

1 **BOARD BILL NO. 376**                      **INTRODUCED BY ALDERMEN JOSEPH D.**  
2 **RODDY/PHYLLIS YOUNG/JOSEPH VOLLMER/ ALFRED WESSELS/LYDA**  
3 **KREWSON**

4 AN ORDINANCE RELATING TO PARKS; RECOMMENDED BY THE BOARD OF  
5 ESTIMATE AND APPORTIONMENT AND THE BOARD OF PUBLIC SERVICE  
6 PROVIDING FOR A FURTHER AMENDMENT TO THE LEASE AGREEMENT BETWEEN  
7 THE CITY OF ST. LOUIS AND BARNES-JEWISH HOSPITAL (FORMERLY KNOWN AS  
8 BARNES HOSPITAL) AS ORIGINALLY AUTHORIZED BY ORDINANCE NO. 56576, AS  
9 AMENDED BY ORDINANCE NO. 58982; CONFIRMING THE PRIOR AGREEMENT AS  
10 AMENDED, EXTENDING THE TERM OF SAID LEASE AGREEMENT, PERMITTING  
11 DEVELOPMENT OF THE LEASED PREMISES, PROVIDING FOR THE EXECUTION OF  
12 A BJH MAINTENANCE TRUST AGREEMENT AND A FPF MAINTENANCE TRUST AND  
13 COOPERATION AGREEMENTS AND GOVERNING DONATIONS THEREUNDER AND  
14 PROVIDING FOR THE EXECUTION OF AN EASEMENT AGREEMENT AND A  
15 MAINTENANCE COOPERATION AGREEMENT; AUTHORIZING AND APPROVING  
16 CERTAIN DOCUMENTS AND OTHER ACTIONS; AND CONTAINING AN EMERGENCY  
17 CLAUSE.

18 WHEREAS, by Ordinance 56576, approved July 17, 1973, the City of St. Louis, Missouri (the  
19 “City”) was authorized to enter into an Agreement providing for the development of a sub-  
20 surface parking facility in an area generally bordered by Euclid, Kingshighway, Barnes Hospital  
21 Plaza and Clayton Avenue (the “Leased Premises”);

22 WHEREAS, pursuant to Ordinance 56576, the City entered into said Agreement and a lease of  
23 such area with Barnes Hospital, a not-for-profit corporation of the State of Missouri (now known  
24 as Barnes-Jewish Hospital, “BJH”), as lessee (“Original Lease”);

25 WHEREAS, said sub-surface parking facility was constructed by Barnes Hospital and is  
26 currently operated by BJH;

27 WHEREAS, pursuant to the Original Lease, Barnes Hospital restored the surface of said sub-  
28 surface parking facility consistent with public park purposes;

29 WHEREAS, by Ordinance 58982, approved December 7, 1983, an Amendment to Agreement  
30 amending the Original Lease was authorized extending the term of the Original Lease, expanding  
31 the area of the Leased Premises thereunder and providing for further development of the sub-  
32 surface parking garage (“First Amendment”);

33 WHEREAS, pursuant to Ordinance 58982, the City entered into said First Amendment with  
34 Barnes Hospital to memorialize their understandings effective as of the date of Ordinance 58982;

35 WHEREAS, BJH is a successor in interest to Barnes Hospital under the Original Lease, as  
36 amended by the First Amendment;

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1 WHEREAS, BJH is committed to the City and for over 100 years BJH (and its predecessors,  
2 Barnes Hospital and Jewish Hospital) has provided health-care services to the St. Louis  
3 community;

4 WHEREAS, BJH has remained, invested and grown in the City even as many other hospitals  
5 relocated to St. Louis County and beyond;

6 WHEREAS, BJH consistently provides more charity care than any other hospital in the State of  
7 Missouri and in 2004 alone, BJC HealthCare hospitals provided more than \$160 million in  
8 charity and uncompensated care;

9 WHEREAS, BJH is the only adult hospital within the City limits that delivers babies;

10 WHEREAS, BJC HealthCare, parent of BJH, maintains its corporate headquarters in the City;

11 WHEREAS, over 15,000 of BJC HealthCare's 26,000 employees are based in the City,  
12 providing the City with approximately \$5 million in annual earnings taxes;

13 WHEREAS, BJH was once again ranked among one of the ten best hospitals in America by US  
14 News & World Report;

15 WHEREAS, BJH and BJC have been good neighbors and partners with the Forest Park  
16 Southeast and Central West End neighborhoods, providing more than \$50,000,000 in grants and  
17 investments over the past several decades;

18 WHEREAS, BJH and affiliated institutions, including St. Louis Children's Hospital, provide  
19 vital services to the residents of the City and the expansion of its operations and facilities will  
20 greatly improve the provision of said services;

21 WHEREAS, BJH desires to improve further its existing buildings and facilities and to replace,  
22 erect or install permanent improvements upon the Leased Premises as an integral part of the  
23 operations of BJH and its affiliated institutions and has agreed that not less than 15% of the  
24 Leased Premises shall be maintained as green space;

25 WHEREAS, the Leased Premises are remote from the rest of Forest Park by virtue of being  
26 separated from the rest of Forest Park by Kingshighway;

27 WHEREAS, BJH and the City desire to improve the maintenance of Forest Park by increasing  
28 the funds available for such maintenance, the City is desirous of establishing a long-term funding  
29 mechanism for the maintenance of Forest Park in order to meet the policy guidelines of the  
30 Forest Park Master Plan, and as a result, BJH will make contributions to the maintenance of  
31 Forest Park which are to be governed by a BJH Maintenance Trust Agreement (as hereinafter  
32 defined);

33 WHEREAS, after consideration and action by the Forest Park Advisory Board and the Planning  
34 Commission, the Amended and Restated Lease (as hereinafter defined) complies with the Forest

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1 Park Master Plan and the City’s Strategic Land Use Plan and requires no further approval by the  
2 Forest Park Advisory Board, the Planning Commission and any other now existing or hereafter  
3 created similar and/or successor organizations;

4 WHEREAS, this Ordinance has been recommended by the Board of Estimate and  
5 Apportionment and by the Board of Public Service;

6 WHEREAS, the Amended and Restated Lease (as hereinafter defined) has been approved by the  
7 City Counselor; and

8 WHEREAS, the Board of Aldermen finds that it is in the best interest of the City to authorize  
9 and direct the Mayor and the Comptroller to execute and enter into a “Second Amendment to  
10 Agreement,” which is an amendment and restatement with BJH of the Original Lease as  
11 amended by the First Amendment, and which provides for an extension of the term of the lease,  
12 an expansion of the authorized uses of the Leased Premises under the lease, an Easement (as  
13 hereinafter defined) granting continued pedestrian and vehicular access to Kingshighway via  
14 Clayton Avenue, Euclid and Barnes-Jewish Hospital Plaza, the obligation of BJH to make a  
15 contribution to fund certain costs of relocating the park improvements currently located on the  
16 Leased Premises and for other public works; and to authorize and direct the Mayor and the  
17 Comptroller to execute and enter into a BJH Maintenance Trust Agreement (as hereinafter  
18 defined) providing for specified donations by BJH and the dedication of such donations in trust  
19 for the maintenance of Forest Park, all as hereinafter provided, and a FPF Maintenance Trust  
20 Agreement and a Maintenance Cooperation Agreement (both as hereinafter defined) with Forest  
21 Park Forever, Inc.

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

23 SECTION ONE. Amended and Restated Lease. The Mayor and the Comptroller of the City  
24 shall be and hereby are authorized and directed to enter into that certain Second Amendment to  
25 Agreement (the “Amended and Restated Lease”) in substantially the form attached hereto as  
26 Exhibit 1, incorporated herein and made a part of this Ordinance by this reference, by and  
27 between the City, as lessor, and Barnes-Jewish Hospital (“BJH”), as lessee, which provides for  
28 an extension of the term of the Original Lease as amended by the First Amendment, an  
29 expansion of the authorized uses of the Leased Premises under the lease, an easement granting  
30 continued pedestrian and vehicular access to Kingshighway via Clayton Avenue and Euclid (the  
31 “Easement”), the obligation of BJH to make contributions to fund certain costs to relocate the  
32 park improvements currently located on the Leased Premises and providing for other public  
33 works, as described in such Amended and Restated Lease.

34 SECTION TWO. Rent. All rental payments under Section 4 of said Amended and Restated  
35 Lease shall be held by the Comptroller of the City in an account for the use and benefit of the  
36 Department of Parks, Recreation and Forestry of the City as provided in the Amended and  
37 Restated Lease.

38 SECTION THREE. BJH Maintenance Trust Agreement; FPF Maintenance Trust Agreement,  
39 Maintenance Cooperation Agreement. The Mayor and the Comptroller of the City are hereby  
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1 authorized and directed to enter into that certain BJH Maintenance Trust Agreement (the “BJH  
2 Maintenance Trust Agreement”) in substantially the form attached hereto as Exhibit 2,  
3 incorporated herein and made a part of this Ordinance by this reference, by and among the City,  
4 BJH, and the trustee named therein, which provides for payments of the cost of maintaining  
5 Forest Park, as described in such BJH Maintenance Trust Agreement, for purposes as set forth in  
6 such BJH Maintenance Trust Agreement. The Mayor and the Comptroller of the City are hereby  
7 authorized and directed to enter into that certain FPF Maintenance Trust Agreement (the “FPF  
8 Maintenance Trust Agreement”) in substantially the form attached hereto as Exhibit 3,  
9 incorporated herein and made a part of this Ordinance by this reference, by and among the City,  
10 Forest Park Forever, Inc., a Missouri not-for-profit corporation, and the trustee name therein,  
11 which provided for payments of a portion of the cost of in maintaining Forest Park, as described  
12 in such FPF Maintenance Trust Agreement, for the purposes as set forth in such FPF  
13 Maintenance Trust Agreement. The Mayor and the Comptroller of the City are hereby  
14 authorized and directed to enter into that certain Maintenance Cooperation Agreement (the  
15 “Maintenance Cooperation Agreement”) in substantially the form attached hereto as Exhibit 4,  
16 incorporated herein and made a part of this Ordinance by this reference, by and between the City  
17 and Forest Park Forever, Inc., a Missouri not-for-profit corporation, which provides for certain  
18 shared responsibilities for maintaining Forest Park, as described in such Maintenance  
19 Cooperation Agreement, for purposes as set forth in such Maintenance Cooperation Agreement.

20 SECTION FOUR. All donations under the BJH Maintenance Trust Agreement and FPF  
21 Maintenance Trust Agreement shall be held by the trustee named therein, and shall be invested  
22 and disbursed as provided in said agreements.

23 SECTION FIVE. Public Works. The design, installation and performance of the Public Works,  
24 as described and provided for in Section 5 of the Amended and Restated Lease, to wit: (a) the  
25 study, design and performance of road work, in connection with the improvement of vehicular,  
26 pedestrian and bike access to Clayton Avenue in order to improve access to and from Forest Park  
27 and to coordinate with the changes being made to Kingshighway and the ramp from westbound  
28 I-64/40 to northbound Kingshighway and the reconstruction and improvement of Clayton  
29 Avenue from Euclid to McKinley/Wilken and McKinley Wilken to I-64/40; and (b) funding the  
30 cost to relocate the playground equipment currently located in Hudlin Park and the installation of  
31 tennis courts on the portion of Forest Park south of Clayton Avenue, east of Kingshighway and  
32 north of I-64/40, fund the restoration, improvement and lighting of existing tennis courts at  
33 AAA, name them in honor of Richard Hudlin make them available for public access and to fund  
34 the construction and restoration of new and/or existing handball facilities in the area immediately  
35 adjacent to Lindell Pavilion. The estimated cost of these Public Works as established by the  
36 City’s Board of Public Service is \$1,500,000 and shall be paid out of the payment to be made by  
37 BJH pursuant to Section 5 of the Amended and Restated Lease and from the funds on deposit in  
38 the hereinafter created Barnes-Jewish Hospital Forest Park Public Works Account. Such work  
39 shall be done using materials specified by the Board of Public Service, and in accordance with  
40 detailed plans and specifications finally adopted and approved by the Board of Public Service  
41 before bids are advertised therefor.

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1 SECTION SIX. Public Works Account. A Barnes-Jewish Hospital Forest Park Public Works  
2 Account is hereby established in the Special Park Fund established by Ordinance 51336 and  
3 referred to as the Forest Park Fund by Ordinance 61988 and the funds paid by BJH pursuant to  
4 Section 5 of said Amended and Restated Lease shall be deposited therein.

5 SECTION SEVEN. Easement. The Mayor and the Comptroller of the City of St. Louis are  
6 hereby authorized and directed to enter into that certain Easement (the "Easement") in  
7 substantially the form attached hereto as Exhibit 5, incorporated herein and made a part of this  
8 Ordinance by this reference, by and between the City of St. Louis and Barnes-Jewish Hospital,  
9 which provides for continued pedestrian and vehicular access to Kingshighway from Clayton  
10 Avenue through Forest Park, whereby Clayton Avenue will remain open to two-way vehicular  
11 traffic, and also provides for access to Kingshighway via Euclid and Barnes-Jewish Hospital  
12 Plaza and provides for an easement to install and maintain utilities.

13 SECTION EIGHT. The Director of Parks, Recreation and Forestry and the Budget Division are  
14 directed to include in the City budget to be prepared for Fiscal Year 2008 the sum of One  
15 Million Six Hundred Thousand Dollars (\$1,600,000) from General Revenue, to be appropriated  
16 conditioned on payment by BJH of its initial payment to the BJH Maintenance Trust, and in  
17 every year thereafter in which such BJH payment is made, for payment to a special fund, hereby  
18 created, to be known as the Neighborhood Park Fund. Moneys in the Neighborhood Park Fund  
19 may be expended solely (i) in Fiscal Year 2008, for the acquisition and improvement of land and  
20 facilities for park and recreational use within a one and one-half mile radius of the Leased  
21 Premises; and (ii) in each Fiscal Year thereafter, for parks and recreation purposes throughout  
22 the City. As part of the annual budget preparation process, the Director of Parks, Recreation and  
23 Forestry shall submit to the Budget Division recommendations for expenditure of revenues in the  
24 Neighborhood Park Fund; provided, said recommendations shall be approved by resolution of  
25 the Parks and Environmental Matters Committee of the Board of Aldermen prior to their  
26 submission to the Budget Division.

