

**SUBLEASE**

**Braddock Glen PACE Adult Day Health Care Center**

THIS SUBLEASE (hereinafter referred to as the "Lease") is made as of the \_\_\_ day of May, 2011 ("Effective Date") by and between (i) the **Board of Supervisors of Fairfax County, Virginia**, a body corporate and politic having an address at 12000 Government Center Parkway, Fairfax, Virginia 22035 ("Fairfax"), and (ii) **Inova Health Care Services**, a Virginia non-stock corporation organized and existing under the laws of Virginia, having an address at 8110 Gatehouse Road, Suite 200, East Tower, Falls Church, Virginia 22042 ("Inova").

**RECITALS**

**R-1** Fairfax holds a leasehold interest in a portion of a building located at 4027-B Olley Lane, Fairfax County, Virginia, such portion consisting of approximately 9,510 square feet ("Premises") pursuant to a lease agreement with the Fairfax County Redevelopment and Housing Authority, dated August 4, 2006 ("Prime Lease") as such Premises more particularly described on Exhibit A, attached hereto.

**R-2** The Premises are adjacent to a 60-unit assisted living rental facility with kitchen (the "Assisted Living Facility"), which facility is contained in the same building in which the Premises are located.

**R-3** Fairfax currently operates an adult day care center program at the Premises ("County Adult Day Care Program").

**R-4** Fairfax desires to sublease to Inova the Premises for the construction, operation and maintenance of the County Adult Day Care Program at absolutely no cost to Fairfax, with

the understanding that Inova shall gradually transition the services at the Premises to a Medicaid-funded program commonly referred to as PACE (an acronym for Program of All-inclusive Care for the Elderly) administered by the Virginia Department of Medical Assistance Services (the "PACE Program").

**R-5** The parties desire to set forth in this Lease the terms under which Inova operate the County Adult Day Care Program and the PACE Program, including, but not limited to, rights, restrictions and obligations with respect to the development, construction and operation of the improvements to the Premises.

**NOW, THEREFORE**, Fairfax, for and in consideration of the rents and additional rents hereinafter reserved, and the covenants and agreements hereinafter set forth, by these presents, does DEMISE AND LEASE unto Inova and Inova does hereby lease from Fairfax, the Premises as more particularly described on Exhibit A.

TO HAVE AND TO HOLD the Premises on the terms and conditions set forth herein. The foregoing demise is made subject to the following:

- (a) All restrictions, regulations and statutes, and amendments and additions thereto of any and all federal, state and County authorities having jurisdiction thereof;
- (b) All covenants, restrictions, easements, reservations and agreements recorded prior to the date of execution of this Lease against the Premises;
- (c) Any state of facts which an accurate survey may show;
- (d) Applicable building restrictions and regulations, zoning ordinances and regulations and any amendments thereto now or hereafter in force and effect;
- (e) The lien of all taxes, assessments, water charges and sewer rents, if any, that have not become due and payable prior to the Effective Date of this Lease;

(f) The condition and state of repair of the Premises as the same may be on the Effective Date, including all deterioration, injury, loss, damage or destruction which may have occurred prior to such date; and

The terms and conditions of the Prime Lease.

## **ARTICLE I Term of the Lease**

**Section 1.01. Initial Term.** The initial term of the Lease (“Initial Term”) shall be for a period commencing on the Effective Date, and terminating at midnight on the date which is the last day of the month which occurs three (3) years after the Effective Date (the “Expiration Date”). (The period from the Effective Date to the first anniversary of the last day of the month in which the Effective Date occurs shall be the first “Lease Year,” and each succeeding one (1) year period during the Term commencing with the first day of the following month shall be a “Lease Year.”)

**Section 1.02. Option to Renew for First Additional Term.** Inova shall have the option to renew this Lease for an additional period of one (1) year (the “First Additional Term”) after the Initial Term, at Fair Market Rental, which option shall be exercised by Inova giving notice to Fairfax of Inova’s exercise at least six (6) months prior to expiration of the Initial Term, in which event the Lease shall be extended to include the First Additional Term.

**Section 1.03. Option to Renew for Second Additional Term.** If Inova exercises the option to renew this Lease for the First Additional Term, Inova shall have the option to renew this Lease for an additional period of one (1) year (the “Second Additional Term”) after the expiration of the First Additional Term, at Fair Market Rental, which option shall be exercised by Inova giving notice to Fairfax of Inova’s exercise at least six (6) months prior to expiration of

the First Additional Term, in which event the Lease shall be extended to include the Second Additional Term.

**Section 1.04. Term.** The Initial Term, as it may be extended by the First Additional Term and, if applicable, the Second Additional Term shall be referred to herein as the “Term” of the Lease.)

**Section 1.05. Fair Market Rental.** As used herein, “Fair Market Rental” means the rental terms that a willing operator of facility comparable to the facility on the Premises and a willing lessor-owner of the Premises would ordinarily agree to, for a one (1)-year term, given the use and benefits of this Lease and current market conditions, including all completed improvements thereon as shall exist at the time Fair Market Rental is determined.. In determining Fair Market Rental, the amounts paid by operators of comparable facilities, shall be taken into account and the then rent under this Lease shall not be taken into account.

**Section 1.06. Determination of Fair Market Rental.** Unless Inova has previously given notice to Fairfax that it has waived its right to exercise its option to renew pursuant to Section 1.02 and Section 1.03, Fairfax and Inova shall in good faith seek to determine the Fair Market Rental by the date that is five (5) months prior to the expiration of the Initial Term, or the First Additional Term, if applicable. If the parties have failed to reach agreement on Fair Market Rental by such date, then either party may require that the provisions of Section 1.07 below be followed by giving notice to the other (an “Appraisal Notice”).

**Section 1.07. Three Appraiser Process.** If either party gives the other an Appraisal Notice, then each party shall appoint, within twenty (20) days after the giving of such Appraisal Notice, at its own expense, an M.A.I. or comparably qualified appraiser, experienced in Northern Virginia properties and knowledgeable in comparable income producing property rentals. These

appointees shall appoint a third person with the same qualifications ten (10) days after the giving of such Appraisal Notice. The cost of the third appointee shall be borne equally by Fairfax and Inova. Fairfax's and Inova's appointees shall each determine the Fair Market Rental for the Premises for the First Additional Term, and if applicable, for the Second Additional Term and provide written reports indicating the basis for their determination within forty-five (45) days after the giving of the Appraisal Notice. The third appointee shall then select, within twenty (20) days after the giving of the Appraisal Notice, the Fair Market Rental proposed by Fairfax's and Inova's appointees that in the third appointee's judgment most closely approximates Fair Market Rental. This selection of the third appointee shall become binding on Fairfax and Inova as the Fair Market Rental for the First Additional Term and, if applicable, the Second Additional Term. Notwithstanding the foregoing, at any time within ten (10) days after Inova's receipt of the written determination of Fair Market Rental by the third appointee, Inova may give notice to Fairfax that it is withdrawing its exercise of the renewal option ("Withdrawal Notice"), in which event this Lease shall not be renewed and shall terminate upon expiration of the Initial Term, or, if applicable, the First Additional Term; provided however that if the date of Inova's Withdrawal Notice is less than six (6) months prior to the expiration of the Term, at the option of Fairfax, Inova will continue to operate the PACE Program in accordance with the provisions of this Lease for an additional period of time beyond the Initial Term or, if applicable the First Additional Term, terminating six (6) months after the Withdrawal Notice, at the same rental then in effect.

**Section 1.08. Reversion of Improvements.** Upon expiration or earlier termination of this Lease, Inova's leasehold interest in the Premises shall terminate and the Improvements (as defined in ARTICLE III hereof) shall become the property of Fairfax, provided, however, that at

the election of Fairfax, Inova shall be responsible at its own cost and expense to remove the Improvements described on Exhibit B, and that portion of the Premises shall be restored by Inova to their condition as of the Effective Date (the "Removal and Restoration"); provided, however, that Fairfax will reimburse Inova for Fifty percent (50%) of the actual costs paid by Inova to third party contractors for the Removal and Restoration following receipt by Fairfax of proper invoices and supporting documentation.

## **ARTICLE II Condition of Premises**

**Section 2.01. As Is.** Inova agrees to accept the Premises in their "as is" condition. Inova also represents that it has made such investigations of title for the estate granted herein and the physical condition and development prospects of the Premises as Inova deems prudent and Inova is fully satisfied with the condition of title of the Premises held by Fairfax and the physical condition and development prospects of the Premises. Inova also acknowledges that it has determined that the utilities that are available at the Premises (the "Existing Utilities") are sufficient for Inova's intended use of the Premises. Inova further acknowledges that Fairfax has not made any representations as to such physical condition or as to any other matter or thing affecting or relating to the Premises, including Fairfax's title thereto, except as may herein be expressly set forth.

