

ORDINANCE #65608
Board Bill No. 164

An ordinance pertaining to Garrison/Brantner/Webster Park, also known as Dunbar Park; authorizing and directing the execution of a lease reviewed and recommended by the Board of Public Service and approved by the City Counselor as to form, and as in all respects consistent with Ordinance 59741 of certain lands commonly known as Dunbar Park to the Board of Education of the City of St. Louis, for an initial period of twenty-five (25) years; and containing an emergency clause.

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

SECTION ONE. The Mayor and the Comptroller of the City of St. Louis are hereby authorized and directed to enter into the following Lease to the Board of Education of the City of St. Louis Garrison/Brantner/Webster Park, also known as Dunbar Park, for purpose of constructing and maintaining athletic facilities, as set forth in such Lease, which shall be in the following form, to wit:

LEASE

This Lease ("Lease") subject to Section One, is made and entered into this _____ day of _____, 2002 (the "Date of Lease") between the City of St. Louis (the "City") and the Board of Education of the City of St. Louis (the "Board").

WHEREAS, the Mayor and Comptroller of the City, acting for and on behalf of the City pursuant to the City Charter and Ordinance _____ (Board Bill _____), have been authorized and directed to lease to the Board Garrison/Brantner/Webster Park, also known as Dunbar Park subject to and in accordance with the terms, covenants and conditions set forth in this Lease; and

WHEREAS, this Lease has been reviewed and favorably recommended in writing by the Board of Public Service, and approved by the City Counselor as to form and as in all respects consistent with Ordinance 59741, prior to the adoption of Ordinance _____ (Board Bill _____); and

WHEREAS, this Lease complies with all of the terms and conditions required by Ordinance 59741 and all procedures specified by Ordinance 59741 have been followed with respect to this Lease.

NOW THEREFORE, in consideration of the premises and their mutual promises, undertakings and agreements hereinafter set forth, the parties hereto agree as follows:

1. LEASED PREMISES. The City hereby leases, lets and rents to the Board and the Board hereby leases, rents and hires from the City, subject to all the provisions of this Lease, as Garrison/Brantner/Webster Park, also known as Dunbar Park (the "Leased Premises") described in Exhibit A, which is incorporated herein by this reference. For this Lease to be effective, it must be approved by the Director of the Bureau of Outdoor Recreation, United States Department of the Interior, or the State Liaison Officer of the State Inter-Agency Council for Outdoor Recreation, or any representative delegated by the State Liaison Officer to act for him in his official capacity, which such approval is required under Section J.2 of the Land and Water Conservation Fund Project Agreement between the State of Missouri and the City of St. Louis, for Project Number 29-00909 - Neighborhood Park Improvements I, dated June 12, 1978, is filed with the City Register; whichever date is later.

2. TERM. The initial term of this Lease shall be twenty-five (25) years from the date of this Lease. This Lease may be renewed not sooner than one (1) year prior to expiration of the original or any renewal term for one or more successive renewal terms of twenty (20) years, provided, however, that any such renewal term shall be subject to the favorable recommendation of the City's Board of Public Service and Board of Estimate and Apportionment and approval of the City's Board of Aldermen by Ordinance and Department of Interior, National Park Service prior to the commencement thereof.

3. RENT. As and for rent throughout the initial term and any renewal term hereof, the Board shall pay to the City rent in the amount of One Dollar (\$1.00) per year; the receipt of such payment for the entire initial term hereof is hereby acknowledged by the City. Such payment shall be held by the Comptroller in an account for the use and benefit of the Department of Parks, Recreation, and Forestry, as provided in Ordinance 59741. As further consideration, the Board shall, through Cardinals Care, construct athletic facilities on the Leased Premises which are listed and depicted in Exhibit B, ("Athletic Facilities").

4. USE. The Leased Premises shall be held and maintained by the Board for the use and benefit of the Board during the school year(s) commencing with the first official day of class and ending the last official day of class and is to be utilized for any

and all activities authorized by the Board ("Board's Park Use"). The Leased Premises shall be for the use and benefit of the public generally during other periods of the year starting with the first day after the conclusion of official classes and ending one day before the start of official classes ("City's Park Use"). The Board shall be responsible for scheduling the use of the Leased Premises during the Board's Park Use. The City of St. Louis Department of Parks, Recreation and Forestry will be responsible for scheduling the use of the Leased Premises during the City's Park Use. The Athletic Facilities will be constructed on the Leased Premises and the Board's property further described on Exhibit A1 ("Board's Property"). The Board hereby grants the City the right to use the Athletic Facilities of the Board's Property during the City's Park Use as long as this Lease is in effect. The City will not use the Board's Property for any other purpose except as a baseball field or with the Board's permission. The City's obligations regarding the Leased Premises under this Lease shall be deemed to include the Board's Property.

