

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (this "Agreement") is made as of the Effective Date, as defined herein, between **Shenandoah Presbytery Corporation** ("Seller"), and **The City of Harrisonburg** ("Purchaser"). In consideration of the mutual covenants and representations herein contained, Seller and Purchaser agree as follows:

1. **Effective date:** The Effective Date shall be the date this Agreement, or counterparts thereof, has been signed by both Seller and Purchaser.
2. **Purchase and Sale:** Subject to terms and conditions of this agreement, Seller agrees to sell and convey to the Purchaser, and Purchaser agrees to purchase from Seller the real property in City of Harrisonburg, Virginia, being tax map parcel(s) 41-E-2 comprised of 3.684 acres, more or less, as described on **Exhibit 1**, together with all improvements and fixtures thereon and appurtenances thereto (the "**Property**").
3. **Purchase Price:** The purchase price ("the Purchase Price") for the Property is Seven Hundred Thousand Dollars (\$700,000.00).
4. **Earnest Money:** Within ten days of the Effective Date, the Purchaser will make an earnest money deposit with Lee & Associates of One Thousand Dollars (\$1,000). The earnest money shall be held and applied in conformity with the regulations of the Virginia Real Estate Board. Pursuant to such regulations, if the sale of the Property is consummated, then the earnest money shall be paid to Seller and applied to the payment of the Purchase Price. If Purchaser terminates this Agreement in accordance with any right to terminate granted by this Agreement, the earnest money shall be immediately returned to the Purchaser, and no party shall have any further obligations under this Agreement except those stated to survive termination. In the event the sale of the Property is not consummated due to a default by Purchaser, the earnest money shall be delivered by Lee & Associates to Seller, and no party shall have any further obligations under this Agreement except those stated to survive termination.
5. **Inspection Period:** Purchaser shall have 30 days after the Effective Date (the "Inspection Period") to conduct regarding the Property such tests, feasibility studies, surveys, inspections and reviews of the due diligence materials provided by Seller as Purchaser chooses to conduct, and to review title, survey and environmental letters, geological and engineering studies including but not limited to test bores for soil analysis. Seller agrees, at its expense, to have its legal counsel perform a 60-year title search and to provide the report thereof to Purchaser within the Inspection Period. Seller hereby agrees to allow Purchaser and its agent's access to the Property to conduct these studies. If Purchaser determines that the Property is, for any reason, unsuitable for its purposes, Purchaser may terminate this Agreement without incurring any cost or liability by submitting written notice of termination to Seller on or before the last day of the Inspection Period.

6. **Subdivision Approvals:** If any subdivision approvals are required for the Property to be conveyed to Purchaser, such subdivision approvals shall have been obtained by Seller at and as of the Closing Date.
7. **Seller's Documents:** Seller agrees to provide to Purchaser within 5 days of the Effective Date a copy of any environmental reports, soil studies, building inspection reports, or any documents within Seller's possession or control pertaining in any way to the condition or of defects to the Property, including a copy of the Seller's most recent title insurance policy for the Property ("Seller's Documents"). Seller shall have a duty to supplement Seller's Documents if at any time Seller receives additional documents prior to the Closing Date, as herein defined.
8. **Closing:**
 - (a) **Closing:** The closing ("Closing") shall be held at a location of Purchaser's choice, on or before 30 days following the expiration of the Inspection Period, or any extension thereof, (the "Closing Date") unless the parties mutually agree upon another place or date.
 - (b) **Closing Documents:** At Closing, Seller shall deliver the following to Purchaser:
 - (i) A Special Warranty Deed ("the Deed") executed by Seller conveying good and marketable title to the Property to Purchaser, free and clear of all liens, but subject to easements and other matters of public record;
 - (ii) If requested by closing agent, a Form 1099-S and Virginia Form R-5 evidencing the Seller's federal tax identification number, state of formation, and other pertinent information for tax reporting purposes;
 - (iii) An industry standard owner's affidavit, executed and sworn to by Seller;
 - (iv) A settlement statement;
 - (v) Such resolutions and certificates as may be required by Purchaser's Title Company to evidence the due authorization of the execution and performance of this Agreement and the documents to be delivered pursuant hereto, Seller's organizational documents, and such other documents as may reasonably be required by Purchaser's Title Insurance Company in order to consummate the sale of the Property to Purchaser and insure title.
 - (c) **Payment of Purchase Price:** At Closing, Purchaser shall deliver to Seller the Purchase Price by cash, certified check, cashier's check, or wire transfer of immediately available funds (taking into account credit for the earnest money). Twenty-five thousand dollars (\$25,000.00) of the Purchase Price shall be held in escrow in accordance with Section 15 of this Agreement.
 - (d) **Proration:** All real estate taxes with respect to the Property for the year in which the Closing occurs shall be prorated as of the Closing Date, with the exception that Purchaser shall be responsible for roll back taxes pertaining solely to the Property by virtue of it receiving a reduced land-use assessment.

