



TO: Mayor and Members of Troy City Council
FROM: Lori Grigg Bluhm , City Attorney
Allan T. Motzny, Assistant City Attorney
DATE: December 1, 2009
SUBJECT: Amendment to Barnard Agreement

In January 2005, the late Harriet Barnard conditionally donated her historical house, located at 5945 Livernois Road, to the City of Troy. This house has substantial historical value, since it was once owned by one of Troy's founding families, the Niles Johnson family. In addition, Norman and Harriet Barnard, the most recent occupants, also made significant contributions to the City of Troy.

Under the previously executed "*Agreement by and Between Harriet Barnard and the City of Troy for the Donation of an Historical House*" the City had five years to move the house to the Troy Museum and Historic Green. This Agreement was signed on January 25, 2005. Since that time, several steps were taken to facilitate the move of the historic home. The Troy Historical Society Heritage Campaign Committee has raised funds for the move. In addition, the Troy Museum and Historic Green have now been expanded with the acquisition of two adjoining parcels, which provides space for the relocation of the historic house. Unfortunately, there is not enough time to move the house prior to the January 25, 2010 deadline. In light of the significant accomplishments, the Barnard family has offered to extend the deadline for moving the historic home until December 31, 2010.

The proposed *Amendment to Agreement By and Between Harriet Barnard and the City of Troy for the Donation of An Historical House* has been approved by the attorney and the personal representatives for the estate. It changes paragraph 6 of the Agreement to extend the time period for moving the historical house to December 31, 2010. If the house is not relocated by that time, the parties can either agree to an extension or to terminate the Agreement. If the Agreement is terminated, Troy would have no further obligations except to pay for any maintenance or restoration as required under the original Agreement. Paragraph 10 of the original Agreement requires that Troy be responsible for maintaining the house and for paying utilities, insurance, and other incidental expenses after the house is vacated.

The Troy Historical Society has agreed to pay for the utilities for one year or until the house is relocated, whichever comes first, and therefore the utilities have already been transferred to the Troy Historical Society. Other measures have also been completed to minimize the costs to the City.

City Administration recommends the approval of the attached Amendment to the Agreement. Please let us know if you have any questions.

**AMENDMENT TO AGREEMENT BY AND BETWEEN HARRIET
BARNARD AND THE CITY OF TROY FOR THE DONATION OF
AN HISTORICAL HOUSE**

This agreement made this _____ day of _____, 2009 by and between Frederick H. Barnard and Sandra H. Elwood, Co-Successor Trustees of the Harriet F. Barnard Revocable Trust Agreement dated September 11, 1998, and hereafter referred to as "BARNARD", whose address is 62998 Invitational Drive, Washington, MI 48094, and the City of Troy, hereafter referred to as "TROY", a Michigan municipal corporation, the address of which is 500 W. Big Beaver, Troy, Michigan, 48084.

RECITALS

- A. TROY and HARRIET BARNARD entered into an Agreement for the donation of a Historical House that was signed by Harriet Barnard on December 10, 2004 and executed on behalf of TROY on January 24, 2005. A copy of the Agreement is attached hereto.
- B. Pursuant to the Agreement, HARRIET BARNARD conveyed a Bill of Sale to her Historical House located at 5945 Livernois Road, in the City of Troy, to TROY. In accordance with the Agreement, the Bill of Sale is being held in escrow and will be delivered to TROY after the Historical House is relocated by TROY to the Troy Museum and Historic Village, located at 60 W. Wattles Road, in the City of Troy.
- C. Pursuant to the Agreement, TROY was allowed a five-year period to secure funding from other public and private sources to pay the costs of relocating the house to the Troy Museum and Historic

Village, and to pay the costs of acquiring additional land as needed to accomplish such relocation in accordance with all applicable statutes, codes and ordinances.

