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January 10, 2023

City of Westmoreland
1001 Park Street
P.O. Box 8
Westmoreland, TN 37186
ATTN: Mayor David Leath; Mr. Steve Mills; Chief Mark Jenkins
[REDACTED]

Re: Living Water Full Gospel Church; The Father's House Men's Ministry

Dear Sirs:

This law firm and First Liberty Institute represent The Living Water Full Gospel Church and its related ministry, The Father's House Men's Ministry (collectively referred to as "the Church"). The Church retained our firm and my co-counsel at First Liberty Institute after receiving an August 11, 2022, "Cease and Desist" letter sent by the City of Westmoreland ("the City"), in which the City instructed the Church to stop operating a residential facility at the Church. As more fully explained below, the City's "Cease and Desist" letter violates local, state, and federal laws. Therefore, the Church hereby demands that the City immediately withdraw its August 11, 2022 "Cease and Desist" letter and acknowledge in writing that the Church is within its legal rights to conduct the ministry of providing housing to those in need.

As an initial matter, the City's "Cease and Desist" letter disregards the City's own zoning ordinances. The church building and the attached structure are in the City's R-1 zoning district. The attached structure was approved by the City in 1999 as a "new addition" for "institutional" use by the First Baptist Church of Westmoreland. Section 5.0501.1 of the City's zoning ordinances specifically permits residential living in the attached building owned by the Church. Representatives of the Church approached City officials in early 2022 as to whether there were any additional permits or approvals required for the Church to provide housing. They were correctly told by Mayor Smalling and Tracy Gatwood that there were no additional requirements or conditions that had to be met. Then, with no warning and without any legal basis, the City sent the "Cease and Desist" letter. Simply put, the Church is already complying with the City's zoning ordinances. There is simply no basis in the zoning ordinances – nor in any applicable building code – which justifies the City's "Cease and Desist" letter.

Second, the City's "Cease and Desist" letter violates Tennessee law because the City is substantially and unfairly burdening the Church's free exercise of religion. The Tennessee Religious Freedom Restoration Act ("TRFRA"), Tenn. Code Ann. § 4-1-407, prohibits any governmental entity in the state from substantially burdening the free exercise of religion unless it can demonstrate that: (a) the application of the burden is essential to furthering a compelling governmental interest; and (b) is accomplished in the least restrictive means of furthering that compelling government interest. TRFRA defines a substantial burden to include any government action that "inhibit[s] or curtail[s] religiously motivated practice." *Id.* § 4-1-407(a)(7). Here, the City is clearly burdening the Church's religious conduct because it has ordered the Church to cease operating a religious ministry to help men escape the trappings of drug addiction. Thus, the City must prove both that its actions are furthering a compelling government interest and that the burden it is imposing is the least restrictive means of achieving that interest. The City cannot meet this statutory test and has not even attempted to do so before sending its "Cease and Desist" letter. Even if the City's purported concern related to fire safety constitutes a compelling interest, it has not demonstrated why there are no less restrictive alternatives available for the Church other than the extraordinarily expensive firewall and sprinkler system demanded by the City. Thus, the City's actions violate TRFRA.

Third, the City's "Cease and Desist Letter" additionally violates the First Amendment of the US Constitution and is, thus, an unconstitutional exercise of governmental authority. The Free Exercise Clause of the First Amendment, applicable to the States under the Fourteenth Amendment, bars government action that "prohibit[s] the free exercise" of religion. Under the Free Exercise Clause, if a policy that burdens religious exercise is not neutral and generally applicable, it must be "justified by a compelling governmental interest and must be narrowly tailored to advance that interest." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531–32 (1993). "Put another way, so long as the government *can* achieve its interests in a manner that does not burden religion, it *must* do so." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1881 (2021) (emphases added). Here, the City's treatment of the Church is not neutral because it is singling out the Church for disparate treatment. To our knowledge, the City is not applying zoning laws and building codes in this arbitrary manner to any other non-religious entities. As such, the City is targeting the Church in a manner unlike any other person or entity in an R-1 district. Because the City's application of its ordinances is not neutral, it must satisfy the same strict scrutiny imposed by TRFRA, and for the reasons discussed above, it cannot satisfy that high bar.

Fourth, the City's actions violate the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. § 2000cc et seq. Under RLUIPA, the government may not impose a land use regulation in a manner that substantially burdens a religious practice unless that burden is (1) in furtherance of a compelling governmental interest; and (2) the least restrictive means of furthering that compelling governmental interest. *Id.* § 2000cc(a)(1). RLUIPA also prohibits the government from treating churches and religious institutions on less than equal terms with non-religious institutions. *Id.* § 2000cc(b)(1). For the same reasons that the City has violated TRFRA, the City has also violated RLUIPA's prohibitions on substantially burdening religious practices. Further, the City's disparate application of its ordinances to the Church compared to other non-religious entities in R-1 districts violates RLUIPA's equal terms provisions.

For all these reasons, the Church hereby demands that, on or before January 30, 2023, the City withdraw its August 11, 2022 “Cease and Desist” letter and acknowledge in writing that the Church is within its legal rights to conduct the ministry of providing housing to those in need. We have advised our client of its legal rights and its means of legal relief in the event the City elects not to do so.

Sincerely,



Steven E. Anderson

cc: Jeremy Dys, Senior Counsel, First Liberty Institute
Ryan Gardner, Counsel, First Liberty Institute
Noah Sacks, U.S. Department of Justice, Civil Rights Division, Housing and Civil Enforcement Section