

GRANT AGREEMENT

THIS GRANT AGREEMENT (this "**Grant Agreement**") is made as of the ___ day of _____ 2021 (the "**Effective Date**") by and between **The City of Alexandria**, a body politic of the Commonwealth of Virginia (the "**City**"), and **Industrial Development Authority of the City of Alexandria**, a political subdivision of the Commonwealth of Virginia (the "**IDA**"). Individually the City and IDA may each be referred to hereinafter as the "**Party**," or collectively as, the "**Parties**."

RECITALS

A. IDA was created by Ordinance number 1671 adopted by the City Council of the City of Alexandria ("**City Council**") on September 8, 1970 and amended pursuant to Ordinance number 2815 adopted by the City Council on June 28, 1983. The IDA was created pursuant to and is governed by the Industrial Development and Revenue Bond Act at Section 15.2-4900 et. seq. of the Code of Virginia (the "**Act**") and has all powers, purposes and duties set forth in the Act as it presently exists or is hereafter amended.

B. The City and IDA are participating together with the Developer (as defined below) and Inova (as defined below) in efforts to redevelop certain real property formerly known as the Landmark Mall in the City of Alexandria, Virginia to become a cohesive mixed-use project (the "**Project**") anchored by a new Inova Alexandria Hospital, cancer center and medical office building (collectively, the "**Hospital Facilities**").

C. Simultaneously with this Grant Agreement, the City will enter into that certain Development and Financing Agreement ("**Development Agreement**") with Landmark Land Holdings, LLC, a Delaware limited liability company (the "**Developer**"), which Developer is a joint venture between the owners of certain parcels of real property that collectively with the Inova Site (as defined below) comprise the Project), and Inova Health Care Services, a Virginia non-stock corporation ("**Inova**"). The Development Agreement addresses, among other things, the City's obligation to fund EIGHTY-SIX MILLION AND 00/100 DOLLARS (\$86,000,000.00) for the costs of public infrastructure improvements to be constructed by Developer at the Project.

D. In connection with the redevelopment of Project, IDA intends to purchase certain real property that is a portion of the Project consisting of 10.3867 acres of land adjacent to Duke Street (the "**Inova Site**") using funds granted to IDA by the City under this Grant Agreement pursuant to that certain Purchase and Sale Agreement to be entered into by and between IDA and Developer, the form of which is attached hereto as **Exhibit A** (the "**Purchase Agreement**") which Purchase Agreement will be executed simultaneously with the closing under the Purchase Agreement (the "**Closing**").

E. Additionally, simultaneously with Closing, IDA intends to execute and deliver: (i) that certain Deed of Ground Lease by and between IDA and Inova, the form of which is attached hereto as **Exhibit B** (the "**Ground Lease**"), whereby Inova will lease, develop, construct, own and operate the Hospital Facilities; (ii) that certain Access Agreement by and among IDA, Developer and Inova, the form of which is attached hereto as **Exhibit C** (the "**Access Agreement**") to allow Developer and Inova access to perform certain site work at the Inova Site prior to the commencement of the Ground Lease, and (iii) that certain Reciprocal Easements and Covenants Agreement (Landmark Mall Redevelopment Project) for the Project by and among IDA, Developer, and Inova, the form of which is attached hereto as **Exhibit D** (the "**REA**") to document certain reciprocal easements and covenants concerning the construction and operation of the Project. The Purchase Agreement, Ground Lease, Access Agreement, and REA are sometimes collectively referred to herein as. the "**Landmark Agreements**."

F. The City agrees to grant to IDA certain funds for the purpose of the purchase of the Inova Site and the redevelopment of the Project, and IDA agrees to accept such funds pursuant to the terms and conditions set forth herein.

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

1. Recitals. The foregoing recitals are incorporated herein by this reference as if fully set forth at this point in the text of this Grant Agreement. The recitals and following terms and conditions shall constitute part of the Grant Agreement and be incorporated therein by reference.

