

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") dated the ____th day of _____, 2016 (the "Effective Date"), by and between the **CITY OF HARRISONBURG** ("Seller") and **THE COMMUNITY FOUNDATION OF HARRISONBURG AND ROCKINGHAM COUNTY, INC.**, a Virginia corporation ("Purchaser").

It is hereby mutually agreed:

1. **Sale.** Seller shall sell, and Purchaser shall purchase, in fee simple, subject to and upon the following terms and conditions, that certain property, a parcel, with improvements, containing approximately 6,678 sq. ft. located at 317 S. Main Street, in Harrisonburg, Virginia and further shown on a sketch attached hereto as Exhibit A. The subject property is improved by a building and other site improvements the ("Property"). The Property shall be conveyed with all improvements located thereon together with (i) all fixtures (including but not limited to all heating, lighting, plumbing and air conditioning equipment and signs) to the extent not owned by tenants, (ii) all easements, rights and privileges appurtenant thereto. All of the above is collectively referred to as the "Property."

In addition, Seller shall designate 2 parking spaces on Seller's property located closest to the southwest corner of the Property for Purchaser's use for as long as Purchaser owns the Property.

The Purchaser shall have the right to use the main municipal parking lot between Main Street and Liberty Street for employee parking and customer parking.

The Purchaser shall also have the right to use the parking lot located between the Property and the old Municipal Building for visitor parking upon the same terms and restrictions as applicable to the general public.

Purchaser's right to use the two designated parking spaces and other parking in the lot between the Property and the old Municipal building shall be subject to Seller's right to close or restrict that parking lot on a short term basis for construction and other reasons.

2. **Purchase Price.** The purchase price ("Purchase Price") for the Property shall be One Dollar (\$1.00), which shall be paid at closing in cash.

3. **Survey.** Within thirty (30) days from the date of this Agreement, Seller shall obtain an as-built survey of the Property. The survey must be sufficient in form and content so that Purchaser's title insurance company will waive all matters of survey not expressly approved by Purchaser. If the survey (a) is for good cause not acceptable to the title insurance company or (b) shows easements, encroachments or other adverse conditions which are not approved by Purchaser, Purchaser shall have the right (i) to terminate this Agreement or (ii) to waive the

exceptions and to close this purchase and sale.

4. **Title Insurance.** Prior to Closing Purchaser may obtain, at its expense, an owner's title insurance commitment to issue a title insurance policy insuring Purchaser's fee simple and easement interest (if any) in the Property. The title insurance commitment will be issued by a title insurance company acceptable to Purchaser and will contain exceptions only for real estate taxes and assessments for the current calendar year, which are not yet due and payable and any other exceptions Purchaser may approve in writing. If the commitment contains other exceptions not acceptable to Purchaser, then Purchaser shall notify Seller, prior to Closing, of such exceptions and Seller shall have the right, but not the obligation, to resolve such exceptions to the satisfaction of the Purchaser. Notwithstanding anything herein to the contrary, title exceptions which can be cured by payment of a stated sum of money (such as mortgages, past due ad valorem taxes and assessments constituting a lien against the Property, mechanic's and materialmen's liens and judgments which have attached to and become liens against the Property), shall be paid at closing. If objections to the title exceptions are not resolved by the Seller within twenty (20) days of receipt of Purchaser's notice to Seller, Purchaser shall have the right to terminate or close.

5. **Additional Documents to be Provided by Seller.** Seller shall provide, within a reasonable time after the full execution of this Agreement, to the extent not previously provided, copies of the following documents to Purchaser for its review:

- (a) The most recent environmental audit (if any).
- (b) Copy of all existing leases affecting the Property, if any.
- (c) Copy of any survey of the Property in Seller's possession.
- (d) Copy of Seller's title policy or policies, if any.
- (e) A disclosure statement by Seller containing all known defects or flaw in the building or otherwise relating to the Property, including but not limited to structural issues, utility service issues, zoning issues and major systems issues.
- (f) A copy of any environmental reports, studies, audits or documentation of any nature relating to the Property.
- (g) A copy of the duly adopted Resolution or Ordinance by City Council authorizing the conveyance of the Property.

In the event Purchaser terminates this Agreement pursuant to the terms hereof, such documents shall be promptly returned to Seller.

