

MEMORANDUM OF UNDERSTANDING

THIS **MEMORANDUM OF UNDERSTANDING** (this “Memorandum”) is made as of [_____, 2021], by and between the **CITY OF ALEXANDRIA, VIRGINIA** (the “City”); the **LANDMARK COMMUNITY DEVELOPMENT AUTHORITY** (the “CDA”); the **INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALEXANDRIA** (the “IDA”); **LANDMARK MALL, LLC**, a Delaware limited liability company, and **SERITAGE SRC FINANCE, LLC**, a Delaware limited liability company, and their respective successors and assigns, as landowners (collectively, the “Landowners”); and **LANDMARK LAND HOLDINGS, LLC**, a Delaware limited liability company (the “Developer”).

WITNESSETH

WHEREAS, by petition (the “Petition”) filed with the City Council of the City (the “Council”) pursuant to Sections 15.2-5152 *et seq.* of the Code of Virginia of 1950, as amended (the “Virginia Code”), the Council was requested to create a community development authority to support the financing of certain infrastructure improvements, facilities and services as described in the Petition and as more particularly described on Exhibit A to this Memorandum (collectively, the “Improvements”);

WHEREAS, pursuant to the Petition and in consideration of the Developer’s undertaking of the development and redevelopment of the property comprising the site of the former Landmark Mall, by Ordinance adopted [_____, 2021] (the “Ordinance”), attached hereto as Exhibit B, the Council created the CDA and established the initial boundaries of the CDA district (the “CDA District”);

WHEREAS, the transactions contemplated by this Memorandum will benefit the citizens of the City by promoting increased employment opportunities, a strengthened economic base, increased tax revenues and additional business, retail and recreational opportunities; and

WHEREAS, the parties wish to set forth several understandings with respect to the CDA and its plan to facilitate the City’s financing of the Improvements in this Memorandum:

NOW, THEREFORE, in consideration of the foregoing, the parties set forth the following agreements and understandings:

1. Definitions. In addition to certain terms defined in the recitals above and elsewhere herein, the following terms shall have the meanings specified below unless otherwise expressly provided or the context otherwise requires:

“CDA Payment Obligation” means any contractual obligation of the CDA authorized under Virginia Code Sections 15.2-5101, 15-2.-5114, 15.2-5125 and 15.2-5158 and entered into to support the City’s financing of the costs of the Improvements.

“City Bonds” means general obligation bonds issued by the City for the purpose of financing the costs of the Improvements and any bonds issued by the City to refund such general obligation bonds.

2. Improvement Financing Plan.

(a) The City proposes to issue one or more series of City Bonds in a maximum aggregate principal amount sufficient to (i) generate \$86,000,000 in net construction proceeds available to pay the costs of the Improvements and (ii) pay capitalized interest on the City Bonds. Although the City Bonds will be issued as general obligation bonds, the parties hereto understand and agree that the City Bonds are intended to be repaid from certain incremental tax revenues described in Section 4(c) below (the “Incremental Tax Revenues”). To the extent that the Incremental Tax Revenues are less than the amounts due on the City Bonds, the City shall be entitled to seek reimbursement for any City funds applied to pay debt service on the City Bonds through the collection of special assessments as set forth in more detail herein.

(b) The CDA proposes to provide for the establishment of special assessments on taxable property within the CDA District (as hereinafter described, the “Special Assessments”) as a source of funds available to reimburse the City for debt service payments on the City Bonds in the event that the Incremental Tax Revenues are insufficient to timely pay such debt service. The aggregate principal amount of the CDA Payment Obligations shall not exceed the principal amount of the City Bonds. Each CDA Payment Obligation shall be entered into for a term extending not more than one year beyond the term of the corresponding City Bonds.

(c) The CDA shall enter into one or more CDA Payment Obligations pursuant to which the CDA will pay installments of the Special Assessments as necessary to reimburse the City for any insufficiencies in the Incremental Tax Revenues.

