

FOURTH AMENDMENT TO LANDMARK MALL DEVELOPMENT AND FINANCING AGREEMENT

THIS FOURTH AMENDMENT to Landmark Mall Development and Financing Agreement (this “**Fourth Amendment**”) is made as of February __, 2023 (the “**Effective Date**”) by and among the City of Alexandria, Virginia (the “**City**”), Landmark Land Holdings, LLC (“**Developer**”), and Inova Health Care Services (“**Inova**,” and collectively with the City and Developer, the “**Parties**”) to amend that certain Landmark Mall Development and Financing Agreement among the aforesaid Parties dated as of July 30, 2021 (the “**Original Agreement**”), as amended by that certain Amendment to Landmark Mall Development and Financing Agreement among the aforesaid Parties dated as of September 23, 2021, as further amended by that certain Second Amendment to Landmark Mall Development and Financing Agreement among the aforesaid Parties dated as of October 27, 2021, and as further amended by that certain Third Amendment to Landmark Mall Development and Financing Agreement among the aforesaid Parties dated as of August 5, 2022 (the Original Agreement, as so amended, the “**Agreement**”). All capitalized terms used but not otherwise defined in this Fourth Amendment shall have the meanings given them in the Agreement or the Inova Site Purchase Agreement, as applicable.

Recitals

WHEREAS, Developer has issued notices to proceed to the General Contractor performing the Public Infrastructure Improvements, Offsite CDD Infrastructure and Private Infrastructure with Public Access under the Construction Agreements, and, subject to the payment by the City or IDA of the Second Installment of the Purchase Price pursuant to the Inova Site Purchase Agreement (i.e., \$33,000,000) (as modified below), Developer is prepared to (i) post (or cause the General Contractors to post) the Infrastructure Bond (as modified below), and (ii) provide the Performance Assurance (as modified below) as required in the Agreement.

WHEREAS, the Parties desire to, (i) amend the “Liquidity Covenant” set forth in Section 7.1(h) of the Original Agreement, and (ii) otherwise modify the Agreement in accordance with the terms set forth below.

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

Section 1. Amendment to Section 4.3(j) of the Original Agreement. The first sentence of Section 4.3(j) of the Original Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

“Developer shall post (or cause the General Contractor to post) with the City a performance and payment bond(s) in customary form and from an issuer reasonably acceptable to the City equal to 100% of the value of the Construction Agreement attributable to the cost to perform the Public Infrastructure Improvements, Offsite CDD Infrastructure and the Private Infrastructure with Public Access as set out in the initial Development Budget upon Commencement of Construction thereof (together, the “**Infrastructure Bond**”) consistent with the terms of the Standard Agreement for Installation of Public Improvements as described on Exhibit O-2 attached hereto, modified and to

the extent necessary to reflect the scope of the Public Infrastructure Improvements and Offsite CDD Infrastructure and the terms of this Agreement.”

Section 2. Amendment to Section 7.1(h) of the Original Agreement. The last sentence of Section 7.1(h) of the Original Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

“Concurrently with the delivery of the second installment of the purchase price of the Inova Site paid by the City or IDA pursuant to the Inova Site Purchase Agreement, as amended, Developer will enter into an escrow agreement in the form attached hereto as Exhibit W (the “**Escrow Agreement**”) and will cause the City to deposit into an escrow account held by the escrow agent (the “**Escrow Agent**”) an amount equal to Thirty-Three Million Dollars (\$33,000,000) (the “**Performance Assurance**”). Developer may draw down on the Performance Assurance to pay Developer’s share of the Private Infrastructure with Public Access, Offsite CDD Infrastructure and Public Infrastructure Improvements upon providing the City (and escrow agent, if applicable) with a “Draw Request” pursuant to the terms of the Escrow Agreement.”

Section 3. Amendment to Section 8.3(a) of the Original Agreement. Section 8.3(a) of the Original Agreement is hereby amended to add the following additional sentences at the end of such section:

“In the event of an Event of Default which has not been cured in accordance with the terms of Section 8.2 or Section 9.16 of this Agreement, the City shall have the right, in addition to all of its other rights and remedies under this Agreement, to receive all remaining amounts of the Performance Assurance held by the Escrow Agent under the Escrow Agreement, upon written demand therefor. The City acknowledges that if it receives amounts of the Performance Assurance from the Escrow Agent pursuant to the foregoing sentence, such amounts are to be used by the City or Inova as contemplated under the terms of Section 8.2 and Section 8.3 of the Development Agreement.”

Section 4. Escrow Agreement.

The Escrow Agreement, attached hereto as Exhibit W, is hereby inserted into the Original Agreement and is made a part of the Agreement.

