

SECOND AMENDMENT TO LANDMARK MALL DEVELOPMENT AND FINANCING AGREEMENT

THIS SECOND AMENDMENT to Landmark Mall Development and Financing Agreement (this “**Second Amendment**”) is made as of _____, 2021 (the “**Effective Date**”) by and among the City of Alexandria, Virginia (the “City”), Landmark Land Holdings, LLC (“**Developer**”) and Inova Health Care Services (“**Inova**”) to amend that certain Landmark Mall Development and Financing Agreement among the aforesaid Parties dated as of July 30, 2021 as amended September 23, 2021 (as amended, the “**Original Agreement**”). All capitalized terms used but not otherwise defined in this Second Amendment shall have the meanings given them in the Original Agreement.

Recitals

WHEREAS, Section 2.2(g) of the Original Agreement contemplated that the Original Agreement would be amended under certain circumstances, which circumstances have occurred; and

WHEREAS, the Parties acknowledge that the conditions precedent in Sections 2.2(a), (b), (c), (d) and (e) of the Original Agreement have been satisfied.

NOW, THEREFORE, in consideration of the mutual promises of the Parties to this Second 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 Inova Site Purchase Agreement

(a) The form of the Inova Site Purchase Agreement will be amended (and the City shall ensure IDA's acceptance of such amendment) to change the definition of “**Second Installment Payment Date**” to mean December 12, 2022 and to make any conforming changes needed to create internal consistency in the Inova Site Purchase Agreement with such definitional change. For avoidance of doubt, the payment of the Second Installment of the Purchase Price shall continue to be subject to the Payment Conditions (as such terms are defined in the Inova Site Purchase Agreement).

(b) The Original Agreement is deemed amended to be consistent with the change in the definition of the Second Installment Payment Date contemplated in Section 1(a) of this Second Amendment above.

(c) The Settlement Date under the Inova Site Purchase Agreement is to be November 17, 2021 assuming all conditions to closing under the Original Agreement as amended hereby and under the Inova Site Purchase Agreement have been satisfied.

Section 2. Amendment to Ground Lease.

The form of the Ground Lease will be amended to amend and restate Section 14.03 thereof in its entirety as shown on Exhibit A attached hereto and made a part hereof.

Section 3. Amendment to Exhibit C-3.

Exhibit C-3 to the Original Agreement is amended and restated in its entirety as shown on Exhibit B attached hereto and made a part hereof.

Section 4. Other Amendments.

For the avoidance of doubt, (a) Section 2.2(g) of the Original Agreement (including as such Section was amended September 23, 2021) is hereby deleted, (b) this Second Amendment eliminates the term “Environmental Remediation Cap” as defined in the Original Agreement, and (c) the definition of “Inova Excavation” is now set forth in the Amended and Restated Exhibit C-3 attached hereto.

Section 5. Representations and Warranties.

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

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

Section 6. Ratification; Conflicts; Counterparts.

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

Section 7. Governing Law; Binding Effect; Incorporation of Recitals.

This Second 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 successors and assigns of the undersigned. The Recitals and Exhibits to this Second Amendment and this Second Amendment shall constitute part of the Original 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 Second 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:

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA

CITY OF ALEXANDRIA

On this the ____ day of _____, 2021, 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: _____

DEVELOPER

LANDMARK LAND HOLDINGS, LLC, a
Delaware limited liability company

By: _____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF MARYLAND
COUNTY OF MONTGOMERY

On this the ____ day of _____, 2021, before me, personally appeared _____, who acknowledged himself/herself to be _____ of Landmark Land Holdings, LLC in the above instrument, and that he/she, as _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of Landmark Land Holdings, LLC by himself/herself as _____.

