FIRST AMENDMENT
TO FIRST AMENDED AND RESTATED PURCHASE AND SALE AGREEMENT
AMONG
DOWNSTATE AT LICH HOLDING COMPANY, INC.,
FPG COBBLE HILL ACQUISITIONS, LLC,
NYU HOSPITALS CENTER AND
FORTIS PROPERTY GROUP, LLC

This First Amendment to First Amended and Restated Purchase and Sale Agreement (“Amendment”) is made as of this ___day of September, 2015, among Downstate at LICH Holding Company, Inc. (“Seller”), FPG Cobble Hill Acquisitions, LLC (“Purchaser”), NYU Hospitals Center (“NYUHC”), Fortis Property Group, LLC (“Fortis”), and each of the entities listed on the attached Schedule 1 (each, an “SPE” and collectively, the “SPEs”) (Seller, Purchaser, NYUHC, and Fortis are each a “PSA Party” and collectively the “PSA Parties,” and together with the SPEs are the “Amendment Parties) and amends that certain First Amended and Restated Purchase and Sale Agreement effective as of June 30, 2014 among the PSA Parties (the “PSA”). Capitalized terms used but not defined in this Amendment have the meanings ascribed to such terms in the PSA.

WHEREAS, the PSA Parties entered into the PSA effective June 30, 2014 which was approved by the AG and OSC on October 28, 2014; and

WHEREAS, Purchaser has or will at or prior to the Initial Closing assign certain of its rights and obligations under the PSA to the SPEs; and

WHEREAS, the PSA which anticipated that AG and OSC approval would be required for the executed versions of the ZLDA, the Roof Easement, the Pacific Street Easement and the Community Foundation Escrow Fund Agreement (collectively, the “Initial Closing Documents”); however, AG and OSC advised upon approval of the PSA that approval of the Initial Closing Documents would not be required provided the versions of the Initial Closing Documents attached as exhibits to the PSA were amended to reflect their determination that no such approval is required; and

WHEREAS, in accordance with Section 22.1 of the PSA, Seller obtained the NPL Consent which was entered August 17, 2015, and which NPL Consent requires the amendment of Exhibit T to the PSA; and

WHEREAS, due to a discrepancy between (a) the legal descriptions of the Fuller Pavilion, the Othmer Pavilion and the Final Closing Premises in Schedule A attached to the PSA and (b) the drawings of Tax Lot 1 of Block 284 (the “New Non-Medical Tax Lot”) and Tax Lot 13 of Block 290 (the “Final Closing Premises Tax Lot”) on the New York City Digital Tax Map, the Parties acknowledge that a portion of the Initial Closing Premises comprising the eastern 140 feet of Pacific Street (“East Pacific Street”) may not be conveyed lawfully at the Initial Closing, but may be so conveyed after it is severed from the Final Closing Premises Tax Lot; and

WHEREAS, Seller, Purchaser, Fortis and the SPEs have executed that certain waiver letter agreement (the “Waiver”), dated August 21, 2015, which modifies the PSA in certain respects not inconsistent with the provisions of this Amendment, and the Amendment Parties wish to clarify certain timing provisions with respect to the NMS Closing.
WHEREAS, the PSA Parties wish to amend the PSA to address each of the above issues and the SPE Parties wish to memorialize their consent to, and their agreement to be bound by, such amendment of the PSA by executing this Amendment as Amendment Parties.

NOW, THEREFORE, for, and in consideration of, the material promises and covenants herein set forth, the Amendment Parties agree as follows:

1. **Initial Closing Documents.**
   A. The form of the ZLDA attached to the PSA as part of Exhibit E thereto is hereby amended and restated in its entirety in the form attached to this Amendment as **Amendment Exhibit A.**
   B. The form of the Roof Easement attached to the PSA as part of Exhibit E is hereby amended and restated in its entirety in the form attached to this Amendment as **Amendment Exhibit B.**
   C. The form of the Pacific Street Easement attached to the PSA as part of Exhibit E thereto is hereby amended and restated in its entirety in the form attached to this Amendment as **Amendment Exhibit C.**
   D. The form of the Community Foundation Fund Escrow Agreement attached to the PSA as Exhibit F thereto is hereby amended and restated in its entirety in the form attached to this Amendment as **Amendment Exhibit D.**

2. **Exhibit T.** The form of the New Medical Site Declaration attached to the PSA as Exhibit T thereto is hereby amended and restated in its entirety in the form attached to this Amendment as **Amendment Exhibit E.**

3. **East Pacific Street.**
   A. Purchaser and FPG CH 91 Pacific LLC (the “NNMS SPE”), one of the SPEs, shall cause East Pacific Street, as more particularly described on the attached Schedule 2, to be severed from the Final Closing Premises Tax Lot and either designated as a new, separate tax lot or incorporated into the New Non-Medical Tax Lot (the “Tax Lot Realignment Project”). Purchaser and the NNMS SPE shall be responsible jointly and severally, at their sole cost and expense, for preparing all applications and similar materials necessary for the performance and completion of the Tax Lot Realignment Project, but Seller shall provide the Seller Assistance as needed with respect to the signing of such application and similar materials. Purchaser shall promptly notify Seller upon the severance of East Pacific Street from the Final Closing Premises Tax Lot.
   B. At the Initial Closing, Seller shall execute and deliver in escrow to Madison Title Agency, LLC (the “Pacific Street Escrow Agent”), a deed in the form attached to the PSA as Exhibit N conveying East Pacific Street to the NNMS SPE (the “East Pacific Street Deed”). Purchaser shall diligently and in good faith endeavor to obtain such severance within six (6) months after the Initial Closing, subject to Unavoidable Delays or Unavoidable Interruptions. Promptly after the Purchaser shall have obtained such severance, Seller shall upon request execute and deliver to the Pacific Street Escrow Agent the Transactional Tax Returns necessary to record such deed.
C. After the severance of East Pacific Street from the Final Closing Premises Tax Lot and receipt of the Transactional Tax Returns, the Pacific Street Escrow Agent shall cause the East Pacific Street Deed and Transactional Tax Returns to be submitted promptly to the New York City Register for recording.

D. If either (a) Purchaser shall fail to complete the Tax Lot Reassignment Project within six (6) months after the Initial Closing, or (b) Purchaser or any of the SPEs shall default under the PSA and shall fail to cure such default within the applicable grace period after the giving of the applicable notice of default, then Seller shall have the right, but not the obligation, to take over the Tax Lot Reassignment Project at any time thereafter, directly or through any designee, upon notice to Purchaser 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 costs in connection with such Tax Lot Reassignment Project. Fortis hereby guarantees the payment of any such amounts owed by Purchaser or Seller or its designee pursuant to this Section 3.D. If the Tax Lot Reassignment Project shall not occur prior to the Final Closing, then the Pacific Street Escrow Agent shall deliver the East Pacific Street Deed and the Transactional Tax Returns to Seller, and East Pacific Street shall be conveyed to Purchaser or its SPE designee as part of the Final Closing Premises.

E. Seller hereby consents to the collateral assignment of Purchaser’s rights under this Paragraph 3 (the “Collateral Assignment”) to any institutional lender, including Madison Realty Capital, Pacific Hicks 1 LLC, and their affiliates, successors and assigns (the “Lenders”), providing financing to either Purchaser and/or the NNMS SPE. Seller shall provide Seller’s Assistance to the Lenders with respect to the Tax Lot Realignment Project if it becomes necessary for Lender to exercise any rights with respect to the Collateral Assignment.

4. Section 5.4(c). Subsections 5.4(c)(i) and (ii) are hereby amended and restated in their entirety to read as follows:

(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 NMS Closing or, if earlier, five (5) Business Days after Seller notifies Purchaser and NYUHC of Seller’s election not to cure one or more Title Objections, other than those that Seller is obligated to cure pursuant to this Agreement, provided, however, that with respect to Title Objections, if any, arising from the AHSS Lease-Related Claims as such term is defined in the Waiver, NYUHC may give such notice on or before the deadline for the NMS Closing; or

(ii) accept such title as Seller is able to convey at the NMS Closing, without any credit or payment from Seller or Purchaser including any payment of the Title Cure Amount.

5. Entire Agreement and Modification. This Amendment shall be binding upon the Amendment Parties hereto and their respective successors and permitted assigns, and shall inure to the benefit of the Amendment Parties hereto and their respective successors and permitted assigns. This Amendment supersedes all prior agreements, whether written or oral, among the Amendment Parties with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the Amendment Parties with respect to its subject matter. This Amendment may not be altered, amended, changed, waived, terminated, or otherwise
modified in any respect except by a written agreement signed by or on behalf of the Amendment Party sought to be charged therewith and approved and signed by the New York State Office of Attorney General ("AG") and the New York State Office of State Comptroller ("OSC"). Except for those provisions of the PSA (as modified by the Waiver) that (a) are expressly affected by the provisions of this Amendment; or (b) were expressly affected by any written consents or other written agreements of the PSA Parties or any of them subsequent to the execution of the PSA, the provisions, terms and conditions of the PSA (as modified by the Waiver) remain in full force and effect. For avoidance of doubt and without limiting Seller’s rights and the obligations of Purchaser and Fortis under the Waiver, the Parties acknowledge and agree that (i) Section 10.1(c) of the PSA remains in full force and effect with respect to the obligation of Seller to deliver the New Medical Site at the NMS Closing free of all Leases or other occupying agreements and vacant of all Previously Permitted Occupants, and (ii) if Seller is unable to deliver the New Medical Site at the NMS Closing free of all Leases or other occupying agreements and vacant of all Previously Permitted Occupants, then NYUHC’s sole remedy is to elect as and when provided in Section 5.4(c) of the PSA. Notwithstanding the foregoing, in the event of any inconsistency between the terms of this Amendment and the terms of the PSA (as modified by the Waiver), the terms of this Amendment shall control.

6. **Governing Law.** This Amendment will be governed by and construed under the laws of the State of New York without regard to conflicts-of-laws principles that would require the application of any other law.

7. **Execution.** This Amendment may be executed in two (2) or more counterparts, each of which when executed and delivered shall be deemed an original of this Amendment, but all of which taken together shall constitute but one and the same agreement. Delivery by a party of executed copies of this Amendment 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.

8. **Further Assurances.** Each Amendment Party hereto shall cooperate reasonably at all times from and after the date hereof with respect to all of the matters described herein, and shall execute such further documents as may be reasonably requested for the purpose of giving effect to, or evidencing or giving notice of, the actions contemplated by this Amendment.

9. **Approvals.** The Amendment Parties hereby acknowledge and agree that this Amendment is subject to the approval of AG and OSC, and this Amendment shall not be valid and enforceable until such approvals are given. The Amendment Parties further acknowledge and agree that this Amendment shall not be effective until it has been fully approved and executed by all applicable governmental agencies, including AG and OSC.

**IN WITNESS WHEREOF,** this Amendment has been duly executed and delivered by the Amendment Parties as of the day and year first above written.
DOWNSTATE AT LICH HOLDING COMPANY, INC.

By: [Signature]

Robert Haelen
President

FPG COBBLE HILL ACQUISITIONS, LLC

By: [Signature]

Joel Kestenbaum
President

NYU HOSPITALS CENTER

By: [Signature]

Name: [Name]
Title: [Title]

FORTIS PROPERTY GROUP, LLC

By: [Signature]

Joel Kestenbaum
President

FPG CH 91 PACIFIC, LLC

By: [Signature]

Joel Kestenbaum
President

FPG CH 340 HENRY, LLC

By: [Signature]

Joel Kestenbaum
President
DOWNSTATE AT LIC\HC HOLDING COMPANY, INC.

By: __________________________
   Robert Haelen
   President

FPG COBBLE HILL ACQUISITIONS, LLC

By: __________________________
   Joel Kestenbaum
   President

NYU HOSPITALS CENTER

By: __________________________
   [Signature]
   Name: _______________________
   Title: ________________

FORTIS PROPERTY GROUP, LLC

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   President

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    Joel Kestenbaum
    President

FPG CH 340 HENRY, LLC

By: ____________________________
    Joel Kestenbaum
    President
FPG CH 363 HICKS, LLC

By: ____________________________
    Joel Kestenbaum
    President

FPG CH 350 HENRY, LLC

By: ____________________________
    Joel Kestenbaum
    President

FPG CH 349 HENRY, LLC

By: ____________________________
    Joel Kestenbaum
    President

FPG CH 350 HICKS, LLC

By: ____________________________
    Joel Kestenbaum
    President

FPG CH 385 HICKS, LLC

By: ____________________________
    Joel Kestenbaum
    President

FPG CH 124 ATLANTIC, LLC

By: ____________________________
    Joel Kestenbaum
    President
FPG CH 94 AMITY, LLC
By: 
Joel Kestenbaum
President

FPG CH 86 AMITY, LLC
By: 
Joel Kestenbaum
President

FPG CH 82 AMITY, LLC
By: 
Joel Kestenbaum
President

FPG CH 78 AMITY, LLC
By: 
Joel Kestenbaum
President

FPG CH 76 AMITY, LLC
By: 
Joel Kestenbaum
President

FPG CH 74 AMITY, LLC
By: 
Joel Kestenbaum
President
FPG CH 113 CONGRESS, LLC

By: __________________________
   Joel Kestenbaum
   President

FPG CH 43 COLUMBIA, LLC

By: __________________________
   Joel Kestenbaum
   President

FPG CH 336 FLATBUSH, LLC

By: __________________________
   Joel Kestenbaum
   President

FPG CH 184 Sterling, LLC

By: __________________________
   Joel Kestenbaum
   President

FPG CH 112 Pacific, LLC

By: __________________________
   Joel Kestenbaum
   President

Escrow acknowledged and agreed upon
Madison Title Agency, LLC

By: __________________________
Title: __________________________
FPG CH 113 CONGRESS, LLC

By: ________________________________
    Joel Kestenbaum
    President

FPG CH 43 COLUMBIA, LLC

By: ________________________________
    Joel Kestenbaum
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Madison Title Agency, LLC

By: ________________________________
Title: MA
Approval as to Form

Eric T. Schneiderman
Attorney General

By: ____________________________
Name: ____________________________
Date: ____________________________

Approved:

Thomas P. DiNapoli
State Comptroller

By: ____________________________
Name: ____________________________
Date: ____________________________
Approval as to Form

Eric T. Schneiderman
Attorney General

By: [Signature]
Name: Gary T. Schatz
Date: September 3, 2015

Approved:

Thomas P. DiNapoli
State Comptroller

By: [Signature]
Name: [Signature]
Date: 9/3/15
(ACKNOWLEDGEMENT BY DOWNSTATE AT LICH HOLDING COMPANY, INC.)

STATE OF NEW YORK

COUNTY OF New York

On the 2nd day of September, 2015, before me, the undersigned, personally appeared Robert Haelen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same in his capacity described thereon, and that by his signature upon the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

(ACKNOWLEDGEMENT BY NYU HOSPITALS CENTER)

STATE OF NEW YORK

COUNTY OF NEW YORK

On the ___ day of September, 2015, before me, the undersigned, personally appeared _________________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same in his capacity described thereon, and that by his signature upon the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

(ACKNOWLEDGEMENT BY FORTIS PROPERTY GROUP, LLC, PURCHASER AND THE SPES)

STATE OF NEW YORK

COUNTY OF _______________ 

On the ___ day of September, 2015, before me, the undersigned, personally appeared Joel Kestenbaum, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same in his capacities described thereon, and that by his signature upon the instrument, the individuals, or the persons on behalf of which the individual acted, executed the instrument.

Notary Public
(ACKNOWLEDGEMENT BY DOWNSTATE AT LICH HOLDING COMPANY, INC.)

STATE OF NEW YORK  
COUNTY OF ____________

: ss.:

On the ___ day of August, 2015, before me, the undersigned, personally appeared Robert Haelen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same in his capacity described thereon, and that by his signature upon the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

__________________________
Notary Public

(ACKNOWLEDGEMENT BY NYU HOSPITALS CENTER)

STATE OF NEW YORK  
COUNTY OF NEW YORK

: ss.:

On the ___ day of August, 2015, before me, the undersigned, personally appeared Michael Burke, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same in his capacity described thereon, and that by his signature upon the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

__________________________
Notary Public

(ACKNOWLEDGEMENT BY FORTIS PROPERTY GROUP, LLC, PURCHASER AND THE SPE

STATE OF NEW YORK  
COUNTY OF ____________

: ss.:

On the ___ day of August, 2015, before me, the undersigned, personally appeared Joel Kestenbaum, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same in his capacities described thereon, and that by his signature upon the instrument, the individuals, or the persons on behalf of which the individual acted, executed the instrument.

__________________________
Notary Public
(ACKNOWLEDGEMENT BY DOWNSTATE AT LICHC HOLDING COMPANY, INC.)

STATE OF NEW YORK 

COUNTY OF ______________ 

On the ___ day of September, 2015, before me, the undersigned, personally appeared Robert Haelen, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and he acknowledged to me that he executed the same in his capacity described thereon, and that by his signature upon the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

________________________________________
Notary Public

(ACKNOWLEDGEMENT BY NYU HOSPITALS CENTER)

STATE OF NEW YORK 

COUNTY OF NEW YORK 

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Notary Public

(ACKNOWLEDGEMENT BY FORTIS PROPERTY GROUP, LLC, PURCHASER AND THE SPES)

STATE OF NEW YORK 

COUNTY OF New York 

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________________________________________
Notary Public

ARTHUR GREENBERGER
Notary Public, State of New York
No. 01GR4715063
Qualified in Queens County
Commission Expires Nov. 30, 2018
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<thead>
<tr>
<th>SPE</th>
<th>Parcel</th>
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<tr>
<td>FPG CH 91 Pacific, LLC, a Delaware limited liability company</td>
<td>New Non-Medical Site 91-95 Pacific Street Brooklyn, New York</td>
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<td>FPG CH 349 Henry, LLC, a Delaware limited liability company</td>
<td>349 Henry Street and 115 Amity Street Brooklyn, New York</td>
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<td>FPG CH 350 Hicks, LLC, a Delaware limited liability company</td>
<td>350-352 Hicks Street Brooklyn, New York</td>
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<td>The Commercial Unit Cobble Hill Condominium 124-134 Atlantic Avenue Brooklyn, New York</td>
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<td>FPG CH 112 Pacific, LLC, a Delaware limited liability company</td>
<td>112 Pacific Street Brooklyn, New York</td>
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<td>FPG CH 385 Hicks, LLC, a Delaware limited liability company</td>
<td>The Engineer Building 385-389 Hicks Street Brooklyn, New York</td>
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SCHEDULE 2

Portion of the Former Street Bed of Pacific Street
Brooklyn, New York

Block 290, Part of Lot 13 on the Tax Map of the Borough of Brooklyn

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

BEGINNING at the corner formed by the intersection of the westerly side of Henry Street as physically opened with the northerly side of Pacific Street (as it formerly existed);

RUNNING THENCE westerly along the northerly side of Pacific Street 140 feet to a point;

THENCE southerly parallel to Henry Street 50 feet to a point;

THENCE easterly along the southerly side of Pacific Street 140 feet to the westerly side of Henry Street;

THENCE northerly along the westerly side of said Henry Street, 50 feet to the corner, the point or place of BEGINNING.
ZONING LOT DEVELOPMENT
AND EASEMENT AGREEMENT

BY AND AMONG

DOWNSTATE AT LICH HOLDING COMPANY, INC.,

AND

FPG COBBLE HILL ACQUISITIONS, LLC,

AND

FPG CH 91 PACIFIC, LLC,

AND

NYU HOSPITALS CENTER

Dated: as of September ___, 2015

BLOCK 284
LOTS 1, 7 (formerly part of Lot 1) and 17

AND

BLOCK 290
LOT 13

RECORD AND RETURN TO:
KRAMER LEVIN NAFTALIS AND FRANKEL LLP
1177 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10036
ATTENTION: ELISE WAGNER, ESQ.
THIS ZONING LOT DEVELOPMENT AND EASEMENT AGREEMENT (this “Agreement”) made as of the ___ day of September, 2015, by and between NYU HOSPITALS CENTER, a New York not-for-profit corporation having an office at 550 Fifth Avenue, New York, NY 10016 (“NYUHC”); DOWNSTATE AT LICH HOLDING COMPANY, INC., a New York not-for-profit corporation with an office c/o the State University of New York Health Science Center at Brooklyn, 450 Clarkson Avenue, Brooklyn, New York 11203 (“DLHC”); 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 (“FCHA”) and FPG CH 91 PACIFIC, LLC, a Delaware limited liability company, having an office c/o Fortis Property Group, LLC, 45 Main Street, Suite 800, Brooklyn, New York 11201 (“Fortis” and, together with NYUHC, FCHA and DLHC, the “Parties”).

