

**King and Queen County  
Board of Supervisors Meeting  
Monday, January 23, 2023**

**6:00 P.M.**

**Regular Meeting  
King and Queen County Courts and Administration Building  
Second Floor Conference Room**

**Minutes of the Meeting**

**CALL TO ORDER AND ROLL CALL**

Chairman Bailey called the meeting to order. Roll call was taken with member Sherrin Alsop being absent.

**INFORMATION TECHNOLOGY BRIEFING**

David Lankford was present and provided information to the Board on how to access the new format for Board meeting packets.

**PRESENTATION BY DAVENPORT**

Kyle Laux and Austin Sacks with Davenport were present and provided an overview of the continuing financial plan for the County. In light of the new challenges faced with the cost of the construction at King and Queen Elementary, they provided several options for additional financing of the project. There was general discussion among the Board including questions relating to how the new reassessment will change the levy on real estate.

**REVIEW MODULAR CLASSROOM PRICING OPTIONS**

Vivian Seay provided the pricing options from Wilmot for the modular classrooms to be used during construction at King and Queen Elementary. They included several leasing options as well as purchase options. Representatives from Davenport reminded the Board that they could adopt a reimbursement resolution that would allow them to 'reimburse themselves' for purchases made for the project prior to additional financing if necessary.

A motion was made by Mr. Burns and seconded by Mr. Simpkins to purchase the modular buildings, contingent upon the adoption of the reimbursement resolution.

AYES: MORRIS, SIMPKINS, BURNS, BAILEY

NAYS: NONE

ABSENT: ALSOP

**ECONOMIC DEVELOPMENT CONSULTANT**

Vivian Seay provided a proposal from Kelly Evko to provide an economic development strategic plan for the county. Both proposals include creation of the plan over a 6 month period but the second provided additional support and activities during the time.

It was the consensus of the Board to have the proposals presented to the EDA for approval.

### **HEALTH DEPARTMENT CARRYOVER FUNDS**

The county has been advised that the Health Department has approximately \$3,000 in carryover funds from FY22. They are requesting to be allowed to keep these funds and use to cover mandatory 5% salary increases that were approved by the state in FY23. It was the consensus of the Board to allow them to do so.

### **TAX RATE DISCUSSION**

Vivian Seay provided a spreadsheet representing how the tax levy could be adjusted to account for inflation since the last reassessment. She is requesting direction from the Board on the level of adjustment to allow for these changes. The change in the tax rate for inflation is approximately 5 cents. There was general discussion among the Board members related to how they have determined what the tax rate would be in prior years and what will need to be done to equalize for the reassessment.

### **SCHOOL WELL REPLACEMENT DISCUSSION**

Vivian Seay advised the Board that the new estimated cost for this project will exceed the amount authorized by the Board (\$100,000). The contractor has determined a need for additional pumps to be used during the transition from the old well to the new well. This cost had not been factored in previously. Ms. Seay advised that she is going to review the procurement for this project and not proceed further until reporting back to the Board.

### **PUBLIC HEARING – ENCUMBRANCE OF REAL PROPERTY AND APPROVAL OF DEED OF TRUST AND AGREEMENT**

Vivian Seay provided background information, stating that the deed of trust is a requirement of the federal grant that was obtained for the telecenter. She also provided notice that the hearing was properly advertised.

Chairman Bailey opened the public hearing. There being no comments from the public the hearing was closed.

