

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (“Agreement”) made this 21 day of August, 2019, by and between BILL V. NEFF (“Seller”) and THE CITY OF HARRISONBURG, VIRGINIA, a municipal corporation (“Purchaser”).

For and in consideration of the mutual covenants herein set forth, the parties agree as follows:

1. Agreement to Sell and Convey.

Seller hereby agrees to sell and convey to Purchaser and Purchaser hereby agrees to purchase from Seller, subject to the terms and conditions hereinafter set forth, all that certain tract or parcel of land containing 0.751 acre, more or less, and lying just east of South Main Street and abutting Boxwood Court in the City of Harrisonburg, Virginia, together with all improvements thereon, and being designated as Harrisonburg City Tax Map number 001-E-5 (the “Property”).

2. Purchase Price.

Seller shall convey to Purchaser and Purchaser shall purchase from Seller the Property for a purchase price of One Hundred Fifty Thousand Dollars (\$150,000.00) (the “Purchase Price”) of which a down payment of One Thousand (\$1,000.00) (the “Down Payment”) shall be made within 10 days of the execution of this Agreement. Purchaser’s attorney shall hold the Down Payment in escrow. The Purchaser shall deliver payment of the Purchase Price, including the Down Payment and any deduction herein authorized, by cash, wire transfer, or certified check to the Seller on the date of closing. Should the sale of this property not close and the reason for the sale not closing is not the fault of the

Purchaser, then the Down Payment shall be returned to the Purchaser. If the reason for not closing is the fault of the Purchaser then the Seller shall be paid the Down Payment.

3. Conditions to Closing.

a) Title.

(i) Seller agrees to convey good and marketable title to the Property by deed containing General Warranty and English Covenants of Title. The Property shall be sold free from all mortgages, deeds of trust, liens, security interests and other encumbrances. Title shall be good, marketable and insurable, without any exception that would render title unmarketable, at regular rates by a title insurance company of the Purchaser's choice and without any encumbrances which would render the Property unusable for the purposes intended by Purchaser. Purchaser will pay the cost of title insurance.

(ii) If there is a defect in title, Purchaser shall notify Seller in writing within forty-five (45) days after execution of this Agreement and Seller shall be required to correct said defect provided that it can be done within thirty (30) days. In the event the defect cannot be cured as provided herein, and Seller does not choose to otherwise correct the defect, Purchaser may accept title as-is or terminate this Agreement.

b) Physical Condition.

Purchaser and its authorized agents may inspect the Property at any reasonable time after the execution of this Agreement. Purchaser may, at its sole cost and expense, conduct any survey, environmental or engineering assessment it deems, in its

sole opinion, necessary or desirable. Seller shall permit Purchaser, its employees, contractors or agents to enter upon the Property for the purpose of inspection, taking samples, testing, making borings or otherwise surveying the Property and shall otherwise cooperate with any such assessment. If, as a result of studies by environmental and soil engineers, any physical conditions are discovered on the Property, which interfere with Purchaser's ability to use the Property for Purchaser's intended purpose, Purchaser shall have the right to terminate this Agreement and to the return of the Down Payment. Seller represents and warrants that to the best of his knowledge and belief there are no environmental conditions adversely affecting the Property. Purchaser shall take all reasonable care to avoid interference with Seller's use of the Property during entry onto the Property and shall return the Property to its original state prior to entry. Exercise of any right to terminate under the terms of this paragraph shall be made by notice from Purchaser within forty-five (45) days after the execution hereof or shall be deemed waived.

4. Representations and Warranties.

a) Seller's Representations and Warranties.

(i) Ownership. Seller warrants and represents that he is the sole fee simple owner and contract purchaser of the Property and has all necessary authority to sell the Property; there are no other contracts for sale or options involving the Property; no other party has any right, title, or interest in the Property. Between the date Seller executes this Agreement and Settlement, Seller shall not subject the Property to or consent to any leases, liens, encumbrances, covenants, conditions, restrictions, easements,

rights of way, or agreements, or take any action affecting or modifying the status of title or otherwise affecting the Property.

(ii) Actions or Suits. Seller warrants and represents that there are no actions or suits in law or equity or proceedings by any governmental agency now pending or, to the knowledge of the Seller, threatened against Seller in connection with the Property, and there is no outstanding order, writ, injunction or decree of any court or governmental agency affecting the Property.

(iii) Proffers and Commitments. Seller represents that there has not been made and will not be made, without Purchaser's consent, any proffers or other commitments relating to the Property, which would impose any obligation on Purchaser or its successors and assigns, after Settlement, to make any contribution of money or dedications of land or to construct, install, or maintain any improvements of a public or private nature on or off the Property.

(iv) Other Agreements. Seller and Purchaser each warrant and represent that the execution and delivery of this Agreement, the completion of the transaction contemplated hereby, and the fulfillment of the terms hereof will not result in a breach of any of the terms or provisions of, or constitute a default under, or conflict with, any agreement, indenture, or other instrument to which Seller or Purchaser are a party or by which it or the Property is bound, or any judgment, decree, order or award of any court, governmental body or arbitrator, or any law, rule or regulation applicable to Seller or Purchaser.

b) Purchaser's Representations and Warranties.

(i) Authority. Purchaser has full power, authorization, and approval to enter into this Agreement and to carry out its obligations hereunder.

(ii) No Conflict. Neither the execution nor the delivery of this Agreement or the documents contemplated hereby nor the consummation of the conveyance of the Property to Purchaser, will conflict with or cause a breach of any of the terms and conditions of, or constitute a default under, any agreement, or obligation by which the Purchaser is bound.

5. Settlement.

a) Settlement shall be on or before sixty (60) days after the execution of this Agreement (“Settlement”) unless this Agreement is terminated pursuant to Section 3. Settlement shall be held at the office of the City Attorney for the City of Harrisonburg, 409 South Main Street, Harrisonburg, Virginia, or at such other place in Harrisonburg, Virginia as the Purchaser may designate. Seller shall deliver to Purchaser, at Settlement, a fully executed General Warranty and English Covenants of Title Deed conveying the Property in fee simple to Purchaser (the “Deed”).

b) Seller shall deliver to Purchaser at Settlement an affidavit, on a form acceptable to Purchaser or Purchaser’s title insurance company signed by Seller that no labor or materials have been furnished to the Property within the statutory period for the filing of mechanics’ or materialmen’s liens against the Property, or if labor or materials have been furnished during the statutory period, an affidavit that the costs thereof have been paid in full and no other person or entities have the right of possession of the Property.

c) Seller agrees to execute at Settlement any affidavit or forms required by the Internal Revenue Service or the Virginia Department of Taxation to report this transaction and/or to exempt the Purchaser from any withholding requirements under applicable law.

d) Seller agrees to deliver to Purchaser the following at or prior to Settlement:

(i) The fully signed Deed;

(ii) A signed closing or settlement statement prepared or approved by Purchaser; and

(iii) Any other documents reasonably required by Purchaser.

e) Purchaser agrees to deliver to Seller the following at or prior to Settlement:

(i) A signed closing or settlement statement prepared or approved by Purchaser;

(ii) Payment of the Purchase Price as required in Section 2; and

(iii) Any other documents reasonably required by Seller.

6. Expenses of Settlement.

a) Purchaser shall be responsible for any survey of the Property, for its own attorney's fees as well as other charges customarily paid by a purchaser of real estate in Virginia, to the extent the Purchaser is not lawfully exempt therefrom.

b) Seller shall pay for the preparation and/or review of the Deed, any other documents it is required to provide hereunder, and their own attorney's fees as well as the Virginia Grantor's Tax.

c) All real estate taxes, assessments, utility charges and rent, if any, shall be prorated as of Settlement.

7. Risk of Loss.

All risk of loss or damage to the Property by fire, windstorm, casualty, or other cause is assumed by Seller until Settlement. In the event of substantial loss or damage to the Property before Settlement, Purchaser shall have the option of either:

- a) Terminating this Agreement and recovering the Deposit, or
- b) Affirming this Agreement, in which event Seller shall assign to Purchaser all of Seller's rights under any policy or policies of insurance applicable to the Property.

8. Rollback Taxes.

In the event Purchaser changes the use of the Property so as to trigger any "rollback taxes", Purchaser shall be responsible for payment of any such rollback taxes.

9. Default.

In the event of any default, the non-defaulting party shall be entitled to pursue any remedies at law or in equity in connection with the default of the other party. The election to terminate this Agreement under the terms hereof shall not constitute a default. If either party defaults under this Agreement, the defaulting party shall be liable for expenses incurred by the non-defaulting party, including attorney's fees, incurred in successful enforcement of this Agreement whether or not litigation is involved.

10. Prior Agreements; Merger.

This Agreement supersedes any and all prior understandings and agreements between the parties relating to the Property and constitutes the entire agreement between them. No representations warranties, conditions or statements, oral or written, not contained herein shall be considered a part hereof. This Agreement may not be amended,

altered or modified except by an instrument in writing signed by the party sought to be charged therewith.

11. Survivability.

Subject to the provisions hereof, this Agreement shall bind and inure to the benefit of the parties hereto, in the case of Purchaser, his successors and assigns. No assignment of this Agreement shall be permitted except with written consent of the other party, which consent shall not be withheld unreasonably. The warranties, representations and terms of this Agreement shall survive delivery of the Deed.

12. Legal Costs and Expenses.

In the event that either Seller or Purchaser elects to incur legal expenses to enforce or interpret any provision of this Agreement, the prevailing party will be entitled to recover such legal expenses, including, without limitation, reasonable attorney's fees, costs, and necessary disbursements, in addition to any other relief to which such party shall be entitled.

13. Miscellaneous.

- a) Purchaser and its representatives shall have the right to make a further inspection immediate before Settlement and Purchaser's obligation to settle is subject to the condition of the Property complying with the provisions of this Agreement.
- b) The divisions of this Agreement into sections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

14. Completed Performance.

B. V. N. ETG

~~Notwithstanding any other provision to the contrary contained herein, this Agreement must be fully performed, and the closing occur, within one (1) year from the date hereof. If not fully performed by such date, this Agreement shall be deemed terminated and have no further force and effect.~~

15. Notices.

Any notice required or permitted to be given hereunder shall be deemed to have been properly given if sent by United States certified or registered mail, return receipt requested, postage prepaid, or if delivered in hand, as follows:

If to purchaser: City of Harrisonburg
Eric D. Campbell, City Manager
409 South Main Street
Harrisonburg, VA 22801

With a copy to: G. Chris Brown
City Attorney
409 South Main Street
Harrisonburg, VA 22801

If to Seller: Bill V. Neff
Bill V. Neff
Harrisonburg, VA 22801
3570 North Valley Pike
Rockingham, VA 22802

With a copy to:

or to such other persons or addresses as the parties may hereafter direct by written notice. Notices except those hand delivered, shall be deemed delivered two (2) days after being deposited with the United State Postal Service. Hand delivered notices shall be deemed delivered upon actual delivery to the person noted.

16. Governing Law.

Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all terms and provisions hereof shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

17. Approval by City Council.

This Agreement shall not be deemed to be accepted by the Purchaser until it is approved in open session at a Harrisonburg City Council meeting.

18. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals:

SELLER:

Bill V. Neff

Bill V. Neff

PURCHASER:

City of Harrisonburg

By: Eric D. Campbell

Its: City Manager