27 SECTION NINE. Further Action. The Mayor and the Comptroller, and the other appropriate  
28 officers, agents and employees of the City, upon the recommendation of the Board of Estimate  
29 and Apportionment, are hereby authorized and directed to take such other and further action, and  
30 to execute, deliver and file such other and further documents, certificates and instruments not  
31 inconsistent herewith as may be necessary or desirable to carry out and comply with the intent of  
32 this Ordinance, and to carry out, comply with and perform the duties of the City with respect to  
33 the Amended and Restated Lease, the BJH Maintenance Trust Agreement, the FPF Maintenance  
34 Trust Agreement, the Maintenance Cooperation Agreement and the Easement.

35 SECTION TEN. Severability. If any term or provision of this Ordinance, the Amended and  
36 Restated Lease, the BJH Maintenance Trust Agreement, the FPF Maintenance Trust Agreement,  
37 the Maintenance Cooperation Agreement and the Easement, or the application thereof for any  
38 reason or circumstances shall to any extent be held invalid or unenforceable, the remaining  
39 provisions or the application of such term or provision to persons in situations other than those as  
40 to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining

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1 term and provision hereof and thereof shall be valid and enforceable to the fullest extent  
2 permitted by law.

3 SECTION ELEVEN. This being an Ordinance providing in part for public works and  
4 improvements, it is hereby declared to be an emergency measure pursuant to Article IV Sections  
5 19 and 20 of the Charter of the City, and shall take effect immediately upon approval by the  
6 Mayor or its adoption over his disapproval.

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1 EXHIBIT 1

2 SECOND AMENDMENT TO AGREEMENT  
3 BETWEEN  
4 CITY OF ST. LOUIS, MISSOURI  
5 AND  
6 BARNES-JEWISH HOSPITAL

7 This Second Amendment to Agreement (this "Lease"), made and entered into this \_\_\_\_\_ day  
8 of \_\_\_\_\_, 2007 (the "Date of this Lease") between the City of St. Louis, Missouri  
9 (the "City") and Barnes-Jewish Hospital ("BJH") witnesses that:

10 WHEREAS, by Ordinance 56576, approved July 17, 1973, the City was authorized to enter into  
11 an Agreement providing for the development of a sub-surface parking facility in an area  
12 generally bordered by Euclid, Kingshighway, Barnes Hospital Plaza and Clayton Avenue (the  
13 "Leased Premises");

14 WHEREAS, pursuant to Ordinance 56576, the City entered into said Agreement and a lease of  
15 such area with Barnes Hospital, a not-for-profit corporation of the State of Missouri (now known  
16 as Barnes-Jewish Hospital, "BJH"), as lessee ("Original Lease");

17 WHEREAS, said sub-surface parking facility was constructed by Barnes Hospital and is  
18 currently operated by BJH;

19 WHEREAS, pursuant to said Original Lease, Barnes Hospital restored the surface of said sub-  
20 surface parking facility consistent with public park purposes (the "Hudlin Improvements");

21 WHEREAS, by Ordinance 58982, approved December 7, 1983, an Amendment to Agreement  
22 amending the Original Lease was authorized extending the term of the Original Lease, expanding  
23 the use of the Leased Premises thereunder and providing for further development of the sub-  
24 surface parking facility ("First Amendment");

25 WHEREAS, pursuant to Ordinance 58982, the City entered into said First Amendment with  
26 Barnes Hospital to memorialize their understandings effective as of the date of Ordinance 58982;

27 WHEREAS, BJH is a successor in interest to Barnes Hospital under the Original Lease, as  
28 amended by the First Amendment;

29 WHEREAS, BJH is committed to the City and for over 100 years BJH (and its predecessors,  
30 Barnes Hospital and Jewish Hospital) has provided health-care services to the St. Louis  
31 community;

32 WHEREAS, BJH has remained, invested and grown in the City even as many other hospitals  
33 relocated to St. Louis County and beyond;

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1 WHEREAS, BJH consistently provides more charity care than any other hospital in the State of  
2 Missouri and in 2004 alone, BJC Hospital hospitals provided more than \$160 million in charity  
3 and uncompensated care;

4 WHEREAS, BJH is the only adult hospital within the City limits that delivers babies;

5 WHEREAS, BJC HealthCare, parent of BJH, maintains its corporate headquarters in the City;

6 WHEREAS, over 15,000 of BJC HealthCare's 26,000 employees are based in the City,  
7 providing the City with approximately \$5 million in annual earnings taxes;

8 WHEREAS, BJH was once again ranked among one of the ten best hospitals in America by US  
9 News & World Report;

10 WHEREAS, BJH and BJC have been good neighbors and partners with the Forest Park  
11 Southeast and Central West End neighborhoods, providing more than \$50,000,000 in grants and  
12 investments over the past several decades.

13 WHEREAS, BJH and affiliated institutions, including St. Louis Children's Hospital, provide  
14 vital services to the residents of the City and the expansion of its operations and facilities will  
15 greatly improve the provision of said services;

16 WHEREAS, BJH desires to improve further its existing buildings and facilities and to replace,  
17 erect or install permanent improvements upon the Leased Premises as an integral part of the  
18 operations of BJH and its affiliated institutions and has agreed that not less than 15% of the  
19 Leased Premises shall be maintained as green space;

20 WHEREAS, the Leased Premises are remote from the rest of Forest Park by virtue of being  
21 separated from the rest of Forest Park by Kingshighway;

22 WHEREAS, BJH and the City desire to improve the maintenance of Forest Park by increasing  
23 the funds available for such maintenance, the City is desirous of establishing a long-term funding  
24 mechanism for the maintenance of Forest Park in order to meet the policy guidelines of the  
25 Forest Park Master Plan, and as a result, BJH will make contributions to the maintenance of  
26 Forest Park which are to be governed by a Maintenance Trust Agreement (as hereinafter  
27 defined);

28 WHEREAS, the Board of Aldermen found in Ordinance \_\_\_\_\_ (BB# \_\_\_\_\_) (the  
29 "Ordinance") that it is in the best interest of the City to authorize and direct the Mayor and the  
30 Comptroller to execute and enter into this Lease, which is an amendment and restatement with  
31 BJH of the Original Agreement as amended by the First Amendment, which provides for an  
32 extension of the term of the lease, an expansion of the authorized uses of the Leased Premises  
33 under the lease, an easement granting continued pedestrian and vehicular access to  
34 Kingshighway via Clayton Avenue and Euclid, the obligation to relocate the park improvements  
35 currently located on the Leased Premises and providing for other public works and to authorize  
36 and direct the Mayor and the Comptroller to also execute and enter into (a) a Maintenance Trust

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1 Agreement (as hereinafter defined) providing for specified donations by BJH and the dedication  
2 of such donations in trust for the maintenance of Forest Park; (b) an Easement (as hereinafter  
3 defined) granting continued pedestrian and vehicular access to Kingshighway from Clayton  
4 Avenue through Forest Park, whereby Clayton Avenue will remain open to two-way vehicular  
5 traffic, and also provides for access to Kingshighway via Euclid and Barnes-Jewish Hospital  
6 Plaza and provides for an easement to install and maintain utilities; and (c) a Maintenance  
7 Cooperation Agreement (as hereinafter defined), all as hereinafter provided;

8 WHEREAS, after consideration and action by the Forest Park Advisory Board and the Planning  
9 Commission, this Lease complies with the Forest Park Master Plan and the City’s Strategic Land  
10 Use Plan and requires no further approval by the Forest Park Advisory Board, the Planning  
11 Commission and any other now existing or hereafter created similar and/or successor  
12 organizations;

13 WHEREAS, the St. Louis Municipal Finance Corporation (“SLMFC”), pursuant to the Indenture  
14 of Trust dated as of March 1, 1997, as supplemented by the First Supplemental Indenture of  
15 Trust dated as of December 1, 2004 (collectively, the “Indenture”), issued its \$16,400,000 Forest  
16 Park Leasehold Revenue Refunding Bonds (City of St. Louis, Missouri, Lessee) Series 2004 (the  
17 “Bonds”) in order to finance and refinance certain improvements to Forest Park;

18 WHEREAS, the City entered into a Lease Purchase Agreement dated as of March 1, 1997, as  
19 supplemented by that First Supplemental Lease Purchase Agreement dated as of December 1,  
20 2004 (collectively, the “Lease Purchase Agreement”), in order to provide payments necessary to  
21 fund amounts due on the Bonds;

22 WHEREAS, the Leased Premises are currently subject to the Base Lease from the City to  
23 SLMFC dated as of March 1, 1997 (the “Base Lease”, together with the Indenture and the Lease  
24 Purchase Agreement, the “Bond Financing Documents”);

25 WHEREAS, the Bond Financing Documents are being amended in order to exclude the Leased  
26 Premises from the terms thereof pursuant to the terms of Ordinance \_\_\_\_\_ (B.B. #  
27 [\_\_\_\_\_]);

28 WHEREAS, the existing zoning is being amended to allow for institutional use of the Leased  
29 Premises pursuant to the terms of Ordinance \_\_\_\_\_ (B.B. #[\_\_\_\_\_]) (as amended, the “Zoning  
30 Ordinance”); and

31 WHEREAS, except as otherwise expressly noted herein, this Lease complies with all of the  
32 terms and conditions required by Ordinance 59741 and all procedures specified by said  
33 Ordinance have been followed with respect to this Lease.

34 NOW, THEREFORE, in consideration of the premises and of the mutual promises, undertakings  
35 and agreements hereinafter set forth, the receipt and sufficiency of which is hereby  
36 acknowledged, the City and BJH hereby agree as follows:

37 1. LEASED PREMISES.

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1 (a) Leased Premises. The City hereby confirms its lease to BJH of those certain tract  
2 of land (the “Leased Premises”) described in Exhibit A hereto. Within the scope of the Leased  
3 Premises are all portions of Forest Park located in the area that is north of Clayton Avenue, west  
4 of Euclid Avenue, south of Barnes-Jewish Hospital Plaza and east of Kingshighway Boulevard.

5 (b) Highway Modifications. It is anticipated that upon completion of the highway  
6 modifications to the intersection of Kingshighway Boulevard and Highway I-64/40, a portion of  
7 the Leased Premises may be required to be dedicated to use by the Missouri Department of  
8 Transportation as additional right-of-way along the east line of Kingshighway Boulevard. Upon  
9 completion of the modifications to the intersection of Kingshighway Boulevard and Highway I-  
10 64/40, any portion of Leased Premises, which are required to be a dedicated right-of-way to the  
11 Missouri Department of Transportation, shall be released from the terms of this Lease and  
12 excluded from the definition of the Leased Premises (the “Modifications”). The parties further  
13 shall commission a survey at BJH’s expense to locate the boundaries of the Leased Premises if  
14 modified by the additions to the right-of-way dedicated to the Missouri Highway Department for  
15 use in connection with Highway I-64/40. The legal description generated by that survey shall be  
16 agreed to by the parties and a modification to this Lease shall be prepared substituting the new  
17 definition of Leased Premises and thereafter such defined area shall be Leased Premises.  
18 Further, there shall be a calculation of the total square feet subject to the terms of this Lease after  
19 such Modifications and the amount of the contributions to be made under the Maintenance Trust  
20 Agreement shall be modified in accordance with Section 3 thereof.

21 (c) Easement. In connection with the development by BJH of the Leased Premises,  
22 the City hereby agrees to grant BJH an easement in substantially the form set forth in Exhibit B  
23 hereto, which provides for continuing pedestrian and vehicular access to Kingshighway from  
24 Clayton Avenue through Forest Park, whereby Clayton Avenue will remain open to two-way  
25 vehicular traffic, and also provides for access to Kingshighway via Euclid and Barnes-Jewish  
26 Hospital Plaza and provides for an easement to install and maintain utilities (the “Easement”).

27 (d) Utilities. The City pledges to cooperate with third parties that provide utility  
28 service to the Leased Premises in the development and improvement of the Leased Premises.

29 (e) The use and occupancy of the Leased Premises is subject to existing easements,  
30 rights of way, restrictions or covenants of record, if any, and existing rights of way for sewers,  
31 pipelines, conduits and utilities, provided the parties acknowledge that the limitations on the use  
32 and occupancy of the Leased Premises are being modified as follows: (i) to allow for  
33 institutional use during the term of the Lease as provided in that change in zoning as adopted by  
34 Ordinance \_\_\_\_\_ (B.B. # [\_\_\_\_]) (as amended and/or restated from time to time, “Zoning  
35 Ordinance”); (ii) other changes in the use and occupancy of the Leased Premises related to the  
36 Zoning Ordinance; (iii) the releases and amendments to the Bond Financing Documents under  
37 Section 2; (iv) the Easement; (v) the relocation of the Hudlin Improvements as provided in  
38 Section 5; and (vi) the Modifications.

39 2. RELEASE OF BOND FINANCING; AMENDMENT OF EXISTING ZONING.

40 (a) The Leased Premises are subject to Bond Financing Documents.  
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1 (b) The St. Louis Municipal Finance Corporation issued the Bonds in order to finance  
2 certain improvements to Forest Park.

3 (c) The City entered into the Lease Purchase Agreement in order to provide payments  
4 necessary to fund amounts due on the Bonds.

5 (d) Simultaneously with the execution of this Lease, the Bond Financing Documents  
6 are being amended in order to exclude the Leased Premises from the terms thereof pursuant to  
7 the terms of Ordinance \_\_\_\_\_ (B.B. # [\_\_\_\_\_]).

