

MANASSAS DRIVE MEDIAN

LANDSCAPING MAINTENANCE AGREEMENT

THIS MANASSAS DRIVE MEDIAN LANDSCAPING MAINTENANCE AGREEMENT (this "Agreement") is made this ____ day of April, 2011, by and between **PARK CENTER LLC**, a Virginia limited liability company, its successors and assigns (the "Developer") and **THE CITY OF MANASSAS PARK, VIRGINIA**, a body corporate and politic, its successors and assigns (the "City").

WITNESSETH

WHEREAS, the Developer, together with the City, each in the capacity as an initial landowner (collectively, the "Initial Landowners"), are developing the City Center in Manassas Park, a multi-use development of residential and commercial spaces (the "City Center"); and

WHEREAS, the Developer and the City desire to enter into this Agreement to address (a) the maintenance of the landscaping within the median situate within Manassas Drive adjacent to property owned by Developer and the City as shown on Exhibit A attached hereto (the "Median Landscaping") and (b) the financial responsibility with respect to the maintenance of such landscaping in accordance with the terms hereof; and

WHEREAS, the Developer is the owner of certain real property situate in Manassas Park, Virginia, known as Parcel A4-3, PARK CENTER ("Parcel A4-3") and Parcel A5-2, PARK CENTER ("Parcel A5-2"), as the same are more particularly described in that certain Deed of Boundary Line Adjustment, Conveyance, Dedication, Easements, Vacations, Release and Subordination dated _____, 2011 (the "Boundary Line Adjustment Deed") and recorded as Instrument No. _____ among the land records of Prince William County, Virginia (the "Land Records"); and

WHEREAS, the City is the owner of certain real property situate in Manassas Park, Virginia, known as Lot 1B of the Resubdivision Plat of Lot 1, CONNER CENTER SUBDIVISION ("Lot 1B"), having acquired Lot 1B by that certain Special Warranty Deed dated _____, 2011 and recorded as Instrument No. _____ among the Land Records; and

WHEREAS, the City is also the owner of certain real property situate in Manassas Park, Virginia, known as Lot 2, Blooms Court, CONNER CENTER SUBDIVISION ("Lot 2"), as the same is more particularly described in that certain Deed of Subdivision and Declaration of Easements dated September 6, 1983 and recorded in Deed Book 1235 at Page 1422 among the Land Records; and

WHEREAS, for purposes hereof Parcel A4-3 and Parcel A5-2 are hereinafter referred to collectively as the "Developer Property"; and

WHEREAS, for purposes hereof, Lot 1B and Lot 2 are hereinafter referred to collectively as the "City Property"; and

WHEREAS, for purposes hereof, Lot 1B, Lot 2, Parcel A4-3 and Parcel A5-2 are each also hereinafter referred to individually as a "Parcel".

NOW, THEREFORE, for and in consideration of the mutual obligations set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Developer and the City do hereby agree as follows:

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated into this Agreement by this reference as if set forth herein in their entirety.

2. Definition of Maintenance. The term "maintenance" (and its grammatical variations) whenever used in this Agreement shall mean any and all of the following to the extent applicable to the Median Landscaping: (a) inspecting, servicing and otherwise taking care of the Median Landscaping; (b) putting and keeping the Median Landscaping in first class condition and state of repair, and performing any replacements, watering, mulching and other work for such purposes; (c) keeping the Median Landscaping clean and clear of rubbish and debris, as well as promptly removing the same; (d) making such additions, alterations, repairs and replacements to the Median Landscaping and doing such other maintenance as is permitted so as to render the Median Landscaping in compliance in all respects with every applicable requirement of law or duly constituted authority; and (e) performing such other acts or work reasonably incident to any of the foregoing which are applicable.

