

against the purchase price. Closing of the purchase shall occur prior to the expiration date of this option as set forth in Section 1 above.

3. **Additional Option Payments:** In addition to the Initial Option Payment of Five Thousand and No/100 (\$5,000.00) Dollars to be paid within five (5) days after full execution hereof, in the event Optionee has not exercised and closed the purchase of the Option Property under this Option Agreement on or before October 31, 2018, Optionee shall thereafter pay to Optionor the sum of Five Thousand and No/100 (\$5,000.00) Dollars prior to October 31, 2018 as an Additional Option Payment or this Option Agreement, and the option to purchase pursuant to this Option Agreement, shall terminate. Further, in addition to the foregoing option payments, in the event Optionee has not exercised and closed the purchase of the Option Property under this option agreement on or before November 30, 2018, Optionee shall thereafter pay to Optionor the additional sum of Five Thousand and No/100 (\$5,000.00) Dollars prior to November 30, 2018 as an Additional Option Payment or this Option Agreement, and the option to purchase pursuant to this Option Agreement, shall terminate. In the event Optionee does not make the Additional Option Payments as scheduled, this option shall terminate, Optionor shall retain any option payments previously made, and neither party shall have any further obligation or rights hereunder, except for those that may survive the termination of this Option to Purchase. The Initial Option Payment and the Additional Option Payments shall be applied to the Purchase Price to be paid by Optionee to Optionor at closing.

4. **Title:** The title to be delivered by the Optionor to the Optionee will be a good and marketable record title, in fee simple, free and clear of any liens or encumbrances other than covenants, conditions, easements and restrictions of record as of the effective date of this Option Agreement, by limited warranty deed, in form reasonably acceptable to the counsel for the Optionee. In the event that Optionor shall be unable to convey title to the Option Property in accordance with the provisions of this section, Optionee's sole remedy shall be to terminate this Option Agreement by notice to Optionor, in which case the Initial Option Payment and any Additional Option Payments paid by Optionee to Optionor shall be returned to Optionee.

5. **Costs:** Optionor shall pay its own attorneys fees and any deed recording fee required by Code Section 12-24-10, et. seq. of the Code of Laws of South Carolina (1976), as amended, or any successor law that requires a fee to be paid based upon the value of the property transferred. Optionee shall be responsible for all other recording costs and its attorneys fees, the costs of title examination and title insurance, if applicable.

6. **Prorations:** Taxes and assessments shall be pro-rated as of the date of closing.

7. **Risk of Loss:** Risk of loss or other damage to said premises and the responsibility and control of same shall remain with the Optionor until delivery of the deed. In the event of such loss or damage, the Optionee may, at his option, either (a) terminate this Option to Purchase Agreement and in such event receive any and all monies paid as option money or (b)

accept the deed with Optionor's right to insurance, if any.

8. **Notices:** All notices, requests, demands or other communications hereunder shall be in writing and shall be delivered by personal delivery, overnight mail or delivery service, electronic mail or email (so long as the applicable communication follows by one of the other means listed), or United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Buyer: City Manager, City of Myrtle Beach
PO Box 2468
Myrtle Beach, South Carolina 29578-2468

With a copy to: City Attorney, City of Myrtle Beach
PO Box 2468
Myrtle Beach, South Carolina 29578-2468

(which shall not constitute notice) _____

If to Seller: First Presbyterian Church of Myrtle Beach

With a copy to: M. Edwin Hinds, Jr
(which shall not constitute notice) Bellamy Law Firm
1000 29th Avenue North
Myrtle Beach, SC 29577

Any such notice, request, demand or communication shall be deemed to have been given on the date of mailing or actually delivered. The refusal to accept delivery by any party or the inability to deliver any communication because of a changed address of which no notice has been given in accordance with this Section shall constitute delivery.

9. **Option Payments Property of Optionor:** It is further understood and agreed, that the Initial Option Payment made upon execution of this Agreement, as well as any Additional Option Payments, if made, are consideration for this option and are fully earned by Optionor upon receipt, unless otherwise provided herein. In case the Optionee does not pay, or tender, or cause to be paid or to be tendered, to the Optionor the balance of the purchase price aforesaid on or before the date and hour above limited, and in accordance with the terms and conditions of this Agreement, then this Agreement shall terminate, except for any provisions that expressly survive termination, and neither party shall have any further obligation to the other.

10. **Default:** In the event of default by Optionor hereunder, Optionee may seek specific performance of Optionor's obligations pursuant to this Option Agreement as its sole and exclusive remedy.

11. **Brokers**: The Optionee and Optionor represent each to the other that neither has dealt with any brokers in connection with this transaction. Each party agrees to indemnify, defend and save harmless the other from any brokerage commission or claim therefore by any person claiming to have acted for or on behalf of said party, or claiming to have brought the premises to said party's attention. The provisions of this paragraph shall survive the termination of this Option Agreement and the closing of title.

12. **Binding Effect**: This Agreement is to bind the heirs, successors, and assigns of the parties hereto.

13. **Entire Agreement**: This Option Agreement shall constitute the entire agreement and understanding between the parties hereto and may not be modified or amended except by written instruments executed by the Optionor and the Optionee.

