

**LANDMARK MALL
DEVELOPMENT AND FINANCING AGREEMENT**

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**LANDMARK MALL
DEVELOPMENT AND FINANCING AGREEMENT**

This **LANDMARK MALL DEVELOPMENT AND FINANCING AGREEMENT** (this “**Agreement**”) is dated as of the ___ day of _____ 2021 (the “**Effective Date**”), by and among **THE CITY OF ALEXANDRIA, VIRGINIA**, a body politic of the Commonwealth of Virginia (the “**City**”), **LANDMARK LAND HOLDINGS, LLC**, a Delaware limited liability company (“**Developer**”) and **INOVA HEALTH CARE SERVICES**, a Virginia non-stock corporation (“**Inova**”). Individually the City, Developer and Inova may each be referred to hereinafter as the “**Party**,” or collectively as the “**Parties**.”

RECITALS:

WHEREAS, Developer has been formed initially by FP Landmark Land, LLC, a Maryland limited liability company (the “**Managing Member**”).

WHEREAS, certain prospective members of Developer (or Affiliates thereof) are the owners of those certain parcels of real property collectively known as “Landmark Mall,” as depicted in **Exhibit A** and improvements thereon located adjacent to Duke Street in Alexandria, Virginia (collectively, the “**Landmark Mall**”), and more particularly: (a) Landmark Mall, LLC a Delaware limited liability company (“**HHC Member**”), an affiliate of Howard Hughes Corporation, is the owner of those certain parcels of real property more particularly described on **Exhibit A-1** and the improvements located thereon; and (b) Seritage SRC Finance LLC, a Delaware limited liability company, is the owner of that certain parcel of real property more particularly described in **Exhibit A-2** and the improvements located thereon. The parcels set forth in **Exhibit A-1** and **Exhibit A-2** are referred to in this Agreement as the “**Property**”.

WHEREAS, HHC Member and Seritage SRC Finance LLC have agreed to contribute the Property to Developer pursuant to a Contribution Agreement dated June 28, 2021 (the “**Contribution Agreement**”) and have agreed, subject to the terms of, and pursuant to, the Contribution Agreement to enter (or in the case of Seritage SRC Finance LLC, may cause an Affiliate to enter) into a joint venture agreement with the Managing Member (such Affiliate or Seritage SRC Finance LLC, as applicable, being the “**SRG Member**”), pursuant to an Amended and Restated Limited Liability Company Agreement of Developer (the “**Developer JV Agreement**”) in the form attached as an exhibit to the Contribution Agreement. HHC Member, SRG Member and Managing Member may, when admitted to Developer pursuant to Developer JV Agreement, individually be referred to hereafter as a “**JV Member**” or collectively as “**JV Members**”.

WHEREAS, Developer JV Agreement provides that Developer has been formed for the purpose of re-developing the Property into a mixed use project (the “**Project**”), which is anticipated to include, *inter alia*, the development/redevelopment of the infrastructure, roads, plazas and landscape of the Project into a mixed use campus that will include: (a) multi-family residential apartment building(s), commercial and medical office buildings with healthcare service, hotel and retail components; and (b) the development, construction and completion of a ‘pad-ready’ site, on the part of the Property depicted on **Exhibit A-3** (the “**Inova Site**”) and which is to be sold to the IDA pursuant to the Inova Site Purchase Agreement (defined below) and which

the City will cause the IDA, pursuant to the “Grant Agreement” (as defined below), to be leased by the IDA to Inova pursuant to a ground lease substantially in the form attached hereto as **Exhibit B** (the “Ground Lease”).

WHEREAS, pursuant to the Ground Lease, Inova is required, subject to conditions contained therein, to construct (i) a new hospital which, together with the cancer center referenced below, will consist of a minimum of 550,000 square feet (more or less), (ii) a new cancer center which will consist of a minimum of 75,000 square feet (more or less), and (iii) a new medical office building which will consist of a minimum of 90,000 square feet (more or less) (together, the “Hospital Facilities”).

WHEREAS, the design, permitting, development, construction and completion of the Project is consistent with the City’s long-term planning goals and vision for the Landmark Mall neighborhood of the City, to be a dynamic area including a mix of commercial, office, hospital and residential uses and Developer intends to achieve such goals using diligent good faith efforts and complete the Project in a timely fashion.

WHEREAS, the Project will require Developer to (a) design, permit, develop, construct and complete certain significant public infrastructure improvements, as more particularly described in **Exhibit C-1**, (b) design, permit, develop, construct and complete the “pad ready” Inova Site, as more particularly described in **Exhibit C-2**, (c) pay for certain costs associated with environmental remediation as more particularly described in **Exhibit C-3** (together, the scope of work described in **Exhibit C-2** and **Exhibit C-3**, the “Inova Pad Ready Scope of Work”) (and together the scopes of work described in **Exhibit C-1**, **Exhibit C-2** and **Exhibit C-3**, the “Public Infrastructure Improvements”), (d) design, permit, develop, construct and complete certain offsite infrastructure improvements described on **Exhibit C-4** (the “Offsite CDD Infrastructure”), and (e) design, permit, develop, construct and complete certain Private Infrastructure with Public Access (defined below), all of which will enhance and benefit the City for the development, retention, and expansion of business enterprises and residential uses within the Landmark Mall neighborhood of the City, in addition to enabling the development, construction and use of the Project, including the Hospital Facilities. For the avoidance of doubt the Inova Pad Ready Scope of Work is included in the scope of work that constitutes the Public Infrastructure Improvements, as is more detailed in this Agreement. Further, for the avoidance of confusion, the Inova Pad Ready Scope of Work includes but is not limited to certain work described as the “On-Site Portion of the Inova Pad Ready Scope of Work” in the below defined Access Agreement.

WHEREAS, in order to facilitate the design, permitting, development, construction and completion of the Public Infrastructure Improvements, the City intends to appropriate \$86,000,000 in currently available funds to fund the hard and soft costs related to the Public Infrastructure and the Offsite CDD Infrastructure and to fund a portion of the Private Infrastructure with Public Access, as more specifically described in this Agreement (the “City’s Public Infrastructure Cost Funding Obligations”).

WHEREAS, the City shall fund the City’s Public Infrastructure Cost Funding Obligations through the issuance of one or more general obligation bonds (the “GO Bonds”), generally under the terms described in **Exhibit D** (the “GO Bond Terms”).

WHEREAS, the City has authorized the issuance of the GO Bonds on the GO Bond Terms pursuant to _____ (the “**Bond Ordinance**”).

WHEREAS, in order to acquire the Inova Site from Developer, City will cause the IDA, pursuant to the Grant Agreement, to enter into that certain Purchase and Sale Agreement with Developer (the (“**Inova Site Purchase Agreement**”), a copy of which is attached hereto as **Exhibit E**, whereby, in consideration of \$54,000,000 to be paid in installments by the IDA to Developer as the purchase price of the Inova Site (which amount the IDA is to receive as a grant from the City pursuant to the below defined Grant Agreement), Developer shall convey or cause the Parcel Owners to convey the Inova Site not later than June 30, 2022 to the IDA, as more specifically described in this Agreement and in the Inova Site Purchase Agreement.

WHEREAS, concurrent with closing under the Inova Site Purchase Agreement, the City will cause the IDA, pursuant to the Grant Agreement, to enter into an access and temporary construction management agreement with Developer, in the form attached hereto as **Exhibit F** (the “**Access Agreement**”), to enable Developer to perform a portion (*i.e.*, the “On-Site Portion”) of the Inova Pad-Ready Scope of Work. Concurrent with closing under the Inova Site Purchase Agreement, the IDA, pursuant to the Grant Agreement, is to enter into the Access Agreement.

WHEREAS, Developer has submitted a Coordinated Development District Concept Plan dated April 9, 2021 to the City, and the City Council is scheduled to consider CDD Concept Plan and associated conditions (CDD #2020-00007) for approval at its July 6, 2021 public hearing (the “Pending Landmark Land Use Application”), and the Planning Commission approved a Preliminary Plat of Subdivision on June 24, 2021 (the “Pending Landmark Subdivision Plat”), as described on **Exhibit H**.

WHEREAS, the City Council approved master plan amendment (MPA #2021-00002) and rezoning (REZ #2021-00001) on June 19, 2021 for a rezoning of Inova’s existing site on Seminary Road to the RB/Townhouse zone with proffer (the “Pending Seminary Road Land Use Applications”).

WHEREAS, in order to facilitate the design, permitting, development, construction and completion of the Public Infrastructure Improvements, the Offsite CDD Infrastructure and the Private Infrastructure with Public Access the Alexandria City Council (the “**City Council**”) is expected to adopt, an ordinance (the “**CDA Ordinance**”) creating the **LANDMARK COMMUNITY DEVELOPMENT AUTHORITY** (the “**CDA**”) in accordance with Sections 15.2-5152, et seq. of the Code of Virginia of 1950, as amended (the “**Act**”), and approving an assessment methodology for the Project as described in **Exhibit J** attached hereto (the “**Assessment Methodology**”).

WHEREAS, the Parties intend that Developer will (i) provide or obtain certain professional, architectural and engineering services for the design of the Public Infrastructure Improvements, the Offsite CDD Infrastructure and the Private Infrastructure with Public Access conforming to the applicable Rezoning Approvals (as defined below) and other codes and ordinances of the City, (ii) provide or obtain certain construction management services and general contractor services for the construction of the Public Infrastructure Improvements, the Offsite CDD Infrastructure and the Private Infrastructure with Public Access, and (iii) execute, or cause

all contractors and subcontractors selected by Developer (and approved by the City, where applicable) to execute, the requisite “Construction Agreements” (as defined below).

WHEREAS, subject to the conditions of this Agreement, the applicable Rezoning Approvals and Regulatory Requirements, Developer will dedicate to public use or convey to the City, and the City will accept ownership of the Public Infrastructure Improvements (excluding the Inova Pad Ready Scope of Work which is to be performed on the Inova Site owned by the IDA) as more fully described in this Agreement.

WHEREAS, the Project is to be subjected to a Reciprocal Easement Agreement substantially in the form attached hereto as **Exhibit K** (the “**REA**”) which will provide, *inter alia*, for certain ingress and egress, utilities and similar matters, including within the existing structured parking garage which is to be renovated in part as part of the Public Infrastructure Improvements, including obligations as to maintenance of the Public Infrastructure Improvements and of certain portions of the Private Infrastructure with Public Access to be maintained by the Parties under the REA. The REA also provides for general public use of the Private Infrastructure with Public Access subject to limited rights of Developer or its designee to close such areas for programming and similar uses.

WHEREAS, the design, permitting, development, construction and completion of the Public Infrastructure Improvements and Offsite CDD Infrastructure will be coordinated with the construction of the Private Infrastructure with Public Access and the Hospital Facilities, as provided in this Agreement, in the REA and in the Access Agreement.

WHEREAS, in furtherance of the Parties’ understandings, the City and Developer now wish to describe and bind themselves to their public-private partnering for the design, permitting, development, funding, construction and completion of the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure and their respective undertakings, responsibilities and understandings regarding the Public Infrastructure Improvements, Offsite CDD Infrastructure and Private Infrastructure with Public Access.

WHEREAS, in furtherance of the Parties’ understanding, the Parties now desire to describe and bind themselves to their plans concerning the development of the Public Infrastructure Improvements, Private Infrastructure with Public Access, Offsite CDD Infrastructure and the Hospital Facilities as more fully provided in this Agreement.

WHEREAS, on July 6, 2021 at a duly sworn meeting of the City Council, the City Council has approved this Agreement and authorized its execution and delivery.

WHEREAS, accordingly, the Parties enter into this Agreement to evidence such undertakings, responsibilities and understandings and other related matters, all as hereinafter described.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I PURPOSE; DEFINITIONS

Section 1.1. Purpose and Effect of Agreement.

(a) This Agreement is executed by the Parties hereto to provide for, among other things, (i) the design, permitting, development, construction and completion of the Public Infrastructure Improvements, Offsite CDD Infrastructure and Private Infrastructure with Public Access, (ii) the financing of the costs of the Public Infrastructure Improvements and the Offsite CDD Infrastructure and the financing of a portion of the costs of the Private Infrastructure with Public Access, (iii) the City to cause the acquisition by the IDA of the Inova Site and the leasing thereof by the IDA to Inova under the Ground Lease; and (iv) the obligations of Inova to develop the Hospital Facilities.

(b) Developer acknowledges and agrees that it is assuming significant financial risks in undertaking the Project, and that, except as otherwise expressly provided herein, all risks of cost overruns, labor difficulties, and development, that are integral to making the Project a financial success after fulfillment of the City's and Inova's respective obligations hereunder are the sole responsibilities of Developer and its successors and assigns.

(c) Inova acknowledges and agrees that its design, development, construction and completion of the Hospital Facilities pursuant to the Ground Lease are integral to making the Project an overall success and are the sole responsibilities of Inova and Inova's undertaking to do so is being reasonably relied upon by Developer in making its commitments herein.

(d) Developer acknowledges and agrees that its design, development, construction and completion of the Project (other than the Hospital Facilities) are integral to making the Project an overall success and are the sole responsibilities of Developer and Developer's undertaking to do so is being reasonably relied upon by Inova and the City in making their commitments herein.

(d) The Parties agree that the recitals set forth above are true and correct and form an operative part of this Agreement.

Section 1.2. Definitions.

Unless the context requires otherwise, the following terms shall have the meanings hereinafter set forth:

“**Access Agreement**” shall have the meaning set forth in the Recitals.

“**Act**” has the meaning set forth in the Recitals.

“**Affiliate**” means any corporation, limited liability company, partnership, other form of business organization, entity, or, as applicable, natural person, which, whether by ownership or any formal or informal arrangement, controls, is controlled by or is under common control with a Party.

“**Allocation Table**” shall have the meaning set forth in in Section 4.2(d).

“**Assessment Methodology**” shall have the meaning set forth in the Recitals.

“**Available Proceeds**” means the net sale proceeds of the GO Bonds excluding proceeds used for cost of issuance, capitalized interest and any reserves, which shall be in an amount equal to \$140,000,000.

“**Base Year**” means, with respect to ad valorem real property assessed value, the 12-month period commencing January 1, 2023.

“**Bond Ordinance**” shall have the meaning set forth in the Recitals.

“**CDA**” shall have the meaning set forth in the Recitals.

“**CDA Ordinance**” shall have the meaning set forth in the Recitals.

“**CDA Petition**” shall have the meaning set forth in Section 7.1.

“**City**” has the meaning given to such term in the Introductory Paragraph.

“**City Council**” shall have the meaning set forth in the Recitals.

“**City Delay**” means any delay in the accomplishment of any obligation of Developer hereunder caused by the City’s failure to carry out its obligations under this Agreement or to cause the IDA to carry out its obligations contemplated in this Agreement as and when required to do so under the terms of this Agreement, provided that the City shall have ten (10) days after written notice to the City from Developer identifying any alleged failure by the City or IDA to cure the same before such event is considered City Delay. In the event of a failure to cure by the City or IDA within such ten (10) day period, the City Delay will be deemed to have begun on the date of delivery of Developer’s notice identifying the City’s alleged failure. For the avoidance of doubt, a wrongful refusal of the City to fund any Requisition when due in accordance with Section 5.2 of this Agreement and the failure by the Director or any other designee or agent of the City to process any Requisition in accordance with Section 5.2 of this Agreement and a failure of the City to fund the second installment of the purchase price under the Inova Site Purchase Agreement when due shall constitute a City Delay.

