

REAL ESTATE OPTION AGREEMENT

THIS REAL ESTATE OPTION AGREEMENT (this “**Agreement**”) made on the ____ of _____, 2024 (the “**Agreement Date**”) by and between **American Baptist Theological Seminary (“Seller”)** and the **METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY (“Buyer”)**.

WITNESSETH

WHEREAS, Seller is the owner of the Property (as defined below); and

WHEREAS, Seller agrees to sell the Property to Buyer and Buyer agrees to purchase the Property from Seller, pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), the receipt of which is hereby acknowledged, and the mutual covenants and promises of the parties, Seller and Buyer agree as follows:

AGREEMENT

1. **Effective Date.** This Agreement shall become effective only after its approval by the Metropolitan Council and upon the date (the “**Effective Date**”) of its filing with the Metropolitan Clerk.

2. **The Property.** Upon the terms and subject to the conditions set forth in this Agreement, Seller shall sell and convey and Buyer shall purchase the following described property (all of which is hereinafter collectively referred to as the “**Property**”):

(a) the real property located in Davidson County, Tennessee and being more particularly described on Exhibit A attached hereto and made a part hereof, together with all easements, covenants, rights, privileges, tenements, hereditaments and appurtenances thereunto now or hereafter belonging or appertaining thereto, including, but not limited to, Seller’s right, title and interest in and to the streets, alleys and right-of-way which abut such real property, and any air rights, subsurface rights, oil, gas and mineral rights, development rights and water rights appurtenant to such real property (collectively, the “**Land**”); and

(b) all the buildings, structures, fixtures and other improvements located on the Land (collectively, the “**Improvements**”).

3. **Purchase Price.** The purchase price for the Property shall be three million one hundred thousand dollars (\$3,100,000.00) (the “**Purchase Price**”). The Purchase Price shall be paid by wire transfer of immediately available funds to First American Title (the “**Title Company**”), at the closing of the sale of the Property and delivery of the Deed (the “**Closing**”).

4. **Seller's Deed.** Upon payment of the Purchase Price, Seller shall execute and deliver to Buyer its recordable and transferable special warranty deed ("**Deed**"), conveying to Buyer title to the Land and Improvements, in fee simple, subject only to the following ("**Permitted Exceptions**"):

(a) ad valorem real estate taxes, assessments and special assessments (excluding any applicable rollback taxes) for public improvements not then due and payable;

(b) any matter relating to title or survey which is accepted (or deemed accepted) by Buyer during the Inspection Period pursuant to the terms hereof; and

(c) any title exception created by any act or omission of Buyer or its representatives, agents, employees or invitees.

5. **Seller's Representations and Warranties.** For the purpose of inducing Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Seller represents and warrants to Buyer as follows:

(a) Seller is duly organized and existing under the laws of the State of Tennessee. Seller has the full right, power and authority to sell the Property as provided in this Agreement and to carry out Seller's obligations hereunder, and all requisite action necessary to authorize Seller to enter into this Agreement and to carry out its obligations hereunder have been, or by the Closing will have been, taken. The person or entity signing this Agreement on behalf of Seller is authorized to do so.

(b) This Agreement is binding on Seller and enforceable against Seller in accordance with its terms. No action, consent or approval of any person, including any creditor, investor, judicial or administrative body, governmental authority, or other governmental body or agency, is required for Seller's execution and delivery of this Agreement and the performance of Seller's obligations hereunder. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will: (i) result in a breach of, default under, nor acceleration of, any agreement to which Seller is a party or by which Seller or the Property are bound; or (ii) violate any restriction, court order, agreement or other legal obligation to which Seller and/or the Property are subject.

(c) Seller owns own good, marketable and indefeasible title to the Land and Improvements, free and clear of all liens and encumbrances other than the Permitted Exceptions.