8 (e) Simultaneously with the execution of this Lease, the zoning is being amended to  
9 allow for institutional use of the Leased Premises pursuant to the terms of Ordinance \_\_\_\_\_  
10 (B.B. #[\_\_\_\_\_]).

11 3. TERM. The current term under the Original Lease, as amended by the First Amendment,  
12 is hereby extended, and such term shall continue until June 30, 2071. Thereafter this Lease shall  
13 automatically renew for one renewal term of twenty-five (25) years, upon the same terms and  
14 conditions hereof, unless BJH shall give written notice to the City at least three (3) years prior to  
15 the expiration of the initial term of this Lease of its election not to renew and extend the term of  
16 this Lease. Notwithstanding Ordinance 59741, the City and BJH acknowledge that BJH will be  
17 expending funds and constructing improvements on the Leased Premises, and such expenditures  
18 and construction shall create a basis and consideration for expecting the Lease to be renewed.

19 4. RENT. Throughout the initial term and any renewal term hereof, BJH shall pay upon  
20 demand to the City rent in the amount of One Dollar (\$1.00) per year (“Rent”); the receipt of  
21 such payment for the entire initial term and renewal term hereof is hereby acknowledged by the  
22 City. Such rent shall be paid to the City’s Comptroller to be held in a special fund for the  
23 account of the City’s Department of Parks, Recreation and Forestry, to wit, the Special Park  
24 Fund established by Ordinance 51336 and referred to as the “Forest Park Fund” by Ordinance  
25 61988. In addition to Rent, BJH shall make yearly contributions to the Trustee in the amounts  
26 and at the times as determined pursuant to the Maintenance Trust Agreement.

27 5. PUBLIC WORKS.

28 (a) BJH agrees to fund in accordance with Section 5(b) hereof during the term of this  
29 Lease public works including certain improvements to Forest Park and other locations (the  
30 “Public Works”), including (i) the study, design and performance of road work, in connection  
31 with the improvement of vehicular, pedestrian and bike access to Clayton Avenue in order to  
32 improve access to and from Forest Park and to coordinate with the changes being made to  
33 Kingshighway and the ramp from westbound I-64/40 to northbound Kingshighway and the  
34 reconstruction and improvement of Clayton Avenue from Euclid to McKinley/Wilken and  
35 McKinley Wilken to I-64/40 (“Initial Public Work Improvements);” and (ii) funding the cost to  
36 relocate the playground equipment currently located in Hudlin Park and the installation of tennis  
37 courts on the portion of Forest Park south of Clayton Avenue, east of Kingshighway and north of  
38 I-64/40, fund the restoration, improvement and lighting of existing tennis courts at AAA, name  
39 them in honor of Richard Hudlin make them available for public access and to fund the  
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1 construction and restoration of new and/or existing handball facilities in the area immediately  
2 adjacent to Lindell pavilion (collectively, the “Hudlin Improvements Relocation”). BJH agrees  
3 to continue to maintain the current location of Hudlin Park as a “park-like setting” from the date  
4 of execution of this Lease until such time as the commencement of the Hudlin Improvements  
5 Relocation. The Public Works shall be performed by the City using materials specified by the  
6 Board of Public Service, and in accordance with detailed plans and specifications finally adopted  
7 and approved by the Board of Public Service before bids are advertised therefor. The Board of  
8 Public Service shall cause the Public Works to be performed in accordance with its customary  
9 procedures.

10 (b) BJH shall pay to the City on or before fifteen (15) days after the latest of (i)  
11 execution of the Lease, (ii) the amendment of the Bond Financing Documents in order to exclude  
12 the Leased Premises from the terms thereof pursuant to the terms of Ordinance \_\_\_\_\_ (B.B.  
13 # [ \_\_\_\_\_ ] ) and (iii) the amendment of the existing zoning pursuant to the terms of  
14 Ordinance \_\_\_\_\_ (B.B. # [ \_\_\_\_\_ ] ), the sum of \$1,500,000, which the City will  
15 deposit in the Barnes-Jewish Public Works Account established pursuant to Section Six of  
16 Ordinance # \_\_\_\_\_ (B.B. \_\_\_\_ ) and will utilize the amounts on deposit in such account solely for  
17 the design, installation, construction, and performance of the Public Works; any portion of the  
18 Public Works that are located in Forest Park shall be consistent with the City’s Forest Park  
19 Master Plan, adopted [ \_\_\_\_\_ ] (as amended, the “Master Plan”).

20 (c) The Initial Public Work Improvements shall be completed promptly by the Board  
21 of Public Service; the Hudlin Improvements Relocation shall be completed promptly, but no later  
22 than the date of the commencement of construction of improvements on the Leased Premises by  
23 BJH.

24 (d) The cost of the Public Works shall include the following components, as may be  
25 applicable, which are attributable to the Public Works: general requirements, building permit  
26 fees, demolition and removals, earthwork, paving and striping, curbs, drainage structures and tie-  
27 ins, landscape, irrigation, planters, electrical and lighting, traffic signalization, architectural,  
28 design, engineering, planning, professionals and construction fees, labor, materials, supplies,  
29 equipment, reasonable related administrative costs (including, but not limited to, bond and  
30 insurance premiums), reasonable related overhead, actual out-of-pocket costs that are a material  
31 component of the improvements and contingency. The City shall provide to BJH information  
32 reasonably necessary to determine the cost to BJH of performing the Public Works.

33 (e) All necessary building, excavation, electrical and mechanical permits required by  
34 law or ordinance will be obtained by the City or its contractors in the normal course. Prior to the  
35 commencement of installation and construction of any of the Public Works, the City will obtain  
36 and maintain in force during installation and construction, insurance in amounts specified by the  
37 Board of Public Service and payment and performance bonds on which BJH will be an  
38 additional obligee, for the full amount of each contract let to perform such Public Works.

39 (f) Upon completion of each of the Public Works, the Board of Public Service will  
40 accept the Public Works on behalf of the City.

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1 (g) Upon acceptance by the City of the Public Works, the City thereafter shall be  
2 solely responsible for all costs of same, including but not limited to, the costs of maintenance,  
3 repair, operation and all other expenses associated with such Public Works and BJH shall have  
4 no interest or responsibility for any kind therein.

5 (h) Representatives of BJH and the City shall meet on an annual basis to discuss the  
6 status of planning and work on the Public Works and any current BJH issues. The City shall  
7 give BJH thirty (30) days written notice of the time and date for such meeting.

8 6. USE.

9 (a) The Leased Premises shall be held, maintained and operated by BJH and not less  
10 than 15% of the Leased Premises shall be maintained as green space.

11 (b) Notwithstanding the foregoing, BJH may assign this Lease or sublet all or any  
12 portion of the Leased Premises, without the City's consent, to: (i) The Washington University  
13 ("WU"), (ii) to any affiliate of BJH or WU, direct or indirect, (iii) to any individual or entity  
14 engaged in the practice of medicine or provision of health care-related services, (iv) in  
15 connection with any merger, consolidation or transfer of substantially all of BJH's assets, or (v)  
16 third party vendors for the purpose of providing services integral to the operation of BJH, WU or  
17 any of their direct or indirect affiliates and those individuals and entities described in (iii) above,  
18 in the Washington University Medical Center.

19  
20 (c) The City has identified the portion of Forest Park south of Clayton Avenue, east  
21 of Kingshighway and north of I-64/40 as site to perform a portion of the Hudlin Improvements  
22 Relocation. The City's failure to perform the Hudlin Improvements Relocation shall not serve to  
23 limit BJH's use of the Leased Premises; specifically, the parties agree that at any time on or after  
24 December 1, 2009, BJH shall have the right to remove the Hudlin Improvements, even if the  
25 City has not completed the Hudlin Improvements Relocation, if BJH requires the Leased  
26 Premises for an alternate use.

27 7. OPERATION OF LEASED PREMISES; CONSTRUCTION BY LESSEE (AND  
28 OTHER AUTHORIZED PARTIES)

29 (a) Improvements. BJH shall have the right at any time during the term of this Lease  
30 to replace, erect or install upon the Leased Premises permanent improvements and to erect or  
31 install additions to or substitutions for those Improvements initially to be constructed on the  
32 Leased Premises, to rearrange, remodel and alter such Improvements and to remove the Hudlin  
33 Improvements as provided of Section 6(c) (collectively, the "Improvements").

34 (b) Any Improvements erected or installed on the Leased Premises pursuant to this  
35 Lease shall be and remain the property of BJH.

36 (c) The City and BJH acknowledge and agree that (i) the Leased Premises, including  
37 any Improvements, for the term of this Lease, shall not be subject to the review or other  
38 requirements of the Forest Park Advisory Board, the Planning Commission and any other now  
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1 existing or hereafter created similar and/or successor organizations; nor shall the Leased  
2 Premises be subject to the City's Heritage and Urban Design Code or any provisions of Chapter  
3 22.42 of the Code; and notwithstanding any provision or recommendation of the Master Plan,  
4 Ordinance 59741, Ordinance 63769 and any other now existing or hereafter adopted ordinances,  
5 restrictions or policies or process of the City relating thereto, the community unit plan shall  
6 govern the design and construction of all additions, structures, site plans or improvements of  
7 BJH on the Leased Premises, to the exclusion of any other design or review standards,  
8 procedures or process of the City, now existing or hereafter adopted by the City; (ii) pursuant to  
9 (i) above, BJH shall be entitled and is expressly authorized to build and develop structures,  
10 buildings or improvements upon the Leased Premises, in accordance with the provisions of this  
11 Section 7, provided BJH complies with the applicable codes as set forth in Section 12(c) as well  
12 as State and Federal law, and (iii) site planning, building and construction design, and land use  
13 for the Leased Premises shall be determined solely by BJH pursuant to its own planning process  
14 (subject to the use limitations set forth in Section 6 of this Lease).

15 (d) The construction of Improvements shall be done promptly and in a good,  
16 workmanlike manner. The cost of such work shall be paid promptly so that the Leased Premises  
17 and the Improvements shall at all times be free of mechanics liens and/or liens for labor and  
18 materials supplied to BJH. In the event any such lien is placed on the Leased Premises and/or  
19 the Improvements, BJH shall promptly give the City notice of such lien and shall indemnify the  
20 City and pay all costs relating thereto.

21 (e) Excavations and Shoring. If any excavation or other construction shall be made  
22 upon the Leased Premises or any adjoining premises, street or alley, BJH shall, and does hereby,  
23 assume all obligations of both the owner and the occupant of the Leased Premises with respect to  
24 shoring and lateral support and agrees, to the extent that either the owner or occupant of the  
25 Leased Premises may be obligated so to do, to shore the foundations and walls of the adjoining  
26 premises as the case may be, and to do any other act or thing, to the extent necessary for the  
27 safety or preservation of the adjoining premises and roadways to prevent any claims or liens  
28 against City, the Leased Premises or the Improvements by reason of failure to furnish such  
29 lateral support or shoring, all at BJH's sole cost and expense.

30 (f) Easements. The City agrees, upon the reasonable request of BJH, to recommend  
31 to the City's Board of Aldermen that the City join in the grant of new easements or alteration of  
32 existing easements upon or over the Leased Premises which may be necessary for public utilities,  
33 public purposes, access to public roads and ways, and reciprocal easements among separately  
34 developed parcels within the Leased Premises, provided such grant or grants are necessary for  
35 the operation of the Leased Premises and Improvements for the uses herein permitted and  
36 provided the City's Board of Public Service reasonably approves, in advance, of the  
37 configuration and terms of such grant or grants or alteration of easements; provided BJH shall  
38 indemnify and reimburse the City for any reasonable out-of-pocket expense it may incur relating  
39 to such easements.

40 8. INDEMNIFICATION. BJH shall indemnify and hold harmless the City, and all its  
41 departments, boards, officers, agents, and employees from all suits, actions, loss, expense, or

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1 claims of any kind whatsoever, including attorneys' fees or expenses, arising out of or relating in  
2 any way to the execution, performance, or non-performance of (i) this Lease or the operation, use  
3 or occupancy of the Leased Premises, (ii) the grant of the Easement, and (iii) the zoning, whether  
4 or not covered by insurance. BJH shall, at the City's option, defend the City with counsel  
5 reasonably approved by the City Counselor, at BJH' sole expense, against any such claim, suit or  
6 action. This provision shall not apply, however, to any such liability as may be the result of the  
7 negligence or willful misconduct of the City or the City's employees or agents.

8 9. TAXES, REPAIRS, MAINTENANCE AND EXPENSES.

9 (a) Payment of Impositions. BJH agrees to pay, as additional rent, before any fine,  
10 penalty, interest or cost may be added thereto for the non-payment thereof, all taxes,  
11 assessments, water rates and charges, levies, and other governmental charges (all of which taxes,  
12 assessments, water rates or charges, levies and other governmental charges are hereinafter  
13 sometimes referred to as "Impositions"), which, as a result of the existence of the Lease and/or  
14 the Improvements, are assessed, levied, confirmed, imposed or become a lien upon the  
15 Improvements or become payable during the term of this Lease; provided, however, that if, by  
16 law, any such Imposition is payable, or may at the option of the taxpayer be paid, in installments  
17 (whether or not interest shall accrue on the unpaid balance of such Imposition), BJH may pay the  
18 same (and any accrued interest on the unpaid balance of such Imposition) in installments as the  
19 same respectively become due and before any fine, penalty, interest or cost may be added thereto  
20 for the non-payment of any such installment and interest.

21 (b) Right to Contest Impositions. BJH shall have the right to contest the amount or  
22 validity of any Imposition by appropriate legal proceedings, but this shall not be construed in any  
23 way as modifying BJH's covenant to pay such Imposition at the time and in the manner as in this  
24 Section 9 provided, unless BJH shall have given City indemnity reasonably sufficient to pay the  
25 Imposition, together with all interest and penalties in connection therewith, and all charges that  
26 may be assessed against or become a charge on the Improvements in said legal proceedings.