“**City’s Public Infrastructure Cost Funding Obligations**” shall have the meaning set forth in the Recitals.

“**Commencement of Construction**” means the date that all of the following have occurred (i) the Plans have been prepared and all approvals thereof (including, but not limited to, the applicable Rezoning Approvals) required by applicable governmental authorities have been

obtained for construction of, respectively, the Public Infrastructure Improvements and the Offsite CDD Infrastructure; (ii) all necessary permits to begin the construction of, respectively, the Public Infrastructure Improvements and the Offsite CDD Infrastructure, pursuant to the respective Plans therefor, have been issued by all applicable governmental authorities; and (iii) notice to proceed with the construction of, respectively, the Public Infrastructure Improvements and the Offsite CDD Infrastructure has been delivered to the General Contractor by Developer pursuant to the Construction Agreement, which such notice Developer shall issue promptly after achieving the requirements of clauses (i) and (ii) above.

“Construction Agreement(s)” means one or more construction agreements relating to the development, construction and completion of the Public Infrastructure Improvements and the Offsite CDD Infrastructure (which may be incorporated in the overall construction contract(s) for the Private Infrastructure with Public Access entered into by Developer) but recognizing that the construction work associated with the Public Infrastructure Improvements, Private Infrastructure with Public Access and Off-Site CDD Infrastructure may be separately bid.

“Contaminated Soils” means soil, the disposal of which is not reasonably expected to be accepted by a receiving site as unrestricted fill due to the presence of contaminants, odor or discoloration.

“Contribution Agreement” shall have the meaning set forth in the Recitals.

“Cure Notice” shall have the meaning set forth in Section 9.17.

“Delay(s)” means any delay or delays resulting from (i) Force Majeure, (ii) City Delay, (iii) Inova Delay, (iv) any period of Dispute until resolved unless the Dispute is resolved in a manner that does not entitle Developer to Delay, and (v) any appeal periods applicable to any land use approval if an appeal is lodged.

“Developer” shall have the meaning set forth in the Introductory Paragraph.

“Developer JV Agreement” shall have the meaning set forth in the Recitals.

“Development Budget” shall have the meaning set forth in Section 4.2(a).

“Development Plan” shall have the meaning set forth in Section 4.2(a).

“Development Schedule” shall have the meaning set forth in Section 4.2(a).

“Director” shall have the meaning set forth in Section 5.2(b).

“Dispute” means any disagreement between the Parties or any of them concerning the interpretation of this Agreement or their respective rights or obligations under this Agreement, including without limitation whether an Event of Default or Delay has occurred.

“Disqualified Person” shall mean any of the following Persons:

(a) Any Person (or any Person whose operations are directed or controlled by a Person) who has been convicted of or has pleaded guilty in a criminal proceeding for a felony under any local, state, or federal criminal statute; or

(b) Any Person organized in or controlled from a country, the effects of the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (x) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, *et seq.*, as amended (which countries are, as of the date hereof, North Korea and Cuba); (y) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, *et seq.*, as amended; and (z) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j), as amended (which countries are, as of the date hereof, Iran, Sudan and Syria); or

(c) Any Person who has been identified by the United States Department of the Treasury or the United States Secretary of State as a person engaged in any dealings or transactions (i) in contravention of the applicable money laundering laws or regulations or conventions or (ii) in contravention of Executive Order No. 13224 dated September 24, 2001 issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, the “**Anti-Terrorism Order**”), as may be amended or supplemented from time-to-time or any published terrorist or watch list that may exist from time to time; or

(d) Any Person with whom the conduct of business is precluded because they are on the list maintained by the U.S. Treasury Department’s Office of Foreign Assets Control located at 31 C.F.R., Chapter V, Appendix A or because they are described in Section 1 of the Anti-Terrorism Order; or

(e) Any Person identified on a list of contractors that have been debarred by the Commonwealth of Virginia or the federal government or with whom the Commonwealth of Virginia is prohibited from doing business by law; or

(f) Any Person known by Developer to be an Affiliate of any of the Persons described in paragraphs (a) through (e) above.

“**Effective Date**” shall have the meaning set forth in the first paragraph of this Agreement.

“**Environmental Remediation Cap**” shall have the meaning set forth in **Exhibit C-3**.

“**Event of Default**” shall have the meaning set forth in Section 8.2.

“**Expiration Date**” means the earlier of (1) the Final Completion Date, and (2) the date upon which this Agreement has been terminated in accordance with ARTICLE VIII hereof.

“**Final Completion**” means: (a) Substantial Completion of the applicable improvements has occurred free of mechanics and other liens not constituting Permitted Exceptions and all punch list items have been completed substantially in accordance with the Construction Agreement, the applicable Rezoning Approvals and all other Regulatory Requirements and (b) the applicable improvements that have achieved Substantial Completion have been completed, inspected and

accepted (or deemed accepted as and to the extent acceptance is required pursuant to the terms of this Agreement), and, as to the Public Infrastructure Improvements and Offside CDD Infrastructure, the City has received final “as-built” drawings thereof.

“**Final Completion Date**” the date upon which Final Completion of all of the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure is achieved.

“**Final Infrastructure Site Plan**” means a final site plan or site plans for all or a portion of the Public Infrastructure Improvements, Offsite CDD Infrastructure and Private Infrastructure with Public Access as approved by the applicable governmental authorities.

“**Force Majeure**” means excused delays in completing an obligation within the time period set forth in this Agreement or achieving a Milestone Date including the Final Completion Date by the date set forth in the Development Schedule that is proximately caused by factors outside of the responsible Party’s reasonable control including the following events: (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, (v) sabotage, war, riot, terrorism, moratorium, (vi) unforeseeable governmental action (including without limitation 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) or (vii) any other unforeseeable act of any third party unrelated to, and having no arrangements, contractual or otherwise, with the Property or the responsible Party (or any of such Party’s Affiliates) that reasonably prevents an action from being taken through no fault of the responsible Party (or any Affiliates of the responsible Party).

“**General Contractor**” shall have the meaning set forth in Section 4.1(b).

“**GO Bonds**” shall have the meaning set forth in the Recitals.

“**GO Bond Terms**” shall have the meaning set forth in the Recitals and includes refunding bonds issued to refund the initially issued GO Bonds.

“**Grant Agreement**” means the agreement between the City and IDA concerning the Project.

“**Ground Lease**” shall have the meaning set forth in the Recitals.

“**HHC Member**” shall have the meaning set forth in the Recitals.

“**Hospital Facilities**” shall have the meaning set forth in the Recitals.

“**I-395/Duke Street Interchange Improvements**” shall have the meaning set forth in Section 5.4.

“IAR” shall have the meaning set forth in Section 5.4.

“IDA” means the Industrial Development Authority of the City of Alexandria, a political subdivision of the Commonwealth of Virginia.

“Infrastructure Bond” shall have the meaning set forth in Section 4.3(j).

“Inova Delay” means any delay in the accomplishment of any obligation of Developer hereunder caused by Inova’s failure to carry out its obligation under this Agreement as and when required to do so under the terms of this Agreement, provided that Inova shall have ten (10) days after written notice to Inova from Developer identifying any alleged failure by Inova to cure the same before such event is considered an Inova Delay. In the event of a failure to cure by Inova within such ten (10) day period, the Inova Delay will be deemed to have begun on the date of delivery of Developer’s notice identifying Inova’s alleged failure. For the avoidance of doubt, breach by Inova of its obligations under the Access Agreement also constitutes Inova Delay.

“Inova Excavation” shall have the meaning set forth in Section 2.2(g)

“Inova Pad Ready Scope of Work” shall have the meaning set forth in the Recitals.

“Inova Site” shall have the meaning set forth in the Recitals.

“Inova Site Phase II ESA” means the Phase II Environmental Site Assessment, which is being prepared by Environmental Consultants and Contractors, on the Inova Site under contract with the City.

“Inova Site Purchase Agreement” shall have the meaning set forth in the Recitals.

“Institutional Lender” means a savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity); an insurance company organized and existing under the laws of the United States or any state thereof; a real estate investment trust; a religious, educational or eleemosynary institution; a governmental agency, body or entity; an employee, benefit, pension or retirement plan or fund; a commercial credit corporation; a commercial bank or trust company acting as trustee or fiduciary of various pension funds or other tax-exempt funds; or other form of entity that, in its ordinary course of business, is involved in the issuance or holding of mortgage loans secured by commercial developments, or of collateralized mortgage obligations or commercial mortgage backed securities; a corporation or other entity which is owned wholly by any other Institutional Lender; or similar investment entity or other recognized financial institution that makes commercial loans for projects similar to the Project; or any combination of the foregoing; *provided*, that any such entity that could hold a mortgage hereunder shall qualify as an Institutional Lender within the provisions of this Section only if such entity: (i) shall be subject to the jurisdiction of the courts of the Commonwealth of Virginia (either state or federal) in any actions relating to the Project or this Agreement, (ii) has assets of at least \$2,000,000,000, and (iii) is not an Affiliate of Developer or any of its members.

“JV Member” and **“JV Members”** shall have the meanings set forth in the Recitals.

“Landmark Mall” shall have the meaning set forth in the Recitals.

“Landmark Land Use Approval” means the approval of the Pending Landmark Land Use Application and Pending Landmark Subdivision Plat with all notice and appeal periods associated therewith having been complied with and expired without the filing of an appeal (or if such an appeal has been filed, such appeal having been dismissed or resolved in a manner approved in writing by Developer and Inova) in substantially the form and without materially burdensome conditions not otherwise contemplated in the Pending Landmark Land Use Application or Pending Landmark Subdivision Plat, in each case, as attached to this Agreement, except to the extent in each case otherwise approved in writing by the Party or Parties being bound.

“Major Subcontractor” shall have the meaning set forth in Section 4.1(b).

“Managing Member” shall have the meaning set forth in the Recitals.

“Milestone Dates” are those dates identified in the Development Schedule.

“Mortgagee” shall have the meaning set forth in Section 9.3 hereof.

“Offsite CDD Infrastructure” shall have the meaning set forth in the Recitals.

“Parcel Owner(s)” shall mean (individually or collectively, as the context requires) HHC Member and Seritage SRC Finance LLC or the applicable Affiliate thereof which owns the applicable Parcel immediately prior to the closing under the Inova Site Purchase Agreement.

“Party” or **“Parties”** shall have the meanings set forth in the Introductory Paragraph.

“Pending Landmark Land Use Application” shall have the meaning set forth in the Recitals.

“Pending Landmark Subdivision Plat” shall have the meaning set forth in the Recitals.

“Pending Seminary Road Land Use Applications” shall have the meaning set forth in the Recitals.

“Pending Work” shall have the meaning set forth in Section 8.2.

“Performance Assurance” shall have the meaning set forth in Section 7.1(h).

“Permitted Exceptions” shall have the meaning set forth in Section 3.4.

“Plans” means the plans and specifications for the Public Infrastructure Improvements, as may be incorporated into the Construction Agreements, which shall be in conformance with all applicable Rezoning Approvals and Regulatory Requirements, including the applicable Regulatory Requirements of the Virginia Department of Transportation, to the extent applicable.

“Plat of Subdivision” means the Pending Landmark Subdivision Plat as finally approved in response to governmental review.

“Preliminary Infrastructure Site Plan” means a preliminary site plan or site plans for all or a portion of the for the Public Infrastructure Improvements, Offsite CDD Infrastructure and Private Infrastructure with Public Access as approved by the applicable governmental authorities.

“Private Infrastructure with Public Access” shall have the meaning set forth in Section 4.1(a).

“Property” shall have the meaning set forth in the Recitals.

“Project” shall have the meaning set forth in the Recitals.

“Public Infrastructure Improvements” shall have the meaning set forth in the Recitals.

“REA” shall have the meaning set forth in the Recitals.

“Regulatory Requirements” means (i) the uniformly applicable laws, codes, rules, regulations, written policies of general applicability to private sector development (except as otherwise specifically provided in this Agreement), (ii) ordinances of the City (including without limitation the City of Alexandria Zoning Ordinance), (iii) where applicable, Requirements for City Oversight of Public Infrastructure Improvements, and (iv) the requirements and provisions of any applicable state or federal law, or other governmental authority having jurisdiction over the Project.

“Requesting Party” shall have the meaning set forth in Section 9.15.

“Requirements for City Oversight of Public Infrastructure Improvements” shall have the meaning set forth in Section 4.3(a).

“Requisition” shall have the meaning set forth in Section 5.2(b).

“Rezoning Approvals” means, collectively, the Landmark Land Use Approval and the Seminary Road Land Use Approval.

“Schedule of Values” shall have the meaning set forth in Section 5.2(b).

“Seminary Road Land Use Approval” means the non-appealable approval of the Pending Seminary Road Land Use Applications with all notice and appeal periods associated therewith having been complied with and expired without the filing of an appeal (or if an appeal has been filed, such appeal having been dismissed or resolved in a manner approved in writing by Inova) in substantially the form as attached to this Agreement and without materially burdensome conditions not otherwise contemplated in the Pending Seminary Road Land Use Applications, except to the extent otherwise approved in writing by the Party or Parties being bound.

“Seminary Road Site” means the site of the existing Inova Alexandria Hospital at 4320 Seminary Road (tax map 039.02-04-11) and 4250 Seminary Road (tax map 031.03-01-16).

“Soil Work” shall have the meaning set forth in **Exhibit C-3**.

“**SRG Member**” shall have the meaning set forth in the Recitals.

“**Substantial Completion**” shall mean that the applicable improvements have achieved that level of completion of construction consistent with the Final Infrastructure Site Plan and have met all Regulatory Requirements that are applicable to such improvements and such improvements are available for their intended use without material impediment (*i.e.*, available to be placed in service) and without mechanics or other liens not constituting Permitted Exceptions under Section 3.4.

“**UST Removal**” shall have the meaning set forth in Exhibit C-3.

ARTICLE II

TERM AND CONDITIONS PRECEDENT

Section 2.1. Term. The term of this Agreement shall begin on the Effective Date and shall continue until the Expiration Date, subject, however, to Section 9.20.

Section 2.2. Conditions Precedent. The following conditions are precedent to the financial and other obligations of the City and the development and construction obligations of Developer and Inova under this Agreement, except as may otherwise be expressly provided:

(a) The City Council has approved, and the City has executed, this Agreement (which approval includes the approval of the Inova Site Purchase Agreement) and such approval has not been amended in any material respect, repealed or lapsed and remain in full force and effect;

(b) The City Council has approved the issuance of the GO Bonds on the GO Bond Terms in the amounts and manner set forth in ARTICLE VI of this Agreement;

(c) All of the Rezoning Approvals have been obtained;

(d) The City has approved the form of the CDA Ordinance and the Assessment Methodology;

(e) The City and IDA shall have entered into the Grant Agreement;

(f) Closing under the Inova Site Purchase Agreement has occurred; and

(g) In the event:

(i) the pending Inova Site Phase II ESA evidences (a) an expectation of Contaminated Soils on the portion of the Inova Site that Inova will excavate in connection with its construction of the Hospital Facilities (including excavation to grade, excavation of below grade level(s) including foundations, and excavation of any onsite utility trenches (collectively, “**Inova Excavation**”), and/or (b) other materially adverse environmental conditions; and

(ii) the reasonably expected cost of remediation for (i)(a) above is greater than the Environmental Remediation Cap, and/or (b) the reasonably expected cost of

remediation for (i)(b) above is greater than \$250,000, the Parties shall have agreed to an apportionment of the cost and responsibility for performing such remediation above such thresholds, which such agreement shall be reduced to writing and executed by all Parties not later than October 1, 2021.

