

RESOLUTION CALLING FOR THE DISSOLUTION OF THE *INDUSTRIAL DEVELOPMENT AUTHORITY OF THE TOWN OF FRONT ROYAL AND THE COUNTY OF WARREN, VIRGINIA* AND THE APPOINTMENT OF A RECEIVER

WHEREAS, the Industrial Development Authority of the Town of Front Royal and the County of Warren, Virginia, a separate political subdivision of the Commonwealth of Virginia (“EDA”), was created jointly by the governing bodies of the Town of Front Royal (“Town”) and the County of Warren (“County”), effective December 21, 1967, pursuant to Virginia’s Industrial Development and Revenue Bond Act (“Act”); and,

WHEREAS, the legislative intent and statutory purpose of the Act is for industrial development authorities to “acquire, own, lease, and dispose of properties and make loans to the end that such authorities may be able to promote industry and develop trade by inducing manufacturing, industrial, governmental, nonprofit, and commercial enterprises, and institutions of higher education to locate in or remain in the Commonwealth...”; and,

WHEREAS, under the Act (Virginia Code §15.2-4904(F)) and Virginia Code §30-140, the EDA “...**shall keep suitable records of its financial transactions...**” and “...**shall arrange to have the records audited annually...**copies of each such audit shall be furnished to the governing body of the locality and shall be open to public inspection.”; and,

WHEREAS, under the Act, “[a]ll **expenses incurred in carrying out the provisions of this chapter shall be payable solely from the funds of the authority and no liability or obligation shall be incurred by the authority hereunder beyond the extent to which moneys shall be available to the authority**” (Virginia Code §15.2-4909 (C)); and,

WHEREAS, in 1991, the EDA, Town and County agreed that, 1) upon dissolution of the EDA, the Town and County shall receive an equal division of all EDA property, and 2) that if the EDA was in possession of property or profits in excess of that needed to carry on the EDA function then said excess property or profits shall be distributed to the Town and County in equal shares; and,

WHEREAS, in 1995, the Town and County agreed to an “Economic Development Partnership” which established a future funding framework for the funding of EDA operational budgets as well as capital funding for industry incentives. Representation on the EDA Board of Directors was changed to reflect the proportional funding framework, with two directors to be appointed by the Town and five directors to be appointed by the County; and,

WHEREAS, in 1999, the EDA, Town and County entered into a Memorandum of Understanding (“Avtex MOU”) regarding the future use and disposition of the Avtex Fibers, Inc. industrial site consisting of approximately 428.2 acres (“Avtex Property”). Pursuant to the Avtex MOU, the Town and County are to be given control of certain parcels of the Avtex Property and are to receive reimbursement of expenses from the proceeds of sales of other parcels; and,

WHEREAS, in 2012, the Town and County approved a Memorandum of Understanding Regarding Funding the Operations Budget of the EDA, thereby amending the “fair funding formula” established by the Town and County in 1995, relieving the Town of any obligation to fund the EDA’s operational budget, and ending any Town operational oversight through the appointment of directors to the EDA board; and,

WHEREAS, in 2015, the EDA, despite having accepted a deed of dedication from HEPTAD, LLC conveying a 2.343 acre parcel (“HEPTAD Parcel”) “...as right-of-way for the construction and improvement of Leach Run Parkway...**created for future dedication to the Town of Front Royal for public street use**”, has failed or refused to convey the HEPTAD Parcel to the Town; and,

WHEREAS, in 2018, facts began coming to light establishing that during the years 2014-2018, the EDA’s executive director was engaged in an embezzlement scheme resulting in losses to the EDA in the millions of dollars; and,

WHEREAS, in 2019, the EDA confessed judgment in favor of First Bank and Trust Company (“FB&T”) in the amount of \$9,015,742.18 with interest at 6%. Said confessed judgment was paid and satisfied in full by the EDA March 8, 2022 using proceeds from a FB&T loan consolidation (see “Loan Agreement” below); and,