- D. Pursuant to Paragraph 2 and 11 of the Agreement, on November 4, 2008, TROY provided BARNARD with a one year advance written notice of the planned relocation of the Historical House. A copy of the notice is attached hereto. In accordance with Paragraph 6 of the Agreement, the Historical House was to have been relocated to the Troy Museum and Historic Village one year after the November 4, 2008 notice, provided sufficient funds for land acquisitions were available and TROY was desirous of moving the House.
- E. The House was not removed and relocated as of November 4, 2009.
- F. Since sufficient funds have been raised to pay the costs of relocation, and sufficient land has been acquired for the relocation, the parties believe that it is feasible to allow TROY until December 31, 2010 to remove the Historical House from the real property located on Livernois Road and relocate it to the Troy Museum and Historic Village.
- G. To clarify the time period allowed for the relocation of the Historical House, TROY and BARNARD have agreed to amend Paragraph 6 of the Agreement.

**IN CONSIDERATION OF THE MUTUAL COVENANTS SET FORTH
HEREIN, IT IS MUTUALLY AGREED BY THE PARTIES THAT PARAGRAPH 6
ONLY OF THE “AGREEMENT BY AND BETWEEN HARRIET BARNARD AND
THE CITY OF TROY FOR THE DONATION OF AN HISTORICAL HOUSE”
SIGNED BY HARRIET BARNARD ON DECEMBER 10, 2004 AND EXECUTED
BY THE MAYOR AND CITY CLERK OF THE CITY OF TROY ON JANUARY
24, 2005, IS AMENDED IN ITS ENTIRETY TO READ AS FOLLOWS:**

6. After one year has elapsed after providing written notice as set forth in paragraph 2, the House will be removed by TROY from the real property located on Livernois Road, and it shall be relocated to the Troy Museum and Historical Village at 60 W. Wattles Road, in the City of Troy, Oakland County, Michigan. Said removal and relocation shall occur by December 31, 2010, unless the parties agree in writing to extend the time period for removal and relocation beyond that date. If the House is not removed and relocated by December 31, 2010, and if the parties do not enter into an agreement to extend the time period for removal and relocation, all rights and interest in the House shall automatically revert back to the successors of Harriet Barnard as set forth in her Revocable Living Trust dated September 11, 1998. Upon such reversion, TROY shall no longer have any responsibilities with respect to the House or the real property located at 5954 Livernois, except that Troy shall be responsible to pay all utilities, insurance, water and incidental expenses which then remain unpaid and shall promptly restore or pay all costs of restoring the walls, ceilings

and floors to their prior condition. TROY agrees, upon such reversion, to execute documents necessary to reconvey any and all interest it may have acquired with respect to the House. It is also agreed that if TROY fails to comply with its obligations to maintain the House prior to its removal and relocation as set forth in paragraph 10, BARNARD shall have the right to terminate this Agreement and recover any sums remaining unpaid and/or the costs needed to restore the walls, ceilings and floors that have been damaged by any investigation work that is not restored at such termination.

EXCEPT FOR THE AMENDED PARAGRAPH 6 AS SET FORTH ABOVE, ALL OTHER PROVISIONS OF THE “AGREEMENT BY AND BETWEEN HARRIET BARNARD AND THE CITY OF TROY FOR THE DONATION OF AN HISTORICAL HOUSE” SHALL REMAIN IN EFFECT.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the date(s) set forth below.

HARRIET F. BARNARD REVOCABLE TRUST AGREEMENT DATED SEPTEMBER 11, 1998

WITNESSES:

By: _____
Frederick H. Barnard, Co-Trustee

By: _____
Sandra H. Elwood, Co-Trustee

Frederick H. Barnard and Sandra H. Elwood, Co-Trustees of the Harriet F. Barnard Revocable Trust acknowledged the foregoing instrument before me on this ____ day of _____, 2009.

Notary Public
_____ County, Michigan
My Commission Expires: _____

WITNESSES:

CITY OF TROY, a Michigan
Municipal Corporation

By: _____
Louise E. Schilling, Mayor

By: _____
Tonni Bartholomew, City Clerk

Louise E. Schilling, Mayor of the City of Troy, and Tonni L. Bartholomew, Troy
City Clerk, acknowledged the foregoing instrument before me on this _____ day
of _____, 2009.

