

THIS ESCROW AGREEMENT made as of the _____ day of May, 2022

BETWEEN: **BASILICA HERITAGE FOUNDATION, INC.**
(the “**Foundation**”)

AND: **STEWART MCKELVEY**
(the “**Escrow Agent**”)

WHEREAS:

1. The Roman Catholic Episcopal Corporation of St. John’s, through its designated trustee, Ernst & Young Inc. (the “Trustee”), is selling a number of properties via tender dated March 4, 2022 (the “Tender”), which includes, as defined in the Tender, the Basilica Complex;
2. The Basilica Complex is divided into three sub-parcels:
 - (i) Parcel 1A – Basilica Cathedral and adjoining structures, including Annex – Cathedral to Pastoral Centre, Pastoral Centre, and the Bishop’s Library;
 - (ii) Parcel 1B – St. Bonaventure’s College, including Mullock Hall, Skinner Building, Cafeteria/Hallway & Connecting Utility Space, Gymnasium, and Holland Hall & Fort Townshend – St. Bonaventure’s College Field; and
 - (iii) Parcel 1C – St. Bon’s Forum;
3. The Foundation and St. Bonaventure’s College Inc. (the “College”) have decided to place a joint bid on the Tender (the “Joint Bid”), for the purpose of acquiring the Basilica Complex parcel;
4. The Joint Bid will be submitted by the Basilica;
5. If Joint Bid is successful, the Foundation will be deeded the Basilica Complex parcel, with beneficial ownership of Parcels 1B and 1C being held by the College, in accordance with a Memorandum of Understanding executed between the Foundation and the College dated as May _____, 2022;
6. In order to obtain funds for the Joint Bid, the Foundation and the College have solicited donations from donors (the “Donors”). These donations (the “Funds”) shall be applied against the deposit required to be submitted with the Joint Bid, and if successful, against the purchase price contemplated by the Joint Bid;
7. In order to ensure the timely collection and appropriate distribution of the Funds for the purpose of the Joint Bid, the Foundation has requested that the Escrow Agent collect and distribute the Funds based upon the terms and conditions contained herein; and
8. The Escrow Agent has agreed to act as escrow agent pursuant to the provisions of this Agreement.

NOW THEREFORE IN CONSIDERATION of the mutual covenants and promises set out in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is

hereby acknowledged, the parties to this Agreement, including subsequent parties by accession (collectively, the "Parties") agree as follows:

ARTICLE 1 INTERPRETATION

1.1 **Interpretation.** In this Agreement, except as otherwise expressly provided:

- (a) all references in this Agreement to designated "Articles", "Sections" and other subdivisions or Schedules are to the designated Articles, Sections and other subdivisions or Schedules of or attached to this Agreement;
- (b) the headings are for convenience only and do not form a part of this Agreement and are not intended to interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof;
- (c) the singular of any terms include the plural, and vice versa, the use of any term is generally applicable to any gender and where applicable, a body corporate;
- (d) the matters contained and referred to in the recitals to this Agreement and the Schedules hereto are expressly incorporated into and form part of this Agreement;
- (e) "or" is used in the inclusive sense of "and/or"; and
- (f) where the time for doing an act falls or expires on a day which is not a day other than a Saturday, Sunday or a statutory holiday in the Province of Newfoundland and Labrador (a "Business Day"), the time for doing such act is extended to the next Business Day.

ARTICLE 2 ESCROW ARRANGEMENTS AND INSTRUCTIONS TO ESCROW AGENT

2.1 **Appointment of Escrow Agent.** Stewart McKelvey is hereby appointed the Escrow Agent under this Agreement.

2.2 **Delivery of Escrow Funds.** The Escrow Agent agrees to:

- (a) receive the Funds from Donors, provided that the Donors execute a direction and accession in a form similar to that provided in Schedule "A" of this Agreement; and
- (b) deposit the Funds to a trust account of the Escrow Agent ("Escrow Account").

These funds and any interest, if any, earned on the funds deposited to the Escrow Account from time to time (the "Escrow Funds") will not be released or dealt with in any other manner whatsoever except in the manner described in this Agreement.