27 (c) Impositions Contested in City's Name. Any such contest may be made in the  
28 name of City (with the consent of the City Counselor, such consent not to be unreasonably  
29 withheld) or BJH, or both, as BJH shall determine; and City agrees to cooperate reasonably with  
30 BJH in any such contest but without expense to City. BJH shall be entitled to any refund of any  
31 Imposition and penalties or interest thereon which have been paid by BJH or which have been  
32 paid by City and for which City has been fully reimbursed.

33 (d) City Payment of Real Estate Taxes. BJH anticipates that during the term of this  
34 Lease, the Leased Premises and the Improvements shall be exempt from real estate taxes. The  
35 City shall pay, or cause to be paid by any third party transferee of the City, any and all real estate  
36 taxes imposed on the Leased Premises and for the Improvements resulting from the City's  
37 transfer of ownership of the Leased Premises.

38 (e) All costs and expenses of any kind whatever of operating and maintaining or  
39 which are related to the Leased Premises shall be borne by BJH, including, but not limited to, the

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1 costs and expenses of the maintenance of all grass, trees, shrubbery, sidewalks, curbs, parking  
2 and other landscaping from time to time on the Leased Premises.

3 (f) All buildings, structures, fences, fixtures, parking and other facilities of BJH and  
4 all other improvements of BJH erected within the Leased Premises pursuant to this Lease shall  
5 be properly maintained and kept in good repair by and at the sole cost and expense of BJH.

6 (g) Removal of Dangerous Conditions. BJH shall, during the term of this Lease, at  
7 BJH's sole expense, do all things reasonably necessary to remove any known dangerous  
8 condition from time to time existing on the Leased Premises, including, but not by way of  
9 limitation, promptly taking appropriate measures to prevent or repair any erosion, collapse or  
10 other unstable condition in the Leased Premises.

11 10. PUBLIC UTILITY CHARGES. BJH shall pay or cause to be paid all charges for gas,  
12 water, sewer, electricity, light, heat or power, telephone or other communication service used,  
13 rendered or supplied upon or in connection with the Leased Premises and the Improvements and  
14 also any charges or expenses in connection with any alterations, additions, installations or  
15 changes required or desired in connection with the supplying or using of such utilities or services  
16 or substitutes therefor throughout the term of this Lease, and to indemnify City and save it  
17 harmless against any liability or damages on such account. BJH shall also at its sole expense  
18 procure any and all necessary permits, licenses or other authorization required for the lawful and  
19 proper installation and maintenance upon the Leased Premises and in or on the Improvements of  
20 wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any such  
21 service to the Improvements and upon the Leased Premises.

22 11. NONDISCRIMINATION. BJH agrees that in the use of the Leased Premises, it will not  
23 exclude or discriminate against any person solely because of race, color or creed, gender or  
24 sexual orientation, or for any reason not sanctioned by law and not applicable alike to persons  
25 generally in the use of said Leased Premises.

26 12. COMPLIANCE WITH LAW; LICENSES AND PERMITS.

27 (a) Compliance with Laws and Easements. Except as specifically exempted  
28 hereunder, BJH shall throughout the term of this Lease, at BJH's sole expense, promptly comply  
29 with all laws and ordinances and the orders, rules, regulations, and requirements of all Federal,  
30 State and municipal governments and appropriate departments, commissions, boards and officers  
31 thereof (whether or not the same require structural repairs or alterations) and with all easement  
32 agreements or restrictions (whether public or private) applicable to the Leased Premises and  
33 Improvements or the use of the Leased Premises and the Improvements. BJH shall likewise  
34 observe and comply with the requirements of all policies of public liability, fire and all other  
35 policies of insurance at any time in force with respect to the Improvements.

36 (b) BJH will secure and keep in force all licenses and permits required for its use of  
37 the Leased Premises.

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1 (c) Except as otherwise specifically provided in Section 7 or otherwise in this Lease,  
2 nothing in this Lease shall be construed to exempt BJH from the provisions of any City  
3 ordinance of general applicability.

4 13. COMMERCIAL ADVERTISEMENTS. BJH shall be entitled to name and re-name any  
5 of its property, including additions, structures, or improvements on the Leased Premises or any  
6 portion or portions thereof, for the term of this Lease. BJH shall be entitled to erect and/or  
7 display such names on the Leased Premises or Improvements subject only to the terms of  
8 applicable zoning laws and any community unit plan, provided that no such name or display  
9 shall indicate that BJH owns the fee title to the Leased Premises.

10 14. INSPECTION. From time to time during the term of this Lease, authorized personnel of  
11 the City shall, at reasonable hours, with reasonable advance written notice to BJH, and subject to  
12 and in compliance with all BJH policies and procedures and the terms of this Lease, be permitted  
13 to enter upon and inspect the Leased Premises in order to ascertain that the Leased Premises are  
14 being maintained and kept in repair and good order as required by this Lease.

15 15. DAMAGE OR DESTRUCTION; PROPERTY INSURANCE.

16 (a) BJH shall at its sole cost, procure and maintain on file with the City's Comptroller  
17 at all times during the initial term and any renewal term of this Lease certificates or other  
18 evidence of insurance as specified in Section 15(b) hereof. The policies described in Section  
19 15(b)(i) shall name "The City of St. Louis and its officers, agents, and employees" as additional  
20 insureds.

21 (b) (i) Comprehensive Liability Insurance (to include premises, operations, products,  
22 and completed operations and personal and bodily injury including death), shall be provided in  
23 the initial minimum amounts specified below:

	Each Occurrence	Aggregate
Bodily Injury	\$3,000,000	\$3,000,000
Umbrella Coverage	\$10,000,000	
Automobile	\$	

28 (ii) Workers compensation insurance.

29 (iii) Builders Risk, property and casualty insurance.

30 (c) Prior to cancellation of any insurance policy under (b)(i), the City shall be given  
31 thirty (30) days written notice.

32 (d) (i) From time to time, but not more frequently than once every five (5) years, the  
33 levels or nature of insurance required to be maintained by BJH under Section 15(b)(i) shall be

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1 reviewed upon the written request of the City's Comptroller or BJH to determine whether such  
2 levels or nature of coverage are consistent with those maintained by other parties engaged in  
3 similar activities in similar locations, and the levels of required coverage shall be reasonably  
4 adjusted.

5 (ii) Upon written notice from the City's Comptroller that the limitations on  
6 liability of the City under section 537.610 RSMo. have been increased pursuant to subsection  
7 537.610.5 above the amounts of coverage provided by BJH as of the time of such notice, BJH  
8 shall within ten business days cause its liability coverage to be increased to the amount  
9 determined pursuant to subsection 537.610.5, and shall provide evidence of such increase to the  
10 Comptroller.

11 (e) BJH may engage in a self-insurance program and/or share the insurance coverage  
12 with its affiliates to cover the risks described in this Section 15 at levels and in a manner  
13 consistent with other similarly situated institutions.

14 (f) BJH shall not be in default under this Lease for failure to maintain the insurance  
15 described in Section 15(b) to the extent and during the period such insurance is not commercially  
16 available.

17 (g) Notwithstanding anything contained in this Lease to the contrary, proceeds of any  
18 insurance other than the insurance described in Section 15(b)(i) shall be the sole property of BJH  
19 and the City shall have no interest and/or rights thereto.

20 16. CONDEMNATION.

21 (a) If the whole of the Leased Premises shall be taken or condemned under the right  
22 of eminent domain or if such a substantial part of the Leased Premises shall be taken as shall  
23 result in the portion remaining being unsuitable for the use being made thereof at the time of  
24 such taking, then this Lease shall terminate as of the date upon which title shall vest in the  
25 condemning authority. The net awards or payments on account of any taking shall be  
26 apportioned as follows:

27 (i) BJH shall receive an equitable portion (taking into account the number of  
28 years remaining in the Term, exclusive of any unexercised options to  
29 renew, as if this Lease had not terminated hereunder) of the then value of  
30 the Improvements constructed by BJH, exclusive of the value of the land  
31 and the value of any unexpired right of occupancy by BJH, as well as  
32 BJH's relocation costs.

33 (ii) City shall receive the remainder of such award.

34 (b) If only a part of the Leased Premises shall be so taken or condemned and the part  
35 not so taken can be adapted for the use then being made thereof, this Lease shall remain in full  
36 force and effect, and BJH, whether or not its portion of the awards or payments, if any, on  
37 account of such taking shall be sufficient for the purpose, at its own expense shall promptly

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1 commence and complete the restoration of the Improvements on the Leased Premises as nearly  
2 as possible to their value, condition and character immediately prior to such taking or  
3 condemnation.

4 (c) In the event of any such taking or condemnation in whole or in part, the entire  
5 award attributed to the value of the Improvements and BJH's relocations costs (if any) shall be  
6 paid to City but City shall cause the same to be held in trust for disbursement as herein provided,  
7 and BJH hereby assigns to City the right to receive such award or awards in trust.

8 (d) In the event of a partial taking that shall not result in termination of this Lease,  
9 City shall cause that portion of the net awards or payments attributed to the value of the  
10 Improvements on the Leased Premises to be applied to pay the cost of restoration of such  
11 Improvements. The balance of such portion, if any, remaining after completion of such  
12 restoration, shall be equitably apportioned between City and BJH as provided in (a) above.

13 (e) If the award or payments on account of any taking shall not be divided or  
14 apportioned by the court or the condemning authority into the portions set forth in (a), and if City  
15 and BJH shall be unable to agree on such apportionment, then such apportionment shall be  
16 determined by appraisers. City and BJH shall each appoint an appraiser, and the two appraisers  
17 so appointed shall promptly appoint a third appraiser. The three appraisers shall jointly  
18 determine the appropriate apportionment and shall render their decision within thirty (30) days  
19 after the appointment of the third appraiser. The appraisal agreed upon by a majority shall be  
20 binding upon the parties. All appraisers shall be members of the American Institute of Real  
21 Estate Appraisers (M.A.I.) or, if such Institute shall not then exist, members of its successor  
22 organization or an organization of substantially equivalent stature. The fees of the appraisers  
23 shall be borne equally by City and BJH.

24 17. MINORITY PARTICIPATION. As specified in Exhibit D hereto, which is incorporated  
25 herein by this reference, BJH agrees to utilization of minority business enterprises in  
26 construction on the Leased Premises. BJH agrees to conform to all applicable federal, state and  
27 local equal opportunity laws.

28 18. REPRESENTATIONS.

29 (a) BJH represents and warrants to the City that BJH's execution, delivery and  
30 performance of this Lease will not conflict with or violate any constitutional provision, statute,  
31 rule, order or regulation of any governmental body applicable to BJH and will not conflict with  
32 or violate any bylaw or rule however denominated of any government or governmental agency  
33 applicable to BJH. BJH represents and warrants that the execution and delivery of this Lease has  
34 been duly authorized by BJH's Board of Directors and that no further authorizations or approvals  
35 of BJH or of any third party or agency are needed or will be needed with respect to the  
36 performance by BJH of any of its obligations or agreements under the Lease throughout the term  
37 of this Lease (except for such routine and customary authorizations, permits or approvals as are  
38 described in this Lease).

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1 [(b) The City represents and warrants to BJH that the City's execution, delivery and  
2 performance of this Lease will not conflict with or violate any constitutional provision, statute,  
3 rule, order or regulation applicable to the City and will not conflict with or violate the Charter of  
4 the City of St. Louis. The City represents and warrants to BJH that the execution and delivery of  
5 this Lease has been duly authorized by the City's Board of Aldermen and that no further  
6 authorizations or approvals of the City or of any third party or agency or governmental body are  
7 needed or will be needed with respect to the performance by the City of any of its obligations or  
8 agreements under the Lease throughout the term of this Lease (except for such routine and  
9 customary authorizations, permits and approvals as are necessary in connection with the Public  
10 Works).] [Consider using replacement language from other Leases.]

11 19. ANNUAL REPORT. Notwithstanding Ordinance 59741, BJH shall submit to the City's  
12 Director of Parks, Recreation and Forestry and the Forest Park Advisory Board its written annual  
13 reports for its prior fiscal years on or before March 31 of every year describing in detail the  
14 activities and operations of the Leased Premises by BJH and an update of its current long-range  
15 plans for the Leased Premises.

16 20. DEFAULT, TERMINATION AND REMEDIES. Notwithstanding Section 5.d. of  
17 Ordinance 59741 to the contrary:

18 (a) The following conditions will, upon expiration of any cure period set forth in Section 20(b),  
19 constitute a breach of this Lease:

20 (i) failure of BJH to make lease payments or failure of BJH to maintain the  
21 insurance required in Section 15 of this Lease; or

22 (ii) any violation by BJH of the use limitations set forth in Section 6 hereof; or

23 (iii) failure of BJH to fund the Public Works as and when provided in Section 5  
24 hereto; or

25 (iv) failure of BJH to fund donations as and when provided under the  
26 Maintenance Trust Agreement.

27 (b) BJH may cure any default hereunder within thirty (30) days after written notice of a default  
28 under Section 20(a)(i) or (iv) above or within one (1) year after written notice of a default under  
29 Sections 20(a)(ii) or (iii) above from the City's Board of Estimate and Apportionment to BJH by  
30 registered or certified mail; provided that if the default is of such a character as cannot  
31 reasonably be cured within such periods, if BJH demonstrates good cause for additional time,  
32 BJH shall be entitled to an additional sixty (60) days for any default under Section 20(a)(i) or an  
33 additional two (2) years for any default under Section 20(a)(ii) or (iii) above to cure said default.  
34 A default under Section 20(a) shall constitute a breach of this Lease and if not cured within the  
35 applicable cure periods set forth in this Section 20(b), this Lease may be immediately terminated  
36 and forfeited.  
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1 (c) Upon the violation of any provision of this Lease by BJH, the City shall be entitled to  
2 exercise any remedies available in equity and at law, including, but not limited to, specific  
3 performance.  
4

5 (d) If any court of competent and final jurisdiction concludes that the City is in any material  
6 breach of Section 18(d) of this Agreement and that BJH is entitled to recover monetary damages  
7 therefor, then any such damages payable by the City to BJH shall not exceed an amount  
8 equivalent to the sum of rents paid by BJH under this Agreement for the five (5) years prior to  
9 the date of the judgment and donations made by BJH under the Maintenance Trust Agreement  
10 for the five (5) years prior to the date of the judgment.  
11

12 21. RE-ENTRY.