5. OPERATION OF LEASED PREMISES. Subject to provisions hereof, the Board, through Cardinals Care, may construct, erect, renovate the Athletic Facilities and the Board shall maintain the Athletic Facilities on the Leased Premises for said purposes only during the Board's Park Use, provided that any such construction, erection, renovation and maintenance shall be substantially in accordance with the plan and specifications approved by the Board of Public Service. The Athletic Facilities erected or renovated pursuant to this Ordinance and Lease, by the Board through Cardinals Care, shall be considered part of the Leased Premises. If the Board relocates any utilities including, but not limited to, gas lines, phone or cable lines, electrical lines or facilities, water and sewer lines, or anything else presently on the Leased Premises, the Board at its sole cost and expense shall provide the relocation. There shall be no cost or expense to the City for any said relocation or removal by the Board. The Board shall not be responsible for relocations of utilities existing on the Leased Premises at the commencement of the Lease and necessary for site preparation for the Athletic Facilities.

The Board is responsible for post completion responsibilities as to the land and water conservation fund, as described in Exhibit C, during the Board's Park Use for those improvements that the Board is responsible for under the Lease.

6. LIABILITY The Board has self-funding for the Board's liability claims relating to the Leased Premises and will, during the Board's Use, indemnify and hold harmless the City and its employees to the extent permitted by law. The City has self-funding for the City's liability claims relating to the Leased Premises and will, during the City's Use, indemnify and hold harmless the Board to the extent permitted by law. The parties hereto shall require third parties, during the term of this agreement, shall at no cost or expense to the City or the Board, maintain public liability insurance, naming the City and the Board as insureds on forms and with companies reasonably satisfactory to the City and Board, against claims for personal injury, death, or property damage occurring upon, in, or about the Leased Premises. Said insurance shall afford protection to the limits of not less than \$325,000 in respect to injury to or death of a single person, not less than \$2,000,000 in respect to any single occurrence, and not less than \$325,000 in respect to property damage for any single occurrence. The policies for such insurance may be for the mutual benefit of the Board and the City, or for the benefit of the City alone.

If at any time any of the insurance policies required by this Section shall be or become unsatisfactory to the City, as to form or substance (including coverage amounts) or issuer, the third party shall, upon notice to that effect from the City, promptly obtain a new policy, and submit the same for approval to the City's Comptroller, provided, however, that within ten days of receipt of notice to such effect from the City. Copies of certificates of all such policies of insurance (or the renewals thereof) showing the City as a "named insured" shall be maintained on file at all times with the City's Comptroller, accompanied by evidence that the premiums thereon have been paid. All policies of insurance issued pursuant to this Section shall contain an agreement by the insurer that such policies shall not be canceled without at least thirty (30) days prior written notice to the City.

7. RESPONSIBILITY. The Board shall, at its own expense, maintain the Leased Premises during the Boards Park Use, including necessary trash removal, lawn care and grass cutting during the Boards Park Use. The Board shall, at its own expense, repair, replace or remove the Athletic Facilities and any and all improvements installed by the Board throughout the term of this Lease. The Board shall not be responsible for any improvements installed by the City or any other person when said improvements were not directly required by the Board. The City shall, at its own expense, provide grounds maintenance during periods of City's Park Use, including trash removal, lawn care, grass cutting and cleaning of the comfort station(s). The City shall be responsible for and inspect any playground equipment on the Leased Premises during the term of the Lease. The City shall notify the Board of any improvements to be installed at the Leased Premises. The City shall not interfere with or obstruct the Athletic Facilities without the Board's prior written consent. If the Board does not comply with the Board's obligations under Sections 7 and 8 of the Lease within the period of time specified in any notice from the City, or in the event of an emergency, then the City shall have the right (but not the obligation) to satisfy such obligation and/or cure such breach (or employ other persons to do so) as it deems necessary, at the Board's sole expense. The Board shall pay, reimburse and compensate the City for whatever costs or expenses are thereby incurred by the City, including but not limited to all expenses for wages and materials for any work performed.