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

Notary Public

My Commission Expires: _____

INOVA

INOVA HEALTH CARE SERVICES, a Virginia
non-stock corporation

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

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX

On this the ____ day of _____, 2021, 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: _____

Exhibit A

Amended and Restated Section 14.03 of Ground Lease

Section 14.03 Environmental Requirements. After the Term Commencement Date, Tenant shall take all necessary steps to ensure that (a) any and all Environmental Activities undertaken or permitted at the Premises are conducted at all times in material compliance with all applicable Legal Requirements, (b) there are no discharges or releases of Hazardous Materials at, on, in, or under the Premises, except in strict compliance with all applicable Legal Requirements, and (c) Tenant complies with all release reporting, disclosure requirements, and other compliance obligations under all other applicable environmental Legal Requirements. After the Term Commencement Date, Tenant shall notify Landlord within twenty-four (24) hours of the material release of any Hazardous Materials from or at the Premises or any material non-compliance with any environmental Legal Requirement. If Landlord reasonably believes that there has been a material release of any Hazardous Materials from or at the Premises, or any material non-compliance with any environmental Legal Requirement, Landlord shall have the right (at Landlord's expense) to conduct an environmental assessment or compliance audit of the Premises during regular business hours, and Tenant shall cooperate in the conduct of such environmental assessment or compliance audit. Any such environmental assessment or compliance audit by Landlord shall comply with the applicable requirements of any Qualifying Mortgage. Landlord shall provide a copy of any such assessment or compliance audit to Tenant. Landlord shall use its reasonable efforts to minimize interference with Tenant's use and occupancy of the Premises in performing such environmental assessment or compliance audit, and shall repair any damage (if any) to the Premises caused by the same. If such environmental assessment or compliance audit identifies a breach of Tenant's covenants provided in this Section 14.03, Tenant shall promptly reimburse Landlord for the third party costs for performing such assessment or compliance audit after written notice, and in addition to any other rights and remedies which may be available to Landlord under this Lease or otherwise at law or in equity, Landlord may require Tenant to take all actions, or to reimburse Landlord for the costs of any and all actions taken by Landlord upon a failure of Tenant to take such actions within a reasonable time after written notice from Landlord, as are necessary or reasonably appropriate to cure such breach. For purposes of this Section 14.03, "Environmental Activity" means any storage, treatment, recycling, use, emission, release, discharge, generation, abatement, removal, disposal, handling or transportation from, under, into or on the Premises of (A) any substance, product, waste or other material of any nature whatsoever that is listed, regulated or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, the Atomic Energy Act, 42 U.S.C. §§ 2014 *et seq.*, the Medical Waste Tracking Act, 42 U.S.C. §§ 6992 to 6992k, the Emergency Planning and Community Right of Know Act of 1986, 42 U.S.C. §§ 11001, *et seq.*, and the Virginia State Water Control Law, Va. Code Ann. § 62.1-44.2, *et seq.*, as any of such statutes may be amended from time to time; (B) petroleum or crude oil or products thereof, other than petroleum products that are contained within regularly-operated motor vehicles and construction equipment; (C) asbestos and polychlorinated biphenyls, (D) medical wastes, and (E) radioactive wastes (the materials described in clauses (A) through (E) above are collectively referred to herein as "Hazardous Materials"). After the Term Commencement Date, Tenant shall indemnify, defend (with counsel reasonably approved by Landlord), and hold Landlord harmless from and against any and all costs, expenses, claims or suits arising in any manner from any discharge or release of Hazardous Materials, or any non-compliance with environmental Legal Requirements at or on the Premises during the Term (and such indemnity obligation shall survive expiration of the Term), including any costs of all necessary clean-up activities and compliance activities. Notwithstanding the foregoing, Tenant shall have no obligation to indemnify, defend or hold harmless Landlord pursuant to the immediately preceding sentence to the extent that (a) the circumstances giving

