

DEED OF GROUND LEASE

Between

INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALEXANDRIA

as Landlord

and

INOVA HEALTH CARE SERVICES

as Tenant

Premises:

Former Landmark Mall Site
Duke Street
Alexandria, Virginia

_____, 2021

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List of Exhibits

Exhibit A-1	—	Legal Description of Land
Exhibit A-2	—	Depiction of Land
Exhibit A-3	—	Depiction of Project
Exhibit B-1	—	Description of Hospital Improvements
Exhibit B-2	—	Description of Cancer Center Improvements
Exhibit B-3	—	Description of Medical Office Building Improvements
Exhibit C	—	Commencement Date Certificate
Exhibit D	—	Form of Memorandum of Ground Lease
Exhibit E	—	Form of Subordination, Non-disturbance and Attornment Agreement
Exhibit F	—	Required Insurance
Exhibit G	—	Form of Guaranty
Exhibit H	—	Permitted Encumbrances

DEED OF GROUND LEASE (this "Lease") made as of the ____ day of _____ 2021 (the "Effective Date"), by and between INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALEXANDRIA, a political subdivision of the Commonwealth of Virginia ("Landlord"), and INOVA HEALTH CARE SERVICES, a Virginia non-stock corporation ("Tenant").

RECITALS

A. Landlord is the fee owner of approximately 10.3867 acres of land adjacent to Duke Street in the City of Alexandria, Virginia (as described on Exhibit A-1 and depicted on Exhibit A-2 attached hereto, the "Land"), that is a portion of the former Landmark Mall property to be redeveloped as a cohesive mixed-use project, as generally depicted on Exhibit A-3 (the "Project").

B. Landlord desires to lease to Tenant the Premises (defined below), in accordance with the terms and conditions of this Lease, for the construction and operation by Tenant of improvements on the Premises as more specifically set forth and defined below.

WITNESSETH:

It is hereby mutually covenanted and agreed by and between the parties hereto that this Lease is made upon the terms, covenants and conditions hereinafter set forth.

ARTICLE 1 DEFINITIONS

The terms defined in this Article 1 shall, for all purposes of this Lease, have the following meanings:

"Access Agreement" means that certain Access Agreement by and between Landlord, Tenant, and Foulger Pratt JV, by which Foulger Pratt JV and Tenant are granted a license to the Land as necessary to perform (i) as it relates to Foulger Pratt JV, the Public Infrastructure Improvements, including the INOVA Pad-Ready Scope of Work (as such terms are defined in the Development Agreement), and (ii) as it relates to Tenant prior to the Term Commencement Date, the Initial Improvements. For clarity, from and after the Term Commencement Date performance of the Initial Improvements by Tenant shall be governed by this Lease.

"Affiliate" means a Person that Controls, is Controlled by, or is under common Control with another Person.

"Anti-Terrorism Law" means (i) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. Law No. 107-56, 115 Stat. 296 (2001); (ii) the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 et. seq. (2003); (iii) the Trading with the Enemy Act, 50 U.S.C. App. §§ 1 et. seq. (2003); and (iv) other similar laws enacted or promulgated from time to time; in each case, together with any executive orders, rules or regulations promulgated thereunder, including temporary regulations, all as amended or otherwise modified from time to time.

"Applicable Standard" means upon Substantial Completion of the respective Initial Improvements, the standard that is generally applicable to Class A properties of similar size and use in the City of Alexandria, Virginia, and thereafter the standard that is generally applicable to properties of similar, size, use and age in in the City of Alexandria, Virginia.

"Approved Final Site Plan" means the Final Site Plan approved by the City pursuant to the Final Site Plan Approval in a form and with conditions reasonably acceptable to Tenant (with Tenant being deemed to accept all normal and customary conditions for comparable approvals and all other conditions that do not materially increase Tenant's costs of development), as amended from time to time, subject to

the terms of this Lease, by which Tenant is granted the rights to develop and construct the Initial Improvements on the Land in general conformity to the DSUP Approvals.

“Building” means any building now or hereafter erected on the Premises.

“Building Permit” shall have the meaning provided in Section 11.08.

“Building Permit Approval” shall have the meaning provided in Section 11.08.

“Business Days” means any day which is not a Saturday, Sunday or a day observed as a holiday by either the Commonwealth of Virginia or the federal government.

“Cancer Center Improvements” means the cancer center which will consist of a minimum of 75,000 square feet (more or less) of above- and below-grade improvements (excluding parking improvements) generally as described on Exhibit B-2 attached hereto and made a part hereof.

“Certificate of Occupancy” means with respect to any Building, a certificate of occupancy issued by the City.

“City” means the City of Alexandria, Virginia, a body public.

“Condemnation Fee Value” means the price at which Landlord’s fee interest in all or any portion of the Premises that is taken pursuant to condemnation or eminent domain, would be sold for cash by a willing seller not compelled to sell to a willing buyer not compelled to buy, assuming for purposes of determination of such price that the Premises (or such portion thereof) was sold encumbered by this Lease for the full remaining Term as of the date value is determined, as determined in accordance with the provisions of Section 33.04.

“Condemnation Leasehold Value” means the price at which Tenant’s leasehold interest under this Lease in all or any portion of the Premises that is taken pursuant to condemnation or eminent domain (including Tenant’s interest in the Improvements on the Land), would be sold for cash by a willing seller not compelled to sell to a willing buyer not compelled to buy, as determined in accordance with the provisions of Section 33.04.

“Consumer Price Index” means the Consumer Price Index for all Urban Consumers (1996=100), Washington, D.C.-Baltimore MSA, all Items, published by the United States Department of Labor, Bureau of Labor Statistics, or any substitute or successor index thereto, appropriately adjusted; provided that if there shall be no successor index, a substitute index or the appropriate adjustment of such successor or substitute index, as the case may be, shall be mutually determined by Landlord and Tenant, in their reasonable discretion.

“Control” means ownership of more than fifty percent (50%) of the outstanding voting stock of a corporation, or other majority equity and control interest of an entity which is not a corporation, or the possession of power to direct or cause the direction of the management and policy of such corporation or other entity, whether through the ownership of voting securities, by statute or according to the provisions of a contract.

“Cure Rights Mortgagee” means (i) if there are multiple Qualifying Mortgagees and such Qualifying Mortgagees have designated a single Qualifying Mortgagee as the Cure Rights Mortgagee by written notice to Landlord, such designated Qualifying Mortgagee, (ii) if there are multiple Qualifying Mortgagees and no Cure Rights Mortgagee has been so designated, then the Qualifying Mortgagee with the first priority lien, or (iii) if there is only one Qualifying Mortgagee, then such Qualifying Mortgagee.

“Default” means any condition or event which constitutes or, after notice or lapse of time, or both, would constitute an Event of Default.

“Deficiency” shall have the meaning provided in Section 22.03(c).

“Development Agreement” shall mean that certain Landmark Mall Development and Financing Agreement among Foulger Pratt JV, the City, and Tenant dated as of [REDACTED], 2021 with respect to the development and construction by Foulger Pratt JV of the Public Infrastructure Improvements (including the INOVA Pad-Ready Scope of Work), the Private Infrastructure with Public Access and the Offsite CDD Infrastructure (as such terms are defined therein).

“DSUP Approvals” means the Development Special Use Permit with Preliminary Site Plan approvals granted by the City Council for the development of the Initial Improvements on the Land by Tenant in a form and with conditions reasonably acceptable to Tenant (with Tenant being deemed to accept all normal and customary conditions for comparable approvals and all other conditions that do not materially increase Tenant's costs of development), and the lapse of any appeal period applicable to such approval without the filing of an appeal (or if any such appeal is filed, the successful resolution of such appeal) as the same may be amended from time to time, subject to the terms of this Lease.

“Due Date” means, with respect to an Imposition (hereinafter defined), the last date on which such Imposition can be paid without any fine, penalty, interest or cost being added thereto or imposed by law for the non-payment thereof.

“Effective Date” has the meaning set forth in the Preamble of this Lease.

“Environmental Activity” shall have the meaning provided in Section 14.03.

“Equipment” means all fixtures incorporated in the Premises, including all machinery, dynamos, boilers, heating and lighting equipment, pumps, tanks, motors, air conditioning compressors, pipes, conduits, fittings, ventilating and communications apparatus, elevators, escalators, antennas and sensors.

“Event of Default” shall have the meaning provided in Section 22.01.

“Existing Improvements” means any improvements existing on the Land as of the Term Commencement Date.

“Expiration Date” means (i) the Fixed Expiration Date or (ii) such earlier date upon which the term of this Lease shall cease or be terminated as hereinafter provided.

“Fee Mortgage” shall have the meaning provided in Section 24.02(a).

“Fee Mortgagee” shall have the meaning provided in Section 24.02(b).

“Final Site Plan” means a final site plan meeting the requirements of the Zoning Ordinance entitling Tenant to develop the Initial Improvements in a manner consistent with the DSUP Approvals.

“Final Site Plan Approval” means the administrative approval of the Final Site Plan by the City.

“Fixed Expiration Date” means the day immediately preceding the ninety-fifth (95th) anniversary of the Term Commencement Date.

“Foulger Pratt JV” means Landmark Land Holdings, LLC, a Delaware limited liability company, which is a joint venture comprised of an Affiliate of Foulger Pratt, an Affiliate of Seritage, and an Affiliate of Howard Hughes Corporation.

“Governmental Authority” means the United States of America, the Commonwealth of Virginia, the City of Alexandria and any agency, department, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having lawful jurisdiction over the Premises or any portion thereof. For clarity, the term “Governmental Authority” shall include Landlord, acting in its governmental capacity.

“Governmental List” means (i) the List of Specially Designated Nationals and Blocked Persons promulgated by the Office of Foreign Assets Control (“OFAC”) from time to time and (ii) any other similar list promulgated by any Governmental Authority from time to time.

“Ground Rent” means One Dollar (\$1.00) for each Lease Year during the Term, as the same may be increased to the Increased Ground Rent, and as the same may be reduced back to One Dollar (\$1.00) for each Lease Year, pursuant to Section 11.08 and Article 22.

“Guarantor” means Inova Health System Foundation, an Affiliate of Tenant.

“Guaranty” means the guaranty provided by the Guarantor to Landlord in the form attached hereto as Exhibit G.

“Hazardous Materials” shall have the meaning provided in Section 14.03.

“Hospital Improvements” means the hospital which (i) together with the Cancer Center Improvements will consist of a total of a minimum of 550,000 square feet (more or less) of above- and below-grade improvements (excluding parking improvements), and (ii) includes capacity for at least 230 hospital beds, generally as described on Exhibit B-1 attached hereto and made a part hereof.

“I-395/Duke Street Interchange Improvement” shall have the meaning provided in Section 2.07.

“Impositions” shall have the meaning provided in Section 4.01.

“Improvements” means the Existing Improvements and such Buildings, structures and other improvements and site work as may be constructed by Tenant on the Land after the Term Commencement Date, including the Initial Improvements.

“Increased Ground Rent” shall have the meaning provided in Section 11.08.

“Indemnitees” shall have the meaning provided in Section 18.01.

“Initial Improvements” means the initial Improvements (including, collectively, the Hospital Improvements, the Cancer Center Improvements, the Medical Office Building Improvements, and associated parking and infrastructure) to be constructed by Tenant on the Land in accordance with the Approved Final Site Plan.

“Involuntary Rate” means the Prime Rate plus four percent (4%) per annum but, in no event, in excess of the maximum permissible interest rate then in effect in the Commonwealth of Virginia.

“Land” has the meaning set forth in the Recital A.

“Landlord” has the meaning set forth in the Preamble of this Lease, and shall include Landlord’s successors and/or assigns.

“Landlord Turnover Conditions” shall have the meaning provided in Section 2.07.

“Landlord’s Termination Rights” shall have the meaning provided in Section 10.01(f).

“Lease” means this Ground Lease and all amendments, modifications and supplements thereof.

“Lease Year” means the twelve month period beginning on the Term Commencement Date and each succeeding twelve month period during the Term; provided, however, if the Term Commencement Date is not the first day of the month, then the first Lease Year shall include the twelve (12) month period from the first day of the first calendar month after the Term Commencement Date as well as the partial calendar month from the Term Commencement Date to the end of the month in which the Term Commencement Date occurs.

“Legal Requirements” shall have the meaning provided in Section 14.01.

“Liquidated Damages 11.08” shall have the meaning provided in Section 11.08.

“Liquidated Damages 22.02” shall have the meaning provided in Section 22.02.

"Medical Office Building Improvements" means the medical office building which will consist of a minimum of 90,000 square feet (more or less) of above- and below-grade improvements (excluding parking improvements) generally as described on Exhibit B-3 attached hereto and made a part hereof.

"Memorandum of Ground Lease" means the form of Memorandum of Ground Lease attached hereto as Exhibit D.

"Milestone" shall have the meaning provided in Section 11.08.

"Milestone Date" shall have the meaning provided in Section 11.08.

"Milestone Delayed Completion Notice" shall have the meaning provided in Section 11.08.

"Milestone Delay Float" shall have the meaning provided in Section 11.08.

"Milestone Early Delivery Notice" shall have the meaning provided in Section 11.08.

"Milestone Failure Notice" shall have the meaning provided in Section 11.08.

"Mortgage" means any mortgage, deed of trust or similar security instrument which constitutes a lien on Tenant's interest in this Lease and the leasehold estate created hereby (but excluding any Sublease).

"Mortgagee" means the holder of a Mortgage.

"New Lease" shall have the meaning provided in Section 10.02(a).

"New Tenant" shall have the meaning provided in Section 10.02(a)(i).

"On-Site INOVA Pad-Ready Site Conditions" means that portion of the INOVA Pad-Ready Scope of Work (as defined in the Development Agreement) to be performed on the Land pursuant to the Access Agreement as necessary for Tenant to commence construction of the Initial Improvements on the Land.

"Outside Commencement Date" shall have the meaning provided in Section 2.02.

"Permitted Encumbrances" means those exceptions to title to the Land set forth on Exhibit H hereto, as well as such other exceptions to title and/or encumbrances contemplated by the terms of this Lease, of the Project Agreements or as recorded in connection with Landlord's purchase of the Land, including the REA, the Grant Agreement between Landlord and the City, and the Memorandum attached hereto as Exhibit D.

"Permitted Operational Stoppages" means periods during which Tenant may cease to deliver healthcare services within the Hospital Improvements, consistent with the terms of Section 2.03(a), for up to a maximum of (i) twenty-four (24) consecutive months, or (ii) thirty-six (36) months in the aggregate during any ten (10) year period, as necessary to perform necessary repairs or renovations to the Hospital Improvements or due to other causes within Tenant's control. Notwithstanding the foregoing or anything in this Lease to the contrary, an event of Unavoidable Delay shall toll the time limits respecting Permitted Operational Stoppages for the duration of the event of Unavoidable Delay.

"Person" shall mean an individual, corporation, partnership, joint venture, estate, trust, unincorporated association, any Federal, State, County or municipal government or any bureau, department or agency thereof.

"Premises" shall have the meaning set forth in Section 2.01.

"Prime Rate" means the prime or base rate announced as such from time to time by Citibank, N.A., or its successors, at its principal office. Any interest payable under this Lease with reference to the Prime Rate shall be adjusted on a daily basis, based upon the Prime Rate in effect at the time in question, and shall be calculated on the basis of a 360 day year with twelve months of 30 days each.

"Project" shall have the meaning set forth in Recital C.

“Project Agreements” means the Development Agreement, the Access Agreement, and the REA.

“Prohibited Person” means any Person (i) who (a) has been convicted, is under investigation, or is under indictment, in a criminal proceeding for a felony (including under any Anti-Terrorism Law) or any crime involving moral turpitude or (b) is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure; (ii) who Controls, is Controlled by, or is under common Control with, a Person who (a) has been convicted, is under investigation, or is under indictment, in a criminal proceeding for a felony (including under any Anti-Terrorism Law) or any crime involving moral turpitude or (b) is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure; (iii) who is designated by the United States federal government as a terrorist or as a suspected terrorist, whether on a Governmental List, or otherwise; or (iv) who Controls, is Controlled by, or is under common Control with, a Person who is designated by the United States federal government as a terrorist or as a suspected terrorist, whether on a Governmental List, or otherwise.

“Purchase Notice” shall have the meaning provided in Section 33.24.

“Purchase Price” shall have the meaning provided in Section 33.24.

“Purchase Right” shall have the meaning provided in Section 33.24.

“Qualifying Mortgage” means any Mortgage (i) that has been recorded in the land records of City of Alexandria, Virginia, (ii) notice of which has been delivered to Landlord, (iii) that is granted to a Mortgagee that is not an Affiliate of Tenant nor a Prohibited Person, and (iv) that when aggregated with all other Mortgages, shall have an “as completed” loan-to-value ratio (based on the appraisal obtained or accepted by the Mortgagee) of no more than 80%.

“Qualifying Mortgagee” means the Mortgagee under any Qualifying Mortgage, so long as not a Prohibited Person.

“REA” means the reciprocal easement agreement dated as of approximately even date herewith, governing certain aspects of the use and operation of the Project among other matters.

“Restoration” shall have the meaning provided in Section 7.01.

“Restore” shall have the meaning provided in Section 7.01.

“Sublease” shall have the meaning provided in Section 9.03(a).

“Subordination, Non-disturbance and Attornment Agreement” shall have the meaning provided in Section 9.07.

“Substantial Completion” means the stage of completion of any Building or Improvement where (i) the entire Building or Improvement may be used and occupied for its intended purposes, (ii) the City has issued a Certificate of Occupancy with respect to such Building or Improvement and (iii) all municipal and zoning requirements for initial use and occupancy of such Building or Improvement have been satisfied.

“Subtenant” shall have the meaning provided in Section 9.03(b).

“System” shall have the meaning provided in Section 2.08.

“Taxes” means all federal, state and local taxes and charges when such become due and payable (and all interest and penalties thereon) as required by applicable law, including all real estate taxes, personal property taxes, water charges, sewer charges and assessments associated with the Premises or Tenant’s ownership interest therein, if any.

“Tenant” has the meaning set forth in the Preamble of this Lease, and shall include Tenant’s successors and/or assigns, as permitted under the terms of this Lease.

“Tenant Turnover Conditions” shall have the meaning provided in Section 2.07.

“Term” means the term of this Lease as set forth in Article 2.

“Term Commencement Date” means the date on which the last of the Tenant Turnover Conditions and the Landlord Turnover Conditions is satisfied or waived by Tenant or Landlord, as applicable.

“Transfer” shall have the meaning provided in Section 9.01(a).

“Transition Date” means the date on which Substantial Completion shall occur with respect to the Hospital Improvements that are constructed on the Land by Tenant.

