

ORDINANCE #67801
Board Bill No. 416
Committee Substitute

An Ordinance recommended by the Board of Public Service ratifying the execution of Purchase and Sale Agreement of real property as set forth herein for additional park land located in City Block 4878 between the City of St. Louis and Forest West Properties, Inc.; making certain findings and representations and warranties with conditions and covenants therein with a deed restriction for a public park including the payment of EIGHT HUNDRED NINETEEN THOUSAND AND FOUR HUNDRED EIGHTY-THREE DOLLARS AND TWENTY-NINE CENTS (\$819,483.29), as adjusted for Holding Costs, as set forth in Exhibit B to said Agreement; authorizing other related actions in connection thereto; and containing an emergency clause.

WHEREAS, the City of St. Louis, Missouri, (the “City” or sometimes “Buyer”) is a body corporate and a political subdivision of the State of Missouri, duly created, organized and existing under and by virtue of its charter, the Constitution and laws of the State of Missouri; and

WHEREAS, upon the recommendation of the Board of Public Service, the Board of Aldermen finds it is necessary and desirable and in the best interest of the City to enter into the Purchase and Sale Agreement (the “Agreement”) with Forest West Properties, Inc. (the “Seller”) in order that the City may purchase certain real property (the “Property”) located in City Block 4878 to provide for additional park land; and

WHEREAS, pursuant to the provisions of the Agreement, the City may and is authorized to purchase title to the Property by Special Warranty Deed for the sum of EIGHT HUNDRED NINETEEN THOUSAND AND FOUR HUNDRED EIGHTY-THREE DOLLARS AND TWENTY-NINE CENTS (\$819,483.29), as adjusted for Holding Costs, which sum was previously appropriated by Ordinance 67496 (Board Bill No. 1); and

WHEREAS, the Board of Aldermen acknowledge and approve the City’s representations and warranties and deed restriction for a public park as Buyer as set forth in the Agreement and in the Special Warranty Deed and finds acceptable the representations and warranties of the Seller.

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

SECTION ONE. Upon recommendation of the Board of Public Service, the execution by the Mayor and Comptroller of the Purchase and Sale Agreement with Forest West Properties, Inc., as attached hereto as Exhibit 1 and incorporated by reference herein as if fully set out, is hereby ratified; and the form and details of said Agreement are hereby acknowledged and approved including the representations and warranties and deed restriction for a public park therein; and the City is authorized to acquire title to the Property in City Block 4878 described in Exhibit A to the Agreement by Special Warranty Deed for additional park land and to pay the sum of EIGHT HUNDRED NINETEEN THOUSAND AND FOUR HUNDRED EIGHTY-THREE DOLLARS AND TWENTY-NINE CENTS (\$819,483.29), as adjusted for Holding Costs, as set forth in Exhibit B to said Agreement, which sum was previously appropriated by Ordinance 67496 (Board Bill No. 1).

SECTION TWO. The Mayor and Comptroller of the City or their designated representatives are hereby authorized and directed to take any and all actions to execute and deliver for and on behalf of the City any and all additional certificates, documents, agreements or other instruments as may be necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such action by the Mayor and the Comptroller or their designated representatives.

SECTION THREE. The Mayor and the Comptroller or their designated representatives, with the advice and concurrence of the City Counselor, are hereby further authorized and directed to make any changes to the documents, agreements and instruments approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such changes by the Mayor and the Comptroller or their designated representatives.

SECTION FOUR. Emergency clause. This being an ordinance for the preservation of public peace, health, safety, it is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and therefore shall become effective immediately upon its passage and approval by the Mayor.

EXHIBIT 1

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “*Agreement*”) is made and dated as of this 31st day of December, 2007 (the “*Effective Date*”), by and between THE CITY OF ST. LOUIS, MISSOURI, a Missouri municipal corporation (“*Buyer*”), and FOREST WEST PROPERTIES, INC., a Missouri corporation (“*Seller*”).

WITNESSETH:

WHEREAS, Seller is the owner of certain real property generally located at Block No. 4878 of the City of St. Louis, State of Missouri, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the “*Property*”); and

WHEREAS, Buyer desires to buy and Seller desires to sell the Property, on the terms and conditions herein set forth;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants of the parties hereinafter expressed, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

ARTICLE IPURCHASE AND SALE

1.1 Agreement to Sell and Purchase. In accordance with and subject to the terms and conditions hereof, on the date of Closing (as hereinafter defined), Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the Property.