rise to the liability result from the breach by Landlord of any of its obligations under this Lease (beyond any applicable notice and cure period) and/or from the gross negligence or intentional misconduct of Landlord or its agents, officers or employees, or (b) the discharge or release involves Hazardous Materials present at, on, or under the Land as of the Term Commencement Date, provided that the exception to Tenant's indemnity obligation set forth in subsection (b) of this sentence shall be subject to the following exceptions: (i) to the extent that the circumstances giving rise to the liability result from environmental conditions documented in any of the following reports, all as related to the Land, prepared by Environmental Consultants and Contractors, Inc.: the Phase 1 Environmental Site Assessment dated May 4, 2021, the Soil/Groundwater Sampling Report dated May 7, 2021, and/or the Phase II Environmental Site Assessment Report dated August 12, 2021, as any of such reports may be updated prior to the Effective Date, and/or (ii) where Landlord incurs costs or expenses arising in any manner from any discharge or release of Hazardous Materials present at, on, or under the Land as of the Term Commencement Date that collectively exceed an aggregate amount over the Term in excess of Ten Million Dollars (\$10,000,000.00). For avoidance of doubt, it is agreed that Tenant's indemnity obligation set forth in this Section 14.03 shall not apply to the City's payment obligations for the remediation of known environmental conditions under the Amended and Restated Exhibit C-3 of the Development Agreement.

Exhibit B

Amended and Restated Exhibit C-3

Environmental Remediation

(a) (i) Developer and the City shall reimburse Inova for Inova's incremental cost to haul, treat and dispose of soil removed from the Inova Site (the "**Soil Work**") in connection with Inova's construction of the Hospital Facilities (including excavation to grade, excavation of below grade level(s) including foundations, and excavation of any onsite utility trenches for up to a maximum of a total of 184,290 cubic yards of soil (collectively, "**Inova Excavation**") as provided in this Amended and Restated Exhibit C-3. Prior to Inova soliciting bids for the Inova Excavation, the Parties will mutually agree upon a consultant with whom Developer will contract (the "**Soils Expert**") to develop a soil handling protocol (including as to testing, segregation and disposal of soils), which protocol will be subject to approval by the City, Developer and Inova, such approvals not to be unreasonably withheld, conditioned or delayed. The protocol developed by the Soils Expert will not be inconsistent with the applicable requirements of Sections (f)(3), (4), (5) and (6) and Section (g) below. In the event the Parties cannot unanimously agree on a Soils Expert after good faith efforts to do so, the expert approved by two (2) of the three (3) Parties (of which one shall be the Developer) shall be selected. The cost of the Soils Expert shall be paid by Inova. Inova shall require its General Contractor for the Hospital Facilities to solicit bids from a minimum of three experienced excavation subcontractors, at least one of which is acceptable to Developer and City. Each excavation subcontractor bid will take the approved soil handling protocol into consideration and break out a cost for excavation and, separately, a cost for the Soil Work. Each excavation subcontractor bid will identify the quantity of material to be hauled, treated and disposed of, so that a per cubic yard price for the Soil Work can be determined, and the subcontract that is awarded will set forth the cost per cubic yard of the Soil Work. Inova does not have to award the contract for the Soil Work to the lowest bidder, but in the event Inova does not award to the lowest bidder, Inova will share all bids with Developer and City with reasonable justification of its decision for Developer's and City's approval, which approvals will not be unreasonably withheld, conditioned or delayed. Developer and City shall reimburse Inova (as provided in Section (a)(ii) below) or the Developer (as provided in Section (a)(iv) below) for the actual cost of the Soil Work above an amount calculated as \$17.50 for each cubic yard of soil removed from the Inova Site as part of the Inova Excavation (the "**Incremental Soil Cost**"), provided that such per cubic yard cost (and the resulting Incremental Soil Cost) will be adjusted by the net adjustment in the Consumer Price Index (all Urban Consumers) from the Effective Date to the date the Inova Excavation begins (such adjusted amount, the "**Adjusted Assumed Base Cost**"). At the time of the Inova Excavation, excavated soils will be evaluated by the Soils Expert who will, in consultation with Inova's selected excavation subcontractor, determine where to direct the disposal of soil excavated as part of the Inova Excavation, subject to the Developer's right to direct soils to areas on the Property other than the Inova Site as provided in Section (a)(iii) below. Any cost incurred in connection with multiple handlings and hauls (e.g., from an anticipated receiving site to an actual receiving site, or from one portion of the Property to another for the purpose of segregating) will be included in the Incremental Soil Cost that Developer and City bear under Section (a)(ii) below.

