"), whether noted or issued prior or subsequent to the date of this Agreement, whether or not caused by Seller, and whether or not Purchaser or NYUHC, as applicable, has been given notice of such Violations, and Purchaser and NYUHC, as applicable, also shall accept the Premises and close title thereto subject to any conditions giving rise to or constituting Violations, without any abatement of or credit against the Purchase Price.

6.2 Notwithstanding anything in Section 6.1 to the contrary, Seller shall pay or discharge at, or prior to, the applicable Closing with respect to the applicable Premises, or eliminate by any of the means allowed in Section 5.6:
any then-known fines or penalties imposed or assessed against Seller or the applicable Premises prior to the applicable Closing by reason of Violations noted or issued prior to the date of this Agreement, and

(b) all liens that may have attached to the applicable Premises prior to the applicable Closing pursuant to the Administrative Code of the City of New York and that are capable of being discharged by the payment of a liquidated sum or sums, excluding, however, any such liens that have attached to the Premises that are caused by the actions of Purchaser, Fortis or NYUHC,

provided, however, that the aggregate cost to pay, discharge, or otherwise dispose of such fines, penalties and liens with respect to all Premises (whether at the Initial Closing, the NMS Closing or the Final Closing) does not exceed One Hundred Thousand Dollars ($100,000.00); and provided further, that the obligation of Purchaser to fully remediate Environmental Conditions relating to the New Medical Site pursuant to Section 10.5 shall be separate from Seller's obligation under this Section 6 and is not subject to any monetary limitations. Purchaser and NYUHC acknowledge and agree that Seller may at its option satisfy or discharge any obligations described in this Section 6.2 at applicable Closing, with proceeds from the Seller Balance or the Final Amount, as applicable.

6.3 If required, Seller shall, upon written request by Purchaser and/or NYUHC, furnish Purchaser and/or NYUHC, as applicable, with written authorizations to make any necessary searches prior to the applicable Closing for the purpose of determining whether any Violations have been noted or issued with respect to the Premises, but such searches shall not alter Purchaser's and NYUHC's, as applicable, obligation under Section 6.1 to accept the Premises and close title thereto subject to all Violations.

Section 7. Representations and Warranties of Seller.

7.1 As of the date hereof and as updated, supplemented or amended as of the Initial Closing Date and the Final Closing Date (with respect to Purchaser), and updated, supplemented or amended as of the NMS Closing Date (with respect to NYUHC) (except to the extent any of the following speaks as of a specific date), Seller represents and warrants to Purchaser and NYUHC the following:

(a) Seller is a not-for-profit corporation duly formed and validly existing in good standing under the Laws of the State of New York.

(b) Seller has the full legal right, power and authority to execute and deliver this Agreement and all documents now or hereafter to be executed and delivered by Seller pursuant to this Agreement (collectively, "Seller's Documents"), to consummate the transactions contemplated hereby (subject to the receipt of any governmental approvals required by Law) and to perform its obligations hereunder and under Seller’s Documents.

(c) The execution and delivery of this Agreement and Seller’s Documents by Seller, and the performance by Seller of its obligations hereunder and thereunder (i) have been duly and validly authorized and approved by all necessary corporate action,
including, to the extent required, any applicable board approvals, and none of such actions has been modified or rescinded and all of which remain in full force and effect; (ii) do not require any authorization or other corporate action by any affiliate of Seller which has not been obtained; and (iii) do not, and will not, contravene any provision of the Articles of Incorporation or By-Laws of Seller, or any judgment, order, decree, writ, or injunction issued against Seller as of the Execution Date.

(d) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder (such Section 1445 and related regulations, collectively, "FIRPTA").

(e) To Seller’s knowledge, Seller and its principals are not named as terrorists or designated as banned or blocked persons or entities by any Executive Order of the U.S. Treasury Department or on any list maintained by the Office of Foreign Assets Control of such Department, and Seller is not, to its knowledge, acting directly or indirectly on behalf of any such persons or entities.

7.2 As of the date hereof and as updated, supplemented or amended as of the Initial Closing Date and the Final Closing Date (with respect to Purchaser), and as updated, supplemented or amended as of the NMS Closing Date (with respect to NYUHC) (except to the extent that any of the following speaks to a specific date), Seller further represents and warrants to Purchaser (and with respect to the New Medical Site only, to NYUHC) as follows:

(a) There are no suits, actions, or proceedings pending or threatened in writing by Seller against any party with respect to the Premises, except for any disclosed in Schedule "G" hereto.

(b) To Seller’s knowledge, there are no suits, actions, or proceedings pending or threatened in writing by any party against Seller with respect to the Premises, except for any suits disclosed in Schedule "G" hereto.

(c) There are no pending proceedings or appeals initiated by Seller to reduce or otherwise protest the assessed valuation of the Premises, and there are no pending protests that have been filed by Seller for such purpose without the initiation of actual proceedings.

(d) Schedule "H" hereto (the "Insurance Schedule") sets forth the property insurance coverage in effect as of the date hereof with respect to the Premises.

(e) To Seller’s knowledge, Seller has received no written notice of any pending condemnation of the Premises or any part thereof.

(f) To Seller’s knowledge, Seller has not received written notice from governmental entities of pending violations of Environmental Laws relating to the Premises.
7.3 As used in this Agreement, the term "Seller’s knowledge" or words of similar import shall be deemed to mean, and shall be limited to, the actual (as distinguished from implied, imputed, or constructive), current knowledge, without any independent investigation or inquiry or duty to conduct same, of Melanie Gehan in her capacity as a director and officer of Seller. Purchaser and NYUHC acknowledge and agree that the naming of such person in this Section shall not impose any personal liability on, or give rise to any personal recourse against, such person.

7.4 Seller’s representations and warranties in Sections 7.1 and 7.2, as re-certified pursuant to Section 7.5, shall survive the applicable Closing for twelve (12) months.

7.5 At the Initial Closing and the Final Closing, Seller shall deliver to Purchaser, and at the NMS Closing Seller shall deliver to NYUHC, a certification ("Seller’s Closing Certification"), in the form of Exhibit "I" annexed hereto, certifying that Seller’s representations and warranties in Sections 7.1 and 7.2 remain true and correct in all material respects as of such Closing Date or, if such is not then the case, the respects in which, to Seller’s knowledge, such is not then the case. Seller’s Closing Certification may be qualified to its knowledge to the extent that such representations and warranties were so qualified. The delivery of Seller’s Closing Certification shall not extend the survival of Seller’s representations and warranties in Sections 7.1 and 7.2 beyond the survival period therefor set forth in Section 7.4.

7.6 Any claims asserted by Purchaser or NYUHC against Seller for any breach of Seller’s surviving representations and warranties in Sections 7.1 and 7.2 must, as a condition precedent, be asserted by Purchaser or NYUHC by notice given to Seller prior to the expiration of the applicable survival period therefor, which notice shall set forth in reasonable detail the basis for such claims. Any suit, action, or proceeding by Purchaser or NYUHC against Seller by reason of any such claims of which Seller has so been given notice, and which claims have not been resolved in writing by the applicable Parties, must, as a condition precedent, be instituted by Purchaser or NYUHC, as applicable, within one hundred twenty (120) days after the giving of such notice. Seller’s liability to Purchaser or NYUHC for any breach of Seller’s surviving representations and warranties in Sections 7.1 and 7.2, or elsewhere in this Agreement, shall be limited to Purchaser’s or NYUHC’s, as applicable, actual damages proximately resulting therefrom, provided, however, that:

(a) Seller shall not be liable for any breach(es) of Seller’s surviving representations and warranties in this Agreement if, and to the extent that, Purchaser and/or NYUHC, as applicable, was given notice of such breach by Seller, or otherwise acquired knowledge thereof, prior to the applicable Closing, and Purchaser and/or NYUHC, as applicable, nonetheless proceeded to consummate the applicable Closing under this Agreement;

(b) Seller shall not be liable for any breach(es) of Seller’s surviving representations and warranties in Sections 7.1 and 7.2 unless Purchaser’s or NYUHC’s, as applicable, actual damages proximately resulting therefrom exceed Twenty-Five Thousand ($25,000) Dollars in the aggregate; and
(c) Seller’s liability for Purchaser’s or NYUHC's actual damages proximately resulting from any breach(es) of Seller’s surviving representations and warranties in Sections 7.1 and 7.2 shall not exceed One Hundred Twenty-Five Thousand Dollars ($125,000) to either of Purchaser or NYUHC or Two Hundred Fifty Thousand ($250,000) Dollars in the aggregate.

Purchaser’s and/or NYUHC’s, as applicable, actual damages for any breach of Seller’s surviving representations and warranties of Seller in Sections 7.1 and 7.2 shall not include, and under no circumstances shall Seller be liable for, punitive, exemplary, special, speculative, or consequential damages of any kind.

Section 8. Representations and Warranties of Purchaser, Fortis and NYUHC

8.1 As of the date hereof and as updated, supplemented or amended as of the Initial Closing Date and the Final Closing Date (with respect to Seller) (except to the extent any of the following speaks as of a specific date), Purchaser represents and warrants to Seller and NYUHC the following:

(a) Purchaser is a limited liability company duly formed and validly existing in good standing under the Laws of the State of Delaware, as well as duly qualified and in good standing to conduct business in the State of New York.

(b) Purchaser has the full legal right, power and authority to execute and deliver this Agreement and all documents now or hereafter to be executed by Purchaser pursuant to this Agreement (collectively, "Purchaser’s Documents"), to consummate the transactions contemplated hereby (subject to any governmental approvals required by Law) and to perform its obligations hereunder and under Purchaser’s Documents.

(c) The execution and delivery of this Agreement and Purchaser’s Documents by Purchaser, and the performance by Purchaser of its obligations hereunder and thereunder (i) have been duly and validly authorized and approved by all necessary company action including, to the extent required, any applicable managers’ or member approvals, and none of such actions have been modified or rescinded and all of which remain in full force and effect; (ii) do not require any authorization or other corporate (or similar) action by any affiliates of Purchaser which has not been obtained; and (iii) do not, and will not, contravene any provision of the limited liability company operating agreement of Purchaser, or any judgment, order, decree, writ, or injunction issued against Purchaser as of the Execution Date.

(d) To Purchaser’s knowledge, there are no suits, actions, proceedings, or investigations pending or threatened in writing against Purchaser that would prevent Purchaser from closing hereunder and otherwise carrying out its obligations hereunder in all material respects.

(e) To Purchaser’s knowledge, Purchaser and its principals are not named as terrorists or designated as banned or blocked persons or entities by any Executive Order of the U.S. Treasury Department or on any list maintained by the Office of Foreign
Assets Control of such Department, and Purchaser is not, to its knowledge, acting directly or indirectly on behalf of any such person or entities.

(f) Purchaser is in full compliance with all Laws that Purchaser (or its affiliates) agreed to comply with pursuant to the provisions of the RFP and the Fortis Proposal.

8.2 Purchaser and Fortis jointly and severally represent and warrant to Seller that, as of the applicable Closing Date, Purchaser will have cash immediately available to pay the Seller Balance and the Final Amount, as applicable, the Medical Malpractice Amount and the Initial Community Fund Payment.

8.3 As used in this Agreement, the term "Purchaser's knowledge" or words of similar import shall be deemed to mean, and shall be limited to, the actual (as distinguished from implied, imputed, or constructive), current knowledge, without any independent investigation or inquiry or duty to conduct same, of Louis Kestenbaum and Joel Kestenbaum in their role as officers/managers of Purchaser. Seller and NYUHC acknowledge and agree that the naming of such persons in this Section 8.3 shall not in and of itself impose any personal liability on, or give rise to any personal recourse against, such persons.

8.4 Purchaser’s representations and warranties in Section 8.1, as recertified pursuant to Section 8.5, shall survive the applicable Closing for twelve (12) months.

8.5 At the Initial Closing and the Final Closing, Purchaser shall deliver to Seller a certification ("Purchaser’s Closing Certification"), in the form of Exhibit "J" annexed hereto, certifying that Purchaser’s representations and warranties in Sections 8.1 and 8.2 remain true and correct in all material respects as of such Closing Date or, if such is not then the case, the respects in which, to Purchaser’s knowledge, such is not then the case. Purchaser’s Closing Certification may be qualified to its knowledge to the extent that such representations and warranties were so qualified. The delivery of Purchaser’s Closing Certification shall not extend the survival of Purchaser’s representations and warranties in Section 8.1 beyond the survival period therefor set forth in Section 8.4.

8.6 At the Initial Closing and the Final Closing, Fortis shall deliver a Certification to Seller ("Fortis’ Closing Certification"), in the form of Exhibit "K" annexed hereto, certifying that Fortis’ representations and warranties in Section 8.2 remain true and correct in all material respects as of such Closing Date.

8.7 Any claims asserted by Seller or NYUHC against Purchaser for any breaches of Purchaser’s surviving representations and warranties in Section 8.1, must, as a condition precedent, be asserted by Seller or NYUHC by notice given to Purchaser prior to the expiration of the survival period therefor, which notice shall set forth in reasonable detail the basis for such claims. Any suit, action, or proceeding by Seller or NYUHC against Purchaser by reason of any such claims of which Purchaser has so been given notice, and which claims have not been resolved in writing by the applicable Parties, must, as a condition precedent, be instituted by Seller or NYUHC, as applicable, within one hundred twenty (120) days after the giving of such notice. Purchaser’s liability for any breaches of Purchaser’s surviving representations and
warranties in Section 8.1 shall be limited in the aggregate to Seller’s or NYUHC's, as applicable, damages proximately resulting therefrom; provided, however, that Purchaser shall not be liable for any such breaches if, and to the extent that, Seller or NYUHC, as applicable, was given notice of such breaches by Purchaser, or otherwise acquired actual knowledge thereof prior to applicable Closing, and Seller or NYUHC, as applicable, nonetheless proceeded to close title under this Agreement. SELLER’S AND/OR NYUHC's, AS APPLICABLE, ACTUAL DAMAGES SHALL NOT INCLUDE, AND NEITHER PURCHASER NOR FORTIS SHALL BE LIABLE FOR, PUNITIVE, EXEMPLARY, SPECIAL, SPECULATIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND.

8.8 As of the date hereof and as updated, supplemented or amended as of the Initial Closing Date and the NMS Closing Date (except to the extent any of the following speaks as of a specific date), NYUHC represents and warrants to Seller and Purchaser the following:

(a) NYUHC is a not-for-profit corporation duly formed and validly existing in good standing under the Laws of the State of New York.

(b) NYUHC has the full legal right, power and authority to execute and deliver this Agreement and all documents now or hereafter to be executed by NYUHC pursuant to this Agreement (collectively, "NYUHC Documents"), to consummate the transactions contemplated hereby (subject to any governmental approvals required by Law) and to perform its obligations hereunder and under the NYUHC Documents.

(c) The execution and delivery of this Agreement and NYUHC Documents by NYUHC, and the performance by NYUHC of its obligations hereunder and thereunder (i) have been duly and validly authorized and approved by all necessary corporate action, including, to the extent required, any applicable board approvals, and none of such actions have been modified or rescinded and all of which remain in full force and effect; (ii) do not require any authorization or other corporate (or similar) action by any affiliates of NYUHC which has not been obtained; and (iii) do not, and will not, contravene any provision of the Articles of Incorporation or By-Laws of NYUHC or any judgment, order, decree, writ, or injunction issued against NYUHC as of the Execution Date.

(d) To NYUHC's knowledge, there are no suits, actions, proceedings, or investigations pending or threatened in writing against NYUHC that would prevent NYUHC from carrying out its obligations hereunder in all material respects.

(e) To NYUHC's knowledge, NYUHC and its principals are not named as terrorists or designated as banned or blocked persons or entities by any Executive Order of the U.S. Treasury Department or on any list maintained by the Office of Foreign Assets Control of such Department, and NYUHC is not, to its knowledge, acting directly or indirectly on behalf of any such person or entities.

8.9 As used in this Agreement, the term "NYUHC's knowledge" or words of similar import shall be deemed to mean, and shall be limited to, the actual (as distinguished from implied, imputed, or constructive), current knowledge, without any independent investigation or inquiry or duty to conduct same, of Vicki Match Suna and Beau Everett in their role as officers...
of NYUHC. Seller and Purchaser acknowledge and agree that the naming of such persons in this Section 8.9 shall not impose any personal liability on, or give rise to any personal recourse against, such persons.

8.10 NYUHC's representations and warranties in Section 8.8, as recertified pursuant to Section 8.11, shall survive the applicable Closing for twelve (12) months.

8.11 At the Initial Closing and at the NMS Closing, NYUHC shall deliver a certification to Seller and Purchaser ("NYUHC's Closing Certification"), in the form of Exhibit "L", annexed hereto, certifying that NYUHC's representations and warranties in Section 8.8 remain true and correct in all material respects as of the Initial Closing Date or, if such is not then the case, the respects in which, to NYUHC's knowledge, such is not then the case. NYUHC's Closing Certification may be qualified to its knowledge to the extent that such representations and warranties were so qualified. The delivery of NYUHC's Closing Certification shall not extend the survival of NYUHC’s representations and warranties in Section 8.8 beyond the survival period therefor set forth in Section 8.10.

8.12 Any claims asserted by Seller or Purchaser against NYUHC for any breaches of NYUHC’s surviving representations and warranties in Section 8.8, must, as a condition precedent, be asserted by Seller or Purchaser by notice given to NYUHC prior to the expiration of the survival period therefor, which notice shall set forth in reasonable detail the basis for such claims. Any suit, action, or proceeding by Seller or Purchaser against NYUHC by reason of any such claims of which NYUHC has so been given notice, and which claims have not been resolved in writing by the applicable Parties, must, as a condition precedent, be instituted by Seller or Purchaser, as applicable, within one hundred twenty (120) days after the giving of such notice. NYUHC’s liability for any breaches of NYUHC’s surviving representations and warranties in Section 8.1 shall be limited in the aggregate to Seller’s or Purchaser’s, as applicable, damages proximately resulting therefrom; provided, however, that NYUHC shall not be liable for any such breaches if, and to the extent that, Seller or Purchaser, as applicable, was given notice of such breaches by NYUHC, or otherwise acquired actual knowledge thereof prior to the Initial Closing or the NMS Closing, as applicable, and Seller or Purchaser, as applicable, nonetheless proceeded to consummate the Initial Closing or the NMS Closing, as applicable. SELLER'S AND/OR PURCHASER'S ACTUAL DAMAGES SHALL NOT INCLUDE, AND NYUHC SHALL NOT BE LIABLE FOR, PUNITIVE, EXEMPLARY, SPECIAL, SPECULATIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND.

Section 9. "AS IS" Condition; Acknowledgement and Release by Purchaser

9.1 (a) The parties acknowledge the New Medical Site will be conveyed to NYUHC at the NMS Closing with all Demolition Activities completed, in the form of land only. Apart from Purchaser's obligations to complete Demolition Activities and remediate Environmental Conditions relating to the demolition and/or the New Medical Site pursuant to Section 10.5, NYUHC expressly acknowledges that the New Medical Site land is being conveyed, and NYUHC agrees to accept the New Medical Site land, in its "AS IS" condition as of the NMS Closing Date, "WITH ALL FAULTS," and, except as otherwise expressly set forth in this Agreement, without any representation or warranty, oral or written, express or implied, by Seller or Seller's Affiliates with respect
thereto. NYUHC hereby forever releases and discharges Seller, Seller’s Affiliates and the State of New York from any and all claims and liability whatsoever, whether known or unknown, liquidated or contingent, in contract, in tort, or otherwise, whether past, present, or future, arising from, or in any way related to, any environmental or other conditions (including any Hazardous Materials) now or hereafter affecting the Premises or the Personal Property.

(b) Each of Purchaser and Fortis expressly acknowledges that the Premises and Personal Property are being sold and conveyed, and Purchaser agrees to purchase and accept the Premises and Personal Property (other than the New Medical Site), in their "AS IS" condition as of the applicable Closing Date (except as otherwise provided in Sections 17 and 18), "WITH ALL FAULTS", and, except as otherwise expressly set forth in this Agreement, without any representation or warranty, oral or written, express or implied, by Seller or Seller’s Affiliates with respect thereto or otherwise with respect to the Premises and Personal Property, and specifically subject to all environmental and other conditions affecting the Premises and Personal Property, whether known or unknown. Each of Purchaser and Fortis hereby forever releases and discharges Seller, Seller’s Affiliates and the State of New York from any and all claims and liability whatsoever, whether known or unknown, liquidated or contingent, in contract, in tort, or otherwise, whether past, present, or future, arising from, or in any way related to, any environmental or other conditions (including any Hazardous Materials) now or hereafter affecting the Premises or the Personal Property. As used in this Agreement, the term "Seller’s Affiliates" shall mean:

(i) the State University of New York, a corporation within the New York State Education Department, and any direct or indirect subsidiary thereof;

(ii) the Health Science Center at Brooklyn Foundation (the "HSCB Foundation") and any direct or indirect subsidiary thereof;

(iii) Staffco of Brooklyn, LLC ("Staffco") or any direct or indirect subsidiaries thereof;

(iv) any affiliates, agents, representatives, employees, consultants, counsel and other professional advisors of or to Seller or any entity described in subsections (a), (b) and (c) above; and

(v) any officers, directors, trustees, shareholders, partners, members, managers, or principals of Seller or of any of the foregoing.

For purposes of the above, "subsidiary" includes without limitation any not-for-profit corporation or limited liability company of which SUNY, the HSCB Foundation or Staffco, as applicable, is a member. For avoidance of doubt, the releases by Purchaser and Fortis in this Section 9.1(b) of Seller, Seller’s Affiliates, their respective subsidiaries, affiliates, agents, representatives, employees, consultants, counsel, professional advisors, officers, directors, trustees, shareholders, partners, members, managers and principals,
and the State of New York encompasses, but is not limited to, a release from any and all environmental liabilities relating to the Premises (including without limitation the New Medical Site) and the Personal Property, both known and unknown, present and future, including but not limited to any and all liabilities, obligations, costs, claims, fines, penalties, damages in connection with the investigation, remediation, mitigation, removal, treatment, encapsulation, containment, monitoring, abatement or disposal of any Hazardous Materials, as well as any fines, penalties, damages or costs arising out of a violation of Environmental Laws or incurred to bring the Premises or the Personal Property in compliance with Environmental Laws. Purchaser acknowledges its obligations to remediate Environmental Conditions relating to the New Medical Site pursuant to Section 10.5.

9.2 This Agreement, as written, contains all of the terms of the agreement entered into between the Parties as of the date hereof. Purchaser and NYUHC acknowledge and confirm that neither Seller nor any of Seller’s Affiliates nor the State of New York have made any representations or warranties, or held out any inducements, to Purchaser or NYUHC, other than as expressly set forth herein. Seller hereby specifically disclaims any representations or warranties, whether oral or written, express or implied, other than those expressly set forth in this Agreement. Except for the representations and warranties of Seller expressly set forth in this Agreement, Purchaser and NYUHC acknowledge and confirm that they have not relied on any representations or warranties by Seller, Seller’s Affiliates or the State of New York, whether oral or written, express or implied, with respect to the Property, including, without limitation, with respect to:

(a) title to the Premises;

(b) the existing leases on the Premises, if any;

(c) any governmental licenses, permits, or approvals pertaining to the Premises, if any;

(d) the current or future real estate tax liability, assessment or valuation of the Premises;

(e) the potential qualification of the Premises for any 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;

(f) the compliance or non-compliance of the Premises in its current or any future state with applicable Laws (including zoning Laws, Laws relating to health care facilities or operations, and Environmental Laws) or any violations thereof, including, without limitation, those relating to access for the handicapped or disabled, environmental or zoning matters, and the ability to obtain a change in the zoning or a variance in respect to any non-compliance with zoning Laws;

(g) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition, or otherwise;
(h) the availability of any financing for the purchase, alteration, rehabilitation, or operation of the Premises from any source, including, without limitation, any governmental authority or any lender;

(i) the current or future use of the Premises, or the quantity of development rights now available or that may hereafter become available to the Premises, or the entitlement or lack of entitlement of the Premises thereto;

(j) the present and future condition and operating state of any Personal Property and the present or future structural and physical condition of the Improvements, the suitability of the Improvements for rehabilitation or renovation, or the need for expenditures for capital improvements, repairs, or replacements thereto;

(k) the viability or financial condition of any tenant under an existing lease, if any;

(l) the status of the leasing or sales market in which the Premises is located;

(m) the actual or projected income or operating expenses of the Premises; or

(n) the environmental conditions affecting the Premises and the Personal Property, 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 which 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 (collectively "Hazardous Materials") 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 (collectively, "Environmental Conditions"). "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 ("CERCLA") (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 ("RCRA") (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.