“Unavoidable Delays” means (a) with respect to Tenant or its obligations hereunder, or a Mortgagee curing Tenant’s or its obligations hereunder pursuant to the terms hereof, delays incurred by Tenant or such Mortgagee due to (i) any act of God (including weather delays beyond historic weather patterns such as “derechos,”) flood, earthquake, fire, mechanical failure of equipment, disease, pandemics, epidemics and the like, (ii) labor strike, civil unrest or work stoppage or slowdown (including failure of building inspectors to reasonably process approvals that cause work stoppage), (iii) unforeseeable interruptions in utility services, (iv) unforeseeable material shortages, transportation and logistics delays (other than due to any governmental restrictions which Tenant or the Mortgagee is bound to observe pursuant to the terms of this Lease or the Approved Final Site Plan), (v) sabotage, war, riot, terrorism, moratorium, (vi) unforeseeable governmental action (including required work stoppage or closure of construction sites by applicable government authorities including closures in the general vicinity where the Property is located, and including unforeseen archeological conditions or closure of government offices that issue necessary permits), (vii) delays caused by Landlord, or City (or any division, department or instrumentality of the City or under City control), (viii) delays resulting from the non-performance by Foulger Pratt JV under the Project Agreements, (ix) delays resulting from the non-performance by the City with respect to the City's obligations under the Development Agreement for the I-395/Duke Street Interchange Improvement, (x) any other unforeseeable act of any third party unrelated to, and having no arrangements, contractual or otherwise, with the Premises or Tenant (or any of Tenant’s Affiliates) that reasonably prevents an action from being taken through no fault of Tenant (or any Affiliates of Tenant), or (xi) other similar causes beyond the reasonable control of Tenant or the Mortgagee (but not including Tenant or the Mortgagee’s insolvency or financial condition), and (b) with respect to Landlord or its obligations hereunder, delays incurred by Landlord due to strikes, lockouts, work stoppages due to labor disputes, acts of God, inability to obtain labor or materials due to governmental restrictions (other than due to any governmental restrictions which Landlord is bound to observe pursuant to the terms of this Lease and the Approved Final Site Plan), enemy action, civil commotion, fire, unavoidable casualty, delays caused by Tenant or other similar causes beyond the reasonable control of Landlord (but not including Landlord’s insolvency or financial condition).

“Zoning Regulations” means the Zoning Regulations of the City, as amended from time to time.

ARTICLE 2

PREMISES AND TERM OF LEASE

Section 2.01 Premises. Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, for the Term, upon and subject to the terms and provisions of this Lease, and subject only to the Permitted Encumbrances, the following (collectively, the “Premises”):

- (a) the Land, and all of the appurtenances, rights, privileges and easements in any way now or hereafter appertaining thereto, including those arising under the Project Agreements;
- (b) all right, title and interest of Landlord in and to the land lying in the streets, avenues, ways and roads in front of and adjoining said Land; and
- (c) all Existing Improvements and Equipment on the Land as of the Term Commencement Date.

Section 2.02 Term. Landlord and Tenant agree that the term of the Lease (“Term”) shall commence on the Term Commencement Date and expire on the Fixed Expiration Date, subject to earlier termination in accordance with the terms set forth in this Lease. Upon the occurrence of the Term Commencement Date, Landlord and Tenant shall execute a certificate in recordable form evidencing the dates of the Term Commencement Date and the Fixed Expiration Date in the form attached hereto and made a part hereof as Exhibit C. The failure of either party to execute such certificate shall not in any manner alter the Term Commencement Date or the Fixed Expiration Date otherwise established by the terms of this Lease. Notwithstanding any term or condition of this Lease to the contrary, if the Term Commencement Date has not occurred by the date that is five (5) years after the Effective Date of this Lease (the “Outside Commencement Date”), each of Landlord and Tenant may waive any Tenant’s Turnover Conditions or Landlord’s Turnover Conditions, as the case may be, that remain unsatisfied to allow the Term to commence, or terminate this Lease upon written notice to the other party, provided that if Tenant’s Turnover Conditions (i) and (ii) have not been satisfied by the date that is three (3) years after the Effective Date of this Lease then the Outside Commencement Date shall mean such date that is three (3) years after the Effective Date of this Lease. If the failure of any of Tenant Turnover Condition to be met prior to the Outside Commencement Date results from Landlord’s breach of its obligations hereunder or in any of the Project Agreements, Tenant shall be entitled to its remedies at law or in equity with respect to such breach. If the Lease terminates as a result of the failure of any Landlord Turnover Conditions to be met prior to the Outside Commencement Date and such failure results from Tenant’s breach of its obligations hereunder or in any of the Project Agreements, Landlord shall be entitled to its remedies at law or in equity with respect to such breach.

Section 2.03 Permitted Use. The Premises may only be used for the purposes specified by the DSUP Approvals or the Approved Final Site Plan, each as may be amended from time to time, and shall be subject to all other applicable Legal Requirements. Without limiting the generality of the foregoing, each of the three (3) Buildings comprising the Initial Improvements may only be used for the following purposes without the consent of Landlord, which consent may be withheld or given in Landlord’s sole but reasonable discretion:

(a) The Hospital Improvements, the Cancer Center Improvements, and the Medical Office Building Improvements may only be used for hospital/medical care facility (including in- and/or out-patient services) and ancillary uses as permitted by the DSUP Approvals and applicable Legal Requirements; provided, however, that during the second half of the Term, such Improvements may also be used for such other healthcare facility uses as may be permitted in the zone where the Land is located under the City’s Zoning Ordinance, as the same may be amended from time to time.

(b) In its operation of the hospital in the Hospital Improvements, Tenant shall, during the Term (i) continue to provide indigent care financial assistance to eligible individuals who receive emergency and other medically necessary services at the hospital that is consistent with Tenant’s charitable status, as well as with state and federal law; (ii) continue to provide financial assistance which is no less than the financial assistance provided to similarly situated individuals receiving emergency and other medically necessary services at each of the other of Tenant’s (or Tenant’s Affiliate’s) hospital facilities in Northern Virginia; (iii) continue to provide emergency room access to anyone who presents at the emergency room of the hospital in the Hospital Improvements as required by the Emergency Medical Treatment and Labor Act (in effect and as may be amended from time to time); and (iv) periodically consult with the City on INOVA’s Indigent Care policies applicable to the hospital in the Hospital Improvements. Satisfaction of the requirements set forth above shall be a condition to the continuation of any City operating subsidy payment to Tenant.

Section 2.04 Continuous Use Covenant. From and after the date that is one (1) year after the Substantial Completion of the Hospital Improvements and continuing for the remainder of the Term, Tenant

shall (i) continuously deliver healthcare services within the Hospital Improvements, and (ii) make best efforts to continuously deliver healthcare services within at least eighty-five percent (85%) of the Hospital Improvements, in a manner fully consistent with the terms of Section 2.03(a), 24-hours per day, 7-days per week, subject only to Permitted Operational Stoppages and Unavoidable Delays.

Section 2.05 Pre-Term Period. Prior to the Term Commencement Date, (a) except as set forth in the Access Agreement, Tenant shall have no obligations or liabilities with respect to the Premises or the maintenance, repair, upkeep, management, operation or securing thereof, which obligations and liabilities shall remain the obligations and liabilities of Landlord, (b) Landlord shall use, maintain and operate the Premises in the ordinary course of business consistent with the practices and procedures in effect as of the Effective Date, and (c) Landlord shall not (i) except for the Access Agreement, enter into any contracts or leases with respect to the Premises unless said contracts and leases are terminable by the Landlord on 30 days' prior notice, (ii) cause or permit any change in title to the Premises, including the creation of any new encumbrance on title, or (iii) construct any new Improvements on the Premises.

Section 2.06 Possession. So long as no Event of Default shall have occurred and be continuing under this Lease, and Tenant shall have satisfied the Landlord Turnover Conditions, Landlord shall give Tenant possession of the Premises on the Term Commencement Date, subject to the Access Agreement if it is still in effect at such time.

Section 2.07 Turnover Conditions.

(a) Commencement of this Lease is subject to the satisfaction of the following conditions (collectively, "Tenant's Turnover Conditions") as reasonably determined by Tenant:

(i) Tenant has obtained the DSUP Approvals;

(ii) Tenant has obtained the Approved Final Site Plan, the Building Permit Approval, and all other permits and licenses necessary for Tenant to construct the Hospital Improvements;

(iii) The On-Site INOVA Pad-Ready Site Conditions have been substantially completed pursuant to the terms of the Project Agreements;

(iv) Landlord has paid, when required to do so, the "Second Installment of the Purchase Price", as such term is defined in that certain Purchase and Sale Agreement by and between Landlord and Foulger Pratt JV dated of even date herewith further to which Landlord acquired fee title to the Land and improvements thereon;

(v) An Interchange Access Request has been approved by the City, the Virginia Department of Transportation and the Federal Highway Administration allowing construction of improvements to the I-395/Duke Street interchange to provide access from northbound I-395 to the eastbound left turns at the intersection of Duke Street / Walker Road / and proposed Road 3 within the Project (the "I-395/Duke Street Interchange Improvement");

(vi) Funding for the I-395/Duke Street Interchange Improvement has been identified as required by the Project Agreements;

(vii) The Project Agreements, as may be amended, shall be in full force and effect and there shall be no material uncured default thereunder;

(viii) Title to and the physical condition of the Premises shall be in the condition as of the Effective Date (except as expressly provided otherwise in this Lease or in the Project Agreements); and

(ix) Landlord shall not be in default of this Lease beyond any notice and cure period required herein.

(b) Prior to the Term Commencement Date, Tenant shall deliver to Landlord the following (collectively, "Landlord Turnover Conditions"):

(i) Evidence that Tenant has obtained the Building Permit Approval, and all other permits and licenses necessary for Tenant to construct the Hospital Improvements;

(ii) Plans and specifications for construction of the Hospital Improvements as approved by Tenant and all applicable Governmental Authorities;

(iii) A fully-executed fixed price or guaranteed maximum price contract for construction of the Hospital Improvements; and

(iv) Evidence reasonably acceptable to Landlord that Tenant has sufficient financial resources to pay all budgeted hard and soft costs of completing construction of the Hospital Improvements.

Section 2.08 Guarantor.

(a) Simultaneously with the execution of this Lease, Tenant shall cause the Guarantor to execute and deliver the Guaranty to Landlord. The minimum tangible net assets requirement under the Guaranty shall be and remain \$500,000,000.00.

(b) Upon execution of the Guaranty, the Guarantor, together with its consolidated affiliates (collectively, the "System"), shall have the tangible net assets required under such Guaranty. Prior to execution of the Guaranty, Tenant shall cause the Guarantor to provide to Landlord a financial statement confirming the System's tangible net assets as required by the Guaranty. The System shall maintain its required tangible net assets as set forth in the Guaranty.

Section 2.09 Reserved.

ARTICLE 3
RENT

Section 3.01 Ground Rent. For each Lease Year, Tenant shall pay to Landlord the "Ground Rent."

Section 3.02 Payment. Ground Rent for each Lease Year shall be paid in advance in a single installment due and payable on the first (1st) day each of Lease Year without deduction, set off or counterclaim. Increased Ground Rent, from time to time if ever due, shall be paid in twelve (12) equal installments in advance on the first day of each month. If Increased Ground Rent becomes due on a day other than the first day of a calendar month, Increased Ground Rent from such due date until the first day of the next month will be prorated based on the actual number of days in such month and will be due on the first day of the next month together with the next month's installment of Increased Ground Rent. If Increased Ground Rent resets to Ground Rent (i.e. \$1.00 per Lease Year) on a day other than the first day of a calendar month, Landlord will reimburse Tenant a prorated portion of that month's installment of Increased Ground Rent based on the actual number of days in such month. If Increased Ground Rent resets to Ground Rent (i.e. \$1.00 per Lease Year) Tenant shall have no obligation for payment of Ground Rent (i.e. \$1.00 per Lease Year) for a partial Lease Year, and the next installment of Ground Rent will be due on the first day of the next Lease Year.

Section 3.03 Net Lease. It is the purpose and intention of Landlord and Tenant, and the parties hereto agree, that Ground Rent shall be absolutely net to Landlord without any abatement, deduction, counterclaim, set-off or offset whatsoever, so that this Lease shall yield, net, to Landlord, the Ground Rent in each year from and after the Term Commencement Date, and that all costs, expenses and charges of

every kind and nature (including all public and private utilities and services) relating to the Premises during the Term shall be paid by Tenant.

Section 3.04 No Offset. All Ground Rent shall be payable without offset, deduction or counterclaim.

ARTICLE 4 IMPOSITIONS

Section 4.01 Impositions. From and after the Term Commencement Date, Tenant shall pay, as hereinafter provided, all of the following items (collectively, "Impositions") imposed by any Governmental Authority and shall fully indemnify and hold Landlord harmless therefrom: (a) Taxes, (b) personal property taxes, (c) occupancy and rent taxes, (d) water, water meter and sewer rents, rates and charges, impervious area charges, stormwater discharge fees, and any building energy performance standards fees/penalties, (e) excises, (f) levies, (g) license and permit fees and user charges; (h) fines, penalties and other similar or like governmental charges applicable to the foregoing and any interest or costs with respect thereto and (i) any and all other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, and any interest or costs with respect thereto, which at any time after the Term Commencement Date are, (1) assessed, levied, confirmed, imposed upon or due and payable out of or in respect of, or charged with respect to, the Premises or any document to which Tenant is a party creating or transferring an interest or estate in the Premises, or the use and occupancy thereof by Tenant, and (2) encumbrances or liens on (i) the Premises, or (ii) the sidewalks or streets in front of or adjoining the Premises, or (iii) any vault (other than a vault in respect of which a utility company is obligated to pay any charge specified above or which is exempt from any such charge by reason of use thereof by any such utility company), passageway or space in, over or under such sidewalk or street, or (iv) any appurtenances of the Premises, or (v) any personal property (except personal property which is not owned by or leased to Tenant), Equipment or other facility used in the operation thereof. However, if, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same in such installments and shall be responsible for the payment of such installments only, together with applicable interest, if any, relating to periods prior to the Expiration Date. Notwithstanding the foregoing or anything in this Lease to the contrary, nothing contained in this Lease shall be construed to limit or adversely affect in any way Tenant's right to exemption from City taxation with respect to Tenant's real and personal property under applicable law, as may be amended from time to time, or to any other right of Tenant with respect to tax exemption to which Tenant is entitled under applicable law, as may be amended from time to time.

Section 4.02 Receipts. If and to the extent Tenant is required to pay Impositions under applicable law, Tenant (a) shall promptly furnish to Landlord evidence of payment of real estate taxes pursuant to Section 4.01 and (b) from time to time upon request of Landlord, shall promptly furnish to Landlord evidence of payment of other Impositions pursuant to Section 4.01.

Section 4.03 Landlord's Taxes. Nothing herein contained shall require Tenant to pay municipal, state or federal income, gross receipts, inheritance, estate, succession, profit, capital or transfer gains taxes of Landlord, if any, or any corporate franchise tax imposed upon Landlord, or any transfer or gains tax imposed on Landlord, or any grantor's, transfer or recordation tax in connection with the transfer by Landlord of any portion of its interest in the Premises. Landlord represents that, as of the Effective Date, Landlord is fully exempt from all of the foregoing-described taxes under applicable law.

Section 4.04 Impositions Beyond Term. Any Imposition relating to a period a part of which is included in a period of time before the Term Commencement Date or after the Expiration Date (whether or not such Imposition shall be assessed, levied, confirmed, imposed upon or in respect of or become a lien upon the Premises, or shall become payable, during the Term) shall be apportioned between Landlord and Tenant as of the Term Commencement Date or the Expiration Date, as the case may be, so that Tenant shall

pay that portion of such Imposition obtained by multiplying (a) the amount of the Imposition in question by (b) the ratio which that part of such fiscal period included in the period of time after the Term Commencement Date or before the Expiration Date, as applicable, bears to the full fiscal period.

Section 4.05 Tenant's Contest.

(a) Tenant shall have the right to contest the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of Section 4.01, payment of such Imposition shall be postponed if, and only as long as neither the Premises nor any part thereof, or interest therein or any income therefrom or any other assets of or funds appropriated to Landlord would, by reason of such postponement or deferment, be, in the reasonable judgment of Landlord, in imminent danger of being forfeited or lost or subject to any lien, encumbrance or charge, and neither Landlord nor Tenant would by reason thereof be subject to any civil or criminal liability. Upon the termination of such proceedings, it shall be the obligation of Tenant to pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which may have been deferred during the prosecution of such proceedings, together with any costs, fees (including attorney's fees and disbursements), interest, penalties or other liabilities in connection therewith.

(b) Tenant shall have the right to seek a reduction in the valuation of the Premises (or any other property) assessed for Taxes and to prosecute any action or proceeding in connection therewith, provided that no such action or proceeding shall postpone Tenant's obligation to pay any Imposition except in accordance with the provisions of this Section 4.05.

Section 4.06 Landlord Cooperation in Proceedings. Landlord shall not be required to join in any proceedings referred to in Section 4.05, but Landlord shall cooperate to the extent strictly necessary under Legal Requirements in order to permit the same to be brought by Tenant. Landlord shall not be liable for the payment of any costs or expenses in connection with any such proceedings and Tenant shall reimburse Landlord for any and all costs or expenses which Landlord may reasonably sustain or incur in connection with any such proceedings, including reasonable attorneys' fees and disbursements.

ARTICLE 5
LATE INTEREST

In the event that Tenant shall fail to pay any installment of Ground Rent on the date due and payable, and such failure shall continue for fifteen (15) days following written notice thereof from Landlord, then (i) the amount due but unpaid shall bear interest at a rate equal to the Involuntary Rate, for the period from the Due Date to the date of actual payment, and (ii) Tenant shall pay to Landlord a late charge in the amount of ten percent (10%) of the Ground Rent that is then due and payable but unpaid. Such interest and late charge shall be due and payable to Landlord as liquidated damages for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make prompt payment. Such interest and late charge shall be payable by Tenant within ten (10) days after demand. No failure by Landlord to insist upon the strict performance by Tenant of its obligations to pay late charges shall constitute a waiver by Landlord of its right to enforce the provisions of this Article 5 in any instance thereafter occurring. Except as expressly set forth herein, the provisions of this Article 5 shall not be construed in any way to extend the grace periods or notice periods provided for in Article 22.

ARTICLE 6
INSURANCE

[OPEN FOR CONSIDERATION OF ADDITIONAL COMMENTS FROM CITY'S AND INOVA'S INSURANCE ADVISORS]

Section 6.01 Required Insurance. From and after the Term Commencement Date, Tenant shall maintain, or cause to be maintained, at its sole cost and expense, the required insurance described in Exhibit F.

Section 6.02 Additional Insurance Requirements.

(a) All insurance policies required by Section 6.01 shall be issued by responsible companies authorized to do business in the Commonwealth of Virginia, have AM Best rating of not less than A-/VII, and shall name Landlord and the City as additional insureds.

(b) Reserved.

(c) Tenant shall not violate or permit to be violated any of the conditions or provisions of any such policy, and Tenant shall so perform and satisfy or cause to be performed and satisfied the requirements of the companies writing such policies.

(d) Tenant shall procure policies for all such insurance required by any provision of this Lease for periods of not less than one (1) year (if such policy term is customary and available) and shall procure renewals thereof from time to time and deliver evidence (via certificate of insurance) of the same to Landlord before the expiration thereof. If Tenant shall fail to procure any such policies or renewals thereof in accordance herewith, Landlord may procure the same, and Tenant shall be obligated to reimburse Landlord for all costs incurred by Landlord in connection therewith.

(e) Landlord and Tenant each hereby releases the other, and the agents, employees, officers, directors, members, partners and stockholders of the other, from any claims for damage or loss to, or arising in connection with the use of, (i) the Premises or the Improvements, or (ii) any property of each other contained therein or thereon, regardless of the cause of the damage or loss (including the negligence of Landlord or Tenant or their respective agents, contractors or employees), to the extent that such damage or loss is a risk or event covered by any insurance maintained by Landlord or Tenant, as the case may be, or which Tenant is obligated to maintain pursuant to this Lease, in each case without regard to deductibles. Tenant shall obtain express waivers of any right of subrogation in its policies providing coverage for general liability, umbrella liability, property damage, pollution liability, worker compensation, business interruption and rent interruption.

(f) Notwithstanding the foregoing or anything in this Lease to the contrary, so long as Tenant under this Lease remains Inova Health Care Services and Tenant can demonstrate to Landlord's reasonable satisfaction that Tenant (directly or indirectly through its Affiliates) possesses sufficient financial resources and controls in order to self-insure its insurance obligations under this Lease, then Tenant may self-insure its insurance obligations hereunder, including through its wholly owned captive insurance company, InovaCap. Upon Landlord's request from time to time, Tenant shall provide Landlord with a current financial statement, audited or certified by Tenant's CFO, and other reasonably requested documentation in order to demonstrate the satisfaction of the conditions described in the foregoing sentence.