Notary Public
_____ County, Michigan
Acting in Oakland County, Michigan
My Commission Expires: _____

AGREEMENT BY AND BETWEEN HARRIET BARNARD
AND THE CITY OF TROY FOR THE DONATION
OF AN HISTORICAL HOUSE

This agreement made this 10th day of December, 2004, by and between Harriet Barnard, hereafter referred to as "Barnard", whose address is 5945 Livernois, Troy, Michigan 48098, and the City of Troy, hereafter referred to as "Troy", a Michigan municipal corporation, the address of which is 500 W. Big Beaver Road, Troy, Michigan 48084.

RECITALS

A. Barnard has expressed a willingness to donate her historical house, located at 5945 Livernois Road, in the City of Troy, to Troy. Barnard desires to convey the house to Troy, so that it can be moved to the Troy Museum and Historic Village, located at 60 W. Wattles Road, Troy, Michigan. Barnard intends only to convey the main structure (the house), and does not intend to convey any of the underlying real property at 5945 Livernois Road to the City of Troy (hereafter sometimes referred to as the "House").

B. Barnard is willing to immediately convey title to the House to Troy through a Bill of Sale, which is subject to the terms as set forth in this Agreement.

C. Barnard is willing to allow a five (5) year period to secure funding from other public and private sources to pay the costs of relocating the House to the Troy Museum and Historic Village, located at 60 W. Wattles Road, in the City of Troy and

to pay the costs of acquiring additional land as needed to accomplish such relocation in accordance with all applicable statutes, codes and ordinances.

D. It is understood that if there are insufficient funds at the expiration of the five year period to either provide for the relocation of the House, or to acquire the land needed for such relocation, then Barnard (or her executors, personal representatives, administrators, trustees, heirs, or successors, whichever may be applicable, if she is not living at that time), and Troy may, but shall not be required to, negotiate and enter into a subsequent agreement that would modify or extend the terms of this Agreement. Such subsequent agreement may grant an extension of time to obtain additional funding and could waive or extend the rights of reversion, as set forth in this Agreement. Such extensions may be for an indefinite or specific period of time.

5. It is also understood that Troy, or Barnard, at the expiration of the five year period, shall have the right to terminate the Agreement if there are insufficient funds to pay the costs of relocation of the House or to pay the costs of acquiring the necessary land for such relocation.

**IN CONSIDERATION OF THE MUTUAL COVENANTS SET FORTH
HEREIN, IT IS MUTUALLY AGREED BY THE PARTIES AS FOLLOWS:**

1. Barnard gives, conveys and transfers to Troy all right, title and interest in the main residential structure presently located at 5945 Livernois, Troy, Michigan, hereafter sometimes

referred to as "the House". The gift, conveyance and transfer, as specified in this Agreement, is confirmed by a Bill of Sale dated of even date herewith and delivered by Barnard contemporaneously with the execution of this Agreement. A copy of the Bill of Sale is attached and incorporated as part of this Agreement. The Bill of Sale shall be held in escrow with a title insurance company to be agreed upon between Barnard and Troy, and will be delivered to Troy when and if the House is relocated to the Troy Museum and Historic Village as required in this Agreement.

2. Prior to relocation of the House, under the terms of this Agreement, Barnard or her trustees, designated agent, or personal representative shall be given one (1) year advance written notice of the planned relocation. Barnard may continue to use the House during this one year period of time without necessity of paying any costs or expenses to Troy.

3. Until the expiration of the one year advance notification period, or a shorter time if mutually agreed to by the parties in writing, Barnard may continue to occupy the House and will continue routine and normal maintenance of the yard and House. Until the House is moved to the Troy Museum and Historic Village, Barnard or her trustees, designated agent or personal representative may request Troy to assume responsibility and/or cost of substantive repairs or other major repairs to the House. Upon such request, Troy shall have the option to determine the costs of such substantive or major repairs to the House are too

great, and can then exercise in writing its option to terminate this Agreement, in which event the House shall revert to Barnard, if living, or in accordance with her Last Will and Testament or trust, if deceased.

4. Barnard shall continue to receive a homestead exemption for the real property located at 5945 Livernois Road in the City of Troy for as long as the House remains on the real property and she is still living, provided Barnard does not then claim entitlement to a homestead exemption for any other real property located within the State of Michigan, and further provided she designates the House as her principal residence.