3. Development of Improvements.

(a) The City agrees to arrange for the acquisition, design, construction, equipping, project management and development of the Improvements and to finance the related costs with proceeds of the City Bonds. In exchange for the City’s assistance in providing the Improvements, the CDA agrees to provide financing support by entering into one more CDA Payment Obligations to provide for the levy and collection of installments of the Special Assessments in the event that the Incremental Tax Revenues are insufficient to timely pay the debt service on the City Bonds.

(b) The Improvements consist of various infrastructure improvements, facilities and services more particularly described in the Petition and Exhibit A hereto.

(c) The City or the CDA, or the Developer or its designee, on behalf of the City or the CDA, shall enter into contracts for the acquisition, design, construction, equipping, project management and development of the Improvements.

4. Special Assessments and Incremental Tax Revenues.

(a) Special Assessments.

(i) *Request for Collection* -- Not later than September 15 of each year, commencing September 15, 2027, the CDA shall request the City to collect annual installments (the “Annual Installments”) of the Special Assessments pursuant to Virginia Code Section 15.2-5158(A)(5) in amounts to be determined in accordance with the Rate and Method of Apportionment of Special Assessments attached hereto as Exhibit C (the “Rate and Method”),

which amounts may be zero for a particular collection date to the extent that the Incremental Tax Revenues collected in the preceding fiscal year were sufficient to pay, or reimburse the City for payment of, the debt service due on the City Bonds in such fiscal year. In making the above request, the CDA shall provide such information as the City may request to enable it to collect the Annual Installments. Each Annual Installment shall be collected on the applicable November 15 due date for real property taxes (commencing November 15, 2027) and shall be in an amount equal to the debt service that was due on the City Bonds in the preceding fiscal year less the Incremental Tax Revenues collected in such fiscal year.

(ii) *City's Agreement with respect to Special Assessments; Retention of Annual Installments by City* – Following receipt of the CDA's request pursuant to clause (i) above, the City Manager shall ask the Council to approve the collection of the applicable Annual Installment; it being understood that the collection of each Annual Installment shall be made only to the extent that the Incremental Tax Revenues calculated pursuant to this Memorandum and collected in the applicable fiscal year were insufficient to pay, or reimburse the City for payment of, the debt service due on the City Bonds in such fiscal year. So long as any CDA Payment Obligations remain outstanding, the City shall collect the Annual Installments and shall be entitled to retain the amounts collected in satisfaction of the CDA's obligations under such CDA Payment Obligations. The CDA hereby pledges and assigns all of its right, title and interest in the Annual Installments (including, without limitation, any proceeds from prepayments and foreclosures) as security for the CDA Payment Obligations, which amounts shall be retained by the City and applied to reimburse the City for prior debt service payments on the City Bonds and any costs of collection of the Annual Installments.

(iii) *Landowners' Agreement with Respect to Assessments* -- In accordance with Virginia Code Sections 15.2-5158(A)(5) and 15.2-2405, the parties hereto agree to the Special Assessments to be levied, apportioned and collected in accordance with this Memorandum and the Rate and Method, which is incorporated as though set forth fully herein. The Landowners for themselves and their successors and assigns represent and agree that the Special Assessments, as apportioned pursuant to the Rate and Method, does not exceed the peculiar benefit to the assessed property resulting from the Improvements and is apportioned to the property within the CDA District on a rational basis. The Landowners acknowledge that the City may commence foreclosure proceedings for the collection of delinquent Annual Installments within the CDA District and that foreclosure proceedings may be instituted whenever an Annual Installment remains delinquent one year from its initial due date (except for owner-occupied residential property, to which the provisions of Virginia Code Section 58.1-3965 shall apply) in accordance with Virginia Code Section 58.1-3965.2. In order to reduce the likelihood of any prolonged foreclosure actions, the Landowners, as appropriate, shall provide for facilitated service of process with respect to any foreclosure action in respect of any delinquent Annual Installments levied in the CDA District and shall waive affirmative defenses to any such foreclosure action pertaining to the formation of the CDA District and its financing structure, including the Rate and Method, the validity of the CDA Payment Obligations and the priority of CDA District liens and foreclosure of liens to collect delinquent Annual Installments, provided, however, that such waiver shall not be deemed to prevent any Landowner from asserting in a separate legal action (and not as an affirmative defense in any foreclosure action) a challenge to (A) any levy or collection not made in accordance with the terms of the Rate and Method or the Virginia Code or (B) a foreclosure not undertaken in accordance with the City's generally applicable foreclosure procedures.

(iv) *Billing and Collection of Annual Installment* -- The City shall bill the Annual Installments, to the extent Incremental Tax Revenues are insufficient to timely pay debt service on the City Bonds described above, at the same time as it bills its November 15 installment of real estate taxes, provided that such bill shall be mailed not later than November 1. The amount of the Annual Installments for each parcel shall be recorded in the City land records such that the public will have access to its existence. Penalties and interest on delinquent payments of the Annual Installments shall be charged as provided by law. The Annual Installments shall be collected on each November 15.

(v) *Collection of Delinquent Assessments* -- The City's customary tax payment enforcement proceedings shall apply to the collection of any delinquent payment of an Annual Installment except that foreclosure proceedings may be instituted to sell any parcel (except for owner-occupied residential property, to which the provisions of Virginia Code Section 58.1-3965 shall apply) when the Annual Installment for such parcel remains unpaid one year from its initial due date in accordance with Virginia Code Section 58.1-3965.2. The City shall pursue the collection of delinquent payments with the same diligence it employs in the collection of the City's general ad valorem real estate taxes, including the commencement of tax foreclosure proceedings to the extent provided by the then-current statutes of the Commonwealth of Virginia. The City agrees that it will provide notice to the CDA of any legal proceedings to be instituted for the collection of delinquent payments of Annual Installments. The parties understand and agree that the City's ordinary discretion in this regard allows it to decide not to expend resources to collect de minimis outstanding amounts; provided that the City shall obtain the CDA's consent with respect to waiving collection of any such amounts in excess of \$200. The CDA agrees to cooperate with the City in any such enforcement action.

(b) Notice to Subsequent Landowners. Each Landowner shall include in each sales contract and each deed for the conveyance of a fee simple interest in any portion of land within the CDA District that is subject to an outstanding Special Assessment a disclosure statement that includes a statement of the amount of the applicable portion of the Special Assessment and setting forth the name and address of the CDA's administrator or other location where information regarding the CDA and the Special Assessment may be obtained. All such sales contracts and deeds shall also include a covenant that all subsequent deeds conveying any fee simple interest in land within the CDA District that is subject to an outstanding Special Assessment include such disclosure statement. Each Landowner agrees that it will notify the CDA and the CDA's administrator in writing, within ten (10) days after recordation of a deed of conveyance, of the sale of any land owned by such Landowner indicating the tax map parcel number of the property sold and the purchaser of the property.

(c) Incremental Tax Revenues.

(i) *City's Agreement to Track and Apply Incremental Tax Revenues* -- Subject to the provisions of this clause (i) and for so long as any City Bonds remain outstanding, the City shall track and collect the Incremental Tax Revenues for each fiscal year, determined as set forth below, and apply such collected Incremental Tax Revenues (or other legally available funds in amounts equal thereto) to the payment, or the reimbursement of the City for payment of, the debt service due on the City Bonds in such fiscal year. For purposes of this Memorandum, the Incremental Tax Revenues for a fiscal shall only include amounts that the City has recognized for such fiscal in accordance with its then-current accounting practices. Further, the City's agreement

to credit such Incremental Tax Revenues to the payment of the City Bonds as provided in this Memorandum is made in consideration of the Developer satisfying its agreement contained in Sections 4.1, 4.2 and 4.3 of the Development Agreement, pursuant to which the Developer has agreed to construct or cause to be constructed the Private Infrastructure with Public Access, the Offsite CDD Infrastructure and the Public Infrastructure Improvements (each as defined therein). In the event the Developer fails to construct or cause to be constructed the Private Infrastructure with Public Access, the Offsite CDD Infrastructure or the Public Infrastructure Improvements within the allotted time set forth in the Development Agreement, the City shall have no obligation to credit any Incremental Tax Revenues to the payment of debt service on the City Bonds as provided in this Section 4(c) until such time as the Developer has satisfied such obligations under Sections 4.1, 4.2 and 4.3 of the Development Agreement.