WHEREAS, in 2019, without reciting any statutory authority in support of taking such action, the EDA and County entered into a “Memorandum of Understanding for Fiscal Agency Services” (“Fiscal Agent MOU”) under the terms of which “[t]he County agrees to receive, account, segregate, and maintain all revenues of and all other money, grants, contributions and other financial assistance received by the Authority and to establish and maintain a separate interest bearing checking account to hold all unexpended funds of the Authority”, and to “...perform annual auditing services for the Authority as a separate component of the annual County audit...” Effective June 25, 2024, the EDA and County renewed the Fiscal Agent MOU for an additional five (5) years; and,

WHEREAS, the Fiscal Agent MOU notwithstanding, the EDA has failed to furnish the Town with annual audits, the Town having last received an annual audit of EDA financial records in October 2021 for fiscal years 2018 and 2019; and,

WHEREAS, on March 2, 2022 the EDA entered into a “Loan Agreement” with FB&T in the amount of \$12,350,000, secured by a mortgage on “Land and Improvements” and a “Support Agreement” between the EDA, FB&T and the County, for the stated purpose “to payoff and refinance certain existing indebtedness of Borrower to Lender and to First Bank Strasburg”, thereby incurring a new liability or obligation beyond the extent to which moneys were available to the EDA, in apparent violation of Virginia Code §15.2-4909 (C), with the terms of the Loan Agreement ceding control over its assets, debt, and its ability to dissolve, and establishing “Events of Default” including, but not limited to, default in payment or in the Support Agreement, the admission, in writing, of the inability to pay debts as they become due, and default on other indebtedness in excess of \$10,000, and,

WHEREAS, in December 2023, the EDA issued a debt status summary statement showing a total indebtedness of \$33,146,993.25, comprised of four (4) bank loans totaling \$24,062,196.70 owed to First Bank and Trust and United Bank (“the Banks”), and since that time, EDA officers have made numerous public written statements concerning the EDA’s dire financial condition, including, but not limited to, the lack of operating funds, a potential “fire sale” of real estate assets, and that the EDA is no longer able to pursue economic development; and,

WHEREAS, on July 2, 2024, United Bank issued notices of payment default to the EDA on two loans totaling \$4,236,325.22, with claimed past due amounts totaling \$38,968.86, with each corresponding promissory note containing a confessed judgment provision in the event of default; and,

WHEREAS, on information and belief, while insolvent, the EDA is currently negotiating one or more forbearance agreements with FB&T in an effort to avoid loan defaults, potentially in violation of Virginia Code §15.2-4909 (C); and,

WHEREAS, under the Act (Virginia Code §§15.2-4902 and 15.2-4910), “‘bonds’ or ‘revenue bonds’ embraces notes, bonds and other obligations authorized to be issued by the authority”, and that, “[e]ach pledge, agreement and trust indenture made for the benefit or security of any of the bonds of the authority shall continue effective until the principal of and interest on such bonds have been fully paid. **In the event of default in such payment** or in any agreements of the authority made as a part of the contract under which the bonds were issued...**such payment or agreements may be enforced...by the appointment of a receiver in equity**...”; and,

WHEREAS, the EDA is insolvent, having failed to meet its obligations as they become due, and with the Banks claims to EDA assets upon default, the County and the Banks have become de facto receivers of EDA assets, requiring a court-appointed receiver to ensure that the public trust is maintained and that publicly held assets are not wasted;

and,

NOW, THEREFORE, BE IT RESOLVED, by the Town Council of the Town that, the EDA having failed to furnish audits since 2019, being in default of its obligations, being insolvent, and not being able to carry out its statutory obligations and purpose in pursuing economic development, the Town having a claim to EDA assets both now and upon dissolution, the Town hereby calls on the EDA Board of Directors to settle EDA debt and otherwise windup its affairs in an expedited manner, and to dissolve pursuant to Virginia Code §15.2-4914, or, the EDA failing to do so, the Town further resolves that the governing bodies immediately petition the Circuit Court for a court-appointed receiver in equity pursuant to Virginia Code §15.2-4910 for that purpose, and calls on the County to join the Town in support of this Resolution.

This Resolution is effective upon passage.