9.3 Purchaser acknowledges and confirms to Seller that Purchaser:
(a) has had sufficient opportunity and access to conduct, and to have conducted, both before and after the submission of the Fortis Proposal, such independent investigations, examinations and inspections of, or with respect to, the Property as Purchaser considered to be necessary or desirable; and

(b) is sufficiently satisfied with the results of Purchaser’s investigations, examinations and inspections, and with its review of such reports and the conditions disclosed thereby, to proceed with the purchase of the Property in accordance with the terms of this Agreement.

9.4 Seller shall not be liable for, or bound in any manner by, and Purchaser and NYUHC shall not place any reliance upon, any oral or written "setups" or information pertaining to the Property, the rents thereof, or the operating income therefrom, or any other materials furnished by Seller, any of Seller’s Affiliates, or any broker, finder, or other person.

9.5 The provisions of this Section 9 shall survive the Closings or sooner termination of this Agreement, as applicable. Purchaser shall, in Purchaser’s Closing Certifications, restate and confirm the provisions of this Section 9. Fortis shall, in Fortis’ Closing Certifications, restate and confirm the provisions of Section 9.1(b). NYUHC shall, in NYUHC’s Closing Certification, restate and confirm the provisions of Sections 9.1(a) and 9.4.

Section 10. Certain Covenants and Obligations of the Parties; Continued Access.

10.1 (a) Between the date hereof and the NMS Closing Date, Seller shall:

(i) maintain in force and effect property insurance coverage for the Premises with coverage limits (x) prior to the Initial Closing, at least equal to the Purchase Price; and (y) after the Initial Closing and prior to the NMS Closing, at least equal to the lesser of One Hundred Twenty Million Dollars ($120,000,000) and the insurable interest in, collectively, the New Medical Site and the Final Closing Premises, and Seller shall pay all premiums as and when required until the NMS Closing;

(ii) use commercially reasonable efforts (consistent with customary reasonable efforts of owners of vacant buildings) to keep the Premises (other than the Interim Medical Premises, which shall be Purchaser’s obligation to keep secure) secure from entry by unauthorized persons;

(iii) diligently and in good faith seek to obtain the NPL Consents, and request that SUNY diligently and in good faith seek to obtain the DOH Consent;

(iv) use commercially reasonable efforts to terminate any leases or occupancy agreements and evict all tenants and other persons in occupancy of the Premises (other than Purchaser and NYUHC with respect to the Interim Medical Premises), and terminate any
service contracts relating to the Premises (other than as required to meet Seller's obligations under the Amended Interim Lease or in connection with Seller's or SUNY's use of the Premises (other than the Interim Medical Premises) prior to the Initial Closing);

(v) provide such reasonable assistance as Purchaser and/or NYUHC may reasonably request (including only the provision of information necessary for the completion of customary applications and forms, and the execution of such applications and forms, each as reasonably requested by Purchaser) with respect to (A) Purchaser's efforts to segregate the New Medical Site into its own tax lot (as set forth in Section 1.5 or otherwise); (B) the recording and/or effectuation of any of the Site Agreements that are executed prior to the Initial Closing; (C) NYUHC's efforts to obtain construction permits and related approvals for construction of the New Medical Building; (D) Purchaser's efforts to obtain permits and related approvals for the Demolition Activities, (E) any correction of discrepancies between the recorded borders of the tax lots and the recorded borders of the real estate parcels, (F) any subdivision of the Land that may be necessary to accomplish the conveyance of the Land as provided herein, and (G) any other applications, statements, certifications, documents, or instruments for required variances, authorizations, and other permits and certificates relating to the development or redevelopment of the buildings located on the Land, and the processing thereof (collectively, the "Seller Assistance"); provided, however, that Seller shall not be obligated either to incur any material expense in connection therewith or agree to any amendment of this Agreement in order to so assist Purchaser or NYUHC; and provided further that (X) Purchaser shall indemnify, defend and hold harmless Seller, SUNY, the State of New York and Seller's Affiliates from all Costs arising from or relating to any Seller Assistance provided at the request of Purchaser; (Y) NYUHC shall indemnify, defend and hold harmless Seller, SUNY, the State of New York and Seller's Affiliates from all Costs arising from or relating to any Seller Assistance provided at the request of NYUHC; and (Z) each of Purchaser and NYUHC shall indemnify, defend and hold harmless Seller, SUNY, the State of New York and Seller's Affiliates from fifty percent (50%) of all Costs (such that the aggregate indemnity provided by both Purchaser and NYUHC covers one hundred percent (100%) of all Costs) arising from or relating to any Seller Assistance provided at the joint request of Purchaser and NYUHC (the indemnification obligations of Purchaser and NYUHC under this Section 10.1(a)(v) shall be Surviving Obligations and shall survive any termination of this Agreement); and
(vi) use commercially reasonable efforts to obtain the “Acknowledgment of Decertification of Radiologic Materials” form from the Radioactive Materials Division, Office of Radiologic Health, New York City Office of Mental Health & Hygiene, acknowledging that SUNY has completed its nuclear decommissioning relating to its prior health operations at LICH.

(b) Between the NMS Closing Date and the Final Closing Date, Seller shall:

(i) maintain in force and effect property insurance coverage for the Final Closing Premises with coverage limits at least equal to the lesser of One Hundred Twenty Million Dollars ($120,000,000) and the insurable interest in the Final Closing Premises, and Seller shall pay all premiums as and when required until the Final Closing; and

(ii) continue to provide the Seller Assistance with respect to the Final Closing Premises.

(c) Notwithstanding the provisions of Sections 10.1(a)(iv) or 12.1(c)(xii), or any other provision of this Agreement, the Parties agree as follows: (i) Seller shall be obligated to deliver at the applicable Closing the Core Premises, the Garage and the 349 Henry Building (the "Required Vacant Premises") free of all Leases or other occupying agreements and vacant of all tenants, former tenants and other occupants that are or were parties to occupying agreements (collectively, "Previously Permitted Occupants") (other than Purchaser under the Amended Interim Lease or NYUHC under the Interim Sublease); (ii) Seller shall be required to deliver the balance of the Premises free of all leases and other occupying agreements and vacant of all Previously Permitted Occupants other than leases in effect and Previously Permitted Occupants in occupancy as of the Execution Date; (iii) if any Previously Permitted Occupants remain in possession of any portion of the Premises other than the Required Vacant Premises, the presence of such Previously Permitted Occupants shall not delay the applicable Closing, nor be deemed to constitute the non-satisfaction of any condition of Closing or the non-satisfaction of any Closing deliverables, nor shall the presence of such Previously Permitted Occupants result in any adjustment of the Purchase Price; (iv) if any such Previously Permitted Occupants continue to occupy any portion of the Premises (other than the Required Vacant Premises) as of the applicable Closing Date, Seller shall use commercially reasonable efforts, for a period from the applicable Closing Date through the Seller Eviction Action Discontinuance Date, at Seller’s sole cost and expense, to evict such Previously Permitted Occupants; and (v) if any such Previously Permitted Occupants continue to occupy any portion of the Premises (other than the Required Vacant Premises) as of the Seller Eviction Action Discontinuance Date, Seller shall reimburse Purchaser for any of Purchaser’s direct costs (e.g., legal fees) incurred thereafter in connection with Purchaser’s efforts to evict such Previously Permitted Occupants, net of any amounts that Purchaser receives from such Previously Permitted Occupants and provided that Seller shall not reimburse Purchaser for any payments made to such
Previously Permitted Occupants as an inducement to vacate the Premises, to settle or dismiss any legal proceedings, or otherwise. The "Seller Eviction Action Discontinuance Date" shall be the earlier of (i) one (1) year from the applicable Closing Date relating to the Premises at issue; or (ii) or the date that Purchaser notifies Seller that Purchaser shall be assuming the obligation to evict any such Previously Permitted Occupants.

10.2 (a) Between the date hereof and the Final Closing Date, Seller shall not, without Purchaser's consent:

(i) extend or renew any leases or occupying agreements on the Premises (other than the Amended Interim Lease), relocate any existing tenant to another portion of the Premises, or enter into any new leases or occupancy agreements with respect to the Premises (other than the Amended Interim Lease); provided, however, that nothing herein shall be deemed or construed to prohibit any amendment to, or termination of, the SUNY Lease;

(ii) remove any Personal Property from the Premises, unless replaced by property of comparable utility;

(iii) take any intentional, affirmative action, unless directed by a court or governmental entity with jurisdiction, to create any new mortgage or other encumbrance on the Premises, other than (i) mortgages or other encumbrances on the Premises other than the New Medical Site and the Final Closing Premises that can and will be satisfied by Seller either prior to Initial Closing or at the Initial Closing from the Seller Balance; (ii) mortgages or other encumbrances on the New Medical Site that can and will be satisfied by Seller either prior to or at the NMS Closing; or (iii) mortgages or other encumbrances on the Final Closing Premises that can and will be satisfied by Seller either prior to the Final Closing or at the Final Closing from the Final Amount; or

(iv) take any intentional, affirmative action, unless directed by a court or governmental entity with jurisdiction, in pursuit of any change in the zoning of any of the Premises.

(b) Between the date hereof and the Final Closing Date, NYUHC shall not, without the consent of Seller and Purchaser:

(i) take any intentional, affirmative action, unless directed by a court or governmental entity with jurisdiction, in pursuit of any changes in the zoning of any of the Premises (except as expressly permitted pursuant to the Site Agreements); or

(ii) take any intentional, affirmative action to cause a condemnation of any portion of the Premises.
(c) Between the date hereof and the Final Closing Date Purchaser shall not, without the consent of NYUHC (with respect to the New Medical Site) or without the consent of Seller (with respect to any of the Premises):

(i) take any intentional, affirmative actions unless directed by a court or governmental entity with competent jurisdiction, in pursuit of any changes in the zoning of any of the Premises if such change imposes conditions on the New Medical Site or the Premises (except (x) as expressly permitted pursuant to the Site Agreements (or as would be permitted under the Site Agreements, if the Site Agreements were in effect); (y) as expressly permitted in subclause (c)(ii) below; and (z) after the Initial Closing, Purchaser may take such actions only with respect to that portion of the Premises conveyed to Purchaser at the Initial Closing and only to the extent any such actions do not affect in any way the zoning of the New Medical Site or the Final Closing Premises or any rights of NYUHC or Seller under this Agreement or the Site Agreements).

(ii) Notwithstanding subparagraph (c)(i) above, Purchaser shall have the right to seek a change in or variance from the current zoning of all or any portion of the Premises if such variance or rezoning would, if approved, permit the development of additional floor area and/or neighborhood retail and office uses on all or any portion of the Premises; provided, that such change in or variance from current zoning does not impose conditions on the New Medical Site or the Premises unless NYUHC (with respect to the New Medical Site) and/or Seller (with respect to any of the Premises) seek or apply to utilize the additional floor area or new use made available by such change in or variance from current zoning (“Permitted Applications”). Seller covenants and agrees to cooperate with Purchaser in all reasonable respects, but at the sole cost and expense of Purchaser, in connection with any Permitted Applications, including, without limitation, the execution and delivery of any such applications, documents or consents required in connection with the Permitted Applications (collectively, the “Permitted Application Materials”) within ten (10) business days of receipt thereof, provided that same complies with this Agreement and the Site Agreements, and Purchaser shall reimburse Seller for any reasonable out-of-pocket expenses incurred by Seller in connection therewith. The parties acknowledge and agree that Seller’s execution of any Permitted Application Materials shall not be construed or represented by Purchaser as an endorsement of the Permitted Application. Seller shall not at any time voluntarily appear in opposition to Purchaser in connection with any Permitted Applications. Seller shall have no obligation to provide support for any Permitted
Application. Purchaser shall provide Seller and NYUHC with advance notice of any Permitted Applications, meetings with or hearings at the Board of Standards and Appeals, and any public meeting or presentation relating to the Permitted Applications, and shall keep Seller and NYUHC apprised of the progress of the Permitted Applications and any modifications thereto. Seller shall be provided with copies of any Permitted Application Materials as filed and any amendments thereto. Purchaser’s success or failure in obtaining approval with respect to any submitted Permitted Application shall not affect any of Seller’s or NYUHC’s rights, or Purchaser’s obligations, hereunder, including without limitation Purchaser’s obligation to pay all portions of the Purchase Price when due and otherwise close title to the Initial Closing Premises and the Final Closing Premises as and when required hereunder. Notwithstanding the foregoing, Purchaser agrees not to violate any of the provisions of the Site Agreements relating to such change or variance (and Purchaser agrees to comply with all such provisions that Purchaser is in a position to comply with at any point in time prior to the Final Closing), whether or not the Site Agreements are then in effect.

(d) Prior to the NMS Closing (unless this Agreement has been terminated as it relates to NYUHC’s rights to New Medical Site), no Site Agreement shall be modified or amended, or subordinated to any other agreement, without the consent of NYUHC.

10.3 (a) Purchaser and Seller agree to the following relating to SUNY’s operation of an Emergency Department on the Premises during the period between May 23, 2014 and August 31, 2014:

(i) Purchaser and Seller acknowledge that in order to promote continuity of care, SUNY has voluntarily agreed to continue operation of its existing Emergency Department on the Polak Premises (the "SUNY Emergency Department") for a period following May 23, 2014, the date SUNY previously had DOH consent (and judicial approval, through the Stipulation and Order) to cease operating the Emergency Department. For purposes of this Agreement, the period from May 23, 2014 through August 31, 2014 shall be the "SUNY ED Continuation Period." Purchaser and Seller acknowledge and agree that SUNY’s voluntary operation of the SUNY Emergency Department during the SUNY ED Continuation Period has provided substantial economic value to Purchaser, and in consideration of such value and in consideration of Seller’s obligations hereunder, Purchaser shall pay (X) the Medical Malpractice Amount; and (Y) Seller's and SUNY's Full Net Costs relating to the operation of the SUNY Emergency Department during the SUNY ED Continuation Period.
The "Medical Malpractice Amount" is One Hundred Thousand Dollars ($100,000), the amount Purchaser and Seller have estimated to cover the likely liability exposure for professional negligence claims arising out of the operation of the SUNY Emergency Department during the SUNY ED Continuation Period.

At the Initial Closing, Purchaser shall pay Seller the Medical Malpractice Amount, which Seller shall maintain in a segregated account. Prior to the Malpractice Net Refund Date, Seller may utilize the Medical Malpractice Amount only to reimburse SUNY and/or the State of New York for settlements or judgments relating to professional negligence actions arising out of or relating to SUNY’s operation of the SUNY Emergency Department during the SUNY ED Continuation Period ("Malpractice Judgments").

On the later of the date that is (X) the expiration of the limitations period for initiating (through a filing of notice of intent) any action against SUNY, its employees or the State of New York under the New York State Court of Claims Act for personal injury due to professional negligence arising out of SUNY’s operation of the SUNY Emergency Department during the SUNY ED Continuation Period (the "Limitations Period Expiration Date"), or (Y) the date that any such actions that have been initiated but not resolved as of the Limitations Period Expiration Date are fully resolved (the later of such periods being the "Malpractice Net Refund Date"), Seller shall remit to Purchaser the positive difference, if any, between the Medical Malpractice Amount (which shall not include any interest earned on such amount) and the aggregate amount of all Malpractice Judgments. For purposes of this Section 10.3(a) (iv), the Limitations Period Expiration Date shall be deemed to be the expiration date of the period for adults (i.e., persons eighteen (18) years of age or older) to initiate such professional negligence actions, unless Seller or SUNY notifies Purchaser as of such date that Seller or SUNY is aware of one or more occurrences (for which formal actions have not yet commenced) involving possible professional negligence in connection with the treatment of non-adults during the SUNY ED Continuation Period (in which event the Limitations Period Expiration Date shall be the expiration date of the period for such non-adults to initiate such professional liability actions).

Seller may transfer the Malpractice Amount to SUNY at any time, providing that SUNY agrees to comply with the provisions
of Section 10.3(a)(iv) relating to the maintenance, use and final disposition of such funds.

(vi) "Full Net Costs" shall mean all costs and expenses incurred by SUNY or Seller (other than any pension withdrawal liabilities and Malpractice Judgments) with respect to operation of the SUNY Emergency Department during the SUNY ED Continuation Period that SUNY and Seller would not have incurred if SUNY had discontinued operation of the SUNY Emergency Department on May 22, 2014, less (A) Nine Million Nine Hundred Forty Thousand Dollars ($9,940,000) (the "Credit"); and (B) any revenues received by SUNY relating to the operation of the SUNY Emergency Department during the SUNY ED Continuation Period that SUNY would not have received if it had discontinued operation of the SUNY Emergency Department on May 22, 2014. Both revenues and costs/expenses shall be computed on a cash basis, as more particularly set forth in subsections (vii) and (viii) below. For avoidance of doubt, Full Net Costs includes such indirect costs as billing costs, payroll processing costs and medical records maintenance costs, but in each case solely to the extent that such costs relate to the operation of the SUNY Emergency Department during the SUNY ED Continuation Period. Full Net Costs shall include overhead costs and expenses of SUNY and/or Seller attributable or allocated to the SUNY Emergency Department only in a manner consistent with past practice.

(vii) No earlier than August 15, 2014, Seller shall submit an invoice to Purchaser (the "Initial ED Deficit Invoice") detailing the costs/expenses paid by SUNY or Seller as of July 31, 2014, and revenues received by SUNY as of July 31, 2014, in each case relating to the operation of the SUNY Emergency Department during the period from May 23, 2014 through June 30, 2014, and setting forth the Full Net Costs (as of July 31, 2014) for the period between May 23, 2014 and June 30, 2014, after application of Three Million Dollars ($3,000,000) of the Credit, certified by Seller's Chief Financial Officer as accurate. Purchaser shall pay the amount set forth on such invoice (the "First ED Deficit Payment") to Seller no later than August 20, 2014.

(viii) No later than November 25, 2014, Seller shall submit an invoice to Purchaser (the "Final ED Deficit Invoice") detailing the costs/expenses paid by SUNY or Seller on or after July 31, 2014, and revenues received by SUNY on or after July 31, 2014, relating to the operation of the SUNY Emergency Department during the SUNY ED Continuation Period, and setting forth the
additional Full Net Costs for such period after application of Six Million Nine Hundred Forty Thousand Dollars ($6,940,000) of the Credit (the "Credit Balance"). The Final ED Deficit Invoice shall reflect all Full Net Costs not included in the Initial ED Deficit Invoice, and shall be certified by Seller’s Chief Financial Officer as accurate. Purchaser shall pay the amount set forth on such invoice (the "Final ED Deficit Payment") to Seller on the later of (X) December 1, 2014; or (Y) two (2) Business Days after Purchaser receives notice that the DOH Consent and the NPL Consents have been obtained.

(ix) In the event that the Final ED Deficit Invoice shows a surplus, after application of the Credit Balance, Seller shall credit the amount of such surplus against the Seller Balance to be paid at the Initial Closing; provided, that the amount of any operating surplus relating to the operation of the SUNY Emergency Department during the entire SUNY ED Continuation Period, without taking into account the Credit, shall be deducted from any such credit given to Purchaser at the Initial Closing (i.e., Purchaser shall receive at the Initial Closing the benefit of any portion of the Credit not needed to fully offset the Full Net Costs, but Purchaser shall not receive the benefit of any actual operating surplus, if any, in connection with the operation of the SUNY Emergency Department during the SUNY ED Continuation Period).

(x) The Initial ED Deficit Invoice and the Final ED Deficit Invoice shall each be in substantially the form attached hereto as Exhibit "M", and shall include only the categories of expense (i.e., line items) set forth on Exhibit "M".

(xi) Notwithstanding the foregoing provisions of this Section 10.3(a), Purchaser's obligation to pay SUNY’s and Seller's Full Net Costs incurred in any consecutive thirty (30) day period shall not exceed Five Million Dollars ($5,000,000) for such thirty (30) day period, and in no event shall Purchaser’s obligation under this Section 10.3(a) to pay SUNY’s and Seller’s Full Net Costs, when added to the Medical Malpractice Amount, exceed Fifteen Million Dollars ($15,000,000) in the aggregate. Application of the Credit shall be considered payment by Purchaser for purposes of determining whether Purchaser has exceeded such maximum payment obligations. For avoidance of doubt, Purchaser shall not have any obligation to pay any costs relating to the operation of the SUNY Emergency Department for any period on or after September 1, 2014.
(xii) In the event that Purchaser fails to pay any amount due pursuant to this Section 10.3(a) on the payment due date, Seller shall issue a written notice to Purchaser of the delinquency. If Purchaser does not remit the full past due payment within five (5) days of Seller’s notice, such failure shall constitute a material breach of this Agreement. Upon the occurrence of such breach, Seller at its option may terminate this Agreement, in which event the Amended Interim Lease and the Interim Sublease shall terminate, the Downpayments will not be refunded to Purchaser but shall be retained by Seller, as its own funds, free and clear of any trust or other further obligations with respect thereto pursuant to this Agreement or otherwise pursuant to Law, and no costs, expenses, fees and/or charges paid or incurred by Purchaser in connection with this Agreement or the Premises shall be refunded. Upon such occurrence, at NYUHC's option, upon completion of Demolition Activities, the New Medical Site shall be conveyed to NYUHC for no additional consideration beyond the retention of the Downpayments by Seller. Any termination of this Agreement shall be in additional to, and shall not limit or be in lieu of, any other remedies available to Seller or SUNY at law or in equity for Purchaser's breach of this Section 10.3(a).

(xiii) If NYUHC elects to take conveyance of the New Medical Site pursuant to Section 10.3(a)(xii), it must so notify Seller within thirty (30) Business Days of NYUHC's receipt of notice of the termination of this Agreement. If Seller timely receives notice of NYUHC's election to take the conveyance of the New Medical Site, such conveyance shall occur within thirty (30) days after the Demolition Activities are complete and Seller has received sale proceeds from another buyer for the remainder of the Premises (or portions thereof) at least equal to the Threshold Amount (which sale proceeds shall constitute the consideration to Seller for the conveyance of the New Medical Site to NYUHC). Such conveyance shall be on all of the terms and conditions of this Agreement relating to the conveyance of the New Medical Site to NYUHC, except those that are personal to Purchaser (other than the obligation to perform the Demolition Activities). In the event of termination pursuant to Section 10.3(a)(xii), Purchaser shall be obligated (as a Surviving Obligation) to promptly complete all Demolition Activities pursuant to Section 10.5 at Purchaser's sole expense (even if such Demolition Activities have not commenced as of the termination date of this Agreement) and if Purchaser does not diligently pursue the Demolition Activities, NYUHC, Seller, or their respective designees, as applicable, designee may perform such Demolition Activities at Purchaser’s sole expense pursuant to Section 10.5. Notwithstanding the foregoing, neither Seller nor NYUHC shall
be obligated to consummate the conveyance of the New Medical Site to NYUHC if Seller has not received sale proceeds at least equal to the Threshold Amount from another buyer, and/or the conveyance of the New Medical Site to NYUHC has not occurred, within two (2) years following the termination of this Agreement, or if the Demolition Activities are not complete as of June 30, 2016 (unless NYUHC, at its option, agrees to extend the date for completion of the Demolition Activities to the end of such two (2) year period). Upon such termination pursuant to Section 10.3(a)(xii), if NYUHC elects to take conveyance of the New Medical Site, and such conveyance is effected, NYUHC's obligations under Section 15 and Section 19.3 shall be Surviving Obligations.

(xiv) The provisions of this Section 10.3(a) shall survive the termination or expiration of this Agreement.

(b) The Parties acknowledge that in order to promote continuity of care, NYUHC shall use good faith diligent efforts to operate an Emergency Department in the Interim Medical Premises continuously from no later than the ED Commencement Date until the opening of the Emergency Department on the New Medical Premises (except for interruptions or delays permitted under Sub-Section 15.1(e)). The Interim Medical Premises shall be provided by Seller to Purchaser from the ED Commencement Date until the Final Closing Date pursuant to the Amended Interim Lease. The Interim Medical Premises shall be provided by Purchaser to NYUHC from the ED Commencement Date until the Final Closing Date pursuant to the Interim Sublease, which has been approved by Seller.