## **ARTICLE III Use of Premises**

**Section 3.01. Use Generally; Environmental.** Inova shall use the Premises for the construction, operation and maintenance of the County Adult Day Care Program and the PACE Program. Inova shall reconfigure approximately 2,500 square feet of space in the existing facility to accommodate PACE services on site. To that end, Inova shall renovate the Premises in

accordance with the Construction Drawings dated March 5, 2011, as amended on April 1, 2011, a copy which Inova and Fairfax have signed and which are hereby deemed incorporated herein by reference (the "Approved Construction Drawings"). Inova shall cause the renovations (the "Renovations") as described on the Approved Construction Drawings to be completed by no later than \_\_\_\_\_, including two observation rooms, a nurses' station, exam room, medications room, and laundry room. The existing arts and crafts suite will be outfitted with equipment to serve as the rehabilitation gym. In addition, the Renovations shall include several spaces on the Premises that will be set up for the use of PACE staff as offices and support. Existing materials and finishes in the center will be matched in areas directly contiguous to new work. The existing improvements on the Premises, as modified by the Renovations, shall be referred to herein as the "Improvements." Inova shall not use or occupy, or permit or suffer the Premises, the Improvements, or any part thereof to be used or occupied (i) for any unlawful or illegal business, use or purpose, (ii) for any business, use or purpose involving or producing any "hazardous substance" as defined in 42 U.S.C. § 9601(14) or any successor thereto (except for reasonable amounts of solutions, fuels and other chemicals customarily used to maintain or operate facilities such as the Improvements as permitted by law and as used and disposed of in accordance with law), (iii) in any manner that constitutes a nuisance, (iv) for any purpose or in any way in violation of any certificate of occupancy, or of any applicable insurance policies reasonably required to be maintained by Inova under this Lease, or (v) for any purpose or in any way in material violation of any applicable governmental laws, ordinances, orders, directives, rules or regulations. Inova shall defend (using counsel reasonably acceptable to Fairfax), indemnify and hold Fairfax harmless from and against all costs, expenses, liabilities, losses, damages, injunctions, suits, fines, penalties, claims and demands, including reasonable attorneys'

fees (including the value of legal services if provided by the County Attorney's Office), arising out of, by reason of, or on account of, any violation of or default in the covenants of this Lease.

**Section 3.02. Operating Permits.** Inova shall, at its cost, obtain and observe and comply with all conditions and requirements necessary to preserve and/or extend any and all governmental permits that are necessary for the operation of the Improvements for the PACE Program and the County Adult Day Care Program during the Term.

**Section 3.03. Cooperation with Assisted Living Facility.** Inova acknowledges that the Premises are adjacent to the Assisted Living Facility and that Inova's operations must be conducted in a manner that will in no manner cause any disruption or damage to the operation of the Assisted Living Facility. Inova hereby agrees to indemnify Fairfax, the Fairfax County Redevelopment and Housing Authority, the operator and residents of the Assisted Living Facility and anyone claiming by or through any of the foregoing for any claims, loss or damages resulting from interference with or damage to the Assisted Living Facility or its residents and guests as a result of action by Inova or Inova's agents, employees, clients or invitees.

#### **ARTICLE IV Construction of the Improvements**

**Section 4.01. Agreement to Construct.** Inova shall cause to be constructed and erected on the Premises in good workmanlike fashion the Renovations in compliance with the Approved Construction Drawings and all the terms and conditions of this Lease. All major construction work shall be done during evenings and weekends in a manner that will not in any material manner interfere with the Assisted Living Facility or the general operations at the Premises by Inova of the County Adult Day Care Program; provided, however, that certain construction may

be performed during workday hours to the extent it does not cause significant disruption to ongoing services at the Premises or in the Assisted Living Facility.

**Section 4.02. Disputes.** In case of disagreement with respect to material compliance with the Approved Construction Drawings or the quality of the work, Fairfax shall advise Inova in writing of the material deficiency claimed. If the claimed deficiency is not cured by Inova within ten (10) days (or such longer period as may be reasonably necessary provided Inova has begun to commence curing within ten (10) days and diligently pursues the completion of the curing thereafter), Inova shall be deemed in material default hereunder and Fairfax may exercise such remedies as are available to it hereunder or at law or in equity.

**Section 4.03. Ownership of Project Documents.** Inova shall retain ownership of any and all master project documents including the Approved Construction Drawings and any plans and specifications relating to the Renovations (collectively, the "Project Documents") provided, however, that copies of all such Project Documents shall promptly be turned over to Fairfax. Upon expiration or earlier termination of this Lease, Inova shall be deemed to have and does hereby assign to Fairfax its interest in the Project Documents. Inova hereby agrees to obtain the consent of any architect or engineer to Fairfax's rights under this Section. Upon completion of construction, Inova shall cause as-built plans to be delivered to Fairfax.

**Section 4.04. Financing.** Inova shall use its own private financing to fund the construction of the Renovations.

**Section 4.05. No Discrimination.** Inova shall not discriminate against any prospective contractor based upon race, sex, religion or national origin.

**ARTICLE V**  
**Requirements of PACE Program**

**Section 5.01. General Requirements.** Inova shall operate the Premises initially as an adult day health care center for residents of Fairfax County, at absolutely no cost to Fairfax. Inova shall provide adult day health care services to clients of Fairfax who are currently participating in the Braddock Glen Adult Day Health Care Center program at the Premises. These clients shall continue to receive services at their current level for as long as they remain eligible. Inova shall gradually transition the services at the Premises to a Medicare-Medicaid-funded program commonly referred to as PACE. The PACE Program will be operated in strict compliance with all applicable governmental requirements, including all licensure guidelines. In addition to providing adult day health care services, Inova shall provide transportation to and from the Premises at a fee equal to the Fairfax-FASTRAN transportation fee schedule and shall charge County Adult Day Health Care participants at the fee scale. All services provided shall be in strict accordance with all governmental rules and regulations, including without limitation the Standards and Regulations for Licensed Adult Day Care Center as promulgated by Virginia Department of Social Services, Division of Licensing Programs, as the same may be modified and amended from time to time (“Licensed Adult Day Care Centers Regulations”). In addition, Inova shall be required to comply with all of the terms of that certain contract Number \_\_\_ for adult \_\_\_ health services dated as of even date herewith, between Fairfax and Inova.

**Section 5.02. Reciprocal Parking.** Fairfax agrees that Inova and persons using the Premises may share parking on the site with the Assisted Living Facility.

**Section 5.03. No Alcohol.** Inova shall not serve, sell, or permit use of alcoholic beverages on the Premises.

**Section 5.04. No Discrimination.** Inova shall not discriminate against any prospective employee or independent contractor based upon race, sex, religion, age or national origin.

**Section 5.05. Management.**

(a) Inova shall provide competent management of the Improvements to the reasonable satisfaction of the County Executive of Fairfax. If Fairfax believes that Inova is failing to provide “competent management,” Fairfax shall so give notice to Inova and Inova and Fairfax shall in good faith negotiate to achieve a mutually acceptable management solution. All communications regarding operation of the Premises between Inova and Fairfax shall be with a designated member of the County Executive’s staff. Fairfax shall notify Inova of any subsequent changes of the designated member of the County Executive’s staff. Inova shall establish and administer the controls necessary to:

- (i) Operate the Improvements in a fiscally responsible;
- (ii) Ensure that management staff be reputable and have successful experience in the operations and management of adult day care health facilities;
- (iii) Ensure that staff are trained in a manner that emphasizes service to the citizens of Fairfax County and that an adequate number of staff shall be trained in appropriate safety and emergency management techniques, including first aid, CPR, and AED to ensure the safety of the user public during all operating hours.

(b) Inova shall maintain an adequate and proper staff and discharge any employees whose conduct or activity shall be detrimental to the interests of the public patronizing the Improvements.

**ARTICLE VI**  
**Rent**

**Section 6.01. Base Rent during Initial Term.** Inova covenants and agrees to pay to Fairfax, promptly when due, without notice or demand and without deduction or setoff of any amount for any reason whatsoever, as rent for the Premises (“Base Rent”) the amount of One

Dollar (\$1.00) per year, payable in advance on the first day of each Lease Year during the Initial Term of three (3) Lease Years.

**Section 6.02. Base Rent during First Additional Term and Second Additional Term.**

If Inova exercises the First Additional Term, Inova covenants and agrees to pay to Fairfax, promptly when due, without notice or demand and without deduction or setoff of any amount for any reason whatsoever, as rent for the Premises, Base Rent in the amount of Fair Market Rental as determined in accordance with Article I of this Lease, on the first day of the month during the First Additional Term. If Inova exercises the Second Additional Term, Inova covenants and agrees to pay to Fairfax, promptly when due, without notice or demand and without deduction or setoff of any amount for any reason whatsoever, as rent for the Premises, Base Rent in the amount of Fair Market Rental as determined in accordance with ARTICLE I of this Lease, on the first day of the month during the Second Additional Term.

**Section 6.03. Place of Payment.** All amounts payable under this ARTICLE VI, as well as all other amounts payable by Inova to Fairfax under the terms of this Lease, shall be paid at the office of the Facilities Management Department of Fairfax, 12000 Government Center Parkway, Suite 424, Fairfax, Virginia 22035, Attention: Leasing Department, or at such other places as Fairfax shall from time to time designate by notice to Inova, in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment.

**Section 6.04. Landlord-Tenant Relationship.** Fairfax's relationship with Inova shall be deemed one of landlord-tenant and no inference that Fairfax is a partner, joint venturer, shareholder, member of Inova, or has any relationship other than that of landlord-tenant shall be drawn from this Lease.

