

MINUTES
ECONOMIC DEVELOPMENT AUTHORITY
| THURSDAY, NOVEMBER 12, 2015 |

A meeting of the Frederick County Economic Development Authority was held on Thursday, November 12, 2015, at 8:00A.M. in the County Administration Building, First Floor Conference Room, 107 North Kent Street, Winchester, Virginia.

PRESENT: Stan Crockett, Dennis McNutt, John Riley, and Gary Lofton

STAFF: Patrick Barker, Frederick County Economic Development Authority, Brenda Garton, Frederick County Administrator, and Michael Bryan, Attorney

MEETING CALLED TO ORDER: Chair Crockett called the meeting to order at 8:20 a.m.

APPROVAL OF MINUTES - APPROVED

The minutes from the October 1, 2015, meeting were presented.

Upon a motion by Mr. Riley, seconded by Mr. Lofton, the minutes from the October 1, 2015, meeting were approved.

J. Stanley Crockett	Aye
Robert Claytor	Absent
Gary Lofton	Aye
James Longersbeam	Absent
Dennis McNutt	Aye
John Riley	Aye
Doug Rinker	Absent

TREASURER'S REPORT - APPROVED

Mr. Barker submitted the following report:

Checking Account - Bank of Clarke County as of October 31, 2015 - \$4,920.77.

Savings Account - Scott & Stringfellow as of October 31, 2015 - \$228,348.39.

The Treasurer's Report was approved as submitted by the following recorded vote:

J. Stanley Crockett	Aye
Robert Claytor	Absent
Gary Lofton	Aye
James Longerbeam	Absent
Dennis McNutt	Aye
John Riley	Aye
Doug Rinker	Absent

RESOLUTION OF SUPPORT FOR FREDERICK COUNTY ROAD PROJECTS

Mr. Barker reviewed a letter from John Bishop, Frederick County Deputy Director – Transportation, requesting an EDA resolution of support for several transportation funding applications.

Upon motion duly made by Mr. Riley and seconded by Mr. Lofton, it was unanimously agreed that the EDA would submit a letter of support for these projects. Mr. Bryan and Mr. Barker will prepare the letter.

J. Stanley Crockett	Aye
Robert Claytor	Absent
Gary Lofton	Aye
James Longerbeam	Absent
Dennis McNutt	Aye
John Riley	Aye
Doug Rinker	Absent

CLOSED SESSION IN ACCORDANCE WITH SECTION 2.2-3711(A)(3) OF THE CODE OF VIRGINIA (1950, AS AMENDED) FOR THE DISCUSSION AND CONSIDERATION OF THE ACQUISITION OF REAL PROPERTY FOR A PUBLIC PURPOSE, OR OF THE DISPOSITION OF PUBLICLY HELD REAL PROPERTY, WHERE DISCUSSION IN AN OPEN MEETING WOULD ADVERSELY AFFECT THE BARGAINING POSITION OR NEGOTIATING STRATEGY OF THE AUTHORITY

Upon Motion duly made by Mr. Lofton, seconded by Mr. Riley, the Authority unanimously RESOLVED to go into a closed meeting in accordance with Section 2.2-3711(A)(3) of the Code of Virginia (1950, as amended) for the discussion and consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real



property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the Authority.

RETURN TO OPEN SESSION

Upon motion duly made by Mr. Riley, seconded by Mr. McNutt, it is hereby unanimously Resolved that the Authority shall enter into that certain Purchase and Sale Agreement for the sale of that certain parcel of land containing 3.938 acres, located on the south side of Roosevelt Boulevard in the City of Winchester, Virginia (Tax Map No. 271-4-21A) to Grafton School, Incorporated for a purchase price of \$913,500.00. The Purchase and Sale Agreement includes a Study Period which expires on February 15, 2016, a brokerage fee payable to Adams-Nelson & Associates, Inc. in the sum of \$27,000.00, a title commitment period which expires on December 14, 2015 and a Closing Date of February 24, 2016, and subject to other customary terms and conditions as approved by Authority Counsel. The Executive Director or the Chairman of the Authority is hereby authorized to execute the Purchase and Sale Agreement on behalf of the Authority and to proceed to Settlement in the event that the Purchase and Sale Agreement is not terminated by the Purchaser during the Study Period. The Executive Director or the Chairman is authorized to execute a Deed, HUD-1 Statement, Seller's Affidavit, Deed of Confirmation of Plat, and other usual and customary documents in connection with the sale of the parcel of land, as approved by Authority Counsel. A copy of the Purchase and Sale Agreement is attached to and made a part of these minutes.

