

## REAL ESTATE GROUND LEASE AND PURCHASE AGREEMENT

**This Agreement** is made as of the 31<sup>st</sup> day of December, 2007, by and between St. Luke's Church of Granville, an Ohio corporation by special act of the General Assembly, ("St. Luke's") and the Village of Granville, Ohio, an Ohio municipal corporation (the "Village").

In consideration of the mutual promises contained herein and other good and valuable consideration, St. Luke's and the Village agree as follows:

### 1. Ground Lease of real estate; Purchase and Sale of Improvements.

(a) The Village agrees to lease to St. Luke's for the term and at the lease rate set forth below .0734 acres, more or less, of real property located at 118 South Main St., Granville, Ohio 43023 (the "Ground Lease"). The property shall consist of a rectangular parcel (the "Property") of ground measuring 30 ft. along South Main St. and 70 ft. on each side extending east from South Main St., all of which is part of Licking County Auditor's parcel number 20-051478-00.000 (the "Parcel"). The parties shall enter into a separate Ground Lease for the Premises.

(b) The Village agrees to sell and St. Luke's agrees to buy all improvements situated on the Property, consisting primarily of a two-story building currently being used by St. Luke's as its parish house (the "Improvements"), for the price set forth below.

(c) The sale described in this Agreement shall also include any certificates, licenses, permits, authorizations and approvals issued for or with respect to the Improvements (the "Licenses, Permits and Approvals") to the extent that they are in the possession or under the control of the Village and are transferable.

### 2. Property Tax Proration.

St. Luke's shall continue to pay all real estate taxes due and payable from and after the Closing Date (as hereinafter defined).

### 3. Other Ground Lease Provisions

(a) *Lease Rate.* The Village shall lease the Property to St. Luke's at the rate of One Dollar (\$1.00) per calendar year or partial calendar year that the Lease is in effect. This amount shall be paid at Closing for the calendar year in which the Closing takes place. Each annual payment thereafter shall be made not later than January 15 of the calendar year to which it applies.

(b) *Mortgage.* The Ground Lease shall permit St. Luke's to provide in any mortgage agreement relating to the Improvements for an assignment of the Ground Lease to the mortgagee under the terms of the mortgage or to any person acquiring the Leasehold in connection with any foreclosure of the mortgage, subject to the consent of the Village, which consent shall not be unreasonably withheld.

(c) *Term.* The term of the Ground Lease shall be for a period of ninety-nine years from the Closing Date.

(d) *Use.* The Ground Lease shall provide that St. Luke's may only use the Property for religious, charitable, and educational purposes consistent with its current charter. In the event St. Luke's fails for a period in excess of thirty calendar days to use the Property for religious, charitable or educational purposes, the Village shall furnish written notice to St. Luke's specifying the non-conforming use. If St. Luke's fails to cease the non-conforming use within thirty (30) days after receiving notice from the Village, the interest of St. Luke's in this lease is extinguished without further notice to St. Luke's, and the equitable interest of St. Luke's shall revert to the Village.

(e) *Recording.* The Ground Lease or a Memorandum of Lease shall be recorded by either the Village or St. Luke's or any successor-in-interest to St. Luke's.

**4. Purchase Price.**

(a) The purchase price for the Improvements shall be Five Hundred Twenty Thousand and 00/100 dollars (\$520,000.00) (the "Purchase Price") and shall be payable in cash at Closing in immediately available funds, adjusted by all prorations, credits, allowances and other adjustments specifically provided for in this Agreement.

**5. Closing.**

(a) The closing of the transactions contemplated in this Agreement (the "Closing") shall occur on such date and at such place and time as the Village and St. Luke's shall mutually agree upon in writing. The date on which this transaction is actually closed is occasionally referred to herein as the "Closing Date".

(b) St. Luke's shall pay all Closing costs other than the cost of the Village's legal counsel and any measures necessary to convey marketable title to the Improvements.

(c) Notwithstanding any other provision of this Agreement, if this transaction fails to close before December 31, 2007, for any reason not attributable to breach by one of the parties of its obligations hereunder, this Agreement and all obligations hereunder shall terminate.

**6. Items to be Delivered at Closing.**

(a) At Closing, the Village shall deliver or cause to be delivered to St. Luke's the following:

- i. A Ground Lease Agreement, in recordable form;
- ii. A warranty bill of sale for the Improvements;
- iii. As many originals (or true and correct copies of the originals) of the Licenses, Permits and Approvals as are then in the Village's possession;
- iv. A non-foreign person certification;
- v. An affidavit relating to liens, a closing statement, and such other documents as may reasonably be requested by St. Luke's title insurer in order to issue a mortgagee policy of title insurance to any institution providing mortgage financing to St. Luke's;
- vi. A certified copy of the ordinance of the Village's Village Council authorizing the execution and delivery of the Ground Lease and the sale of the Property to St. Luke's and empowering the individuals executing documents at Closing to execute documents and instruments on behalf of the Village;
- vii. An opinion of counsel for the Village in a form satisfactory to counsel for St. Luke's certifying as to the Village's authority to enter into the transactions contemplated in this Agreement;
- viii. Such other documents as may reasonably be requested by St. Luke's in furtherance of this transaction.

(b) At the Closing, St. Luke's shall deliver or cause to be delivered to the Village the following:

- i. The rent pursuant to the Ground Lease for the remainder of 2007 and the Purchase Price, as the latter may be adjusted pursuant to this Agreement and allocated in accordance with the Village's instructions;
- ii. An incumbency certificate executed by St. Luke's secretary or assistant secretary certifying that the officers executing documents on behalf of St. Luke's have been duly appointed and currently hold their respective positions;
- iii. An opinion of counsel for St. Luke's in a form satisfactory to counsel for the Village certifying as to St. Luke's organization, existence, standing and authority to enter into the transactions contemplated in this Agreement;

iv. Such other documents as may reasonably be requested by the Village in furtherance of this transaction.

**7. Possession; Termination of Existing Lease.**

The Village shall deliver possession of the Property to St. Luke's at Closing. The current Lease Agreement dated March 4, 2005 (the "Lease"), between the Village and St. Luke's with respect to the Property shall be terminated effective as of the Closing Date.

**8. Conditions to the Performance of St. Luke's.**

The obligation of St. Luke's to enter into the Ground Lease and to purchase the Improvements is subject to the satisfaction of the following conditions not later than the Closing (any of which may be waived in whole or in part by St. Luke's in writing on or before the Closing):

(a) St. Luke's title examination, any title insurance commitment and policy, and any boundary survey to be procured by St. Luke's shall show marketable title to the Property in the Village immediately prior to Closing in fee simple free and clear of all liens and encumbrances except for (a) liens and encumbrances included as standard, preprinted exceptions to the title policy; (b) liens, covenants, conditions, and easements of record which do not interfere with present lawful use; (c) legal highways; (d) taxes and assessments which are a lien on the date of the Agreement; (e) liens or encumbrances which are created by St. Luke's; (f) the Lease; and (g) those approved by St. Luke's in writing (all of the foregoing being referred to collectively as the "Permitted Exceptions"). Marketability shall be determined in accordance with the title standards of the Ohio State Bar Association. If St. Luke's examination of the title or the title insurance commitment discloses any defect or encumbrance adversely affecting marketability, the Village shall have thirty (30) days to cure or remove same, at the Village's expense. If the Village fails to do so, St. Luke's shall have the option of terminating this Agreement without obligation or proceeding to lease the Property and purchase the Improvements subject to such defect or encumbrance. St. Luke's election shall be evidenced by notice in writing to the Village within ten (10) days after the termination of the aforementioned thirty (30) day period.

(b) St. Luke's shall have procured financing commitments from one or more lenders satisfactory to St. Luke's totaling the full amount of the Purchase Price and on terms and conditions satisfactory to St. Luke's and shall provide to the Village copies of written loan commitments from all lenders at least seven (7) calendar days prior to the Closing.

(c) St. Luke's Vestry shall have approved the terms and conditions of this Agreement and authorized the transactions contemplated herein on behalf of St. Luke's.

(d) The Village's representations and warranties in Section 11, below, shall be true, complete, and correct in all material respects at and as of the Closing Date.

St. Luke's may terminate this Agreement as the result of the failure of any of the above conditions by written notice to the Village to that effect.

**9. Conditions to the Performance of the Village.**

The obligation of the Village to enter into the Ground Lease and to sell the Improvements is subject to the satisfaction of the following condition not later than the Closing (any of which may be waived in whole or in part by the Village in writing on or before the Closing):

(a) The Village's Village Council shall have approved the terms and conditions of this Agreement and authorized the transactions contemplated herein on behalf of the Village, and the Village Council's action shall not be subject to referendum at the time of the Closing.

**10. Broker.**

The Village represents and warrants to St. Luke's that the Village has not dealt with any broker or finder with respect to the transactions contemplated in this Agreement. The Village shall indemnify St. Luke's from and against any claim for brokerage commission or finder's fee asserted by any person, firm, or corporation claiming to have been engaged by or otherwise deriving rights through the Village. St. Luke's represents and warrants to the

Village that St. Luke's has not dealt with any broker or finder with respect to the transactions contemplated in this Agreement, and St. Luke's shall indemnify the Village from and against any claim for brokerage commission or finder's fee asserted by any person, firm or corporation claiming to have been engaged by or otherwise deriving rights through St. Luke's.

**11. The Village's Representations and Warranties.**

The Village represents and warrants to St. Luke's that:

(a) The Village is a municipal corporation duly organized and validly existing under the laws of the State of Ohio. The Village has the power to execute, deliver and perform this Agreement and the transactions contemplated hereby, and the Village at Closing will have taken all requisite action necessary to authorize the execution, delivery and performance by the Village of this Agreement.

