

1 **PURCHASE AND SALE AGREEMENT**

2 **THIS AGREEMENT OF PURCHASE AND SALE** (this “Agreement”) is made on
 3 _____, 2021, by and between **LANDMARK LAND HOLDINGS, LLC**, a Delaware limited
 4 liability company (“Seller”), and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY**
 5 **OF ALEXANDRIA**, a political subdivision of the Commonwealth of Virginia (“Purchaser”). Seller and
 6 Purchaser are sometimes hereinafter collectively referred to as the “Parties.”

7 **RECITALS**

8 A. Seller, Inova and the City of Alexandria, Virginia (the “City”), are parties to that certain
 9 Landmark Mall Development and Financing Agreement dated as of _____, 2021 (as it may be
 10 amended from time to time, collectively, the “Development Agreement”), pursuant to which (i) Seller
 11 agreed to sell (or cause the sale of) the Property to Purchaser, as the City’s designee, and the City agreed to
 12 cause Purchaser to purchase the Property, and (ii) Seller further agreed to thereafter cause certain site
 13 development work to be performed on the Land, all as more particularly described in the Development
 14 Agreement.

15 B. Seller and Purchaser now desire to consummate the sale of the Property as contemplated
 16 by the Development Agreement, subject to the terms of this Agreement (including the terms of Section 35
 17 hereof).

18 C. Seller, Purchaser and Inova shall, simultaneously with the Settlement, enter into the Access
 19 Agreement (as defined in Section 10.a. hereof).

20 **NOW, THEREFORE**, in consideration of the mutual promises hereinafter set forth and of other
 21 good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties
 22 agree as follows:

23 **1. DEFINITIONS**

24 a. General Interpretive Principles. For purposes of this Agreement, except as otherwise
 25 expressly provided or unless the context otherwise requires, (i) the terms defined in this Section include the
 26 plural as well as the singular, and the use of any gender herein shall be deemed to include the other genders;
 27 (ii) accounting terms not otherwise defined herein have the meanings assigned to them in accordance with
 28 generally accepted accounting principles with respect to commercial real estate; (iii) references herein to
 29 “Articles,” “Sections,” “subsections,” “paragraphs” and other subdivisions, which are not referenced to a
 30 document, are to designated Articles, Sections, subsections, paragraphs and other subdivisions of this
 31 Agreement; (iv) a reference to an Exhibit or a Schedule without a further reference to the document to
 32 which the Exhibit or Schedule is attached is a reference to an Exhibit or Schedule to this Agreement; (v)
 33 the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a
 34 whole and not to any particular provision; (vi) the word “including” means “including, but not limited to;”
 35 and (vii) unless specifically noted to the contrary all references herein to “days” shall mean calendar days.

36 b. Defined Terms. For all purposes of this Agreement, the following terms shall have the
 37 respective meanings set forth below:

38 “Access Agreement” shall have the meaning set forth in Section 10.a.

39 “Affiliate” shall mean, with respect to any Person, a party controlling, controlled by or under
 40 common control with such Person, and if such Person is a partnership or limited partnership, a partner of
 41 such Person, or if such Person is a corporation, a shareholder of such Person.

42 “Agreement” shall mean this Agreement as it may be amended from time to time.

43 “Bankruptcy” shall mean Title 11, U.S. Code, and any similar state law for the relief of debtors, as
 44 such laws may be amended.

45 “Business Day” shall mean Purchaser’s official work days and shall exclude those holidays
46 determined by Purchaser.

47 “City” shall have the meaning set forth in Recital A.

48 “Code” shall have the meaning set forth in Section 16.

49 “Contracts” shall mean all oral or written agreements, providing for the management, operation,
50 supply, maintenance, repair, advertising or promotion of the Property, including service agreements,
51 maintenance contracts, cleaning contracts, contracts for the purchase or delivery of labor, services, materials
52 or supplies and equipment rental agreements or leases, and landscaping and lawn maintenance agreements
53 but shall exclude any agreements or contracts entered into by Seller or any affiliate thereof relating to the
54 site development work to be completed in accordance with the Development Agreement.

55 “Custodian” shall mean a receiver, trustee, assignee, liquidator or similar official under any
56 Bankruptcy Law.

57 “Deed” shall mean the Deed of Resubdivision and Conveyance, substantially in the form attached
58 as Exhibit B (subject, however, to any form modifications required by the Title Company), together with
59 any and all exhibits and attachments thereto.

60 “Delinquent Rent” shall mean Rent which is due and payable by a Tenant on or before the
61 Settlement Date but has not been paid by the Settlement Date.

62 “Development Agreement” shall have the meaning set forth in Recital A.

63 “Easement Agreements” shall mean any and all easement agreements, reciprocal easement
64 agreements, declarations of covenants, conditions, restrictions and easements, party wall agreements, “tie-
65 back” agreements, common area agreements, shared maintenance agreements, common use agreements or
66 similar agreements or understandings which burden or benefit the Property, and all supplements,
67 amendments, modifications and memoranda thereof, relating to the development, use, operation,
68 management, maintenance or occupancy of the Property. Easement Agreements shall include the above
69 described agreements, whether or not such agreements convey an interest in real property.

70 “Effective Date” means the date of execution and delivery of this Agreement by the last of the
71 Parties hereto to execute and deliver same.

72 “Environmental Law” shall mean any federal, state or local law, ordinance, rule, regulation,
73 requirement, guideline, code, resolution, order or decree (including consent decrees and administrative
74 orders) in effect on the date of this Agreement which regulates the use, generation, handling, storage,
75 treatment, transportation, decontamination, clean-up, removal, encapsulation, enclosure, abatement or
76 disposal of any Hazardous Material, including the Comprehensive Environmental Response, Compensation
77 and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C.
78 Sections 6901, et seq., the Toxic Substance Control Act, 15 U.S.C. Sections 2601, et seq., the Clean Water
79 Act, 33 U.S.C. Sections 1251 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. Section 1802,
80 their state analogues, and any other federal, state or local statute, law, ordinance, resolution, code, rule,
81 regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning
82 any Hazardous Material.

83 “Escrow Agent” shall mean First American Title Insurance Company, National Commercial
84 Services, 666 Third Avenue, New York, New York 10017, Attn: Larissa Kravanja, Esq. and Andrew D.
85 Jaeger, Esq.

86 “Executive Order 13224” shall have the meaning set forth in Section 8.a(7).

87 “Final Settlement Adjustment” shall have the meaning set forth in Section 7.e.

88 “First Installment of the Purchase Price” shall have the meaning set forth in Section 3.

90 “Governmental Authorities” shall mean any authority, board, bureau, commission, department or
91 body of any municipal, county, state or federal governmental entity, instrumentality, unit, or any
92 subdivision thereof, having or acquiring jurisdiction over the Property or the management, operation, use
93 or improvement thereof.

94 “Ground Lease” shall have the meaning set forth in the Development Agreement.

95 “Hazardous Material” shall mean any flammable, explosive, radioactive or reactive materials, any
96 asbestos (whether friable or non-friable), any pollutants, contaminants or other hazardous, dangerous or
97 toxic chemicals, materials or substances, any petroleum products or substances or compounds containing
98 petroleum products, including gasoline, diesel fuel and oil, any polychlorinated biphenyls or substances or
99 compounds containing polychlorinated biphenyls, and any other material or substance defined as a
100 “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic materials,” “contamination,”
101 and/or “pollution” within the meaning of any Environmental Law.

102 “Improvements” shall mean the buildings and other improvements that may be situated on the
103 Land.

104 “Inova” means Inova Health Care Services, a Virginia non-stock corporation.

105 “Inova Cure Period” shall have the meaning set forth in Section 23.b.

106 “Land” shall mean that certain parcel of real property described on Exhibit A attached hereto,
107 located in Alexandria, Virginia.

108 “Leases” shall mean all leases, licenses or other agreements (other than subleases entered into by
109 Tenants), including all amendments, extensions, modifications and supplements thereto, pursuant to which
110 any Person has the right to use or occupy any part of the Property.

111 “Legal Requirements” shall mean all laws, ordinances, rules, regulations, orders and requirements
112 of all Governmental Authorities relating to, or regulating the ownership, use, operation, management,
113 maintenance and repair of the Property, including zoning laws, building, fire, safety and health laws and
114 Environmental Laws, and any obligations imposed on the owner of the Property in connection with any site
115 plan approval of the Property or any part thereof, or zoning proffers relating to the Property or any part
116 thereof.

117 “Lender” shall have the meaning set forth in Section 33.