WHEREAS, DLHC is the current owner of certain land, with the buildings and improvements thereon, in the City of New York, County of Kings, designated as Lot 7 (formerly a part of Lot 1) in Block 284 on the Tax Map of the City and State of New York, County of Kings (the “Tax Map”) and more particularly described on Exhibit A annexed hereto and made a part hereof (said land being herein collectively called the “New Medical Land,” and the New Medical Land and said buildings and improvements, together with any future replacements thereof permitted pursuant to the provisions of this Agreement, being herein collectively called the “New Medical Premises”);

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

WHEREAS, DLHC is the owner of certain land, with buildings and improvements thereon, in the City of New York, County of Kings, designated as Lot 13 in Block 290 on the Tax Map, as more particularly described in Exhibit C annexed hereto and made a part hereof (such land being herein called the “DLHC Land”, each of said buildings and improvements, together with any future replacements thereof permitted pursuant to the provisions of this Agreement, being herein called a “DLHC Building”, and the DLHC Land and the DLHC Building being herein collectively called the “DLHC Premises”);

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

WHEREAS, pursuant to that certain First Amended and Restated Purchase and Sale Agreement among DLHC, FCHA and NYUHC, effective as of June 30, 2014 (the “FAR PSA”), as amended by that certain First Amendment to First Amended and Restated Purchase and Sale Agreement among DLHC, FCHA and NYUHC, effective as of September ___, 2015 (the “First Amendment” and, together with the FAR PSA, the “PSA”), (i) DLHC conveyed the Fortis Premises to Fortis immediately prior to this
Agreement, (ii) DLHC agreed to convey the DLHC Premises to FCHA or an affiliate thereof at a Final Closing (as defined in the PSA) pursuant to the terms and conditions of the PSA, and (iii) DLHC agreed to convey the New Medical Premises to NYUHC at an NMS Closing (as defined in the PSA) pursuant to the terms and conditions of the PSA;

WHEREAS, pursuant to the First Amendment, DLHC is obligated to convey a portion of the DLHC land that was formerly within the bed of Pacific Street promptly after the severance of such former street bed from the tax lot in which the DLHC Land is located is obtained;

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

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

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

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

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

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

WHEREAS, Fortis desires to construct one or more new buildings or alter any existing buildings (individually or collectively, including the Cantilevered Portion (as hereinafter defined), the “Fortis Building”) on the Fortis Land, utilizing the Fortis Floor Area Development Rights (as hereinafter defined);
WHEREAS, DLHC does not intend to alter (other than incidentally in connection with the interim use of a portion of a DLHC Building as an emergency department), demolish or reconstruct any of the DLHC Buildings or to construct any new buildings on the DLHC Premises;

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

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

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

WHEREAS, all parties in interest (as defined in the Zoning Resolution) to the Balance Premises as shown on the Zoning Lot Certification of Stalwart Abstract Limited Liability Company (“Certification”), annexed hereto as Exhibit E, have subordinated or are simultaneously herewith subordinating their interest to this Agreement.

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

I. **Certain Definitions.** As used herein:

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

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

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

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

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

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

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

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

J. “Datum Level” shall mean shall mean the North American Vertical Datum of 1988 (NAVD88), which is the vertical control datum of orthometric height established for vertical control surveying in the United States of America based upon the General Adjustment of the North American Datum of 1988.

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

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

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

N. “Fortis Floor Area Development Rights” means (i) 185,000 square feet of Residential Floor Area Development Rights and 25,000 square feet of Community Facility Floor Area Development Rights appurtenant to the Balance Premises as of the date hereof, (ii) any Bonus Floor Area Development Rights that may be acquired by Fortis, and (iii) any Additional Floor Area Development Rights acquired by Fortis, ((i)-(iii) above shall be subject to adjustment pursuant to Section II.C hereof). ¹

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

P. “Lower Limiting Plane” means that certain horizontal plane located above and coincident with the boundaries of the New Medical Premises at an elevation of fifteen (15) feet above the wearing surface of the roof of the New Medical Building, which elevation the parties agree is one hundred twenty five feet and nine inches (125’ 9”) feet above Datum Level (the “Initial Datum Elevation”).² The Parties further agree that, should NYUHC provide to Fortis on or before October 8, 2015, a different elevation for the wearing surface of the roof (“Amended Datum Elevation”), this Agreement shall be amended so as to substitute the Amended Datum Elevation for the Initial Datum Elevation and the Lower Limiting Plane shall be adjusted accordingly. The Parties acknowledge and agree that DLHC’s consent shall not be required for any such amendment.

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

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

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

¹ To the extent that the total amount of Floor Area Development Rights appurtenant to the Balance Premises is less than the total of the New Medical Floor Area Development Rights and the Fortis Floor Area Development Rights as defined herein, the amount of Fortis Floor Area Development Rights shall be reduced accordingly so that the amount of New Medical Floor Area Development Rights remains unaffected.

² The elevation of the Lower Limiting Plane shall be 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.
T. “Residential Floor Area Development Rights” shall mean Floor Area Development Rights appurtenant to the Combined Zoning Lot to be used for residential uses only in accordance with the Zoning Resolution.

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

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

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

II. Limitations on Premises.

A. Limitations on the New Medical Premises.

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

2. Light and Air Easement. DLHC hereby grants to Fortis a permanent and perpetual easement over the portion of the New Medical Premises located above the Lower Limiting Plane (the “Light and Air Easement”), as described in Exhibit F hereto, for (i) light, air and view for the Fortis Building’s windows, (ii) the operation, maintenance and use of the Fortis Building’s windows, and (iii) within the volume of the Light and Air Easement located within ten (10) feet of the façade of the Fortis Building, for the ordinary and necessary cleaning, maintenance and repair of the façade of the Fortis Building. The Light and Air Easement shall not be obstructed by any structures, equipment, fixtures or furniture except to the extent permitted in subdivision c of Section II(A)(3). If requested in writing by Fortis, DLHC shall, within ten (10) Business Days after its receipt of such request, execute, acknowledge and deliver to Fortis a form of Light and Air Easement substantially in accordance with the easement form attached hereto as Exhibit G or such alternative form as may be required by the Department of Buildings of the City of New York, together with transfer tax returns required to record such easement. Fortis may record such easement in the City Register’s Office at its sole expense.
3. **Cantilever Easement.**

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

b. Prior to the NYUHC Forfeiture Date, Fortis shall not commence construction of the Cantilevered Portion or exercise any other rights it has to install projections within or over the New Medical Premises until the earlier to occur of (i) completion by NYUHC of construction of the steel structure of the New Medical Building, as evidenced by a notice from NYUHC to Fortis within ten (10) days of the occurrence thereof, and (ii) thirty (30) months from the date on which NYUHC acquires the New Medical Land, subject to Unavoidable Delays (as defined in Section 25 of the Open Space Easement). In the event that Fortis commences construction of the Cantilevered Portion pursuant to clause (ii) of the preceding sentence, Fortis shall reimburse NYUHC for any incremental costs of the construction of the New Medical Building above and over such costs as NYUHC would have incurred absent the construction of the Cantilevered Portion prior to completion by NYUHC of construction of the steel structure of the New Medical Building, such reimbursement to be made in installments of 50% on commencement of construction of the Cantilevered Portion, 25% on 50% completion of the Cantilevered Portion, and 25% on substantial completion of the Cantilevered Portion (such reimbursement obligation of Fortis, the “Fortis Cantilever Payment”). In the event that Fortis fails to reimburse NYUHC for the Fortis Cantilever Payment within thirty (30) days after receipt of an invoice and supporting documentation, the unpaid amount shall be treated as a Grantee’s Construction Payment (as defined in Section 2(b)(iv) of the Open Space Easement), and the provisions of Section 13.5 of the Open Space Easement shall govern NYUHC’s right to collect interest on the amount due and to place a lien on the Fortis Premises.

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

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

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

5. NYUHC covenants and agrees that no new buildings, improvements, alterations or additions (each, an “Alteration”) shall be constructed or allowed to exist on the New Medical Premises, and no reconstruction, replacement, or rebuilding of substantially the same building as now exists on the New Medical Land (“Rebuilding”) shall be undertaken of the New Medical Building if such Alteration or Rebuilding or any portion of such Alteration or Rebuilding (a) is used for any use other than community facility use or the use by Fortis of the roof of the New Medical Building as provided in the Open Space Easement Agreement, (b) encroaches over or extends above the Lower Limiting Plane, except as provided in Section II.A.2.c hereof, (c) creates a Material Violation (as hereinafter defined), (d) utilizes any of the Fortis Floor Area Development Rights or any of the DLHC Floor Area Development Rights, (e) decreases the Fortis Floor Area Development Rights or the DLHC Floor Area Development Rights, and/or (f) creates any new non-compliance or non-conformance, or increase the degree of an existing non-compliance or non-conformance, with the Zoning Resolution. Any Alteration or Rebuilding shall be in accordance with Exhibit J hereto, as it may be modified in accordance with Section II.C below.

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

a. If at any time hereafter there exists any Material Violation on the New Medical Premises, NYUHC shall commence a cure promptly after receiving notice of the same from Fortis or DLHC, and shall proceed diligently and continuously to make all commercially reasonable efforts to cure, remove and discharge of record the same as rapidly as possible.
b. In the event that NYUHC does not commence such cure and proceed diligently and continuously with such cure as required by Section II.A.5.a, Fortis or DLHC, as the case may be, shall be permitted to pursue all legal and equitable remedies available to it under law.

B. Limitations on Fortis Premises.

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

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

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

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

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

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

C. Limitations on DLHC Premises.

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

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

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

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

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

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

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

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

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3 Includes certain public access easements adjacent to Henry Street, and a portion of the open area adjacent to the south and east walls of the Henry Pavilion and the adjacent sidewalks, all within the DLHC Premises.
Area or make any temporary or permanent improvements in or over the DLHC Open Space Easement Area, provided, however, the foregoing shall not prevent or prohibit DLHC from landscaping the DLHC Open Space Easement Area or from erecting any sculpture, statuary, seating areas, garbage enclosures or other objects in the DLHC Open Space Easement Area provided that such objects are permitted obstructions in open space as provided in Sections 12-10 and 23-12 of the Zoning Resolution in effect on the date hereof (or any amendment thereto). Fortis, and the occupants of the Fortis Building (and their guests and invitees) shall not be obligated to pay any consideration to DLHC for the right to access the Open Space Easement Area in accordance with the DLHC Open Space Easement.

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

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

D. Development Limitations on All Premises.

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

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

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

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

3. If a validly enacted amendment of the Zoning Resolution increases the Floor Area Development Rights ascribable to all or a portion of the Balance Premises (an “Upzoning”), then any increase in the Floor Area Development Rights resulting from such Upzoning shall be allocated to the DLHC Premises; provided, however, that, if Fortis has applied for an Upzoning and such Upzoning is approved, then any increase in the Floor Area Development Rights resulting from such Upzoning shall be allocated in a manner that is substantially in accordance with the plans approved in connection with such Upzoning.

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

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

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

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

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

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

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

IV. Representations.

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

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

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

VI. Separate Building Plans.

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

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

VII. Separate Tax Lots.

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

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

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

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

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

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

C. Notwithstanding and without limiting the validity and effectiveness of subparagraph B. above, (i) the Non-Acting Party shall, if requested by the Acting Party, within ten (10) Business Days after such request, execute, acknowledge and deliver any declaration and/or amendments or replacement to this Agreement, and such other instruments as may reasonably be required for the purposes of subdividing or enlarging the Combined Zoning Lot, subject to all the other terms and conditions of this Agreement, at no additional cost or expense to the Non-Acting Party, and (ii) provided that NYUHC, Fortis, FCHA and/or DLHC, as applicable, have executed such declaration and amendment or replacement of this Agreement, each present and future “party in interest” in the Combined Zoning Lot, by waiving by subordinating its interest in the Combined Zoning Lot to this Agreement, or by taking its interest in the Combined Zoning Lot subject to this Agreement, shall be deemed automatically and without any further action on its part to have consented to and waived its right to execute such declaration and to have subordinated its interest in the Combined Zoning Lot to such amendment or replacement of this Agreement, regardless of whether such “party in interest” executes such declaration or waiver thereof or such amendment or replacement of this Agreement or subordination thereto. Notwithstanding and without in any way limiting the validity and effectiveness of the foregoing obligations, each Non-Acting Party shall make reasonable efforts to cause (without incurring any cost) any “party in interest” to the its Premises to execute all documents and instruments required to confirm the subdivision or enlargement of the Combined Zoning Lot or a Fortis Transfer in accordance with the provisions of this Agreement.

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

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

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liability whatsoever (except for fraud), notwithstanding the negligent or inadvertent failure of such Party to disclose correct or relevant information.

XI. Construction Protection and Construction Easements.

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

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

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

D. During Alterations or Rebuilding on its Premises, each Constructing Owner shall, at its sole cost and expense, obtain and at all times maintain or cause to be obtained and maintained public liability insurance coverage to include personal injury, bodily injury, broad form property damage, operations hazard, independent contractor’s coverage, contractual liability and products and completed operations liability, naming the Granting Owner and its Mortgagee(s) as an additional insured, in amounts customarily maintained by a prudent contractor/developer/owner performing such work.

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

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

G. NYUHC and Fortis agree that, if the construction of a new New Medical Building and the construction of a new Fortis Building is proceeding at the same time, they will reasonably cooperate with each other in order to reduce to the extent commercially reasonable and practicable any conflict between the construction operations of one and the other and the impact that their construction activities will have on surrounding streets and neighboring properties. Notwithstanding the foregoing, but only when the New Medical Premises is owned in fee by NYUHC and NYUHC is constructing the New Medical Building (it being understood that the balance of this Section XI(G) does not apply if any other party, including without limitation DLHC, owns the New Medical Premises in fee), Fortis agrees that, in the event that a conflict has, in NYUHC’s reasonable judgment, the potential to delay construction, increase to any material extent the cost of construction, or negatively impact the constructability of any portion of the New Medical Building, the resolution of such conflict shall not result in a delay of construction, an increase to any material extent the cost of construction, or a negative impact on the constructability of any portion of the New Medical Building. Fortis further acknowledges that the construction of the Cantilevered Portion requires special safeguards for the protection of the New Medical Premises, and agrees to implement such construction protection measures in connection therewith that NYUHC may, in its sole discretion, request, including but not limited to the installation of a construction screen for the protection of construction personnel at the New Medical Premises.
XII. **Rights of Entry.** The exercise of any right of entry pursuant to any of the Easements granted under the terms of this Agreement shall be upon at least five (5) Business Days’ notice to the other Party, except in an Emergency Situation, in which event the Party seeking access shall endeavor to notify the other Party of the action taken or proposed to be taken, as the case may be, to cure the Emergency Situation.

XIII. **Allocation of Certain Rights and Obligations between DLHC and NYUHC.** Any approval or determination right provided to DLHC, in its capacity as owner of the New Medical Premises, under this Agreement shall, during the period preceding the NYUHC Forfeiture Date, be exercisable solely by NYUHC on behalf of DLHC (regardless of whether at such time NYUHC or DLHC is the fee owner of the New Medical Premises).

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

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

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

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

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

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

XVI. **Remedies.** In the event of any breach, or threatened breach, of this Agreement by any party hereto, any non-defaulting parties shall only have the right to injunctive relief and specific performance (including, without limitation, any reimbursement of costs pursuant to Sections II.A.4.c and II.B.2.c) and under no circumstances shall the defaulting party be liable for damages, whether consequential, direct, foreseen or unforeseen. Notwithstanding the foregoing, the limitations on damages set forth in this paragraph shall not apply to any liability of NYUHC or Fortis for damage to property or injury to persons resulting from or arising in connection with any demolition or construction activities on the New Medical Premises or the Fortis Premises during their period of ownership.
XVII. **Limitation of Liability.** No liability under this Agreement shall be enforced by any action or proceeding wherein damages or any money judgment or any deficiency judgment establishing any personal obligation or liability shall be sought, collected or otherwise obtained against any party to this Agreement, or any past, present or future partner, officer, trustee, director or shareholder of such party but shall rather be limited to and enforceable solely against, and each party agrees to look solely to such other party’s interest in the Balance Premises (including rental, insurance, condemnation and sales proceeds attributable to such party’s Premises) and no other assets of such party.

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

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

If to NYUHC:

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

With a copy to:

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

If to Fortis or FCHA:

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

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

If to DLHC:

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

With a copy to:

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

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

XX. No Oral Agreements; Integration. Except as stated in this Agreement, the exhibits and schedules annexed hereto, this Agreement contains all the promises, agreements, conditions, inducements and understandings between parties relative to the matters stated herein and therein, and there are no oral promises, agreements, conditions, understandings, inducements, warranties or representations, expressed or implied, between the parties other than as set forth herein and therein. This Agreement may not be modified, amended or terminated except by an instrument in writing signed by all of the parties hereto, except that (i) any modification or amendment that does not create an encumbrance on the DLHC Premises, does not reduce DLHC’s rights or increase its obligations as set forth in this Agreement, and does not adversely affect DLHC’s use of the DLHC Premises as permitted by law and this Agreement, including, without limitation, any change required in connection with the Pacific Street Strip Transfer (as defined in the Pacific Street Easement Agreement) such as without limitation changes in the boundaries between the New Medical Land and the Fortis Land, any change to the amount of Floor Area Development Rights transferred between the New Medical Premises and the Fortis Premises, and any amendments to
this Agreement required to effect the foregoing, may be made by an instrument in writing signed only by Fortis and NYUHC (and the consent thereto and signature of DLHC shall not be required) and (ii) any party in interest to any other premises joined to the Combined Zoning Lot shall be deemed to be bound by the provisions of this Agreement upon the execution of a document to that effect.

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

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

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

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

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

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

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

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

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

XXX. Special DLHC Provisions.

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

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

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

NYUHC:
NYU HOSPITALS CENTER

By: ______________________________
Name:
Title:

DLHC:
DOWNSTATE AT LICH HOLDING COMPANY, INC.

By: ______________________________
Robert Haelen, President

FORTIS:
FPG CH 91 PACIFIC, LLC

By: ______________________________
Joel Kestenbaum, President

FCHA:
FPG COBBLE HILL ACQUISITIONS, LLC

By: ______________________________
Joel Kestenbaum, President
STATE OF NEW YORK )
COUNTY OF NEW YORK ) ss.:

On the ____ day of September, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared ______________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

____________________________________
Notary Public

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

On the ____ day of September, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared ROBERT HAELEN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

____________________________________
Notary Public

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

On the ____ day of September, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared JOEL KESTENBAUM, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacities, and that by his signatures on the instrument, the individual or the persons upon behalf of which the individual acted, executed the instrument.