(d) Seller has made available, either via electronic access or by delivery of materials to Buyer's representatives, true and complete copies of the following, to the extent in Seller's possession or control: governmental approvals, contracts, surveys, ad valorem tax statements, declarations and restrictive covenants, property condition reports, engineering studies or reports (including architectural, structural, drainage, plumbing, soils or electrical, civil or mechanical engineering reports), plans and specifications, soil reports,

warranties, environmental reports, maps, income and expense statements for the Property, material correspondence with any governmental or quasi-governmental authority, including, without limitation, the Metropolitan Government of Nashville & Davidson County, Tennessee and the State of Tennessee for the prior three (3) years, and other material documents relating to the condition, use, development, ownership or operation of the Property (collectively, the “**Documents**”). Buyer will reimburse Seller at Closing for the reasonable costs incurred by Seller in obtaining and providing the Documents to Buyer.

(e) Seller has not entered into any contracts, subcontracts or agreements, including without limitation, any brokerage agreements, affecting the Property which will be binding upon Buyer after the Closing.

(f) There is no pending or, to Seller’s knowledge, threatened condemnation or similar proceeding affecting the Property or any portion thereof. There is no pending or, to Seller’s knowledge, threatened action, suit or proceeding against Seller or affecting the Property or any portion thereof, or relating to or arising out of the ownership, operation, management, use or maintenance of the Property. Seller has not received any notice alleging that it is in default under any of the documents, recorded or unrecorded, referred to in the Permitted Exceptions.

(g) Seller is not acting on behalf of (i) an “employee benefit plan” (as defined in Section 3(3) of the Employment Retirement Income Security Act of 1974 (“ERISA”)) that is subject to Title I of ERISA, (ii) a “plan” as defined in Section 4975(e) of the Internal Revenue Code of 1986 (the “Code”) that is subject to Section 4975 of the Code (each of the foregoing a “Plan”), (iii) an entity or account the assets of which constitute “plan assets” of one or more such Plans within the meaning of Department of Labor Regulation 29 CFR Section 2510.3-101, as modified by Section 3(42) of ERISA or (iv) a “governmental plan” within the meaning of Section 3(32) of ERISA.

(h) All contractors, subcontractors, suppliers, architects, engineers, and others who have performed services or labor or have supplied materials in connection with Seller’s acquisition, development, ownership, or management of the Property have been paid in full, and all liens arising therefrom (or claims which with the passage of time or the giving of notice, or both, could mature into liens) have been satisfied and released or will be satisfied and released on the Closing.

(i) There are no written or oral leases, licenses or other occupancy agreements affecting the Land or Improvements, and there are no parties in possession of any portion of the Land or Improvements as lessees, tenants at sufferance, trespassers or otherwise.

(j) There are no unrecorded easements, unrecorded reservations or encroachments on the Land or Improvements, or any encroachments by Improvements on the Land onto any easements or rights of way or any adjoining property or which would otherwise conflict with the property rights of any other person.

(k) Neither Seller nor the Property is in violation of any applicable laws, ordinances, regulations, statutes, codes, rules, orders, decrees, determinations, covenants and restrictions relating to the Property or any part thereof. The Land and Improvements are in good condition and repair (ordinary wear and tear excepted), free from structural defects and of good workmanship and materials, and is clean, orderly and sanitary, safe, well lit and well maintained.

(l) There are no attachments, executions or assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or under any other debtor relief laws contemplated by or pending or, to the best of Seller's knowledge, threatened by or against Seller or the Property. Seller is not entering into the transactions described in this Agreement with an intent to defraud any creditor or to prefer the rights of one creditor over any other. Seller and Buyer have negotiated this Agreement at arms-length, and Seller believes the consideration paid represents fair value for the assets to be transferred.

(m) Seller is not a foreign person as such term is defined in Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

(n) Neither Seller nor any Seller Related Party (as defined below) is a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and will not contract with or otherwise engage in any dealings or transactions or be otherwise associated with such persons or entities. As used herein, the term "Seller Related Party" means (i) any affiliate of Seller, (ii) any person or entity holding any direct or indirect legal or beneficial interest in Seller, and (iii) any employee, officer, director, representative or agent of Seller or any of the persons or entities described in clauses (i) and (ii).