(h) In the event the Parties cannot agree on whether to submit the Inova Site Phase II ESA received by the City to the Virginia Department of Environmental Quality in connection with obtaining one or more “comfort letters,” as described in Section 7.1(n) below, no action shall be taken with respect to the Inova Site Phase II ESA until the Parties have come to agreement with respect thereto, which such agreement shall be reduced to writing and executed by all Parties not later than October 1, 2021.

ARTICLE III **PRE-DEVELOPMENT ACTIVITIES**

Section 3.1. Rezoning Approvals.

(a) Developer shall use commercially reasonable efforts to obtain the approval of the Pending Landmark Subdivision Plat and of the Pending Landmark Land Use Approval for the Property on or before the Milestone Date therefor, as set forth on the Development Schedule. Inova shall use commercially reasonable efforts to obtain the Seminary Road Land Use Approval for the Seminary Road Site on or before the Milestone Date therefor, as set forth on the Development Schedule. At the request of Inova or Developer, the City shall cause, pursuant to the Grant Agreement, the IDA (to the extent the IDA’s execution is required by applicable law) in its capacity as the owner of the Inova Site, to execute and deliver to Developer or Inova, all reasonably requested applications, affidavits, proffers, and any other documentation related to the rezoning and subdivision of the Project in connection with the rezoning within ten (10) business days after Inova’s or Developer’s request therefor, so long as there is no material cost or obligation imposed on the IDA as a result of its said execution and so long as such documentation does not impose a material negative economic impact on the Inova Site, provided that, notwithstanding the foregoing, the CDA Petition shall be executed by the IDA upon request, and provided that a negative economic impact shall not be deemed to occur in respect to any matter that is reasonably foreseeable from the Pending Landmark Land Use Application or Pending Seminary Road Land Use Approval.

(b) If the IDA fails to execute any such application, affidavit, proffer, plat, plan or any other documentation requested by Developer or Inova under this Section 3.1 within the ten (10) business day period, then each Milestone Date shall be extended one day for every day past the ten (10) business day period that the IDA’s failure to execute continues.

Section 3.2. City Obligations to Rezoning Approval. The City agrees to prioritize the issuance of all permits and approvals related to the Public Infrastructure Improvements, the Offsite CDD Infrastructure and Private Infrastructure with Public Access. The City’s Director of Transportation and Environmental Services is appointed as the single point-of-contact for the City for this purpose.

Section 3.3. Preliminary Infrastructure Site Plan/Final Infrastructure Site Plan.

(a) Developer shall use commercially reasonable efforts to obtain the approval of the Preliminary Infrastructure Site Plan and of the Final Infrastructure Site Plan for the Property and the Offside CDD Infrastructure and all requisite permits therefor (including posting required bonds therefor) on or before the Milestone Date therefor, as set forth on the Development Schedule and in conformance with the applicable Rezoning Approvals and Regulatory Requirements. At request of Developer (if and to the extent the IDA's execution is required by applicable law), the City shall cause the IDA (in its capacity as owner of the Inova Site) to execute and deliver to Developer or such other Person, all reasonably requested applications, affidavits, proffers, and any other documentation related to the Preliminary Infrastructure Site Plan and Final Infrastructure Site Plan in connection with the rezoning within ten (10) business days after Developer's request therefor, so long as there is no material cost or obligation to the IDA and no material negative impact on the Inova Site.

(b) If the IDA fails to execute any such application, affidavit, proffer, plat, plan or any other documentation requested by Developer under this Section 3.3 within the ten (10) business day period, then each Milestone Date shall be extended one day for every day past the ten (10) business day period that the IDA's failure to execute continues.

Section 3.4. Title. Developer acknowledges that the City and Inova have received a draft pro forma title policy for the Inova Site identifying only those matters of record listed on **Exhibit V-1** hereto. Among the matters listed on **Exhibit V-1**, Developer, at its sole cost and expense, shall cause those matters listed on **Exhibit V-2** hereto to be removed of record prior to, and as a condition of, closing under the Inova Site Purchase Agreement, all other items being deemed permitted (the "**Permitted Exceptions**"), provided that in no event shall monetary liens be deemed Permitted Exceptions. In addition, Developer, at its sole cost and expense, shall cause those matters listed on **Exhibit V-3** hereto to be removed of record in connection with Developer's development and construction of the Public Infrastructure Improvements under this Agreement.

Section 3.5. Condition 8 of Landmark Land Use Approval. Upon approval of the Pending Landmark Land Use Application, Developer will diligently pursue updating the CDD plans pursuant to Condition 8 of the Landmark Land Use Approvals. Developer will submit to Inova the updated plans no later than forty-five (45) days after the approval of the Pending Landmark Land Use Application by the City Council. Inova will review such plan for conformance with Condition 8 of the Landmark Land Use Approvals and provide any comment within five (5) days of receipt. A failure by Inova to respond within said five (5) days will be a deemed approval of the updated plans.

ARTICLE IV
DESIGN, PERMITTING, DEVELOPMENT, CONSTRUCTION AND
COMPLETION OF THE INFRASTRUCTURE IMPROVEMENTS

Section 4.1. Developer Obligation to Construct.

(a) **Developer Obligation to Construct.** Subject to the terms of this Agreement, the applicable Rezoning Approvals and Regulatory Requirements, Developer shall design, permit,

develop, construct and complete the improvements described on **Exhibit M** (the “**Private Infrastructure with Public Access**”), the Public Infrastructure Improvements and the Offsite CDD Infrastructure. For the avoidance of doubt, Developer obligations under this Section 4.1(a) include the obligation to fund all costs of the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure thereof in excess of the funding to be provided therefor by the City under this Agreement.

(b) **Selection of General Contractor.** The general contractor performing the Public Infrastructure Improvements, Offsite CDD Infrastructure and Private Infrastructure with Public Access (the “**General Contractor**”) will be a joint venture between Foulger Pratt Contracting LLC and Clark Construction. Developer agrees to provide the City and Inova with substantially final copies of the Construction Agreements, at least twenty (20) days before execution and delivery. During such twenty (20) day period, the City shall review and approve or disapprove in whole or in part the proposed Construction Agreements in writing delivered to Developer taking into account Inova’s feedback. Failure by the City to approve or disapprove the proposed Construction Agreements during such twenty (20) day period may be deemed by Developer as an approval of the applicable Construction Agreements. In the event of a disapproval in whole or in part, the Parties will diligently cooperate to resolve any points of disagreement. The General Contractor will select the subcontractors in connection with the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure by competitive bidding for all subcontractors with contract values in excess of \$250,000 (each, a “**Major Subcontractor**”). The Construction Agreement(s) will provide for the General Contractor’s consent to assignment of the Construction Agreement(s) to the City and/or Inova. The General Contractor’s fee and overhead rate shall not exceed generally prevailing market rates applicable to comparable projects.

Section 4.2. Development Documents.

(a) **Development Plan.** A preliminary development plan for the Public Infrastructure Improvements, Offsite CDD Infrastructure and Private Infrastructure with Public Access, attached hereto as **Exhibit N-1** (the “**Development Plan**”), is hereby approved by the Parties. Developer may modify the Development Plan from time to time, subject to the reasonable approval of Inova. If Developer determines that any modifications to the Development Plan are necessary, Developer shall notify the City and Inova in writing of any such proposed modifications, and such proposed modifications shall be subject to the prior written approval of Inova, which approval shall not be unreasonably withheld, conditioned or delayed.

(b) **Development Schedule.** A development schedule for the Public Infrastructure Improvements, Offsite CDD Infrastructure and Private Infrastructure with Public Access, attached hereto as **Exhibit N-2** (the “**Development Schedule**”), sets forth, *inter alia*, Milestone Dates (subject to any extensions provided in this Agreement), the expected date of Substantial Completion (subject to any extensions as provided in this Agreement including by reason of Delay) of each. The Development Schedule is hereby approved by the Parties. The Development Schedule may be modified from time to time, subject to approval of the City, as set forth below. If Developer determines that any modifications to the Development Schedule are necessary after the Effective Date, Developer shall notify the City and Inova in writing of any such proposed modifications, and such proposed modifications shall be subject to the prior written

approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed and in reviewing any proposed modifications the City shall take into consideration Inova's feedback. Notwithstanding the foregoing, the City may approve or deny approval in its sole but reasonable discretion if a modification to the Development Schedule will have a material adverse effect on Inova's schedule for development of the Inova Site under the Ground Lease. Notwithstanding the foregoing, to the extent any proposed modifications to the Development Schedule are necessitated by the occurrence of Delays, the City's approval shall not be required.

(c) Reserved.

(d) Development Budget. A preliminary budget for the Private Infrastructure with Public Access, Offsite CDD Infrastructure and Public Infrastructure Improvements is attached hereto as **Exhibit N-3** (the "**Development Budget**") and sets forth all of the estimated costs of the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure, which Development Budget is hereby approved by the Parties. Upon approval of the Final Infrastructure Site Plan, Developer shall make any changes to the Development Budget necessitated thereby and submit the revised Development Budget for the City's approval. In all events (including in the event of approved modifications to the Development Budget as provided in this Section 4.2(d)) the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure will be funded by \$86,000,000 of Available Proceeds as provided in the Development Budget. The Development Budget may be modified from time to time, subject to the approval of the City, as set forth herein. To the extent any line item of the Development Budget contains costs pertaining to Public Infrastructure Improvements, Offsite CDD Infrastructure and to the Private Infrastructure with Public Access, such line item shall contain the amount of such costs allocated to the City and the amount of such costs allocated to Developer (on either an actual cost basis or a percentage basis, as identified in the Development Budget (the "**Allocation Table**"). If Developer determines that any material modifications to the Development Budget are necessary after the Effective Date, Developer shall make such modifications to the Development Budget and submit the revised Development Budget to the City (with a copy to Inova) for the City's approval. Modifications to the Development Budget shall be deemed "material" if such modifications would result in (1) a change in the quality and character of the Public Infrastructure Improvements or Offsite CDD Infrastructure from that contemplated by the Development Plan, Preliminary Infrastructure Site Plan or Final Infrastructure Site Plan, (2) an increase of more than 5% in any line item of the Development Budget, except to the extent that savings from a completed line item are available for re-allocation to offset such increased amount, provided that a modification shall not be deemed material under this sub-clause (2) if (a) Developer agrees to pay 100% of the cost of any such increase and increases its Performance Assurance by 114% of the amount of such increase, or (b) the modification is a re-allocation only to the Allocation Table. In the event that modifications to the Development Budget are not material, Developer may re-allocate savings from any line item(s) to overruns in another line item(s) without having to obtain the approval of the City. The City's approval of any material modifications to the Development Budget of the type described in clauses (1) or (2) of this paragraph shall not be unreasonably withheld, conditioned or delayed. To the extent the City's approval of any modifications to the Development Budget is required hereunder, Developer shall provide the City with copies of any proposed modifications to the Development Budget for the City's review and approval of the Development Budget and the City shall review such modified Development Budget and notify Developer in writing of the City's

approval or disapproval of the same (provided that any notice of disapproval sent by the City shall contain sufficient details and explanations for the reason of such disapproval and any requested changes to the Development Budget or any subsequent modifications thereto necessary to obtain the City's approval) within twenty (20) days after its receipt of the same from Developer. If the City fails to notify Developer in writing of either its approval or disapproval of the Development Budget, or any modifications thereto, within twenty (20) days after its receipt of the same from Developer, then the Development Budget or such modifications (as applicable) shall be deemed approved by the City. Additional Costs caused by Delay shall not constitute material modifications but Developer shall promptly notify the City thereof. For the avoidance of doubt, to the extent reflected in the Allocation Table, Available Proceeds may be used to pay the cost of Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure. In the event of an approved (or deemed approved) modification to the Development Budget that affects the Public Infrastructure Improvements, Private Infrastructure with Public Access or Offsite CDD Infrastructure, the Allocation Table shall be correspondingly modified and Developer may further modify the Allocation Table by notice to the City as Developer so determines without adverse effect to the tax exemption of the GO Bonds.

Section 4.3. Construction of Infrastructure.

(a) Construction Agreement. Developer shall cause the Private Infrastructure with Public Access, Offsite CDD Infrastructure and the Public Infrastructure Improvements to be designed, permitted, developed, constructed and completed in accordance with the Development Schedule, Construction Agreements, the applicable Rezoning Approvals and all other Regulatory Requirements. Without limiting the generality of the foregoing, Developer shall cause the applicable Public Infrastructure Improvements and Offsite CDD Infrastructure to be designed, permitted, developed, constructed, completed and submitted to the City pursuant to the Requirements for City Oversight of Public Infrastructure Improvements attached hereto as **Exhibit O-3** (the "**Requirements for City Oversight of Public Infrastructure Improvements**"). The Construction Agreement will be on a guaranteed maximum price, fixed price or not-to-exceed price basis in accordance with bidding and award processes, all as determined at the sole and absolute discretion of Developer (and consistent with Section 4.3(b)(i) of this Agreement). Each Construction Agreement shall provide that in performing its duties under the Construction Agreement, Developer and each General Contractor thereunder shall be an independent contractor, independent of, and not the agent of, the City, the IDA or Inova that Developer shall be responsible for the design, permitting, development, construction and completion of the Public Infrastructure Improvements, Offsite CDD Infrastructure and Private Infrastructure with Public Access, as provided herein and therein, and that Developer, or the General Contractor on behalf of Developer, shall retain the services of necessary and appropriate architects, engineers and subcontractors. There shall be no material amendments to such Construction Agreement related to Public Infrastructure Improvements, Private Infrastructure with Public Access or Offsite CDD Infrastructure as to scope or cost or any change orders in excess of \$500,000 individually or \$5,000,000 in aggregate without the prior written consent of the City, provided that the City shall not be required to approve change orders if such change order(s) do(es) not require an amendment to the Development Plan, and if Developer agrees to pay 100% of the cost of any such change and increases the Performance Assurance by 114% of the amount of such change. The City shall treat all Construction Agreements related to this Agreement as confidential and proprietary to the extent it may be so treated under applicable law, and if the City determines that it must disclose the

Construction Agreements, the City shall not disclose the same to third parties or the public without the consent of Developer unless compelled by valid legal process to do so after timely prior notice to Developer has been given that is sufficient to allow Developer to oppose such disclosure.

(b) Contractors; Subcontractors. The following shall be required for each Construction Agreement related to the development, construction and completion of the Public Infrastructure Improvements and Offsite CDD Infrastructure:

(i) Developer shall solicit (or cause its General Contractor to solicit) proposals for at least 20% of the cost of the Public Infrastructure Improvements and Offsite CDD Infrastructure work from companies that are local small, women-owned or minority-owned businesses with the goal that 15% of such cost be contracted with local, small, women-owned or minority-owned businesses. The Parties agree that Developer may solicit such businesses at any level of the contracting process (i.e. the General Contractor, Major Subcontractor, other subcontractors, sub-subcontractors or anywhere else in or outside the chain of the contracting process, so long as the contract relates to the Project) and that “local” is not limited to the Commonwealth of Virginia, but may include businesses located in Maryland, the District of Columbia or West Virginia (so long as such business is properly certified where their respective work is being done).

(ii) All Plans for the Public Infrastructure Improvements and Offsite CDD Infrastructure shall be in accordance with the applicable Rezoning Approvals, and all other Regulatory Requirements.

(c) Insurance.