____________________________________
Notary Public
<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>Exhibit A</td>
<td>Metes and Bounds Description of the New Medical Land</td>
</tr>
<tr>
<td>Exhibit B</td>
<td>Metes and Bounds Description of the Fortis Land</td>
</tr>
<tr>
<td>Exhibit C</td>
<td>Metes and Bounds Description of the DLHC Land</td>
</tr>
<tr>
<td>Exhibit D</td>
<td>Metes and Bounds Description of the Atlantic Premises</td>
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<td>Exhibit E</td>
<td>Title Company Certification</td>
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<td>Exhibit F</td>
<td>Metes and Bounds Description of the Light and Air Easement</td>
</tr>
<tr>
<td>Exhibit G</td>
<td>Form of DOB Light and Air Easement</td>
</tr>
<tr>
<td>Exhibit H</td>
<td>Metes and Bounds Description of the Cantilever Easement</td>
</tr>
<tr>
<td>Exhibit I</td>
<td>Metes and Bounds Description of the DLHC Open Space Easement</td>
</tr>
<tr>
<td>Exhibit J</td>
<td>Floor Area Development Rights Chart</td>
</tr>
</tbody>
</table>
EXHIBIT A

Metes and Bounds Description of the New Medical Land

339-357 Hicks Street
Brooklyn, New York

Block 284, Lot 7 (formerly part of Lot 1), on the Tax Map of the Borough of Brooklyn

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

BEGINNING at the corner formed by the intersection of the southerly side of Atlantic Avenue and the easterly side of Hicks Street;

RUNNING THENCE easterly along the southerly side of Atlantic Avenue, 135.25 feet to a point;

THENCE southerly parallel with Hicks Street, 90.00 feet to a point;

THENCE easterly parallel with Atlantic Avenue, 81.25 feet to a point:

THENCE southerly parallel with Hicks Street, 30.50 feet to a point;

THENCE easterly parallel with Atlantic Avenue, 11.50 feet to a point;

THENCE southerly parallel with Hicks Street, 63.90 feet to a point;

THENCE westerly parallel with Atlantic Avenue, 228.00 feet to the easterly side of Hicks Street;

THENCE northerly along the easterly side of Hicks Street, 184.40 feet to the point or place of BEGINNING.
EXHIBIT B

Metes and Bounds Description of the Fortis Land

91-95 Pacific Street
Brooklyn, New York

Block 284, Lot 1 (formerly part of Lot 1), on the Tax Map of the Borough of Brooklyn

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

BEGINNING at a point on the easterly side of Hicks Street, 184.40 feet southerly from the corner formed by the intersection of the southerly side of Atlantic Avenue and the easterly side of Hicks Street;

RUNNING THENCE easterly parallel with Atlantic Avenue, 228.00 feet to a point;

THENCE northerly parallel with Hicks Street, 63.90 feet to a point;

THENCE westerly parallel with Atlantic Avenue 11.50 feet to a point;

THENCCE northerly parallel Hicks Street 30.50 feet to a point

THENCE easterly parallel with Atlantic Avenue 187.50 feet to the westerly side of Henry Street

THENCE southerly along the westerly side of Henry Street, 90.00 feet to a point;

THENCE westerly parallel with Atlantic Avenue, 140.00 feet to a point:

THENCE southerly parallel with Hicks Street, 50.00 feet to a point;

THENCE westerly parallel with Atlantic Avenue, 264.00 feet to the easterly side of Hicks Street;

THENCE northerly along the easterly side of Hicks Street, 45.60 feet to the point or place of BEGINNING.
EXHIBIT C

Meted and Bounds Description of the DLHC Land

Henry Street Building
97 Amity Street and 340 Henry Street
Brooklyn, New York

Polak Pavilion
363 Hicks Street
Brooklyn, New York

Block 290, Lot 13 on the Tax Map of the Borough of Brooklyn

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

BEGINNING at the corner formed by the intersection of the westerly side of Henry Street as physically opened with the northerly side of Pacific Street (as it formerly existed);

RUNNING THENCE westerly along the northerly side of Pacific Street 140 feet to a point;

THENCE southerly parallel to Henry Street 50 feet to a point;

THENCE westerly along the southerly side of Pacific Street 264 feet to the easterly side of Hicks Street;

THENCE southerly along the easterly side of Hicks Street, 200 feet to the northerly side of Amity Street;

THENCE easterly along the northerly side of Amity Street, 404 feet to the westerly side of Henry Street;

THENCE northerly along the westerly side of said Henry Street, 250 feet to the corner, the point or place of BEGINNING.
EXHIBIT D

Metes and Bounds Description of the Atlantic Premises

94-106 Atlantic Avenue
Brooklyn, New York

Block 284, Lot 17 (f/k/a Lots 17, 18, 19, 21, 23, and 24), on the Tax Map of the Borough of Brooklyn

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

BEGINNING at a point on the southerly side of Atlantic Avenue distant 37.5 feet westerly from the corner formed by the intersection of the southerly side of Atlantic Avenue with the westerly side of Henry Street;

RUNNING THENCE southerly parallel with Henry Street, 90 feet to a point;

THENCE westerly parallel with Atlantic Avenue, 150 feet to a point;

THENCE northerly again parallel with Henry Street, 90 feet to the southerly side of Atlantic Avenue;

THENCE easterly along the southerly side of Atlantic Avenue, 150 feet to the point or place of BEGINNING.
EXHIBIT II

Stewart Title Insurance Company

CERTIFICATION PURSUANT TO ZONING LOT SUBDIVISION (D) OF SECTION 12-10 OF THE ZONING
RESOLUTION OF DECEMBER 15, 1961 OF THE CITY OF NEW YORK – AS AMENDED EFFECTIVE AUGUST
18, 1977.

Stewart Title Insurance Company, a title insurance company licensed to do business in the State of New York and
having an office at 300 East 42nd Street, 10th Floor, New York, NY 10017, hereby certifies that as to the land
hereinafter described being a tract of land, either un-subdivided or consisting of two or more lots of record,
contiguous for a minimum of ten linear feet, located within a single block, that all the parties in interest constituting
a “party in interest” as defined in Section 12-10, Subdivision (D) of the Zoning Resolution of the City of New York,
effective December 15, 1961, as amended, are the following:

<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
<th>NATURE OF INTEREST</th>
</tr>
</thead>
<tbody>
<tr>
<td>FPG CH 91 Pacific, LLC</td>
<td>c/o Fortis Group, LLC, 45 Main Street, Suite 800, Brooklyn, NY 11201</td>
<td>Fee Owner of Block 284 Lot 1</td>
</tr>
<tr>
<td>Downstate at LICH Holding Company, Inc.</td>
<td>450 Clarkson Avenue, Box 1258, Brooklyn, NY 11203</td>
<td>Fee Owner of Block 290 Lot 13, Block 284 Lot 7</td>
</tr>
<tr>
<td>NYU Hospitals Center</td>
<td>550 Fifth Avenue, New York, NY 10016</td>
<td>Contract Vendee for Lot 7</td>
</tr>
<tr>
<td>FPG Cobble Hill Acquisitions, LLC</td>
<td>c/o Fortis Property Group, LLC, 45 Main Street, Suite 800, Brooklyn, NY 11201</td>
<td>Contract Vendee for Lot 13</td>
</tr>
<tr>
<td>The State University of New York</td>
<td>State University Plaza, Albany, New York 12246</td>
<td>Ground Lessee of Lot 13</td>
</tr>
</tbody>
</table>

The subject tract of land with respect to which the foregoing parties are the parties in interest as
aforesaid is known as Tax Lot 13, Block 290 and Tax Lots 1, 7 Block 284 as shown on the Tax Map of the
City of New York, Kings County, and more particularly described as follows:

Lot(s) 1
ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying
and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as
follows:

BEGINNING at a point on the easterly side of Hicks Street distant 184.40 feet southerly from the corner formed by
the intersection of the southerly side of Atlantic Avenue with the easterly side of Hicks Street;
RUNNING THENCE easterly and parallel with the southerly side of Atlantic Avenue, 228.00 feet;

THENCE northerly and parallel with the easterly side of Hicks Street, 63.90 feet;

THENCE westerly and parallel with the southerly side of Atlantic Avenue, 11.50 feet;

THENCE northerly and parallel with the easterly side of Hicks Street, 30.50 feet;

THENCE easterly and parallel with the southerly side of Atlantic Avenue, 187.50 feet to the westerly side of Henry Street;

THENCE southerly along the westerly side of Henry Street, 90.00 feet;

THENCE westerly and parallel with the southerly side of Atlantic Avenue, 140.00 feet;

THENCE southerly and parallel with the easterly side of Hicks Street, 50.00 feet;

THENCE westerly and parallel with the southerly side of Atlantic Avenue, 264.00 feet to the easterly side of Hicks Street;

THENCE northerly along the easterly side of Hicks Street, 45.60 feet to the point or place of BEGINNING.

Lot(s) 7

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

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

RUNNING THENCE easterly along the southerly side of Atlantic Avenue, 135.25 feet;

THENCE southerly and parallel with the easterly side of Hicks Street, 90 feet;

THENCE easterly and parallel with the southerly side of Atlantic Avenue, 81.25 feet;

THENCE southerly and parallel with the easterly side of Hicks Street, 30.50 feet;

THENCE easterly and parallel with the southerly side of Atlantic Avenue, 11.50 feet;

THENCE southerly and parallel with the easterly side of Hicks Street, 63.90 feet;

THENCE westerly and parallel with the southerly side of Atlantic Avenue, 228.00 feet;

THENCE northerly along the easterly side of Hicks Street, 184.40 feet to the point or place of BEGINNING.

Lot(s) 13

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

BEGINNING at the corner formed by the intersection of the westerly side of Henry Street as physically opened with the southerly side of Pacific Street (as it formerly existed);
RUNNING THENCE westerly along the southerly side of Pacific Street, 404 feet to the easterly side of Hicks Street;

THENCE southerly along the easterly side of Hicks Street, 200 feet to the northerly side of Amity Street;

THENCE easterly along the northerly side of Amity Street, 404 feet to the westerly side of Henry Street;

THENCE northerly along the westerly side of said Henry Street, 200 feet to the corner, the point or place of BEGINNING.

That the said premises are known as and by the street addresses of:
Address: 91-95 Pacific Street, Brooklyn, NY 11201 (Block 284, Lot(s) 1), as shown on the following diagram

Address: 339-357 Hicks Street and 70-76 Atlantic Avenue, Brooklyn, NY 11201 (Block 284, Lot(s) 7), as shown on the following diagram

Address: 97 Amity Street a/k/a 340 Henry Street a/k/a 363 Hicks Street, Brooklyn, NY 11201 (Block 290, Lot(s) 13), as shown on the following diagram

1. Show Distance from corner
   SEE ATTACHED DIAGRAM

2. Show Block and Lot Numbers
   and dimensions of each lot
   The north point of the diagram must agree with the arrow.
NOTE: A Zoning Lot may or may not coincide with a lot as shown on the Official Tax Map of the City of New York, or on any recorded subdivision plot or deed. A Zoning Lot may be subdivided into two or more zoning lots provided all the resulting zoning lots and all the buildings thereon shall comply with the applicable provisions of the Zoning Lot Resolution.

THIS CERTIFICATE IS MADE AND ACCEPTED BY THE APPLICANT UPON THE EXPRESS UNDERSTANDING THAT LIABILITY HEREUNDER IS LIMITED TO ONE THOUSAND ($1,000.00) DOLLARS.

DATED: 9/2/15

BY: Stewart Title Insurance Company

BY: James H. Lee Esq., Counsel, agent for Stewart Title Insurance Company

STATE OF NEW YORK: SS:

COUNTY OF Ocean

On 9/2/2015, before me, the undersigned, personally appeared, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument and that such individual made such appearance before the undersigned in the County of Ocean, State of New York.

Michal Baum
Notary Public of New Jersey
My Commission Expires July 1, 2018
EXHIBIT F

Metes and Bounds Description of the Light and Air Easement
DESCRIPTION

MEDICAL SITE LIGHT AND AIR EASEMENT

ALL that volume of space, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, from and above the Lower Limiting Plane, which is located at an elevation of one hundred forty feet and nine inches (140’ 9”) above the North American Vertical Datum of 1988 (NAVD88) within the boundaries of that certain plot, piece or parcel of land bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of Atlantic Avenue and the easterly side of Hicks Street;

RUNNING THENCE easterly along the southerly side of Atlantic Avenue, 135.25 feet to a point;

THENCE southerly parallel with Hicks Street, 90.00 feet to a point;

THENCE easterly parallel with Atlantic Avenue, 81.25 feet to a point;

THENCE southerly parallel with Hicks Street, 30.50 feet to a point;

THENCE easterly parallel with Atlantic Avenue, 11.50 feet to a point;

THENCE southerly parallel with Hicks Street, 63.90 feet to a point;

THENCE westerly parallel with Atlantic Avenue 228.00 feet to the easterly side of Hicks Street;

THENCE northerly along the easterly side of Hicks Street 184.40 feet to the point or place of BEGINNING.
EASEMENT AGREEMENT made this _____ day of __________, 20___, between
having an office/residing at  
and
, hereinafter referred to as the “Grantee,” having an office/residing at  

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

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

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

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

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

NOW, THEREFORE, good and valuable consideration having been paid, the Grantor for her/himself, her/his heirs, legal representatives, successors and assigns hereby makes the following

__________________________

4 This easement agreement may be entered into as a means of compliance with the 1968 or 2008 Building Codes by permitting such codes’ light and air requirements to be satisfied on an adjacent tax lot. However, this agreement cannot be used to permit the required light and air to be satisfied on an adjacent zoning lot in lieu of compliance with the New York City Zoning Resolution or Section 30 of the Multiple Dwelling Law.
grant to Grantee, her/his heirs, legal representatives, successors, and assigns and to any future owner of Premises B:

1. The right to unrestricted light and air over Premises A as described herein commencing at a height of ______ (___) feet above Manhattan datum, such that any construction on Premises A shall never infringe upon the light and air provided to Premises B.

2. This easement agreement may not be modified, amended or terminated without the prior written consent of the Department of Buildings.

3. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

4. Failure to comply with the terms of this easement agreement may result in the revocation of a building permit or certificate of occupancy.

5. This easement agreement shall be recorded at the city register’s (county clerk’s) office against all affected Premises of land and the cross-reference number and title of the easement agreement shall be cited on each temporary and permanent certificate of occupancy hereafter issued to buildings located on the affected Premises and in any deed for the conveyance thereof.

6. This easement agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.
EXHIBIT H

Metes and Bounds Description of the Cantilever Easement
DESCRIPTION

CANTILEVER EASEMENT

ALL that volume of space, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, from and above the Lower Limiting Plane, which is located at an elevation of one hundred forty feet and nine inches (140’ 9”) above the North American Vertical Datum of 1988 (NAVD88) within the boundaries of that certain plot, piece or parcel of land bounded and described as follows:

BEGINNING at a point on the westerly side of Henry Street, 90.00 feet southerly from the corner formed by the intersection of the southerly side of Atlantic Avenue and the westerly side of Henry Street;

THENCE westerly parallel with Atlantic Avenue 187.50 feet to the true point or place of beginning.

RUNNING THENCE southerly parallel with Hicks Street, 30.50 feet to a point; THENCE easterly parallel with Atlantic Avenue, 11.50 feet to a point;

THENCE south parallel with Hicks Street, 63.90 feet to a point;

THENCE west parallel with Atlantic Avenue, 19.00 feet to a point;

THENCE north parallel with Hicks Street, 63.90 feet to a point;

THENCE west parallel with Atlantic Avenue, 11.50 feet to a point;

THENCE north parallel with Hicks Street, 30.50 feet to a point;

THENCE east parallel with Atlantic Avenue 19.00 feet to the point or place of BEGINNING.
EXHIBIT I

Metes and Bounds Description of the DLHC Open Space Easement
DESCRIPTION

EASTERN OPEN SPACE EASEMENT

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

BEGINNING at a point on the westerly side of Henry Street, 180.00 feet southerly from the corner formed by the intersection of the southerly side of Atlantic Avenue and the westerly side of Henry Street;

RUNNING THENCE southerly along the westerly side of Henry Street, 250.00 feet to the northerly side of Amity Street;

THENCE westerly along the northerly side of Amity Street, 59.67 feet to a point; THENCE northerly parallel with Hicks Street, 1.41 feet to a point;

THENCE easterly parallel with Atlantic Avenue, 49.72 feet to a point;

THENCE northerly parallel with Hicks Street, 36.93 feet to a point;

THENCE westerly parallel with Atlantic Avenue, 49.75 feet to a point;

THENCE northerly parallel with Hicks Street, 0.61 feet to a point;

THENCE westerly parallel with Atlantic Avenue, 32.62 feet to a point;

THENCE northerly parallel with Hicks Street, 10.56 feet to a point; THENCE easterly parallel with Atlantic Avenue, 1.64 feet to a point;

THENCE northerly parallel with Hicks Street, 40.01 feet to a point;

THENCE easterly parallel with Atlantic Avenue, 13.63 feet to a point;

THENCE northerly parallel with Hicks Street, 20.72 feet to a point;

THENCE westerly parallel with Atlantic Avenue, 13.70 feet to a point;

THENCE northerly parallel with Hicks Street, 40.07 feet to a point;

THENCE westerly parallel with Atlantic Avenue, 3.77 feet to a point;
THENCE northerly parallel with Hicks Street, 10.71 feet to a point,
THENCE easterly parallel with Atlantic Avenue, 37.58 feet to a point;
THENCE northerly parallel with Hicks Street, 0.64 feet to a point;
THENCE easterly parallel with Atlantic Avenue, 46.84 feet to a point;
THENCE northerly parallel with Hicks Street, 36.97 feet to a point;
THENCE westerly parallel with Atlantic Avenue, 46.00 feet to a point,
THENCE northerly parallel with Hicks Street, 1.54 feet to a point;
THENCE westerly parallel with Atlantic Avenue, 84.04 feet to a point;
THENCE northerly parallel with Hicks Street, 50.00 feet to a point;
THENCE easterly parallel with Atlantic Avenue, 140.00 feet to the point or place of BEGINNING.

WESTERN OPEN SPACE EASEMENT

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

BEGINNING at the corner formed by the intersection of the easterly side of Hicks Street and the northerly side of Amity Street;
RUNNING THENCE northerly along the easterly side of Hicks Street, 200.00 feet to a point;
THENCE easterly parallel with Amity Street, 18.02 feet to a point;
THENCE southerly parallel with Hicks Street, 200.00 feet to a point;
THENCE westerly parallel with Amity Street, 18.02 feet to the point or place of BEGINNING.
### EXHIBIT J

**Floor Area Development Rights Chart**

<table>
<thead>
<tr>
<th></th>
<th>DLHC Land (sf)</th>
<th>Fortis Land (sf)</th>
<th>New Medical Land (sf)</th>
<th>TOTAL (sf)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Lot Area</strong></td>
<td>87,800</td>
<td>28,388</td>
<td>33,345</td>
<td>149,533</td>
</tr>
<tr>
<td><strong>2. Total Floor Area</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Development Rights</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Generated by Lot</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Area</td>
<td>TTL 444,985 [1][3]</td>
<td>CF 136,262</td>
<td>TTL 160,056</td>
<td>TTL 741,303[3]</td>
</tr>
<tr>
<td></td>
<td>RES 204,907 [2][3]</td>
<td>CF 81,028</td>
<td>RES 136,028</td>
<td>RES 354,918 [3]</td>
</tr>
<tr>
<td><strong>3. Retained Floor</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Area Development</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rights</td>
<td>CF 324,569 [4]</td>
<td>RES 162,695</td>
<td>CF 105,000</td>
<td>NA</td>
</tr>
<tr>
<td></td>
<td>RES 60,961</td>
<td>RES 68,983</td>
<td>RES 0</td>
<td>NA</td>
</tr>
<tr>
<td><strong>4. Excess Floor</strong></td>
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<td></td>
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<tr>
<td>Area Development</td>
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</tr>
<tr>
<td>Rights</td>
<td>CF 0</td>
<td>RES 0</td>
<td>CF 0</td>
<td>NA</td>
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<tr>
<td></td>
<td>RES 42,279</td>
<td>RES 55,056</td>
<td>RES 55,056</td>
<td>NA</td>
</tr>
<tr>
<td><strong>5. Allocation of</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Floor Area Development</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rights After Transfer</td>
<td>CF 324,569</td>
<td>CF 25,000</td>
<td>CF 25,000</td>
<td>CF 454,569</td>
</tr>
<tr>
<td></td>
<td>RES 101,734</td>
<td>RES 185,000</td>
<td>RES 105,000</td>
<td>RES 286,734</td>
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<td><strong>6. Pro Rata (%)</strong></td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>Allocation of Floor</td>
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<td></td>
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</tr>
<tr>
<td>Area Development Rights</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Rights After Transfer</td>
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<td>CF 5.5%</td>
<td>CF 23.1%</td>
<td>CF 100%</td>
</tr>
<tr>
<td></td>
<td>RES 35.48%</td>
<td>RES 64.52%</td>
<td>RES 0%</td>
<td>RES 100%</td>
</tr>
</tbody>
</table>

This **Exhibit J**, as shown, excludes Bonus Floor Area Development Rights. This **Exhibit J** shall be deemed modified to reflect any change in the amount of Floor Area Development Rights in the Combined Zoning Lot at any time, whether such change is the result of the utilization of Bonus Floor Area Development Rights, the acquisition of additional Floor Area Development Rights by Developer, the subdivision of the Combined Zoning Lot in accordance with the provisions of this Agreement, or any Upzoning or Downzoning of the Combined Zoning Lot. No change in this **Exhibit J** (such as filling in missing numbers) shall cause the amount of floor area allocated to the Fortis Land to be less than 185,000 square feet and the amount of floor area allocated to the New Medical Premises to be less than 105,000 square feet.