(o) To Sellers' knowledge there is no currently existing violation of the Land and Improvements under any applicable Environmental Law. Neither the Seller nor, to Seller's knowledge, any other party has ever caused or permitted any Hazardous Materials to be placed, held, located, or disposed of on, under, or at the Land or Improvements or any part thereof in forms or concentrations which violate applicable laws and regulations, and neither the Land and Improvements nor any part thereof has ever been used as a dump or storage site (whether permanent or temporary) for any Hazardous Materials. For purposes hereof, the term "Hazardous Materials" means, collectively, any hazardous wastes, hazardous substances or hazardous materials, as those terms are defined and used in Environmental Laws; and the term "Environmental Laws" means, collectively: (A) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. Section 9601, et seq., (B) the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. Section 6901, et seq., (C) the Clean Water Act, 33 U.S.C. Section 1251, et seq., (D) the Toxic Substances and Control

Act, 15 U.S.C. Section 2601, et seq., (E) the Clean Air Act, 42 U.S.C. Section 7401, et seq., and (F) environmental laws of the State of Tennessee governing Hazardous Materials applicable to the Property, as such Environmental Laws exist on the Effective Date. The Land does not currently contain and, to the Seller's knowledge, has not in the past contained any underground storage tanks. The environmental reports included within the Documents, if any, are all the reports in Seller's or Seller's affiliates' possession or control which relate to the presence of Hazardous Materials at, under or near the Land and Improvements or compliance with Environmental Laws with respect to the Land and Improvements, and full, correct and complete copies of such reports have been delivered to Buyer.

All representations and warranties made by Seller in this Agreement (i) are true and correct as of the Effective Date, (ii) shall be true and correct as of the Closing Date (as hereinafter defined), and (iii) shall survive the Closing, but only for a period of eighteen (18) months thereafter (the "**Survival Period**"), and not otherwise. From the Effective Date through the earlier of the Closing or earlier termination of this Agreement, Seller agrees that if Seller learns of an error in any of the foregoing representations or warranties prior to the Closing, Seller promptly shall give written notice thereof to Buyer. Seller shall not be liable to Buyer for a breach of any of the representations and warranties set forth in this Agreement if, and to the extent that, Buyer has actual knowledge of such breach at Closing, and Buyer elects to proceed to Closing.

6. **Buyer's Representations and Warranties.** For the purpose of inducing Seller to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer represents and warrants to Seller as follows:

(a) Buyer has the full right, power and authority to purchase the Property as provided in this Agreement and to carry out Buyer's obligations hereunder, and all requisite action necessary to authorize Buyer to enter into this Agreement and to carry out its obligations hereunder have been, or by the Closing will have been, taken. The person signing this Agreement on behalf of Buyer is authorized to do so.

(b) There are no attachments, executions or assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or under any other debtor relief laws contemplated by or pending or, to the best of Buyer's knowledge, threatened by or against Buyer.

All representations and warranties made by Buyer in this Agreement (i) are true and correct as of the Effective Date, (ii) shall be true and correct as of the Closing Date, and (iii) shall survive the Closing, but only for the Survival Period, and not otherwise.

7. **Buyer Conditions Precedent.** The obligation of Buyer hereunder to purchase the Property is subject to the following conditions and Buyer may elect not to close on the purchase of the

Property, unless all of the following conditions are satisfied or waived by Buyer:

(a) The representations and warranties of Seller set forth in this Agreement shall be true on and as of the Closing Date with the same force and effect as if such representations and warranties have been made on and as of the Closing Date, and Seller shall have complied with all covenants and obligations set forth in this Agreement.

(b) The Metropolitan Council shall have approved this Agreement by appropriate legislation, and the Agreement shall have been filed with the Metropolitan Clerk.

(c) Seller shall have delivered to Title Company for delivery to Buyer all documents and items to be delivered at Closing pursuant to the terms of this Agreement, and Seller shall have performed and complied with all covenants, obligations and agreements required by this Agreement to be performed or complied with by Seller on or prior to the Closing.