(b) The execution and delivery of this Agreement and the consummation of the transactions hereunder do not violate any terms, provisions, and conditions of any agreement or any decree, judgment, or other obligation binding upon the Village.

(c) The Village has not received any written notice of violation from any governmental agency with respect to the Property, nor is the Village aware of any intended real estate tax assessment.

(d) The Village has not received any written notice or report from any governmental authority regarding any liability, or regarding any investigatory, corrective or remedial obligation under any federal, state or local environmental law, or regarding any threatened or existing proceeding asserting that the Property is or may be in violation of any federal, state or local environmental law or subject to any liability under any environmental law which would adversely affect in any material respect St. Luke's use of the Property and ownership of the Improvements.

(e) The Village has no knowledge of any solid waste, hazardous waste, hazardous substances, toxic substances, toxic chemicals, pollutants or contaminants, underground storage tanks (except those specifically identified in writing to St. Luke's prior to the date of this Agreement), purposeful dumps, wastes, pollutants, contaminants in, or accidental spills of same on or about the Property, nor any solid wastes, hazardous wastes, toxic substances, hazardous substances, contaminants, wastes, or pollutants that are stored on the Property.

(f) The Village has no knowledge of any filtering into ground water or transmission by seepage, leaching, drainage, or other transfer of any solid wastes, hazardous wastes, hazardous substances, toxic substances, pollutants, contaminants, or other wastes which have affected, are now affecting, or at and as of Closing will affect adjoining sites.

The foregoing representations and warranties shall be true as of the Closing Date and shall survive the Closing.

**12. St. Luke's Representations and Warranties.**

St. Luke's represents and warrants to Village that:

(a) St. Luke's is a non-profit corporation duly organized and validly existing under the laws of the State of Ohio. St. Luke's has the power to execute, deliver and perform this Agreement and the transactions contemplated hereby, and St. Luke's at Closing will have taken all requisite action necessary to authorize the execution, delivery and performance by St. Luke's of this Agreement.

(b) At Closing, St. Luke's will provide to the Village a duly executed Resolution authorizing this transaction.

(c) The execution and delivery of this Agreement and the consummation of the transactions hereunder do not violate any terms, provisions, and conditions of any agreement or any decree, judgment, or other obligation binding upon St. Luke's.

The foregoing representations and warranties shall be true as of the Closing Date and shall

survive the Closing.

**13. Breach or Default.**

If either St. Luke's or the Village breaches or is in default in the observance or performance of its obligations hereunder, then the nonbreaching/nondefaulting party shall have the right to specific performance by the breaching/defaulting party of its obligations hereunder or, in the alternative, to terminate this Agreement and recover compensation for any actual damages resulting from the breach or default. Each party waives the right to any claim for incidental, consequential, or punitive damages resulting from any breach of or default under this Agreement.

**14. Notice.**

Any notice required or contemplated under this Agreement shall be deemed to have been properly served if it is in writing and (a) delivered in person to the recipient, (b) sent by telecopy to the recipient at the telecopy number set forth below and the charges prepaid, or by certified U.S. mail, postage prepaid, to the recipient at the address set forth below:

*If to the Village:*  
Village of Granville, OH  
141 E. Broadway  
Granville, Ohio 43023  
Fax: (740) 587-0128

*If to St. Luke's:*  
St. Luke's Episcopal Church  
118 South Main St.  
Granville, Ohio 43023  
Fax: (740) 587-0167

*with a copy to:*  
D. Michael Crites, Esq.  
Rich, Crites & Dittmer, LLC  
300 East Broad St., Ste. 300  
Columbus, Ohio 43215  
Phone: (614) 228-5822  
Fax: (614) 540-7468  
E-mail: mcrites@richcrites.com

*with a copy to:*  
Dixon F. Miller, Esq.  
Porter, Wright, Morris & Arthur  
41 South High St., 28<sup>th</sup> Floor  
Columbus, Ohio 43215  
Phone: (614) 227-2241  
Fax: (614) 227-4492  
E-mail: dmiller@porterwright.com

Notice sent in the manner described above shall be deemed effective upon sending. Notice sent in any other manner shall be deemed effective upon receipt.

**15. Assignment.**

This Agreement is made for the benefit of each party hereto and its respective successors and may not be assigned by either party.

**16. Miscellaneous.**

All parties hereby acknowledge receipt of a full and complete copy of this Agreement and declare that no promises, representations or agreements, other than those herein contained, have been made or were relied upon. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio.

**IN WITNESS WHEREOF**, St. Luke's and the Village have caused this Agreement to be executed by their respective, duly authorized representatives on the date first set forth above.

**THE VILLAGE:**  
Village of Granville, OH

**ST. LUKE'S:**  
St. Luke's Episcopal Church

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Current Draft: December 5, 2007

This Lease prepared by D. Michael Crites, Attorney, 300 East Broad Street, Suite 300, Columbus, OH 43215  
After filing, return to: D. Michael Crites, Attorney, 300 East Broad Street, Suite 300, Columbus, OH 43215