

<p><b>Prepared by and Return to:</b></p> <p><b>RPC #</b></p>	<p><b>Assessed Value:</b> No assessed value has been assigned to the interests herein conveyed. No conveyance of real property is contemplated by this instrument.</p>
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## ACCESS AND TEMPORARY CONSTRUCTION MANAGEMENT AGREEMENT

THIS ACCESS AND TEMPORARY CONSTRUCTION MANAGEMENT AGREEMENT (this “*Agreement*”), made as of the \_\_\_\_ day of \_\_\_\_\_, 2021 (the “*Effective Date*”), by and among the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALEXANDRIA**, a political subdivision of the Commonwealth of Virginia (the “*IDA*”), **LANDMARK LAND HOLDINGS, LLC**, a Delaware limited liability company (“*Developer*”), and **INOVA HEALTH CARE SERVICES**, a Virginia non-stock corporation (“*Inova*”). Individually the IDA, Developer and Inova may each be referred to as a “*Party*,” or collectively as the “*Parties*.”

### RECITALS

WHEREAS, the IDA is the owner of certain real property situated in the City of Alexandria, Virginia, more particularly described on Exhibit A (the “*Inova Site*”).

WHEREAS, the IDA, as landlord, and Inova, as tenant, have entered into that certain Ground Lease of the Inova Site dated as of even date herewith (the “*Ground Lease*”).

WHEREAS, the IDA, with the consent of Inova, has agreed to grant Developer access to the Inova Site, subject to the terms and conditions set forth in this Agreement, to demolish existing improvements and to develop, construct and complete the portion of the “Inova Pad Ready Scope of Work” (as such term is defined in that certain Development and Financing Agreement dated as of \_\_\_\_\_, 2021 by and among, the City of Alexandria, Virginia, a body politic of the Commonwealth of Virginia (the “*City*”), Developer and Inova (as amended from time to time, the “*Development Agreement*”) which affects the Inova Site (the “*On-Site Portion of the Inova Pad Ready Scope of Work*”), on the Inova Site in accordance with the terms of the Development Agreement and this Agreement.

WHEREAS, the IDA with the consent of Developer has further agreed to grant Inova access to the Inova Site, subject to the terms and conditions set forth in this Agreement, and subject to the terms and conditions of the Ground Lease, to develop and construct the “Hospital Facilities” (as such term is defined in the Development Agreement), on the Inova Site in accordance with the terms of this Agreement. For clarity, as between Inova and the IDA, the Ground Lease shall govern Inova’s development and construction obligations.

WHEREAS, ingress, egress and other rights pertaining to the Inova Site are further set forth in a Reciprocal Easement Agreement between the IDA, Inova, and Developer of even date herewith (the “*REA*”);

WHEREAS, the performance of the On-Site Portion of the Inova Pad Ready Scope of Work and certain elements of the construction of the Hospital Facilities (collectively, the “*Parties Respective Scopes of Work*”) may occur in part concurrently;

WHEREAS, Developer and Inova have agreed to reasonably cooperate with one another in the performance of each Party's obligations under the Development Agreement including the performance of the On-Site Portion of the Inova Pad Ready Scope of Work and in the development of the Hospital Facilities (each, a "**Project**" and together, the "**Projects**"), pursuant to the terms of this Agreement.

WITNESSETH:

In consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation of Recitals. Each of the foregoing recitals is incorporated herein by reference and made a part of this Agreement. All capitalized terms used but not otherwise defined in this Agreement shall have the meaning assigned to such terms in the Development Agreement.