(d) Between the Effective Date and the Closing, no material adverse change in the physical condition of the Property shall have occurred and be continuing. Additionally, no order, stay, injunction or restraining order, pending or threatened litigation, legal requirement, or any other condition, event or circumstance shall exist that in the reasonable determination of Buyer could have a material adverse effect on the Property.

(e) The Title Company shall be irrevocably committed to issuing an owner's policy of title insurance to Buyer (together with such extended coverages and endorsements as Buyer may reasonably require, the "**Title Policy**") with respect to the Land and Improvements, dated as of the Closing Date, in form and substance satisfactory to Buyer.

The conditions precedent set forth in this Section are intended solely for the benefit of Buyer. If any of such condition(s) are not satisfied on or before the Closing Date, Buyer shall have the right, in addition to any other remedies it may be entitled to as a result of the default of Seller hereunder, at its election, either to: (i) waive the condition(s) in question, either in whole or in part, and proceed with the purchase; or (ii) terminate this Agreement with respect to the Property to be purchased by giving Seller and the Title Company written notice of such election. If this Agreement is terminated pursuant to this Section, the parties shall be released from all liabilities and obligations under this Agreement with respect to the Property.

8. **Inspection and Access.** Commencing on the Effective Date and continuing until the date that is thirty (30) days after the Effective Date (the "**Inspection Period**"), Seller shall afford Buyer and its representatives a continuing right to inspect the Property and to enter upon the Land and Improvements and conduct engineering studies, non-intrusive environmental testing, geotechnical tests and studies (which may include soil borings), surveys, feasibility studies, and any other inspections Buyer deems necessary or desirable. Notwithstanding the foregoing, Buyer shall not conduct any so-called "Phase II" environmental assessment of the Land and Improvements, other

invasive or intrusive environmental inspection or testing of the Land and Improvements or any other environmental sampling of the Land and Improvements without Seller's written consent, not to be unreasonably withheld, conditioned or delayed. Buyer shall promptly restore the Land and Improvements to the condition in which Buyer found it if the Land and Improvements are damaged, disturbed or altered in any way in connection with any studies, tests, examinations and/or inspections performed by or on behalf of Buyer, free of any mechanic's or materialman's liens or other encumbrances arising out of any such studies, tests, examinations and/or inspections or any restoration of the Land and Improvements by or on behalf of Buyer. If for any reason, in Buyer's sole and absolute discretion, Buyer is not satisfied with the Property in any respect, then Buyer may terminate this Agreement by delivering written notice to Seller at any time on or before the expiration of the Inspection Period. If Buyer does not so terminate this Agreement before the expiration of the Inspection Period, Buyer shall be deemed to have approved the condition of the Property (subject to the terms of this Agreement), this Agreement shall remain in effect.

9. Title Insurance and Survey.

(a) Seller will obtain and deliver to Buyer at least 21 days prior to the expiration of the Inspection Period: (1) a commitment for an owner's policy of title insurance ("**Title Commitment**") from the Title Company; (2) a current boundary survey of the Land and Improvements prepared by a licensed surveyor (the "**Boundary Survey**"); and (3) a Phase I (and Phase II if recommended in the Phase I report) environmental survey (the "**Environmental Survey**") by an appropriately licensed firm.

