

20190508000155880 1/8 \$.00
Shelby Cnty Judge of Probate, AL
05/08/2019 01:42:41 PM FILED/CERT

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

REPURCHASE OPTION

THIS REPURCHASE OPTION (this "Agreement") is made and entered into as of the 7th day of May, 2019 by EVANGEL PRESBYTERIAN CHURCH, an Alabama non-profit corporation ("Church"), in favor of EVANGEL SCHOOL FOUNDATION, LLC, an Alabama limited liability company ("ESF").

RECITALS:

Contemporaneously herewith, ESF has sold, transferred and conveyed to Church that certain real property (the "Property") situated in Shelby County, Alabama which is more particularly described in Exhibit A attached hereto and incorporated herein by reference:

ESF agreed to sell, transfer and convey the Property to Church only if and to the extent Church granted to ESF an option to repurchase the Property in the event Church desires to resell the Property at any time in the future.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ESF and Church do hereby agree as follows:

1. **Repurchase Option.**

(a) In the event Church desires to sell, transfer, convey, lease, exchange or alienate the Property or any portion thereof (collectively, a "Sale"), then, subject to the provisions of Paragraphs 1(e) and 1(g) below, Church shall provide to ESF a copy of the proposed sales contract, offer or letter of intent for any such proposed Sale (the "Offer Notice") and ESF shall have the right, at its option, to repurchase (the "Repurchase Option") the Property at the Repurchase Price, as herein defined. The Offer Notice shall include the gross purchase price which Church has agreed to offer, or desires to accept, for the Property, as set forth in the Option Notice (the "Gross Purchase Price"). As used herein (but subject to the terms and provisions of Paragraph 1(g) below), the term "Repurchase Price" shall mean the Gross Purchase Price for the Property set forth in the Offer Notice delivered by Church to ESF less the sum of \$2,940,000.00.

(b) In order to exercise the Repurchase Option, ESF must notify Church in writing of its desire to exercise the Repurchase Option within 30 days following the giving of the Offer Notice by Church to ESF. In the event ESF timely exercises the Repurchase Option, ESF shall be deemed to have agreed to purchase the Property on a date (the "Repurchase Closing Date") to be specified by ESF (but in no event later than 60 days following the giving of the Offer Notice) on the following terms: (i) on the Repurchase

Closing Date, ESF shall pay to Church the Repurchase Price, subject to the adjustments specified in Paragraph 1(d) below and (ii) on the Repurchase Closing Date, the Property shall be conveyed by Church to ESF by statutory warranty deed subject only to the then current year's ad valorem taxes, library district and fire district dues and assessments for the then current year and those easements, restrictions, rights-of-way, reservations and other matters of record as of the date and time of recordation of this Agreement in the Office of the Judge of Probate of Shelby County, Alabama and any other easements, restrictions, rights-of-way, reservations and other matters of record affecting the Repurchase Property which are approved in writing by ESF.

(c) In the event ESF fails to timely exercise the Repurchase Option as provided above, then the Repurchase Option shall automatically expire, terminate, be deemed null and void and of no further force or effect; provided, however, that if the sales transaction specified in the applicable Offer Notice is not consummated by Church within six (6) months from the date of such Offer Notice or should any of the terms and provisions of such proposed transaction change from those as set forth in the Offer Notice, then Church shall be obligated to re-offer the Property to ESF in accordance with the terms and provisions of this Paragraph 1. To the extent the Repurchase Option is not timely exercised by ESF, ESF covenants and agrees to execute a release in form reasonably acceptable to Church or its successors and assigns acknowledging that the Repurchase Option has been terminated and releasing any further rights or interests which ESF may have in and to the Property as a result of the execution of this Agreement by Church.

(d) Real estate ad valorem taxes, fire district and library district dues and assessments if any, affecting the Property shall be prorated on the Repurchase Closing Date. To the extent any Mortgage, as hereinafter defined, encumbers the Property, then (i) the Repurchase Price shall be reduced by the total amount of principal, interest and other sums due and payable to pay in full the indebtedness secured by any Mortgage as of the Repurchase Closing Date (the "Loan Balance") and (ii) ESF shall pay the Loan Balance to the holder of any Mortgage encumbering the Property; provided, however, that if the Loan Balance exceeds the Repurchase Price, Church shall pay to the holders of such Mortgage on or before the Repurchase Closing Date the excess amount by which the Loan Balance exceeds the Repurchase Price.