2. Grant Agreement; Obligations of the City.

(a) The City agrees to fund to IDA, and IDA agrees to accept, the purchase price of Fifty-four Million and 00/100 Dollars (\$54,000,000.00) for the Inova Site pursuant to the terms of the Purchase Agreement, as a grant to IDA under this Grant Agreement. The purchase price is to be paid in two installments under the Purchase Agreement, with the first installment in the amount of Twenty-one Million and 00/100 Dollars (\$21,000,000.00) (the "**First Installment**") due at Closing on the purchase of the Inova Site, and the second installment in the amount of Thirty-three Million Dollars and 00/100 (\$33,000,000.00) (the "**Second Installment**") due approximately fifteen (15) months later as further described in the Purchase Agreement. Under the Purchase Agreement, the payment of the Second Installment is conditioned upon Developer meeting certain requirements under the Development Agreement. The City will fund the First Installment and the Second Installment, when due, directly to Developer or to an approved escrow agent, as required under the Purchase Agreement. The City's obligation to fund the Second Installment of the purchase price under the Purchase Agreement is subject to the appropriation of funds by the City Council. However, if the City Council fails to appropriate funds for the Second Installment of the purchase price under the Purchase Agreement: (i) the Ground Lease provides that under certain circumstances Inova has the right to pay the Second Installment, and that in such event Inova has the right to purchase the Inova Site from IDA (the "**Inova Cure Right**"), and (ii) if Inova does not exercise the Inova Cure Right, the Purchase Agreement provides under certain circumstances that the Developer or its designees has the right to purchase the Inova Site from IDA. In such event, IDA agrees, at the City's written direction, so convey the Inova Site to Inova, or re-convey the Inova Site to Developer.

(b) The City agrees to fund all costs of due diligence performed with respect to the Inova Site, all closing costs applicable to IDA under the Purchase Agreement, and pay the costs of an owner's policy of title insurance reasonably acceptable to both the City and IDA which owner's policy will insure IDA's title to the Inova Site.

(c) The City agrees to reasonably respond to all of IDA's requests for information, guidance and consents, and shall provide reasonable staff assistance and technical support with respect to the administration of the Landmark Agreements. The City shall fund the reasonable costs of IDA's staffing, consultants, administration and enforcement of the Landmark Agreements. Such obligation shall include IDA's reasonable attorney's fees, reasonable consultant's fees, and staffing costs so long as the City receives prior written notice from IDA as to the perceived necessity for engaging an attorney, consultants, and additional staff and the City approves an estimate of the anticipated fees.

(d) The City shall fund the reasonable costs of customary insurance policies related to IDA's ownership of the Inova Site.

3. Obligations of IDA.

(a) IDA shall execute and deliver the Landmark Agreements as and when directed by the City in conjunction with the Closing on the purchase of the Inova Site (which is currently scheduled to take place during the month of September 2021). IDA hereby acknowledges that the City is named as a third-party beneficiary under the Landmark Agreements, and that the City shall be entitled to enforce such rights in its reasonable discretion.

(b) IDA shall reasonably administer and enforce the Landmark Agreements. IDA will handle all "day to day" matters with respect to the administration and enforcement of the Landmark Agreements, but will need the City's prior written approval for any non-routine matters under the Landmark Agreements, including without limitation, any material amendments or modifications to or terminations of any of the Landmark Agreements, exercise of any default remedies under any Landmark Agreements, and consent to any proposed assignment, sublease (other than routine subleases of space) or leasehold mortgage by Inova under the Ground Lease. For avoidance of doubt, any proposed change of use under the Ground Lease or material modification to the Hospital Facilities shall be considered a material amendment to the Ground Lease necessitating the City's prior written consent pursuant to this Section 3(b). In the event a non-routine matter occurs, IDA is empowered to propose a solution to the City for action in writing. The solution shall be accompanied by a written request for the City's consideration stating the reasonable date by which IDA needs a response (the "**Response Deadline Date**"). In the event that (i) the failure by IDA to respond to such non-routine matter will result in a default under any of the Landmark Agreements and (ii) the City does not respond by the Response Deadline Date set forth in the letter, then IDA shall provide a reminder notice to the City stating in capital letters "FAILURE TO RESPOND TO THIS NOTICE WITHIN FIVE (5) BUSINESS DAYS WILL RESULT IN DEEMED APPROVAL OF THE PROPOSAL" and if the City's failure to respond continues for the five (5) business days thereafter, IDA's proposed action shall be deemed approved by the City.

(c) With respect to any matters for which the City's prior written consent is required under Section 3(b) above, IDA shall take such actions as reasonably directed by the City.