Prior to the demolition of the existing parking garage on the property at 350 Hicks Street, the amount of Floor Area Development Rights shown on the Combined Zoning Lot shall be limited to 603,640 square feet; provided that in no event shall the New Medical Land be allocated an amount of Floor Area Development Rights less than the amount allocated thereto pursuant to Row 5 of this chart.

This chart reflects the allocation of 41,250 square feet of residential floor area to the Atlantic Premises pursuant to the Atlantic ZLDA. Lot 17 has an area of 13,499 square feet, permitting a maximum floor area of 64,795 square feet of floor area for community facility use and 32,803 square feet for residential use. All of the floor area generated by the Atlantic Premises that was available after retaining floor area for the existing residential buildings thereon was transferred to the land included in this chart (collectively, the “Balance Land”) pursuant to the Atlantic ZLDA. The transfer resulted in a net addition to the total floor area and community facility floor area developable on the Balance Land of 23,545 square feet, after taking into account the reduction of 8,447 square feet of residential floor area required to be transferred from the Balance land to the Atlantic Premises.

1. TTL represents the maximum floor area permitted on the lot for any individual use or any combination of uses. In this case, the maximum floor area generated by the Land is based on the maximum community facility (CF) FAR of 4.8.

2. The maximum residential (RES) floor area generated by the Land is based on an assumed FAR of 2.43.

3. Total overall and community facility floor area is equal to the amount generated by the DLHC Land adjusted upward by the net transfer of 23,545 square feet of community facility floor area from the Atlantic Premises to the Balance Land and allocated herein.
to the DLHC Land. Residential floor area on the DLHC land is equal to the amount generated by the DLHC Land reduced by the 8,447 square feet of residential Excess Floor Area Development Rights transferred to the Atlantic Premises, a transfer allocated herein to the DLHC Land. The net transfer of total and community facility floor area referred to in the first sentence includes an adjustment to account for the residential floor area transferred to the DLHC Land.

[4] Retained Floor Area Development Rights are equal to floor area of existing buildings on the DLHC land. The allocation of Retained Floor Area Development Rights between Community Facility and Residential Uses may be adjusted upon the demolition of these existing buildings.
AMENDMENT EXHIBIT B
ROOF EASEMENT
EASEMENT GRANT AND AGREEMENT

This Easement Grant and Agreement ("Agreement" or "Grant") entered into this ____ day of September, 2015 ("Effective Date") is between DOWNSTATE AT LICH HOLDING COMPANY, INC., a New York not-for-profit corporation with an office c/o The State University of New York Health Science Center at Brooklyn, 450 Clarkson Avenue, Brooklyn, New York 11203 ("DLHC"), NYU HOSPITALS CENTER, a New York not-for-profit corporation ("NYUHC") (DLHC and NYUHC, as applicable during their respective periods of ownership of, and to the extent of their interests in, the Grantor’s Fee Parcel, “Grantor”), with an address at 550 First Avenue, New York, New York 10016, FPG CH 91 PACIFIC, LLC, a Delaware limited liability company ("Initial Grantee") with offices c/o Fortis Property Group, LLC, 45 Main Street, Suite 800, Brooklyn, New York 11201 and FPG COBBLE HILL ACQUISITIONS, LLC, a Delaware limited liability company ("Subsequent Grantee"; Initial Grantee and Subsequent Grantee, individually, or collectively, as applicable, “Grantee”) with offices c/o Fortis Property Group, LLC, 45 Main Street, Suite 800, Brooklyn, New York 11201.
W I T N E S S E T H:

WHEREAS, DLHC is the fee owner of the property commonly known as 339-357 Hicks Street and a portion of 91-95 Pacific Street in Brooklyn, New York, constituting Block 284, Lot 7 (formerly part of Lot 1) on the tax map of the Borough of Brooklyn, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the “Grantor’s Fee Parcel”);

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

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

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

WHEREAS, Initial Grantee is the fee owner of the property commonly known as a portion of 91-95 Pacific Street in Brooklyn, New York, constituting Block 284, Lot 1 (formerly part of Lot 1) on the tax map of the Borough of Brooklyn, as more particularly described on Exhibit B attached hereto and incorporated herein by reference (the “New Non-Medical Site”);

WHEREAS, DLHC is the fee owner, and pursuant to the PSA, Subsequent Grantee is the contract vendee, of the property commonly known as Block 290, Lot 13, as more particularly described on Exhibit C attached hereto and incorporated herein by reference (the “Final Closing Premises”; the New Non-Medical Site and the Final Closing Premises, individually or collectively (as permitted by
the Zoning Resolution) the “Benefited Parcel”), which Benefited Parcel is adjacent to Grantor’s Fee Parcel;

WHEREAS, Grantor’s Parcel and the Benefited Parcel are part of a single zoning lot, as such term is defined in the Zoning Resolution of the City of New York, effective as of December 15, 1961, as amended from time to time (the “Zoning Resolution”) with other parcels (the “Zoning Lot”), which Zoning Lot is the subject of certain agreements, including that certain Zoning Lot Development and Easement Agreement, dated as of even date and contemporaneously herewith, among Downstate at LICH Holding Company, Inc., FPG Cobble Hill Acquisitions, LLC, FPG CH 91 Pacific, LLC, and NYU Hospitals Center (as amended from time to time, the “ZLDA”); and

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

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

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

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

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

2. **Grant of Easement.**

   (a) Subject to the further terms and provisions hereof:
(i) Effective upon the date hereof, but subject to the restrictions below, Grantor hereby grants to Grantee and Grantee’s occupants and guests, a permanent and perpetual non-exclusive easement for use of 23,000 square feet of outdoor space at grade on the Grantor’s Fee Parcel (“Grantor’s Open Space Easement”), it being understood that it shall be Grantee’s responsibility to initially render the Grantor’s Open Space Easement at grade level usable by demolishing the existing buildings on the Grantor’s Fee Parcel and removing any debris resulting from such demolition. Grantor’s Open Space Easement shall be in locations determined, during such period preceding the NYUHC Forfeiture Date, by NYUHC in its sole discretion and may be obstructed with structures, equipment, fixtures or furniture that have been determined by the New York City Department of Buildings (“DOB”) not to reduce the area of “open space” available for Grantee’s use in generating residential floor area (as such terms are defined in the Zoning Resolution of the City of New York (the “Zoning Resolution”) to an amount below that which is required hereunder. It is understood and agreed that, notwithstanding the grant of Grantor’s Open Space Easement hereunder, Grantor shall be permitted to construct the New Medical Building. It is further understood and agreed that, prior to the Roof Completion Date (as hereinafter defined), Grantor shall have no obligation to prepare the Grantor’s Open Space Easement located at-grade so as to make it usable or accessible by Grantee or Grantee’s occupants and guests, except that, upon and after the NYU Forfeiture Date, if applicable, Grantee shall have the right to prepare Grantor’s Open Space Easement located at-grade so as to make it so usable or accessible, and DLHC shall cooperate with Grantee in connection therewith.

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

(iii) Notwithstanding the provisions of clauses (i) and (ii) above, Initial Grantee shall not use or occupy, nor shall it apply to DOB for or accept from DOB any work permit, TCO, or PCO for, any residential floor area in the Initial Grantee’s Building, that is in excess of the amount of residential floor area that is permitted based on the amount of “open space” on the Zoning Lot other than the open space in Grantor’s Open Space Easement or that assumes, represents or relies upon the provision of open space on Grantor’s Fee Parcel prior to a date which is the earlier to occur of (A) the issuance of the first TCO for the whole of the New Medical Building and (B) the NYUHC Forfeiture Date. In addition, notwithstanding the provisions of clauses (i) and (ii) above, Subsequent Grantee shall not use or occupy, nor shall it apply to DOB for or accept from DOB any work permit, TCO, or PCO for, any residential floor area in the Subsequent Grantee’s Building, that is in excess of the amount of residential floor area that is permitted based on the amount of “open space” on the Zoning Lot other than the open space in Grantor’s Open Space Easement or that assumes, represents or relies upon
the provision of open space on Grantor’s Fee Parcel prior to a date which is the earlier to occur of (A) the issuance of the first TCO for the whole of the New Medical Building; (B) the NYUHC Forfeiture Date; (C) four (4) years following the commencement of construction of the New Medical Building, as extended by Unavoidable Delays; and (D) the date which is two (2) years from the date of acquisition of the Grantor’s Fee Parcel by NYUHC if NYUHC shall not have commenced construction of the New Medical Building by such date, as extended by Unavoidable Delays; provided that, in the case of clauses (B), (C) and (D) above, Grantee shall have first obtained from DOB a determination confirming, to the satisfaction of NYUHC or DLHC (as the case may be) in its sole discretion, that DOB would not refuse to grant or approve an application for or to issue any work permit, TCO or PCO for the development, alteration, enlargement or occupancy of the New Medical Building for reasons that include the disruption of access to, or the temporary elimination or modification of, the open space on Grantor’s Fee Parcel (the “Open Space Changes”), and that DOB would not seek to rescind any such work permit, TCO or PCO based on Open Space Changes, notwithstanding that either (X) Grantee had filed an application for a work permit, TCO or PCO that relied on such open space to support the residential floor area on the Benefitted Parcel (an “Open Space Filing”), (Y) DOB had issued a work permit pursuant to such Open Space Filing, or (Z) DOB had issued a TCO or PCO pursuant to such Open Space Filing.

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

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

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

(i) Grantor shall have sole design control over the New Medical Building and its appurtenances, provided such design is not inconsistent with this Agreement.
(ii) Grantor shall have the right to install stairs and elevator bulkheads, ventilation equipment, a cooling tower and other equipment on the Roof of the New Medical Building (the “Rooftop Appurtenances”) that, in Grantor’s sole judgment, satisfy its operational requirements, subject only to the locational restrictions set forth in Section 2(b)(v) hereof.

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

(iv) Grantor shall be responsible for and shall pay for the construction and maintenance of the New Medical Building, including without limitation the structure, the Roof slab and its wearing surface, and emergency egress stairs and passageways that comply with Code and meet the standards for a medical building of the type being constructed, except that Grantee shall reimburse Grantor in installments in advance (50% on commencement of construction, 25% on 50% completion, and 25% on substantial completion) for that portion of Grantor’s costs which are in excess of the costs of building a medical facility comparable to that proposed by Grantor but without the roof loading and any other additional expenses arising from Grantee’s installations on and use of the Roof on the New Medical Building as “open space,” including, without limitation, expenses arising from the incorporation of any changes to the design of the Roof requested by Grantee pursuant to Section 2(b)(iii) hereof (such reimbursement obligation of Grantee, the “Grantee Roof Payment”). In the event that three egress stairs are required by Code within the New Medical Building solely based on Grantee’s use of Grantor’s Open Space Easement (i.e. not if a third egress stair would be required regardless of Grantee’s use of Grantor’s Open Space Easement), Grantee shall pay for the costs to construct, operate, maintain and repair one of Grantor’s Egress Stairs (such reimbursement obligation of Grantee, the “Grantee Egress Stair Payment”). (The Grantee Roof Payment, the Grantee Egress Stair Payment, and the Fortis Cantilever Payment (as set forth and defined in Section II.A.2.b of the ZLDA) shall hereinafter collectively be referred to as “Grantee’s Construction Payments”). All costs to be reimbursed by Grantee pursuant to this Section (but, for the avoidance of doubt, not the Fortis Cantilever Payment) shall be determined on an “open
(v) Grantee shall be responsible for installing, at its expense, all pavers, fixtures, furnishings, equipment and landscaping above the wearing surface of the Roof, other than the Rooftop Appurtenances; provided, however, that Grantor shall have the option to install any of the foregoing at Grantee’s expense. The foregoing improvements installed by or for Grantee are herein called the “Open Space Improvements”. In addition to Grantee’s obligation to pay for the costs to construct, operate, maintain and repair one of Grantor’s Egress Stairs under Section 2(b)(iv) hereof, Grantee shall maintain, repair, insure and replace the components of the Roof above the wearing surface other than the Rooftop Appurtenances and, if reasonably agreed to by Grantor, may make alterations to such roof components (except that Grantor shall have the option to perform any of the foregoing at Grantee’s expense), and shall provide utilities and services from Grantee’s Building, except as required for the Rooftop Appurtenances, and shall reimburse Grantor for repairs and replacements of the other portions of the Roof to the extent required due to Grantee’s improvements (including improvements installed for Grantee by Grantor) or use of the Roof. Grantor shall provide Grantee with a plan for Grantor’s Open Space Easement showing the location of all Rooftop Appurtenances. Grantee shall provide Grantor with a plan for the Open Space Improvements (the “Grantee Plan”) that is in accordance with the Grantor Plan and which shall comply with Code, shall take into account, among other things, the need to avoid leakage from Grantee’s water distribution and drainage infrastructure, and shall be subject to approval by Grantor, which approval shall not be unreasonably withheld, conditioned or delayed. The Grantee Plan shall show 75% of the open space on the Roof as “not occupiable” pursuant to Code, and the parties shall use commercially reasonable efforts to convince DOB to approve the Grantee Plan. If DOB requires changes in the Grantee Plan that allows less than 50% of the open space on the
Roof to be “not occupiable” (i.e., with the effect that occupancy would be considered more than 766 persons), this shall not affect Grantor’s obligations under this agreement and Grantor shall have no obligation to provide additional outdoor space beyond what Grantor would have to provide if DOB had allowed 50% or more of the open space to be “not occupiable”. Grantor will make good faith efforts to identify possibilities for additional “open space,” so long as the creation of the additional “open space” does not adversely affect the design, functionality, constructability, construction timing or operations, or any other aspect, of the New Medical Building, in Grantor’s discretion, and provided that in no event shall Grantor be required to accommodate an occupancy in excess of 766 persons on the Roof of the New Medical Building and that all incremental costs incurred by Grantor in effecting the modifications or thereafter in connection with the modifications will be paid by Grantee. Grantee’s construction shall comply with the requirements of the ZLDA. Alterations to the Roof and installation thereon shall be subject to the same approval, performance and cost allocation rules as are prescribed herein for initial construction thereof.

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

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

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

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

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

3. Compliance with Laws.

(a) From and after the date that Grantee shall have access to the Grantor’s Open Space Easement pursuant to this Agreement (the “Access Date”), Grantee shall comply with all applicable laws, orders, rules, ordinances, regulations and requirements of all public authorities to the extent now or hereafter affecting the Grantor’s Open Space Easement and the Open Space Improvements, or Grantee’s use of the same, or Grantee’s construction, maintenance, alteration, modification, replacement or removal of the same, (collectively, “Applicable Laws”). As used herein, (i) “Environmental Law” means any applicable federal, state or local environmental, health or safety, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards concerning or in connection with hazardous, toxic or dangerous wastes, substances, material, gas or particulate matter as now or at any time hereinafter in effect; (ii) “Hazardous Materials”
includes, without limitation, any hazardous or toxic material, substance, irritant, chemical, or waste, including without limitation (A) any material defined, classified, designated, listed or otherwise considered under any Environmental Law as a “hazardous waste,” “hazardous substance,” “hazardous material,” “extremely hazardous waste,” “acutely hazardous waste,” “radioactive waste,” “biohazardous waste,” “pollutant,” “toxic pollutant,” “contaminant,” “restricted hazardous waste,” “infectious waste,” “toxic substance,” or any other term or expression intended to define, list, regulate or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment, (B) any material, substance or waste which is toxic, ignitable, corrosive, reactive, explosive, flammable, infectious, radioactive, carcinogenic or mutagenic, and which is or becomes regulated by any local, state or federal governmental authority, any agency of the State of New York or any agency of the United States Government, (C) any oil, petroleum, petroleum based products, petroleum additives, and/or derived substances of breakdown product, (D) asbestos, (E) petroleum and petroleum based products, (F) urea formaldehyde foam insulation, (G) polychlorinated biphenyls (“PCBs”), (H) freon and other chlorofluorocarbons, (I) any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources, (J) lead-based paint, (K) solvents, and (L) Infectious Waste and medical waste. The term “Infectious Waste” means any solid waste capable of producing an infectious disease, including all bulk blood, blood products; cultures of specimens from medical, pathological, pharmaceutical, research, commercial and industrial laboratories; human tissues; organs, body parts, secretions, blood and body fluids removed during surgery and autopsies; the carcasses and body parts of all animals exposed to pathogens in research, used in the vivo testing of pharmaceuticals or that died of known or suspected infectious diseases; needles, syringes and scalpels. The term “Environmental Laws” shall include all Laws pertaining to health, industrial hygiene, Hazardous Materials or the environment, including, but not limited to each of the following, as enacted as of the date hereof or as hereafter amended: the Comprehensive Environmental Response, Compensation and

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

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

d) Grantee covenants that, from and after the Access Date, Grantee (1) shall comply with, and Grantee’s use of the Grantor’s Open Space Easement or the Open Space Improvements and the Roof shall comply with all Environmental Laws applicable to the Grantor’s Open Space Easement, (2) shall not use, and shall prohibit the use of the portion of the Grantor’s Open Space Easement or the Open Space Improvements for the generation, manufacture, storage, handling, transfer, treatment, recycling, transportation, processing, production, refinement or disposal (each, a “Regulated Activity”) or for the storage, handling or disposal of Hazardous Materials (other than as is reasonable and customary in connection with the operation and maintenance of the Grantor’s Open Space Easement or the Open Space Improvements for the Permitted Use and in commercially reasonable quantities, subject to compliance with Applicable Laws), (3) will not install or permit the installation on the Grantor’s Open Space Easement or the Open Space Improvements of any storage tanks or surface impoundments in violation of Applicable Laws and shall not permit there to exist any petroleum contamination in violation of applicable Environmental Laws originating on the Grantor’s Open Space Easement, and with respect to any petroleum contamination on the Grantor’s Open Space Easement or the Open Space Improvements which originates, from and after the Access Date, from a
source off the Grantor’s Open Space Easement or the Open Space Improvements, Grantee shall notify all responsible third parties and appropriate government agencies (collectively, “Third Parties”) and shall utilize commercially reasonable efforts to prosecute the cleanup of the Grantor’s Open Space Easement or Open Space Improvements to be performed by such Third Parties, including, without limitation, undertaking legal action, if necessary, to enforce the cleanup obligations of such Third Parties and, to the extent not done so by such Third Parties and to the extent technically feasible and commercially practicable, Grantee shall remediate such petroleum contamination, and (4) shall cause any alterations of the Grantor’s Open Space Easement or Open Space Improvements to be done in a way which complies with Applicable Laws relating to exposure of persons working on or visiting the Grantor’s Open Space Easement or Open Space Improvements to Hazardous Materials and, in connection with any such alterations, shall remove any Hazardous Materials present upon the Grantor’s Open Space Easement or Open Space Improvements which are not in compliance with applicable Environmental Laws or which present a danger to persons working on or visiting the Grantor’s Open Space Easement.