2. Access.

2.1. Grant of Access to Developer. Subject to the limitations set forth in this Agreement, Developer, and its employees, agents, contractors, consultants, advisors, attorneys and other authorized representatives (collectively and including Developer, "**Developer's Representatives**") shall have the right to enter onto the Inova Site for the purpose of examining, investigating, designing, developing and constructing the On-Site Portion of the Inova Pad Ready Scope of Work in accordance with the terms of the Development Agreement and the terms of this Agreement and to license the use of the Inova Site prior to commencement of construction of the On-Site Portion of the Inova Pad Ready Scope of Work for any non-healthcare service activity which is (a) not reasonably expected to cause "Hazardous Materials" (defined below) to contaminate the Inova Site, (b) is not reasonably expected to materially interfere with Inova's examining, investigating, designing, developing and constructing the Hospital Facilities on the Inova Site, and (c) otherwise permitted under applicable law, provided that the confirmation of the IDA (following the IDA's consultation with Inova) shall be required as to the determination that the proposed use meets the criteria of clauses (a), (b), and (c) above. The access rights granted herein are in addition to the rights provided in the REA.

2.2. Grant of Access to Inova. Subject to the limitations set forth in this Agreement, Inova, and its employees, agents, contractors, consultants, advisors, attorneys and other authorized representatives (collectively and including Inova, "**Inova's Representatives**") shall have the right to enter onto the Inova Site for the purpose of examining, investigating, designing, developing and constructing the Hospital Facilities.

3. Concurrent Construction. For the purposes of this Agreement, the term "**Constructing Party**" shall mean and refer to either or both of Developer or Inova, and be applicable to such Party in connection with the construction of such Constructing Party's Project upon the Inova Site. For the avoidance of doubt, simultaneous construction of the Parties Respective Scopes of Work may occur on the Inova Site (the "**Concurrent Construction**"). In connection with the Concurrent Construction:

3.1. Duty to Cooperate. Each Constructing Party agrees to: (i) reasonably cooperate with the other in order that each Constructing Party may develop the Inova Site in accordance with the Development Agreement and this Agreement, and (ii) act in good faith and exercise commercially reasonable efforts to use construction means or methods that permit both

Parties to construct the Parties Respective Scopes of Work independently and concurrently; provided however, in the event of an inherent conflict between the Parties Respective Scopes of Work being completed in coordination with each other, the Inova Pad Ready Scope of Work shall take precedent and shall be resolved in favor of the timing and logistics of the installation of the Inova Pad Ready Scope of Work taking priority, as Developer reasonably determines. In addition to the cooperation obligations set forth in this Section 3.1, each Constructing Party will otherwise generally cooperate with the other in good faith to avoid and/or minimize conflicts and adverse impacts, where feasible, and to accommodate the other Constructing Party's construction schedules and minimize any increases in the other Constructing Party's development costs attributable to conflicts in the exercise of such rights and benefits.

3.2. Duty of Care. The exercise of any rights granted to a Constructing Party under this Agreement shall be performed or exercised, as applicable, by each Constructing Party (and the Developer's Representatives and Inova's Representatives, respectively), (1) in a safe and workmanlike manner with due care and diligence, (2) in compliance with all sound, usual and customary construction and engineering standards and practices for a project of similar scope and nature in the City of Alexandria, Virginia and in conformance with this Agreement, (3) in compliance with all applicable federal, Commonwealth of Virginia and the City of Alexandria laws, statutes, codes, ordinances and regulations, and with all necessary permits, (4) free of any liens affecting the Inova Site or any of On-Site Portion of the Inova Pad Ready Scope of Work, (5) in compliance with the terms of all governmental permits, authorizations and approvals, and (6) otherwise in accordance with the terms and conditions of this Agreement and the Development Agreement.

3.3. Permits. Developer covenants to the IDA and Inova, prior to any and all excavation or construction work by Developer on the Inova Site, that it shall have obtained all necessary permits and approvals from the City of Alexandria, Virginia and other governmental authorities to perform such work. Each Party agrees to execute or consent to any reasonable application for such permits and authorizations to the extent required by law in order for a Constructing Party to avail itself of the rights granted under this Agreement.