(c) Between the date hereof and the applicable Closing, Seller shall allow (i) Purchaser and Purchaser’s authorized representatives access to the Premises, at Purchaser’s risk and expense; and (ii) NYUHC and NYUHC’s authorized representatives access to the Interim Medical Premises and the New Medical Site (and the buildings thereon), at NYUHC’s risk and expense, in each case for inspection and examination purposes. If the Interim Sublease terminates prior to the time that the Defeasance Payment has been made, NYUHC also shall be given reasonable access to the Interim Medical Premises, at NYUHC’s risk and expense, for a reasonable period after the expiration of the Interim Sublease for the purpose of removing any of its personal property. All such access to Purchaser, NYUHC and their authorized representatives shall be upon not less than two (2) Business Days’ prior notice to Seller and during normal business hours. Such prior notice shall be given by e-mail or telephonically to Melanie Gehan, e-mail address Melanie.Gehan@downstate.edu and telephone number (718) 270-3176, or to such other representative of Seller or other e-mail address or telephone number as Seller may hereafter designate by notice to Purchaser. Seller shall be entitled to have its representatives accompany Purchaser and/or Purchaser’s representatives, or NYUHC and/or NYUHC's representative, as applicable, during any on-site visits by them to the Premises. Seller may at its option suspend or terminate Purchaser’s or NYUHC’s, as applicable, right of access under this Section 10.3(c), upon
notice to Purchaser or NYUHC, as applicable, if Purchaser or its representatives, agents or contractors, or NYUHC or its representatives, agents or contractors, as applicable, fails at any time to comply with Seller’s reasonable rules, regulations, policies and procedures relating to the Premises. This Section 10.3(c) shall not apply to any portion of the Premises leased to Purchaser pursuant to the Amended Interim Lease during the term of the Amended Interim Lease; the provisions of the Amended Interim Lease shall control the Parties’ respective access rights to the portion of the Premises covered by the Amended Interim Lease during the term of the Amended Interim Lease.

(d) Notwithstanding any other provisions of this Section 10 or this Agreement, Purchaser and NYUHC may not, directly or through contractors, agents or representatives, conduct any physically invasive environmental, health or safety investigations of the Premises, including any sampling or testing of surface water, ground water or ambient air, at any time prior to the applicable Closing. Following the payment by Purchaser to Seller of the Section 10.3(d) Downpayment and the approval and execution of this Agreement by AG and OSC, Purchaser's lender (or its representatives) may conduct the following testing during the period between the date hereof and each Closing, which testing shall not be deemed to be invasive: soil testing and borings solely to test for fuel leaks and only on the Core Premises; provided, that if Purchaser’s lender requires, as a condition of its financing, that it conduct soil testing or borings for expanded purposes or on portions of the Premises other than the Core Premises, such expanded soil testing and/or borings shall be permitted upon receipt by Seller of written notice of such lender requirements. Any soil testing and borings permitted under this Section 10.3(d) are collectively the "Permitted Section 10.3(d) Inspections." All such inspections must be coordinated with Melanie Gehan or her designee and notice of same (with the date and time of such inspections) shall be provided to NYUHC. Purchaser shall report to governmental authorities the findings of any such Permitted Section 10.3(d) Inspections to the extent required by Law, and nothing in this Section 10.3(d) or elsewhere in this Agreement shall be deemed to limit Purchaser’s reporting or remediation obligations under Law. Purchaser shall make a good faith effort to give to NYUHC notice of material Permitted Section 10.3(d) Inspections of the New Medical Site and their scope, and NYUHC shall have the right to observe any Permitted Section 10.3(d) Inspections of the New Medical Site and to receive any oral or written reports provided to Purchaser and/or Seller from Purchaser's contractors, agents and/or representatives arising from such Permitted Section 10.3(d) inspections of the New Medical Site promptly after receipt by Purchaser and/or Seller. Purchaser may make improvements at, on or under the Premises prior to each Closing only upon Seller’s prior approval, which may be withheld in Seller’s sole discretion, or as set forth in the Amended Interim Lease with respect to the Interim Medical Premises. Under no circumstances shall any examination of the Premises by Purchaser, NYUHC or their respective affiliates, agents or representatives, pursuant to this Section 10.3(d) or otherwise (or any discoveries therefrom): (i) result in any reduction to the Purchase Price; (ii) result in any obligation of Seller to take any action prior to or after any Closing; (iii) result in any Seller obligation or liability under Sections 5.5(d), 6.2 or 7.6 of this Agreement, or increase any obligation or liability of Seller otherwise incurred under Sections 5.5, 6.2 or 7.6 of this Agreement or under the Amended Interim Lease; (iv) delay or affect any Closing; or (v) relieve Purchaser or NYUHC of their obligation to
close the transactions contemplated hereunder. The prohibitions against testing (invasive or otherwise) set forth in this Section 10.3(d) shall not apply to the Fuller Pavilion premises or the Othmer Pavilion premises if such testing is required in connection with Purchaser's demolition and Environmental Condition remediation obligations under Section 10.5.

(e) With respect to all examinations of the Premises hereunder by Purchaser, its lender or their respective contractors, agents or representatives, or any action taken by Seller pursuant to Sections 10.1(a)(v) or 10.1(b)(ii), or any action taken by Purchaser or any other entity pursuant to Section 10.5, Purchaser shall indemnify, defend and save Seller, and Seller’s Affiliates and the State of New York harmless of, from and against any and all damages, demands, claims, losses, liabilities, costs and expenses (including, without limitation, reasonable attorneys’ fees and disbursements and costs paid and/or incurred in the enforcement of the foregoing indemnity by Seller, any of Seller’s Affiliates and/or the State of New York) to the extent attributable to (i) any action taken by Seller pursuant to Sections 10.1(a)(v) or 10.1(b)(ii); (ii) any action taken by Purchaser or any other entity pursuant to Section 10.5; or (iii) any entry onto, or examination of, the Premises by Purchaser or Purchaser’s agents, employees, representatives, contractors, or consultants in connection therewith (such indemnification, defense, and hold harmless shall apply without limitation to any costs, claims, fines, penalties, expenses and damages relating to the remediation of any violation of Environmental Laws, or the removal of any Hazardous Materials, discovered as the result of any Permitted Section 10.3(d) Inspections and/or Demolition Activities and required by any governmental authority having jurisdiction), which indemnity shall survive each Closing or, if this Agreement is terminated prior to the Initial Closing, which indemnity shall survive the termination of this Agreement. With respect to the Demolition Activities only, Purchaser's indemnity under this Section 10.3(e) shall extend to NYUHC and the NYUHC Indemnitees, but subject to the limitations set forth in Section 19.1(e)(vi). Prior to entering upon the Premises, Purchaser shall provide, or shall cause its consultant(s) to provide, Seller with a Certificate of Insurance from an insurance company licensed by the New York State Department of Insurance with a rating of at least A-, and a financial strength of at least VIII, as published in Standard and Poor’s, naming Seller, Seller’s Affiliates and the State of New York as additional insureds, evidencing that Purchaser or its consultant(s) maintain:

A. commercial general liability insurance with a combined single limit coverage of not less than One Million ($1,000,000.00) Dollars per claim and Two Million ($2,000,000.00) Dollars in the aggregate; and

B. workers’ compensation insurance and disability benefits coverage in statutory limits.

Such Certificate of Insurance shall provide that Seller and SUNY shall receive at least thirty (30) days’ notice prior to any material change, cancellation, or expiration of any such policy. All activities conducted by Purchaser or its agents, employees, representatives, contractors, or consultants at or on the Premises shall
be compliant with all applicable Laws, in all respects, at Purchaser’s sole cost and expense. Purchaser shall promptly reimburse Seller for all reasonable third party costs or expenses paid or incurred by Seller in connection with the exercise of Purchaser’s examination rights hereunder.

(f) NYUHC shall be required pursuant to Sections 15.1(b) and (c) of this Agreement to commence operation, directly or through Lutheran Family Health Center ("LFHC") or another Responsible Affiliate or Contractor, of a federally qualified health center, licensed under Article 28 of the New York Public Health Law (the "FQHC"), no later than the New Medical Operations Commencement Deadline. Pursuant to Section 15.1(b), NYUHC may, and NYUHC acknowledges that it currently intends to, cause the FQHC to be operated in the Red Hook neighborhood of Brooklyn, New York (the "Red Hook Location") rather than on the New Medical Premises.

10.4 Seller shall notify DASNY of the receipt of the following approvals, promptly following Seller's receipt of notice that such approvals have been obtained: (a) the approval of this Agreement by AG and OSC as directed in Section 22.4; (b) the NPL Consents; (c) any approvals relating to the Demolition Activities to be performed by Purchaser pursuant to Section 10.5; and (d) any approvals relating to the segregation of the New Medical Site into a separate tax lot.

10.5 (a) Promptly following the execution of this Agreement by the Parties, the approvals and execution of this Agreement by AG and OSC pursuant to Section 22.4 and the satisfaction of the conditions set forth in Section 4.2(b)(vi), Purchaser shall commence the process of demolishing all buildings located on the New Medical Site (and, at Purchaser's option, any part or all of the Othmer Pavilion that is not part of the New Medical Site) and the remediation of any Hazardous Materials or other Environmental Conditions thereon in accordance with the scope and standards set forth on Schedule "I" (the "Demolition"). The Demolition process shall include, without limitation: (i) seeking and obtaining all permits and governmental approvals (and making all regulatory filings) required for such Demolition (including, without limitation, formally closing out any demolition permits upon the completion of the Demolition); (ii) obtaining, directly or through its contractors, commercial general liability insurance, builder's risk insurance and other customary insurance coverages, with customary coverage limits, for the contemplated Demolition and remediation of Environmental Conditions (with each such insurance policy naming Seller and the Seller Indemnitees as additional insureds); (iii) conducting any environmental investigation, testing and remediation of Environmental Conditions required by Law or Schedule "I" before, during and after the Demolition, including obtaining, as applicable, written determinations of No Further Action by a governmental agency with jurisdiction over the New Medical Site or a P.E. Certification for any Remedial Measures required pursuant to Schedule "I"; (iv) conducting the actual Demolition; and (v) disposing of all demolished building materials and Hazardous Materials in a manner fully compliant with Law (collectively, the "Demolition Activities"). The Demolition Activities shall be undertaken and completed as required pursuant to this Agreement at Purchaser's sole cost and expense; provided, that Seller shall provide the Seller Assistance as reasonably necessary at no material cost to Seller.
NYUHC shall have the right to observe the on-site Demolition Activities and shall provide reasonable advance notice to Purchaser of any site visits during the Demolition process; provided, that NYUHC shall not interfere with the Demolition Activities. Purchaser shall make a good faith effort to provide NYUHC with reasonable opportunity to confirm that Demolition Activities are conducted in accordance with Schedule “I”. To that end, without limitation, Purchaser shall provide NYUHC with reasonable prior notice of all material Demolition Activities, and copies of all work plans, reports, test results and material communications between Purchaser and any governmental agency, or from any governmental agency to Purchaser, with respect to the Demolition Activities. If not otherwise prepared, Purchaser shall provide NYUHC with a weekly report summarizing the status of the Demolition Activities. If requested by NYUHC and at its expense, Purchaser shall provide split samples of all tests for NYUHC's review, and shall allow NYUHC (with Purchaser's participation) to meet with Purchaser's third party consultants and contractors. NYUHC shall have the reasonable opportunity to review and approve (which approval cannot be unreasonably withheld, denied or delayed) proposed investigation and remedial work plans, or similar documents, prepared to implement the Remedial Measures pursuant to Schedule “I”.

Purchaser shall use commercially reasonable efforts to complete the Demolition Activities as soon as reasonably feasible and shall provide prompt notice to Seller and to NYUHC of such completion, which notice, to have effect for any purpose under this Agreement (including Section 4.1(b)), shall be accompanied by an engineer's environmental certificate contemplated under Schedule "I" to the effect that Demolition Activities have been completed as required under such Schedule "I". Fortis hereby guarantees Purchaser's performance of its obligations under this Section 10.5 (and all other obligations of Purchaser hereunder relating to the Demolition Activities).

For avoidance of doubt, Purchaser's indemnification obligations under Section 10.3(e) shall apply to any and all damages, demands, claims, losses, liabilities, costs and expenses incurred by Seller, Seller's Affiliates, and the State of New York, NYUHC and NYUHC 's affiliates arising from or relating to the Demolition Activities. If Purchaser defaults in its obligation to timely conduct and complete the Demolition Activities, and Purchaser does not commence to cure such default within thirty (30) days after receipt of written notice thereof and thereafter diligent pursue such cure to completion, either of NYUHC or Seller, at their option, or any designee of Seller or NYUHC, may take over the completion of the Demolition Activities upon notice to Seller, NYUHC and Purchaser, and in that event Purchaser shall reimburse NYUHC, Seller, or NYUHC's or Seller's designee, as applicable, within thirty (30) days after demand, NYUHC's, Seller's or such designee's reasonable and documented costs in connection with such Demolition Activities.

If after the conveyance of the New Medical Site to NYUHC, and prior to completion of construction of the New Medical Building, it is discovered that Demolition Activities were not completed in accordance with Schedule “I”, or that Environmental Conditions still exist on the New Medical Site, NYUHC, or any other designee of NYUHC, may complete or correct Demolition Activities, or remediate such Environmental Conditions, and in that event Purchaser shall reimburse NYUHC or such
designee, within thirty (30) days after demand, for NYUHC’s or such designee’s reasonable and documented costs in connection with such Demolition Activities or remediation. Purchaser shall have rights in connection with such work comparable to NYUHC’s rights set forth in subsections (a) through (d) of this Section, except that Purchaser shall not have the right to consent to any work performed by NYUHC, but only to contest whether the costs incurred are properly reimbursable by Purchaser. Notwithstanding the foregoing, Purchaser and NYUHC may, at their option, agree that Purchaser shall perform this work, in which event Purchaser shall perform the same in reasonable coordination with construction work being performed by NYUHC.

(f) Purchaser shall discharge, by bond or otherwise, any mechanic's liens filed against the New Medical Site for work claimed to have been done for, or materials claimed to have been furnished to, Purchaser in connection with Demolition Activities or any other activities undertaken by Purchaser or its affiliates at the Premises, within thirty (30) days after Purchaser receives actual notice thereof from any source, and at Purchaser's sole cost. Should Purchaser fail to discharge any such lien within such thirty (30) day period, Seller and NYUHC each shall have the right, but not the obligation, to pay such claim or post a bond or otherwise provide security to eliminate the lien as a claim against title to the New Medical Site or the Premises. In such event, Purchaser shall reimburse Seller or NYUHC, as applicable, within thirty (30) days after demand for the cost so incurred by Seller or NYUHC, respectively.

10.6 Conditioned upon the NMS Closing having occurred or the New Medical Site having otherwise been conveyed to and accepted by NYUHC pursuant to the terms hereof (that is, NYUHC will have no obligations or liabilities under this Section 10.6 unless and until such event occurs), NYUHC agrees that, notwithstanding any subsequent default by any Party or any subsequent termination of this Agreement, it shall at its sole cost and expense, no later than the New Medical Operations Commencement Deadline or the date that would have been the New Medical Operations Commencement Deadline if there had been no default and/or this Agreement had not been terminated (but subject to any extension of same permitted pursuant to Section 15 or elsewhere in this Agreement), substantially complete the New Medical Building in accordance with plans and specifications for a building reasonably sufficient for the provision of the medical services contemplated hereunder to be provided at the New Medical Building (but not necessarily in accordance with NYUHC’s then-existing plans and specifications, which the Parties acknowledge may go beyond what is reasonably sufficient for the provision of the medical services contemplated hereunder). Such NYUHC obligation to complete the construction of the New Medical Building shall be a Surviving Obligation. If NYUHC defaults in its obligation to timely conduct and complete such construction, and NYUHC does not commence to cure such default within thirty (30) days after receipt of written notice thereof from Seller, and thereafter diligently pursue such cure to completion, Seller, at its option, or any designee of Seller, may take over the completion of construction of the New Medical Building upon notice to NYUHC and in that event (a) NYUHC shall assign to Seller or its designee all assignable permits, licenses and approvals relating to such construction; (b) NYUHC shall promptly convey to Seller all of NYUHC’s (or NYUHC’s contractors’) then-existing plans and specifications for the New Medical Building; and (c) NYUHC shall reimburse Seller or its designee, within thirty (30) days after demand, for Seller's or such designee's reasonable and documented costs in connection with such construction.
Section 11. **Transaction Costs; Transactional Tax Returns.**

11.1 Seller shall pay Seller’s fees and expenses, including, without limitation, legal fees, relating to the sale of the Property to Purchaser and the consummation of the transactions contemplated hereby.

11.2 NYUHC shall pay:

(a) NYUHC's expenses, including without limitation, its fees relating to due diligence and legal fees relating to the conveyance of the New Medical Site to NYUHC and the consummation of the transactions contemplated hereby;

(b) any title company premiums for issuing policies of fee title insurance to NYUHC relating to the New Medical Site; and

(c) the cost of recording the Deed for the New Medical Site.

11.3 Purchaser shall pay:

(a) all fees, costs and expenses associated with the Community Foundation Fund Escrow Agreement, including without limitation all fees charged by the Community Foundation Escrow Agent;

(b) Purchaser’s due diligence costs and other fees and expenses, including, without limitation, legal fees, relating to the purchase of the Property from Seller and the consummation of the transactions contemplated hereby;

(c) the Title Company’s premiums for issuing its policies of fee and (if applicable) mortgage title insurance to Purchaser and (if applicable) Purchaser’s lender, and the costs of obtaining any recertification or update of the existing survey or of obtaining any other survey of the Premises;

(d) the costs of any appraisals of any of the Premises (or portions thereof) undertaken after the Execution Date (i) at the request of any court or government agency (or other regulatory body) or (ii) by Seller as a condition to responding to any request of Purchaser that reasonably requires an appraisal; and

(e) the costs of recording the Deeds for the Premises other than the New Medical Site.

(f) any mortgage recording taxes, realty transfer taxes, sales taxes and all other taxes and fees that may be imposed upon Seller or Purchaser by New York State and/or New York City taxing authorities by reason of Seller’s conveyance of the Premises to Purchaser or NYUHC (collectively, the "Transactional Taxes");

11.4 At each Closing, the Parties shall execute, acknowledge (where required), and deliver such tax returns, affidavits of consideration, or other documents as are customary or required by Law and as may be required of them, respectively, in order to pay any of the
Transactional Taxes and/or claim exemption(s) therefrom (collectively, the "Transaction Tax Returns") and/or to record the Deeds.

11.5 Seller shall reasonably cooperate with Purchaser (by providing information reasonably in Seller’s possession and by completing forms reasonably requested by Purchaser or governmental entities) to enable Purchaser to receive the benefit of any tax exemptions that may be applicable to the transactions contemplated hereby.

11.6 The Parties’ respective obligations under Sections 11.1, 11.2, 11.3 and 11.5 shall survive the Closings.

Section 12. **Seller’s Closing Deliveries.**

12.1 At the Initial Closing, and subject to the occurrence thereof, Seller shall execute, acknowledge and/or deliver (or cause to be delivered), as applicable, the following to Purchaser, NYUHC, the Community Fund Escrow Agent and/or the Title Company, as hereinbelow indicated:

(a) to Purchaser (or Purchaser’s designee) and the Title Company:

   (i) a Bargain and Sale Deed Without Covenants Against Grantor’s Acts (the "Initial Purchaser Deed") in substantially the form set forth in Exhibit "N" annexed hereto, covering all of the Premises except the New Medical Site and the Final Closing Premises.

(b) To Purchaser (or Purchaser's designee), NYUHC and the Title Company:

   (i) written evidence, reasonably acceptable to the Title Company, of the NPL Consents and the DOH Consent;

   (ii) a copy of the resolutions of Seller’s Board of Directors, authorizing the execution, delivery, and performance of this Agreement by Seller, certified as being true and in force and effect by the Secretary or an Assistant Secretary of Seller;

   (iii) an incumbency certificate executed by the Secretary or an Assistant Secretary of Seller, certifying as to the signatures of those individuals executing any documents or instruments on behalf of Seller in connection with carrying out the transactions contemplated herein;

   (iv) a certificate of Seller’s good standing, issued by the Secretary of State of Seller’s state of formation and dated not earlier than forty-five (45) days prior to the Closing Date;

   (v) all Transactional Tax Returns required to be executed and delivered by Seller; and
(vi) any Site Agreements, as reflected on Exhibit "E", that require Seller's execution.

to Purchaser (or Purchaser’s designee):

(i) an Assignment and Assumption of Permits and Warranties (the "Initial Omnibus Assignment"), in the form of Exhibit "O" annexed hereto;

(ii) a Bill of Sale of Seller (the "Seller Bill of Sale"), in the form of Exhibit "P" annexed hereto;

(iii) a Bill of Sale of SUNY (the "SUNY Bill of Sale"), in the form of Exhibit "Q" annexed hereto;

(iv) a "Non-Foreign Person" Certification in the form of Exhibit "R" annexed hereto;

(v) to the extent then in Seller’s possession or under Seller’s control, copies or originals of current occupancy, building and similar licenses and permits issued by governmental authorities for, or with respect to, the Land and Improvements that constitute the Premises (other than the New Medical Site and the Final Closing Premises) that are not posted at such Premises (for avoidance of doubt, licenses and permits issued to SUNY or any entity other than Seller relating to the pre-Closing operations of health facilities on the Premises shall not transfer to Purchaser and shall not be delivered to Purchaser);

(vi) [intentionally omitted];

(vii) keys to the Premises (other than the New Medical Site and the Final Closing Premises), security/entry system cards and other means of access, if applicable;

(viii) codes to any security systems, combinations to any safes constituting fixtures to the Premises (other than the New Medical Site and the Final Closing Premises) or otherwise included in the Personal Property;

(ix) evidence that the SUNY Lease has been amended to apply only to the New Medical Site and the Final Closing Premises on and after the Initial Closing Date and that SUNY has waived its right under the SUNY Lease to acquire the Premises (other than the Final Closing Premises);
evidence that Seller has maintained property insurance on the Premises, as required pursuant to Section 10.1(a)(i), through the Initial Closing Date;

Seller’s Initial Closing Certification;

possession of the Premises, other than the New Medical Site and the Final Closing Premises, subject to the Permitted Title Exceptions and subject further to the provisions of Section 10.1(c);

an assignment of the Revocable Consent Agreements that apply to the Premises other than the New Medical Site or the Final Closing Premises; and

subject to the provisions of Section 17, an assignment of any insurance proceeds in the event of a casualty relating to the Premises other than the New Medical Site or the Final Closing Premises and delivery of any such proceeds paid to Seller prior to the Closing.

to Purchaser and the Community Fund Escrow Agent, the Community Foundation Agreement;

to the Title Company, such customary Affidavits of Title as may be reasonably required by the Title Company, consistent with the terms of this Agreement, and that are reasonably acceptable to Seller and the State of New York, in order for the Title Company to insure Purchaser’s title to the Premises (other than the New Medical Site and the Final Closing Premises), subject only to the Permitted Title Exceptions; and

to Purchaser and/or the Title Company (as the case may be), all other documents and items that Seller is required to deliver under this Agreement.

12.2 At the NMS Closing, and subject to the occurrence thereof, Seller shall execute, acknowledge and/or deliver (or cause to be delivered), as applicable, the following to NYUHC and/or the Title Company, as hereinbelow indicated:

to NYUHC and the Title Company:

A Bargain and Sale Deed Without Covenants Against Grantor's Acts (the "New Medical Site Deed"), in substantially the form set forth in Exhibit "S" annexed hereto;

an incumbency certificate executed by the Secretary or an Assistant Secretary of Seller, certifying as to the signatures of those individuals executing any documents or instruments on behalf of Seller in connection with carrying out the transactions contemplated herein;
(iii) a certificate of Seller’s good standing, issued by the Secretary of State of Seller’s state of formation and dated not earlier than forty-five (45) days prior to the Closing Date; and

(iv) all Transactional Tax Returns required to be executed and delivered by Seller.