1.2 Purchase Price. The purchase price (the “*Purchase Price*”) to be paid to Seller for the sale of the Property to Buyer as provided for herein shall be EIGHT HUNDRED NINETEEN THOUSAND AND FOUR HUNDRED AND EIGHTY-THREE DOLLARS AND TWENTY CENTS (\$819,483.29) plus TWO HUNDRED FORTY-TWO THOUSAND SEVEN HUNDRED FORTY-SEVEN DOLLARS (\$242,747.00) of Holding Costs, as hereinafter defined.

The Purchase Price shall be paid by Buyer, subject to credit, debit and adjustment as hereinafter provided and subject to all the terms and conditions herein contained, as follows:

(a) Buyer and Seller agree that Seller has incurred and will continue to incur costs pursuant to holding the Property prior to Closing (as hereinafter defined), including, without limitation, the cost of demolishing all buildings on the Property (the “*Holding Costs*”). Seller’s costs in obtaining the Property and costs of holding the Property through the Effective Date are set forth on Exhibit B, attached hereto and incorporated herein by reference. Seller and Buyer hereby agree to share the ongoing Holding Costs as hereinafter set forth. At Closing, the Purchase Price shall be increased by the amount of the Holding Costs incurred by Seller from and after the Effective Date. Within ten (10) days after the date of satisfaction and/or waiver of the final condition precedent to be satisfied or waived under Section 4.1 hereof, Seller shall deliver a statement setting forth the total Holding Costs.

(b) Buyer has requested, and Seller has agreed, to finance the performance of a Phase I environmental assessment of the Property (the “*Phase I*”) by Professional Environmental Engineers or such other environmental consultant selected by Buyer (the “*Environmental Consultant*”), and the cost of such Phase I shall be included in the Holding Costs.

(c) Buyer shall, on the date of Closing, pay the Purchase Price, subject to adjustment in the amount of the Holding Costs as provided in subsections (a) – (c) of this Section 1.2 and subject to credit and adjustment as provided in Section 1.3 hereof, which shall be paid to Seller by the wire transfer of good, current, immediately available funds and which Buyer shall cause to be received by Seller on or before 4:00 p.m. (Central Standard Time) on the date of Closing.

1.3 Adjustments. The following items shall be credited, debited and otherwise adjusted, and the resulting calculation shall be an adjustment to the Purchase Price payable at Closing pursuant to Section 1.2(d) hereof (where appropriate, such adjustments shall be made on the basis of a year of 12 months, 30 days to the month, Seller to have the last day, unless otherwise provided):

- (a) General property taxes (state, county, municipal, school and fire district) for the then current tax fiscal year based upon the latest available tax bills or assessment information, whether for that year or the preceding year.
- (b) Special taxes or assessments, if any, upon the Property assessed or becoming a lien prior to the date hereof (but only a pro rata share of the then current installment of such special taxes or assessment, if any, shall be charged as a credit against the Purchase Price, Buyer agreeing to assume all liability for future installments and deferred payments).
- (c) Fuel, electricity, water, sewer, gas, electric, telephone and other utility charges and assigned deposits, Buyer agreeing to assume all liability for such utility payments.

In addition, certain costs incidental hereto and to the transactions contemplated hereby shall be borne such that at (or prior to) Closing, Buyer shall pay all recording fees and costs, all survey costs, all title commitment and title insurance premiums, all mortgage taxes or intangible taxes, and all transfer taxes or revenue stamps incidental to the recordation of the Special Warranty Deed, any mortgage, or otherwise. Any and all state, county and municipal sales taxes due and payable as a result of the transactions contemplated herein shall be paid by Buyer. To the extent the law requires Seller to collect and remit such taxes, then Buyer shall pay such taxes to Seller at the Closing and the parties shall agree, each acting reasonably, upon the appropriate procedure for determining or estimating the amount thereof.

Except as expressly provided in this Section 1.3 or as expressly provided elsewhere in this Agreement, Buyer and Seller shall pay their own respective costs and expenses, including attorneys' fees, incidental to this Agreement and the transactions contemplated hereby.

1.4 Possession. Seller shall transfer possession of the Property to Buyer on the date of Closing.

1.5 Closing. The closing (herein referred to as the "**Closing**") of the transactions contemplated hereby shall be on the date 20 days after the date of satisfaction and/or waiver of the final condition precedent to be satisfied or waived under Section 4.1 hereof, between the hours of 9 a.m. and 4 p.m. (Central Standard Time) on said date. The Closing shall take place through escrow at the offices of such title insurer as Buyer may select (the "**Title Company**").

