

First American Title
Title # 3020-832991

DECLARATION OF COVENANTS AND RESTRICTIONS
(New Medical Site)

NYU LANGONE HOSPITALS,
(f/k/a 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
a/k/a 70-76 Atlantic Avenue
Brooklyn, New York 11201

Dated: March 13, 2020

RECORD AND RETURN BY MAIL TO:

Cozen O'Connor
277 Park Avenue
New York, New York 10172
Attention: Joseph A. Mascia, Esq.

DECLARATION OF COVENANTS AND RESTRICTIONS
(New Medical Site)

THIS DECLARATION (this "*Declaration*") is made as of the 13th day of March, 2020 (the "*Declaration Date*"), by NYU LANGONE HOSPITALS, 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 First Amended and Restated Purchase and Sale Agreement dated as of June 30, 2014, by and among Holding, NYU Hospitals Center (n/k/a NYU Langone Hospitals), Declarant, FPG Cobble Hill Acquisitions, LLC ("*FPG*") and Fortis Property Group, LLC, as amended by a certain First Amendment to First Amended and Restated Purchase and Sale Agreement dated as of September 1, 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, *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

(ii) 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 March 13, 2021 (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 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:

(i) 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;

(ii) the approval of SUNY or any successor or assign thereof shall not be required in connection with a sale, conveyance, or transfer of all or any portion of the Premises, after the Commencement of Health Care Operations, to a Permitted NYU Entity; and

(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 September 1, 2025, 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 NYULH and any affiliate of NYULH;

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

(iii) between NYULH 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 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: Joseph A. Mascia, Esq.

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

to:

NYU Langone Hospitals
RED+F
550 First Avenue
New York, NY 10016
Attention: Vicki Match Suna, Senior Vice President, Real Estate
Development and Facilities

- with copies to -

NYU Langone Hospitals
RED+F

550 First Avenue
New York, NY 10016
Attention: Annette Johnson, Esq., Executive Vice President, General
Counsel

NYU Langone Hospitals
RED+F
1 Park Avenue, 5th Floor
New York, NY 10016
Attention: Director of Real Estate

Pillsbury Winthrop Shaw Pittman LLP
31 West 52nd Street
New York, NY 10019
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 LANGONE HOSPITALS, a New York not-for-profit corporation

By: 
Name: Dr. Robert I. Grossman
Title: Chief Executive Officer

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: Robert M. Haelen
Title: President


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

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

By: _____
Name: Robert I. Grossman
Title: Chief Executive Officer

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: Robert M. Haelen
Title: President

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

On the 18 day of March, in the year 2020, before me, the undersigned, personally appeared Dr. Robert I. Grossman, 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 SHEILA EISENBERG
Notary Public, State of New York
Reg. No. 4932212
Qualified in New York County
Commission Expires 6/28/2023

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

On the ___ day of March, in the year 2020, before me, the undersigned, personally appeared Robert M. 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 (s)he acknowledged to me that (s)he executed the same in (his)(her) capacity described thereon, and that by (his)(her) signature upon the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

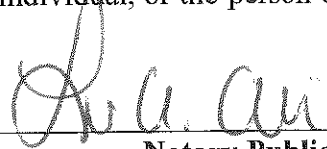
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the ___ day of March, in the year 2020, before me, the undersigned, personally appeared Robert I. Grossman, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and (s)he acknowledged to me that (s)he executed the same in (his)(her) capacity described thereon, and that by (his)(her) signature upon the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

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

On the 9th day of March, in the year 2020, before me, the undersigned, personally appeared Robert M. 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 (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

Lori A. Aldi
Notary Public in the state of New York
Qualified in Schenectady County
Reg. No. 01AL6003477
My commission Expires
March 2, 2022

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 NYULH 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 NYULH 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.