

ORDINANCE #68626
Board Bill No. 302

An ordinance approving a blighting study and redevelopment plan dated December 15, 2009 for the 4101-43 and 4134-40 N. Newstead Ave. & 4406 Lee Ave. Redevelopment Area (as further defined herein, the "Plan") after finding that said Redevelopment Area ("Area") is blighted as defined in Section 99.320 of the Revised Statutes of Missouri, as amended (the "Statute" being Sections 99.300 to 99.715 RSMo inclusive, as amended); containing a description of the boundaries of the Area in the City of St. Louis ("City"), attached hereto and incorporated herein as Attachment "A", finding that redevelopment and rehabilitation of the Area is in the interest of the public health, safety, morals and general welfare of the people of the City; approving the Plan attached hereto and incorporated herein as Attachment "B", pursuant to Section 99.430 RSMo, as amended; finding that there is a feasible financial plan for the redevelopment of the Area which affords maximum opportunity for redevelopment of the Area by private enterprise; finding that no property in the Area may be acquired by the Land Clearance for Redevelopment Authority of the City of St. Louis ("LCRA"), a public body corporate and politic created under Missouri law, through the exercise of eminent domain; finding that none of the property within the Area is occupied, but if it should become occupied the Redeveloper(s) (as defined herein) shall be responsible for providing relocation assistance pursuant to the Plan to any eligible occupants displaced as a result of implementation of the Plan; finding that financial aid may be necessary to enable the Area to be redeveloped in accordance with the Plan; finding that there shall be available up to a ten (10) year real estate tax abatement; and pledging cooperation of this St. Louis Board of Aldermen ("Board") and requesting various officials, departments, boards and agencies of the City to cooperate and to exercise their respective powers in a manner consistent with the Plan; and containing a severability clause.

WHEREAS, the predominance of defective or inadequate street layout, insanitary or unsafe conditions, deterioration of site improvements, improper subdivision or obsolete platting, inadequate or outmoded design and conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, morals or welfare in the present condition and use of the Area and such conditions are beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by ordinary private enterprise without the aids provided in the Statute; and

WHEREAS, this Board has considered the "Blighting Study and Redevelopment Plan for the 4101-43 and 4134-40 N. Newstead Ave. & 4406 Lee Ave. Redevelopment Area" dated December 15, 2009, consisting of a Title Page; a Table of Contents Page, sixteen (16) numbered pages including Exhibits "A" – "F" attached hereto and incorporated herein as Attachment "B" ("Plan"); and based on the information in the Plan, specifically the Blighting Report in Exhibit "F" to the Plan, considered each parcel of property in the Area and found the preponderance of the Area to be blighted, and

WHEREAS, there is a need for the LCRA to undertake the redevelopment of the Area as a land clearance project under the Statute, pursuant to plans by or presented to the LCRA under Section 99.430.1 (4) RSMo, as amended; and

WHEREAS, the LCRA has, after considering each individual parcel of property in the Area and finding the Area to be blighted, approved the Plan and recommended approval of the Plan to the Planning Commission of the City of St. Louis ("Planning Commission") and to this Board; and

WHEREAS, it is desirable and in the public interest that a public body, the LCRA, undertake and administer the Plan; and

WHEREAS, the LCRA and the Planning Commission have made and presented to this Board the studies and statements required to be made and submitted by Section 99.430 RSMo, as amended, and this Board has been fully apprised by the LCRA and the Planning Commission of the facts and is fully aware of the conditions in the Area; and

WHEREAS, the Plan has been presented and recommended by LCRA and the Planning Commission to this Board for review and approval; and

WHEREAS, a general plan has been prepared and is recognized and used as a guide for the general development of the City and the Planning Commission has advised this Board that the Plan conforms to that general plan; and

WHEREAS, under the provisions of the Statute, it is required that this Board take such actions as may be required to approve the Plan; and

WHEREAS, this Board has duly considered the reports, recommendations and certifications of the LCRA and the Planning Commission; and

WHEREAS, the Plan prescribes land use and street and traffic patterns which may require, among other things, the vacation of public rights-of-way, the establishment of new street and sidewalk patterns or other public actions; and

WHEREAS, this Board is cognizant of the conditions which are imposed on the undertaking and carrying out of a redevelopment project, including those relating to prohibitions against discrimination because of race, color, creed, national origin, sex, marital status, age, sexual orientation or physical handicap; and

WHEREAS, in accordance with the requirements of Section 99.430 RSMo, as amended, this Board placed public notices in a newspaper of general circulation in the City that a public hearing would be held by this Board on the Plan, and a hearing was held at the time and place designated in those notices and all those who were interested in being heard were given a reasonable opportunity to express their views; and

WHEREAS, it is necessary that this Board take appropriate official action respecting the approval of the Plan.

