

FIRST AMENDMENT TO MAINTENANCE AGREEMENT

THIS FIRST AMENDMENT TO MAINTENANCE AGREEMENT (this "Amendment") is made this _____ day of April, 2011, by and between **PARK CENTER LLC**, a Virginia limited liability company, its successors and assigns (the "Developer"), **PARK CENTER COMMUNITY DEVELOPMENT AUTHORITY**, a political subdivision of the Commonwealth of Virginia, its successors and assigns (the "CDA"), and **THE CITY OF MANASSAS PARK, VIRGINIA**, a body corporate and politic, its successors and assigns (the "City").

W I T N E S S E T H

WHEREAS, the Developer and the CDA entered into that certain Maintenance Agreement dated as of April 1, 2007 (the "Agreement"), to address (a) the maintenance and operation of certain CDA Improvements (as defined in the Agreement) and (b) the financial responsibility with respect to the maintenance of the CDA Improvements;

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 CDA is the owner of certain real property situate in Manassas Park, Virginia, known as Parcel A3-2, PARK CENTER ("Parcel A3-2"), as the same is more particularly described in the Boundary Line Adjustment Deed, on which the CDA Improvements have been constructed; and

WHEREAS, the City is the owner of certain real property situate in Manassas Park, Virginia, known as Parcel A1-1, PARK CENTER ("Parcel A1-1"), as the same is more particularly described in the Boundary Line Adjustment Deed; and

WHEREAS, the Developer and the CDA desire to amend the Agreement to adjust the financial responsibility with respect to the maintenance of the CDA Improvements in accordance with the terms hereof; and

WHEREAS, the City has joined in this Amendment as the owner of Parcel A1-1 to acknowledge and accept the obligations imposed on the owner of such Parcel A1-1 by the terms hereof; and

WHEREAS, for purposes hereof, Parcel A4-3, Parcel A5-2, and Parcel A1-1 are each also referred to individually as a "Parcel".

NOW, THEREFORE, for and in consideration of the premises and the sum of Ten Dollars (\$10.00), cash in hand paid, and other good and valuable consideration, the

receipt and sufficiency of which are hereby acknowledged, the Developer and the CDA do hereby agree as follows:

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

2. Section 5 of the Agreement is hereby deleted in its entirety and replaced by a new Section 5 as follows:

“5. Financial Responsibility.

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

33.33% by the owner of Parcel A4-3

33.33% by the owner of Parcel A5-2

33.33% by the owner of Parcel A1-1

(b) As the manager of the CDA Improvement maintenance, the Developer shall develop a budget for the annual cost of the maintenance of the CDA Improvements for each calendar year (the “Annual Budget”). The Annual Budget shall be presented to the CDA not later than November 1 each year. The CDA shall present the Annual Budget to the Parcel owners 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 CDA. 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 CDA shall present such comments and/or concerns to the Developer. The Developer shall review the same and revise the Annual Budget as the Developer deems appropriate and present the revised Annual Budget to the CDA. This process shall continue until all of the owners approve the Annual Budget or the CDA determines on or before December 1 that the owners cannot agree on the Annual Budget. Approval of the Annual Budget by the owners of the applicable Parcels shall be deemed approval of such Annual Budget. Provided no dispute exists between the Parcel owners, the CDA will not have approval or veto rights over the Annual Budget. If the proposed Annual Budget is not approved by the owners by December 1, then the CDA shall resolve the dispute and establish the Annual Budget for the following calendar year, provided that the Annual Budget approved by the CDA does not vary by 5%, plus or minus, from the prior year’s approved Annual Budget.

(c) The Developer shall be responsible for assessing and collecting each owner’s applicable percentage of the Annual Budget through such mechanism as the Developer deems appropriate. All amounts owed to the Developer for the Annual Budget shall be made, 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. All amounts shall be remitted to the Developer, in advance without setoff, to enable the Developer to perform its maintenance obligations hereunder in accordance with the approved Annual Budget. 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 or its designee shall be entitled to pursue all rights and remedies at law or in equity to collect the amounts owed hereunder and, if the Developer or its designee 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) In the event of a foreclosure on the property on which any CDA Improvements exist or in the event of a bankruptcy of the Developer, the owner of Parcel A1-1, or their successors or assigns, the CDA shall have no responsibility to honor the terms and conditions of this Agreement or pay the cost of performing maintenance on the CDA Improvements.

(f) Notwithstanding the foregoing, the owner of Parcel A1-1 shall be exempt from contributing to the cost of the maintenance of the CDA Improvements (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 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 Parcel A1-1 to a non-public third party or the City has leased Parcel A1-1 to a non-public third party and such lease has commenced. After the occurrence of a Trigger Event, the Exemption for the owner of Parcel A1-1 shall expire and the owner of Parcel A1-1 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 A 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 all 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."

3. Sections 8, 9, 10 and 11 of the Agreement are hereby renumbered as Sections 9, 10, 11 and 12, respectively.

4. A new Section 7 is hereby inserted into the Agreement as follows:

“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.”

5. Renumbered Section 8 is hereby deleted in its entirety and replaced by a new Section 8 as follows:

“8. Agreement Runs with the Land. This Agreement shall run with the land and shall be binding upon the Developer, the CDA and 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 A1-1, Parcel A4-3, and Parcel A5-2.”

6. Interpretation. Except as otherwise provided herein, all terms and phrases used in this Amendment that are defined in the Agreement shall have the meaning ascribed to such term or phrase in the Agreement. In the event of any conflict between the Agreement and this Amendment, the terms of this Amendment shall control.

7. Ratification. Except as modified herein, the Agreement shall remain unchanged and shall continue in full force and effect.

8. Binding Effect. All of the covenants contained in this Amendment shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, legal representatives, and permitted successors and assigns.

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

IN WITNESS WHEREOF, the parties hereto have executed this Amendment under seal as of the day and year first written above.

{The remainder of the page is intentionally left blank}

FURTHER WITNESS THE FOLLOWING SIGNATURES AND SEALS:

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 First Amendment to Maintenance Agreement]

PARK CENTER COMMUNITY DEVELOPMENT
AUTHORITY, a political subdivision of the
Commonwealth of Virginia

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

STATE/COMMONWEALTH OF _____
CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of April,
2011, by Francis C. Jones, Jr., as Chairman of the Park Center Community
Development Authority.

Notary Public

My Commission Expires: _____

APPROVED AS TO FORM

Dean H. Crowhurst, CDA Attorney

[Signature page of First Amendment to 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 First Amendment to Maintenance Agreement]

EXHIBIT A

2011 ANNUAL BUDGET