3.4. Excavation and Related Work.

(a) Inova shall be permitted to excavate the Inova Site and to install tie backs and perform underpinning work on the Inova Site associated with the excavation and to install retaining walls on the Inova Site (the "Below-Grade Work"). The Below Grade Work may include, without limitation, the following: (i) underpinning work, (ii) the placement of tieback rods, (iii) the placement of sheeting and shoring and brackets, and (iv) the maintenance, inspection, repair and replacement of any of the foregoing, (v) excavation, (vi) retaining walls all as deemed necessary by Inova to secure the excavation areas, the foundations and/or structural components of the Parties Respective Scopes of Work; provided, however, all Below Grade Work shall be at locations at depths approved by Developer, which approval shall not be unreasonably withheld or conditioned, and shall not disturb or affect any of the Developer's Scope of Work (including, without limitation, any pavement, curbing, landscaping, utility lines or structures). Prior to commencing the Below Grade Work, Inova will deliver plans and specifications for the Below Grade Work to the Developer and its consultants for review and approval, which approval shall not be unreasonably withheld or conditioned. Developer will respond with any comments to those plans within thirty (30) days after delivery. If Developer fails to timely respond, then Developer shall be deemed to have approved

such submitted plans. The Below Grade Work shall be performed in accordance with the approved (or deemed approved) plans and specifications. Should changes in the Below Grade Work become necessary that would affect or alter the scope of the Below Grade Work, then Inova shall inform in writing, and shall receive written approval from, the Developer, which approval shall not be unreasonably withheld, conditioned or delayed, prior to making such changes. The Below Grade Work may then commence and shall proceed in accordance with the updated approved plans.

(b) Any damage to any portion of the Inova Pad Ready Scope of Work caused by the Inova work shall be promptly restored by Inova, at Inova's sole cost, as nearly as practicable to their prior condition and such damage, if not restored, shall not entitle Inova to withhold its acknowledgement of the Substantial Completion and/or Final Completion of the Inova Pad Ready Scope of Work.

4. Additional Obligations.

4.1. Developer's Operational Obligations. Prior to Substantial Completion of the On-Site Portion of the Inova Pad Ready Scope of Work, Developer shall be responsible, at its sole cost, to secure, operate, maintain, repair and, when necessary, replace, any and all components of the Inova Site, including without limitation, landscaping, parking areas, storm water drainage facilities, lighting equipment, utilities, reasonable site security, and legal compliance. Developer has determined that it will be able to ensure adequate security for the Inova Site prior to commencement of construction of the Inova Pad Ready Scope of Work, without the necessity of fencing off the Inova Site from the rest of the Property. It is understood and agreed that IDA shall have absolutely no obligation, liability or responsibility whatsoever for the security, operation, maintenance, repair or replacement of the Inova Site or of any improvements or equipment thereon under this Agreement. During the term of this Agreement, Developer shall not be responsible for real estate taxes or other governmental impositions chargeable to the Inova Site or to any improvements or equipment thereon. Upon commencement of construction by Inova on the Inova Site, whether before or after Substantial Completion of the On-Site Portion of the Inova Pad Ready Scope of Work, Inova shall assume responsibility for and the cost to secure, operate, maintain, repair and replace any and all components of the Inova Site affected by Inova's construction, including without limitation, landscaping, parking areas, storm water drainage facilities, lighting equipment, utilities, reasonable site security and legal compliance. Upon the expiration of the term of this Agreement, Developer shall cause the termination, at its expense, of all service contracts related to the operation, maintenance, repair and replacement of the Inova Site or of any improvements or equipment thereon.

4.2. Developer's Construction Obligations. In undertaking construction of the On-Site Portion of the Inova Pad Ready Scope of Work and performance of its obligations under this Agreement and the applicable obligations under the Development Agreement, Developer and Developer's Representatives shall:

(a) subject to Section 8.1 below, take all reasonable actions to protect and safeguard any equipment, materials, and supplies used in connection with the construction of the On-Site Portion of the Inova Pad Ready Scope of Work and shall maintain, at its cost and expense, all fencing it elects to install, locked storage areas, and other safekeeping features as shall be necessary in connection with the storage of such equipment, materials, and supplies.

