

## *St. Louis City Ordinance 64913*

FLOOR SUBSTITUTE

BOARD BILL NO. [99] 279

INTRODUCED BY ALDERMAN MIGUEL MITCHELL

An ordinance authorizing an Amended and Restated Lease between the City of St. Louis and Homer G. Phillips Dignity House, L.P., to amend and restate, in its entirety, the original lease between the City of St. Louis and W.A.T. Dignity Corporation, authorized by Ordinance 64565, adopted by the Board of Aldermen of the City of St. Louis and approved September 28, 1998, for property and improvements located at Whittier and Kennerly Streets; authorizing and directing the Mayor and the Comptroller to enter into said Amended and Restated Lease on behalf of the City of St. Louis; setting forth the terms and conditions of the Lease; with an emergency clause.

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Board of Aldermen hereby declares that it has reviewed the following Amended and Restated Lease and compared the Amended and Restated Lease with the original lease and, consistent with its findings in the aforementioned Ordinance 64565, finds that the use to be made of a portion of the Premises, as hereinafter defined, by Homer G. Phillips Dignity House, L.P. for the operation of a 225-unit multi-family residential development primarily for low income persons with a preference for elderly persons capable of independent living with commercial facilities will serve a public need.

SECTION TWO. The Mayor and the Comptroller are hereby authorized and directed to enter into the Amended and Restated Lease with Homer G. Phillips Dignity House, L.P., which shall read in words and figures in substantially the following form:

### AMENDED AND RESTATED LEASE

This Amended and Restated Lease (the **Lease**) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2000 (**the date of this Lease**), by and between THE CITY OF ST. LOUIS, MISSOURI (**Landlord**) and Homer G. Phillips Dignity House, L.P. (**Tenant**), a Missouri limited partnership, and it amends and restates, in its entirety, that certain lease between the City of St. Louis and W.A.T. Dignity Corporation, and that certain sublease between W.A.T. Dignity Corporation and Homer G. Phillips Dignity House, L.P., which

lease and sublease were executed on December 1, 1999, and were authorized by Ordinance 64565, adopted by the Board of Aldermen of the City of St. Louis and approved September 28, 1998.

WHEREAS, Landlord is the fee simple owner of certain property and improvements thereon located at Whittier and Kennerly Streets in the City of St. Louis, State of Missouri, more particularly described on EXHIBIT A attached hereto and incorporated herein by reference (the **◆Premises◆**);

WHEREAS, the Premises were operated by the City of St. Louis for many years as a hospital and accompanying service building serving the population of the City of St. Louis and particularly persons of low and moderate income;

WHEREAS, the City is no longer operating a municipal hospital in the Premises and a need exists in the City for the comprehensive renovation and productive reutilization of the Premises;

WHEREAS, a special need exists to provide housing for the elderly, and Tenant's proposed uses of the Premises are compatible with such need; and the governing body of the City has determined that the proposed uses of the Premises by the Tenant will be for the benefit of the City of St. Louis and its residents;

WHEREAS, Tenant intends to operate a multi-family apartment housing project to accommodate approximately two hundred twenty-five (225) apartments for low income persons with a preference for the elderly and approximately eleven thousand (11,000) square feet of commercial rental space in a portion of the Premises (together, the **◆Project◆**) on behalf of and for the benefit of Landlord and the residents of the City of St. Louis;

WHEREAS, Tenant intends to obtain financing for completion of the Project; and

WHEREAS, pursuant to Ordinance \_\_\_\_\_ adopted by the Board of Aldermen of the City of St. Louis and approved \_\_\_\_\_, 2000, Landlord is authorized to lease the Premises to Tenant upon the terms and conditions therein contained by the amendment and restatement, in its entirety, of that certain lease between the City of St. Louis and W.A.T. Dignity Corporation, and that certain sublease between W.A.T. Dignity Corporation and Homer G. Phillips Dignity House, L.P., which lease and sublease were executed on December 1, 1999, and were authorized by Ordinance 64565,

adopted by the Board of Aldermen of the City of St. Louis and approved September 28, 1998.

1. Granting of Leasehold. Landlord, in consideration of the rent hereinafter reserved and agreed to be paid and the stipulations, agreements, covenants and conditions hereinafter set forth, hereby rents, leases, and lets to Tenant, and Tenant hereby rents, leases and hires from Landlord, the Premises in accordance with the terms and conditions hereof. Tenant's use and operation of the Project shall be subject only to the provisions of this Lease and the following specific entry and usage rights of Landlord:

(a) Until April 1, 2000, Landlord shall have the right to continue to operate any utility equipment or facility presently located in improvements on the Premises, shall have full access to the Premises and improvements for such utility operations, and may remove any surplus utility equipment or parts from the Premises and improvements.

(b) Tenant acknowledges and agrees that a certain building, commonly referred to as the clinic building, is located generally south of Parcel A of the Premises, and generally east of Parcel B of the Premises. Tenant covenants and agrees that, throughout the Term hereof, Tenant will reserve, maintain, and provide for the use of clinic building employees and visitors, not less than fifty parking spaces for full size automobiles, at no cost or charge to Landlord or the users of such parking spaces. Such parking spaces shall be provided on Parcel B of the Premises and as close as possible to the clinic building; provided, the parties may agree from time to time in writing on relocation of any or all of such parking spaces.

2. Uses. Tenant shall use the Premises for the purposes of providing apartment housing primarily for low income persons with a preference for the elderly, services incidental to the foregoing, and additional retail uses compatible with the foregoing. With the prior written approval of Landlord's Board of Estimate and Appointment, which approval shall not be unreasonably withheld or delayed, Tenant may be permitted to use the Premises for other lawful purposes from time to time so long as the Premises, in large part, is used for the purpose of providing housing.

