

Economic Development Authority of the City of Portsmouth

January 15, 2019

6th Floor Conference Room, City Hall
801 Crawford Street, Portsmouth, VA

COMMISSIONERS PRESENT: Anthony W. Hinds
Kyle J. Kovachik
Malcom Mitchell
Cathy Revell - Chairman
Don L. Scott
Ray A. Smith, Sr.

ALSO PRESENT: Robert D. Moore – Secretary
Brian Donahue – Asst. Secretary
Dr. L. Pettis Patton – City Manager
Robert Baldwin – Assistant City Manager
Solomon Ashby – City Attorney
Jeffrey S. Miller – Assistant City Attorney
Nina Patel – Assistant City Attorney
Elizabeth M. Psimas – City Councilwoman
Cheryl Spivey – CFO
Wendy Hu – Assistant CFO
Alisa Winston – PRHA
Kyle Laux – Davenport & Company

ABSENT: Tracy Link

The Chairman called the meeting to order at 8:01 a.m.

New Commissioners, Ray A. Smith, Sr. and Kyle J. Kovachik, were introduced.

The November 26, 2018 meeting minutes were reviewed.

ACTION: On a motion by Mr. Hinds and seconded by Mr. Smith, the Commissioners approved the November 26, 2018 meeting minutes as presented. **Roll Call Vote:** Mr. Hinds – yes; Mr. Kovachik – yes; Ms. Link – absent; Mr. Mitchell – yes; Ms. Revell – yes; Mr. Scott –yes; Mr. Smith – yes.

The December 11, 2018 Special Called Meeting minutes were reviewed.

ACTION: On a motion by Mr. Hinds and seconded by Mr. Scott, the Commissioners approved the December 11, 2018 special called meeting minutes as presented. **Roll Call Vote:** Mr. Hinds – yes; Mr. Kovachik – yes; Ms. Link – absent; Mr. Mitchell – yes; Ms. Revell – yes; Mr. Scott –yes; Mr. Smith – yes.

The November and December 2018 financial statements were reviewed and will be filed for audit.

Mr. Ashby discussed the legal fees paid to outside legal counsel for the litigation with Victory Village Developers II LLC.

Mr. Moore reported that three (3) such invoices, totaling \$74,036.34 have been by the EDA. The City Attorney's office has paid invoices in the amount of approximately \$95,500.00 concerning this matter; this amount needs to be reimbursed from the EDA.

Mr. Moore recommended that the EDA increase their FY2019 budget by \$135,500.00. This will allow the EDA to reimburse the City Attorney and increase the EDA's administrative Legal Expenses line item to cover future real estate issues that may arise before June 30, 2019.

ACTION: On a motion by Mr. Hinds and seconded by Mr. Smith, the Commissioners approved amending the FY2019 budget in the amount of \$135,500.00 to cover legal expenses through the end of the fiscal year. **Roll Call Vote:** Mr. Hinds – yes; Mr. Kovachik – yes; Ms. Link – absent; Mr. Mitchell – yes; Ms. Revell – yes; Mr. Scott – yes; Mr. Smith – yes.

Ms. Revell appointed Mr. Hinds and Mr. Scott as a nominating committee to present recommendations to fill the officer slots of Vice Chairman and Treasurer at the February meeting.

Mr. Donahue presented an IBOG application in the amount of \$24,275.00 received from Ms. Taneisha Mitchell of A+ Healthcare Partners for property located at 1 Crawford Parkway, Suite 101.

ACTION: On a motion by Mr. Hinds and seconded by Mr. Kovachik, the Commissioners approved the IBOG application in the amount of \$24,275.00, received from Ms. Taneisha Mitchell of A+ Healthcare Partners for property located at 1 Crawford Parkway, Suite 101. **Roll Call Vote:** Mr. Hinds – yes; Mr. Kovachik – yes; Ms. Link – absent; Mr. Mitchell – yes; Ms. Revell – yes; Mr. Scott – yes; Mr. Smith – yes.

Mr. Donahue presented a FIG application in the amount of \$25,000.00 received from Ms. Toni McLeod of Victory West Thrill Park, LLC for property located at 2880-2884 Airline Boulevard.

ACTION: On a motion by Mr. Smith and seconded by Mr. Scott, the Commissioners approved the FIG application in the amount of \$25,000.00, received from Ms. Toni McLeod of Victory West Thrill Park, LLC for property located at 2880-2884 Airline Boulevard. **Roll Call Vote:** Mr. Hinds – yes; Mr. Kovachik – yes; Ms. Link – absent; Mr. Mitchell – yes; Ms. Revell – yes; Mr. Scott – yes; Mr. Smith – yes.

ACTION: At 8:59 a.m. on a motion by Mr. Scott and seconded by Mr. Hinds, the Authority entered into a closed meeting pursuant to Virginia Code subsection 2.2-3711 A.3 for the purpose of discussing disposition of publicly held real property interests where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body, specifically regarding the 1500 Block of High Street, 0 Harbor Center, and 602 Fifth Street; and pursuant to Virginia Code subsection 2.2-3711 A.6 for the purpose of discussing or considering the investment of public funds where competition or bargaining is involved where, if made public initially, the financial interest of the governmental unit would be adversely affected, specifically regarding the issuance of bonds. **Roll Call Vote:** Mr. Hinds – yes; Mr. Kovachik – yes; Ms. Link – absent; Mr. Mitchell – yes; Ms. Revell – yes; Mr. Scott – yes; Mr. Smith – yes.

City Councilwoman Psimas remained for the Closed Meeting.

ACTION: At 9:35 a.m., on a motion by Mr. Hinds and seconded by Mr. Mitchell, the Authority entered into an open meeting whereby only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act, and only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting just concluded. **Roll Call Vote:** Mr. Hinds – yes; Mr. Kovachik – yes; Ms. Link – absent; Mr. Mitchell – yes; Ms. Revell – yes; Mr. Scott – departed meeting early; Mr. Smith – yes.

ACTION: On a motion by Mr. Hinds and seconded by Mr. Mitchell, the Commissioners approved the following resolution:

**RESOLUTION OF THE ECONOMIC DEVELOPMENT AUTHORITY OF THE
CITY OF PORTSMOUTH, VIRGINIA AUTHORIZING THE ISSUANCE OF ITS
REVENUE NOTE TO FINANCE THE ACQUISITION OF CERTAIN REAL
ESTATE**

WHEREAS, the Economic Development Authority of City of Portsmouth, Virginia, a political subdivision of the Commonwealth of Virginia (the "Authority"), is empowered by the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended (the "Act"), to issue bonds, notes and other obligations for the purpose of protecting and promoting the safety, health, welfare, convenience and prosperity of the inhabitants of the Commonwealth of Virginia (the "Commonwealth") by, among other things, assisting in the acquisition and development of properties and the improvement of properties to promote industry and develop trade; and

WHEREAS, to encourage the continuing economic development of the City of Portsmouth, Virginia (the "City"), to induce private businesses, industries and tourism to the City to strengthen the business climate, and to thus expand the tax base and capital investment in the City and provide new employment opportunities for its citizens, the Authority intends to finance the acquisition of property in the City in the Victory Crossing area and costs of issuance associated therewith (collectively, the "Project"); and

WHEREAS, the Authority has determined to issue its Revenue Note (City of Portsmouth Project), Series 2019, in the maximum principal amount of \$5,275,000 (the "Note"), for the purposes of paying the costs of the Project and paying costs associated with the issuance of the Note (the "Issuance Costs"); and

WHEREAS, the Note will be issued to a financial institution (the "Bank") and in accordance with a Financing Agreement (the "Financing Agreement"), by and between the Authority, the City, and the Bank; and

WHEREAS, the principal of and interest on the Note and all other obligations payable by the Authority to the Bank under the Financing Agreement and the Note shall be payable first from funds of the Authority and then from payments of the City and secured by a pledge and assignment to the Bank of payments made to the Authority by the City pursuant to the Cooperation Agreement (the "Cooperation Agreement"), by and between the Authority and the City and attached hereto as Exhibit A; and

WHEREAS, the foregoing arrangements will be reflected in the Note, the Financing Agreement and the Cooperation Agreement; and

WHEREAS, (i) no member of the Board of Commissioners of the Authority is an officer or employee of the City, (ii) each member has, before entering upon his duties during his or her present term of office, taken and subscribed to the oath prescribed by Section 49-1 of the Code of Virginia of 1950, as amended (the "Virginia Code"), and (iii) at the time of their appointments and at all times thereafter, including the date hereof, all of the members of the Board of Commissioners of the Authority have satisfied the residency requirements of the Act; and

WHEREAS, other than the members who have disqualified themselves from participating in accordance with Section 2.2-3112 of the Virginia Code, no member of the Board of Commissioners of the Authority has any personal interest or business interest in the Project, the Bank, the Note, the Financing Agreement, the Cooperation Agreement or any of the transactions contemplated in this resolution, the Note, the Financing Agreement or the Cooperation Agreement or has otherwise engaged in conduct prohibited under the Conflict of Interests Act, Chapter 31, Title 2.2 of the Virginia Code (the "Conflict of Interests Act") in connection with this resolution or any other official action of the Authority in connection therewith and each member of the Board of Commissioners of the Authority has filed the disclosure statement required by the Conflict of Interests Act; and

WHEREAS, the City Council is expected to approve the final terms and conditions of the Note, the Financing Agreement, and the Cooperation Agreement (the "Terms") by a resolution, expected to be adopted on January 22, 2019;

NOW, THEREFORE, BE IT RESOLVED BY THE ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF PORTSMOUTH, VIRGINIA:

1. It is hereby found and determined that undertaking of the Project and the issuance of the Note will be in the public interest, and is for the purpose of inducing private businesses, industries and tourism to the City to strengthen the business climate and thus expand the tax base and capital investment in the City and providing new employment opportunities for its citizens, and thereby will protect and promote the safety, health, welfare, convenience and prosperity of the inhabitants of the Commonwealth in general and the City in particular.

2. The issuance of the Note is hereby authorized and approved. The Note shall be in substantially the form approved by City Council and shall be consistent with the Terms approved by City Council. The proceeds of the issuance and sale of the Note shall be applied in accordance with the Financing Agreement for the purposes of paying the costs of the Project and paying the Issuance Costs. The Note is a limited obligation of the Authority and payable solely from the all revenues that the Authority receives from (i) the development, sale, or leasing of the property acquired under the Project, (ii) the Authority's bond program, (iii) prior property sales, and (iv) any other sources to the payment of principal and interest on the Note and any other amounts due under the Financing Agreement. The Note will not be deemed to constitute a debt or a pledge of the faith and credit of the Commonwealth, or any political subdivision thereof, but the Note shall be payable from the funds provided therefor under the Financing Agreement. Neither the Commonwealth, nor any political subdivision thereof, nor the Authority will be obligated to pay the principal of, premium, if any, or interest on the Note or other costs incident thereto except from the revenues of the Authority pledged for such purpose, including the funds provided therefor under the Cooperation Agreement. Except as provided in the Cooperation Agreement, neither the faith and credit nor the taxing power of the Commonwealth, nor political subdivision thereof, is pledged to the payment of the principal of, premium, if any, or interest on the Note or other costs incident thereto.

3. As to be more specifically provided in the Financing Agreement, the Authority hereby pledges and assigns to the Bank to secure the payment of the principal of and premium, if any, and interest on the Note the revenues derived by the Authority from the payments made to the Authority by the City pursuant to the Cooperation Agreement. It is acknowledged that the City's obligation to make payments under the Cooperation Agreement is secured by the City's general obligation pledge.

4. The Note shall be sold to the Bank substantially on the Terms set forth in the Financing Agreement and the Chairman and Vice Chairman, or either of them, are authorized to approve such additional terms as either officer, in consultation with the counsel, may approve, with such approval to be evidenced conclusively by the issuance and delivery of the Note.

5. The Authority approves the Cooperation Agreement substantially in the form presented to this meeting, with such changes, additions and deletions as the Chairman or Vice Chairman, in consultation with the counsel, may approve, with such approval to be evidenced conclusively by the execution and delivery of the Cooperation Agreement. The

Authority approves entering into the Financing Agreement upon the Terms approved by City Council, with such changes, additions and deletions as the Chairman or Vice Chairman, in consultation with the counsel, may approve, with such approval to be evidenced conclusively by the execution and delivery of the Financing Agreement.

6. The Chairman or Vice Chairman and the Secretary or any Assistant Secretary of the Authority, or any of them, are authorized to execute and deliver the Financing Agreement, the Cooperation Agreement, the Note and such other documents and agreements as may be necessary or desirable in connection with the transactions authorized by this resolution or contemplated by the Note, the Financing Agreement and the Cooperation Agreement, and the Secretary and any Assistant Secretary, or either of them, are authorized to affix and attest the Authority's seal to the Note or any other instrument. All of the officers and agents of the Authority are authorized to execute and deliver on behalf of the Authority such instruments, documents or certificates, and to do and perform such things and acts, as they shall deem necessary or appropriate to carry out the transactions authorized by this resolution or contemplated by the Note, the Financing Agreement and the Cooperation Agreement; and all of the foregoing, previously done or performed by such officers or agents of the Authority, are in all respects approved, ratified and confirmed.