1.6 Documents at Closing.

(a) On the date of Closing, Seller shall execute and deliver or cause to be delivered to Buyer, the following documents:

(i) Special Warranty Deed (the "**Deed**"), transferring and conveying to Buyer title to the Property (Seller's record title to govern for purposes of the legal description), subject to a deed restriction which shall state: "Notwithstanding anything contained herein to the contrary, for so long as the Amended and Restated Lease Agreement between the City of St. Louis and Barnes Jewish Hospital is in effect, the use of the Property that is the subject of this deed shall be restricted and used only as a public park; provided that this restriction shall not limit the building of structures associated with the use of a public park for festivals, concessions, athletic or recreational activities." (the "**Deed Restriction**"), the lien of general real estate taxes for the then current tax fiscal year, and those easements, restrictions, conditions, and other exceptions described on Exhibit C attached hereto and incorporated herein by reference ("**Permitted Exceptions**"), which Deed shall be in form reasonably approved by Seller and Buyer.

(ii) A standard form Seller's affidavit, against mechanics liens and against parties in possession, and such other documents, if any, as may be required by the Title Company, on forms customarily used by the Title Company and reasonably satisfactory to Seller, in order to issue an owner's policy of title insurance.

(b) On the date of Closing, Buyer and Seller shall execute and deliver to one another counterpart originals of the following:

- (i) Closing Statements.
- (ii) Certificate document Holding Costs through the date of Closing.

ARTICLE IIREPRESENTATIONS AND WARRANTIES OF SELLER

Seller makes the following representations and warranties, which representations and warranties are true and correct on the date hereof and will be true and correct on the date of Closing, and which representations and warranties shall not survive the Closing but shall be merged into the delivery of the Special Warranty Deed.

2.1 Corporate Authority. With respect to Seller and its business, Seller represents and warrants, in particular, that:

(a) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Missouri.

(b) Seller has all necessary power and authority to own, use and transfer its properties (including the Property) and to transact the business in which it is engaged, and has full power and authority to enter into this Agreement, to execute and deliver the documents required of Seller herein, and to perform its obligations hereunder.

(c) Seller is duly authorized to execute, deliver and perform this Agreement and all documents and instruments and transactions contemplated hereby or incidental hereto.

2.2 Commissions. Seller has dealt with no broker, finder or other person in connection with the sale or negotiation of the sale of the Property in any manner that might give rise to any claim for commission against Buyer.

ARTICLE IIIREPRESENTATIONS AND WARRANTIES OF BUYER

Buyer makes the following representations and warranties, each of which representations and warranties is true and correct on the date hereof and will be true and correct on the date of Closing, and which representations and warranties shall survive Closing.

3.1 Authority of Buyer. Buyer represents and warrants to Seller that Buyer's execution, delivery and performance of this Agreement will not conflict with or violate any constitutional provision, statute, rule, order or regulation applicable to Buyer and will not conflict with or violate the Charter of the City of St. Louis. Buyer represents and warrants to Seller that the execution and delivery of this Agreement has been duly authorized by the City of St. Louis's Board of Aldermen and that no further authorizations or approvals of the Buyer or of any third party or agency or governmental body are needed to enter into this Agreement, provided that additional authorization is required by the City of St. Louis's Board of Aldermen expressly authorizing Buyer to purchase the Property (the "**Authorizing Ordinance**") (as well as additional authorizations from other governmental bodies as legally required) on or prior to the Closing Date.

3.2 Commissions. Buyer has dealt with no broker, finder or any other person, in connection with the purchase of or the negotiation of the purchase of the Property that might give rise to any claim for commission against Seller or lien or claim against the Property.

ARTICLE IVCONDITIONS TO OBLIGATIONS

4.1 Conditions to the Buyer's Obligations. The obligations of Buyer to consummate the transactions provided for in this Agreement shall be subject to the satisfaction of each of the following conditions on or before the dates specified, subject to the right of Buyer to waive any one or more of such conditions:

(a) Buyer shall have obtained a commitment in favor of Buyer for a current ALTA owner's policy of title insurance from the Title Company with respect to the Property, which commitment shall be in the amount of the Purchase Price and shall show Seller as the owner of the Property. Buyer agrees to obtain such a commitment (the cost of which shall be paid by Buyer), together with copies of all exceptions referred to thereon, on or before the date thirty (30) days after the date hereof (and Buyer agrees to furnish Seller with copies thereof immediately upon receipt); it being understood that if Buyer fails to obtain such commitment within such thirty (30) day period, this condition precedent shall be conclusively

deemed satisfied. Buyer agrees to review and approve such commitment and the exceptions shown thereon (or disapprove the same and thereby terminate this Agreement) on or before the date forty-five (45) days after the date hereof (Buyer hereby agreeing that it shall not disapprove, as exceptions, the lien of general real estate taxes for the current tax fiscal year).

