

**MOTION:**

**September 8, 2015  
Regular Meeting  
Res. No. 15-**

**SECOND:**

**RE:            AUTHORIZE SALE OF COUNTY-OWNED PROPERTY AT  
INNOVATION PARK LOCATED AT 9349 HORNBAKER ROAD,  
CONSISTING OF APPROXIMATELY SIX ACRES AND THE  
THOMASSON BARN – BRENTSVILLE MAGISTERIAL DISTRICT**

**ACTION:**

**WHEREAS**, the Prince William Board of County Supervisors acquired 500+ acres known as Innovation Park for the purpose of encouraging economic development consistent with the County's Strategic and Comprehensive Plans; and

**WHEREAS**, the Board of County Supervisors has received a proposal from Silva Holdings, LLC, to acquire approximately six acres of the County-owned land including the Thomasson Barn, which is situated at 9349 Hornbaker Road (GPIN #7695-04-6570, on which they would construct a 9,000 square-foot brewery, 8,500 square-foot beer garden and a hops and vegetable garden, and renovate the Thomasson Barn for adaptive reuse as a bistro and tasting room, consistent with the County's Innovation Sector Plan; and

**WHEREAS**, Silva Holdings, LLC, has agreed to pay \$5.00 per square-foot for approximately four acres based on an appraisal of County-owned land at Innovation Park, and \$1.70 per square-foot for approximately two acres and the Thomasson Barn for a total sales price of approximately \$1,019,304; and

**WHEREAS**, Silva Holdings, LLC, has agreed to make a deposit of \$50,000 at signing and another \$50,000 at the end of the study period, which shall be held in an interest-bearing escrow account by the County; and

**WHEREAS**, the parties have mutually agreed to the terms and conditions in the attached Land Sale Agreement; and

**WHEREAS**, Section 15.2-1800, VA Code Ann., requires a public hearing for the sale of County-owned land; and

**WHEREAS**, a notice of public hearing was advertised on August 26, 2015 and September 2, 2015;

**WHEREAS**, a public hearing has been duly authorized for this purpose was held on September 8, 2015, pursuant to Section 15.2-1800 of the Code of Virginia, and all interested citizens were heard;

**September 8, 2015**  
**Regular Meeting**  
**Res. No. 15-**  
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**NOW, THEREFORE, BE IT RESOLVED** that the Prince William Board of County Supervisors does hereby authorize the sale of approximately six acres of land and the Thomasson Barn in Innovation Park located at 9349 Hornbaker Road, in accordance with the attached Agreement of Sale and authorize the Chairman to sign the Agreement in a form to be approved by the County Attorney.

ATTACHMENTS: Parcel Sketch  
Agreement of Sale

**Votes:**

**Ayes:**

**Nays:**

**Absent from Vote:**

**Absent from Meeting:**

**For Information:**

Economic Development Director  
County Attorney

**ATTEST:** \_\_\_\_\_  
**Clerk to the Board**



Attachment A: Parcel Sketch





## **AGREEMENT OF SALE**

**THIS AGREEMENT OF SALE** (the "Agreement") is made this                      day of                      2015 (the "Effective date") by and between the **BOARD OF COUNTY SUPERVISORS OF PRINCE WILLIAM COUNTY, VIRGINIA**, the governing body of a political subdivision of the Commonwealth of Virginia (hereinafter referred to as "Seller" or "County") and Silva Holdings, LLC, a Virginia limited liability company ("Purchaser")

### **WITNESSETH:**

**WHEREAS**, the County is the owner of land known as INNOVATION @ Prince William, which the County has acquired for economic development purposes; and

**WHEREAS**, Purchaser desires to renovate the historic Thomasson Barn in a manner that will allow adaptive reuse of the Barn for a bistro and tasting room and to construct a 9,000 square foot brewery, 8,500 square foot outdoor beer garden and hops and vegetable garden on the Subject Property, as hereinafter defined. Silva Holdings plans to complete the renovation and building by Fall, 2016. Estimated investment of the renovation and new construction is \$3.6 million, and

**WHEREAS**, the County is willing to sell a portion of its property to Purchaser to permit Purchaser to renovate the historic Thomasson Barn, in furtherance of the County's Strategic Plan goals for economic development, and in support of the Innovation Sector Plan, which encourages adaptive reuse of the Thomasson Barn in a manner that compliments the overall goals for Innovation.

**NOW, THEREFORE**, for good and valuable consideration, including the mutual covenants and undertakings expressed herein, the receipt and sufficiency of which consideration the parties hereto acknowledge, the County agrees to sell and the Purchaser agrees to purchase certain hereinafter described real estate, all in accordance with the terms and conditions set forth herein.

### **1. SUBJECT PROPERTY:**

The property which is the subject of this Agreement consists of six acres, more or less of land in the area known as INNOVATION @ Prince William, which is generally located between Route 28, Route 234 Bypass and University Boulevard, on Hornbaker Road, in the Brentsville Magisterial District. The parcel was created on a plat of subdivision recorded as Instrument Number 200509080154804 among the land records of Prince William County, and is a portion of the property the County acquired from TMB Service Corporation, by deed recorded in deed book 2428 at Page 219 among the land records of Prince William County. The involved six acres, more or less, of land is identified as a



portion of 9349 Hornbaker Road with the GPIN 7695-04-6570 (hereinafter referred to as the "Subject Property" and shown in Attachment A: Parcel Sketch).