Section 5. Amendments to the Inova Site Purchase Agreement. The Inova Site Purchase Agreement is hereby amended as follows:

(a) Section 3 of the Inova Site Purchase Agreement is hereby revised such that: (i) the Second Installment of the Purchase Price shall be paid to the Escrow Agent, rather than to Seller; (ii) the term "Second Installment Payment Date" shall mean the date that all Payment Conditions are met, so long as such Payment Conditions are met by no later than March 31, 2023; and (iii) the

term "Payment Conditions" shall also include the issuance by Developer of notices to proceed to the General Contractor under the Construction Agreements.

(b) Section 23 of the Inova Site Purchase Agreement is hereby revised such that upon the payment of the Second Installment of the Purchase Price to the Escrow Agent, the Repurchase Right shall be deemed to be null and void and of no further force or effect, and Seller shall promptly remove the Repurchase Memo from the land records pursuant to a form of release/termination document approved by the City.

Section 6. Ratification; Conflicts; Counterparts.

Except as expressly amended by this Fourth Amendment, the terms of the Agreement are hereby ratified and affirmed. This Fourth Amendment may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. This Fourth Amendment may be executed by .pdf or other electronic format signature. To the extent the provisions of this Fourth Amendment conflict with any provisions of the Agreement (including its Exhibits), such provisions of this Fourth Amendment shall prevail and govern for all purposes and in all respects.

Section 7. Representations and Warranties.

The following representations and warranties of the Parties to the Agreement are hereby deemed repeated herein and as so repeated deemed to refer to this Fourth Amendment:

- (a) As to the Developer: Section 7.1(b) and (c) of the Original Agreement;
- (b) As to Inova: Section 7.2(b) and (c) of the Original Agreement; and
- (c) As to the City: Section 7.3(b) and (c) of the Original Agreement.

Section 8. Governing Law; Binding Effect; Incorporation of Recitals.

This Fourth Amendment shall be governed by and construed according to the laws of the Commonwealth of Virginia and shall bind and inure to the benefit of the permitted successors and assigns of the undersigned. The Recitals to this Fourth Amendment and this Fourth Amendment shall constitute part of the Agreement and be incorporated therein by reference.

[signatures begin on following page]

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

CITY

Approved as to form:

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

Name:

Title:

By: _____

Name:

Title:

ACKNOWLEDGMENT¹

COMMONWEALTH OF VIRGINIA
CITY OF ALEXANDRIA

On this the ____ day of February ___, 2023, before me, personally appeared _____, who acknowledged himself/herself to be the _____ in the above instrument, and that he/she, as _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the City of Alexandria, Virginia, a body corporate and politic of the Commonwealth of Virginia, by himself/herself as the _____.

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

Notary Public

My Commission Expires: _____

¹ NTD: The original development agreement has acknowledgments and believe it has been recorded. If correct, amendments need to be recorded as well.

JOINDER

INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALEXANDRIA, a political subdivision of the Commonwealth of Virginia, as “Purchaser,” under the Inova Site Purchase Agreement, with Landmark Land Holdings, LLC, a Delaware limited liability company, as “Seller,” in order to evidence its acknowledgment of this Fourth Amendment, and its consent to modifications made in this Fourth Amendment to certain definitions under the Inova Site Purchase Agreement and to certain provisions of the Inova Site Purchase Agreement.

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

By: _____

Name: _____

Title: _____

DEVELOPER

LANDMARK LAND HOLDINGS, LLC, a
Delaware limited liability company

By: FP Landmark Land, LLC, its Managing
Member

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF MARYLAND
COUNTY OF MONTGOMERY

On this the ____ day of February ___, 2023, before me, personally appeared _____, who acknowledged himself/herself to be _____ of FP Landmark Land, LLC, in its capacity as Managing Member of Landmark Land Holdings, LLC, in the above instrument, and that he/she, as _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of FP Landmark Land, LLC, as Managing Member of Landmark Land Holdings, LLC by himself/herself as _____.

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

Notary Public

My Commission Expires: _____

INOVA

INOVA HEALTH CARE SERVICES, a Virginia
non-stock corporation

By: _____
Name: Alice H. Pope
Title: Chief Financial Officer

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX

On this the ____ day of February ___, 2023, before me, personally appeared Alice H. Pope, who acknowledged herself to be the Chief Financial Officer in the above instrument, and that she, as Chief Financial Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Inova Health Care Services, Alice H. Pope, by herself as the Chief Financial Officer.

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

Notary Public

My Commission Expires: _____

NEW EXHIBIT W TO THE AGREEMENT

ESCROW AGREEMENT

(To Be Attached)

21855273.3

Ex. W

Escrow Agreement

THIS ESCROW AGREEMENT (the “**Escrow Agreement**”) made as of the _____ day of _____ 2023 (the “**Effective Date**”), by and among LANDMARK LAND HOLDINGS, LLC, a Delaware limited liability company (“**Developer**”), and the INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALEXANDRIA, a political subdivision of the Commonwealth of Virginia (“**IDA**”), CITY OF ALEXANDRIA, VIRGINIA, a body politic of the Commonwealth of Virginia (the “**City**”), and FIRST AMERICAN TITLE INSURANCE COMPANY, a _____ (the “**Escrow Agent**”). All capitalized terms not defined herein shall have the same meanings ascribed to them in the Purchase Agreement.

RECITALS

A. Pursuant to that certain Agreement of Purchase and Sale, dated November 17, 2021 (as amended, the “**Purchase Agreement**”), IDA has agreed to pay Developer the “Second Installment of the Purchase Price” (as such term is defined in the Purchase Agreement), or a total of Thirty Three Million and 00/100 Dollars (\$33,000,000.00) (the “**Escrowed Amount**”).

B. Pursuant to Section 3 of the Purchase Agreement, the Escrowed Amount is payable to Developer as and for the Second Installment of the Purchase Price upon the occurrence of certain Payment Conditions, including the posting or delivery, as the case may be, of “Performance Assurance” (as such term is defined in the Landmark Mall Development and Financing Agreement, dated as of July 30, 2021, as amended, the “**Development Agreement**”), by and among the City, Developer and Inova Health Care Services, a Virginia non-stock corporation (“**Inova**”).

C. In furtherance of Developer’s obligations under the Development Agreement, the parties have agreed to place the Escrowed Amount into escrow with Escrow Agent to fund, in part, Developer’s Performance Assurance, such Escrowed Amount to be held by Escrow Agent and disbursed to fund certain costs that Developer bears under the terms of the Development Agreement, as described in more detail below.

NOW, THEREFORE in consideration of the mutual promises and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The foregoing Recitals are true and correct and are incorporated herein by reference.

2. Appointment of Escrow Agent. The Developer and IDA, at the direction of the City, and the City, hereby engage and appoint the Escrow Agent for the purposes set forth herein, and the Escrow Agent accepts said engagement and appointment. The escrow fee payable to the Escrow Agent for its services under this Escrow Agreement, if any, will be payable by Developer.

3. Deposit into Escrow. Within three (3) business days following the Effective Date, the IDA shall deposit, or cause to be deposited, with Escrow Agent the entirety of the Escrowed Amount (the “**Escrowed Funds**”). Upon receipt of the Escrowed Funds, (i) the IDA shall be deemed to have fully paid the Second Installment of the Purchase Price and to have satisfied all of its obligations under the Purchase Agreement, and (ii) the Escrow Agent agrees to invest such funds in an interest-bearing account in a financial institution approved by the City and Developer;

provided, however, such funds will not be invested until the Developer shall deliver to Escrow Agent a properly executed, current Internal Revenue Service (IRS) Form W-9. Any amounts earned on the Escrowed Funds shall be added to and be part of the Escrowed Funds, and earnings shall be treated and reported as earned by Developer.

4. Disbursements to Developer.

(a) Developer shall have the right from time-to-time (but on no more than a monthly basis), at its discretion, to request disbursement of Escrowed Funds to pay for the costs of the Public Infrastructure Improvements, the Private Infrastructure with Public Access and the Offsite CDD Infrastructure that Developer is required to develop pursuant to the Development Agreement by submitting documentation to the Escrow Agent and the City (each, a “**Draw Request**”), which shall (i) certify that it is a Draw Request in accordance with the terms of this Escrow Agreement and the Development Agreement; (ii) certify that all requested funds are authorized in accordance with the Development Agreement, that the requested funds are consistent with the then-approved Development Budget, and all work relating to the requested funds has been performed and completed in accordance with the terms of the Development Agreement, and are then due and payable or have been paid by Developer; (iii) designate the person to whom the requested funds are to be delivered, and certify that such person(s) is/are the person(s) (or designated agent for the person(s)) to whom such funds are then due and payable (which may include the Developer as to self-performed work and as to reimbursements of amounts previously paid by it otherwise eligible hereunder for payments); (iv) include copies of invoices and other reasonable evidence supporting the amount of funds requested and the party to whom such funds are being delivered; (v) include copies of unconditional final or partial lien waivers (as applicable) or other evidence of payment reasonably satisfactory to the Escrow Agent and the City from all parties furnishing labor, service and/or materials to the extent paid in connection with the prior Draw Request (excluding the first Draw Request and payment for self-performed work for which no lien waivers or other evidence of payment are required); and (vi) evidence of the City’s written approval of said Draw Request by an authorized signer. Only the City Manager and the Deputy City Manager shall have the authority to approve a Draw Request on behalf of the City. If Escrow Agent receives a Draw Request which satisfies the foregoing requirements, then Escrow Agent shall withdraw funds from the Escrow Account in an amount equal to the Draw Request and deliver such amount to the party(ies) designated in the Draw Request within five (5) business days after the date of Escrow Agent’s receipt of such Draw Request. Such funds shall be delivered to such party(ies) by wire transfer in accordance with any wiring instructions set forth in the Draw Request or otherwise provided by the party(ies) designated to receive the Escrowed Funds or, if no wiring instructions are provided, then by hand-delivery of a check drawn on the Escrow Account. Escrow Agent shall be entitled to rely upon the factual statements and certifications set forth in a Draw Request, and shall have no obligation to take any steps to confirm the veracity thereof.

(b) Notwithstanding anything to the contrary in this Section 4, in the event of any dispute between Developer, on the one hand, and the City, on the other hand, regarding the disbursement of any of the Escrowed Funds, or in the event that Escrow Agent shall receive conflicting demands or instructions with respect thereto, Escrow Agent shall withhold such

disbursement or delivery or return, as the case may be, until such dispute is resolved. Alternatively, in the event that, at any time, Escrow Agent reasonably believes that there are conflicting claims or disputes with respect to the Escrowed Funds and/or any Draw Requests, or conflicting directions regarding the disposition thereof, then Escrow Agent shall be entitled to deposit the remaining balance of the Escrow Account into the Alexandria Circuit Court, 18th Judicial Circuit of Virginia, and to interplead Developer and the City in connection therewith, and the parties to this Agreement hereby consent to the jurisdiction of such court in connection with any such dispute.

(c) Further notwithstanding anything to the contrary in this Section 4, upon the occurrence of an Event of Default (as such term is defined in the Development Agreement) under the Development Agreement by Developer, the City shall have the right, in accordance with Section 3 of the Fourth Amendment to the Development Agreement dated as of approximately even date herewith, to obtain the full release of the Escrowed Funds to the City upon written demand to the Escrow Agent. Each of Developer and the City may, from time to time, request from Escrow Agent (by delivery of written notice thereof) an accounting of the Escrow Account, but in no event more frequently than once per month.

5. Termination. This Escrow Agreement and the escrow provided for herein shall automatically terminate upon full disbursement of the Escrowed Funds pursuant to the provisions hereof. This Escrow Agreement and the escrow provided for herein may be terminated earlier upon the written agreement of the City, IDA and Developer. Without limiting the foregoing, if and when the Developer and the City enter into the Fifth Amendment to Development Agreement, this Escrow Agreement shall terminate as provided for in such Fifth Amendment to the Development Agreement. In the event any Escrowed Funds remain in the Escrow Account at the time of termination of this Agreement, the Escrow Agent shall deliver to Developer the entirety of the remaining Escrowed Funds unless otherwise provided by such Fifth Amendment to the Development Agreement or other written agreement of the City, IDA and Developer.

6. Escrow Agent's Reliance. In performing its duties hereunder, Escrow Agent shall not incur any liability to anyone for any damages, losses or expenses, except for its gross negligence or willful misconduct, and it shall accordingly not incur any such liability with respect to any action taken or omitted (a) in good faith upon advice of its counsel or (b) in reliance upon any instrument, including any written notice or instruction provided for in this Escrow Agreement, not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and accuracy of any information contained therein, that Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a proper person and to conform to the provisions of this Escrow Agreement. To induce the Escrow Agent to serve hereunder, the Developer hereby agrees to indemnify and hold harmless the Escrow Agent against any and all losses, claims, damages, liabilities and expenses (including reasonable costs of investigation and reasonable counsel fees and disbursements) which may be imposed upon the Escrow Agent or incurred by the Escrow Agent in connection with its acceptance of appointment as Escrow Agent hereunder, or the performance of its duties hereunder, including without limitation, any litigation arising out of this Escrow Agreement.

7. Resignation. The Escrow Agent shall have the right to resign at any time by giving the parties to this Escrow Agreement thirty (30) days' written notice. Immediately upon receiving such notice of resignation, the parties to this Escrow Agreement shall, acting reasonably and in good faith, jointly designate a successor Escrow Agent which is mutually satisfactory to them. If the parties to this Escrow Agreement are unable to agree upon such successor Escrow Agent, such successor Escrow Agent shall be designated by proceedings before a neutral arbiter employed or appointed by the American Arbitration Association upon application by the parties to this Escrow Agreement (the parties to this Escrow Agreement hereby agreeing to cooperate to expedite such proceedings).

8. Removal. The parties to this Escrow Agreement reserve the right, at any time and from time to time, to substitute a new escrow agent in place of Escrow Agent, with the approval of each party hereto in accordance with joint written instructions.

9. Notices. All notices, demands and requests required or permitted to be given under this Escrow Agreement must be in writing, addressed to the parties at their respective addresses set forth below, and must be delivered (i) by hand delivery, (ii) by telephone facsimile or electronic mail during normal business hours to compatible equipment in the possession of the recipient, provided completion of transmission is confirmed by telephone and provided a confirmation copy is also delivered pursuant to one of the other delivery methods set forth in clauses (i), (iii), or (iv) hereof, (iii) by nationally recognized overnight courier service, marked for delivery on the next Business Day, or (iv) by United States certified mail, return receipt requested, postage prepaid. Notices shall be effective upon receipt. Any party may designate a change of address by written notice to the other parties in accordance with the provisions set forth above, which notice shall be given at least two (2) Business Days before such change of address is to become effective. Notices may be delivered by counsel to a party on behalf of such party. The initial address for notice for each party is set forth below:

If to the IDA to:

Industrial Development Authority of the City
of Alexandria
601 Prince Street
Alexandria, Virginia 22314
Attn: Stephanie Landrum
E-Mail: _____

and to:

Attn: _____
E-Mail: _____

If to the City to:

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

and to:

City of Alexandria, Virginia
301 King Street, Suite 1300
Alexandria, Virginia 22314
Attn: City Attorney
E-Mail: _____

If to Developer:

Landmark Land Holdings, LLC
c/o Foulger Pratt, LLC
12435 Park Potomac Ave #200
Potomac, MD 20854
Attention: Cameron Pratt
E-Mail: _____

with a copy to:

Foulger-Pratt, LLC
12435 Park Potomac Avenue, Suite 200
Potomac, MD 20854
Attn: Jay Kelly, E-Mail: _____
Legal Department, E-Mail: _____

If to the Escrow Agent to:

First American Title Insurance Company
1850 K Street NW, Suite 1225,
Washington D.C. 20006,
Attn: Brian A. Lobuts, Vice President,
Associate Regional Director
E-Mail: _____

10. Governing Law. This Escrow Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia, without regard to the conflict of laws principles thereof.

11. Headings; Definitions. The headings used herein are for convenience only and are not to be used in interpreting this Escrow Agreement. Except as otherwise defined herein, all initial-capped terms used herein shall have the same meanings set forth in the Road Agreement.

12. Entire Agreement and Amendments. This Escrow Agreement is intended solely to supplement and implement the provisions of the Purchase Agreement and the Development Agreement, as amended, and is not intended to modify, amend or vary any of the rights or obligations of any of the parties under the Purchase Agreement and the Development Agreement, as amended. The escrow created by this Escrow Agreement is irrevocable, and the instructions to the Escrow Agent contained herein may not be modified, amended or altered in any way except by a writing (which may be in counterpart copies) signed by each of the City, the IDA, and Developer and acknowledged by Escrow Agent. This Escrow Agreement represents the entire agreement among the parties hereto (including any successors or assigns) with respect to the subject matter hereof and may be amended only by a written amendment executed by all of the parties hereto.

13. Counterparts. This Escrow Agreement may be executed in any number of counterparts and by facsimile or electronically transmitted (PDF) signatures, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

14. Security Interest and Deposit Account Control Agreement for UCC Purposes. This Escrow Agreement is intended to be treated as a deposit account control agreement under the Uniform Commercial Code, and, as such, Developer hereby grants to the City, as control party, a perfected security interest in the entire Escrowed Amount.

IN WITNESS WHEREOF, the parties hereto have set their hand and seals as of the Effective Date.

DEVELOPER:

LANDMARK LAND HOLDINGS, LLC,
a Delaware limited liability company

By: FP Landmark Land, LLC,
a Maryland limited liability company,
its Managing Member

By: Foulger-Pratt, LLC,
a Maryland limited liability company,
its Class A Manager

By: _____
Name: Cameron Pratt
Title: Authorized Person

IDA:

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

By: _____
Name: _____
Title: _____

CITY:

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

By: _____
Name:
Title:

ESCROW AGENT:

**FIRST AMERICAN TITLE INSURANCE
COMPANY,** a

By: _____
Name: _____
Title: _____