118 “Licenses” shall mean all licenses, authorizations, approvals and permits issued or granted by any
119 Person relating to Seller’s (and not any Tenant’s) use, operation, ownership or maintenance of the Property
120 but shall exclude any licenses, approvals and permits issued or granted to Seller or any affiliate thereof
121 relating to the site development work to be completed in accordance with the Development Agreement.

122 “Litigation” shall have the meaning set forth in Section 8.b(4).

123 “Litigation and Claims Schedule” shall mean the information concerning pending and threatened
124 litigation and claims contained in Schedule 1, as described in Section 8.b(4).

125 “Monetary Lien” shall have the meaning set forth in Section 5.b.

126 “Mortgage” shall mean a mortgage, deed of trust, or any other type of security instrument of the
127 type commonly given to secure loans or advances on, or the unpaid purchase price of, real property in
128 Alexandria, Virginia.

129 “Operating Expenses” shall mean all costs, expenses, charges and fees relating to the ownership,
130 management, operation, maintenance and repair of the Property, including electricity, gas, water and sewer
131 charges, telephone and other public utilities, common area maintenance charges, insurance premiums, vault
132 charges, personal property taxes, excise taxes on Rent, business occupational taxes, Seller’s contributions
133 to merchant or project associations or to promotional funds, periodic fees payable under transferable

134 Licenses for the operation (as opposed to the construction) of the Property, charges under Easement
135 Agreements, salaries, wages, vacation and sick pay, pension, welfare and other fringe benefits, employee-
136 related taxes and other labor costs and any other operating expenses payable by Tenants under their Leases,
137 but not including any costs, expenses, charges or fees which are the direct responsibility of a Tenant.

138 "Payment Conditions" shall have the meaning set forth in Section 3.

139 "Permitted Exceptions" shall mean (i) the lien of current real estate taxes not yet due and payable,
140 (ii) the title exceptions listed in the attached Exhibit C, if any, (iii) any gaps, gores, encroachments and
141 other physical matters not shown on the Title Commitment but disclosed by the Survey, (iv) all building,
142 zoning, and other state, county or federal laws, codes and regulations (whether existing or proposed)
143 affecting the Property, (v) the REA, and (vi) the Access Agreement.

144 "Person" shall mean an individual, estate, trust, partnership, corporation, Governmental Authority
145 or other legal entity.

146 "Property" shall mean the Real Estate and the other rights described in subsections b, c and d of
147 Section 2.

148 "Purchase Price" shall mean the purchase price of the Property specified in Section 3.

149 "Purchaser's Fiscal Year" shall mean from July 1 to June 30.

150 "Pursuit Costs" shall have the meaning set forth in Section 14.b.(1)(C).

151 "Real Estate" shall mean the Land and the Improvements thereon.

152 "REA" shall mean that certain Reciprocal Easements and Covenants Agreement between
153 Purchaser, Seller and Inova.

154 "Release Date" shall have the meaning set forth in Section 8.c.

155 "Repurchase Memo" shall have the meaning set forth in Section 23.b.

156 "Repurchase Notice" shall have the meaning set forth in Section 23.b.

157 "Repurchase Price" shall have the meaning set forth in Section 23.b.

158 "Repurchase Right" shall have the meaning set forth in Section 23.b.

159 "Repurchase Settlement Date" shall have the meaning set forth in Section 23.b.

160 "Second Installment of the Purchase Price" shall have the meaning set forth in Section 3.

161 "Second Installment Payment Date" shall have the meaning set forth in Section 3.

162 "Seller's Knowledge" means the actual, conscious knowledge of Brigg M. Bunker and Jay Kelly.

163 "Settlement" or "Settlement Date" shall have the meaning set forth in Section 6.a.

164 "Settlement Statement" shall have the meaning set forth in Section 7.a.

165 "Survey" shall have the meaning set forth in Section 5.c.

166 "Tenant" or "Tenants" shall mean all Persons who have the right to lease or occupy space within
167 the Property pursuant to written or oral agreements.

168 "Title Commitment" shall have the meaning set forth in Section 5.a.

169 "Title Company" shall have the meaning set forth in Section 5.a.

170 "Transferring Parties" shall mean, together, SRG Landmark Member LLC, a Delaware limited
171 liability company (or a successor thereto), and Landmark Mall, L.L.C., a Delaware limited liability
172 company.

173 **2. THE PROPERTY:** On the Settlement Date (as hereinafter defined in Section 6), and subject to
174 the terms and conditions set forth in this Agreement, Seller agrees to sell (or cause to be sold) to Purchaser,
175 and Purchaser agrees to purchase:

176 a. the Real Estate;

177 b. all right, title and interest of Seller and the Transferring Parties, if any, in and to any street,
178 road, avenue or alley, open or closed, adjacent to or abutting the Real Estate;

179 c. all the estate and rights of Seller and the Transferring Parties, if any, in and to all Easement
180 Agreements and other easements, covenants and other rights appurtenant to the Real Estate, streets, roads,
181 avenues or alleys, open or closed, adjacent to or abutting the Real Estate;

182 d. all right, title and interest of Seller and the Transferring Parties, if any, in and to the
183 proceeds of, or any award made for, a taking of all or any part of the Property by any Governmental
184 Authority pursuant to the exercise of its power of eminent domain; and

185 e. all right, title and interest of Seller and the Transferring Parties, if any, in and to the
186 Licenses, if any.

187 Seller shall sell and convey (or cause to be sold and conveyed) to Purchaser and Purchaser shall purchase
188 and accept fee simple title to the Property and other rights to be transferred to Purchaser as set forth above,
189 free and clear of all liens, encumbrances, easements, covenants, conditions, Leases, financing statements,
190 and rights of others, except for the Permitted Exceptions.

191 Except as expressly provided in this Agreement or in any document to be executed and delivered on the
192 Settlement Date pursuant to the terms of this Agreement, Purchaser is not assuming any of the debts,
193 liabilities, taxes or obligations of, or claims against, Seller or any other party (including the Transferring
194 Parties) of any kind or character, whether direct or contingent and whether known or unknown. The only
195 transactions contemplated by this Agreement are the sale and purchase of the Property. Seller is not selling
196 a business. The Parties intend that Purchaser shall not be deemed to be a successor of Seller or any other
197 party (including the Transferring Parties) with respect to any liabilities or obligations to Tenants or other
198 third parties. Purchaser shall not accept or assume the assignment of any Leases or Contracts at Settlement.
199 The provisions of this Section shall neither increase, decrease, diminish nor abrogate Seller's
200 representations, warranties and indemnification obligations under Section 8.

201 **3. PURCHASE PRICE:** The total purchase price of the Property is Fifty-four Million
202 Dollars (\$54,000,000.00), subject to adjustments as provided for in this Agreement, to be paid by Purchaser
203 to Seller as set forth hereafter (the "Purchase Price"). Purchaser shall pay the Purchase Price in two (2)
204 installments. The first installment in the amount of Twenty-one Million Dollars (\$21,000,000.00) shall be
205 paid by Purchaser to Seller on the Settlement Date (the "First Installment of the Purchase Price"). The
206 second installment in the amount of Thirty-three Million Dollars (\$33,000,000.00) (the "Second Installment
207 of the Purchase Price") shall be paid by Purchaser to Seller on the date that is fifteen (15) months after the
208 Settlement Date (i.e., _____, 202_) (the "Second Installment Payment Date"); subject, however, to
209 Seller having (i) posted or delivered, as the case may be, the Performance Assurance (as such term is defined
210 in the Development Agreement) pursuant to the terms of Section 7.1(h) of the Development Agreement,
211 and (ii) performed in all material respects all covenants and obligations required by this Agreement and the
212 Development Agreement to be performed by it on or before the Second Installment Payment Date
213 (collectively, the "Payment Conditions"). The obligations set forth in this Section 3 shall expressly survive
214 Settlement.

215 **4. [INTENTIONALLY OMITTED]**

216 **5. TITLE AND SURVEY:**

217 a. Purchaser has obtained a title commitment from First American Title Insurance Company
218 (the "Title Company") committing to insure the fee simple title to the Land, in an amount equal to the
219 Purchase Price (the "Title Commitment"). Purchaser has provided Seller with a copy of the Title
220 Commitment.

221 b. All title exceptions listed in the attached Exhibit C and shall be deemed Permitted
222 Exceptions. Notwithstanding the foregoing, any and all ground leases, mortgages, deeds of trust, financing
223 statements, mechanic's liens, judgment liens, security interests and/or any other type of monetary lien or
224 encumbrance not created or caused by Purchaser (singly and collectively, a "Monetary Lien") shall not be
225 considered to be Permitted Exceptions under any circumstance and Seller shall be responsible, at its sole
226 costs and expense, for removing all Monetary Liens of record on or before the Settlement Date.