(b) Buyer shall have reviewed and approved a survey of the Property, the zoning of the Property, environmental studies (subject to Section 8.4 of this Agreement), and any other matter relating to or affecting the Property which Buyer deems suitable to review, in its reasonable discretion. Buyer agrees to obtain such survey, environmental assessments, zoning reports, and related due diligence reports (the cost of which shall be paid by Buyer, except to the extent Buyer elects to have Seller finance the cost of the Phase I pursuant to Section 1.2(c), in which event, the cost of the Phase I shall be included in the Holding Costs), on or before the date forty-five (45) days after the date hereof (and Buyer agrees to furnish Seller with copies thereof immediately upon receipt); it being understood that if Buyer fails to obtain such items within such forty-five (45) day period, this condition precedent shall be conclusively deemed satisfied. Buyer agrees to review and approve such matters (or disapprove the same and thereby terminate this Agreement) on or before the date sixty (60) days after the date hereof.

(c) The Board of Aldermen of the City of St. Louis shall have enacted the Authorizing Ordinance.

4.2 Conditions to the Seller's Obligations. The obligations of Seller to consummate the transactions provided for in this Agreement shall be subject to the satisfaction of each of the following conditions on or before the dates specified, subject to the right of Seller to waive any one or more of such conditions:

(a) The Board of Aldermen of the City of St. Louis shall have enacted the Authorizing Ordinance.

(b) Buyer shall have, on or before the date of Closing, performed all of its covenants, obligations and agreements under this Agreement by June 30, 2008.

4.3 Failure of Satisfaction of Conditions.

(a) In the event that any one or more of the matters referred to in each of the subsections of Section 4.1 has not been reviewed and approved and the condition precedent set forth in each such subsection thereby satisfied on or before the date of Closing (or, if earlier, the date for satisfaction thereof), Buyer may, at its option, elect to terminate this Agreement and, except as otherwise expressly provided herein, the parties shall have no further liability to one another hereunder. In the event that on or prior to the date of Closing (or, if earlier, the date for satisfaction thereof) any such condition precedent is not expressly designated as satisfied or unsatisfied in writing by Buyer, then such condition precedent shall be conclusively deemed satisfied.

(b) In the event that any one or more of the matters referred to in each of the subsections of Section 4.2 has not been reviewed and approved and the condition precedent set forth in each such subsection thereby satisfied on or before the date of Closing (or, if earlier, the date for satisfaction thereof), Seller may, at its option, elect to terminate this Agreement and, except as otherwise expressly provided herein, the parties shall have no further liability to one another hereunder. In the event that on or prior to the date of Closing (or, if earlier, the date for satisfaction thereof) any such condition precedent is not expressly designated as satisfied or unsatisfied in writing by Seller, then such condition precedent shall be conclusively deemed satisfied.

ARTICLE V

COVENANTS OF SELLER

Seller covenants and agrees that from and after the date of this Agreement and until the date of Closing:

5.1 Operation of Property.

(a) Seller shall continue to maintain the Property in "AS IS" condition, it being the intention of the parties hereto that the general condition and use of the Property shall not be changed between the Effective Date and the date of Closing.

(b) Seller shall not (i) construct or install or contract for the construction, installation or alteration of any improvements at the Property, (ii) enter into any leases or occupancy agreements with respect to the Property, or (iii) record or suffer to be recorded against the Property any easements, liens or other encumbrances without, in each instance, obtaining the prior written consent of Buyer, such consent not to be unreasonably withheld.

5.2 Insurance of Property. Seller will cause the Property to be insured in accordance with its current insurance program.

ARTICLE VI

COVENANTS OF BUYER

6.1 Post Termination Covenants. Buyer covenants and agrees that in the event Closing does not occur due to the failure of a condition precedent to Buyer's or Seller's obligations, then, at the option and written request of Seller, Buyer will transfer to Seller copies of all surveys, reports, and the like in the possession of Buyer and submitted to Buyer in the course of the inspections and evaluations of the Property, at Buyer's cost of reproduction and delivery.