13 If this Lease shall be terminated pursuant to Section 20 hereof, if this Lease is not  
14 renewed and extended pursuant to Section 3 hereof or at the end of the term of this Lease or any  
15 renewal thereof, BJH shall have the right to promptly (and in all events by the end of the term of  
16 this Lease) remove all or any of its property therefrom (which property shall remain the property  
17 of BJH), including any personal property or any structure or portions thereof which it has placed  
18 on the Leased Premises; provided that upon completion of any removal of such property or  
19 structure, BJH shall notify the City and thereafter the City or its agents and servants may  
20 immediately re-enter the Leased Premises and any property or structure which remains after said  
21 notice shall become the property of the City; provided that if BJH shall make a determination to  
22 remove any or all buildings on the Leased Premises, BJH shall notify the City and the City shall  
23 have an option for a period of three (3) months following notice from BJH to purchase such  
24 buildings which are to be removed for a purchase price equal to the fair market value of such  
25 buildings, provided, further that if BJH shall make a determination to remove any or all buildings  
26 on the Leased Premises, or if requested to do so by the City, BJH shall be obligated to restore the  
27 Leased Premises to a condition suitable for park purposes at the sole cost and expense of BJH.

28 (b) The rights and obligations of BJH under this Section 21 shall survive for three (3)  
29 years after any termination of this Lease.

30 22. ASSIGNABILITY AND SUBLETTING.

31 (a) Notwithstanding any provision in Chapter 3.94 of the Code, either party may  
32 assign, transfer or sublease, in whole or in part, this Lease or such party's interest in the Leased  
33 Premises, without the prior consent of the other party; provided, however that any assignee,  
34 transferee or sublessee of BJH shall be an entity or person described in Section 6(b) of this  
35 Lease.

36 (b) All leases or subleases granted by BJH pursuant to Section 6(b) demising all or  
37 any part of the Leased Premises and Improvements (i) shall be subject to all the terms and  
38 conditions of this Lease and the rights of City hereunder, and (ii) shall, at the option of City,  
39 terminate upon the termination of this Lease at any time for any reason.

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1 23. SUCCESSORS AND ASSIGNS. Subject to Section 22 hereof, the covenants and  
2 agreements contained in this Lease shall bind and inure to the benefit of the City, its successors  
3 and assigns, and to the benefit of BJH, its permitted successors and assigns.

4 24. MORTGAGING THE LEASEHOLD AND THE IMPROVEMENTS;  
5 SUBORDINATION OF FEE; ESTOPPEL CERTIFICATES.

6 (a) Limitation on Mortgages/Deeds of Trust - Leasehold. BJH is hereby given the  
7 right, at any time and from time to time, to mortgage its interest in the Leased Premises and in  
8 the Improvements by one or more deeds of trust; provided, however, (i) that BJH at the time any  
9 such deed of trust is made shall not be in default under this Lease, (ii) that no holder of any such  
10 deed of trust or anyone claiming by, through or under such holder shall by virtue thereof acquire  
11 any greater rights in the Leased Premises and in the Improvements or any portion thereof than  
12 BJH has under this Lease, and (iii) that any such deed of trust shall be subject and subordinate to  
13 all conditions and covenants of this Lease and to the rights of City hereunder. In the event of a  
14 foreclosure or disposition in lieu of foreclosure of any such deed of trust, the holder thereof (or  
15 its assignee or purchaser at foreclosure) shall promptly cure any existing or accrued defaults of  
16 BJH hereunder and under the Maintenance Trust Agreement.

17 (b) Right of Mortgagee to Cure Defaults. If the leasehold estate shall from time to  
18 time be encumbered by the lien of a deed of trust by BJH and if City shall be notified in writing  
19 of such deed of trust, then, so long as such deed of trust shall continue in force and until delivery  
20 of a Trustee's deed to the purchaser at a foreclosure sale thereof, notice of default in the  
21 performance of the covenants of this Lease shall simultaneously be given to the record holder of  
22 said deed of trust, and such holder shall have the right, within the period of thirty (30) days  
23 thereafter, to take such action or to make such payment as may be necessary to cure any such  
24 default to the same extent and with the same effect as though done by BJH. In the event such  
25 default is of a nature that it cannot be cured within said thirty (30) days and City elects to  
26 terminate this Lease pursuant to Section 20, then such holder shall have an option to enter into a  
27 new lease for the unexpired term hereof (ignoring for such purposes the termination by reason of  
28 BJH's default) on the same terms and conditions hereof, and such holder shall have ninety (90)  
29 days following the commencement of such new lease in which to cure the default which gave  
30 rise to the termination of this Lease. The option of such holder to enter into a new lease shall be  
31 exercisable by written notice to City within one hundred eighty (180) days following the  
32 termination of this Lease.

33 (c) Estoppel Certificates. City and BJH each agree at any time and from time to time,  
34 so long as this Lease shall remain in effect, and provided no default then exists, upon not less  
35 than twenty (20) days prior written request by the other party to execute, acknowledge and  
36 deliver to the other party a statement in writing certifying that this Lease is unmodified and in  
37 full force and effect (or if there have been modifications that the same is in full force and effect  
38 as modified, stating the modifications), and the dates to which the rent and other charges have  
39 been paid in advance, if any, it being intended that any such statement delivered pursuant to this  
40 Section 24(c) may be relied upon by any prospective purchaser of City's fee simple interest or

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1 any mortgagee or assignee of any mortgage upon the Leased Premises and Improvements or by  
2 any assignee or mortgagee of BJH's leasehold estate, as the case may be.

3 25. TITLE TO BUILDING AND IMPROVEMENTS.

4 (a) Title and Lien Paramount. City shall have fee simple title to the Leased Premises  
5 and the remainder interest in the Leased Premises and Improvements paramount to all others.

6 (b) BJH Not to Encumber City's Interest. BJH shall have no right or power to and  
7 shall not in any way encumber the title of City in and to the Leased Premises or any remainder  
8 interest in the Leased Premises and Improvements. The fee simple estate of City in the Leased  
9 Premises and the remainder interest of City in the Leased Premises and any remaining  
10 Improvements shall not be in any way subject to any claim by way of lien or otherwise, whether  
11 claimed by operation of law or by virtue of any express or implied lease or contract or other  
12 instrument made by BJH and any claim to a lien or otherwise upon the Leased Premises or in the  
13 remaining Improvements arising from any act or omission of BJH shall accrue only against the  
14 leasehold estate of BJH in the Leased Premises and Improvements and shall in all respects be  
15 subject to the paramount rights of City in the Leased Premises and the Improvements.

16 26. GOVERNING LAW. This Lease and the rights and liabilities of the parties to this Lease  
17 shall be governed by the laws of the State of Missouri. If any provision of this Lease is  
18 invalidated by judicial decision or statutory enactment, the invalidity of any such provision will  
19 not affect the validity of any other provisions of this Lease.

20 27. CAPTIONS. The captions or headings of the several sections of this Lease are for  
21 convenience only and shall not define, limit or construe the contents of such sections.

22 28. NON-WAIVER. No failure of either party to exercise any power given under this Lease  
23 or to insist upon strict compliance with the undertakings, duties and obligations of the other party  
24 hereunder, and no custom or practice of either party at variance with the terms hereof shall  
25 constitute a waiver of either party's right to demand exact compliance with the provisions,  
26 covenants, terms and conditions of this Lease.

27 29. NOTICES AND ADDRESSES. All notices, demands, requests or replies provided for or  
28 permitted by this Lease shall be in writing and delivered by deposit with the United States Postal  
29 Service as certified or registered mail, return receipt request, postage prepaid to the addresses  
30 stated below or by deposit with an overnight express delivery service. Notices mailed in the  
31 manner described above shall be deemed effective three (3) business days after deposit with the  
32 Postal Service and notices sent by overnight express delivery shall be deemed effective one (1)  
33 business day after deposit with such delivery service.

34 For purposes of notice, demand, request, reply or repayment, if to the City, delivery shall be to  
35 the City at the following address:

36 Comptroller of the City of St. Louis  
37 Room 212, City Hall

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1 St. Louis, Missouri 63103

2 and

3 Department of Parks Recreation and Forestry

4 Forest Park

5 5600 Clayton Road

6 St. Louis, Missouri 63110

7 Attn: Director

8 And

9 City Counselor

10 Room 314, City Hall

11 St. Louis, Missouri 63103

12 If to BJH, delivery shall be to:

13 Barnes-Jewish Hospital

14 One Barnes-Jewish Hospital Plaza

15 St. Louis, Missouri 63110

16 Attn.: President

17 with a copy to:

18 BJC HealthCare

19 Mailstop 90-66-500

20 4444 Forest Park Ave., Suite 500

21 St. Louis, Missouri 63108

22 Attn.: Senior Vice President and General Counsel

23 and

24 Bryan Cave LLP

25 One Metropolitan Square

26 211 N. Broadway, Suite 3600

27 St. Louis, MO 63102-2750

28 Attn: Linda M. Martínez

29 Each party shall have the right to designate a different address or addressee within the United  
30 States of America by giving of notice in conformity with this Section 29.

31 30. GENDER. Words of the masculine gender shall be deemed and construed to include  
32 correlative words of the feminine and neuter genders.

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1 31. MEMORANDUM OF LEASE. The parties shall record a Memorandum of this Lease in  
2 the real estate records of the City of St. Louis, Missouri.

3 32. MISCELLANEOUS

4 (a) Modification. None of the covenants, terms or conditions of this Lease to be kept  
5 and performed by the City or BJH shall in any manner be waived, modified, changed or  
6 abandoned except by a written instrument, duly signed and acknowledged by the City and BJH.

7 (b) Right of First Refusal. If during the term of this Lease the City desires to sell the  
8 Leased Premises, including the City's residual interest in the Improvements thereon, the City  
9 shall notify BJH in writing of the price and the terms and conditions on which the City would be  
10 willing to sell the Leased Premises. After receipt of such notice, BJH shall have an option for a  
11 period of six (6) months in which to purchase, or enter into a binding contract agreed to by the  
12 City to purchase, the Leased Premises at the price in cash or on such other terms and conditions  
13 as may be offered by the City. If BJH does not exercise this option to purchase or contract to  
14 purchase the Leased Premises, thereafter the City shall have a period of one (1) year in which to  
15 sell the Leased Premises, subject to the Lease, on any terms and conditions the City that are  
16 materially the same as those offered to BJH, but not at a price that is lower than that which was  
17 offered to BJH without BJH's prior written consent. If the City does not sell the Leased  
18 Premises during the one-year period, then any future proposed sale of the Leased Premises shall  
19 be subject to BJH's right of first refusal as described above.

20 (c) Broker's Fees. The City and BJH represent to each other that they have not  
21 employed the services of brokers in connection with the leasing of the Leased Premises and  
22 Improvements as set forth in this Lease. To the extent there is any misrepresentation by either  
23 party in connection with the provisions of this paragraph, the misrepresenting party shall be  
24 liable for all broker's fees and commissions contracted for or agreed to by such misrepresenting  
25 party and shall indemnify and hold the innocent party harmless against same.

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22

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

CITY OF ST. LOUIS, MISSOURI

[SEAL]

By: \_\_\_\_\_  
Name: Francis G. Slay  
Title: Mayor

ATTEST:

\_\_\_\_\_  
Name: Parrie L. May  
Title: City Register

By: \_\_\_\_\_  
Name: Darlene Green  
Title: Comptroller

APPROVED AS TO FORM:

\_\_\_\_\_  
Name: Patricia A. Hageman  
Title: City Counselor

[NOTARY]

BARNES-JEWISH HOSPITAL

[SEAL]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[NOTARY]

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EXHIBIT A

LEASED PREMISES

Existing Hudlin Park

A tract of land being located in Part of Block 2022 of the City of St. Louis, and being more particularly described as follows:

BEGINNING at the point of intersection of the South line of Barnes-Jewish Hospital Plaza, 130 feet wide, with the West line of Euclid Avenue, 130 feet wide, thence along said West line South 04 degrees 27 minutes 35 seconds West 576.98 feet to the North line of Clayton Avenue, 60 feet wide, thence along said North line South 88 degrees 48 minutes 38 seconds West 484.28 feet to the East line of Kingshighway, variable width, thence along said East line the following courses and distances: thence North 50 degrees 43 minutes 46 seconds West 32.29 feet to a point of curvature to the right for which the radius point bears North 39 degrees 16 minutes 16 seconds East 560.69 feet; thence along last said curve with a chord which bears North 23 degrees 58 minutes 45 seconds West 504.73 feet, an arc length of 523.54 feet to a point of non-tangency; thence North 02 degrees 38 minutes 54 seconds East 128.81 feet; thence North 47 degrees 38 minutes 54 seconds East 14.14 feet to the South line of above said Barnes-Jewish Hospital Plaza; thence along last said South line South 87 degrees 20 minutes 24 seconds East 743.56 feet to the POINT OF BEGINNING and containing 410,104 square feet or 9.415 acres, more or less, according to calculations by Stock and Associates Consulting Engineers, Inc. on August 23, 2006.