3. Cooperation of Landlord. Landlord agrees to execute and deliver any and all appropriate consents and other documents and instruments necessary or required for subletting of the Premises pursuant to Section 19 hereof. Landlord agrees reasonably and appropriately to cooperate with Tenant, at Tenant's

sole cost and expense, in connection with Tenant's efforts, in (i) obtaining financing for the Project; (ii) allocating the benefit and use of any federal or state tax credits to Tenant; (iii) subjecting the Premises to a condominium declaration; and (iv) if necessary, complying with the requirements and certification of the State Health Planning and Development Agency of the Missouri Department of Social Services and the Missouri Health Facilities Review Committee, if applicable. To the extent permitted by law, Landlord's Mayor and Comptroller are authorized in their discretion, to execute, on behalf of Landlord, corrective or clarifying supplemental agreements hereto to facilitate these objectives, at no out-of-pocket cost or expense to Landlord.

4. Term. The Term of this Lease shall be ninety-nine (99) years, commencing on the date of this Lease, and shall expire, unless sooner terminated as hereinafter provided, at midnight on January 1, 2100; provided, that if Tenant shall not have commenced remediation, renovation and reconstruction at the Premises by July 1, 2000, either party may terminate this Lease at any time during the sixty (60) days thereafter by giving notice of such termination to the other party and provided further that if Tenant shall not have substantially completed the remediation, renovation and reconstruction at the Homer G. Hospital Facility and the remediation of the Service Building by July 1, 2003, either party may terminate this Lease at any time during the sixty (60) days thereafter by giving notice of such termination to the other party. The foregoing deadlines shall be subject to extension by the Board of Estimate and Apportionment on account of any force majeure occurrences. As used herein, a force majeure occurrence shall mean any casualty, severely inclement weather, strike or labor disturbance, civil disorder, governmental intervention, shortage of labor or materials, or other occurrence beyond the reasonable control of Tenant.

5. Warranty of Title and Quiet Enjoyment. Landlord represents and warrants to and covenants with the Tenant that Landlord has a fee simple interest in the Premises, free and clear of all liens, encumbrances, and conditions or restrictions of title except for those items which shall be listed on an EXHIBIT B. Landlord covenants that for so long as this Lease shall remain in full force and effect, Tenant shall have peaceable possession and quiet enjoyment of the Premises during the entire term hereof.

6. Rental. Tenant covenants and agrees to pay to Landlord as and for the rental of the Premises, a total Base Rent of Four Million Nine Hundred Fifty Thousand Dollars (\$4,950,000) payable in arrears on the last day of each Lease Year (defined below) during the term hereof in equal annual installments of

Fifty Thousand Dollars (\$50,000). The Term **Lease Year** shall mean twelve (12) consecutive calendar months commencing on the date which is ten years after the date of this Lease. Beginning on the first day of the twentieth Lease Year, and on the first day of every fifth Lease Year thereafter, the annual rental installments shall be increased (and in no event decreased) by the percentage increase occurring, if any, in the last full calendar year for which Consumer Price Index, U.S. City Average for all Urban Consumers, Seasonally Adjusted, All Items, (1982-84=100) (**the Index**), shall have been published by the United States Department of Labor of the Index over the Index for the fifth previous year. If the United States shall cease to publish the Index, rental increases hereunder shall be calculated using such other index reflecting general cost of living increases as may be reasonably selected by Landlord's Board of Estimate and Apportionment. After any such increase of the annual rental installments hereunder, an Adjusted Base Rent for the remainder of the Term hereof shall be calculated in lieu of the Base Rent provided for hereunder. In the event that the total amount of the Base Rent and the Adjusted Base Rent paid hereunder upon at the end of the term of this Lease shall be less than Four Million Nine Hundred Fifty Thousand Dollars (\$4,950,000), the balance of the total Base Rent shall be due and owing on January 1, 2100, the last day of the term of this Lease.

7. Taxes. Landlord hereby acknowledges and represents that the Premises, as real property owned by the City of St. Louis, are presently exempt and will upon completion of the renovation of the Premises be eligible for real estate tax abatement as provided in Ordinance No. 64525 of the City of St. Louis. Landlord agrees to lend all reasonable cooperation to Tenant in connection with Tenant's efforts to qualify the Premises or any applicable portion thereof for tax abatement to the fullest extent available under applicable law.

8. Insurance. Tenant, at its sole cost and expense, shall at all times carry general accident and public liability insurance for the Premises in the amount of not less than \$3,000,000 per person, \$5,000,000 per occurrence against all forms of loss or injury including death, personal and bodily injury, and medical malpractice, and not less than \$10,000,000 coverage against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri designating Landlord as a named additional insured without cost to Landlord. Landlord's Board of Estimate and Apportionment may, not more frequently than every ten years, at Landlord's cost, retain an Insurance Consultant qualified to evaluate insurance needs in connection with the Premises, to review the amounts of property coverage under this Section. Tenant shall obtain any increased

coverage reasonably recommended by Landlord after review of the Insurance Consultant's recommendation effective as of the first to occur of the next semi-annual premium adjustment date or the sixth (6th) month following delivery of written notice of the change in insurance requirements.

Tenant shall at all times maintain or cause to be maintained in full force and effect with respect to the Premises Workers' Compensation insurance in Missouri statutory amounts.

Tenant shall furnish Landlord with certificates evidencing insurance coverage, as provided herein, bearing evidence of payment of premiums, which certificates shall provide that such insurance shall not be cancelable without at least thirty (30) days' prior written notice from the insurer to Landlord. In the event that Tenant shall fail to maintain such insurance coverage, Landlord may pay for the cost of maintaining such insurance and Tenant shall promptly reimburse Landlord for any insurance premiums paid by Landlord in connection therewith; provided, however, prior to expending any sums for such insurance coverage, Landlord shall first give Tenant ten (10) days' notice of its intention to purchase such insurance and Landlord shall have no right to purchase such insurance or to seek reimbursement from Tenant if Tenant obtains such insurance coverage within said ten (10) day period. Landlord shall not be liable to Tenant or any person claiming through or under Tenant for any injury to person or damage to property of whatsoever kind or nature caused by water, rain, ice, snow, frost, fire, storm, accidents or any other conditions on the Premises. All insurance policies hereunder shall be issued by insurers acceptable to Landlord's Comptroller.