6.2 Restoration of Property. Buyer shall, in connection with its studies and investigations of the Property contemplated hereunder, promptly restore the Property to its condition existing immediately prior to such studies and investigations. To the extent permitted by law, Buyer hereby agrees to indemnify, defend and hold Seller and the Property free and harmless from and against any cost, expense, charge, lien, action or judgment, as well as any claim of a right to any such cost, expense, charge, lien, action or judgment arising directly or indirectly from any act or omission of Buyer, Buyer's agents or contractors, or any services, labor, supplies or materials provided or performed by surveyors, engineers, architects and others making the inspections and tests, and from and against any personal injury and property damage caused by the act or neglect of Buyer or any of its agents or independent contractors. This indemnification shall survive the termination of this Agreement and shall survive the Closing of the transactions described in this Agreement. Buyer, or such person or entity actually doing any work contemplated hereunder shall secure and maintain, at Buyer's or such other person or entity's sole cost and expense, the following policies of insurance: (i) comprehensive public liability and property damage insurance, with limits of \$1,000,000 for bodily injury to, or death of, any one person, \$2,000,000 for bodily injury to, or death of, more than one person on an occurrence basis, property damage insurance with limits of \$1,000,000 for each accident, and \$1,000,000 policy limit for aggregate operations on an occurrence basis, (ii) comprehensive automobile liability insurance with limits of \$1,000,000 for injury to, or death of, any one person, \$2,000,000 for bodily injury to, or death of, more than one person, (iii) workers' compensation insurance in accordance with the provisions of Missouri law, and (iv) employer's liability insurance in the minimum amounts of \$1,000,000 each accident, \$1,000,000 disease policy limit, and \$1,000,000 disease each employee. Notwithstanding, if Buyer does the work contemplated hereunder, Buyer may self-insure.

6.3 Development of Park Land and Facilities. Buyer covenants and agrees that, in the event the transactions contemplated herein are closed with title to the Property transferred to Buyer, Buyer shall comply with the covenants as shall be set forth in the Deed Restriction.

ARTICLE VII

CASUALTY; CONDEMNATION

7.1 Casualty. There are no buildings or improvements on the Property, therefore, in the event of the damage or destruction of all or any part of the Property, Buyer shall have no right to terminate this Agreement on account thereof.

7.2 Condemnation. In the event of the taking of all or any material part of the Property (e.g., not including the taking of strips of widths less than 10 feet of the Property running along adjacent roadways and highways) prior to Closing, by eminent domain or condemnation, then Buyer may, at its option, exercisable by written notice to Seller, either (i) terminate this Agreement, whereupon, except as expressly provided herein, neither party will have any further obligation hereunder, or (ii) continue under this Agreement, whereupon Seller will assign to Buyer its interest in and to any award and proceeds thereof payable as a result of such taking to the extent directly attributable to the value of the land taken.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.1 Binding Agreement. This Agreement shall be binding on and shall inure to the benefit of the parties named herein and to their respective heirs, administrators, executors, personal representatives, successors and assigns.

8.2 Assignment. Neither party may assign its rights and interest hereunder.

8.3 Notices. All notices, requests, demands and other communications hereunder shall be deemed to have been duly given if the same shall be in writing and shall be delivered by national overnight courier service or sent by registered or certified mail, postage pre paid, and addressed as set forth below:

(a) If to Seller:

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

and

The Washington University
660 S. Euclid
St. Louis, Missouri 63110
Attn.: Dean and Executive Vice Chancellor for Medical Affairs

and

Forest West Properties, Inc.
c/o Washington University Medical Center Redevelopment Corporation
4400 Chouteau
St. Louis, Missouri 63110
Attn.: Brian K. Phillips

And

Washington University Medical Center Redevelopment Corporation
4400 Chouteau
St. Louis, Missouri 63110
Attn.: Brian K. Phillips

with copies 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
Ann: Linda M. Martínez

and

The Washington University
North Brookings Hall, Room 219
Campus Box 1058
One Brookings Drive
St. Louis, Missouri 63130
Attn.: Thomas J. Blackwell

If to Buyer:

Comptroller of the City of St. Louis
Room 212, City Hall
St. Louis, Missouri 63103
Attn: James Garavaglia, Asset Manager

and

Department of Parks Recreation and Forestry of the City of St. Louis
Forest Park
5600 Clayton Road
St. Louis, Missouri 63110
Attn: Gary Bess, Director

and

City Counselor
Room 314, City Hall
St. Louis, Missouri 63103
Attn: Patricia A. Hageman, City Counselor

With a copy to:

Armstrong Teasdale LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102
Attn: Thomas J. Ray

Any party may change the address to which notices are to be addressed by giving the other parties notice in the manner herein set forth.