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EXHIBIT B  
EASEMENT

January 19, 2007

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BB# 373

Sponsor: Alderman Roddy

Space Above Line Reserved For Recorder's Use

1. Title of Document: Easement Agreement
2. Date of Document: January 15, 2007
3. Grantor(s): City of St. Louis, Missouri, a city and political subdivision
4. Grantee(s)/Lessor: Barnes-Jewish Hospital, a Missouri not-for-profit corporation
5. Statutory Mailing Address(es):  
Grantor's Mailing Address: City Hall, Tucker and Market Streets, St. Louis, MO 63103  
Grantee's Mailing Address: One Barnes-Jewish Hospital Plaza, St. Louis, MO 63110
6. Legal description: See Exhibits A, B, C and D annexed to the document on pages 10 - ??
7. Reference(s) to Book and Page(s): N/A

This cover page is attached solely for the purpose of complying with the requirements stated in §§ 59.310.2; 59.313.2 RSMo. of the Missouri Recording Act.

Return Recorded Document to:

Bryan Cave LLP  
One Metropolitan Square  
Suite 3600  
St. Louis, Missouri 63102  
Attention: Linda M. Martínez  
January 19, 2007

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Sponsor: Alderman Roddy

## EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the "Agreement") is made and entered into as of January 15, 2007 (the "Effective Date"), by and between THE CITY OF ST. LOUIS, a city and political subdivision (for purposes of recordation, "Grantor") (hereinafter referred to as, "City"), and BARNES-JEWISH HOSPITAL, a Missouri not-for-profit corporation (for purposes of recordation, "Grantee") (hereinafter referred to as "BJH").

### WITNESSETH:

WHEREAS, the City is the owner of and/or the holder of easement covering certain streets located in the City of St. Louis, Missouri, more particularly described on Exhibit A attached hereto and incorporated herein by reference ("City's Property"); and

WHEREAS, the City is the fee simple owner and BJH is the owner of a long-term leasehold interest in certain real estate located adjacent to City's Property, more particularly described on Exhibit B attached hereto and incorporated herein by reference ("BJH's Property"); and

WHEREAS, roads commonly known as Barnes-Jewish Hospital Plaza, Euclid Avenue, Clayton Avenue and Kingshighway (collectively, "Access Roads") are currently located on City's Property and provide access from BJH's Property to Kingshighway from the east and from the west, as shown on Exhibit C attached hereto and incorporated herein by reference; and

WHEREAS, BJH desires to secure a permanent right of access from BJH's Property to Kingshighway from the east and the west via the Access Roads as depicted in the plan attached hereto as Exhibit D (the "Easement Area"), for vehicular and pedestrian ingress and egress; and

WHEREAS, BJH also desires to secure the permanent nonexclusive right and easement to construct, reconstruct, use, operate and maintain any utilities that are currently located in the Easement Area and any utilities and services BJH deems necessary or desirable to be installed in the Easement Area for the purpose of serving BJH's Property, including any upgrades to said utilities and services which any utility company or affiliate of BJH providing services to BJH's Property deems necessary or desirable, together with all necessary and related fixtures and appurtenances thereto (hereinafter called "Utilities");

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Grant of Easement.

(a) City hereby grants to BJH a non-exclusive perpetual easement over and upon that portion of the Easement Area of the City's Property, which is described on Exhibit D attached hereto, for the purposes of ingress and egress of vehicular and pedestrian traffic.

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(b) City hereby further grants to BJH a non-exclusive perpetual easement over and upon that portion of the Access Roads of the City's Property, which is described on Exhibit C attached hereto, for the purposes of construction, reconstruction, use, operation, maintenance and patrolling of the Utilities.

(c) The rights and privileges granted in this Section 1 shall be exercised and enjoyed by BJH and its tenants and subtenants and their respective employees, representatives, agents, servants, contractors, subcontractors and invitees. The rights and privileges granted in this Section 1 also benefit any utility company or municipality providing utility services to BJH's Property.

2. Maintenance and Repair.

(a) For so long as this Agreement shall remain in effect, the City shall be responsible for promptly performing, at its sole cost and expense, in accordance with all applicable statutes, laws, ordinances, requirements, and directives of any federal, state or local authority, in a good and workmanlike manner and consistent with the service level provided in other areas of the City, any and all maintenance, repair, replacement and reconstruction with respect to the Easement Area and the Access Roads in a good, safe and functional condition, including, without limitation, (i) the cleaning and resurfacing of the Access Roads; (ii) the removal of all debris, ice and snow on the Access Roads, and adjacent sidewalks; (iii) the repair and replacement of all entrance, exit and directional signs, markers and lights; (iv) the cleaning of lighting fixtures and re-lamping and re-ballasting as needed; (v) the mowing of any grassy areas; and (vi) the maintaining and irrigating of landscaping. Notwithstanding the foregoing, BJH shall be responsible for one hundred percent (100%) of the cost of any maintenance, repair, replacement or reconstruction incurred in connection with the Easement Area and Access Roads, to the extent directly caused by the negligent, willful or intentional acts or omissions of BJH (or its respective employees, agents, contractors, subcontractors, lessees and/or licensees).

(b) Notwithstanding anything to the contrary set forth herein, the City shall not be responsible for the maintenance, repair, replacement and reconstruction of any Utilities unless such Utilities are utilized by the City for the purpose of providing utility services to BJH's Property; provided, however, the City shall be responsible for one hundred percent (100%) of the cost of any maintenance, repair, replacement or reconstruction of the Utilities incurred to the extent caused by the negligent, willful or intentional acts or omissions of the City (or its respective employees, agents, contractors, subcontractors, lessees, licensees and/or invitees).

3. Default. In the event that either party shall fail to comply with any of the terms, covenants, agreements, and conditions contained herein and if such failure shall continue for thirty (30) days after written notice of said default from the nondefaulting party to the defaulting party specifying such default in reasonable detail (or, in the case of a default that by its nature cannot be cured within such thirty (30)-day period, if the defaulting party shall not have commenced the curing of the default within such thirty (30)-day period and thereafter shall not diligently prosecute the curing of the default to completion), then the nondefaulting party, at its

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option, may pursue any remedies available to it at law or in equity (other than termination of this Agreement) or may proceed to take such action as shall be necessary to cure the default, in the name of the defaulting party and for the account of the defaulting party; provided, however, in the event of an emergency and upon making reasonable efforts to contact the defaulting party, the nondefaulting party may take such action to cure the default without notice to the defaulting party and shall subsequently notify the defaulting party of such action as soon as reasonably practicable. All expenses reasonably incurred by the nondefaulting party in connection with any work performed by the nondefaulting party pursuant to this Section shall be due and payable to the nondefaulting party by the defaulting party within ten (10) days of a detailed, written demand therefor (accompanied by reasonable documentation substantiating the amounts set forth therein) and shall bear interest at the rate of 1.5 percent per month or, if less, the maximum rate permitted by applicable law, from the date of any payment or expense by the nondefaulting party.

4. Miscellaneous.

(a) Final Agreement. This Agreement, together with all the Exhibits attached hereto and incorporated by reference herein and with that separate Lease and Maintenance Trust Agreement between parties as of even date herewith, constitutes the entire undertaking between the parties hereto, and supersedes any and all prior agreements, arrangements and understandings between the parties. Any subsequent amendment to this Agreement shall be valid only if executed in writing by the City and BJH, or their successors or assigns.

(b) No Waiver. No waiver of any condition, covenant, or agreement in this Agreement by either party hereto will imply or constitute a further waiver by said party of the same or any other condition, covenant or agreement. No waiver of any breach or obligation of a party by the other party shall be effective unless such waiver is made in a writing signed by said party.

(c) Notices. Any notice, request, demand, consent, approval, or other communication required or permitted under this Agreement will be written and will be deemed to have been given when delivered by a recognized overnight courier service providing proof of delivery or on the third day after it is deposited in any depository regularly maintained by the United States postal service, postage prepaid, certified or registered mail, return receipt requested, addressed to:

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

and

Department of Parks Recreation and Forestry  
Forest Park  
5600 Clayton Road

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Sponsor: Alderman Roddy

St. Louis, Missouri 63110  
Attn: Director

And

City Counselor  
Room 314, City Hall  
St. Louis, Missouri 63103

If to BJH, delivery shall be to:

Barnes-Jewish Hospital  
One Barnes-Jewish Hospital Plaza  
St. Louis, Missouri 63110  
Attn.: President

with a copy to:

BJC HealthCare  
Mailstop 90-66-500  
4444 Forest Park Ave., Suite 500  
St. Louis, Missouri 63108  
Attn.: Senior Vice President and General Counsel

and

Bryan Cave LLP  
One Metropolitan Square  
211 N. Broadway, Suite 3600  
St. Louis, MO 63102-2750  
Attn: Linda M. Martínez

Either the City or BJH may change its address or addressee, for purposes of this subsection by giving notice according to this subsection.

(d) Attorney's Fees. If either party brings any action or legal proceeding for damages for an alleged breach of any provision of this Agreement, to recover any sums due, to protect or establish any term, condition or covenant of this Agreement or right of either party, the prevailing party shall be entitled to recover as part of such action or proceedings, or in a separate action brought for that purpose, reasonable attorneys' fees and costs, at trial, on appeal and in bankruptcy, to be fixed and determined by the court in such action or proceeding.

(e) Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns.

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(f) Severability. If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that, in lieu of each clause or provision of this Agreement, to agree to a clause or provision as similar in terms of such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

(g) Governing Law. This Agreement shall be construed and interpreted according to the laws of the State of Missouri, without regard to its conflicts of law or choice of law rules.

(h) Authority. Each party hereby represents and warrants to the other that the person or entity signing this Agreement on behalf of such party is duly authorized to execute and deliver this Agreement and to legally bind the party on whose behalf this Agreement is signed to all of the terms, covenants and conditions contained in this Agreement.

(i) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original.

[Signature Page Follows]

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Sponsor: Alderman Roddy

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

CITY OF ST. LOUIS

By: \_\_\_\_\_  
Francis G. Slay, Mayor

By: \_\_\_\_\_  
Darlene Green, Comptroller

[SEAL]

\_\_\_\_\_  
Parrie L. May, City Register

APPROVED AS TO FORM:

\_\_\_\_\_  
Patricia A. Hageman, City Counselor

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STATE OF MISSOURI     )  
  ) SS.  
CITY OF ST. LOUIS     )

On this \_\_\_\_ day of \_\_\_\_\_, 2007, before me appeared Francis G. Slay, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY 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 Commission Expires:

[SEAL]

STATE OF MISSOURI     )  
  ) SS.  
CITY OF ST. LOUIS     )

On this \_\_\_\_ day of \_\_\_\_\_, 2007, before me appeared Darlene Green, to me personally known, who, being by me duly sworn, did say that she is the Comptroller of the CITY OF ST. LOUIS, MISSOURI, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY 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 Commission Expires:

[SEAL]

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Sponsor: Alderman Roddy



EXHIBIT A  
TO THE AGREEMENT

LEGAL DESCRIPTION OF CITY'S PROPERTY

[insert legal description of Kingshighway, Barnes-Jewish Hospital Plaza, Euclid and Clayton Avenue adjoining the BJH Property]

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Sponsor: Alderman Roddy

EXHIBIT B  
TO THE AGREEMENT

LEGAL DESCRIPTION OF BJH'S PROPERTY

Existing Hudlin Park

A tract of land being located in Part of Block 2022 of the City of St. Louis, and being more particularly described as follows:

BEGINNING at the point of intersection of the South line of Barnes-Jewish Hospital Plaza, 130 feet wide, with the West line of Euclid Avenue, 130 feet wide, thence along said West line South 04 degrees 27 minutes 35 seconds West 576.98 feet to the North line of Clayton Avenue, 60 feet wide, thence along said North line South 88 degrees 48 minutes 38 seconds West 484.28 feet to the East line of Kingshighway, variable width, thence along said East line the following courses and distances: thence North 50 degrees 43 minutes 46 seconds West 32.29 feet to a point of curvature to the right for which the radius point bears North 39 degrees 16 minutes 16 seconds East 560.69 feet; thence along last said curve with a chord which bears North 23 degrees 58 minutes 45 seconds West 504.73 feet, an arc length of 523.54 feet to a point of non-tangency; thence North 02 degrees 38 minutes 54 seconds East 128.81 feet; thence North 47 degrees 38 minutes 54 seconds East 14.14 feet to the South line of above said Barnes-Jewish Hospital Plaza; thence along last said South line South 87 degrees 20 minutes 24 seconds East 743.56 feet to the POINT OF BEGINNING and containing 410,104 square feet or 9.415 acres, more or less, according to calculations by Stock and Associates Consulting Engineers, Inc. on August 23, 2006.

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EXHIBIT C  
TO THE AGREEMENT

DEPICTION OF ACCESS ROADS

[insert depiction of Kingshighway, Barnes-Jewish Hospital Plaza, Euclid and Clayton Avenue adjoining the BJH Property]

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EXHIBIT D  
TO THE AGREEMENT

DESCRIPTION OF ACCESS ROADS EASEMENT AREA

[insert depiction of egress from BJH Property via Euclid Avenue and via Clayton Avenue on Clayton Avenue under Kingshighway and then going north and east to Kingshighway]

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EXHIBIT C

MAINTENANCE TRUST AGREEMENT

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MAINTENANCE TRUST AGREEMENT

Dated as of January 15, 2007

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Among

THE CITY OF ST. LOUIS, MISSOURI,  
BARNES-JEWISH HOSPITAL

And

[TRUST COMPANY]

---

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Sponsor: Alderman Roddy

## MAINTENANCE TRUST AGREEMENT

THIS MAINTENANCE TRUST AGREEMENT dated as of January 15, 2007 (the "Agreement"), between the CITY OF ST. LOUIS, MISSOURI, a city and political subdivision duly organized and existing under its charter and the constitutions and laws of the State of Missouri (the "City"), BARNES-JEWISH HOSPITAL, a not-for-profit corporation organized and existing under the laws of the State of Missouri ("BJH"), and [TRUST COMPANY], a [trust company] located in \_\_\_\_\_, Missouri, and having full trust powers, as Trustee (the "Trustee").