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

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

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

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

(c) Notwithstanding anything to the contrary contained herein, each of Grantor and Grantee hereby waives claims against the other for punitive, special, indirect, consequential and exemplary damages arising out of or relating to this Easement; provided, however, that nothing in this Section 4 shall be construed to constitute a waiver by either party of indemnification for punitive, special, indirect, consequential and exemplary damages awarded to a third party to the extent such waiver is prohibited by law.

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

5. **Condition of Access Grantor’s Open Space Easement.** This instrument incorporates and describes all of the grants, undertakings, conditions and considerations of the parties. Grantee, in executing and delivering this instrument, represents that it has not relied upon any promises, inducements or representations of the Grantor or its agents or employees, other than specifically
provided in this Agreement. Grantee is acquiring the Grantor’s Open Space Easement granted herein and delivery of the Roof on an “AS-IS-WHERE-IS AND WITH ALL FAULTS” basis, provided the Grantor’s Open Space Easement otherwise complies with this Agreement. Subject to the foregoing, Grantee shall accept the Grantor’s Open Space Easement and Roof in an “AS IS” condition WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER BY GRANTOR, INCLUDING BUT NOT LIMITED TO THE EXPRESS WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR CONFORMITY WITH MODELS, including the physical condition of the Grantor’s Open Space Easement and the Roof and any defects thereof, and the presence of any Hazardous Materials located in, on or under the Grantor’s Open Space Easement, subject to Grantee’s rights under Section 2(c) hereof. Except as otherwise provided in this Agreement, Grantee has not relied on any representations or warranties, and neither Grantor nor any of its agents or representatives has or is willing to make any representations or warranties, express or implied, other than as may be expressly set forth herein, as to (i) the future real estate tax liability, assessment or valuation of the Grantor’s Open Space Easement; (ii) the potential qualification of the Grantor’s Open Space Easement for any and all benefits conferred by any laws whether for subsidies, special real estate tax treatment, insurance, mortgages or any other benefits, whether similar or dissimilar to those enumerated; (iii) the availability of any financing for the purchase, alteration, rehabilitation or operation of Grantor’s Open Space Easement from any source, including, without limitation, any government authority or any lender; (iv) the current or future use of the Grantor’s Open Space Easement; (v) the present and future condition and operating state of the Grantor’s Open Space Easement and the present or future structural and physical condition and operating state of the Roof; or (vi) the actual or projected operating expenses of the Grantor’s Open Space Easement.

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

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

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

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

10. **Utilities and Security.** From and after the Access Date, Grantee shall directly contract with, and pay all charges of, the companies (“Service Providing Companies”) providing utilities and
security services to the Grantor’s Open Space Easement and Open Space Improvements, including, without limitation, water, gas, heat, light, power, sewer, electricity, telephone or other service metered and security, chargeable or provided to the Grantor’s Open Space Easement and Open Space Improvements. Grantor shall not be liable in damages or otherwise for any failure or interruption of any utility or other service furnished to the Grantor’s Open Space Easement and Open Space Improvements. No such failure or interruption shall entitle Grantee to terminate this Easement and Grantee hereby waives the provisions of any applicable existing or future law, ordinance or regulation permitting the termination of this Agreement due to an interruption, failure or inability to provide any services.

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

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

13. **Enforcement.**

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

13.2. In the event of any breach or threatened breach of this Agreement by any party hereto, the other party shall have the right to any remedy available at law, in equity or under this Agreement, including but not limited to injunctive relief, specific performance, damages (excluding
consequential damages) and the right to cure such breach (after notice and opportunity to cure) at the expense of the breaching party (and the breaching party shall, to the extent necessary be deemed to have granted a license for access to its parcel for the purpose of effecting such cure). The other party shall have a lien on the property of the breaching party in the amount of all such sums and interest not reimbursed by the breaching party in accordance with this section.

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

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

13.5. In the event that the party in violation fails to reimburse the complaining party for amounts due under this Agreement within thirty (30) days after receipt of said invoice and supporting documentation, the unpaid amount shall accrue interest (herein, the “Default Rate”) equal to the lesser of (i) 4% per annum plus the prime rate (or corporate base rate) from time to time published in the Wall Street Journal (or, if the Wall Street Journal is no longer published, then another nationally-recognized publication selected by Grantor), (ii) the maximum rate permitted by law, whichever is less, and (iii) with respect to DLHC or any successor or assign thereof that is a governmental agency or instrumentality (including, without limitation, SUNY, the State of New York, or any subsidiary or agency thereof), the rate determined pursuant to Article 11-A of the State Finance Law, and the unpaid amount together with such interest at the Default Rate shall constitute a lien (the “Unpaid Reimbursement Lien”) on the party in violation’s parcel adjacent to the Grantor’s Open Space Easement. As evidence and notice of such Unpaid Reimbursement Lien, the complaining party may
prepare a written notice of such lien setting forth the amount of delinquent indebtedness. Said lien (except for Unpaid Reimbursement Liens based on Grantee’s failure to pay Grantee’s Construction Payments under Section 2(b)(iv) hereof) shall be subordinate to any bona fide mortgage held by the lender unaffiliated to either Grantor or Grantee, as the case may be, prior to the filing of such lien. Such notice of Unpaid Reimbursement Lien shall be signed by the complaining party and shall be recorded in the Office of the City Register, Kings County, New York or such other place as may be required by law for the recording of liens affecting real property at the time such notice is recorded. Such Unpaid Reimbursement Lien shall attach to the party in violation’s parcel as of the date payment becomes delinquent and may be enforced after recording said notice by foreclosure of such Unpaid Reimbursement Lien on the party in violation’s parcel and any improvements thereon in like manner as a mortgage on real property, or by suit against the party in violation.

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

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

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

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

14.4. With respect to the Grantor Open Space Easement located at grade level, Subsequent Grantee and Initial Grantee shall jointly and severally have all of Grantee’s rights and shall be jointly and severally liable for Grantee’s obligations under this Agreement.
14.5. Subsequent Grantee and Initial Grantee shall designate one such entity (and shall notify Grantor of such designation) for purposes of providing to Grantor any approvals, determinations, notifications or other communications that this Agreement contemplates shall be provided by Grantee, and Grantor shall be permitted to rely on such designated party with respect to the foregoing.

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

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

15.2. Promptly upon Grantor’s or Grantee’s request and at Grantor’s or Grantee’s expense, Grantee or Grantor shall sign such application for, or other documentation relating to, any permits or licenses necessary or useful in order for Grantee to exercise its rights hereunder.
16. **Covenants Run with the Land; Successors and Assigns.** The easement granted herein and all other rights, privileges, covenants, conditions, and restrictions contained herein shall be deemed to be covenants running with the land. An Owner who conveys its interest in its Parcel (the “Transferring Parcel Owner”) shall be released from all obligations arising or accruing under this Agreement after the date of such conveyance (and, with respect to Grantee, for the payment of Grantee’s Construction Payments). The party to whom such Transferring Parcel Owner conveys its interest in its Parcel (except for SUNY, the State of New York, or any subsidiary or agency thereof) (the “Transferee”) shall execute and deliver to the other party(ies) an instrument pursuant to which the Transferee assumes all of the obligations of the Transferring Parcel Owner, but whether or not the Transferee complies with the foregoing, the Transferee shall be automatically liable for and be deemed to have assumed the obligations of the Transferring Parcel Owner accruing hereunder from and after the date of such conveyance. It is understood and agreed that in the event an Owner effectuates a Condominium Formation, such Owner and/or the resulting condominium association or condominium board shall remain liable under this Agreement (notwithstanding the creation of the condominium or the sale or transfer of any condominium units), including, without limitation, with respect to any payment or reimbursement obligations.

17. **Notices.** Unless otherwise provided herein, all notices, requests, demands and other communications required or permitted under this Grant shall be in writing and shall be served on the parties at the following addresses:
If to DLHC: Downstate at LICH Holding Company, Inc.  
c/o State University of New York  
State University Plaza  
Albany, New York 12246  
Attn: Robert Haelen

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

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

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

If to Initial Grantee: FPG CH 91 Pacific, LLC  
c/o Fortis Property Group, LLC  
45 Main Street, Suite 800  
Brooklyn, New York 11201  
Attn: Joel Kestenbaum

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

With copies to, as to all notices to Initial Grantee and/or Subsequent Grantee: Fortis Property Group, LLC  
45 Main Street, Suite 800  
Brooklyn, New York 11201  
Attn: Joel Kestenbaum

DLA Piper LLP (US)  
203 North LaSalle Street, Suite 1900  
Chicago, Illinois 60601-1293
Any such notices shall be either (i) sent by certified mail return receipt requested and postage pre-paid, in the United States Mail, (ii) sent by overnight delivery using a nationally recognized courier, or (iii) sent by personal hand delivery. Notices shall be deemed effective and received by Grantor on the date of actual receipt or refusal by a member of the office of the Grantor representative who is addressed, and shall be deemed effective and received by Grantee on the date of actual receipt or refusal by a member of the office of the Grantee representative who is addressed.

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

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

20. **Counterparts.** This Grant may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, and all of which shall together constitute one and the same instrument.
21. **No Waiver.** Acceptance by either party of any performance less than required hereby shall not be deemed to be a waiver of the rights of such party to enforce all of the terms and conditions hereof. Except as otherwise expressly provided herein, no waiver of any such right hereunder shall be binding unless reduced to writing and signed by the party to be charged therewith.

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

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

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

25. **Unavoidable Delays; Unavoidable Interruptions.** Whenever performance is required by any party hereunder, such party shall use reasonable due diligence to perform, and take all necessary measures in good faith to perform, its obligations; provided, however, that completion of performance shall be subject to postponement and/or suspension (as applicable), as a result of an
Unavoidable Delay or an Unavoidable Interruption. For purposes of this Agreement, the terms “Unavoidable Delay” or “Unavoidable Interruption” means delays or service interruptions incurred by the Grantor, Grantee, or their respective successors or assigns, or their respective affiliates, contractors, permitted successors, or permitted assigns, due to strikes, lockouts, or other labor disputes, severe weather conditions, earthquakes or other acts of God, inability to obtain labor or materials due to restrictions of governmental authorities, enemy action, civil commotion, fire or other casualty, Environmental Conditions (as defined in the New Medical Site Deed) at the Grantor’s Fee Parcel (and the need to remediate them), acts or omissions of FPG Cobble Hill Acquisitions, LLC, FPG CH 91 Pacific, LLC, or FPG CH 350 Hicks, LLC (and its successors and assigns as owner of the Interim Medical Site (as defined in the New Medical Site Deed), the Garage Premises (as defined in the New Medical Site Deed) and/or the New Non-Medical Site, as the case may be, and demolition and construction activities thereon) that delay the performance of the obligations of Grantor, Grantee, or their respective successors or assigns, hereunder, condemnation or act of eminent domain, acts of war or terrorism, any action by third parties (including members or representatives of the general public or the community to receive the applicable service(s)), delays in obtaining or maintaining any required license reliant on other governmental approval, any other action by any governmental agency with jurisdiction that adversely affects the ability of Grantor, Grantee or their respective successors or assigns, to satisfy their obligations to meet such deadlines or continuously provide such services, or court orders not resulting from any unlawful action by Grantor, Grantee or their respective successors or assigns, or any of their respective affiliates or contractors. The provisions of this Section shall not operate to excuse any party from the prompt payment of any monies required by this Agreement.

26. **Captions – Singular, Plural, Gender.** The Section headings herein are for convenience only and shall not be construed with any substantive effect in this Agreement. Words used herein shall be deemed to include singular and plural, and any gender as the context requires.
27. **Casualty.** In the event of casualty or condemnation of the New Medical Building, Grantor shall either (at its election) (i) use diligent efforts to rebuild the New Medical Building to the extent permitted by applicable law, in which case the New Medical Building (as so rebuilt) will provide for the Grantor’s Open Space Easement on the Roof in a manner that the Roof it is directly accessible from the Grantee’s Building, or (ii) not rebuild and provide the Grantor’s Open Space Easement at grade level.

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

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

SIGNATURES APPEAR ON THE FOLLOWING PAGE(S)
EXECUTED the day and year first above written.

NYUHC

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

By: ________________________________
   Name: ____________________________
   Title: ____________________________

DLHC

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

By: ________________________________
   Name: Robert Haelen, President

INITIAL GRANTEE

FPG CH 91 PACIFIC, LLC, a Delaware limited liability company

By: ________________________________
   Joel Kestenbaum, President

SUBSEQUENT GRANTEE

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

By: ________________________________
   Joel Kestenbaum, President
ACKNOWLEDGMENTS

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

On the ____ day of September, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared _______________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

______________________________
Notary Public

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

On the ____ day of September, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared ROBERT HAELEN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

______________________________
Notary Public

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

On the ____ day of September, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared JOEL KESTENBAUM, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacities, and that by his signatures on the instrument, the individual or the persons upon behalf of which the individual acted, executed the instrument.

______________________________
Notary Public

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EXHIBIT A

GRANTOR’S FEE PARCEL

339-357 Hicks Street
Brooklyn, New York

Block 284, Lot 7 (formerly part of Lot 1), on the Tax Map of the Borough of Brooklyn

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

BEGINNING at the corner formed by the intersection of the southerly side of Atlantic Avenue and the easterly side of Hicks Street;

RUNNING THENCE easterly along the southerly side of Atlantic Avenue, 135.25 feet to a point;

THENCE southerly parallel with Hicks Street, 90.00 feet to a point;

THENCE easterly parallel with Atlantic Avenue, 81.25 feet to a point;

THENCE southerly parallel with Hicks Street, 30.50 feet to a point;

THENCE easterly parallel with Atlantic Avenue, 11.50 feet to a point;

THENCE southerly parallel with Hicks Street, 63.90 feet to a point;

THENCE westerly parallel with Atlantic Avenue, 228.00 feet to the easterly side of Hicks Street;

THENCE northerly along the easterly side of Hicks Street, 184.40 feet to the point or place of BEGINNING.
EXHIBIT B

NEW NON-MEDICAL SITE

91-95 Pacific Street
Brooklyn, New York

Block 284, Lot 1 (formerly part of Lot 1), on the Tax Map of the Borough of Brooklyn

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

BEGINNING at a point on the easterly side of Hicks Street, 184.40 feet southerly from the corner formed by the intersection of the southerly side of Atlantic Avenue and the easterly side of Hicks Street;

RUNNING THENCE easterly parallel with Atlantic Avenue, 228.00 feet to a point;

THENCE northerly parallel with Hicks Street, 63.90 feet to a point;

THENCE westerly parallel with Atlantic Avenue 11.50 feet to a point;

THENCE northerly parallel Hicks Street 30.50 feet to a point

THENCE easterly parallel with Atlantic Avenue 187.50 feet to the westerly side of Henry Street

THENCE southerly along the westerly side of Henry Street, 90.00 feet to a point;

THENCE westerly parallel with Atlantic Avenue, 140.00 feet to a point;

THENCE southerly parallel with Hicks Street, 50.00 feet to a point;

THENCE westerly parallel with Atlantic Avenue, 264.00 feet to the easterly side of Hicks Street;

THENCE northerly along the easterly side of Hicks Street, 45.60 feet to the point or place of BEGINNING.
EXHIBIT C

FINAL CLOSING PREMISES

Henry Street Building
97 Amity Street and 340 Henry Street
Brooklyn, New York

Polak Pavilion
363 Hicks Street
Brooklyn, New York

Block 290, Lot 13 on the Tax Map of the Borough of Brooklyn

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

BEGINNING at the corner formed by the intersection of the westerly side of Henry Street as physically opened with the northerly side of Pacific Street (as it formerly existed);

RUNNING THENCE westerly along the northerly side of Pacific Street 140 feet to a point;

THENCE southerly parallel to Henry Street 50 feet to a point;

THENCE westerly along the southerly side of Pacific Street 264 feet to the easterly side of Hicks Street;

THENCE southerly along the easterly side of Hicks Street, 200 feet to the northerly side of Amity Street;

THENCE easterly along the northerly side of Amity Street, 404 feet to the westerly side of Henry Street;

THENCE northerly along the westerly side of said Henry Street, 250 feet to the corner, the point or place of BEGINNING.
EXHIBIT D

RULES FOR ROOFTOP OPEN SPACE

1. The open space shall be used only by residents of buildings on the zoning lot and their accompanying guests.

2. There shall be no cooking or barbequing or other activities that create fire or odors.

3. There shall be no amplified speaking or music.

4. Smoking shall not be allowed.

5. Pets shall not be allowed.

6. There shall be no activities constituting a nuisance, and all activities shall be in accordance with law.

7. The open space shall be used for passive recreation only; events, meetings, ceremonies, assemblies, parties or other gatherings shall not be permitted unless non-commercial in nature and limited to thirty (30) people in size and unless the same otherwise comply with clauses (1) through (6) and (8) of this Exhibit D.

8. There shall be established hours of operation, which hours shall be the minimum allowed by the Department of Buildings.
AMENDMENT EXHIBIT C
PACIFIC STREET EASEMENT
EASEMENT GRANT AND AGREEMENT (PACIFIC STREET)

THIS EASEMENT GRANT AND AGREEMENT (PACIFIC STREET) (this “Grant” or this “Agreement”) is made and entered into as of the ___ day of __________________, 2015, by and between FPG CH 91 PACIFIC, LLC, a Delaware limited liability company with offices c/o Fortis Property Group, LLC, 45 Main Street, Suite 800, Brooklyn, New York 11201 (hereinafter referred to, together with its successors and assigns, as “Grantor”), DOWNSTATE AT LICH HOLDING COMPANY, INC., a New York not-for-profit corporation with an office c/o The State University of New York Health Science Center at Brooklyn, 450 Clarkson Avenue, Brooklyn, New York 1203 (“DLHC”) and NYU HOSPITALS CENTER, a New York not-for-profit corporation with an address of 550 First Avenue, New York, New York 10016 (“NYUHC”); DLHC and NYUHC hereinafter referred to, as applicable during their respective ownership of the Benefited Parcel, together with its successors and assigns, as “Grantee”) as follows:

RECITALS:

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

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

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

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

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

**PROVISIONS:**

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

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

2. **Grant of Ingress and Egress Easement.** Grantor hereby grants and conveys to Grantee, its successors and assigns, the following non-exclusive easement appurtenant to the Benefited Parcel, over, upon, and across the Easement Parcel as described in Exhibit A for ingress and egress to and from the Benefited Parcel to provide access (a) for motor vehicle traffic (including trucks but excluding ambulances) to and from the loading dock in Grantee’s building (including pick-up and drop-off, deliveries, loading, trash disposal and pick-up), but no vehicular access shall be permitted on the sidewalks except to the extent reasonably necessary to enter into the loading dock and pursuant to Section 3 hereof, (b) for pedestrian traffic to any other entrances or exits on the Benefited Parcel, (c) for pedestrian traffic for any lawful purpose, from all portions of the Benefited Parcel abutting the Easement Parcel to and from the public street commonly known as Hicks Street, and (d) for the installation, operation, maintenance, repair and replacement of subsurface utilities which serve the Benefited Parcel. Such easement shall be perpetual over that portion of the Easement Parcel that is distant 30.0 feet or less from the northern boundary thereof, but Grantor shall have the right on sixty (60) days’ notice to Grantee to close that portion of the Easement Parcel that is more than 30.0 feet distant from its northern boundary (the “Southern Portion”) at such time as it shall determine that the Southern Portion will be used and developed as private open space for the occupants of the Zoning Lot. Grantee’s right to utilize the Easement Parcel for subsurface utilities is subject to the requirement that Grantee first obtains the prior written consent of Grantor to Grantee’s final plans and specifications for the same, which Grantor’s consent shall not be unreasonably withheld or delayed. In the event Grantor’s consent or refusal to consent is not given within thirty (30) days after the delivery of Grantee's request for consent, the consent of Grantor shall be deemed given. Grantee’s rights hereunder shall be subject and subordinate to any documents recorded prior to the date of this Agreement affecting the Easement Parcel, including, without limitation, the Agreement and Grant of Easements, dated November 28, 1994, between the City of New York and Long Island College Hospital (“LICH”) and recorded in the City Register’s Office in Reel 3551 Page 2375, the Agreement, dated July 16, 1993, between the Department of Parks and Recreation and LICH and recorded in the City Register’s Office in Reel 3551 Page 2417 (collectively, the “Recorded Documents”). In addition to the foregoing, it is acknowledged and agreed that, with respect to any portions of Pacific Street located between the eastern boundary of the Easement Parcel and Henry Street, Grantee shall have such rights of pedestrian access as are enjoyed by other residents or occupants of the Zoning Lot pursuant to and in accordance with the Recorded Documents. Notwithstanding anything to the contrary in this Agreement, the parties hereto acknowledge and agree that DLHC shall neither use the easements granted herein nor have any affirmative obligations under this Agreement in connection therewith unless and until the date that either (i) NYUHC shall no longer have the right to acquire New Medical Premises pursuant to the PSA or (ii) DLHC exercises any of its rights of reacquisition with respect to
the New Medical Premises pursuant to the New Medical Site Deed (as defined in the PSA) (such date, the "NYUHC Forfeiture Date").