- (e) **Possession:** Possession of the property shall be delivered to Purchaser at closing, free and clear of leases and parties in possession except for Valley Open Doors; however, the parties agree that the Seller may maintain its offices in the house located on the Property until August 30, 2022. The Seller understands that between the Closing date and August 30, 2022 the Purchaser will be conducting various construction related activities in the house. Purchaser agrees to minimize to the extent reasonably possible any adverse effect on the Seller's use of the house during this time, but some interference and inconvenience may occur. The Purchaser will attempt to limit its activities to the first floor of the house. The Purchaser may provide office and storage space to an agency or non-profit providing services to individuals experiencing homelessness, but such lease shall not unreasonably interfere with the Seller's use of the Property. The Seller shall not pay rent during such occupancy but will pay all utilities associated with the Seller's use and to be responsible for any damages to the Property caused by Seller.
- (f) **Closing Costs:** Except as otherwise expressly provided herein, Seller shall pay, on the Closing Date, the Virginia grantor's tax, fees for recording any lien releases, and the real estate commission payable to Lee & Associates herein provided. Purchaser shall pay on the Closing Date, all recording costs other than the Virginia grantor's tax and release fees, and all other normal and customary charges regarding the closing.
10. **Corporate Authority:** Each party's obligation to proceed to closing is contingent upon both parties completing the appropriate corporate and legal procedures to authorize the transactions contemplated in this Agreement by July 15, 2022, and each party agrees to diligently pursue all required approvals by such date. In the case of the Seller, such compliance shall include approval by the Shenandoah Presbytery Corporation's Board of Directors. In the case of the City, its obligation to close is conditioned on approval by the Harrisonburg City Council at a duly called meeting. If a party fails to obtain required approvals by July 15, 2022, despite its diligent efforts, the other party may elect to grant an extension or may elect to terminate this Agreement in which event the earnest money shall be refunded to Purchaser.
11. **Covenants for Use of Property:** The deed of conveyance for the Property from the Seller to the Purchaser shall contain a legally binding covenant that for ten years from the date of closing the Purchaser shall use the Property to provide services to individuals experiencing homelessness. The covenant will also allow Purchaser to use the Property for any additional governmental services at Purchaser's discretion. This covenant shall be deemed a personal covenant to the Seller, not assignable by Seller, and shall be binding on successor owners of the Property but shall not run with the land.
12. **AS IS:** CONVEYANCE OF THE PROPERTY TO PURCHASER AT CLOSING SHALL BE "AS IS" WITH ALL FAULTS. PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT TITLE WARRANTIES TO BE SET FORTH IN THE CONVEYANCE DEED, SELLER HAS NOT MADE AND EXPRESSLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR

GUARANTEES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, WITH RESPECT TO (i) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY FOR THE USES THAT PURCHASER MAY CONDUCT THEREON; (ii) THE SUITABILITY OF THE PROPERTY FOR THE USES THAT PURCHASER MAY CONDUCT THEREON; (iii) THE PROPERTY'S COMPLIANCE WITH APPLICABLE LAW, INCLUDING WITHOUT LIMITATION, ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS; (iv) THE HABITABILITY, MERCHANTABILITY, MARKET ABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; OR (V) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE CLOSING.

13. Risk of Loss

- (a) Casualty: If the property suffers any damage prior to Closing from fire or other casualty, Purchaser may either (i) terminate this Agreement or (ii) consummate the closing in which event the proceeds of any insurance covering such damage, up to the amount of the purchase price shall be assigned to Purchaser at closing.
- (b) Condemnation: If prior to closing, action is initiated or threatened to take any of the Property by eminent domain proceedings or by deed in lieu thereof, Purchaser shall have ten (10) days from written notice of such event from Seller to advise Seller that it intends to (i) terminate this agreement or (ii) consummate the closing, in which event the award of the condemning authority shall be assigned to Purchaser at the closing.

14. Default

- (a) Breach by Seller: If Seller breaches this Agreement, Purchaser may terminate this Agreement and receive immediate return of the earnest money, in addition to all other remedies available to Purchaser at law or in equity.
- (b) Breach by Purchaser: If Purchaser breaches this Agreement, Seller shall be entitled to retain the earnest money, in addition to all other remedies available to Seller at law or in equity.