(b) If: (1) the Title Commitment or Boundary Survey show that Seller does not have good, record and marketable fee simple title to the Land and Improvements, or that there are any defects, liens or encumbrances or any other matters shown by the Title Commitment or the Survey not acceptable to Buyer; or (2) the Environmental Survey discloses adverse environmental conditions not acceptable to Buyer ("**Buyer's Objections**"), Buyer may notify Seller prior to the date that is ten (10) days prior to the expiration of the Inspection Period. By not later than five (5) days after receipt of notice of such Buyer's Objections (the "**Seller's Response Period**"), Seller shall notify Buyer in writing whether Seller is willing to endeavor to cure any of Buyer's Objections, including the remediation of materially adverse environmental conditions. If Seller fails to notify Buyer before the end of the Seller's Response Period whether Seller is willing to endeavor to cure any of such Buyer's Objections, Seller shall be deemed to have elected to endeavor to cure such Buyer's Objections. If Seller notifies Buyer that it is not willing to endeavor to cure any of Buyer's Objections, Buyer shall have the option, exercisable within five (5) days after expiration of Seller's Response Period (the "**Buyer's Reply Period**"), to accept the status of title of the Land and Improvements subject to such Buyer's Objections and proceed with this Agreement, or give Seller written notice of termination, and Buyer shall be released of all liabilities and obligations under this Agreement (except those set forth in this Agreement which expressly survive a termination of this Agreement). If Buyer fails to notify Seller before the end of Buyer's Reply Period of its election pursuant to the previous sentence, Buyer shall be deemed to have elected to accept the status of title of the Land and Improvements subject to such Buyer's Objections and proceed with this Agreement. If Seller notifies Buyer in writing (or is deemed to have notified Buyer) within

the Seller's Response Period that Seller is willing to endeavor to cure one or more of such Buyer's Objections, Seller shall attempt to cure the applicable Buyer's Objection on or before the Closing Date to the reasonable satisfaction of Buyer. Except for any Monetary Encumbrances (defined below), any exception not objected to by Buyer in the manner and within the time periods specified in this Section shall be deemed waived by Buyer and shall thereafter be a Permitted Exception. If Seller notifies Buyer in writing that it is willing to endeavor to cure one or more Buyer's Objections, and Seller fails to cure the applicable Buyer's Objections by the Closing Date, Buyer shall have the right, as its sole and exclusive remedy, to either (i) terminate this Agreement by delivering written notice thereof to the Seller and the Title Company on or before the Closing Date; or (ii) waive the unsatisfied Buyer's Objections and proceed to Closing.

(c) Notwithstanding anything to the contrary contained herein, on or prior to Closing, Seller shall deliver to Buyer and the Title Company releases, in form and substance satisfactory to Buyer and the Title Company, of (i) all deeds of trust and/or mortgages and similar liens for monetary encumbrances, including but not limited to, assignments of leases and rents and UCC-1 financing statements and (ii) all judgment liens, mechanic's liens, notices of lis pendens, tax liens, attachments, and any other matters evidencing monetary liens. No monetary liens of any amount shall be deemed to be a Permitted Exception hereunder.

10. **Platting the Property.** The parties acknowledge that the Property is not currently a validly platted lot as required for conveyance under Tennessee law. Seller will initiate and diligently pursue the platting of the Property. Buyer will fully cooperate in the platting process.

11. **Closing Date, Costs and Documents.**

(a) If this Agreement has not terminated in accordance with the express provisions hereof, then delivery of the Deed and all other closing documents to be delivered by Seller to Buyer and payment of the Purchase Price in accordance with the provisions hereof, shall take place in escrow with the Title Company on a date mutually agreed upon by the parties that is no later than thirty (30) days after the later to occur of (x) expiration of the Inspection Period and (y) recordation of a valid plat with the Property given a Metro Parcel ID Number and showing a reasonable drainage easement, as agreed to by the parties in good faith and as generally shown on Exhibit B, serving and for the benefit of the Property across Seller's retained property (the "**Closing Date**"). For the avoidance of doubt, Buyer will be responsible for any and all costs related to the installation and maintenance of any infrastructure to allow for such drainage.

(b) Buyer shall pay the closing or escrow fees charged by the Title Company; and the title insurance premium for the issuance of a standard owner's policy of title insurance and any search and exam fees associated therewith. Buyer shall also pay all transfer taxes payable in connection with the conveyance of the Property to Buyer and the recording fees for the Deed. Buyer shall pay Seller's reasonable costs in obtaining the Boundary Survey and Environmental Survey. Each party shall pay its attorneys' fees.