(d) In no event may IDA sell, mortgage or otherwise encumber the Inova Site, or permit any liens thereon, except as otherwise provided by the Landmark Agreements or as directed by the City.

(e) IDA shall provide the City with regular updates of the status of the Landmark Agreements and provide the City with prompt written notice of the occurrence of any default thereunder or occurrence of any event with the potential to cause a material adverse change to the value of the Inova Site (such as the occurrence of a material casualty or condemnation).

(f) While IDA shall be entitled to retain payments of the standard base rent and other routine payments made by Inova under the Ground Lease, IDA shall promptly provide to the City any extraordinary or non-standard payments received by IDA under the Ground Lease, including without limitation, any payments of increased rent or liquidated damages by Inova under the Ground Lease, as well as any insurance proceeds from casualty or condemnation awards.

(g) Upon the expiration or earlier termination of the term of the Ground Lease, IDA shall re-convey the ownership of the Inova Site to the City, without any payment or consideration, unless (i) the Inova Site is purchased by Inova under the terms of the Ground Lease or by Developer under the terms of the REA, or (ii) the City otherwise directs IDA in writing. Additionally, IDA shall re-convey the ownership of the Inova Site to the City and shall assign the Ground Lease to the City, without any payment or consideration, at any time upon the City's prior written request. Notwithstanding the foregoing, prior to re-conveyance of the Inova Site as required herein, IDA may propose other uses, ownership, or financial arrangements for the Inova Site (including retaining ownership) in writing and the City agrees to consider any such proposals.

(h) IDA shall execute and deliver such other documents and shall take such other actions as the City shall reasonably request to facilitate the Project, the City's interests with respect thereto and the City's obligations under the Development Agreement, including without limitation, execution and delivery of land use applications related to necessary approvals for the Project in IDA's capacity as owner of the Inova Site and execution of documents related to the Landmark Community Development Authority.

4. Term. The term of the Grant Agreement will commence on the Effective Date and will expire on the upon the expiration or earlier termination of all of the Landmark Agreements.

5. Notices. 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 a copy to: City Attorney
City of Alexandria
301 King Street
Alexandria, Virginia 22314

IDA: Industrial Development Authority of the City of Alexandria
625 North Washington Street, Suite 400
Alexandria, Virginia 22314
Attn: Stephane Landrum

6. Recording of Memorandum. Concurrently with Closing, the City and IDA shall execute the Memorandum of Grant Agreement in the form attached hereto as **Exhibit E**. The Parties agree to record the Memorandum of Ground Lease in the Land Records of the Office of the Recorder of Deeds of the City of Alexandria, Virginia (the "**Land Records**") against the Inova Site at the City's sole cost and expense. Upon the expiration or earlier termination of this Grant Agreement or upon re-conveyance of the Inova Site to the City as required hereunder, the City and IDA shall, within five (5) days of either Party's written request, execute and record a release of the Memorandum of Ground Lease in the Land Records.

7. Counterparts. This Grant 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.

8. Governing Law. This Grant 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.

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

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

11. No Assignment. This Grant Agreement shall not be assigned by either Party without the other Party's written consent, which may be withheld in its sole and absolute discretion.
12. Complete Understanding. This Grant Agreement, including all exhibits attached hereto, together with the Landmark Agreements, represents the complete understanding between the Parties hereto as to the subject matter hereof, the Project, and the rights and obligations of the parties hereto as to the same, and supersedes all prior negotiations, representations, guaranties, warranties, promises, statements or agreements, either written or oral, between the parties hereto as to the same. No inducements, representations, understandings or agreements have been made or relied upon in the making of this Grant Agreement, except those specifically set forth in this Grant Agreement. Neither Party hereto has any right to rely on any other prior or contemporaneous representation made by anyone concerning this Grant Agreement which is not set forth herein.
13. Construction. As used herein, all references made (a) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (c) to any Section, paragraph or subparagraph shall be deemed, unless otherwise expressly indicated, to have been made to such Section, paragraph or subparagraph of this Grant Agreement. There shall be no presumption against the either Party on account of the fact that such Party that caused the drafting of this Grant Agreement.
14. Exhibits. Each document referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit hereto is hereby made a part hereof.
15. Severability. No determination by any court, governmental or administrative body or agency or otherwise that any provision of this Grant Agreement or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (a) any other such provision, or (b) such provision in any circumstance not controlled by such determination. Each such provision shall remain valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with, applicable law.
16. Independent Covenants. Except as otherwise provided, every covenant contained herein shall be deemed to be independent of every other covenant and the breach of any covenant by one Party shall not relieve the other Party of any obligation to perform hereunder.
17. No Indemnification or Hold Harmless. Notwithstanding any other term or provision of this Grant Agreement to the contrary, the City shall have no obligation to explicitly or implicitly indemnify or hold harmless IDA or any third party or parties from any liability whatsoever.
18. Appropriation of Funds. The City's obligations under this Grant Agreement, to be performed, require an appropriation of funds, and as such, shall be fully subject to the appropriation of funds by the City Council for the specific purpose of satisfying the obligations of the City hereunder.