9. Maintenance and Utilities. Tenant, at its own cost and expense, shall maintain the Premises and improvements (unless removed) now or hereafter situated thereon in good condition and repair. The Landlord shall have no responsibility to effect any repairs or replacements in connection with the Premises, all of which are the Tenant's obligation as aforesaid. Tenant shall be responsible for all costs of utility services consumed or furnished in connection with Tenant's use and occupancy of the Premises.

10. Improvements. Tenant shall have the right during the term of this Lease, to construct, rehabilitate or remove any improvements on the Premises, which improvements shall be constructed, rehabilitated or removed in a good and workmanlike manner and all construction and rehabilitation shall be in material compliance with applicable requirements of the National Historic Preservation Act of 1966, as amended, all rules and regulations promulgated in connection

therewith, and all other laws, statutes, ordinances and regulations of governmental authorities having jurisdiction with respect to the Premises. In this regard, Landlord shall cooperate reasonably and appropriately with Tenant. Landlord will reasonably assist Tenant in applying for permits or other authorizations for construction, rehabilitation or removal of any improvements, provided that Tenant shall pay all costs and expenses involved therein and shall hold Landlord harmless from any such costs or expenses.

11. AS-IS. Tenant represents and warrants that all known transformers containing PCBs on the Premises have been removed. Tenant accepts the Premises in ~~as is~~ condition, and hereby releases, agrees to hold Landlord harmless from, any claim, loss, costs, damage, judgment or liability of any kind whatsoever, by or to any person, including governmental agencies, arising out of or relating to any defect, condition of, or substance in or upon the Premises, including, by way of example and not limitation, asbestos or radioactive substances. The foregoing release and indemnity shall not be construed to release or excuse Landlord from, or to make Tenant suffer or liable for, any negligent act or negligent omission to act or intentional misconduct of Landlord's employees, agents, contractors or invitees on or about the Premises.

12. Status of Tenant. Tenant shall not be deemed, by virtue of or pursuant to this Lease, for any purpose whatsoever, to be an agent or employee of Landlord, but rather, shall be deemed to be and is intended to be, an independent contractor. No work or activity, including but not limited to renovation, reconstruction, or removal of any improvements on the Premises, or any business activity or operations of any kind on the Premises, conducted by Tenant or anyone in privity with or operating allegedly or in fact under, for, or on behalf of Tenant, shall ever be deemed to be a public work of or on behalf of Landlord for any purpose whatsoever.

13. Liens. Tenant shall keep the Landlord's fee estate and Tenant's Leasehold estate in the Premises free and clear from all mechanics', materialmen's and other liens for work or labor done, services performed, materials or appliances contributed, used or furnished in or about the Premises in connection with any operations of Tenant, or any alteration, rehabilitation, restoration, improvements, repairs or reconstruction which Tenant may make or any work or construction permitted by Tenant on or about the Premises. If Tenant desires to contest any lien of the nature set forth in this Section 13, it shall notify Landlord of its intention to do so within thirty (30) days after the recording of such a lien, and Tenant shall protect and indemnify Landlord

against all losses, expense and damage resulting therefrom. In such case, Tenant shall not be in default hereunder until thirty (30) days after the final determination of the validity thereof, within which time Tenant shall satisfy and discharge such lien to the extent held valid, and all penalties, interest, and costs in connection thereof. Tenant shall upon request of Landlord's Comptroller furnish proof of or provision for payment of all contractors, subcontractors, materialmen or suppliers, or lien waivers therefrom, with respect to any work on the Premises.

14. Indemnification. Tenant shall save harmless from, and indemnify, Landlord against any and all liens, costs, liabilities, claims, loses, damages, judgments, and expenses (including but not limited to reasonable attorney's fees) of any kind, incurred by or asserted or rendered against Landlord, by reason of this Lease, the Premises or any condition thereon or therein, or any act, conduct, omission, activity, or operation of Tenant, or any person claiming under or acting for or on behalf of Tenant in any capacity whatever. The foregoing release and indemnity shall not be construed to release or excuse Landlord from, or to make Tenant suffer or liable for, any negligent act or negligent omission to act or intentional misconduct of Landlord's employees, agents, contractors or invitees on or about the Premises. Nothing herein contained shall be construed to make Tenant, or any person claiming under or acting on behalf of Tenant in any capacity whatever, the agent of the Landlord for the purpose of binding the Landlord or the Premises for any purpose, including but not limited to, the payment of contractors', subcontractors', mechanics' or materialmen's liens under the present or any future laws of the State of Missouri, but all improvements made or erected on the Premises or any part hereof by the Tenant or persons claiming by, through or under the Tenant shall be furnished and erected solely on the credit of the Tenant and Tenant's interests in the Leasehold term hereby created and shall under no circumstances be binding upon the estate of the Landlord in the Premises.

15. Compliance with Laws. Tenant covenants that it will comply with all laws, statutes, ordinance and regulations applicable to the Premises relating to use or occupancy thereof or to the making of repairs or alterations thereto, and will indemnify and hold Landlord harmless from any liability or expense as owner of the Premises with respect thereto including all reasonable costs and attorney's fees, that Landlord may have or incur in connection therewith. The foregoing release and indemnity shall not be construed to release or excuse Landlord from, or to make Tenant suffer or liable for, any negligent act or negligent omission to act or intentional misconduct of Landlord's employees, agents, contractors or invitees on or about the Premises.