## **2. PROPOSED USE/PROJECT:**

Purchaser intends to use the Subject Property to renovate the existing historic Thomasson Barn for adaptive reuse as a bistro and tasting room and to construct a 9,000 square foot brewery and 8,500 square foot outdoor beer garden. The Initial Phase will include all site improvements, renovation of the Thomasson Barn and construction of the beer garden and brewery with a capacity of 2,500 to 3,000 barrels a year. Subsequent Phases could expand capacity to 15,000 to 20,000 barrels per year however buildout beyond the Initial Phase is subject to market conditions. Any obligation to construct and develop The Project beyond the Initial Phase shall be at the Buyers option. At full build out the brewery and bistro may employ an estimated 100 people and attract 75,000 guests per year. The County is selling the Subject Property under these terms, conditions and understandings as an economic development measure in the public interest to enhance the tax base of the County and its employment opportunities.

## **3. PURCHASE:**

The County agrees to sell and the Purchaser agrees to purchase the Subject Property in fee simple with special warranty of title and a covenant preserving the Thomasson Barn for adaptive reuse. Such covenant shall allow for renovation of Thomasson Barn for adaptive reuse while maintaining the exterior character of the building and requiring Purchaser to maintain and repair, at its own cost, the Thomasson Barn so as to preserve its architectural and historical integrity in order to protect and enhance those qualities that made the Barn eligible for listing in the National Register of Historic Places. Purchaser will not make any visual or structural alterations to the Thomasson Barn without the consent of the County, such consent will be provided through the building and site permitting process prior to closing. The County will take pictures of the Thomasson Barn before Settlement to serve as baseline documentation for this covenant.

## **4. PURCHASE PRICE:**

Purchaser agrees to pay One Dollar and Seventy (\$1.70) per square foot for the Barn and two acres surrounding the barn, and Five Dollars (\$5.00) per square foot for the remaining approximately four (4) acres of the parcel. (See Attachment A: "Parcel Sketch") The resulting blended rate of the full parcel of approximately six (6) acres (261,360 square feet) is approximately \$3.90 per square foot. Purchase price (less the Deposit specified in paragraph five of this Agreement) shall be paid by Purchaser to County at Settlement, as hereafter set forth. The purchase price to be paid by Purchaser to the County amounts to a total of One Million, Nineteen Thousand, and Three Hundred and Four Dollars (\$1,019,304)

(the "Purchase Price").

**5. DEPOSIT:**

Purchaser shall pay to the County a Deposit in the amount of Fifty Thousand Dollars (\$50,000) (the "Deposit") within three (3) business days of the effective date of this Agreement, plus an additional Fifty Thousand Dollars (\$50,000) payable upon expiration of the Study Period ("DEPOSITS"). The Deposits shall be held in escrow and shall be applied toward the purchase price at settlement. For the purposes of this Agreement the Effective Date shall be the date upon which the Purchaser receives a fully executed original version of this Agreement from the County.

**6. OTHER CONDITIONS OF SALE:**

**A. STUDY PERIOD:**

Purchaser shall have a study period of one hundred eighty (180) days from the effective date of this Agreement (the "Study Period") to inspect and test the Subject Property to confirm its acceptability and feasibility for Purchaser's purposes. Purchaser shall be entitled to enter upon the Subject Property to conduct any and all such tests as it deems necessary. Within three (3) business days of the effective date of this Agreement the County shall provide the Purchaser a copy of any and all reports of testing it may have in its possession or control dealing with the Subject Property, specifically including but not limited to the Phase One Environmental Study performed on the Subject Property prior to the County's acquisition. In the event that Purchaser determines, in its sole discretion, that the Subject Property is not suitable for Purchaser's intended use thereof, then Purchaser may terminate this Agreement by delivery of written notice thereof to seller on or before the expiration of the Study Period, and thereupon the parties hereto shall have no further rights or obligations hereunder except for those rights and obligations which specifically survive termination hereunder and the Deposit shall be returned by the County to the Purchaser within fifteen (15) days. The Study Period may be extended by the Purchaser for an additional 60 days through a written request and an additional Deposit of \$25,000. This additional Deposit shall be held in escrow and applied to the purchase price at closing, or refunded if the Purchaser decides to terminate this Agreement at the end of the Study Period. Purchaser must notify the County that it has achieved the Conditions to Close, in Section 10, within 60 days of the end of the Study Period.