**ARTICLE VII**  
**Additional Rent**

**Section 7.01. Duty to Pay.** In addition to Base Rent, Inova shall also pay without notice or demand and without abatement, deduction or setoff (except as may be expressly provided for herein), all Impositions (as provided in Section 8.01) and all other sums of money required to be paid by Inova under the terms of this Lease ("Additional Rent"). (Base Rent and Additional Rent are collectively herein referred to as "Rent.") In the event of any non-payment of all or any part of Additional Rent, when due, Fairfax shall have, at its option, (i) the right to pay the same as provided herein (and subject to the grace periods provided with respect thereto), or (ii) after notice to Inova and expiration of all applicable cure periods, all other rights and remedies provided for hereunder, or by law, for the non-payment of rent or for the breach of a covenant or condition.

**Section 7.02. Default Interest.** In the event Tenant fails to pay any Additional Rent when due and payable, such Additional Rent shall bear interest at the rate of 400 basis points above the Prime Rate from time to time published in the *Wall Street Journal* ("Default Rate") from the date that all applicable notice and cure periods in respect of the failure to timely pay such Additional Rent have expired.

**ARTICLE VIII**  
**Impositions and Other Charges**

**Section 8.01. Duty to Pay.** Inova agrees that it will pay and discharge, as and when due all Impositions. The term "Impositions" means all taxes, assessments, water and sewer charges, charges for public utilities, excises, levies, licenses, business licenses, personal property taxes, permit fees and other charges that shall or may be assessed, levied or imposed during the Term by any governmental authorities upon the Premises or any part thereof, including the

buildings or improvements now or hereafter located thereon; provided, however, that the term Impositions shall not include any income tax, capital levy, estate, succession, inheritance, transfer or similar taxes of Fairfax or any franchise tax imposed upon Fairfax, or any income, profits or revenue tax, assessment or charge imposed upon the rent or other benefit received by Fairfax under this Lease by any governmental authorities.

**Section 8.02. Proration.** Any Impositions relating to a fiscal period of the taxing authority that (i) falls in part before the commencement of the Term and in part within the Term; or (ii) falls in part within the Term and in part subsequent to the Term, shall, whether or not such Impositions shall be assessed, levied, imposed or become a lien upon the Premises or the Improvements, or shall become payable, during the Term, be apportioned and adjusted between Fairfax and Inova, as of the Effective Date and the last day of the Term, so that Inova shall pay that proportion of such Impositions which that part of such fiscal period falling within the Term bears to such fiscal period, and Fairfax shall be responsible for the remainder thereof, if any.

**Section 8.03. Receipts.** Inova covenants to furnish to Fairfax if requested by Fairfax, within ten (10) days after the last date when any Imposition must be paid by Inova as provided in this ARTICLE VIII, official receipts, if such receipts are then available to Inova, of the appropriate taxing authority, or other proof satisfactory to Fairfax, evidencing the payment thereof.

**Section 8.04. Fairfax's Right to Pay.** If Inova shall fail to pay any Impositions as in this ARTICLE VIII are required to be paid, after the same shall become due and payable (and Inova is not contesting the same in the manner approved hereunder), and at least ten (10) days prior to the expiration of any grace period allowed by law or by the governmental authority imposing such Impositions, Fairfax shall have the right, at its option upon at least three (3) days

notice to Inova, to pay the same with all interest and penalties thereon. As provided in ARTICLE VII, the amount so paid shall constitute Additional Rent, and shall bear interest from the date of such payment at the Default Rate. Such Additional Rent shall be due and payable by Inova on the fifteenth (15<sup>th</sup>) day of the month following the month in which payment by Fairfax was made.

## **ARTICLE IX Insurance**

**Section 9.01. Liability for Damage to Personal Property and Person.** All personal property of the Inova (including its employees, business invitees, customers, clients, etc.), agents, family members, guests or trespassers, in and on the Premises, shall be and remain at the sole risk of Inova, and Fairfax shall not be liable to them for any damage to, or loss of such personal property arising from any act of any other persons nor from the leaking of the roof, or from the bursting, leaking or overflowing of water, sewer or steam pipes, or from heating or plumbing fixtures, or from electrical wires or fixtures, or from air-conditioning failure. Fairfax shall not be liable for any personal injury to Inova (including its employees, business invitees, customers and clients), arising from the use, occupancy and condition of the Premises.

**Section 9.02. Liability Insurance.** During the Lease Term, Inova will maintain a policy of commercial general liability insurance insuring Fairfax and Inova against liability arising out of the ownership, use, occupancy or maintenance of the Premises. This insurance will be deemed sufficient if provided by Inova's self insurance carrier, InovaCap. If Inova elects not to provide such self insurance, it shall provide the insurance as described in the remainder of this Section 9.02. The insurance will be for not less than \$1,000,000 for bodily or personal injury to or death of one person in any one accident or occurrence and for not less than \$2,000,000 for bodily injury or personal injury to or death of more than one person in any one accident or

occurrence. The insurance shall insure Fairfax and Inova against liability for property damage of at least \$2,000,000. The limits of the insurance will not limit the liability of Inova. Inova will not do anything or permit anything to be done or any hazardous condition to exist ("Increased Risk") which shall invalidate or cause the cancellation of the insurance policies carried by Inova. If Inova does or permits any Increased Risk which causes an increase in the cost of insurance policies then Inova shall reimburse Fairfax for additional premiums attributable to any act, omission or operation of Inova causing the increase in the premiums. Payment of additional premiums will not excuse Inova from terminating or removing the Increased Risk unless Fairfax agrees in writing. Absent agreement, Inova shall promptly terminate or remove the Increased Risk. Fairfax, its officers, employees and volunteers, shall be named as an "additional insured" on the General Liability policy and it shall be stated on the Insurance Certificate with the provision that this coverage "is primary to all other coverage Fairfax may possess." If an "ACORD" Insurance Certificate form is used by Inova's insurance agent, the words, "endeavor to" and ". . . but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted or crossed out.

**Section 9.03. Indemnify.** Inova hereby agrees to indemnify and hold harmless the Board of Supervisors of Fairfax County, Virginia, its officers, employees, volunteers and agents, from any and all claims for bodily injuries and personal injuries, death or property damage, including cost or investigation, all expenses of litigation, including reasonable attorney fees (including the value of legal services if provided by the County Attorney's Office) and the cost of appeals arising out of any claims or suits because of Inova, including his agents, servants, employees, volunteers, business invitees, customers, guests or trespassers arising from the use, occupancy and condition of the Premises. Inova hereby agrees to indemnify and hold harmless the Board of

Supervisors of Fairfax County, Virginia, and the Fairfax County Redevelopment and Housing Authority, and their officers, employees, volunteers and agents, from any and all claims for bodily injuries and personal injuries, death or property damage, including cost or investigation, all expenses of litigation, including reasonable attorney fees (including the value of legal services if provided by the County Attorney's Office) and the cost of appeals arising out of any claims or suits because of Inova, including his agents, servants, employees, volunteers, business invitees, customers, guests or trespassers arising from the use, occupancy and condition of the Premises.

**Section 9.04. Builder's Insurance.** At all times during the Term when Inova is engaged in the construction of the renovations or reconstruction of the Improvements, or repairs thereof, at its own cost and expense, Inova shall provide and keep in force for the benefit of Fairfax, "all risk" builders risk insurance on the Renovations and other improvements on the Premises under construction. Such insurance shall be in the amount of one hundred percent (100%) of the insurable value of the construction contract with respect thereto. Such insurable value shall reflect any increases to such contract amount through change orders. The policy shall be in Builder's Risk Completed Value forms, including the following:

- (a) Policies shall be written to include the names of Inova and Fairfax "as their interest may appear";
- (b) All insurance shall be in effect on or before the date when construction work is to commence; and
- (c) All insurance shall be maintained in full force and effect until the Renovations are fully completed.

**Section 9.05. Worker's Compensation Insurance.** At all times during the Term, at its own cost and expense, Inova shall purchase and keep in force worker's compensation insurance and employer's liability insurance for all employees of Inova in limits of not less than \$100,000

to protect the Inova from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.

**Section 9.06. Requirements.** All of the policies of insurance required by this Lease (except with regard to Inova's self insurance carrier, InovaCap, as described in Section 9.02) shall be (i) underwritten only by companies licensed in the Commonwealth of Virginia which have a then current Alfred M. Best Company, Inc. (or if it no longer exists, a then comparable rating service) general policyholder's rating of B+ or better (or the equivalent thereof) and a financial rating of VI or better (or the equivalent thereof), (iii) accompanied by evidence of payment of premiums thereon to the insurance companies or their agents, including evidence of current annual payment, if on an installment payment basis; (iv) contain standard waiver of subrogation clauses (builder's risk and property policies only); and (v) provide that they may not be cancelled by the insurer for non-payment of premiums or otherwise until at least forty-five (45) days after a receipt of the proposed cancellation, and in any event shall not be invalidated, as to the interests of Inova therein, by any act, omission or neglect of Inova (other than nonpayment of premiums), which might otherwise result in a forfeiture or suspension of such insurance, including without limitation, the occupation or use of the Premises or the Improvements for purposes more hazardous than those permitted by the terms of the policy, any foreclosure of any leasehold deed of trust and any change in title or ownership of the Premises or the Improvements. If requested by Fairfax, copies of all insurance policies required by this Lease shall be delivered by Inova to Fairfax. All insurance policies shall be renewed by Inova and proof of such renewals, accompanied by evidence of the payment of the premiums thereon to the insurance companies or

their agents, shall be delivered to Fairfax, at least twenty (20) days prior to their respective expiration dates.