16. Surrender. At the expiration or other termination (by forfeiture or otherwise) of this Lease and subject to applicable laws, statutes, ordinances and regulations of governmental authorities having jurisdiction with respect to the Premises, Tenant shall surrender the Homer G. Phillips Hospital in good condition and repair and the Service Building in its current condition and repair as modified by the work done pursuant to paragraph 31 hereof, ordinary wear and tear and loss by casualty and condemnation excepted, provided, however, Tenant shall be entitled, but not obligated, to remove all or any improvements, furniture, machinery, trade fixtures, and equipment located on the Premises and installed by Tenant during the term hereof. If Tenant elects to remove such improvements, furniture, machinery, trade fixtures or equipment, Tenant shall do so at its own cost and without costs to Landlord.

17. Condemnation.

(a) If, as a result of condemnation, the entire Premises and all interests therein shall be taken, this Lease shall terminate as a result of the taking on the date of vesting of title in the condemnor pursuant to such condemnation and the rent and payment provided for in Section 6 hereof shall be apportioned as of such date, but the termination shall not affect the right of either party to receive compensation for its loss resulting from the taking in the condemnation.

(b) If less than the entire Premises shall be taken as a result of any condemnation and the portion of the Premises remaining after the taking shall be insufficient for the reasonable needs of the business or businesses conducted on the Premises, Tenant may terminate this Lease upon vesting of title in the condemnor and the rent provided for in Section 6 hereof shall be apportioned as of the date of such termination, but the termination shall not affect the right of either party to receive compensation for its loss resulting from the taking in the condemnation.

(c) If a part of the Premises is taken in condemnation and this Lease is not terminated pursuant to the provisions of subsection 17(b), then this Lease shall terminate as a result of the taking as to the portion of the Premises so taken upon vesting of title in the condemnor, but the partial termination shall not affect the right of either party to receive compensation for its loss resulting from the taking in the condemnation. This Lease shall remain in full force and effect as to the portion of the Premises not taken, provided that (i) Tenant may, at Tenant's option and at its sole cost and expense, promptly restore all buildings or improvements located on the Premises of which any part has been taken to a complete architectural unit; and (ii) if Tenant so elects to restore any such building or improvements the Landlord shall pay to or at the direction of

Tenant the cost of restoration to the extent of the net amount of any award that may be received by Landlord for physical damage to the buildings or improvements or properly allocable to physical damage to the buildings or improvements (which shall not be deemed to include the net amount of any award received by Landlord which is properly allocable to the Landlord's interest in the land, exclusive of improvements, taken); and (iii) there shall be an equitable reduction in the rent provided for in Section 6 hereof.

18. Damage to Premises. In the event the Premises or any sublet unit thereof shall be damaged so as to be rendered untenable for a period of one hundred eighty days or more, then and in the event, the payment of the first subsequent annual rental installment for the Premises, if the entire Premises have been so rendered untenable, or, that portion of such annual rental installment allocable to such sublet unit hereunder, shall be waived and further payment shall not be due until the date of the second subsequent annual rental installment after the date of the event of such damage.

19. Subleasing, Assignment and Leasehold Financing.

(a) Tenant's Right to Assign and Sublet. Tenant may assign its interest in this Lease or sublet all or any portion of the Premises to any party, subject, however, to the prior written approval, as to parties other than residential occupants, of the assignee or subtenant, as the case may be, and of the form and content of all instruments of assignment or subletting by Landlord's Board of Estimate and Apportionment and subject to any consent, not to be unreasonably withheld, conditioned or delayed, required by Chapter 3.94 of the St. Louis City Revised Code. The Tenant and any permitted assignee or subtenant may sublet or sub-sublet the Premises or any part thereof for the uses permitted by this Lease. The Tenant and any permitted assignee or subtenant of the entire Premises may place one or more mortgages or deeds of trust on the leasehold estate of Tenant (the Leasehold) as security for loans to finance or maintain the improvements to be constructed, rehabilitated or replaced, and the lender or trustee for the bonds issued in connection with such financing shall have a right to assume the encumbered Leasehold interest in the event of a mortgage or deed of trust default or foreclosure; provided, however, no such assignment, subletting, mortgage or deed of trust shall have the effect of conveying, imperiling or prejudicing Landlord's ownership of the Premises or Landlord's fee title to the Premises and shall be subject to all the terms of this Lease. Landlord's approval of an assignee or subtenant shall not be denied hereunder if such assignee or subtenant is either a corporation, limited liability

company or partnership in which W.A.T. Dignity Corporation, a Missouri corporation, is a controlling shareholder, managing member, or general partner, as the case may be. W.A.T. Dignity Corporation is a general partner of Tenant.

(b) Landlord's Covenants in Connection with Leasehold Financing. Landlord shall execute, acknowledge and deliver upon request any and all amendments to or modifications of this Lease and any and all forms of Landlord Waiver, Landlord Consent, and Estoppel Certificate (or similar form, however captioned) as may be requested by any lender (Lender) now or hereafter proposing to provide Leasehold financing for the Project or any portion thereof. Landlord acknowledges that any such agreement may be recorded in the records of the City of St. Louis and may require Landlord to agree (i) to forbear in the exercise of any remedies provided herein upon Tenant's default pending notice to the Lender and a reasonable opportunity to cure said default, including such time as may be required by the Lender to complete foreclosure proceedings and secure Leasehold title (or vest Leasehold title in any transferee) to the Premises, (ii) to provide Lender with a copy of each and every notice of default delivered to or received by Landlord in respect of the Premises (including copies of notices alleging non-compliance of the Premises with applicable law), and (iii) to permit the Lender to assign its Leasehold interest to one or more third parties in accordance with the requirements of this Lease. Tenant shall notify Landlord in writing within ten (10) days after any payment in full; prepayment or refinancing, of any loans secured by an interest in the Leasehold or execution of any mortgage or deed of trust.

20. Real Estate Tax Abatement. All other provisions of this Lease notwithstanding, pursuant to the authority granted in Ordinance No. 64525 of the City of St. Louis which provides for real estate tax abatement to the Premises pursuant to Chapter 99, the Lessee shall have the authority in order to secure said real estate tax abatement for the Premises.

