

**ORDINANCE #68941**  
**Board Bill No. 58**  
**Committee Substitute**

An Ordinance authorizing Amendment No. 3 to the Amended and Restated Lease (“Amendment No. 3”) between the City of St. Louis and W.A.T. Dignity Corporation, originally authorized by Ordinance 64565, which was adopted by the Board of Alderman of the City of St. Louis and approved September 28, 1998, and subsequently amended pursuant to Ordinance 64913, for property and improvements located at Whittier and Kennerly Streets.

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

**SECTION ONE.** The Board of Alderman hereby declares that it has reviewed the following Amendment No. 3 and compared Amendment No. 3 with the original lease and subsequent amendments and, consistent with its findings in the aforementioned Ordinances 64565 and 64913, finds that the use made of a portion of the premises by Homer G. Phillips Dignity House L.P. for the operation of a 220-unit multifamily 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 Comptroller are hereby authorized and directed to enter into Amendment No. 3 with Homer G. Phillips Dignity House, L.P., which shall read in substantially in the form set forth as the attached Exhibit A.

**EXHIBIT A**

**AMENDMENT NO. 3 TO AMENDED AND RESTATED LEASE**

AMENDMENT NO. 3 TO

AMENDED AND RESTATED LEASE

This Amendment No. 3 to the Amended and Restated Lease (this “Amendment to Lease”) is made and entered into as of \_\_\_\_\_, 2010, by and between THE CITY OF ST. LOUIS, MISSOURI (“Landlord”) and HOMER G. PHILLIPS DIGNITY HOUSE, L.P. , a Missouri limited partnership (“Tenant”), and it amends that certain Amended and Restated Lease dated December 1, 2001 between Landlord and Tenant, as amended by Amendment No. 1 to Amended and Restated Lease between Landlord and Tenant dated December 1, 2001, and as further amended by Amendment No. 2 to the Amended and Restated Lease between Landlord and Tenant dated December 1, 2004 (together, the “Lease”).

**WHEREAS,** Landlord is the fee simple owner of certain property and improvements thereon located at Whittier and Kennedy 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,** Tenant operates a 220-unit multi-family apartment housing project for low-income persons with a preference for the elderly and approximately two thousand five hundred (2,500) square feet of commercial rental space in a portion of the Premises (together, the “Project”) that benefits Landlord and the residents of the City of St. Louis;

**WHEREAS,** Tenant and Landlord have executed the Lease covering the Premises;

**WHEREAS,** The Industrial Development Authority of the City of St. Louis (the “Authority”), U.S. Bank National Association (“U.S. Bank”) and the limited partner of Tenant (the “Investor”) previously agreed to provide financing for the completion of the Project; and

**WHEREAS,** Tenant and Landlord desire to modify the Rent arrangement set forth in the Lease.

**NOW, THEREFORE,** Landlord and Tenant agree to amend the terms of the Lease as follows:

1. Rental. Section 6 of the Lease is deleted in its entirety and replaced with the following:

“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 January 1, 2020. Beginning on January 1, 2040, 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. The intent of deferring ground lease payments is to minimize the need for rent increases and to allow the property to cover operating costs and maintain a high level of service to its senior residents. To insure this intent is realized, the Owner agrees to forgo any distributions of cash flow unless and until the Owner begins to make full ground lease payments to the City. In order to insure compliance with this provision of the ground lease amendment, the Owner shall submit annually, no later than June 30 of each year, to the St. Louis Board of Aldermen and the St. Louis Development Corporation audited financial statements showing the Owner has received no such distributions of cash flow.

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

3. Amendment. This Amendment to Lease may be modified, amended or surrendered only by an instrument in writing duly executed by Landlord or Tenant with the prior written consent of the Lenders.

[Balance of page left blank intentionally]

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

**CITY OF ST. LOUIS**

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

Attest:

**CITY REGISTER**

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

Approved as to form:  
City Counselor

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

**HOMER G. PHILLIPS DIGNITY HOUSE, L.P.**

By: Dominion Homer G. Phillips, LLC  
Its Managing General Partner

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

STATE OF MISSOURI     )  
                                  ) ss.



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 Kennedy Avenue, 70 feet wide; then south 59 degrees 58 minutes 35 seconds east along said southern line of Kennedy 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'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 limner 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 front 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 properly records of the City of St. Louis, Missouri in Book 1529, Page 745 and more particularly described therein.

#### PARCEL C

All of St. Ferdinand Avenue (50 feet wide), vacated by Ordinance 47509, being bounded on the Northwest by a line beginning at the Northeast corner of Lot 12 Block 5 of Robert Wash's Estate, a subdivision recorded in Plat Book 16 Page 5 of the City of St. Louis, Missouri records and in Block 3677, extending Northeastwardly to the Northwest corner of Lot 41 Block 6 of said Robed Wash's Estate and in Block 3676, bounded on the Southwest by Lots 12 through 15 Block 5 of said Robert Wash's Estate and in City Block 3677, on the Northeast by Lots 38 through 41 Block 6 of said Robert Wash's Estate and in City Block 3676 and on the Southeast by a line running perpendicular from the Southeast corner of said Lot 15, Block 5, to a point on the Southwest line

of Block 3676.

**Approved: July 5, 2011**