(ii) *Calculation of Incremental Tax Revenues* -- The annual Incremental Tax Revenues shall equal the sum of:

(A) 100% of the regular ad valorem real property tax revenues (excluding any special tax revenues) collected for each fiscal year by the City within the CDA District (including payments of any “roll back” taxes) that exceed the regular ad valorem real property tax revenues collected by the City within the CDA District during fiscal year 2021;

(B) 100% of the City’s portion of the retail sales and use tax revenues collected for each fiscal year by the City from retail and other establishments located within the CDA District that exceed the City’s portion of the retail sales and use tax revenues collected by the City within the CDA District during fiscal year 2021;

(C) 100% of the meals tax revenues (excluding the portion of such revenues required to be allocated to affordable housing) collected for each fiscal year by the City from restaurants and other establishments located within the CDA District that exceed the meals tax revenues collected by the City within the CDA District during fiscal year 2021; and

(D) 100% of the transient lodging tax revenues collected for each fiscal year by the City from hotels and other establishments located within the CDA District (excluding any revenues realized from “short-term residential rentals” as defined in Section 3-2-152 of the City Code of Ordinances) that exceed the transient lodging tax revenues collected by the City within the CDA District during fiscal year 2021.

Notwithstanding the foregoing, Incremental Tax Revenues shall not include any amounts realized from penalties or interest collected in connection with payments of delinquent taxes.

(iii) *Timing of Application of Incremental Tax Revenues* -- Commencing July 1, 2025, and for so long as any City Bonds remain outstanding, the City shall apply the Incremental Tax Revenues collected for each fiscal year (or other legally available funds in amounts equal thereto) to the payment, or the reimbursement of the City for payment, of debt service due on the City Bonds in such fiscal year. Except as provided in the following sentence, any excess

Incremental Tax Revenues of a particular fiscal year remaining after payment of debt service due on the City Bonds in such fiscal year shall then be available for the City's general use and shall not be credited against any debt service on the City Bonds due in any other fiscal year or otherwise applied to reduce the Special Assessment lien. Any Incremental Tax Revenues collected in fiscal year 2026 shall be credited, together with any Incremental Tax Revenues collected in fiscal year 2027, to the payment of debt service coming due on the City Bonds in fiscal year 2027.

(iv) *Release of Incremental Tax Revenues* -- After all City Bonds have been repaid in full, or provision for their repayment in full has been made, the tax increment contribution plan shall expire and all Incremental Tax Revenues shall thereafter be available for the City's general use.

(d) Application of City's Accounting Practices. For the purposes of making the calculations and determinations provided for under this Section 4, the recognition of revenues and expenditures shall be consistent with the City's then-current accounting practices.

(e) Treatment of CDA District Property Leased to Inova. For the avoidance of doubt, no Special Assessments shall be levied upon the property owned by the IDA and leased to Inova Health Care Services to the extent such property is otherwise exempt from real property tax under applicable law

5. Additional Covenants.

(a) Public Ownership of Improvements. The Developer, the Landowners, the City, the IDA and the CDA agree that all Improvements financed with proceeds of the City Bonds and supported by the CDA Payment Obligations will be conveyed to the City or other appropriate public entity or that the City or other appropriate public entity will have a long term-interest in such improvements via a lease, an easement or other property right. The Developer, the Landowners, the City, the IDA and the CDA further agree that the City shall not be required to undertake ownership, operation or maintenance of any improvements unless the City agrees to such undertaking.

(b) Assets upon Dissolution. Upon dissolution of the CDA, any assets of the CDA not previously conveyed to another governmental entity shall be transferred to or at the direction of the City.

(c) Developer Reports. The Developer agrees to provide the City with regular reports (which may be in written or oral form) regarding the progress of the development and such other matters as the City may reasonably request. Such reports shall be delivered at least once per calendar year.