**B. RIGHT OF ENTRY:**

Purchaser and its agents shall have the right, at their own risk, cost and

expense, at any reasonable time or times prior to settlement, with reasonable advance notice to seller (such notice may be by telephone and is not required to be in writing), to enter upon the property for the purpose of making surveys and/or studies, or of performing soil test borings or engineering or such other work as may be deemed desirable or necessary and does not result in a change in the present character of the Subject Property, provided, however, that Purchaser shall indemnify and hold Seller harmless from any and all causes of action, claims, damages and expenses, including reasonable attorney's fees and costs, arising from Purchaser's entry, or the entry of its agents, on the Subject Property. Purchaser agrees to return the Subject Property to its original condition to the extent that the condition changed due to Purchaser's tests and studies and shall be responsible to seller for any and all damages caused upon the Subject Property as a result of its entry thereupon.

**C. PROPERTY TO BE CONVEYED "AS-IS":**

The sale of the Subject Property is made on an "AS-IS" basis with no warranties whatsoever being made to Seller. Purchaser acknowledges and agrees that the Subject Property is to be conveyed and Purchaser will receive and accept the Subject Property and any structures, buildings, improvements, appurtenances, equipment and personal property located on the Subject Property or relating to the Subject Property in an "AS-IS, WHERE-IS" condition, with all faults, and that Purchaser is not relying upon any warranty, representation, statement or communication whatsoever by the County or any of its officers, agents, employees, or volunteers in connection with entering into this Agreement of Sale or consummating the transaction hereunder or otherwise acquiring title to the Subject Property hereunder.

**D. NO ENVIRONMENTAL WARRANTIES:**

The County makes no warranties, and hereby specifically disclaims any and all warranties relating to the current or prior physical, environmental and/or structural condition of the Subject Property and/or any structures or improvements located on the Subject Property, any hazardous material and/or adverse environmental conditions upon or in the vicinity of the Subject Property, the effect of environmental laws upon the Subject Property and the current status of the Subject Property thereunder and/or the fitness of the property and/or any structures or improvements on the Subject Property for any particular purpose.

**E. REPRESENTATIONS OF SELLER:**

The County represents it is a political subdivision of the Commonwealth of Virginia. The County has full authority to enter into and perform its obligations under this Agreement. The parties executing this



Agreement on behalf of the County have the authority to do so. The County is the record owner of the Subject Property and has the right to sell and assign title to the Subject Property to Purchaser in accordance with Virginia law. The County represents that it had a Phase I Environmental Study done on the Subject Property prior to its acquisition, a copy of which shall be delivered to Purchaser in accordance with Section 6(A) above. The County has not deposited any hazardous materials or hazardous substances on the Subject Property during the time it has owned the Subject Property. The County has no actual knowledge of hazardous substances or hazardous materials being located on the Subject Property other than what may be reflected in the Phase I Environmental Study.

#### **F. REPRESENTATIONS OF PURCHASER:**

Purchaser represents that it is a limited liability company duly formed and existing with the Virginia State Corporation Commission; that its board of managers has authorized the purchase of the Subject Property in accordance with all company policies and regulations; that the signing of this Agreement has been duly approved; that this Agreement when executed will be binding on Purchaser; and that it will provide satisfactory evidence of same to the County at settlement.

#### **G. COUNTY OBLIGATIONS:**

The County agrees to provide the Purchaser with certain services and infrastructure improvements to the Subject Property, at the County's cost, which is needed for the proposed project. These services and improvements are as follows:

1. Design and construct a two lane asphalt road from the end of Discovery Boulevard to the property line of the Subject Property. The County will commence design work for this road after the expiration of the Study Period and provide the Purchaser with any road and utility design and survey work necessary to complete permitting work required in the Conditions to Settlement. County will begin construction of this work after Settlement.
2. Design and construct extensions of sewer and water necessary to serve the proposed project; sewer and water will be extended to the property line of the Subject Property.
3. Subdivide the property and prepare the required plat and deed and create the Subject Property as a separate lot by recorded instruments in the land records of the County prior to or contemporaneously with Settlement. During the preparation of the subdivision plat, the County will coordinate with the Purchaser to ensure the property boundaries are generally consistent with Attachment A and acceptable to the Purchaser.

The County's work will include the establishment of horizontal and vertical controls onsite.

4. Provide to the Purchaser, within seven (7) days of the Effective Date of this Agreement, a copy of the Wetland Permit for the overall Innovation Project approved by the Virginia Department of Environmental Quality. This permit established no jurisdictional wetlands exist on the Subject Property. Further, no mapped resource protection areas exist on the Subject Property. The County will contribute up to \$3,000 toward any further confirmation of jurisdictional wetlands and/or resource protection area that may be required as part of the site plan process. If the presence of Wetlands is found on the Subject Property, the County will negotiate in good faith with the Purchaser to establish a new boundary and/or consider an adjustment in the Purchase Price.
5. Submit, if requested in writing by the Purchaser, the property to the Commonwealth of Virginia for inclusion in the State Historic Properties Register.
6. Cutting of grass on the property within five business days of Effective Date of this Agreement, and as needed up to the date of Settlement.
7. Negotiate, in good faith with the Purchaser, the protective covenants to be placed upon the property as required by Paragraph 3 above, and complete these negotiations by the end of the Study Period.
8. Assist the Purchaser in presenting The Project to the Architectural Review Board of the Innovation Owners Association for review and approval.
9. Assign a Project Manager from the Development Services Department to facilitate review of all submittals, arrange requested meetings and expeditiously resolve problems in the site and building development permitting, review and inspection processes.
10. Assist Purchaser with submitting requests for wayfinding signage to the Virginia Department of Transportation (VDOT) to include, but not limited to:
  - a. Support the Purchaser's supplemental guide signage requirements in accordance with guidelines established by Virginia Department of Transportation, Integrated Directional Signing Program
  - b. Attend periodic meetings and/or phone conference calls with Purchaser and VDOT in support of Purchasers request for supplemental guide signage, which the Purchaser proposes would be consistent with the VDOT Winery signage program; and,
  - c. Work with VDOT to facilitate applicable right of ways or easements, or otherwise enter into agreements for the purpose of installing Tourist Oriented Directional Signage