7. This resolution shall take effect immediately upon its adoption.

Roll Call Vote: Mr. Hinds – yes; Mr. Kovachik – yes; Ms. Link – absent; Mr. Mitchell – yes; Ms. Revell – yes; Mr. Scott – departed meeting early; Mr. Smith – yes.

ACTION: On a motion by Mr. Hinds and seconded by Mr. Kovachik, the Commissioners approved amending the FY2019 budget to take into account the approved bond issuance by increasing the budget by \$5,275,000.00 in bond proceeds and appropriating the bond proceeds for the purpose of paying off the December 2018 loan received from the City and paying the costs of the bond issuance. **Roll Call Vote:** Mr. Hinds – yes; Mr. Kovachik – yes; Ms. Link – absent; Mr. Mitchell – yes; Ms. Revell – yes; Mr. Scott – departed meeting early; Mr. Smith – yes.

ACTION: On a motion by Mr. Smith and seconded by Mr. Mitchell, the Commissioners approved the following resolution:

WHEREAS, EDA and Breeden Investment Properties, Inc. (“Developer”) entered into a Restated Agreement of Purchase and Sale dated as of June 26, 2012 for the conveyance and development of two properties, 800 Crawford Street (“Desk Inc”) and 0 Harbor Center Court (the “North Pier”) (collectively, the “Properties”); and

WHEREAS, the Restated Agreement of Purchase and Sale was amended on March 5, 2014, August 19, 2014, November 18, 2014, and March 9, 2015 (as amended, the “Purchase Agreement”); and

WHEREAS, the Purchase Agreement provided for the staggered development of the Properties; and

WHEREAS, on June 11, 2015 EDA conveyed Desk Inc to Developer and Developer subsequently developed a quality multifamily residential structure on the site that now generates in excess of \$200,000 per year in real estate tax revenue to the City; and

WHEREAS, at closing on the conveyance of the Desk Inc site EDA received net proceeds of \$1,004,661.57 (the "Net Proceeds"); and

WHEREAS, as provided by the Purchase Agreement the Net Proceeds were deposited in escrow with BB&T Investment Properties, Inc., trading as BridgeTrust Title Group ("BridgeTrust") and, at the direction of EDA, were invested in certificates of deposit that mature in March 2019 (the "Certificates of Deposit"); and

WHEREAS, the Purchase Agreement contemplated that the Net Purchase Proceeds, together with interest earned thereon and certain real estate tax revenues resulting from Developer's developments, would be used to finance a substantial portion of the structural site work necessary to allow construction of a multifamily development on the North Pier site; and

WHEREAS, a new engineering study prepared by EDA's consultant has determined that the actual cost of the structural work necessary to make the North Pier site buildable for multifamily will substantially exceed the estimate as of the date of execution of the Purchase Agreement; and

WHEREAS, Authority, Developer and the City of Portsmouth have therefore mutually determined that, through no fault of any party, development of the North Pier in the manner contemplated by the Purchase Agreement is not feasible at this time; and

WHEREAS, Authority and Developer have agreed to execute a Termination Agreement terminating the Purchase Agreement and all related agreements, and providing that the funds held in escrow by BridgeTrust shall be released to the Authority upon maturity of the Certificates of Deposit (the "Termination Agreement");

NOW, THEREFORE, it is hereby RESOLVED that:

1. The Chair is authorized to execute the Termination Agreement on behalf of EDA.
2. The Chair, Vice Chair, and Secretary, and their designees, are each hereby authorized to take such further actions and execute such further documents and instruments as may be

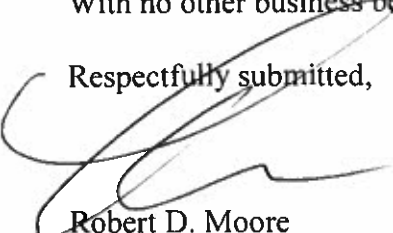
necessary or desirable to terminate the Purchase Agreement and all related agreements and to retrieve the escrowed funds.

3. This Resolution shall be effective immediately upon its adoption

Roll Call Vote: Mr. Hinds – no; Mr. Kovachik – yes; Ms. Link – absent; Mr. Mitchell – yes; Ms. Revell – yes; Mr. Scott – departed meeting early; Mr. Smith – yes

With no other business before the Board the meeting was adjourned at 9:40 a.m.

Respectfully submitted,



Robert D. Moore
Secretary