(e) Subject to the terms and provisions of Paragraph 1(f) below, the Repurchase Option granted herein to ESF shall not be applicable to:

(i) The Sale of the Property by Church to any entity (1) in which Church is the owner of a controlling interest therein or (2) any entity which has a controlling interest in Church. As used herein, the term "controlling interest" shall mean the ownership of fifty percent (50%) or more of the voting and beneficial interests in an entity; or

(ii) The granting of any Mortgage, as hereinafter defined, by Church to any bona fide third party mortgagee ("Mortgagee"). As used herein, the term "Mortgage" shall mean any one or more mortgages which may be granted by Church to any Mortgagee so long as such Mortgage (together with any other Mortgage encumbering the Property) secures an indebtedness owing by Church which does not exceed the then appraised fair

market value of the Property and any improvements thereto, which appraisal shall be prepared by M. A. I. designated appraiser selected by the Mortgagee and reasonably satisfactory to ESF.

(f) To the extent Church elects to effect a Sale of the Property to any third party which Sale, pursuant to the terms and provisions of Section 1(e) above, is not subject to the Repurchase Option granted herein, then such third party acknowledges and agrees that any subsequent Sale of the Property shall be subject to the terms and provisions of this Agreement and the Repurchase Option granted herein to ESF. Each Mortgagee, by acceptance of a Mortgage on any portion of the Property, acknowledges and agrees that, from and after the foreclosure of such Mortgage or the acceptance of any deed in lieu of foreclosure or the taking of any other action which results in such Mortgagee or any purchaser at foreclosure ("Foreclosure Purchaser") acquiring fee simple title to the Property (collectively, a "Foreclosure Action"), such Mortgagee and any Foreclosure Purchaser shall be bound by and subject to the terms and provisions of the Repurchase Option granted herein.

(g) Notwithstanding anything provided in this Agreement to the contrary, (i) the Repurchase Option shall not apply to any Foreclosure Action but shall continue to be applicable to any Sale of the Property following any Foreclosure Action and (ii) to the extent any Mortgagee or Foreclosure Purchaser elects to effect a Sale of the Property following such Foreclosure Action, then such Sale shall be subject to the Repurchase Option except that if the Repurchase Price payable by ESF to Mortgagee or such Foreclosure Purchaser pursuant to Paragraph 1(a) above would not pay in full the outstanding principal balance of the loan secured by the Mortgage which has been foreclosed by such Mortgagee plus all interest accrued thereon through the date on which the Foreclosure Action occurs (collectively, the "Foreclosure Balance"), then the Repurchase Price shall be increased to the Foreclosure Balance. Except as expressly set forth above in this Paragraph 1(g), the exercise of the Repurchase Option by ESF in connection with the Sale of the Property by any Mortgagee or Foreclosure Purchaser following a Foreclosure Action shall be on the same terms and conditions as set forth in this Paragraph 1.

2. **Enforcement.** Seller shall have the right to enforce the Repurchase Option by an action for specific performance.

3. **No Subordination.** The Repurchase Option granted herein by Church to ESF shall be superior to any and all Mortgages and any and all other mortgages, liens or other encumbrances which may at any time encumber the Property or any portion thereof; provided, however, that following any Foreclosure Action involving a Mortgage, then the terms and provisions of Paragraph 1(g) above shall be applicable to and binding upon Seller.

4. **Miscellaneous.**

(a) All of the terms and provisions of this Agreement shall (i) be and are covenants running with the land and (ii) be binding upon and inure to the benefit of all present and future owners of the Property and their respective successors and assigns.

(b) This Agreement embodies the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior written or oral agreements and undertakings of the parties relating to the subject matter of this Agreement. The terms and provisions of this Agreement may be modified, amended or supplemented only by a written instrument executed by ESF and the then owner(s) of the Property.

(c) The paragraph headings and captions used herein are for convenience of reference only and shall in no way define, limit, describe or restrict the scope or intent of this Agreement or in any way affect the terms and provisions hereof.

(d) Whenever the context requires or permits, the use of the masculine gender shall be deemed to include the feminine, the singular shall include the plural and vice versa.