(ii) The City's and Developer's obligations to reimburse the Incremental Soil Cost under Section (a)(i) above or (a)(iv) below shall be allocated as follows: First, the Developer shall bear the first \$5,000,000 of the Incremental Soil Cost; Second, a credit shall be taken against the City's and Developer's obligations to reimburse the Incremental Soil Cost in an amount equal to the lesser of (a) the Developer's actual costs for the excavation and handling of any Relocated Soils (as defined in Section (a)(iii) below), or (b) the Adjusted Assumed Base Cost for each cubic yard of Relocated Soils; Third, the City shall bear the next \$1,000,000 of the Incremental Soil Cost plus the amount by which the amount described in "Second" above is less than \$1,000,000; Fourth, Developer will bear the next \$1,000,000 of the Incremental Soil Costs; Fifth, the City shall bear the next \$1,000,000 of the Incremental Soil Costs; and last, any Incremental Soil Cost in excess of the amounts described under "First," "Second," "Third," "Fourth," and "Fifth" shall be borne in equal shares by the City and Developer.

(iii) At Developer's election, in connection with Developer's performance of the On-Site Portion of the Inova Pad Ready Scope of Work (as defined in the Access Agreement), Developer, at its expense, may (or may cause its General Contractor or a subcontractor to) excavate and relocate from the Inova Site to the balance of the Property up to 40,000 cubic yards (or such greater amount as the Parties may mutually agree) of additional soil than is contemplated in the Inova Pad Ready Scope of Work (any such soil, the "**Relocated Soils**"). If Developer elects to so relocate Relocated Soils, the Developer shall provide an as-built plan or other appropriate documentation showing grades after the Relocated Soils have been removed.

(iv) At Developer's election, Developer, at its expense, may handle (or cause its General Contractor or a subcontractor to handle) the Soil Work in connection with the Inova Excavation, and Inova and the City shall pay to Developer the lesser of (i) Developer's actual costs for the same, or (ii) the Adjusted Assumed Base Cost per cubic yard (and Developer and the City shall be responsible for all costs in excess of Adjusted Assumed Base Cost per cubic yard related thereto as provided in Section (a)(ii) above). Developer's right in the preceding sentence shall be subject to the reasonable approval of Inova, and such approval may only be withheld in the event that Developer's undertaking of the Soil Work would materially adversely affect Inova's development schedule, as reasonably determined by Inova, and provided Developer carries out its obligations in conformance with the same. In the event Developer undertakes the Soil Work as set forth above, the reimbursement obligations from Developer to Inova with respect to Soil Work as set forth in Section (a)(ii) shall not apply, and the City's obligations under Section (a)(ii) above will apply but reimbursement shall be made to Developer and not to Inova.

(b) During the Inova Excavation, Developer shall be responsible to reimburse Inova for any costs for the treatment of or disposal of groundwater, seepage and casual water due to contamination above standards outlined under 9VAC25-120 (Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests). Inova shall seek, in coordination with Developer, a permit to treat and discharge all groundwater from the Inova Site into the Alexandria storm sewer system. If Inova fails to obtain such a permit, Developer shall have the right to review all materials submitted to any regulatory authority in connection with such failed permit application. Additionally, if Inova fails to obtain such a permit, Developer shall have the right to seek said discharge permit (or appeal its denial) on behalf of Inova, provided that Developer's efforts in doing so shall not have a material effect on Inova's construction schedule.

If both Inova and Developer fail to retain a permit to discharge groundwater from the Inova Site into the Alexandria storm sewer system, Developer shall be responsible to reimburse Inova for any costs for the treatment of and disposal of groundwater, seepage and casual water due to contamination above standards as provided by a Discharge Authorization Letter (DAL or equivalent) for discharges to a sanitary sewer system (aka publicly owned treatment works – POTW) that occur during the period that ends on the first to occur of (x) 36 months following the conclusion of the Inova Pad Ready Scope of Work or (y) the completion of Inova Excavation. Inova shall give notice to Developer when it completes the Inova Excavation.