**Section 9.07. Compliance Through Contractors and Subcontractors.** Compliance by contractors and subcontractors with the foregoing requirements as to carrying insurance shall not relieve Inova of its obligations under this Lease.

**Section 9.08. Fairfax's Right to Pay Premiums.** If Inova fails to obtain and maintain insurance as in this Lease provided, Fairfax may, but shall not be obligated to, effect and maintain any such insurance coverage and pay premiums therefor. As provided in ARTICLE VII, all premiums so paid by Fairfax shall constitute Additional Rent and shall bear interest at the Default Rate from the date of such payment by Fairfax. Such Additional Rent shall be payable by Inova to Fairfax by the fifteenth (15<sup>th</sup>) day of the month following the month in which payment therefor is made by Fairfax. In addition thereto, Fairfax may recover from Inova, and Inova covenants and agrees to pay as Additional Rent to Fairfax, any and all damages which Fairfax may have sustained by reason of the failure of Inova to obtain and maintain such insurance, it being expressly declared that any damages of Fairfax shall not be limited to the amount of premiums thereon. Inova shall make payment to Fairfax by the fifteenth (15<sup>th</sup>) day of the month following the month in which any payments were made by Fairfax or in which the amount of such damage was determined. The payment by Fairfax of premiums for any such insurance policy shall not be, or be deemed to be, a waiver or release of the default of Inova with respect thereto or the right of Fairfax to pursue any other remedy permitted hereunder or by law as in the case of any other default hereunder or of default in the payment of Rent.

**ARTICLE X**  
**Applicable Laws and Regulations**

**Section 10.01. Compliance.** Throughout the Term hereof Inova shall, at its own cost and expense, observe and comply with all applicable county, state and federal governmental laws, ordinances and regulations, including without limitation all licensure requirements required to operate the County Adult Day Care Program and the PACE Program.

**ARTICLE XI**  
**Repairs and Maintenance**

**Section 11.01. Generally.** Throughout the Term, Inova shall, without any cost or expense to Fairfax: (i) take good care of and keep in good order and repair, or cause the same to be done, inside and out, of the Premises, including, but not limited to, all necessary non-structure repairs and replacements, interior and exterior, ordinary and extraordinary, including but not limited to, windows, glass and plate glass, doors, entryways, walls and finish work, floors and floor covering, heating and air conditioning systems, and termite and pest extermination, (ii) promptly pay or cause the payment of the expense of such repairs; (iii) not cause or permit any waste to the Premises; (vi) give prompt written notice to Fairfax of any fire or other casualty that may occur, (iv) permit Fairfax to enter the Improvements, the Premises, or any part thereof, after appropriate notice to Inova under the circumstances as contemplated hereunder (which may be contemporaneous with Fairfax's entry in case of an emergency) to make repairs to the Improvements, to restore the same after damage or destruction by fire or other casualty or by partial condemnation, to complete repairs commenced but not completed by Inova, to repair, at or before the end of the Term, all injury done by the installation or removal of Inova's furniture, trade fixtures and property, and/or to comply with all orders and requirements of any governmental authority applicable to the Improvements and to any

occupation thereof, where, in Fairfax's reasonable judgment, such entry is necessary to prevent waste, physical deterioration, safety hazards and/or other circumstances that threaten the value of the property when Inova is in default of its covenants and obligations herein with respect to any of the foregoing matters.

**Section 11.02. Specific Maintenance Obligations.** Without limitation, Inova's obligations for maintenance of the Premises shall include all maintenance as required by the Licensed Adult Day Care Centers Regulations. In addition, Inova shall comply with the maintenance requirements as set forth on Exhibit C attached hereto. When used in this Lease, the term "repairs" shall include routine maintenance, replacements, restoration and/or renewals when necessary, as well as painting and decorating. The parties contemplate that Inova may, from time to time, enter into a contract with Fairfax to provide some of this maintenance work.

If Fairfax determines in its reasonable judgment that the Improvements are not being maintained in accordance with the terms as set forth herein, Fairfax shall give written notice thereof to Inova. A designee by the County Executive of Fairfax shall meet with Inova during the period ("Discussion Period") of ten (10) days following the date of such notice, or such shorter time as Fairfax shall reasonably deem necessary in the case of exigent circumstances, to discuss in good faith maintenance needs for the Improvements.

All maintenance reasonably required by Fairfax for Inova to perform in accordance with the terms of this Lease shall be commenced no later than five (5) days after the expiration of the Discussion Period and completed within fifteen (15) days thereafter, unless Fairfax approves in writing a request from Inova for an enlarged time period for completion. Fairfax shall not unreasonably withhold delay or condition extensions for the specified time requested if Inova is proceeding with diligence in its efforts to correct the maintenance deficiency. If Inova shall fail

to perform its maintenance obligations required hereunder after notice thereof and a reasonable opportunity to cure as described hereinabove, Fairfax, in addition to all other available remedies, may, but shall not be obligated, to enter upon the Premises and perform such failed maintenance obligations of Inova after notice thereof to Inova, using any equipment or materials on the Premises suitable for such purpose. Inova shall, on demand, reimburse Fairfax for its actual costs so incurred, which shall be Additional Rent hereunder.

**Section 11.03. Right of Entry.** Inova shall permit Fairfax and/or its authorized representative to enter the Premises and the Improvements during normal business hours except in the case of an emergency for the purpose of inspecting the same. Nothing in this Lease shall imply any duty or obligation upon the part of Fairfax to do any work or to make any alterations, repairs, additions or improvements of any kind whatsoever to the Premises or to the Improvements, except as otherwise provided in the event of a fire or other casualty or as otherwise provided in Section 11.04 below. The performance thereof by Fairfax shall not constitute a waiver of Inova's default in failing to perform the same.

**Section 11.04. Fairfax's Responsibilities.** Fairfax shall at its own cost and expense, maintain the roof, walls and foundation of the building in which the Premises are located unless such repairs are required due to the negligence or willful act of Inova, or any party claiming by or through Inova, or their agents, employees, clients or invitees, in which event such repairs or replacements shall be paid by Inova. If the repairs or replacements are due to the joint misconduct of Inova and Fairfax, then such costs shall be borne by the parties in accordance with their proportionate share of the misconduct. While it is Inova's responsibility to maintain and service the heating and air conditioning system and equipment in accordance with Sections 11.01 and 11.02, it shall be Fairfax's responsibility to replace the heating and air conditioning system

and other equipment if it is no longer commercially reasonable for such system or equipment to be repaired or serviced.

**ARTICLE XII**  
**Public Utilities and Services**

**Section 12.01. Utility Services Provided by Fairfax.** Inova has inspected the Existing Utilities that are available at the Premises and determined that they are in good working order and that they are sufficient for Inova's intended use of the Premises. Fairfax agrees to continue to make available to Inova the Existing Utilities.

**Section 12.02. Inova's Responsibility for Utility Costs.** Inova agrees to pay or cause to be paid its pro rata share of all the Existing Utilities, including charges for gas, water, sewer, electricity, light, heat, power, steam, air conditioning, telephone or other communication service or other public utility or public service used, rendered or supplied to, upon or in connection with the Premises or the Improvements throughout the Term, and to indemnify Fairfax and hold Fairfax harmless from and against any liability or damages on such account. It is agreed and understood that the Premises are shared with the Assisted Living Facility and that Inova will be billed by Fairfax for a pro rata share of utilities applicable to the entire building, except to the extent that they are individually charged to the Premises. The utility charges applicable to the Premises for Fiscal Year 2010 are identified on Exhibit D and reflect a cost of 25% of the utility charges for the entire building. It is agreed that the pro rata share of utilities charged to the Premises may be adjusted by Fairfax if Fairfax determines in its reasonable judgment that the usage of utilities by Inova is materially greater or lesser than the usage on which the pro rata share was based when determining cost allocations as reflected on Exhibit D.

**ARTICLE XIII**  
**Alterations and Additions**

**Section 13.01. Fairfax's Consent Required.** Inova agrees that it will not (i) demolish the Improvements for the purpose of reconstruction, renovation or otherwise, or (ii) make any material alterations, renovations, additions, changes or substitutions without, in the case of each of the foregoing, the prior written consent of Fairfax, which consent shall not be unreasonably withheld Fairfax determines that such work shall not materially adversely affect the nature of the Premises or the Improvements thereon; provided however that Fairfax shall have a right to condition its consent upon Inova's agreement to restore the Premises to their condition prior to the work requested if Fairfax determines the need for such restoration.

**Section 13.02. Conditions and Requirements of Alterations.** Subject to the limitations contained in the foregoing Section 13.01, Inova may, at any time during the Term of this Lease, at Inova's own cost and expense, make or permit to be made any alteration, change or addition, of, in or to the Premises, including the Improvements, or any part thereof, subject, however, to the following requirements, each of which must be fully observed and performed by Inova before the commencement of any work whatsoever:

(a) At the time of commencement of work, there shall be no existing and unremedied default on the part of Inova, under any of the terms, covenants and conditions herein on the part of Inova to be observed and performed.

(b) The same shall be performed with diligence and in a good and workman-like manner.