(i) Except as provided in Section 4.3(c)(i)(F), the Construction Agreements will require the General Contractor or its subcontractors, as applicable, to carry at a minimum the following types of insurance with respect to the Public Infrastructure Improvements, Offsite CDD Infrastructure, and Private Infrastructure with Public Access:

A. Commercial general liability insurance insuring against liability for injury to or death of a person or persons and for damage to property occasioned by or arising out of the activities of Developer, the General Contractor, all subcontractors and their respective agents, contractors or employees, in connection with the construction of the components of the Public Infrastructure Improvements, in the amounts of \$10,000,000 per occurrence and \$20,000,000 General Aggregate Bodily Injury and Property Damage, on an occurrence basis, which limits may be satisfied when combined with Umbrella/Excess Policies. Developer may procure and maintain a Master or Controlled Insurance policy to satisfy the requirements of this Section, which may cover other property or locations of Developer, the General Contractor or their respective affiliates, so long as the coverage required in this Section is separate and specific to the Public Infrastructure Improvements. Such policy may include Developer self-insured retention not in excess of \$500,000. Commercial general liability coverage shall include X, C, U coverage, and limits shall be maintained at least ten years or the applicable statute of repose (whichever is less) following completion of the last to be completed of the Public Infrastructure, Private Infrastructure with Public Access or Offsite CDD Infrastructure.

B. Statutory worker's compensation and employer's liability insurance as required by law.

- Each Employee \$1,000,000 Bodily Injury by accident
- Each Employee \$1,000,000 Bodily Injury by disease
- Policy Limit \$1,000,000 Bodily Injury by disease

C. Builder's Risk insurance in the amount of the construction values.

D. \$10,000,000 per occurrence and \$10,000,000 annual aggregate Umbrella/Excess insurance extending over required Commercial General Liability, Automobile and Employee's Liability.

E. \$5,000,000 combined single limit automobile insurance. Required limits for general liability and automobile liability may be attained through a combination of primary and excess policies.

F. \$5,000,000 Environmental Insurance for environmental liabilities caused by the performance of the Public Infrastructure Improvements, including coverage for new pollution conditions (cleanup, bodily injury/property damage and defense) and for off-site transport and disposal of Contaminated Soils at non-owned disposal sites (Developer or General Contractor).

(ii) The Construction Agreement shall require that the following general requirements apply to all insurance coverages carried by Developer, the General Contractor or its subcontractors:

A. Each policy shall contain a clause whereby the insurer waives all rights of subrogation against the City, IDA and Inova and their respective employees, agents, contractors, consultants, advisors, attorneys and other authorized representatives;

B. The City, IDA and Inova shall each be included as an additional insured through a CG 2037 endorsement (or its equivalent) in all policies hereunder except Workers' Compensation for both operations and completed operations periods;

C. Such policies shall be procured from financially sound and reputable insurers licensed to do business in Virginia and have an A.M. Best rating of not less than "A-X" or, if not rated with A.M. Best, the equivalent of A.M. Best's surplus size of "A-X" (or as otherwise approved by the City and Inova); and

D. Such coverages shall be primary and non-contributory in form and be non-cancelable unless the carrier gives to the City and Inova not less than ten (10) days' prior written notice of cancellation.

(iii) Each Construction Agreement shall require Developer or the applicable contractor to deliver to the City and Inova policies or certificates of insurance evidencing such coverage before the Commencement of Construction and shall provide that within

ten (10) days before expiration of coverage, or as soon as practicable, renewal policies or certificates of insurance evidencing renewal shall be delivered by Developer to the City and, upon request, to Inova.

(iv) Major Subcontractors will be required to provide 100% performance and payment bonds naming the General Contractor, Developer, City and Inova as obligees.

(v) The insurance requirements set forth above may be satisfied in whole or in part through an Owner-Controlled Insurance Program (OCIP) or Contractor Controlled Insurance Program (CCIP) subject to the prior written consent of the City and Inova, not to be unreasonably withheld, conditioned or delayed.

(vi) The City and Inova may maintain such additional insurance as they may deem appropriate to cover their acts or omissions.

(d) Regulatory Compliance. The design and construction of the Public Infrastructure Improvements, Offsite CDD Infrastructure and Private Infrastructure with Public Access shall comply with the applicable Rezoning Approvals and all other Regulatory Requirements. Developer shall obtain all permits, authorizations, and approvals required by the applicable Rezoning Approvals and other Regulatory Requirements to design, develop, construct and complete the Private Infrastructure with Public Access, Public Infrastructure Improvements and Offsite CDD Infrastructure.

(e) Mechanics' Liens. Nothing contained herein shall be construed to authorize Developer to subject the Public Infrastructure Improvements or Inova Site to any liens of mechanics, artisans, laborers, materialmen, contractors or subcontractors, or to any other liens or charges whatsoever arising out of any construction and development work or arising in any other manner in connection with the Public Infrastructure Improvements or Offsite CDD Infrastructure; and Developer is hereby expressly prohibited from subjecting the Public Infrastructure Improvements, Offsite CDD Infrastructure or Inova Site to any such liens or charges. If any such mechanics liens are filed against the Inova Site or Public Infrastructure Improvements, Developer shall cause the same to be removed or bonded off within fifteen (15) days of notice from Inova or the City.

(f) Commencement of Construction. On or before the date set forth in the Development Schedule, subject to events of Delay, Developer will cause to occur Commencement of Construction of the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure on behalf of the City as provided in the Construction Agreements. Developer will report monthly to Inova and the City on its progress in completing the Public Infrastructure Improvements, Offsite CDD Infrastructure and Private Infrastructure with Public Access.

(g) Approval and Acceptance of Public Infrastructure Improvements. Except as otherwise approved by the City in writing, and subject to Delays, on or before the Milestone Date for Substantial Completion, all components of the Public Infrastructure Improvements and Offsite CDD Infrastructure (other than the Inova Pad Ready Scope of Work) will be Substantially Completed by Developer in accordance with the applicable Rezoning Approvals and all other

Regulatory Requirements and the achievement of Substantial Completion of the Public Infrastructure Improvements (other than the Inova Pad Ready Scope of Work) shall be acknowledged in writing by the City. The Parties agree that all components of Public Infrastructure Improvements (other than the Inova Pad Ready Scope of Work which will be constructed on property already owned by the IDA) and Offsite CDD Infrastructure shall be accepted by the City after the City's written acknowledgment confirming Substantial Completion per **Exhibit O-3**. Once the City's written acknowledgment confirming Substantial Completion is provided to Developer by the City and prior to any such Public Infrastructure Improvements and Offsite CDD Infrastructure components being placed into service, the City shall assume the obligation to maintain the same and the Infrastructure Bond or applicable portion thereof shall be reduced in accordance with Section 4.3(j) below. Final Completion of the Public Infrastructure Improvements (other than the Inova Pad Ready Scope of Work) and of the Offsite CDD Infrastructure will be acknowledged by the City within fifteen (15) business days after the evidence reasonably acceptable to the City of the completion of any punch list items identified by the City at Substantial Completion and evidence of the absence of liens not constituting Permitted Exceptions as provided by Developer to the City. In the event the City does not agree the evidence delivered by Developer is sufficient to support Substantial Completion or Final Completion (as applicable) of any component of the Public Infrastructure Improvements, the City shall give written notification to Developer within the time periods for acceptance set forth above specifying the reasons for such denial and the additional requirements to be satisfied for approval of Substantial Completion or Final Completion (as applicable). Failure of the City to comply with the preceding sentence within the applicable time frame shall be deemed acceptance of Substantial Completion or Final Completion (as applicable) of the components Public Infrastructure Improvements at issue and that Developer has satisfied its obligations in this Section. For the avoidance of doubt, because the Offsite CDD Infrastructure constitutes improvements to public roads and infrastructure, it need not be dedicated to the City or IDA but will be deemed owned by the City without any such dedication being required.

(h) Approval and Acceptance of the Inova Pad Ready Scope of Work. Except as otherwise approved by Inova in writing, and subject to extension in the event of Delays, on or before the Milestone Date for Substantial Completion of the Inova Pad Ready Scope of Work, the Inova Pad Ready Scope of Work will be substantially completed by Developer in accordance with the applicable Rezoning Approvals and all other Regulatory Requirements and the achievement of Substantial Completion of the Inova Pad Ready Scope of Work shall be acknowledged in writing by Inova. The Parties agree that the Inova Pad Ready Scope of Work shall be accepted by Inova within ten (10) days after reasonable evidence of Substantial Completion thereof is provided by Developer to Inova and prior to being placed into service. Final Completion of the Inova Pad Ready Scope of work will be acknowledged by Inova within ten (10) days following reasonable evidence of Final Completion having occurred is provided by Developer to Inova. Inova will not unreasonably withhold, condition or delay acknowledgment or acceptance of Final or Substantial Completion of the Inova Pad Ready Scope of Work.

(i) Utilization of the City Standard Agreement for Installation of Public Improvements. Prior to the commencement of the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure, Developer will enter into the City's Standard Agreement for Installations of Public Improvements with respect to the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD

Infrastructure substantially in the form attached hereto as **Exhibit O-1**, modified as mutually agreed to by the City and Developer, however, if and to the extent necessary to reflect Developer's obligations and role under this Agreement.

(j) **Infrastructure Bond.** Developer shall post with the City a performance and payment bond(s) in customary form and from an issuer reasonably acceptable to the City equal to 100% of the value of the Construction Agreement attributable to the cost to perform the Public Infrastructure Improvements and Offsite CDD Infrastructure as set out in the initial Development Budget upon Commencement of Construction thereof (together, the "**Infrastructure Bond**") consistent with the terms of the Standard Agreement for Installation of Public Improvements as described on **Exhibit O-2** attached hereto, modified and to the extent necessary to reflect the scope of the Public Infrastructure Improvements and Offsite CDD Infrastructure and the terms of this Agreement. The Infrastructure Bond will be reduced to 10% of the original dollar amount of the Infrastructure Bond upon Substantial Completion (provided Developer complies with the requirements contained in **Exhibit O-1**) and released upon Final Completion of the Public Infrastructure Improvements and Offsite CDD Infrastructure as described in Section 4.3(g) above. Inova may only realize on the Infrastructure Bond if Inova is exercising remedies under Section 8.3.

(k) **Achievement of Final Completion.** Developer will use its good faith efforts to achieve Final Completion of each of the Public Infrastructure Improvements, Private Infrastructure with Public Access, and Offsite CDD Improvements within ninety (90) days of Substantial Completion thereof.

(l) **Building Demolition to Comply with Subdivision Approval.** To the extent Developer becomes aware that the timing of Developer's obligation to comply with Sub#20214-00003 Conditions for Demolition are unlikely to be timely met, Developer shall send written notice to the City and Inova thereof, and the Parties will work cooperatively to seek an extension of the timing requirements imposed by such condition. This Section 4.3(l) shall not be construed to limit or expand Developer's obligations under this Agreement or the City's or Inova's remedies with respect thereto.

Section 4.4. Agreement to Convey Rights-of-Way and Easements. As provided in the Recitals, subject to the conditions of the applicable Rezoning Approvals, the Plat of Subdivision, and the Preliminary Infrastructure Site Plan and the Final Infrastructure Site Plan, Developer and the IDA, at the direction of the City pursuant to the Grant Agreement, will grant by reciprocal easement agreement the rights-of-way and easements on and across the Property that are needed for the financing, construction, operation and maintenance of the Public Infrastructure Improvements and Private Infrastructure with Public Access, in substantially the form of the REA included in **Exhibit K** attached hereto. To the extent necessary, Inova and the IDA, at the direction of the City pursuant to the Grant Agreement, will consent to the REA and both will subordinate their interest in the Inova Site and, as to Inova, under Ground Lease, to the encumbrance of the REA and to any amendments thereto made pursuant to this Agreement or pursuant to the terms of the REA and in each case consented to by Inova and IDA (at the direction of the City).

Section 4.5. Maintenance, Insurance and Warranties. Until the Public Infrastructure Improvements have been dedicated, conveyed, assigned and accepted by the City as set forth in

Section 4.3(g) of this Agreement, Developer shall maintain or provide for the maintenance of the Public Infrastructure Improvements or the applicable portion thereof in good and safe condition (including providing snow removal and removal of excessive dust or mud from construction activities) and shall maintain or cause to be maintained liability insurance on the Public Infrastructure Improvements or the applicable portion thereof as provided in Section 4.3(c). Developer shall, upon the dedication, conveyance, assignment and acceptance of the Public Infrastructure Improvements to the City, assign as directed by the City to either the City or IDA all of Developer's rights in any applicable legally required warranties, guarantees, maintenance obligations or other evidence of contingent obligations of third persons with respect to the Public Infrastructure Improvements.

Section 4.6. Limitation on City Funding Obligation. The City shall not be responsible for making any payments to any contractor, subcontractor, agent, consultant, employee or supplier of Developer including, but not limited to, with respect to any contracts approved by the City, other than from the \$86,000,000 of Available Proceeds as provided in the Development Budget (except as otherwise specifically provided in Section 5.4), and Developer shall, subject to the requirements set forth in Section 9.11, indemnify, defend and hold harmless the City, the IDA and Inova with respect to any claim from any such Party, excluding claims caused by the gross negligence or willful misconduct of the indemnified parties. For the avoidance of doubt, and notwithstanding any other term or provision of the Agreement to the contrary, the City's obligations to fund the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure is limited to the \$86,000,000 of Available Proceeds as provided in the Development Budget.

ARTICLE V

PAYMENT FOR INFRASTRUCTURE IMPROVEMENTS AND OFFSITE CDD INFRASTRUCTURE

Section 5.1. Concurrent Funding of Private Infrastructure with Public Access. When Requisitions for payment are submitted in accordance with Section 5.2(b) contain invoices for work on both (a) Public Infrastructure Improvements and/or Offsite CDD Infrastructure, and (b) Private Infrastructure with Public Access to the extent included in the Development Budget in accordance Section 4.2(d), such invoices shall be paid by the City and Developer in the proportion set forth in the Allocation Table. When payment is to be made for a portion of any such costs by Developer in accordance with the Allocation Table, Developer will provide evidence of such payment to the City along with its Requisition.

Section 5.2. Payment for Infrastructure Improvements.

(a) Payments Generally. The City shall pay all mutually agreed costs of the Public Infrastructure Improvements and Offsite CDD Infrastructure from Available Proceeds, as provided in the Development Budget and in the manner described below.

(b) Requisitions for Payment; Retainage. The City agrees to pay to Developer from the \$86,000,000 of Available Proceeds as provided in the Development Budget, the City's share (as shown on the Allocation Table) of the hard and soft costs associated with completed, approved and accepted payment requests related to Public Infrastructure Improvements, Private

Infrastructure with Public Access and Offsite CDD Infrastructure. All Requisitions for hard costs of construction shall be net of a 10% retainage until 50% of the cost of the component or related portion of the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure has been requisitioned, after which retainage shall be reduced to 5% (and any retainage then held by the City in excess of 5% shall be released to Developer by the City). Upon achieving Substantial Completion of such component or portion, retainage shall be further reduced to the greater of: (i) 1% of requisitioned hard costs of such component or portion, and (ii) the cost to complete the punch list items related thereto that has been agreed to by the City and Developer at Substantial Completion. Upon Final Completion of the component or related portion of the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure, all retainage shall be released to Developer. Such payments shall be made not more frequently than monthly upon submission of a complete Requisition in substantially the form attached hereto as **Exhibit P** which shall include General Contractor payment applications, partial mechanics' lien waivers and such other supporting evidence as the City shall reasonably require (each, a "**Requisition**").