### RECITALS:

1. Pursuant to Ordinance No. \_\_\_\_\_ adopted on December \_\_, 2007, the City authorized a certain Amended and Restated Lease dated as of January 15, 2007 between the City and BJH covering certain property located in a portion of Forest Park (the "Lease").

2. Pursuant to Resolution \_\_ adopted on \_\_\_\_\_, 1995, the City has adopted a Master Plan governing capital improvements to and operations of Forest Park (the "Master Plan").

3. The City is desirous of establishing a long-term funding mechanism for the maintenance of Forest Park in order to meet the policy guidelines of the Master Plan.

4. The City and BJH have agreed that as part of the consideration for the Lease is the execution and performance under this Maintenance Trust Agreement to establish a long-term funding mechanism for Forest Park.

5. BJH has agreed to make donations in trust under this Maintenance Trust Agreement (the "Donation Amount").

6. The Trustee has agreed to hold, invest and disburse the Donation Amounts deposited hereunder in accordance with the terms of this Maintenance Trust Agreement.

7. The City has agreed to request and apply the Donation Amounts deposited hereunder in the Park Maintenance Fund (as hereinafter defined), to reimburse the City for expenses incurred in the maintenance of Forest Park in accordance with [Forest Park Maintenance Plan].

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions. In addition to the definitions set forth above, the following words and terms used in this Maintenance Trust Agreement shall have the following meanings:

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“Business Day” means any day other than (a) a Saturday, Sunday or any other day on which banking institutions in the city in which the principal corporate trust office or payment office of the Trustee is located are required or authorized by law to close or (b) a day on which the New York Stock Exchange is closed.

“City Representative” means the person or persons at the time designated to act on behalf of the City in matters not requiring legislative authorization relating to the Park Maintenance Fund and this Maintenance Trust Agreement as evidenced by a written certificate furnished to the Trustee containing the specimen signature of such person or persons and signed on behalf of the City by its Mayor and its Comptroller. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the City Representative.

“Cost of Maintaining the Park” shall mean any expense incurred by or on behalf of the City in maintaining Forest Park in accordance with [insert name of Forest Park Maintenance Plan].

“Donation Payment Date” means the date of the execution of this Agreement (or such later date as provided in the Lease) and July 1<sup>st</sup> of each year thereafter commencing July 1, 2007 and continuing during the term of the Lease.

“Leased Premises” shall have the same meaning as provided in the Lease.

“Lease Year” shall mean each July 1 to June 30 during the term of the Lease.

“Park Maintenance Fund” means the fund by that name referred to in Section 2 of this Maintenance Trust Agreement.

“Permitted Investments” means, if and to the extent the same are at the time legal for investment of funds held under this Maintenance Trust Agreement:

(a) cash, certificates of deposit or instruments of deposit (in each case, insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in paragraph (b) below);

(b) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of Treasury of the United States of America;

(c) U.S. dollar denominated deposit accounts, federal funds and banker’s acceptances with domestic commercial banks which have a rating on their short term certificates of deposit on the date of purchase of “A-1” or “A-1+” by Standard & Poor’s and “P-1” by Moody’s and maturing no more than 360 days after the date of purchase (ratings on holding companies are not considered as the rating of the bank);

(d) commercial paper which is rated at the time of purchase in the single highest classification, “A-1+” by Standard & Poor’s and “P-1” by Moody’s and which matures not more than 270 days after the date of purchase; and/or

(e) investments in a money market fund rated “AAAm” or “AAAm-G” or better by Standard & Poor’s.

2. Creation of Park Maintenance Fund. There is hereby created and established with the Trustee the following special and irrevocable separate trust fund to be held in the custody of the Trustee and designated as the “Park Maintenance Fund” (the “Park Maintenance Fund”).

3. Deposits to the Park Maintenance Fund. On the date of the execution of this Agreement, BJH agrees to deposit \$\_\_\_\_\_ with the Trustee [Note: calculation is \$150,000 times number of months between the effective date of the Lease and June 30, 2007 less \$500,000]. On each Donation Payment Date thereafter, BJH hereby agrees to deposit with the Trustee the Donation Amount calculated as follows:

(a) the Donation Amount shall be \$2,000,000 per year for the Lease Year commencing July 1, 2007 and ending on June 30, 2008 and for each Lease Year thereafter, and such amount is subject to the adjustments as described in paragraphs (b), (c) and (d) below.

(b) CPI Adjustment. Commencing five years after July 1, 2016, or July 1 of the Lease Year five years after the commencement of construction by BJH on the Leased Premises if earlier, and every fifth anniversary of that date during the term of the Lease (each an “Adjustment Date”), the Donation Amount shall be subject to escalation as follows:

(i) “Index” shall mean the “Consumer Price Index for all Urban Consumers” (CPI-U) specified for All Items, relating to St. Louis, Missouri and issued by the Bureau of Labor Statistics of the United States Department of Labor. In the event the Index shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the Percentage Increase (defined below) shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics or, if said shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice Hall, Inc., or failing such publication, by any other nationally recognized publisher of similar statistical information as agreed to by the City and BJH. In the event the Index shall cease to be published, then for the purposes of this paragraph, City and BJH shall agree upon the new index to be used.

(ii) “Base Index” shall mean the Index in effect in December of the fifth calendar year prior to each Adjustment Date.

(iii) “Anniversary” shall mean December of the calendar year prior to the each Adjustment Date, i.e. the first Anniversary shall be December, 2020 (or December of the

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calendar year five years after the commencement of construction by BJH on the Leased Premises if earlier), the second Anniversary shall be December, 2025, etc.

(iv) "Percentage Increase" shall mean the percentage equal to the fraction, the numerator of which shall be the Index at the Anniversary less the Base Index, and the denominator of which shall be the Base Index; provided, however that the Percentage Increase for each one-year period between each Anniversary shall be not less than one percent (1%) nor shall it exceed two percent (2%); and provided, further that the Percentage Increase for each five-year period between Anniversaries shall not exceed ten percent (10%).

(v) If the Index at an Anniversary shall exceed the Base Index, then the Donation Amount payable for the ensuing five Lease Years, and thereafter until a new index comparative statement is sent to BJH, shall be increased by the Percentage Increase adjusted in accordance with (c ) and (d) below due to any decrease in the square footage of the Leased Premises. On or before April 1st of the Lease Year to which the increase in the Donation Amount applies, City shall send BJH an "Index Comparative Statement" setting forth the following:

- (1) The Index at the Anniversary preceding the date of the statement,
- (2) The Base Index,
- (3) The Percentage Increase,
- (4) Any adjustments due to (c ) and (d) below due to any decrease in the amount of the Leased Premises; and
- (5) The net increased Donation Amount.

(c) In the event that any portion of the Leased Premises shall be taken due to MoDOT modifications to intersection of I-64/40 and Kingshighway, the Donation Amount hereunder shall be reduced, commencing with the first day of the next Lease Year following the date of such reduction of Leased Premises and for each Lease Year thereafter, by a fraction the numerator of which shall be the total square footage taken and the denominator of which shall be the total square footage of the Leased Premises prior to MoDOT modifications.

(d) In the event that any portion of the Leased Premises shall be taken due to condemnation, the Donation Amount hereunder shall be reduced, commencing with the first day of the next Lease Year following the date of such reduction of Leased Premises and for each Lease Year thereafter, by a fraction the numerator of which shall be the total square footage taken and the denominator of which shall be the total square footage of the Leased Premises prior to condemnation.

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4. Creation of Lien. The escrow created hereby shall be irrevocable. The City is hereby given an express lien on and security interest in the securities and the cash in the Park Maintenance Fund and all earnings thereon until used and applied solely in accordance with this Maintenance Trust Agreement.

5. Application of Amounts on Deposit in the Park Maintenance Fund.

(a) The Trustee shall disburse moneys on deposit in the Park Maintenance Fund from time to time as reimbursement for payment made for the Costs of Maintaining Forest Park within three (3) Business Days after receipt by the Trustee of written disbursement requests of the City in substantially the form of Exhibit A hereto, complete in all respects, and signed by the City Representative.

(b) In making payments pursuant to this Section, the Trustee may rely upon such written requests and accompanying certificates and statements and shall not be required to make any independent investigation in connection therewith.

(c) Upon termination of the Lease, all remaining money and securities in the Park Maintenance Fund, together with any interest thereon, shall be transferred to the City to be applied in accordance with law.

6. [Release of Funds for use in other City Parks].

(a) [If other funding source provided – e.g. Park Tax, then amounts on deposit in the Park Maintenance Fund may be used to maintain other City parks]

(b) [If such other source terminates, or is less than \$\_\_\_\_\_ per year, then no disbursements under this Section 6]

7. Investments; Moneys to be Held in Trust. All moneys deposited with or paid to the Trustee for the funds and accounts held under this Maintenance Trust Agreement shall be held by the Trustee and shall be applied only in accordance with the provisions of this Maintenance Trust Agreement. The Trustee shall not be under any liability for interest on any moneys received hereunder except to the extent such moneys are invested in Permitted Investments. Moneys held in the Park Maintenance Fund shall, pursuant to written directions of the City Representative, or in the absence of such direction at the discretion of the Trustee, be invested and reinvested by the Trustee in Permitted Investments which mature or are subject to redemption by the owner thereof prior to the date such funds are expected to be needed. The Trustee may make any investments permitted by the provisions of this Section through its own bond department or short-term investment department or that of any affiliate of the Trustee and may pool moneys for investment purposes. Any such Permitted Investments shall be held by or under the control of the Trustee and shall be deemed at all times a part of the Park Maintenance Fund. The interest accruing on such fund and any profit realized from such Permitted Investments shall be credited to such fund, and any loss resulting from such Permitted

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Investments shall be charged to such fund. The Trustee shall sell or present for redemption and reduce to cash a sufficient amount of such Permitted Investments whenever it shall be necessary to provide moneys hereunder and the Trustee shall not be liable for any loss resulting from such investments.

8. Reports of the Trustee. The Trustee shall keep and maintain adequate records pertaining to the Park Maintenance Fund and all disbursements therefrom, and shall file periodic statements of activity regarding the Project Fund with the City and BJH.

9. Liability of Trustee.

(a) The Trustee shall not be liable for any loss resulting from any investment, sale, transfer or other disposition made pursuant to this Maintenance Trust Agreement in compliance with the provisions hereof. The Trustee shall have no lien whatsoever on any of the money or securities on deposit in the Park Maintenance Fund for the payment of fees and expenses for services rendered by the Trustee under this Maintenance Trust Agreement or otherwise.

(b) So long as the Trustee applies the securities and money as provided herein, the Trustee shall not be liable for any deficiencies in the amounts necessary to pay the cost of maintaining Forest Park. Notwithstanding the foregoing, the Trustee shall not be relieved of liability arising from and proximate to its failure to comply fully with the terms of this Maintenance Trust Agreement.

10. Fees and Costs of the Trustee. The aggregate amount of the costs, fees and expenses of the Trustee in connection with the creation of the escrow described in and created by this Maintenance Trust Agreement and in carrying out any of the duties, terms or provisions of this Maintenance Trust Agreement shall be paid by BJH when due.

Notwithstanding the preceding paragraph, the Trustee shall be entitled to reimbursement from BJH of reasonable out-of-pocket expenses incurred in carrying out the duties, terms or provisions of this Maintenance Trust Agreement. Claims for such reimbursement may be made to BJH and in no event shall such reimbursement be made from funds held by the Trustee pursuant to this Maintenance Trust Agreement.

If the Trustee resigns prior to the expiration of this Maintenance Trust Agreement, the Trustee shall rebate to BJH a ratable portion of any annual fee theretofore paid by BJH to the Trustee for its services under this Maintenance Trust Agreement for the then current fee period.

11. Resignation or Removal of Trustee; Successor Trustee. The Trustee at the time acting hereunder may at any time resign and be discharged from its duties and responsibilities hereby created by giving written notice by registered or certified mail to the City and BJH not less than sixty (60) days prior to the date when the resignation is to take effect. Such resignation shall take effect immediately upon the acceptance of the City and BJH of the resignation, the appointment of a successor Trustee (which may be a temporary Trustee) by the City and BJH,

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the acceptance of such successor Trustee of the terms, covenants and conditions of this Maintenance Trust Agreement, the transfer of the Park Maintenance Fund, including the money and any investments held therein, to such successor Trustee and the completion of any other actions required for the securities to be made payable to such successor Trustee rather than the resigning Trustee.

The Trustee may be removed by the City if the Trustee fails to make timely payments of the amounts required to be paid by it by Sections 5 and 6 of this Maintenance Trust Agreement. Any removal pursuant to this paragraph shall become effective upon the appointment of a successor Trustee (which may be a temporary successor Trustee) by the City and BJH, the acceptance of such successor Trustee of the terms, covenants and conditions of this Maintenance Trust Agreement, the transfer of the Park Maintenance Fund, including the money and any investments held therein, to such successor Trustee and the completion of any other actions required for the securities to be made payable to such successor Trustee rather than the Trustee being removed.

If the Trustee resigns or is removed, or is dissolved, or is in the course of dissolution or liquidation, or otherwise becomes incapable of acting hereunder, or if the Trustee is taken under the control of any public officer or officers, or of a receiver appointed by a court, the City and BJH shall appoint a temporary Trustee to fill such vacancy until a successor Trustee is appointed by the City and BJH in the manner above provided, and any such temporary Trustee so appointed by the City and BJH shall immediately and without further act be superseded by the successor Trustee so appointed.

If no appointment of a successor Trustee or a temporary successor Trustee has been made by the City and BJH pursuant to the foregoing provisions of this Section within sixty (60) days after written notice of resignation of the Trustee has been given to the City and BJH, the Trustee may apply to any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice, if any, as it shall deem proper, appoint a successor Trustee.

No successor Trustee shall be appointed unless such successor Trustee is a corporation with trust powers authorized to do business in the State of Missouri and organized under the banking laws of the United States or the State of Missouri and has at the time of appointment capital and surplus of not less than \$25,000,000.