(c) At Closing, in addition to the Deed, Seller shall deliver to Buyer and the Title Company (i) such instruments or documents as are necessary, or reasonably required by the Title Company, to evidence the status and capacity of Seller and the authority of the person or persons who are executing the various documents on behalf of Seller in connection with the purchase and sale transaction contemplated hereby; (ii) a satisfactory written certificate complying under the Foreign Investment in Real Property Act and the regulations thereunder (“**FIRPTA**”), certifying that Seller is neither a foreign person nor subject to withholding under FIRPTA, and containing Seller’s tax identification or social security number and address; (iii) a standard and customary owner/seller affidavit and indemnity (with gap indemnity) in the form reasonably required by the Title Company and which will cause the Title Company to remove the so-called “standard exceptions” from the final Title Policy; (iv) a settlement statement (which shall also be executed by the Buyer) detailing the financial transaction contemplated herein, including, but not limited to, the Purchase Price, prorations and closing costs; and (v) such other documents as are reasonably required to carry out the terms and provisions of this Agreement.

(d) At Closing, Buyer shall deliver to Seller and the Title Company (i) the Purchase Price, (ii) a counterpart of the settlement statement detailing the financial transaction contemplated herein, including, but not limited to, the Purchase Price, prorations and closing costs; (iii) a counterpart to the Bill of Sale; and (iv) such other documents as are reasonably required to carry out the terms and provisions of this Agreement.

12. **Possession.** Exclusive possession of the Property shall be given to Buyer on the date of Closing.

13. **Prorations.**

(a) Except as otherwise set forth hereinafter, if the transaction contemplated by this Agreement is consummated, the following items shall be paid, prorated or adjusted as of 12:01 a.m. on the Closing Date (“**Proration Date**”), in the manner hereinafter set forth:

- i. All real estate taxes and personal property taxes due and owing as of the Proration Date, and all installments of assessments for public improvements or other matters or facilities which constitute a lien against the Property and are due and owing as of the Proration Date, and all penalties and interest thereon, shall be paid by Seller on or before the Closing Date. Real estate taxes not yet due and owing as of the Proration Date shall be prorated as of the Proration Date based upon the tax year of the applicable taxing authority so that the portion of the prorated taxes allocable to the period from the beginning of each tax year through the Proration Date shall be credited to Buyer and the portion of the current taxes allocable to the portion of such tax year following the Proration Date to the end of such tax year shall be the responsibility of Buyer. The adjustment shall be predicated upon the most recently available tax bills or actual rates and assessments, provided that such real estate taxes

shall be re prorated forthwith upon Buyer's receipt of the actual tax bill or bills for the tax year or tax years in question.

- ii. All other items which are customarily prorated in transactions similar to the transaction contemplated hereby (including, without limitation, any association fees applicable to the Property), and which were not heretofore dealt with, will be prorated as of the Proration Date.

(b) All prorations shall be calculated on the basis of a three hundred sixty five (365) day year. Seller and Buyer hereby agree that if any of the aforesaid prorations cannot be calculated accurately on the Proration Date, then the same shall be calculated after the Proration Date and either party owing the other party a sum of money based on such subsequent proration(s) shall promptly pay said sum to the other party. This provision shall survive Closing until the one (1) year anniversary following Closing.

14. **Notices.** Any notice or other writing required or permitted to be given to a party under this Agreement shall be given in writing and shall be (i) delivered by hand or (ii) delivered through the United States mail, postage prepaid, certified, return receipt requested, or (iii) delivered through or by UPS, Federal Express, or other expedient mail or package service, or (iv) delivered by electronic mail PDF format with a hard copy to follow via overnight courier on the date such electronic mail is sent, addressed to the parties at the addresses set forth below. Any notice or demand that may be given hereunder shall be deemed complete: (a) on the third business day after depositing any such notice or demand in the United States mail with proper postage affixed thereof, certified, return receipt requested; (b) on the next business day after depositing any such notice or demand with UPS, Federal Express, or other expedient mail or package delivery service for next business day delivery, (c) upon hand delivery to the appropriate address as herein provided or (d) upon the date such electronic mail is sent to the email address set forth below. Any party hereto may change said address by notice in writing to the other parties in the manner herein provided. The appropriate address for notice hereunder shall be the following:

If to Seller:

American Baptist College
1800 Baptist World Center Dr.
Nashville, TN 37207
Attn: Dr. Forrest Harris & Richard Jackson
rjackson@abcnaskedu
forrest.harris@gmail.com

with copy to:

Chris Raybeck
Spencer Fane, LLP
511 Union St #1000
Nashville, TN 37219
craybeck@spencerfane.com

If to Buyer:

Metropolitan Government
106 Metropolitan Courthouse

Nashville, Tennessee 37201
Attn: Director of Finance
Email: kevin.crumbo @nashville.gov

with copy to: Deputy Director of Law
108 Metropolitan Courthouse
Nashville, Tennessee 37201
E-mail: tom.cross@nashville.gov

15. **Remedies.** Each party shall have the right to bring an action against the other on the breach of a representation or warranty hereunder, but only if brought prior to the expiration of the Survival Period, and (ii) neither party shall have the right to bring a cause of action for a breach of a representation or warranty. Neither party shall have any liability after Closing for the breach of a representation or warranty hereunder of which the other party hereto had actual knowledge as of Closing. The provisions of this Section shall survive the Closing.

16. **Right of First Refusal.** In the event Buyer receives a letter of intent or other offer to purchase the Property from a third party (the "Offer"), and Buyer desires to accept the Offer, Buyer shall, prior to accepting such Offer, send the Offer to Seller. Seller shall have 30 days from receipt of the Offer to match all of the terms of the Offer, in writing, delivered to the Seller. If Seller agrees to match the Offer, the parties shall enter into a mutually agreeable real estate purchase agreement, subject to a title commitment with standard exceptions and a customary survey (each delivered by Buyer) and a Phase I Environmental Study paid for by Seller.

17. **Brokers.** Seller and Buyer represent and warrant to each other that they have not dealt with any real estate agent or broker in connection with this Agreement.

18. **Entire Agreement.** This Agreement constitutes the entire agreement between Seller and Buyer and no amendment or modification of this Agreement may be made except by an instrument in writing signed by all parties.

19. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.

20. **Waiver of Jury Trial.** In the event of any action or proceeding, (including without limitation, any claim, counterclaim, cross-claim or third party claim) arising out of or, relating to this Agreement, or the transaction contemplated by this Agreement (i) the prevailing party shall be entitled to recover all of its costs and expenses, including a reasonable attorneys' fees and costs, and (ii) **A COURT SHALL DETERMINATE ALL ISSUES OF LAW AND FACT, A JURY TRIAL BEING EXPRESSLY WAIVED.**

21. **Time of the Essence.** Time is declared to be of the essence of this Agreement.

22. **Miscellaneous.**

(a) Assignment. Neither party may assign its rights under this Agreement.

(b) Severability. In the event any one or more of the provisions contained in this Agreement are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.

(c) No Recordation. Neither this Agreement nor any memorandum or other summary of this Agreement shall be placed of public record under any circumstances except with the prior written consent of the Seller and the Buyer.

(d) Counterparts. This Agreement may be executed in any number of counterparts, in original or by facsimile or electronic mail PDF format copy, each of which shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument. A facsimile of PDF signature shall have the same force and effect as an "original" signature.

(e) Additional Acts. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered at the Closing, Buyer and Seller agree to perform, execute and/or deliver any and all such further acts, deeds and assurances as Buyer or Seller, as the case may be, may reasonably require to (i) evidence and vest in the Buyer the ownership of, and title to, the Property and (ii) consummate the transactions contemplated hereunder.

(f) Business Day. In the event that the date for taking any action under this Agreement (including, but not limited to, the giving of a notice of termination or closing) falls on a Saturday, Sunday or legal holiday, then such time period shall automatically be extended until 5:00 p.m. Central Time on the next regularly scheduled business day in Nashville, Tennessee.