21. Default. The following events (Defaults), upon failure of the same to be cured in accordance with Sections 22 and 23 hereof, shall entitle Landlord to the remedies hereinafter provided:

(a) Failure by Tenant to make any payment or rent hereunder as and when due;

(b) Failure by Tenant to maintain insurance in effect on the Premises as required hereunder, or to reimburse Landlord for premiums paid by Landlord hereunder;

(c) Failure by Tenant to observe or perform any other covenant, agreement, condition, promises, undertaking or obligation whatsoever of Tenant hereunder;

(d) Tenant's (i) admission in writing of its inability to pay its debts as they become due; or (ii) filing of a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future Federal or State Statute or regulation, or filing of a pleading asking for such relief; or (iii) making an assignment for the benefit of its creditors; or (iv) consenting to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or shall fail to have vacated or set aside the appointment of any trustee, receiver or liquidator which was made without Landlord's consent or acquiescence; or (v) being finally adjudicated as bankrupt or insolvent under any Federal or State law; or (vi) being subject to any proceeding or suffering the entry of a final and nonappealable court order, under any Federal or State law appointing a receiver, trustee or liquidator for all or a major part of its property or ordering the winding up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order or proceeding, if not the subject of the Landlord's consent, shall not be dismissed, vacated, denied, set aside or stayed within 60 days after the day of entry or commencement; or (vii) suffering a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside; or

(e) Tenant shall abandon the Premises, and the same shall remain uncared for and unoccupied for a period of 60 days (it being understood that neither the mere vacation of the Premises, nor the vacancy of the Service Building, shall be deemed an act of abandonment).

22. Remedies. In addition to any other remedy available at law or in equity:

(a) in case of any Default as defined in Section 21(a) and (b) hereof, if Tenant shall fail to cure such Default within fifteen (15) days after notice of any such Default given by Landlord, the City Comptroller or the City Counselor to Tenant and to any person or entity which shall have given notice to Landlord that such person or entity holds a mortgage or deed of trust or other security interest in the Leasehold estate of the Tenant;

(b) in the case of any Default as defined in Section 21(c) hereof, if Tenant shall fail to cure such Default within thirty (30) days after notice of such Default given in the manner and to the parties referred to in subsection 22(a) above and if such Default cannot be cured within the thirty (30) day notice period, then if Tenant shall either fail to commence efforts to cure the Default within the thirty (30) day notice period or fail after such commencement to diligently proceed with efforts to cure such Default; and

(c) in the case of any Default as defined in Section 21(d) (subject to any then applicable Federal law) or Section 21(e) hereof, immediately; then in any such event, Landlord may either: (i) terminate this Lease, and by due process of law remove Tenant, or any other person or persons in occupancy from the Premises, together with their goods and chattels and repossess the Premises; or (ii) terminate Tenant's right to possession only, without terminating this Lease, and by due process of law, remove Tenant, or any other person in occupancy from the Premises, together with their goods and chattels and repossess the Premises without such entry and possession terminating this Lease or releasing Tenant in whole or in part from Tenant's obligation to pay rent hereunder for the full term hereof. Upon and after entry into possession without termination of the Lease, Landlord shall use its best efforts to relet the Premises or any part thereof for the account of the Tenant, for such rent, (including a Term beyond the term hereof, the part of any such term which is beyond Term hereof shall not be chargeable to Tenant's account), and upon such terms and conditions as Landlord, in Landlord's reasonable discretion, shall determine, and Landlord shall apply all rents received upon such a renting as follows: (A) first, to the payment such reasonable expenses as Landlord may have incurred in recovering possession of the Premises (including legal expenses and attorney's fees) and in putting the same into order or condition for rental and renting of the Premises; and (B) then to the fulfillment of the covenants of Tenant hereunder. If the consideration collected by Landlord upon any such reletting for the account of Tenant is not sufficient to pay in full the amount of rent reserved in the Lease whether with the items and expenses enumerated in subsection (A) and (B) above, then Tenant shall pay to the Landlord the amount of each yearly deficiency upon demand. In the event the rents collected by Landlord from any such reletting for Tenant's account exceed payment of the expenses enumerated in subsections (A) and (B) above and exceed the amount of the rent reserved in this Lease as it becomes due, such excess shall be utilized by Landlord to be applied against any subsequent deficiency and any excess remaining at the term of this Lease shall be returned to Tenant.

23. Acceptance of Others Upon Default. In the event of any Default hereunder by Tenant which would otherwise permit Landlord to terminate this Lease, Landlord shall accept any cure proffered on behalf of Tenant by any Lender, and in the event the Lender shall notify Landlord of the Lender's intention to foreclose the lien of the leasehold deed of trust encumbering the Leasehold, Landlord shall provide such additional period of time as may be required to enable such Lender (or any other transferee in foreclosure) to succeed to the right, title and estate of Tenant in the Premises, whereupon Landlord shall recognize such successor in leasehold title under this Lease upon the cure of all defaults or breaches hereunder, including without limitation the payment of all back arrearage of rent and other sums required to be paid thereunder by Tenant. Upon Landlord's acceptance of such attornment, the successor in leasehold title shall have the rights and obligations of the Tenant and such party and Landlord shall promptly execute all documents necessary to evidence such acceptance and attornment.

24. Notice. All notices and all rent and other payments required under the terms of this Lease shall be made in writing and personally delivered or deposited in the United States mail, as registered or certified matter, return receipt requested, addressed as follows:

If to Landlord:  
Comptroller of the City of St. Louis  
City Hall, Room 211  
Tucker Boulevard and Market Street  
St. Louis, Missouri 63103

with a copy to:  
City Counselor of the City of St. Louis  
City Hall, Room 314  
Tucker Boulevard and Market Street  
St. Louis, Missouri 63103

If to Tenant:  
Homer G. Phillips Dignity House, L.P.  
209 East Kirkham Square  
St. Louis, Missouri 63119

with a copy to:

Linda M. Martinez  
Bryan Cave LLP  
One Metropolitan Square, Suite 3600  
St. Louis, Missouri 63102

or to such other address of which Tenant or Landlord shall give written notice to the other as provided in this Section 24. Any notice or payment, unless otherwise proved herein, shall be deemed to be given on the date the same is personally delivered or deposited in the United States mail, as registered or certified matter, postage prepaid.