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor, the City and BJH an instrument in writing accepting such appointment hereunder, and thereupon such successor Trustee without any further act, deed or conveyance shall become fully vested with all the rights, immunities, powers, trusts, duties and obligations of its predecessor, but such predecessor shall, nevertheless, on the written request of such successor Trustee, the City or BJH, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder, and every predecessor Trustee shall deliver all securities and money held by it to its successor.

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Should any transfer, assignment or instrument in writing from the City or BJH be required by any successor Trustee for more fully and certainly vesting in such successor Trustee the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor Trustee, any such transfer, assignment and instruments in writing shall, on request, be executed, acknowledged and delivered by the City and BJH.

Any corporation into which the Trustee, or any successor to it of the duties and responsibilities created by this Maintenance Trust Agreement, may be merged or converted or with which it or any successor to it may be consolidated, or any corporation resulting from any merger, conversion, consolidation or reorganization to which the Trustee or any successor to it may be a party, shall, if satisfactory to the City, be the successor Trustee under this Maintenance Trust Agreement without the execution or filing of any paper or any other act on the part of the parties hereto, anything herein to the contrary notwithstanding.

12. Limitation on Liability of BJH. BJH shall not be liable (a) for any loss resulting from any investment made pursuant to this Maintenance Trust Agreement, (b) for the accuracy of the calculations as to the money in the Park Maintenance Fund, or (c) for any acts of the City or the Trustee.

13. Amendments to this Maintenance Trust Agreement. This Maintenance Trust Agreement is made for the benefit of the City, and it shall not be repealed, revoked, altered or amended without the prior written consent of BJH, the Trustee and the City.

14. Termination. This Maintenance Trust Agreement shall terminate upon the expiration of the Lease. Upon such termination, all amounts on deposit in the Maintenance Trust Fund shall be transferred to the City.

15. Notices. Except as otherwise provided herein, it shall be sufficient service of any notice, request, complaint, demand or other paper required by the Lease or this Maintenance Trust Agreement to be given to or filed with the following parties if the same is duly mailed by first class, certified or registered mail addressed:

(a) To the City at:

City of St. Louis  
Office of the Mayor  
City Hall  
1200 Market Street, Room 200  
St. Louis, Missouri 63103  
Attention: Mayor  
Facsimile: 314-622-\_\_\_\_\_

And:

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City of St. Louis  
Office of the Comptroller  
City Hall  
1200 Market Street, Room 212  
St. Louis, Missouri 63103  
Attention: Comptroller  
Facsimile: 314-588-0550

With a copy to:

City of St. Louis  
City Counselor's Office  
City Hall  
1200 Market Street, Room 314  
St. Louis, Missouri 63103  
Attention: City Counselor  
Facsimile: 314-622-4956

(b) To BJH at:

Barnes-Jewish Hospital  
10 Barnes-Jewish Hospital Plaza  
St. Louis, Missouri 63110  
Attention: President

With a copy to:

BJC HealthCare  
Mailstop 90-66-500  
4444 Forest Park Avenue  
Suite 500  
St. Louis, MO 63108  
Attention: Senior Vice President and General Counsel

And

Bryan Cave LLP  
One Metropolitan Square  
211 N. Broadway, Suite 3600  
St. Louis, MO 63102-2750  
Attn: Linda M. Martínez

(c) To the Trustee at:

[Trust Company]

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[address]

Attention: Corporate Trust Department

16. Severability. If any one or more of the covenants or agreements provided in this Maintenance Trust Agreement on the part of the City or the Trustee to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Maintenance Trust Agreement.

17. Successors and Assigns. All of the covenants, promises and agreements in this Maintenance Trust Agreement contained by or on behalf of the City, BJH or the Trustee shall be binding upon and inure to the benefit of their respective successors and assigns whether so expressed or not.

18. Governing Law. This Maintenance Trust Agreement shall be governed by the applicable law of the State of Missouri.

19. Dispute Resolution Process.

(a) The City, BJH and the Trustee agree that in the event of a disagreement concerning the matters described herein (including without limitation the calculation of the escalation of the Donation Amount) they shall negotiate, in good faith, in an attempt to resolve such disagreement for a period of at least forty-five(45) days following receipt of notice from either party setting forth the specifics of the disagreement and the relief requested. If such dispute shall involve the payment of Donation Amount, the City and BJH agree that BJH shall pay that portion of the Donation Amount which is undisputed prior to contesting such amount and such payment shall not prejudice either party in the contest of the remaining amount.

(b) Should the City and BJH be unable to resolve such disagreement through good faith negotiation, the City and BJH agree to attempt in good faith to resolve such disagreement through mediation administered by an organization offering commercial mediation services. Unless otherwise agreed all mediation proceedings shall be conducted in the City of St. Louis, Missouri.

(c) The City and BJH may seek an adjudication of the controversy by the Circuit Court of the City of St. Louis, Missouri, and the prevailing party therein shall be entitled to recover all costs and expenses, including reasonable legal fees and expenses associated therewith.

20. Counterparts. This Maintenance Trust Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have each caused this Maintenance Trust Agreement to be executed by their duly authorized officer(s) or elected official(s) and their corporate seals to be hereunder affixed and attested as of the date first above written.

CITY OF ST. LOUIS, MISSOURI

[SEAL]

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

Name: Francis G. Slay

Title: Mayor

ATTEST:

\_\_\_\_\_

Name: Parrie L. May

Title: Register

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

Name: Darlene Green

Title: Comptroller

APPROVED AS TO FORM:

\_\_\_\_\_

Name: Patricia A. Hageman

Title: City Counselor

[NOTARY]

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IN WITNESS WHEREOF, the parties hereto have each caused this Maintenance Trust Agreement to be executed by their duly authorized officer(s) or elected official(s) and their corporate seals to be hereunder affixed and attested as of the date first above written.

BARNES-JEWISH HOSPITAL

[SEAL]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[NOTARY]

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IN WITNESS WHEREOF, the parties hereto have each caused this Maintenance Trust Agreement to be executed by their duly authorized officer(s) or elected official(s) and their corporate seals to be hereunder affixed and attested as of the date first above written.

[TRUST COMPANY]

[SEAL]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[NOTARY]

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EXHIBIT A

TO THE MAINTENANCE TRUST AGREEMENT

Request No: \_\_\_\_\_

Date: \_\_\_\_\_

DISBURSEMENT REQUEST

To: \_\_\_\_\_, as Trustee

Corporate Trust Department

\_\_\_\_\_, Missouri,

Re: Maintenance Trust Agreement among the City of St. Louis, Missouri, Barnes-Jewish Hospital and the Trustee

You are hereby requested and directed as Trustee under the Maintenance Trust Agreement dated as of January 15, 2007 (the "Maintenance Trust Agreement"), among the City of St. Louis, Missouri, Barnes-Jewish Hospital and you, as Trustee, to pay from moneys in the Park Maintenance Fund, pursuant to Section 6 of the Maintenance Trust Agreement, to the City to reimburse the City for the following payments incurred in the maintenance of Forest Park which constitute Cost of Maintaining the Park (as defined in the Maintenance Trust Agreement):

<u>[Payee/Project]</u>	<u>Amount</u>	<u>Description</u>
------------------------	---------------	--------------------

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The undersigned authorized representative of the City of St. Louis, Missouri (the "City") hereby states and certifies that:

1. Each item listed above is a valid and proper Cost of the Maintaining the Park (as defined in the Maintenance Trust Agreement).
2. Each item listed above has not previously been paid or reimbursed from moneys in the Park Maintenance Fund and no part thereof has been included in any other Disbursement Request previously filed with the Trustee under the provisions of the Park Maintenance Agreement or reimbursed to the City from the Park Maintenance Fund.
3. There has not been filed with or served upon the City any notice of any lien, right to a lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request.
4. All work for which payment is now requested has been performed in a good and workmanlike manner and in accordance with the [Forest Park Maintenance Plan].

CITY OF ST. LOUIS, MISSOURI

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

City Representative

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## EXHIBIT D

### POLICY STATEMENT OF BARNES-JEWISH HOSPITAL REGARDING DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

It is the policy of Barnes-Jewish Hospital (“BJH”) to ensure the maximum utilization of qualified minority business enterprises (“MBEs”) and qualified women’s business enterprises (“WBEs”) in the proposed permanent improvements upon the Leased Premises, while the same time achieving a competitive contract price for goods and services of high quality.

A MBE is defined as a business which is at least fifty-one percent (51%) owned and controlled by minority group members. Controlled means that the minority ownership must exercise actual day-to-day management of the business. Minority groups covered by this policy include Black-Americans, Hispanic-Americans, Native-Americans, and Asian-Pacific Americans.

A WBE is defined as an independent business concern which is at least fifty-one (51%) owned by a woman or women, who also control and operate it. Determination of whether a business is at least fifty-one percent (51%) owned by a woman or otherwise qualified WBE which is fifty-one percent (50%) owned by a married woman in a community property State will not be disqualified because her husband has a fifty percent (50%) interest in her share.

Maximum utilization means, with respect to the proposed improvement projects, that the general contractor shall take all reasonable steps: (i) to provide MBEs and WBEs (collectively referred to as Disadvantaged Business Enterprises or “DBE”) with the maximum opportunity to compete for all construction contracts and subcontracts, and to furnish supplies and labor (“Subcontracts”); and (ii) to provide, as reference points, that at least twenty-five percent (25%) of all work for the project as a whole will be performed by MBEs and that at least five percent (5%) of all work on the project will be performed by WBEs.

Ordinarily, the main criteria to be used in selection of this successful general contractor for a particular project are: (i) competitive price; (ii) quality of work; (iii) ability to meet or exceed reference points; (iv) favorable contract terms, and (v) qualifications of contractor. In selecting the successful bidder, BJH’s management may give such relative weight to each criterion as it deems appropriate.

The general contractor shall made a good faith effort to replace with another DBE any DBE subcontractor who is unable to perform satisfactorily. Replacement firms must be approved by BJH.

Each general contract shall make adequate provision to compensate BJH for damages in the event the actual dollar amount paid to DBE falls short of the amount to be paid as set forth in the bid as awarded. The foregoing policy shall be implemented, and DBE utilization shall be evaluated in the context of the dollar value of the following factors:

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A contract or subcontract awarded to DBEs.

A subcontractor with a joint venture eligible under the DBE standards equal to the percentage of the ownership and control of the DBE partner in the joint venture.

Expenditures to DBEs who perform a commercially useful function in the contract. A DBE is considered to perform a commercially useful function when responsible for the execution of a distinct element of the work of a contract and the carrying out of the responsibilities by actually performing, managing and supervising the work involved.

Expenditures to a DBE manufacturer.

Expenditures for materials and supplies required under a contract and obtained from a DBE regular dealer.

- a. A regular dealer is a firm that owns, operates, or maintains a store, which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business and in its own name, the purchase and sale of products in question.
- b. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section (i.e. a truck hauler is a regular dealer when the firm owns, operates, maintains, or leases, operates and maintains, the distribution equipment for the delivery of the above products to the public in the usual course of business; ad hoc performance for one contractor or select group of contractors does not qualify as a regular dealer).
- c. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor (i.e. a supplier who produces goods from raw materials or substantially alters them before resale).

The following expenditures to DBE firms that are not regular dealers or manufacturers: The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler or trucker is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the

fee is determined by BJH to be reasonable as compared with fees customarily allowed for similar service.

A contractor's good faith efforts to meet the DBE reference point may include, but are not limited to, such items as the following:

Attended a pre-bid meeting, if any, schedules by BJH to inform DBEs of contracting and subcontracting opportunities;

Advertised in general circulation trade association and socially and economically disadvantaged business-directed media concerning the subcontracting opportunities;

Provided written notice to a reasonable number of specific DBEs that their interest in the contract is solicited, in sufficient time to allow the DBEs to participate effectively;

Followed up on initial solicitations of interest by contracting DBEs to determine with certainty whether the DBEs were interested;

Selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);

Provided interested DBEs adequate information about plans, specifications and requirements of the contract;

Negotiated in good faith with interested DBEs not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;

Made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by BJH or by the bidder; and

Made effective use of the services of available disadvantaged business trade organizations, minority contractors' group, local, state and federal disadvantaged business assistance offices and other organizations that provide assistance in the recruitment and placement of DBEs.

The general contractor shall make a good faith effort to replace with another DBE any DBE subcontractor who is unable to perform satisfactorily. Replacement firms must be approved by BJH.

Each general contract for a project shall provide a reasonable retainage to be withheld until the date of substantial completion. Pending completion of the contract, amounts paid to DBEs shall

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be reported to BJH on a monthly basis. Prior to the release of the retainage, the general contractor shall file a list with BJH showing the DBEs used and the work performed. The list shall show the actual dollar amount paid to each DBE that is applicable to the percentage participation established in the contract. The general contract shall provide that in the event the actual dollar amount paid to DBE falls short of the amount to be paid as set forth in the bid as awarded, BJH may sustain damages, the exact extent of which would be difficult or impossible to ascertain. Therefore, in order to liquidate such damages, the contract shall provide that the monetary difference between the amount to be paid to the DBEs as set forth in the bid as awarded less the amount actually paid to the DBEs for performing a commercially useful function will be deducted from the contractor's payments as liquidated damages. No such deduction will be made when, for reasons beyond the reasonable control of the contractor, the stated DBE participation is not met. Any amount so deducted will be donated to organizations offering scholarship and/or internship programs for disadvantaged or disabled youth, with preference given to scholarships and internships in the fields of health care or used by BJH for such scholarship and/or internship programs as may be sponsored or operated by BJH. BJH shall report to the City's contract compliance officer the occurrence and amount of any such deduction and the organization to which the money is donated or the use made thereof by BJH for scholarship and/or internship programs.

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EXHIBIT 2

[MAINTENANCE TRUST AGREEMENT]

See Exhibit C to Exhibit 1.

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