(b) be solely responsible for any damage to any improvements constructed by Inova on the Inova Site caused by Developer or Developer's Representatives. Developer shall promptly repair, restore or replace, as directed by Inova, any such property that is damaged by Developer's activities to the condition which existed immediately prior to such damage, at Developer's sole cost and expense.

(c) be solely responsible for obtaining and maintaining, and, at its sole cost and expense, all necessary governmental approvals, licenses, and permits from any federal, state or local governmental body having jurisdiction over the Inova Pad Ready Scope of Work.

(d) use the access rights granted herein in compliance with all laws and in accordance with good and workmanlike practices and procedures in a safe and workmanlike manner, in accordance with the standards of the trade, and shall avoid any adverse impact on the Inova Site or Hospital Facilities. Without limiting the foregoing, Developer shall not allow or permit the use or storage of any Hazardous Materials on the Inova Site.

4.3. Inova's Construction Obligations. If Inova commences construction of the Hospital Facilities on the Inova Site before Final Completion of all of the Inova Pad Ready Scope of Work, then, in undertaking construction of the Hospital Facilities and exercising its rights under this Agreement, Inova and Inova's Representatives shall:

(a) subject to Section 8.1 below, take all reasonable actions to protect and safeguard any equipment, materials, and supplies used in connection with the construction of the Hospital Facilities and shall maintain, at its cost and expense, all fencing, locked storage areas, and other safekeeping features as shall be necessary in connection with the storage of such equipment, materials, and supplies.

(b) be solely responsible for any damage to the On-Site Portion of the Inova Pad Ready Scope of Work caused by Inova or Inova's Representatives. Inova shall promptly repair, restore or replace, as directed by Developer, any property that is damaged by Inova's activities to the condition which existed immediately prior to such damage, at Inova's sole cost and expense.

(c) be solely responsible for obtaining and maintaining, and, at its sole cost and expense, all necessary governmental approvals, licenses, and permits from any federal, state or local governmental body having jurisdiction over the Hospital Facilities.

(d) use the access rights granted herein in compliance with all laws and in accordance with good and workmanlike practices and procedures in a safe and workmanlike manner, in accordance with the standards of the trade, and shall avoid any adverse impact on the On-Site Portion of the Inova Pad Ready Scope of Work. Without limiting the foregoing, Inova shall not allow or permit the use or storage of any Hazardous Materials (except fuel and other materials used in connection with the routine operation of construction equipment) on the Inova Site prior to Final Completion of the On-Site Portion of the Inova Pad Ready Scope of Work, and, thereafter, only in conformance with the provisions of the Ground Lease.

5. Advance Notice of Entry; Restoration; Pre-Construction Meeting and Monitoring.

5.1. Notice. Each Constructing Party shall keep the other Constructing Party reasonably informed of such owner's respective Project's construction schedule, with monthly updates given to one another (which updates may be held informally through teleconference, video chat, or other commercially reasonable form of communication).

5.2. Pre-construction Meeting for Hospital Facilities. If Inova commences construction of the Hospital Facilities on the Inova Site before Final Completion of all of the On-Site Portion of the Inova Pad Ready Scope of Work, then prior to commencement of any work constituting part of the Hospital Facilities by Inova or any excavation by Inova on the Inova Site, Developer and Inova shall meet to discuss the anticipated construction activities, scheduling, hours of construction, etc., and at such meeting Inova shall provide a detailed work timeline for all phases of the construction of the Hospital Facilities that are to occur during the terms of this Agreement. In the event of a scheduling conflict, the Developer's schedule shall prevail until Substantial Completion of the On-Site Portion of the Inova Pad Ready Scope of Work.

5.3. Monitoring. If Inova commences construction of the Hospital Facilities on the Inova Site before Final Completion of all of the On-Site Portion of the Inova Pad Ready Scope of Work, INOVA and Developer may mutually elect to jointly engage an independent construction monitor to advise both Inova and Developer as to whether either has responsibilities to the other under Sections 4.1(b) or 4.2(b).

6. Constructing Party Covenants.

6.1. Indemnification of IDA. Each Constructing Party hereby agrees to indemnify, defend, and hold the IDA, its counsel, real estate advisors, consultants, agents, and each manager, member, partner, officer, director, and employee of the IDA or any of the foregoing, and any other party related in any way to any of the foregoing (all of which parties are herein collectively called the "**IDA Parties**"), free and harmless from and against any and all costs, loss, liability, damages and expenses incurred by any such party (collectively, "**Claims**"), of any kind or nature whatsoever (including reasonable attorneys' fees and costs actually incurred), proximately arising out of injury or death to persons or damage to property caused by or arising out of or resulting from the entry and/or the conduct of activities upon the Inova Site by Developer's Representatives or Inova's Representatives, as the case may be, in connection with development and construction of the Project, but excluding any Claims (i) resulting from the mere discovery of existing defects or conditions affecting the Inova Site, and (ii) to the extent they result from the fraud, intentional misconduct or gross negligence of the IDA. Additionally, Developer hereby agrees to indemnify, defend, and hold the IDA Parties free and harmless from and against any and all Claims of any kind or nature (including reasonable attorneys' fees and costs actually incurred) arising out of injury or death to persons or damage to property caused by or arising out of any entry upon or use of the Inova Site by the Developer Parties or by any other person, including without limitation, by any invitee or trespasser, but excluding any Claims (a) covered by Inova's foregoing indemnification obligations to IDA in this Section 6.1 and (b) to the extent they result from the fraud, intentional misconduct or gross negligence of the IDA. The provisions of this Section 6.1 shall survive the expiration of the term of this Agreement.

6.2. Indemnity of Developer by Inova. Inova agrees to indemnify, defend, and hold harmless Developer, and Developer's Representatives and their respective successors and assigns, and their respective owners, members, managers, directors, officers, employees, and agents (collectively, the "**Indemnified Developer Parties**"), from and against all damage, including injury or death to persons or damage to property, claim, damage, expenses or other liability of any kind (excluding consequential and punitive damages), that may result from, or arise out of, the construction of the Hospital Facilities on the Inova Site during the term of this Agreement, including the utilization of the access rights granted herein to Inova and Inova's Representatives; provided, however, that Inova shall not be obligated to indemnify such Indemnified Developer Party for

damage, expenses or liability to the extent arising from the negligence or willful misconduct of such Indemnified Developer Party. If any person shall make a claim against such Indemnified Developer Parties, then upon Developer's request, Inova, at its own expense, will assume the defense thereof including any appeal, which may be brought on account thereof, and, will pay and discharge any settlement or final judgment after exhaustion of all legal remedies, including costs and reasonable attorneys' fees, in any such action. As a condition of indemnity hereunder, Developer shall give prompt and timely notice to Inova of the assertion of any claim by a third party so as to allow Inova the opportunity to meaningfully defend the same (if requested by Developer) and shall reasonably cooperate (at no cost to Developer) in any such defense undertaken by Inova; in no event shall indemnity apply to the settlement of any third party claim as to which Inova has not give its prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. The above indemnification obligations shall survive the expiration of the term of this Agreement for events, acts or omissions occurring during the term of this Agreement.

6.3. Indemnity of Inova by Developer. Developer agrees to indemnify, defend, and hold harmless Inova, and Inova's Representatives and their respective successors and assigns, and their respective owners, members, managers, directors, officers, employees, and agents (collectively, the "***Indemnified Inova Parties***"), from and against all damage, including injury or death to persons or damage to property, claim, damage, expenses or other liability of any kind (excluding consequential and punitive damages), that may result from, or arise out of, the construction of the On-Site Portion of the Inova Pad Ready Scope of Work on the Inova Site during the Term of this Agreement, including the utilization of the access rights granted herein to Developer and Developer's Representatives; provided, however, that Developer shall not be obligated to indemnify such Indemnified Inova Party for damage, expenses or liability to the extent arising from the negligence or willful misconduct of such Indemnified Inova Party. If any person shall make a claim against such Indemnified Inova Parties, then upon Inova's request, Developer, at its own expense, will assume the defense thereof including any appeal, which may be brought on account thereof, and, will pay and discharge any settlement or final judgment after exhaustion of all legal remedies, including costs and reasonable attorneys' fees, in any such action. As a condition of indemnity hereunder, Inova shall give prompt and timely notice to Developer of the assertion of any claim by a third party so as to allow Developer the opportunity to meaningfully defend the same (if requested by Inova) and shall reasonably cooperate (at no cost to Inova) in any such defense undertaken by Developer; in no event shall indemnity apply to the settlement of any third party claim as to which Developer has not give its prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. The above indemnification obligations shall survive the expiration of the term of this Agreement for events, acts or omissions occurring during the term of this Agreement.

6.4. Liens. Neither Constructing Party shall permit any liens to be recorded against the Inova Site in connection with the construction of the Parties Respective Scopes of Work. If any liens are recorded against the Inova Site in connection with the construction of the Parties Respective Scopes of Work, such liens shall be released of record by such Constructing Party, respectively (which may be done by posting a bond to the extent permitted by applicable law) at the sole expense of such Constructing Party within 60 days following such Constructing Party's receipt of written notice thereof (and if such Constructing Party fails to do so, the other Constructing Party and the IDA may, in their respective sole discretion, do so and in such event, such Constructing Party shall reimburse such the Constructing Party for all costs and expenses incurred by it in

connection therewith within five (5) business days following receipt of written demand together with reasonable evidence of all such costs and expenses incurred).

7. Insurance.

7.1. The insurance requirements of Section 4.3(c) of the Development Agreement are hereby incorporated herein by reference and shall fully apply to both Constructing Parties for the benefit of IDA.

7.2. If Inova commences construction of the Hospital Facilities on the Inova Site before Final Completion of all of the On-Site Portion of the Inova Pad Ready Scope of Work, then Inova shall cause its contractors or subcontractors to carry insurance in the amounts and on the terms set forth in Section 4.3(c) of the Development Agreement provided that Developer shall be named as an additional insured on all such policies and all such policies shall contain waiver of subrogation in favor of the Developer, Developer's Representatives and their employees, agents, contractors, consultants, advisors, attorneys and any other party designated by Developer.

8. Hand-over; Term of this Agreement.

8.1. Prior to Substantial Completion of the On-Site Portion of the Inova Pad Ready Scope of Work, Developer will be responsible to obtain any necessary utilities for the Inova Site and shall secure the Inova Site in a reasonable manner under the applicable circumstances and as it may be required under applicable legal requirements. Developer will provide copies of construction inspection and monitoring reports prepared in connection with the On-Site Portion of the Inova Pad Ready Scope of Work prior to, and as a condition of Final Completion of the Inova Pad Ready Scope of Work. Upon Substantial Completion of the On-Site Portion of the Inova Pad Ready Scope of Work, Developer shall cease to have any obligation to pay for any utilities and, as provided in Section 4.1, thereafter Inova shall secure the Inova Site in a reasonable manner under the applicable circumstances and as it may be required under applicable legal requirements. Notwithstanding the foregoing right to secure, access to the Inova Site will be coordinated as provided in this Agreement.

8.2. The term of this Agreement shall expire upon the earlier to occur of (i) December 31, 2025 (subject to extension in the event of Delay as provided in the Development Agreement) or (ii) Final Completion of the On-Site Portion of the Inova Pad Ready Scope of Work, provided that Sections 6.1, 6.2, 6.3 and 6.4 shall survive without durational limitation.

9. Miscellaneous.

9.1. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia, and the Circuit Court of Alexandria, Virginia shall be the exclusive venue for any dispute hereunder.

9.2. Waiver of Jury Trial. Each party hereby waives trial by jury in any action, proceeding, claim or counterclaim brought by either party in connection with any matter arising out of or in any way connected with this Agreement.

9.3. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement, and fax or computer-scanned image signatures hereon shall be binding.

9.4. Covenants. Each and every covenant and agreement contained in this Agreement shall be subject to Force Majeure (as defined in the Development Agreement) and

construed as a separate and independent covenant and agreement and the breach of any such covenant or agreement by any Party or beneficiary hereof shall not discharge or relieve any other Party or beneficiary from their respective obligations to perform same.

9.5. Entire Agreement. This Agreement and all exhibits hereto, in conjunction with the Development Agreement and the REA, and all exhibits thereto, contain all of the agreements and conditions made among the Parties regarding the subject matter herein contained. Without limiting the generality of the foregoing, the damages cap imposed under and as qualified by Section 8.3(a) of the Development Agreement applies to the liability of the Developer under this Agreement. This Agreement shall be considered a covenant running with the title of the Inova Site and all of the covenants, conditions, agreements and obligations of this Agreement shall extend to and be binding upon the respective successors and assigns of the respective Parties hereto and the future owners of the Inova Site, with the same effects as if they were in every case named and expressed. The Parties shall not be bound by, nor shall they rely upon, any oral term, covenant, condition, statement, warranty or representation other than as set forth in this Agreement or in the Development Agreement, the Ground Lease, the REA, or any ancillary documents related thereto. This Agreement may not be altered, modified, or changed except in a writing signed by all Parties.

9.6. Legal Fees. Each party is responsible for all of its own expenses and attorneys' fees, including all disbursements and litigation expenses incurred by such party in connection with an action or proceeding against another party arising out of or relating to the terms and conditions of this Agreement. No party shall have any obligation to reimburse any other party for any such fees, costs and expenses.

9.7. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns and shall be construed as running with the land and burdening and benefiting the land.

9.8. Defined Term. As used in this Agreement the term "Hazardous Materials" means (i) materials governed by the Environmental Laws (as defined below); and (ii) "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 5101 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), the Clean Air Act (42 U.S.C. Section 7401 et seq.), and the regulations promulgated pursuant thereto, or successor legislation thereto, or any other Federal or Virginia environmental law, ordinance, rule, regulation and/or other statute of a governmental or quasi-governmental authority relating to protection of human health or the environment.

9.9. No Consents Required. The Parties represent, warrant and covenant to the other that they have full authority to execute and deliver, and to perform, this Agreement, and that there are no consents required therefore that have not been obtained.

9.10. Exhibits. Any Exhibits referenced in this Agreement are incorporated by this reference as if fully set forth in this Agreement.

9.11. Third Party Beneficiary. The Parties hereto mutually agree that, except as provided below, no provision of this Agreement shall create in the public, or in any person or entity other than those signing this Agreement as Parties hereto, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party or authorized assignee hereto, to maintain

any action for personal injury, property damage, or breach of contract pursuant to the terms of this Agreement or otherwise. Notwithstanding the foregoing, the City is hereby irrevocably designated a third party beneficiary of all rights and interests of IDA under this Agreement, including without limitation, as an indemnitee under all indemnifications granted by the Constructing Parties hereunder, and the City has the right to independently enforce the terms of this Agreement. It is acknowledged that the City shall have no liability or obligations under this Agreement arising from its status as a third party beneficiary. IDA and the Constructing Parties acknowledge and agree that the City is aware of and accepts its designation as a third party beneficiary under this Agreement.

9.12. No Lease or Easement. The Parties hereto acknowledge and agree that the rights granted by the IDA under this Agreement to the Constructing Parties is merely a license to use the Inova Site and does not constitute a lease or easement.

9.13. Assignment. No Party under this Agreement may assign its rights or obligations under this Agreement without the prior written consent of the other two (2) Parties, which such consents may be withheld in the sole and absolute discretion of such Parties.