2.3 **Escrow Funds in Escrow.** The Escrow Funds will be held by the Escrow Agent, in trust for the benefit of the Foundation on the terms set out in this Agreement.

2.4 **Release from Escrow.**

- (a) The Foundation acknowledges and agrees that the Escrow Account will be maintained by the Escrow Agent.

- (b) The Foundation agrees that:
 - (i) The Escrow Agent shall receive fifteen percent (15%) of the purchase price of Parcels 1B and 1C from the College or the Escrow Agent of the College (the "College Deposit Funds"), which shall be included with the Foundation Deposit Funds and delivered with the Joint Bid as a deposit;
 - (ii) The Escrow Agent shall deliver to the Trustee fifteen percent (15%) of the total purchase price of the Basilica Complex as contemplated by the Joint Bid (the "Foundation Deposit Funds"), which shall be delivered with the Joint Bid as a deposit;
 - (iii) In the event that the Joint Bid is unsuccessful, and upon the return of the deposit from the Trustee:
 - (A) the Foundation Deposit Funds shall be returned to the Donors in the amounts of their individual and specific donations; and
 - (B) the College Deposit Funds shall be returned to the College or the Escrow Agent of the College; and
 - (iv) In the event that the Joint Bid is successful and is accepted by the Supreme Court of Newfoundland and Labrador, the Escrow Agent shall:
 - (A) receive any Funds which have been committed by the Donors but not yet delivered to the Escrow Agent;
 - (B) receive the balance of the purchase price of Parcels 1B and 1C from the College or the Escrow Agent of the College;
 - (C) deliver the balance of the purchase price for the Basilica Complex parcel to the Foundation or to the Trustee or the Trustee's counsel; and
 - (D) release any excess Funds to the Foundation for the maintenance, preservation, conservation, restoration, interpretation, and ongoing operation of the Basilica.
- (c) In the event of a dispute regarding whether or not the Escrow Funds should be released, then any party to this Agreement may provide written notice to the Escrow Agent (with a copy to all other Parties) instructing the Escrow Agent to interplead the Escrow Funds to a court of competent jurisdiction to be held pending resolution of such dispute. In the event that a Donor disputes whether or not the Escrow Funds should be released, the Escrow Agent may interplead that portion of the Escrow Funds delivered by the Donor to the Escrow Agent to a court of competent jurisdiction to be held pending resolution of such dispute.
- (d) The Escrow Agent shall receive and hold the Funds, but shall not be responsible for soliciting and/or collecting Funds from Donors.

2.5 **Investment of and Interest on Escrow Account.** The Escrow Agent will invest the Escrow Account in a separate interest-bearing CAD trust account with a Canadian

Chartered Bank, redeemable at any time, or in such other manner as is agreed to by the Foundation in writing. All interest earned on the Escrow Account will form part of Escrow Funds. The Escrow Funds shall remain at all times in CAD.

- 2.6 **Court Orders.** The Escrow Agent is authorized and directed to comply with and obey the order, judgment or decree of any court of competent jurisdiction, and in case of such compliance the Escrow Agent will not be liable to any party or to any other person even if any such order, judgment or decree is subsequently reversed, modified, annulled, set aside or vacated.

ARTICLE 3 TERM AND TERMINATION OF AGREEMENT

- 3.1 **Term and Termination.** This Agreement will remain in full force and effect until:
- (a) terminated in accordance with the terms of this Agreement or by order of a court of competent jurisdiction; or
 - (b) until payment of the full amount of the Escrow Funds has been made by the Escrow Agent in accordance with the terms of this Agreement, at which time this Agreement will terminate.