J. Stanley Crockett	Aye
Robert Claytor	Absent
Gary Lofton	Aye
James Longerbeam	Absent
Dennis McNutt	Aye
John Riley	Aye
Doug Rinker	Absent

SUCH OTHER BUSINESS AS MAY COME BEFORE THIS AUTHORITY

Mr. Barker noted that Board members had been given a copy of the minutes from the work session with the BOS. Their visions for economic development in Frederick County included keeping citizens in the County instead of out-commuting, increasing incomes of County residents, continue helping existing businesses, slow and steady growth, and creation and retention of jobs.

A date for the legislative reception in Richmond has not been selected yet. Mr. Barker reported he is waiting for the transition to a new Board Chairman and elections.



ADJOURN

There being no further business to come before this Authority, the meeting was adjourned. (8:30 A.M.).

Stan Crockett
Chairman

Brenda Garton
Secretary



PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "**Agreement**") made and dated this 28th day of October, 2015, ("**Effective Date**") by and between the **ECONOMIC DEVELOPMENT AUTHORITY OF THE COUNTY OF FREDERICK, VIRGINIA**, a political subdivision of the Commonwealth of Virginia ("**Seller**"), and **GRAFTON SCHOOL, INCORPORATED**, a Virginia corporation ("**Purchaser**").

RECITALS :

A. Seller owns fee simple title to in that certain lot or parcel of land containing 3.938 acres, more or less, lying and being situate in the City of Winchester, Virginia, as more particularly described as "New Lot 1 3.938 Acres" on that certain plat titled "Minor Subdivision Combination of Land & Subdivision of Land Into Two New Lots by the Frederick County School Board City of Winchester, Virginia" dated November 6, 2007, drawn by Richard H. McDearmon, Jr., L.S., of record in the Clerk's Office of the Circuit Court for the City of Winchester, Virginia as Instrument No. 080000302; and being a portion of the property acquired by the Economic Development Authority of the County of Frederick, Virginia by Deed of Gift dated March 2, 2015, of record in the aforesaid Clerk's Office as Instrument No. 150000394 (the "**Property**"). Tax Map No. 271-4-21A.

B. Seller desires to sell and Purchaser desires to purchase the Property, together with all improvements situate thereon and all rights, rights of way and appurtenances thereunto belonging, upon the terms and conditions set forth hereinafter.

NOW THEREFORE, in consideration of the earnest money deposit, more particularly described hereinafter, (the "**Deposit**") and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby agrees to sell and Purchaser hereby agrees to purchase the Property on the following terms and conditions.

1. **RECITALS:** The Recitals are made a material part hereof and incorporated herein by referenced as if set out in full.

2. **DEPOSIT:** Purchaser shall deposit the sum of Five Thousand Dollars (\$5,000.00) (the "**Deposit**") directly with Seller contemporaneously with the full execution of this Agreement. Unless otherwise applied in accordance with this Agreement, the Deposit shall be applied to the Purchase Price (as hereinafter defined) due Seller at Settlement (as hereinafter defined).

3. **PURCHASE PRICE:** The total Purchase Price of the Property shall be Nine Hundred, Thirteen Thousand, Five Hundred Dollars and 00/100 (\$913,500.00) (the "**Purchase**

Price”). The Purchase Price, of which the Deposit shall be a part, shall be paid to Seller in cash, by certified or bank cashier’s check or by wire transfer at Settlement (as hereinafter defined). .

4. CONDITION AND INSPECTION: Purchaser agrees to accept the Property at Settlement in its present physical condition. Purchaser specifically acknowledges and agrees that the Property shall be conveyed "AS IS", "WHERE IS", and "WITH ALL FAULTS". No warranty or assurance of any kind is given by Seller as to matters of zoning, restrictions, environmental status, development potential or any other matter concerning the use, condition, or status of the Property.

5. SETTLEMENT: Settlement (“Settlement”) shall be made at the offices of Stephen L. Pettler, Jr., Esquire, Harrison & Johnston, PLC, 21 South Loudoun Street, Winchester, Virginia 22601, on or before February 24, 2016 (the “Closing Date”). **IN NO EVENT SHALL CLOSING OCCUR LATER THAN FEBRUARY 24, 2016.** Possession of the Property shall be given at Settlement by Seller to Purchaser.

6. RISK OF LOSS: Seller assumes all risks and liability for loss, damage to or destruction of the Property until Settlement.

7. EXPENSES: PRORATIONS: Seller agrees to pay the Grantor's tax, the cost of preparing the Deed, all Seller's attorney's fees, and all normally proratable items shall be prorated to the Closing Date, based upon the latest assessments or actual invoices available. Purchaser shall pay the cost of recording the Deed and the Deed of Trust, any fees of Purchaser's attorney, title insurance premiums, any costs associated with obtaining financing, the settlement agent's fee, survey costs, environmental studies, title examination costs, and all other standard settlement expenses incurred in connection with this purchase.

8. BROKERAGE FEE: Seller and Purchaser agree that other than Adams-Nelson & Associates, Inc. (the “Broker”), no other broker, finder, real estate agent, or other person or entity whatsoever has acted for or on behalf of either of them in bringing about this Agreement, and each party agrees to indemnify against and hold the other harmless from and against any claim, loss, or expense (including reasonable attorney’s fees) in connection therewith. Provided that Settlement is fully accomplished pursuant to the terms of this Agreement, the Broker shall be entitled to a real estate commission in the total sum of Twenty-Seven Thousand Dollars (\$27,000.00) to be paid by the Seller. In the event that title does not convey, for whatever reason, then and in such event the Broker shall not be entitled to any real estate commission, finders fee, or other compensation or fees whatsoever and neither Seller nor Purchaser shall have any liability to the Broker whatsoever. No such commission shall be due and payable to the Broker by Seller or the Purchaser until such time as title to the Property is conveyed to the Purchaser, the deed is recorded and the Seller has received the Purchase Price in full in accordance with the terms of this Agreement.

9. TITLE:

(a) At Settlement, Purchaser shall be entitled to receive good and marketable fee simple title to the Property, insurable at regular rates by a title insurance company duly authorized to do business in the Commonwealth of Virginia, subject, however, to recorded easements, agreements, and restrictions applicable thereto which do not render title to the Property unmarketable or unreasonably interfere with Purchaser's intended use of the Property for educational/office purposes, as determined by Purchaser, in Purchaser's sole and absolute discretion, and free of all liens, leases, tenancies and other encumbrances whatsoever.

(b) Purchaser shall obtain a commitment for Title Insurance (the "**Commitment**") on or before December 14, 2015 (the "**Title Commitment Period**"). Any matters or defects appearing in the Commitment which are not objected to in writing by Purchaser prior to the expiration of the Title Commitment Period shall be deemed permitted exceptions (the "**Permitted Exceptions**").

(c) In the event that any exceptions to title which render the title to the Property unmarketable, or which in Purchaser's reasonable opinion unreasonably interfere with Purchaser's intended use of the Property for educational/office purposes, are disclosed in the Commitment, Purchaser may, in its discretion, either (i) terminate this Agreement by delivery of written notice thereof to Seller before the expiration of the Title Commitment Period, whereupon Seller and Purchaser shall have no rights or obligations on to the other hereunder the Deposit shall be returned to Purchaser; (ii) waive such title defects and proceed to close the transaction contemplated by this Agreement; or (iii) request Seller in writing to remedy such title defects and extend the Closing Date for a period of time not exceeding forty-five (45) days to allow sufficient time to remedy such defects. Seller shall notify Purchaser within ten (10) business days of receipt of Purchaser's request to remedy such title defects of Seller's election to either attempt to remedy such defects or to decline to remedy such defects. Failure by Seller to timely notify Purchaser shall be deemed an election by Seller to decline to remedy said title defects. If Seller declines to remedy such title defects, Purchaser shall have the right to terminate this Agreement and the Deposit shall be refunded to Purchaser.

(d) At Settlement the Seller shall convey good and marketable fee simple title to the Property to the Purchaser by special warranty deed.

10. STUDY PERIOD:

(a) This Agreement is contingent until 4:00 p.m. on February 15, 2016 (the "**Study Period**") to allow the Purchaser, at Purchaser's sole cost and expense, to determine whether the Purchaser's plans for development of the Property are feasible.

(b) During the Study Period, the Purchaser may, at Purchaser's sole cost and expense, conduct such inspections, studies, and/or investigations with respect to the

Property, including, but not limited to, soil, percolation, economic, environmental, zoning, engineering and architectural, as the Purchaser deems necessary. Purchaser agrees to conduct all such inspections, studies and/or investigations of the Property in a manner that will not harm or damage the Property or cause any claim adverse to Seller, and agrees to restore the Property to its condition prior to any such inspections, studies and/or investigations immediately after conducting the same at Purchaser's sole cost and expense. Purchaser shall indemnify, hold harmless and defend the Seller from and against any and all damage to the Property or injury to persons or property caused by Purchaser's or his agent's or representative's studies and investigations, and from and against all claims, damages or injuries asserted against Seller and any and all costs and expenses (including reasonable attorney's fees and costs of collection) incurred by Seller as a result of any such entry upon the Property. Notwithstanding anything to the contrary set forth in this Agreement, Purchaser's indemnity of Seller as set forth in this Section 10 shall survive Settlement and any earlier expiration or termination of this Agreement.

(c) If the Purchaser's plans for the development of the Property are not deemed feasible, at the Purchaser's sole discretion, the Purchaser may terminate this Agreement by giving written notice of termination to the Seller before the expiration of the Study Period, whereupon the Deposit shall be refunded to Purchaser.

(d) In that event that the Purchaser terminates this Agreement in strict conformity with the terms hereof, Purchaser shall deliver to Seller copies of all reports, inspections, tests, studies or other documentation arising from or incident to any inspection, study and/or investigation conducted by Purchaser with respect to the Property within ten (10) days of the date of termination by the Purchaser without cost or expense to Seller; provided, however, that Purchaser assumes no responsibility for the accuracy of any such documents.

11. SELLER'S OBLIGATIONS AT SETTLEMENT: At Settlement, Seller shall execute and deliver the Deed required above, and all other such customary documents and affidavits which may be reasonably required by the settlement attorney or Purchaser's title insurance company in order to consummate Settlement hereunder.

12. PURCHASER'S OBLIGATIONS AT SETTLEMENT: At the Settlement hereunder, Purchaser shall pay the Purchase Price pursuant to Section 2 hereof, and execute and deliver all such customary documents and affidavits which may be reasonably required by Purchaser's counsel or Purchaser's Title Insurance Company in order to consummate Settlement hereunder.

13. REMEDIES:

(a) In the event that Seller defaults, fails or refuses to perform its obligations as set forth in this Agreement, then and in that event, Purchaser shall be entitled to a return of the Deposit or, at the election of the Purchaser, the exercise of the right of specific performance, if available to Purchaser, as Purchaser's sole and exclusive remedies on account of such breach or default by Seller. In no event shall Purchaser be entitled to recover any damages whatsoever

arising from, in connection with or incident to such breach or default by Seller, including, but not limited to, compensatory, special, direct, indirect and/or punitive damages.

(b) In the event that Purchaser defaults, fails or refuses to perform its obligations as set forth in this Agreement, Seller shall be entitled to retain the Deposit as Seller's sole and exclusive remedy on account of such breach, default or refusal by Purchaser.

14. **CONDEMNATION:** In the event any condemnation proceedings are instituted with respect to all or any portion of the Property prior to the Closing Date hereunder, Seller shall promptly notify Purchaser thereof. In the event that prior to Settlement hereunder, there shall occur a taking by condemnation or eminent domain of all or any portion of the Property or a proposed conveyance to a condemning authority in lieu of condemnation, then Purchaser, at its option, may either (i) terminate this Agreement by delivery of written notice thereof to Seller, and thereupon the parties shall have no further rights or obligations hereunder and the Deposit shall be returned to Purchaser (except for Purchaser's indemnity and agreement to produce records as set forth in Section 6, above), or (ii) proceed to closing hereunder, in which event Seller shall assign to Purchaser at closing all interest of Seller in and to any condemnation proceeds that may be payable to Seller on account of such condemnation and thereupon Purchaser shall control all negotiations and proceedings undertaken with the condemning authority with respect to the Property; Purchaser shall receive a credit at Settlement in the amount of any condemnation proceeds paid to and retained by Seller with respect to the Property prior to the Closing Date.

15. **PARTIES BOUND:** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective personal representatives, heirs, successors and assigns.

16. **APPLICABLE LAW:** This Agreement shall be construed in accordance with the laws of or applicable to the Commonwealth of Virginia.

17. **FOREIGN PERSONS:** Seller hereby represents and warrants to Purchaser that Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code of 1986, as amended, and Seller further agrees, at Settlement, to furnish Purchaser an affidavit to this effect complying with the provisions of Section 1445 of the Internal Revenue Code of 1986, as amended. If Seller fails to execute and deliver such affidavit, Purchaser may deduct and withhold from the Purchase Price such amounts and the Purchaser may be required to withhold in order to satisfy any of Purchaser's tax withholding obligations under such statutes or regulations promulgated pursuant thereto.

18. **NON-MERGER:** The provisions of this Agreement shall survive the Settlement hereunder and the execution and delivery of the Deed of conveyance conveying the Property and shall not be merged therein.

19. **NOTICES:** All notices, demands, or other communications that may be necessary or

proper hereunder shall be deemed duly given if personally delivered, or when deposited in the United States mail, postage prepaid, first class, registered or certified, return receipt requested, addressed respectively as follows:

Purchaser: Grafton School, Incorporated
120 Bellview Avenue
Post Office box 2500
Winchester, Virginia 22604
Attn: James H. Stewart, Executive Vice President
E-Mail: james.h.stewart01@grafton.org

With a copy to: Stephen L. Pettler, Jr., Esquire
Harrison & Johnson, PLC
21 South Loudoun Street
Winchester, Virginia 22601
E-Mail: pettler@harrison-johnston.com

Seller: Economic Development Authority
of the County of Frederick, Virginia
45 East Boscawen Street
Winchester, Virginia 22601
Attn: Patrick Barker, Executive Director
E-Mail: pbarker@YesFrederickVA.com

With a copy to: Michael L. Bryan, Esquire
Bryan & Coleman, P.L.C.
116 South Braddock Street
Winchester, Virginia 22601
E-Mail: mbryan2@earthlink.net

20. MECHANIC'S LIEN NOTICE:

Virginia law (Va. Code Ann. Sec. 43-1 et seq. permits persons who have performed labor or furnished materials for the construction, removal, repair or improvement of any building or structure to file a lien against the Property. This lien may be filed at any time after the work is commenced or the material is furnished, but not later than the earlier of (i) 90 days from the last day of the month in which the lienor last performed work or furnished materials or (ii) 90 days from the time the construction, removal, repair or improvement is terminated.

AN EFFECTIVE LIEN FOR WORK PERFORMED PRIOR TO THE DATE OF SETTLEMENT MAY BE FILED AFTER SETTLEMENT. LEGAL COUNSEL SHOULD BE CONSULTED.

21. **TITLE INSURANCE NOTIFICATION:** The Purchaser may wish at Purchaser's expense to purchase owner's title insurance. Depending on the particular circumstances of the

transaction, such insurance could include affirmative coverage against possible mechanic's and materialmen's liens for labor and materials performed prior to settlement and which, though not recorded at the time of recordation of the Purchaser's deed, could be subsequently recorded and would adversely affect Purchaser's title to the Property. The coverage afforded by such title insurance will be governed by the terms and conditions thereof, and the dollar amount of the cost of obtaining such title insurance coverage.

22. CONTINGENCIES: This Agreement and the terms thereof are expressly conditioned upon the following:

(a) Approval of the terms of this Agreement by the Seller's Board of Directors on or before November 16, 2015; and

(b) Approval of the terms of this Agreement by the Purchaser's Board of Directors on or before October 28, 2015.

In the event that both of the foregoing contingencies are not timely satisfied, then and in that event, this Agreement shall be deemed null, void and of no binding effect.

23. CONDITION PRECEDENT: Purchaser's obligation to proceed to Settlement is expressly conditioned upon Purchaser receiving approval by the City of Winchester, Virginia of such changes to the zoning of the Property as are reasonably deemed necessary by Purchaser in order to make use of the Property for educational/office purposes prior to Settlement. In the event that such zoning changes are not approved by the City of Winchester, Virginia, then and in that event, the Purchaser shall be entitled to terminate this Agreement and receive a refund of the Deposit.

24. TOTAL AGREEMENT: This Agreement contains the full and final agreement between the parties hereto with respect to the sale and purchase of the Property. Purchaser and Seller shall not be bound by any terms, conditions, statements, warranties, or representations, oral or written, not contained herein. No change or modification of this Agreement shall be valid unless the same is in writing and is signed by the parties hereto. No waiver of any of the provisions of this Agreement shall be valid unless the same is in writing and is signed by the party against which it is sought to be enforced.

25. ASSIGNMENT: This Agreement may be assigned by Purchaser to an affiliate or entity in which Purchaser holds a majority controlling interest. Purchaser agrees to give Seller written notice of any such assignment prior to such assignment. Any assignee of Purchaser shall assume and be liable for the performance of all of Purchaser's obligations hereunder and, in addition, Purchaser shall remain obligated, responsible for and liable for the performance of all of Purchaser's obligations hereunder.

26. COUNTERPARTS: This Agreement may be executed in two or more counterparts, each of which together shall constitute one and the same Agreement.

27. **TIME:** Time is of the essence with respect to all matters set forth in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal as of the later of the dates set forth below, which date shall be inserted on Page 1 of this Agreement.

PURCHASER:

GRAFTON SCHOOL, INCORPORATED

By: _____ (SEAL)
James G. Gaynor, CEO

SELLER:

**ECONOMIC DEVELOPMENT AUTHORITY
OF THE COUNTY OF FREDERICK,
VIRGINIA**

By: _____ (SEAL)
Patrick Barker, Executive Director

MLB/pmn
c:/Contracts\EDA Grafton Contract
11/2/15