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

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

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

6. **Improvements and Maintenance.**

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

(b) After completion of construction by Grantee of Grantee's New Building, the issuance of a full temporary certificate of occupancy with respect thereto by the New York City Department of Buildings and commencement of substantially all of the operations contemplated by Grantee, Grantor, at its expense and option, may install a gate across the portion of the Easement Parcel used for vehicular traffic (but not the sidewalks), provided that such gate (i) can be controlled by both Grantor and Grantee (in Grantee's case, from the loading dock in Grantee's New Building), (ii) permits entrance and exit by vehicles serving Grantee's New Building, and (iii) is located fifty (50) feet east of the western boundary of the Easement Area. If Grantor elects to install a gate, the installation, repair, maintenance and any replacement thereof shall be in compliance with applicable law, including any binding open space requirements, and restrictions of record and shall be at Grantor's expense. Grantor shall install, repair, maintain and replace, at Grantee’s request, video monitors, both at the gate and in the security post on Grantee’s loading dock, together with 2-way audio communication between such locations and remote control allowing operation of the gate from such security post.

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

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

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

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

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

9. **Compliance with Laws.**

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

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

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

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

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

10. Indemnification and Limitation of Liability.

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

(b) In any and all claims against Grantor Indemnified Parties by any employee (or the survivor or personal representative of any employee) of any Grantee Indemnifying Party, any of its contractors, any subcontractor, any supplier, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the construction, installation, operation, replacement, inspection, alteration, reconstruction, repair or maintenance of the Easement Parcel or anyone for whose acts any of them may be liable, the indemnification obligation under this Agreement shall not be limited in any way based on the amount or type of damages, compensation or benefits payable by or for any Grantee Indemnifying Party, its contractors or any such subcontractor, supplier or other person or organization under workers’ compensation acts, disability benefit acts or other employee benefit acts.
(c) Notwithstanding anything to the contrary contained herein, each of the Grantee Indemnifying Parties and Grantor hereby waives claims against the other for punitive, special, indirect, consequential and exemplary damages arising out of or relating to this Agreement; provided, however, that nothing in this Section 10 shall be construed to constitute a waiver by either party of indemnification for punitive, special, indirect, consequential and exemplary damages awarded to a third party to the extent such waiver is prohibited by law.

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

11. Enforcement.

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

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

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

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

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

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

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

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

14. **Covenants Run with the Land; Successors and Assigns.** The easement granted
herein and all other rights, privileges, covenants, conditions, and restrictions contained herein shall be
deemed to be covenants running with the land. An Owner who conveys its interest in its Parcel (the
“Transferring Parcel Owner”) shall be released from all obligations arising or accruing under this
Agreement after the date of such conveyance, but shall remain liable under this Agreement for all
obligations arising or accruing under this Agreement prior to the date of such conveyance, and the
party to whom such Transferring Parcel Owner conveys its interest in its Parcel shall be automatically
liable for the obligations of the Transferring Parcel Owner of such Parcel accruing hereunder from and
after the date of such conveyance, and shall not be liable for obligations accruing prior to the date of
such conveyance.
15. **Notices.** Unless otherwise provided herein, all notices, requests, demands and other communications required or permitted under this Grant shall be in writing and shall be served on the parties at the following addresses:

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

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

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

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

If to Grantor: FPG CH 91 Pacific, LLC  
c/o Fortis Property Group, LLC  
45 Main Street, Suite 800  
Brooklyn, New York 11201  
Attn: Joel Kestenbaum

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

With a copy to: DLA Piper LLP (US)  
203 North LaSalle Street, Suite 1900  
Chicago, Illinois 60601-1293  
Attention: Peter Ross, Esq.

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

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

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

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

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

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

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

21. **Invalidity of Provision.** If any provisions of this Grant as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction or other qualified tribunal to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permitted by applicable law) any other provision of this Grant, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Grant as a whole.
22. **Governing Law, Jurisdiction and Venue.** This Grant shall be governed by, and construed in accordance with, the laws of the State of New York, and the parties hereto (i) agree that any action or proceeding that is brought to enforce or interpret this Grant or that concerns or is in any way related to this Grant shall only be commenced in the courts of the State of New York and (ii) consent to venue and personal jurisdiction in the courts specified in the foregoing subpart (i) of this subsection.

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

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

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

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

27. **Pacific Street Strip.** To facilitate the construction of Grantee’s New Building, the portion of the Easement Parcel described on Exhibit C hereto (the “Pacific Street Strip”) will be made a separate tax lot and will, pursuant to and in accordance with the terms of a separate agreement by and between Grantor, Fortis Property Group, LLC, FPG Cobble Hill Acquisitions, LLC, and NYUHC dated September ____, 2015, a copy of which is annexed hereto as Exhibit D, be transferred from the owner of the Easement Parcel to the owner of the Benefited Parcel and will become a portion of the Benefited Parcel; provided, however, that for all other purposes of this Agreement, the Pacific Street Strip will be treated (and the rights and obligations of the parties will be determined) as if the Pacific Street Strip had remained part of the Easement Parcel (the “Pacific Street Strip Transfer”).

[SIGNATURES APPEAR ON THE FOLLOWING PAGE(S)]
IN WITNESS WHEREOF, Grantor and Grantee have executed this Grant as of the date first above written.

GRANTOR: FPG CH 91 PACIFIC, LLC, a Delaware limited liability company

By: ____________________________
    Joel Kestenbaum, President

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

By: ____________________________
    Robert Haelen, President

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

By: ____________________________

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

On the ____ day of September, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared ______________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

______________________________
Notary Public

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

On the ____ day of September, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared ROBERT HAELEN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

______________________________
Notary Public

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

On the ____ day of September, 2015, before me, the undersigned, a Notary Public in and for said State, personally appeared JOEL KESTENBAUM, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacities, and that by his signatures on the instrument, the individual or the persons upon behalf of which the individual acted, executed the instrument.

______________________________
Notary Public
EXHIBIT A
LEGAL DESCRIPTION OF EASEMENT PARCEL

91-95 Pacific Street
Brooklyn, New York

Block 284, Part of Lot 1, on the Tax Map of the Borough of Brooklyn

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

BEGINNING at a point on the easterly side of Hicks Street, 184.40 feet southerly from the corner formed by the intersection of the southerly side of Atlantic Avenue and the easterly side of Hicks Street;

RUNNING THENCE easterly parallel with Atlantic Avenue, 228.00 feet to a point;

THENCE southerly parallel with Hicks Street, 45.60 feet to a point;

THENCE westerly parallel with Atlantic Avenue, 228.00 feet to the easterly side of Hicks Street;

THENCE northerly along the easterly side of Hicks Street, 45.60 feet to the point or place of BEGINNING.
EXHIBIT B
LEGAL DESCRIPTION OF BENEFITED PARCEL

339-357 Hicks Street
Brooklyn, New York

Block 284, Lot 7 (formerly part of Lot 1), on the Tax Map of the Borough of Brooklyn

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

BEGINNING at the corner formed by the intersection of the southerly side of Atlantic Avenue and the easterly side of Hicks Street;

RUNNING THENCE easterly along the southerly side of Atlantic Avenue, 135.25 feet to a point;

THENCE southerly parallel with Hicks Street, 90.00 feet to a point;

THENCE easterly parallel with Atlantic Avenue, 81.25 feet to a point;

THENCE southerly parallel with Hicks Street, 30.50 feet to a point;

THENCE easterly parallel with Atlantic Avenue, 11.50 feet to a point;

THENCE southerly parallel with Hicks Street, 63.90 feet to a point;

THENCE westerly parallel with Atlantic Avenue, 228.00 feet to the easterly side of Hicks Street;

THENCE northerly along the easterly side of Hicks Street, 184.40 feet to the point or place of BEGINNING.
EXHIBIT C
LEGAL DESCRIPTION OF PACIFIC STREET STRIP

91-95 Pacific Street
Brooklyn, New York

Block 284, Part of Lot 1, on the Tax Map of the Borough of Brooklyn

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

BEGINNING at a point on the easterly side of Hicks Street, 184.40 feet southerly from the corner formed by the intersection of the southerly side of Atlantic Avenue and the easterly side of Hicks Street;

RUNNING THENCE easterly parallel with Atlantic Avenue, 228.00 feet to a point;

THENCE southerly parallel with Hicks Street, 10 feet to a point;

THENCE westerly parallel with Atlantic Avenue, 228.00 feet to the easterly side of Hicks Street;

THENCE northerly along the easterly side of Hicks Street, 10 feet to the point or place of BEGINNING.
EXHIBIT D
PACIFIC STREET STRIP TRANSFER AGREEMENT
RE: LICH

Ladies and Gentlemen:

Reference is hereby made to that certain First Amended and Restated Purchase and Sale Agreement, effective June 30, 2014 (the “PSA”), by and among Downstate at LICH Holding Company, Inc. (“Seller”), FPG Cobble Hill Acquisitions, LLC (“Purchaser”), NYU Hospitals Center (“NYUHC”) and Fortis Property Group, LLC (“Fortis”). Capitalized terms used but not defined in this letter have the meanings ascribed to such terms in the PSA.

In connection with the Initial Closing of the transactions described under the PSA, Purchaser, Fortis, NYUHC and FPG CH 91 Pacific, LLC (“FPG CH 91” and, together with Purchaser and Fortis, the “Fortis Parties”) hereby jointly and severally agree as follows:

Following the Initial Closing, NYUHC shall have the right to make and thereafter prosecute on behalf of FPG CH 91 any applications as NYUHC deems reasonably necessary to obtain City approval of a tax lot reapportionment (the “Tax Lot Reapportionment”) to designate the property described in Exhibit A hereto (the “Pacific Street Strip”) as a tentative or permanent tax lot separate from the New Non-Medical Site (which as of the date hereof is designated as Block 284, Lot 1), provided that NYUHC furnishes FPG CH 91 with a copy of such applications before the submission thereof to any agency and obtains FPG CH 91’s prior written approval thereof, which approval shall not be unreasonably withheld, delayed or conditioned. The Fortis Parties will use commercially reasonable efforts to respond to such request for consent within ten (10) business days. The Fortis Parties agree that, promptly upon written request from NYUHC, FPG CH 91 shall pay any outstanding taxes due on the New Non-Medical Site to the extent required to effectuate the Tax Lot Reapportionment.

The Fortis Parties agree that, upon the later to occur of (i) obtaining the Tax Lot Reapportionment and (ii) the NMS Closing, FPG CH 91 will convey the Pacific Street Strip to NYUHC, for no consideration other than reimbursements described below, subject to execution by FPG CH 91, Purchaser, NYUHC, Seller and, as indicated, any mortgagees or lien-holders on the Pacific Street Strip, of the following documents to which they are a necessary party:
1. A Deed for the conveyance of the Pacific Street Strip from FPG CH 91 to NYUHC, and related ACRIS and other forms required to record the Deed. If the Pacific Street Strip is subject to any mortgage created by or entered into by any Fortis Party or other lien created by or entered into by any Fortis Party that is not consented to by NYUHC or is not an easement permitted pursuant to any agreement to which NYUHC is a party (collectively, “Required Removal Exceptions”), the Fortis Parties shall, at their expense, but subject to the reimbursement obligation below, cause the Required Removal Exceptions to be released or to be made subordinate to NYUHC’s fee interest in the Pacific Street Strip and to the amendments set forth in Section 3 hereof (however, the reimbursement obligation below shall include the reasonable out-of-pocket expenses of any mortgagee or lienor incurred in releasing or subordinating the lien, but not the payment of any portion of the sums or obligations secured by the lien or any release or other fee). Any contract or other agreement relating to the Pacific Street Strip entered into by any of the Fortis Parties shall, after the conveyance of the Pacific Street Strip to NYUHC, be subject to the provisions of the Pacific Street Easement.

2. Release(s) or subordinations of any Required Removal Exceptions encumbering the Pacific Street Strip at Fortis' expense (except for reimbursements described below).

3. Amendments to the Site Agreements listed in this Section 3 (a) to modify all legal descriptions to correspond to the change in ownership of the Pacific Street Strip and (b) to provide as follows:

   (i) With respect to the ZLDA:

      (A) FPG CH 91 shall retain the Floor Area Development Rights (as defined in the ZLDA) attributable to the Pacific Street Strip.

      (B) The lot areas set forth in Exhibit J shall be modified to correspond to the transfer of the Pacific Street Strip, but with no change in floor area allocations.

   (ii) With respect to the Open Space Easement: NYUHC shall grant FPG CH 91 and Purchaser an open space easement over the Pacific Street Strip in addition to the 23,000-square-foot easement provided in the form of Open Space Easement annexed to the PSA.

   (iii) With respect to the Pacific Street Easement: NYUHC shall grant to FPG CH 91 all rights that it would have had as owner of the Pacific Street Strip, and FPG CH 91 will retain all obligations it would have had as such owner, except that NYUHC shall reserve all rights provided to NYUHC, and shall retain all obligations of NYUHC, in the Pacific Street Easement annexed to
the PSA, including the right of each to place utilities, conduits and similar facilities below grade.

Notwithstanding the foregoing, if Seller agrees to accept a reconveyance to it of the Pacific Street Strip prior to the NMS Closing (and to convey the Pacific Street Strip to NYUHC at the NMS Closing on the same terms as the rest of the New Medical Site), then the Fortis Parties and NYUHC will cooperate reasonably to effectuate the same expeditiously. Under no circumstances will Seller be obligated after the Initial Closing to accept title to the Pacific Street Strip. NYUHC shall prepare a first draft of the foregoing documents for review and approval, which approval shall not be unreasonably withheld or delayed if such drafts are consistent with clauses (i), (ii) and (iii) of this Section.

Without limiting the generality of any of the provisions of Section III of the ZLDA, the Fortis Parties agree that the obligations of FPG CH 91 and Purchaser under Section III of the ZLDA shall apply in all respects to any Applications (as defined in the ZLDA) made by NYUHC (1) to effectuate the Tax Lot Reapportionment or (2) that reflect or rely upon the Tax Lot Apportionment, the conveyance to NYUHC of the Pacific Street Strip and/or the merger of the Pacific Street Strip and the New Medical Site into a single tax lot, including, but limited to, any Applications for a building permit and related approvals for the New Medical Building, regardless of whether the Tax Lot Apportionment, the conveyance of the Pacific Street and/or such tax lot merger have been effectuated prior to the making of such Applications.

The Fortis Parties agree that they will cause (i) any person or entity to whom the Pacific Street Strip is transferred by any of the Fortis Parties (excluding any person or entity addressed in clause (ii) of this sentence) to agree to comply with the provisions of this letter agreement, and (ii) any person or entity to whom any of the Fortis Parties grants a mortgage secured by the Pacific Street Strip to agree to release or subordinate the lien of such mortgage as it relates to the Pacific Street Strip to NYUHC's fee interest in and to the Pacific Street Strip and the documents described in subsection (3) above.

The Fortis Parties and NYUHC agree that the actual reasonable out of pocket third party costs associated with the Tax Lot Reapportionment, and the conveyance of the Pacific Street Strip to Seller or NYUHC shall be reimbursed by NYUHC within thirty (30) days after demand by the Fortis Parties accompanied by invoices or other customary evidence setting forth in reasonable detail the amounts due, payees and services provided.

In the event of any breach of this letter agreement by the Fortis Parties, NYUHC shall have the right to any remedy available at law or in equity, including, without limitation, specific performance or injunctive relief, provided that any mortgagee that forecloses on the rights of the Fortis Parties to the Pacific Street Strip or acquires the rights of the Fortis Parties to the Pacific Street Strip by deed in lieu of foreclosure shall not be liable for damages.

This letter agreement may not be modified or amended except by a writing executed and delivered by the parties hereto, and shall be binding upon and inure to the benefit of
the parties hereto and their respective successors and assigns. This letter agreement will
be governed by and construed under the laws of the State of New York without regard to
conflicts-of-laws principles that would require the application of any other law. This letter
agreement may be executed in two (2) or more counterparts, each of which will be deemed
to be an original copy of this letter agreement and all of which, when taken together, will
be deemed to constitute one and the same agreement. The exchange of copies of this letter
agreement and of signature pages by facsimile transmission shall constitute effective
execution and delivery of this letter agreement as to the parties hereto and may be used in
lieu of the original letter agreement for all purposes. Signatures of the parties hereto
transmitted by facsimile or electronically scanned (.pdf) shall be deemed to be their original
signatures for all purposes.

[SIGNATURE PAGE FOLLOWS]
If the foregoing reflects your understanding with respect to the subject matter of this letter agreement, please acknowledge your agreement with and acceptance of the same by signing the enclosed counterpart of this letter agreement in the space provided below and returning it to the undersigned.

Very truly yours,

FPG COBBLE HILL ACQUISITIONS, LLC

By: ______________________________
   Joel Kestenbaum
   President

FORTIS PROPERTY GROUP, LLC

By: ______________________________
   Joel Kestenbaum
   President

FPG CH 91 PACIFIC, LLC

By: ______________________________
   Joel Kestenbaum
   President

Acknowledged and agreed as of the date first set forth above:

NYU HOSPITALS CENTER

By: ______________________________
   Name:
   Title:
EXHIBIT A
LEGAL DESCRIPTION OF PACIFIC STREET STRIP

91-95 Pacific Street
Brooklyn, New York

Block 284, Part of Lot 1, on the Tax Map of the Borough of Brooklyn

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

BEGINNING at a point on the easterly side of Hicks Street, 184.40 feet southerly from the corner formed by the intersection of the southerly side of Atlantic Avenue and the easterly side of Hicks Street;

RUNNING THENCE easterly parallel with Atlantic Avenue, 228.00 feet to a point;

THENCE southerly parallel with Hicks Street, 10 feet to a point;

THENCE westerly parallel with Atlantic Avenue, 228.00 feet to the easterly side of Hicks Street;
THENCE northerly along the easterly side of Hicks Street, 10 feet to the point or place of BEGINNING.
COMMUNITY FOUNDATION ESCROW FUND AGREEMENT

THIS COMMUNITY FOUNDATION ESCROW FUND AGREEMENT ("Escrow Agreement") dated this __ day of September, 2015 (the "Effective Date"), is entered into by and between DOWNSTATE AT LICH HOLDING COMPANY, INC., a New York not-for-profit corporation ("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"), and MADISON TITLE AGENCY, LLC, a New York limited liability company, having an office at 1125 Ocean Avenue, Lakewood, New Jersey 08701, as escrow agent ("Escrow Agent").

