

RESOLUTION APPROVING THE ASSIGNMENT, ASSUMPTION AND AMENDMENT OF
LEASE OF REAL PROPERTY

WHEREAS, on December 2, 2012, Interfaith Medical Center (“IMC” or Interfaith”) filed a petition under Chapter 11 of the United States Bankruptcy Code; and

WHEREAS, on June 11, 2014 the United States Bankruptcy Court confirmed a Chapter 11 Plan (effective on June 19, 2014), which resulted in, *inter alia*, Atlantic Avenue Healthcare Property Holding Corporation (“Atlantic Avenue”) taking title to Interfaith’s real property, and a restructured Interfaith (“New IMC”) operating a hospital at the premises subject to a lease and related agreements with Atlantic Avenue; and

WHEREAS, as a result of these proceedings, Atlantic Avenue entered into a Lease Agreement with New IMC dated as of June 19, 2014 for all real property owned by Atlantic Avenue in Brooklyn (Kings County), New York (the “New IMC Lease”); and

WHEREAS, on April 13, 2015, Governor Cuomo secured budget legislation creating a new Public Health Law Section 2825-a (Health Care Facility Transformation Program: Kings County Project) to, *inter alia*, provide up to \$700 million in capital grant funding to strengthen and protect continued access to health care services in Brooklyn through projects that replace inefficient and outdated facilities as part of a **merger, consolidation, acquisition or other significant corporate restructuring activity** intended to create a financially sustainable system of care (emphasis supplied); and

WHEREAS, on April 20, 2016, the New York State Department of Health (DOH) announced a grant to Northwell Health to conduct a feasibility study for Kings County that would include recommendations for providing comprehensive, sustainable health care to residents of central and northeastern Brooklyn; and

WHEREAS, Northwell Health issued its study entitled "The Brooklyn Study: Reshaping the Future of Healthcare," in October 2016;¹ and

WHEREAS, on October 14, 2016, consistent with the recommendations in Northwell Health's October 2016 study, Brookdale Hospital Medical Center, New IMC and Kingsbrook Jewish Medical Center formed One Brooklyn Health System, Inc. (“OBHS”) to, *inter alia*, create a new, integrated central health care delivery system to transform health care and increase access to quality care in Central Brooklyn; and

WHEREAS, on March 9, 2017, DOH and DASNY announced a Request for Applications (“RFA”) for the Kings County Project pursuant to Public Health Law Section 2825-a; and

¹ <https://www.northwell.edu/about/our-organization/northwell-ventures/brooklyn-study>

WHEREAS, on January 24, 2018, Governor Cuomo announced the award to OBHS of approximately \$664 million in capital grant funding pursuant to Public Health Law 2825-a to support the State's ongoing efforts to transform the health care system, and OBHS's Transformation Plan submitted with its grant application for an approximately 32-site ambulatory care network, critical clinical and facility infrastructure improvements and a system-wide health information technology platform (collectively, the "Transformation Plan"); and

WHEREAS, post-award work on OBHS's Transformation Plan and \$664 million capital grant award continues to date; and

WHEREAS, in furtherance of this Transformation Plan, OBHS requested authorization from the DOH to complete a proposed full asset merger of New IMC and Kingsbrook Jewish Medical Center into Brookdale Hospital Medical Center (which will be the sole surviving Article 28 hospital with three separate divisions, for each of Brookdale, New IMC and Kingsbrook), together with certification of all sites as divisions and extension clinics of Brookdale Hospital Medical Center; and

WHEREAS, on October 14, 2020, DOH issued contingent approval of the proposed full asset merger; and

WHEREAS, OBHS, Brookdale Hospital Medical Center, New IMC and Kingsbrook Jewish Medical Center have requested all relevant approvals from the Dormitory Authority of the State of New York ("DASNY") and Atlantic Avenue in connection with this proposed merger, including without limitation all consents and other approvals required by the various loan, security and other agreements between the parties (including without limitation the New IMC Lease); and

WHEREAS, Section 10.1 of the New IMC Lease requires, *inter alia*, the prior consent of Atlantic Avenue to any sale, assignment, sublease, license or other transfer of the demised premises; and

WHEREAS, Section 4.4 of the Atlantic Avenue Bylaws requires Subsidiary Board approval of any acquisition, sale or lease of real property by Atlantic Avenue; and

WHEREAS, in the context of the proposed full asset merger, New IMC and Brookdale Hospital Medical Center have proposed the assignment of the New IMC Lease by New IMC to Brookdale Hospital Medical Center, together with the complete assumption of all responsibility and liability under the New IMC Lease by Brookdale Hospital Medical Center and an amendment of New IMC Lease with Atlantic Avenue establishing Brookdale Hospital Medical Center as tenant; and

WHEREAS, New IMC has previously requested modification of the New IMC Lease to include a reduction in the rental liability; and

WHEREAS, after review, Staff has proposed a reduction of rent to a nominal amount in exchange for Brookdale Hospital Medical Center agreeing to pay all lease arrears through November 2020 of approximately \$29.8 million (payable on or before 2/15/2028) and other consideration including but not limited to an updated and conformed security package; and

WHEREAS, Staff has had the opportunity to confer with the Department of Health and Division of Budget on this proposal and consult with external counsel (Law Offices of Barry D. Lites LLP) in this matter; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Atlantic Avenue Healthcare Property Holding Corporation, as follows:

1. Staff and external counsel are authorized to proceed to take the necessary action and prepare the appropriate documents consistent with this Resolution; and
2. An Authorized Officer of Atlantic Avenue is hereby authorized to negotiate and execute any and all documentation necessary to authorize the assignment, assumption and amendment of the New IMC Lease as described herein, in form and content acceptable to such Authorized Officer, and to execute and deliver any and all further documents and to take all actions, as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the transactions contemplated herein.

Dated: December 9, 2020