ARTICLE 4 ESCROW AGENT

- 4.1 **Covenants of the Escrow Agent.** The Escrow Agent agrees to be bound by all of the terms and provisions contained in this Agreement applicable to the Escrow Agent. Any act or matter to be done or carried out by the Escrow Agent may be done or carried out by or under the direction of any lawyer practicing with the Escrow Agent.
- 4.2 **Escrow Agent as Legal Advisor.** The parties to this Agreement acknowledge and agree that prior to entering into this Agreement the Escrow Agent has and may continue to act as the legal advisor to the Foundation. Without limiting the generality of the foregoing, the Parties acknowledge, agree and consent to the Escrow Agent acting as legal advisor to the Foundation with respect to any matters in relation to or arising from the Joint Bid and this Agreement.
- 4.3 **Escrow Agent as Trustee.** The Escrow Agent will act at all times and for all purposes under this Agreement as a holding agent and trustee for the Foundation and the Parties to this Agreement, however the duties and powers of the Escrow Agent as trustee are only as expressly stated in this Agreement and no further duties or powers will be implied by the description of the Escrow Agent as trustee.
- 4.4 **Fees and Costs.** The Foundation agrees with the Escrow Agent to be responsible for and to pay to the Escrow Agent the following amounts:
- (a) all reasonable fees charged by the Escrow Agent for the Escrow Agent's services under this Agreement; and
 - (b) any and all expenses reasonably incurred by the Escrow Agent in discharging the Escrow Agent's duties in accordance with the terms of this Agreement.
- 4.5 **Withdrawal of Escrow Agent.**
- (a) The Escrow Agent may withdraw by giving thirty (30) days written notice to the Parties to this Agreement. Within the thirty (30) day period, the Parties will appoint another escrow agent, which will, unless otherwise agreed in writing by the Parties, be a lawyer or firm of lawyers duly qualified to practice in the Province of

Newfoundland and Labrador (the "New Agent"), who are able and willing to accept the Escrow Funds and establish the Escrow Account on substantially the same terms as set out in this Agreement.

- (b) Upon the appointment of the New Agent, the Parties will provide written notice of the New Agent to the Escrow Agent. Upon delivery of the Escrow Funds to the New Agent, the obligations of the Escrow Agent under this Agreement will terminate. In the event that a New Agent is not appointed within the thirty (30) day period, the Parties agree that the Escrow Agent will apply to pay the Escrow Funds into a court of competent jurisdiction and upon doing so, the obligations of the Escrow Agent under this Agreement will terminate.

ARTICLE 5 LIABILITY OF ESCROW AGENT

- 5.1 **Escrow Agent Not Bound by Provisions Outside Agreement.** The Escrow Agent is not a party to and is not bound by any provisions that may be evidenced by, or arise out of, any agreement other than as set forth under the express provisions of this Agreement.
- 5.2 **Limitation on Action for Default.** The Escrow Agent is not required to take notice of any default or take any action with respect to such default involving any expense or liability, unless notice in writing of such default is formally given to the Escrow Agent in accordance with the notice provisions of this Agreement and unless the Escrow Agent is indemnified and funded, in a manner satisfactory to it, against such expense or liability.
- 5.3 **Advice of Legal Counsel.** The Escrow Agent may seek the advice of independent legal counsel in the event of any question or dispute as to the construction of any provision of this Agreement or its obligations under this Agreement, and the Escrow Agent will not incur any liability and will be fully protected in acting in accordance with the opinion and instructions of such legal counsel.
- 5.4 **Error of Judgment.** The Escrow Agent will not be liable for any error of judgment, or for any act done or omitted by it in good faith, or for any mistake of fact or law, or for anything which it may do or omit from doing in connection with this Agreement, except for gross negligence, fraud or willful misconduct.
- 5.5 **Release from Liability.** The Escrow Agent will not, by reason of its signing this Agreement, or otherwise, assume any responsibility or liability relating to the Escrow Funds or for any transaction between the Parties, other than the performance of its obligations in accordance with this Agreement. The Escrow Agent will be automatically released from all responsibility and liability under this Agreement upon the delivery of the Escrow Funds in accordance with the provisions of this Agreement.
- 5.6 **Indemnity.** Without limiting any protection or indemnity of the Escrow Agent under any other provision of this Agreement, or otherwise at law, the Parties hereby agree to jointly and severally indemnify and hold harmless the Escrow Agent from and against any and all liabilities, losses, damages, penalties, claims, action, suits, costs, expenses and disbursements, including reasonable legal or advisor fees and disbursements, of whatever kind and nature which may at any time be imposed on, incurred by or asserted against the Escrow Agent in connection with the performance of its duties and obligations hereunder, other than such liabilities, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements arising by reason of the gross negligence, fraud or willful misconduct of the Escrow Agent. This provision will survive the resignation or

removal of the Escrow Agent. The Escrow Agent is not under any obligation to prosecute or to defend any action or suit in respect of the relationship which, in the opinion of its legal counsel, may involve it in expense or liability, unless the Parties, so often as required, furnish the Escrow Agent with satisfactory indemnity and funding against such expense or liability.