5. Barnard and Troy agree the value of the House is approximately \$88,900.00. After the House is relocated to the Troy Museum and Historic Village, Troy will acknowledge the donation of the House, and will reduce the real property assessment by one half of the current year's market value of the building as shown on the assessment roll, after Barnard vacates the House. If and when the House and all accessory structures are removed from the real property, then Troy will conduct a new assessment to the real property to determine appropriate exemptions and also to determine the value of the real property without the structures.

6. One year after providing written notice as set forth in Paragraph 2, or at such earlier date as agreed to by Barnard, the House will be removed by Troy from the real property located on Livernois Road, and it shall be relocated to the Troy Museum and Historic Village at 60 W. Wattles Road, in the City of Troy,

Oakland County, Michigan, provided sufficient funds for necessary land acquisitions are available and Troy is desirous of moving the House to the Troy Museum and Historic Village.

7. Within nine (9) months after the House is relocated to the Troy Museum and Historic Village, the underlying real property shall be fully filled and restored by Troy (including removing the foundation and fully grading and compacting the area). Until this work is completed by Troy, it will take necessary steps to secure and protect the real property against injury to persons. Such securing, protecting and restoration of the real property shall comply with all applicable statutes, ordinances and codes.

8. If the House is relocated and the real property restored by Troy in accordance with Paragraph 7 above, then Barnard shall be responsible for the removal of all other accessory structures located upon the real property within a reasonable period of time and in accordance with applicable statutes, ordinances and codes.

9. Troy shall not be responsible for any alleged environmental clean up requirements with respect to the real property located at 5945 Livernois, including but not limited to the removal of any underground storage tanks, the removal of contaminated soil, and/or the restoration of wetlands. Likewise, Troy will not cause any contamination of soil or disturbance of wetlands on the real property as part of its removal of the House.

10. After Troy has given the advanced written notification as set forth in Paragraph 2, Barnard will continue to be responsible for maintaining and securing the House and for paying utilities, insurance and other incidental expenses until she has vacated the House. Once the House is vacated, Troy shall be responsible for maintaining and securing the House and for paying utilities, insurance and other incidental expenses. This Paragraph 10 is in addition to the obligations of Barnard and Troy under Paragraph 3 of this Agreement.

11. Troy shall have five years from the date of this Agreement to exercise its rights to the House by submitting the written notice described in Paragraph 2. Troy shall endeavor to obtain sufficient funding from public and private sources to pay the cost of removal and relocation of the House and the cost to acquire land needed for such relocation. If Troy is unable to obtain sufficient funding, and if Troy fails to exercise its rights by providing the written notice as described in Paragraph 2 within five years from the date of this Agreement, then Troy and Barnard shall either re-negotiate an extension of time to move the House if it is reasonably believed by each party that it is feasible to do so, or all rights and interest in the House shall revert back to Barnard or her executors, personal representatives, administrators, trustees, heirs or successors as specified by Barnard or as otherwise set forth in her will and/or trust. Upon such reversion, Troy shall no longer have any responsibilities with respect to the House or the real property

located at 5945 Livernois. Troy agrees, upon such reversion, to execute documents necessary to reconvey any and all interest it may have acquired with respect to the House.

12. If the House is removed and relocated to the Troy Museum and Historic Village, the House shall remain open to the public for tours in a manner similar to the other buildings located at the Troy Museum and Historic Village. Troy may utilize portions of the House for administrative offices for the Troy Museum Staff. The House shall be identified by the Troy Museum and Historic Village as the "Niles-Barnard Home" or similar designation containing the words Niles and Barnard.

13. Notwithstanding the Bill of Sale to the House, if in the course of removal of the House to the Troy Museum and Historic Village and its restoration, any person finds, locates, discovers or becomes aware of money or other items of monetary or historic value located in the walls, floors, attic, ceilings or other portions of the House, such items shall remain the property of Barnard, or her executors, personal representatives, trustees, heirs, successors and assigns and are not intended to become the property of Troy or anyone locating such assets, and they shall be forthwith turned over to Barnard, or her executors, personal representatives, trustees, heirs, successors and assigns.

14. Following the removal and relocation of the House to the Troy Museum and Historic Village, Troy agrees private tours of the House may be arranged between museum staff and members of Barnard's family, including children; grandchildren; great

grandchildren; great, great grandchildren; and great, great, great grandchildren, so they may continue to share the heritage established by Judge Norman Barnard and Mrs. Harriet Barnard.

15. Except as otherwise provided for termination of this Agreement and/or reversion of the House to Barnard, this Agreement shall be binding on the executors, personal representatives, administrators, heirs, successors and assigns of the parties hereto.

16. Barnard may elect to record this Agreement with the Oakland County Register of Deeds.

17. The Recitals are a part of this Agreement, except to the extent that they conflict with the balance of this Agreement and to that extent the balance of the Agreement shall be controlling.

18. This Agreement may be amended only by a separate written agreement signed by the parties.

19. This Agreement shall be controlled under Michigan law.

WITNESSES:

Therese Helboix
Janis Libert

Harriet F. Barnard
Harriet Barnard

Harriet Barnard acknowledged the foregoing instrument before me on this 10th day of December, 2004.

Lorraine E. Bess
Notary Public, State of Michigan
Genesee County
My Commission Expires: 09-23-05
Acting in the County of Oakland

CITY OF TROY, a Michigan
municipal corporation

Charlene A. McComb
Charlene A. McComb

By: Louise E. Schilling
Louise E. Schilling, Mayor

By: Tonni L. Bartholomew
Tonni Bartholomew, City Clerk

Cheryl A. Maxwell
Cheryl A. Maxwell

Louise E. Schilling, Mayor of the City of Troy, and Tonni L. Bartholomew, Troy City Clerk, acknowledged the foregoing instrument before me 5th day of January, 2004 ~~2005~~.

Wendy Hays

Notary Public, State of Michigan
Oakland County

My Commission Expires: April 16, 2005
Acting in the County of Oakland

BILL OF SALE

For consideration, the receipt of which is acknowledged, I, Harriet Barnard, the undersigned, of 5945 Livernois, Troy, Michigan, in accordance with the "Agreement By and Between Harriet Barnard and the City of Troy for the Donation of an Historical House", and subject to all conditions set forth in said agreement, give and transfer to the City of Troy, 500 W. Big Beaver Road, Troy, Michigan, 48084, the residential structure presently located upon my real property at 5945 Livernois, Troy, Michigan, 48098.

I warrant that I am the legal owner of the aforesaid residential structure and that it is free from all liens and encumbrances.

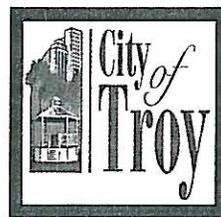
Harriet Barnard

Subscribed and sworn to before me
this day of 2004.

Notary Public, Oakland
County, Michigan
Acting in Oakland County, Michigan
My commission expires: _____

Troy Museum & Historic Village
60 W. Wattles
Troy, MI 48098
(248) 524-3570

The City of Tomorrow...



...Today

November 4, 2008

Fred Barnard, Personal Representative
Estate of Harriet Barnard, Deceased
62998 Invitational Dr.
Washington MI 48094

Re: Historic House Gift Agreement Dated December 10, 2004

Dear Fred:

Pursuant to the terms of Paragraph 2 on page 3 of the Agreement by and between Harriet Barnard and the City of Troy for the Donation of an Historic House ["the House"] dated December 10, 2004, the City of Troy and the Troy Historical Society hereby give you one (1) year advance written notice of their planned relocation of the House to the Troy Museum and Historic Village.

If the best time for the planned relocation of the House in our judgment is less than one (1) full year from the date of this letter, we will request that you agree in writing with us to accept such time and waive the one full year's advance notification requirement. We will make this request of you as soon as possible in 2009 after we have been able to decide on the best relocation date.

Until the expiration of the one year advance notification period, or a shorter time if mutually agreed to by the parties in writing under Paragraph 3 of the Agreement you may continue to occupy the House and will continue routine and normal maintenance of the yard and House. During this period, the City of Troy and the Troy Historical Society may remove contents from the House prior to its planned relocation in accordance with their separate agreement with you.

Yours truly,

City of Troy

Troy Historical Society

By Philip J. Nelson

By Cheryl L. Baum

Its: City Manager

Its: President