Recitals

A. This Escrow Agreement is being entered into in connection with that certain First Amended and Restated Purchase and Sale Agreement (the "Purchase Agreement") dated as of June 30, 2014 by and among Seller, Purchaser, and for the limited purposes set forth therein, Fortis Property Group, LLC, a Delaware limited liability company ("Fortis"), pursuant to which Purchaser is acquiring certain Premises and other Property, and Purchaser and Fortis are making certain commitments relating to the establishment of a not-for-profit foundation (the "Community Foundation") to make grants and investments to support community health, social services, affordable housing and other needs in the vicinity of the Premises, on the terms and subject to the conditions of the Purchase Agreement.

B. Pursuant to Section 2.2 of the Purchase Agreement (i) Purchaser is obligated at the Initial Closing to deposit Two Million Five Hundred Thousand Dollars ($2,500,000) (the "Initial Escrow Funds") with the Escrow Agent to be held in escrow in accordance with the terms of this Escrow Agreement; and (b) Purchaser may be obligated at the later of (i) the third anniversary of the Initial Closing Date; and (ii) the Final Closing, to deposit an additional Two Million Five Hundred Thousand Dollars ($2,500,000) (the "Conditional Additional Escrow Funds") with the Escrow Agent to be held in escrow in accordance with the terms of this Escrow Agreement if the Community Foundation is not yet formed or has not yet received an exemption from federal income taxation as of such date (all such funds deposited with the Escrow Agent in accordance with this Escrow Agreement are collectively referred to as "Escrow Funds" herein).

C. Purchaser agrees to place in escrow the Escrow Funds and the Escrow Agent agrees to hold and distribute the Escrow Funds in accordance with the terms of this Escrow Agreement.

D. Any capitalized terms not defined herein shall have the meanings as set forth in the Purchase Agreement. The term "Escrow Funds" will be deemed to include any interest or other investment income earned on the amounts deposited with the Escrow Agent.

IN CONSIDERATION of the promises and agreements of Seller and Purchaser, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Purchaser, Seller and Escrow Agent agree as follows:
ARTICLE 1
ESCROW DEPOSIT

Section 1.1. **Receipt of Escrow Funds.** At the Initial Closing, Purchaser shall deliver to the Escrow Agent, by wire transfer of immediately available funds, the Initial Escrow Funds, and the Escrow Agent will acknowledge to Purchaser and Seller its receipt of the Initial Escrow Funds.

Section 1.2. **Additional Escrow Funds.** If the Community Foundation has not been formed as a not-for-profit foundation or, if formed, has not received an exemption from federal income taxation as of the later of (i) the third anniversary of the Initial Closing Date; and (ii) the Final Closing, Purchaser shall deliver to the Escrow Agent on such date, by wire transfer of immediately available funds, the Conditional Additional Escrow Funds, and the Escrow Agent will acknowledge to Purchaser and Seller its receipt of the Conditional Additional Escrow Funds, which will be added to and deemed part of the Escrow Funds.

Section 1.3. **Investments.**

(a) The Escrow Agent is authorized and directed to establish a segregated account for the Escrow Funds (the “Escrow Account”) in a New York branch of a commercial bank, and to deposit, transfer, hold and invest the Escrow Funds, and any investment income on the Escrow Funds, as set forth in Exhibit A hereto, or as set forth in any subsequent written instruction signed by Seller and Purchaser. Any investment earnings and income on the Escrow Funds shall become part of the Escrow Funds, and shall be disbursed in accordance with Section 1.4 of this Escrow Agreement.

(b) The Escrow Agent is hereby authorized and directed to sell or redeem any such investments as it deems necessary to make any payments or distributions required under this Escrow Agreement. The Escrow Agent shall have no responsibility or liability for any loss which may result from any investment or sale of investment made pursuant to this Escrow Agreement. The Escrow Agent is hereby authorized, in making or disposing of any investment permitted by this Escrow Agreement, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or any such affiliate is acting as agent of the Escrow Agent or for any third person or dealing as principal for its own account. Seller and Purchaser acknowledge that the Escrow Agent is not providing investment supervision, recommendations, or advice.

Section 1.4. **Interest.** Subject to Section 1.6, any interest received by the Escrow Agent with respect to the Escrow Funds, including reinvested interest, shall become part of the Escrow Funds, and shall be disbursed in accordance with the provisions of this Escrow Agreement at the time of the distributions from the Escrow Account under Section 1.4 of this Escrow Agreement. All investment losses shall be charged against the Escrow Funds.

Section 1.5. **Disbursement.** The Escrow Agent will hold the Escrow Funds in its possession in the Escrow Account until authorized hereunder to deliver such Escrow Funds as follows:
(a) **Disbursement to the Community Foundation.** Purchaser shall deliver to the Escrow Agent documentation confirming the formation of the Community Foundation as a not-for-profit foundation and receipt of an exemption from federal income taxation, together with directions for payment of the Escrow Funds to the Community Foundation. Purchaser shall deliver copies of such documentation and directions to Seller promptly upon receipt. If Seller does not object within seven (7) days following the Escrow Agent’s delivery of such documentation to Seller, then the Escrow Agent will deliver the Escrow Funds to the Community Foundation. If the Escrow Agent receives a written objection from Seller prior to the expiration of said seven (7) day period, then the Escrow Agent shall hold the Escrow Funds until it receives joint written instructions from Seller and Purchaser or otherwise pursuant to a final, non-appealable judgment or order of the Supreme Court of the State of New York, County of Kings.

(b) Whenever the Escrow Agent shall be required to make the payment of the Escrow Funds from the Escrow Account, the Escrow Agent shall pay such amount by liquidating the investments of the Escrow Fund. Upon payment of the Escrow Funds pursuant to this Agreement, this Escrow Agreement shall terminate in accordance with the terms of Section 1.7 hereof.

Section 1.6. **Income Tax Allocation and Reporting.**

(a) Seller and Purchaser agree that, for tax reporting purposes, all interest and other income from investment of the Escrow Funds shall, to the extent required by the Internal Revenue Service, be reported by the Escrow Agent as having been earned by the party to which such interest or other income is actually disbursed, at the end of the calendar year in which such interest or other income is actually disbursed.

(b) To the extent that the Escrow Agent becomes liable for the payment of any taxes in respect of income derived from the investment of the Escrow Funds, the Escrow Agent shall satisfy such liability to the extent possible from the Escrow Funds. Purchaser shall indemnify, defend and hold the Escrow Agent harmless from and against any tax, late payment, interest, penalty or other cost or expense that may be assessed against the Escrow Agent on or with respect to the Escrow Funds and the investment thereof unless such tax, late payment, interest, penalty or other expense was directly caused by the gross negligence or willful misconduct of the Escrow Agent. The indemnification provided by this Section 1.6(b) is in addition to the indemnification provided in Section 3.1 and shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement.

Section 1.7. **Termination.** Upon the disbursement of the Escrow Funds, including any interest and investment earnings thereon, this Escrow Agreement shall terminate and be of no further force and effect except that the provisions of Sections 1.6(b), 3.1 and 3.2 hereof shall survive termination.
ARTICLE 2
DUTIES OF THE ESCROW AGENT

Section 2.1. Scope of Responsibility. Notwithstanding any provision to the contrary, the Escrow Agent is obligated only to perform the duties specifically set forth in this Escrow Agreement, which shall be deemed purely ministerial in nature. Under no circumstances will the Escrow Agent be deemed to be a fiduciary to Seller, Purchaser or any other person under this Escrow Agreement. The Escrow Agent will not be responsible or liable for the failure of Seller or Purchaser to perform in accordance with this Escrow Agreement. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Escrow Agreement, whether or not an original or a copy of such agreement has been provided to the Escrow Agent; and the Escrow Agent shall have no duty to know or inquire as to the performance or nonperformance of any provision of any such agreement, instrument, or document. References in this Escrow Agreement to any other agreement, instrument, or document are for the convenience of Seller and Purchaser, and the Escrow Agent has no duties or obligations with respect thereto. This Escrow Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred or implied from the terms of this Escrow Agreement or any other agreement.

Section 2.2. Reliance. The Escrow Agent shall not be liable for any action taken or not taken by it in accordance with the direction or consent of Seller and Purchaser or their respective agents, representatives, successors, or assigns. The Escrow Agent shall not be liable for acting or refraining from acting upon any notice, request, consent, direction, requisition, certificate, order, affidavit, letter, or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, without further inquiry into the person’s or persons’ authority.

Section 2.3. Right Not Duty Undertaken. The permissive rights of the Escrow Agent to do things enumerated in this Escrow Agreement shall not be construed as duties.

Section 2.4. No Financial Obligation. No provision of this Escrow Agreement shall require the Escrow Agent to risk or advance its own funds or otherwise incur any financial liability or potential financial liability in the performance of its duties or the exercise of its rights under this Escrow Agreement.

ARTICLE 3
PROVISIONS CONCERNING THE ESCROW AGENT

Section 3.1. Indemnification. Purchaser shall indemnify, defend and hold harmless the Escrow Agent from and against any and all loss, liability, cost, damage and expense, including, without limitation, attorneys’ fees and expenses or other professional fees and expenses which the Escrow Agent may suffer or incur by reason of any action, claim or proceeding brought against the Escrow Agent, arising out of or relating in any way to this Escrow Agreement or any transaction to which this Escrow Agreement relates, unless such loss, liability, cost, damage or expense shall have been finally adjudicated to have been directly caused by the willful misconduct.
or gross negligence of the Escrow Agent. The provisions of this Section 3.1 shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement.

Section 3.2. **Limitation of Liability.** THE ESCROW AGENT SHALL NOT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY (I) DAMAGES, LOSSES OR EXPENSES ARISING OUT OF THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES, LOSSES OR EXPENSES WHICH HAVE BEEN FINALLY ADJUDICATED TO HAVE DIRECTLY RESULTED FROM THE ESCROW AGENT’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

Section 3.3. **Resignation or Removal.** The Escrow Agent may resign by furnishing written notice of its resignation to Seller and Purchaser, and Seller and Purchaser may remove the Escrow Agent by furnishing to the Escrow Agent a joint written notice of its removal along with payment of all fees and expenses to which it is entitled through the date of termination. Such resignation or removal, as the case may be, shall be effective thirty (30) days after the delivery of such notice or upon the earlier appointment of a successor, and the Escrow Agent’s sole responsibility thereafter shall be to safely keep the Escrow Funds and to deliver the same to a successor escrow agent as shall be appointed by Seller and Purchaser, as evidenced by a joint written notice filed with the Escrow Agent or in accordance with a court order. If Seller and Purchaser have failed to appoint a successor escrow agent prior to the expiration of thirty (30) days following the delivery of such notice of resignation or removal, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon Seller and Purchaser.

Section 3.4. **Compensation.** The Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule attached hereto as Exhibit B, which shall be paid on the date hereof solely by Purchaser. The fees detailed in Exhibit B for the services rendered hereunder are intended as full compensation for the Escrow Agent’s services as contemplated by this Escrow Agreement.

Section 3.5. **Merger or Consolidation.** Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor escrow agent under this Escrow Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

Section 3.6. **Attachment of Escrow Funds; Compliance with Legal Orders.** In the event that any Escrow Funds shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Escrow Funds, the Escrow Agent is
hereby expressly authorized, in its sole discretion, to respond as it deems appropriate or to comply with all writs, orders or decrees so entered or issued, or which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction. In the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of Seller and Purchaser or to any other person, firm or corporation, should, by reason of such compliance notwithstanding, such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

**Section 3.7 Force Majeure.** The Escrow Agent shall not be responsible or liable for any failure or delay in the performance of its obligation under this Escrow Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; wars; acts of terrorism; civil or military disturbances; sabotage; epidemic; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

**ARTICLE 4 MISCELLANEOUS**

**Section 4.1. Successors and Assigns.** This Escrow Agreement shall be binding on and inure to the benefit of Seller and Purchaser and the Escrow Agent and their respective successors and permitted assigns. No other persons shall have any rights under this Escrow Agreement. No assignment of the interest of any of Seller and Purchaser shall be binding unless and until written notice of such assignment shall be delivered to the other and to Escrow Agent and shall require the prior written consent of the other and Escrow Agent.

**Section 4.2. Notices.** All notices, requests, demands, and other communications, including Joint Written Instruction, under this Escrow Agreement shall be in writing, in English, and shall be deemed to have been duly given if delivered (i) personally, (ii) by facsimile transmission or e-mail to the e-mail address given below with written confirmation of receipt obtained promptly after completion of transmission, (iii) by overnight delivery with a reputable national overnight delivery service, or (iv) by certified mail, return receipt requested, and postage prepaid. If any notice is mailed, it shall be deemed given five (5) Business Days after the date such notice is deposited in the United States mail. If notice is given to a party, it shall be given at the address for such party set forth below. It shall be the responsibility of Seller and Purchaser to notify the Escrow Agent and the other in writing of any name or address changes. In the case of communications delivered to the Escrow Agent, such communications shall be deemed to have been given on the date received by the Escrow Agent.
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

With a copy to:

DLA Piper LLP (US)
 203 North LaSalle Street, Suite 1900
  Chicago, Illinois 60601-1293
  Attention: Peter Ross, Esq.
  Telephone: (312) 368-2178
  Facsimile: (312) 630-7332

If to Seller:

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

With a copy to:

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

If to Escrow Agent:

Madison Title Agency, LLC
1125 Ocean Avenue
Lakewood, New Jersey 08701
Attention: Ms. Rachel Baum
Telephone: (732) 905-9400
Facsimile: (732) 905-9420
Section 4.4. **Governing Law.** This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

Section 4.5. **Entire Agreement.** Except for the Purchase Agreement, this Escrow Agreement sets forth the entire agreement and understanding of Seller and Purchaser related to the Escrow Funds.

Section 4.6. **Amendment.** This Escrow Agreement may be amended, modified, superseded, rescinded, or canceled only by a written instrument executed by Seller, Purchaser and the Escrow Agent.

Section 4.7. **Waivers.** The failure of any party to this Escrow Agreement at any time or times to require performance of any provision under this Escrow Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by any party to this Escrow Agreement of any such condition or breach of any term, covenant, representation, or warranty contained in this Escrow Agreement, in any one or more instances, shall neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or breach of any other term, covenant, representation, or warranty contained in this Escrow Agreement.

Section 4.8. **Headings; Interpretation.** Section headings of this Escrow Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions of this Escrow Agreement. For purposes of this Escrow Agreement “Business Day” means a day, other than a Saturday or Sunday, on which commercial banks in New York City are open for the general transaction of business.

Section 4.9. **Counterparts.** This Escrow Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

Section 4.10. **Waiver of Jury Trial.** THE PARTIES HERETO WAIVE ANY RIGHT THEY MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS ESCROW AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT OR ACTION OF ANY PARTY HERETO.

Section 4.11. **Jurisdiction.** Each of the parties submits to the exclusive jurisdiction of any state or federal court sitting in Kings County, Brooklyn, New York, in any action or proceeding arising out of or relating to this Escrow Agreement, agrees that all claims in respect of the action or proceeding may be heard and determined in any such court and agrees not to bring any action or proceeding arising out of or relating to this Escrow Agreement in any other court. Each of the
parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other party with respect thereto. Each party agrees that a final, non-appealable judgment in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by law. To the extent that in any jurisdiction any party may now or hereafter be entitled to claim for itself or its assets, immunity from suit, execution attachment (before or after judgment), or other legal process, such party shall not claim, and it hereby irrevocably waives, such immunity.

[The remainder of this page left intentionally blank.]
IN WITNESS WHEREOF, this Escrow Agreement has been duly executed as of the date first written above.

PURCHASER:

FPG COBBLE HILL ACQUISITIONS, LLC

By: _________________________
    Joel Kestenbaum, President

SELLER:

DOWNSTATE AT LICH HOLDING COMPANY, INC.

By: _________________________
    Robert Haelen, President

ESCROW AGENT:

MADISON TITLE AGENCY, LLC

By: _________________________
    Rachel Baum, Manager
EXHIBIT A

Investment Direction
For Escrow Funds

The Escrow Funds will be deposited in a segregated account at Capital One Bank. The funds will be held in a Demand Deposit Account (“DDA”) which will earn an annual rate of return of 30 basis points. Upon written direction of Purchaser and Seller, Escrow Agent will invest the funds in such other manner as directed, so long as any risk of loss resulting from investment in such vehicle is borne by Purchaser and Seller.
EXHIBIT B

Escrow Agent Fees

Escrow Agent Service Fee ..........................................................$1,000
AMENDMENT EXHIBIT E
DECLARATION
EXHIBIT T

DECLARATION OF COVENANTS AND RESTRICTIONS
(New Medical Site)

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

Declarant

Block: 284  County: Kings
Lot: 7  City: New York

State: New York

Premises: 339-357 Hicks Street
70-76 Atlantic Avenue
Brooklyn, New York 11201

Dated: ________________, 201__

RECORD AND RETURN BY MAIL TO:

Cozen O’Connor
277 Park Avenue
New York, New York 10172
Attention: Marc S. Intriligator, Esq.
DECLARATION OF COVENANTS AND RESTRICTIONS
(New Medical Site)

THIS DECLARATION (this “Declaration”) is made as of the ___ day of ______________, 201__ (the “Declaration Date”), by NYU HOSPITALS CENTER, a New York not-for-profit corporation having an office at 550 First Avenue, New York, New York 10016 (the “Declarant”).

Statement of Facts

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

Pursuant to the provisions of a certain Amended and Restated Purchase and Sale Agreement dated as of June 30, 2014, by and among Holding, Declarant, FPG Cobble Hill Acquisitions, LLC (“FPG”) and Fortis Property Group, LLC, as amended by a certain First Amendment to Amended and Restated Purchase and Sale Agreement dated as of ______________, 2015 (the “PSA”), and as part of the closing of title in connection with the conveyance of an estate in the Premises by Holding to the Declarant at the direction of FPG, the Declarant now desires to set forth certain covenants and restrictions with regard to the Premises and otherwise.

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

1. Those capitalized terms used, but not otherwise defined, in the body of this Declaration shall have the respective meanings given to such terms either:

   (a) on Schedule “2” attached to, and by this reference made a part of, this Declaration; or

   (b) in that certain deed dated contemporaneously with this Declaration (including, without limitation, in any exhibit or schedule thereto), by and between Holding and the Declarant, pursuant to which Holding conveyed an estate in the Premises to the Declarant (the “NMS Deed”).

2. The Declarant hereby declares, covenants and agrees, to, with and for the benefit of Holding and its successors and assigns, that, subject to the provisions of Paragraph 13 below:

   (a) During the Interim Care Period, the Declarant shall observe and comply with the Interim Care Continuous Operation Requirement, as such requirement may be suspended from time to time as a result of the operation of the provisions of Section 3.06 of the Interim Sublease. Further, the Declarant shall not, without the prior written consents of Holding or its successor or assign (which consent shall not be unreasonably
withheld, delayed, or conditioned with regard to any proposed material amendment to the Interim Sublease or any subletting under the Interim Sublease, but not with regard to any assignment thereof) and the AG, OSC and DASNY (which consent may be given or withheld in their sole and absolute discretion), either:

(i) enter into any material amendment of the Interim Sublease (including, without limitation, any amendment that would result in any reduction of health care services), or permit the same to be so materially amended, \textit{provided, however}, that no such consent shall be required in connection with any amendment necessary in order to comply with Law or licensing or permitting requirements; or

(ii) assign the Interim Sublease or sublease any of the premises demised thereunder, except as provided in the Interim Lease.

