

**BILL NO. 1609**  
**INTRODUCED BY: Alderman Newman**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE FOR THE ACCEPTANCE OF A COMMERCIAL SALE CONTRACT WITH GRACE CHURCH OF KIRKWOOD FOR CERTAIN REAL PROPERTY.**

**WHEREAS**, on February 21, 2012, the City of Warson Woods (“City”) entered into a purchase agreement with St. Matthew’s Protestant Episcopal Church to buy a certain parcel known and numbered as 653 Flanders Drive which agreement included a right of first refusal (“Right of First Refusal”) on the remainder of the St. Matthew’s parcel consisting of 1.98± acres, known and numbered as 1551 Bennett Avenue (“1551 Bennett”); and,

**WHEREAS**, on or about December 30, 2014, the City received notice from Grace Church of Kirkwood, as successor by merger to St. Matthew’s Protestant Episcopal Church, that it had received an offer in the form of a letter of intent from a third party to purchase 1551 Bennett, which offer Grace Church found to be acceptable; and,

**WHEREAS**, the Board of Aldermen (the “Board”) on February 16, 2015, after reviewing preliminary studies of 1551 Bennett, other information, and hearing from the public, voted to exercise the Right of First Refusal and proceed to enter into a purchase agreement; and,

**WHEREAS**, upon the City’s formal notice of exercise of the Right of First Refusal, the City and Grace Church began negotiating a mutually acceptable sale and purchase agreement, and on March 26, 2015, at a duly noticed meeting the Board authorized the Mayor to submit a counter-offer to Grace Church which counter-offer was accepted by Grace Church on March 28, 2015 (the “Agreement” attached as Exhibit 1 hereto and incorporated herein by reference); and,

**WHEREAS**, now having in place a mutually acceptable agreement with Grace Church, the Board now seeks to formally approve, accept, and ratify the Agreement by ordinance;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF WARSON WOODS, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:**

**SECTION 1.** The Board of Aldermen hereby authorizes, accepts, approves and ratifies the Commercial Sale Contract between the City of Warson Woods and Rector, Church Wardens and Vestrymen of Grace Church of Kirkwood, a Missouri benevolent corporation, as successor by merger to St. Matthew’s Protestant Episcopal Church, a Missouri benevolent corporation, attached hereto as Exhibit 1 and incorporated herein by this reference (“Agreement”), for certain real property known and numbered as 1551 Bennett Avenue as more fully described in the Agreement.

**SECTION 2.** The Board of Aldermen hereby further authorizes the Mayor, the City Clerk, and the City Attorney to each take such other and further actions as any of such officials may deem necessary or appropriate, including, but not limited to, engaging in all necessary due diligence (including title searches, surveying, and environmental assessments), depositing earnest money in escrow in accordance with the terms of the Agreement, accepting deeds and taking such other

actions to obtain for the City the property interests described herein and in the Agreement and to effectuate the intent of this Ordinance and the Agreement.

**SECTION 3.** This Ordinance shall be in full force and effect from and after its passage by the Board of Aldermen and approval by the Mayor.

THIS BILL PASSED AFTER HAVING BEEN READ IN FULL TWO TIMES PRIOR TO PASSAGE BY THE BOARD OF ALDERMEN OF THE CITY OF WARSON WOODS, MISSOURI THIS \_\_\_\_\_ DAY OF APRIL, 2015.

\_\_\_\_\_  
Laurance M. Howe, Mayor

ATTEST:

\_\_\_\_\_  
Kathy Mahany, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Paul Rost, City Attorney

**Exhibit 1**  
**Commercial Sale Contract**

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This is a legally binding contract, it is recommended that you seek legal advice to make certain you fully understand your rights and obligations.

COMMERCIAL SALE CONTRACT  
For IMPROVED PROPERTY

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Seller's Initial & Date

EA

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File Date: \_\_\_\_\_ (not acceptance date)

Buyer's Initial & Date

A

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COMMERCIAL SALE CONTRACT  
IMPROVED PROPERTY

1. PARTIES AND PROPERTY.

City of Warson Woods, a city of the fourth class and a Missouri municipal corporation.	("Buyer") agrees to purchase from
The Rector, Church Wardens and Vestrymen of Grace Church of Kirkwood, a Missouri benevolent corporation and Successor to St. Matthew's Protestant Episcopal Church of Warson Woods	("Seller") and Seller agrees to sell

to buy the property ("Property") located in the:

County of:	St. Louis
City of (if any):	Warson Woods
Address of:	1551 Bennett Ave.
Exact legal description in Seller's vesting deeds to govern.	

2. INCLUSIONS AND EXCLUSIONS.

The Property includes all right, title and interest of Seller in any and all existing improvements, buildings, structures, fixtures, equipment, apparatus, machinery, appliances, heating and air conditioning systems, heat, gas, water, light, power, laundry, garbage disposal, fire prevention, elevator, antenna or pool equipment, air rights, water rights, mineral rights, crops, trees, shrubbery, rents, profits, royalties, tolls, earnings, leases, tenements, inherited rights, appurtenances, security deposits, easements and rights-of-way as well as all assignable agreements, licenses and permits pertaining to the Property, whether now or hereafter placed or installed on the Property or used in connection with the operation of the Property.