227 c. Purchaser has obtained a survey for the Real Estate setting forth the boundaries and acreage
228 of the Land (the "Survey"). Purchaser has provided Seller with a copy of the Survey.

229 d. Purchaser has reviewed the Survey and accepted any and all matters set forth therein, all
230 of which shall be deemed Permitted Exceptions.

231 **6. SETTLEMENT:**

232 a. Settlement Date. The settlement of the sale of the Property in accordance with this
233 Agreement (the "Settlement" or "Settlement Date") shall be on _____, 20__.

234 b. Settlement. Settlement shall take place in the offices of the Escrow Agent. On the morning
235 of the Settlement Date, Purchaser shall effect a wire transfer of Federal funds to the Escrow Agent's escrow
236 account in an amount equal to the sum of (i) the First Installment of the Purchase Price and (ii) the net
237 amount (if any) of the costs, expenses, prorations and adjustments payable by Purchaser under this
238 Agreement. After the Escrow Agent's receipt of the wire transfer of funds and immediately following the
239 recordation of the Deed vesting fee simple title to the Property in Purchaser or its designee, (i) the Escrow
240 Agent shall disburse to Seller an amount equal to the Purchase Price reduced by the net amount of the costs,
241 expenses, prorations and adjustments payable by Seller under this Agreement; (ii) the Escrow Agent shall
242 deliver to Purchaser all other documents and instruments received by it which, in accordance with the terms
243 of this Agreement, are to be delivered by Seller to Purchaser at the Settlement; and (iii) the Escrow Agent
244 shall deliver to Seller all other documents and instruments received by it which, in accordance with the
245 terms of this Agreement, are to be delivered by Purchaser to Seller at the Settlement.

246 c. Seller's Deliveries. At the Settlement, Seller shall deliver to Purchaser the following:

247 (1) the fully executed Deed;

248 (2) a certification as to non-foreign status which complies with the provisions of
249 Section 1445(b)(2) of the Internal Revenue Code of 1986, as amended, signed by the Transferring Parties;

250 (3) an Owner's Affidavit, signed by each of the Transferring Parties and by Seller (to
251 the extent required by the Title Company), and addressed to the title insurance company designated by
252 Purchaser, with respect to the absence of claims which would give rise to mechanics' liens (except claims
253 for mechanics' liens arising from the acts or omissions of Purchaser), the absence of parties in possession
254 of the Property and the absence of unrecorded easements, in the form required by the Title Company to
255 eliminate the exceptions for those matters from Purchaser's title insurance policy;

256 (4) the Settlement Statement referred to in Section 7.a, signed by Seller;

257 (5) a certificate, signed by Seller, that all the representations and warranties made by
258 Seller in Section 8 are true and correct on the Settlement Date with the same force and effect as if such
259 representations and warranties had been made on and as of such date (which certificate shall survive the
260 Settlement for a period of twelve (12) months);

261 (6) all organizational documents and resolutions, certifications or other agreements
262 evidencing the requisite authorization to perform the transactions hereunder, as is required by the Title
263 Company pursuant to the Title Commitment;

264 (7) all other documents reasonably required by the Title Company for the
265 consummation of the transactions contemplated by this Agreement;

266 (8) the Access Agreement signed by Seller (or an affiliate thereof);

267 (9) the REA signed by Seller (or an affiliate thereof); and

268 (10) the Repurchase Memo signed by Seller.

269 d. Purchaser's Deliveries. At the Settlement, Purchaser shall deliver to Seller the following:

270 (1) the Settlement Statement referred to in Section 7.a, signed by Purchaser;

271 (2) a certificate, signed by Purchaser, that all the representations and warranties made
272 by Purchaser in Section 9 are true and correct on the Settlement Date with the same force and effect as if
273 such representations and warranties had been made on and as of such date (which certificate shall survive
274 the Settlement for a period of twelve (12) months);

275 (3) the Access Agreement signed by Purchaser;

276 (4) the REA signed by Purchaser; and

277 (5) the Repurchase Memo signed by Purchaser.

278 e. Delivery in Escrow. The delivery to the Escrow Agent of the Purchase Price, the executed
279 Deed and all other documents and instruments required to be delivered by either Party to the other by the
280 terms of this Agreement shall be deemed to be a good and sufficient tender of performance of the terms
281 hereof. The Escrow Agent shall have the right, at the Settlement, to apply the Purchase Price to pay off and
282 discharge encumbrances or other obligations affecting the Property which are not Permitted Exceptions, so
283 that title to the Property shall be insurable as required by Section 12.c.

284 7. SETTLEMENT ADJUSTMENTS AND PRORATIONS

285 a. General. There shall be no adjustments between the Parties at Settlement with respect to
286 utilities, maintenance charges and other Operating Expenses incurred in connection with the ownership,
287 management and operation of the Property (other than real estate taxes, as set forth below), as Seller shall
288 continue to be responsible for all such Operating Expenses (other than real estate taxes) and other charges
289 from and after Settlement pursuant to the terms of the Access Agreement.

290 b. Taxes and Assessments.

291 (1) Proration of Taxes at Settlement. All non-delinquent real estate taxes assessed
292 against the Property shall be prorated between Seller and Purchaser on an accrual basis, as of the Settlement
293 Date, based upon the actual current tax bill. If the most recent tax bill received by Seller before the
294 Settlement Date is not the actual current tax bill, then Seller and Purchaser shall initially prorate the real
295 estate taxes at the Settlement by applying 105% of the tax rate indicated on the most recent tax bill received
296 by Seller to the latest assessed valuation, and shall re-prorate the real estate taxes retroactively following
297 Settlement once the next tax bill is received. All real estate taxes accruing through the Settlement Date
298 shall be the obligation of Seller and all real estate taxes accruing after the Settlement Date shall be the
299 obligation of Purchaser, recognizing that Purchaser is a tax-exempt entity. Any delinquent real estate taxes
300 assessed against the Property shall be paid (together with any interest and penalties) by Seller at the
301 Settlement from the Purchase Price.

302 (2) Post-Settlement; Supplemental Taxes. If, after the Settlement Date, any additional
303 or supplemental real estate taxes are assessed against the Property by reason of back assessments,

304 corrections of previous tax bills or other events occurring before the Settlement Date, Seller and Purchaser
305 shall re-prorate the real estate taxes to provide the appropriate credit to Purchaser.

306 (3) Post-Settlement; Refunds of Taxes. Any refunds of real estate taxes made after
307 the Settlement shall be held by Purchaser (and, if received by Seller, shall be delivered immediately to
308 Purchaser to be held in accordance with this Section) and shall be paid to Seller (for the period through the
309 Settlement Date) and to Purchaser (for the period commencing after the Settlement Date).

310 (4) Pending Tax Proceedings. If any proceeding to determine, contest or challenge
311 the assessed value of the Property or the real estate taxes payable with respect to the Property has been
312 commenced before the date of this Agreement, all such proceedings, both administrative and judicial, shall,
313 at Purchaser's option, be dismissed, with prejudice, prior to the Settlement Date.

314 c. Settlement Costs and Transfer Taxes. Seller shall pay the cost of preparing the Deed, any
315 regional congestion fee, any other fee or tax required by law to be paid by Seller, the Virginia grantor's tax
316 payable in connection with the recording of the Deed, all costs to release Mortgages and other liens, and
317 the costs and attorney's fees to remove any title exceptions to be removed by Seller pursuant to the terms
318 of Section 5.b. All other State and County transfer taxes and recording charges payable in connection with
319 the recording of the Deed (whether imposed in the form of transfer taxes, revenue stamps or otherwise)
320 shall be the responsibility of Purchaser or Purchaser shall indicate to Seller Purchaser's exemption
321 therefrom. Purchaser shall pay all fees charged by the Title Company, including all expenses of
322 examinations of title and for the cost of the survey. Seller and Purchaser shall each pay one-half (1/2) of all
323 fees and expenses of the Escrow Agent and all other recording fees and Settlement expenses. Each Party
324 shall pay its own legal fees and other expenses incurred by it prior to Settlement.

325 d. Income Taxes. Notwithstanding any other provision of this Agreement to the contrary, all
326 federal, state or local income taxes payable with respect to Seller or the Property, if any, accruing through
327 the Settlement Date, shall be the obligation of and for the account of Seller, and Purchaser shall have no
328 obligation or liability whatsoever with respect thereto.

329 **8. REPRESENTATIONS AND WARRANTIES OF SELLER.** Seller hereby makes the following
330 representations and warranties to Purchaser for the purpose of inducing Purchaser to execute and deliver
331 this Agreement and to consummate the transactions contemplated by this Agreement, each of which
332 representations and warranties are true and correct in all material respects on the Effective Date:

333 a. Representations and Warranties Regarding Authority and Status.

334 (1) Organization. Seller and the Transferring Parties are duly organized limited
335 liability companies in good standing under the laws of the State of Delaware and are authorized to do
336 business in the Commonwealth of Virginia.

337 (2) Authorization. Seller hereby represents and covenants that each individual
338 executing this Agreement on behalf of Seller and/or executing the Deed on behalf of the Transferring Parties
339 are duly authorized to execute and deliver this Agreement and the Deed, as applicable, and that Seller has
340 the power and authority to enter into this Agreement, and that all necessary and required actions requisite
341 to authorize Seller to enter into this Agreement have been duly taken.

342 (3) No Conflicting Agreements. The execution and delivery by Seller of, and the
343 performance and compliance by Seller with the terms and provisions of, this Agreement do not violate any
344 of the terms, conditions or provisions of (i) Seller's organizational or authority documents, (ii) any
345 judgment, order, injunction, decree, regulation or ruling of any court or other Governmental Authority to
346 which Seller is subject, or (iii) any agreement or contract to which Seller is a party or to which it or the
347 Property is subject, nor shall such execution, delivery, performance or compliance with this Agreement
348 constitute a material default thereunder or give to others any material rights of termination or cancellation
349 in or with respect to the Property.

350 (4) Approvals. No authorization, consent, order, approval or license from, filing with,
351 or other act by any Governmental Authority is or will be necessary to permit the valid execution and
352 delivery by Seller of this Agreement or the performance by Seller or of the Transferring Parties of the
353 obligations to be performed by Seller under this Agreement, including but not limited to conveyance of the
354 Property to the Purchaser. No authorization, consent or approval from any other Person is or will be
355 necessary to permit the valid execution and delivery by Seller of this Agreement or the performance by
356 Seller of the obligations to be performed by Seller or by the Transferring Parties under this Agreement, or
357 the conveyance of the Property to the Purchaser at Settlement.

358 (5) United States Person. Seller and each the Transferring Parties is a “United States
359 person” within the meaning of Sections 1445(f)(3) and 7701(a)(30) of the Internal Revenue Code of 1986,
360 as amended.

361 (6) Absence of Bankruptcy. Neither Seller nor either of the Transferring Parties has
362 commenced (within the meaning of any Bankruptcy Law) a voluntary case, consented to the entry of an
363 order for relief against it in an involuntary case, or consented to the appointment of a Custodian of it or for
364 all or any substantial part of its property, nor has a court of competent jurisdiction entered an order or decree
365 under any Bankruptcy Law that is for relief against Seller in an involuntary case or appointed a Custodian
366 of Seller for all or any substantial part of its property.

367 (7) Executive Order 13224. Neither Seller nor either of the Transferring Parties is
368 listed in Executive Order 13224-Blocking Property and Prohibiting Transactions with Persons Who
369 Commit, Threaten to Commit or Support Terrorism, as amended (“Executive Order 13224”), and neither
370 Seller nor either of the Transferring Parties has present, actual knowledge that it has knowingly providing
371 assistance, support, sponsorship, or services of any kind to, or otherwise knowingly associated with any of
372 the persons or entities referred to or described in Executive Order 13324, or other banned or blocked person,
373 entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered
374 by the Office of Foreign Assets Control. Neither Seller nor either of the Transferring Parties is the subject
375 of any law blocking or prohibiting transactions with persons who commit, threaten to commit or support
376 terrorism, including the USA Patriot Act.

377 b. Representations and Warranties Regarding Real Estate and Legal Matters.

378 (1) Employees. As of the Settlement Date, neither Seller nor any Affiliate of Seller,
379 including, without limitation, the Transferring Parties, has any employees engaged in the operation or
380 maintenance of the Property.

381 (2) Ownership of Property. There are no defaults in compliance with the material
382 terms and provisions of any of the covenants, conditions, restrictions, rights-of-way or easements
383 constituting one or more of the Permitted Exceptions which are to be performed or complied with by the
384 owner of the Property, or if any such defaults exist, they will be cured on or before the Settlement Date.
385 No party, except Purchaser, has or shall have on or before the Settlement Date any right to purchase the
386 Property.

387 (3) Condemnation. Except as disclosed to Purchaser in writing, neither Seller nor
388 either of the Transferring Parties has received from any Governmental Authority any notice of, and Seller
389 has no knowledge of, pending or contemplated condemnation proceedings affecting the Property, or any
390 part thereof.

391 (4) Litigation and Claims. The Litigation and Claims Schedule contains a complete
392 and correct list of all investigations, actions, suits, proceedings or claims pending, threatened against or
393 affecting the Property, at law or in equity or before or by any court, federal, state, municipal or other
394 governmental department, commission, board, agency or instrumentality, domestic or foreign (collectively,
395 “Litigation”), and sets forth, with respect to each such Litigation, the parties to such Litigation, the amount
396 claimed as damages (or other remedies sought) and the status of such Litigation as of the date hereof.

397 (5) Mechanics' Liens. All bills and claims, other than bills and claims arising from
398 work performed by Purchaser or specifically authorized by Purchaser to Purchaser's contractors, for labor
399 performed and materials furnished to or for the benefit of the Property for all periods prior to the Settlement
400 Date have been (or prior to the Settlement Date will be) paid in full, and on the Settlement Date there shall
401 be no mechanics' liens or materialmen's liens (whether or not perfected), other than mechanics' liens or
402 materialmen's liens arising from work performed by Purchaser or specifically authorized by Purchaser to
403 Purchaser's contractors, on or affecting the Property.

404 c. Survival. All representations and warranties contained in this Section 8 shall survive the
405 Settlement, and the execution and delivery of the Deed, for a period of one (1) year after the Settlement
406 Date (the "Release Date"), and shall not be merged in the Deed at Settlement. Nothing herein shall be
407 deemed to affect the obligations of Seller under the Development Agreement and the Access Agreement,
408 which obligations shall survive the Release Date subject to the terms of those documents.

409 d. No Other Representations; "As-is" Conveyance. Except as expressly set forth in this
410 Agreement or in the Development Agreement, it is understood and agreed that Seller is not making and has
411 not at any time made any warranties or representations of any kind or character, express or implied with
412 respect to the Property, including, but not limited to, any warranties or representations as to habitability,
413 merchantability, or fitness for a particular purpose or any other matter or thing regarding the Property.
414 Except as expressly set forth in this Agreement or in the Development Agreement, Purchaser acknowledges
415 and agrees that upon closing Seller shall sell and convey (or cause to be sold and conveyed) to Purchaser
416 and Purchaser shall accept the Property "as is, where is, with all faults." Except as expressly set forth in
417 this Agreement or in the Development Agreement, Purchaser shall rely solely on its own investigation with
418 respect to the Property, including the Property's physical, environmental or economic condition, compliance
419 or lack thereof with any ordinance, order, permit or resolution. In addition to, and not by way of limitation
420 of, the sale of the Property on an AS IS, WHERE IS, CONDITION WITH ALL FAULTS basis under this
421 Agreement, Purchaser acknowledges that, except as otherwise expressly herein provided herein or in the
422 Development Agreement, Seller makes no representations or warranties whatsoever to Purchaser regarding
423 the: (i) physical condition of the Property, or (ii) the presence or absence of Hazardous Materials in, at, or
424 under the Property.

425 **9. REPRESENTATIONS AND WARRANTIES OF PURCHASER:** Purchaser makes the
426 following representations and warranties to Seller for the purpose of inducing Seller to execute and deliver
427 this Agreement and to consummate the transactions contemplated by this Agreement:

428 a. Authorization. The City Council of Alexandria, Virginia has approved this Agreement and
429 has duly authorized the execution and delivery of this Agreement on behalf of The City of Alexandria,
430 Virginia as Purchaser.

431 b. No Conflicting Agreements. The execution and delivery by Purchaser of, and the
432 performance and compliance by Purchaser with the terms and provisions of, this Agreement do not violate
433 any of the terms, conditions or provisions of (i) any applicable judgment, order, injunction, decree, ruling
434 of any court to which Purchaser is subject, or (ii) any agreement or contract to which Purchaser is a party.

435 **10. ADDITIONAL OBLIGATIONS OF SELLER**

436 a. Possession. Seller agrees to give (or cause to be given) full, complete and actual possession
437 of the Property to Purchaser on the Settlement Date, free from Tenants and all occupants, and subject to the
438 right of Seller and its affiliates, contractors, agents and representatives to perform the site development
439 work on the Real Estate in accordance with the Development Agreement and access and use of the Real
440 Estate for such purposes pursuant to terms of an access agreement to be entered into by Seller (or an affiliate
441 thereof), Purchaser and Inova at the time of Settlement in the form attached hereto as Exhibit D (the "Access
442 Agreement").

443 b. Further Assurances. Seller agrees that it shall, at any time and from time to time after the
444 Settlement Date, upon request of Purchaser, do, execute, acknowledge and deliver, or will cause to be done,
445 executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances
446 and assurances as may reasonably be required for the better assigning, transferring, granting, assuring and
447 confirming to Purchaser, or to its successors and assigns, or for aiding and assisting in collecting and
448 reducing to possession, any or all of the assets or Property being sold to Purchaser pursuant to this
449 Agreement.

450 c. Expenses. Seller agrees to pay all expenses incurred by it in connection with the
451 negotiation, execution and performance of this Agreement and the transactions contemplated hereby,
452 including the fees and expenses of its legal counsel.

453 e. Cancellation of Contracts. Seller (or the Transferring Parties with respect to the period
454 prior to Settlement) shall be fully responsible for all Contracts before and after Settlement, and Purchaser
455 shall have no responsibility for or obligations under Contracts.

456 f. Pay-Off Letter. Seller shall obtain (or cause to be obtained) from every holder of a
457 Mortgage on the Property (if any), and deliver to the Escrow Agent at least three (3) Business Days prior
458 to the Settlement Date, a letter from such mortgagee specifying the amounts necessary to pay off such
459 Mortgage.

460 **11. CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS:** The obligations of Seller to
461 cause the Property to be sold to Purchaser and to perform the other covenants and obligations to be
462 performed by Seller on the Settlement Date shall be subject to the following conditions (all or any of which
463 may be waived, in whole or in part, by Seller):

464 a. Purchaser's Representations and Warranties True. The representations and warranties
465 made by Purchaser in Section 9 shall be true and correct on and as of the Settlement Date with the same
466 force and effect as though such representations and warranties had been made on and as of such date, and
467 Purchaser shall have executed and delivered to Seller a certificate, dated as of the Settlement Date, to the
468 foregoing effect.

469 b. Purchaser's Performance. Purchaser shall have performed all obligations required by this
470 Agreement to be performed by it on or before the Settlement Date, except for the Second Installment of the
471 Purchase Price which shall be due and payable pursuant to the terms of Section 3.a. hereof.

472 **12. CONDITIONS PRECEDENT TO PURCHASER'S OBLIGATIONS:** The obligations of
473 Purchaser to purchase the Property and to perform the other covenants and obligations to be performed by
474 Purchaser on the Settlement Date in all material respects shall be subject to the following conditions (all or
475 any of which may be waived, in whole or in part, by Purchaser):

476 a. Seller's Representations and Warranties True. The representations and warranties made
477 by Seller in Section 8 shall be true and correct in all material respects on the date of this Agreement and
478 shall be true and correct in all material respects on and as of the Settlement Date with the same force and
479 effect as if such representations had been made on and as of such date, and Seller shall have executed and
480 delivered to Purchaser a certificate, dated as of the Settlement Date, to the foregoing effect, which by its
481 terms shall survive the Settlement Date for a period of twelve (12) months.

482 b. Seller's Performance. Seller shall have performed in all material respects all covenants
483 and obligations required by this Agreement and the Development Agreement to be performed by it on or
484 before the Settlement Date.

485 c. Title to Property. On the Settlement Date, (i) the Land shall be a separate lot of record
486 lawfully created by the Deed, (ii) title to the Property shall be marketable, good of record and in fact, and
487 free and clear of all Mortgages, liens, encumbrances, easements, Leases, conditions and other matters
488 affecting title, recorded or unrecorded, other than the Permitted Exceptions; and (iii) subject to the payment

489 by Purchaser of the applicable premium, Purchaser shall receive from a title insurance company selected
490 by Purchaser, a current ALTA Form B owner's policy of title insurance, or an unconditional binder to issue
491 the same, in an amount equal to the Purchase Price, dated, or updated to, the Settlement Date, insuring, or
492 committing to insure, at standard rates, Purchaser's marketable fee simple title to the Property in the
493 condition required by clause (i) above. Such title insurance policy, or commitment to issue the same, may
494 in Purchaser's sole discretion, in addition, (A) include reinsurance, with direct access agreements, from
495 such other title insurance companies, and in such amounts of liability, as Purchaser may reasonably request;
496 (B) provide extended coverage, including protection against (i) liens for labor or material, whether or not
497 of record, (ii) parties in possession, (iii) unrecorded easements, and (iv) taxes and special assessments not
498 shown on the public records.

499 d. **[INTENTIONALLY OMITTED]**

500 e. No Litigation. On the Settlement Date, no action, suit or proceeding shall have been
501 instituted or threatened, by any person or entity not a party to this Agreement, before any court to restrain,
502 prohibit, enjoin, or to obtain damages in respect of, or which is related to or arises out of, this Agreement,
503 or the consummation of the transactions contemplated herein which in the reasonable opinion of Purchaser
504 makes it inadvisable to consummate such transactions.

505 f. Condemnation. On the Settlement Date, no material part of the Property shall be about to
506 be acquired (*i.e.*, Seller has received notice of condemnation), or shall previously have been acquired, by
507 authority of any governmental agency in the exercise of its power of eminent domain or by purchase in lieu
508 of condemnation, nor on the Settlement Date shall there be any threat or imminence of any such
509 condemnation or purchase in lieu of condemnation.

510 **13. [INTENTIONALLY OMITTED]**

511 **14. DEFAULT AND REMEDIES:**

512 a. Default. Purchaser or Seller, as applicable, shall be deemed in default of this Agreement
513 if any of the following failures or breaches occur and are not cured within twenty (20) days after receipt of
514 written notice of such failure or breach from the other party:

515 (1) Seller fails to satisfy all of the conditions set forth in Section 12 or Section 13 on
516 the Settlement Date;

517 (2) Seller is in material breach of any of the representations or warranties made by it
518 in this Agreement or fails to perform any of the material covenants or agreements to be performed by it
519 under this Agreement;

520 (3) Purchaser fails to satisfy all of the conditions set forth in Section 11 on the
521 Settlement Date;

522 (4) Purchaser is in breach of any of the representations or warranties made by it in this
523 Agreement or fails to perform any of the covenants or agreements to be performed by it under this
524 Agreement;

525 (5) Purchaser is in breach of any of the terms of the Development Agreement; or

526 (6) Seller is in breach of any of the terms of the Development Agreement.

527 In addition, Purchaser shall be in immediate default of this Agreement (without the application of any notice
528 and cure period) upon Purchaser's failure to pay the Second Installment of the Purchase Price to Seller on
529 the Second Installment Payment Date, subject to the Payment Conditions having been satisfied, time being
530 strictly of the essence, which obligation shall survive Settlement).

531 b. Remedies.

532 (1) Purchaser's Remedies.

533 (A) If Seller is in default of this Agreement pursuant to Section 14.a, Purchaser
534 may, at its option, terminate this Agreement, and the Parties thereafter shall be relieved of liability, each to
535 the other, at law and equity.

536 (B) In lieu of the foregoing, but only if the failure of a condition precedent
537 under Section 14.a.(1) is also a breach by Seller under Section 14.a.(2), Purchaser shall be entitled to seek
538 all remedies at law, including, without limitation, monetary damages, excluding, however, consequential,
539 punitive or exemplary damages. Without limiting or waiving the foregoing, Purchaser may also seek all
540 remedies to which it is entitled in equity, including the right to an injunction or restraining order and the
541 right to seek specific performance. Accordingly, if Seller defaults in performing any of the material
542 covenants or agreements to be performed by it under this Agreement, Purchaser shall have the right, instead
543 of terminating this Agreement pursuant to Section 14.b(1)(A), to elect to permit this Agreement to remain
544 in effect and to sue for actual damages, specific performance, or other remedies available to Purchaser at
545 law or equity, excluding, however, consequential, punitive or exemplary damages.

546 (C) In addition to all remedies available to Purchaser, if Seller fails or refuses
547 to perform its obligations pursuant to, or required by, this Agreement, including but not limited to Seller's
548 obligation to cause the Property to be conveyed to Purchaser, then Purchaser shall also be entitled to recover
549 all of its reasonable, actual, documented, out-of-pocket costs and expenses incurred in connection with this
550 Agreement, any breach of this Agreement, or the enforcement of this Agreement, including but not limited
551 to Purchaser's reasonable, actual, documented, out-of-pocket costs for the preparation of this Agreement,
552 and for all inspections, studies and surveys performed or contracted for in connection with this Agreement
553 and for any bond-related costs and expenses incurred by Purchaser to fund the Purchase Price (collectively,
554 "Pursuit Costs"), and all of its reasonable attorney's fees and costs incurred to negotiate this Agreement
555 and in connection with Purchaser's efforts to purchase the Property hereunder.

556 (2) Seller's Remedies. If Purchaser is in default of this Agreement pursuant to Section
557 14.a, Seller may terminate this Agreement and neither Party shall have any further rights or obligations
558 hereunder; provided, however, that Purchaser shall promptly return to Seller all engineering studies, and
559 other written material relating to the Property previously delivered by Seller to Purchaser and Seller shall
560 be entitled to seek all remedies at law, including, without limitation, monetary damages, excluding,
561 however, consequential, punitive or exemplary damages.

562 **15. BROKERS.** Seller acknowledges and agrees that no broker has acted on behalf of Seller in
563 connection with the transaction contemplated hereby. Seller hereby agrees to indemnify and hold harmless
564 Purchaser, its elected and appointed officers, officials, and employees from any loss, damage, cost or
565 expense incurred by such indemnified entity and persons and arising out of a breach of the representation
566 and warranty made by Seller as set forth in this Section 15. Purchaser represents and warrants to Seller that
567 Purchaser has not engaged any broker, agent or finder to act on its behalf in connection with this transaction.

568 **16. [INTENTIONALLY OMITTED]**

569 **17. NOTICES:** All notices, demands, and requests which may be given, or are required to be given
570 by either party to the other shall be in writing, and shall be (i) hand delivered (including via courier), or (ii)
571 delivered via overnight service by Federal Express, or sent by United States certified mail, return receipt
572 requested, with proper first class postage prepaid, properly and fully addressed:

573 If to Seller: Seritage SRC Finance LLC
574 500 Fifth Avenue, Suite 1530
575 New York, NY 10017

576 Attn: Matthew Fernand, Chief Legal Officer
577
578 And to: The Howard Hughes Corporation
579 9950 Woodloch Forest Drive, 11th Floor
580 The Woodlands, TX 77380
581 Attn: Peter F. Riley
582
583 With mandatory copies to:
584
585 Fried, Frank, Harris, Shriver & Jacobson LLP
586 One New York Plaza
587 New York, NY 10004
588 Attention : Steven Rudgayzer, Esq.
589
590 And to: Foulger-Pratt
591 12435 Park Potomac Avenue, Suite 200
592 Potomac, Maryland 20854
593 Attention: Brigg M. Bunker
594
595 And to: Foulger-Pratt
596 12435 Park Potomac Avenue, Suite 200
597 Potomac, Maryland 20854
598 Attention: Demetri Datch, General Counsel
599
600 And to: Arent Fox LLP
601 1717 K Street, N.W.
602 Washington, DC 20006
603 Attn: Bryson Filbert, Esq.
604
604 If to
605 Purchaser: Industrial Development Authority of the City of Alexandria
606 625 North Washington Street, Suite 400
607 Alexandria, Virginia 22314
608 Attn: Stephane Landrum
609
609 And to: City Manager, City of Alexandria
610 301 King Street
611 Alexandria, Virginia 22314
612
612 With mandatory copies to:
613
613 City Attorney, City of Alexandria
614 301 King Street, Suite 1300
615 Alexandria, Virginia 22314
616
616 If to Inova (for purposes of Section 23.b):
617
617 H. Thomas McDuffie, President
618 Inova Realty
619 8095 Innovation Park Drive
620 Building D, Floor 7 – Office 0230
621 Fairfax, Virginia 22031
622
622 And to: John Gaul, General Counsel

623 Inova Health System
624 8110 Gatehouse Road, Suite 200-E
625 Falls Church, Virginia 22042

626 And to: Timothy S. Sampson
627 Downs Rachlin Martin PLLC
628 199 Main Street, PO Box 190
629 Burlington, Vermont 05402-0190

630 A notice shall only be deemed given when actually delivered. Any party may, by like notice given at
631 least ten (10) days before such change becomes effective, designate a new address to which such notices
632 shall be sent.

633 **18. ASSIGNMENT:** Neither Seller nor Purchaser shall assign this Agreement, or any or all rights
634 thereof, to any other person or entity; provided, however, Purchaser shall have the right to assign this
635 Agreement to another governmental agency or entity or to designate another governmental agency or entity
636 to receive title to the Property upon written notice to Seller.

637 **19. RELATIONSHIP BETWEEN PARTIES.** Notwithstanding any other provision of this
638 Agreement, nothing contained herein shall be construed as making the Parties partners or joint venturers or
639 rendering either liable for any of the debts or obligations of the other. It is the intent of this Agreement to
640 create simply the relationship of Seller and Purchaser with respect to the Property.

641 **20. WEEKENDS AND HOLIDAYS.** Any date specified in this Agreement for the performance of
642 an obligation or expiration of a time period which date is not a Business Day shall be extended to the first
643 regular Business Day thereafter.

644 **21. RECITALS.** The Recitals to this Agreement are incorporated into this Agreement.

645 **22. ENTIRE AGREEMENT.** This Agreement, the Deed, the Development Agreement and the
646 Access Agreement (and all exhibits to such documents) contain the entire agreement between the Parties
647 with respect to the sale of the Property to Purchaser. There are no promises, agreements, conditions,
648 undertakings, warranties, or representations, oral or written, express or implied, between them, other than
649 as herein set forth in this Agreement, the Deed, the Development Agreement and the Access Agreement
650 (and all exhibits to such documents). This Agreement, the Deed, the Development Agreement and the
651 Access Agreement (and all exhibits to such documents) taken together are intended by the Parties to be an
652 integration of all prior or contemporaneous promises, agreements, conditions, negotiations, and
653 undertakings between the Parties with respect to the sale of the Property to Purchaser. This Agreement
654 may not be modified orally or in any other manner other than by an agreement in writing signed by both
655 the Parties or their respective successors in interest. Except as otherwise specifically provided in this
656 Agreement, the Development Agreement and the Access Agreement taken together, the terms of this
657 Agreement shall be merged into the Deed at Settlement.

658 **23. PURCHASER'S OBLIGATIONS SUBJECT TO APPROPRIATION OF FUNDS;
659 SELLER'S REPURCHASE RIGHT:**

660 a. Appropriation of Funds for Second Installment. Purchaser's obligation under this
661 Agreement to pay the Second Installment of the Purchase Price is subject to appropriation of funds by the
662 City for the specific purpose of satisfying the payment and performance of such obligation. It is agreed by
663 both Seller and Purchaser that, notwithstanding any provision in this Agreement to the contrary (other than
664 as set forth below in this Section 23), this clause shall supersede any and all obligations imposed by any
665 other provision of this Agreement or the Exhibits hereto. No subsequent amendment of, or addendum to,
666 this Agreement shall compromise the full legal implication of this Section between the Parties or their
667 respective successors or assigns.

668 b. Seller's Repurchase Right. Notwithstanding the terms of subsection a. above, if the Second
669 Installment of the Purchase Price is not paid under this Agreement by Purchaser on the Second Installment
670 Payment Date for any reason (subject, however, to Seller's satisfaction of the Payment Conditions),
671 including, without limitation, as a result of the City's failure to timely appropriate the necessary funds for
672 such payment, then, in accordance with the terms of Section 9.17 of the Development Agreement, Seller
673 shall have a right to repurchase the Property from Purchaser (the "Repurchase Right") subject to the
674 following terms and conditions:

675 (1) Following Purchaser's failure to timely pay the Second Installment of the Purchase
676 Price in accordance with this Agreement, Seller may exercise the Repurchase Right by delivering written
677 notice thereof to Purchaser and Inova (the "Repurchase Notice"); provided, however, if Inova pays to Seller
678 the Second Installment of the Purchase Price within ninety (90) days following its receipt of the Repurchase
679 Notice (the "Inova Cure Period"), Seller shall accept such payment as full performance of Purchaser's
680 obligation to pay the Second Installment of the Purchase Price in accordance with this Agreement and the
681 Repurchase Right shall thereafter be deemed null and void and of no further force or effect. The aforesaid
682 right of Inova to pay the Second Installment of the Purchase Price during the Inova Cure Period shall be
683 exclusive to Inova and shall in no event be deemed an extension of time or cure period during which
684 Purchaser may be entitled to pay the Second Installment of the Purchase Price, either on behalf of Inova or
685 otherwise.