(b) The Declarant shall cause the New Medical Building to be designed, constructed, outfitted, equipped and finished so as to contain not less than one hundred thousand (100,000) square feet of floor area (as defined in the Zoning Resolution), suitable to conduct, at a minimum, the New Medical Operations, and in which substantially all of the usable area is devoted to Permitted Uses (excluding, however, the FHQC if, to the extent and during such period when the Declarant shall operate, or cause the operation of, an FQHC at the Red Hook Location). For avoidance of doubt, the Declarant’s undertaking and obligation herein shall include all base building, building core and building common area construction (including, without limitation, all necessary and desirable lobbies, ambulance bays, loading docks, elevators, escalators, hallways, corridors and common lavatory facilities). The design, construction, outfitting, equipping and finishing of the New Medical Building (including, without limitation, the spaces therein intended for use in providing and/or conducting the New Medical Operations) shall be done in compliance with all applicable Laws (including, without limitation, the requirements of all applicable building codes, the requirements of Article 28 of the New York Public Health Law, the requirements of the United States Occupational Safety and Health Act, the requirements of the United States Americans with Disabilities Act, the requirements of the United States Health Insurance Portability and Accountability Act and all applicable rules, regulations and requirements promulgated pursuant to, or in connection with, any of the foregoing).

(c) The Declarant shall cause the Commencement of New Medical Operations to occur on or before the New Medical Operations Deadline, as such date may be postponed pursuant to the applicable provisions of the NMS Deed.

(d) The Declarant shall cause the Commencement of Cancer Center Operations to occur on or before the Cancer Center Operations Deadline, as such date may be postponed pursuant to the applicable provisions of the NMS Deed.

(e) Both:

(i) During the New Medical Period, the Declarant, and its successors and assigns, shall observe and comply with both the NMP
Continuous Operation Requirement and the Cancer Care Continuous Operation Requirement, as either or both of such requirements may be suspended, from time to time, pursuant to the applicable provisions of the NMS Deed; and

(iii) During the period commencing on the date upon which the Commencement of New Medical Operations occurs and expiring on the Declaration Expiration Date (that is, the day that is twenty (20) years after the commencement of New Medical Operations in the New Medical Building), the Declarant, and its successors and assigns, shall observe and comply with the obligation to operate in the New Medical Building an Emergency Department operating on a twenty-four (24) hours per day, seven (7) days per week, basis. For purposes of the preceding sentence, the term “Emergency Department” shall mean a freestanding emergency department, licensed under Article 28 of the New York State Public Health Law, with all supportive services then required under said Article 28; provided, however, that a facility shall qualify as an Emergency Department only if such facility includes, without limitation, not less than four (4), and as many as twelve (12), observation beds, on an as-needed basis (and, if Declarant determines in its professional discretion, after the New Medical Operations commence, that additional observation beds are medically necessary, the Declarant, or its then successor or assign, shall ensure that the observation bed capacity is expanded to up to twenty (20) observation beds upon the receipt of New York State Department of Health and all other appropriate regulatory approvals), as the foregoing requirement to operate an Emergency Department in the New Medical Building may be suspended, from time to time, pursuant to the applicable provisions of the NMS Deed (including Sections 2(d) and 9), and including pursuant to a determination or direction of the New York State Department of Health;

(f) Not later than ___________________ (the “Community Services Commencement Deadline”), as such date may be postponed pursuant to the provisions of Paragraph 9 below, the Declarant, or its then successor or assign, shall, directly or through arrangements with one or more Responsible Affiliates and Contractors, cause to occur the Commencement of Community Services.

(g) During the period commencing on the date upon which the Commencement of Community Services occurs and expiring on the Declaration Expiration Date, the Declarant, or its then successors or assigns, shall, directly or through one or more Responsible Affiliates or Contractors, operate continuously the Community Services (the “Community Services Continuous Operation Requirement”), subject, however, to the provisions of Paragraph 9 below.

(h) During the period commencing on the date upon which the Commencement of New Medical Operations occurs and expiring on the Declaration

________________________

1 Insert the day that is twelve (12) months following the NMS Closing Date.
LEGAL.24187909.1
Expiration Date, the New Medical Building shall be used or occupied solely for the Permitted Uses, and for no other purpose or purposes, except, however, for the use of the roof of the New Medical Building, or portion(s) of such roof, as open space for purposes of the Zoning Resolution pursuant to the provisions of an easement or other agreement by and between the Declarant and FPG or its affiliate.

(i) During the period commencing on the Declaration Date and expiring thirty (30) months after Commencement of Health Care Operations, neither the Declarant nor any of its successors or assigns shall or will sell, convey, or transfer all or any portion of the Premises without the prior written approval of SUNY or its successors or assigns. For all purposes of this subparagraph, and notwithstanding anything to the contrary set forth in this subparagraph:

(ii) the mortgaging of the Premises to an Institutional Lender, or the renewal, modification, consolidation, replacement, extension, or foreclosure of a mortgage held by an Institutional Lender, with such Institutional Lender, shall not be considered to be a sale, conveyance, or transfer of the Premises, and shall not require the approval of SUNY or any successor or assign thereof;

(iii) if the Declarant’s successor or assign is a corporation, a partnership (limited or general), a joint venture, a limited liability company, or another entity, the prior written approval of SUNY or its successor or assign (which approval shall not be unreasonably withheld, delayed, or conditioned) shall be required in connection with the transfer (however accomplished, whether in a single transaction or in a series of related or unrelated transactions) of either:

(A) any stock in the Declarant (or any other mechanism, such as, by way of example, the issuance of additional stock, the execution and delivery of a stock voting agreement, or a change in class(es) of stock); or

(B) an equity or beneficial interest in such entity (or any other mechanism, such as, by way of example, the creation of additional general partnership or limited partnership interests or other interest),

provided, however, that such approval shall not be required if, after giving effect to such transfer or transfers, such successor or assign remains a Permitted NYU Entity.
(j) During the period commencing on the Declaration Date and expiring on ______________, \(^2\) neither the Declarant nor any of its successors or assigns shall lease any portion of the Premises without the prior written approval of the DOH or the then successor thereto (as the case may be), provided, however, that, except to the extent required by Law, such approval shall not be required with respect to any lease or leases:

(i) between NYUHC and any affiliate of NYUHC;

(ii) between NYUHC or New York University and faculty practice groups comprised of physicians affiliated with NYUHC or New York University;

(iii) between NYUHC and LFHC; or

(iv) of any parking garage located on the Premises.

Upon the Commencement of New Medical Operations, those declarations, covenants and agreements set forth in subparagraphs (a), (b) and (c) above shall be deemed to be null and void, and of no further force or effect. Upon the Commencement of Cancer Center Operations, those declarations, covenants and agreements set forth in subparagraph (d) above shall be deemed to be null and void, and of no further force or effect. Upon the Commencement of Community Services, those declarations, covenants and agreements set forth in subparagraph (f) above shall be deemed to be null and void, and of no further force or effect.

3. Effective upon, and as of, the Declaration Subordination Date, the covenants and conditions set forth in Paragraph 2 above, excluding, however, the covenants and conditions set forth in subparagraphs (b) and (h) thereof (which shall remain unaffected by the provisions of this Paragraph 3), shall immediately, automatically and unconditionally be deemed to be subject and subordinate, in all respects and without the payment of any compensation or consideration, to the lien of any mortgage theretofore or thereafter given by the Declarant, or its successor or assign, encumbering the Premises, and all renewals, modifications, consolidations, replacements and extensions thereof (collectively, the “Superior Mortgage”), provided, and on the conditions, that:

(a) as of the Declaration Subordination Date, neither the Declarant, nor any of its successors or assigns, shall be in breach or default of any of the provisions contained in this Declaration (including, without limitation, any of the provisions contained in Paragraph 2 above) beyond the expiration of the cure and remedy period provided for in Paragraph 5 below after the giving of the notice of default provided for therein; and

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

Provided that the foregoing conditions are satisfied, Holding or its then successor or assign shall execute and deliver (with signatures acknowledged) documents confirming such subordination (which documents, if requested by the Declarant, or its successor or assign, shall be in recordable form), promptly following the delivery to Holding, or such successor or assign, of any and all such documents.

\(^2\) Insert the day that is ten (10) years following the Initial Closing Date.
by the Declarant or its successor or assign (which delivery shall not be made prior to the Declaration Subordination Date), which documents shall be subject to the approval of Holding or its successor or assign (which approval shall not be unreasonably withheld, delayed, or conditioned). All reasonable, out of pocket, costs and expenses incurred by Holding or its successor or assign in connection with such confirmation (including, without limitation, all reasonable attorneys’ fees and disbursements in connection therewith) shall be reimbursed by the Declarant, or by its then successor or assign, to Holding or its successor or assign within thirty (30) days after written demand therefor, which demands may be made from time to time at reasonable intervals. For sake of clarification, Holding, on behalf of itself and any and all of its successors and assigns, acknowledges and agrees that, from and after the Declaration Subordination Date, the foreclosure of the lien of any Superior Mortgage will, if the conditions set forth in subparagraphs (a) and (b) above are satisfied, extinguish all of the covenants and conditions set forth in Paragraph 2 above, excluding, however, the covenants and conditions set forth in subparagraphs (b) and (h) thereof (which shall remain unaffected by such foreclosure).

4. If, as of the Declaration Expiration Date, neither the Declarant, nor any of its successors or assigns, shall be in breach or default of any of the provisions contained in this Declaration (including, without limitation, any of the provisions contained in Paragraph 2 above) beyond the expiration of the cure and remedy period provided for in Paragraph 5 below after the giving of the notice of default provided for therein (or, if the Declarant or such successor or assign is in uncured default as of the Declaration Expiration Date, then as of the day thereafter, if any, when such default is fully cured and remedied), then all of the terms, covenants and conditions set forth in this Declaration shall immediately, automatically and unconditionally be deemed to be terminated and of no further force or effect, without the payment of any compensation or consideration. Provided that the foregoing condition is satisfied, Holding or its then successor or assign shall execute and deliver (with signatures acknowledged) documents confirming such termination (which documents, if requested by the Declarant, or its successor or assign, shall be in recordable form), promptly following the delivery to Holding, or such successor or assign, of any and all such documents by the Declarant or its successor or assign (which delivery shall not be made prior to the Declaration Expiration Date), which documents shall be subject to the approval of Holding or its successor or assign (which approval shall not be unreasonably withheld, delayed, or conditioned). All reasonable, out of pocket, costs and expenses incurred by Holding or its successor or assign in connection with such confirmation (including, without limitation, all reasonable attorneys’ fees and disbursements in connection therewith) shall be reimbursed by the Declarant, or by its then successor or assign, to Holding or its successor or assign within thirty (30) days after written demand therefor, which demands may be made from time to time at reasonable intervals.

5. In the event of a breach or threatened breach by the Declarant, and/or by any of its successors or assigns, of any of the terms, covenants and/or conditions set forth in this Declaration (including, without limitation, in Paragraph 2 above), Holding, and its successors or assigns, shall have the right to give a written notice of default to the Declarant or its successors or assigns in the manner set forth in Paragraph 10 below. From and after the effective date of such notice, the Declarant or such successor or assign shall be allowed thirty (30) days to completely cure and remedy the default(s) set forth in such notice, provided, however, that, if the default cannot, with due diligence, be completely cured and remedied within such thirty (30) day period, but is of a nature that it can be completely cured and remedied within a reasonable period of time after the expiration of such thirty (30) day period, then the period for curing and remedying such default shall be extended beyond such thirty (30) day period, if the Declarant or such successor or assign shall:
(a) advise Holding, or its successor or assign, in writing, within such thirty (30) day period, of the intention to duly institute all steps necessary to completely cure and remedy such default;

(b) duly institute, within such thirty (30) day period, all steps necessary to completely cure and remedy such default, and thereafter diligently prosecute such steps to completion; and

(c) complete such cure and remedy within such time after the expiration of such thirty (30) day period as shall reasonably be necessary to effect such cure and remedy.

6. In the event of a breach or threatened breach by the Declarant, and/or by any of its successors or assigns, of any of the terms, covenants and/or conditions set forth in this Declaration (including, without limitation, in Paragraph 2 above), which breach shall not be cured and remedied within the applicable period provided in Paragraph 5 above after the giving of the notice of default provided for therein, Holding, and its successors and assigns, shall have the right of injunction, as well as the right to invoke any other remedy allowed at law or in equity (excluding, however, any remedy calling for the payment of monetary damages or costs, except as otherwise specifically provided in the next sentence of this Paragraph 6). Nothing contained in this Paragraph 6 shall be construed to limit or preclude the recovery by Holding and/or its successors and assigns of any sums or damages to which any of them may lawfully be entitled by reason of any breach of the terms, covenants and/or conditions set forth in Section 10.6 of the PSA. However, notwithstanding anything to the contrary set forth in this Declaration (including, without limitation, in this Paragraph 6), in no event shall any holder of title to the Premises be:

(a) liable for any money damages, other than as specifically provided above;

(b) subject to any consequential or special damages; or

(c) subject to any right of rescission or reacquisition, other than pursuant to the Fuller/Other Deed.

7. Subject, in all respects, to the cure and remedy rights of the Declarant, or its successor or assign, under Paragraph 5 above and to the limitations as to remedies set forth in Paragraph 6 above:

(a) any mention in this Declaration, in the NMS Deed and/or in the PSA (to the extent of those provisions of the PSA that have survived the closing of title to the Premises) of any particular right or remedy shall not preclude Holding, its successors and assigns, from any other remedy, in law or in equity;

(b) no right or remedy conferred upon, or reserved to, Holding, its successors and 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 under this Declaration, the NMS Deed and/or the PSA (to the extent of those provisions of the PSA that have survived the closing of title to the Premises), or now or hereafter existing at law or in equity; and
(c) 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.

8. Notwithstanding the foregoing or anything to the contrary provided in this Declaration, in the NMS Deed and/or in the PSA (to the extent of those provisions of the PSA that have survived the closing of title to the Premises), although Holding and/or its successors or assigns (as the case may be) shall have the right to enforce the terms, covenants and conditions set forth in this Declaration (including, without limitation, in Paragraph 2 above), neither Holding, any Holding Affiliate, nor the State of New York shall have the obligation to do so. Notwithstanding anything in this Declaration to the contrary, the Declarant acknowledges and agrees, both for itself and its successors or assigns, that Holding’s (or its assignee’s or designee’s) exercise of the rights granted to it pursuant to this Declaration, the NMS Deed and/or in the PSA (to the extent of those provisions of the PSA that have survived the closing of title to the Premises) shall not be considered an act of eminent domain or condemnation.

9. For all purposes of Paragraph 2 above, the Community Services Commencement Deadline shall be subject to postponement, and the Community Services Continuous Operation Requirement shall be subject to suspension, only as a result of an Unavoidable Delay or an Unavoidable Interruption. The Declarant, or its successor or assign, shall give Holding, or its successor or assign, notice of such Unavoidable Delay or Unavoidable Interruption promptly after the Declarant, or such successor or assign, obtains factual knowledge of the occurrence of the same. The Community Services Commencement Deadline shall be postponed, and/or the Community Services Continuous Operation Requirement shall be suspended, in each case only by the period of delay or interruption of operations reasonably caused by the Unavoidable Delay or Unavoidable Interruption.

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

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

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

- with a copy to -

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

(b) with respect to notices to the Declarant or its successor or assign, to:
NYU Hospitals Center
550 First Avenue
New York, NY 10016
Attention: Vicki Match Suna, Senior Vice President-Real Estate

- with copies to -

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

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

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

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

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

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

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

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

(d) as to such other matters as Holding or such other requesting party may reasonably request,
which certifications made pursuant to subparagraphs (c) and (d) above may, in the sole discretion of the Declarant or such successor or assign, be upon its knowledge in whole or in part.

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

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

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

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

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

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

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

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

15. If any provision of this Declaration, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent, be held to be invalid, inoperative, or unenforceable, the remainder of this Declaration, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby. It shall not be deemed that any such invalid provision affects the consideration for this Declaration, and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by Law.
16. This Declaration shall be construed in accordance with the Laws of the State of New York.

17. Unless and until the Future Estate Holder shall succeed to the fee simple title in and to the Premises pursuant to the applicable provisions of the NMS Deed, this Declaration may be amended, modified, or terminated only by an instrument in writing, executed and acknowledged by both the Declarant and Holding, or their respective successors or assigns. From and after the date, if any, when the Future Estate Holder shall succeed to the fee simple title in and to the Premises pursuant to the applicable provisions of the NMS Deed, this Declaration may be amended, modified, or terminated at any time, solely by an instrument in writing, executed and acknowledged by such Future Estate Holder or its successor or assign.

[Signatures begin at the top of the next page.]
IN WITNESS WHEREOF, the Declarant has duly executed this Declaration as of the day and year first above written.

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

By: __________________________
   Name: _______________________
   Title: ________________________

Downstate at LICH Holding Company, Inc., hereby joins in the execution and delivery of this Declaration for the limited purposes of agreeing to the provisions of Paragraphs 3, 4, 10, 12 and 17 hereof.

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

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

______________
Notary Public

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

______________
Notary Public
Schedule “1”
to
Declaration of Covenants and Restrictions

Legal Description of the Land

339-357 Hicks Street and
70-76 Atlantic Avenue
Brooklyn, New York

Block 284, Lot 7 (formerly part of Lot 1), on the Tax Map of the Borough of Brooklyn

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

BEGINNING at the corner formed by the intersection of the southerly side of Atlantic Avenue and the easterly side of Hicks Street;

RUNNING THENCE easterly along the southerly side of Atlantic Avenue, 135.25 feet to a point;

THENCE southerly parallel with Hicks Street, 90.00 feet to a point;

THENCE easterly parallel with Atlantic Avenue, 81.25 feet to a point:

THENCE southerly parallel with Hicks Street, 30.50 feet to a point;

THENCE easterly parallel with Atlantic Avenue, 11.50 feet to a point;

THENCE southerly parallel with Hicks Street, 63.90 feet to a point;

THENCE westerly parallel with Atlantic Avenue, 228.00 feet to the easterly side of Hicks Street;

THENCE northerly along the easterly side of Hicks Street, 184.40 feet to the point or place of BEGINNING.
Schedule “2”
to
Declaration of Covenants and Restrictions

Certain Definitions

“AG” means the New York State Office of the Attorney General.

“Commencement of Community Services” means the commencement by the Declarant, or its successor or assign, either directly or through one or more Responsible Affiliates and/or Contractors, of providing all of the Community Services with and to the public, with all necessary licenses, permits, authorizations and approvals therefor.

“Community Services” means all of the following services to the public, as well as such other services as the Declarant, its successors and assigns, shall elect to provide:

(a) dialysis services in the community surrounding the New Medical Premises; and

(b) home care services within the Borough of Brooklyn,

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

“DASNY” means the Dormitory Authority of the State of New York.

“Declaration Expiration Date” means the day that is twenty (20) years after the Commencement of New Medical Operations.

“Declaration Subordination Date” means the latest day to occur of:

(a) the Commencement of New Medical Operations;

(b) the Commencement of Cancer Center Operations; and

(c) the Commencement of Community Services.
“Holding Affiliates” shall mean:

(a) SUNY, any entity within SUNY and any direct or indirect subsidiaries thereof;

(b) the Health Science Center at Brooklyn Foundation and any direct or indirect subsidiaries thereof;

(c) Staffco of Brooklyn, LLC and any direct or indirect subsidiaries thereof;

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

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

“OSC” means the New York State Office of the State Comptroller.

“Permitted NYU Entity” means:

(a) New York University, a New York education corporation (“NYU”);

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

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

(d) any entity that is affiliated with the Declarant or NYU; and

(e) any entity to which substantially all of the assets of the Declarant or NYU are transferred, or into which the Declarant or NYU may be merged or consolidated.