25. Binding Effect. All of the terms and conditions of this Lease shall bind and shall inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns.

26. Non Discrimination. Tenant agrees that in the use of the leased property or in the use of any property used in connection with the leased property, Tenant will not exclude or discriminate against any person solely because of race, color, or creed, or for any reason not sanctioned by law and not applicable alike to persons generally in the use of said property.

27. Estoppel. Promptly on request of Tenant or any Lender, Landlord shall from time to time execute estoppel certificates stating that this Lease is then in full force and effect, that rent has been paid through the date of the certificate, and that the Landlord knows of no default by Tenant hereunder, or if any of such facts are not true, then stating specifically in what respect they are not true and providing such additional information as may be requested in such certificate. In the event Landlord shall fail to deliver a completed certificate as requested by Tenant or any Lender within twenty (20) days after delivery of Tenant's request, Landlord shall be conclusively estopped, to the extent permitted by law, from asserting against the Tenant or Lender, as the case may be, any claim or demand theretofore accrued against Tenant under this Lease, except that such failure shall not apply as to any claim of Default which remains uncured and as to which Tenant and the Lender have previously been given notice in accordance with the applicable provisions of this Lease.

28. Right of Access of the Premises. The Tenant agrees that the Landlord and its duly authorized agents shall have the right at reasonable times (during business hours), subject to the Tenant's usual safety and security requirements, to enter upon the Premises (i) to examine and inspect the Premises without interference or prejudice to the Tenant's operations, (ii) to

ascertain Tenant's compliance with this Lease and applicable ordinances and (iii) during the last two years of the term of this Lease, to exhibit the Premises to prospective purchasers, lessees or trustee.

29. Remedies. All of the remedies provided for herein are cumulative, and given without impairing any of the rights or remedies of Landlord. The failure of any party to insist upon a strict performance of any of the terms, conditions and covenants herein, shall not be deemed a waiver of any rights or remedies that it may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained.

30. Net Lease. The parties hereto agree that this Lease shall be deemed and construed to be a Net Lease.

31. Remediation of the Service Building. Separately, the Landlord has agreed that on or before the date that is twenty (20) months after the date of this Lease, Landlord shall, at its sole cost and expense, either (i) remove any asbestos, PCBs, and other Hazardous Materials (as hereinafter defined) from the Service Building (as hereinafter defined) and perform such other remediation as is necessary to make the Service Building comply with all Environmental Laws (as hereinafter defined) or (ii) demolish the Service Building in its entirety and remove from the area all debris resulting therefrom. Notwithstanding anything contained in this Lease to the contrary, the Landlord's obligation under this paragraph is currently limited to the \$400,000 of funds from the Capital Improvements Sales Tax Fund for Ward Four which Landlord has allocated and appropriated to its obligations under this paragraph. In the event the cost of performing the obligations under this paragraph shall exceed \$400,000, the additional costs of performing such obligations shall be funded solely from future amounts allocated to the Capital Improvements Sales Tax Fund for Ward Four and appropriated by Landlord for such purposes. Provided, further, that Landlord shall have no obligations under this paragraph unless and until Tenant shall commence the renovation and construction of the Project.

Definitions:

As used herein, "Service Building" means that structure located to the northwest of the Premises and adjacent thereto.

As used herein, "Hazardous Materials" means any chemical, compound, material, mixture, living organism or substance that is now or hereafter defined or listed in, or otherwise classified pursuant to, any "Environmental Laws" as a "hazardous substance," "hazardous material," "hazardous waste,"



◆extremely hazardous waste,◆ ◆infectious waste,◆ ◆toxic substance,◆ ◆toxic pollutant◆ or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity or toxicity, including, without limitation, any items defined as ◆Hazardous Materials◆ in 49 CFR 171.8, and any petroleum, polychlorinated biphenyls (◆PCBs◆), asbestos, radon, natural gas, natural gas liquids, liquified natural gas or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

As used herein, the term ◆Environmental Laws◆ means any and all present and future federal, state and local laws (whether under common law, statute, rule, regulation or otherwise), requirements under permits issued with respect thereto, and other requirements of governmental authorities relating to the environment, or to any Hazardous Materials or to any activity involving Hazardous Materials, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. ◆ 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. ◆ 6901 et seq., the Clean Water Act, 33 U.S.C. ◆ 1251 et seq., the Clean Air Act, 42 U.S.C. ◆ 7401 et seq., the Toxic Substance Control Act, 15 U.S.C. ◆ 2601 et seq., and the Safe Drinking Water Act, 42 U.S.C. ◆ 300f through 300j, as all of the foregoing may be amended from time to time.

32. Service Contracts. Tenant warrants and represents that if Tenant enters into any Service Contract (as hereinafter defined) pertaining to the Premises, such Service Contract shall include the following: (1) a provision specifying the Minimum Prevailing Wages (as hereinafter defined) to be paid by the Service contractor (as hereinafter defined) to any Service Employee (as hereinafter defined); (2) a provision specifying the Minimum Prevailing Fringe Benefits (as hereinafter defined) be provided by the Service Contractor to any Service Employee; and (3) a representation by the Service Contractor to abide by the terms of Chapter 6.20 of the St. Louis City Revised Code and to pay and provide to all Service Employees the Minimum Prevailing Wage and Minimum Prevailing Fringe Benefits as noted in the Service Contract. Tenant further warrants and represents that Tenant shall not enter into any Service Contract with (a) any Service Contractor debarred in accordance with Chapter 6.20 of the St. Louis City Revised Code, or (b) any Service Contractor managed, controlled, or more than fifty percent (50%) owned by a person or entity so debarred.