9.14. Notices. Whenever it is provided in this Agreement that a notice, demand, request, consent, approval or other communication (each of which is herein referred to as "Notice") shall or may be given to or served upon the Parties, and whenever the Parties shall desire to give or serve upon the other any Notice with respect hereto, each such Notice shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless given or served as follows: (i) by personal delivery (with receipt acknowledged), (ii) delivered by reputable, national overnight delivery service (with its confirmatory receipt therefor), next Business Day delivery specified, or (iii) sent by registered or certified United States mail, postage prepaid, in each case to the parties as follows:

**IDA:** Industrial Development Authority of the City of Alexandria  
625 N. Washington Street, Suite 400  
Alexandria, Virginia 22314  
Attn: Stephanie Landrum, Assistant Secretary  
Email: landrum@aalexandriaecon.org

With a copy to: City Manager, City of Alexandria  
301 King Street  
Alexandria, Virginia 22314

And copy to: City Attorney, City of Alexandria  
301 King Street, Suite 1300  
Alexandria, Virginia 22314

**Inova:** H. Thomas McDuffie, President  
Inova Realty  
8095 Innovation Park Drive, Building D,  
Floor 7, Office 0230  
Fairfax, Virginia 22031  
Email: tom.mcduffie@inova.org

With Copies to: John Gaul, General Counsel  
Inova Health System  
8110 Gatehouse Road, Suite 200-E  
Falls Church, Virginia 22042  
Email: john.gaul@inova.org

And to: Timothy S. Sampson  
Downs Rachlin Martin PLLC  
199 Main Street  
Burlington, VT 05402-0190  
Email: tsampson@drm.com

**Developer:** Landmark Land Holdings LLC  
c/o Foulger Pratt  
12435 Park Potomac Avenue, Suite 200  
Potomac, Maryland 20854  
Attn: Cameron Pratt and Brigg M. Bunker  
Email: cpratt@foulgerpratt.com

With a Copy to: Landmark Land Holdings LLC  
c/o Foulger Pratt  
12435 Park Potomac Avenue, Suite 200  
Potomac, Maryland 20854  
Attn: Demetri Datch  
Email: ddatch@foulgerpratt.com

And a Copy to: Arent Fox LLP  
1717 K Street, NW  
Washington, DC 20006  
Attn: Richard A. Newman  
Email: Richard.newman@arentfox.com

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be duly executed on its behalf, under seal, the day and year first above written.

**IDA:**

**INDUSTRIAL DEVELOPMENT AUTHORITY OF  
THE CITY OF ALEXANDRIA**, a political  
subdivision of the Commonwealth of Virginia

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

**ACKNOWLEDGMENT**

COMMONWEALTH OF VIRGINIA  
CITY OF ALEXANDRIA

On this the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, before me, personally appeared \_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ in the above instrument, and that he, as \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Industrial Development Authority of the City of Alexandria, a political subdivision of the Commonwealth of Virginia, by himself as the \_\_\_\_\_.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**DEVELOPER:**

**LANDMARK LAND HOLDINGS, LLC, a  
Delaware limited liability company**

By: \_\_\_\_\_

Name:

Title:

**ACKNOWLEDGMENT**

STATE OF MARYLAND  
COUNTY OF MONTGOMERY

On this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, personally appeared \_\_\_\_\_, who acknowledged himself/herself to be \_\_\_\_\_ of Landmark Land Holdings, LLC in the above instrument, and that he/she, as \_\_\_\_\_, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Landmark Land Holdings, LLC by himself/herself as \_\_\_\_\_.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**INOVA:**

**INOVA HEALTH CARE SERVICES**, a Virginia  
non-stock corporation

By: \_\_\_\_\_

Name:

Title:

**ACKNOWLEDGMENT**

COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX

The foregoing Agreement was acknowledged before me, the undersigned notary for the aforesaid jurisdiction, on this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, the \_\_\_\_\_ of Inova Health Care Services.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**Exhibit A**

Description of the Inova Site

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20671556.6