## **H. COOPERATION IN PRE-CLOSING ACTIVITIES:**

Until settlement, as the County will remain the title owner of the Subject Property, the County agrees to cooperate with the Purchaser as it seeks various development permits and permissions prior to settlement. This cooperation is set forth below:

1. As the owner of the Subject Property prior to settlement, the seller agrees to assist the Purchaser, to the extent authorized in the Innovation Covenants and Declarations, in acquiring the necessary approvals by the Innovation Owners Association.

## **I. ZONING AND DESIGN GUIDELINES:**

The current zoning of the Subject Property will allow the restaurant and brewery uses described by the Purchaser to the County up to 10,000 barrels per year and including live entertainment subject to Section 400.15 of the County Zoning Code. During the Study Period the County Staff will pursue a zoning text amendment increasing the barrels per year permitted for a brewery in an M-2 Zoning District consistent with the projected capacity of Section 2 of this Agreement. All requirements of the County Zoning Ordinance are applicable to the Subject Property.

## **J. DEED AND TITLE:**

At Settlement, County will convey title to the Subject Property to Purchaser by Special Warranty Deed. Conveyance of the Subject Property shall be subject to any and all easements, covenants, restrictions and all other matters of record, including a covenant prohibiting the demolition of the Thomasson Barn. Title shall be good and marketable, subject only to standard exceptions taken by title companies, and shall be free of all liens, mortgages and deeds of trust. Purchaser may obtain a title examination at its expense. Any exceptions to the title taken by the title company may be cured by Purchaser. The County shall not be responsible for paying for the curing or removal of any exceptions to the title, other than liens, mortgages and deeds of trust. In the event there are title defects Purchaser decides to cure, then the settlement will be extended for thirty (30) calendar days at Purchaser's written request. Any real estate taxes due on the Subject Property as of the date of settlement shall be paid by the County. If at the time of settlement, title to the Subject Property is subject to any exceptions which arose after the effective date of any title commitment obtained by Purchaser during the Study Period, Purchaser may terminate this Agreement upon written notice to seller, and thereupon the parties hereto shall have no further rights or obligations hereunder except for those rights and obligations which specifically survive termination hereunder and the Deposit shall be returned by the County to Purchaser within fifteen (15) days.



**K. TAKING BY EMINENT DOMAIN OR DEDICATION REQUIREMENTS:**

If prior to Settlement on the Subject Property, all or any portion of the Subject Property is taken by eminent domain, or all or any portion of the Subject Property is required to be dedicated by any governmental authority, Purchaser may, at its sole option, choose to terminate this Agreement, whereupon all rights and responsibilities hereunder shall be null and void, and the Deposit shall be refunded by the County to the Purchaser within fifteen (15) days. Purchaser may elect to make settlement on all of the Subject Property other than that which is the subject of such condemnation proceeding, in accordance with the terms of this Agreement and the purchase price shall be adjusted on a pro rata square foot basis.

**L. COUNTY'S RIGHT TO REPURCHASE:**

Purchaser acknowledges and understands that the County is entering into this Agreement in order to further economic development in the County, by having Purchaser construct a bistro, tasting room, and brewery. Purchaser agrees to commence work in the Initial Phase of the project, including renovation of the Thomasson Barn and construction of the brewery within 60 calendar days after the closing (the "Construction Initiation Date"). In the event Purchaser does not initiate construction of its new facilities on the Subject Property by the Construction Initiation Date, the County shall have the right, but not the obligation, to repurchase the Subject Property at the same purchase price paid by Purchaser, by providing Purchaser with written notice no later than ninety (90) days after the Construction Initiation Date (the "Repurchase Right"). The Repurchase Right shall be deemed waived by the County if the County does not provide said written notice to Purchaser within said ninety-day period. If the County exercises the Repurchase Right, Purchaser agrees to convey the Subject Property to the County by special warranty deed, upon the County paying Purchaser the purchase price of the property. The County shall pay all settlement charges for repurchase, including the grantor's tax. For the purposes of this section, "initiate construction" shall be deemed to be the mobilization of the construction contractor on the Subject Property, and the commencement of related site development work, which includes but may not be limited to establishment of VDOT approved site entrance, all related development and grading to include drainage design and construction, water and sanitary connections, establishment of required siltation and erosion controls and initial phase one building construction of brewery building by the Construction Initiation Date.