686 (2) If Inova does not pay the Second Installment of the Purchase Price during the Inova
687 Cure Period, Seller's purchase price for the Property shall be an amount equal to the First Installment of
688 the Purchase Price, less any and all documented out of pocket costs and expenses incurred by Seller in
689 connection with the performance of its obligations under the Development Agreement with respect to
690 Public Infrastructure Improvements (as such term is defined in the Development Agreement) from and after
691 July 6, 2021 through the Repurchase Settlement Date (the "Repurchase Price").

692 (3) If Inova does not pay the Second Installment of the Purchase Price during the Inova
693 Cure Period, then within five (5) business days following the expiration of the Inova Cure Period, (i) Seller
694 shall deposit funds in the amount of the Repurchase Price into escrow with Escrow Agent, and (ii) Purchaser
695 shall deposit into escrow with Escrow Agent (a) a written notice to Inova terminating the Ground Lease,
696 together with any documentation necessary to remove of record any memorandum or other evidence thereof
697 recorded in the applicable land records, and (b) an original executed special warranty deed sufficient to
698 convey to Seller good, marketable and insurable fee simple title to the Property, free and clear of all liens,
699 encumbrances, leases (including, without limitation, the Ground Lease), covenants, conditions and other
700 matters affecting title the Property, other than such matters created by Seller and the then-remaining
701 Permitted Exceptions. Seller and Purchaser shall instruct Escrow Agent that upon receipt of the items
702 described above from Seller and Purchaser, Escrow Agent shall deliver the Repurchase Price proceeds to
703 Purchaser, deliver the Ground Lease termination notice to Inova and record the special warranty deed and
704 Ground Lease memorandum termination and related documents in the land records of the Office of the
705 Circuit Court Clerk for the City of Alexandria, Virginia (such date of recordation being the "Repurchase
706 Settlement Date"). Any and all transfer or similar taxes or charges, if any, incurred in recording such deed
707 shall be paid by Purchaser.

708 (4) Simultaneous with Settlement, Seller shall record a memorandum of the
709 Repurchase Right (the "Repurchase Memo") substantially in the form attached hereto as Exhibit E in the
710 applicable land records of the Office of the Circuit Court Clerk for the City of Alexandria, Virginia. Upon
711 Purchaser's payment of the Second Installment of the Purchase Price pursuant to this Agreement, Seller
712 shall remove the Repurchase Memo from the applicable land records.

713 c. Survival. The terms of this Section 23 shall expressly survive Settlement.

714 **24. BENEFIT AND BURDEN:** All terms of this Agreement shall be binding upon, and inure to the
715 benefit of and be enforceable by, the Parties and their respective successors and assigns.

716 **25. NO RIGHTS IN THIRD PARTIES.** Inova and City are hereby designated as third-party
717 beneficiaries of Purchaser’s rights under this Agreement, and Inova is further hereby designated as a third-
718 party beneficiary under Section 23.b. of this Agreement. The Parties mutually agree that, except as provided
719 by the immediately foregoing sentence, no provision of this Agreement shall create in the public, or in any
720 person or entity other than those signing this Agreement as Parties, rights as a third party beneficiary
721 hereunder, or authorize any person or entity not a party hereto, to maintain any action or personal injury,
722 property damage or breach of contract pursuant to the terms of this Agreement or otherwise.

723 **26. SURVIVAL OF AGREEMENTS:** The agreements, obligations, and indemnities set forth,
724 without limitation, in Section 7 and Section 15 and as otherwise expressly provided in this Agreement as
725 surviving Settlement, shall survive Settlement.

726 **27. BINDING AGREEMENT:** The Parties mutually agree that this Agreement shall be binding upon
727 them, and each of the respective successors and permitted assigns.

728 **29. COUNTERPARTS.** This Agreement may be executed in several counterparts (which counterpart
729 signatures may be delivered via email or facsimile), each of which shall be an original, but all of which
730 shall constitute one and the same instrument.

731 **30. INTERPRETATION.** The paragraph headings used herein are for reference and convenience
732 only and shall not enter into the interpretation hereof. Wherever herein reference is made to “days” the
733 same shall mean “calendar days” unless Business Days are specified.

734 **31. PARTIAL INVALIDITY.** If any term, covenant or condition of this Agreement or the application
735 thereof to any Person or circumstances shall be held to be invalid or unenforceable, the remainder of this
736 Agreement, or the application of such term or provisions to persons or circumstances other than those to
737 which it is held invalid or unenforceable, shall not be affected thereby, and each term shall be valid and
738 enforceable to the fullest extent permitted by law.

739 **32. GOVERNING LAW.** This Agreement shall be governed by the laws of the Commonwealth of
740 Virginia (without giving effect to its rules governing conflicts of laws). All legal actions brought by either
741 Purchaser or Seller concerning this Agreement shall be brought in the City of Alexandria, Virginia General
742 District or Circuit courts and in no other courts whatsoever.

743 **33. PAYMENT OF PURCHASE PRICE TO LENDER.** If on the Settlement Date the Property is
744 encumbered by a mortgage or deed of trust securing a loan made by an unrelated third party lender
745 (“Lender”) to the current owner of the Property, then on the Settlement Date, Purchaser shall pay the First
746 Installment of the Purchase Price (net of any amounts to be credited or adjusted under this Agreement) to
747 the Escrow Agent under and pursuant to the terms of Section 6.b hereof and shall direct that, upon
748 Settlement, Escrow Agent pay that portion of the First Installment of the Purchase Price (net of any amounts
749 to be credited or adjusted under this Agreement) to Lender in an amount necessary to repay the loan(s) and
750 release the mortgage or deed of trust as a lien on the Property.

751 **34. EFFECTIVE DATE.** This Agreement shall be effective upon the Effective Date.

752 **35. DIRECT CONVEYANCE OF PROPERTY.** Notwithstanding the foregoing terms of this
753 Agreement, in accordance with and subject to the terms and conditions of the Development Agreement and
754 as memorialized in the Deed, at the time of Settlement, the Property will be conveyed to Purchaser directly
755 from the Transferring Parties, rather than from Seller; provided, however, for all purposes of this
756 Agreement, Landmark Land Holdings, LLC shall be considered the “Seller” hereunder and subject to all of
757 the terms, conditions, rights, obligations and liabilities of Seller hereunder as if the Property was being
758 conveyed directly by Seller to Purchaser at Settlement.

759 [SIGNATURE PAGE FOLLOWS]

WITNESS the following signatures:

SELLER:

LANDMARK LAND HOLDINGS, LLC,
a Delaware limited liability company

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

By: _____

Name: _____

Title: _____

PURCHASER:

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

By: _____

Name: _____

Title: _____

Approved as to Form:

City Attorney

JOINDER

Inova hereby executes this Joinder in order to evidence its acknowledgement of and consent to the terms of Section 23.b. of this Agreement.

INOVA HEALTH CARE SERVICES,
a Virginia non-stock corporation

By: _____

Name:

Title:

EXHIBIT A

Description of Land

#83015707_v11 071185.00010

AFDOCS/24342553.1

EXHIBIT B

FORM OF DEED

Prepared by and return to:

McGuireWoods LLP

1750 Tysons Boulevard, Suite 1800

Tysons, Virginia 22102

Attn: Steven M. Mikulic

VSF: 92408

Tax Map Parcels: 047.02-03-05, 047.02-03-06, 047.02-03-07, 047.02-03-08, and 047.02-03-09

DEED OF RESUBDIVISION AND CONVEYANCE

THIS DEED OF RESUBDIVISION AND CONVEYANCE is made this ____ day of _____, _____, by and between **LANDMARK MALL L.L.C.**, a Delaware limited liability company (“LM”), Grantor and Grantee; **SERITAGE SRC FINANCE LLC**, a Delaware limited liability company (“Seritage”), Grantor and Grantee; **LANDMARK LAND HOLDINGS, LLC**, a Delaware limited liability company (“LLH”), Grantee; and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALEXANDRIA**, a political subdivision of the Commonwealth of Virginia (“IDA”), Grantee.

WITNESSETH:

WHEREAS, LM is the owner of certain property by virtue of deeds recorded in the land records of the Office of the Circuit Court Clerk for the City of Alexandria, Virginia (the “Land Records”) as Instrument 000007614 and 170000324, and at Deed Book 1720, Page 162, and known as:

Tax Map Parcel 047.02-03-05 Lot 500 (“Lot 500”);
Tax Map Parcel 047.02-03-06 Lot 501 (“Lot 501”);
Tax Map Parcel 047.02-03-07 Lot 502 (“Lot 502”); and
Tax Map Parcel 047.02-03-09 Parcel B-2 (“Parcel B-2,” together with Lot 500, Lot 501, and Lot 502 as the “LM Properties”)

as more particularly described on that plat dated April 7, 2021, entitled “PLAT SHOWING LOT 601 AND LOT 602 LANDMARK MALL REDEVELOPMENT”, and prepared by Urban, Ltd., attached hereto and incorporated herein (“Plat”); and

WHEREAS, Seritage is the owner of certain property by virtue of a deed recorded in the Land Records as Instrument 150011927, and known as Tax Map Parcel 047.02-03-08 Parcel A-2 (“Parcel A-2,” and together with the LM Properties as the “Properties”); and

WHEREAS, the Properties are not subject to the lien of any deed of trust; and

WHEREAS, it is the desire of LM and Seritage to consolidate and resubdivide the Properties, as depicted on the Plat; and

WHEREAS, it is the desire of LM and Seritage to convey the consolidated Properties as hereinafter provided.