Section 6.03 Delivery of Certificates. Prior to the Term Commencement Date and thereafter prior to the expiration dates of the expiring policies theretofore furnished pursuant to this Article, certificate of insurance shall be delivered by Tenant to Landlord. Landlord shall not be deemed to have responsibility for or knowledge of the accuracy, adequateness or compliance of such policies with the requirements set forth in this Article 6. Tenant shall, upon the written request of Landlord, obtain and deliver to Landlord, within thirty (30) days after the date of any such request, a certificate from Tenant's insurer or independent insurance agent certifying to Landlord, as certificate holder, in reasonable detail the insurance policies then being maintained by Tenant in accordance with the requirements of this Article 6.

ARTICLE 7
CASUALTY

Section 7.01 Tenant's Obligation to Restore. If, following the commencement of construction of the Initial Improvements on the Land, all or any part of any of the Premises shall be destroyed or damaged in whole or in part by fire or other casualty (including any casualty for which insurance was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, Tenant shall give to Landlord prompt notice thereof, except that no notice shall be required if the estimated cost of repairs, alterations, restorations, replacements and rebuilding (collectively, "Restoration") shall be less than \$10,000,000 (as such amount shall be adjusted on each anniversary of the Term Commencement Date, by the percent increase, if any, in the Consumer Price Index for the month in which the applicable anniversary date occurs over the Consumer Price Index for the month in which the Term Commencement Date occurs), and Tenant shall, whether or not such damage or destruction shall have been insured, and whether or not insurance proceeds, if any, shall be sufficient for the purpose of such Restoration, with reasonable diligence (subject to Unavoidable Delays) repair, alter, restore, replace and rebuild (collectively, "Restore") the same, at least to the extent of the value and as nearly as possible to the quality and class of the Premises existing immediately prior to such occurrence, subject to Tenant's rights to make alterations and other such modifications as Tenant may reasonably determine are necessary to respond to changes in the delivery of healthcare services (and provided that in no event shall Tenant be required to restore or rebuild any Existing Improvements). Each such Restoration shall be done in accordance with the provisions of this Lease. Notwithstanding the foregoing or anything in this Lease to the contrary, during the period from and after the Effective Date until the Term Commencement Date, Landlord bears all risk of loss of or to the Premises except as otherwise provided by the Project Agreements.

Section 7.02 Disposition of Insurance Proceeds. If as of the date of any fire or other casualty there is a Qualifying Mortgagee, any proceeds of fire or casualty insurance shall be payable as required pursuant to the terms of the applicable Qualifying Mortgage to such Qualifying Mortgagee. If as of the date of any fire or other casualty there is not a Qualifying Mortgagee, any proceeds of fire or casualty insurance shall be payable to Tenant, and may be retained by Tenant except as otherwise set forth in this Lease.

Section 7.03 Damage During Last Years

(a) Notwithstanding any other provision of this Article 7, if any damage or casualty to the Premises shall occur within the ten (10) years prior to the Fixed Expiration Date, and the cost of Restoration pursuant to Section 7.01 shall exceed two percent (2%) of the replacement cost of the entire Premises (or one percent (1%) within the last five (5) years of the Term), then Tenant shall have the right to terminate this Lease. Tenant shall exercise such right on or before the date that is ninety (90) days after the occurrence of such damage or casualty. Such termination shall be effective at such time as the following conditions shall have been satisfied: (i) such termination shall be approved by any Qualifying Mortgagee and (ii) Tenant shall have performed its obligations under Sections 7.03(b) and (c). If the conditions set forth in the foregoing clauses (i) and (ii) shall not have been satisfied by the date that is one (1) year after Tenant's notice of termination, then such notice shall be deemed rescinded and this Lease shall continue in full force and effect.

(b) If Tenant provides notice of termination of this Lease pursuant to Section 7.03(a), then at the option of Landlord, Tenant, at its sole cost and expense (subject to reimbursement as described in Section 7.03(d)), shall either (i) demolish all Improvements on the Land, or (ii) safeguard and secure the Improvements on the Land so that they do not present any imminent danger to person or property. Landlord shall exercise such option within two (2) months after such notice.

(c) If Tenant provides notice of termination of this Lease pursuant to Section 7.03(a), then Tenant, at its sole cost and expense, shall terminate all Subleases and extinguish all rights of Subtenants to require the restoration of all or any portion of the Improvements on the Land. At the

option of Landlord, Tenant shall use commercially reasonable efforts to prevent the termination of such Subleases. Landlord shall exercise such option within two (2) months after such notice.

(d) If this Lease terminates pursuant to Section 7.03(a), then the proceeds of insurance shall be disbursed as follows: (i) first, to any Qualifying Mortgagee, the amount of the outstanding indebtedness secured by the Qualifying Mortgage, (ii) second, to Tenant to reimburse Tenant for the out-of-pocket costs incurred by Tenant pursuant to Sections 7.03(b) and 7.03(c), if any, and (iii) the balance, to Landlord.

Section 7.04 No Abatement of Ground Rent. Except as expressly set forth in this Lease (including as set forth in Section 7.03 above), this Lease shall not terminate or be forfeited or be affected in any manner, and there shall be no reduction or abatement of the Ground Rent payable hereunder, by reason of damage to or total, substantial or partial destruction of any of the Premises or any part thereof or by reason of the untenability of the same or any part thereof, for or due to any reason or cause whatsoever, and Tenant, notwithstanding any law or statute present or future, waives any and all rights to quit or surrender the Premises or any part thereof. Tenant expressly agrees that its obligations hereunder, including the payment of Ground Rent, shall continue as though the Premises had not been damaged or destroyed and without abatement, suspension, diminution or reduction of any kind.

ARTICLE 8 CONDEMNATION

Section 8.01 Taking of All or Substantially All of Premises.

(a) If the whole or substantially all of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, this Lease and the Term shall terminate and expire on the date of such taking and the Ground Rent payable by Tenant hereunder shall be equitably apportioned as of the date of such taking.

(b) The term “substantially all of the Premises” shall mean such portion of the Premises as when so taken would leave remaining a balance of the Premises which, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not under economic conditions, applicable zoning laws or building regulations then existing or prevailing permit the feasible operation of the Premises for their permitted uses hereunder as reasonably determined by Tenant.

(c) If this Lease is terminated pursuant to this Section 8.01, the condemnation award shall be paid and distributed as follows: (a) to Tenant (or any Qualifying Mortgagee to the extent required under the terms of its Qualifying Mortgage), in the proportion that the Condemnation Leasehold Value bears to the sum of the Condemnation Fee Value and the Condemnation Leasehold Value, and (b) to Landlord, in the proportion that the Condemnation Fee Value bears to the sum of the Condemnation Fee Value and the Condemnation Leasehold Value.

Section 8.02 Date of Taking. For purposes of this Article 8 the “date of taking” shall be deemed to be the earlier of (a) the date on which actual possession of the whole or substantially all of the Premises, or a part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of the applicable federal or Virginia law, or (b) the date in which title to the Premises or the aforesaid portion thereof shall have vested in any lawful power or authority pursuant to the provisions of the applicable federal or Virginia law.

Section 8.03 Partial Taking: Tenant’s Obligation to Restore. If less than substantially all of the Premises shall be so taken, this Lease and the Term shall continue as to the portion of the Premises remaining and the Ground Rent shall be reduced in the proportion which the fair market value of the portion of the Premises so taken bears to the fair market value of the entire Premises (both of these values shall be

determined by appraisal pursuant to Section 33.04). Tenant shall (subject to Unavoidable Delays) and without obligation to spend more than the condemnation award, proceed diligently to Restore any remaining part of the Project not so taken so that the latter shall be complete, operable and in good condition and repair. Any balance of the award not applied to Restore the Premises remaining after completion of the Restoration shall be paid to Tenant.

Section 8.04 Temporary Taking. If the temporary use of the whole or any part of the Premises shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right, Tenant shall give prompt notice thereof to Landlord and the Term shall not be reduced or affected in any way and Tenant shall continue to pay in full the Ground Rent payable by Tenant hereunder without reduction or abatement, and Tenant shall be entitled to receive for itself any award or payments for such use, provided, however, that if the taking is for a period extending beyond the Term, Landlord's consent shall be required for any agreement as to such taking with the lawful power or authority and such award or payment shall be apportioned between Landlord and Tenant as of the Expiration Date.

Section 8.05 Sale in Lieu of Condemnation. In the event of a negotiated sale of all or a portion of the Premises in lieu of condemnation, the proceeds shall be distributed as provided above in this Article 8 with respect to the respective type of condemnation (i.e., total, partial or temporary).

Section 8.06 Participation in Proceedings. Landlord, Tenant and any Mortgagee shall be entitled to file a claim and otherwise participate in any condemnation or similar proceeding and all hearings, trials and appeals in respect thereof.

Section 8.07 Claims for Personal Property. Notwithstanding anything to the contrary contained in this Article 8, in the event of any permanent or temporary taking of all or any part of the Premises, Tenant and its Subtenants shall have the exclusive right to assert claims for any trade fixtures and personal property so taken which were the property of Tenant or its Subtenants and for relocation expenses of Tenant or its Subtenants, and all awards and damages in respect thereof shall belong to Tenant and its Subtenants, and Landlord hereby waives any and all claims to any part thereof.

ARTICLE 9 ASSIGNMENT AND SUBLETTING

Section 9.01 Assignment of Lease.

(a) Prior to the Transition Date, neither this Lease nor any interest of Tenant in this Lease, shall be sold, assigned, or otherwise transferred, whether by operation of law or otherwise (each, a "Transfer"), nor shall Tenant sublet the Premises as an entirety or substantially as an entirety, without the prior written consent of Landlord in each instance. Landlord may withhold such consent in its sole but reasonable discretion.

(b) Landlord's consent shall not be required pursuant to Section 9.01(a) or Section 9.01(c) with respect to any Transfer (i) by the foreclosure of any Qualifying Mortgage or through a deed or instrument of transfer delivered in lieu of such foreclosure or through a deed or instrument of transfer by a Qualifying Mortgagee out of foreclosure or next after having received a deed or other instrument of transfer delivered in lieu thereof; or (ii) to a direct or indirect Affiliate of Tenant to the extent such Person is not a Prohibited Person.

(c) Following the Transition Date, Tenant may, from time to time, effectuate a Transfer to any Person (other than a Prohibited Person), subject to Landlord's prior written consent, which such consent shall not be unreasonably withheld, conditioned or delayed, provided that in the instrument effecting the Transfer, the transferee shall assume and agree to perform all of the terms, covenants and conditions of this Lease from and after the date of the Transfer, including the terms and conditions of this Lease related to the use of the

Premises. [REMAINDER OF 9.01(c) IS OPEN FOR CITY PER DISCUSSION WITH BOND COUNSEL] Notwithstanding the foregoing, if Tenant seeks to effectuate a Transfer to a “for-profit” hospital operator and, as a result of that Transfer, the Landlord or the City are required to redeem or defease the Allocable Tax Exempt Debt as part of a remedial action under Treas. Reg. Section 1.142-2, or successor thereto (a “Remedial Action”), to preserve the exclusion from gross income for federal income tax purposes of interest on the Allocable Tax Exempt Debt, it shall be reasonable for Landlord to condition its consent to such a Transfer on Tenant's agreement to pay or to provide for the payment to Landlord or the City, as applicable, any and all costs, expenses and penalties that Landlord or the City actually incur for such Remedial Action, including any incremental increase in the interest cost of the Replacement Debt (when compared to the interest cost that would have been payable on the Allocable Tax-Exempt Debt for the same period of time), prepayment penalties relating to the defeasance or redemption of the Allocable Tax Exempt Obligations and legal fees and other transactional expenses relating to such Remedial Action). For purposes of this Section 9.01(c), “Allocable Tax Exempt Debt” shall mean the portion of any Tax Exempt Debt allocable to the financing or refinancing of the costs of the Land; “Replacement Debt” shall mean that portion of any new indebtedness incurred by the Landlord or the City and used to refinance the Allocable Tax-Exempt Debt; and “Tax Exempt Debt” shall mean any then outstanding state or local bonds, the interest on which is excluded from gross income for federal income tax purposes under Section 103(a) of the Internal Revenue Code of 1986, as amended.

(d) From and after a Transfer by Tenant of its interest in the Premises and this Lease that is permitted pursuant to this Section 9.01, such Tenant shall have no obligation for liabilities under this Lease first arising from and after the date of such Transfer, provided that in the instrument effecting the Transfer, the transferee shall assume and agree to perform all of the terms, covenants and conditions of this Lease from and after the date of the Transfer.

(e) Landlord has the right to freely assign its interests in this Lease to City including in connection with a Transfer of the Land to City.

Section 9.02 Consent Limited to Transaction. Any consent by Landlord under Section 9.01 shall apply only to the specific transaction thereby authorized and shall not relieve Tenant from any requirement hereunder of obtaining the consent of Landlord to any further transaction requiring such consent.

Section 9.03 Subleases.

(a) Except as expressly set forth in Section 9.01(a), Tenant may, without Landlord's consent, enter into subleases, licenses, occupancy agreements or management agreements for the possession, operation or use of any space in the Improvements and any amendments thereto (collectively, “Subleases”) with any Person in Tenant's sole discretion, provided that each Sublease shall satisfy the requirements of this Section 9.03; provided, however, Tenant shall not enter into any Sublease (exclusive of Subleases with Affiliates) which, when combined with any other then pending Sublease (exclusive of Subleases with Affiliates), exceeds fifteen percent (15%) of the occupiable area of the Hospital Improvements (excluding any parking facility), without Landlord's prior written consent. For any Sublease (exclusive of Subleases with Affiliates) which, when combined with any other then pending Sublease (exclusive of Subleases with Affiliates), is less than forty percent (40%) of the occupiable area of the Hospital Improvements (excluding any parking facility), Landlord's consent shall not be unreasonably withheld, conditioned or delayed. For any Sublease (exclusive of Subleases with Affiliates) which, when combined with any other then pending Sublease (exclusive of Subleases with Affiliates), is forty percent (40%) or more of the occupiable area of the Hospital Improvements (excluding any parking facility) Landlord's consent may be withheld in its sole but reasonable discretion. Whether Landlord's consent to a Sublease is required or not, Tenant shall provide Landlord with a copy of each and every Sublease

that Tenant enters into for space in the Improvements. When Tenant seeks Landlord's consent to any Sublease, Tenant shall provide Landlord with a written list of all then pending Subleases in the Hospital and Tenant's calculation of the occupiable area covered by such Subleases, as well as the total occupiable area of the Hospital Improvements (excluding any parking facility).

(b) Each Sublease shall obligate the subtenant pursuant thereto ("Subtenant") to occupy and use the premises included therein for purposes consistent with Legal Requirements and the provisions of this Lease, including Section 2.03(a). Except as explicitly agreed to by Landlord in writing, with respect to each and every Sublease, it is further agreed that:

(i) no subletting shall be for a term ending later than the Fixed Expiration Date;

(ii) each Sublease shall specifically state that (A) it is subject to all of the terms, covenants, agreements, provisions, and conditions of this Lease, (B) if an Event of Default of Tenant has occurred and is continuing, Subtenant shall pay to Landlord upon demand, any and all rent and other sums due or accruing to Tenant under such Sublease, and (C) if there is a termination of this Lease, or if Landlord shall exercise its rights to dispossess Tenant or to re-enter the Premises, any subtenant which is not an Affiliate of Tenant will attorn to Landlord and Landlord will have all rights of Tenant under such Sublease, including the right to enforce those rights by court proceeding or otherwise;

(iii) the receipt by Landlord of any amounts from any subtenant or other occupant of any part of the Premises shall not be deemed or construed as releasing Tenant from Tenant's obligations hereunder; and

(iv) the Subtenant will not pay rent or other sums under the Sublease more than one (1) month in advance (excluding security and other deposits required under such Sublease).

Section 9.04 Acts of Subtenant. The fact that a violation or breach of any of the terms, provisions or conditions of this Lease results from or is caused by an act or omission by any subtenant, or subtenant of a subtenant, shall not relieve Tenant of Tenant's obligation to cure the same.

Section 9.05 Collection of Rent from Subtenants. Landlord, after an Event of Default by Tenant, may, subject to the rights of any present or future Qualifying Mortgagee, collect subrent and all other sums due under Subleases, and apply the net amount collected to Ground Rent, but no such collection shall be, or be deemed to be, a waiver of any agreement, term, covenant or condition of this Lease, or a release of Tenant from performance by Tenant of its obligations under this Lease.

Section 9.06 Assignment of Tenant's Interest in Subleases. To secure the prompt and full payment by Tenant of the Ground Rent and the faithful performance by Tenant of all the other terms and conditions herein contained on its part to be kept and performed, Tenant hereby assigns, transfers and sets over unto Landlord, subject to any assignment of Subleases and/or rents now or hereafter made in connection with any present or future Qualifying Mortgage, all of Tenant's right, title and interest in and to all Subleases and hereby confers upon Landlord, its agents and representatives, a right of entry in, and sufficient possession of, the Premises to permit and insure the collection by Landlord of the Ground Rents and other sums payable under the Subleases. The exercise of the right of entry and qualified possession by Landlord shall not constitute an eviction of Tenant from the Premises or any portion thereof; provided, however, that such assignment and right of entry shall become operative and effective only if (a) an Event of Default shall occur and remain uncured, or (b) this Lease and the Term shall be cancelled or terminated pursuant to the terms, covenants and conditions hereof.

Section 9.07 Nondisturbance. If this Lease shall terminate for any reason, Landlord shall recognize each Sublease meeting the requirement of Section 9.03 above and right to possession granted to any Subtenant under any Sublease meeting the requirement of Section 9.03 above, subject to the following:

(a) Landlord shall not be obligated to construct or pay for any tenant improvements required under any Sublease, or pay any allowances or concessions that may be provided for in any Sublease, provided that Landlord agrees that the Sublease may include an offset right on the part of the Subtenant with respect to the Landlord's failure to pay the cost of such tenant improvements and/or such allowances or concessions.

(b) Landlord shall not be bound by any payment of rent under any Sublease that is for more than one (1) month rent and for more than one (1) month prior to its Due Date.

(c) Landlord shall not be liable for damages for any breach, act or omission of Tenant or any other prior landlord under any Sublease, or subject to any offsets or defenses which the Subtenant may have against Tenant or any other prior landlord under its Sublease.

(d) Landlord shall not be responsible for the return of any security deposit furnished to Tenant or any other prior landlord that has not actually been received by Landlord.

(e) For clarity, in no event shall Landlord be obligated to recognize any right to possession beyond the Fixed Expiration Date unless specifically approved by Landlord in writing.

Landlord shall, within twenty (20) Business Days following Tenant's request therefor (which may be made at any time or from time to time), enter into a subordination, non-disturbance and attornment agreement, in the form attached hereto as Exhibit E or otherwise in a commercially reasonable form reasonably acceptable to Landlord and consistent with this Section 9.07 (the "Subordination, Non-disturbance and Attornment Agreement"), with respect to any Sublease entered into in accordance with the provisions of this Lease (i) with a premises in excess of 10,000 rentable square feet, if the Subtenant is not a retail Subtenant, and (ii) with a premises in excess of 2,500 rentable square feet, if the Subtenant is a retail Subtenant.

ARTICLE 10 LEASEHOLD MORTGAGES

Section 10.01 Leasehold Mortgages.