**M. COVENANTS, CONDITIONS AND RESTRICTIONS:**

Purchaser acknowledges and agrees that the Subject Property will be

conveyed subject to covenants, conditions and restrictions of record, which are designed to maintain the higher quality of INNOVATION as a technology business park. The existing covenants applicable to the Subject Property are recorded in deed book 2864 on page 307 and to the Declaration for the property of the Board of County Supervisors of Prince William County, Virginia, Frederick M. Mako and Connie E. Mako at Innovation @ Prince William dated January 7, 2000, recorded in the deed book 2864 on page 0390 and recorded as Instrument No. 2001104050032230, and to the Amendment to Declaration for property of the Board of County Supervisors of Prince William County, Virginia dated July 18, 2002 and recorded as Instrument No. 200207300097483, and to the Supplemental Declaration of Covenants for property of the Board of County Supervisors of Prince William County, Virginia, in Innovation @ Prince William dated July 12, 2004, recorded as Instrument No. 200407130117878, and to the Amendments to Declaration for Property of Board of County Supervisors of Prince William County, Virginia, dated the 17th day of January, 2006, recorded at Instrument Number 201507100055956, and to the Amendments to Declaration for Property of Board of County Supervisors of Prince William County, Virginia, dated the 7th day of August, 2007, recorded at Instrument Number 201507100055957, all among the land records of Prince William County. The same covenants shall apply to all of the property within Innovation in order to maintain the consistency of the quality of development throughout the technology business park.

**N. ANNEXATION:**

Purchaser agrees not to seek, acquiesce in or agree to having any portion of the Subject Property be annexed into the corporate limits of the City of Manassas, or any other independent city or any town now in existence or hereafter created, through initiation of, participation in, or acquiescence in any voluntary landowner or citizen-initiated petition under Virginia law seeking any such annexation. The parties further agree that the deed conveying the Subject Property to the Purchaser will contain a provision reciting that the grantee under the deed shall not initiate, acquiesce in or participate in any citizen-initiated annexation petition seeking to annex any portion of the Subject Property into the City of Manassas, or any other independent city or any town now in existence or hereafter created.

**O. PURCHASER'S CONSENT TO ADDITIONAL DEDICATIONS OR EASEMENTS REQUIRED FOR DEVELOPMENT OF INFRASTRUCTURE:**

Purchaser acknowledges that the County has constructed the necessary infrastructure to facilitate public and private development at INNOVATION. Should the County inform Purchaser, either prior to settlement, or up to one year after settlement, that the County's construction of infrastructure in

accordance with governmental regulation, requires the acquisition of right-of-way dedication or easements, and Purchaser reasonably determines that the location and extent of rights-of-way or easements needed on the Subject Property will not unreasonably or materially interfere with or increase the cost of Purchaser's development of the Subject Property, Purchaser will convey the necessary right-of-way and/or easements to the County without the payment of any further consideration by the County for the right of way and/or easements to be conveyed. The County agrees to assume all costs of preparing the necessary deed(s), plat(s) and other documents and all costs of land recordation necessary to affect the grant of the right of way and/or easements. This obligation shall survive settlement and shall not be merged with the deed.

#### **7. NO MERGER**

The terms and provisions of this Agreement of Sale shall survive settlement and the recording of the deed, and shall be binding upon the parties hereto, their successors in interest and assigns thereafter.

#### **8. NOTICE:**

All notices, requests, consents and other communications hereunder shall be in writing and shall be personally delivered or mailed by first class, registered or certified mail, return receipt requested, postage paid.

- a. If to the Purchaser: Silva Holdings, LLC, PO Box 79 Clifton, Virginia 20124, or to such other address as may have been furnished by the Purchaser to the seller in writing.
- b. If to the seller: Board of County Supervisors of Prince William County, c/o County Executive, 1 County Complex Court, Prince William, Virginia 22192, with a copy to the County Attorney, at the same address or to such address as may have been furnished by the Seller to the Purchaser in writing.

Any notice, request, consent or other communication shall be deemed received when it is personally delivered or faxed, or on the second business day after it is Deposited in the United States mail, as the case may be.

#### **9. ASSIGNMENT:**

The County must approve, in writing, the assignment of this Agreement or the sale of the Subject Property prior to the completion of the Initial Phase of The Project as described in Section 2 to any entity not a signatory to this Agreement. Such County approval shall not unreasonably be withheld for an assignment or sale which does not deviate from The Project design.



## **10. SETTLEMENT:**

Settlement of this real estate transaction shall be made at the office of an attorney licensed to practice law in Virginia or a settlement agent selected by Purchaser, said settlement to occur by fifteen (15) day notice from the Purchaser to the Seller stating that the Purchaser has achieved the following Conditions to Settlement:

- a. Final site plan approval,
- b. Issuance of Site Development Permit
- c. Issuance of Building Permit for Brewery Building,
- d. Initial submission for building permits for barn renovation,
- e. Closing into escrow all funding (including debt and equity) sufficient to complete the Initial Phase of The Project.
- f. Signed "Not to Exceed" contract(s) with a general contractor(s) for the Initial Phase of The Project, including renovation of the Thomasson Barn and construction of site work, brewery and beer garden.
- g. A Zoning Text Amendment increasing the barrels per year permitted for a Brewery in an M-2 Zoning District.