(e) If any provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(f) This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

(g) All notices required or permitted under this Agreement shall be in writing and shall be served on the parties hereto at the following addresses:

If to ESF: Evangel School Foundation, LLC
P.O. Box 602
Helena, Alabama 35080

With a copy to: William C. Byrd, II, Esq.
Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203

If to Church: Evangel Presbyterian Church

423 Thompson Road
Alabaster, Alabama 35007

Any such notices shall be deemed to be sufficiently given or served upon any party hereto when either (i) sent by personal delivery to the address set forth above, (ii) deposited in the United States Mail by registered or certified mail, return receipt requested, postage prepaid and addressed as provided above, (iii) deposited with a nationally recognized overnight delivery courier service for next day delivery and addressed as set forth above or (iv) sent by facsimile, in which case notice shall be deemed delivered upon receipt of confirmation of transmission of such facsimile notice. The above addresses may be changed by written notice to the other parties given in the manner set forth above.

(h) In the event of any violation or threatened violation of any of the terms and provisions of this Agreement by any party hereto or any of their respective successors and assigns, then the non-defaulting party shall have the right to exercise all rights and remedies available to such party at law or in equity including, without limitation, seeking specific performance of this Agreement and any and all costs and expenses incurred by such non-defaulting party, including, without limitation, attorneys' fees and expenses, consultants' fees and expenses, court costs and all other expenses paid or incurred by the non-defaulting party, shall be paid by the defaulting party.


20190508000155880 5/8 \$.00
Shelby Cnty Judge of Probate, AL
05/08/2019 01:42:41 PM FILED/CERT

IN WITNESS WHEREOF, Church and ESF have executed this Agreement as of the day and year first above written.

EVANGEL SCHOOL FOUNDATION, LLC,
an Alabama limited liability company

By: Howard O'Neal
Print Name: Howard O'Neal
Title: Member

STATE OF ALABAMA)

Shelby COUNTY)

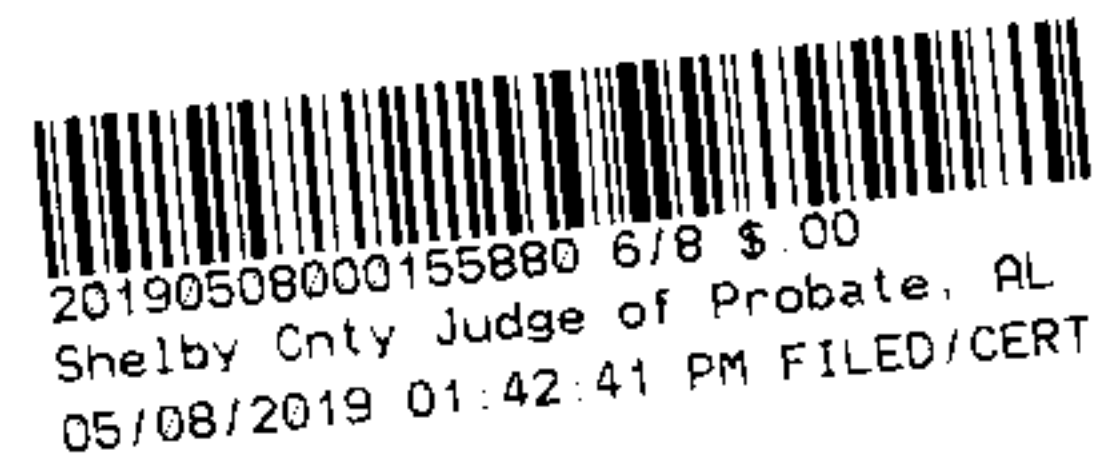
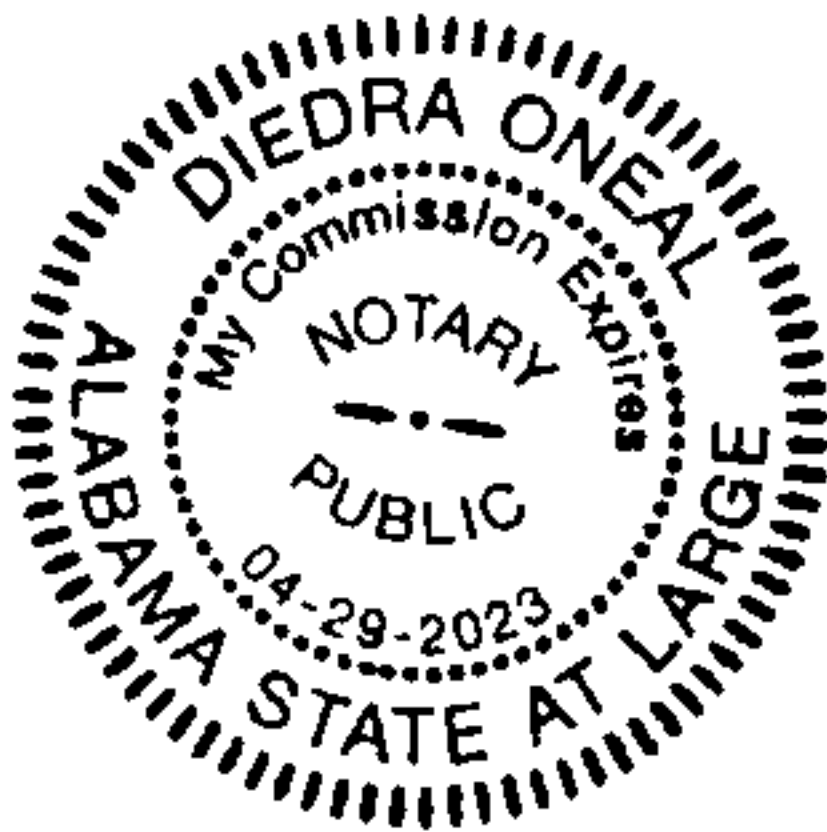
I, the undersigned, a notary public in and for said county in said state, hereby certify that Howard O'Neal whose name as member of Evangel School Foundation, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such member and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 7th day of May, 2019.

