

**ORDINANCE #65614**  
**Board Bill No. 184**  
**Committee Substitute**

An ordinance pertaining to Forest 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 consistent except as expressly noted with Ordinance 59741 (Chapter 22.42, St. Louis City Code) of certain property in Forest Park to Forest Park Forever, Inc.; with an emergency provision.

**BE IT ORDAINED BY THE CITY OF SAINT LOUIS AS FOLLOWS:**

**SECTION ONE.** The Mayor and the Comptroller are hereby authorized and directed to enter into that certain Lease Agreement, attached hereto as Exhibit 1, which is incorporated herein and made a part of this ordinance by this reference, by and between the City of St. Louis, Lessor, and Forest Park Forever, Inc., a Missouri not-for-profit corporation, Lessee, of certain City-owned land and improvements thereon in Forest Park, as therein described.

**SECTION TWO.** This being an ordinance providing in part for public improvements or repairs thereof, it is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis, and shall become effective upon its passage and approval by the Mayor or its adoption over the Mayor's disapproval.

**EXHIBIT 1**

**LEASE**

This Lease ("this Lease"), made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2002 (the "Date of this Lease") between the City of St. Louis, Missouri (the "City") and Forest Park Forever, Inc., a Missouri not-for-profit corporation ("FPF"), witnesses that:

WHEREAS, the Mayor and Comptroller of the City, acting for and on behalf of the City pursuant to the City Charter, Chapter 22.42 of the City Code and Ordinance \_\_\_\_\_ (C.S. B.B. #184) have been authorized and directed to lease to FPF \_\_\_\_\_ acres, more or less, of land situated in Forest Park described and depicted in Exhibit A hereto, 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 consistent with Ch. 22.42, City Code, except as otherwise herein expressly provided, prior to the adoption of Ordinance \_\_\_\_\_ (C.S. B.B. #184);

NOW, THEREFORE, in consideration of the premises and of the 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 FPF and FPF hereby leases, rents and hires from the City, subject to all the provisions of this Lease, that certain tract of land ("the Leased Premises"), together with an improvement thereon referred to as the "Lindell Pavilion", described and depicted in Exhibit A hereto, which is incorporated herein by this reference, in their present, "as is" condition.

**2. TERM.** The initial term of this Lease shall be twenty-five (25) years from the date on which FPF acquires control of the Lindell Pavilion from American Golf Corporation, which the parties believe will be on or before January 1, 2003. Section 5.d of Ordinance 59741 to the contrary notwithstanding: (a) at the end of such initial term, (a) FPF shall have an option to renew this Lease for an additional term of fifteen years, on the same terms and conditions hereof, upon written notice to the City of the exercise of such option, given not less than one (1) year prior to the expiration of the initial term hereof; and (b) if FPF exercises the option granted in the preceding clause (a), at the end of such renewal term the parties may extend this lease for an additional term of five years on terms approved by the City's Board of Estimate and Apportionment.

**3. RENT.**

A. As and for rent throughout the initial term and any renewal term hereof, FPF 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 the Special Park Fund created by Ordinance 51336 for use pursuant to that Ordinance.

B. As and for additional rent, FPF shall, at its cost and expense, improve the Leased Premises in a manner substantially consistent with the plans and specifications developed by Mackey-Mitchell and Associates (the "Plan") as described and depicted in Exhibit B, (the Leasehold Improvements") the cost of which is presently estimated at Three Million Eight Hundred Fifty Thousand Dollars (\$3,850,000), pursuant to Ordinance 65480 and the Cooperation Agreement between FPF and the City dated \_\_\_\_\_, 2002.

#### **4. ACCOUNTING RECORDS; INSPECTION; AUDITS.**

A. FPF shall keep complete and accurate records of any and all gross revenues, earnings, receipts, fees commissions and income whatsoever from the operation of the Leased Premises or any activity conducted thereon, in accordance with generally accepted accounting procedures. Such records shall specifically include, but not be limited to, duplicate cash register receipts, copies of bank statements and deposit slips. Lessee agrees to maintain these records for a period of two (2) years after the conclusion of any Lease Year and further agrees that such financial records shall be open and available to the City or other persons authorized by the City for examination at all reasonable times during business hours.

B. At any time within two (2) years after the conclusion of a Lease Year, the City acting by and through its Comptroller may audit or have audited FPF's operations during such Lease Year on the Leased Premises, and FPF shall cooperate with any such audit by promptly making its records available to the auditor. If any audit is so conducted for any Lease Years following the Lease Year beginning April 1, 2007, the City shall pay the cost of such audit, unless such audit reveals that FPF has under reported its gross revenue to Lessor by more than two percent (2%), in which event Lessee shall pay promptly the cost of the audit in addition to correcting any deficiencies in rent resulting therefrom.

**5. USE.** The Leased Premises shall be held, maintained and operated by FPF in a first class manner for: i) office space for FPF in the Lindell Pavilion; ii) a Park visitors' information and education center in the Lindell Pavilion offering print and/or audio-visual information concerning the Park to visitors; iii) exercise lockers and showers for men and women in the Lindell Pavilion; iv) a catering and food service facility in the Lindell Pavilion with indoor and outdoor temporary seating offering moderately priced food service to the public in a manner suitable for a family and tourist facility; and v) multipurpose rooms in the Lindell Pavilion which may be utilized for public and private functions, including but not limited to educational programs and private parties. No other use of the Leased Premises may be made without an amendment to this Lease.

#### **6. INSURANCE.**

A. During the term of this Lease, FPF shall, at no cost or expense to the City, maintain public liability insurance, naming the City as an assured on forms and with companies satisfactory to the City, against claims for personal injury, death, or property damage occurring upon, in, or about the Leased Premises. Such insurance shall afford protection to the limits of not less than \$300,000 in respect to injury to or death of a single person, not less than \$1,000,000 in respect to any single occurrence, and not less than \$100,000 in respect to property damage for any single occurrence.

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.

Such certificates shall indicate that such policies shall not be canceled without at least thirty (30) days prior written notice to the City.

**B INSURANCE REVISION.** If at any time during the term of this Lease any of the insurance policies required by this Paragraph shall be or become unsatisfactory to the City, as to form or substance (including coverage amounts), or if a company issuing such policy shall have a Best's Rating of less than B, FPF shall, upon notice to that effect from the City, acting through its Comptroller, promptly obtain a new policy, and submit the same for approval to Lessor's Comptroller, provided, however, that within ten days of receipt of notice to such effect from the City, FPF may notify the City that it disputes the content of such notice. In that event, such issue shall be resolved within 45 days by a panel consisting of the City's Comptroller or her or his designee, a designee of FPF, and an insurance broker doing business in the Metropolitan Saint Louis Area jointly selected by the City's and FPF's designees.

**7. PUBLIC PROPERTY.** FPF acknowledges that the Leased Premises are located in a public park and are public property and, as such shall be open and accessible to the public at all times, except as expressly permitted by the next sentence. Areas of the Lindell Pavilion used for office space, catering and food service, and multi-function rooms may be closed to the public from time to time at the sole discretion of FPF for short-term private functions, including but not limited to educational programs and

private parties. FPF shall notify the City in writing in advance of such closures. In no event shall the shower and locker facilities be closed during the hours the Lindell Pavilion is required to be open under Section 10 hereof. The grounds of the Leased Premises shall not be fenced or otherwise enclosed or identified as other than part of Forest Park. Any change of name or new naming of any part of the Leased Premises, including the Lindell Pavilion and any part thereof, may be done by the City, only, in its sole discretion.

**8. UTILITY EXPENSES.** Charges for all utilities, including but not limited to water, electricity, telephone, power, heat, refrigeration, sewage and waste disposal within the Leased Premises shall be paid at the sole cost and expense of FPF.

**9. INSPECTION.** From time to time during the term of this Lease, authorized personnel of the City shall at all reasonable hours (with reasonable advance notice to FPF) be permitted to enter upon and inspect all parts of the Leased Premises in order to ascertain that the Leased Premises are being properly maintained and kept in repair and good order by FPF.

**10. HOURS OF OPERATION.** The Lindell Pavilion shall be open and accessible to shower and locker users from 6:00 a.m. until 10:00 p.m. except Thanksgiving Day, Christmas Day and New Year's Day. The visitors' center shall be open from 9 a.m. to 5 p.m. every day of the year except Thanksgiving Day, Christmas Day and New Year's Day. Food service shall be offered to the public while the visitors, center is open. These hours of operation may be altered from time to time by mutual written agreement of FPF and the Director of Parks, Recreation and Forestry. If the Leased Premises are partially destroyed and this Lease remains in full force and effect, FPF shall continue business operations on the Leased Premises to the extent reasonably practical from the standpoint of good business judgment during the period of restoration.

**11. ENVIRONMENTAL LAWS; INSPECTIONS.** FPF shall not take or omit any action which would constitute a violation of 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 ("AWPCA"), 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. Notwithstanding the foregoing, FPF shall not be liable to City for any violation of such laws not caused or committed by FPF, its agents, employees, contractors, and invitees.

**12. MAINTENANCE, REPAIRS, AND EXPENSES.** FPF shall be responsible for the maintenance, repair and upkeep of the Leased Premises, which repair and upkeep shall be performed in a workmanlike, diligent and efficient manner, and shall be accomplished in a first class manner in accord with the standards to which other buildings and facilities in Forest Park of a comparable type and size are maintained and repaired. Any operating profit realized by FPF from the Leased Premises will be used for maintenance of the Leased Premises in a first class condition. FPF shall be solely responsible for the costs of maintenance, repair and upkeep of the Leased Premise and for all expenses of any kind or description relating to the Leased Premises and all improvements thereon, for all costs of operation of all improvements on the Leased Premises, and for maintenance, upkeep and repair of all land, vegetation and sidewalks within or bordering on the Leased Premises.

**13. LICENSES AND PERMITS.** FPF will secure and keep in force all licenses and permits required for its use of the Leased Premises. Except as otherwise specifically provided in this Lease, nothing in this Lease shall be construed to exempt FPF from the provisions of any City ordinance of general applicability.

**14. CONSTRUCTION WORK.** Any and all construction or work on the Leased Premises 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 subject to approval by or permit of any other City department or agency whose approval or permission may be required under the St. Louis City Charter or St. Louis City ordinance prior to the commencement of any such construction or work. No new fixture, structure or improvement of any kind may be installed anywhere on the Leased Premises without the prior approval of the Director of Parks, Recreation and Forestry, or without any prior approvals that may be required by the City Charter or ordinance or by the Forest Park Master Plan. Any new fixture, structure or improvement installed on the Leased Premises shall be the property of the City.

**15. ANNUAL REPORT.** FPF shall submit to the Director of Parks, Recreation and Forestry, a written annual report, no later than June 30 each year, which includes a description of the activities at the Leased Premises in the preceding calendar year.

**16. TERMINATION.** Any provision of Section 5.d. of Ordinance 59741 to the contrary, only:

- a. in the event of a use of the Leased Premises which is not expressly permitted by Section 5 of this Lease, or
- b. in the event of FPF's breach of its rent obligations under this Lease or to complete the Leasehold Improvements pursuant to Section 3.B, or
- c. in the event of FPF's failure to maintain insurance as required by Section 6 of this Lease, and the continuation of any such material breach for sixty (60) days after written notice of such material breach from the City's Director of Parks, Recreation and Forestry to FPF (by registered or certified mail, return receipt requested), or, if the same material breach is of such a character as cannot reasonably be cured within a sixty (60) days period, then upon failure by FPF 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, in any such event, the City, acting through its Board of Estimate and Apportionment, may declare that FPF is in breach of this Lease and that the Lease is accordingly terminated and forfeited pursuant to Section 5.d of Ordinance 59741.
- d. Notwithstanding termination of this Lease pursuant to the provisions of this section prior to the end of the Lease term, FPF may continue to use the areas in the Lindell Pavilion occupied and used by it for office space prior to the termination, for office space, unless and until a new tenant or user (including, but not limited to, any City agency or department) of the Lindell Pavilion determines that such continued occupancy by FPF is not desirable.

**17. RE-ENTRY.** Subject to Section 16.d, if this Lease shall be terminated, the City or its agents may immediately or at any time thereafter, reenter the Leased Premises and remove therefrom FPF, its agents, employees, or other persons, and thereupon FPF may, at its option, remove all or any of its personal property therefrom (which property shall remain the property of FPF).

**18. ASSIGNMENT, SUBLEASES AND TRANSFERS.** Without the prior written consent of the other party first obtained, neither party shall assign, lease or transfer, in whole or in part, this Lease or such party's interest in the Leased Premises. Except as expressly permitted by this Section 18, any assignment, sublease or transfer of this Lease or of FPF's interest without the prior consent of the City shall be null and void and of no effect whatever. FPF shall, in its sole discretion, have the authority to contract or sublease that portion of the Leased Premises which is to be used as the catering and food service facility, as well as the indoor and outdoor seating areas, to a private operator after soliciting public bids for said operations. The operations must include a moderately priced food service operation, which is suitable for a family and tourist market. Furthermore, FPF and its sublessee or operator may, in their sole discretion, from time to time lease the areas to be used as the catering and food service facility as well as the indoor and outdoor seating areas for short term educational programs and private parties.

**19. PARKING.** Except as provided by existing contracts and leases, throughout the term of this Lease and any extension thereof the City agrees that the parking area known as the Twin Lots and designated on Exhibit C shall at all times remain open and accessible on an unreserved basis to the public; provided, the City may reserve parts or all of the Twin Lots for parking or other use on a short term basis for special events organized by the City or others. The City will notify FPF promptly when such events are scheduled.

**20. AUTHORITY.** The City and FPF warrant, each to the other, that the City, FPF and their representative signatories each has full power and authority under its charter and the statutes of the State of Missouri, to enter into and execute this Lease.

**21. SUCCESSORS AND ASSIGNS.** The covenants and agreements contained in this Lease shall bind and inure to the benefit of the City, its successors and assigns, and FPF, its successors and assigns.

**22. RIGHT OF ENTRY.** The City reserves the right in the future to enter the Leased Premises for the construction, reconstruction or location of any public utilities through the Leased Premises; provided that if as a result any building, fixture, roadway, pathway or other facility then being used by FPF shall be required to be removed, relocated or damaged, then in such event such removal, relocation or damage shall be at the City's expense.

**23. NONDISCRIMINATION.** FPF 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.

**24. MINORITY PARTICIPATION.** As specified in Exhibit D hereto, which is incorporated herein by this reference, FPF agrees to maximum utilization of minority and women business enterprises in construction within the Leased Premises; further, FPF agrees to conform to all applicable federal, state and local equal opportunity laws. FPF shall make provisions to monitor the level of minority and women business enterprises participation for the Leasehold Improvements. The level of minority and women business enterprises participation shall be reported to the City on a periodic basis through completion of the Leasehold Improvements.

**25. NOTICES AND ADDRESSES.** All notices, demands, requests or replies provided for or permitted by this Lease 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 after 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, or reply, delivery of such shall be:

if to the City, to:

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

with copies to:

Gary Bess  
Director's Office  
Parks, Recreation & Forestry  
5600 Clayton Avenue in Forest Park  
St. Louis, Missouri 63110-1310

Francis Oates, Esq.  
City Counselor's Office  
Room 314, City Hall  
St. Louis, Missouri 63103

If to FPF, delivery shall be to:

Executive Director  
Forest Park Forever, Inc.  
5595 Grand Drive  
St. Louis, Missouri 63112

with a copy to:

S. Jerome Pratter, Esq.  
The Stolar Partnership  
911 Washington Avenue  
7<sup>th</sup> Floor  
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.

**26. INDEMNIFICATION.** FPF shall indemnify and hold harmless the City, and all its departments, boards, officers, agents and employees from all suits, actions, loss, expense, or claims of any kind whatsoever, including attorneys' fees or expenses, arising out of or relating in any way to the execution, performance, or non-performance of the Lease, whether or not covered by insurance. FPF shall, at the City's option, defend the City and its departments, boards, officers, agent and employees, at FPF's sole expense, against any such claim, suit or action. This provision does not apply, however, to any liability that may be the result of the direct and proximate negligence or willful misconduct of the City or of the City's employees or agents acting within the scope of their employment or agency.

**27. HEADINGS.** The headings of the several Sections of this Lease are for convenience only and shall not define, limit or construe the contents of such Sections.

**28. APPLICABLE LAW.** This Lease shall be subject to, governed by and interpreted by and in accordance with Missouri law.

IN WITNESS WHEREOF, this Lease is executed the day and year first above written.

CITY OF ST. LOUIS, MISSOURI

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

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

(SEAL)

City Register

APPROVED AS TO FORM:

City Counselor

**EXHIBITS A, B, C & D,**

See Exhibits A, B, C & D on file in the Register's Office

**Approved: August 5, 2002**