8.4 Environmental Review.

- (a) The following defined terms used in this Section 8.4 shall have the following meanings:

“Hazardous Materials” include: (i) oil or other petroleum products, (ii) “hazardous wastes,” as defined by the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq., or similar state or local law, ordinance, regulation or order, (iii) “hazardous substances,” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §9601 et seq., or similar state or local law, ordinance, regulation or order, (iv) “hazardous materials,” as defined by the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. §5102, or similar state or local law, ordinance, regulation or order, (v) radioactive materials subject to the Atomic Energy Act (AEA), 42 U.S.C. §2011 et seq., or similar state or local law, ordinance, regulation or order, and (vi) any other pollutant, contaminant, chemical, or substance whose presence creates or could create a hazard to health or the environment or a violation of any federal, state or local Environmental Law.

“Environmental Liability” means any and all liability, claim, demand, obligation, cause of action,

accusation, allegation, order, violation, damage, loss, cost, expense, injury, judgment, penalty, or fine alleged by any third party (including, without limitation, any private party or governmental entity), arising out of, relating to, or resulting from, directly or indirectly, in whole or in part: (i) the presence, generation, transport, disposal, treatment, storage or Release of Hazardous Materials, (ii) the violation or alleged violation of any Environmental Law, or (iii) any Enforcement or Remedial Action. This liability includes any cost of removing or disposing of any Hazardous Materials, any cost of enforcement, cost of investigation and/or remedial action, and any other cost or expense whatsoever, including, without limitation, reasonable attorneys', accountants', engineers', and consultants' fees and disbursements, interest, and medical expenses.

"Environmental Law" means any applicable past, present, or future federal, state, or local laws, ordinances, regulations, judgments, and orders and the common law, including the law of strict liability and the law of abnormally dangerous activities, relating to environmental matters, including, without limitation, provisions pertaining to or regulating air pollution, water pollution, noise control, wetlands, watercourses, wildlife, Hazardous Materials, or any other activities or conditions which impact or relate to the environment or nature.

"Enforcement or Remedial Actions" include any step taken by any person or entity (i) to cleanup, remedy, or remove any Release of Hazardous Materials, or (ii) to enforce compliance with or to collect or impose penalties, fines, or other sanctions provided by any Environmental Law.

"Release" includes any and all releasing, spilling, leaking, migrating (from or to), pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, dumping, and any other means by which any Hazardous Material or other substance may be introduced into or travel through the environment (i.e., the soils and/or groundwater).

(b) At Buyer's sole cost and expense (except as otherwise provided herein), Buyer may, with Seller's prior written consent, which consent may be withheld in Seller's sole and absolute discretion, on or before the date forty-five (45) days after the date hereof, inspect and survey the Property and perform tests and analyses of any kind relating to the Property's physical quality or physical condition at a time mutually convenient to Seller and Buyer. At its option and at the same time, Seller may perform similar tests and analyses including, but not limited to, the taking of split samples with Buyer. Notwithstanding anything to the contrary herein, Buyer may elect to have Seller finance the cost of the Phase I to be performed by the Environmental Consultant as set forth in Section 1.2(c). If Buyer so elects, the cost of such Phase I shall be included in the Holding Costs.

(c) Seller expressly disclaims any warranties as to: (i) the presence or Release of Hazardous Materials on, in, under, or adjacent to the Property, (ii) the Property's compliance with Environmental Laws, and (iii) any potential Environmental Liability associated with the Property or any activities conducted on the Property.

(d) After the Closing, the Buyer shall be solely responsible and liable for the Property's compliance with all Environmental Laws and for all Environmental Liabilities and Enforcement or Remedial Actions.

(e) After the Closing, the Seller shall not bear any responsibility or liability contractually, under common law, or under federal, state, or local laws or regulations for: (i) any Hazardous Materials which have been, are, or may be present, generated or Released in, on, under, or adjacent to the Property or the disposal of such Hazardous Materials, or (ii) any Environmental Liability associated with the Property or past, present or future activities conducted on the Property.