Diedra O'Neal
Notary Public

[NOTARIAL SEAL]

My commission expires: 4/29/23



EVANGEL PRESBYTERIAN CHURCH,
an Alabama non-profit corporation

By: [Signature]
Print Name: John Pitts
Title: Trustee

STATE OF ALABAMA

Jefferson COUNTY

I, the undersigned, a notary public in and for said county in said state, hereby certify that John Pitts, whose name as Trustee of Evangel Presbyterian Church, an Alabama non-profit corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such Trustee and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 8th day of May, 2019.

[Signature]
Notary Public

[NOTARIAL SEAL]

My commission expires: 7/8/2021


20190508000155880 7/8 \$.00
Shelby Cnty Judge of Probate. AL
05/08/2019 01:42 41 PM FILED/CERT

EXHIBIT A

Legal Description of Property

Parcel I:

Begin at the Northeast corner of the Northeast 1/4 of Section 35, Township 21 South, Range 3 West, thence run S 03° 29' 03" W for a distance of 310.00 feet; thence run N 90° 00' 00" W for a distance of 1,609.53 feet; thence run N 12° 29' 42" E for a distance of 537.29 feet; thence run S 81° 54' 09" E for a distance of 1,527.36 feet to a point of beginning. Situated in Shelby County, Alabama.

Less and except any portion of subject property lying within a road right of way.

Parcel II:

Commence at the Northeast corner of the Northeast 1/4 of Section 35, Township 21 South, Range 3 West, thence run South 03° 29' 03" West for a distance of 310.00 feet; thence run South 90° 00' 00" West for a distance of 2,026.78 feet to a point of beginning; thence run South 16° 36' 34" West for a distance of 52.18 feet; thence run North 90° 00' 00" East for a distance of 358.97 feet to a point on a curve having a radius of 200.00 feet and a chord direction of North 83° 43' 45" East; thence run along said curve for a distance of 43.69 feet; thence run North 12° 29' 42" East for a distance of 52.18 feet to a point on a curve having a radius of 150.00 feet and a chord direction of North 79° 04' 19" East; thence run along said curve for a distance of 56.87 feet; thence run South 90° 00' 00" West for a distance of 416.25 feet to a point of beginning. Being situated in Shelby County, Alabama.

Less and except any portion of subject property lying within a road right of way.


20190508000155880 8/8 \$.00
Shelby Cnty Judge of Probate, AL
05/08/2019 01:42:41 PM FILED/CERT