(c) Inova shall have delivered to Fairfax detailed plans and specifications and shall have obtained all required approvals of any and all governmental authorities and departments having jurisdiction over the work.

(d) Inova shall not subject the Premises or the Improvements to any charge, liability, claim or lien of any kind or nature whatsoever by reason thereof.

(e) Inova or Inova's contractor shall provide and maintain, at its own cost and expense, full workmen's compensation insurance with respect to such work as well as any other insurance as may then be required by law, and certificates of any such policies shall be delivered to Fairfax on demand.

(f) If under the provisions of any insurance policies required to be provided and maintained hereunder, any consent to such demolition, alteration, change or addition by the insurers therein shall be required to continue and keep such policies in full force and effect, Inova shall obtain such consents and pay any premiums or charges that may be incurred.

(g) Fairfax may inspect the construction and all work and materials thereof in the course of its construction and on its completion, and Inova shall permit Fairfax to examine the plans, drawings and specifications relating thereto or, in the alternative, shall furnish Fairfax with copies of same within five (5) days after receipt of a request therefor. Fairfax shall have the right to object reasonably to any deviation from such plans and specifications as approved and upon receipt of any such notice, Inova shall take such steps as shall be necessary to correct such deviation. Fairfax agrees to use reasonable efforts to avoid impeding the progress of any excavation or construction while performing its rights to inspect hereunder.

(h) Inova shall comply with all applicable requirements of applicable laws, ordinances, rules and regulations of all governmental authorities having jurisdiction thereof, and the construction, when completed, shall comply with all applicable laws and regulations of any and all governmental authorities having jurisdiction thereof.

(i) Inova shall procure at its own expense all necessary permits required for the work. Upon completion, Inova shall deliver to Fairfax a set of "as built" plans for the work if such plans exist, which "as built" plans the parties shall sign.

(j) Inova shall pay and discharge all costs, expenses, damages and other liabilities which may arise in connection with or by reason of such demolition, alteration, change, addition or construction work.

#### **ARTICLE XIV Liens and Encumbrances**

**Section 14.01. No Subordination of Fairfax's Prime Lease Interest.** It is expressly understood and agreed that by entering into this Lease Fairfax is not agreeing to subordinate its rights to Premises as set forth in the Prime Lease.

**Section 14.02. Discharge of Liens.** Inova shall not suffer or permit any liens to stand against the Premises, the Improvements, or any part thereof, by reason of any work, labor, services or materials done for, or supplied to, or claimed to have been done for, or supplied to Inova or anyone holding the Premises, the Improvements, or any part thereof, through or under Inova. If any such lien against the Premises, the Improvements or any part thereof shall at any time be filed, Inova shall cause the same to be discharged within fifteen (15) business days after the date of filing the same, by either payment, deposit, bond or other security reasonably satisfactory to Fairfax. If Inova shall fail to discharge any such lien against the Premises, the Improvements or any part thereof within such period, then, in addition to any other right or remedy of Fairfax, Fairfax may, but shall not be obligated to, procure the discharge of the same after notice to Inova either by deposit in court, by bonding, or by paying the amount claimed to be due. As provided in ARTICLE VII, any amount paid or deposited by Fairfax for any of the aforesaid purposes, and all legal and other expenses of Fairfax, including attorneys' fees

(including the value of legal services if provided by the County Attorney's Office), and all necessary disbursements in connection therewith, in defending any such action or in procuring the discharge of such lien, shall constitute Additional Rent, and shall bear interest from the date of payment or deposit at the Default Rate during the period that such payment or deposit is outstanding. Such Additional Rent shall become due and payable upon demand by Fairfax to Inova, or at the option of Fairfax, shall be payable by Inova to Fairfax by the fifteenth (15<sup>th</sup>) day of the month following the month in which the payment or deposit was made by Fairfax.

**Section 14.03. No Consent to Liens Implied.** Nothing in this Lease shall be deemed to be construed in any way as constituting the consent or request of Fairfax, expressed or implied, by inference or otherwise, to any person, firm or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Premises, the Improvements, or any part thereof, or as giving Inova any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials which might in any way give rise to the right to file any lien against Fairfax's interest in the Premises or in the Improvements. Notwithstanding the foregoing provisions of this Section 14.03, if such lien against the Premises, the Improvements or any part thereof is filed, Inova shall either pay the same and have it discharged of record, or take such action as may be required to legally object to such lien, or to have such lien discharged within fifteen (15) days after the date of filing the same, and in all events to have such liens against the Premises, the Improvements or any part thereof discharged prior to the foreclosure thereof and the imposition of any penalty upon Fairfax.

**ARTICLE XV**  
**Exculpation and Indemnification**

**Section 15.01. Exculpation of Fairfax.** Inova is and shall be in control and possession of the Premises and the Improvements as provided herein, and Fairfax shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in or about the Premises, the Improvements or the appurtenances thereto, or for any injury or damage to the Premises or the Improvements, or to any property, whether belonging to Inova or any other person, caused by any fire, breakage, leakage, defect or bad condition in any part or portion of the Premises or of the Improvements or from steam, gas, electricity, water, rain or snow that may leak into, issue or flow from any part of the Premises or the Improvements from the drains, pipes or plumbing work of the same, or from the street, subsurface or any place or quarter, or due to the use, misuse or abuse of all or any of the hatches, openings, installations, or hallways of any kind whatsoever, or from any kind of injury which may arise from any other cause whatsoever on the Premises or in the Improvements, including defects in construction, latent or otherwise; provided, however, that Inova shall not be responsible for clean up of any “hazardous substances” or “hazardous waste” as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.* (as amended), or “toxic substances” as defined in the Toxic Substance Control Act, 15 U.S.C. § 2601, *et seq.* (as amended), to the extent that such waste or substances were introduced to the Premises (i) by Fairfax, the Fairfax County Redevelopment and Housing Authority, the operator of the Assisted Living Facility, or their agents, contractors or invitees, or (ii) prior to the Effective Date and not as the result of actions by Inova or its agents, employees or independent contractors. The provisions of this Lease permitting Fairfax, after notice, to enter and inspect the Premises and the Improvements are made for the purpose of enabling Fairfax to become informed as to whether

Inova is complying with the agreements, terms, covenants and conditions thereof, but Fairfax is under no obligation to perform such acts as Inova shall fail to perform.

**Section 15.02. Indemnification of Fairfax.** Inova shall indemnify and hold Fairfax harmless from and against all liability, judgments, claims, demands, suits, actions, losses, penalties, fines, damages, costs and expenses, including attorneys' fees (including the value of legal services if provided by the County Attorney's Office), of any kind or nature whatsoever, due to or arising out of or from:

(a) Any breach, violation or nonperformance of any covenant, condition, provision or agreement in this Lease set forth and contained on the part of Inova to be fulfilled, kept, observed and performed, and

(b) Claims of every kind or nature, arising out of the use and occupancy of the Premises and/or the Improvements (and/or the construction, alteration, etc. thereof) by Inova, including without limitation, any damage to property occasioned or arising out of the use and occupancy thereof by Inova, or any injury to any person, including death resulting at any time therefrom, occurring in or about the Premises or the Improvements. Nothing contained in the foregoing shall be deemed to obligate Inova either to indemnify or to waive claims against Fairfax for claims arising because of the negligence or intentional wrongful acts of Fairfax or Fairfax's agents or employees.

## **ARTICLE XVI Inspection and Access**

**Section 16.01. Fairfax's Right.** Inova shall permit Fairfax and its agents to enter the Premises and the Improvements during normal business hours (except in the case of emergency in which event Fairfax may enter at any time Fairfax reasonably deems necessary) at all

reasonable times for the purpose of (i) inspection; (ii) making repairs that Inova has neglected or refused to make in accordance with the agreements, terms, covenants and conditions of this Lease; and (iii) at any time within six (6) months prior to the expiration of the Term, to persons or entities interested in operating on the Premises, the Improvements, or any part thereof. Fairfax shall use reasonable efforts to attempt to notify Inova prior to Fairfax entering the Premises.

## **ARTICLE XVII**

### **Damage and Destruction**

**Section 17.01. Limited Duty to Restore.** Subject to Section 17.03 below, if during the Term the Improvements shall be destroyed or damaged in whole or in part by fire or any other casualty, and it is not reasonably possible to repair such destruction or damage within ninety (90) days, as determined by Fairfax, either party shall be entitled to terminate this Lease by written notice to the other within fifteen (15) days after such destruction. If the Premises can be reasonably repaired within ninety (90) days from the date of damage, as determined by Fairfax, then Fairfax shall be responsible for restoration of Premises to the extent that monies are available from the fire and casualty insurance of Fairfax, subject to the exception for Inova's negligence or willful act as set forth in Section 17.03 below. If the cost of repairs is more than the monies available under the insurance policies of Fairfax, or if Fairfax determines that it is uneconomical or impractical to make such repairs, Fairfax may, at its option, terminate the Lease upon written notice to Inova.

**Section 17.02. Abatement of Rent.** In the event of any damage or destruction to which the above is applicable, Rent shall be proportionally abated for the period from the date of such

damage or destruction until the repair of the Premises, or the termination of this Lease, if sooner, to the extent to which Inova is deprived of normal occupancy of the use of the Premises.