## **11. CHARGES:**

Examination of title, conveyancing, notary fees, settlement fees and recording charges, other customary charges associated with finalizing this transaction, and Purchaser's attorney's fees, shall be paid by the Purchaser. The County shall be responsible for payment of any grantor's tax and the release of any liens which are the County's responsibilities as set forth in paragraph 6 (J), above. Seller and Purchaser each warrant to the other that they have dealt with no agent or broker with respect to the transaction contemplated by this Agreement. In the event that any claim for commission or finder's fee is brought by any person or entity whatsoever as a consequence of the transaction contemplated hereby and as a result of any action or omission of either seller or Purchaser, then seller or Purchaser (whichever party is alleged to have committed the act or omission which is the basis of such claim), as the case may be, shall indemnify, defend and hold harmless the other party against any loss, cost, or expense of any nature, including, but not limited to, court costs and reasonable attorneys' fees, arising as a consequence of such claim for the commission or fee.

## **12. DEFAULT:**

- A. In the event that Seller performs all of seller's obligations hereunder and has approved the Zoning Text Amendment called for in the Conditions of Settlement and the Purchaser has paid the full \$100,000 deposit amount required at the end of the Study Period and Purchaser fails to proceed to settlement on the Subject Property or otherwise defaults under this Agreement, and fails to cure such default

within five (5) days after receipt by Purchaser of written notice of such default, then seller, as seller's sole and exclusive remedy, shall be entitled to terminate this Agreement by delivery of written notice to Purchaser and thereupon the Deposit shall be retained by seller as full liquidated damages, in lieu of any other claims or causes of action which may be available to seller at law or in equity by reason of such default hereunder by Purchaser. The foregoing forfeiture of the Deposit to seller is agreed upon as liquidated damages by the parties hereto because of the difficulty of ascertaining the actual damages seller may suffer by reason of Purchaser's breach of this Agreement.

- B.** In the event that Purchaser performs all of its obligations hereunder and seller fails to proceed to settlement on the Subject Property or otherwise defaults under this Agreement, and fails to cure such default within five (5) days after receipt by seller of written notice of such default, then Purchaser shall be entitled, as Purchaser's sole and exclusive remedies hereunder, to (i) terminate this Agreement by delivery of written notice to seller, and thereupon the Deposit shall be returned by the County to Purchaser and the parties hereto shall have no further rights or obligations hereunder except for those obligations which expressly survive termination, or (ii) seek to obtain specific performance of seller's obligations hereunder.

### **13. MISCELLANEOUS:**

- A.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors in interest and assigns. Purchaser shall have no right to assign this Agreement of Sale without the written permission of the County, whose consent shall not be unreasonably withheld.
- B.** Failure by the Purchaser or the Seller to insist upon or enforce any of their respective rights hereunder shall not constitute a waiver thereof, except as provided for herein. Purchaser may, at its sole discretion, waive any breach by Seller of any Seller's representations, warranties and/or covenants hereunder, or any failure of a condition precedent to closing hereunder.
- C.** This Agreement shall be governed by, and construed under the laws of the Commonwealth of Virginia.
- D.** The section headings as herein used are for convenience or reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations and warranties herein set forth or to limit the provisions or scope of any section.
- E.** To facilitate execution, this Agreement may be executed in as many counterparts as may be required, and it shall not be necessary that the

signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on more than one counterpart. All counterparts shall collectively constitute a single agreement.

- F.** Time shall be of the essence with respect to this Agreement.
- G.** Any date specified in this Agreement for the performance of an obligation or expiration of a time period which is a Saturday, Sunday, or a legal holiday shall be extended to the first regular business day after such date which is not a Saturday, Sunday or a legal holiday. For purposes of this Agreement, the day following Thanksgiving shall be deemed to be a legal holiday.
- H.** No determination by any court or other governmental authority that any provision of this Agreement is invalid or unenforceable in any instance shall affect the validity or enforceability of (i) any other provision of this Agreement, or (ii) such provision of this Agreement in any circumstance not controlled by such determination. Each provision of this Agreement shall be valid and enforceable to the fullest extent allowed by, and shall be construed whenever possible as being consistent with, all applicable laws.

**14. ENTIRE AGREEMENT:** This Agreement, when executed by the parties, contains the final and entire agreement between them. No parties shall be bound by any terms, conditions, statements or representations, oral or written, not herein contained.