(c) In connection with the Inova Pad Ready Scope of Work, Developer shall remove any known underground storage tanks on the Inova Site and remediate surrounding soils and groundwater (“**UST Removal**”), as determined based on the most recent Phase 1 Environmental Site Assessment addressing the Inova Site, in compliance with Applicable Law. The Developer’s cost of the UST Removal shall be credited against the Developer’s obligations under Section (a)(ii) above. Developer shall provide Inova and the City with necessary and appropriate invoices, receipts and other reasonable evidence to confirm Developer’s costs of the UST Removal within sixty (60) days after completion thereof. Developer shall deliver to Inova and the City a report summarizing the removal and disposal of any such tanks.

(d) Inova shall request reimbursement from Developer and City in writing for Developer’s and City’s obligations under this Amended and Restated Exhibit C-3 within sixty (60) days after completion of the Inova Excavation, which request will contain necessary and appropriate invoices, receipts and other evidence reasonably satisfactory to Developer and City to confirm its reimbursement obligations hereunder. Within ten (10) business days of receipt of such request, Developer and City shall each, separately, either (i) approve and execute the request and process it for payment, or (ii) disapprove the request in whole or in part and execute any approved portion and process it for payment. In the event Developer or City disapproves all or any portion of the request, it shall give written notification to Inova of the disapproval of such request, specifying the additional documentation that is required for approval of such request. Developer and City shall reimburse Inova within thirty (30) days after its respective reasonable approval.

(e) To the extent the Inova Pad Ready Scope of Work (including its description in Exhibit C-2 and Exhibit C-2.1 of the Original Agreement) conflicts with this Amended and Restated Exhibit C-3 (including Section (a)(iii) above giving the right to Developer to relocate Relocated Soils), the Inova Pad Ready Scope of Work is hereby deemed amended to conform with this Amended and Restated Exhibit C-3, and the Parties will in good faith cooperate to update the description of the Inova Pad Ready Scope of Work in Exhibit C-2 and Exhibit C-2.1 of the Original Agreement at any Party’s request to so conform to this Amended and Restated Exhibit C-3.

(f) In connection with the performance of the Soil Work, the following procedures shall apply:

- (1) Inova will inform the City and Developer of any material changes in Inova’s planning for construction on the Inova Site that would affect the quantity of soil excavation as anticipated herein.

- (2) Reserved.
- (3) The Soils Expert will determine as part of the soil handling protocol the process for stockpiling excavated soil (if applicable) for verification while soil is characterized prior to removal/relocation on site or to another location on the Property.
- (4) The Soils Expert will be responsible for the analysis and characterization of the excavated material. Once the result of the analysis comes back, the Soils Expert will be responsible for locating the closest disposal site that would accept the excavated material, and provide the necessary manifests for the material.
- (5) The Soils Expert will detail the documentation and verification/reporting process for measurement and, upon completion of the Soil Work, verify any over excavation based as-built plans.
- (6) The Soils Expert will maintain records and track all truck tickets for all off-site soil disposal.
- (7) Inova (or Developer as applicable pursuant to Section (a)(iv) above) will require detailed accounting and reporting of all environmental costs against the agreed upon allocations for reasonable concurrence by Developer and City.
- (8) Inova (or Developer as applicable pursuant to Section (a)(iv) above) will track and record all quantities of soil, if any, reused on the Inova Site. The location and depth of reused soil, if any, shall also be documented.

(g) Inova (or Developer as applicable pursuant to Section (a)(iv) above) shall use a Health and Safety Plan ("HASP") and a Soil and Groundwater Management Plan ("SGMP") to address potential construction worker exposures during excavation within Contaminated Soil and/or groundwater areas of the Inova Site. In order to address potential worker exposure to contaminants, a HASP shall be developed prior to any excavation or redevelopment activities that may occur within Contaminated Soil and/or groundwater areas of the Site. The HASP shall be consistent with NIOSH Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities, OSHA regulations (particularly in 29 CFR 1910 and 1926), state and local regulations, and other US EPA guidance, and shall be implemented upon excavation within Contaminated Soil and/or groundwater areas of the Inova Site. Excavated soil must be properly managed or disposed in accordance with the SGMP and all applicable local, state and federal regulations. Groundwater discharged, pumped or otherwise removed from an excavation or trench must be properly managed or disposed in accordance with the SGMP and all applicable local, state and federal regulations.

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