Definitions:

As used herein, ♦Minimum Prevailing Fringe Benefits♦ means the minimum fringe benefits to be provided by Service Contractors to Service Employees as determined by the United States Secretary of Labor, or his authorized representative, to be prevailing for such employees in the locality of the St. Louis metropolitan area pursuant to 41 U.S.C. Section 351 et seq., as amended. Such fringe benefits shall include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs and other bona fide fringe benefits to be provided by the Service Contractor and not otherwise required by federal, state or local law. The term ♦Minimum Prevailing Fringe Benefits♦ may include any contributions of fringe benefits equivalent to the foregoing or differential payments in cash.

As used herein, ♦Minimum Prevailing Wage(s)♦ means the minimum monetary wages to be paid by Service Contractors to Service Employees as determined by the United States Secretary of Labor, or his authorized representative, in accordance with the prevailing rates for such employees in the locality of the St. Louis metropolitan area pursuant to 41 U.S.C. Section 351 et seq., as amended.

As used herein, ♦Service Contract♦ means any contract, the purpose of which is to furnish services to Tenant and shall include any subcontract to provide such services. The term shall not include (1) any contract for construction, alteration and/or repair of any building, capital improvement or equipment owned by the City or (2) any contract pertaining to work required to be done in accordance with the Missouri Prevailing Wage Law, Missouri Revised Statutes, Sections 290.210 through 290.341.

As used herein, ♦Service Contractor♦ means any person, firm, corporation or other entity entering into a Service Contract with Tenant. The term ♦Service Contractor♦ shall also include any person, firm, corporation or other entity who subcontracts to furnish said services.

As used herein, ♦Service Employee♦ means any person employed in the performance of a Service Contract. The term shall not include any person engaged in an executive, administrative or professional capacity. (Ord. 62124 ♦ 1, 1990.)

33. Amendment. This Lease may be modified, amended or surrendered only by an instrument in writing duly executed by the Landlord or Tenant.

34. Headings. The titles of the sections of this Lease are for convenience only and shall not be considered as part of the Lease for purposes of construction of the terms and conditions hereof.

35. Recording. Tenant shall, at its own expense, record this Lease and any amendments or modifications thereto in the Office of the Recorder of Deeds of the City of St. Louis.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

CITY OF ST. LOUIS

By:

Clarence Harmon, Mayor Attest:

\_\_\_\_\_  
City Register

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

Darlene Green, Comptroller

Approved as to form:

HOMER G. PHILLIPS DIGNITY HOUSE, L.P.

By: W.A.T. DIGNITY CORPORATION \_\_\_\_\_

City Counselor

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

Sharon Robnett, President

STATE OF MISSOURI )

CITY OF ST. LOUIS ) ss. On this \_\_\_\_ day of \_\_\_\_\_, 2000, before me  
) appeared Clarence Harmon and Darlene Green, to me  
personally known, who being by me duly sworn did say that they are the Mayor and  
Comptroller of THE CITY OF ST. LOUIS, and that they are authorized to execute the

Lease on behalf of the City by authority of Ordinance \_\_\_\_\_ and they acknowledge said instrument to be the free act and deed of the City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public  
My term expires: \_\_\_\_\_

STATE OF MISSOURI )

) ss. On this \_\_\_\_ day of \_\_\_\_\_, 2000, before me  
CITY OF ST. LOUIS ) appeared Sharon Robnett, to me personally known, who  
being by me duly sworn did say that she is the President of W.A.T. DIGNITY CORPORATION, as corporation organized under the laws of the State of Missouri, which corporation is the general partner of HOMER G. PHILLIPS DIGNITY HOUSE, L.P., a Missouri limited partnership, that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed in behalf of the corporation by authority of its Board of Directors, in behalf of the limited partnership by authority of its general partner; and she acknowledged the instrument to be the free act and deed of the corporation and the limited partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public  
My term expires: \_\_\_\_\_

**EXHIBIT A  
LEGAL DESCRIPTION FOR LEASE OF HOMER G. PHILLIPS HOSPITAL  
PROPERTY**

**PARCEL A**

A legal description of the tract of land in blocks 6 and 7 of subdivision of the eastern portion of property belonging to the Estate of Honorable Robert Wash, deceased, situated in the Grand Prairie Common Fields (recorded in Plat Book 6, page 89) and being the former Homer G. Phillips site, by Ordinances 33812,33363 and 47509, excepting therefrom a parcel of land containing the former Hospital's Nurse

Residence (presently leased by City to Annie Malone Children Home by Ordinance 59437), excepting also therefrom a parcel of land containing the present Homer G. Phillips Clinic building, said tract being part of City blocks 3675 and 3676 and also vacated eastern portion of Cottage Avenue by Ordinance 39375, vacated east west alley in City Block 3675 by ordinance 33812, vacated east west alley and northern portion of north south alley in City Block 3676 by Ordinances 33812, and being more fully described as follows:

BEGINNING at the intersection of the western right of way line of Whittier Street, 60 feet wide and the southern right of way line of Kennerly Avenue, 70 feet wide, thence south 30 degrees 00 minutes 00 seconds west along said western line of Whittier Street, a distance of 608.31 feet to a point in the former northern right of way line of St. Ferdinand Avenue, 50 feet wide; thence north 59 degrees 58 minutes 35 seconds west along said northern line of St. Ferdinand Avenue, a distance of 135.50 feet to a point; said point being 10 feet east of said Clinic Building; thence north 30 degrees 04 minutes 04 seconds east along a line parallel to and 10 feet east of the said Clinic Building a distance of 36.46 feet to a point, said point being 10 feet north and 10 feet east of north eastern corner of said Clinic Building; thence north 59 degrees 47 minutes 24 seconds west along a line parallel to and 10 feet north of the Clinic Building a distance of 34.05 feet to a point; thence north 30 degrees 18 minutes 48 seconds east along a line parallel to and 10 feet east of enclosed walkway between said Clinic Building and former Homer G. Phillips Hospital Building a distance of 89.50 feet to a point; thence north 60 degrees 57 minutes 11 seconds west along a line parallel to and on the southern line of former Homer G. Phillips Hospital a distance of 30.38 feet to a point; thence south 30 degrees 00 minutes 31 seconds west along a line parallel to and 10 feet west of enclosed walkway between said Clinic Building and former Homer G. Phillips Hospital a distance of 89.53 feet to a point; thence north, 59 degrees 56 minutes 45 seconds west along a line parallel to and 10 feet north of said Clinic Building a distance of 55.62 feet to a point , said point being 10 feet north and 10 feet west of northwestern corner of said Clinic Building, thence south 29 degrees 57 minutes 11 seconds west along a line parallel to and 10 feet west of the Clinic Building a distance of 36.07 to a point in the former northern right of way line of St. Ferdinand Avenue 50 feet wide; thence north 59 degrees 58 minutes 35 seconds west along said former northern line of said avenue a distance of 134.23 feet to a point in the eastern line of vacated north south 15 feet wide alley in City Block 3676; thence north 29 degrees 01 minutes 46 seconds east along said eastern line of said north south alley, a distance of 179.17 feet to a point; thence north 59 degrees 58 minutes 35 seconds west, a distance of 30.00 feet to a point; thence north 29 degrees 01 minutes 46 seconds east, a distance of 100.00 feet to a point in the southern right of way line of Cottage Avenue, 50 feet wide; thence south 59 degrees 58 minutes 35 seconds east, along said southern line of Cottage Avenue, a distance of 30.00 feet to a point; thence

north 29 degrees 01 minutes 46 seconds east along said eastern line of Cottage Avenue and continuing along the eastern right of way line of north south 15 feet wide alley in City block 3675 a distance of 329.25 feet to a point in the southern right of way line of Kennerly Avenue, 70 feet wide; then south 59 degrees 58 minutes 35 seconds east along said southern line of Kennerly avenue, a distance of 399.53 feet to the point of beginning and containing 235,876.71 square feet or 5.415 acres more or less.

## PARCEL B

A track of land in City Block 3677 and being in Block 5 of Wash<sup>◆</sup>s Estate Subdivision and being all of Lots 1 through 8 and southern part of Lot 9, and Lots 12 through 14 and Lots 39 through 41 and that portion of the north south alley vacated by Ordinance 47509 and the western portion of the east west alley vacated by Ordinance 47509 abutting aforesaid Lots 12 through 14 and Lots 39 through 41 and more fully described as follows:

BEGINNING at the intersection of the line of North Market Street, 50 feet wide, and the eastern line of Anne Malone Drive, 60 feet wide, thence north 29 degrees 01 minutes 46 seconds east a distance of 206.13 feet along said western line of lots 1 through southern part of Lot 9 to a point, said point being the southwest corner of a tract of land now or formerly conveyed to St. Phillips Evangelical Lutheran Church by deed recorded in Book 6392 on Page 437 of the City of St. Louis Recorder; thence south 59 degrees 58 minutes 35 seconds east along the southern line of said St. Phillips Evangelical Lutheran Church tract a distance of 144.99 feet to a point on the western line of said Lot 12 in City Block 3677, said point being the eastern line of a former 15 feet wide alley; thence north 29 degrees 01 minutes 26 seconds east along the western line of said Lot 12 to the northwestern corner of Lot 12 being a distance of 73 feet more or less also to the southern line of former vacated St. Ferdinand Street, 50 feet wide; thence south 59 degrees 58 minutes 35 seconds east along the northern line of said Lots 12 through 14 a distance of 75 feet to a point in the northeastern corner of said Lot 14; thence south 29 degrees 01 minutes 46 seconds west along said eastern line of Lot 14 and continuing southwardly across said vacated 15 feet wide former east west alley and continuing southwardly along the eastern line of Lot 39 a total distance of 279 feet more or less to a point in the northern line of North Market Street, 50 feet wide; thence north 59 degrees 58 minutes 35 seconds west along said southern line of Lots 39 through 41 and continuing across said vacated 15 feet wide north south alley and continuing along said southern line of Lot 1 to said southwestern corner of said Lot, total distance of 220 feet [^] more or less to the point of beginning and containing approximately 50,813.85 square feet or 1.1665 acres more or less.

EXCEPTING THEREFROM the property conveyed by Quit Claim Deed dated March 30, 1998 from the City of Saint Louis to the Annie Malone Children and Family Service Center, Incorporated, a Missouri not-for-profit corporation, which Quit Claim Deed is recorded in the real property records of the City of St. Louis, Missouri in Book 1529, Page 745 and more particularly described therein.

**EXHIBIT B**

[INSERT PERMITTED EXCEPTIONS]

SECTION THREE: This Ordinance being deemed necessary for the preservation of the public health and welfare, it is hereby declared to be an emergency ordinance within the meaning of Article IV, Sections 19 and 20 of the Charter.

<b>Legislative History</b>				
<b>1ST READING</b>	<b>REF TO COMM</b>	<b>COMMITTEE</b>	<b>COMM SUB</b>	<b>COMM AMEND</b>
<b>01/21/00</b>	<b>01/21/00</b>	<b>W&amp;M</b>		
<b>2ND READING</b>	<b>FLOOR AMEND</b>	<b>FLOOR SUB</b>	<b>PERFECTN</b>	<b>PASSAGE</b>
<b>01/28/00</b>			<b>02/04/00</b>	<b>03/24/00</b>
<b>ORDINANCE</b>	<b>VETOED</b>		<b>VETO OVR</b>	
<b>64913</b>				