6. **Oil Tank Removal.** Prior to closing, Seller shall remove the one underground oil storage tank on the northwest end of the Property. In addition, the Seller shall provide Purchaser with documentation that there are no environmental concerns related to any oil tanks on the Property.

7. **Purchaser's Duty to Remodel/Refurbish.** It is understood by Seller and Purchaser that the building's condition makes it unsuitable as an office building without major renovations and remodeling. Purchaser has engaged Blue Ridge Architects to determine what should be done, including, but not limited to, plumbing and electrical systems, bathrooms, modification for better handicap accessibility, and other items. Purchaser agrees as a condition of this Purchase as follows:

(a) Purchaser will invest a minimum of \$440,000 (which may be comprised of cash and in-kind contributions of labor and materials) in renovation, repairs, and refurbishing of the existing building to bring it to a standard acceptable as an office building. Said minimum capital investment shall be made within twenty-four (24) months of closing.

(b) Purchaser must receive written approval from Harrisonburg City Council prior to any demolition activity on the principal structure.

8. **Right of First Refusal.** The Seller shall have a Right of First Refusal should Purchaser decide to sell the Property. If Purchaser decides to sell the Property, Purchaser shall notify Seller and the fair market value of the Property shall be established by taking the average of two independent appraisals prepared by qualified appraisers knowledgeable in downtown Harrisonburg properties. That value, less \$250,000 (the Seller's upfront contribution) shall determine the value for the re-purchase by Seller. Seller shall have sixty (60) days to close unless delayed by title issues. Should Seller not purchase, Purchaser may sell the Property to a third party.

This Right of First Refusal shall be incorporated in Seller's deed to Purchaser and the exact terms and provisions shall be determined by Seller and Purchaser, along with assistance from their respective attorneys, all acting in good faith, at the time of settlement.

9. **Expenses and Prorations.** The expenses of this transaction and Closing prorations shall be paid as follows:

(a) Seller will pay for the survey referred to in Paragraph 3;

(b) Purchaser will pay for the title insurance examination fee and for the premium if this transaction closes;

(c) Seller will pay for the preparation of a Special Warranty deed conveying the real estate comprising the Property and other conveyance documents;

(d) Purchaser will pay the transfer taxes and recording costs incurred in recording the deed, with the exception of the statutory Grantor's Tax, which shall be paid by Seller;

(e) Purchaser shall pay for any environmental audit

Purchaser desires;

(f) Each party will pay its own attorneys' fees;

(g) The real estate taxes for the year of closing, rent from tenants, and invoices for all utilities serving the Property (to the extent not paid by tenants) shall be apportioned between the parties as of the Closing Date (as defined herein). Municipal or other governmental assessments assessed or attributed to periods on or before the Closing Date shall be paid by Seller in full. All expenses arising from ownership or operation of the Property prior to closing shall be paid by Seller.

10. **Brokers and Commission.** Seller and Purchaser each warrant to the other that there are no brokers or agents involved in this transaction. Each party shall indemnify the other from claims of other brokers, agents or finders claiming by, through or under the indemnifying party.

11. **Inspection Period.** Purchaser shall have a period (the "Inspection Period") of thirty (30) days commencing upon full execution of this Agreement, to examine the Property and all matters relating thereto. Purchaser shall have the right to terminate this Agreement for any reason, at Purchaser's discretion during the Inspection Period. Purchaser shall promptly notify Seller following the expiration of the thirty (30) day inspection period whether it will proceed to close this transaction or will terminate this Agreement. Failure to give written notice within three (3) days after the expiration of the thirty (30) day period shall constitute approval on the part of Purchaser.

12. **Inspection Rights.** Purchaser, its agents, engineers, surveyors and other representatives shall have the right, during the term of this Agreement, to enter upon the Property to inspect, examine, survey and conduct an environmental assessment of the Property and otherwise do that which, in the opinion of Purchaser, is necessary to determine the suitability of the Property for the uses intended by Purchaser and to make tests to determine the physical condition of the Property. Such tests and inspections shall not unreasonably interfere with Seller's operations or the operations of any tenant on the Property. Purchaser agrees to indemnify and hold Seller harmless from and against any damages arising directly from Purchaser's inspection and testing of the Property, which indemnity shall survive the closing or the termination of this Agreement.