15. Removal of Existing Covenant; Escrow:

- (a) Covenant Release: The parties acknowledge that the Property is the subject of a document entitled "Access Easement Agreement with Reciprocal Covenants and Restrictions" (the "Access Easement"), between the Seller and JMB Investment Company, LLC, of record in the Clerk's Office of the Circuit Court of Rockingham County, Virginia in Deed Book 5013, page 704. The Access Easement, among other things, purports to prohibit by restrictive covenant "any living quarters, sleeping apartments or lodging rooms" on the portion of the Property located between a parcel containing 42,777 square feet conveyed by the Seller to JMB Investments, LLC and Albert Street. The Seller, through its legal counsel, has filed a Complaint for Declaratory Judgment in the Rockingham Circuit Court

against Seven West LLC (successor in title to JMB Investments LLC) seeking to have such restrictive covenant declared void. Seller agrees to continue to pursue in good faith and with all deliberate speed the release of such restrictive covenant through the pending or alternative litigation or negotiation.

- (b) Escrow: Seller acknowledges that if the restrictive covenant is not released within six months of the Closing Date then Purchaser's intended use of the property will be adversely affected. The Parties agree that \$25,000.00 of the Purchaser Price shall be held in escrow in an interest-bearing account by Hoover Penrod PLC. Escrow Agents shall be David Penrod and Chris Brown. In the event the restrictive covenant is released within six months of the Closing Date, the Escrow Agents shall pay the escrowed funds to the Seller. If the restrictive covenant is not released within six months of the Closing Date, the Escrow Agents shall pay the escrowed funds to the Purchaser.. This obligation shall survive closing, however Seller's obligation to pursue the release of the restrictive covenant shall terminate upon payment of the escrowed funds to Purchaser. Seller agrees to cooperate with Purchaser's substitution as plaintiff in the above referenced litigation if requested by Purchaser.

16. Miscellaneous

- (a) Notice: Any notice pursuant to this agreement must be in writing and shall be effective: (i) on the date of actual receipt by the addressee, if sent by delivery, electronic mail, or facsimile, or (ii) on the third day after deposit with the U. S. Postal Service, postage prepaid and properly addressed. If mailed or (iii) when the attempted initial delivery is refused or when it cannot be made because of a change of address of which the sending party has not been notified. Either party may change its address for notification by giving notice to the other party.

IF TO SELLER:

Jeff Robb, Senior Vice President
Lee & Associates
10070 Mount Zion Road
Linville, VA 22834
Jeffreyrobbs@gmail.com

IF TO PURCHASER:

Chris Brown, City Attorney
409 South Main Street
Harrisonburg, VA 22801
Chris.Brown@Harrisonburgva.gov

- (b) **Real Estate Commission.** Neither Seller nor Purchaser has contacted any real estate broker, finder or similar person in connection with the sale or purchase of the property, and each party represents and warrants to the other that no broker commissions, finder fees or similar compensation are due or owing to any person or entity as a result of such party's actions, **EXCEPT** Lee & Associates who represents the Seller, to whom Seller shall pay, at closing, a commission of 5% of the purchase price.
- (c) **Entire Agreement:** This Agreement embodies the entire agreement between the parties relative to the property and its conveyance from Seller to Purchaser.
- (d) **Amendment:** This agreement may be amended only by a written instrument executed by the party or parties to be bound thereby.
- (e) **Headings:** The captions and headings used in this Agreement are for convenience only and are not intended to amplify or modify the provisions of this agreement.
- (f) **Governing Law:** This Agreement shall be governed by the laws of the Commonwealth of Virginia and the applicable federal laws of the United States.
- (g) **Successors and assigns:** This agreement is assignable and shall bind and inure to the benefit of Seller and Purchaser and their respective successors and assigns.
- (h) **Attorney's Fees:** If it becomes necessary for either party to file a suit to enforce this Agreement, the party prevailing in such suit shall be entitled to recover, in addition to all other remedies or damages as herein provided, reasonable attorney's fees and costs incurred in such suit.
- (i) **Construction:** Each party waives any common law or statutory rules of construction providing that this Agreement should interpreted against the drafter and agrees that this Agreement should be interpreted according to the fair meaning of its language.
- (j) **Waiver:** Any waiver of any provision of this Agreement must be in writing, and any waiver by any party of a breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of that provision or of any other breach of any other provision of this Agreement. The failure of a party to insist on a strict adherence to any term of this Agreement on one or more occasions will not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this agreement.

WITNESS, the following signatures and seals.

SELLER:

Shenandoah Presbytery Corporation

By: Anneth H. Miller

Its: President of Board of Trustees

Date: 06/20/2022

PURCHASER:

City of Harrisonburg, Virginia

By: Dee Gault

Its: City Manager

Date: 6/15/2022

EXHIBIT 1

Legal Description of Property

That certain lot as shown on the City Block Maps on Sheet 42, Block E, Parcel 2, and being more particularly described as that lot, containing 3.684 acres, more or less, situated at 1111 North Main Street in the City of Harrisonburg, and being shown and designated as Lot 2 (Remainder) on a plat made by James A. Patton, L.S., entitled "Minor Subdivision of Tax Map #41-E-2," which is recorded in the Clerk's office of the Circuit Court of Rockingham County, Virginia, in Deed Book 5004 at Page 121.