3. Maintenance of Median Landscaping. The Developer shall maintain the Median Landscaping in such manner as deemed appropriate by the Developer and otherwise in accordance with the practices prevailing in the maintenance of Median Landscaping in and about similar types of developments in the Northern Virginia region. Without any limitation to the foregoing, in performance of such operation and maintenance the Developer shall:

- (a) Remove all papers, debris, filth, and refuse.
- (b) Maintain any and all landscaping within the Median as needed to keep the same in a first class and thriving condition.
- (c) Furnish pest abatement controls within the Median Landscaping, as reasonably necessary.

4. Insurance. The Developer shall carry, or cause to be carried, comprehensive general liability coverage for work to be performed by the Developer pursuant to this Agreement, with the City being named as an additional insured and a certificate of insurance provided to the City to evidence the same. Such insurance coverage shall not be terminated, modified or amended without first providing at least thirty (30) days' prior written notice to the City.

5. Indemnification. The Developer shall defend, hold harmless and indemnify the City from and against any and all actual, third-party claims, demands or causes of action whatsoever, by or on behalf of any person, firm or corporation or other

legal entity arising out of the work to be performed or the Median Landscaping maintenance duties assumed by the Developer pursuant to this Agreement. The Developer shall have no liability to indemnify the City against claims or damages resulting from the City's own gross negligence or willful misconduct and the City shall not be entitled to assert or collect from the Developer consequential, special or punitive damages in addition to any actual, third-party damages incurred by the City.

6. Financial Responsibility.

(a) The Developer shall manage the maintenance of the Median Landscaping with the cost thereof shared as follows:

25% by the owner of Parcel A4-3

25% by the owner of Parcel A5-2

25% by the owner of Lot 1B

25% by the owner of Lot 2

(b) As the manager of the Median Landscaping maintenance, the Developer shall develop a budget for the annual cost of the maintenance of the Median Landscaping for each calendar year (the "Annual Budget"). The Annual Budget shall be presented to the owner of each applicable Parcel not later than November 1 each year for the Parcel owners' review and approval. Each applicable owner shall have five (5) business days of receipt of the proposed Annual Budget to provide any comments or concerns thereon to the Developer. Failure of an owner to respond shall be deemed approval of the Annual Budget. Upon receipt of any comments or concerns from the applicable owners, the Developer shall review the same and revise the Annual Budget as the Developer deems appropriate and present the revised Annual Budget to the owners. This process shall continue until all of the owners approve the Annual Budget or the Developer determines on or before December 1 that the owners cannot agree on the Annual Budget. If the proposed Annual Budget is not approved by the owners by December 1, then the City shall resolve the dispute and establish the Annual Budget for the following calendar year, provided that the Annual Budget approved by the City does not vary by 5%, plus or minus, from the prior year's approved Annual Budget.

(c) All amounts owed by the owners for the Annual Budget shall be paid to the Developer, in advance without setoff, in equal quarterly installments on or before the first day of each applicable calendar quarter (January 1, April 1, July 1, and October 1) during the calendar year. The payment for the first quarter shall also include any credits (or catch up payments) related to payments in excess (or deficit) of the previous year's Annual Budget. If such amounts are not paid within ten (10) days after the first day of each calendar quarter, then the Developer shall automatically assess a late fee of five percent (5%) on the amount owed and default interest thereon at an annual rate of fifteen percent (15%) compounded quarterly. In addition, the Developer shall be entitled to pursue all rights and remedies at law or in equity to collect the amounts owed hereunder and, if the Developer prevails in such action, to recover all costs incurred in connection with such action from the losing party, including court costs and legal fees.

(d) In its role as manager, the Developer shall receive an annual administrative fee equal to ten percent (10%) of the base budget.