**Section 17.03. Inova's Negligence.** If the Premises are damaged or destroyed by or as a result of the negligent or willful act or omission of Inova, those claiming under Inova, or any of foregoing's respective officers, employees, agents, clients or invitees, (i) no Rent or other charges shall be suspended or apportioned as set forth in Section 17.02 above, and (ii) Inova shall pay to Fairfax upon demand, and after written verification and explanation of the costs, as Additional Rent, the cost of (a) any repairs and restoration made or to be made as a result of such damage, (b) any damage or loss which Fairfax incurs as a result of such damage if Fairfax elects no to restore the Premises and adjoining Assisted Living Facility.

## **ARTICLE XVIII**

### **Condemnation**

#### **Section 18.01. Right to Award.**

(a) If any or all of the Premises are taken by the exercise of any power of eminent domain or are conveyed to or at the direction of any governmental entity under a threat of any such taking (each of which is hereinafter referred to as a "Condemnation"), Fairfax shall be entitled to collect from the condemning authority thereunder the entire amount of any award made in any such proceeding or as consideration for such conveyance, without deduction therefrom for any leasehold or other estate held by Inova under this Lease.

(b) Inova hereby (a) assigns to Fairfax all of Inova's right, title and interest, if any, in and to any such award; (b) waives any right which it may otherwise have in connection with such Condemnation against Fairfax or such condemning authority, to any payment for (i) the value of the then-unexpired portion of the Term, (ii) leasehold damages, and (iii) any damage to or

diminution of the value of Inova's leasehold interest hereunder or any portion of the Premises not covered by such Condemnation; and (c) agrees to execute any and all further documents which may be required to facilitate Fairfax's collection of any and all such awards.

(c) Subject to the operation and effect of the foregoing provisions of this Section 18.01, Inova may seek, in a separate proceeding, a separate award on account of any damages or costs incurred by Inova as a result of such Condemnation, so long as such separate award in no way diminishes any award or payment which Fairfax would otherwise receive as a result of such Condemnation.

**Section 18.02. Effect of Condemnation.**

(a) If (i) all of the Premises are covered by a Condemnation, or (ii) any part of the Premises is covered by a Condemnation and the remainder thereof is insufficient for the reasonable operation therein of Inova's business, or (iii) any of the building in which the Premises are located is covered by a Condemnation and, in Fairfax's reasonable opinion, it would be impractical to restore the remainder thereof, then, in any such event, the Term shall terminate on the date on which possession of so much of the Premises, as is covered by such Condemnation is taken by the condemning authority thereunder, and all Rent (including, by way of example rather than of limitation, any Additional Rent), shall be apportioned and paid to such date.

(b) If there is a Condemnation and the Term does not terminate pursuant to the foregoing provision of this subsection, the operation and effect of this Lease shall be unaffected by such Condemnation, except that the Base Rent shall be reduced in proportion to the square footage of floor area, if any, of the Premises covered by such Condemnation.

(c) If there is a Condemnation, Fairfax shall have no liability to Inova on account of any

(a) interruption of Inova's business upon the Premises, (b) diminution in Inova's ability to use the Premises, or (c) other injury or damage sustained by Inova as a result of such Condemnation.

(d) Except for any separate proceeding brought by Inova under the provisions of Section 18.01(c), Fairfax shall be entitled to conduct any such condemnation proceeding and any settlement thereof free of interference from Inova, and Inova hereby waives any right which it otherwise has to participate therein.

**ARTICLE XIX**  
**No Assignment and Subletting**

**Section 19.01. Consent Required.** Inova shall have no right to sublet or assign this Lease or any part thereof unless Inova shall have received the express prior written consent of Fairfax, which consent may be granted or withheld in the sole and absolute discretion of Fairfax.

**ARTICLE XX**  
**Events of Default**

**Section 20.01. Events of Default.** It shall be deemed an "Event of Default" hereunder if any one or more of the following events shall occur:

(a) Inova shall default in making timely payment to Fairfax of any Rent, Additional Rent or of any money advanced by Fairfax or otherwise collectible as Additional Rent, and the same shall not be paid within five (5) days after Inova receives notice of the delinquency; or

(b) Inova shall fail to pay any tax, assessment, water rent, rate or charge, sewer rent or other governmental imposition, or any other charges or lien against the Premises or the Improvements which Inova is required to pay under this Lease and the same shall not be paid within ten (10) days after Inova receives notice of the delinquency; or

(c) Inova shall default in complying with any other agreement, term, covenant or condition of this Lease and such default in compliance shall continue for a period of thirty (30)

days after notice by Fairfax or such longer period up to thirty (30) additional days as may reasonably be required to commence cure of the default, provided Inova has commenced curing within such thirty (30) days and continues with diligence thereafter to complete the cure; or

(d) This Lease or the estate of Inova hereunder shall be transferred, assigned, or subleased (in a single transaction or a series of related transactions) in violation of the provisions of this Lease; then an Event of Default shall be deemed to have occurred in which case Fairfax may thereafter serve a written notice of cancellation and termination of this Lease, any other notice to quit required hereunder or by law being expressly waived by Inova and Inova shall then quit and surrender to Fairfax the Premises, the Improvements and any other improvements on, under or above the Premises, and Fairfax may enter into or repossess the same, either by force, summary proceedings or otherwise.

**Section 20.02. Effect of Termination.** If this Lease is terminated pursuant to the provisions of Section 20.01 hereof, except to the extent otherwise expressly provided in this Lease, all of the right, title, estate and interest of Inova, (i) in and to the Premises, (ii) in and to the Improvements and other improvements on, under and above the Premises, (iii) in and to equipment, fixtures and machinery therein or upon the Premises and the Improvements and other improvements on, under and above the Premises, and (iv) in and to all insurance policies and all insurance monies paid or payable thereunder, shall terminate and Fairfax, without further action on the part of either party and without cost or charge to Fairfax, shall have unlimited and sole title thereto and ownership thereof, free of any claim thereto by Inova.

**ARTICLE XXI**  
**Remedies of Fairfax**

**Section 21.01. Payment by Fairfax and Reimbursement by Inova.** If an Event of Default shall have occurred with regard to the payment of any Additional Rent, Fairfax may, after the applicable notice to Inova therefor as set forth in Section 20.01, pay the same for the account and at the expense of Inova. If Fairfax shall incur any expenses, including reasonable attorneys' fees (including the value of legal services if provided by the County Attorney's Office), in instituting, prosecuting or defending any action or proceeding instituted by reason of any default by Inova, Inova shall reimburse Fairfax for the amount of such expenses. As provided in 0, should Inova, pursuant to this Lease, become obligated to reimburse or otherwise pay Fairfax one or more sums of money in addition to Rent, the amount thereof shall be deemed Additional Rent and may, at the option of Fairfax, be added to any subsequent installment of Rent due and payable under this Lease, in which event Fairfax shall have the additional remedies for default in the payment thereof provided by ARTICLE XX. The provisions of this Section 21.01 shall survive the termination of this Lease.

**Section 21.02. Injunction.** If an Event of Default shall have occurred, in addition to other rights of Fairfax hereunder, Fairfax shall have the right of injunction to restrain the same and the right to invoke any remedy allowed hereunder by law or in equity, as if specific remedies, indemnity or reimbursement were not herein provided.

**Section 21.02. Right of Entry Upon Termination.** In the event of any termination of this Lease, whether by expiration, forfeiture, cancellation, surrender, operation of law, issuance of a final court order or otherwise, Fairfax may enter the Premises, and enter the Improvements and other improvements on, under or above the Premises, to remove therefrom Inova, its agents, employees, licensees and any sublessees, persons, firms or corporations and all of their

respective property, using such force for that purpose as may be necessary without being liable for prosecution or damages therefor, and thereupon Fairfax shall be entitled to retain possession of the Premises and the Improvements and other improvements on, under or above the Premises with all additions, alterations and improvements thereon and all fixtures owned by Inova (including, but not limited to, HVAC systems, bleachers, lockers, scoreboards and affixed signs) and appurtenances thereto, free from any interest of Inova therein.

**Section 21.04. Waiver of Redemption Rights.** If a judgment is entered for the recovery of possession of the Premises and the Improvements in any action or proceeding, Inova, for itself and for any and all persons claiming through or under Inova, hereby waives any right of redemption provided or permitted by any statute, law or decision now or hereafter in force, and does hereby waive, surrender and give up all rights or privileges which it or they may or might have, under and by reason of any present or future law or decision, to redeem the Premises and the Improvements or for a continuation of this Lease for the Term hereby demised after having been dispossessed or ejected therefrom by process of law or otherwise.

**Section 21.05. Rights After Termination.** No receipt of monies by Fairfax from Inova after the termination hereof in any lawful manner shall reinstate, continue or extend the Term, or affect any notice theretofore given to Inova, or operate as a waiver of the right of Fairfax to enforce the payment of any Rent and Additional Rent then due or thereafter falling due, or operate as a waiver of the right of Fairfax to recover possession of the Premises and the Improvements by proper suit, action, proceedings or other remedy; it being agreed that after the service of notice of termination as herein provided and the expiration of the time therein specified, after the commencement of any suit, action, proceedings or other remedy, or after a final order or judgment for possession of the Premises and the Improvements, Fairfax may

demand, receive and collect any monies due, or thereafter falling due, without in any manner affecting such notice, suit, action, proceedings, order or judgment; and any and all such monies so collected shall be deemed to be payments on account of the use and occupation of the Premises, or, at the election of Fairfax, on account of Inova's liability hereunder. In such event, Fairfax, at its option, may make such alterations and repairs in or to the Premises and the Improvements and other improvements as in its judgment Fairfax considers advisable and necessary, and the making of such alterations and repairs shall not operate or be construed to release Inova from liability hereunder. Fairfax shall in no event be liable in any way whatsoever for failure to relet the Premises or the Improvements and other improvements or in the event that the Premises and the Improvements and other improvements are relet, for failure to collect rent thereof under such reletting; and in no event shall Inova be entitled to receive any excess of such rents from any such tenant leases over the sums payable by Inova to Fairfax hereunder. Suit or suits for the recovery of such damages, or any installments thereof, may be brought by Fairfax from time to time at its election, and nothing herein contained shall be deemed to require Fairfax to postpone suit until the date when the Term of this Lease would have expired if it had not been terminated under the provisions of this Lease, or under any provision of law, or had Fairfax not re-entered into or upon the Premises and the Improvements.

**Section 21.06. Cumulative Remedies.** The rights and remedies given to Fairfax and Inova in this Lease are distinct, separate and cumulative, and no one of them, whether or not exercised by Fairfax, shall be deemed to be in exclusion of any of the others herein, or by law or in equity.

## **ARTICLE XXII**

### **No Waiver**

**Section 22.01. No Waiver.** Waiver by Fairfax of any breach by Inova of any covenant or condition herein contained, or failure by Fairfax to exercise any right or remedy in respect of any such breach, shall not constitute a waiver or relinquishment for the future of any such covenant or condition or of any subsequent breach of any such covenant or condition, or bar any right or remedy of Fairfax in respect of any such subsequent breach, nor shall the receipt of any rent or portion thereof (regardless of any endorsement on any check or any statement in any letter accompanying any payment of rent) by Fairfax, whether the same be reserved and provided for herein as Rent or Additional Rent under any of the covenants or provisions herein contained, operate as an accord and satisfaction or a waiver of the right of Fairfax to enforce the payment of rents of any kind previously due or as a bar to the termination of this Lease and the recovery of the Premises because of default in the payment of said rents previously due, by any appropriate remedy Fairfax may select.

## **ARTICLE XXIII**

### **Notices**

**Section 23.01. Notices.** Whenever it is provided herein that notice, demand, request or other communication shall or may be given to, or served upon, either of the parties by the other, and/or whenever either of the parties shall desire to give or serve upon the other any notice, demand, request or other communication with respect hereto or with respect to the Premises or the Improvements, each such notice, demand, request or other communication shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served as follows:

If to Inova:

Inova Health Care Services  
8110 Gatehouse Road, Suite 200, East Tower  
Falls Church, Virginia 22042

If to Fairfax:

Facilities Management Department of Fairfax County Government Center  
12000 Government Center Parkway  
Suite 424  
Fairfax, Virginia 22035  
Attention: Leasing Department

and

County Attorney's Office  
12000 Government Center Parkway  
Suite 549  
Fairfax, Virginia 22035  
Attention: County Attorney

Every such notice, demand, request or other communication hereunder shall be deemed to have been given or served for all purposes hereunder on the date on which it is received or refused by the party to whom it was sent. Either party may change the address or addresses designated for it to receive notice by giving notice of such change to the other party in accordance with the foregoing.

**ARTICLE XXIV**  
**Quiet Enjoyment and Other Fairfax Covenants**

**Section 24.01. Quiet Enjoyment.** Fairfax covenants that Inova, on paying the rent reserved and on performing all the terms, covenants and conditions hereof on the part of Inova to be performed, and not being in default under any of the terms of this Lease, shall at all times during the Term peacefully and quietly have, hold and enjoy the Premises and the Improvements.

**Section 24.02. Fairfax.** The term "Fairfax" as used in this Lease so far as covenants or obligations on the part of Fairfax are concerned shall be limited to mean and include only the owner or owners at the time in question of the Prime Lease interest of the Premises. In the event

of any transfer or transfers of the title to such interest, Fairfax herein named (and in case of any subsequent transfers or conveyances the then grantor) shall be automatically freed and relieved from and after the date of such transfer or conveyance of all liability as respects the performance of any covenants or obligations on the part of Fairfax contained in this Lease thereafter to be performed, it being intended hereby that the covenants and obligations contained in this Lease on the part of Fairfax shall be binding on Fairfax, its successors and assigns, only during and in respect of their respective periods of ownership. Any liability on Fairfax's part hereunder shall be limited to its interest in the Premises, and no officer, director or employee of Fairfax shall have any personal liability hereunder.

**ARTICLE XXV**  
**Covenant to Yield Possession**

**Section 25.01. Covenant to Yield Possession.** Except as herein otherwise provided, Inova shall on the last day of the Term, or upon the sooner termination of the Term, peaceably and quietly surrender and deliver up to Fairfax the Premises and the Improvements and other improvements on, under or above the Premises, broom-clean, in good condition and repair, depreciation and ordinary wear and tear excepted, without any payment or allowance whatever therefore, provided, however, that at Fairfax's election, Inova shall remove the Renovations described in Exhibit B and restore the Premises to their original condition prior to construction of such Renovations.

**ARTICLE XXVI**  
**Governing Law**

**Section 26.01. Virginia Law Governs.** This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

**ARTICLE XXVII**  
**Captions**

**Section 27.01. No Substantive Effect.** The captions and headings in this Lease are inserted only as a matter of convenience and for reference, and they in no way define, limit or describe the scope of this Lease or the intent of any provision thereof.

**ARTICLE XXVIII**  
**Partial Invalidity**

**Section 28.01. Severability.** If any term or provision of this Lease, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**ARTICLE XXIX**  
**Successors and Assigns**

**Section 29.01. Successors and Assigns.** All of the terms, covenants and conditions herein contained shall inure to the benefit of and be binding upon Fairfax, its successors and assigns, and any person who at any time shall be the owner of the Premises, and upon Inova and the heirs, administrators, executors, legal representatives, successors and assigns of Inova, and any person who at any time shall be the owner of the leasehold estate hereby created or of the Improvements and other improvements on, under or above the Premises.

**ARTICLE XXX**  
**Time of the Essence**

**Section 30.01. Time of the Essence.** Time is of the essence with regard to each and every term herein to which time is an element.

**ARTICLE XXXI**  
**No Commissions**

**Section 30.01. No Commissions.** Each party represents to the other that no brokerage or leasing commissions or other compensation are due or payable to any person, firm, corporation or other entity with respect to or account of any action taken by or on behalf of such party with respect to this Lease.

**ARTICLE XXXII**  
**Integration and Interpretation**

**Section 32.01. Integration and Interpretation.** The terms and conditions herein set forth all the promises, agreements, conditions and understandings between Fairfax and Inova pertaining to leasing of the Premises, and there is no promise, agreement, condition or understanding either oral or written, between the parties other than as are herein set forth. This Lease has been negotiated at arm's length with both parties having the opportunity to consult with legal counsel with respect to all provisions hereof. In the event of any ambiguity in any of the terms or provisions, this Lease shall not be interpreted against or in favor of either Fairfax or Inova, nor shall there be any presumption against or in favor of either Fairfax or Inova. No prior writings, including without limitation, drafts of this Lease and modifications thereto, shall be given any force or effect.

**ARTICLE XXXIII**  
**Subordination**

**Section 33.01. Subordination.** This Lease is subject and subordinate to the Prime Lease.

**ARTICLE XXXIV**  
**Rules and Regulations**

**Section 34.01. Rules and Regulations.** Inova and its agents, clients, invitees, and employees shall abide by and observe such reasonable rules and regulations as may be promulgated from time to time by Fairfax for the operation and maintenance of the Premises. Nothing contained in this Lease shall be construed to impose upon Fairfax any duty or obligation to enforce such rules and regulations.

**ARTICLE XXXV**  
**Subject to Appropriations**

**Section 35.01. Subject to Appropriations.** Any and all of the obligations of Fairfax hereunder which could result in the payment of money are subject to appropriations by the Fairfax County Board of Supervisors.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed as of the date first hereinabove written.

**INOVA:**

**INOVA HEALTH CARE SYSTEMS**

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

COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX:

to-wit:

The foregoing instrument was acknowledged before me this \_\_\_ day of May, 2011, by \_\_\_\_\_, in his/her capacity as the \_\_\_\_\_ of Inova Health Care Systems.

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

My Commission expires: \_\_\_\_\_

**FAIRFAX:**

**BOARD OF SUPERVISORS OF FAIRFAX  
COUNTY VIRGINIA**

By: \_\_\_\_\_  
Deputy County Executive

COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX:

to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of May 2011, by \_\_\_\_\_ the Deputy County Executive on behalf of the Board of Supervisors of Fairfax County, Virginia.