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RESUBDIVISION

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LM and Seritage do hereby vacate the existing property lines, as shown on the Plat, and consolidate and resubdivide the Properties into two parcels, to be known hereafter as "Lot 601," containing 452,433 square feet, and "Lot 602," containing 1,789,430 square feet, as more particularly described on the Plat.

CONVEYANCE OF LOT 601

THIS DEED FURTHER WITNESSETH that for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LM and Seritage do hereby GRANT, BARGAIN, SELL and CONVEY, with Special Warranty of Title unto IDA, that certain Lot 601, as more particularly described upon the Plat.

This conveyance is made expressly subject to all easements, reservations, restrictions, covenants, conditions and agreements contained in duly recorded deeds, plats and other instruments constituting notice in the chain of title to which have not expired by a time limitation contained therein or have not otherwise become ineffective.

CONVEYANCE OF LOT 602

THIS DEED FURTHER WITNESSETH that for and in consideration of the sum of Ten Dollars (\$10.00), cash in hand paid, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, LM and Seritage do hereby GRANT, BARGAIN, SELL and CONVEY, with Special Warranty of Title unto LLH, that certain Lot 602, as more particularly described upon the Plat.

This conveyance is made expressly subject to all easements, reservations, restrictions, covenants, conditions and agreements contained in duly recorded deeds, plats and other instruments constituting notice in the chain of title to which have not expired by a time limitation contained therein or have not otherwise become ineffective.

FREE CONSENT AND DESIRE

This Deed is made with the free consent and in accordance with the desire of the undersigned owners, proprietors, and trustees, if any.

MISCELLANEOUS

This Deed shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. This Deed may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. This Deed is in accordance with the Statutes of Virginia and the ordinances in force in the City of Alexandria, Virginia governing the platting and subdivision of land, and is approved by the proper authorities as evidenced by their endorsement hereto and the Plat.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

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Witness the following signatures and seals:

LANDMARK MALL L.L.C., a Delaware
limited liability company:

BY: _____

TO-WIT: _____

STATE OF _____

CITY/COUNTY OF _____

I, _____, a notary public in and for the State and County
aforesaid, do certify that _____, whose name is signed to the foregoing
instrument dated _____, 20____, has acknowledged the same before me.

GIVEN under my hand this ____ day of _____, 20____.

Notary Public

Registration No.: _____

My Commission Expires _____

[Signatures continue on the following page]

Witness the following signatures and seals:

SERITAGE SRC FINANCE LLC, a Delaware
limited liability company:

BY: _____

TO-WIT: _____

STATE OF _____

CITY/COUNTY OF _____

I, _____, a notary public in and for the State and County
aforesaid, do certify that _____, whose name is signed to the foregoing instrument
dated _____, 20____, has acknowledged the same before me.

GIVEN under my hand this ____ day of _____, 20____.

Notary Public

Registration No.: _____

My Commission Expires _____

EXHIBIT C

Title Exceptions

(to reflect a final run down of title immediately prior to Settlement, but in all events, consistent with the requirements of the Development Agreement)

EXHIBIT D

Form of Access Agreement

EXHIBIT E

Form of Repurchase Memo

MEMORANDUM OF REPURCHASE RIGHT

THIS MEMORANDUM OF REPURCHASE RIGHT (this “**Memorandum**”) is made and entered into as of the ____ day of _____, 202__, by and between LANDMARK LAND HOLDINGS, LLC, a Delaware limited liability company (“**Seller**”), and the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALEXANDRIA**, a political subdivision of the Commonwealth of Virginia (“**Purchaser**”).

RECITALS

A. Pursuant to the terms of that certain Purchase and Sale Agreement of even date herewith by and between Seller and Purchaser (as same may be amended, the “**Agreement**”), Seller has sold and conveyed to Purchaser, and Purchaser has acquired from Seller, fee simple title in and to that certain parcel of real property located in the City of Alexandria, Virginia, as more particularly described in Exhibit A attached hereto and made a part hereof (the “**Property**”).

B. In accordance with the terms of Section 23 of the Agreement, Seller has a right to purchase the Property back from Purchaser in the event the Second Installment of the Purchase Price is not timely paid to Seller when due.

C. The parties desire to execute, acknowledge, deliver and record this Memorandum in the land records of the Office of the Circuit Court Clerk for the City of Alexandria, Virginia (the “**Official Records**”) for the purpose of evidencing and giving public notice of the existence of the Repurchase Right (as hereafter defined) and of certain terms and conditions set forth therein.

NOW, THEREFORE, the parties hereby give public notice as follows:

1. **Defined Terms.** Capitalized terms used but not defined herein shall have the meaning ascribed to such term in the Agreement.

2. **Grant of Repurchase Right.** In accordance with the terms and conditions of Section 23 of the Agreement, Purchaser has granted to Seller a right to purchase the Property back from Purchaser (the “**Repurchase Right**”) if Purchaser does not timely pay the Second Installment of the Purchase Price when due.

3. **Term of Repurchase Right.** The term of the Repurchase Right shall continue until the Second Installment of the Purchase Price has been made to Seller.

4. **Recordation and Termination of Memorandum.** This Memorandum shall be recorded on the Official Records and is intended to provide record and constructive notice of the Repurchase Right to all persons and entities. This Memorandum does not describe or refer to all of the terms or conditions contained in the Agreement, nor is this Memorandum intended to modify, amend or vary any of the terms or conditions set forth in the Agreement. Nothing set forth herein shall be deemed to enlarge, detract from or otherwise affect the rights, privileges, duties

and obligations of Seller and Purchaser under the Agreement. In the event of any inconsistency between this Memorandum and the Agreement, the terms and provisions of the Agreement shall govern and prevail. This Memorandum shall be deemed terminated automatically in its entirety, without further actions or documents, and of no further force or effect whatsoever upon the earlier of (i) Seller's receipt of the Second Installment of the Purchase Price, or (ii) Seller's exercise of the Repurchase Right; provided, however, Seller shall be required to remove this Memorandum from the land records pursuant to the terms and conditions of Section 23 of the Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have each executed and delivered this Memorandum as of the date first above written.

SELLER:

LANDMARK LAND HOLDINGS, LLC,
a Delaware limited liability company

By: _____

Name:

Title:

COUNTY: _____) ss:

STATE: _____)

I HEREBY ACKNOWLEDGE that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, the foregoing instrument was sworn to and acknowledged before me [] in my physical presence or [] by online notarization by _____, on behalf of Landmark Land Holdings, LLC, who is personally known to me or who has produced _____ as identification.

WITNESS my hand official seal in the County and State last aforesaid this ____ day of _____.

Notary

Typed, printed or stamped name Notary Public
My Commission Expires:

PURCHASER:

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

By: _____
Name:
Title:

COUNTY: _____) ss:

STATE: _____)

I HEREBY ACKNOWLEDGE that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, the foregoing instrument was sworn to and acknowledged before me [] in my physical presence or [] by online notarization by _____, on behalf of **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALEXANDRIA**, a political subdivision of the Commonwealth of Virginia, who is personally known to me or who has produced _____ as identification.

WITNESS my hand official seal in the County and State last aforesaid this ____ day of _____.

Notary

Typed, printed or stamped name Notary Public
My Commission Expires:

Exhibit A

Legal Description

SCHEDULE 1

Litigation and Claims Schedule

1. That certain Adversary Proceeding, including any consolidated cases or appeals related thereto or arising therefrom, and the consequences thereof, filed in the U.S. Bankruptcy Court, Southern District of New York and titled Sears Holdings Corporation; Sears, Roebuck and Co.; Sears Development Co.; Kmart Corporation; and Kmart of Washington, LLC, Plaintiffs v. Edward Scott “Eddie” Lampert; ESL Investments, Inc.; et al., Case No. 19-08250, in connection with case titled In re Sears Holdings Corporation, et al., Debtors, in Chapter 11 Case No. 18-23538.