13. **Closing.**

(a) In the event this Agreement is not terminated as provided herein, the closing of the purchase and sale contemplated herein shall take place at a mutually convenient time at the offices of Clark & Bradshaw, P.C., 92 North Liberty St., Harrisonburg, Virginia, 22802, on or before May 25, 2016, or such other time and place as shall be mutually agreed upon (the "Closing Date").

(b) At the closing, Seller shall execute or provide the following documents, which shall be reasonably acceptable to both parties:

(i) A Special Warranty deed and an assignment of Seller's interest in all existing leases and security deposits affecting the Property, both of which shall be fully executed, in recordable form and reasonably acceptable to the Purchaser's title insurance company;

(ii) An affidavit to the title insurance company enabling it to issue its final title insurance policy without exception for mechanic's or materialmen's liens, parties in possession or other off-record matters;

(iii) A non-foreign affidavit pursuant to the Internal Revenue Code of 1986, as amended;

(iv) Instruments satisfactory to Purchaser and Purchaser's title insurance company reflecting the proper authority of Seller to consummate the transactions contemplated by this Agreement;

(v) A Closing statement with all financial details of the Closing transaction, pro-rations, rent, reserve and deposit transfers and any other necessary information satisfactory to all parties.

14. **Warranties.** Seller represents and warrants to Purchaser that:

(a) Subject to the public hearing requirement and formal vote of City Council as set forth in Section 27, Seller has full power and authority to enter into this Agreement and to assume and perform all of its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder on the part of Seller do not and will not violate any provision of law and do not and will not conflict with or result in the breach of any condition or provision of, or constitute a default under, any contract, mortgage, lien, lease, agreement or other instrument to which Seller is a party or which purports to affect any of the property or assets of Seller. Seller is the owner of all assets comprising the Property subject to no liens or encumbrances except for taxes for the year of closing and (insofar as the real estate comprising the Property is concerned) easements, covenants, encumbrances and restrictions of record. The Property is properly zoned to allow for all current uses thereof by Seller and current Lessees.

(b) No party is entitled to occupancy of any portion of the Property.

(c) Seller will maintain the physical condition of all improvements on the Property in good repair and good working order during the term of this Agreement, including, but not limited to the roof, structure, utilities, heating, ventilating and air conditioning equipment as well as the parking areas and access drives, reasonable wear and tear excepted. Seller will make all ordinary repairs to the Property and the improvements thereon from the date hereof until the Closing Date as it would in the normal course of operating the Property.

15. **"As-Is"**. Unless expressly provided otherwise herein, Seller sells the Property "as-is" with no expressed or implied warranties and/or

conditions of the Property and improvements thereon.

16. **Environmental Audit.**

(a) Purchaser, at its sole cost and expense, shall have the right to require a reputable environmental firm to perform an environmental inspection and audit of the Property ("Environmental Audit"). Purchaser shall advise Seller in writing in the event the Environmental Audit reveals any items which require a remedial clean-up response pursuant to applicable federal, state or local statute, law, regulation or ordinance ("Applicable Laws") and shall simultaneously deliver a copy of the Environmental Audit to Seller.

(b) Seller agrees to provide to Purchaser a disclosure in writing stating any known environmental problems affecting the Property, and copies of any environmental reports in Seller's possession, or of which Seller has knowledge, in any way relating to the Property.

(c) Purchaser acknowledges that Seller has already provided Purchaser with a report concerning the presence of asbestos in certain areas of the improvements. Due to the age of the improvement, Purchaser is also aware that lead based paint is more than likely present. Purchaser is not aware of any other environmental issues affecting the Property.

17. **Default.**

(a) In event that Purchaser defaults in the terms of this Agreement, and Seller has not defaulted, Seller shall be entitled to receive any deposit made by Purchaser as agreed upon liquidated damages, and the parties shall be relieved from any further liability hereunder.

(b) In the event Seller defaults in its obligations hereunder and Purchaser has not defaulted, Purchaser shall be entitled to declare this Agreement terminated and may recover its out of pocket expenses for studies, surveys, etc.

(c) In the event that legal proceedings are commenced to construe or enforce the terms of this Agreement, the prevailing party may recover from the other party its costs and expenses including reasonable attorneys' fees.

