

## AGREEMENT

This Agreement ("Agreement") is made and entered into on February \_\_\_\_, 2004 by and between the Diocese of Toledo and St. Joseph Church, Sylvania (collectively "Parish") and the City of Sylvania, Ohio ("City"), concerning the disposition of the residence known as the Lathrop House, currently located at 5362 South Main Street, Sylvania, Ohio and the future use and development of the four parcels of property identified on Exhibit A and legally described on Exhibit B. Intending to be legally bound, the parties agree as follows:

1. Background. The Parish and the City agree that certain parcels of property owned by the parties should be exchanged between them (a) to provide access to and parking for Harroun Park and the site to which the Lathrop House is intended to be moved and (b) to create a contiguous parcel adjacent to the Lathrop House property for joint use by the Parish and the City as described in Section 9, and for the eventual use and development by the Parish for its future needs.

2. Exchange of Property. Within five (5) business days after the Lathrop House is placed at the location in Harroun Park described in Section 3 of this Agreement, subject to Section 10, there shall be a closing at which the following shall occur: (a) the City shall transfer to the Parish Parcels A and B as reflected on Exhibit A; (b) the Parish shall transfer to the City Parcel C as reflected on the Exhibit A; and (c) the Parish shall grant a joint driveway and access easement and utility easement as described in Section 17 to the City over Parcel D as reflected on Exhibit A. Notwithstanding the foregoing, if the process of moving the Lathrop House begins and is subsequently abandoned because of damage or destruction of the Lathrop House caused by casualty or the moving process, the landswap will be concluded within five (5) business days after the move has been abandoned. To facilitate the exchange, the City will cause a legal description to be prepared for Parcels B, C and D by February 18, 2004 and the City will promptly file applications to obtain the split of Parcel B and Parcel C from the larger Parcels of which they are currently a part. Upon completion of the legal descriptions, Exhibit B will be completed and be attached to this Agreement.

3. Lathrop House. The City will cause the Lathrop House (consisting of the entire structure, including foundations and all elements of the structure below and above ground) to be removed from its present location by May 15, 2004 for relocation to the site selected by the Toledo Metropolitan Park District ("Metroparks") or an alternate site that is selected by the agreement of the Parish, the City and the Metroparks. To facilitate this process, the City will begin advertising for bids to perform the necessary work with sufficient lead time to enable the work to be completed by May 15, 2004 and will close the bidding process thirty (30) days later. The obligations of the City under this Agreement will be subject to items (a) and (b) below. If necessary to accomplish the move, the Parish will permit the City or its contractor to dig a trench or other necessary excavation on Parish property. Upon completion of the removal of the Lathrop House from its existing location, the City shall remove all footers, the basement, other underground installations and other structures related to the Lathrop House and all debris resulting from the work from the Parish's property within thirty (30) days of removing the house and then promptly backfill all excavations to existing grade with clean fill. The City will also

repair any damage to the parking lot caused by the movement of the Lathrop House regardless of whether such damage is on land owned by the City or the Parish and will remove any stone or dirt placed on Parish property in connection with the move for construction of the ramp from the existing location to the new location or any other purposes and return the affected areas to currently existing grade. The cost of all such work described in this Section 3 shall be the sole cost of the City. If the City hires a contractor to perform such work, the City shall be solely responsible for all costs associated with the completion of that work. If the City and the Parish agree to enter into a separate contract pursuant to which the Parish will cause the house to be moved to property owned by the City, the City will pay the full cost agreed upon between the City and the Parish for that work to the Parish prior to the commencement of that work. The Parish makes no representations or warranties regarding the condition of the Lathrop House and the City is acquiring the Lathrop House "as is" with all faults. The obligations of the City and the Parish pursuant to this Section 3 are subject to satisfaction of the following conditions prior to the dates indicated, provided any such dates can be extended by the agreement of the parties:

(a) Approval of the Lathrop House Site Operating Agreement by the Metropolitan Park District ("Metroparks") on or before February 27, 2004.

(b) Confirmation by the City on or before May 15, 2004 that sufficient funds are available to pay for the relocation of the Lathrop House from its present site to the relocation site within Harroun Park and all related costs as determined to be appropriate by the City, including installation of a foundation and remediation of the Parish property.

4. Security Prior to Commencement of the Relocation. From the date of this Agreement until commencement of the relocation of the Lathrop House, the Parish shall be responsible for reasonably securing the Lathrop House and the surrounding area.

5. Security Upon Commencement of Relocation. Upon commencement of the relocation of the Lathrop House, the City shall be responsible for the security of the Lathrop House and all work areas and shall reimburse the Parish for expenses the Parish may incur as a result of the relocation of the Lathrop House or the failure to properly secure the Lathrop House or the surrounding area.

6. Risk of Loss. The City acknowledges that the Parish carries liability insurance for the area adjacent to the Lathrop House but does not carry property and casualty insurance on the house. The Parish will not be responsible for any damage or deterioration to the Lathrop House that occurs at any time. The City may insure the Lathrop House at its cost in such manner as it deems appropriate and the Parish will have no rights in the proceeds of any such insurance, other than as a source of payment for any claim with respect to which the City is obligated to reimburse the Parish pursuant to this Agreement.

7. Terms of Conveyances. All conveyances of any interest in real property occurring pursuant to this Agreement shall be free and clear of all liens and encumbrances of any kind whatsoever other than zoning ordinances, easements, agreements and restrictions of record that will not hinder or interfere with the intended use of the property, and taxes and installments of assessments not yet due in payable ("Permitted Exceptions"). All such taxes and assessments

not yet due and payable related to property conveyed in fee shall be prorated as of the date of the closing on the Lucas County method.

8. Representations and Warranties. Each party represents and warrants to the other that it owns fee simple title to each parcel of real estate an interest in which it is conveying to the other party, whether by deed or easement; that it is the owner of each such parcel free and clear of any liens or encumbrances whatsoever, with the exception of Permitted Exceptions and the parking lot agreement described in section 9; and each party has all required power and authority necessary to enter into this Agreement and consummate the transactions contemplated herein.

9. Parking Lot Agreement. Parcels A, C and D are each subject to the terms of the Agreement for the Development, Maintenance and Joint Use of a Parking Lot between the City and Parish dated August 15, 1989 (the "Parking Agreement"). Simultaneously with the closing of the conveyances described in this Agreement, the parties will amend the Parking Agreement to reflect the change of ownership of the land subject to the Parking Agreement and to provide that either party can terminate it upon twelve (12) months written notice given any time after the later of four (4) years after the date of this Agreement or the date that TARTA no longer uses the parking lot for a bus stop.

10. Parcel B. The Parish acknowledges that Parcel B was acquired by the City with funding provided by the federal government. Consequently, the approval of the federal government is required to transfer ownership of that property to the Parish. The City will use its best efforts to obtain the necessary approval as quickly as possible and will convey Parcel B to the Parish within five (5) business days of receiving the necessary approval. If the City is unable to convey Parcel B to the Parish by the date required in Section 2, the City will grant the Parish and its successors in interest a perpetual, exclusive easement over Parcel B that grants the Parish the right to control access to Parcel B, build over or upon Parcel B, remove existing trees and other growth from Parcel B, change the topography of Parcel B, add landscaping to Parcel B and otherwise use Parcel B in such manner as the Parish or its successors in interest deem appropriate. After granting the easement, the City will continue to use its best efforts to pursue the necessary approval and will convey Parcel B to the Parish promptly upon receipt of that approval. If at any time the forgoing easement is determined to be unenforceable or invalid, then, at the option of the Parish, the easements granted by the Parish on Parcel D may be terminated by the Parish or the westerly one-half of Parcel C will be reconveyed to the Parish.

11. Conveyance Documents. The deeds transferring Parcels A, B and C as described above shall be limited warranty deeds. The easements described in Sections 2, 10 and 17 and the amendment to the Parking Agreement shall be evidenced by documentation that is mutually agreeable to the parties. Immediately upon approval of this Agreement by the Sylvania City Council, the parties will use their best efforts to complete that documentation by March 19, 2004. Where this Agreement requires any conveyance to or from the Parish, the instrument of conveyance shall be to or from Leonard Paul Blair, Bishop of the Roman Catholic Diocese of Toledo in America ("Bishop"). The City and the Parish each acknowledge and agree that the Parish, not the Bishop, is responsible and liable for the performance of all of the Parish's obligations and agreements hereunder. The Bishop is executing the Agreement solely for the purpose of (i) acknowledging that the Parish has the Bishop's approval to enter into this

Agreement and (ii) agreeing that the Bishop will execute and deliver the instruments of conveyance described herein in accordance with the customs and practice of the Diocese of Toledo and civil and canon law.

12. Further Documentation and Assurances. Each party shall execute such additional documentation as the other party or any title insurance company may reasonably request in connection with the transactions contemplated in this Agreement, including closing affidavits, mechanics' lien affidavits, closing statements and similar items. Each party agrees to take all reasonable actions necessary to consummate the transactions contemplated by this Agreement.

13. Conditions to the Parish's Obligation. Upon the occurrence of any of the following, the Parish, in its sole and unrestricted discretion, may terminate this Agreement effective immediately upon delivery by the Parish to the Mayor or Law Director of the City notice of its intention to terminate or, by similar notice to the City elect to remove the Lathrop House from its existing foundation and move it to the parking lot that is the subject of the Parking Agreement or another location on Parish property. If the Parish elects to move the Lathrop House, the City will use its best efforts to resolve the situation that led the Parish's decision to move the Lathrop House and, upon resolving those issues, will complete the relocation of the Lathrop House, reimburse the Parish for such portion of any out of pocket costs incurred by the Parish related to the move and temporary storage of the Lathrop House as will not cause the cost of the move to the City to exceed the cost that would have been incurred had the house been moved directly from its original site to the relocation site up to the Contracted Amount, and upon completion of the move, the landswap described in Section 2 shall be consummated. If the Parish elects to move the Lathrop House as described above, the City consents to the Parish moving the Lathrop House across Parcel B and the City agrees that the storage of the Lathrop House in the parking lot will not constitute a breach of the Parking Agreement.

(a) Any individual, entity, or group of individuals or entities initiates or continues any legal action, whether judicial, administrative or otherwise, to directly or indirectly:

(i) challenge the validity of the outcome of the November 4, 2003, election;

(ii) enjoin or delay the effect of the passage of Issue 16;

(iii) delay in any manner the relocation of the Lathrop House or the current or future plans of the Parish to develop or use in any manner its property on the east side of Main Street in Sylvania, Ohio, including, without limitation, delaying or preventing the City from consummating the landswap contemplated by this Agreement, spending or authorizing the expenditure of any money to facilitate the landswap or the relocation of the Lathrop House, or challenging or seeking to overturn the approval by the Sylvania City Council, of this Agreement, the Operating Agreement between the City and the Metroparks or any other

agreements directly or indirectly related to the transactions contemplated by this Agreement, whether by referendum, initiative or otherwise; or

(b) Any individual, entity or group of individuals or entities initiates or continues any action, the direct or indirect objective of which is to delay in any manner the relocation of the Lathrop House or the current or future plans of the Parish to develop or use in any manner its property on the east side of Main Street in Sylvania, Ohio, including, without limitation, delaying or preventing the City from consummating the landswap contemplated by this Agreement, spending or authorizing the expenditure of any money to facilitate the landswap or the relocation of the Lathrop House or challenging or seeking to overturn the approval by the Sylvania City Council of this Agreement, the Operating Agreement between the City and the Metroparks or any other agreements directly or indirectly related to the transactions contemplated by this Agreement, whether by referendum, initiative or otherwise; or

(c) The City fails to strictly comply with any of the deadlines for action required to be taken by it or on its behalf pursuant to this Agreement.

The City expressly acknowledges that time is of the essence in the completion of the actions required to be taken hereunder. The City expressly acknowledges that the Parish would not have entered into this Agreement but for the rights of the Parish described in this Section, including the sole and unrestricted discretion of the Parish in deciding whether to exercise any such rights. If an event occurs that results in the Parish terminating this Agreement or moving the Lathrop House to a temporary storage area pursuant to the provisions of this Section 13, the Parish will have the unconditional right to remove or allow any other person to remove the Lathrop House and to take such other actions as are permissible under law as the Parish deems appropriate in its sole and unrestricted discretion and the City agrees that it will do nothing to prevent or delay any such action in any manner whatsoever other than the general enforcement of its Codified Ordinances.

14. Completion of the Move. The removal of the Lathrop House structure from Parish property shall be completed by May 15, 2004. The Parish may in its sole discretion extend that deadline if it determines that the City is attempting to complete the move with all reasonable diligence and without unnecessary delay. If the Lathrop House is not removed from Parish property by May 15, 2004, or such extended date as the Parish may allow, the City agrees that the Parish will have the unconditional right to remove or allow any other person to remove the Lathrop House in the manner described in Section 13 and take such other actions as are permissible under law as the Parish deems appropriate in its sole and unrestricted discretion and the City agrees that it will do nothing to prevent or delay any such action in any manner whatsoever other than the general enforcement of its Codified Ordinances.

15. Parish Development. The City acknowledges that the Parish acquired the land upon which the Lathrop House is currently located and that the Parish is entering into this Agreement and participating in the exchange described in this Agreement for the purpose of creating a contiguous site for the long term development and expansion of the Parish's campus. The City also acknowledges that the future development plans of the Parish may result in a

church, school or other structure being constructed on the land located to the west of the proposed relocation site for the Lathrop House, including the land that is currently subject to the Parking Agreement and Parcel B, and that any such construction may entirely block the view of the relocated Lathrop House and the surrounding areas of Harroun Park and Parcel C from Main Street.