(f) Buyer, for itself, all persons or entities that control, are controlled by, or are under common control with Buyer (each, a **"Buyer Affiliate"**), and all of their respective successors and assigns, expressly waives any and all rights against Seller and all persons or entities that control, are controlled by, or are under common control with Seller (each, a **"Seller Affiliate"**) pertaining to any Environmental Liability or pursuant to any Environmental Law, including, without limitation, any claim alleged under CERCLA.

(g) Buyer, for itself, each Buyer Affiliate, and all of their respective successors and assigns, agrees to the extent permitted by law, to reimburse, defend, indemnify and hold harmless the Seller, its subsidiaries and affiliates and their respective successors and assigns, officers, directors, employees and agents from and against any and all losses, costs, expenses, claims, demands, obligations and liabilities (including, without limitation, cleanup costs, reasonable attorneys' and consultants' fees and expenses) (collectively, **"Liabilities"**) arising from or related to, directly or indirectly, in whole

or in part: (i) the threatened or actual Release of any Hazardous Materials in, on, under or from the Property, and (ii) any Environmental Liability or Enforcement or Remedial Action associated with the Property or any past, present or future activities conducted on the Property or any adjacent property. This indemnification shall survive the Closing of the transactions described in this Agreement and shall include any Liabilities attributable, in whole or in part, to Seller’s acts or omissions, including the negligence or gross negligence of Seller, or those of third parties.

8.5 Governing Law. This Agreement shall be construed and interpreted according to the laws of the State of Missouri.

8.6 Time of the Essence. Time is of the essence with respect to each and every provision of this Agreement.

8.7 Performance on Business Days. If any date for the occurrence of an event or act under this Agreement falls on a Saturday or Sunday or legal holiday in the State of Missouri, then the time for the occurrence of such event or act shall be extended to the next succeeding business day.

8.8 Entire Agreement. This Agreement, together with all the Exhibits attached hereto and incorporated by reference herein, constitutes the entire undertaking between the parties hereto, and supersedes any and all prior agreements, arrangements and understandings between the parties, whether written or oral.

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

8.10 “AS IS” Condition of Property. It is expressly acknowledged and agreed by Buyer that no representations or warranties of any kind, except those set forth in Article II hereof, have been made by Seller or Seller's agents or consultants to Buyer or to the agents or consultants of Buyer with respect to the Property, and that any statements whatsoever made by Seller or Seller's agents or consultants to Buyer or to Buyer's agents or consultants outside of Article II are not material and have not been relied upon by Buyer. **Without limiting the generality of this acknowledgment and agreement, it is specifically acknowledged and agreed that the PROPERTY shall be accepted by Purchaser in “AS IS,” “WHERE IS” condition, “WITH ALL FAULTS.”** Seller expressly disclaims any warranties as to: (i) the presence or release of hazardous materials on, in, under or adjacent to the Property, (ii) the Property’s compliance with any federal, state or local law, ordinance, rule or regulation applicable thereto, including, without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Resource Conservation and Recovery Act, and any and all federal, state or local requirements with respect to the maintenance and/or removal of the improvements on the Property, (iii) any potential environmental liability associated with the Property or any activities conducted on the Property; (iv) legal access from the Property to any public road, (v) the existence, attainability, or the cost of, potable water, wells, an irrigation system, sanitary sewerage disposal or a septic tank system, electricity, gas, telephone or other utilities at, on, or to or from the Property, (vi) restrictions on usage of the Property imposed by any governmental authority or the suitability of the Property as a developable site for any purpose, (vii) the acreage or square footage of the Property, and (viii) the fitness or value of the Property.

8.11 No Offer. The submission of this Agreement to Buyer shall not be deemed an offer by Seller to enter into any transaction or to enter into any other relationship with Buyer, whether on the terms contained in this Agreement or on any other terms. This Agreement shall not be binding upon Buyer or Seller nor shall Buyer or Seller have any obligations or liabilities or any rights with respect hereto, unless and until both Buyer and Seller have executed and delivered this Agreement. Until such execution and delivery of this Agreement, Seller may negotiate with other prospective buyers and either Buyer or Seller may terminate all negotiation and discussion of the subject matter of this Agreement without cause or for any reason, without recourse or liability.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written.

[NO SEAL]

FOREST WEST PROPERTIES, INC.