The following additional items are included in the sale:
N/A
The following items are excluded from the sale:
Copper spire and carved stone letters "St. Matthew Episcopal Church 1959". These excluded items shall be removed from the Property by Seller prior to Closing.

3. PURCHASE PRICE. Buyer shall pay for the Property as follows:

<b>A. EARNEST MONEY</b>	
Ten Thousand and 00/100	Dollars \$10,000.00
<b>B. ADDITIONAL EARNEST MONEY (if any)</b>	
Ten Thousand and 00/100	Dollars \$10,000.00
Additional Earnest Money (if any) shall be payable upon waiver or expiration of Buyer's Due Diligence Period or as further specified herein:	
<b>C. CASH DUE AT CLOSING</b>	
Nine Hundred Fifteen Thousand and 00/100	Dollars \$915,000.00
Amount to be paid at Closing ("Cash Due at Closing") (subject to adjustments described herein) in United States funds payable and delivered to Escrow Agent in the form of cashier's check, bank check or wire transfer by Closing:	
<b>D. PURCHASE PRICE</b>	
Nine Hundred Thirty Five Thousand and 00/100	Dollars \$935,000.00
Total of A, B and C is D the Purchase Price:	

Seller's Initial & Date  
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Buyer's Initial & Date  
A

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3. PURCHASE PRICE (Continued)

Earnest money ("Earnest Money") in the amount set forth herein shall be tendered by Buyer with this Contract in the form of good, United States funds, payable and delivered to the herein identified Escrow Agent:

("Escrow Agent")

Security Title Company

(NOTE: This Commercial Sale Contract assumes that "Escrow Agent" is a title insurance company or agency.)

If any Earnest Money check tendered by Buyer is returned for insufficient funds, or otherwise, Seller may promptly terminate this Contract by written notice to Buyer. Escrow Agent shall deposit the Earnest Money promptly upon acceptance of this Contract in an  non-interest bearing or  interest bearing (select one) account (if interest bearing the account will be insured by the Federal Deposit Insurance Corporation). Interest (if any) shall accrue to the benefit of Buyer.

4. CLOSING AND CONVEYANCE OF TITLE.

The closing of this sale ("Closing") shall take place 30 CALENDAR DAYS after waiver or expiration of Buyer's Due Diligence Period, no later than 5:00 p.m. or on any other date and time that both parties agree to in writing, at the office of Escrow Agent.

(NOTE: Item 8. BUYERS DUE DILIGENCE PERIOD, Paragraph: (g) Extension of Closing Date.)

5. SELLER'S OBLIGATIONS.

(c) Seller shall promptly execute and deliver when requested the following documents or items to Escrow Agent, or Buyer or Buyer's Representatives at the Closing for recording or delivery to Buyer prior to Closing, as appropriate: (1) Special Warranty Deed to the Property constituting realty in recordable form; (2) A General Warranty Bill of Sale to those items of the Property constituting personally, if any, in a form reasonably acceptable to Buyer; (3) Any keys, security cards or garage door openers in Seller's possession to any part of the Property; (4) Provide evidence of Seller's good standing, authority, related customary documents and instruments as may be reasonably required by the Escrow Agent; (5) A Certification of Non-foreign Status under penalty of perjury, including Seller's United States Taxpayer Identification Number, stating that Seller is not a foreign person; (6) Affidavits, as to rights of parties in possession, mechanics' liens and claims, as may be reasonably required by the Escrow Agent in order to issue Buyer's Owner's Policy of Title Insurance with Mechanic's Lien coverage; (7) The Closing Statement; (8) Any other documents reasonably necessary to consummate the transaction contemplated by this Contract; and (9) Deliver possession of the Property as of Closing subject to any herein permitted tenancy.

Seller's Initial & Date

EA

Page 3 of 12 Pages

File Date: \_\_\_\_\_ (not acceptance date)

Buyer's Initial & Date

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5. SELLER'S OBLIGATIONS. (Continued)

(d) Buyer shall not be obligated to close hereunder unless: (1) Seller delivers, pays and executes all monies, items and other instruments required to be delivered, paid and/or executed by Seller herein no later than Closing; (2) Seller's Covenants, Representations and Warranties (defined below) are true and correct in all material respects as of Closing; (3) If improvements or repairs have been performed within six (6) months prior to Closing, Seller shall, furnish reasonable security against mechanic's liens or evidence of payment of bills satisfactory to Escrow Agent to issue mechanics lien coverage to Buyer; (4) Buyer can obtain from Escrow Agent at Closing an Owner's Policy of Title Insurance insuring fee simple title to and ownership of the Property in Buyer in the amount of the Purchase Price on applicable ALTA Form with exceptions on Schedule B thereof only for the Permitted Exceptions (defined herein) and with the standard exceptions as to rights of parties in possession (except tenants under leases) and mechanics liens deleted ("Buyer's Owners Policy of Title Insurance"); and (5) Seller delivers possession of the Property as of Closing.

6. BUYER'S OBLIGATIONS.

(a) Buyer shall execute and/or deliver the following to Escrow Agent at the Closing for recording or delivery to Seller as appropriate: (1) Cash Due at Closing; (2) Buyer's share of the Closing costs, pro-rations and any other expenses provided to be paid by Buyer by this Contract; (3) The Closing Statement; (5) A Real Property Certificate of Value, as may be required in the city or county in which the Property is located; and (6) Any other documents reasonably necessary to consummate the transaction contemplated by this Contract.

(b) Seller shall not be obligated to close hereunder unless: (1) Buyer delivers, pays and executes all monies, items, and any other instruments required to be delivered, paid and/or executed by Buyer herein no later than Closing; and (2) Buyer's Covenants, Representations and Warranties (defined below) are true and correct as of Closing.

7. CLOSING COSTS AND PRORATIONS.

Closing costs and pro-rations are agreed to be paid by the parties as follows:

(a) Buyer and Seller shall prorate and adjust between them on the basis of the actual number of days in the year, with Seller to pay expenses and to receive income until midnight the day of Closing, the following: (1) general taxes (based on assessment and rate for current year, if both are available; otherwise based on previous year; (2) subdivision assessments (if any); (3) utility charges which are capable of becoming a lien against the Property.

Note: Who pays for "Title Insurance Premium" must be identified by the appropriate selection per Item 23 herein.

(b) Seller shall pay for (where applicable): (1) Title company charges (including closing, releasing and escrow fees) and other charges customarily paid by a seller of real estate in the county where the Property is located; (4) municipal or conservation district inspection fee; (5) special taxes and assessments levied before Closing; and (6) Broker's commission or fee as specifically agreed to herein or by prior written agreement.

(OR)

(c) Buyer shall pay for (where applicable): (1) title insurance premium for the Owner's Policy of Title Insurance and title company charges (including closing, recording and escrow fees) and other charges customarily paid by a buyer of real estate in the county where Property is located; (2) regardless who pays for the Owner's Policy of Title Insurance, Buyer shall pay for any title policy endorsements thereto including but not limited to a Lender's Policy of Title Insurance (if any); (3) hazard insurance premium on the Property from and after Closing; (4) flood insurance premium on the Property from and after Closing, if any; (5) any fees for appraisals or surveys ordered by or for Buyer; (6) any fees for building or environmental studies ordered by or for Buyer; (7) special taxes and assessments levied after Closing; (8) municipal occupancy permit, and (9) Broker's commission or fee as specifically agreed to herein or by prior written agreement.

All of the above Closing costs and pro-rations shall be itemized on a closing statement prepared by Escrow Agent and executed by Buyer and Seller at or prior to Closing ("Closing Statement").

Seller's Initial & Date

EA

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Buyer's Initial & Date

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8. BUYER'S DUE DILIGENCE PERIOD.

This Contract and Buyer's obligations hereunder are specifically made contingent upon Buyer's satisfaction of the following items on or before the date indicated:

(a) Title and Survey Inspection. Approval by Buyer by 5:00 p.m. 45 calendar days after the Effective Date. Buyer, at its option and expense, may obtain a survey of the Property ("Survey") and a title examination of the Property ("Title Report"). If Buyer obtains a Survey and/or Title Report, then within the time period stated herein, Buyer may notify Seller in writing of any matters shown by the Survey and/or Title Report that are unacceptable to Buyer ("Buyer's Title Objections"). If Buyer notifies Seller of any Buyer's Title Objections, Buyer must also deliver a copy of the Survey and/or Title Report to Seller with such objections. Failure by Buyer to notify Seller of Buyer's Title Objections within the stated time period will constitute a waiver by Buyer of any objections to the Survey or Title Report and to matters which could have been shown by a Survey or Title Report. Seller shall be responsible for removing any exceptions to title which arise between the Effective Date and Closing unless created by or with the written consent of Buyer. Any item shown on the Title Report for which Buyer does not deliver Buyer's Title Objections within the stated time period or for which Buyer agrees to waive Buyer's Title Objections will be deemed approved by Buyer and are called "Permitted Exceptions".

(b) Property and Records Inspection. Approval of the physical condition and records inspection by Buyer by 5:00 p.m. on 90 calendar days after the Effective Date. During the stated time period, Buyer and Buyer's representatives may, at Buyer's option, expense and sole liability conduct such examinations, tests, inspections, structural and systems reports, environmental studies and other studies of the Property as Buyer shall deem desirable, and obtain copies of such books, computer records, records, reports, leases, Estoppel Certificates as executed by tenant(s), agreements, contracts, rent rolls, financial records, permits, licenses, approvals and such other records necessary and appropriate for the use and occupancy of the Property or reflecting the income or expenses of the Property ("Buyer's Property and Records Inspection"). Seller agrees to permit Buyer or its representatives to enter the Property for such purposes during reasonable business hours and upon reasonable notice to Seller and to allow Buyer access to such books, computer records, records, reports, leases, agreements, contracts, rent rolls, financial records, permits, licenses, approvals and other records, provided that such investigations do not unreasonably disrupt the operation of Seller's business and do not cause any damage to the Property and that any such damage is immediately repaired by Buyer. Buyer shall be liable to Seller for the acts of any person or persons, employee(s), representative, contractor, or consultant that Buyer may engage, and Buyer shall maintain adequate insurance or cause each to maintain adequate insurance at all times while performing any property inspections. Buyer agrees that the results of any inspection or test and the reports or conclusions of Buyer and Buyer's representatives, shall be kept confidential (except as required by law) by Buyer and Buyer's representatives; provided that Buyer may disclose such items to Buyer's attorney, accountants, lenders and other parties reasonably necessary to enable Buyer to purchase the Property. During the stated time period, Buyer may notify Seller in writing of any matters pertaining to Buyer's Property and Records Inspection Contingency that are unacceptable to Buyer ("Buyer's Property and Records Objections"). Failure by Buyer to notify Seller of Buyer's Property and Records Objections within the time period stated herein shall constitute a waiver by Buyer of any objections thereto or any right not to close by reason thereof.

Empty rectangular box for signature or stamp.

Seller's Initial & Date

EA

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File Date: \_\_\_\_\_ (not acceptance date)

Buyer's Initial & Date

[Signature]

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8. BUYER'S DUE DILIGENCE PERIOD (Continued).

(d) Satisfaction/Waiver of Contingencies. Each of the above contingencies is for the sole and subjective benefit of Buyer. Subject to subparagraphs (e) and (f) below, if Buyer notifies, in writing, Seller that it has not satisfied or waived each of the above contingencies by 5:00 p.m. on or before the date specified for each, this Contract shall, at the close of business on the applicable date, terminate without further action of the parties, and in such event, all Earnest Money and interest thereon, shall be promptly returned to Buyer. If Buyer fails to notify Seller in writing within the applicable stated period that any contingency has not been satisfied or waived, such contingency shall be deemed satisfied.

(e) Seller's Time to Respond. If Buyer does timely notify Seller (within the stated time periods) in writing of Buyer's Title Objections and/or Buyer's Property and Records Objections, Seller has five (5) business days from receipt of said notice to either: (a) agree in writing to correct Buyer's Title Objections, and/or Buyer's Property and Records Objections, at Seller's expense, on or before Closing; or (b) refuse to correct some or all of Buyer's Title Objections, and/or Buyer's Property and Records Objections. Failure by Seller to respond in writing within the stated time period shall constitute a refusal to correct all objections of Buyer.

(f) Buyer's Time to Respond. In the event Seller refuses to correct any or all of permitted objections of Buyer, Buyer has ten (10) calendar days from the expiration date of the applicable contingency to either: (i) waive Buyer's objections and proceed to Closing hereunder; or (ii) terminate this Contract, whereupon all Earnest Money and interest thereon shall be promptly returned to Buyer.

(g) Extension of Closing Date. If Buyer's or Seller's time to respond extends beyond the date set for Closing, the Closing shall be automatically extended to the date by which the response must be received by the other party.

(h) Buyer's Due Diligence Period. The period from the Effective Date until the end of the longest contingency period described above is referred to in this Contract as the "Buyer's Due Diligence Period".

9. SELLER'S COVENANTS, REPRESENTATIONS AND WARRANTIES.

Seller covenants, represents and warrants to Buyer as follows ("Seller's Covenants, Representations and Warranties") which covenants, representations and warranties shall be considered made as of the Effective Date and again as of Closing except to the extent that Seller obtains knowledge or notice after the date Seller executes this Contract of any fact or facts which would make any covenant, representation or warranty untrue or misleading in any material respect and discloses such fact or facts to Buyer in writing prior to Closing, in which case Buyer shall not be obligated to close hereunder:

- (a) From the Effective Date until Closing, Seller shall not execute any leases or contracts affecting the Property which shall be binding on the Property or Buyer after Closing without the prior written consent of Buyer;
- (b) From the Effective Date until Closing, Seller shall maintain the Property in the same condition existing as of the Effective Date; ordinary wear and tear and casualty excepted and shall be broom clean with all personal property removed upon closing. Seller shall pay on a timely basis all bills and discharge all of Seller's obligations arising from ownership, operation, management, repair and maintenance of the Property as payments become due;
- (c) Seller is the owner in fee simple of the Property;
- (d) Seller has the authority and capacity to enter into and perform this Contract, and the person who executes this Contract on behalf of Seller represents and warrants such person has been authorized to do so;
- (e) Seller is not bankrupt or insolvent;
- (g) There shall be no tenancies or occupancies affecting the Property as of Closing;
- (h) As of Closing there shall be no service, supply, maintenance or management contracts or agreements affecting the Property which will be binding on the Property or Buyer after Closing except as disclosed by Seller to Buyer in writing;
- (i) There are, and as of Closing there shall be, no recorded or unrecorded contracts and/or options to which Seller is a party pertaining to or affecting title to or the sale of the Property, or any part thereof;
- (j) To the best of Seller's knowledge without independent inquiry or investigation, and except as disclosed to Buyer in writing, there are and have been no hazardous or toxic substances or materials, including without limitation, oil, PCB's, urea formaldehyde foam insulation, asbestos or underground storage tanks of any kind, as those terms are used in any applicable federal, state and/or local environmental laws, which regulate such substances or materials or tanks, brought or placed on the Property; and
- (k) Seller shall deliver possession of the property as of Closing.

Seller's Covenants, Representations and Warranties and Seller's liability for breach thereof shall not survive Closing and shall be merged into the deed given at Closing.

Seller's Initial & Date

EA

Page 6 of 12 Pages

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Buyer's Initial & Date

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10. BUYER'S COVENANTS, REPRESENTATIONS AND WARRANTIES.

Buyer covenants, represents and warrants to Seller as follows ("Buyer's Covenants, Representations and Warranties") which covenants, representations and warranties shall be considered made as of the Effective Date and again as of Closing except to the extent that Buyer obtains knowledge or notice after the date Buyer executes this Contract of any fact or facts which would make any covenant, representation or warranty untrue or misleading in any material respect and discloses such fact or facts to Seller in writing prior to Closing in which case Seller shall not be obligated to close hereunder:

(a) Except as specifically set forth in Seller's Covenants, Representations and Warranties, Buyer is relying on its own investigation and inspection of the Property, Title Report, Survey, Buyer's Property and Records Inspection or any other permitted contingencies, all to the extent conducted by Buyer in Buyer's judgment, and Buyer will take title to the Property in its AS IS, WHERE IS condition based solely on such investigation and inspection. Buyer acknowledges and agrees that Seller and its representative(s) have not made any warranty or representation, express or implied, written or oral concerning the Property except as set forth in Seller's Covenants, Representations and Warranties; (b) Buyer has the authority and capacity to enter into and perform this Contract, and the person who executes this Contract on behalf of Buyer represents and warrants that such person has been authorized to do so; (c) Buyer is not bankrupt or insolvent; and (d) Buyer shall neither encumber nor cause any liens to be created against the Property in any way, nor record this Contract or a memorandum hereof, prior to Closing.

Buyer's Covenants, Representations and Warranties and Buyer's liability for breach thereof shall survive Closing and shall not be merged into any deed or other document given at Closing.

11. REMEDIES UPON DEFAULT.

If either party defaults in the performance of any obligation of this Contract, the party claiming a default shall notify the other party in writing of the nature of the default. In the event of litigation (including mediation/arbitration, if applicable) between the parties, the prevailing party shall recover, in addition to damages or equitable relief, the cost of litigation including reasonable attorney's fees. This provision shall survive Closing.

(a) If Buyer defaults, Seller may either accept the Earnest Money and interest thereon as liquidated damages and release Buyer from the Contract (in lieu of making any claim in court), or Seller may pursue any remedy at law or in equity.

(b) If Seller defaults, Buyer may either release Seller from liability upon Seller's release of the Earnest Money (including interest) and reimbursement to Buyer for all direct costs and expenses, as specified in Buyer's notice of default (in lieu of making any claim in court), or Buyer may pursue any remedy at law or in equity, including enforcement of sale.

12. LOSS; CONDEMNATION. Risk of loss to improvements on the Property shall be borne by Seller until Closing. Seller agrees to maintain Seller's current fire and extended coverage insurance (if any) on the Property until Closing. If before Closing all or any part of the Property is destroyed or materially damaged, then Seller shall promptly provide written Notice to Buyer of any such event. In light of Buyer's stated intention to demolish the improvements on the Property after Closing, no such event shall entitle Buyer to rescind or otherwise terminate the Contract and Buyer shall remain affirmatively obligated to proceed with the transaction. In the event the cost of clearing the damaged improvements from the Property after Closing shall exceed the projected demolition costs which would otherwise be borne by Buyer, Buyer shall receive a credit at Closing against the Purchase Price otherwise payable by Buyer at Closing in an amount equal to the amount of such excess (but not in any event in an amount to exceed the amount of insurance proceeds actually received by Seller). Seller shall have no obligation to repair or restore the improvements on the Property and Seller shall be entitled to retain all such insurance proceeds other than the credit, if any, to be paid to Buyer at Closing pursuant to the preceding sentence. If, before Closing, all or any part of the Property is taken by eminent domain, or if a condemnation proceeding has been filed or is threatened against the Property or any part thereof, then Seller shall promptly provide written Notice to Buyer of any such event, together with copies of any written communications to and from the condemning authority. Buyer may then either: (1) proceed with the transaction and be entitled to condemnation payments and awards, if any, payable to Seller relating to any condemnation loss caused to the Property as a result of a diminution of the aggregate size of the real estate constituting part of the Property (exclusive of any diminution in value pertaining to the loss of any improvements thereon, all of which shall be payable to Seller), in which case the amount of any such payments theretofore made to Seller in respect of such real estate loss (but not in respect of loss of improvements) shall be a credit against the Purchase Price otherwise payable by Buyer at Closing, and Seller shall assign to Buyer all such remaining claims and rights to or arising out of any such taking, including the right to conduct any litigation with respect thereto; or (2) rescind the Contract, and thereby release all parties from further liability hereunder, in which case the Earnest Money shall be returned to Buyer. Buyer shall give written Notice of Buyer's election to Seller within 10 days after Buyer has received written Notice of such condemnation proceeding and Closing will be extended accordingly, if required *file*, if such information is not received by Buyer more than 10 days prior to the date scheduled for Closing. Seller shall not settle any claim regarding a taking of any part of the Property by eminent domain or condemnation prior to the Closing (or earlier termination of this Contract) without the prior written approval of Buyer, which approval shall not be unreasonably withheld, conditioned or delayed. Failure by Buyer to so notify Seller shall constitute an election to rescind this Contract. A rescission hereunder does not constitute a default by Seller. The provisions of this Section shall survive Closing.

Seller's Initial & Date

EA

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Buyer's Initial & Date

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13. NOTICES.

Any and all notices required or permitted hereunder shall be in writing and shall be deemed given upon receipt and shall be delivered by: (i) personal delivery; (ii) United States registered or certified mail, return receipt requested; or (iii) overnight commercial package courier or local delivery service, or (iv) facsimile transmission, in all events prepaid and addressed:

In the case of Seller to (Attention):	Ms. Elizabeth Allen, Senior Warden
Company:	Grace Episcopal Church
Mailing Address:	514 East Argonne Drive
Email Address:	Kirkwood, Missouri 63122 lizcallen@gmail.com
Fax Number:	

With copy to (Attention):	Mr. Harold R. Burroughs
Company Name:	Bryan Cave
Mailing Address:	One Metropolitan Square 211 North Broadway, Ste. 3600 St. Louis, Missouri 63102-2750
Email Address:	hburroughs@bryancave.com
Fax Number:	314-259-2020

In the case of Buyer to (Attention):	Mayor Laurance M. Howe
Company Name:	City of Warson Woods
Mailing Address:	10015 Manchester Road Warson Woods, Missouri 63122
Email Address:	lhowe@warsonwoods.com
Fax Number:	314-965-3102

With copy to (Attention):	Mr. Paul V. Rost
Company Name:	Cunningham, Vogel & Rost PC
Mailing Address:	333 S. Kirkwood Road St. Louis, Missouri 63122
Email Address:	paul@municipalfirm.com
Fax Number:	314-446-0801

Each party shall have the right to change its foregoing address by written notice to the other party.

14. ASSIGNABILITY OF CONTRACT.

Buyer shall have the right to assign its rights under this Contract provided that Seller consents to such assignment, which consent shall not be unreasonably withheld or delayed. Upon Buyer's assignment of this Contract, such assignee shall be deemed substituted, for the named Buyer, and such assignee shall be deemed to have assumed Buyer's obligations hereunder, without any release of Buyer unless Seller releases Buyer in writing.

15. TIME IS OF THE ESSENCE.

Time is of the essence in the performance of the obligations of the parties under this Contract.

Seller's Initial & Date

EA

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File Date: \_\_\_\_\_ (not acceptance date)

Buyer's Initial & Date



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16. BINDING EFFECT.

This Contract shall be binding on and for the benefit of the parties and their respective heirs, personal representatives, executors, administrators, successors and assigns.

17. GOVERNING LAW.

This Contract shall be considered a Contract for the sale of real property and shall be construed in accordance with the laws of the State where the property is located

18. ENTIRE AGREEMENT.

This Contract and any riders, addenda and exhibits attached hereto constitute the entire agreement between the parties hereto and there are no other understandings, written or oral, relating to the subject matter hereof. This Contract may not be changed, modified or amended, in whole or in part, except in writing signed by both Buyer and Seller.

19. CONSTRUCTION.

Words and phrases shall be construed as in the singular or plural number, and as masculine, feminine or neuter in gender, according to the context.

20. SATURDAYS, SUNDAYS AND HOLIDAYS.

If any date for the occurrence of an event or act under this Contract falls on a Saturday, Sunday or legal holiday in the State where the property is located, then the time for the occurrence of such event or act shall be extended to the next succeeding business day.

21. EFFECTIVE DATE.

The "Effective Date" of this Contract is the date of the last of Buyer or Seller to execute this Contract as an accepted Contract. Facsimile transmission of the Contract and Riders shall constitute one acceptable method to provide notice of acceptance ("Effective Date") between Buyer and Seller, and each agree to deliver executed originals of Contracts and Riders promptly thereafter.

22. LIKE-KIND EXCHANGE. A qualified like-kind exchange requires adherence to specific rules and regulations as set forth by the Internal Revenue Service. Seller and Buyer are advised to obtain appropriate legal and tax advice to implement any such exchange.

CHECK APPLICABLE BOX

Buyer. Seller acknowledges that Buyer is contracting to acquire the Property in contemplation of completing a like-kind exchange of certain other property previously owned by Buyer in a manner which will qualify as a like-kind exchange pursuant to Section 1031 of the Internal Revenue Code. In this regard, Seller agrees to cooperate reasonably with Buyer so as to structure the transaction in a manner which will qualify as a like-kind exchange under Section 1031; provided, however, that (i) Seller shall in no event be required to incur any costs or expenses with respect to such cooperation; (ii) Buyer shall fully indemnify and hold harmless Seller from all losses, costs, expenses and liabilities incurred as a result of such cooperation; (iii) Seller makes no warranty or representation whatsoever with respect to the qualification of the transaction for like-kind exchange treatment under Section 1031; and (iv) Seller shall have no responsibility, obligation or liability with respect to the tax consequences of the transaction to Buyer.

Seller. Seller has advised Buyer of Seller's intention to seek to effect a non-simultaneous like-kind exchange pursuant to Section 1031 of the Internal Revenue Code in connection with the conveyance of the Property. In this regard, prior to the transfer of the Property to Buyer, Seller intends to convey the Property to a neutral third party (an "Exchange Facilitator") subject to the terms of this Contract. The Exchange Facilitator will assume and fulfill the contractual obligations of Seller contained herein and the Property shall be transferred by the Exchange Facilitator to Buyer pursuant to the terms of this Contract at the time and in the manner set forth herein. Buyer agrees to cooperate reasonably with Seller with respect to such exchange, provided, however (i) Buyer shall in no event be required to incur any costs or expenses in this transaction as a result of or connected with the structuring of this transaction as a like-kind exchange under Section 1031 of the Internal Revenue Code; (ii) Seller shall fully indemnify and hold Buyer harmless from all loss, cost, expenses and liabilities incurred as a result of Buyer's cooperation in structuring this transaction as a like-kind exchange; (iii) Buyer makes no warranty or representation whatsoever with respect to the qualification of the transaction for like-kind exchange treatment under Section 1031; and (iv) Buyer shall have no responsibility, obligation or liability with respect to the tax consequences of the transaction to Seller.

Seller's Initial & Date

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Buyer's Initial & Date

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23. TITLE INSURANCE (Per Item 7, Closing Costs & Prorations)

Buyer or  Seller (select one) agrees to pay for the title insurance premium for the Owner's Policy for Title Insurance. Regardless who pays for the Owner's Policy of Title Insurance, Buyer shall pay for any title policy endorsements thereto including but not limited to a Lender's Policy of Title Insurance (if any).

24. RIDERS or SPECIAL TERMS & CONDITIONS

The following riders or supplements are attached hereto and incorporated herein as part of this Contract:

Estoppel Rider,  Mediation/Arbitration

1) Buyer to provide Seller 10 days prior written notice of the establishment of a closing date.

2) Diocesan Approval : This contract is contingent upon receipt of approval from the Diocese (written approval of the Bishop with the advice and consent of Standing Committee) for the sale of the Property. This contingency will be deemed satisfied or waived thirty (30) days after the Effective Date unless Seller notifies Buyer in writing that it has not satisfied this contingency.

3) Option to Terminate after Due Diligence:  
 A. Seller does hereby grant to Buyer a ninety (90) day right ("Termination Right") from the Effective Date, for Buyer to conduct due diligence to determine the suitability of the Property for Buyer's intended use, during which Buyer may do any or all of the following :  
 i) Conduct, at Buyer's sole expense whatever due diligence, inspections, examinations, surveys and testing, if any, Buyer deems appropriate to evaluate the suitability of the Property. This may include but is not limited to, engineering, environmental concerns, availability of utilities, and soil studies, to the sole and complete satisfaction of the Buyer (herein collectively referred to as "Buyer's Due Diligence Contingency") as evidenced by the passage of an ordinance or resolution by the Board of Aldermen of Buyer (the City of Warson Woods, Missouri) approving the results of Buyer's due diligence, authorizing Buyer to close the Buyer's Due Diligence Period, approving any financing necessary for the performance of Buyer's purchase obligation hereunder, and establishing the Closing Date ("Board Approval"). Board Approval shall be deemed to be part of Buyer's Due Diligence Contingency;  
 ii) Seek to amend this Agreement to address any concerns with the Property; or  
 iii) Terminate this Agreement without penalty.  
 B. If Buyer decides to exercise Buyer's right to terminate this Agreement, Buyer must give notice of the same to Seller prior to the expiration of the Termination Right. If Buyer fails to give such notice timely, the Termination Right shall automatically expire and shall no longer be a part of this Agreement, and Buyer shall be deemed to have accepted the Property "as-is." Buyer may also waive in writing the Termination Right and such waiver will serve as Buyer's irrevocable notice to proceed with the purchase herein, with Closing to take place within thirty (30) days of delivery of said waiver to Seller.  
 C. Buyer will deposit an additional \$10,000 in Earnest Money with Escrow Agent within three (3) business days of Buyer's written waiver or automatic expiration of the Termination Right.  
 D. This section supplements the provisions of this Agreement regarding Due Diligence and termination; to the extent in conflict, these Special Terms and Conditions shall supersede the standard provisions of this Agreement.

4) Buyer and Seller acknowledge that NAI DESCO (Allen Kippel) is the agent of the Seller and that Buyer is represented by the City Attorney. ~~Buyer and Seller acknowledge that the December 18, 2014 letter of intent between St. Matthew Protestant Episcopal Church of Warson Woods and Charles W. Fewcott, Jr. ("Fewcott LOI"), obligated Seller to pay a total commission of 6%, which was to be paid and split evenly between Seller's and Buyer's Agents at Closing. In satisfaction of the commissions and compensation due, and as provided in item 7 of the Fewcott LOI, Seller's Limited Agent, NAI DESCO (Allen Kippel) shall receive a commission of 4%, per the Listing Agreement between NAI DESCO and Seller, and, in lieu of a commission or compensation to Buyer's City Attorney, Buyer shall receive a 2% credit at Closing representing the balance of the commission due in accordance with the terms of the Fewcott LOI.~~

Upon contract execution, Buyer hereby permanently releases Seller from the "Right of First Refusal" as contained in the Purchase Agreement dated February 21, 2012 between St. Matthew Protestant Episcopal Church and the City of Warson Woods for the subject property, 1551 Bennett Ave., Warson Woods, MO.

The foregoing release of Buyer's rights in respect of the Right of First Refusal shall survive termination of this Contract for any reason whatsoever and Buyer hereby agrees to execute and deliver any notice, confirmation or other evidence of such release upon the request of Seller.

The foregoing release shall no longer be effective in the event Seller fails to obtain the approval from the Episcopal Church in the Diocese of Missouri as contemplated by Section 1 of the Rider to this Contract or the transactions contemplated by this Contract fail to close solely as a result of a default by the Seller hereunder.

In exchange for and as a condition precedent to the foregoing release of Buyer's rights in respect to the Right of First Refusal, Seller shall pay Buyer \$15,000.

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Seller's Initial & Date

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**25. AGENCY DISCLOSURE AND BROKERAGE COMMISSION.**

Buyer and Seller by signature to this Commercial Sale Contract acknowledge and consent to the representations and payment of commission(s) or fee(s) disclosed herein.

