

CONTRACT OF SALE

THIS CONTRACT OF SALE (“Contract”) is entered into as of the ____ day of _____, 2015 (“Effective Date”), by and between the **FAIRFAX COUNTY PARK AUTHORITY**, a political subdivision of the Commonwealth of Virginia (the “Park Authority”), and **THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, (the “County”).

RECITALS

WHEREAS, the Park Authority is the fee simple owner of real property located in Fairfax County, Virginia, containing approximately 217,800 square feet, identified on Fairfax County Tax Map 017-1, Double Circle 1, as Parcel 14D, and further shown highlighted in blue on the Fairfax County Tax Map attached hereto as Exhibit A and made a part hereof (the “Property”); and

WHEREAS, the Property is currently used as undeveloped parkland; and

WHEREAS, both the County and Inova Health Care Services (“Inova”) each own certain properties adjacent and/or otherwise close to the Property (the “Current County Properties” and the “Current Inova Properties”); and

WHEREAS, on February 11, 2014, the Board of Supervisors of Fairfax County, Virginia, acting in its governmental capacity, adopted an amendment to the Fairfax County Comprehensive Plan which, among other things, sets forth recommendations for the coordinated redevelopment of the Property together with the Current County Properties and the Current Inova Properties (collectively, the “Town Center North Area”), including a concept plan, a copy of which is attached hereto as Exhibit B, that depicts, among other things, a grid of streets, a central green, and land bays for future development (the “Concept Plan”); and

WHEREAS, the Park Authority desires to convey the Property to the County, and the County desires to accept such conveyance, in order to help effectuate the redevelopment envisioned by said Comprehensive Plan amendment; and

WHEREAS, the County, if such redevelopment can be achieved, intends to provide rights to certain density on one of the newly-created land bays to the Park Authority or its designee for park uses, as further set forth herein; and

WHEREAS, the Park Authority has determined that such new parcel would better serve the needs of the citizens concerned, that the County can more appropriately administer the Property by acting as the main point of contact in redevelopment efforts with Inova, and that such disposal of the Property would serve to further the mission of the Park Authority;

NOW THEREFORE, in consideration of the mutual covenants of the Park Authority and the County and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged by both parties, the Park Authority and the County hereby agree as follows:

1. SALE OF PROPERTY.

Subject to the terms and conditions of this Contract, the Park Authority shall sell and convey the Property to the County, together with all improvements thereon and all rights, privileges, easements, benefits, and agreements appurtenant thereto.

2. CONSIDERATION.

(a) As consideration for the Park Authority's conveyance of the Property to the County, the County (i) shall use good faith efforts to pursue the redevelopment of the Town Center North Area as generally envisioned by the aforementioned Comprehensive Plan amendment, (ii) shall ensure that the central green, as generally depicted on the Concept Plan, is restricted to publicly accessible open space and/or park uses (except for incidental commercial activities as mutually and reasonably agreed upon) and is not to be maintained by the Park Authority, and (iii) shall – if its redevelopment efforts are successful, meaning that new land bays as generally depicted on the Concept Plan have been created through a subdivision, lot line adjustment, or other similar process – convey rights to approximately 90,000 gross square feet of density (or such other amount as the County and the Park Authority may subsequently agree to in writing) to be located on one of the new land bays to the Park Authority or its designee for use as an indoor recreational facility.

(b) Regarding subsection (a)(iii), the parties each acknowledge and agree (i) that the County shall convey such rights to a new land bay to the Park Authority for no additional consideration, (ii) that the County shall not be liable pursuant to this Contract for any design, construction, or other costs of the indoor recreational facility, and (iii) that, following the execution of a final agreement with Inova, the County and the Park Authority shall meet regularly to discuss which of the resulting land bays shall be the one in which rights are to be conveyed to the Park Authority or its designee, as well as the timing and mechanics of such conveyance. The County and the Park Authority agree that no Inova-owned land bay will be the site for density conveyed to the Park Authority hereunder.

(c) The parties acknowledge and agree that the above consideration constitutes “substantial consideration” and therefore that that certain Agreement between the parties dated November 14, 2007 (as amended to date, the “Land Bank Agreement”) shall not apply to this transaction, except as expressly set forth in Section 11(b) below.

3. INSPECTIONS AND INVESTIGATIONS.

From and after the Effective Date, the County shall have the right, at its own risk, cost and expense, to examine title to the Property and to enter, or cause its agents, representatives, contractors or other designees, to enter upon the Property during normal business hours for the purpose of making any surveys, tests, investigations or inspections relating to the Property which the County deems desirable, including without limitation environmental investigations. If the County, for any reason whatsoever, is not satisfied with title to or the condition of the Property, the County shall have the right to terminate the Contract upon written notice to the Park Authority by no later than forty-five (45) days after the Effective Date, in which event, this Contract shall terminate and the parties shall have no further obligations or liabilities with respect to the Contract.