(b) to NYUHC:

(i) a declaration of covenants and restrictions for the New Medical Site (the "New Medical Site Declaration"), in substantially the form set forth in Exhibit "T" hereto;

(ii) to the extent then in Seller's possession or under Seller's control, copies of originals of current licenses or permits issued by governmental authorities for, or with respect to, the New Medical Site land (for avoidance of doubt, licenses and permits issued to SUNY or any entity other than Seller relating to the pre-Closing operations of health facilities on buildings currently located on the New Medical Site shall not transfer to NYUHC and shall not be delivered to NYUHC);

(iii) a "Non-Foreign Person" Certification in the form of Exhibit "R" hereto;

(iv) evidence that the SUNY Lease has been amended to apply only to the Final Closing Premises on and after the NMS Closing Date, and that SUNY has waived its right under the SUNY Lease to acquire the Premises (other than the Final Closing Premises);

(v) Seller's NMS Closing Certification;

(vi) possession of the New Medical Site, subject to Permitted Title Exceptions.

(c) to the Title Company, such customary Affidavits of Title as may be reasonably required by the Title Company, consistent with the terms of this Agreement, and that are reasonably acceptable to Seller and the State of New York, in order for the Title Company to insure NYUHC's title to the New Medical Site, subject only to the Permitted Title Exceptions; and

(d) to NYUHC and/or the Title Company (as the case may be), all other documents and items that Seller is required to deliver under this Agreement.

12.3 At the Final Closing, and subject to the occurrence thereof, Seller shall execute, acknowledge and/or deliver (or cause to be delivered), as applicable, the following to Purchaser and/or the Title Company, as hereinbelow indicated:
(a) to Purchaser (or Purchaser’s designee) and the Title Company:

(i) a Bargain and Sale Deed Without Covenants Against Grantor’s Acts (the "Final Closing Deed"), in substantially the form set forth in Exhibit "U" annexed hereto, covering the Final Closing Premises;

(ii) all Transactional Tax Returns required to be executed and delivered by Seller;

(iii) a certification by the Secretary or an Assistant Secretary of Seller that the resolutions of Seller’s Board of Directors, authorizing the execution, delivery, and performance of this Agreement by Seller, remain in force and effect;

(iv) an incumbency certificate executed by the Secretary or an Assistant Secretary of Seller, certifying as to the signatures of those individuals executing any documents or instruments on behalf of Seller in connection with carrying out the transactions contemplated herein; and

(v) a certificate of Seller’s good standing, issued by the Secretary of State of Seller’s state of formation and dated not earlier than forty-five (45) days prior to the Final Closing Date.

(b) to Purchaser (or Purchaser’s designee):

(i) an Assignment and Assumption of Permits and Warranties (the "Final Omnibus Assignment"), in the form of Exhibit "V" annexed hereto;

(ii) to the extent then in Seller’s possession or under Seller’s control, copies or originals of current occupancy, building and similar licenses and permits issued by governmental authorities for, or with respect to, the Land and Improvements that constitute the Final Closing Premises that are not posted at such Premises (for avoidance of doubt, licenses and permits issued to SUNY or any entity other than Seller relating to the pre-Closing operations of health facilities on the Premises shall not transfer to Purchaser and shall not be delivered to Purchaser);

(iii) keys to the Final Closing Premises, security/entry system cards and other means of access, if applicable;

(iv) codes to any security systems, combinations to any safes constituting fixtures to the Final Closing Premises;
(v) evidence that the SUNY Lease has been terminated and that SUNY has waived its right under the SUNY Lease to acquire the Final Closing Premises;

(vi) evidence that Seller has maintained property insurance on the Final Closing Premises, as required pursuant to Section 10.1(b)(i), through the Final Closing Date;

(vii) Seller’s Final Closing Certification;

(viii) possession of the Final Closing Premises, other than the Interim Medical Premises (of which Purchaser shall have obtained possession pursuant to the Amended Interim Lease), subject to the Permitted Title Exceptions and subject further to the provisions of Section 10.1(c);

(ix) an assignment of the Revocable Consent Agreements that apply to the Final Closing Premises; and

(x) subject to the provision of Section 17, an assignment of any insurance proceeds in the event of a casualty relating to the Final Closing Premises and delivery of any such proceeds paid to Seller prior to the Closing.

c) to the Title Company, such customary Affidavits of Title as may be reasonably required by the Title Company, consistent with the terms of this Agreement, and that are reasonably acceptable to Seller and the State of New York, in order for the Title Company to insure Purchaser’s title to the Final Closing Premises, subject only to the Permitted Title Exceptions; and

d) to Purchaser and/or the Title Company (as the case may be), all other documents and items that Seller is required to deliver under this Agreement.

12.4 In addition to the deliveries required pursuant to Section 12.1 and Section 12.3 above, Seller shall make any other current, material records and files relating to the construction, alteration, maintenance, and/or leasing of the applicable Premises (excluding income or franchise tax records, company books and records, appraisals, and any privileged or other confidential information, and excluding records relating to the operation by SUNY of health care facilities on the Premises), to the extent that the same are in Seller’s possession or under Seller’s control, available for examination and copying by Purchaser during regular business hours, at Purchaser’s expense and upon reasonable prior notice, at Seller’s office address hereinabove set forth (or at another location in the City of New York, of which notice is given by Seller to Purchaser). Seller’s obligations under this Section 12.4 shall survive the applicable Closing for twelve (12) months.
Section 13.  **Purchaser’s and NYUHC's Closing Deliveries.**

13.1 At the Initial Closing, and subject to the occurrence thereof, Purchaser shall execute, acknowledge and/or deliver (or cause to be delivered), as applicable, the following to Seller, NYUHC, the Community Fund Escrow Agent and/or the Title Company, as hereinbelow indicated:

(a) to Seller:

(i) the Seller Balance, subject to apportionments, credits and adjustments as provided for in this Agreement, and payment of any other sums required to be paid by Purchaser to Seller or any Seller’s Affiliate hereunder;

(ii) the Medical Malpractice Amount;

(iii) the Initial Omnibus Assignment;

(iv) Purchaser’s Initial Closing Certification;

(v) Fortis’ Initial Closing Certification;

(vi) the Initial Closing Estoppel Certificate or the Initial Closing Release and Certification; and

(vii) the Fortis Guarantee, duly executed by Fortis.

(b) to Seller and the Community Fund Escrow Agent, the Community Foundation Agreement;

(c) to the Community Fund Escrow Agent, the Initial Community Fund Payment;

(d) to Seller and the Title Company:

(i) all Transactional Tax Returns required to be executed and delivered by Purchaser (the Parties also acknowledge and agree that although Purchaser shall have fully paid for the New Medical Site as of the Initial Closing, Purchaser may be required to execute and deliver Transactional Tax Returns at the NMS Closing, and Purchaser agrees to do so if so required); and

(ii) the Initial Purchaser Deed.

(e) To Seller, NYUHC and the Title Company:

(i) a copy of the resolutions of Purchaser’s managers, authorizing the execution, delivery and performance of this Agreement by
Purchaser, certified as being true and in force and effect by the chief executive officer or managing member of Purchaser;

(ii) an incumbency certificate executed by the managing member or manager or another authorized representative of Purchaser, certifying as to the signatures of those individuals executing any documents or instruments on behalf of Purchaser in connection with carrying out the transactions contemplated herein;

(iii) a certificate of Purchaser’s good standing issued by the Secretary of State of Delaware and a certificate of Purchaser’s good standing as a foreign limited liability company authorized to do business in New York State, each dated not earlier than forty-five (45) days prior to the Closing Date; and

(iv) the Site Agreements.

(f) to the Title Company, Purchaser’s payment of the Transactional Taxes; and

(g) to Seller, NYUHC and/or the Title Company (as the case may be), all other documents and items that Purchaser is required to deliver under this Agreement.

13.2 At the Final Closing, and subject to the occurrence thereof, Purchaser shall execute, acknowledge and/or deliver (or cause to be delivered), as applicable, the following to Seller, the Community Fund Escrow Agent and/or the Title Company, as hereinbelow indicated:

(a) to Seller:

(i) the Final Amount, subject to apportionments, credits and adjustments as provided for in this Agreement, and payment of any other sums required to be paid by Purchaser to Seller or any Seller’s Affiliate hereunder;

(ii) the Final Omnibus Assignment;

(iii) Purchaser’s Final Closing Certification;

(iv) Fortis’ Final Closing Certification; and

(v) The Final Closing Estoppel Certificate or the Final Closing Release and Indemnification;

(b) if due pursuant to Section 2.2 above, to the Community Foundation or the Community Fund Escrow Agent, the Additional Community Fund Payment;

(c) to Seller and the Title Company:
(i) all Transactional Tax Returns required to be executed and delivered by Purchaser;

(ii) a certification by the chief executive officer or managing member of Purchaser that the resolutions of Purchaser’s managers, authorizing the execution, delivery and performance of this Agreement by Purchaser, remain in force and effect;

(iii) an incumbency certificate executed by the managing member or manager or another authorized representative of Purchaser, certifying as to the signatures of those individuals executing any documents or instruments on behalf of Purchaser in connection with carrying out the transactions contemplated herein;

(iv) a certificate of Purchaser’s good standing issued by the Secretary of State of Delaware and a certificate of Purchaser’s good standing as a foreign limited liability company authorized to do business in New York State, each dated not earlier than forty-five (45) days prior to the Final Closing Date; and

(v) the Deed for the Final Closing Premises.

(d) to the Title Company, Purchaser’s payment of the Transactional Taxes; and

(e) to Seller and/or the Title Company (as the case may be), all other documents and items that Purchaser is required to deliver under this Agreement.

13.3 At the Initial Closing, and subject to the occurrence thereof, NYUHC shall execute, acknowledge and deliver (or cause to be delivered), as applicable, the following to Purchaser, Seller and the Title Company:

(a) to Purchaser, Seller and the Title Company:

(i) a copy of resolutions of NYUHC’s Board of Trustees, authorizing the execution, delivery and performance of this Agreement by NYUHC, certified as being true and in force and effect by the Secretary or Assistant Secretary of NYUHC;

(ii) an incumbency certificate executed by the Secretary or Assistant Secretary of NYUHC, certifying as to the signatures of those individuals executing documents or instruments on behalf of NYUHC in connection with carrying out the transactions contemplated herein; and

(iii) a certificate of NYUHC’s good standing, issued by the Secretary of State of NYUHC’s state of formation and dated not earlier than forty-five (45) days prior to the Initial Closing Date; and
(iv) the Site Agreements (or, as to any Site Agreement as to which NYUHC is not a party, a written acknowledgement pursuant to which NYUHC agrees to be bound by the provisions of such Site Agreement);

(b) to Purchaser and Seller, NYUHC's Initial Closing Certification:

(c) to Seller, the Initial Closing Estoppel Certificate (provided that Purchaser may instead execute, acknowledge and deliver to Seller the Initial Closing Release and Indemnification); and

(d) to Purchaser, Seller and/or the Title Company (as the case may be), all other documents and items that NYUHC is required to deliver under this Agreement.

13.4 At the NMS Closing, and subject to the occurrence thereof, NYUHC shall execute, acknowledge and deliver (or cause to be delivered), as applicable, the following to Purchaser, Seller and the Title Company:

(a) to Seller and the Title Company:

(i) a certification by the Secretary or Assistant Secretary of NYUHC that the resolutions of NYUHC's Board of Trustees, authorizing the execution, delivery and performance of this Agreement by NYUHC, remain in force and effect.

(ii) an incumbency certificate executed by the Secretary or Assistant Secretary of NYUHC, certifying as to the signatures of those individuals executing documents or instruments on behalf of NYUHC in connection with carrying out the transactions contemplated herein;

(iii) a certificate of NYUHC's good standing, issued by the Secretary of State of NYUHC's state of formation and dated not earlier than forty-five (45) days prior to the Closing Date;

(iv) all Transactional Tax Returns required to be executed and delivered by NYUHC;

(v) the New Medical Site Deed; and

(vi) the New Medical Site Declaration;

(b) to Seller, NYUHC's NMS Closing Certification;

(c) to Purchaser, Seller and/or the Title Company (as the case may be), all other documents and items that NYUHC is required to deliver under this Agreement.
13.5 At the Final Closing, and subject to the occurrence thereof, NYUHC shall execute, acknowledge and deliver to Seller the Final Closing Estoppel Certificate (provided that Purchaser may instead execute, acknowledge and deliver to Seller the Final Closing Release and Indemnification).

Section 14. Defaults in Closing and Remedies.

14.1 (a) Purchaser acknowledges that if Purchaser or Fortis breaches any representation or warranty set forth in Section 8.1 or 8.2 prior to the Initial Closing (and Seller is aware of such breach prior to the Initial Closing), and if such breach (if capable of being cured) remains uncured as of the Initial Closing Deadline (as may be extended pursuant to the provisions of Section 4.4), or if Purchaser defaults in its obligation to close title as required under this Agreement, or if, prior to the Initial Closing, Purchaser defaults on any other material obligation hereunder and remains in default following notice and a reasonable opportunity to cure not to exceed thirty (30) days, Seller’s and NYUHC's damages, including for the loss of their bargain and lost opportunity cost, will be difficult, if not impossible, to ascertain. Accordingly, the Parties have agreed that:

(i) Seller’s sole and exclusive remedy for any such default (excluding, however, any default by Purchaser of its indemnification obligations under Sections 10.3(e) or 19.1 or of its payment obligations under Section 10.3(a))) shall be to retain the Downpayments as liquidated damages;

(ii) the Downpayments constitute the best estimate of Seller’s damages by reason of such default;

(iii) the Downpayments represent a fair and reasonable amount of damages under the circumstances, and are not a penalty; and

(iv) Upon such default by Purchaser and the termination of this Agreement by Seller, the Amended Interim Lease and the Interim Sublease shall terminate and, at NYUHC's option, Seller shall convey the New Medical Site to NYUHC for no additional consideration beyond the retention by Seller of the Downpayments. If NYUHC elects to take conveyance of the New Medical Site, it must so notify Seller within thirty (30) Business Days of NYUHC's receipt of notice of the termination of this Agreement. If Seller timely receives notice of NYUHC's election to take the conveyance of the New Medical Site, such conveyance shall occur within thirty (30) days after the Demolition Activities are complete and Seller has received sale proceeds from another buyer for the remainder of the Premises (or portions thereof) at least equal to the Threshold Amount (which sale proceeds shall constitute the consideration to Seller for the conveyance of the New Medical Site to NYUHC). Such conveyance shall be on all of the terms and conditions of this
Agreement relating to the conveyance of the New Medical Site to NYUHC, except those that are personal to Purchaser (other than the obligation to perform the Demolition Activities). In the event of termination pursuant to this Section 14.1(a), Purchaser shall be obligated (as a Surviving Obligation) to promptly complete all Demolition Activities pursuant to Section 10.5 at Purchaser's sole expense (even if such Demolition Activities have not commenced as of the termination date of this Agreement) and if Purchaser does not diligently pursue the Demolition Activities, NYUHC, Seller or their respective designees, as applicable, may perform such Demolition Activities at Purchaser’s sole expense pursuant to Section 10.5. Notwithstanding the foregoing, neither Seller nor NYUHC shall be obligated to consummate the conveyance of the New Medical Site to NYUHC if Seller has not received sale proceeds at least equal to the Threshold Amount from another buyer, and/or the conveyance of the New Medical Site to NYUHC has not occurred, within two (2) years following the termination of this Agreement, or if the Demolition Activities are not complete as of June 30, 2016 (unless NYUHC, at its option, agrees to extend the date for completion of the Demolition Activities to the end of such two (2) year period). Upon such termination pursuant to this Section 14.1(a), if NYUHC elects to take conveyance of the New Medical Site, and such conveyance is effected, NYUHC's obligations under Section 15 and Section 19.3 shall be Surviving Obligations.

(b) Purchaser acknowledges that if Purchaser or Fortis breaches any representation or warranty set forth in Section 8.1 or 8.2 after the Initial Closing but prior to the NMS Closing or Final Closing (and Seller is aware of such breach prior to NMS Closing or the Final Closing), and if such breach (if capable of being cured) remains uncured as of the NMS Closing or Final Closing Deadline, or if Purchaser defaults in its obligation to close title to the Final Closing Premises as required under this Agreement, or if Purchaser defaults on any other material obligation hereunder after the Initial Closing but prior to the NMS Closing or Final Closing and remains in default following notice and reasonable opportunity to cure not to exceed thirty (30) days, Seller’s and NYUHC's damages, including for the loss of their bargain and lost opportunity cost, will be difficult, if not impossible, to ascertain. Accordingly, the Parties have agreed that:

(i) Seller’s sole and exclusive remedy for any such default (excluding, however, any default by Purchaser of its indemnification obligations under Sections 10.3(e) or 19.1 or of its payment obligations under Section 10.3(a))) shall be to retain the remaining Downpayments as liquidated damages and to immediately receive an additional Three Million Dollars ($3,000,000) from Fortis (the "Fortis Payment") pursuant to the Fortis Guarantee;
(ii) the remaining Downpayments and the Fortis Payment constitute
the best estimate of Seller’s damages by reason of such default;

(iii) the remaining Downpayments and the Fortis Payment represent a
fair and reasonable amount of damages under the circumstances,
and are not a penalty; and

(iv) Upon such default by Purchaser and the termination of this
Agreement by Seller prior to the NMS Closing, at NYUHC's
option, Seller shall convey the New Medical Site to NYUHC for
no additional consideration beyond the retention by Seller of the
Downpayments. If NYUHC elects to take conveyance of the
New Medical Site, it must so notify Seller within thirty (30)
Business Days of NYUHC's receipt of notice of the termination
of this Agreement. If Seller timely receives notice of NYUHC's
election to take the conveyance of the New Medical Site, such
conveyance shall occur within thirty (30) days after the
Demolition Activities are complete. Such conveyance shall be
on all of the terms and conditions of this Agreement relating to
the conveyance of the New Medical Site to NYUHC, except
those that are personal to Purchaser (other than the obligation to
perform the Demolition Activities). In the event of termination
pursuant to this Section 14.1(b), Purchaser shall be obligated (as
a Surviving Obligation) to promptly complete all Demolition
Activities pursuant to Section 10.5 at Purchaser's sole expense
(even if such Demolition Activities have not commenced as of
the termination date of this Agreement) and if Purchaser does not
diligently pursue the Demolition Activities, NYUHC, Seller or
their respective designees, as applicable, may perform such
Demolition Activities at Purchaser's sole expense pursuant to
Section 10.5. Notwithstanding the foregoing, neither Seller nor
NYUHC shall be obligated to consummate the conveyance of the
New Medical Site to NYUHC if the conveyance of the New
Medical Site to NYUHC has not occurred within two (2) years
following the termination of this Agreement or if the Demolition
Activities are not complete as of June 30, 2016 (unless NYUHC,
at its option, agrees to extend the date for completion of the
Demolition Activities to the end of the two (2) year period). If
NYUHC elects to take conveyance of the New Medical Site
pursuant to this Section 14.1(b) (iv), then (X) the Interim
Sublease shall not terminate but shall remain in effect, subject to
the Subordination, Non-Disturbance and Attornment Agreement
by and between Seller and NYUHC; (Y) the Interim Sublease
shall then terminate at such time, if any, as either Seller or
NYUHC later elects, pursuant to the preceding sentence, not to
consummate the conveyance of the New Medical Site; and (Z)
upon conveyance to NYUHC of the New Medical Site,
NYUHC’s obligations under Section 15 and Section 19.3 shall be Surviving Obligations.

(c) Nothing in this Section 14.1 shall limit Purchaser’s or Fortis’ indemnification obligations prior to or after termination of this Agreement as set forth in Sections 10.3(e), 19.1 and 19.2 or Purchaser’s payment obligations, if any, prior to or after termination of this Agreement as set forth in Section 10.3(a).

14.2 (a) If Seller shall intentionally breach its obligation to sell the Property as required under this Agreement despite (i) the satisfaction of all conditions set forth in Sections 4.2(b), (c) or (f), as applicable; and (ii) the satisfaction of all conditions set forth in Sections 4.2(a), (d) and/or (e), as applicable, or the waiver by Purchaser or NYUHC, as applicable, of any such conditions not satisfied, then Purchaser, as its sole and exclusive remedies for such default, may either (i) seek specific performance of such obligation of Seller; or (ii) if such default occurs prior to the Initial Closing, terminate this Agreement and receive a full refund of the entire Downpayments (including any amounts used by Seller to pay expenses pursuant to Section 2.5) and a refund of any Full Net Costs paid as of the date of termination by Seller pursuant to Section 10.3(a), or if such default occurs after the Initial Closing but prior to the Final Closing, terminate this Agreement and receive a refund of Twelve Million Dollars ($12,000,000) of the Downpayments.

(b) If Seller shall fail to modify the SUNY Lease as required hereunder at or prior to the Initial Closing Deadline (as same may be extended under this Agreement), or if Seller shall fail to terminate the SUNY Lease at or prior to the Final Closing, then Purchaser, as its sole and exclusive remedies for such failure or breach, may either (i) seek specific performance of such obligations; or (ii) if such default occurs prior to the Initial Closing, terminate this Agreement and receive a full refund of the entire Downpayments (including any amounts used by Seller to pay expenses pursuant to Section 2.5) and a refund of any Full Net Costs paid as of the date of termination by Seller pursuant to Section 10.3(a), or if such default occurs after the Initial Closing but prior to the Final Closing, terminate this Agreement and receive a refund of Twelve Million Dollars ($12,000,000) of the Downpayments.

(c) If Seller shall breach its obligations under Section 10.1(a), Section 10.1(c), or Sections 10.2(a)(i), (ii) or (iv) prior to the Initial Closing, then Purchaser, as its sole and exclusive remedy for such breach, may terminate this Agreement and receive a full refund of the entire Downpayments (including any amounts used by Seller to pay expenses pursuant to Section 2.5) and a refund of any Full Net Costs actually paid by Purchaser after applying the Credit as of the date of termination by Seller pursuant to Section 10.3(a) (i.e., Purchaser shall not be entitled to a refund of any portion of the Full New Costs that Purchaser did not actually pay due to the application of the Credit). If Seller shall breach its obligations under Sections 10.1(b) or 10.1(c), or Sections 10.2(a)(i), (ii) or (iv) after the Initial Closing but prior to the Final Closing, then Purchaser, as its sole and exclusive remedy for such breach, may terminate this Agreement and receive a refund of Twelve Million Dollars ($12,000,000) of the Downpayments.
(d) If this Agreement terminates solely because the NPL Consents and/or the DOH Consent have not been obtained by the Initial Closing Deadline (as same may be extended under this Agreement), and if all of the following are true as of the date of such termination, then Purchaser, as its sole and exclusive remedy for Seller's inability to consummate the transaction, shall receive a full refund of the entire Downpayments (including any amounts used by Seller to pay expenses pursuant to Section 2.5), but Purchaser shall not receive a refund of the First ED Deficit Payment:

(i) Purchaser must be ready, willing and able to consummate the transaction contemplated hereunder, including but not limited to making full payment of the Purchase Price;

(ii) all conditions set forth in Section 4.2(b) must have been satisfied other than receipt of the NPL Consents and/or the DOH Consent; and

(iii) if either Purchaser or Seller shall have extended the Initial Closing Deadline beyond its original date pursuant to the provisions of Section 4.4, then Purchaser must have extended the Amended Interim Lease and must have paid the Defeasance Payment (if required by DASNY).

(e) If Seller is unable to deliver possession of the Core Premises (other than the Final Closing Premises), the Garage and the 349 Henry Building as of the Initial Closing Deadline (as same may be extended under this Agreement) due to Previously Permitted Occupants remaining in possession of some or all of such Core Premises, the Parking Garage or the 349 Henry Building, then Purchaser, as its sole and exclusive remedy for Seller's inability to deliver such portions of the Premises vacant of such Previously Permitted Occupants, may terminate this Agreement and receive a full refund of the entire Downpayments (including any amounts used by Seller to pay expenses pursuant to Section 2.5) and a refund of any Full Net Costs paid as of the date of termination by Seller pursuant to Section 10.3(a). If Seller is unable to deliver the Final Closing Premises as of the deadline for the Final Closing due to Previously Permitted Occupants (other than NYUHC or Purchaser) remaining in possession of some or all of the Final Closing Premises, then Purchaser, as its sole and exclusive remedy for Seller's inability to deliver the Final Closing Premises vacant of such Previously Permitted Occupants, may terminate this Agreement and receive a refund of Twelve Million Dollars ($12,000,000) of the Downpayments.

(f) If Purchaser and/or NYUHC, as applicable, elect to terminate this Agreement prior to the Initial Closing pursuant to Section 18.1, and all of the conditions for such termination set forth in Section 18.1 have been met, then Purchaser, as its sole and exclusive remedy for Seller's inability to convey some or all of the Core Premises or the Parking Garage, shall receive a full refund of the entire Downpayments (including any amounts used by Seller to pay expenses pursuant to Section 2.5) and a refund of any Full Net Costs paid as of the date of termination by Seller pursuant to Section 10.3(a). If Purchaser elects to terminate this Agreement after the Initial Closing and prior to the
Final Closing pursuant to Section 18.1, and all of the conditions set forth in Section 18.1 have been met, then Purchaser, as its sole and exclusive remedy, shall receive a refund of Twelve Million Dollars ($12,000,000) of the Downpayments.

(g) If Seller materially breaches any representation or warranty set forth in Sections 7.1 or 7.2 prior to the Initial Closing (and if Purchaser is aware of such breach prior to the Closing), and if such breach (if curable) remains uncured as of the Initial Closing Deadline (as same may be extended under this Agreement), then Purchaser, as its sole and exclusive remedy for such Seller breach, may either proceed to the Initial Closing and seek damages pursuant to Section 7.6 (if applicable), or terminate this Agreement on the Initial Closing Deadline and receive a full refund of the entire Downpayments (including any amounts used by Seller to pay expenses pursuant to Section 2.5) and a refund of any Full Net Costs paid as of the date of termination by Seller pursuant to Section 10.3(a). If Seller materially breaches any representation or warranty set forth in Section 7.1 or 7.2 after the Initial Closing but prior to the Final Closing, then Purchaser, as its sole and exclusive remedy for such breach, may either proceed to the Closing and seek damages pursuant to Section 7.6 (if applicable), or terminate this Agreement and receive a refund of Twelve Million Dollars ($12,000,000) of the Downpayments.

(h) If a court of competent jurisdiction has issued a ruling or order prior to the Initial Closing that enjoins or otherwise prohibits the consummation of the transaction contemplated hereunder, or if such ruling or order would substantially deprive Purchaser of the benefit of such transaction if the transaction were consummated, and such ruling or order remains in effect as of the Initial Closing Deadline (as same may be extended under this Agreement), then Purchaser, as its sole and exclusive remedy, may terminate this Agreement and receive a full refund of the entire Downpayments (including any amounts used by Seller to pay expenses pursuant to Section 2.5) and a refund of the Final ED Deficit Payment (if paid by Purchaser prior to the date of termination) but Purchaser shall not receive a refund of the First ED Deficit Payment. If a court of competent jurisdiction has issued such a ruling or order after the Initial Closing but prior to the Final Closing, the Purchaser, as its sole and exclusive remedy, may terminate this Agreement and receive a refund of Twelve Million Dollars ($12,000,000) of the Downpayments.

(i) If Seller shall have breached its obligations under Section 5.5 prior to the Initial Closing, then Purchaser, as its sole and exclusive remedy for such breach, may terminate this Agreement and receive a full refund of the entire Downpayments (including any amounts used by Seller to pay expenses pursuant to Section 2.5) and a refund of any Full Net Costs paid as of the termination date by Seller pursuant to Section 10.3(a). If Seller shall have breached its obligations under Section 5.5 with respect to the Final Closing Premises after the Initial Closing but prior to the Final Closing, then Purchaser, as its sole and exclusive remedy for such breach, may terminate this Agreement and receive a refund of Twelve Million Dollars ($12,000,000) of the Downpayments.

(j) If Seller shall be able but not willing to deliver each of the Closing deliverables for the Initial Closing set forth in Section 12.1 by the Initial Closing
Deadline (as same may be extended under this Agreement) and if all other conditions set forth in Sections 4.2(a) and (b) have been satisfied or waived as of the Initial Closing Deadline (as same may be extended under this Agreement), then Purchaser, as its sole and exclusive remedy for Seller’s failure to deliver such Closing deliverables, may either seek specific performance to require Seller to deliver such Closing deliverables or terminate this Agreement and receive a full refund of the entire Downpayment (including any amounts used by Seller to pay expenses pursuant to Section 2.5) and a refund of any Full Net Costs paid as of the termination date by Seller pursuant to Section 10.3(a). If Seller shall be able but not willing to deliver each of the Closing deliverables for the Final Closing set forth in Section 12.3 and if all other conditions set forth in Sections 4.2(e) and 4.2(f) have been satisfied or waived, then Purchaser, as its sole and exclusive remedy for Seller's failure to deliver such Closing Deliverables, may either seek specific performance to require Seller to deliver such Closing deliverables or terminate this Agreement and receive a refund of Twelve Million Dollars ($12,000,000) of the Downpayments.

Notwithstanding the foregoing provisions of this Section 14.2 or any other provisions of this Agreement, neither the Downpayments nor any applicable portion of the Full Net Costs shall be refunded to Purchaser pursuant to subsections (a) through (j) above unless Purchaser shall have been at all times prior to termination of this Agreement in compliance with all of its material obligations under the Amended Interim Lease (other than any default caused by NYUHC), and unless Purchaser shall have remained current at all times prior to termination of this Agreement with its payment obligations under Section 10.3(a) and any indemnification obligations under Sections 10.1(a)(v), 10.3(e) and 19.1(a) (and unless Purchaser is current with such payment and/or indemnification obligations as of the date of termination). Further, for avoidance of doubt, Purchaser acknowledges and agrees that neither the Downpayments nor any portion of the Full Net Costs shall be refunded to Purchaser under any circumstances whatsoever other than those set forth in subsections (a) through (j) of this Section 14.2. Purchaser also acknowledges and agrees that no portion of the Medical Malpractice Amount shall be returned or refunded to Purchaser under any circumstances whatsoever except as expressly set forth in Section 10.3(a)(iv). If this Agreement is terminated and Purchaser is not entitled hereunder to a refund of the Downpayments or the Full Net Costs (or any portion thereof), then the Downpayments and such Full Net Costs (or any portion of either not so refunded) shall be retained by Seller, as its own funds, free and clear of any trust or other further obligations with respect thereto pursuant to this Agreement or otherwise pursuant to Law. Purchaser at its option may waive any of its rights set forth in subsections (a) through (j) of this Section 14.2. If this Agreement is terminated by Purchaser prior to the NMS Closing pursuant to Sections 14.2(a), (b), (c), (e), (g), (i) or (j), then upon such occurrence:

(A) if prior to the Initial Closing, the Amended Interim Lease and the Interim Sublease shall terminate and, at NYUHC's option, the New Medical Site shall be conveyed directly by Seller to NYUHC for no additional consideration beyond any retention hereunder of the Downpayments by Seller. If NYUHC elects to take conveyance of the New Medical Site, it must so notify Seller within thirty (30) Business Days of NYUHC's receipt of notice of the termination of this Agreement. If Seller timely receives notice of NYUHC's election to take the conveyance of the New Medical Site, such conveyance shall occur within thirty (30) days after the Demolition Activities.
are complete and Seller has received sale proceeds from another buyer for the remainder of the Premises (or portions thereof) at least equal to Threshold Amount (which sale proceeds shall constitute the consideration to Seller for the conveyance of the New Medical Site to NYUHC). Such conveyance shall be on all of the terms and conditions of this Agreement relating to the conveyance of the New Medical Site to NYUHC, except those that are personal to Purchaser (other than the obligation to perform the Demolition Activities). In the event of termination pursuant to this Section 14.2, Purchaser shall be obligated (as a Surviving Obligation) to promptly complete all Demolition Activities pursuant to Section 10.5 at Purchaser's sole expense (even if such Demolition Activities have not commenced as of the termination date of this Agreement) and if Purchaser does not diligently pursue the Demolition Activities, NYUHC, Seller or their respective designees as applicable, may perform such Demolition Activities at Purchaser’s sole expense pursuant to Section 10.5. Notwithstanding the foregoing, neither Seller nor NYUHC shall be obligated to consummate the conveyance of the New Medical Site to NYUHC if Seller has not received such sale proceeds at least equal to the Threshold Amount from another buyer, and/or the conveyance of the New Medical Site to NYUHC has not occurred, within two (2) years of the termination of this Agreement, or if the Demolition Activities are not complete as of June 30, 2016 (unless NYUHC, at its option, elects to extend the date for completion of the Demolition Activities to the end of the two (2) year period).

(B) if after the Initial Closing but prior to the NMS Closing, the provisions of Section 14.2(A), immediately above, shall apply, except that (I) the Interim Sublease shall not terminate if NYUHC elects to take conveyance of the New Medical Site but shall remain in effect, subject to the Subordination, Non-Disturbance and Attornment Agreement by and between Seller and NYUHC; (II) the Interim Sublease shall then terminate at such time as either Seller or NYUHC later elects, pursuant to the last sentence of Section 14.2(A), not to consummate the conveyance of the New Medical Site because the conveyance of the New Medical Site to NYUHC has not occurred within two (2) years of the termination of this Agreement or the Demolition Activities are not complete as of June 30, 2016 (unless NYUHC, at its option, elects to extend the deadline for completion of the Demolition Activities to the end of the two (2) year period); (III) if NYUHC elects to take the conveyance of the New Medical Site, such conveyance shall occur within thirty (30) days after the Demolition Activities are complete; and (IV) if NYUHC elects to take conveyance of the New Medical Site, and such conveyance is effected, NYUHC's obligations under Section 15 and Section 19.3 shall be Surviving Obligations.

14.3 In the event of any occurrence of Seller default that would entitle Purchaser to seek specific performance under Section 14.2 NYUHC also may seek Seller's specific performance. Such specific performance shall be NYUHC’s sole and exclusive remedy against Seller for any breach by Seller of any of Seller’s representations, warranties or obligations hereunder. As a condition precedent to Purchaser’s right to seek specific performance under any applicable subsection of Section 14.2, and to NYUHC's right to seek specific performance under this Section 14.3, Purchaser or NYUHC, as applicable, must commence an action for specific performance within ninety (90) days after the Initial Closing Deadline (or NMS Closing Deadline or Final Closing Deadline, as applicable), and Purchaser’s or NYUHC's, as applicable,
failure to commence an action within such specified period shall be deemed an irrevocable waiver of its right to seek specific performance from Seller. In the event Purchaser is unable to enforce a claim for specific performance it shall not be deemed to have waived any claim or right it otherwise would have pursuant to such applicable subsection of Section 14.2 to a full (or partial, as applicable) refund of the Downpayments (including any amounts used by Seller to pay expenses pursuant to section 2.5) and, if applicable, the Full Net Costs.

14.4 A breach by Purchaser of any monetary or material non-monetary obligations under the Amended Interim Lease (other than any breach caused by NYUHC) shall constitute a default under this Agreement unless cured within any applicable cure periods specified in the Amended Interim Lease. If any such default occurs, and is not so cured, Seller may, at its option, terminate this Agreement, in which event Seller shall be entitled to retain the Downpayments as liquidated damages for such default. Such liquidated damages for default of this Agreement shall be in addition to any remedies available to Seller under the terms of the Amended Interim Lease for breach of the Amended Interim Lease. Upon such termination by Seller:

(a) if prior to the Initial Closing, the Amended Interim Lease and the Interim Sublease shall terminate and, at NYUHC’s option, the New Medical Site shall be conveyed directly by Seller to NYUHC for no additional consideration beyond any retention hereunder of the Downpayments by Seller. If NYUHC elects to take conveyance of the New Medical Site, it must so notify Seller within thirty (30) Business Days of NYUHC’s receipt of notice of the termination of this Agreement. If Seller timely receives notice of NYUHC's election to take the conveyance of the New Medical Site, such conveyance shall occur as soon as the Demolition Activities are complete, any required regulatory approvals for such conveyance are obtained and Seller has received sale proceeds from another buyer for the remainder of the Premises (or portions thereof) at least equal to Threshold Amount (which sale proceeds shall constitute the consideration to Seller for the conveyance of the New Medical Site to NYUHC). Such conveyance shall be on all of the terms and conditions of this Agreement relating to the conveyance of the New Medical Site to NYUHC, except those that are personal to Purchaser (other than the obligation to perform the Demolition Activities). In the event of termination pursuant to this Section 14.4, Purchaser shall be obligated (as a Surviving Obligation) to promptly complete all Demolition Activities pursuant to Section 10.5 at Purchaser's sole expense (even if such Demolition Activities have not commenced as of the termination date of this Agreement) and if Purchaser does not diligently pursue the Demolition Activities, NYUHC, Seller or their respective designees, as applicable, may perform such Demolition Activities at Purchaser’s sole expense pursuant to Section 10.5. Notwithstanding the foregoing, neither Seller nor NYUHC shall be obligated to consummate the conveyance of the New Medical Site to NYUHC if Seller has not received such sale proceeds at least equal to the Threshold Amount from another buyer, and/or the conveyance of the New Medical Site to NYUHC has not occurred, within two (2) years of the termination of this Agreement, or if the Demolition Activities are not complete as of June 30, 2016 (unless NYUHC, at its option, elects to extend the date for completion of the Demolition Activities to the end of such two (2) year period).
if after the Initial Closing but prior to the NMS Closing, the provisions of Section 14.4(a), above, shall apply, except that (w) the Interim Sublease shall not terminate if NYUHC elects to take conveyance of the New Medical Site but shall remain in effect, subject to the Subordination, Non-Disturbance and Attornment Agreement by and between Seller and NYUHC; (x) the Interim Sublease shall then terminate at such time as either Seller or NYUHC later elects, pursuant to the last sentence of Section 14.4(a), not to consummate the conveyance of the New Medical Site; (y) if NYUHC elects to take the conveyance of the New Medical Site, such conveyance shall occur as soon as the Demolition Activities are complete and any required regulatory approvals for such conveyance are obtained; and (z) if NYUHC elects to take conveyance of the New Medical Site, and such conveyance is effected, NYUHC’s obligations under Section 15 and Section 19.3 shall be Surviving Obligations.

14.5 (a) If (i) Seller or NYUHC elects to terminate the Agreement pursuant to Section 4.6; or (ii) NYUHC breaches any representation, warranty or obligation hereunder prior to the NMS Closing or fails to deliver any item required of NYUHC at the Initial Closing or NMS Closing and such breach results in a termination of this Agreement as it relates to the New Medical Site pursuant to Section 14.6; or (iii) NYUHC elects to terminate the Agreement as it relates to the New Medical Site prior to the NMS Closing, Seller shall send Purchaser written notice of such event (“NYUHC Failure Notice”). If, in that event, Purchaser desires to move forward with its transaction in accordance with the provisions of Sections 14.5(b) through (j), Purchaser must deliver to Seller a notice (the “Purchaser Section 14.5 Notice”) of its election to do so within thirty (30) days of Purchaser’s receipt of the NYUHC Failure Notice.

(b) Notwithstanding anything to the contrary contained in this Agreement (other than the provisions of Section 4.6, which take precedence over this Section 14.5), but subject to the provisions of subsection (c), below, if Purchaser timely delivers the Purchaser Section 14.5 Notice and if (i) within ninety (90) days after receipt of the NYUHC Failure Notice, Purchaser identifies a healthcare provider licensed under Article 28 of the New York Public Health Law ("Replacement Provider") that Purchaser proposes to replace NYUHC under this Agreement to provide the New Medical Operations, at least the oncology and infusion services of the Cancer Center Services, and the Community Services (the “New Healthcare Services”); and (ii) within two hundred ten (210) days after receipt of the NYUHC Failure Notice, Purchaser delivers to Seller one or more letters confirming a Replacement Provider’s interest in providing the New Healthcare Services ("Letter of Interest"), Purchaser shall have the right, whether or not a transaction to provide the New Healthcare Services is consummated with the Replacement Provider, to (y) consummate the acquisition of the Initial Closing Premises at the Initial Closing on the terms set forth herein; and (z) consummate the acquisition of the Final Closing Premises at a Final Closing on a date to be set by Purchaser within three (3) years after the Initial Closing and otherwise on the terms set forth herein.

(c) If any event requiring an NYUHC Failure Notice occurs after January 1, 2015, Purchaser will make a reasonable and diligent effort to obtain a Letter of Interest from a Replacement Provider (including after the Initial Closing), but even if such Letter of Interest cannot be obtained by the Initial Closing Deadline, so long as Purchaser has...
timely delivered the Purchaser Section 14.5 Notice Purchaser shall have the right to (i) consummate the acquisition of the Initial Closing Premises at the Initial Closing on the terms set forth herein; and (ii) consummate the acquisition of the Final Closing Premises at a Final Closing on a date to be set by Purchaser within three (3) years after the Initial Closing and otherwise on the terms set forth herein.

(d) Whether or not Purchaser delivers the Letter of Interest or consummates the Initial Closing or Final Closing, if either (i) Purchaser has commenced the on-site Demolition as of the date of the event that triggers the NYUHC Failure Notice, or (ii) Purchaser issues a Purchaser Section 14.5 Notice indicating its desire to move forward with its transaction, Purchaser shall be obligated (as a Surviving Obligation) to promptly complete all Demolition Activities on the New Medical Site at Purchaser's sole expense.

(e) In the event that Purchaser timely issues a Purchaser Section 14.5 Notice and subsequently timely delivers a Letter of Interest, and SUNY's Board of Trustees affirmatively votes to reject the Replacement Provider (a "SUNY Rejection Notice"), Purchaser shall promptly complete all Demolition Activities on the New Medical Site at Purchaser's sole expense and shall be entitled to (i) consummate the acquisition of the Initial Closing Premises at the Initial Closing on the terms set forth herein; and (ii) consummate the acquisition of the Final Closing Premises at a Final Closing on a date to be set by Purchaser within three (3) years after the Initial Closing and otherwise on the terms set forth herein.

(f) In the event that Purchaser timely issues a Purchaser Section 14.5 Notice and subsequently timely delivers a Letter of Interest, and if SUNY does not deliver a SUNY Rejection Notice, Seller agrees that if within six (6) months after delivery of the Letter of Interest Purchaser executes binding agreements ("Replacement Agreements") with the Replacement Provider to provide the New Healthcare Services, Seller agrees either to convey the New Medical Site at no additional cost (i) to the Replacement Provider for construction of the New Medical Premises by the Replacement Provider; or (ii) to Purchaser for construction of the New Medical Premises by Purchaser and the lease thereof to the Replacement Provider. Either such conveyance shall be subject to the reverter provisions of Section 15.2 below (other than those related to operations in the Interim Medical Premises) and the covenants in Section 15.3 below, provided that (x) the New Medical Operations Commencement Deadline and the Cancer Center Commencement Deadline shall be four (4) years after execution of the Replacement Agreements; and (y) the Community Services Commencement Deadline shall be one (1) year after execution of the Replacement Agreements.

(g) Upon delivery of the NYUHC Failure Notice, the term of the Interim Sublease shall expire, and, upon vacation of the Interim Medical Premises by NYUHC, the Amended Interim Lease shall terminate.

(h) For avoidance of doubt, the foregoing provisions of this Section 14.5 shall not apply if NYUHC defaults on its obligations or terminates this Agreement as to the New Medical Site after the NMS Closing; in that event the Final Closing shall not be
affected and this Agreement shall remain in force as to Purchaser's and Seller's obligations to one another.

(i) In the event that the Initial Closing proceeds pursuant to this Section 14.5, Purchaser shall be obligated to execute and deliver the Initial Closing Release and Indemnification at the Initial Closing in lieu of the Initial Closing Estoppel Certificate. In the event that the Final Closing proceeds pursuant to this Section 14.5, Purchaser shall be obligated to execute and deliver the Final Closing Release and Indemnification at the Final Closing in lieu of the Final Closing Estoppel Certificate.

(j) In the event that Purchaser timely delivers a Purchaser Section 14.5 Notice, all obligations of Seller to Purchaser set forth in this Agreement, and all obligations of Purchaser and Fortis to Seller set forth in this Agreement, shall remain in full force and effect, except to the extent expressly modified by the provisions of this Section 14.5. Without limiting the foregoing, and for avoidance of doubt, all indemnification obligations of Purchaser and Fortis set forth in Sections 10.1(a)(v), 10.3(e), 19.1 and 19.2 shall remain in full force and effect.

(k) The provisions of this Section 14.5 shall survive the applicable Closing.

14.6 Upon the material breach by NYUHC of any representation, warranty or obligation hereunder, either Purchaser or Seller may, as its sole and exclusive remedy, following notice to NYUHC thereof and an opportunity to cure not to exceed the earlier of (i) 10:00 a.m. on the date three (3) days prior to the last day of the Initial Closing Deadline and (ii) thirty (30) days, terminate this Agreement as it relates solely to the New Medical Site. In the event of such termination, NYUHC shall have no further liability or obligation to any other Party other than the Surviving Obligations, and such other Parties shall have no further liability or obligation to NYUHC other than the Surviving Obligations. For avoidance of doubt, if the NMS Closing shall have occurred prior to such termination, or if the New Medical Site shall have otherwise been conveyed to and accepted by NYUHC prior to such termination, in either case pursuant to the terms hereof, NYUHC’s obligations set forth in Section 10.6 shall be Surviving Obligations.

Section 15. Additional Obligations and Covenants of the Parties

15.1 The conveyance of the New Medical Site at the NMS Closing shall be made upon, and subject to, the following terms, covenants and conditions, which shall apply following the NMS Closing (except that the provisions of Section 15.1(e) shall apply on and after the ED Commencement Date):

(a) Subject to Sections 15.1(e) and 15.12, NYUHC shall have used good faith diligent efforts to continuously operate the Emergency Department on the Interim Medical Premises during the period from the Initial Closing Date through the date of commencement of Emergency Department operations on the New Medical Premises.

(b) NYUHC, directly or through one or more affiliates or contractors, each of whom shall have been determined in advance by SUNY, in accordance with standards and guidelines issued by the New York State Office of State Comptroller, to be responsible vendors (each a "Responsible Affiliate or Contractor"), shall construct on the
New Medical Site a new medical building (the "New Medical Building", and collectively with the New Medical Site, the "New Medical Premises") comprised of at least 100,000 zoning square feet, which shall be used to provide, at minimum, the following services:

- an Emergency Department, including not less than four (4) and as many as twelve (12) observation beds, on an as-needed basis (and if, in NYUHC’s professional discretion it determines, after the New Medical Operations commence, that additional observation beds are medically necessary, NYUHC 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);
- an ASC with such services as are approved by DOH (NYUHC shall ensure that the Certificate of Need Application for the ASC on the New Medical Premises shall request approval for the full range of ambulatory surgical procedures then performed by NYUHC at any of its ambulatory surgical sites in the New York City metropolitan area);
- a FQHC;
- office based surgical procedures such as GI/endoscopy; bronchoscopy and dermatology;
- primary and preventive care including internal medicine and obstetrics/gynecology;
- comprehensive women’s services, including perinatal care;
- a multi-specialty ambulatory medical practice including such specialties as: cardiology; gastroenterology; pulmonology; rheumatology; neurology; urology; orthopedics; and rehabilitation medicine;
- a medical office/clinic specializing in care for patients with HIV/AIDS as part of the FQHC;
- dental services, which may instead be part of the FQHC;
- pediatrics, which may instead be part of the FQHC; and
- behavioral health services, which may instead be part of the FQHC.

The above services are collectively the "New Medical Operations." The New Medical Operations will be provided in a manner consistent with the customary operations of the NYUHC ambulatory network. At NYUHC’s option, the FQHC may be located at the Red Hook Location instead of on the New Medical Premises.

(c) No later than thirty-six (36) months following the NMS Closing Date or the conveyance of the New Medical Site to NYUHC upon a termination of this
Agreement as provided hereunder (the "New Medical Operations Commencement Deadline"), subject to the provisions of Sections 15.12 and 15.13 below, NYUHC, LFHC and/or other Responsible Affiliates and Contractors shall be fully licensed by all governmental entities with competent jurisdiction to commence, and shall actually have commenced at the New Medical Premises (or at the Red Hook Location, with respect to the FQHC), all of the New Medical Operations; provided that the Emergency Department and the ASC, at minimum, will be operated directly by NYUHC or an affiliate of NYUHC. Within one (1) year following the commencement of the New Medical Operations at the New Medical Premises, NYUHC shall ensure that the New Medical Operation services are furnished to patients during at least the following hours (the Parties agree that services provided only on weekdays need not be provided on holidays recognized by such healthcare operators):

- Emergency Department – 24 hours/7 days per week;
- Dental, Pediatrics and Behavioral Health – 9:00 am to 7:00 pm, Monday through Friday.
- Rehabilitation Medicine – 8:00 am to 5:00, Monday through Friday.
- Ambulatory Surgery Center – 7:00 am to 5:00 pm, Monday through Friday.
- All Other Services – 8:00 am to 7:00 pm, Monday through Friday.

(d) In addition to the New Medical Operations, no later than thirty-six (36) months following the NMS Closing Date or the conveyance of the New Medical Site to NYUHC upon a termination of this Agreement as provided hereunder (the "Cancer Center Commencement Deadline"), subject to the provisions of Sections 15.12 and 15.3 below, NYUHC shall be full licensed by all governmental entities with competent jurisdiction to commence, and shall have commenced at the locations set forth below, a cancer center operating 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, offering all of the following services (collectively, the "Cancer Center Services"):

- Medical oncology and infusion services at the New Medical Premises;
- Radiation therapy at NYUHC (160 East 34th Street, New York, New York) and at the following locations (or other locations similarly convenient to the New Medical Premises): Lutheran Medical Center Department of Radiation Oncology (150 55th Street, Brooklyn, New York) and a satellite NYUHC Cancer Center in the Midwood neighborhood of Brooklyn;
- Advanced imaging services at the following locations (or at other locations similarly convenient to the new Medical Premises): Premier-NYU Imaging (348 13th Street, Suite 101, Brooklyn, New York) and Lutheran Medical Center, Department of Radiology (150 East 55th Street, Brooklyn, New York);
Transportation at the request of Cancer Center patients from the New Medical Premises to the radiation oncology and advanced imaging locations set forth above that are in Brooklyn, New York.

All radiation therapy at the radiation therapy locations above shall follow NYUHC Department of Radiation Oncology treatment protocols and all imaging tests performed at the advanced imaging locations above shall be interpreted by NYUHC facility physicians. Within one (1) year following the commencement of the Cancer Center Services, the Cancer Center Services shall be provided during the following hours, at minimum: 8:00 a.m. to 7:00 p.m., Monday through Friday, excluding holidays recognized by NYUHC or Lutheran Medical Center, as applicable.

(e) Notwithstanding the provisions of Section 15.1(a) or any other provision of this Agreement, if at any time during the period commencing on the ED Commencement Date and expiring on the opening of the New Medical Premises and the commencement (with all necessary governmental approvals) of the Emergency Department services on the New Medical Premises, any license, permit, authorization and/or approval necessary for the conduct of the Emergency Department on the Interim Medical Premises shall lapse, or be revoked, suspended or surrendered, or the operation of the Emergency Department shall be interrupted to protect and preserve patient safety, NYUHC will use commercially reasonable efforts following such lapse, revocation, suspension, surrender or permitted interruption to cause such license, permit, authorization and/or approval to be reinstated or replaced and the interruption to be discontinued, so as to restore to full operation the Emergency Department with all necessary licenses, permits, authorizations and approvals therefor as soon as reasonably feasible (but "reasonable efforts" do not include cure by NYUHC of an event described in (ii), (iii) or (vi) below). However, NYUHC's obligations hereunder to operate the Emergency Department on the Interim Medical Premises shall be subject to interruption due to the following events:

(i) Unavoidable Delay or Unavoidable Interruption;

(ii) any breach by Seller of its obligations under the Amended Interim Lease which delays or interrupts NYUHC's operation of the Emergency Department;

(iii) any breach by Purchaser of its obligations under the Interim Sublease which delays or interrupts NYUHC's operation of the Emergency Department;

(iv) any delays due to time required to determine the necessity for or to perform any Tenant Space Required Upgrade or any Building Required Upgrade (each as defined in the Interim Sublease);

(v) any failure to complete a Permitted Non-Upgrade (as defined in the Interim Sublease); provided, however, that in the event of any loss of a permit or approval necessary for the operation of the
Emergency Department by reason of the failure to complete a Permitted Non-Upgrade, NYUHC shall continue to make good faith and diligent efforts to procure all such licenses and approvals to the extent same can be procured prior to the completion of such Permitted Non-Upgrade;

(vi) any stoppage of services or exercise of a right of re-entry under Sections 16.05 or 17.02 of the Interim Sublease that interferes with NYUHC's operation of the Emergency Department;

(vii) a Permitted Closure Event (as defined in Section 13.03(b) of the Interim Sublease);

(viii) incidental cessation consistent with the customary operations of emergency departments in NYUHC's network; or

(ix) withdrawal of the DOH Consent.

Upon the occurrence of any of the events described in (i) through (ix) above, NYUHC shall continue to use good faith and diligent efforts, based on NYUHC's good faith professional judgment, to cause compliance with its obligations hereunder to use good faith diligent efforts to continually operate the Emergency Department on the Interim Premises until such time as the Emergency Department services commence on the New Medical Premises, except in the case of a Permitted Closure Event, and the effect of any such event shall apply only to the operations actually delayed or interrupted by the occurrence of such event and only for the period of actual delay or interruption caused by such event. NYUHC shall deliver to Purchaser and Seller notice of such event as described in (i) through (ix) above, promptly following NYUHC having obtained actual knowledge of the occurrence of same.

(f) Subject to Section 15.12, NYUHC shall operate continuously the Emergency Department and the ASC on the New Medical Premises, as well as the Cancer Center Services, and NYUHC shall operate continuously and/or cause one or more Responsible Affiliates or Contractors to operate continuously all of the other New Medical Operations on the New Medical Premises, in each case for five (5) years following the commencement of such services. The following shall not be deemed to constitute a disruption of continuous operation of the New Medical Operations or the Cancer Center Services: (i) any incidental cessation of any of the New Medical Operations or the Cancer Center Services, other than the complete cessation of operation of the Emergency Department, the ASC or the FQHC, if such incidental cessation is consistent with the customary operations of the NYUHC ambulatory network; and (ii) any partial closure of any of the New Medical Operations or the Cancer Center Services in order to perform work in or to the New Medical Premises (or other locations at which the services are permitted to be, and are being, conducted) that is required to obtain or maintain any license, permit, authorization and/or approval required under any applicable Law(s) for the conduct of such New Medical Operations or Cancer Center Services, for
patient health or safety, or to meet the standards of patient care consistent with the customary operations of the NYUHC ambulatory network.

15.2 The Deed for the New Medical Site shall reflect that if and when the conditions and covenants set forth in Section 15.1 shall fail to be met, NYUHC, or its then successors or assigns (as the case may be), shall, without any further notice and without any compensation or consideration, quit and surrender the New Medical Premises promptly to Seller, or to Seller’s permitted assigns, in its "as is" condition. Should NYUHC, or any such successor or assign, fail to so quit and surrender the New Medical Premises, Seller, or its permitted assigns, and their agents and employees, may immediately, or at any time thereafter, enter the New Medical 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 Seller, or its permitted assigns, may have, hold and enjoy the New Medical Premises as and of its estate and interest therein.

15.3 In addition to the reverter provisions set forth in Section 15.2 above: (i) the New Medical Site Declaration; and (ii) with respect to the covenants at Section 15.3(f) below only, the Parking Declaration, shall contain the following covenants to, and for the benefit of, Seller and its successors or assigns:

(a) No later than twelve (12) months following the NMS Closing Date or the conveyance to NYUHC of the New Medical Site upon a termination of this Agreement as provided hereunder (the "Community Services Commencement Deadline"), NYUHC shall, through arrangements with one or more Responsible Affiliates and Contractors, commence operation of the following community services: (i) dialysis services in the community surrounding the New Medical Site; and (ii) home health care services within the borough of Brooklyn (collectively, the "Community Services"). Following commencement of the Community Services, subject to Section 15.12, NYUHC shall, directly or through one or more Responsible Affiliates or Contractors, operate continuously the Community Services for a period of no less than twenty (20) years from the Final Closing Date.

(b) During the period commencing on commencement of the New Medical Operations and expiring twenty (20) years after the commencement of the New Medical Operations, the New Medical Premises shall be used or occupied solely for the operation and/or delivery of health services and, incidental thereto, for general offices, the operation of pharmacy services, the clinical programs and other uses typically found in conjunction with the operation and delivery of health services (the "Permitted Purposes"), and for no other purpose or purposes.

(c) During the period commencing on the Initial Closing Date and expiring thirty (30) months after commencement of the New Medical Operations, except as expressly set forth in Section 20.7, neither NYUHC nor any of its successors or assigns shall or will sell, convey, or transfer all or any portion of the New Medical Premises without the prior written approval of Seller or its successors or assigns, such approval not to be unreasonably withheld, delayed or conditioned.
(d) During the period commencing on the NMS Closing Date and expiring ten (10) years thereafter, neither NYUHC nor any of its successors or assigns shall lease any portion of the New Medical Premises without the prior written approval of DOH or the then successor thereto (as the case may be); provided, however, that except to the extent required by Law, the following will not be subject to such approval: (a) any lease or leases between NYUHC and any affiliate of NYUHC; (b) any lease between NYUHC or New York University and faculty practice groups comprised of physicians affiliated with NYUHC or New York University; (c) any lease or leases between NYUHC and LFHC; and (d) any lease of any parking garage located on the New Medical Premises.

(e) During the period commencing on the Initial Closing Date and expiring upon the completion of construction on the New Medical Premises and the opening (with all required government approvals) of all of the New Medical Operations; (i) NYUHC shall not, without the prior written consent of Seller or its successors or assigns, which consent shall not be unreasonably withheld, delayed or conditioned, terminate or enter into any material amendments (including without limitation any amendments that would result in any reduction of health care services) to any such leases; provided that no such consent shall be required in connection with any amendment necessary in order to comply with Law or licensing or permitting requirements; (ii) NYUHC shall not assign or sublet its rights or obligations under the Interim Sublease except in accordance with the provisions thereof; and (iii) NYUHC shall use good faith diligent efforts to continuously operate the Emergency Department on the Interim Medical Premises, subject to suspension and/or Unavoidable Interruption or Delay as provided herein and in the Interim Sublease.

(f) Purchaser, and its successors and assigns, subject to the provisions of Section 15.12 below, shall keep and maintain (or cause to be furnished and maintained) in the Parking Garage, or in any additional or replacement parking structure, whichever shall then be in operation, a sufficient number of parking spaces (including, without limitation, a sufficient number of handicap parking spaces), in good condition and state of repair, and having the requisite size, configuration and proximity to the Interim Medical Premises or the New Medical Premises, whichever shall then be in operation, necessary to satisfy all requirements as to parking for the Interim Medical Premises and the Emergency Department therein or the New Medical Premises and the New Medical Operations therein (as the case may be) under all applicable Laws and other governmental requirements (including, without limitation, the requirements of the Zoning Resolution of the City of New York, as amended, and Article 28 of the New York Public Health Law). NYUHC (and NYUHC's successors and assigns) shall pay Purchaser (and Purchaser's successors and assigns) parking fees for any parking provided by Purchaser (and Purchaser's successors and assigns) to NYUHC (and NYUHC's successors and assigns); the payment shall be 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 rates charged for parking by the general public (if any) for parking spaces on the Premises; provided, that NYUHC shall not be required to pay compensation for such spaces until the date set forth in Section II.B.3 of the ZLDA. Such parking spaces also shall be made available by Purchaser at the same rates to NYUHC’s principals,
employees, volunteers, patients, visitors and invitees. If Purchaser and NYUHC (or their respective successors or assigns, as applicable) cannot agree on the fair market value for such parking in any year, the fair market rate shall be as determined by an independent consultant jointly selected by Purchaser and NYUHC (or their successors or assigns, as applicable). The provisions of this Section 15.3(f) shall not limit any provisions relating to parking or the Parking Garage set forth in the Site Agreements.

Notwithstanding the provisions of Sections 15.3(a) and (b), if NYUHC determines, from time to time after the commencement of the New Medical Operations, in the exercise of its reasonable professional judgment made after consultation with the Clinical Advisory Panel and the Ombudsperson, or if DOH determines in writing, that any of the New Medical Operations other than the Emergency Department, the ASC and the FQHC are no longer necessary or appropriate due to changes in medical technology, care delivery methods, significant demographic shifts or other similar grounds, NYUHC thereafter shall not be obligated (directly or through its applicable Responsible Affiliates or Contractors) to provide the service(s) so determined to be unnecessary or inappropriate, but NYUHC 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 Clinical Advisory Panel and the Ombudsperson.

15.4 Purchaser shall establish, at its sole cost and expense, a panel (the "Clinical Advisory Panel"), no later than the Initial Closing Date, to (i) provide input to NYUHC as it establishes and expands the New Medical Operations, the Cancer Center Services, and the Community Services; (ii) collaborate in an effort to develop a more integrated system of care in the community, including enhanced communication and coordination of care across care settings, better management of patients with chronic conditions, and improved provision of community health services; and (iii) monitor health data and information to identify and prioritize opportunities for improvements. The members of the Clinical Advisory Panel shall be appointed by Purchaser from time to time but Purchaser shall seek to include representatives from most or all of the following: local healthcare providers, NYUHC, and provider associations, as well as public health experts.

15.5 Purchaser shall establish, at its sole cost and expense, a panel (the "LICH Transformation Advisory Panel"), no later than the Initial Closing Date, to (i) provide input to NYUHC as to whether the planned New Medical Operations, the Cancer Center Services and the Community Services are responsive to community needs and support the broader goals of delivery system transformation in Brooklyn. The LICH Transformation Advisory Panel may make non-binding recommendations from time to time on additions to the planned New Medical Operations, Cancer Center Services or Community Services. The members of the LICH Transformation Advisory Panel shall be appointed by Purchaser from time to time but Purchaser shall seek to include representatives from most or all of the following: the Mayor's office, the Speaker of the City Council's office, the Borough President's office, the Public Advocate's office, neighborhood associations, the New York State Department of Health, hospital and community health center organizations, and other interested organizations (collectively, the "Stakeholders"). The LICH Transformation Advisory Panel shall remain active until the commencement of both the New Medical Operations and the Cancer Center Services, at which juncture it shall meet with the Clinical Advisory Panel to provide final input into ongoing matters, prior to dissolving.
15.6 Purchaser shall appoint a "Ombudsperson," no later than the Initial Closing Date, who shall act as a community representative to seek input as to whether the Interim Care Operations, the New Medical Operations, the Cancer Center Services and the Community Services are meeting community needs. The Ombudsperson will be a direct contact through whom community members and other stakeholders can provide input to the leadership of NYUHC. The Ombudsperson shall be appointed by Purchaser from time to time, but with input from some or all of the Stakeholders. Purchaser shall ensure that the position of Ombudsperson shall continue for a minimum of three (3) years. Any costs, fees and expenses associated with the Ombudsperson (including without limitation any compensation to the Ombudsperson) shall be paid solely by Purchaser.

15.7 [Intentionally Omitted]

15.8 In the event of a breach or threatened breach by the holder of title to the New Medical Premises (or the holder of title to the Parking Garage with respect to Section 15.3(f) only), and/or by any of its or their successors or assigns, of any of the terms, covenants and/or conditions set forth in Sections 15.1 and/or 15.3 above, and/or any of their subsections, Seller and/or its successors or assigns shall have the right of injunction. Mention in this Agreement, the Deeds, the New Medical Site Declaration or the Parking Declaration (the New Medical Site Declaration and the Parking Declaration are sometimes collectively referred to as the "Declarations of Covenants and Restrictions") of any particular right or remedy shall not preclude Seller and/or its successors or assigns from any other remedy, in law or in equity, other than monetary damages. No right or remedy conferred upon, or reserved to, Seller and/or its successors or assigns is intended to be exclusive, and every such right or remedy shall be cumulative and shall be in addition to every other right or remedy given hereunder, under the Deeds, under the Declarations of Covenants and Restrictions, or now or hereafter existing at law or in equity (other than monetary damages). 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. In order to entitle Seller and/or its successors or assigns to exercise any right or remedy reserved in this Section 15.8, it shall not be necessary to give any notice to Purchaser, NYUHC and/or any of their successors or assigns. Notwithstanding the foregoing or anything to the contrary provided in this Agreement, any of the Deeds, or the Declarations of Covenants and Restrictions, although Seller 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 Sections 15.1 and 15.3, as well as the right to enforce Seller’s post-Closing obligations set forth in Section 2.2, neither Seller nor any Seller Affiliate (including but not limited to SUNY) nor the State of New York shall have the obligation to do so. Notwithstanding anything in the foregoing to the contrary, Purchaser and NYUHC acknowledge and agree that Seller’s (or its assignee or designee) exercise of the rights granted to it pursuant to Section 15.1 (and each subsection of Section 15.1), the Deeds and/or the Declarations of Covenants and Restrictions shall not be considered an act of eminent domain or condemnation. In no event shall NYUHC be subject to any monetary damages for breach of this Agreement, the Deeds or the Declarations of Covenants and Restrictions except as set forth in Sections 8.12 (for breaches for NYUHC’s representations and warranties), 10.1(a)(v), 10.6, 16.1 and/or 19.3 hereof (and in those instances where NYUHC may be subject to monetary damages, NYUHC shall not be subject to consequential or special damages).
15.9 Seller, and its successors and assigns, 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 Section 15.2 and/or in the Deeds to: (a) without the consent of any individual or entity, to any entity within SUNY, or any direct or indirect subsidiary of either of the foregoing; or (b) without the consent of any individual or entity, to the State of New York, any agency thereof, or any direct or indirect subsidiary of either of the foregoing; or (c) with the prior written consent of NYUHC (or its then successors or assigns (as the case may be), to any other entity (such consent not to be unreasonably withheld, delayed, or conditioned in connection with a proposed conveyance to any governmental agency, any office, division, or department thereof, any agency or instrumentality thereof, or any direct or indirect parent, affiliate, or subsidiary thereof).

15.10 For avoidance of doubt, in the event that any one or more of the future estates reserved by Seller in the Deeds become estate(s) in possession pursuant to the provisions thereof, neither Seller nor SUNY (nor any Seller assignee or designee) 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 Seller (or its assignee) of any of the Personal Property, other than Personal Property affixed to the reacquired Premises.

15.11 Purchaser and NYUHC acknowledge that none of SUNY’S health care-related licenses and permits shall transfer, or be transferred, to Purchaser, NYUHC or their respective affiliates or contractors, and that NYUHC and its affiliates and contractors shall be solely responsible for obtaining all licenses and permits necessary for the New Medical Operations and the Cancer Center Services.

15.12 The New Medical Operations Commencement Deadline, the Cancer Center Commencement Deadline and the Community Services Commencement Deadline, as well as NYUHC's obligations to (a) continuously operate the Emergency Department on the Interim Medical Premises as set forth in Section 15.1(a); and (b) directly or through its affiliates, contractors, permitted successors or permitted assigns, as applicable, continuously provide the New Medical Operations, the Cancer Center Services and the Community Services after the commencement of such services, are each subject to "Unavoidable Delays" or "Unavoidable Interruptions." "Unavoidable Delays" or "Unavoidable Interruptions" shall mean delays or service interruptions incurred by NYUHC or its 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 New Medical Site (and the need to remediate them), acts or omissions of Purchaser (and its successors and assigns as owner of the Premises, including the New Non-Medical Site, and demolition and construction activities thereon) that delay NYUHC's performance of its obligations 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, permit or other governmental approval, any other action by any governmental agency with jurisdiction that adversely affects NYUHC's ability to satisfy its obligations to meet such deadlines or continuously provide such services, or court orders not resulting from any unlawful action by NYUHC or any of its affiliates or contractors. NYUHC shall give Seller and...
Purchaser notice of such Unavoidable Delay or Unavoidable Interruption promptly following NYUHC having obtained factual knowledge of the occurrence of same, and provided further that the deadline in each case shall be extended only by the period of delay or interruption of operations reasonably caused by the Unavoidable Delay or Unavoidable Interruption.

15.13 The New Medical Operations Commencement Deadline, as it may have been extended pursuant to Section 15.12, and the commencement of any Cancer Center Services on the New Medical Premises as it may have been extended pursuant to Section 15.12, shall be extended for up to twelve (12) months if, as indicated in a certificate issued by NYUHC's architect, or, in the absence of such certificate, in Seller's reasonable opinion, set forth in writing to NYUHC: (a) construction on the New Medical Premises (excluding the installation of medical equipment, furniture, furnishings, business equipment and trade fixtures) is more than eighty percent (80%) complete as of the original New Medical Operations Commencement Deadline; and (b) NYUHC is diligently pursuing completion of construction.

15.14 Notwithstanding any other provision of this Agreement, Purchaser’s and NYUHC’s obligations set forth in Section 15 shall expire on the day, if any, on which the City of New York or any department, agency or instrumentality thereof shall acquire title, pursuant to the exercise of its power of eminent domain, to any right in any document of record as of the Initial Closing or to any other means or method, of all or any portion of the parcels of land in Block 284, Lot 1 and/or Block 290, Lot 13 shown on Map No. V 2584, which Map was approved under ULURP No. 910374 MMK, as subject to “Public Access Easement” if, by virtue of the size and/or location of such taking, the amount of floor area and other development rights under Zoning Resolution that are thereafter available either to the Interim Medical Premises, on the one hand, or the Polak Premises and Henry Premises together, on the other hand, (including without limitation floor area and other development rights allocated and available to either Premises pursuant to any ZLDA then in effect) shall be reduced, requiring Purchaser, or its successor and assign, to reduce the floor area to be constructed after the Final Closing Date on either the Interim Medical Premises or, together, the Polak Premises and Henry Premises. For all purposes of this Agreement (including, without limitation, this Section 15.14), unless the context requires otherwise, those terms that are defined in the Zoning Resolution (including, without limitation, “bulk”, “dwelling units”, “floor area”, “open space” and “zoning lot”), shall have the respective meanings given therein.

15.15 If Seller reacquires the New Medical Site after the NMS Closing Date pursuant to this Agreement and the Deed for the New Medical Site, Purchaser shall have the option to acquire the New Medical Site and New Medical Premises from Seller (“Option”) for a price (the “Reacquisition Price”) equal to the Appraised Value, less (x) all documented, reasonable costs incurred by Purchaser with respect to the Demolition Activities (excluding all costs incurred by Purchaser in connection with any remediation of Environmental Conditions required by Law before, during and after the Demolition), and (y) the then outstanding indebtedness secured by any mortgage encumbering the New Medical Site (which mortgage, if any, shall transfer to Purchaser or shall be satisfied by Purchaser at the closing of such transaction). The Appraised Value shall be equal to the midpoint of two independent appraisals that Seller shall obtain at its expense, which appraisals shall reflect that the New Medical Site and New Medical Premises are restricted as to use and subject to the limitations on development rights set forth in the Site Agreements. In order to exercise the Option, Purchaser must (i) within ninety (90) days after
receipt of written notice from Seller that Seller has reacquired the New Medical Site (“Reacquisition Notice”), identify a Replacement Provider that Purchaser proposes to provide the New Healthcare Services that is acceptable to Seller, which approval shall not be unreasonably withheld, conditioned or delayed; and (ii) within two hundred ten (210) days after receipt of the Reacquisition Notice, deliver to Seller a notice exercising the option that is accompanied by a binding written agreement with the Replacement Provider to provide the New Healthcare Services. If Purchaser exercises the Option, the New Medical Site and New Medical Premises will be sold by Seller to Purchaser or its designee in their “As Is” condition. Seller shall not be required to sell the New Medical Site and New Medical Premises to Purchaser or its designee unless Purchaser or its designee agrees to substantially the same restrictions as to use as are in the New Medical Site Declaration attached hereto as part of Exhibit “T”. In Purchaser exercises the Option, Seller shall thereafter negotiate with Purchaser in good faith, for a period of not less than one hundred twenty (120) days, definitive documents that memorialize the transaction. Seller and Purchaser agree that if Purchaser exercises the Option, Purchaser shall pay all costs and expenses associated with the transaction (including without limitation, title company premiums and fees and all Transactional Taxes) other than Seller’s legal expenses. Notwithstanding the foregoing provisions of this Section 15.15, the Reacquisition Price shall not be less than $0.

15.16 The provisions of this Section 15 shall survive the Closing.

Section 16. Broker.

16.1 Purchaser represents and warrants that it has not dealt with any broker or finder in connection with the sale of the Property and the other transactions contemplated hereby. Purchaser hereby indemnifies, and agrees to defend and hold harmless Seller, Seller’s Affiliates, the State of New York and NYUHC from and against, any and all Costs that Seller, Seller’s Affiliates, the State of New York or NYUHC may suffer or incur by reason of any breach of the forgoing Purchaser representation and warranty. NYUHC represents and warrants that it has not dealt with any broker or finder in connection with the transactions contemplated hereby. NYUHC hereby indemnifies, and agrees to defend and hold harmless Seller, Seller’s Affiliates, the State of New York and Purchaser from any and all Costs that Seller, Seller’s Affiliates, the State of New York or Purchaser may suffer or incur by reason of any breach of the forgoing NYUHC representation and warranty.

16.2 Purchaser’s and NYUHC’s obligations, representations, and warranties contained in this Section 16 shall survive the Closing or sooner termination of this Agreement.

Section 17. Casualty.

17.1 If, prior to the Initial Closing Date or the Final Closing Date, the Premises subject to such Closing shall be damaged or destroyed by fire or other casualty, in whole or in part (whether material or immaterial part), Seller shall promptly give Purchaser notice of such occurrence. Purchaser shall remain obligated to close title as provided in this Agreement (so long as Seller has maintained and paid for property insurance as required hereunder), without any abatement of or credit against the Purchase Price, except that, at the Closing, Seller shall:
(a) pay over to Purchaser the net proceeds of any property insurance collected by Seller on account of such damage or destruction (other than any insurance proceeds relating to damage or destruction of the buildings located as of the date hereof on the New Medical Site), less the amount of all reasonable, out-of-pocket costs actually incurred by Seller to carry out immediate repairs necessary to comply with Laws, to safeguard and secure the Premises and/or to prevent imminent risk of injury to person or property (collectively, "Immediate Repair Costs"); and

(b) assign and transfer to Purchaser (without recourse) all right, title and interest of Seller in and to any uncollected property insurance proceeds that Seller may be entitled to receive on account of such damage or destruction (other than any insurance proceeds relating to damage or destruction of the buildings located as of the date hereof on the New Medical Site), less any such proceeds for Immediate Repair Costs.

Seller shall not settle, adjust, or compromise any claims for property insurance proceeds over Five Hundred Thousand ($500,000) Dollars from such damage or destruction (exclusive of claims for Immediate Repair Costs or claims relating to the damage or destruction of the buildings located as of the date hereof on the New Medical Site ) without Purchaser’s approval, which approval shall not be unreasonably withheld, delayed, or conditioned. The cost of any property insurance deductible shall be split equally between the Parties.

**Section 18. Condemnation.**

18.1 If, prior to the Initial Closing Date or the Final Closing Date, all or any portion of the Core Premises or the Parking Garage to be conveyed on such Closing Date is taken by eminent domain or condemnation (or is the subject of a pending taking by eminent domain or condemnation that has not been consummated), Seller shall give Purchaser and NYUHC notice of such event in reasonable detail and, except as otherwise provided in Section 18.3, Purchaser shall have the right to terminate this Agreement by notice to Seller and NYUHC given not later than ten (10) Business Days after receipt of Seller’s notice. If this Agreement is so terminated, then the provisions of Section 14.2(f) shall apply, Purchaser shall not receive any refund of any costs, expenses, fees or charges paid or incurred by Purchaser in connection with this Agreement (other than a refund of some or all of the Downpayments and Full Net Costs, as provided in Section 14.2) and no Party shall have any further obligations or liabilities to any other Party following such termination, other than the Surviving Obligations. Notwithstanding the foregoing: (a) if a pending or actual taking by eminent domain or condemnation prior to the Initial Closing Date or the NMS Closing Date affects only the New Medical Site, NYUHC and not Purchaser shall have the right to terminate this Agreement solely as it relates to the New Medical Site by notice to Purchaser and Seller given not later than ten (10) Business Days after receipt of Seller's notice; and (b) if a pending or actual taking by eminent domain or condemnation prior to the Initial Closing Date or the NMS Closing Date affects both the New Medical Site and other portions of the Core Properties, or if such pending or actual taking by eminent domain or condemnation prior to the Initial Closing Date affects only the Parking Garage, then either NYUHC or Purchaser shall have the right to terminate this Agreement (provided that NYUHC may only terminate this Agreement as it relates to the New Medical Site) by notice to the other and to Seller given not later than ten (10) Business Days after receipt of Seller's notice. If pursuant to this Section 18.1 NYUHC terminates the Agreement as it relates to
the New Medical Site, Seller and Purchaser shall proceed with the remainder of the Agreement as provided in Section 14.5 above.

18.2 If Purchaser, or NYUHC, as applicable, does not elect to terminate this Agreement pursuant to Section 18.1, or if any portion of the Premises other than the Core Premises or the Parking Garage is taken by eminent domain or condemnation (or is the subject of a pending taking by eminent domain or condemnation that has not been consummated), Purchaser shall remain obligated to close the title as provided in this Agreement except that Seller at the applicable Closing shall assign (without recourse) to Purchaser all of Seller's rights in connection with such taking (other than Seller's rights in connection with any taking of the New Medical Site, which rights shall be assigned by Seller to NYUHC), and shall pay over to Purchaser (or NYUHC, as applicable), and Purchaser (or NYUHC, as applicable) shall be entitled to receive and keep, the net proceeds of any award for such taking by eminent domain or condemnation collected by Seller.

18.3 A street or sidewalk widening shall not constitute the taking of a portion of the Premises, if such widening does not reduce the developable floor area of the Land under current zoning Laws.

Section 19. Purchaser, Fortis and NYUHC Indemnification Obligations; Seller Responsibility

19.1 (a) Purchaser shall indemnify, defend and hold harmless Seller, SUNY, the other Seller Affiliates, the State of New York, their respective trustees, directors, officers, members, managers, employees and agents, and all members of the committees that evaluated responses to the RFP (collectively, the "Seller Indemnitees") from and against all suits, judgments, claims, actions, damages, loss, costs and liabilities of every nature and description (including reasonable attorneys’ fees and other litigation costs but excluding consequential damages, loss of profits and the like) (collectively, "Costs") arising out of (i) third party claims against the Seller Indemnitees arising from or relating to the pre-Final Closing breach of this Agreement or the Amended Interim Lease or Interim Sublease by Purchaser (other than any breach caused by NYUHC), Fortis and/or their respective affiliates, successors, assigns, tenants, contractors, subcontractors, employees or agents (excluding third party claims arising solely from any failure of NYUHC to continually operate the Emergency Department during any period prior to the Final Closing Date); (ii) any Environmental Conditions and/or Hazardous Materials on, beneath, or about the Premises, or any violation of Environmental Laws, discovered during any Permitted Section 10.3(d) Inspections performed by Purchaser, its lender or their respective contractors; (iii) any Environmental Conditions and/or Hazardous Materials on, beneath, or about the New Medical Site, or any violation of Environmental Laws, discovered during any Demolition Activities relating to the New Medical Site performed by Purchaser or any other party; (iv) any other acts, omissions, liabilities, and obligations of Purchaser, Fortis and/or their respective affiliates, successors, assigns, tenants, contractors, subcontractors, employees or agents in connection with or resulting from this Agreement (but excluding breaches hereof) causing personal injury or damage to real or personal property on the Premises prior to the Final Closing; (v) negligence of Purchaser, Fortis and/or their respective affiliates, successors, assigns, tenants,
contractors, subcontractors, employees or agents, either active or passive, in the conduct of any activities on the Premises prior to the Final Closing resulting in personal injury or property damage; and (vi) infringement by Purchaser, Fortis and/or their respective affiliates, successors, assigns, tenants, contractors, subcontractors, employees or agents of any Law, any copyright, trademark, trade secret or intellectual property rights, or any United States Letter Patent, in connection with the Fortis Proposal.

(b) Conditioned on the Initial Closing having occurred, Purchaser also shall indemnify, defend and hold harmless the Seller Indemnitees from and against all Costs arising out of (i) any Environmental Conditions and/or Hazardous Materials on, beneath or about the Premises conveyed to Purchaser at the Initial Closing or the New Medical Site (and not caused by NYUHC); and (ii) any violation of any Environmental Laws relating to the Premises conveyed to Purchaser at the Initial Closing or the New Medical Site (regardless of whether such violation occurred prior to or after the Initial Closing, and regardless of whether such violation was caused by Purchaser, Fortis, Seller, or any other individual or entity other than NYUHC).

c) Conditioned on the Final Closing having occurred, Purchaser also shall indemnify, defend and hold harmless the Seller Indemnitees from and against all Costs arising out of (i) the post-Final Closing breach of any obligations under this Agreement by Purchaser, Fortis and/or their respective affiliates, successors, assigns, tenants, contractors, subcontractors, employees or agents; (ii) any Environmental Conditions and/or Hazardous Materials on, beneath or about the Final Closing Premises; (iii) any violation of any Environmental Laws relating to the Final Closing Premises (regardless of whether such violation occurred prior to or after the Final Closing, and regardless of whether such violation was caused by Purchaser, Fortis, Seller, NYUHC or any other individual or entity); and (iv) the negligence of Purchaser, Fortis or their respective affiliates, successors, assigns, tenants, contractors, subcontractors, employees or agents, either active or passive, in the conduct of any activities on the Final Closing Premises following the Final Closing.

(d) Notwithstanding the provisions of Sections 19.1(a)(ii) and (iii), Section 19.1(b) and Sections 19.1(c)(ii) and (iii), Purchaser shall not be obligated to indemnify, defend or hold harmless the Seller Indemnitees from or against any costs arising out of a violation of an Environmental Law relating to the Premises if (i) the violation was pending as of the Execution Date; (ii) Seller had knowledge (as defined in Section 7.3) of the pending violation as of the Execution Date; (iii) Seller failed to disclose the pending violation to Purchaser prior to the Initial Closing (or prior to the Final Closing with respect to the Final Closing Premises only); and (iv) Purchaser did not have knowledge of the pending violation as of the Initial Closing (or prior to the Final Closing with respect to the Final Closing Premises only).

(e) (i) Purchaser shall indemnify and hold harmless NYUHC, New York University, affiliates of NYUHC or New York University, and their respective trustees, directors, members, managers, employees or agents (collectively, "NYUHC Indemnitees") from and against all Environmental Losses incurred by NYUHC Indemnitees,
including any Costs related thereto (excluding diminution of value of the New Medical Premises). If NYUHC becomes aware after the conveyance of title of the New Medical Site to NYUHC of any circumstances giving a reasonable indication of an Environmental Condition, NYUHC shall give Purchaser prompt written notice stating in reasonable detail the nature of the Environmental Condition. Except as provided to the contrary in Section 10.5(e), Purchaser shall thereafter have the right, in its sole discretion, to conduct all Remedial Measures with respect to any Environmental Condition and to make all material communications to third-parties regarding such measures, including communications with regulatory authorities.

(ii) [Intentionally Deleted].

(iii) After the conveyance of the New Medical Site to NYUHC, NYUHC shall provide Purchaser and its consultants and professional advisors access, upon reasonable advance notice, to the New Medical Site and other relevant material information relating to an Environmental Condition. After the conveyance of the New Medical Site to NYUHC, and subject to Section 10.5(e), NYUHC shall use commercially reasonable efforts to cooperate with the Purchaser with respect to Remedial Measures, in particular by obtaining and maintaining related consents, approvals and permits required by Governmental Authorities subject to NYUHC being reimbursed its related costs and expenses.

(iv) [Intentionally Deleted]

(v) Purchaser and NYUHC agree to promptly notify each other of all material communications from third-parties regarding Environmental Conditions and Remedial Measures and provide written summaries of any such verbal communications and copies of any such written communications. Purchaser shall keep NYUHC reasonably informed of the status of any Remedial Measures or related proceedings.

(vi) Notwithstanding anything to the contrary contained in this Section 19.1(e), (A) the maximum aggregate liability of Purchaser under this Section 19.1(e) for Third Party Claims shall be Twenty Million Dollars ($20,000,000.00) and (B) Purchaser shall have no liability for any such Third Party Claim unless Purchaser receives a written notice of a Third Party Claim from NYUHC prior to the tenth (10th) anniversary of conveyance of the New Medical Site to NYUHC or its designee; provided, however, that costs and expenses incurred by Purchaser pursuant
to Section 10.5 shall be excluded from liabilities taken into account under this clause (vi).

(vii) “Remedial Measures” means measures to investigate, test, secure or remediate Hazardous Materials that exist on the New Medical Site prior to conveyance of the New Medical Site to NYUHC consistent with Schedule "I", or measures to eliminate, reduce or otherwise remedy, consistent with Schedule "I", Environmental Conditions and/or Hazardous Materials that exist on the New Medical Site in violation of any currently existing Environmental Law prior to conveyance of the New Medical Site to NYUHC as required by and in accordance with currently existing applicable Environmental Laws in accordance with Schedule "I". “Third Party Claims” shall mean damages for personal injury and injury to property incurred by third parties (including the owner of any other portion of the Premises, or purchasers of cooperative or condominium units in any building on the Premises), or claims made by any governmental entity as the result of Hazardous Materials that exist on, migrated from, or are migrating from the New Medical Site prior to conveyance of the New Medical Site to any NYUHC Indemnitee, but excluding punitive or consequential damages. “Environmental Losses” shall mean Remedial Measures and Third Party Claims and all Costs incurred by an NYUHC Indemnitee in connection therewith (excluding diminution of value of the New Medical Premises).

(viii) Notwithstanding anything contained in this Agreement to the contrary, in no event shall Purchaser be responsible or liable to any NYUHC Indemnitee under the foregoing indemnification (A) for indirect, consequential or punitive damages (including loss of use or diminution in value), or (B) to the extent that any Environmental Condition is caused by (i) any NYUHC Indemnitee, or (ii) any Hazardous Materials used, handled, produced, disposed of, released or stored in, under or on the New Medical Site or transferred or transported to or from the New Medical Site after NYUHC takes title to the New Medical Site, except as provided in Section 10.5(e). The provisions of this Section 19.1(e) are not assignable other than to New York University or to an affiliate of NYUHC or New York University.

19.2 Fortis hereby guarantees Purchaser’s performance of its obligations under Sections 10.3(e) and 19.1.

19.3 NYUHC shall indemnify, defend and hold harmless the Seller Indemnities, as well as Purchaser, Fortis and their respective directors, officers, members, managers, employees and agents (collectively, the "Purchaser Indemnities"), from and against all Costs arising out of
third party (including governmental) claims against the Seller Indemnitees and/or the Purchaser Indemnitees relating to (a) the construction and operation of the New Medical Premises by NYUHC (and specifically excluding Demolition Activities); (b) the provision of the New Medical Operations; and (c) the provision of the Cancer Center Services. NYUHC also shall indemnify, defend and hold harmless the Seller Indemnitees from and against all Costs to the same extent (and subject to the same limitations) as NYUHC is obligated to indemnify, defend and hold harmless Purchaser (as Landlord) and Landlord's Indemnitees (as defined in the Interim Sublease) pursuant to Section 19.02 of the Interim Sublease.

19.4 Seller shall be responsible for any liability, claim, loss, damage, suit or judgment (and if asserted by a court of competent jurisdiction, any costs, expenses and reasonable counsel fees) arising directly from the negligent acts or omissions of Seller or Seller’s officers and employees while they are acting within the scope of their employment.

19.5 The provisions of this Section 19 shall survive the Closing. The provisions of this Section 19 also shall survive the termination of this Agreement to the extent applicable if any portion of the Premises is conveyed to NYUHC or Purchaser, or their assignees, following such termination pursuant to the provisions hereof. For avoidance of doubt, the limitations of liability set forth in Sections 7.6, 8.7 and 8.12 shall not apply to any indemnification obligations of Seller, Purchaser, Fortis or NYUHC under this Section 19 or under Sections 10.1(a)(v), 10.3(e) or 10.6.

Section 20. Assignment.

20.1 Except as otherwise provided in Section 20.2, neither Purchaser nor Fortis shall engage in any of the following without the prior written consent of Seller in each instance: (a) engage in any transaction which results in Purchaser no longer being a Permitted Kestenbaum Entity prior to the Final Closing; (b) assign Purchaser’s rights or obligations under this Agreement in whole or in part; (c) enter into any agreement with any party prior to the Initial Closing Date to convey all or any portion of the Premises; or (d) enter into any agreement with any party prior to the Final Closing Date to convey all or any portion of the Final Closing Premises.

20.2 Upon written notice to Seller specifying the assignee or assignees, given at least ten (10) Business Days prior to the applicable Closing Date, Purchaser may assign all or a portion of its rights under this Agreement, without Seller’s consent, to one or more entities formed for the purpose of acquiring title to the Premises to be conveyed to Purchaser at such Closing or any part thereof ("SPEs"), which entities must be Permitted Kestenbaum Entities. Such notice shall be preceded or accompanied by:

(a) a certification from Purchaser that each of such assignees are Permitted Kastenbaum Entities, and in which certification Purchaser and each such SPE shall also make the same representations and warranties with regard to such assignees as those made by Purchaser in Sections 8.1 and 8.2 above; and

(b) a true and complete copy of the assignment instrument, which instrument must:
assign all of Purchaser’s right, title and interest in and to the
Downpayments (or the applicable part thereof) to such
assignee(s); and

be countersigned by such assignee to evidence its assumption of
Purchaser’s obligations under this Agreement applicable to the
part of the Premises being acquired by it.

(c) if any such SPE will acquire the Parking Garage, an acknowledgement
executed by such SPE, substantially in the form attached as Exhibit "W", pursuant to
which such SPE acknowledges the restrictions in the Deed and the Parking Declaration
and agrees to comply fully with and be bound by such restrictions.

20.3 Any assignment or attempted assignment by Purchaser of this Agreement in
breach of Section 20.1, and any agreement by Purchaser to convey the Premises by Purchaser to
other than a permitted assignee under Section 20.2, shall be null and void and, if not revoked or
withdrawn by Purchaser within five (5) Business Days after notice from Seller, shall constitute a
material default by Purchaser hereunder, entitling Seller and NYUHC to the same remedies as
are set forth in Section 14.1 for a default by Purchaser hereunder, including Seller’s right upon
such default to retain the Downpayments as Seller's own funds, free and clear of any trust or
other further obligations with respect thereto pursuant to this Agreement or otherwise pursuant to
law.

20.4 Any attempted Change in Control of Purchaser in breach of Section 20.1 shall be
constitute a material default by Purchaser and Fortis hereunder, entitling Seller and NYUHC to
the same remedies as are set forth in Section 14.1 for a default by Purchaser hereunder, including
Seller's right upon such default to retain the Downpayments as Seller's own funds, free and clear of any trust or other further obligations with respect thereto pursuant to this Agreement or otherwise pursuant to
law.

20.5 In the event of any permitted assignment pursuant to Section 20.2, Purchaser shall
remain liable to Seller (or Seller’s assignee, as applicable), and, with respect to Sections 10.5 and
19.1(e), NYUHC, for any failure of Purchaser’s assignee(s) to fulfill any obligations hereunder,
including but not limited to: (a) Purchaser’s obligation to close the purchase and sale of the
Premises pursuant to the terms of this Agreement; (b) Purchaser’s obligation under Section 2.1 to
pay the Purchase Price; (c) Purchaser's obligations to conduct and complete the Demolition
Activities; and (d) Purchaser’s indemnification obligations under Sections 10.3(d) and 19.1. In
the event of any such permitted assignment, Fortis hereby guarantees the assignee's performance
of its obligations to the same extent as Fortis is guaranteeing Purchaser's performance of its
obligations hereunder.

20.6 Except as otherwise provided in Section 20.7, NYUHC shall not engage in any of
the following without the prior written consent of Seller and Purchaser in each instance: (a)
assign NYUHC’s rights or obligations under this Agreement in whole or in part; or (b) enter into
any agreement with any party prior to the Initial Closing Date to convey all or any portion of the
New Medical Site.
20.7 Following the commencement of the New Medical Operations and the Cancer Center Services, NYUHC may assign all or a portion of its rights under this Agreement, without Seller's consent, to one or more Permitted NYUHC Entities. NYUHC shall provide Seller advance written notice at least ten (10) Business Days prior to any such assignment. Such notice shall be preceded or accompanied by:

(a) a certification from NYUHC that each of such assignees are Permitted NYUHC Entities;

(b) a true and complete copy of the assignment instrument, which instrument must be countersigned by such assignee to evidence its assumption of NYUHC’s obligations under this Agreement; and

(c) an acknowledgement executed by each such assignee, substantially in the form attached as Exhibit "X", pursuant to which each such assignee: (i) acknowledges NYUHC’s obligations and Seller’s (or its assignee’s) rights under Section 15 of this Agreement and agrees to comply fully with and be bound by the provisions thereof; and (ii) acknowledges the corresponding restrictions in the New Medical Site Deed and the New Medical Site Declaration and agrees to comply fully with and be bound by such restrictions.

20.8 Any assignment or attempted assignment by NYUHC of this Agreement in breach of Section 20.6, and any agreement by NYUHC to convey the New Medical Site to other than a permitted assignee under Section 20.7, shall be null and void and, if not revoked or withdrawn by NYUHC within five (5) Business Days after notice from Seller, shall constitute a material default by NYUHC hereunder.

20.9 In the event of any permitted assignment pursuant to this Section 20.7, NYUHC shall remain liable to Seller (or Seller’s assignee, as applicable) for any failure of NYUHC’s assignee(s) to fulfill any of NYUHC’s obligations under Section 15 or Section 19.3.

Section 21. No Publicity; Confidentiality Agreement.

21.1 Between the date hereof and the Initial Closing, Purchaser and NYUHC may make public announcements and engage in other communications concerning the transactions contemplated hereunder only in accordance with a Seller-approved community outreach plan or otherwise with Seller’s consent. Seller’s approval of any such outreach plan shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, approval shall not be required for any regulatory filing required by Law to be made by Purchaser or NYUHC, but a copy of the pertinent parts of any such filing describing or referring to such transactions shall be delivered to Seller promptly after such filing is made.

21.2 Except as modified by Section 21.1, the terms and conditions of that certain Registration and Confidentiality Agreement, executed by each of NYUHC and Fortis and delivered to SUNY, dated as of March 4, 2014, shall survive the execution and delivery hereof and shall remain in full force and effect until the Closing has been fully consummated (and Purchaser hereby agrees that, by virtue of Fortis' execution of the Registration and Confidentiality Agreement, Purchaser is bound by the terms thereof). Purchaser acknowledges
and agrees that the results of any investigation of the Premises performed by Purchaser, Purchaser's affiliates or their respective contractors, representatives and agents, and all materials containing or summarizing such results, shall be confidential information of Seller and/or SUNY for purposes of the restrictions on use or disclosure of confidential information set forth in the Registration and Confidentiality Agreement.

21.3 For so long as this Agreement remains in force, Seller shall not engage in discussions with any prospective purchaser regarding a sale of the Premises other than to Purchaser and NYUHC except pursuant to the Stipulation and Order (and any subsequent court orders relating thereto) and/or the RFP. A violation of this Section 21.3 shall constitute a material default by Seller, and shall entitle Purchaser and NYUHC to the remedy of specific performance.

Section 22. NPL and DOH Consents.

22.1 Purchaser and NYUHC acknowledge that, because Seller is a not-for-profit corporation selling all or substantially all of its assets, Seller may not sell and convey the Premises to Purchaser or NYUHC without first obtaining the written consent (collectively, the "NPL Consents") of one or both of the Charities Bureau of the New York State Office of the Attorney General (the "Charities Bureau") and the New York State Supreme Court (the "Supreme Court"). Reasonably promptly following the execution of this Agreement by Purchaser, NYUHC and Seller and the receipt of all approvals and signatures required under Section 22.4, Seller shall submit an application to the Charities Bureau for its NPL Consent, accompanied by such appraisals of the Premises, affidavits and other materials as shall be required by the Charities Bureau to accompany such an application. If and when the Charities Bureau shall issue its NPL Consent or, if applicable, decline to evaluate the transaction, Seller shall, if required, submit a petition to the Supreme Court for its NPL Consent, accompanied by such appraisals of the Premises, affidavits and other materials as shall be required by the Supreme Court to accompany such an application. If and when Seller shall have obtained all required NPL Consents, Purchaser and NYUHC shall cooperate with Seller in all reasonable respects in connection with obtaining the NPL Consents, provided, however, that neither Purchaser nor NYUHC shall be obligated either to incur any material expense in connection therewith or agree to any amendment of the Agreement in order to obtain any required NPL Consent.