Prior to submission of the first payment Requisition, Developer shall submit a schedule of values (the "**Schedule of Values**") to the City. The approved Schedule of Values shall form the basis for the City's review of each Requisition. Developer and the City acknowledge and agree that the Schedule of Values shall be based on the Development Budget, attached hereto as **Exhibit N-3**. Payments will be based on documented and verifiable progress against the Schedule of Values. Within ten (10) business days of receipt of any Requisition, the City shall either (i) approve and execute the Requisition and process it for payment, (ii) disapprove the Requisition in whole or in part and execute any approved portion and process it for payment, or (iii) approve the Requisition subject to the satisfaction of certain conditions. In the event the City disapproves all or any portion of a Requisition, it shall give written notification to Developer of the disapproval of such Requisition, specifying the reasons for such disapproval and the additional requirements to be satisfied for approval of such Requisition. For any Requisition (or portion thereof) that has been approved by the City, the City shall pay Developer the same within twenty-five (25) days after submission of such Requisition. For any Requisition (or portion thereof) that has been disapproved by the City, the City shall pay Developer the same within twenty-five (25) days after Developer has satisfied the additional requirements to be satisfied for approval of such Requisition.

In the event the City disapproves any Requisition or any portion thereof, Developer may nonetheless continue with the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure and may pay the disapproved amount out of its own funds and, if Developer is subsequently able to convince the City to approve such disapproved Requisition or portion thereof, it may include such amounts in subsequent Requisitions.

The City shall direct the City's Director of the Department of Project Implementation (the "**Director**") to administer the Requisition review process. In furtherance of the foregoing, the Director shall review and certify the approved portions of all Requisitions pursuant to the form of Requisition attached hereto as **Exhibit P** and upon its approval the City shall direct payment of the Requisition pursuant to the form of Requisition attached hereto.

(c) **Joint or Third-Party Payments**. Except as provided below, Requisitions shall be deemed to request payment jointly to Developer and the applicable contractor or supplier

of materials, as their interests may appear. Requisitions may request joint payment or payment solely to such third party, if Developer so requests the same in writing. Payment may appropriately be made solely to, or for the account of, Developer if evidence of payment of the cost of a component of the Public Infrastructure Improvements, Private Infrastructure with Public Access or Offsite CDD Infrastructure by Developer, and of the release of the related lien, if applicable, is presented. In the event joint payments are made to Developer, Developer shall timely remit the third party portion of the joint payment to the applicable third party.

(d) Withholding Payments. Subject to the final paragraph in this subsection, the City shall be entitled, but shall not be required, to withhold any payment hereunder if Developer (or any Parcel Owner, if applicable) is delinquent in the payment of ad valorem real property taxes, or other taxes or special assessments of the City. In the event of any such delinquency, the City may make payments hereunder directly to contractors hired by Developer or to any assignee of Developer's interests in this Agreement (and not to Developer or any Affiliate of Developer), until such time as Developer, (or the delinquent Parcel Owner, if applicable) provides the City with evidence that all such delinquent taxes and assessments have been paid.

Subject to the following paragraph, the City may withhold any payment hereunder, if at the time of any Requisition there are any liens for labor and material from a contractor with respect to a component of the Public Infrastructure Improvements, Private Infrastructure with Public Access or Offsite CDD Infrastructure, for reasons other than the City's failing to timely pay properly filed Requisitions, the provision for payment of which has been previously approved and for which no lien releases have been provided by Developer or the General Contractor, as appropriate. The amount withheld pursuant to this Section shall in no event exceed 125% of the outstanding liens.

Nothing in this Agreement shall be deemed to prohibit Developer or the General Contractor, as appropriate, from contesting in good faith the validity or amount of any tax, assessment, mechanic's or materialman's lien and/or judgment, or limit the remedies available to Developer or the General Contractor, as appropriate, with respect thereto so long as any resulting delay in performance shall not subject the Public Infrastructure Improvements to foreclosure, forfeiture, or sale or adversely affect the timely repayment of the Bonds. In the event that any such tax, assessment, lien or judgment with respect to the Public Infrastructure Improvements is contested, Developer shall be required to post or cause the delivery of a bond in the amount contested or, if applicable, provide title insurance with affirmative mechanic's lien coverage.

Section 5.3. Developer Fees and Overhead. In consideration of Developer's performance of its obligations under this Agreement to manage, coordinate and construct the Public Infrastructure Improvements and Offsite CDD Infrastructure as described above, the City shall pay from the \$86,000,000 of Available Proceeds as provided in the Development Budget, funds to be used for such purposes under this Agreement to Developer, an amount equal to 5% of the amount of the Requisitions for the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure funded through Substantial Completion of the Public Infrastructure Improvements, and 2% of the funded amount of the Requisitions for the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure upon Final Completion, to the extent (in each case) undisbursed funds from the

\$86,000,000 of Available Proceeds as provided in the Development Budget remain to be used for such purposes under this Agreement.

Section 5.4. I-395/Duke Street Interchange Improvement. The City shall cause the design, permitting, and 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 as conceptually shown on the alternatives depicted on **Exhibit L** attached hereto and made a part hereof (the “**I-395/Duke Street Interchange Improvement**”) to be completed in accordance with the milestones set forth below in this Section 5.4 and all Regulatory Requirements. The City shall complete the I-395/Duke Street Interchange Improvement at the City’s sole cost and expense except that, if at such time as the City is prepared to issue notice to proceed to commence construction of the I-395/Duke Street Interchange Improvement, the City has not secured third-party funding for 100% of the costs of the same, then each of Developer and Inova will contribute to the City, *pari passu*, funds in an amount not to exceed the lesser of (i) the amount needed by the City to fund 100% of the costs, and (ii) the \$1,000,000 (for each of Developer and Inova) as provided in, and in satisfaction of, Condition 93 of the Pending Landmark Land Use Application, as amended. To the extent the City later receives additional funding, or is otherwise reimbursed from third parties, for any of such costs, the City shall reimburse Developer and Inova for their respective contributions to the cost thereof, *pari passu*. The City’s obligations with respect to the I-395/Duke Street Interchange Improvement shall be completed in accordance with the following milestones:

(a) Milestone 1: Prior to closing on the Inova Site Purchase Agreement, the City shall have obtained the approval of the Federal Highway Administration (“FHA”), and the Virginia Department of Transportation (“VDOT”) for the submission of an Interchange Access Report (“IAR”), prepared by Developer’s transportation consultant under contract with Developer the cost of which to be reimbursed by the City out of sources other than the Available Proceeds promptly upon invoice, to modify the I-395/Duke Street interchange to provide for the I-395/Duke Street Interchange Improvement.

(b) Milestone 2: Prior to commencement of the term of the Ground Lease, the IAR shall have been approved by the FHA, VDOT and the City, and the City shall have identified funding sources for 100% of the cost of the I-395/Duke Street Interchange Improvement (including the contributions, if any are required, from Developer and Inova as provided above in this Section 5.4) which shall not include Available Proceeds.

(c) Milestone 3: Prior to July 15, 2026, the City shall have issued notice to proceed under a construction contract for construction of I-395/Duke Street Interchange Improvement.

(d) Milestone 4: Prior to January 15, 2028, the City shall have caused the construction of the I-395/Duke Street Interchange Improvement to be complete and open to the public. In the event the I-395/Duke Street Interchange Improvement is not complete and open to the public by such time, the City shall pay to Inova liquidated damages in the amount of \$750,000 per year (prorated for partial years) as liquidated damages and not as a penalty (and not payable from Available Proceeds), it being acknowledged that actual damages would be difficult to establish.

ARTICLE VI
ISSUANCE OF BONDS

Section 6.1. Issuance of GO Bonds.

(a) Subject to the terms and conditions set forth in Section 5.2 hereof and this Article VI, the City agrees to finance the Public Infrastructure Improvements and the Offsite CDD Infrastructure, and to finance the applicable portion of the Private Infrastructure with Public Access, with up to \$86,000,000 as reflected on the Allocation Table, by issuing the GO Bonds in accordance with the GO Bond Terms, as the same may be amended with the consent of Developer.

(b) The aggregate principal amount of Bonds required to be issued hereunder shall not exceed an amount sufficient to fund: (i) \$86,000,000 for the costs to acquire, construct and complete the Public Infrastructure Improvements and the Offsite CDD Infrastructure, and a portion of the costs of the Private Infrastructure with Public Access, (ii) \$54,000,000 for the costs to purchase and acquire the Inova Site from the Parcel Owners, (iii) capitalized interest and (iv) all costs of issuance of the GO Bonds. In no event will the City be required to apply any amount not referenced in Section 6.1(a) to fund Requisitions for the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure.

(c) The City shall adopt and execute such agreements, bond resolutions, and other instruments as may be required to secure the GO Bonds with lawful general obligation pledges of the City.

Section 6.2. CDA Function. The CDA will, when the CDA Ordinance has been adopted, have the authority under the CDA Ordinance to impose a special assessment on all portions of the Property that are subject to ad valorem tax and not exempt from real property tax under the Act or under other applicable laws, due and payable annually on June 15 of each fiscal year of the City in the amount necessary to equal the shortfall between (a) the total ad valorem, sales and hotel tax collected from the Property in the prior fiscal year of the City in excess of the total ad valorem, sales and hotel taxes collected from the Property in the Base Year, and (y) the total debt service paid on the GO Bonds in such prior fiscal year as more fully set forth in the Assessment Methodology. These special assessments shall be imposed pursuant to the Assessment Methodology. The Assessment Methodology and the GO Bond Terms may not be amended, and the City will not consent to any amendment of the Assessment Methodology by the CDA, without the prior written consent of Developer, which shall not be unreasonably withheld, conditioned or delayed. The City will cause the CDA to give Developer not less than thirty (30) days advance notice of the imposition of a special assessment, along with the financial calculations supporting the same. Nothing in this Agreement shall adversely affect the rights of any Parcel Owner or Inova to contest any ad valorem tax assessment or any deviance from the Assessment Methodology.

The CDA, City, Developer and Parcel Owners and Inova (to the extent required) and the IDA at the direction of the City pursuant to the Grant Agreement will, upon the request of the City (to be requested prior to the adoption of the CDA Ordinance) promptly enter into a Memorandum of Agreement as to the Assessment Methodology and the reserves to be maintained by the City to mitigate the costs of imposition of the CDA Assessments in the form attached as **Exhibit T**. For

avoidance of doubt, Inova's entering into such Memorandum of Agreement shall be without prejudice to its rights to tax exempt status with respect to taxation of its real and personal property.

ARTICLE VII
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 7.1. Representations, Covenants and Warranties of Developer. In order to induce the City and Inova to enter into this Agreement, Developer represents and warrants for the benefit of each such Party as follows:

(a) Organization. Developer is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware, is authorized to do business in the Commonwealth of Virginia, is in compliance with the laws of the Commonwealth of Virginia, and has the power and authority to own its properties and assets and to carry on its business in the Commonwealth of Virginia as now being conducted and as hereby contemplated.

(b) Authority. Developer has the power and authority to enter into this Agreement, and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by Developer.

(c) Binding Obligations. This Agreement is a legal, valid and binding obligation of Developer enforceable against Developer in accordance with its terms, subject to bankruptcy and equitable principles.

(d) Compliance with Laws. Developer shall not knowingly commit, suffer or permit any act to be done with respect to the Public Infrastructure Improvements, Private Infrastructure with Public Access or Offsite CDD Infrastructure in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the Public Infrastructure Improvements, Private Infrastructure with Public Access or Offsite CDD Infrastructure and shall promptly correct any such non-compliance.

(e) Requests for Payment. Developer represents and warrants that (i) it will not request payment from the City for the acquisition, design or construction of any improvements that are not part of the Public Infrastructure Improvements, the Offsite Public Infrastructure and the applicable portions of the Private Infrastructure with Public Access, and (ii) it will diligently follow all procedures set forth in this Agreement with respect to the request of payments.

(f) Financial Records. Until a date that is three (3) years following the later of (x) final acceptance of the Public Infrastructure Improvements and the Offsite CDD Infrastructure by the City or IDA pursuant to Section 4.3(g), or (y) Final Completion of the Inova Pad Ready Scope of Work, Developer covenants to maintain, or cause to be maintained, proper books of record and account for the construction of the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure and all costs related thereto. Such accounting books shall be maintained in accordance with generally accepted accounting principles, and shall be available for inspection by the City and its agents at any reasonable time during regular business hours on reasonable notice.

(g) Plans. Developer represents that it has obtained or will obtain approval of the Plans for the Public Infrastructure Improvements, Offsite CDD Infrastructure and Private Infrastructure with Public Access from all appropriate departments of the City and from any other public entity or public utility from which such approval must be obtained. Developer further agrees that the Public Infrastructure Improvements to be dedicated to the City hereunder and the Offsite CDD Infrastructure and Private Infrastructure with Public Access will be constructed in full compliance in all material respects with such approved Plans and the applicable Rezoning Approval and other Regulatory Requirements consistent with this Agreement.

(h) Liquidity Covenant. Developer will utilize an amount equal to the net proceeds of sale it realizes under the Inova Site Purchase Agreement solely for the hard and soft costs of pursuit of the Project, and until applied to such hard and soft costs, Developer will retain such net proceeds of sale in the form of cash and liquid investments (including a bond or letter of credit in form reasonably acceptable to the City). As used in this Section, “soft costs” include operating expenses of the Property and the improvements thereon, including real estate taxes, insurance, utility costs, maintenance costs, property management fees, and design and permitting costs. Developer will post or deliver in favor of the City a bond or letter of credit (the “**Performance Assurance**”) in form and from an issuer reasonably acceptable to the City in an amount equal to 114% of the budgeted cost of the Private Infrastructure with Public Access as set out in the Initial Development Budget on the date the City or IDA pays (and as a condition of the payment of) the second installment of the purchase price of the Inova Site pursuant to the Inova Site Purchase Agreement, which bond or letter of credit will be returned undrawn to Developer when it achieves Final Completion of the Private Infrastructure with Public Access.

(i) Enforcement of Contribution Agreement. A redacted copy of the Contribution Agreement has been provided by Developer to Inova and the City. The Contribution Agreement will not be amended in any material respect without the consent of the City and Inova, such consent not to be unreasonably withheld, conditioned or delayed. Developer will exercise all power and authority it has under the Contribution Agreement to enforce the Contribution Agreement against the SRG Member and the HHC Member to give full force and effect to the intention of the Parties as expressed in this Agreement. Without limiting the generality of the foregoing, Developer will convey or cause the Parcel Owners to convey the Inova Site to the IDA pursuant to the Inova Site Purchase Agreement in a manner consistent with the terms of this Agreement, such conveyance to be subject to the REA and Access Agreement.

(j) Additional Information. Developer agrees to cooperate with all reasonable written requests for nonproprietary information by the City related to the status of construction of Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure, the anticipated completion dates for future improvements and any other matters deemed material by such parties.

(k) CDA Petition. Developer will sign a petition seeking the creation of the CDA in the form attached hereto as Exhibit U (the “**CDA Petition**”) as provided in Section 6.2.