6. Approval by City. Any approval or consent required of the City under this Memorandum may be given by the City Manager or such officer's designee unless action by the Council is expressly required.

7. Successors and Assigns. This Memorandum shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

8. **Amendments.** This Memorandum may be amended only in writing signed by each of the parties hereto or their successors and assigns; provided, however, any Landowner's consent to and execution of an amendment shall only be required with respect to amendments affecting such Landowner.

9. **Term.** This Memorandum shall be in full force and effect until all City Bonds and CDA Payment Obligations have been paid or deemed no longer outstanding.

10. **Severability.** If any clause, provision or section of this Memorandum is held to be illegal or invalid by any court, the invalidity of the clause, provision or section shall not affect any of the remaining clauses, provisions or sections, and this Memorandum shall be construed and enforced as if the illegal or invalid clause, provision or section had not been contained in it.

11. **Counterparts.** This Memorandum may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same instrument.

12. **Recitals.** The recitals set forth at the beginning of this Memorandum are incorporated into and made a part of this Memorandum as though they were fully set forth in this Section 14 and constitute representations and understandings of the parties hereto.

13. **Governing Law and Venue.** This Memorandum shall be governed by the laws of the Commonwealth of Virginia without regard to its conflict of law rules. Any action or dispute arising out of this Memorandum that cannot be resolved among the parties shall be resolved in the City of Alexandria Circuit Court or in the United States District Court, Eastern District of Virginia, Alexandria Division and in no other forum.

14. **Notices.** Any notice, request or other deliveries required to be given hereunder shall be deemed given if sent by registered or certified mail, or overnight delivery service, postage prepaid, addressed to the following addresses:

City: City of Alexandria
301 King Street
Alexandria, Virginia 22314
Attention: City Manager
Phone: (703) 746-4300

with a copy to: City Attorney's Office
301 King Street
Alexandria, Virginia 22314
Attention: City Attorney
Phone: (703) 746-3750

IDA: Industrial Development Authority of the City of Alexandria
625 N. Washington Street, Suite 400
Alexandria, Virginia 22314
Attention: Stephanie Landrum, Assistant Secretary
Phone: (703) 739-3820

with a copy to: City Attorney's Office

301 King Street
Alexandria, Virginia 22314
Attention: City Attorney
Phone: (703) 746-3750

CDA: Landmark Community Development Authority
c/o City of Alexandria
301 King Street
Alexandria, Virginia 22314
Attention: City Manager
Phone: (703) 746-4300

with a copy to: City Attorney's Office
301 King Street
Alexandria, Virginia 22314
Attention: City Attorney
Phone: (703) 746-3750

Developer: Landmark Land Holdings, LLC
c/o Foulger Pratt
12435 Park Potomac Avenue, Suite 200
Potomac, Maryland 20854
Attention: Cameron Pratt and Brigg M. Bunker
Phone: (301) 922-3392

with a copy to: Landmark Land Holdings LLC
c/o Foulger Pratt
12435 Park Potomac Avenue, Suite 200
Potomac, Maryland 20854
Attention: Demetri Datch
Phone: (301) 980-4725

with a copy to: Arent Fox LLP
1717 K Street, NW
Washington, DC 20006
Attention: Richard A. Newman
Phone: (202) 857-6170

Any party may designate any other addresses for notices or requests or other deliveries by giving notice under this Section 14.

WITNESS the following signatures.

CITY OF ALEXANDRIA, VIRGINIA

By: _____
[NAME, TITLE]

**LANDMARK COMMUNITY DEVELOPMENT
AUTHORITY**

By: _____
[NAME, TITLE]

**INDUSTRIAL DEVELOPMENT AUTHORITY
OF THE CITY OF ALEXANDRIA**

By: _____
[NAME, TITLE]

LANDMARK MALL, LLC

By: _____
[NAME, TITLE]

SERITAGE SRC FINANCE, LLC

By: _____
[NAME, TITLE]

LANDMARK LAND HOLDINGS, LLC

By: _____
[NAME, TITLE]

Exhibit A - Petition

Exhibit B - Ordinance

Exhibit C - Rate and Method of Apportionment of Special Assessments