(e) Notwithstanding the foregoing, the owner of the City Property shall be exempt from contributing to the cost of the maintenance of the Median Landscaping (the "Exemption"), and the owners of Parcel A5-2 and Parcel A4-3 shall share the cost evenly and have all approval rights over the Annual Budget (as hereinafter defined), until thirty (30) days following the occurrence of a Trigger Event (as hereinafter defined). For purposes hereof, a "Trigger Event" shall be deemed to have occurred when the City has closed on the sale and conveyance of Lot 1B and/or Lot 2 to a non-public third party or the City has leased Lot 1B and/or Lot 2 to a non-public third party and such lease has commenced. After the occurrence of a Trigger Event, the Exemption for the applicable Parcel shall expire and the owner of such Parcel shall be considered an owner for purposes of approving and funding the Annual Budget. Prior to a Trigger Event, the Annual Budget approval process described above shall not occur and the Annual Budget shall be as may be determined by the Developer. Commencing with the first calendar year after the Trigger Event, the Annual Budget process shall commence, provided that the Trigger Event occurs prior to October 1 of such calendar year. In the event of a failure to approve the first Annual Budget after the Trigger Event, the Annual Budget shall be the lesser of (i) the 2011 Annual Budget attached hereto as Exhibit B escalated annually for each calendar year up to the calendar year of the first Annual Budget by the greater of CPI (applicable to each year) or 3% (the "Escalator"), and (ii) the previous calendar year's Annual Budget escalated by the Escalator. For example, if the Trigger Date occurs prior to October 1, 2014, then the first Annual Budget adopted by the owners will be for calendar year 2015; and if the owners do not approve the then-presented Annual Budget by October 1, 2014, then the 2015 Annual Budget shall be the lesser of (i) the 2011 Annual Budget attached hereto and escalated for 2012, 2013, 2014, and 2015, and (ii) the 2014 Annual Budget escalated by the Escalator for one year.

7. Assignment. To the extent all or a portion of the Developer Property is converted to condominiums, the Developer sells Parcel A4-3 and/or Parcel A5-2 to a third party, or the Developer creates a business owners association, the Developer may assign the maintenance rights and obligations set forth above to the responsible condominium owners association, property owners association or business owners association and any reference to the Developer's maintenance rights and obligations shall thereafter be deemed to be a reference to the rights and obligations of such association.

8. Agreement Runs with the Land. This Agreement shall run with the land and shall be binding upon the Developer, the City, and their respective successors or assigns. To evidence the existence of this Agreement, this Agreement shall be recorded against the land records of Parcel A4-3, Parcel A5-2, Lot 1B and Lot 2.

9. Governing Law. This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia. The parties hereto (a) agree that any suit, action or other legal proceeding, as between the parties hereto, arising out of or related to this Agreement shall be brought and tried only in the Circuit Court of the County of Prince William, Virginia, (b) consent to the jurisdiction of such court in any

such suit, action or proceeding, and (c) waive any objection which any of them may have to the laying of venue of any such suit, action or proceeding in such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. The parties hereto agree that a final judgment in any such suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

10. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement.

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Witness the following signatures and seals pursuant to due authority:

PARK CENTER LLC,
a Virginia limited liability company

By: Clark Realty Capital, L.L.C.,
a Delaware limited liability company,
its Manager

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

STATE/Commonwealth of _____

CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of April, 2011, by _____ as _____ of Clark Realty Capital, L.L.C, Manager of Park Center LLC, on behalf of said entity.

Notary Public

My Commission Expires: _____

STATE/Commonwealth of _____

CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of April, 2011, by _____ as _____ of Clark Realty Capital, L.L.C, Manager of Park Center LLC, on behalf of said entity.

Notary Public

My Commission Expires: _____

[Signature page of Median Landscaping Maintenance Agreement]

THE CITY OF MANASSAS PARK, VIRGINIA,
a body corporate and politic

By: _____
Francis C. Jones, Jr., Mayor

COMMONWEALTH OF VIRGINIA
CITY OF MANASSAS PARK, to-wit:

The foregoing instrument was acknowledged before me this _____ day of April,
2011, by Francis C. Jones, Jr., as Mayor of the City of Manassas Park, Virginia.

Notary Public

My Commission Expires: _____

APPROVED AS TO FORM

Dean H. Crowhurst, City Attorney

[Signature page of Median Landscaping Maintenance Agreement]

EXHIBIT A

LANDSCAPING EXHIBIT

EXHIBIT B

2011 ANNUAL BUDGET