If the City does not comply with the City's obligations under Sections 7 and 8 of the Lease within the period of time specified in any notice from the Board, or in the event of an emergency, then the Board shall have the right (but not the obligation) to satisfy such obligation and/or cure such breach (or employ other persons to do so) as it deems necessary, at the City's sole expense. The City shall pay, reimburse and compensate the Board for whatever costs or expenses are thereby incurred by the Board, including but not limited to all expenses for wages and materials for any work performed.

Except as otherwise contained herein, no City funds shall be appropriated for said maintenance, expenses and costs related to the Leased Premises.

8. EXPENSES. Charges for all utilities, including water, electricity, telephone, power, heat, sewage and waste disposal within the Leased Premises shall be paid at the sole cost and expense of the Board during the term of this Lease except the City shall pay all such charges for any utilities installed or constructed by the City after the beginning date of this Lease.

9. ENVIRONMENTAL LAWS.

The Board and the City shall comply in its occupancy and its use of the Leased Premises with any applicable laws pertaining to health of the environment including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as hereafter amended ("CERCLA"), the Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Hazardous and Solid Waste Amendments of 1984, as hereafter amended ("RCRA"), the Federal Water Pollution Control Act, as now or hereafter amended ("FWPCA"), and any laws of the State of Missouri or any subdivision thereof, relating to the presence of, removal, spill, release, leaking or disposal of oil, petroleum, toxic pollutants, solid waste or other hazardous substances.

b. The Board shall, periodically furnish the Director and the City shall furnish to the Board with satisfactory proof that the Board or the City, as the case may be, is in full compliance with any and all federal and/or state laws and regulations and City ordinances relating to or concerning air quality, water quality, noise, hazardous or toxic materials, hazardous wastes, infectious wastes, solid wastes, underground storage tanks and hazardous building materials. Further, the City and the Board shall have the right to inspect any and all portions of the Leased Premises, including facilities or vehicles located thereon, at any time during normal business hours or at any time if the City or the Board have reason to believe that a violation of any federal or state law or City ordinance has occurred or is about to occur.

10. INSPECTION. From time to time during the term of this Lease, authorized personnel of the City or the Board shall at all reasonable hours (with reasonable advance notice to the other party) be permitted to enter upon and inspect the Leased Premises in order to ascertain that the Leased Premises are being properly maintained and kept in repair and good order by the Board or the City as the case may be.

11. NOTICE AND OPPORTUNITY TO CURE; TERMINATION. In the event of the Board's failure to comply with or perform any of the terms, covenants or agreements herein required to be complied with or performed by the Board, including but not limited to, any use whatsoever of the Leased Premises for purposes other than for Athletic Facilities, or other improvements and the continuation of such failure for sixty (60) days after written notice of such failure from the City's Comptroller to the Board (by registered or certified mail, return receipt requested), or, if the failure is of such a character as cannot reasonably be cured within a sixty (60) day period, then upon failure by the Board within such sixty (60) day period to undertake such action as reasonably can be taken toward curing same, or failure thereafter diligently to prosecute such action to completion as promptly as reasonably possible after such action is initiated, then such failure shall constitute a breach of this Lease and all rights of the Board hereunder, and this Lease shall immediately cease, terminate, be forfeited, and be void.

12. RE-ENTRY. If this Lease shall be terminated pursuant to its terms, the City or its agent and servants may immediately or at any time thereafter, re-enter the Leased Premises and remove therefrom the Board, its agents, employees, or other persons, and all or any of its property therefrom.

13. NON-ASSIGNABILITY. Without the prior written consent of the other party first obtained, neither party shall assign, lease or transfer or mortgage or borrow using as security any part of the Leased Premises, in whole or in part, this Lease or such party's interest in the Leased Premises. This Lease shall automatically and forthwith terminate if assigned, sold or otherwise transferred by the Board without prior written consent by the City.

14. ABANDONMENT OF PREMISES BY BOARD. Should the Board abandon the Leased Premises, this Lease should

be deemed terminated at the option of the City's Comptroller and in such event the provisions of Section 11 and 12 of this Lease shall be applicable. Abandon shall mean that the Board has ceased using the Leased Premises for two consecutive years or that Vashon and Dunbar Schools are no longer in use.

15. AUTHORITY. The City and Board warrants, each to the other, that the City, Board and their representative signatories each has full power and authority under its articles of incorporation, charter, and the statutes of the State of Missouri to enter into and execute this Lease.

16. SUCCESSORS AND ASSIGNS. The covenants and agreements herein contained shall bind and inure to the benefit of the City, its successors and assigns.