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

My Commission expires: \_\_\_\_\_

EXHIBIT A

PREMISES

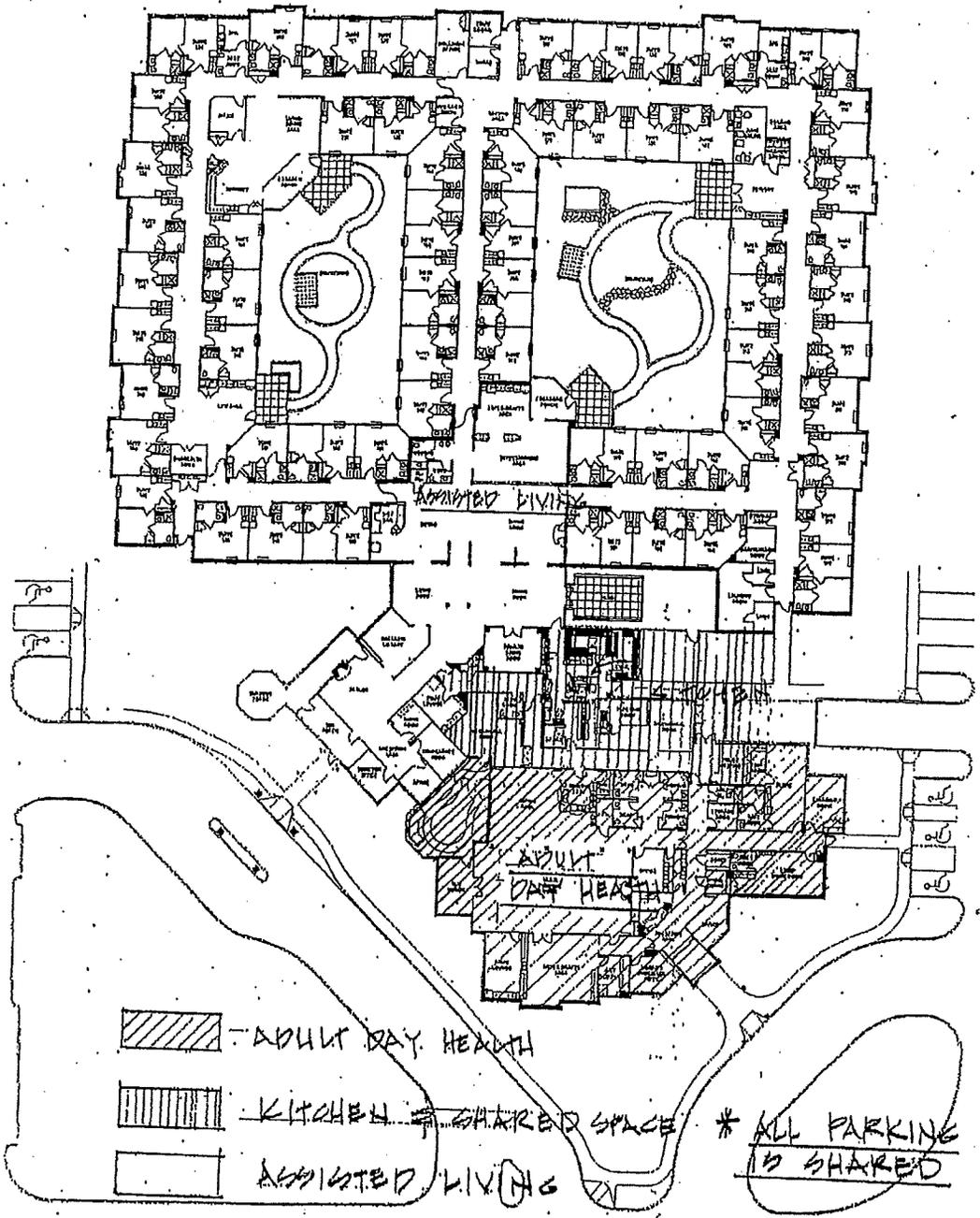


EXHIBIT B

Renovations to be Removed by Inova

[Health Department and Inova to agree on list of Renovations that Inova will be required to remove at termination of Lease if requested by Fairfax.]

**EXHIBIT C**  
**INOVA MAINTENANCE REQUIREMENTS**

**Daily Service to all areas**

Empty all trash, disinfect all trash receptacles, reline with a clean bag, remove trash and recyclable materials to designated pick-up location, and empty recycle materials into containers at designated storage locations.

Clean floor surfaces including stone, brick, or composition flooring. Remove gum and tar. Mop all floor surfaces; spray buff surfaces at lobbies, entrances, main corridors and public areas.

Vacuum carpets including walk off mats, spot clean, remove gum and tar.

Clean and disinfect drinking fountains / water coolers.

Clean elevator cabs (if applicable). Vacuum cab carpet (shampoo weekly if necessary).

Dust all vertical and horizontal surfaces that are readily available and visibly require it.

Clean all interior windows (below 100 inches) and glass entrances and other doors, partitions, display cases, clean and polish light fixtures, pay phones, etc.

Clean and disinfect counter tops, table tops, chairs, and exterior of appliances.

Remove handprints or marks from walls, doors, and doorframes.

Clean Kitchen / coffee bar areas, empty trash, wash sink basins, wipe off counters, mop floors, replenish towels and soap if available.

Remove all trash and debris from Building Entrances, and inspect nightly.

**Daily Service to Restrooms / Fitness Center / Locker Rooms / Dressing Rooms / Clinic Area**

Empty trash, reline with clean bag, and remove trash to designated pick up location.

Clean and disinfect all fixtures, clean all partitions, clean and polish mirrors, chromes, metals, counters, benches, shower, saunas, etc.

Wet mop and rinse floor and flush floor drain in bathrooms.

Restock all supplies. There shall always be an adequate supply of required expendable toilet items – soap, paper towels, toilet paper, sanitary napkins and toilet seat covers. Restock vending concession dispensers.

**Every Other Day Service To All Areas**

Sweep and dust stairways including steps and landings (if applicable).

**Once Weekly Service To All Areas**

Spray buff all tiled floors not treated under daily service. Spray buff computer room floors.

**Twice Weekly Service To All Areas**

Sweep entrance ways, sidewalks and around the entire building including the loading dock areas.

Disinfectant and clean telephones to include pay phones.

**Biweekly Service To All Areas**

Machine scrub all restroom floors to include shower areas.

**Monthly Service To All Areas**

Complete vertical and horizontal surface cleaning.

Clean and disinfectant all trash receptacles.

Clean storage areas

Mop stairways, steps, risers and landings

**Quarterly Service To All Areas**

High dusting / cleaning

**As Needed in All Areas But Not Less Than Quarterly**

Strip and refinish floors to include honed granite floors

Shampoo all carpeted floors

Clean Venetian blinds, clean and treat furniture, woodwork and upholstery

Window washing, twice outside once inside

**As Needed in All Areas**

Respond to emergency custodial services

Respond to job assignments

Maintain janitor closet / room in an orderly condition and in compliance with County safety and fire regulations

**At Closing in All Areas**

Close and lock all doors

**Approved Cleaning Disinfectants for Norovirus Prevention**

Cleaning disinfectants shall be those that the Environmental Protection Agency has approved in the prevention and cleaning treatment of the norovirus (see page 10 of the Norovirus Prevention Guidance for Institutions/Facilities attached hereto published by the Virginia Department of Health).

**Exhibit D**

**FY 2010 Utilities**

**Braddock Glen  
Detail of Utilities and Maintenance Related Accounts  
Allocated between FMD and Braddock Glen**

Account #	Account Name	Braddock Glen		Totals Incurred through 5/31/2010	Braddock Glen *	FMD 25% allocation
		FY '10 YTD Balance at 5/31/2010	Paid By FMD at 5/31/2010			
61900	Utilities - Electric	71,840.66	0.00	71,840.66	53,880.50	17,960.17
61910	Utilities - Gas/Oil	0.00	0.00	0.00	0.00	0.00
61920	Utilities - Other	863.67	0.00	863.67	647.75	215.92
61930	Utilities - Water/Sewer	14,414.35	0.00	14,414.35	10,810.76	3,603.59
61940	Utilities - Propane	31.82	0.00	31.82	23.87	7.96
61950	Utilities - Natural Gas	9,806.28	0.00	9,806.28	7,354.71	2,451.57
	<b>Subtotal Utilities</b>	<b>96,956.78</b>	<b>0.00</b>	<b>96,956.78</b>	<b>72,717.59</b>	<b>24,239.20</b>
60250	Repairs - Contracted	30,747.71	0.00	30,747.71	23,060.78	7,686.93
60251	Repairs - Supplies	10,141.81	0.00	10,141.81	7,606.36	2,535.45
60270	Repairs, Suite Turnover	10,312.67	0.00	10,312.67	7,734.50	2,578.17
60300	Maintenance Contracts	52,537.81	0.00	52,537.81	39,403.36	13,134.45
68600	Grounds	0.00	0.00	0.00	0.00	0.00
	<b>Subtotals - Repairs &amp; Maint.</b>	<b>103,740.00</b>	<b>0.00</b>	<b>103,740.00</b>	<b>77,805.00</b>	<b>25,935.00</b>
	<b>Total all Utilities and Maintenance</b>	<b>200,696.78</b>	<b>0.00</b>	<b>200,696.78</b>	<b>150,522.59</b>	<b>50,174.20</b>
	<b>FMD Paid to date:</b>					<b>0.00</b>
	<b>FY 2009 adjustment in FY 2010</b>					
	<b>FMD Owes to Braddock Glen thru 5/31/10</b>					<b>50,174.20</b>
	<b>Estimated amount for June 2010</b>					<b>4,500.00</b>
	<b>Estimated FMD Owes to Braddock Glen</b>					<b>54,674.20</b>