4. SETTLEMENT.

Settlement (“Settlement”) shall take place at the offices of the County, 12000 Government Center Parkway, Fairfax, Virginia 22035, on the date selected by the County, upon at least five (5) business days advance notice to the Park Authority (“Settlement Date”), but no later than July 1, 2015, unless otherwise mutually agreed by the Park Authority and the County.

5. PROPERTY CONDITION.

(a) **Title.** The Park Authority shall convey title to the Property at the time of Settlement to the County by Deed in the form attached as Exhibit C hereto. The Park Authority shall neither take any action nor permit any action to be taken which could adversely affect the state of title as of the Effective Date.

(b) **Extent of Conveyance.** The Park Authority shall deliver or cause to be delivered to the County at Settlement the Property substantially in the condition as of the Effective Date.

6. CONDITION PRECEDENT.

The obligation of the County to proceed with Settlement is contingent upon the condition of the Property and title thereto being as required by the terms of this Contract.

7. RISK OF LOSS.

If, prior to Settlement, the Property or a material part thereof is materially destroyed or damaged by fire or other casualty or occurrence, unless caused by the County, the County shall have the option (i) to proceed to Settlement, or (ii) to terminate this Contract in which event the Park Authority and the County shall have no further liability hereunder.

8. CONDEMNATION.

If, prior to Settlement, any material portion of the Property is condemned or taken under the power of eminent domain (or is the subject of a pending taking that has not yet been consummated), then either party shall have the right to terminate this Contract by giving written notice thereof to the other party, in which event the Park Authority and the County shall have no further liability hereunder.

9. SETTLEMENT OBLIGATIONS.

(a) **Park Authority's Obligations at Settlement.** At Settlement, the Park Authority shall (i) execute, acknowledge and deliver to County, or County's designee, (i) a quitclaim deed ("Deed") in the form attached as Exhibit C hereto, conveying fee simple title in the Property, and (ii) execute and deliver any other instruments or documents as may be reasonably necessary to fully consummate the transactions contemplated herein.

(b) **County's Obligation at Settlement.** At Settlement, the County shall (i) execute an acceptance of the Deed, (ii) execute and deliver any any other instruments or documents as may be reasonably necessary to fully consummate the transactions contemplated herein, and (iii) pay for any recordation or other similar charges (to the extent required by applicable law) arising out of the Settlement.

10. POST-SETTLEMENT RETURN OF PROPERTY.

If, following Settlement but prior to any resubdivision or adjustment to parcel boundary lines, the County reasonably determines that the redevelopment of the Town Center North Area, as generally envisioned by the Concept Plan, cannot be effectuated, the County shall convey the Property back to the Park Authority, and the parties hereto shall use good faith efforts to facilitate such reconveyance.

11. SURVIVAL, DEFAULTS, AND REMEDIES.

(a) It is the parties' intent, and the parties hereby agree that the terms of this Contract shall survive Settlement, including without limitation Section 2 hereof.

(b) If the County defaults under this Contract on its obligation to proceed to Settlement and the County is willing and able to proceed, and such default shall continue for a period of fifteen (15) days after notice thereof from County, then County shall be entitled to terminate this Contract and the Park Authority and the County shall thereafter have no further liability hereunder. If the County defaults under this Contract on its obligations under Section 2(a)(iii) hereof, then the Park Authority may elect to deem its conveyance of the Property to the County as a conveyance subject to the Land Bank Agreement and the value of the Property shall

then be deducted from the Land Bank. If the County defaults under this Contract on its obligations under Section 10 hereof, then the Park Authority shall be entitled to (i) terminate this Contract and the Park Authority and the County shall thereafter have no further liability hereunder, or (ii) in the alternative, pursue a suit for specific performance.

(b) If the Park Authority defaults under this Contract and such failure shall continue for a period of five (5) business days after notice from the County, then the County shall be entitled to (i) terminate this Contract and the Park Authority and the County shall thereafter have no further liability hereunder, or (ii) in the alternative, pursue a suit for specific performance.

12. NOTICES.

All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when received if delivered by reputable courier service, received by facsimile or if sent by certified mail, return receipt requested and postage prepaid, to a party at its address set forth below or at such other address as such party may specify by at least five (5) days advance written notice to the other party:

If to Park Authority:

Fairfax County Park Authority
12055 Government Center Parkway
Suite 927
Fairfax, Virginia 22035-1118
Attention: Kirk Kincannon

If to County:

Fairfax County Department of Public Works & Environmental Services
12000 Government Center Parkway, Suite 449
Fairfax, Virginia 22035
Attention: Carey Needham

13. ADDITIONAL PROVISIONS.

(a) **Entire Agreement and Interpretation.** This Contract contains the entire agreement between the parties hereto. There are no promises or other agreements, oral or written express or implied, between them other than as herein set forth. This Contract may not be amended or modified except by written instrument signed by the party to be charged with such amendment or modification. The section headings in this Contract are inserted for convenience only and in no manner expand, limit or otherwise define the terms hereof.