Seller shall pay Seller's Broker a commission or fee per separate written agreement. Buyer's agent is due no commission from Seller.

Seller or  Buyer shall pay Buyer's Broker a commission or fee as indicated herein or per separate written agreement.

See 4), Paragraph 24, Special Terms & Conditions

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Broker(s) and affiliated licensee(s) duties and responsibilities are governed by the selection below (check appropriate category):

SELLER'S BROKER and Agent/Licensee(s)		BUYER'S BROKER and Agent/Licensee(s)	
<input type="checkbox"/>	SELLER NOT REPRESENTED	<input type="checkbox"/>	BUYER NOT REPRESENTED
<input checked="" type="checkbox"/>	Sellers Limited Agent	<input checked="" type="checkbox"/>	Buyer's Limited Agent
<input type="checkbox"/>	Sub-Agent	<input type="checkbox"/>	Sub-Agent
<input type="checkbox"/>	Disclosed Dual Agent	<input type="checkbox"/>	Disclosed Dual Agent
<input type="checkbox"/>	Designated Agent	<input type="checkbox"/>	Designated Agent
<input type="checkbox"/>	Transaction Broker	<input type="checkbox"/>	Transaction Broker

**Disclosure.** Buyer and Seller confirm that disclosure of the licensee's relationship was made no later than the first showing of the property, upon first contact, or immediately upon the occurrence of a change to the relationship. Buyer and seller acknowledge that they have received and read the Missouri Real Estate Commission Broker Disclosure Form.

**No Other Brokers.** Buyer and Seller warrant and represent that no Broker or other person other than Broker or Broker(s) named herein are entitled to a commission or fee, finder's fee or other compensation in connection with this Commercial Sale Contract, and Buyer and/or Seller shall indemnify and hold harmless the other party from any and all claims, liabilities, losses, damages, costs and expenses arising from the claim of any other Broker, finder or other person for such compensation arising by, under or through the indemnifying party.

**Commission Payable to Brokers Upon Default.** (1) Upon Seller's failure to close due to Seller's default, Seller shall immediately pay in full the commissions or fee due Broker(s) by Seller, as set forth above. (2) Upon Buyer's failure to close due to Buyer's default, the Escrow Agent is authorized to release one-half (1/2) of the Earnest Money and interest thereon to the Broker(s), not to exceed the total commissions or fee due as set forth above, with the remaining balance released to Seller. (3) Upon Buyer's failure to close due to Buyer's default, Buyer shall immediately pay in full the commissions or fee due Buyer's Broker, as set forth above (or by separate written Agreement).

**Principal Status.**  Seller and/or  Buyer is a real estate licensee and is acting as a principal party in this Contract

By signature below, the licensees confirm making disclosure of the brokerage relationship to the appropriate parties.

Seller's Broker: **NAI DESCO**  
 Seller's Broker's Agent Licensee: **Allen P. Klippel Jr.**  
 Signature of Licensee: *Allen P. Klippel Jr.*

Buyer's Broker: **N/A**  
 Buyer's Broker's Agent Licensee:  
 Signature of Licensee:

Seller's Initial & Date

*EAJ*

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Buyer's Initial & Date

*[Signature]*

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OFFER BY BUYER.

Buyer Executes Offer: (Date) March 12, 2015 (Time)  
 Buyer's Executed Offer To Be Accepted By: (Date) April 13, 2015 (Time) 5:00 PM (CST)

BUYER:  
 Signature: *[Signature]*  
 Title: Mayor, City of Warson Woods  
 Print Full Name: Laurance M. Howe  
 Tax Identification Number(s): 43-6014970

ACCEPTANCE OR COUNTER-OFFER BY SELLER.

Seller Accepts Offer: (Date) (Time)  
 OR  
 Seller Executes 1<sup>st</sup> Counter-Offer: (Date) 3/19/2015 (Time) 9:20 AM  
 Seller's 1<sup>st</sup> Counter-Offer To Be Accepted By: (Date) 3/27/2015 (Time) 5:00 PM

SELLER:  
 Signature: *Elizabeth Allen*  
 Title: Senior Warden  
 Print Full Name: ELIZABETH ALLEN  
 Tax Identification Number(s): 43-0653320

ACCEPTANCE OR COUNTER-OFFER BY BUYER.

Buyer Accepts 1<sup>st</sup> Counter-Offer: (Date) (Time)  
 OR  
 Buyer Executes 2<sup>nd</sup> Counter-Offer: (Date) 3-27-15 (Time) 11AM  
 Buyer's Executed 2<sup>nd</sup> Counter-Offer To Be Accepted By: (Date) 4-10-15 (Time) 5PM

BUYER:  
 Signature: *[Signature]*

ACCEPTANCE OR COUNTER-OFFER BY SELLER.

Seller Accepts 2<sup>nd</sup> Counter-Offer: (Date) 3/29/15 (Time) 1:30 pm  
 OR  
 Seller Executes 3<sup>rd</sup> Counter-Offer: (Date) (Time)  
 Seller's Executed 3<sup>rd</sup> Counter-Offer To Be Accepted By: (Date) (Time)

SELLER:  
 Signature: *Elizabeth Allen Senior Warden*

Seller's Initial & Date

*EA*

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Buyer's Initial & Date

*[Signature]*