By: _____
Name: _____
Title: _____

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

On this ___ day of ___, 2007, before me appeared ___, to me personally known, who, being by me duly sworn, did say that he/she is the ___ of FOREST WEST PROPERTIES, INC., a Missouri corporation, and that said instrument was signed in behalf of said Corporation by authority of its Board of Directors, and said individual acknowledged said instrument to be the free act and deed of said Corporation.

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
Printed Name:

Please affix stamp in area designated above

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the day and year first above written.

[SEAL]

CITY OF ST. LOUIS, MISSOURI

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

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
Printed Name:

Please affix stamp in area designated above

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
 Printed Name:

Please affix stamp in area designated above

EXHIBIT A

PROPERTY

The entirety of Block No. 4878 of the City of St. Louis, State of Missouri, currently consisting of several parcels bordered by Chouteau Ave. to the south, S. Newstead Ave. to the west, Interstate Highway 64 to the north, and Tower Grove Ave. to the east.

EXCEPT, that certain parcel owned by the City of St. Louis and more particularly described as **[INSERT LEGAL DESCRIPTION OF PARCEL OWNED BY THE CITY]**

EXHIBIT B

HOLDING COSTS THROUGH THE EFFECTIVE DATE

<u>Property Address</u>	<u>Acquisition Cost</u>	<u>Holding Costs</u>	<u>Total Costs</u>
4359 Chouteau	\$ 56,835.00	\$ 8,456.00	\$ 65,291.00
4373 Chouteau	\$ 11,700.00	\$ 7,589.00	\$ 19,289.00
4385 Chouteau	\$ 61,425.00	\$ 9,982.00	\$ 71,407.00
4395 Chouteau	\$ 22,779.00	\$ 19,753.00	\$ 42,532.00
4399 Chouteau	\$ 47,456.26	\$ 17,032.00	\$ 64,488.26
4363 Donovan	\$ 21,892.50	\$ 7,354.00	\$ 29,246.50
4365 Donovan	\$ 18,765.00	\$ 17,350.00	\$ 36,115.00
4367 Donovan	\$ 15,637.50	\$ 15,616.00	\$ 31,253.50
4369 Donovan	\$ 15,637.50	\$ 16,988.00	\$ 32,625.50
4373 Donovan	\$ 15,637.50	\$ 7,403.00	\$ 23,040.50
4375 Donovan	\$ 15,367.50	\$ 16,631.00	\$ 31,998.50
4379 Donovan	\$ 15,637.50	\$ 18,093.00	\$ 33,730.50
4383 Donovan	\$ 28,147.50	\$ 7,269.00	\$ 35,416.50
4387 Donovan	\$ 25,020.00	\$ 7,321.00	\$ 32,341.00
4391 Donovan	\$ 22,500.00	\$ 7,385.00	\$ 29,885.00
4393 Donovan	\$ 15,637.50	\$ 7,921.00	\$ 23,558.50
4395 Donovan	\$ 81,000.00	\$ 9,768.00	\$ 90,768.00
4371 Donovan	\$ 51,881.75	\$ 17,055.00	\$ 68,936.75
4379-81 Chouteau	\$ 175,898.00	\$ 11,599.00	\$ 187,497.00
4375-77 Chouteau	\$ 100,628.28	\$ 12,182.00	\$ 112,810.28
TOTAL	\$ 819,483.29	\$ 242,747.00	\$1,062,230.29

EXHIBIT C

PERMITTED EXCEPTIONS

1. Any covenants, conditions, limitations, restrictions, rights of way, encumbrances, encroachments, reservations, easements, agreements and other matters reserved in or established by the provisions of, or permitted under or contemplated by this Purchase and Sale Agreement.
2. Covenants, conditions, limitations, restrictions, rights, rights of way, encumbrances, encroachments, reservations, easements, agreements and other matters of fact or record.
3. Present and future zoning, subdivision, building, land use, and environmental laws, ordinances, restrictions, resolutions, orders and regulations and all present and future ordinances, laws, regulations and orders of all federal, state, county, municipal or other governments, agencies, boards, bureaus, commissions, authorities and bodies now or hereafter having or acquiring jurisdiction of the Property and the use and improvement thereof.
4. Any state of facts or exception which an accurate survey or an inspection of the Property would show.
5. Special assessments now or hereafter becoming a lien.
6. General property taxes for the current tax fiscal year and subsequent tax fiscal years.
7. The Deed Restriction, as defined in Section 1.6 (a) (i).
8. All other exceptions listed in the Title Insurance Commitment to be obtained by Buyer pursuant to Section 4.1(a) of the Agreement.

Approved: December 17, 2007