A motion was made by Mr. Burns and seconded by Mr. Simpkins to adopt the following resolution and deed of trust:

### **RESOLUTION TO APPROVE THE ENCUMBRANCE OF COUNTY REAL PROPERTY**

**WHEREAS**, King and Queen County, Virginia (the “County”) in January of 2022 was awarded a grant from the United States Department of Commerce, Economic Development

Administration in the amount of \$1,600,000 for the construction of a telehealth center and business development center (the “Grant”), which grant was accepted by the County on February 1, 2022; and

**WHEREAS**, one of the conditions of the Grant is to secure for a period of twenty years for the benefit of the Economic Development Administration the investment through the grant award with the real property which is the subject of the grant project; and

**WHEREAS**, in order to comply with the said grant condition, the Board of Supervisors of King and Queen County, Virginia now wishes to approve, execute, and record a Deed of Trust and Agreement; and

**WHEREAS**, in furtherance of the pledge and mortgage of its real property, and in accordance with Va. Code § 15.2-1800, the King and Queen County Board of Supervisors held a duly-advertised public hearing on the 23<sup>rd</sup> day of January, 2023 at 6:00 p.m., and following that public hearing now wishes to authorize the execution, delivery, and recordation of the subject Deed of Trust and Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of King and Queen County, Virginia that (a) the Deed of Trust and Agreement attached hereto as **Exhibit A** is approved, and (b) the Chairman of the King and Queen County Board of Supervisors is hereby authorized to take such actions and execute such documents on behalf of the County and on behalf of the Board of Supervisors as are necessary to effectuate the Deed of Trust and Agreement and encumbrance of the subject real property as required by the Grant, including, but not limited to, the execution, delivery, and recordation of the Deed of Trust and Agreement attached hereto as **Exhibit A**.

This Ordinance shall take effect upon adoption.

### **DEED OF TRUST and AGREEMENT**

This Deed of Trust, made the \_\_\_\_ day of \_\_\_\_\_, 2023, between **The King and Queen County Board of Supervisors** for King and Queen County, Virginia, a political subdivision of the Commonwealth of Virginia, **Grantor** and hereinafter the “**Mortgagor**” or the “**Grantor**”; **Vivian R. Seay, Trustee, Grantee**, whose business address is 242 Allen’s Circle, Suite L, King and Queen Court House, Virginia 23085; and the **United States Department of Commerce, Economic Development Administration**, hereinafter the “**EDA**”.

**WHEREAS**, the King and Queen County Board of Supervisors has applied to, received, and accepted from the United States Department of Commerce, Economic Development Administration ( the “**EDA**”) a grant under the Public Works and Economic Development Act of 1965 (41 U.S.C. § 3121 et seq.) (PWEDA) in the amount of \$1,600,000 Dollars (the “**EDA Grant Amount**”) pursuant to a Financial Assistance Award dated January 13, 2022, and bearing EDA Award ID Number 01-01-15168 (the “**Award**”); and

**WHEREAS**, pursuant to the application submitted by Mortgagor requesting said Award, which includes all forms, documentation, and any information submitted to EDA as part and in furtherance of the request for the Award, including any information submitted after the initial application (the “**Grant Application**”) and pursuant to the Award, the Grant Amount is to be used for the purpose of acquiring or making improvements to the real property described in **Schedule A**, attached hereto and made a part hereof (the “**Project Property**”), consisting of the construction of a 7,000 square foot metal building to house a telehealth and business development center located 3.44 acres, more or less, of county-owned real property located in King and Queen County, Virginia (the “**Project**”); and

**WHEREAS**, twenty (20) years from the date of award, as determined by EDA, is the Estimated Useful Life, as defined in 13 C.F.R. § 314.1, of the improvements made to the Project Property pursuant to the Project; and

**WHEREAS**, under government-wide regulations set out at 2 CFR part 200 and EDA's regulations governing the Award at 13 CFR Chapter III, any transfer or conveyance of Project Property or any portion thereof must have the prior written approval of EDA; and

**WHEREAS**, in accordance with PWEDA, EDA is not authorized to permit transfer or conveyance of Project Property to parties that are not eligible to receive EDA grants unless EDA is repaid the Federal Share as defined at 13 CFR § 314.5 ("Federal Share") or unless the authorized purpose of the Award is to develop land in order to lease or sell it for a specific use, in which case EDA may authorize a lease or sale of the Project Property or a portion thereof if certain conditions are met; and

**WHEREAS**, the aforesaid Award from EDA provides the purposes for which the Grant Amount may be used and provides, inter alia, that Mortgagor will not sell, lease, mortgage, or otherwise use or alienate any right to, or interest in the Project Property, or use the Project Property for purposes other than or different from those purposes set forth in the Award and the Grant Application made by Mortgagor therefor, such alienation or use being prohibited by 13 CFR part 314 and 2 CFR part 200; and

**WHEREAS**, Mortgagor and EDA desire to establish an obligation for and first priority lien on the Project Property in favor of EDA in the event that the Project Property is used, transferred, or alienated in violation of the Award, 13 CFR Chapter III, or 2 CFR part 200.

**NOW, THEREFORE**, the Grantor does hereby grant and convey unto the said, Vivian R. Seay, Trustee, the following real property:

**SEE ATTACHED SCHEDULE A**

**IN TRUST** to secure the Mortgagor's obligation (i) to comply with the terms and conditions of the Award and the regulations set forth in 13 CFR Chapter III and 2 CFR part 200, and (ii) to use Project Property only for the purposes set forth therein for the Estimated Useful Life of Project Property. Mortgagor agrees that a debt, with interest thereon at the rate set forth in 31 U.S.C. § 3717, in the amount of the Federal Share, which amount shall be determined at the sole discretion of EDA in accordance with its authorities and regulations, such amount being either EDA's pro-rata share of the fair market value of the Project Property, as further set forth at 13 CFR § 314.5, as that provision may be amended from time to time, the Grant Amount, or the amount actually disbursed under the Award (Indebtedness), shall be due and payable by Mortgagor to EDA upon the termination of the Award, or any attempt to use, transfer, or alienate any interest in Project Property in violation of the Award or of the regulations set forth in 13 CFR Chapter III or 2 CFR part 200 and does, moreover, agree that such Indebtedness shall be extinguished only through the full payment thereof to the Federal Government.

Mortgagor further covenants and agrees as follows:

**1. Lease of Project Property:**

If the Grant Application provides for and the Award authorizes Mortgagor to lease Project Property, each lease arrangement shall be subject to the prior written approval of EDA. EDA must determine that the applicable lease arrangement is consistent with the Grant Application and authorized general and special purpose(s) of the Award; will provide adequate employment and economic benefits for the area in which Project Property is located; is consistent with EDA policies concerning, but not limited to, non-discrimination, non-relocation, and environmental requirements; and that the proposed lessee is providing adequate compensation, as defined in 13 CFR § 314.1, to Mortgagor for said lease. Any lease agreement entered into by Mortgagor of the Project Property not on public record as of the date of this Deed of Trust shall be subordinate, junior, and inferior to this Deed of Trust Agreement and Mortgage, and, at EDA's request, be expressly subordinated in writing and the written subordination recorded in the same manner as this Agreement and Mortgage.

**2. Charges; Liens:**

Mortgagor shall protect the title and possession of all Project Property; pay when due all taxes, assessments, mechanic and/or materialmen liens, and other charges, fines, and impositions now existing or hereafter levied or assessed upon

Project Property; and preserve and maintain the priority of the lien hereby created on Project Property, including any improvements hereafter made a part of the realty.

**3. Hazard Insurance:**

Mortgagor shall insure and keep insured all improvements now or hereafter created upon Project Property against loss or damage by fire and windstorm and any other hazard or hazards included within the term "extended coverage." The amount of insurance shall be the full insurable value of said improvements but in no event less than the full replacement value of the improvements. Any insurance proceeds received by Mortgagor due to loss shall be applied to restoration or repair of any damaged Project Property, provided such restoration or repair is economically feasible and the security of this Agreement and Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Agreement and Mortgage would be impaired, Mortgagor shall use said insurance proceeds to compensate EDA for its Federal Interest. EDA's Federal Interest, as defined at 13 C.F.R. § 314.2 ("Federal Interest") shall be satisfied when amount received is equal to the Federal Share as that term is defined at 13 CFR § 314.5 ("Federal Share").

**4. Preservation and Maintenance of the Project Property:**

Mortgagor shall keep Project Property in good condition and repair during the Estimated Useful Life and shall not permit or commit any waste, impairment, or deterioration of Project Property, but shall give notice written thereof to EDA without delay.

**5. Indemnification:**

To the extent permitted by law, Recipient agrees to indemnify and hold the Federal Government harmless from and against all liabilities that the Federal Government may incur as a result of providing an award to assist, directly or indirectly, in the preparation of the Project Property or construction, renovation, or repair of any facility on the Project Property, to the extent that such liabilities are incurred because of toxic or hazardous contamination of groundwater, surface water, soil, or other conditions caused by operations of the Recipient or any of its predecessors (other than the Federal Government or its agents) on the Project Property. See also 13 C.F.R. § 302.19 ("Indemnification").

**6. Inspection:**

EDA may make or cause to be made reasonable entries upon and inspection of Project Property by EDA or an authorized representative of EDA.

**7. Condemnation:**

The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of Project Property, or any part thereof, or for any conveyance in lieu of condemnation shall be used by Mortgagor to

compensate EDA for EDA's Federal Share. EDA's Federal Share of said condemnation proceeds shall be equal to that percentage which the Grant Amount bore to the total project costs under the Award for which the condemned property was acquired or improved. See also 13 CFR § 314.5 ("Federal Share").

**8. Recording of Agreement and Mortgage — Mortgagor's Copy:**

Mortgagor shall record this Agreement and Mortgage in accordance with the laws and rules of the County where Project Property is located, and shall ensure that the lien hereby granted is a first and prior lien on Project Property senior to all other interests save those which may arise by operation of law or other priority position as approved by EDA and those on record prior to this Deed of Trust and Agreement. EDA shall be furnished with the original, recorded Deed of Trust and Agreement as executed.

**9. Notice:**

Any notice from EDA to Mortgagor provided for in this Deed of Trust and Agreement shall be sent by certified mail to Mortgagor's last known address or at such address as Mortgagor may designate to EDA, except for any notice given to Mortgagor in the manner as may be prescribed by applicable law as provided hereafter in this Mortgage. Likewise, any notice from Mortgagor to EDA shall be sent by certified mail to EDA's address.

**10. Remedies:**

Upon Mortgagor's breach of any term or condition of the Award or any provision of this Deed of Trust and Agreement, then EDA, its designees, successors, or assigns may declare the Indebtedness immediately due and payable, and may enforce any and all remedies available including but not limited to foreclosure by an action brought either in a United States District Court or in any State Court having jurisdiction, but such action shall not be deemed to be a release or waiver of any other right or remedy to recover repayment thereof.

After any breach on the part of Mortgagor, EDA shall, upon bill filed or the proper legal proceedings being commenced for the foreclosure of this Deed of Trust and Agreement, be entitled, as a matter of right, to the appointment by any competent court, without notice to any party, of a receiver of the rents, issues, and profits of Project Property, with power to lease and control such Property, and with such other powers as may be deemed necessary.

**11. Remedies Cumulative:**

All remedies provided in this Deed of Trust and Agreement are distinct and cumulative to any other right or remedy under this Deed of Trust and Agreement, the Award, or related documents, or afforded by law or equity, and may be exercised concurrently, independently, or successively.

**12. Forbearance Not a Waiver:**

Any forbearance by EDA in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by EDA shall not be a waiver of EDA's rights under this Deed of Trust and Agreement.

**13. Release:**

EDA and the Mortgagor agree that, so long as the possession and use of Project Property by Mortgagor has been only for the purposes set forth in the Award and Grant Application, then upon the expiration on January 13, 2042 of the Estimated Useful Life of the improvements to Project Property, Mortgagor may request a release of the Federal Interest in accordance with 13 CFR part 314, which release will not be withheld except for good cause, as determined in EDA's sole discretion; provided, however, that in accordance with 13 CFR part 314, restrictions upon the religious use or discriminatory practices in connection with the use of Project Property shall survive this Deed of Trust and Agreement and any release thereof, which shall be evidenced by a separate recorded covenant.

**14. Governing Law; Severability:**

This Deed of Trust and Agreement shall be governed by applicable federal law, if any, and if there is no applicable federal law by state law, and nothing contained herein shall be construed to limit the rights the EDA, its designees, successors, or assigns are entitled to under applicable federal or state law. In the event that any provision or clause of this instrument conflicts with applicable law, such conflict shall not affect other provisions of this instrument which can be given effect without the conflicting provision, and to this end the provisions of this instrument are declared to be severable.

**15. Authority to Execute Agreement and Mortgage:**

Grantor represents and warrants to and covenants with EDA that Grantor has been duly authorized by Grantor's governing body by all necessary action and has received all necessary third party consents to enter into this Deed of Trust and Agreement.

**IN WITNESS WHEREOF**, Mortgagor, acting by and through its Chairman pursuant to Resolution duly adopted on the 23<sup>rd</sup> day of January, 2023, has hereunto set its hand and seal on this the \_\_\_\_ day of \_\_\_\_\_, 2023.

**THE KING AND QUEEN COUNTY  
BOARD OF SUPERVISORS**

By \_\_\_\_\_  
**R. F. Bailey, Jr., Chair**



COMMONWEALTH OF VIRGINIA  
COUNTY/CITY OF \_\_\_\_\_, to-wit:

The foregoing Deed of Trust and Agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 2023 was acknowledged before the undersigned notary public in and for the jurisdiction aforesaid by **R. F. Bailey, Jr.**, in his capacity as Chairman of the Board of Supervisors of King and Queen County, Virginia and on behalf of the King and Queen County Board of Supervisors and King and Queen County, Virginia, on this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

{SEAL}

\_\_\_\_\_  
Notary Public

Registration No.: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

## SCHEDULE A

All that certain tract, piece, or parcel of land with improvements thereon and appurtenances thereto belonging, situate, lying, and being in Buena Vista Magisterial District, King and Queen County, Virginia, containing 3.44 acres, more or less, and shown on that certain plat of survey prepared by Mitchell Land Surveying, LLC, James E. Mitchell, L.S., dated June 20, 2012, entitled "Plat of Property To Be Conveyed to Economic Development Authority of King and Queen County, Virginia Being Tax Map 1623-135X-165A containing 3.44 Ac. ±," a true copy being recorded in the Circuit Court Clerk's Office of King and Queen County, Virginia as instrument number 120000569 and attached to, and recorded together with, that Deed of record in the aforesaid Clerk's Office as Instrument Number 220000234. Reference is here made to the aforementioned plat for a more complete and accurate description of the real property herein conveyed.

**BEING** the same identical real property conveyed unto the King and Queen County Board of Supervisors by Deed of the Economic Development Authority of King and Queen County, Virginia dated the 3<sup>rd</sup> day of March, 2022 and recorded in the Circuit Court Clerk's Office of King and Queen County, Virginia as Instrument Number 220000234.

AYES: MORRIS, SIMPKINS, BURNS, BAILEY

NAYS: NONE

ABSENT: ALSOP

### **APPROVAL OF RECURRING WARRANTS**

A motion was made by Mr. Burns and seconded by Mr. Simpkins to approve the January 2023 recurring warrants, subject to audit.

AYES: MORRIS, SIMPKINS, BURNS, BAILEY

NAYS: NONE

ABSENT: ALSOP

### **ITEMS BROUGHT BY BOARD MEMBERS**

Mr. Burns asked for someone to check on why the County gateway signs are down on Route 33 at the bridge and on Rt. 14 at the Gloucester line.

Mr. Burns also requested an update on the firehouse project and asked that Central King and Queen Fire Department be kept in the loop as that project moves forward.

### **IT IS ORDERED THAT THIS BOARD BE ADJOURNED**

A motion was made by Mr. Burns and seconded by Ms. Morris to adjourn the meeting at 7:50 p.m.

---

Doris H. Morris, Chairman

---

Clerk of the Board