17. CONSTRUCTION WORK. Any and all construction or work on the Leased Premises by the Board shall be done in complete compliance with all applicable City, State and Federal Codes and pursuant to plans and specifications approved by the City's Board of Public Service and Planning and Urban Design Agency, and subject to approval by or permit of any other City department or agency whose approval or permission may now or hereafter be required under the Saint Louis City Charter or Saint Louis City ordinance prior to the commencement of any such construction or work.

18. ANNUAL REPORT. The Board shall submit to the City's Director of Parks, Recreation and Forestry ("the Director") a written annual report describing in detail its activities and operations on the Leased Premises in the preceding calendar year, by March 31 of each year.

19. COMMERCIAL ADVERTISEMENTS OR IDENTIFICATION. No commercial advertisements or identification shall be visible to the public on the Leased Premises. Signs identifying the Board, Cardinals Care and/or contributors shall not be construed as commercial advertisements or identification or signs for purposes of this paragraph. All signs must be approved by the Board of Public Service and the Preservation Board prior to installation.

20. PUBLIC PARKING FACILITIES. No public vehicular parking or public vehicular parking facility except as substantially consistent with the plan shall be allowed, constructed or maintained within the Leased Premises.

21. RIGHT OF ENTRY. The City reserves the right in the future to enter the Leased Premises for the construction, reconstruction or location of any city owned public utility through the Leased Premises; provided that if as a result any roadway or parking lot, pathway or other facility and/or such other part of the Leased Premises then being used by the Board be required to be removed, relocated or damaged, then in such event the cost of such removal, relocation or damage shall be at City's cost and the Leased Premises shall be restored to a useful condition at the City's expense.

22. FAILURE TO COMMENCE DEVELOPMENT. Should construction of the Leased Premises for the purposes authorized in this Lease not be commenced within one (1) year of the effective date of this Lease, this Lease shall be null and void and of no effect. Further, should Cardinals Care fail to make a written commitment to the Board to fund and construct the Athletic Facilities on the Lease Premises within thirty days from the approval by the Mayor of this Ordinance, then the Lease shall be null and void and of no effect. The Board shall send a copy of the commitment to the Director within three days of receipt by the Board. The City acknowledges that the Board has no obligation to construct the Athletic Facilities without the Cardinals Care commitment.

23. LESSEE'S ACKNOWLEDGMENTS. The Board acknowledges that neither expenditures of funds by the Board, nor construction of improvements by the Board, nor any representation by any City official or employee, shall create any valid expectancy or right in the Board to renewal of this Lease, or obligation by Lessor to renew this Lease, and that the Board's performance of all its undertakings in this Lease, over the term hereof, is a valid factor for consideration by the City in determining whether this Lease shall be renewed.

24. NONDISCRIMINATION. The Board agrees that in the use of the Leased Premises or in the use of any premises, it 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 Leased Premises.

25. MINORITY PARTICIPATION. The Board agrees to maximum utilization of minority business enterprises in construction within the Leased Premises; further, the Board agrees to conform to all federal, state and local equal opportunity laws.

26. NOTICES AND ADDRESSES. All notices, demands, requests or replies provided for or permitted by this Agreement

shall be in writing and may be delivered by any one of the following methods: (1) by personal delivery; (2) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid to the addresses stated below; (3) by prepaid telegram; or (4) by deposit with an overnight express delivery service. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (3) business days after deposit with the Postal Service. Notice by telegram or overnight express delivery service shall be deemed effective one (1) business day after transmission to the telegraph company or deposit with the express delivery service. Notice by personal delivery shall be deemed effective at the time of personal delivery.

For purposes of notice, demand, request, reply or payment, if to the City, delivery of such shall be to the City's Comptroller at the following address:

Comptroller of the City of St. Louis
Room 212, City Hall
St. Louis, Missouri 63103

If to the Board, delivery shall be to:
801 N. 11th Street
St. Louis, Missouri 63101

Each party shall have the right to designate a different address within the United States of America by the giving of notice in conformity with this section.

IN WITNESS WHEREOF, this agreement was executed the day and year first above written.

BOARD OF EDUCATION OF THE CITY OF ST. LOUIS

By: _____

By: _____

CITY OF ST. LOUIS

By: _____
Mayor

By: _____
Comptroller

(SEAL)

(SEAL) _____
City Register

APPROVED AS TO FORM:

City Counselor

SECTION TWO. The passage of this ordinance being necessary for the immediate preservation of the public health, safety and welfare, is hereby declared to be an emergency measure pursuant to Article IV Section 20 of the Charter of the City of St. Louis and shall take effect immediately upon its approval by the Mayor.

(See Exhibit "A")

Approved: August 5, 2002