(l) Affirmative Covenants with Respect to Inova Site. Between the date of this Agreement and the earlier of (i) the closing under the Inova Site Purchase Agreement or (ii) the Expiration Date of this Agreement, Developer agrees that it shall:

(i) manage and operate the Inova Site only in the ordinary and usual manner, maintain in full force and effect insurance policies, or renewals thereof for not more than one year;

(ii) at its expense, maintain the Inova Site in its present order and condition, make all necessary repairs and replacements and deliver the Inova Site at closing under the Inova Site Purchase Agreement in substantially the same condition it is in on the Effective Date (which condition may be evidenced by a property condition report prepared by or on behalf of the City or Inova) reasonable wear and tear and damage by fire or other casualty excepted;

(iii) give prompt notice to the City and Inova of any fire or other casualty affecting the Inova Site after the date of this Agreement;

(iv) deliver to City and Inova, promptly after receipt by Developer after the date of this Agreement, a copy of all written notices of violation issued by governmental authorities with respect to the Inova Site;

(v) notify City and Inova in writing, promptly after Developer acquires knowledge thereof, of any facts or events which would cause any of Developer's representations and warranties to be untrue or incorrect in any material respect;

(vi) perform, observe and comply with all terms and provisions of all easement agreements to be performed, observed or complied with by the owner of the Inova Property; and

(vii) maintain in full force and effect all material permits and licenses that are required by any governmental authority for the operation of the Inova Site in the manner in which it is being operated on the date of this Agreement

(m) Negative Covenants with Respect to Inova Site. Between the date of this Agreement and the earlier of (i) the closing under the Inova Site Purchase Agreement or (ii) the Expiration Date of this Agreement, Developer agrees that, without City's and Inova's prior written consent in each case, it will not:

(i) voluntarily grant, create, assume or permit to exist any Mortgage, lien, lease, encumbrance, easement, covenant, condition, right-of-way or restriction upon the Inova Site, or voluntarily take or permit any action adversely affecting the title to the Inova Site as it exists on the date of this Agreement;

(ii) make any commitment or incur any liability to any labor union relating to the Inova Site, through negotiations or otherwise;

(iii) become a party to any new contract respecting the Inova Site unless the new contract is terminable without penalty to the then-owner of the Inova Site upon not more than thirty (30) days' notice;

(iv) alter, amend, renew or extend any existing lease in any respect;

(v) permit occupancy of, or enter into any new lease for, space in the Inova Site, including the expansion of an existing tenant's leased premises into vacant space;

(vi) agree to any request by an existing tenant for permission to assign its lease or sublet the leased premises thereunder;

(vii) market or advertise the Inova Site for sale or enter into a letter of intent or contract for the sale of the Inova Site; or

(viii) take any affirmative action or affirmatively permit or consent to any action that would cause any of Developer's representations and warranties under this Agreement to be untrue in any material respect as of the closing under the Inova Site Purchase Agreement.

(n) Environmental Comfort Letter. Developer acknowledges that the City and/or Inova and/or the IDA may seek one or more "comfort letter(s)" from the Virginia Department of Environmental Quality with respect to the Inova Site only prior to closing under the Inova Site Purchase Agreement and in connection therewith may submit only the Inova Site Phase I Environmental Site Assessment (to be amended to include the City and IDA as site users) and documents and results of testing conducted in connection with soil sampling work (as provided to Developer in BFPP Draft Application dated June 25, 2021) unless or until the Parties agree to submit the Inova Site Phase II ESA in accordance with Section 2.2(h) above.

Section 7.2. Representations, Covenants and Warranties of Inova. In order to induce Developer and the City to enter into this Agreement, Inova represents and warrants for the benefit of each such Party as follows:

(a) Organization. Inova is a non-stock corporation duly organized, validly existing and in good standing under the laws of Virginia, is authorized to do business in the Commonwealth of Virginia, is in compliance with the laws of the Commonwealth of Virginia, and has the power and authority to own its properties and assets and to carry on its business in the Commonwealth of Virginia as now being conducted and as hereby contemplated. Inova is an entity recognized by the Internal Revenue Service as described in Section 501(c)(3) of the Internal Revenue Code.

(b) Authority. Inova has the power and authority to enter into this Agreement, and has taken all action necessary to cause this Agreement to be executed and delivered, and this Agreement has been duly and validly executed and delivered by Inova.

(c) Binding Obligations. This Agreement is a legal, valid and binding obligation of Inova enforceable against Inova in accordance with its terms, subject to bankruptcy and equitable principles.

(d) Compliance with Laws. Inova shall not knowingly commit, suffer or permit any act to be done with respect to the Inova Site or Hospital Facilities in violation of any law, ordinance, rule, regulation or order of any governmental authority or any covenant, condition or restriction now or hereafter affecting the Inova Site or Hospital Facilities and shall promptly correct any such non-compliance.

(e) Financial Capacity. Inova has the financial capacity to perform its obligations under this Agreement and the Ground Lease.

(f) Completion of Hospital Facilities. Provided that the conditions precedent set forth in Section 2.2 have been met, the Plat of Subdivision has been duly recorded among the land records of the City of Alexandria, the City has caused the IDA to acquire the Inova Site pursuant to the Inova Site Purchase Agreement, neither Developer nor the City is in default of any of the obligations under this Agreement beyond any applicable notice and cure periods (including cure periods provided for Developer's Mortgagee), and the REA has been recorded in the land records of the City of Alexandria, Inova will lease the Inova Site from the IDA pursuant to the Ground Lease and will diligently pursue the completion and licensure of the Hospital Facilities in accordance with and subject to the conditions in the Ground Lease. Notwithstanding the foregoing, Inova shall have no obligation to Developer with respect to Inova's obligation in this Section to diligently pursue the completion and licensure of the Hospital Facilities in accordance with and subject to the conditions in the Ground Lease if the Developer is not diligently pursuing the completion of the rest of the Project.

(g) Reserved.

(h) Due Diligence. Inova has completed such investigations of the Project and Inova Site as it has determined to conduct and shall have no recourse against Developer in respect to the Inova Site except as expressly provided in this Agreement, the REA and the Access Agreement.

(i) CDA Petition. Inova will sign the CDA Petition as provided in Section 6.2.

(j) Complete Road 1, Road 3 and Park Q. Inova shall design, permit, construct and complete Road 1, Road 3 and Park Q on the Inova Site in connection with Inova's development of the Hospital Facilities. Developer shall reimburse Inova \$500,000 toward such improvements. Inova shall request reimbursement from Developer in writing within 120 days after completion of the Hospital Facilities and the opening of such improvements intended for public use, which request will contain necessary and appropriate invoices, receipts and other evidence reasonably satisfactory to Developer to confirm its reimbursement obligations hereunder. Within ten (10) business days of receipt of such request, Developer shall either (i) approve and execute the request and process it for payment, or (ii) disapprove the request in whole or in part and execute any approved portion and process it for payment. In the event Developer disapproves all or any portion of the request, it shall give written notification to Inova of the disapproval of such request, specifying the additional documentation that is required for approval of such request. Developer shall reimburse Inova within thirty (30) days after Developer's reasonable approval.

Section 7.3. Representations, Covenants and Warranties of the City. In order to induce Developer and Inova to enter into this Agreement, the City represents and warrants for the benefit of each such Party as follows:

(a) Organization. The City is a body politic of the Commonwealth of Virginia and has the power and authority to perform all of its obligations set out in this Agreement.

(b) Authority. The City has the power and authority to enter into this Agreement and the Grant Agreement, and has taken all action necessary to cause this Agreement and the Grant Agreement to be executed and delivered, and this Agreement and the Grant Agreement have been duly and validly executed and delivered by the City.

(c) Binding Obligations. This Agreement and the Grant Agreement are legal, valid and binding obligations of the City enforceable against the City in accordance with its terms, subject to bankruptcy and equitable principles.

(d) Reserved.

(e) Reserved.

(f) Due Diligence. The City has completed such investigations of the Project and Property as it has determined to conduct and shall have no recourse against Developer with respect to this Project and Property except as expressly provided in this Agreement and in the Inova Site Purchase Agreement.

(g) Appropriation. The City has appropriated the full amount of the first installment of the purchase price payable under the Inova Site Purchase Agreement. The City Manager will make good faith efforts to cause the City to appropriate all other amounts to be paid by the City or IDA, as directed by the City under this Agreement.

Section 7.4. Representations, Covenants and Warranties of the City Concerning the IDA. In order to induce Developer and Inova to enter into this Agreement, the City represents and warrants for the benefit of each such Party as follows:

(a) Organization. IDA is a body politic of the Commonwealth of Virginia, and has the power and authority to perform all of its obligations set out in this Agreement.

(b) Authority. IDA has the power and authority to enter into the various agreements that, pursuant to this Agreement, and pursuant to the Grant Agreement the City has or will direct the IDA to enter into, and to take all action necessary to cause the Inova Site Purchase Agreement to be executed and delivered.

(c) Binding Obligations. The Inova Site Purchase Agreement entered into by the IDA pursuant to this Agreement will be the legal, valid and binding obligations of IDA enforceable against IDA in accordance with its terms, subject to bankruptcy and equitable principles.

(d) Ground Lease. The City will, pursuant to the Grant Agreement, direct the IDA to lease the Inova Site to Inova pursuant to the Ground Lease, and the Ground Lease, when entered into, will be the legal, valid and binding obligation of the IDA.

(e) Grant Agreement. A true, complete and correct copy of the Grant Agreement is attached hereto as **Exhibit S**. Prior to the Expiration Date, the Grant Agreement will not be amended, in any material manner, without the written consent of Developer and Inova, such consent not to be unreasonably withheld, conditioned or delayed. The City will reasonably

administer the Grant Agreement to give full force and effect to the intention of the Parties as expressed in this Agreement and to facilitate the timely completion of the Project.

(f) **Due Diligence.** IDA has completed such investigations of the Project and Property as it has determined to conduct and shall have no recourse against Developer with respect to this Project and Property except as expressly provided in this Agreement and in the Inova Site Purchase Agreement, the REA and the Access Agreement.

Section 7.5. Acknowledgement of the Parties. Each Party acknowledges and agrees that it is assuming significant financial burdens and risks in undertaking their obligations under this Agreement and are doing so based on their independent investigation and due diligence. Except as expressly set forth in this Agreement and the other documents referenced herein, no representation, express or implied, has been made by or relied upon by any Party to this Agreement.

Section 7.6. Quarterly Meeting and Reporting Requirements. Developer shall meet with the City at least quarterly during the term of this Agreement to provide progress reports and updates on the advancement of the Project.

Section 7.7. Cooperation. Each Party agrees to use its good faith commercially reasonable efforts to facilitate the completion of the Public Infrastructure Improvements, the Private Infrastructure with Public Access and the Offsite CDD Infrastructure and all other elements of the Project. Without limiting the generality of the foregoing, the Parties will agree to such reasonable amendments to the REA, subdivision of the Property, the applicable Rezoning Approvals and CDA documentation as are necessary or desirable to give full effect to the intentions of the Parties as requested from time to time by Developer.

ARTICLE VIII

TERMINATION AND EVENTS OF DEFAULT

Section 8.1. Termination by Mutual Consent. This Agreement (a) may be terminated by the mutual, written consent of all of the Parties, (b) may be terminated as provided in the last paragraph of Section 8.2, and in Section 8.3(b) and (c) shall be deemed terminated if the conditions precedent set out in Section 2.2 and/or Section 7.2(f) have not been satisfied by June 30, 2022.

Section 8.2. Events of Default. The following events shall, if not cured after the expiration of the applicable notice and cure period described below in this Section 8.2, be deemed an event of default ("**Event of Default**"):

(a) Absent an ongoing unresolved Delay, Developer shall abandon construction or other work with respect to the Public Infrastructure Improvements and/or the Private Infrastructure with Public Access and/or Offsite CDD Infrastructure for a period of more than 4 consecutive months or fail to diligently and continuously pursue the completion of the Public Infrastructure Improvements, Offsite CDD Infrastructure and/or Private Infrastructure with Public Access in a commercially reasonable manner in accordance with this Agreement.

(b) Developer shall breach any material covenant or default in the performance of any material obligation hereunder.

(c) Developer shall transfer any of its rights or obligations under this Agreement except as expressly permitted hereunder.

(d) Developer shall have made any material misrepresentation or omission in this Agreement.

(e) Developer or the Parcel Owners shall at any time challenge the validity of the CDA, the levy of CDA special assessments or CDA special taxes or shall fail to pay any special taxes or special assessments applicable to the Property, provided however, the foregoing shall not limit Developer and the Parcel Owners rights under Section 6.2.

(f) The Public Infrastructure Improvements and/or Offsite CDD Infrastructure are not Substantially Completed by the Milestone Dates for Substantial Completion of each, subject to extension for Delays as provided in this Agreement.

(g) The Public Infrastructure Improvements and/or Offsite CDD Infrastructure are not finally complete by the Milestone Date for Final Completion or each, subject to extensions for Delays, as provided in this Agreement.

(h) If Developer files a voluntary petition under Title 11 of the United States Code, or if Developer files a petition or an answer seeking, consenting to 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 bankruptcy or insolvency statute or law, or seeks, consents to, acquiesces in or suffers the appointment of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Developer, of all or any substantial part of its properties, or of all or any part of Developer's interest in the Project, and the foregoing are not stayed or dismissed within one hundred eighty (180) calendar days after such filing or other action.

If any of the events described in Section 8.2(a), (b), (c), (d), (e), (f) or (g) above occurs, Developer shall have thirty (30) days after Developer receives written notice of such event from the City or Inova, given to Developer and the other Party to this Agreement, to cure such event, provided that if such occurrence is not reasonably susceptible of cure within such thirty (30) day period, then such thirty (30) day period shall be extended for up to an additional sixty (60) days so long as Developer initiates efforts to cure the same within the initial thirty (30) day period and thereafter diligently pursues completion of such cure. If such event is not cured within such time periods (as applicable), the Parties agree to meet within fifteen (15) days thereafter and confer as to options available to assure timely completion of the Public Infrastructure Improvements, Offsite CDD Infrastructure and Private Infrastructure with Public Access. If after such conference the City or Inova determines that the event so noticed has not been cured to its satisfaction, either the City or Inova, after consultation with one another, may by notice to Developer and to one another, declare an Event of Default. Notwithstanding the declaration of the occurrence of an Event of Default (including after any notice and cure periods provided for Developer's Mortgagee as provided in Section 9.16), Developer (or such Mortgagee) is entitled to reimbursement for work related to the Public Infrastructure Improvements and for work related to the Offsite CDD Infrastructure undertaken prior to the date of the notice of the event giving rise to the Event of

Default (“**Pending Work**”), but such reimbursement shall be solely from the \$86,000,000 of Available Proceeds as provided in the Development Budget.

Notwithstanding the foregoing and except for Pending Work, after an Event of Default by Developer (and after any notice and cure period as provided under Section 9.16 has expired) the City may cease making payments to Developer for the Public Infrastructure Improvements and Offsite CDD Infrastructure hereunder.

In the event of the occurrence of an Event of Default, the City shall have the first right to elect to cure the Event of Default or proceed to complete or cause the completion of the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure, with or without curing the Event of Default. If the City elects not to cure the Event of Default or proceed to complete or cause the completion of the work, then Inova shall have the right to elect to cure the Event of Default or proceed to complete or cause the completion of the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure with or without curing the Event of Default. If either the City or Inova elects to cure the Event of Default or proceed to complete or cause the completion of the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure, with or without curing the Event of Default, then the City and Inova will reasonably cooperate with each other to effectuate modifications to the Development Schedule and otherwise, to allow the curing or completing Party to complete or cause the completion of the Public Infrastructure Improvements and Private Infrastructure with Public Access and Offsite CDD Infrastructure. If neither the City nor Inova elects to cure the Event of Default or proceed to complete or cause the completion of the Public Infrastructure Improvements, with or without curing the Event of Default, the City and Inova shall have the right to mutually terminate this Agreement. In the event the City or Inova elects to proceed to complete or cause the completion of the work, the City or Inova, as applicable, or their respective designees may either execute contracts for or perform any remaining work related to the Public Infrastructure Improvements and the Private Infrastructure with Public Access and the Offside CDD Infrastructure, the rights of access to the Property for such work being set forth in the REA, use all or any portion of the Available Proceeds, and draw on the Performance Assurance, and Developer shall have no claim or right to any further payments for the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure hereunder (including under Section 5.3, regardless of whether Substantial Completion or Final Completion occurs), except as otherwise may be provided upon the mutual written consent of the Parties. Developer agrees, to the extent it has not previously done so, to assign all the Plans and related contracts with contractors and consultants (including the Construction Agreements) to the City or Inova or their respective designees, at no cost to such Party, and such Party or their respective designees shall have the same rights as Developer to rely on same.

Section 8.3. Remedies for Events of Default.

(a) In the event of an Event of Default which has not been cured in accordance with the terms of Section 9.16 of this Agreement, and whether or not the City or Inova elects to complete or cause the completion of the Public Infrastructure Improvements, Private Infrastructure with Public Access or Offsite CDD Infrastructure, the City and Inova shall be entitled to be reimbursed by Developer for all reasonable, actual out of pocket costs incurred in pursuit of

completion of the Public Infrastructure Improvements (including Inova Pad-Ready Scope of Work), Private Infrastructure with Public Access and Offsite CDD Infrastructure and the Hospital Facilities (in each instance, to the extent applicable) including as to the City cost of issuance of the GO Bonds, up to a maximum of \$3,000,000 to the City and including as to Inova the cost of the Seminary Road Land Use Approval and Landmark Land Use Approval up to a maximum of \$3,000,000 to Inova, provided that in the event that an Event of Default occurs following the failure of the City to pay, when and as required, the second installment of the purchase price payable under the Inova Site Purchase Agreement, the foregoing cap on Inova's damages payable by Developer shall be reduced to \$1.00 and the cap on the City's damages payable by Developer shall be reduced to \$1.00. In furtherance of the foregoing, if the City draws upon the Performance Assurance or the Infrastructure Bond described in Section 4.3(j) it shall credit the amount thereof against the amount needed to satisfy its rights to complete the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure. In no event will either the City or Inova be entitled to consequential, or indirect damages, whether in the nature of special, exemplary, punitive or any other form of consequential or indirect damages. The foregoing damages caps apply to all damages of Developer under this Agreement and under the Access Agreement except for liabilities paid from proceeds of insurance required to be maintained under this Agreement or the Access Agreement and liabilities arising from claims of third parties that are governed by indemnification obligations set out in this Agreement or the Access Agreement.

(b) In the event Inova or the City breaches any respective obligations under this Agreement or if the IDA fails to discharge its obligations contemplated by this Agreement, Developer, and Inova or the City (whichever is the non-breaching Party) shall retain all rights at law and in equity except that no Party shall have the right to terminate, rescind or cancel this Agreement unless the breach renders continued performance impossible and except that Developer shall have the right to terminate this Agreement if the City fails to appropriate the second installment of the purchase price under the Inova Site Purchase Agreement. Further, notwithstanding the foregoing, Developer (or Inova or the City, whichever is the non-breaching Party) may not take any action to enforce against a breach of this Agreement by Inova or the City unless and until the enforcing Party provides written notice to the breaching Party (and the other, non-breaching Party) with a reasonably detailed description of the alleged breach and, thereafter, the breaching Party fails to cure such alleged breach within thirty (30) days after receipt of such notice, provided that if such alleged breach is not reasonably susceptible of cure within such thirty (30) day period, then such thirty (30) day period shall be extended for up to an additional sixty (60) days so long as the breaching Party initiates efforts to cure the same within the initial thirty (30) day period and thereafter diligently pursues completion of such cure. The enforcing Party agrees to accept performance by any non-breaching Party to effectuate the cure. If such event is not cured within such time periods (as applicable), the Parties agree to meet within fifteen (15) days thereafter and confer as to options available to assure timely completion of the Public Infrastructure Improvements, Offsite CDD Infrastructure and Private Infrastructure with Public Access. Further, notwithstanding the foregoing or anything to the contrary in this Agreement, Developer's damages remedy against each of the City and Inova shall be limited to Developer's actual and reasonable damages up to a maximum of \$3,000,000 with respect to each of Inova and the City. In no event will Developer be entitled to consequential, or indirect damages, whether in the nature of special, exemplary, punitive or any other form of consequential or indirect damages. The foregoing damages caps apply to all damages of the City and Inova under this Agreement and under the Access Agreement except liabilities paid from proceeds of insurance required to be

maintained under this Agreement or the Access Agreement and liabilities arising from claims of third parties that are governed by indemnification obligations set out in this Agreement or the Access Agreement.

(c) Except as otherwise expressly set forth herein, the rights and remedies of the Parties under this Agreement, whether provided by law, in equity, or by this Agreement, shall be cumulative, and the exercise of any one or more of such remedies shall not preclude the exercise of any other remedies for the same such default or breach. Without limiting the generality of the foregoing, (i) Inova and the City shall have the right to obtain specific performance of Developer's obligations under Sections 4.4, 7.1(i), 8.3(d) and (8.3(e) of this Agreement (limited to the extent specific performance is an enforceable remedy under applicable law), and Inova and the City shall have the right, but not the obligation, to take over completion of the Public Infrastructure Improvements, Offsite CDD Infrastructure and the Private Infrastructure with Public Access utilizing Available Proceeds and drawing on the Performance Assurance without limitation to the right of Inova and the City to be reimbursed for their damages as provided in Section 8.3(a), and (ii) Developer shall have the right, but not the obligation, to complete Inova's obligations under Section 7.2(j) of this Agreement and to be reimbursed for its actual third party costs to cure and complete such obligations without regard to the cap on Inova's damages provided in Section 8.3(b).

(d) If the City or Inova declares an Event of Default pursuant to Section 8.2 and thereafter elects to exercise any cure right or right to proceed with the Public Infrastructure Improvements, Private Infrastructure with Public Access or Offsite CDD Infrastructure, it may have under this Agreement, effective upon such exercise of such right, Developer shall transfer and assign to such Party, all of Developer's right, title and interest in and to all the Construction Agreements, Plans and all permits, completion bonds in favor of Developer, sewer permits and tap fees, utility deposits and all other contracts, agreements, permits and authorizations in any way related to the development and construction of the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure, and such Party or their respective designees shall have the same rights as Developer to rely on same.

(e) The Plans and other documents and electronic data furnished by Developer under this Agreement or prepared by or on behalf of Developer are deemed to be "Instruments of Service". Developer shall obtain nonexclusive, perpetual licenses for all Instruments of Service prepared for it in connection with the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure. Developer hereby collaterally assigns to the City and Inova all common law, statutory and other reserved rights, including ownership, licenses, and copyright interests, whether now owned or hereafter acquired in the Instruments of Service with respect to the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure, whether owned directly by Developer or obtained by assignment. Developer hereby collaterally assigns to the City and Inova all of the Plans and agreements related contracts with contractors and consultants (other than legal counsel and accountants) including the Construction Agreements related to the Public Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure. In the event the City or Inova exercises remedies under this Agreement, the City or Inova may use all Instruments of Service and all the Plans and related contracts with contractors and consultants (other than legal counsel and accountants) including the Construction Agreements for the design and construction of the Public

Infrastructure Improvements, Private Infrastructure with Public Access and Offsite CDD Infrastructure and for its normal and customary maintenance thereof including for information purposes in connection with future alterations, renovations or expansions of the Public Infrastructure Improvements, Private Infrastructure with Public Access or Offsite CDD Infrastructure (all at no cost to the City or Inova).

Section 8.4. Delay. Whenever performance of an obligation under this Agreement is required of a Party hereunder, excluding the payment of money, that Party shall use all due diligence and take all commercially reasonable measures to perform, but if completion of performance is delayed by reasons of Delay, then the specified time for performance shall be Delay hereunder, and the performance of such obligation shall be extended on a day-for-day basis (including without limitation, any Milestone Dates), for so long as the existence of the Delay remains in effect.

ARTICLE IX
MISCELLANEOUS

Section 9.1. Notices, Demands, and Communications Between the Parties. Formal notices, demands, and communications between the Parties shall be given either by (a) personal service, (b) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (c) mailing utilizing a certified or first class mail postage prepaid service of the United States Postal Service that provides a receipt showing date and time of delivery:

City: City of Alexandria
City Manager
301 King Street
Alexandria, Virginia 22314

With Copies to: City Attorney
City of Alexandria
301 King Street
Alexandria, Virginia 22314

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

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

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

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

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

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

Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed shall be deemed effective on the second business day following deposit in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as any Party may from time to time designate in writing.

Section 9.2. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent possible.

Section 9.3. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties hereto. Prior to Final Completion of construction of the Public Infrastructure Improvements, the Private Infrastructure with Public Access and the Offsite CDD Infrastructure, and acceptance thereof by the City and Inova, as applicable, in accordance with Section 4.3(g) and Section 4.3(h), this Agreement shall not be assigned by Developer without the prior written consent of the City and Inova, which consents shall not be unreasonably withheld, conditioned or delayed, except for the assignment of this Agreement in whole (including the assumption in writing of all obligations hereunder and the reissuance, if necessary, of all bonds, letters of credit and other security required hereunder) to an

Affiliate of Developer, which assignment is permitted without the consent of the other Parties. In connection with any such consent of the City or Inova, however, such Party may condition its consent among other reasons upon the acceptability of the financial condition of the proposed assignee, upon the assignee's express assumption of all obligations of Developer hereunder, as applicable, and upon any other reasonable factor which the City or Inova deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the scope of the rights and obligations assigned and shall not be effective until approved by the City and Inova and shall not relieve the assignor of any of its obligations hereunder. The granting of a mortgage to an Institutional Lender (each, a "**Mortgagee**") by Developer to secure financing for any portion of the Project shall not be deemed to constitute an assignment or transfer of this Agreement, nor shall any Mortgagee thereunder, as such, be deemed to be an assignee or transferee of this Agreement so as to require such Mortgagee, as such, to assume or otherwise be obligated to perform any of Developer's obligations hereunder.

Section 9.4. Other Agreements. Nothing herein shall be construed as affecting any Party's rights or duties to perform their respective obligations under other agreements, use regulations or subdivision requirements relating to the development of the lands in the City. This Agreement shall not confer any additional rights, or waive any rights given, by any Party hereto under any development or other agreement to which they are a party.

Section 9.5. Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by another Party, or the failure by a Party to exercise its rights upon the default of another Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

Section 9.6. Merger. This Agreement, including all Exhibits and Schedules named herein and attached hereto, supersedes any other agreement, whether written or oral, that may have been made or entered into by Parties relating to the matters contemplated hereby. This Agreement, including all Exhibits and Schedules named herein and attached hereto, which are incorporated by reference and made a part of this Agreement, constitutes the entire agreement by and among such Parties except as expressly set forth herein.

Section 9.7. Parties in Interest. Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City, Inova and Developer any rights, remedies or claims under or by reason of this Agreement or any covenants, conditions or stipulations hereof, and all covenants, conditions, promises and agreements in this Agreement contained by or on behalf of the City, Inova or Developer shall be for the sole and exclusive benefit of the City, Inova and Developer.

Section 9.8. Amendment. This Agreement may be amended, from time to time by written amendment hereto and executed by all of the Parties.

Section 9.9. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against any Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement. References to other agreements shall

be deemed to refer to such agreements as amended from time to time as the context may require. As used herein, "lien free" shall mean any lien shall have been released or bonded off. Time shall be of the essence as to all matters arising hereunder.

Section 9.10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. The Agreement may be executed by facsimile or pdf format signature.

Section 9.11. Indemnification. NEITHER THE CITY NOR INOVA NOR IDA SHALL BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE ACTS OR OMISSIONS OF DEVELOPER, THE GENERAL CONTRACTOR OR ANY PARCEL OWNER PURSUANT TO THIS AGREEMENT. DEVELOPER HEREBY WAIVES ALL CLAIMS AGAINST THE CITY, IDA, THE CDA, AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "ALEXANDRIA") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN, AND TO THE EXTENT TO, THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY OR THE BREACH OF ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT BY THE CITY OR THE IDA. DEVELOPER HEREBY INDEMNIFIES AND SAVES ALEXANDRIA AND INOVA HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY ARISING FROM DEVELOPER'S BREACH OF ANY OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR BY REASON OF ANY ACT OR OMISSION ON THE PART OF DEVELOPER, THE GENERAL CONTRACTOR OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, SUBCONTRACTORS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS IN THE PERFORMANCE OF THIS AGREEMENT (EXCEPT WHEN, AND TO THE EXTENT TO, SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO THE BREACH, NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY, IDA OR INOVA). IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF ANY OF THE CITY, IDA OR INOVA AND DEVELOPER, THE RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF VIRGINIA AND DEVELOPER'S INDEMNIFICATION OBLIGATION SHALL BE REDUCED ACCORDINGLY, WITHOUT, HOWEVER, WAIVING ANY SOVEREIGN OR GOVERNMENTAL IMMUNITY WHICH MAY BE AVAILABLE TO THE CITY OR IDA AND WITHOUT WAIVING ANY SOVEREIGN OR DEFENSES OF THE PARTIES UNDER VIRGINIA LAW, IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST THE CITY OR IDA OR INOVA IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, OR IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT IN CONNECTION WITH THE ISSUANCE OF THE GO BONDS UNDER THE TERMS OF THIS AGREEMENT, DEVELOPER SHALL BE REQUIRED, ON NOTICE FROM THE CITY OR IDA OR INOVA, AS APPLICABLE, TO DEFEND SUCH ACTION OR PROCEEDINGS AT DEVELOPER'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY

SATISFACTORY TO THE PARTY BEING INDEMNIFIED AND SHALL FULLY INDEMNIFY THE PARTY BEING INDEMNIFIED AGAINST ALL COSTS RESULTING THEREFROM. THE CITY SHALL (OR SHALL CAUSE THE IDA) OR INOVA SHALL, AS APPLICABLE (I) PROMPTLY NOTIFY DEVELOPER OF ITS RECEIPT OF ANY CLAIM OR DEMAND, AND (II) COOPERATE WITH DEVELOPER AND ITS COUNSEL IN THE DEFENSE OF THE CLAIM OR DEMAND. DEVELOPER SHALL HAVE THE RIGHT TO CONTROL THE DEFENSE AND SETTLEMENT OF SUCH CLAIM OR DEMAND IN ITS SOLE DISCRETION. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

Section 9.12. No Liability of Public Employees . Notwithstanding any other provisions of this Agreement to the contrary, nothing in this Agreement nor any action taken by the City pursuant to this Agreement nor any document which arises out of this Agreement shall give rise to personal liability to any of the City's elected or appointed officials, officers and employees.

Section 9.13. Exhibits. All Exhibits referred to in this Agreement are by such references fully incorporated herein. In the event of a conflict between the Exhibits and the terms of this Agreement, the terms of this Agreement shall prevail.

Section 9.14. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the Commonwealth of Virginia. The parties consent to the jurisdiction and venue of the courts of the Circuit Court for the City of Alexandria, Virginia.

Section 9.15. Estoppel Certificates. Upon the written request of Developer, the City or Inova (in each case, a "**Requesting Party**"), the other Parties shall, within twenty (20) days of its receipt of such request, execute and deliver a written statement certifying: (i) that this Agreement is unmodified and in full force and effect (or, if modified, that this Agreement is in full force and effect as modified, and stating any and all modifications), (ii) to its actual knowledge, that Requesting Party is not in default hereunder except as specified in such statement, (iii) that to its actual knowledge, no event has occurred which with the passage of time or the giving of notice, or both, would ripen into an Event of Default hereunder, except as specified in such statement and (iv) other matters reasonably requested by Requesting Party reasonably related to the subject matter of this Agreement. Such estoppel certificate may be relied upon by Requesting Party, and any Mortgagee or prospective Mortgagee of Requesting Party.

Section 9.16. Mortgage Provisions. Notwithstanding anything herein to the contrary, with respect to any Mortgagee or prospective Mortgagee:

(a) Developer may subject its interest in the Project (exclusive of the Inova Site) to a Mortgage or other lien or security interest in favor of a Mortgagee that is (x) an Institutional Lender, (y) not an Affiliate of such Party and (z) is not a Disqualified Person. Notwithstanding the foregoing or anything in this Agreement to the contrary, such Mortgage or other lien or security interest shall be subordinated to the REA and this Agreement. Simultaneously with the giving by the City or Inova to Developer of any notice of an Event of Default under this Agreement, the City or Inova (as applicable) agree to provide a copy of the same to a Mortgagee with respect to whom Developer has previously provided Inova and the City

notice, provided that the failure by the City or Inova (as applicable) to deliver such Mortgagee notice shall have no effect on the rights of the City and Inova hereunder but shall only extend, on a day for day basis, any timelines within which such Mortgagee must act with respect to the Event of Default as provided in this Agreement. Such Mortgagee may act to cure an Event of Default upon the same terms and conditions as provided to Developer such that wherever Developer is provided specific rights under this Agreement with respect to the manner of effecting a cure, such Mortgagee shall have identical rights for effecting a cure. Additionally, wherever Developer is provided a specific time within which to cure under this Agreement, such Mortgagee shall have a period of time within which to cure that (i) runs contemporaneously with Developer's opportunity to cure and (ii) extends thirty (30) days beyond Developer's opportunity to cure.

(b) Notwithstanding anything to the contrary in this Agreement, a Mortgagee shall not be entitled to exercise cure rights with respect to any matter covered by the Infrastructure Bond if the City has realized on the Infrastructure Bond and provided further that in the event that either the City or Inova has elected to undertake to cure any Event of Default, or to proceed to complete or cause the completion of the Public Infrastructure Improvements, the Offsite CDD Infrastructure and/or the Private Infrastructure with Public Access as provided in Article VIII, the Mortgagee shall forbear in exercising its rights under this Section 9.16 for so long as such electing Party is diligently pursuing its rights. In addition, but subject to the foregoing, in the event any Mortgagee gives notice to the City and Inova that it has commenced efforts to obtain possession of the Project, the time by which any event is required to be commenced or completed hereunder by Developer shall be extended to the date not later than ninety (90) days following the date a Mortgagee or its designee obtains possession of the Project, provided the Mortgagee or its designee diligently continues its efforts to obtain possession and its efforts to commence or complete the underlying required event, provided that the foregoing extension of time limits shall not apply if an Event of Default has been declared in accordance with Article VIII prior to the date the aforesaid notice is given by a Mortgagee, and provided further that the foregoing extension of time limits shall not extend longer than thirty (30) days from and after the date a Mortgagee or its designee obtains possession of the Project.

(c) If after the City or Inova declaring an Event of Default under Article VIII but prior to the City or Inova initiating cure rights under this Agreement, a Mortgagee or its designee gives the City and Inova notice that it has commenced efforts to obtain possession of all or any portion of the Project and thereafter diligently continues those efforts and its efforts to cure any Event of Default (excluding Events of Default which are by their nature personal to Developer and which cannot reasonably be expected to be cured by a Mortgagee or its designee), no other Party to this Agreement shall initiate cure rights under this Agreement or move to terminate this Agreement earlier than ninety (90) days following the date Mortgagee or its designee obtains possession; provided, however, in the event that the Mortgagee or its designee does not thereafter achieve the next Milestone Date(s) (including without limitation, Substantial Completion or Final Completion of the Public Infrastructure Improvements, the Offsite CDD Infrastructure or the Private Infrastructure with Public Access) occurring within the 120 day period following the date such Mortgagee gives such notice (subject to Delays which occur after Mortgagee or its designee has given such notice), the other Parties will not unreasonably withhold their consent to an extension of time necessary to complete such improvements provided Mortgagee is diligently pursuing to cure such Event of Default. The provisions of this Section 9.16(c) shall not extend the

time limits within which such Mortgagee must complete the cure of the underlying Event of Default.

(d) If any Mortgagee or its designee has obtained possession of the Project, and no Event of Default has occurred and is continuing, and Mortgagee or its designee does cure in accordance with this Agreement, such Mortgagee or its designee shall succeed to the rights and obligations of Developer hereunder including with respect to the undisbursed portion of the \$86,000,000 of Available Proceeds as may be remaining at such time.

(e) The City and Inova shall provide a copy of written notice of the acceptance of the Public Infrastructure Improvements under Section 4.3(g) and (h), respectively, to any Mortgagee with respect to whom the City and Inova have been provided notice.

(f) No amendment pursuant to Section 9.8 hereof which could reasonably be expected to materially adversely affect the interests of any Mortgagee shall be effective without the prior written consent of such Mortgagee.

(g) Developer shall provide notice to the City and Inova of the identity of each Mortgagee that obtains an interest in the Project during the term of this Agreement.

(h) The City and Inova will grant recognition, step in and cure rights pursuant to a recognition agreement acceptable to the City and Inova on reasonable terms and in any event subject to the City and Inova priority cure and completion rights as provided in this Agreement, and subject to consent of the City Council, to a Mortgagee which has provided timely notice of its election to cure an Event of Default.

Section 9.17. Failure to Pay the Second Installment. In the event the City fails to pay, as and when payable, the second installment of the purchase price payable under the Inova Site Purchase Agreement, Developer has certain remedies as more fully provided in the Inova Site Purchase Agreement to repurchase the Inova Site free and clear of the Ground Lease (the “**Repurchase Rights**”). The Repurchase Rights are in addition to and not to the exclusion of the rights of Developer under Section 8.3. Prior to exercising the Repurchase Rights, Developer will give Inova ninety (90) days’ notice, and if Inova pays Developer an amount equal to the second installment of the purchase price under the Inova Site Purchase Agreement in immediately available funds, within said ninety (90) day period, Developer will not exercise the Repurchase Rights and will accept such payment as full performance of the obligation of the IDA to pay such second installment under the Inova Site Purchase Agreement and the Ground Lease will remain in full force and effect (an “**Inova Cure**”). In the event of an Inova Cure, Inova shall be entitled to its rights under the Ground Lease which are in addition to and not to the exclusion of the rights of Inova under Section 8.3.

Section 9.18. Fire Station Site. Upon Final Completion of the shell construction of a building to be built in “Block J” of the Project comprising 46,000 square feet more or less of floor area density (the “Block J Building”), which Final Completion shall occur as provided in the Development Schedule (subject to extension of the event of Delay as provided in Section 4.2), Developer shall convey, or cause its applicable Affiliate to convey, to the City a condominium unit in a 2-unit condominium encumbering the Block J Building for one dollar. The unit to be so

conveyed (the “Fire Station Unit”) (x) shall be comprised of approximately 26,000 square feet more or less of floor area density, (y) shall include a limited common element interest and a driveway serving such Fire Station Unit of size and quality for fire stations reasonably acceptable to the City, and (z) shall be configured substantially as described on Exhibit R. The condominium regime burdening the Block J Building shall include a prohibition on the use by the City or any lessee of the City of the Fire Station Unit for any use other than customary EMS station, fire station, police station, or other similar use or government administrative offices and will include a fair market value purchase option allowing the owner of the other condominium unit the (“Housing Unit”) to acquire the Fire Station Unit if at any time it ceases for in excess of 18 months to be used by the City either as a fire station, EMS station police station or other similar use or government administrative offices. Any alternative use of the Fire Station Unit shall be subject to the consent of the owner of the Housing Unit, not to be unreasonably withheld, conditioned or delayed. The conveyance of the Fire Station Unit shall be on substantially similar terms as those set out in the Inova Site Purchase Agreement (modified to include market standard title contingency provisions, but otherwise on an “as-is, where-is, with all faults” basis). As a condition of the conveyance of the Fire Station Unit, Developer or its applicable Affiliate shall give a written notice to the City, at least one hundred eighty (180) days in advance of the date of the City’s annual appropriations, that Developer is prepared within one (1) year thereafter to commence work on the Fire Station Unit. In such event, the City shall give Developer or its applicable Affiliate evidence of the appropriation by the City of the reasonable expected cost to design, permit, and construct the Fire Station Unit (excluding interior finishes) to be conveyed in connection with such appropriation and in all events prior to the commencement of construction of the Block J Building. Developer and the City agree to cooperate and work together in good faith with respect to design, specifications, pricing, development and construction of the Fire Station Unit and in connection therewith (including, if beneficial for proceeding with the Fire Station Unit, to have the City’s appropriation for the Fire Station Unit be in two phases – one for design and permitting costs and one for construction costs). Developer and City will diligently pursue entering into a separate development agreement to memorialize design, funding, and construction obligations of each Party for the Fire Station Unit. For the avoidance of doubt, if the City has not timely provided Developer with evidence of the appropriation of the reasonable expected cost to design, permit, and construct the Fire Station Unit (excluding interior finishes) as contemplated in this paragraph and such failure continues for more than thirty (30) days after Developer provides the City with written notice of its failure, Developer or its applicable Affiliate will have no obligation to convey the Fire Station Unit to the City and may reconfigure the Block J Building to create an alternative use for the space that would otherwise have been used for the Fire Station Unit.

Section 9.19. Dispute Resolution. The Parties shall attempt diligently and in good faith to resolve any dispute, controversy or claim between them, whether framed in contract, tort or otherwise, arising out of this Agreement including as to whether Delay has occurred by negotiations between senior representatives of each Party who have the authority to act and who will promptly meet for negotiations to settle the dispute. If the matter has not been resolved within twenty (20) days from the referral to the senior representatives, any Party may submit the Dispute to legal recourse. In any dispute resolution process, including litigation, the Parties will agree with any request by any Party to consolidated dispute resolution involving any relevant third party such that any related dispute with the General Contractor or any other third party can be resolved concurrently and by the same process. In the resolution of any Dispute that also implicated Delay, the issue of Delay will be resolved concurrently.

Section 9.20. Survival. The provisions of Sections 3.3, 3.4, 3.5, 4.4, 5.2(c), 5.4, 6.2, 6.3, 7.2(f), 7.2(j), 7.7, 8.3, 9.1, 9.3, 9.11, 9.12, 9.15, 9.16, 9.18 and 9.19 of this Agreement shall survive the expiration of the Term of this Agreement without durational limitation.

Section 9.21. Consent by CDA. The CDA by its signature below, consents to its obligations under this Agreement and agrees, for the benefit of the Parties, to perform its obligations set out in this Agreement.

Section 9.22. Recordation. Neither this Agreement nor a memorandum thereof shall be recorded in the land records.

Section 9.23. Appropriation of Funds. All of the City's obligations under this Agreement are subject to appropriation of funds by the City Council of the City of Alexandria, Virginia for the specific purpose of satisfying the payment and performance of such obligations.

Section 9.24. No Indemnity. Notwithstanding any other term or provision of this Agreement to the contrary, the City shall have no obligation to explicitly or implicitly indemnify or hold harmless and Party or Parties from any liability whatsoever.

Section 9.25. No Waiver of Sovereign Immunity. Notwithstanding any other provision of this Agreement to the contrary, nothing in this Agreement nor any action taken by the City pursuant to this Agreement nor any document which arises out of this Agreement shall constitute or be construed as a waiver of either the sovereign immunity or governmental immunity of the City, or of its elected and appointed officials, officers and employees.

Section 9.26. Authority of City Manager. Except to the extent prohibited by law, the City's City Manager or his or her designee is hereby authorized to grant, withhold, or revoke consents and approvals, exercise discretion, make determinations, make elections or selections, create protocols, adopt rules, or give direction on behalf of the City under this Agreement. This specific authority shall not be construed to limit the general authority invested by law in the City Manager.

Section 9.27. City Acting in its Proprietary Capacity. Developer and Inova hereby acknowledge that the City has entered into this Agreement in its proprietary capacity and not as a governing authority. Accordingly, the City's execution of this Agreement shall neither constitute nor be deemed to be governmental approval for any actions or interests contemplated herein, including without limitation, for the construction of the Public Infrastructure Improvements, the Offsite CDD Infrastructure or the Private Infrastructure with Public Access, or for any other governmental approval or consent required to be obtained by Developer and Inova. Whenever in this Agreement the City is required to join in, consent, give its approval, or otherwise act under this Agreement, it is understood that such obligations are meant to apply to the City acting in its proprietary capacity and not in its capacity as a governing authority. Further, Developer and Inova hereby acknowledge that any and all decisions, determinations, consents, notifications or any other actions taken or to be taken by the City pursuant to this Agreement, whether or not specifically contemplated hereunder, may be taken by the City Manager or by another City official or body pursuant to any means, mechanism or process as determined by the City in its sole discretion, and Developer and Inova shall have no right to question or challenge the propriety, authority or legality

of any such City official or body, or means, mechanism or process by which any such decision, determination, consent, notification, or other action is taken or to be taken hereunder by the City. Notwithstanding the foregoing, nothing in this Agreement shall be construed to waive any of the City's powers, rights or obligations as a governing authority or local governing body, whether or not affecting the Inova Site or the Project, including, but not limited to its police power, right to grant or deny permits, right to collect taxes or other fees, or any other power, right or obligation whatsoever but Developer and Inova have not and do not waive their rights to question or challenge the propriety, authority or legality of any such action.

[Signatures and acknowledgments appear on the following pages]

IN WITNESS WHEREOF, the Parties have each executed, or caused to be duly executed, this Agreement under seal in duplicate, in the name and behalf of each of them (acting individually or by their respective officers or appropriate legal representatives, as the case may be, thereunto duly authorized) as of the day and year first written above.

CITY

Approved as to form:

**THE CITY OF ALEXANDRIA,
VIRGINIA**, a body politic of the
Commonwealth of Virginia

Name:
Title:

By: _____
Name:
Title:

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA
CITY OF ALEXANDRIA

On this the ____ day of _____, 20__, before me, personally appeared _____, who acknowledged himself to be the _____ in the above instrument, and that he, as _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the City of Alexandria, Virginia, a body corporate and politic of the Commonwealth of Virginia, by himself as the _____.

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

Notary Public

My Commission Expires: _____

DEVELOPER

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

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF MARYLAND
COUNTY OF MONTGOMERY

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

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

Notary Public

My Commission Expires: _____

INOVA

INOVA HEALTH CARE SERVICES, a Virginia
non-stock corporation

By: _____
Name:
Title:

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX

On this the ____ day of _____, 20__, before me, personally appeared _____, who acknowledged himself to be the _____ in the above instrument, and that he, as _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Inova Health Care Services, _____, by himself as the _____.

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

Notary Public

My Commission Expires: _____