(b) **Partial Invalidity.** If any term, covenant or condition of this Contract shall be invalid or unenforceable, the remainder of this Contract shall not be affected.

(c) **Governing Law.** It is the intention of the parties that all questions with respect to this Contract and the rights and liabilities of the parties hereunder shall be determined in accordance with the laws of the Commonwealth of Virginia.

(d) **Time of the Essence.** Time is of the essence with respect to this Contract.

(e) **Assignment.** This Contract may not be assigned, in whole or in part, by either the Park Authority or the County, without the prior written consent of both parties hereto.

(f) **Exhibits.** Each of the exhibits attached to this Contract are incorporated herein by reference.

(g) **Counterparts.** This contract may be executed in any number of identical counterparts, but all counterparts hereof taken together shall constitute a single instrument.

(h) **Holidays.** If the date for performance hereunder shall fall on a Saturday, Sunday or legal holiday, of Fairfax County, Virginia, the date for performance shall be extended until the next business day thereafter.

[Remainder of page intentionally left blank; signatures appear on the following page.]

IN WITNESS WHEREOF, the parties hereto have signed, sealed and delivered these presents as their own free act and deed.

PARK AUTHORITY:

FAIRFAX COUNTY PARK AUTHORITY

By: _____

Name:

Title:

COUNTY:

**BOARD OF SUPERVISORS OF FAIRFAX COUNTY,
VIRGINIA**

By: _____

Name:

Title:

EXHIBIT A

Property Description

217,800 square feet, more or less, shown on Fairfax County Tax Map Section 17-1 ((1)), parcel 14D, being the same as that property acquired by Grantor by Quitclaim Deed dated July 10, 1998 and recorded in Deed Book 10477 at Page 1227 among the land records of Fairfax County, Virginia.

EXHIBIT B

Concept Plan

Please see the attached document.

EXHIBIT C

Fairfax County Tax Map #: 17-1 ((1)), parcel 14D

Prepared by:
Ryan Wolf, Assistant County Attorney, VSB # 79503
Office of the County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, VA 22035

After recording return to:
Box []

Exempt from tax under Virginia Code Section 58.1-802 pursuant to Virginia Code Section 58.1-811(c)(4).
Exempt from tax under Virginia Code Section 58.1-801 pursuant to Virginia Code Section 58.1-811(a)(3).

QUITCLAIM DEED

THIS QUITCLAIM DEED is made this _____ day of _____, 2015, by and between the **FAIRFAX COUNTY PARK AUTHORITY**, a political subdivision of the Commonwealth of Virginia (“Grantor”) and the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (“Grantee”).

WITNESSETH that in consideration of the sum of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by Grantor, Grantor hereby does quitclaim and convey unto Grantee in fee simple all of that land identified as containing approximately 217,800 square feet as further shown on Exhibit A attached hereto and incorporated herein (the “Property”), together with all appurtenances, rights, privileges, easements, benefits and agreements appurtenant thereto.

This conveyance is made subject to all easements, covenants, rights-of-way, and restrictions of record.

IN WITNESS WHEREOF, Grantor has caused this Quitclaim Deed to be executed as of the date first hereinabove written pursuant to a resolution duly adopted by the Grantor

authorizing the conveyance of the Property following a public hearing and in accordance with Virginia Code § 15.2-5707. Grantee has further caused this Quitclaim Deed to be executed as of the date first hereinabove written pursuant to a resolution duly adopted by Grantee authorizing acquisition of the Property following a public hearing and in accordance with Virginia Code §§ 15.2-1800 and 15.2-1802.

GRANTOR:

FAIRFAX COUNTY PARK AUTHORITY

By: _____
Name:
Title:

COMMONWEALTH OF VIRGINIA :
:
COUNTY OF FAIRFAX : to-wit

The foregoing Quitclaim Deed was acknowledged before me this ____ day _____, 2015, by _____, the _____ of the **Fairfax County Park Authority**, the Grantor hereunder.

My commission expires:

Notary Public

SEEN AND ACCEPTED:

GRANTEE:

**BOARD OF SUPERVISORS OF FAIRFAX COUNTY,
VIRGINIA**

By: _____
Name:
Title:

COMMONWEALTH OF VIRGINIA :
:
COUNTY OF FAIRFAX : to-wit

The foregoing instrument was acknowledged before me this ____ day of _____,
2015, by _____, the _____ of the **Board of Supervisors of Fairfax
County, Virginia**, the Grantee hereunder.

My Commission expires: _____

Notary Public