**WITNESS** the following signatures and seals:

**BOARD OF COUNTY SUPERVISORS OF  
PRINCE WILLIAM COUNTY, VIRGINIA**

By: \_\_\_\_\_  
Chairman

**ATTEST:**

**SILVA HOLDINGS, LLC**

By:  \_\_\_\_\_  
Marcus A. Silva  
Title: Chief Executive Officer

Approved as to form:

\_\_\_\_\_  
County Attorney  
Date: \_\_\_\_\_

Clerk to the Board





Melissa S. Peacor  
County Executive

## COUNTY OF PRINCE WILLIAM

### OFFICE OF EXECUTIVE MANAGEMENT

1 County Complex Court, Prince William, Virginia 22192-9201  
(703) 792-6600 Metro 631-1703 FAX: (703) 792-7484

### BOARD OF COUNTY SUPERVISORS

Corey A. Stewart, Chairman  
Maureen S. Caddigan, Vice Chairman  
Pete Candland  
John D. Jenkins  
Jeanine M. Lawson  
Michael C. May  
Martin E. Nohe  
Frank J. Principi

August 24, 2015

**TO:** Board of County Supervisors

**FROM:** Jeffrey A. Kaczmarek, Executive Director  
Department of Economic Development

**THRU:** Melissa S. Peacor  
County Executive

**RE:** Authorize Sale of County-owned Property at Innovation Park, Located at 9349 Hornbaker Road and Consisting of Approximately Six Acres and the Thomasson Barn – **Brentsville Magisterial District**

**I. Background** in chronological order is as follows:

- A. Original Land Purchase – The Prince William Board of County Supervisors (BOCS) purchased approximately 500+/- acres of land in 1997, now known as Innovation Park (Innovation), for economic development purposes.
- B. Land Sale Activity – Since the original purchase, the County has sold 14 parcels of land and one additional sale is pending.
- C. Innovation Land Sale Policies – The BOCS adopted Innovation Land Sale Policies in 1997. Item No. 6 of these policies states: “Upon the retirement of all outstanding obligations issued on behalf of the Land Bank, any remaining balance and/or new sales revenue will be reserved for purposes of economic development in the County including the purchase of additional land to be added to the Land Bank or for infrastructure construction intended to promote development.”
- D. Sale Proceeds – The proceeds from the sale of these parcels have been utilized to retire the original debt used to purchase the property and to pay for all engineering, road, storm water and utilities to prepare the site for development. Proceeds from this proposed sale would go into the Innovation Enterprise Fund which is dedicated to infrastructure improvements in Innovation.

II. Current Situation is as follows:

- A. Request to Purchase Land – The County was approached by Silva Holdings, LLC, which is interested in purchasing a parcel of approximately six acres, including the Thomasson Barn, located at 9349 Hornbaker Road, GPIN # 7695-04-6570.
- B. Proposed Project – Silva Holdings, LLC wishes to acquire the Thomasson Barn and six acres around the barn to renovate the barn for adaptive reuse as a bistro and tasting room and to construct a 9,000 square foot brewery; 8,500 square foot beer garden; and a hops and vegetable garden.
- C. Project Phasing – The Initial Phase of the project includes all site improvements, renovation of the Thomasson Barn for the bistro and tasting room, construction of the beer garden and a brewery with a capacity of 2,500 to 3,000 barrels per year. A later phase of the project would expand capacity to between 15,000 and 20,000 barrels per year. Total investment in the project is estimated at \$3.6 million. At full build-out the project could employ an estimated 100 people.
- D. Purchase Price – The agreed upon purchase price of the Thomasson Barn and surrounding two acres is \$1.70 per square foot (\$148,104) and the remaining four acres of land has a purchase price of \$5 per square foot (\$871,200). The resulting blended rate for the full parcel (approximately six acres including the barn) is \$3.90 per square foot of land or a total sales price of approximately \$1,019,304. The \$5.00 per square foot is consistent with other sales in the Innovation area. The \$1.70 per square foot for the barn and surrounding two acres, accounts for the current condition of the barn and the high cost of renovating it for commercial use while maintaining historical integrity.
- E. Key Provisions of Land Sale Agreement – The Land Sale Agreement has been agreed to by Silva Holdings, LLC and includes the following key provisions:
  - 1. Study Period – Purchaser shall have 180 days from the effective date of this agreement to inspect and test the subject property (the “Study Period”) to confirm its acceptability and feasibility for purchaser’s purposes. In the event that purchaser determines that the subject property is not suitable for purchaser’s intended use, then purchaser may terminate this agreement and the deposit shall be returned by the County to the purchaser. The Study Period can be extended for another 60 days by the purchaser through a written request and additional deposit of \$25,000.
  - 2. Deposits – Purchaser shall pay to the County a deposit in the amount of \$50,000 within three business days of the effective date of the agreement,

plus an additional \$50,000 upon expiration of the study period. The deposit shall be held in escrow and applied towards the purchase price at settlement. Once the full deposit of \$100,000 is made, the total \$100,000 deposit becomes non-refundable. If Silva Holdings, LLC pays to extend the Study Period, the total non-refundable deposit would be \$125,000.

3. Conditions to Closing – Silva Holdings, LLC must have achieved the following within 60 days of the end of the Study Period in order to close on the property:
  - Final Site Plan Approval;
  - Issuance of Site Development permit;
  - Issuance of Building Permit for Brewery Building;
  - Initial submission for building permits for the barn renovation;
  - Closing into escrow of all funding (debt and equity) sufficient to complete the Initial Phase of the Project;
  - Signed not to exceed contract (s) with a general contractor (s) for the Initial Phase of the Project; and
  - A Zoning Text Amendment increasing the barrels per year permitted for a Brewery in an M-2 Zoning District.
4. County Obligations – The County's obligations under the Sale Agreement include:
  - Design and construct a two-lane asphalt road from the end of Discovery Boulevard to the new property line. Road design would be done after the expiration of the Study Period. Road construction would not commence until after closing. Estimated cost for the road is \$1,329,000 including extending water and sewer to the property line. This road will also serve approximately 19 additional acres of County-owned land at Innovation, which will generate additional land sale proceeds estimated at \$4.14 million when sold.
  - Submit Thomasson Barn to the Commonwealth of Virginia for inclusion in the State Historic Properties register, if requested by Silva Holdings, LLC.
  - Negotiate with Silva Holdings, LLC the protective covenants ensuring Thomasson Barn can be renovated for adaptive reuse while maintaining the exterior character of the building so as to preserve its architectural and historic integrity. These covenants would be placed on the property at closing in order to ensure the preservation and maintenance of the Thomasson Barn.
  - Provide expedited permitting review for the project.

5. County Agreement to Resale of Property or Assignment – Resale or assignment of the property prior to completion of the Initial Phase is prohibited without the written approval of the County.
  6. Zoning – The current zoning on the property allows for craft breweries up to a capacity of 10,000 barrels per year. Silva Holdings, LLC plans for eventual expansion to between 15,000 and 20,000 barrels per year. During the Study Period, the County will consider a zoning text amendment increasing the barrels per year permitted for a brewery in an M-2 district.
- F. Public Hearing – A notice of public hearing was advertised on August 26, 2015 and September 2, 2015 in accordance with Section 15.2-1800, VA.Code Ann.
- G. Board Action Requested – Authorize sale of County-owned property at Innovation Park, located at 9349 Hornbaker Road and consisting of approximately six acres and the Thomasson Barn – **Brentsville Magisterial District**.

III. Issues in order of importance are:

- A. Service Level/Policy Impact – Does this potential sale meet the policy objectives of the County's Economic Development Plans?
- B. Fiscal Impact – Will the sale and future development of the project be financially positive to the County?
- C. Legal – Are there any legal issues associated with this potential land sale?
- D. Timing – Are there timing issues associated with this potential land sale?

IV. Alternatives in order of feasibility are:

- A. Authorize Sale of County-owned Property at Innovation Park, located at 9349 Hornbaker Road and consisting of approximately six acres and the Thomasson Barn – **Brentsville Magisterial District**
  1. Service Level/Policy Impact – The Innovation Sector Plan, adopted in 2005, calls for the preservation and adaptive reuse and rehabilitation of the barns in Innovation. In addition to accomplishing this goal, the proposed project would enhance Innovation by attracting tourists and nearby residents to Innovation after hours and on weekends for food, brewery tours, live music, and arts programs in the bistro. Companies located at Innovation will also benefit from having another restaurant option in Innovation which will help create a “sense of place”. The proposed



project also supports the Strategic Plan goal of increasing at place employment by adding 100 jobs at full build-out.

2. Fiscal Impact – The sale will generate \$1,019,304. In accordance with the Innovation Land Sale Policies these proceeds go to the Innovation Enterprise Fund for infrastructure improvements. The current balance in that fund is \$2.68 million and would increase to \$3.7 million with the proceeds from this sale. Infrastructure improvements for the project are estimated to cost \$1,329,000 which can be funded from the Innovation Enterprise Fund, Fund 540, sub funds 054 and 055. These improvements are consistent with previous property sales in Innovation and would serve approximately 19 additional acres of County-owned land at Innovation, which when sold generate an estimated \$4.14 million in sale proceeds. The construction and operation of the proposed project generates an estimated \$543,885 in County tax revenues through 2029. After providing for the cost to the County of constructing the road, the project has an estimated positive net present value to the County of \$1,264,406.
3. Legal – The BOCS is required by Virginia Code Section 15.2-1800 to provide a two-week public notice of the sale and conduct a public hearing prior to considering a sale of County-owned land. Staff set a public hearing for the September 8, 2015 Board of County Supervisors meeting and advertised this sale and public hearing on August 26, 2015, and September 2, 2015.
4. Timing – Board approval on September 8, 2015 will allow the Study Period to begin with a projected closing on the land in mid-April 2016 and a projected opening of the brewery in Fall 2016.

B. Take No Action

1. Service Level/Policy Impact – If no action is taken on this proposal the County would retain ownership and maintenance responsibilities of the Thomasson Barn and the barn will not be renovated for adaptive reuse at this time, as called for in the Innovation Sector Plan. An opportunity to increase the amount of at-place employment, a Strategic Plan Goal, would be missed.
2. Fiscal Impact – If the land is not sold then the balance in the Innovation Enterprise Fund will remain at \$2.68 million and no infrastructure improvement costs will be incurred at this time
3. Legal – None.

4. Timing – There would be no timing impact as the proposed project would not proceed.

V. **Recommendation** is that the Board of County Supervisors concurs with Alternative A and approves the attached Resolution.

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