18. **Risk of Loss.** Seller shall maintain in full force and effect all insurance policies currently covering the Property until the Closing Date. The risk of loss or damage to the Property from fire, flood, windstorm or other casualty until delivery and acceptance of the deed to Purchaser shall belong to Seller. Risk of loss or damage to the Property after delivery and acceptance of such deed is assumed by the Purchaser. If, before delivery and acceptance of such deed any condemnation proceeding is or has been commenced or threatened with respect to the Property or any casualty results in damage to the Property or improvements thereon, Purchaser shall have the option of either terminating this Agreement as to such portion of the Property or of completing the purchase contemplated herein. In the event the Purchaser shall elect to terminate this Agreement, all parties shall be

relieved and discharged of any further liability hereunder. If, however, Purchaser shall elect to complete this transaction, there shall be no reduction in the Purchase Price and Purchaser shall be entitled, in the case of fire or other casualty, to receive from the insurance carrier all insurance proceeds or, in the case of condemnation, to receive the entire award for the Property or the portion thereof so taken. Seller shall execute and deliver to Purchaser on the Closing Date all proper instruments for the assignment and collection of such proceeds and awards.

19. **Binding Effect.** This Agreement shall be binding upon all of the parties hereto and their respective successors and assigns.

20. **Entire Agreement.** This Agreement and its exhibits constitute the entire agreement of the parties, and no other statement or representation shall be considered a part of this Agreement, or be binding upon the parties, unless the same shall be contained herein.

21. **Notices.** Any notice, request, demand, instruction or other communication hereunder shall be in writing and shall be deemed to have been duly given if (a) delivered in person or (b) sent by first class, registered or certified mail (return receipt requested), postage fully prepaid or (c) sent by Federal Express or other overnight addressed as follows:

To Seller:

City of Harrisonburg
Attention: Kurt D. Hodgen, City Manager
409 South Main Street
Harrisonburg, VA 22801

To Purchaser:

The Community Foundation of Harrisonburg and Rockingham
County
Attention: Revlan Hill, President
P.O. Box 1068
Harrisonburg, VA 22803

The addresses for the purpose of this paragraph may be changed by giving notice as provided herein. Notice shall also be deemed to have been given upon receipt by any means of the information contained in said notice.

22. **Counterparts.** This Agreement may be executed in any number of counterparts, any one or all of which shall constitute the agreement of the parties.

23. **Captions.** The captions contained herein are for purposes of identification and convenience only and shall not be considered in construing this Agreement.

24. **Governing Law.** This Agreement shall be governed by and

construed in accordance with the laws of the State of Virginia.

25. **Assignment by Purchaser.** This Agreement may be assigned by Purchaser to an entity to be formed in which Purchaser is a member or partner.

26. **Survival.** The indemnity obligations or warranties and Purchaser's duty to remodel/refurbish set forth or referred to in this Agreement shall survive Closing or the termination of this Agreement. Representations and warranties made in this Agreement or made in writing pursuant to this Agreement shall not merge with the Deed and shall survive Closing for a period of three (3) years.

27. **Corporate Authority.** As a condition precedent to each parties' obligation to proceed to closing, the other party must complete the appropriate corporate and legal procedures to authorize the transactions contemplated by this purchase agreement. Such other party must provide to the first party evidence of such compliance reasonably acceptable to counsel for the first party and to such first parties' title insurance provider (if any). In the case of the Seller, such compliance shall include compliance with any provision of Virginia law or the City's Charter regarding the sale of real property, including any public hearing required incident thereto. Each party shall bear the cost of its own compliance with the provisions of this paragraph.

IN WITNESS WHEREOF each of the parties hereto has signed this Agreement on the dates set forth below, effective as of the latest date below, which latest date shall be the "Effective Date" and shall be inserted in the first paragraph of this Agreement.

**SELLER:
CITY OF HARRISONBURG
a Virginia municipal corporation**

Date

By: Kurt D. Hodgen, City Manager

**PURCHASER:
THE COMMUNITY FOUNDATION OF
HARRISONBURG AND
ROCKINGHAM COUNTY, INC.,
a Virginia corporation**

Date

By: Revlan Hill, President