16. Drainage. Storm water drainage for a substantial part of the parking lot that is the subject of the Parking Agreement and adjacent land drains into Harroun Park over Parcels C and D. The City will not take any action to prohibit such property from draining in that manner without the consent of the Parish, or its successors in interest. If, in connection with any future development of Parcel C the City reasonably determines that it is necessary to redirect some or all of such drainage, it may do so at its sole cost in a manner that is reasonably acceptable to the Parish, or its successor in interest. In connection with the development of the property west of Parcel C by the Parish or any successor in interest, the City will grant the Parish or its successor in interest an easement or other rights reasonably necessary over Parcel C to accommodate the drainage plan that is approved for those improvements by applicable governmental authorities. Any drainage systems installed or modified by the Parish or its successors in interest pursuant to the preceding Section shall be at the sole cost and expense of the Parish or its successors in interest, including the cost of repairing or restoring any damage caused to Parcel C as a result thereof.

17. Utilities. The Parish will grant the City additional easement rights over the northerly thirty (30) feet of Parcel D for the installation of utilities by the City to service Harroun Park; provided, however, that if Parcel D is less than thirty (30) feet wide at any point, the utility easement will be limited to the width of Parcel D. Any such installation will be at the sole cost of the City and the City will be solely responsible for the cost of repairing or restoring any damage caused to Parcel D as a result of such installation. No such utilities shall affect the use of any part of Parcel D for access and driveway purposes other than reasonable temporary delays or interruptions while the utilities are being installed or maintained.

In connection with the intended development of the Lathrop House property and adjacent property by the Parish, it will be necessary for the Parish to install utilities to service the new construction on that site. The Parish agrees to explore in good faith the possibility of installing those utilities in a manner that will permit them to service both the Parish development and the relocated Lathrop House. The Parish and the City will share the cost of any shared improvements in such manner as they agree. If the Parish and the City agree upon the installation of utilities that will reasonably meet the needs of the City to provide utilities to Harroun Park and the Lathrop House, the City will terminate the utility easement rights described in the first paragraph of Section 17.

18. Governing Law. This Agreement will be construed and enforced pursuant to the laws of the State of Ohio.

19. Recording. This Agreement may be recorded in the records of the Lucas County Recorder at any time by either party to this Agreement.

[THE REMAINDER OF THIS PAGE HAS INTENTIONALLY BEEN LEFT BLANK]

The parties have caused this Development Agreement to be executed by their authorized representatives on the dates indicated below.

\_\_\_\_\_  
Leonard Paul Blair, Date  
Bishop of the Roman Catholic  
Diocese of Toledo in America

St. Joseph Parish, Sylvania, Ohio

By \_\_\_\_\_  
Rev. Richard T. Wurzel, Pastor Date

Approved as to Form:

City of Sylvania, Ohio

By \_\_\_\_\_  
James E. Moan Date  
City Law Director

By \_\_\_\_\_  
Craig A. Stough, Mayor Date

By \_\_\_\_\_  
John W. Plock, Director of Finance Date

STATE OF OHIO )  
 ) SS:  
COUNTY OF LUCAS )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2004, by Leonard Paul Blair, Bishop of the Roman Catholic Diocese of Toledo in America, successor in interest to James R. Hoffman, Bishop of Toledo.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[SEAL]



STATE OF OHIO            )  
                                  ) SS:  
COUNTY OF LUCAS        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2004, by Reverend Richard T. Wurzel, Pastor of Sylvania St. Joseph Parish, on behalf of the Parish.

My Commission Expires: \_\_\_\_\_  
Notary Public [SEAL]

STATE OF OHIO            )  
                                  ) SS:  
COUNTY OF LUCAS        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2004, by Craig A. Stough, Mayor of the City of Sylvania, Ohio, an Ohio municipal corporation, on behalf of the municipal corporation.

My Commission Expires: \_\_\_\_\_  
Notary Public [SEAL]

STATE OF OHIO            )  
                                  ) SS:  
COUNTY OF LUCAS        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2004, by John W. Plock, Director of Finance of the City of Sylvania, Ohio, an Ohio municipal corporation,, on behalf of the municipal corporation.

My Commission Expires: \_\_\_\_\_  
Notary Public [SEAL]

STATE OF OHIO            )  
                                  ) SS:  
COUNTY OF LUCAS        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2004, by James E. Moan, Law Director of the City of Sylvania, Ohio, an Ohio municipal corporation, on behalf of the municipal corporation.

Notary Public  
My Commission Expires: \_\_\_\_\_ [SEAL]

This instrument prepared by:  
Michael S. McGowan, Esq.  
Shumaker, Loop & Kendrick, LLP  
1000 Jackson Street  
Toledo, Ohio 43624-1573  
msm/st.joseph/development.agmt.06