- 5.7 **Duties Limited.** The Escrow Agent has no duties except those that are expressly set out in this Agreement, and the Escrow Agent is not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement and no implied covenants or obligations will be read into this Agreement against the Escrow Agent. The Escrow Agent will not be bound by any notice, claim or demand with respect to, or any waiver, modification, amendment, termination or rescission of this Agreement, unless received by it in writing and if its duties as set out in this Agreement are affected, unless the Escrow Agent has given its prior written consent to such amendment. The Escrow Agent is not required to expend or risk its own funds or otherwise incur financial liabilities in the performance of any of its duties under this Agreement.
- 5.8 **Reliance on Documents Apparently Signed.** The Escrow Agent will not incur any liability in acting on any signature, notice, instruction, consent, or document reasonably believed by the Escrow Agent to be genuine, and the Escrow Agent may assume that any person purporting to give it any such notice, instruction, consent or document on behalf of the Parties in accordance with the provisions of this Agreement, has been duly authorized to do so.
- 5.9 **Survival.** The provisions of this Article 5 will survive the Closing and the termination of this Agreement.

ARTICLE 6 GENERAL MATTERS

- 6.1 **Entire Agreement.** This Agreement shall constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement. There are no warranties, representations, covenants or agreements between the Parties in connection with such subject matter except as specifically set forth or referred to in this Agreement.
- 6.2 **Notices.** Any notice, consent, wavier, approval, authorization or other communication which any party is required or may desire to give to or make upon any other party pursuant to this Agreement will be effective and valid only if in writing and personally delivered or sent by facsimile or email transmission to the other party or Parties at the address set out below (or at such other address as any such other party may designate by notice delivered in accordance with this Section 6.2).

Basilica Heritage Foundation, Inc.

200 Military Road

St. John's, NL

A1C 2E8

Attention:

Email:

Phone:

Fax:

Stewart McKelvey

Cabot Place, Suite 1100
100 New Gower Street
St. John's, NL
A1C 5V3

Email: bsheppard@stewartmckelvey.com

Phone: 709.570.8832

Fax: 709.722.4565

Any notice delivered or sent in accordance with this Section 6.2 will be deemed conclusively to have been given and received on the day such notice was delivered or sent if it was delivered or sent on a day that was a Business Day or on the next day that is a Business Day if it was delivered or sent on a day that was not a Business Day.

- 6.3 **Time of Essence.** Time is of the essence in this Agreement in all respects.
- 6.4 **Further Assurances.** Each of the Parties will promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts and documents as the other parties may reasonably require from time to time for the purpose of giving effect to this Agreement and will use reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent the provisions of this Agreement.
- 6.5 **Modifications, Approval and Consents.** No amendment, modification, termination or waiver of, and no consent with respect to, any provisions of this Agreement will be effective unless in writing signed by the party against whom such amendment, modification, termination, waiver or consent is sought to be enforced, and then any such waiver or consent will be effective only in the specific instance and for the specific purpose given.
- 6.6 **Enurement.** This Agreement will enure to the benefit of and be binding upon the Parties and their respective heirs, administrators, executors, successors and assigns.
- 6.7 **Governing Law.** This Agreement is and will be deemed to have been made in the Province of Newfoundland and Labrador, and for all purposes will be governed exclusively by and construed and enforced in accordance with the laws of the Province of Newfoundland and Labrador and the laws of Canada applicable therein and the rights and remedies of the Parties will be determined in accordance with those laws. The Parties irrevocably attorn and submit to the exclusive jurisdiction of the courts of the Province of Newfoundland and Labrador.
- 6.8 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

SIGNED:

**BASILICA HERITAGE FOUNDATION,
INC.**

Per: _____
Name:
Title:

STEWART MCKELVEY

Per: _____
Name:
Title: