

ORDINANCE #68601
Board Bill No. 308

An ordinance approved and recommended by the Board of Estimate and Apportionment; providing for the termination of the Agreement authorized by Ordinance 63383 pertaining to the West End Community Center between the City of St. Louis and the West End Community Center Restoration Corp., a Missouri not-for-profit corporation; approving and authorizing the execution and delivery of an Operating Lease Agreement of the property known as the West End Community Center between the City of St. Louis, as lessor, and Demetrious Johnson Charitable Foundation, as lessee; providing for a West End Community Center Advisory Board; with an emergency provision.

WHEREAS Ordinance 63383 authorized an agreement with the West End Community Center Restoration Corporation concerning the operation of the building known as the West End Community Center located at 724 Union Avenue; and

WHEREAS the City and the West End Community Center Restoration Corporation have agreed to conclude their relationship with respect to the West End Community Center; and

WHEREAS, the City conducted an Request for Proposals process for an operator of the West End Community Center; and

WHEREAS, the Demetrious Johnson Charitable Foundation was selected to be the operator, subject to an appropriate operating lease agreement; and

WHEREAS, the terms of an operating lease agreement have been agreed to, and the form of such an agreement has been approved and recommended by the Board of Estimate and Apportionment.

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

SECTION ONE. The Agreement authorized by Ordinance 63383 pertaining to the West End Community Center between the City of St. Louis and the West End Community Center Restoration Corp., a Missouri not-for-profit corporation is hereby terminated by mutual agreement of the parties thereto.

SECTION TWO. The City hereby approves, and the Mayor and Comptroller are hereby authorized and directed to executed and deliver on behalf of the City, an Operating Lease Agreement of the West End Community Center property, to the Demetrious Johnson Charitable Foundation in substantially the form attached hereto as Exhibit A, with changes or corrections or such other documents as may be approved by the City Counselor and which are not inconsistent herewith and which are incidental to and related to the transactions contemplated by the Operating Lease Agreement.

SECTION TWO. A West End Community Center Advisory Board shall be appointed by the Director of Parks, Recreation and Forestry. The Director of Parks, Recreation and Forestry shall consult with the Alderman of the Ward where the West End Community Center is located, the neighborhood association and nearby block units prior to issuing the West End Community Center Advisory Board appointments. The Advisory Board shall consist of five members from the neighborhood adjacent to the West End Community Center. Of the members first appointed, one shall be appointed for a term of one year, one for a term of two years, and three for terms of three years; all members thereafter shall be appointed for terms of three years. The Board's role relation to the operation of the West End Center shall be solely that of advisor to the Foundation and the City's Recreation Commissioner, and the Board shall have no responsibility or authority for the day-to-day operation of the facility.

SECTION THREE. This being an ordinance necessary for the immediate preservation of the public peace and health, it is hereby declared to be an emergency ordinance as provided by Article IV, Section 20 of the Charter of the City of St. Louis, and shall be effective immediately upon approval by the Mayor or its approval over his veto.

OPERATING LEASE AGREEMENT

This Operating Lease Agreement ("this Agreement") is made and entered into this ____ day of _____, 2010 by and between the City of St. Louis, Missouri, a constitutional charter city of the State of Missouri, (the "City") and Demetrious Johnson Charitable Foundation, Inc. , a Missouri corporation exempt from federal income taxation under Section 501(c)(3) of the United States Internal Revenue Code (the "Foundation").

PREMISES

1. The City owns the West End Community Center, a recreational and office facility located at 5242 Enright Avenue/724 Union Boulevard, St. Louis, Missouri 63112 (the "Center").
2. The City desires to lease the Center for operation by a suitable entity, and has conducted a selection process to identify such an operator.
3. The Foundation has been duly selected to be the operator for the City, subject to a mutually acceptable agreement concerning such operation.
4. The City and the Foundation have agreed upon terms for rental and operation of the Center by the Foundation, as hereinafter set forth.

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the parties agree as follows:

TERMS**1. Lease.**

The City hereby leases to Foundation, and the Foundation hereby rents from the City the Center and the land upon which the Center is located, described as follows : a parcel located in City Block 4845, comprising Lots 14 to 18 and W. 19, fronting 271 Feet 10 inches on Enright Avenue with a depth of 170 feet fronting on Union Boulevard, together with an improvement thereon commonly known as the West End Community Center; provided, this lease does not include a former police station located east of the West End Community Center building.

2. Term.

The term of this Agreement shall be one year commencing on the date hereof (the "Initial Term"). This Agreement may be renewed by mutual agreement of the Foundation and the City, acting through its Director of Parks, Recreation and Forestry (the "Director"), for two successive additional terms of one year (respectively, the "First and Second Renewal Terms") and thereafter by mutual agreement of the parties for one additional term of five years, subject to the approval of the City's Board of Estimate and Apportionment. Not later than sixty (60) days prior to the expiration of the Initial Term or the First Renewal term, as the case may be, the parties shall notify each other in writing whether or not they wish to renew this Agreement upon the expiration of the Initial Term for the First Renewal Term or the Second Renewal Term, as the case may be. Not later than ninety (90) days prior to the expiration of the Second Renewal Term, the parties shall notify each other in writing whether or not they wish to renew this Agreement upon the expiration of the Second Renewal Term, for an additional term of five years, subject to the approval of the City's Board of Estimate and Apportionment.

The Foundation shall commence operations as soon as possible after October 31, 2009, and shall continue operations until the expiration of the last renewal term of this Agreement, unless this Agreement is earlier terminated or not renewed pursuant to its terms.

At any time during the Initial term and any renewal term, the City may terminate this Agreement upon ten (10) days written notice for cause, which notice shall specify the cause for termination; provided, that in the event of a notice for termination for cause, the Foundation shall have a ten (10) day period in which to cure the action or omission giving rise to the termination; during such cure period, the Director shall, at the Foundation's request, meet and confer with the Foundation to determine if the termination can be rescinded.

Grounds for termination for cause shall include, but not be limited to:

- Non-payment or late payment of rent;
- Abusive damage to Center property;
- Failure to comply with any material term of this Agreement, including but not limited to the insurance requirements of section 15 hereof.
- The City does not have funds available for the costs of repairs needed to keep the Center operational;
- The City determines to sell the property;

- The City determines to use the property for other purposes.

3. Rent.

As and for monetary rent, the Foundation shall pay to the City the sum of One Dollar (\$1.00) per year. Receipt of the monetary rent for the initial term of this Agreement is hereby acknowledged by the City.

As additional rent, the Foundation shall perform all of its undertakings and obligations under this Agreement and provide office space and access to facilities within the Center to the City, as provided in Section Nine hereof.

4. Business Plan.

Not less than one hundred and eighty (180) days prior to the expiration of the Initial Term, the Foundation shall submit to the Director for review and approval a detailed business plan for the authorized renewal terms of this Agreement, including: i) a facility budget detailing the costs of personnel, benefits, supplies, equipment, utilities, insurance and other related operational costs for the Center and ii) a detailed breakdown of anticipated revenue, identifying the source of funds to be used to cover operating expenses, including but not limited to office rents, facility rentals, grants (specifying the specific grants to be applied for), fund raising and in-kind services.

5. Subleases; Sublease Agreements.

The parties contemplate that the Foundation will sublet office space in the Center to organizations or persons providing various services to the community in which the Center is located ("Tenants") as herein provided.

The Foundation shall develop a standard form sublease agreement outlining the conditions of Center use by Tenants, including cost, hours of operation, housekeeping requirements, maintenance responsibilities, decorating/renovation restrictions and other necessary rules and regulations. All sublease agreements shall be subject to all applicable City ordinances, including but not limited to zoning, and to all licensing, permit and inspection requirements of the City or other governmental authority. All sublease agreements must be reviewed and approved by the Director in writing before the sublease agreement is finally executed. Any sublease agreement executed without the Director's approval shall be void; execution by the Foundation of a sublease without the Director's approval shall be cause for termination of this Agreement. Sublease rates charged must be comparable to commercial rates within a three (3) mile radius of the facility and must be approved by the Director, which approval shall not be unreasonably withheld. All sublease agreements must expressly provide that the sublease will terminate immediately upon the termination or expiration of this Agreement.

6. Tenant Meetings; Advisory Board.

The Foundation shall conduct regular Tenant meetings on a quarterly basis. The purposes of the meetings will be to supply information about programs in the Center, to allow Tenants to supply information about their programs, to provide Tenants the opportunity to discuss concerns about operational or maintenance issues, and to allow the Foundation to advise Tenants of policies, procedures and operational issues that might impact their programs.

The Foundation shall review correspondence from the West End Community Center Advisory Board, and shall meet from time to time with the Advisory Board and the City's Recreation Commissioner concerning the operation of the Center.

7. Alterations.

The Foundation, may in its discretion and at its expense, with the prior written approval of the Director, which approval shall not be unreasonably withheld, and pursuant to plans and specifications approved by the City's Board of Public Service, make alterations and improvements to the Center. All permanent improvements shall become the property of the City.

8. Revocation of Lease/Rental Agreement.

Tenants may be removed by the Foundation for cause. Such cause may include, but not be limited to:

- Non-payment or late payment of fees;
- Abusive damage to property;

- Failure to comply with terms of sublease agreement.

In the event the Foundation feels it is necessary to evict a Tenant, the Director must be notified, and approve of the eviction, which approval shall not be unreasonably withheld, prior to tenant eviction.

9. City Use and Access.

One (1) office of approximately one hundred forty-four square feet will be provided in the Center at a location determined by the Director, for use by the Director as the Director determines.

Access to gym, pool and other athletic facilities and auditorium shall be provided at times mutually agreed to by the Director and the Foundation, during which times the City may provide sports and community programs to the public. The City also retains the right at times mutually agreed to by the parties to utilize the Center without charge to the City for programs, activities and office space.

10. Swimming Pool.

Subject to the availability of funds appropriated for such work, the City shall make necessary repairs to the swimming pool in the Center to ensure it is operational within six (6) months of the execution of this Agreement.

11. Rental Fees/Program Fees.

The Foundation may charge fees to rent various portions of the Center on a short term basis to groups and organizations other than Tenants for the conduct of events or programs. Such groups and organizations may charge an admission fee to their event or program. All such rentals and admission fees to be charged are subject to the prior approval of the Director, which approval shall not be unreasonably withheld.

12. Responsibilities of Foundation.

The Foundation shall:

- i) be responsible for the day-today operation, maintenance, and costs of the Center and may charge rent and related fees for office space, gym and swimming pool usage, and programs offered, subject to the provisions of this Agreement.
- ii) retain all earned revenue.
- iii) provide all personnel, including security, if required necessary for an efficient, safe, organized, and appropriately operated recreation and community center.
- iv) weather and season permitting, have at least 60 hours of operations per week, from 8:00A.M. to 8:00 P.M. Monday through Friday, with occasional weekend programs.
- v) be responsible for all repairs costing less than \$10,000 up to an aggregate of \$10,000 in a calendar year.
- vi) make the Center accessible to youth and families of the neighboring area for some limited activities that will involve no fees to the participants.
- vii) cause the leased premises to be operated in complete compliance with all applicable environmental laws and regulations.

13. Repairs, Damages.

In the event a repair to the facility under \$10,000 is necessary and the Foundation cannot make the repair, the Director can, in the Director's sole discretion, cause the necessary work to be performed in order to preserve the safety and continued operation of the Center, and then bill the Foundation for said work. Failure by the Foundation to reimburse the City may be deemed a cause for termination or may result in non-renewal of this Agreement. Any damage to the Center caused by the Foundation, its employees,

agents, or contractors, or by Foundation operations or programs, shall be repaired, or the costs of repair shall be paid, regardless of the amount, by the Foundation; failure of the Foundation to make any such repair or pay such cost, within sixty after notice to do so from the Director, shall be grounds for termination of this Agreement.

14. Utilities.

The City will pay utilities during the Initial Term of this Agreement, that is to say, for one (1) year commencing on the date hereof. During subsequent renewal terms, if any, the Foundation shall pay for all utilities.

15. Insurance.

- (a) Commercial General Liability Insurance. The Foundation shall obtain and maintain a commercial general liability insurance (“CGL”) policy, which provides insurance to protect against claims for bodily injury and property damage arising out of premises operations, products and completed operations and advertising and personal injury liability. The City, its officers, and employees shall be included as “additional insureds” under the CGL policy. The CGL policy shall provide limits no less than the following:

	Per Occurrence	In the Aggregate
Personal and Bodily Injury	\$3,000,000	\$3,000,000
Property	\$1,000,000	\$2,000,000
Umbrella	\$4,000,000	
Fire Damage	\$50,000	
Medical Expense	\$10,000	

- (b) Workers Compensation Insurance. The Foundation shall obtain and maintain insurance sufficient to discharge its obligations under all applicable workers compensation laws in the state as to work that is to be performed, including any of the federal or maritime laws.
- (c) Miscellaneous. The Foundation shall cause any contractors employed by or contracted with the Foundation to purchase and maintain insurance of the types and limits specified herein (including appropriate motor vehicle insurance). The Foundation shall furnish the City with standard certificates of insurance as evidence of confirmation of all such insurance. All certificates shall provide for thirty (30) days written notice to the City prior to the cancellation, expiration or reduction of the limits of any insurance referred to therein and shall name the City, its officers, and employees as additional insureds. All insurers shall have an A.M. Best rating of A-, IX or higher and be fully authorized to conduct business in the State of Missouri.

Any such required minimum amounts shall not be construed to limit the liability of the Foundation or its contractor(s). The Foundation shall file certificates of insurance with the City’s Comptroller reflecting the coverage required in Section 15 (a) above, naming the City, its officers, and employees as additional insureds. From time to time, but not more frequently than once every five (5) years, the levels or nature of insurance required to be maintained by the Foundation under Section 15 (a) shall be reviewed upon the written request of the City’s Comptroller or the Foundation to determine whether such levels or nature of coverage is consistent with that maintained by other parties engaged in similar activities in similar locations, and the levels of required coverage shall be reasonably adjusted as agreed to by the parties.

Upon written notice from the City’s Comptroller that the limitations on liability of the City under Section 537.610 RSMo. have been increased pursuant to subsection 537.610.5 above the amounts of coverage provided by the Foundation as of the time of such notice, the Foundation shall within ten business days cause its liability coverage to be increased to the amount determined pursuant to subsection 537.610.5, and shall provide evidence of such increase to the Comptroller.

16. Capital repairs.

Except as provided in Section 13, the City will be responsible for capital repairs in excess of \$10,000, subject to applicable law or ordinance and further subject to availability of funds appropriated for such work. Determination of the need for capital repairs in excess of \$10,000 shall be made by City in its sole discretion.

17. West End Center Accepted As Is.

The Foundation acknowledges and agrees that it is accepting the West End Center in its current, "as is" condition, and hereby releases the City from any and all claims with respect to the condition of the West End Center. Subject to availability of funds, the City will remove a vacant police station, which is attached to the West End Center, and convert the underlying land to spaces for West End Center parking, within the twenty-four (24) month period commencing on the date hereof. The City makes no warranties or guarantees of any kind as to the suitability of the West End Center or the facilities therein for their intended use.

18. Non-Discrimination Policy.

The City is an equal opportunity employer and does not discriminate on the basis of race, color, religion, sex, age, physical handicap, national origin or sexual orientation. The Foundation and its agents and employees shall not discriminate on the basis of race, color, religion, sex age, physical handicap, national origin, or sexual orientation, nor shall they exclude from participation in, deny benefits of, or subject any person to discrimination under any program or activity made possible or resulting from any agreement with the City.

Minority/Women's Business Enterprise Obligation: The Foundation will be expected to take all reasonable steps necessary to ensure that Minority and Women's Business Enterprises (M/WBEs) as certified with the City of St. Louis as defined in Mayor's Executive Order #28, as amended, have a maximum opportunity to participate in the performance of contracts financed in whole or in part with the City of St. Louis funds under this Agreement, and to agree to comply with all applicable provisions of Executive Orders and ordinances relating to such matters. The Foundation shall not discriminate on the basis of race, religion, color, age, national origin, sex, sexual orientation, or physical handicap in award of and performance of contracts financed in whole or part by the City of St. Louis.

19. Living Wage.

The Foundation will be expected to comply with the applicable provisions of the City's Living Wage Ordinance No. 65597.

20. Audits.

The City and the City's auditors and accountants shall be afforded access during the term of this Agreement, and for five (5) years following termination, to all of the Foundation's books and records without limitation whatsoever for the purpose of conducting audits. All books and records shall be open to inspection and/or reproduction to the extent necessary to adequately permit evaluation and verification of the company's full compliance with contract documents. In those situations where the company's records have been generated from computerized data or records, in addition to hard copy (reports), the Foundation shall provide such information on disk or in a suitable alternative electronic form.

21. Service Contracts.

The Foundation hereby represents to the City that the Foundation is presently uncertain whether it will enter into any service contract pertaining to the leased premises. The Foundation warrants and represents to the City that if it does enter into a service contract pertaining to the leased property that any such service contract shall include:

- A. A provision specifying the minimum prevailing wages to be paid by the service contractor to any service employee;
 - B. A provision specifying the minimum prevailing fringe benefits, to be provided by the service contractor to any service employee; and
 - C. A representation by the service contractor to abide by the terms of Ch. 6.20 of the Revised Code, City of St. Louis and to pay and provide to all service employees the minimum prevailing wage and minimum prevailing fringe benefits as noted in the service contract; and
2. The Foundation warrants and represents to the City that it shall not enter into any service contract with (a) any service contractor debarred in accordance with Ch. 6.20 of the Revised Code, City of St. Louis or (b) any service contractor managed, controlled, or more than fifty percent (50%) owned by a person or entity so debarred; and

- 3. For any service contract greater than five-thousand dollars (\$5,000.00) in value and pursuant to Sections 285.525 through 285.555 of the Revised Statutes of Missouri, such service contract shall contain provisions requiring the contractor and any subcontractors to enroll and participate in a federal work authorization program and affirm that the contractor and any subcontractors do not knowingly employ any unauthorized aliens in connection with the contracted services.

THE CITY OF ST. LOUIS, MISSOURI

By: _____
Title: Comptroller, City of St. Louis

By: _____
Director of Department of Parks,
Recreation and Forestry of the City of St. Louis

DEMETRIOUS JOHNSON FOUNDATION

By _____

APPROVED AS TO FORM:

Secretary, Board of E & A

City Counselor

Date

Date

Approved: March 16, 2010