(a) Subject to the terms of Section 24.01, Tenant shall have the right to mortgage or pledge its interest in this Lease to one or more Mortgagees at any time and from time to time after the Transition Date in its sole discretion, *provided* that no holder of any Mortgage, nor anyone claiming by, through or under any such Mortgage, shall by virtue thereof, acquire any greater rights hereunder than Tenant has (except in the case of a Qualifying Mortgagee only, such rights as are expressly granted to Qualifying Mortgagees hereunder). Each Subtenant shall have the right to mortgage or pledge its interest in its Sublease to one or more mortgagees at any time and from time to time after the Transition Date in its sole discretion (subject to the terms of the Sublease in question), but no such mortgage shall constitute a Mortgage or Qualifying Mortgage hereunder. For avoidance of doubt, Tenant has no right to grant a Mortgage prior to the Transition Date without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided however it is agreed that it shall be reasonable, in all events, for Landlord to deny its consent to a proposed Mortgage if Landlord reasonably believes that the existence of the Mortgage would (i) reduce the likelihood of Tenant meeting any Milestone, (ii) limit Landlord's rights and remedies in the event Tenant failed to meet any Milestone, or (iii) reduce Landlord's rights and remedies under the Guaranty.

(b) Tenant or the Mortgagee shall give to Landlord written notice of the making of any Mortgage (which notice shall contain the name and office address of the Mortgagee) within ten

(10) days after the execution and delivery of such Mortgage and a duplicate original or certified copy thereof.

(c) Landlord shall give to each Qualifying Mortgagee, at the address of such Qualifying Mortgagee set forth in the notice from such Qualifying Mortgagee or from Tenant, and otherwise in the manner provided by Article 23, a copy of each notice given by Landlord to Tenant hereunder (including Default notices) at the same time as and whenever any such notice shall thereafter be given by Landlord to Tenant, and no such notice by Landlord shall be deemed to have been duly given to Tenant (and no grace or cure period shall be deemed to have commenced) unless and until a copy thereof shall have been given to each such Qualifying Mortgagee. The Cure Rights Mortgagee (i) shall thereupon have a period of thirty (30) days more in the case of a Default in the payment of Ground Rent and sixty (60) days more in the case of any other Default (or in the case of a non-monetary Default which shall require more than sixty (60) days to cure using due diligence, then such longer period of time as shall be necessary so long as such Cure Rights Mortgagee shall have commenced to cure (or caused to be commenced such cure) within such 60-day period and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence and continuity), after the applicable period afforded Tenant for remedying the Default or causing the same to be remedied has expired and (ii) shall, within such period and otherwise as herein provided, have the right (but not the obligation) to remedy such Default or cause the same to be remedied. Landlord shall accept performance by or on behalf of the Cure Rights Mortgagee of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant, so long as such performance is made in accordance with the terms and provisions of this Lease. Landlord shall not object to any temporary entry onto the Premises by or on behalf of the Cure Rights Mortgagee to the extent necessary to effect such Cure Rights Mortgagee's cure rights, provided such entry is in compliance with applicable law.

(d) A non-monetary Default by Tenant or a non-monetary Event of Default shall not be deemed to exist as long as the Cure Rights Mortgagee, in good faith, (i) shall have commenced to cure (or caused to be commenced such cure) the Default or Event of Default within the time periods provided in Section 10.01(c), and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence and continuity (subject to Unavoidable Delays), or (ii) if possession of the Premises or any part thereof is required in order to cure such Default or Event of Default, shall have notified Landlord within thirty (30) days after the applicable period afforded to Tenant for remedying the Default or Event of Default shall have expired of its intention to institute foreclosure proceedings to obtain possession directly or through a receiver, and thereafter commences such foreclosure proceedings, prosecutes such proceedings with all reasonable diligence and continuity (subject to Unavoidable Delays) and, upon obtaining such possession, commences promptly to cure the Default or Event of Default and prosecutes the same to completion with all reasonable diligence and continuity (subject to Unavoidable Delays).

(e) Notwithstanding anything in this Section 10.01 to the contrary, a Qualifying Mortgagee shall not be required to cure any Incurable Defaults of Tenant, and if any Qualifying Mortgagee, assignee or transferee shall acquire the Premises pursuant to a foreclosure or transfer in lieu of foreclosure, then any such Incurable Default by Tenant shall no longer be deemed a default. "Incurable Default" shall mean (i) any Event of Default described in Section 22.01(c), Section 22.01(d), Section 22.01(e) or Section 22.01(f), (ii) any Event of Default that is based upon the breach of any representation or warranty (such as entity status, OFAC compliance and the like) that is personal in nature to the Tenant, and (iii) any Event of Default that is based upon Tenant's wrongful assignment of this Lease or any interest therein (other than a wrongful assignment to such Qualifying Mortgagee). For clarity, Incurable Defaults shall not include any monetary Event of Default.

(f) With respect to any Default or Event of Default, so long as the Cure Rights Mortgagee shall be diligently exercising its cure rights under this Section 10.01 with respect thereto within the applicable cure periods set forth above and so long as, if possession of the Premises is required to cure the same, the Cure Rights Mortgagee shall be taking the actions required by Section 10.01(d), Landlord shall not (i) re-enter the Premises, (ii) serve a termination notice, or (iii) bring a proceeding on account of such default to (A) dispossess Tenant and/or other occupants of the Premises, (B) re-enter the Premises, or (C) terminate this Lease or the leasehold estate (such rights described in clauses (i), (ii) and (iii) being herein “Landlord’s Termination Rights”). Upon any cessation of the Cure Rights Mortgagee so exercising such rights and undertaking such activities, Landlord may exercise any of Landlord’s Termination Rights hereunder. Nothing in the protections to Qualifying Mortgagees provided in this Lease shall, however, be construed to either (i) extend the Term beyond the stated Fixed Expiration Date provided for in this Lease that would have applied if no Default had occurred or (ii) require such Qualifying Mortgagee to cure any non-monetary Default by Tenant that is not capable of being cured as a condition to preserving this Lease or, in the case of a Qualifying Mortgagee only, to obtaining a New Lease as provided in Section 10.02.

(g) The exercise of any rights or remedies of a Qualifying Mortgagee, including the consummation of any foreclosure or transfer in lieu of foreclosure, shall not constitute a default under this Lease.

(h) No Mortgagee shall become liable under the provisions of this Lease unless and until such time as it becomes, and then only for so long as it remains, the owner of the leasehold estate created hereby and no performance by or on behalf of such Mortgagee of Tenant’s obligations hereunder shall cause such Mortgagee to be deemed to be a “mortgagee in possession” unless and until such Mortgagee shall take control or possession of the Premises.

Section 10.02 New Lease.

(a) In the event of the termination of this Lease as a result of an Event of Default by Tenant, prior to the expiration of the Term, whether by summary proceedings to dispossess, service of notice to terminate, or otherwise, or as a result of any bankruptcy, insolvency or similar proceedings, Landlord shall serve upon each Qualifying Mortgagee who is entitled to notice, written notice of such termination promptly following same, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other Defaults, if any, under this Lease then known to Landlord. Subject to Section 10.02(d) below, the Cure Rights Mortgagee shall thereupon have the option to obtain a new lease in accordance with and upon the following terms and conditions, and otherwise upon the same terms and conditions and in the same form as this Lease (including a term that expires on the same Fixed Expiration Date as this Lease) (a “New Lease”):

(i) Upon the written request of such Cure Rights Mortgagee, served upon Landlord in accordance with Article 23, within forty-five (45) Business Days after service upon the Cure Rights Mortgagee of the aforementioned notice of termination, Landlord shall enter into a New Lease of the Premises with the Cure Rights Mortgagee or any designee of the Cure Rights Mortgagee (such Qualifying Mortgagee or such designee, the “New Tenant”).

(ii) The New Lease shall be effective as of the date of termination of this Lease and shall be for the remainder of the Term and at the Ground Rent and upon all the agreements, terms, covenants and conditions hereof, it being acknowledged that the New Lease is effectively a reinstatement of this Lease (but with the New Tenant). Upon and as a condition to Landlord’s execution of such New Lease, the New Tenant shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for

its termination, as aforesaid, and shall commence to remedy any non-monetary Defaults (other than Incurable Defaults) under this Lease (and the New Lease shall require the New Tenant to diligently continue to remedy such non-monetary Defaults until cured). Landlord shall have no obligation to deliver physical possession of the Premises in connection with the giving of any such New Lease to the extent that Landlord shall not previously have recovered possession of same.

Nothing herein contained shall release Tenant from any of its obligations under this Lease which shall not have been discharged or fully performed by Tenant or by such Cure Rights Mortgagee.

(b) As between Landlord and such New Tenant, any such New Lease and the leasehold estate thereby created, subject to the same conditions contained in this Lease, shall continue to maintain the same priority as this Lease with regard to any Mortgage or any other lien, charge or encumbrance whether or not the same shall then be in existence.

(c) Upon the execution and delivery of a New Lease under this Section 10.02, all Subleases which theretofore may have been assigned to Landlord thereupon shall be assigned and transferred, without recourse, by Landlord to the New Tenant. Between the date of termination of this Lease and the date of execution and delivery of the New Lease, if a Cure Rights Mortgagee shall have requested such New Lease as provided in Section 10.02(a)(i), Landlord shall not enter into any new Subleases, cancel or modify in any material respect any then-existing Subleases or accept any cancellation, termination or surrender thereof (unless such termination shall be effected as a matter of law on the termination of this Lease) without the written consent of the Cure Rights Mortgagee, not to be unreasonably withheld or delayed, except as permitted in the Subleases.

(d) Any rejection of this Lease by any trustee of Tenant in any bankruptcy, reorganization, arrangement or similar proceeding which would otherwise cause this Lease to terminate, shall, without any action or consent by Landlord, Tenant or any Mortgagee, effect the transfer of Tenant's interest hereunder to the Cure Rights Mortgagee or its nominee or designee. Such Cure Rights Mortgagee may reject the transfer of this Lease upon such transfer upon giving notice thereof to Landlord no later than thirty (30) days after notice from Landlord of such transfer. Such Cure Rights Mortgagee shall thereupon have no further obligations hereunder. Alternatively, the Cure Rights Mortgagee may, during such 30-day period, request a new lease in accordance with the provisions of this Section 10.02. In the event that the Cure Rights Mortgagee shall fail either to timely effect the transfer of this Lease or timely request a new lease, then this Lease shall be deemed terminated and no Mortgagee shall have any further rights under this Lease.

Section 10.03 Additional Mortgagee Protective Clauses. In addition to the other rights, notices and cure periods afforded to the holders of any Qualifying Mortgage or to the Cure Rights Mortgagee, as applicable, Landlord further agrees that:

(a) without the prior written consent of the Cure Rights Mortgagee, Landlord will neither agree to any modification or amendment of this Lease, nor accept a surrender or cancellation of this Lease;

(b) Landlord shall execute any modification to the Lease and enter into recognition agreements (in form and substance reasonably acceptable to Landlord) as reasonably requested by a Qualifying Mortgagee as a condition to making a loan to Tenant, provided that the same does not materially increase Landlord's obligations or diminish Landlord's rights hereunder;

(c) the Cure Rights Mortgagee shall have the right to participate in the adjustments of any insurance claims of the nature set forth in Article 7 and condemnation awards of the nature set forth in Article 8; and

(d) within fifteen (15) Business Days following the written request of Tenant from time to time (but no more than once per Lease Year for each Qualifying Mortgagee), Landlord shall execute and deliver an instrument addressed to the holder of any Qualifying Mortgage confirming that such holder is a Qualifying Mortgagee and entitled to the benefit of all provisions contained in the Lease which are expressly stated to be for the benefit of Qualifying Mortgagees, and if such Mortgagee is the Cure Rights Mortgagee, such instrument shall confirm such status.

ARTICLE 11 IMPROVEMENTS; DEVELOPMENT

Section 11.01 Improvements. Tenant shall construct on the Land the Initial Improvements pursuant to and in accordance with the Approved Final Site Plan. Following Substantial Completion of the Initial Improvements on the Land, Tenant shall have the right to construct, demolish, alter and replace Improvements on the Land in its sole discretion, provided that (a) all such Improvements shall be constructed, and all such work shall be performed, in accordance with all applicable Legal Requirements, and (b) Tenant shall not demolish any material portion of the Improvements (excluding demolition in connection with tenant improvements, base building finishes and routine capital improvements or otherwise in the ordinary course of business) unless such demolition is in connection with replacement improvements to be constructed by Tenant of the same or greater value.

Section 11.02 Title to Improvements. Title to all Improvements on the Land shall, for purposes of this Lease, be deemed to be in and remain in Tenant subject to the terms of this Lease for and during the entire Term, but upon the expiration or termination of the Term shall automatically vest in Landlord as to all Improvements then upon the Land, free and clear of all Mortgages. Upon such vesting, Landlord shall receive such Improvements “as is, where is, with all faults”. Upon expiration or termination of the Term, Tenant shall promptly execute such instruments of further assurances as may be requested by Landlord.

Section 11.03 Commencement and Completion of all Construction Work. All construction, demolition or alteration work, once commenced, shall be completed with reasonable diligence (subject to Unavoidable Delays) and in accordance with all applicable Legal Requirements.

Section 11.04 Permits and Insurance. Tenant shall not commence any construction, demolition or alteration work unless and until (a) Tenant shall have obtained all necessary permits, consents, certificates and approvals of all Governmental Authorities with regard to the particular work to be performed, and (b) Tenant shall have delivered to Landlord certificates of insurance evidencing the policies of insurance required to be carried pursuant to the provisions of Article 6. If strictly required by Legal Requirements and requested in writing by Tenant, Landlord shall cooperate with Tenant in obtaining all necessary permits, consents, certificates and approvals required to allow the construction of Improvements, including the DSUP Approvals, the Final Site Plan Approval, the Building Permit Approval, and including enrollment of the Premises in the Voluntary Remediation Program of the Virginia Department of Environmental Quality (if determined by Tenant), and as otherwise provided by this Section 11.04, and shall sign any application made by Tenant required to obtain such permits, consents, certificates and approvals. True copies of all such permits, consents, certificates and approvals shall be delivered by Tenant to Landlord.

Section 11.05 Development Encumbrances. If Landlord’s consent or joinder shall be required for any easements, rights of way, covenants, condominium regimes or other title matters encumbering the Land or the Improvements on the Land in connection with the development of the Land and/or the demolition, construction, renovation, alteration or replacement of any Improvements (collectively, “Development Encumbrances”), Landlord, promptly upon request of Tenant, shall provide such consent or joinder provided that (a) Landlord shall not be required to incur any material expense or liability (and any such expense or liability shall be promptly reimbursed by Tenant to Landlord upon request), and (b) Landlord shall not unreasonably withhold such consent so long as the proposed Development Encumbrance would not materially impair Landlord’s ownership or use of the Premises upon expiration or earlier

termination of the Lease. For clarity, Development Encumbrances may include construction easements, easements or rights of way for installation of water, gas, steam, electricity, telephone, cable or other communication service, sewer, district energy, chilled or heated water, storm drainage and other utilities, and easements or rights of way for streets, roads, alleys, or other access. Notwithstanding the foregoing, any condominium regime that affects the Premises shall explicitly provide that the condominium regime shall automatically terminate upon the expiration or earlier termination of this Lease.

Section 11.06 Dedications. If any dedication of fee simple title to any portion of the Land for streets, roads, alleys, open space, park, tree preservation, schools, or other public purposes, is required in accordance with the Approved Final Site Plan in connection with or as a condition to the development of the Land and/or the demolition, construction, renovation, alteration or replacement of any Improvements, Landlord, promptly upon request of Tenant, shall transfer such title to the applicable Governmental Authority, provided that (a) the form of such transfer is approved by Landlord, such approval not to be unreasonably withheld, conditioned or delayed, and (b) Landlord shall not be required to incur any material expense or liability (and any such expense or liability shall be promptly reimbursed by Tenant to Landlord upon request).

Section 11.07 DSUP Approvals and Final Site Plan. Following submission of an application for the Final Site Plan Approval, Tenant shall diligently pursue Final Site Plan Approval. Such application shall be consistent with the DSUP Approvals. Landlord shall cooperate in such manner as Tenant or its Affiliates may reasonably request in connection with the DSUP Approvals, Final Site Plan Approval and other approval processes (or any subsequent revisions to the DSUP Approvals, the Approved Final Site Plan, or other approvals), including execution of applications therefor if required by Legal Requirements.

Section 11.08 Milestone Schedule; Remedies Upon Failure to Achieve a Milestone. Tenant shall:

(a) submit an application and all required related materials for conceptual DSUP Approval of the Initial Improvements on or before the date that is one hundred twenty (120) days after Foulger Pratt JV submits an application for a conceptual Preliminary Infrastructure Site Plan for the Public Infrastructure Improvements, the Offsite CDD Infrastructure and the Private Infrastructure with Public Access (all as defined in the Development Agreement) and shall thereafter, upon necessary approvals of the City, utilize commercially reasonable efforts to submit for and pursue obtaining the preliminary DSUP Approval;

(b) submit an application and all required related materials for a Final Site Plan for the Hospital Improvements on or before the date that is 180 days following receipt of the preliminary DSUP Approvals and shall thereafter utilize commercially reasonable efforts to diligently pursue obtaining the Final Site Plan Approval;

(c) submit an application for a core and shell building permit for the Hospital Improvements (the "Building Permit") on or before the date that is ninety (90) days following receipt of the Final Site Plan Approval and shall thereafter utilize commercially reasonable efforts to diligently pursue obtaining approval thereof (the "Building Permit Approval");

(d) commence the physical construction of the Hospital Improvements on or before the date that is ninety (90) days after the date of the Building Permit Approval, and shall thereafter utilize commercially reasonable efforts to diligently pursue the construction of the Hospital Improvements;

(e) obtain a Certificate of Occupancy for the Hospital Improvements on or before the date that is five (5) years following the commencement of physical construction of the Hospital Improvements; and

(f) obtain a Certificate of Occupancy for the Cancer Center Improvements and the Medical Office Building Improvements on or before the date that is one (1) year following the issuance date of a Certificate of Occupancy for substantially all of the Hospital Improvements.

Each of the foregoing milestones described in items (a) through (f) of this Section 11.08 are referred to herein as a “Milestone”, and each of the corresponding dates or the last day of corresponding time periods, as the case may be, are referred to as a “Milestone Date.” In the event of an Unavoidable Delay that actually delays Tenant's ability to achieve a Milestone by the corresponding Milestone Date, the corresponding Milestone Date shall be deemed to be extended on a day for day basis to the extent of actual delay caused by the Unavoidable Delay, so long as Tenant provides Landlord with written notice of the occurrence of the Unavoidable Delay, Tenant provides reasonable evidence supporting its position that the Unavoidable Delay actually delayed Tenant's ability to achieve a Milestone, and Tenant thereafter uses reasonable efforts to minimize the delaying effect of such Unavoidable Delay. Tenant shall promptly notify Landlord following the completion of each Milestone, together with reasonable supporting documentation of the occurrence and the date of such completion. If Tenant completes a Milestone prior to the corresponding Milestone Date, the notice of completion provided by Tenant to Landlord (together with reasonable supporting documentation of such completion) shall be deemed a “Milestone Early Delivery Notice”. If Tenant fails to complete any Milestone by the corresponding Milestone Date (as such date may be extended pursuant to the terms of this Lease), then at any time thereafter that is prior to the completion of such Milestone, Landlord may notify Tenant in writing of such failure (a “Milestone Failure Notice”). Following the delivery of a Milestone Failure Notice, Tenant shall thereafter promptly notify Landlord in writing upon the completion of such Milestone (a “Milestone Delayed Completion Notice”), which notice shall include reasonable supporting documentation of such completion. As used herein, the term “Milestone Delay Float” shall mean (i) the aggregate number of days between the Milestone Date that is the subject of each Milestone Failure Notice and the delivery of the corresponding Milestone Delayed Completion Notice, minus (ii) the aggregate number of days between the delivery of any Milestone Early Delivery Notice and the corresponding Milestone Date, as same is calculated at any time. By way of example only, if (i) the Milestone Date that is the subject of a Milestone Failure Notice is January 1 and the corresponding Milestone Delayed Completion Notice is delivered on January 31, and (ii) a Milestone Early Delivery Notice is delivered on March 1 with respect to a Milestone Date on March 16, then the aggregate Milestone Delay Float as of March 17 would be 15 days (i.e., 30 days related to the delay, minus 15 days related to the early delivery). Any modifications to the Milestone Dates shall be subject to the approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed. In addition, in the event that any Milestone is completed after the applicable Milestone Date, and a Milestone Failure Notice is not sent with respect thereto, then Tenant and Landlord shall agree to a modification of the Milestone Dates to extend any dates for the completion of future Milestones the timing of which are based upon completion of the delayed Milestone.

If at any time after the Term Commencement Date the Milestone Delay Float exceeds one hundred eighty (180) days, Ground Rent shall immediately and automatically increase to an amount equal to the then amount of the City's annual debt service on the Fifty-four Million Dollar (\$54,000,000) bond obligation incurred by the City to finance the purchase of the Land (as amortized over 30 years), which such amount shall in no event be less than Two Million Seven Hundred Thousand Dollars (\$2,700,000) per Lease Year and in no event be more than Three Million Three Hundred Thousand Dollars (\$3,300,000) (the “Increased Ground Rent”). Notwithstanding the foregoing, Increased Ground Rent shall immediately and automatically decrease back to Ground Rent (i.e., \$1.00 per year) upon Tenant timely meeting the corresponding Milestone Date for Milestone (e) or (f) above, as applicable, or timely meeting timely meeting the next Milestone Date with respect to Milestones (a) – (d), as applicable.

Notwithstanding the foregoing, except to the extent resulting from an Unavoidable Delay, if Tenant ceases its diligent pursuit in achieving any Milestone for a period of more than twelve (12) consecutive months, Ground Rent shall immediately and automatically increase to the Increased Ground Rent, and

Tenant shall promptly provide to Landlord a written plan explaining Tenant's cessation of diligent pursuit and describing Tenant's plans to restart its diligent pursuit to achieve all Milestones. Such plan of Tenant shall be subject to the reasonable approval of Landlord. If Landlord approves Tenant's plan, Tenant diligently proceeds in accordance with such plan and Tenant continues to pay Increased Ground Rent when due, Landlord shall forebear terminating this Lease. Notwithstanding the foregoing, if Landlord approves Tenant's plan, then Increased Ground Rent shall immediately and automatically decrease back to Ground Rent (i.e., \$1.00 per year) upon Tenant's resumption and continuation pursuant to such plan of construction or operations, as the case may be, as required by this Lease. If Landlord does not approve Tenant's plan, Tenant does not diligently proceed in accordance with such plan (if approved) or Tenant fails to pay Increased Ground Rent when due, then Landlord shall have the right to terminate this Lease without cost or penalty upon written notice of termination to Tenant, and if Landlord so elects to terminate this Lease, Tenant shall pay to Landlord upon demand, as and for liquidated damages, the amount of Fifty Million Dollars (\$50,000,000.00) (the "Liquidated Damages 11.08"). Tenant acknowledges that the amount of the Liquidated Damages 11.08 is a reasonable estimate of the anticipated harm caused to Landlord and the City (a third-party beneficiary of this Lease) as a result of such failures of Tenant, and does not represent or constitute a penalty. Landlord and Tenant acknowledge and agree that Tenant's agreement to pay the Liquidated Damages 11.08 pursuant to the terms of this Section 11.08 is intended to avoid the substantial expense and difficulties of proving actual damages and the unnecessary expenditure of judicial resources in doing.

Notwithstanding the foregoing or anything in this Lease to the contrary, in no event shall Tenant's obligation to pay Increased Ground Rent exceed a total of \$54,000,000, and in the event such total amount of Increased Ground Rent is ever paid by Tenant to Landlord, Increased Ground Rent shall immediately and automatically decrease back to Ground Rent (i.e., \$1.00 per year).

For avoidance of confusion, no event described in this Section 11.08 shall constitute an Event of Default or entitle Landlord to remedies for Events of Default under Article 22 of this Lease.

ARTICLE 12

INTENTIONALLY OMITTED

ARTICLE 13

REPAIRS AND MAINTENANCE

Section 13.01 Repairs. Except as otherwise provided by the Project Agreements, (a) Prior to the Term Commencement Date, Landlord, and (b) after the Term Commencement Date, Tenant shall, respectively, at its sole cost and expense, be responsible for the care, maintenance and repair of the Premises in accordance with the Applicable Standard and all applicable Legal Requirements, including the Improvements on the Land, roofs, foundations and appurtenances thereto, water, sewer and gas connections (unless maintained by the utility company), pipes and mains which are located on the Premises and all Equipment, provided, however that the respective party's obligations with respect to Restoration resulting from a casualty or condemnation shall be as provided in Articles 8 and 9. Neither Landlord nor Tenant shall not commit or suffer, and shall use all reasonable precaution to prevent, waste, damage or injury to the Premises.

Section 13.02 No Obligation on Landlord. Except as otherwise provided by the Project Agreements, (a) Prior to the Term Commencement Date, Tenant, and (b) after the Term Commencement Date, Landlord shall, respectively, not be required to furnish any services, utilities or facilities whatsoever to the Premises, nor shall the respective party have any duty or obligation to make any alteration, change, improvement, replacement, Restoration or repair to, nor to demolish, the Premises.

Section 13.03 REA. Tenant shall be directly responsible for all obligations and liabilities imposed upon the fee owner of the Land under the REA, and shall indemnify and hold the other harmless

therefrom, and (ii) be entitled to the rights of the fee owner under the REA including with respect to the use of the Hospital Parking Spaces (as defined in the REA).

ARTICLE 14
REQUIREMENTS OF PUBLIC AUTHORITIES AND
OF INSURANCE UNDERWRITERS AND POLICIES

Section 14.01 Compliance with Requirements. Except as otherwise provided by the Project Agreements, (a) Prior to the Term Commencement Date, Landlord, and (b) after the Term Commencement Date, Tenant shall, respectively, comply with any and all applicable present and future (giving full force and effect to any vesting or “grandfathering” provisions) laws, rules, orders, ordinances, regulations, statutes, requirements, permits, consents, certificates, approvals, codes and executive orders of all Governmental Authorities now existing or hereafter created (giving full force and effect to any vesting or “grandfathering” provisions) having jurisdiction over the Premises or the construction, maintenance, use, operation or occupancy thereof (collectively, “Legal Requirements”). Tenant also shall comply with any and all provisions and requirements of any casualty, liability or other insurance policy required to be carried by Tenant under the provisions of this Lease.

Section 14.02 Right to Contest. Tenant, at its expense, may contest, by appropriate proceedings prosecuted diligently and in good faith, the validity or applicability of any Legal Requirement, provided that such contest, and any disposition thereof (including the cost of complying therewith and paying all interest, penalties, fines, liabilities, fees and expenses in connection therewith), shall be at the sole cost of and shall be paid by Tenant.

Section 14.03 Environmental Requirements. After the Term Commencement Date, Tenant shall take all necessary steps to ensure that (a) any and all Environmental Activities undertaken or permitted at the Premises are conducted at all times in material compliance with all applicable Legal Requirements, (b) there are no discharges or releases of Hazardous Materials at, on, in, or under the Premises, except in strict compliance with all applicable Legal Requirements, and (c) Tenant complies with all release reporting, disclosure requirements, and other compliance obligations under all other applicable environmental Legal Requirements. Tenant shall notify Landlord within twenty-four (24) hours of the material release of any Hazardous Materials from or at the Premises or any material non-compliance with any environmental Legal Requirement. If Landlord reasonably believes that there has been a material release of any Hazardous Materials from or at the Premises, or any material non-compliance with any environmental Legal Requirement, Landlord shall have the right (at Landlord’s expense) to conduct an environmental assessment or compliance audit of the Premises during regular business hours, and Tenant shall cooperate in the conduct of such environmental assessment or compliance audit. Any such environmental assessment or compliance audit by Landlord shall comply with the applicable requirements of any Qualifying Mortgage. Landlord shall provide a copy of any such assessment or compliance audit to Tenant. Landlord shall use its reasonable efforts to minimize interference with Tenant’s use and occupancy of the Premises in performing such environmental assessment or compliance audit, and shall repair any damage (if any) to the Premises caused by the same. If such environmental assessment or compliance audit identifies a breach of Tenant’s covenants provided in this Section 14.03, Tenant shall promptly reimburse Landlord for the third party costs for performing such assessment or compliance audit after written notice, and in addition to any other rights and remedies which may be available to Landlord under this Lease or otherwise at law or in equity, Landlord may require Tenant to take all actions, or to reimburse Landlord for the costs of any and all actions taken by Landlord upon a failure of Tenant to take such actions within a reasonable time after written notice from Landlord, as are necessary or reasonably appropriate to cure such breach. For purposes of this Section 14.03, “Environmental Activity” means any storage, treatment, recycling, use, emission, release, discharge, generation, abatement, removal, disposal, handling or transportation from, under, into or on the Premises of (A) any substance, product, waste or other material of any nature whatsoever that is listed, regulated or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, the Hazardous Materials Transportation Act, 49

U.S.C. § 5101, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, the Atomic Energy Act, 42 U.S.C. §§ 2014 *et seq.*, the Medical Waste Tracking Act, 42 U.S.C. §§ 6992 to 6992k, the Emergency Planning and Community Right of Know Act of 1986, 42 U.S.C. §§ 11001, *et seq.*, and the Virginia State Water Control Law, Va. Code Ann. § 62.1-44.2, *et seq.*; (B) petroleum or crude oil or products thereof, other than petroleum products that are contained within regularly-operated motor vehicles and construction equipment; (C) asbestos and polychlorinated biphenyls, (D) medical wastes, and (E) radioactive wastes (the materials described in clauses (A) through (E) above are collectively referred to herein as “Hazardous Materials”). Tenant shall indemnify, defend (with counsel selected by Landlord), and hold Landlord harmless from and against any and all costs, expenses, claims or suits arising in any manner from any discharge or release of Hazardous Materials, or any non-compliance with environmental Legal Requirements at or on the Premises during the Term (and such indemnity obligation shall survive expiration of the Term), including any costs of all necessary clean-up activities and compliance activities, [THE FOLLOWING BRACKETED CLAUSE IS SUBJECT TO APPROVAL BY THE CITY AFTER THE COMPLETION AND RELATED ANALYSIS OF THE PHASE II AND RELATED STUDIES, AND ANY FOLLOW-ON DISCUSSIONS BETWEEN THE PARTIES UNDER SECTION 2.2 (g) OF THE DEVELOPMENT AGREEMENT] [provided further that Tenant shall have no obligation to indemnify, defend or hold harmless Landlord to the extent that the discharge or release involves Hazardous Materials present at, on, or under the Land as of the Term Commencement Date].

ARTICLE 15 DISCHARGE OF LIENS; BONDS

If, after the Term Commencement Date, any mechanic’s, laborer’s or materialman’s lien (other than a lien arising out of any work performed by Landlord) at any time shall be filed against the Premises or any part thereof, Tenant, within thirty (30) days after notice of the filing thereof shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged of record within the period aforesaid, and if such lien shall continue for an additional ten (10) days after notice by Landlord to Tenant, then, in addition to any other right or remedy, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. Any amount so paid by Landlord, including all reasonable costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the Involuntary Rate, from the respective dates of Landlord’s making of the payment or incurring of the costs and expenses, shall be paid by Tenant to Landlord within ten (10) days after demand. Notwithstanding the foregoing provisions of this Article 15, Tenant shall not be required to discharge any such lien if Tenant is in good faith contesting the same and has furnished a cash deposit or a security bond or other such security satisfactory to Landlord or any Qualifying Mortgagee in an amount sufficient to pay such lien with interest and penalties.

Except as otherwise provided by the Project Agreements, if, prior to the Term Commencement Date, any mechanic’s, laborer’s or materialman’s lien (other than a lien arising out of any work performed by Tenant) at any time shall be filed against the Premises or any part thereof, Landlord, within thirty (30) days after notice of the filing thereof shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Landlord shall fail to cause such lien to be discharged of record within the period aforesaid, and if such lien shall continue for an additional ten (10) days after notice by Tenant to Landlord, then, in addition to any other right or remedy, Tenant may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. Any amount so paid by Tenant, including all reasonable costs and expenses incurred by Tenant in connection therewith, together with interest thereon at the Involuntary Rate, from the respective dates of Tenant’s making of the payment or incurring of the costs and expenses, shall be paid by Landlord to Tenant within ten (10) days after demand. Notwithstanding

the foregoing provisions of this Article 15, Landlord shall not be required to discharge any such lien if Landlord is in good faith contesting the same and has furnished a cash deposit or a security bond or other such security satisfactory to Tenant or any Qualifying Mortgagee in an amount sufficient to pay such lien with interest and penalties.

ARTICLE 16 REPRESENTATIONS

Section 16.01 As-Is Condition; No Representations. Tenant has inspected the condition of the Premises and, subject to applicable Landlord representations, warranties, and covenants set forth in this Lease, the Tenant Turnover Conditions, and the substantial completion of the On-Site INOVA Pad-Ready Site Conditions under the Development Agreement, accepts the Premises in its existing “AS IS” legal, physical and environmental condition and state of repair as of the Effective Date, and, except as otherwise expressly set forth in this Lease, no representations, statements, or warranties, express or implied, have been made by or on behalf of Landlord in respect of the Land, the Premises, the status of title thereof, the physical condition thereof, including the zoning or other laws, regulations, rules and orders applicable thereto, Taxes, environmental conditions, or the use that may be made of the Premises, and that Tenant has not relied on, and hereby disclaims, any such representations, statements or warranties (including any warranties provided under applicable law). For avoidance of doubt, Tenant accepts the status of title in and to the Land subject only to the Permitted Encumbrances as of the Effective Date without any representation or warranty from Landlord.

Section 16.02 Tenant’s Representations. Tenant represents and covenants that:

- (a) it is duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia;
- (b) it has not dealt with any broker in connection with this Lease or the transactions contemplated hereby;
- (c) it has or will obtain all approvals, if any, required from the Commonwealth of Virginia for the construction, ownership, operation or use of the Initial Improvements; and
- (d) the execution and delivery of this Lease, and all documents and instruments collateral to this Lease, by the officer(s) of Tenant executing and delivering the same, have been duly authorized by all requisite corporate action on the part of Tenant, and, upon such execution and delivery, this Lease and such other documents and instruments shall constitute valid and binding obligations of Tenant.

Section 16.03 Landlord’s Representations. Landlord represents and covenants that:

- (a) it has not dealt with any broker in connection with this Lease or the transactions contemplated hereby;
- (b) the execution and delivery of this Lease, and all documents and instruments collateral to this Lease, by the officer(s) of Landlord executing and delivering the same, have been duly authorized by all requisite action on the part of Landlord, and, upon such execution and delivery, this Lease and such other documents and instruments shall constitute valid and binding obligations of Landlord;
- (c) Landlord owns fee simple title to the Premises, subject only to the Permitted Encumbrances, and Landlord’s acquisition of the Premises and the public financing issued in connection therewith were duly authorized and effectuated in accordance with all applicable Legal Requirements and Landlord’s organizational documents and controls; and
- (d) Landlord shall timely make the “Second Installment of the Purchase Price”, as such term is defined in that certain Purchase and Sale Agreement by and between Landlord and Foulger

Pratt JV dated of even date herewith further to which Landlord acquired fee title to the Land and improvements thereon.

ARTICLE 17
LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Section 17.01 No Liability for Injury. Except as otherwise explicitly set forth in any Project Agreement or other agreement executed by Landlord, after the Term Commencement Date, Landlord shall not in any event whatsoever be liable for any injury or damage to Tenant or to any other Person happening on, in or about the Premises, nor for any injury or damage to the Premises or to any property belonging to Tenant or to any other Person which may be caused by any fire or breakage, or by the use, misuse or abuse of any of the Premises (including, but not limited to, any of the common areas within the Premises, Equipment, elevators, hatches, openings, installations, stairways, hallways, or other common facilities), or which may arise from any other cause whatsoever, except to the extent any of the foregoing shall have resulted from the negligence or intentional misconduct of Landlord, its officers, agents, employees or licensees.

Section 17.02 No Liability for Soil Conditions. In addition to the provisions of Sections 17.01, in no event shall Landlord be liable to Tenant or to any other Person for any injury or damage to any property of Tenant or of any other Person or to the Premises, arising out of any sinking, shifting, movement, subsidence, failure in load-bearing capacity of, or other matter or difficulty related to, the soil, or other surface or subsurface materials, on the Premises.

ARTICLE 18
INDEMNIFICATION OF LANDLORD AND OTHERS

Section 18.01 Indemnification. Tenant, to the fullest extent permitted by law, shall indemnify and save Landlord and its agents, officers and employees (collectively, the “Indemnitees”), harmless from and against any and all loss, cost, liabilities, suits, fines, damages, penalties, claims, charges and expenses (including engineers’, architects’ and attorneys’ fees and charges), which may be suffered by, imposed upon, incurred by or asserted against any of the Indemnitees, by reason of any of the following occurring on or after the Term Commencement Date and prior to the expiration of the Term, except to the extent that the same shall have been caused by the gross negligence or intentional misconduct of any of the Indemnitees:

- (a) construction of Improvements on the Land or any other work or thing done in or on the Premises or any part thereof;
- (b) any use, non-use, possession, occupation, entry upon, alteration, repair, operation or maintenance of the Premises or any part thereof;
- (c) any negligent or tortious act or failure to act within the Premises on the part of Tenant or any agent, contractor, servant or employee of Tenant, including any such act or failure to act that constitutes or is alleged to have constituted any type of medical malpractice;
- (d) any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in or on the Premises or any part thereof, including any such accident, injury or death that constitutes or is alleged to have constituted any type of medical malpractice;
- (e) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with;
- (f) any lien or claim which may have arisen out of any act of Tenant or any agent, contractor, servant or employee of Tenant against or on the Premises or any liability which may be asserted against any of the Indemnitees with respect thereto;

(g) any failure on the part of Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in Subleases or other contracts and agreements affecting the Premises, on Tenant's part to be kept, observed or performed;

(h) the presence of Hazardous Materials on the Premises; or

(i) any other Environmental Activity that is not in compliance with applicable Legal Requirements.

Section 18.02 Not Affected by Insurance. The obligations of Tenant under this Article 18 shall not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Premises

Section 18.03 Notice and Defense Process. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event for which Tenant has agreed to indemnify the Indemnitees in Section 18.01, then, upon demand by Landlord, Tenant shall resist or defend such claim, action or proceeding (in such Indemnitee's name, if necessary) by the attorneys for Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance maintained by Tenant) or (in all other instances) by such attorneys as Tenant shall select and Landlord shall approve, which approval shall not be unreasonably withheld. The foregoing notwithstanding, and except with respect to personal injury or other liability claims within the coverage limits afforded by Tenant's liability insurance and being defended by attorneys for, or approved by, Tenant's insurance carrier, Landlord may, following such consultation with Tenant as to the necessity of such engagement and the choice of such attorneys as is reasonable under the circumstances, engage its own attorneys to defend or to assist in its defense of such claim, action or proceeding and Tenant shall pay the reasonable fees and disbursements of such attorneys. Landlord will not unreasonably withhold its consent to any proposed settlement by Tenant of a matter which is covered by Tenant's indemnification hereunder, provided that such settlement does not impose any liability on Landlord.

Section 18.04 Survival. The provisions of this Article 18 shall survive the Expiration Date with respect to matters arising prior to the Expiration Date.

ARTICLE 19 RIGHT OF INSPECTION, ETC.

Section 19.01 Landlord Right of Inspection. Tenant shall permit Landlord and its agents or representatives to enter the Premises at all reasonable times and upon reasonable notice for the purpose of (a) inspecting the same, (b) determining whether or not Tenant is in compliance with its obligations hereunder, and (c) performing any work or repairs that Landlord has the right to perform hereunder. Notwithstanding the foregoing, (i) in the absence of an emergency or Event of Default, Landlord shall access the Premises pursuant to this Section 19.01 no more than one (1) time per calendar year during the Term and (ii) Landlord shall not unreasonably interfere with Tenant's use or operation of the Premises when accessing the Premises.

Section 19.02 No Duty on Landlord. Nothing in this Article 19 or elsewhere in this Lease shall imply any duty on the part of Landlord to do any work required to be performed by Tenant hereunder and performance of any such work by Landlord shall not constitute a waiver of Tenant's Default in failing to perform the same. To the extent that Landlord undertakes such work or repairs, such work or repairs shall be commenced and completed in a good and workmanlike manner, and with reasonable diligence, subject to Unavoidable Delays.

ARTICLE 20
LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 20.01 Landlord Right to Cure. If an Event of Default shall have occurred and be continuing, Landlord, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, may (but shall be under no obligation to) perform such obligation on Tenant's behalf; provided that prior to performing any such obligation, Landlord shall provide Tenant at least thirty (30) days' prior written notice of Landlord's intent to perform such obligation, during which thirty (30) day period Tenant shall be entitled to perform the obligation in question.

Section 20.02 Reimbursement of Landlord. All reasonable sums paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with its performance of any obligation pursuant to Section 20.01, together with interest thereon at the Involuntary Rate from the respective dates of Landlord's making of each such payment or incurring of each such sum, cost, expense, charge, payment or deposit until the date of actual repayment to Landlord, shall be paid by Tenant to Landlord within thirty (30) days after Landlord shall have submitted to Tenant a statement, in reasonable detail, substantiating the amount demanded by Landlord.

ARTICLE 21
NO ABATEMENT OF GROUND RENT

Except as may be otherwise expressly provided in this Lease, there shall be no abatement, off-set, diminution or reduction of Ground Rent payable by Tenant hereunder or of the other obligations of Tenant hereunder under any circumstances.

ARTICLE 22
EVENTS OF DEFAULT; CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 22.01 Events of Default. Each of the following events shall be an "Event of Default" hereunder:

- (a) if Tenant shall fail to pay any Increased Ground Rent, or any part thereof, when the same shall become due and payable and such failure shall continue for ten (10) days after notice from Landlord to Tenant;
- (b) if Tenant shall fail to observe or perform one or more of the other material terms, conditions, covenants or agreements contained in this Lease (except for a failure respecting a Milestone Date, which such failure is governed by Section 11.08), and such failure shall continue for a period of thirty (30) days after notice thereof by Landlord to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, or because of Unavoidable Delays, reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall have commenced curing the same within such thirty (30) day period and shall, subject to Unavoidable Delays, diligently and continuously prosecute the same to completion);
- (c) if Tenant shall admit to its creditors, in writing, that it is unable to pay its debts as such become due;
- (d) if Tenant shall make an assignment for the benefit of creditors;
- (e) if Tenant shall file a voluntary petition under Title 11 of the United States Code or if such petition is filed against it and an order for relief is entered, or if Tenant shall file any petition or answer seeking, consenting to or acquiescing in any reorganization, arrangement, composition, other present or future applicable federal, state or other statute or law, or shall seek or consent to or acquiesce in or suffer the appointment of any trustee, receiver, custodian, assignee, sequestrator,

liquidator or other similar official of Tenant, or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant; or

(f) if within ninety (90) days after the commencement of any proceeding against Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy code or any other present or future applicable federal, state or other statute or law, such proceeding shall not have been dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant or of all or any substantial part of its properties or of the Premises or any interest therein of Tenant or such appointment shall not have been vacated or stayed on appeal or otherwise, or if, within thirty (30) days after the expiration of any such stay, such appointment shall not have been vacated.

Section 22.02 Remedies Upon an Event of Default. If any Event of Default shall occur, Ground Rent shall immediately and automatically increase to the Increased Ground Rent for the remainder of the Term; provided, however, if Landlord thereafter accepts Tenant's tender of a full cure of an Event of Default (which such acceptance Landlord shall not unreasonably withhold), Tenant's obligation for rent shall then resume to be the original Ground Rent (i.e. \$1.00 per Lease Year) (barring any future Event of Default). Additionally, if any Event of Default has occurred and Landlord, at any time thereafter, at its option, gives notice to Tenant stating that this Lease and the Term shall expire and terminate on the date specified in such notice, which date shall be not less than sixty (60) days after the giving of such notice, and if, on the date specified for termination in such notice, Tenant shall have failed to cure the Default which was the basis for the Event of Default, then, subject to the rights of Qualifying Mortgagees under Article 10, this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as of the date specified for termination in such notice, as if such date were the date herein definitely fixed for the expiration of the Term, and Tenant immediately shall quit and surrender the Premises. Notwithstanding the foregoing, if the Event of Default upon which Landlord's notice of termination is based arises from Tenant's default of its obligations under Section 2.04 of this Lease, and, within ten (10) business days' notice, Tenant provides Landlord with a written explanation for such default and a written plan for the cure or resolution of such default, which plan is approved by Landlord, then the effective date of termination of the Lease will be extended for up to twelve (12) months after the date set for termination in Landlord's notice so long as (i) Tenant diligently proceeds in accordance with such plan to cure or resolve such default, and (ii) Tenant pays Increased Ground Rent for such entire twelve (12) month period to Landlord in advance. Further, if Landlord so elects to terminate this Lease Tenant shall pay to Landlord upon demand, as and for liquidated damages, the amount of Ten Million Dollars (\$10,000,000.00) (the "Liquidated Damages 22.02"). Tenant acknowledges that the amount of the Liquidated Damages 22.02 is a reasonable estimate of the anticipated harm caused to Landlord and the City (a third-party beneficiary of this Lease) as a result of such failures of Tenant, and does not represent or constitute a penalty. Landlord and Tenant acknowledge and agree that Tenant's agreement to pay the Liquidated Damages 22.02 pursuant to the terms of this Section 22.02 is intended to avoid the substantial expense and difficulties of proving actual damages and the unnecessary expenditure of judicial resources in doing so. For clarity, Landlord shall be entitled to take all actions under applicable law and equity as necessary to enforce its remedies under this Section 22.02, and Landlord's remedies upon an Event of Default shall arise, if ever, only following the Term Commencement Date. Notwithstanding the foregoing or anything in this Lease to the contrary, in no event shall Tenant's obligation to pay Increased Ground Rent exceed a total of \$54,000,000, and in the event such total amount of Increased Ground Rent is ever paid by Tenant to Landlord, Increased Ground Rent shall immediately and automatically decrease back to Ground Rent (i.e., \$1.00 per year).

Section 22.03 Reserved.

Section 22.04 Survival of Obligations. No termination of this Lease pursuant to Section 22.02 shall relieve Tenant of its monetary liabilities and obligations accruing hereunder prior to such termination, all of which shall survive such termination, repossession or reletting.

Section 22.05 Tenant's Waiver. To the extent not prohibited by law, Tenant hereby waives and releases all rights now or hereafter conferred by statute or otherwise which would have the effect of limiting or modifying any of the provisions of this Article 22.

Section 22.06 Successive Suits. Suit or suits for the recovery of damages, or for a sum equal to any installment or installments of Ground Rent payable hereunder or other sums payable by Tenant to Landlord pursuant to this Article 22, may be brought by Landlord from time to time at Landlord's election, and nothing herein contained shall be deemed to require Landlord to await the date whereon this Lease or the Term would have expired had there been no Event of Default by Tenant and termination. Nothing in this Section 22.06 shall be deemed a waiver by Tenant to any statute of limitations under applicable law.

Section 22.07 Bankruptcy Damages. Nothing contained in this Article 22 shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount shall be greater than, equal to or less than the amount of the damages referred to in any of the preceding Sections of this Article 22.

Section 22.08 No Reinstatement. No receipt of moneys by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease (unless such receipt cures the Event of Default which was the basis for the notice), shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Ground Rent payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy, except as herein otherwise expressly provided, it being agreed that after the service of notice to terminate this Lease or the commencement of any suit or summary proceedings, or after a final order or judgment for the possession of the Premises, Landlord may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting such notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and operation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 22.09 Waiver of Notice of Re-Entry. Except as otherwise expressly provided herein or as prohibited by applicable law, Tenant hereby expressly waives the service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings to that end.

Section 22.10 No Waiver by Landlord. No failure by Landlord or any prior Landlord to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial Ground Rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Landlord. No waiver of any breach shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease still continue in full force and effect with respect to any other than existing or subsequent breach thereof.

Section 22.11 Injunction. In the event of any breach or threatened breach by either party of any of the covenants, agreements, terms or conditions contained in this Lease, the other party shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease. To the extent permitted by law each party waives any requirement for the posting of bonds or other security in any such action.

Section 22.12 Rights Cumulative. Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now

or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 22.13 Reserved.

Section 22.14 Adequate Assurance. If an order for relief is entered or if a stay of proceeding or other acts becomes effective in favor of Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future federal Bankruptcy Code or any other present or future applicable federal, state or other statute or law, Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy code, statute, law or this Lease, including such rights and remedies as may be necessary to adequately assure the complete and continuous future performance of Tenant's obligations under this Lease.

Section 22.15 Mortgagee Protections. Nothing contained in this Article 22 shall be deemed to modify the provisions of Article 10.

Section 22.16 Landlord Default. Landlord will be in default of this Lease if Landlord fails to comply with any material term, provision or covenant of this Lease. Landlord may cure any non-monetary default by bringing its performance into compliance with the terms, provisions and covenants of this Lease within thirty (30) days of Landlord's receipt of Tenant's notice of such default. However, if such default cannot reasonably be cured within thirty (30) days, Landlord will be allowed such additional time as is reasonably necessary to cure the default so long as: (i) Landlord commences to cure the default within the initial thirty (30) day cure period, and (ii) Landlord diligently pursues a course of action that will cure the default and restore Landlord's compliance with this Lease. In the event of a Landlord default beyond any applicable notice and cure period, Tenant may bring an action at law or in equity for money damages or equitable relief including specific performance and injunctions. Tenant's taking of possession on the Term Commencement Date does not waive any pre-possession Landlord defaults.

ARTICLE 23 NOTICES

Section 23.01 Notice Addresses. Whenever it is provided in this Lease 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 either of the parties by the other, and whenever either of the parties shall desire to give or serve upon the other any Notice with respect hereto or the Premises, 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: (a) by personal delivery (with receipt acknowledged), (b) delivered by reputable, national overnight delivery service (with its confirmatory receipt therefor), next Business Day delivery specified, or (c) sent by registered or certified United States mail, postage prepaid, in each case to the parties as follows:

If to Landlord: Industrial Development Authority of the City of Alexandria
625 North Washington Street, Suite 400
Alexandria, Virginia 22314
Attn: Stephanie Landrum

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

If to Tenant: Inova Health Care Services
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, Vermont 05402-0190
Email: tsampson@drm.com

Either party may change the address(es) to which any such Notice is to be delivered by furnishing ten (10) days written notice of such change(s) to the other party in accordance with the provisions of this Section 23.01.

Section 23.02 When Notices Deemed Given. Every Notice shall be deemed to have been given or served (a) if given by hand or overnight mail, upon delivery thereof, and (b) if given by certified or registered mail, on the third (3rd) Business Day after the posting the same, postage prepaid; in each case with failure to accept delivery to constitute delivery for such purpose.

Section 23.03 Notices to Mortgagees. If requested in writing by the holder of any Mortgage (which request shall be made in the manner provided in Section 23.01 and shall specify an address to which Notices shall be given), a notice of a Default or Event of Default given to a party hereunder shall also be given contemporaneously to such holder in the manner herein specified.

ARTICLE 24 LEASE NOT SUBORDINATE; LANDLORD MORTGAGES

Section 24.01 Lease Not Subordinate. Notwithstanding any other term or provision of this Lease to the contrary, Landlord's interest in this Lease and in the Premises shall not be subject or subordinate to (a) any Mortgage now or hereafter placed upon Tenant's interest in this Lease, the leasehold interest created hereby, or upon any interest in Tenant, or (b) any other liens, security interests or encumbrances now or hereafter affecting Tenant's interest in this Lease, the leasehold interest created hereby, or upon any interest in Tenant.

Section 24.02 Landlord Mortgage.

(a) Landlord shall have the right to grant one or more mortgages, deeds of trust or other security instruments on Landlord's interest in the Premises (each, a "Fee Mortgage"), subject to Section 24.02(b).

(b) Any Fee Mortgage shall automatically and without further act be subject and subordinate in all respects to this Lease, any Mortgage and the Tenant's rights hereunder. Any

exercise by the holder of a Fee Mortgage (each, a “Fee Mortgage”) of its remedies thereunder shall be subject to this Lease and any leasehold Mortgage and shall not terminate or otherwise affect this Lease. No foreclosure of such Fee Mortgage (or deed in lieu of such foreclosure) or other exercise of remedies under a Fee Mortgage, shall operate to disturb the rights of Tenant under this Lease or the rights of a Mortgagee under a Mortgage, and the transferee thereof shall recognize such rights. The foregoing provisions of this Section 24.02(b) are intended to be self-operative, but each Fee Mortgagee, by acceptance of its Fee Mortgagee, shall be deemed to have agreed to execute such further assurances as Tenant or any Mortgagee may reasonably request to confirm the agreements set forth in this Section 24.02(b).

(c) Tenant agrees to give each Fee Mortgagee a copy of any written notice of default served upon Landlord, provided that prior to such notice Tenant has been notified, in writing, of the address of such Fee Mortgagee. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in this Lease, then such Fee Mortgagee shall have an additional thirty (30) days within which to cure such default or, if such default cannot be cured within that time, then such additional time (not to exceed the time reasonably required to appoint a receiver or to complete a foreclosure proceeding) as may be necessary if, within such thirty (30) days, such Fee Mortgagee has commenced and is diligently pursuing the remedies necessary to cure such default (including but not limited to commencement of foreclosure proceedings, if necessary to effect such cure).

ARTICLE 25
INTENTIONALLY OMITTED

ARTICLE 26
ESTOPPEL CERTIFICATES

Section 26.01 Tenant Estoppels. At any time and from time to time upon not less than twenty (20) Business Days’ notice by Landlord, an appropriate representative of Tenant shall execute, acknowledge and deliver to Landlord or any other party specified by Landlord a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same as modified, is in full force and effect and stating the modifications) and the date to which Ground Rent and any other amounts owed have been paid, stating whether or not to the best knowledge of Tenant, Landlord is in default in performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such default of which Tenant may have knowledge, and certifying as to any other matter with respect to this Lease as Landlord or such other addressee may reasonably request. For purposes of this Section, the phrase “best knowledge of Tenant” shall mean the actual knowledge of the representative of Tenant executing the estoppel, without a duty of investigation.

Section 26.02 Landlord Estoppels. At any time and from time to time upon not less than twenty (20) Business Days’ notice by Tenant, an appropriate representative of Landlord shall execute, acknowledge and deliver to Tenant or any other party specified by Tenant a statement certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications) and the date to which Ground Rent and any other amounts owed have been paid, and stating whether or not to the best knowledge of Landlord, Tenant is in Default in the performance of any covenant, agreement or condition contained in this Lease, and, if so, specifying each such Default of which Landlord may have knowledge, and certifying as to any other matter with respect to this Lease as Tenant or such other addressee may reasonably request. For purposes of this Section, the phrase “best knowledge of Landlord” shall mean the actual knowledge of the representative of Landlord executing the estoppel, without a duty of investigation.

ARTICLE 27
CONSENTS AND APPROVALS

Section 27.01 Consent Not a Waiver. It is understood and agreed that the granting of any consent or approval by Landlord to Tenant to perform any act of Tenant requiring Landlord's consent or approval under the terms of this Lease, or the failure on the part of Landlord to object to any such action taken by Tenant without Landlord's consent or approval, shall not be deemed a waiver by Landlord of its right to require such consent or approval for any further similar act by Tenant, and Tenant hereby expressly covenants and warrants that as to all matters requiring Landlord's consent or approval under the terms of this Lease Tenant shall secure such consent or approval for each and every happening of the event requiring such consent or approval, and shall not claim any waiver on the part of Landlord of the requirement to secure such consent or approval.

Section 27.02 Consent Not To Be Unreasonably Delayed. Anywhere in this Lease where Landlord has agreed not to unreasonably withhold its consent, Landlord also agrees that its consent shall not be unreasonably delayed or conditioned. Any matter which must be submitted to and consented to or approved by Landlord, as required under this Lease, shall be submitted to Landlord in the manner and to the address of Landlord designated for the giving of notice to Landlord under Article 23 of this Lease and shall either be approved or rejected by Landlord within thirty (30) days after receipt (unless a shorter period of time is expressly stated elsewhere in this Lease).

ARTICLE 28 SURRENDER AT END OF TERM

Section 28.01 Surrender at End of Term. On the last day of the Term or upon any earlier termination of this Lease, or upon a re-entry by Landlord upon the Premises pursuant to Article 22, Tenant shall well and truly surrender and deliver up to Landlord the Premises and all fixtures therein in good order, condition and repair, reasonable wear and tear excepted, free and clear of all lettings, Subtenants, occupancies, liens and encumbrances other than those encumbrances, if any, that exist at the date hereof or were consented to by Landlord, and which by their express terms and conditions extend beyond the Expiration Date. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on any such termination date.

Section 28.02 Delivery of Premises Agreements. On the last day of the Term or upon any earlier termination of the Lease, or upon a re-entry by Landlord upon the Premises pursuant to Article 22, Tenant shall deliver to Landlord Tenant's executed counterparts of all Subleases and any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Land, permanent or temporary Certificates of Occupancy then in effect for Improvements on the Land, and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed in the Premises, together with a duly executed assignment thereof to Landlord, all financial reports, books and records and any and all other documents of every kind and nature whatsoever relating to the Premises.

Section 28.03 Abandonment of Property. Any personal property of Tenant or of any Subtenant, or subtenant of a Subtenant which remains on the Premises at the expiration or earlier termination of this Lease, shall, at the option of Landlord, be deemed to have been abandoned by Tenant or such Subtenant and either may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit. Landlord shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any Subtenant.

Section 28.04 Survival. The provisions of this Article 28 shall survive any expiration or termination of this Lease.

ARTICLE 29 *Reserved*

ARTICLE 30 QUIET ENJOYMENT

Landlord covenants that so long as this Lease is full force and effect and Tenant is not in default beyond notice and grace hereunder, Tenant shall and may (subject, however, to the exceptions, reservations, terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Premises for the term hereby granted without molestation or disturbance by or from Landlord or any Person claiming through Landlord.

ARTICLE 31
INVALIDITY OF CERTAIN PROVISIONS

If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

ARTICLE 32
RECORDING OF MEMORANDUM

Neither Landlord nor Tenant shall record this Lease or any amendment or modification of this Lease. Concurrently with this Lease, Landlord and Tenant shall execute the Memorandum of Ground Lease. Tenant shall record the Memorandum of Ground Lease in the Land Records of the Office of the Recorder of Deeds of the City of Alexandria, Virginia, and Landlord and Tenant shall share equally any recordation tax due and payable in connection therewith. Upon the expiration or earlier termination of this Lease, Tenant shall, within five (5) days of Landlord's written request, execute and return to Landlord a release of the Memorandum of Ground Lease in recordable form.