14. **Access and Inspection**: During the term of this Agreement, Optionee or its agents or designees shall be entitled to enter upon the Option Property for the purpose of inspecting same, conducting surveys, feasibility studies, and other tests needed to determine conditions of the Option Property, including any and all improvements located thereon. Optionee shall return the Option Property to substantially the same condition in which it was prior to the time of such entry. All work performed shall be performed without cost or expense to Optionor and Optionee shall indemnify and hold Optionor harmless from any liability or loss as a result of said entry.

15. **Property Condition; As-Is Sale**: Optionee understands and agrees that except for the representations, warranties, and covenants of the Optionor as expressly set forth herein, Optionee accepts the Option Property in its "**AS IS, WHERE IS, and WITH ALL FAULTS**" condition, with all present and future faults or defects, and without any additional representation or warranty of Optionor. Optionee hereby specifically waives, any warranties, representations or guarantees of any kind or character, express or implied (or arising by operation of law), oral or written, past, present or future, with respect to or in any way related to or concerning Optionor or the Option Property or its suitability for any particular purpose or use. Optionee on behalf of itself and its successors and assigns hereby releases Optionor from any liability with respect to any and all such matters. The terms and conditions of this Paragraph shall survive the Closing.

16. **Time is of the Essence**: It is expressly understood and agreed that time is of the essence as to all obligations hereunder, including Purchaser's obligation to obtain a mortgage commitment and provide the lending institution with all information requested.

17. **Headings**: Descriptive headings herein are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

18. **Governing Law**: This Agreement is being delivered in the State of South Carolina and shall be construed, interpreted and enforced in accordance with the laws of such

State, without regard to the conflicts rules or choice of law rules thereof, and each party hereto hereby agrees that any court of competent jurisdiction in Horry County, South Carolina shall be a proper (but not exclusive) venue for the enforcement of any rights hereunder, and, accordingly, each party hereby agrees to be subject to the jurisdiction of any such court.

19. **Counterparts:** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Emailed copies of this Agreement shall be deemed an original for all purposes.

20. **Severability:** If any part of this Agreement should be determined to be invalid, unenforceable, or contrary to law, that part shall be amended, if possible, to conform to law, and if amendment is not possible, that part shall be deleted and other parts of this Agreement shall remain fully effective, but only if, and to the extent, such modification or deletion would not materially and adversely frustrate the parties' essential objectives as expressed in this Agreement.

21. **Right of Optionor to Remove Fixtures and Personal Property:** Notwithstanding that the same may be considered a fixture, Optionor shall retain all right, title and interest in the organ, and all appurtenances thereto, which shall include, without limitation, the speakers for such organ. The removal of such organ and appurtenances shall be at the sole expense of Optionor and may be accomplished either prior to, or within thirty (30) days following Closing. Likewise, Optionor may remove any of the pews, pulpits, lecturns, chandeliers, and similar fixtures and furnishings located within the Sanctuary upon the Option Property. This provision shall expressly survive the Closing of the transaction provided for herein.

22. **Occupancy Following Closing:** Optionor shall have the right to continue occupancy of the Option Property for a period following Closing and not to extend past January 31, 2019. During such period, Optionor shall maintain its existing insurance upon the Option Property naming Optionee as an additional insured party under such insurance. This provision shall expressly survive the Closing of the transaction provided for herein.

23. **Arbitration Agreement:** Optionor and Optionee agree that any and all claims, disputes, demands, actions and causes of action of every nature and kind which arise out of or are in any manner whatsoever related to this Agreement shall be subject to and resolved by final and binding arbitration conducted in Horry County, South Carolina pursuant to the terms of the South Carolina Arbitration Act found at South Carolina Code Section 15-48-10, et seq. All such claims, disputes, demands, actions and causes of action shall be asserted in a single arbitration proceeding and all persons and entities which are subject to this arbitration provision may be joined in said proceeding so that all issues may be resolved in one forum. In any arbitration proceeding conducted pursuant hereto, the parties shall be entitled to conduct discovery (including without limitation, interrogatories, requests for admission, requests for production of documents and things, requests for inspection of real property, and depositions) in accordance with the South Carolina Rules of Civil Procedure. The arbitrators may reasonably

limit the number and duration of said depositions in order to avoid undue expense and delay. The arbitrator(s) shall issue a written decision identifying with specificity each claim or cause of action asserted in and resolved by the arbitration and the principles of res judicata and collateral estoppel shall be applicable to any arbitration award. The written decision of the arbitrator(s) may be confirmed and enforced in any court of competent jurisdiction. In the event this arbitration provision is deemed invalid or unenforceable, the parties listed as being bound hereby expressly waive their right to a trial by jury and agree that any and all claims, disputes, demands, actions and causes of action of every nature and kind which arise out of or are in any manner whatsoever related to the development, design, construction, condition, merchantability, habitability, fitness for a particular purpose, or any other implied or express warranty shall be tried non-jury.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date set forth below. The Effective Date of this Agreement shall be the date signed by the last party to execute this agreement, as indicated by the date set forth next to each party's signature below.

Signature Page to Follow

In the Presence of:

**OPTIONOR:
First Presbyterian Church of Myrtle Beach**

By: _____
Its: Trustee

By: _____
Its: Trustee

By: _____
Its: Trustee

Date Signed: _____, 2018

OPTIONEE:

By: _____
Its: _____

Date Signed: _____, 2018

Exhibit A

(Legal Description of Option Property)