(g) Risk of Loss. If, prior to Closing, the Property or any part thereof shall (i) be condemned or transferred in lieu of condemnation, or (ii) be destroyed or damaged by fire or other casualty, then Seller shall so notify Buyer in writing, and:

- i. If such event (A) would result in the loss or damage to the Property or any portion thereof such that the cost of repairing or restoring the Property in question to a condition substantially identical to that of the Property in question prior to the event of damage would be, in the opinion of an architect selected by Seller and reasonably approved by Buyer (1) equal to or greater than Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) or (2) greater than the amount of insurance proceeds plus any credit for deductibles that Buyer would receive at Closing pursuant to the other provisions of this Section, or (B) would result in any loss due to a condemnation which permanently and materially impairs Buyer's intended use of the Property (any such event, a "**Material Event**"), then Buyer shall have the option either to (i) terminate this Agreement (by written notice given to Seller within

ten (10) days of receipt of notice of the applicable event) or (ii) consummate the transaction contemplated by this Agreement notwithstanding such condemnation, destruction or damage. If Buyer elects to consummate the transaction contemplated by this Agreement, Buyer shall be entitled to receive the condemnation proceeds or settle the loss under all policies of insurance applicable to the destruction or, damage and receive the proceeds of insurance applicable thereto, and Seller shall credit Buyer for the amount of all deductibles under any insurance policies and further shall execute and deliver to Buyer all required proofs of loss, assignments of claims and other similar items. If Buyer elects to terminate this Agreement, this Agreement shall, without further action of the parties, become null and void and neither party shall have any rights or obligations under this Agreement (except those set forth in this Agreement which expressly survive a termination of this Agreement); and

- ii. If such event is not a Material Event, Buyer shall be required to close, but shall be entitled to receive the condemnation proceeds or settle the loss under all policies of insurance applicable to the destruction or damage and receive the proceeds of insurance applicable thereto, and Seller shall credit Buyer for the amount of all deductibles under any insurance policies and further shall execute and deliver to Buyer all required proofs of loss, assignments of claims and other similar items.

23. **Title Company as Escrow Agent.** In performing any of its duties hereunder, the Title Company shall not be liable to a party or to any third person for any erroneous delivery to Buyer or Seller of monies subject to the escrow, nor shall the Title Company incur any liability to anyone for any damages, losses or expenses, except for the Title Company's own willful default, neglect or breach of trust. In the event Title Company has doubts as to its duties or liabilities under this Agreement, the Title Company may, in its discretion, continue to hold monies in escrow until the parties mutually agree on disbursement thereof, or until a court of competent jurisdiction shall determine the rights of the parties thereto. Alternatively, the Title Company may elect to deposit the funds held with a court having jurisdiction of the dispute, and upon notifying the parties of such disposition, all liability of the Title Company under this Agreement shall terminate.

24. **Limitation on Liability.** Any obligation or liability of Buyer or Seller whatsoever which may arise at any time under this Agreement or any obligation or liability which may be incurred by Buyer or Seller pursuant to any other instrument, transaction or undertaking contemplated hereby shall be satisfied, if at all and subject to any limitations set forth elsewhere in this Agreement, out of Buyer's or Seller's assets only. Except in the event of fraud, no obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of Buyer's or Seller's trustees, officers, employees, partners, shareholders or agents.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates listed below their respective signatures.

SELLER:

**AMERICAN BIBLE THEOLOGICAL
SEMINARY**

By: Forrest E. Harris *FEH*
Name: Forrest E. Harris, Sr.
Title: President

[Signatures Continue on Following Page]

BUYER:

**METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY**

By: _____
Name: _____
Title: _____

**APPROVED AS TO AVAILABILITY
OF FUNDS:**

Kevin Crumbo, Director
Department of Finance

**APPROVED AS TO FORM AND
LEGALITY:**

Metropolitan Attorney

EXHIBIT A

The Land

Approximately 3 acres located along Baptist World Center Drive in Nashville, Davidson County, Tennessee. The site is currently a smaller portion of two adjacent sites, which will be re-platted per the terms of this Agreement.

Aerial Image



Lot Lines are Approximate.

EXHIBIT B

General Location of Drainage Easement