ARTICLE 33
MISCELLANEOUS

Section 33.01 Captions. The captions of this Lease are for convenience of reference only and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 33.02 Table of Contents; Schedules and Exhibits. The Table of Contents is for the purpose of convenience of reference only and is not to be deemed or construed in any way as part of this Lease or as supplemental thereto or amendatory thereof. All Schedules and Exhibits to this Lease are hereby incorporated in this Lease.

Section 33.03 Pronouns. The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant, and the use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant.

Section 33.04 Reserved

Section 33.06 Limitation of Liability.

(a) The liability of Landlord for damages or otherwise shall be limited to Landlord's interest in the Premises, including the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, and any other rights, privileges, licenses, franchises, claims, causes or action or other interests, sums or receivables appurtenant to the Premises, and neither Landlord nor any such Person nor any of the members, directors, officers, employees, agents of servants of either shall have any liability (personal or otherwise) hereunder beyond Landlord's interest in the Premises, and no other property or assets of Landlord or any such Person or any of the members, directors, officers, employees, agents or servants of either shall be subject to levy, execution or other

enforcement procedure for the satisfaction of Tenant's remedies hereunder. Notwithstanding the foregoing, from and after a transfer by Landlord of its interest in the Premises and this Lease, such Landlord shall have no obligation to Tenant for liabilities first arising from and after the date of such transfer, provided that the transferee shall assume all liabilities first arising from and after the date of such transfer.

(b) From and after the Transition Date, (i) the liability of Tenant for damages or otherwise shall be limited to Tenant's interest in the Premises, including the rents and profits therefrom, the proceeds of any insurance policies covering or relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, and any other rights, privileges, licenses, franchises, claims, causes or action or other interests, sums or receivables appurtenant to the Premises, and (ii) Tenant shall not have any liability (personal or otherwise) hereunder beyond Tenant's interest in the Premises, and no other property or assets of Tenant shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder. In addition, no member, director, officer, employee, agent or servant of Tenant or its Affiliates shall have any liability (personal or otherwise) under this Lease, and no property or assets of any of the members, directors, officers, employees, agents or servants of Tenant or its Affiliates shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's liabilities hereunder. For avoidance of doubt, it is understood and agreed that the provisions of this Section 33.05(b) shall only apply to the Tenant so long as it is the Tenant under this Lease and shall not apply to any former Tenant.

Section 33.07 No Merger. Except as otherwise expressly provided in this Lease, there shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease or the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

Section 33.08 Amendments in Writing. This Lease may not be changed, modified, or terminated orally, but only by a written instrument of change, modification or termination executed by the party against whom enforcement of any change, modification, or termination is sought.

Section 33.09 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without reference to conflicts of laws principles. The City of Alexandria Circuit shall be the sole and exclusive venue for any disputes between Landlord and Tenant relating to the Lease.

Section 33.10 Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and shall inure to the benefit of, Landlord and Tenant and their respective successors and (except as otherwise provided herein) assigns.

Section 33.11 Licensed Professionals. All references in this Lease to "licensed professional engineer," "licensed surveyor" or "registered architect" shall mean a professional engineer, surveyor or architect who is licensed or registered, as the case may be, by the Commonwealth of Virginia.

Section 33.12 No Joint Venture. Nothing herein is intended nor shall be deemed to create a joint venture or partnership between Landlord and Tenant, nor to make either party hereto in any way responsible for the debts or losses of the other.

Section 33.13 Complete Understanding. This Lease, including all exhibits attached hereto, together with the Project Agreements, represents the complete understanding between the parties hereto as to the subject matter hereof, the Project, the Premises, the Improvements or, the Equipment, and the rights and obligations of the parties hereto as to the same, and supersedes all prior negotiations, representations, guaranties, warranties, promises, statements or agreements, either written or oral, between the parties hereto

as to the same. No inducements, representations, understandings or agreements have been made or relied upon in the making of this Lease, except those specifically set forth in this Lease. Neither party hereto has any right to rely on any other prior or contemporaneous representation made by anyone concerning this Lease which is not set forth herein. Without limiting the generality of the foregoing, the letter of intent between Landlord and Tenant shall be superseded in its entirety by the terms and conditions of this Lease.

Section 33.14 Waiver. No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right. Without limiting the generality of the foregoing, no action taken or not taken by Landlord under this Section or any other provision of this Lease (including but not limited to Landlord's acceptance of the payment of Rent after an Event of Default occurs) shall operate as a waiver of any right to be paid a late charge or of any other right or remedy which Landlord would otherwise have against Tenant on account of such Event of Default under this Lease or applicable law (Tenant hereby acknowledging that, in the interest of maintenance of good relations between Landlord and Tenant, there may be instances in which Landlord chooses not immediately to exercise some or all of its rights if an Event of Default occurs). No waiver by Tenant of (a) any provision of this Lease, (b) the performance by Landlord of any of its duties or obligations hereunder, or (c) any right, option, election, privilege or benefit of Tenant herein shall be effective without prior written consent of any Qualifying Mortgagee and any investor in Tenant that owns (together with such investor's Affiliates), directly or indirectly, more than fifty percent (50%) of the beneficial ownership interests in Tenant (a "Majority Investor"), and any waiver without such consent shall be void *ab initio*; provided, however, Landlord shall only be required to obtain the consent of a Majority Investor if, and only if, Landlord has received prior written notice from Tenant advising Landlord of the name and contact information of the Majority Investor.

Section 33.15 Time of Essence. Time shall be of the essence of this Lease, except that, whenever the last day for the exercise of any right or the discharge of any obligation hereunder falls on a Saturday, Sunday or statutory holiday, the party having such right or obligation shall have until 5:00 p.m. on the next succeeding day which is not a Saturday, Sunday or statutory holiday to exercise such right or discharge such obligation.

Section 33.16 Headings. The headings of the Sections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing their contents.

Section 33.17 Construction. As used herein, all references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (c) to any Section, paragraph or subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such Section, paragraph or subparagraph of this Lease. Landlord agrees that, when interpreting this Lease, there shall be no presumption against Landlord on account of the fact that Landlord is the party that caused the drafting of this Lease. The term "including", and variants thereof, shall mean "including without limitation".

Section 33.18 Exhibits. Each writing or plat referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit hereto is hereby made a part hereof.

Section 33.19 Severability. No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Lease or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid

and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.

Section 33.20 Independent Covenants. Except as otherwise provided, every covenant contained herein shall be deemed to be independent of every other covenant and the breach of any covenant by one party shall not relieve the other party of any obligation to perform hereunder.

Section 33.21 Attorney's 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 Lease or any default hereunder. No party shall have any obligation to reimburse any other party for any such fees, costs and expenses

Section 33.22 No Rights in Third Parties. The parties hereto mutually agree that, except as provided below, no provision of this Lease shall create in the public, or in any person or entity other than those signing this Lease 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 Lease or otherwise. Notwithstanding the foregoing, the City is hereby irrevocably designated a third party beneficiary of all rights and interests of Landlord under this Lease, including as an indemnitee under all indemnifications granted by Tenant hereunder, and the City has the right to independently enforce the terms of this Lease. It is acknowledged that the City shall have no liability or obligations under this Lease arising from its status as a third party beneficiary. Landlord and Tenant acknowledge and agree that the City is aware of and accepts its designation as a third party beneficiary under this Lease.

Section 33.23 No Indemnification or Hold Harmless. Notwithstanding any other term or provision of this Lease to the contrary, Landlord shall have no obligation to explicitly or implicitly indemnify or hold harmless Tenant or any third party or parties from any liability whatsoever.

Section 33.24 Appropriation of Funds/Tenant's Purchase Right. So long as Landlord is the entity first named as Landlord hereunder, or the City, or any other governmental agency, body or instrumentality of the City, all of Landlord's obligations under this Lease that, to be performed, require an appropriation of funds, shall be fully subject to the appropriation of funds by the City Council of the City of Alexandria, Virginia for the specific purpose of satisfying the obligations of Landlord hereunder.

Notwithstanding the foregoing, if Landlord fails to pay (including as a result of the City's failure to timely appropriate the necessary funds for such payment), as and when due, the "Second Installment of the Purchase Price", as such term is defined in that certain Purchase and Sale Agreement by and between Landlord and Foulger Pratt JV dated of even date herewith further to which Landlord acquired fee title to the Land and improvements thereon, and Tenant effectuates the "Inova Cure" (as defined in and pursuant to the Development Agreement), Landlord shall within sixty (60) days of receipt of an invoice from Tenant reimburse Tenant all of Tenant's costs and expenses incurred to effectuate such "Inova Cure", including the amount of such "Second Installment of the Purchase Price". If Landlord fails to timely reimburse Tenant as provided above, then Tenant shall have a right to purchase the Premises from Landlord (the "Purchase Right") subject to the following terms and conditions:

(1) Following Landlord's failure to timely reimburse Tenant as provided above, Tenant may exercise the Purchase Right by delivering written notice thereof to Landlord (the "Purchase Notice").

(2) Tenant's purchase price for the Premises shall be \$1.00 (the "Purchase Price").

(3) Within five (5) business days following the payment by Tenant to Landlord of the Purchase Price, Landlord shall record a special warranty deed sufficient to convey to Tenant good, marketable and insurable fee simple title to the Premises, free and clear of all liens, encumbrances, leases (including this

Lease), covenants, conditions and other matters affecting title the Premises, other than such matters created by Tenant. Any and all transfer or similar taxes or charges, if any, incurred in recording such deed shall be paid by Landlord. Upon Landlord's delivery of such deed, Landlord and Tenant shall execute an agreement confirming the termination of this Lease.

Section 33.25 Right of First Offer/Right of First Refusal.

If Landlord desires to sell, transfer or assign Landlord's interest in this Lease to a person or entity, other than to the City, any other governmental entity or to a fee mortgagee, Landlord must first give Tenant notice of its desire to sell and give Tenant the right of first offer to purchase Landlord's interest at the sale price and other financial terms specified by Landlord and otherwise in accordance customary terms for the purchase and sale of such interests in the City. Thereafter, Tenant has the right, exercisable by delivering notice to Landlord within thirty (30) days after Tenant's receipt of Landlord notice, to commit to purchase Landlord's interest upon such terms. If Tenant timely exercises its right aforesaid, then unless otherwise agreed to by Tenant and Landlord, closing on the Premises pursuant shall occur within sixty (60) days. At closing, Landlord shall convey fee title to the Premises to Tenant or its designee with the same warranty of title that was provided to Landlord upon its acquisition of fee title to the Premises and with closing costs and taxes allocated between the parties as is customary for commercial real estate sales transactions in the City of Alexandria. If Tenant does not commit to purchase Landlord's interest as provided above, Landlord may proceed to transfer Landlord's interest to a third party upon terms and conditions no more favorable to a buyer than as set forth in Landlord's offer provided to Tenant.

If Landlord should receive an unsolicited, bona fide offer from a third party (other than from the City, any other governmental entity or from a fee mortgagee) to purchase Landlord's interest in this Lease, which Landlord desires to accept, then Landlord must deliver a notice to Tenant setting forth the terms and conditions of such third party offer and providing Tenant the right of first refusal to purchase Landlord's interest consistent with such offer. Tenant has the right, exercisable by delivering notice to Landlord within thirty (30) days after Tenant's receipt of such offer, to commit to purchase Landlord's interest upon the sale price and terms and conditions contained therein. If Tenant timely exercises its right aforesaid, then unless otherwise agreed to by Tenant and Landlord, closing on the Premises pursuant shall occur within sixty (60) days. At closing, Landlord shall convey fee title to the Premises to Tenant or its designee with the same warranty of title that was provided to Landlord upon its acquisition of fee title to the Premises and with closing costs and taxes allocated between the parties as is customary for commercial real estate sales transactions in the City of Alexandria. If Tenant does not commit to purchase Landlord's interest as provided above, Landlord may proceed to transfer Landlord's interest to a third party upon the terms and conditions set forth in Landlord's offer provided to Tenant.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

Landlord:

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

By: _____
Name: _____
Its: _____

Tenant:

INOVA HEALTH CARE SERVICES, a Virginia non-stock
corporation

By: _____
Name: _____
Its: _____

Exhibit A-1

Legal Description of Land

[Attached behind]

Exhibit A-2

Depiction of Land

[to be attached at signing]

Exhibit A-3

Depiction of Project

[to be attached at signing]

Exhibit B-1

Description of Hospital Improvements

[to be attached at signing]

Exhibit B-2

Description of Cancer Center Improvements

[to be attached at signing]

Exhibit B-3

Description of Medical Office Building Improvements

[to be attached at signing]

Exhibit C
Form of Term of Commencement Date Certificate
[Attached behind]

Exhibit D
Form of Memorandum of Ground Lease

City of Alexandria Map-Block-Lot¹
№ 047.02-03-08
№ 047.02-03-09
№ 047.02-03-05

MEMORANDUM OF LEASE

This **MEMORANDUM OF LEASE** is made as of the ___ day of _____, 2021, by and between INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALEXANDRIA, a political subdivision of the Commonwealth of Virginia (“**Landlord**”), with an address at 625 North Washington Street, Suite 400, Alexandria, Virginia, and INOVA HEALTH CARE SERVICES, a Virginia non-stock corporation (“**Tenant**”), with an address c/o 8095 Innovation Park Drive, Building D, Floor 7, Office 0230, Fairfax, Virginia 22031.

RECITALS:

- A. Landlord is the owner of certain real property comprised of City of Alexandria Map-Block-Lot Number _____, as more particularly described on Exhibit A attached hereto (the “**Premises**”).
- B. Landlord and Tenant have entered into that certain Ground Lease dated as of [_____, 2021] (the “**Ground Lease**”) on the terms and conditions set forth therein.
- C. Landlord and Tenant desire to execute and record this Memorandum of Lease with the Land Records of the Office of the Recorder of Deeds of the City of Alexandria, Virginia, to provide notice of the Ground Lease.

NOW, THEREFORE, for and in consideration of the rents and covenants set forth in the Ground Lease and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree and state as follows:

1. **Ground Lease.** Landlord has demised the Premises (as defined in the Ground Lease) to Tenant and Tenant has accepted the Premises from Landlord, upon and subject to the terms and conditions set forth in the Ground Lease.
2. **Term.** The term of the Ground Lease will commence on the Term Commencement Date (as defined in the Ground Lease) and will expire on the day immediately preceding the ninety-ninth (99th) anniversary of the Term Commencement Date.
3. **Notice to Third Parties.** This Memorandum of Lease is prepared for the sole purpose of imparting notice to third parties in the public records of the existence of the Ground Lease and certain of its terms, and nothing contained herein shall in any way abrogate, enlarge or otherwise modify any provisions of the Ground Lease. Reference is made to the Ground Lease for a complete description of all of the rights, duties and obligations of the parties in respect of the Premises and the use and occupancy thereof. In the event of any inconsistency between the terms of the Ground Lease and any provision of this Memorandum of Lease, the provisions of the Ground Lease shall govern and control.
4. **Third Party Beneficiary.** The Ground Lease irrevocably designates the City of Alexandria, Virginia as a third party beneficiary of all rights and interests of Landlord under the Ground Lease.

¹ Note to Draft: To be updated prior to signing if necessary based on pending resubdivision.

5. Governing Law. The Ground Lease and this Memorandum of Lease shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Virginia without reference to conflicts of laws principles.

6. Counterparts. This Memorandum of Lease may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute the same document.

IN WITNESS WHEREOF, the parties have caused this Memorandum of Lease to be executed as of the day and year first above written.

Landlord:

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

By: _____
Name: _____
Its: _____

COMMONWEALTH OF VIRGINIA)
) to wit:
CITY OF ALEXANDRIA)

I, _____, a Notary Public in and for the aforesaid jurisdiction, do hereby certify that _____, who is personally well known to me as the _____ of INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALEXANDRIA, a political subdivision of the Commonwealth of Virginia, executed the foregoing Memorandum of Lease bearing date as of the ___ day of _____, 2021, personally appeared before me in the said jurisdiction and acknowledged the same to be his/her act and deed, and that he/she executed the same for the purposes therein contained.

GIVEN under my hand and seal this _____ day of _____, 2021.

(Notarial Seal)

Notary Public

My Commission Expires: _____

Tenant:

INOVA HEALTH CARE SERVICES, a Virginia non-stock corporation

By: _____
Name: _____
Its: _____

COMMONWEALTH OF VIRGINIA)
) to wit:
COUNTY/CITY OF: _____)

I, _____, a Notary Public in and for the aforesaid jurisdiction, do hereby certify that _____, who is personally well known to me as the _____ of INOVA HEALTH CARE SERVICES, a Virginia non-stock corporation, executed the foregoing Memorandum of Lease bearing date as of the ___ day of _____, 2021, personally appeared before me in the said jurisdiction and acknowledged the same to be his/her act and deed, and that he/she executed the same for the purposes therein contained.

GIVEN under my hand and seal this _____ day of _____, 2021.

(Notarial Seal)

Notary Public

My Commission Expires: _____

EXHIBIT A

Legal Description

[To be attached]

Exhibit E

Form of Subordination, Nondisturbance and Attornment Agreement

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is dated _____, 20__, and is made by (i) INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALEXANDRIA, a political subdivision of the Commonwealth of Virginia ("Ground Lessor"), having an address at 625 North Washington Street, Suite 400, Alexandria, Virginia, (ii) [INOVA HEALTH CARE SERVICES], a _____ ("Landlord"), having an address c/o 8095 Innovation Park Drive, Building D, Floor 7, Office 0230, Fairfax, Virginia 22031., and (iii) _____, a _____, having an address at _____ ("Tenant").

RECITALS

- A. Tenant has entered into a lease dated _____, 20__ ("Lease") with Landlord for [_____] use, covering certain premises containing approximately [_____] square feet/acres of land [_____] square feet of building area] (as more fully described in the Lease, the "Premises") in a building [to be constructed and] known as _____, located at [5901 Duke Street], City of Alexandria, Virginia.
- B. Ground Lessor is the ground lessor under that certain Ground Lease dated as of [_____] 2021] with Landlord, as ground lessee thereunder (the "Ground Lease"). Landlord [has agreed to construct] [has constructed] the building of which the Premises are a part ("Building") on the land which is subject to the Ground Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Landlord hereby represents and warrants to Ground Lessor that Landlord has provided to Ground Lessor a correct and complete copy of the Lease.
2. The Lease is and shall be subject and subordinate to the Ground Lease and to all renewals, modifications, replacements, amendments and extensions thereof.
3. If for any reason the Ground Lease is terminated, then Tenant shall attorn to Ground Lessor and shall recognize Ground Lessor as Tenant's landlord under the Lease, and Tenant shall execute and deliver, upon the reasonable request of Ground Lessor, an instrument evidencing its agreement to attorn to Ground Lessor in such event. Tenant hereby waives the provisions of any statute or rule of law which may give Tenant any right or election to terminate the Lease or to surrender possession of the Premises in the event the Ground Lease terminates, and Tenant agrees that the Lease shall not be affected in any way whatsoever by such termination. If Ground Lessor elects to terminate the Ground Lease as a result of Landlord's default thereunder after the substantial completion of the Building of which the Premises are a part (or prior to substantial completion if Ground Lessor or its assignee thereafter completes the Building within two (2) years following termination of the Ground Lease), then, so long as Tenant is not in default under the Lease beyond any applicable notice and cure period, Ground Lessor shall not terminate the Lease nor join Tenant in summary or other termination proceedings, and shall recognize the right to possession of the Premises by Tenant under the Lease, subject to the following:
 - (a) Ground Lessor shall not be obligated to construct or pay for any improvements required under the Lease, or pay any allowances or concessions that may be provided for in the Lease, provided that Ground Lessor agrees that the Lease may include an offset right against rent due or coming due under the Lease on the part of the Tenant with respect to the Ground Lessor's failure to pay the cost of such tenant improvements and/or such allowances or concessions.

(b) Ground Lessor shall not be bound by any payment of rent under the Lease that is for more than one (1) month's rent and for more than one (1) month prior to its Due Date.

(c) Ground Lessor shall not be liable for damages for any breach, act or omission of Landlord or any other prior landlord under the Lease, or subject to any offsets or defenses which the Tenant may have against Landlord or any other prior landlord under the Lease, except to the extent the same are based upon conditions that continue to exist following termination of the Ground Lease.

(d) Ground Lessor shall not be responsible for the return of any security deposit furnished to Landlord or any other prior landlord that has not actually been received by Ground Lessor.

(e) For clarity, in no event shall Ground Lessor be obligated to recognize any right to possession beyond the Fixed Expiration Date (as defined in the Ground Lease) unless specifically approved by Ground Lessor in writing.

4. Tenant acknowledges that (a) pursuant to the Ground Lease, Landlord has assigned to Ground Lessor all right, title and interest of Landlord in and to the Lease, and (b) except as provided in paragraph 3 above, Ground Lessor has no obligation to recognize Tenant's rights under the Lease.

5. All notices, demands or requests made pursuant to, under, or by virtue of this Agreement must be in writing and sent by recognized overnight courier or by hand delivery to the party to whom the notice, demand or request is being made at its address set forth herein. Any party may change the place that notices and demands are to be sent by written notice delivered in accordance with this Agreement. Notice is deemed given upon delivery. The address of Ground Lessor for any notice required by this Agreement is as follows:

If to Ground Lessor: Industrial Development Authority of the City of Alexandria
625 North Washington Street, Suite 400
Alexandria, Virginia 22314

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

If to Landlord: [INOVA Health Care Services]

Attn: _____

With a copy to: _____

Attn: _____

If to Tenant:

Attn: _____

6. This Agreement may be modified only by agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns.

7. In the event there is any inconsistency between the terms and provisions hereof and the terms and provisions of the Lease dealing with non-disturbance by Ground Lessor, the terms and provisions hereof shall be controlling.

8. This Agreement shall be governed by the laws of the Commonwealth of Virginia without reference to conflicts of laws principles. If any term of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term to any person or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

[signatures attached on next page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

GROUND LESSOR:

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

By: _____
Name: _____
Title: _____

Landlord:

[INOVA HEALTH CARE SERVICES], a

By: _____
Name: _____
Its: _____

Tenant:

By: _____
Name: _____
Its: Manager

Exhibit F
Required Insurance

[OPEN FOR CONSIDERATION OF ADDITIONAL COMMENTS FROM CITY'S AND
INOVA'S INSURANCE ADVISORS]

1. Insurance against loss or damage to the Premises and Tenant's personal property by fire and such other risks as may be now or hereafter embraced by an "all-risk" form of insurance policy. The amount of such insurance shall be not less than one hundred percent (100%) of the full replacement cost (insurable value) of the Improvements located on the Land from time to time, without reduction for depreciation. The determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing such coverage. "Replacement cost," as used herein, means the cost of replacing the Improvements without regard to deduction for depreciation, exclusive of the cost of excavations, foundations and footings below the lowest basement floor.
2. Commercial general liability insurance against claims for personal injury, bodily injury, death and property damage occurring on, in or about the Premises in amounts not less than \$10,000,000 per occurrence and \$10,000,000 in the aggregate plus umbrella coverage in an amount not less than \$25,000,000. Landlord hereby retains the right to periodically review the amount of said liability insurance and to require (but no more frequently than once every five (5) years) an increase in the amount of said liability insurance based on coverage limits generally maintained by prudent owners of comparable properties in the City of Alexandria, Virginia.
3. During the period of any construction, renovation or alteration of the Premises which exceeds ten percent (10%) of the principal amount of the indebtedness secured by any Qualifying Mortgage, at Landlord's request, a completed value, "All Risk" Builder's Risk form or "Course of Construction" insurance policy in non-reporting form, in an amount consistent with the practices of prudent owners of comparable properties in the City of Alexandria, Virginia. Coverage shall include delay in start-up including expediting/extra expense arising from a peril insured under the Builders Risk Policy for any portion or phase of the Initial Improvements, even if other portions or phases of the Initial Improvements are still under construction. The delay in start-up limit shall not be less than twelve (12) months of Tenant's projected gross revenues from the Initial Improvements plus continuing expenses, including construction loan debt service and tax credits, as may be applicable. Such coverage must be in terms consistent with Section 1 above. Tenant may elect to insure builder's risk under its current property policy.
4. Worker's Compensation and Employer's Liability Insurance covering all appropriate persons.
5. Business income (loss of rents) insurance in amounts sufficient to compensate Tenant for the greater of (i) gross revenues for twelve (12) months, or (ii) twelve (12) months of operating expenses including debt service and Ground Rent and containing an extended period of indemnity endorsement which provides that after the physical loss to the Premises and personal property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration twelve (12) months from the date that the Premises and Tenant's personal property are repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such

period. The amount of coverage shall be adjusted annually to reflect the rents and profits or income payable during the succeeding twelve (12) month period.

6. Pollution Liability Insurance covering Tenant and Landlord as their interests may appear. At least \$2 million per occurrence/\$3 million aggregate coverage. Must include third-party BI/PD, on- or off-premise pollution cleanup, off-site disposal, transport, and third party defense.

Exhibit G

Form of Guaranty

GUARANTY

THIS GUARANTY (“Guaranty”) is made as of _____, 2021 by **INOVA HEALTH SYSTEM FOUNDATION**, a Virginia non-stock corporation (“Guarantor”), for the benefit of **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALEXANDRIA**, a political subdivision of the Commonwealth of Virginia (“Landlord”).

Recitals:

A. Landlord and Inova Health Care Services, a Virginia non-stock corporation (together with its permitted successors and assigns, “Tenant”), have executed that certain Ground Lease dated as of [_____, 2021] (as amended from time to time, the “Ground Lease”) with respect to certain real property, located at [5901 Duke Street], City of Alexandria, Virginia, as more particularly described therein (the “Property”).

B. Section 2.08 of the Ground Lease provides that, among other things, Guarantor shall execute and deliver this Guaranty to Landlord as a Turnover Condition.

C. Guarantor warrants and acknowledges that because of its financial interest, direct and indirect in the Tenant and in the benefits and advantages which will result from the Ground Lease, Guarantor will be significantly benefitted by the Ground Lease.

NOW, THEREFORE, in consideration of the foregoing, Guarantor, intending to be legally bound, hereby covenants, agrees, represents and warrants as follows:

ARTICLE I- DEFINED TERMS

Unless the context otherwise requires, capitalized terms used but not otherwise defined in this Guaranty shall have the meanings provided in the Ground Lease. In addition, “Guaranteed Obligations” shall mean all of Tenant's monetary and nonmonetary obligations under the terms of the Ground Lease, including without limitation, meeting all of the Milestones by the applicable Milestone Dates pursuant to Section 11.08 of the Ground Lease and the payment of all Ground Rent, Increased Ground Rent and the Liquidated Damages.

ARTICLE II - GUARANTY

2.1 **Guaranteed Obligations.** Guarantor hereby unconditionally, absolutely and irrevocably guarantees to Landlord the prompt payment and performance when due of all Guaranteed Obligations subject to any applicable cure periods in the Ground Lease. In the event Tenant fails to pay or perform any of the Guaranteed Obligations that are not cured or waived, Guarantor shall cause the same to be paid or performed in accordance with their terms.

2.2 **Nature of Obligations.** The obligations of Guarantor under this Guaranty constitute a guarantee of payment and performance and not merely of collection, are unconditional, absolute and irrevocable under all circumstances and shall not in any event be discharged, impaired, or otherwise affected except by payment to Landlord or performance of such obligations. Landlord shall have the right to require Guarantor to pay, comply with and satisfy its obligations and liabilities under this Guaranty and shall have the right to proceed immediately against Guarantor with respect thereto, without being required to bring any proceeding or take any action of any kind against Tenant, any other guarantor or any other Person or property prior thereto. Notwithstanding anything to the contrary herein, Landlord shall not enforce this

Guaranty during any period in which a Mortgagee has the right to cure and is actively exercising a right to cure, any default by Tenant under the Ground Lease.

2.3 **Third Party Beneficiary.** Notwithstanding the foregoing, the City of Alexandria, Virginia (the “City”) is hereby irrevocably designated a third party beneficiary of all rights and interests of Landlord under this Guaranty, and the City has the right to independently enforce the terms of this Guaranty. Guarantor acknowledges that the City is aware of and accepts its designation as a third party beneficiary under this Guaranty.

2.4 **Termination.** From and after the Fixed Expiration Date of the Lease or the earlier termination thereof, Guarantor shall have no further liability under this Guaranty, other than for Guaranteed Obligations which have accrued prior to such date and remain outstanding, provided that any claim with respect thereto is brought within twelve (12) months of the date of the Fixed Expiration Date of the Lease or the earlier termination thereof. Upon payment and performance of all Guaranteed Obligations, this Guaranty shall be automatically released.

ARTICLE III- WAIVERS

Waivers. Guarantor hereby:

3.1 Agrees that its obligations hereunder shall not be released or otherwise affected by and hereby waives notice of any agreement, amendment, release, suspension, compromise, forbearance, indulgence, waiver, extension, renewal, supplement or modification of the Ground Lease, Development Agreement or any other obligations of Tenant to Landlord;

3.2 Consents that Landlord may, without affecting the liability of Guarantor under this Guaranty, (i) renew or change the terms of any of the liabilities or obligations of Tenant to Landlord, or (ii) waive any of Landlord’s rights or remedies against Tenant or any other guarantor of any obligations of Tenant;

3.3 Agrees that Guarantor’s liability under this Guaranty shall be in addition to that stated in any other guaranty that may be hereafter given by Guarantor and unless specifically stated in such guaranty, shall not be reduced or affected by any payment made under any such guaranty;

3.4 Agrees that any failure or delay by Landlord to exercise any right under this Guaranty, under any other guaranty or under the Ground Lease or the Development Agreement shall not be construed as a waiver of the right to exercise the same or any other right hereunder at any time and from time to time thereafter, except as otherwise expressly set forth herein;

3.5 Agrees that Landlord shall not, under any circumstances, be required to exhaust remedies or proceed against Tenant or any other guarantors, sureties or parties before proceeding under this Guaranty against Guarantor;

3.6 Agrees that under no circumstances shall Guarantor become subrogated to the claims or liens of Landlord against Tenant or any other guarantor and that all amounts due to Landlord shall have priority over any amounts payable now or hereafter from Tenant or such other guarantor to Guarantor;

3.7 Reserved;

3.8 Agrees that no single exercise of the power to bring any action or institute any proceeding shall be deemed to exhaust such power, but such power shall continue undiminished and may be exercised from time to time as often as Landlord may elect until all of Guarantor’s liabilities and obligations hereunder have been satisfied;

3.9 Agrees that Guarantor’s liability under this Guaranty shall in no way be released or otherwise affected by the commencement, existence or completion of any proceeding against Tenant, any other guarantors or any other Person, and Landlord shall be under no obligation to take any action and shall

not be liable for any action taken or any failure to take action or any delay in taking action against Guarantor, Tenant, or any other Person;

3.10 Waives any notice of Landlord's intention to act in reliance on this Guaranty; and

3.11 Irrevocably waives all claims of waiver, release, surrender, alteration or compromise and all defenses, set-offs, counterclaims, recoupments, reductions, limitations or impairments and any other available defense at law or in equity, in each case other than good faith defenses to the performance of the Tenant's obligations under the Ground Lease and/or the Development Agreement.

ARTICLE IV- CERTAIN AGREEMENTS

4.1 **Financial Statements.** Upon the execution of this Guaranty and within 150 days after the end of each fiscal year of Guarantor during the term hereof, Guarantor shall furnish to Landlord a financial statement for Guarantor and its consolidated affiliates (collectively, the "System") as of the end of such fiscal year, either (i) certified by the chief financial officer of Guarantor (or equivalent) as correct and complete in all material respects or (ii) audited by an independent certified public accountant. Such financial statements shall be prepared in accordance with generally accepted accounting principles, consistently applied.

4.2 **Reinstatement.** This Guaranty shall be reinstated and remain in full force and effect for so long as and to the extent that any payment made by Guarantor under this Guaranty may be voided or rescinded in bankruptcy proceedings as a preference or for any other reason.

4.3 **Costs and Fees.** If Guarantor does not timely satisfy its obligations under this Guaranty in accordance with the terms hereof, Landlord shall have the right, in addition to the other rights described in this Guaranty, to collect from Guarantor, on demand, all costs, fees and expenses (including reasonable attorneys' fees and disbursements) incurred by Landlord in connection with the enforcement of or collection upon this Guaranty against Guarantor, as well as interest at the Involuntary Rate on such costs, fees and expenses from and after the date of such demand through the date of payment.

4.4 **Bankruptcy.** The obligations of Guarantor under this Guaranty shall not be discharged, impaired or otherwise affected by the insolvency, bankruptcy, liquidation, readjustment, composition, dissolution or other similar proceeding involving or affecting Tenant, Guarantor, or any other guarantor of any of the Guaranteed Obligations, proceedings affecting the ownership of any of the above through merger, consolidation or otherwise, inconsistent orders in or claims by parties to any such proceedings or other release of obligations by operation of law.

ARTICLE V- REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 **Representations and Warranties.** Guarantor hereby represents and warrants to Landlord as follows:

5.1.1 Guarantor (i) is a non-stock corporation duly formed, validly existing and in good standing under the laws of the Commonwealth of Virginia, (ii) is an affiliate of Tenant and (iii) has the power and authority to conduct the business in which it is currently engaged.

5.1.2 Guarantor (i) has the power and authority to execute, deliver and perform its obligations under this Guaranty, and (ii) has taken all necessary action to authorize the execution, delivery and performance of this Guaranty.

5.1.3 No consent or authorization of, or filing with, any Person (including any Governmental Authority), which has not been obtained, is required in connection with the execution, delivery and performance of this Guaranty by Guarantor.

5.1.4 This Guaranty has been duly executed and delivered by Guarantor, and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its

terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of contracting parties generally.

5.1.5 The execution, delivery and performance by Guarantor of this Guaranty will not result in a breach of any contractual obligation to which Guarantor is a party or, to the knowledge of Guarantor, violate any requirement of law, in each case to the extent such breach or violation would have a material adverse impact on the System.

5.1.6 No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the actual knowledge of Guarantor, threatened in writing by or against Guarantor which, if adversely determined, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the System or the Guarantor's ability to perform its obligations under this Guaranty.

5.1.7 Guarantor is not the subject debtor under any federal, state or local bankruptcy or insolvency proceeding or any other proceeding for dissolution, liquidation or winding up of its assets.

5.1.8 All financial statements and other financial information provided by Guarantor to Landlord regarding the System are correct in all material respects as of the dates thereof, and since the dates of such financial statements and other financial information there has been no material adverse change in the financial condition of the System.

5.1.9 The System has tangible net assets in an amount not less than \$500,000,000.00.

5.2 Net Worth Covenant.

5.2.1 Until termination of this Guaranty in accordance with Section 2.3, the System shall maintain tangible net assets in an amount not less than \$500,000,000.00 (the "Minimum Net Assets") determined in accordance with generally accepted accounting principles. Within 150 days after the end of each fiscal year of Guarantor, Guarantor shall provide to Landlord either of the following (each, a "Financial Report"): (i) a certification as to the System's tangible net assets as of the end of such fiscal year, or (ii) a financial statement of the System for such fiscal year that has been reviewed or audited by an independent certified public accountant.

5.2.2 If prior to termination of this Guaranty in accordance with Section 2.4, the Financial Report indicates that the tangible net assets of the System is less than the Minimum Net Assets, then within forty-five (45) days of Landlord's receipt of such Financial Report, Guarantor shall cause Tenant to cause a substitute guarantor with a tangible net worth (demonstrated to Landlord's reasonable satisfaction) in excess of the Minimum Net Assets, which substitute guarantor shall be reasonably approved by Landlord, to execute and deliver to Landlord a guaranty in substantially the same form as this Guaranty. Upon provision of such substitute guaranty, this Guaranty shall be released and of no further force or effect.

ARTICLE VI- MISCELLANEOUS

6.1 **Binding Effect.** This Guaranty shall be binding upon Guarantor and inure to the benefit of Landlord or any successor Landlord (including without limitation, any Mortgagee of Landlord's fee interest in the Premises) under the Ground Lease.

6.2 **Jurisdiction.** Any suit, action, proceeding or claim relating to this Guaranty shall be brought exclusively in the Circuit Court for City of Alexandria, Virginia, or the successors to such court in the Commonwealth of Virginia, and Landlord and Guarantor agree that such court is the most convenient forum for resolution of any such action and further agree to submit to the jurisdiction of such court and waive any right to object to venue in such courts.

6.3 **Notices.** Notices and other communications required or permitted under this Guaranty shall be in writing and delivered (i) by hand against receipt, (ii) by recognized overnight delivery service,

or (iii) by certified or registered mail, postage prepaid, with return receipt requested. All notices shall be addressed as follows:

If to Landlord: Industrial Development Authority of the City of Alexandria
625 North Washington Street, Suite 400
Alexandria, Virginia 22314
Attn: Stephanie Landrum

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

If to Guarantor: Inova Health Care Services
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 a copy to: John Gaul, General Counsel
Inova Health System
8110 Gatehouse Road, Suite 200-E
Falls Church, Virginia 22042
Email: john.gaul@inova.org

with a copy to: Timothy S. Sampson
Downs Rachlin Martin PLLC
199 Main Street
Burlington, Vermont 05402-0190
Email: tsampson@drm.com

or to such other addresses as may be designated by notice pursuant to this Section 6.3. Notices shall be deemed to be effective upon receipt (or refusal thereof) if personally delivered, sent by recognized overnight delivery service, or sent by certified or registered mail, postage prepaid, with return receipt requested.

6.4 Time of Essence. Time is of the essence with respect to the performance by Guarantor of all obligations under this Guaranty.

6.5 Waiver of Jury Trial. As further inducement to Landlord to make and enter into the Ground Lease and in consideration thereof, Guarantor covenants and agrees that in any action or proceeding brought on, under, or by virtue of the Guaranty, each of Guarantor and Landlord, by its acceptance of this Guaranty, shall and does hereby waive trial by jury.

6.6 Equitable Relief. Guarantor covenants, warrants and agrees with Landlord, and is hereby irrevocably estopped from denying, that the subject matter of this Guaranty is unique, that any failure to perform the covenants, agreements, conditions and obligations under this Guaranty shall cause irreparable injury and damage to Landlord and that, accordingly, in addition to and without limiting, reducing, altering, or otherwise affecting any of the rights of Landlord at law or in equity to seek damages or other relief, Landlord shall have the right to obtain from any court of competent jurisdiction an order or decree compelling specific performance by Guarantor of this Guaranty and of all the obligations, undertakings, conditions, agreements, covenants and other provision of this Guaranty.

6.7 **No Landlord or City Signature.** This Guaranty may be enforced by Landlord and/or by City without the necessity of its signature appearing hereon.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed by its duly authorized representative, as of the day and year first above written.

GUARANTOR:

INOVA HEALTH SYSTEM FOUNDATION, a Virginia non-stock corporation

By: _____
Name: _____
Title: _____

Exhibit H
Permitted Encumbrances

[Attached behind]

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