IN WITNESS WHEREOF, the Parties have caused this Grant Agreement to be signed by their duly authorized representatives as of the day and year first above written.

Approved as to form:

City Attorney

CITY:

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

By: _____
Title: City Manager

IDA:

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

By: _____
Name: _____
Its: _____

LIST OF EXHIBITS

- Exhibit A Form of Purchase Agreement
- Exhibit B Form of Deed of Ground Lease
- Exhibit C Form of Access Agreement
- Exhibit D Form of Reciprocal Easements and Covenants Agreement
- Exhibit E Form of Memorandum of Grant Agreement

Exhibit A
Form of Purchase Agreement
[To be attached]

Exhibit B
Form of Deed of Ground Lease
[To be attached]

Exhibit C
Form of Access Agreement
[To be attached]

Exhibit D
Form of Reciprocal Easements and Covenants Agreement
[To be attached]

EXHIBIT E

Form of Memorandum of Grant Agreement

City of Alexandria Map-Block-Lot
No _____

MEMORANDUM OF GRANT AGREEMENT

This **MEMORANDUM OF GRANT AGREEMENT** (this "Memorandum") is made as of the ____ day of _____, 2021, by and between **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALEXANDRIA**, a political subdivision of the Commonwealth of Virginia ("IDA"), with an address at 625 North Washington Street, Suite 400, Alexandria, Virginia, and **THE CITY OF ALEXANDRIA**, a body politic of the Commonwealth of Virginia (the "City"), with an address 301 King Street, Alexandria, Virginia 22314.

RECITALS:

A. The City has granted to IDA, and IDA has accepted, certain funds in connection with the purchase and redevelopment of that certain real property comprised of City of Alexandria Map-Block-Lot Number _____, as more particularly described on Exhibit A attached hereto (the "Land").

B. The City and IDA have entered into that certain Grant Agreement dated as of [_____, 2021] (the "Grant Agreement") on the terms and conditions set forth therein.

C. The City and IDA desire to execute and record this Memorandum with the Land Records of the Office of the Recorder of Deeds of the City of Alexandria, Virginia, to provide notice of the Grant Agreement.

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

1. Grant Agreement. The City has provided certain funds to IDA and IDA has accepted the funds from the City, upon and subject to the terms and conditions set forth in the Grant Agreement.

2. Term. The term of the Grant Agreement will commence on the date hereof and will expire on the termination or earlier expiration of all of the "Landmark Agreements" as such term is defined in the Grant Agreement.

3. Obligation to Re-convey. IDA shall re-convey the ownership of the Inova Site to the City, without any payment or consideration, under certain circumstances set forth in the Grant Agreement, including, without limitation, (i) the termination of the Ground Lease (as defined in the Grant Agreement) and (ii) at any time upon the City's prior written request.

4. Notice to Third Parties. This Memorandum is prepared for the sole purpose of imparting notice to third parties in the public records of the existence of the Grant Agreement and certain of its terms, and nothing contained herein shall in any way abrogate, enlarge or otherwise modify any provisions of the Grant Agreement. Reference is made to the Grant Agreement for a complete description of all of the rights, duties and obligations of the parties with respect thereto. In the event of any inconsistency between the terms of the Grant Agreement and any provision of this Memorandum, the provisions of the Grant Agreement shall govern and control.

Approved as to form:

CITY:

Name:
Title:

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

By: _____
Title: City Manager
Date: _____

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

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

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

(Notarial Seal)

Notary Public

My Commission Expires: _____

EXHIBIT A

Legal Description

[To be attached]