22.2 If Seller has not obtained all required NPL Consents by the Initial Closing Deadline, Seller shall be entitled to adjourn the Initial Closing for one or more periods by notice given to Purchaser and NYUHC on or before the Initial Closing Deadline, in order to continue its attempts to obtain the required NPL Consents. If Seller shall fail, after the use of diligent and commercially reasonable efforts, to obtain all required NPL Consents by the Initial Closing Deadline (as same may be extended under this Agreement), then, subject to Sections 4.4(a) and (b) hereof, either Seller or Purchaser may elect at any time thereafter, but prior to the date upon which all required NPL Consents are thereafter issued, to terminate this Agreement by notice given to the other and to NYUHC. If either Seller or Purchaser shall elect to give notice terminating this Agreement pursuant to this Section 22.2, then, upon the giving of such notice, this Agreement shall be terminated, the provisions of Section 14.2(d) shall apply with respect to
the Downpayments, no other costs, expenses, fees and/or charges paid or incurred by Purchaser or NYUHC in connection with this Agreement and/or the Premises (including but not limited to the First ED Deficit Payment) shall be refunded to Purchaser, and no Party shall have any further obligations or liabilities to the other except for the Surviving Obligations.

22.3 Purchaser and NYUHC acknowledge that SUNY is also required to obtain, prior to the commencement of the Amended Interim Lease, approval from the DOH to discontinue all remaining SUNY hospital operations on the Health Premises (the "DOH Consent"). Notwithstanding any other provision of this Agreement or the Amended Interim Lease, the term of the Amended Interim Lease shall not commence, NYUHC shall not be required to operate the Emergency Department (and non-operation by reason thereof shall not constitute a default under this Agreement), and the Initial Closing shall not occur, until the DOH Consent has been obtained. Seller represents that as of the Execution Date, the DOH Consent has been obtained. If the DOH Consent is withdrawn, amended or otherwise affected such that it effectively has not been obtained by the Initial Closing Deadline, Seller shall be entitled to adjourn the Initial Closing for one or more periods by notice given to Purchaser and NYUHC on or before the Initial Closing Deadline, in order to facilitate SUNY’s continued attempts to obtain the DOH Consent. If the DOH Consent effectively has not been obtained on or before the Initial Closing Deadline (as same may be extended under this Agreement), then, subject to Sections 4.4(a) and (b) hereof, Seller or Purchaser may elect at any time thereafter, but prior to the date upon which the DOH Consent is thereafter issued, to terminate this Agreement by notice given to the other Parties. If Seller or Purchaser shall elect to give notice terminating this Agreement pursuant to this Section 22.3, then, upon the giving of such notice, this Agreement shall be terminated, the provisions of Section 14.2(d) shall apply with respect to the Downpayments, no other costs, expenses, fees and/or charges paid or incurred by Purchaser or NYUHC in connection with this Agreement and/or the Premises (including but not limited to the First ED Deficit Payment) shall be refunded to Purchaser or NYUHC, and no Party shall have any further obligations or liabilities to the other except for the Surviving Obligations.

22.4 The Parties hereby acknowledge and agree that this Agreement (and the Exhibits and Schedules hereto, including without limitation the Amended Interim Lease and the Interim Sublease) is subject to the approval of the New York State Office of Attorney General ("AG") and the New York State Office of State Comptroller ("OSC"), and this Agreement shall not be valid and enforceable until such approvals are given. The Parties further acknowledge and agree that this Agreement (and the Amended Interim Lease and the Interim Sublease) shall not be effective until it has been fully approved and executed by all applicable governmental agencies, including AG and OSC. In the event such approvals are obtained (regardless of when they are obtained), the effective date of this Agreement shall be the Execution Date.

Section 23. Notices.

23.1 Unless otherwise expressly provided herein, all notices, elections, consents, approvals, demands, objections, requests, or other communications (collectively, "notices"), that Seller, Purchaser or NYUHC may be required or desire to give pursuant to, under, or by virtue of this Agreement, shall be in writing and shall be sent by either reputable overnight courier (such as FedEx, UPS, or DHL), hand delivery, facsimile, or e-mail.
23.2 All notices sent in compliance with the provisions hereof shall be deemed given and received on:

(a) the date on which they are delivered to the intended recipient Party(ies) (or delivery refused), if sent by overnight courier service or hand delivery, provided that such date is a Business Day and such delivery is made before 4:00 PM on such day, otherwise on the next succeeding Business Day; or

(b) the date on which the transmission of such notices was completed by the transmitting Party’s electronic equipment or device, if sent by facsimile or e-mail, provided that such date is a Business Day and such transmission was completed before 4:00 PM on such day, otherwise on the next succeeding Business Day,

provided, however, that notices of change of address shall be effective only upon actual receipt thereof.

23.3 For purposes of Section 23.1, notices to the Parties shall be addressed as follows:

**If to Seller:**

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
E-mail: Robert.Haelen@suny.edu

- 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
E-mail: mintriligator@cozen.com

**If to Purchaser:**

FPG Cobble Hill Acquisitions, LLC
c/o Fortis Property Group, LLC
45 Main Street, Suite 800
Brooklyn, New York 11201
Attention: Joel Kestenbaum
Telephone: (718) 907-7702
E-mail: jkestenbaum@FortisPropertyGroup.com

- with a copy to -

Tannenbaum Helpern Syracuse & Hirschtitt LLP
900 Third Avenue
New York, New York 10022
Attention: Robert E. Helpern
Telephone: (212) 508-6720
Facsimile: (646) 390-7018
E-mail: helpern@thsh.com

If to Fortis:

Fortis Property Group, LLC
45 Main Street, Suite 800
Brooklyn, New York 11201
Attention: Joel Kestenbaum
Telephone: (718) 907-7702
E-mail: jkestenbaum@FortisPropertyGroup.com

If to NYUHC:

NYU Hospitals Center
550 First Avenue
New York, NY 10016
Attn: Vicki Match Suna, Senior Vice President
Telephone: (212) 263-8712
E-mail: vicki.match.suna@nyumc.org

-with copies to –

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

-and-

Andrew J. Weiner, Esq.
Dentons US LLP
1221 Avenue of the Americas
New York, NY 10022
23.4 Any Party may change the person to whose attention notices to it should be addressed; or change or add the person(s) to whom copies of notices to it should be given; or change its address for notices (including its facsimile number and/or e-mail address), in each case by notice to the other Parties given in the manner provided in Section 23.1.

23.5 Any notices required or permitted to be given by a Party hereunder may be given by the attorneys for such Party, with the same force and effect as if given by such Party.

Section 24. Further Assurances.

24.1 After each Closing, each Party shall from time to time, execute, acknowledge and deliver such further instruments and perform such additional acts as the other Parties may reasonably request and as may reasonably be required in order to effectuate the purchase and sale of the Property pursuant to this Agreement. This Section shall survive the applicable Closing for a period of twelve (12) months.

Section 25. Certain Rules of Construction and Defined Terms; Governing Law.

25.1 This Agreement has been entered into after negotiation by the Parties and their counsel, each party having been represented by counsel of its selection. This Agreement shall not be construed against any Party as the Party actually or purportedly drafting, or causing the drafting of, this Agreement.

25.2 The words "hereto", "herein", "hereof", "hereunder", "herewith", and words of similar import, refer to this Agreement in its entirety. Unless otherwise specified herein, all references to Sections are to Sections of this Agreement.

25.3 The words "include" or "including", and words of similar import, shall be deemed to be followed by the words "but not limited to" or "without limitation."

25.4 Section captions or titles used herein are for ease of reference only, and shall not be taken into account in construing or interpreting this Agreement.

25.5 The following documents are hereby incorporated in, and made part of, this Agreement (the "Incorporated Documents"): (a) the Schedules and Exhibits to this Agreement; (b) the Amended Interim Lease; (c) the RFP, including all exhibits thereto (including without limitation Exhibit A (Standard Contract Clauses); Exhibit A-1 (Affirmative Action Clauses); Exhibit B (Procurement Lobbying Form); Exhibit C (Term Sheet); and Exhibit D (Conditions, Terms and Limitations)); and (d) the Fortis Proposal.

25.6 In the event of any inconsistency or conflict between the provisions of this Agreement and the Incorporated Documents, such inconsistencies shall be remedied by giving precedence to the documents in the following order: (a) Exhibits A and A-1 to the RFP (Standard Contract Clauses and Affirmative Action Clauses, which include the requirement that Contractor shall exert good faith efforts to achieve a participation goal of twenty percent (20%)
participation, collectively, for Certified Minority-Owned Business Enterprises and Certified Women-Owned Business Enterprises; (b) Exhibit B to the RFP (Procurement Lobbying Form); (c) Exhibit D to the RFP (Conditions, Terms and Limitations); (d) this Agreement, including all Schedules and Exhibits hereto (except Exhibits "A" and "B"); (e) the RFP (other than the Exhibits thereto referred to above); and (f) the Fortis Proposal.

25.7 The use of any pronoun shall include the corresponding masculine, feminine and neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa. Any term defined herein in the singular form shall have the corresponding meaning when used in the plural form, and any term defined herein in the plural form shall have the corresponding meaning when used in the singular form.

25.8 The term "Business Day" as used in this Agreement shall mean any day other than Saturday, Sunday, or any day observed as a public holiday by the federal government or by the State or City of New York. If the last day of any period prescribed herein for the giving of any notice or the delivery of any documents by any party hereunder, or the last permitted adjournment date for the Closing, is not a Business Day, then such period or date (as the case may be) shall be extended to the next succeeding Business Day.

25.9 The terms "Contractor," "Certified Minority-Owned Business Enterprises" and "Certified Women-Owned Business Enterprises" each have the meaning set forth in Exhibit A-1 to the RFP.

25.10 The term "Law" 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).

25.11 The term "Permitted Kestenbaum Entity" means any entity as to which:

(a) Louis Kestenbaum and/or Joel Kestenbaum (together with their respective spouses, parents, parents in law, brothers, brothers in law, sisters, sisters in law and the lineal descendants (whether by blood or adoption) of his or her parents) shall own, directly or indirectly through any entity owned directly by any of the foregoing...
individuals, not less than fifty-one (51%) percent of the capital stock (if a corporation) or fifty-one (51%) percent of all of the equity and beneficial interests therein (if a partnership, limited liability company, or other entity); and

(b) Louis Kestenbaum and/or Joel Kestenbaum shall control the day to day operation of the business of such corporation, partnership, limited liability company, or other entity, except in the event of both of their deaths or disability.

(c) For purposes of making the calculation described in subsection (a) above with regard to a corporation, partnership, limited liability company, or other entity, there shall be disregarded any direct or indirect stock or interests therein that:

(i) are redeemable or required to be redeemed by such corporation or entity, or by the direct or indirect shareholders or equity holders therein;

(ii) entitle the holder(s) thereof to a fixed or floating return out of the dividends or distributions within such corporation, partnership, limited liability company, or other entity;

(iii) entitle the holder(s) thereof to event of default and forfeiture remedies similar to the rights of a secured mezzanine lender;

(iv) except for a possible right to share in residual profits or income similar to so-called "equity kickers" reserved by some mezzanine lenders, do not entitle the holder(s) thereof to participate in any of the residual profits or income of such corporation, partnership, limited liability company, or other entity; and

(v) are held by an independent, institutional equity investor as a result of its infusion into such corporation, partnership, limited liability company, or other entity of part of the proceeds of an investment fund or pool raised either through a public offering or a bona fide, registered or exempt (i.e., Reg D) private placement.

25.12 The term "Permitted NYUHC Entity" means:

(a) New York University ("NYU");

(b) any wholly-owned subsidiary of NYUHC or NYU;

(c) any corporation or entity that controls, or is controlled by, NYUHC or NYU;

(d) any entity that is affiliated with NYUHC or NYU;

(e) any entity to which substantially all of the assets of NYUHC or NYU are transferred, or into which NYUHC or NYU may be merged or consolidated; and
(f) any successor to NYU or any of the foregoing.

25.13 The term "Surviving Obligations" means those obligations that, by the express terms of this Agreement, survive the expiration or termination hereof, or any Closing, as applicable. For avoidance of doubt: (a) upon the expiration or termination of this Agreement prior to commencement of the Demolition on the New Medical Site, completion of the Demolition Activities shall be a Surviving Obligation of Purchaser under certain circumstances as expressly set forth herein; and (b) notwithstanding any other provision of this Agreement, upon the expiration or termination of this Agreement under any circumstances after commencement of the Demolition on the New Medical Site, completion of the Demolition Activities shall be a Surviving Obligation of Purchaser.

25.14 This Agreement shall be governed by, and construed in accordance with, the internal Laws of the State of New York, without giving effect to principles of conflicts of law.

Section 26. Miscellaneous.

26.1 This Agreement may not be altered, amended, changed, waived, terminated, or otherwise modified in any respect or particular, and no consent or approval required pursuant to this Agreement shall be effective, unless the same shall be in writing, signed by or on behalf of the Party sought to be charged therewith and approved and signed by AG and OSC.

26.2 This Agreement shall be binding upon the Parties and their respective successors and permitted assigns, and shall inure to the benefit of the Parties and their respective successors and permitted assigns. SUNY, the SUNY Affiliates and the State of New York are intended third party beneficiaries of this Agreement. The Community Foundation, once formed, is an intended third party beneficiary solely for purposes of its right to receive the Community Fund Payment and the Supplemental Community Fund Contribution, if any, pursuant to Section 2.2. There are no other intended third party beneficiaries to this Agreement. Except as otherwise expressly set forth herein, this Agreement, and a Party’s rights and obligations hereunder, may be assigned by that Party only upon the prior written consent of the other Parties.

26.3 All prior statements, understandings, representations and agreements between the Parties, oral or written, are superseded by, and merged into, this Agreement and the Incorporated Documents, which alone fully and completely express the agreement among the Parties in connection with the transactions contemplated hereby and which is entered into after full investigation, no Party relying upon any statement, understanding, representation, or agreement made by another not embodied in this Agreement or the Incorporated Documents. For avoidance of doubt, that certain Purchase and Sale Agreement by and among the Parties, dated June 30, 2014 and executed by the Parties on that date (the "Original PSA"), and that certain Term Sheet by and among the Parties, dated September 24, 2014, are superseded in full by this Agreement.

26.4 Except as otherwise expressly provided in this Agreement:

(a) Purchaser’s and NYUHC’s, as applicable, acceptance of the Deeds shall be deemed a discharge of all of the obligations of Seller hereunder;
(b) all of Seller’s representations, warranties, covenants, and agreements contained in this Agreement shall merge into the documents and agreements executed and delivered by Seller at the Closings; and

(c) none of such representations, warranties and agreements of Seller shall survive the Final Closing.

26.5 Each of Purchaser and NYUHC agrees that it does not have and, except as expressly provided herein, will not have, any claims or causes of action against any of Seller’s Affiliates or the State of New York, whether disclosed or undisclosed, direct or indirect, arising out of, or in connection with, this Agreement or the transactions contemplated hereby. Without limiting the generality of the foregoing, Each of Purchaser and NYUHC hereby unconditionally and irrevocably waives any and all claims and causes of action of any nature whatsoever it may now or hereafter have against Seller’s Affiliates and/or the State of New York, and hereby unconditionally and irrevocably releases and discharges Seller’s Affiliates and the State of New York from any and all liability whatsoever that may heretofore have accrued, or may hereafter accrue, in favor of Purchaser or NYUHC against Seller’s Affiliates or the State of New York, in connection with, or arising out of, this Agreement or the transactions contemplated hereby. This Section 26.5 shall survive the Closing or sooner termination of this Agreement.

26.6 EACH OF THE PARTIES HEREBY WAIVES TRIAL BY JURY IN ANY SUIT, ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER ARISING IN TORT, CONTRACT, OR OTHERWISE) BROUGHT BY ANY OTHER PARTY AGAINST SUCH PARTY ON ANY MATTER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT. EACH OF THE PARTIES HEREBY CONSENTS AND SUBMITS TO THE EXCLUSIVE JURISDICTION OF A COURT OF COMPETENT JURISDICTION LOCATED IN ALBANY COUNTY, NEW YORK, AND ANY APPELLATE COURTS THEREFROM, FOR THE ADJUDICATION OF ANY SUCH SUIT, ACTION, PROCEEDING, OR COUNTERCLAIM, AND EACH OF THE PARTIES HEREBY WAIVES ANY OBJECTION OR DEFENSE OF INCONVENIENT FORUM OR IMPROPER VENUE BY REASON OF ANY SUCH SUIT, ACTION, PROCEEDING, OR COUNTERCLAIM BEING BROUGHT IN, OR RAISED BEFORE, SUCH COURTS.

26.7 Purchaser and NYUHC shall comply with the Form 1099-S ("Proceeds from Real Estate Transactions") filing requirements of Section 6045(e) of the Code, if applicable, and Seller shall reasonably cooperate with Purchaser to enable Purchaser to so comply.

26.8 Any recording of this Agreement by Purchaser, Fortis, NYUHC or any of their respective affiliates, successors, assigns, employees, representatives or agents shall constitute a material breach of this Agreement. Notwithstanding any other provisions of this Agreement, upon the occurrence of any such breach, Seller at its option may terminate this Agreement (provided that any such termination shall only be with respect to the New Medical Site in the event of any such breach by NYUHC), and in the event of any such breach by Purchaser or Fortis, the Downpayments shall not be refunded to Purchaser but shall be retained by Seller, as its own funds, free and clear of any trust or other further obligations with respect thereto pursuant to this Agreement or otherwise pursuant to Law, no other costs, expenses, fees and/or charges paid or incurred by Purchaser or NYUHC in connection with this Agreement and/or the
Premises (including without limitation the Full Net Costs) shall be refunded to Purchaser, and Seller may additionally pursue any other remedies available to it at Law or in equity.

26.9 This Agreement may be executed in one or more counterparts, each of which when executed and delivered shall be deemed an original, but all of which taken together shall constitute but one and the same instrument. Delivery by a party of executed copies of this Agreement or the signature pages thereto by facsimile or by e-mail in pdf or other digital format, or by other electronic means, shall be as fully valid, binding, and effective as the delivery of originals, but upon request by any party, the other parties shall furnish to the requesting party original signatures within five (5) Business Days of their receipt of the request.

26.10 The provisions of this Section 26 shall survive the Closing.

[SIGNATURE PAGE FollowS]
IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the Parties and Fortis as of the day and year first above written.

SELLER:

DOWNSTATE AT LICH HOLDING COMPANY, INC.

By:
Name: Robert Haelen
Title: President

PURCHASER:

FPG COBBLE HILL ACQUISITIONS, LLC

By:
Name:
Title:

NYUHC

NYU HOSPITALS CENTER

By:
Name:
Title:

FORTIS:

FORTIS PROPERTY GROUP, LLC

For the limited purposes of Sections 2.3, 4.3(b), 8.2, 8.4, 8.6, 8.7, 9.1, 9.5, 10.5, 14.1(b), 19.2, 20.1, 20.5, 23 and 26:

By:
Name:
Title:
IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the Parties and Fortis as of the day and year first above written.

SELLER:

DOWNSTATE AT LICH HOLDING
COMPANY, INC.

By: _________________________
Name: _______________________
Title: _______________________

PURCHASER:

FPG COBBLE HILL ACQUISITIONS, LLC

By: _________________________
Name: Joel Kestenbaum
Title: President

NYUHC
NYU HOSPITALS CENTER

By: _________________________
Name: _______________________
Title: _______________________

FORTIS:

FORTIS PROPERTY GROUP, LLC

For the limited purposes of Sections 2.3, 4.3(b), 8.2, 8.4, 8.6, 8.7, 9.1, 9.5, 10.5, 14.1(b), 19.2, 20.1, 20.5, 23 and 26:

By: _________________________
Name: Joel Kestenbaum
Title: President

109
IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the Parties and Fortis as of the day and year first above written.

SELLER:

DOWNSTATE AT LICH HOLDING COMPANY, INC.

By: 
Name: 
Title: 

PURCHASER:

FPG COBBLE HILL ACQUISITIONS, LLC

By: 
Name: 
Title: 

NYUHC

NYU HOSPITALS CENTER

By: 
Name: ROBERT, E. GROSS MAN, M.D
Title: CHIEF EXECUTIVE OFFICER

FORTIS:

FORTIS PROPERTY GROUP, LLC

For the limited purposes of Sections 2.3, 4.3(b), 8.2, 8.4, 8.6, 8.7, 9.1, 9.5, 10.5, 14.1(b), 19.2, 20.1, 20.5, 23 and 26:

By: 
Name: 
Title: 

109
Approval as to Form
Eric T. Schneiderman
Attorney General

By: ____________________________
Name: __________________________
Date: ____________________________

Approved:
Thomas P. DiNapoli
State Comptroller

By: ____________________________
Name: __________________________
Date: ____________________________

APPROVED
DEPT. OF AUDIT & CONTROL
OCT 28 2014
Chariot E. Price
FOR THE STATE COMPTROLLER

APPROVED AS TO FORM
NYS ATTORNEY GENERAL
IN ACCORDANCE WITH NY SFL §112
CONTRACT PROCESS

OCT 28 2014
LORRAINE L. RENO
PRINCIPAL ATTORNEY

Contract X00 2654
STATE OF NEW YORK          
COUNTY OF NEW YORK

On this 8th day of October, 2014, before me personally came
Robert Haelen, to me known, who being sworn, did depose and say that he/she resides
in Green County; that he/she is the President of Downstate at
LICH Holding Company, Inc., the corporation described in and which executed the foregoing
instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument
is such corporate seal; that it was so affixed by the order of the Board of Directors of said
corporation, and that he/she signed his/her name thereto by like order.

Janice Bili
Notary Public
State of New York
No. 0184886886
Qualified in Putnam County
Commission Expires March 16, 2015
STATE OF NEW YORK

COUNTY OF KINGS

On this 7th day of October, 2014, before me personally came Joel Kaminvain, to me known, who being sworn, did depose and say that he/she resides in Brooklyn, NY; that he/she is the President of FPG Cobble Hill Acquisitions, LLC, the limited liability company described in and which executed the foregoing instrument; that he/she knows the seal of said limited liability company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the order of the governing body of said limited liability company, and that he/she signed his/her name thereto by like order.

[Signature]
Notary Public

CHAIM WEISS
Notary Public, State of New York
No. 01WES219068
Qualified in Rockland County
My Commission Expires October 28, 2017
(ACKNOWLEDGEMENT BY NYU HOSPITALS CENTER)

STATE OF NEW YORK
 )
COUNTY OF NY,
 ) ss

On this 8th day of October, 2014, before me personally came
Robert Grossman, who being sworn, did depose and say that he/she resides
in NY; that he/she is the President of NYU Hospitals
Center, the not-for-profit company described in and which executed the foregoing instrument;
that he/she knows the seal of said limited liability company; that the seal affixed to said
instrument is such corporate seal; that it was so affixed by the order of the governing body of
said limited liability company, and that he/she signed his/her name thereto by like order.

Notary Public

MARIA GUZIERO
Notary Public - State of New York
No. 01056979
Qualified in New York County
My Comm. Expires Jul. 15, 2017
STATE OF NEW YORK

COUNTY OF Kings

On this 7th day of October, 2014, before me personally came
Joel Rosenbaum, to me known, who being sworn, did depose and say that he/she resides
in Brooklyn, NY; that he/she is the President of Fortis Property
Group, LLC, the limited liability company described in and which executed the foregoing
instrument; that he/she knows the seal of said limited liability company; that the seal affixed to
said instrument is such corporate seal; that it was so affixed by the order of the governing body
of said limited liability company, and that he/she signed his/her name thereto by like order.

Chai Weiss
Notary Public

CHAIM WEISS
Notary Public, State of New York
No. 01WE6291958
Qualified in Rockland County
My Commission Expires October 26, 2017