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

SECTION ONE. There exists within the City of St. Louis ("City") a blighted area, as defined by Section 99.320 of the Revised Statutes of Missouri, as amended (the "Statute" being Sections 99.300 to 99.715 inclusive, as amended) described in Attachment "A", attached hereto and incorporated herein, known as the 4101-43 and 4134-40 N. Newstead Ave. & 4406 Lee Ave. Area ("Area"). The existence of deteriorated property and other conditions constitutes an economic or social liability to the City and presents a hazard to the health and well-being of its citizens. These conditions, therefore, qualify the Area as blighted within the meaning of Section 99.320(3) RSMo, as amended, and are evidenced by the Blighting Report attached as Exhibit "F" ("Blighting Report") to the Blighting Study and Redevelopment Plan for the Area dated December 15, 2009 which is attached hereto, and labeled Attachment "B" and incorporated herein by reference ("Plan").

SECTION TWO. The redevelopment of the Area, as provided by the Statute, is necessary and in the public interest, and is in the interest of the public health, safety, morals and general welfare of the people of the City.

SECTION THREE. The Area qualifies as a redevelopment area in need of redevelopment under the provision of the Statute, and the Area is blighted as defined in Section 99.320 of the Statute.

SECTION FOUR. The Plan (including the Blighting Report) having been duly reviewed and considered, is hereby approved and incorporated herein by reference, and the President or Clerk of this St. Louis Board of Aldermen ("Board") is hereby directed to file a copy of the Plan with the Minutes of this meeting.

SECTION FIVE. The Plan is feasible and conforms to the general plan for the City.

SECTION SIX. The financial aid provided and to be provided for financial assistance pertaining to the Area is necessary to enable the redevelopment activities to be undertaken in accordance with the Plan, and the proposed financing plan for the Area is feasible.

SECTION SEVEN. The Plan for the Area will afford maximum opportunity, consistent with the sound needs of the City as a whole, for the redevelopment of the Area by private enterprise, and private redevelopments to be sought pursuant to the requirements of the Statute.

SECTION EIGHT. The Plan provides that the Land Clearance for Redevelopment Authority of the City of St. Louis ("LCRA") may acquire no property in the Area by the exercise of eminent domain.

SECTION NINE. None of the property within the Area is currently occupied. If it should become occupied, all eligible occupants displaced by the Redeveloper(s)(as defined in Section Twelve, below) shall be given relocation assistance by the Redeveloper(s) at its expense, in accordance with all applicable federal, state and local laws, ordinances, regulations and policies.

SECTION TEN. The Plan gives due consideration to the provision of adequate public facilities.

SECTION ELEVEN. In order to implement and facilitate the effectuation of the Plan hereby approved, it is found and determined that certain official actions must be taken by this Board and accordingly this Board hereby:

- (a) Pledges its cooperation in helping to carry out the Plan;
- (b) Requests the various officials, departments, boards and agencies of the City, which have administrative responsibilities, likewise to cooperate to such end and to execute their respective functions and powers in a manner consistent with the Plan; and
- (c) Stands ready to consider and take appropriate action upon proposals and measures designed to effectuate the Plan.

SECTION TWELVE. All parties participating as owners or purchasers of property in the Area for redevelopment ("Redeveloper(s)") shall agree for themselves and their heirs, successors and assigns that they shall not discriminate on the basis of race, color, creed, national origin, sex, marital status, age, sexual orientation or physical handicap in the sale, lease, or rental of any property or improvements erected or to be erected in the Area or any part thereof and those covenants shall run with the land, shall remain in effect without limitation of time, shall be made part of every contract for sale, lease, or rental of property to which Redeveloper(s) is a party, and shall be enforceable by the LCRA, the City and the United States of America.

SECTION THIRTEEN. In all contracts with private and public parties for redevelopment of any portion of the Area, Redeveloper(s) shall agree:

- (a) To use the property in accordance with the provisions of the Plan, and be bound by the conditions and procedures set forth therein and in this Ordinance;
- (b) That in undertaking construction under the agreement with the LCRA and the Plan, bona fide Minority Business Enterprises (as further defined below, "MBEs") and Women's Business Enterprises ("as further defined below ("WBEs") will be solicited and fairly considered for contracts, subcontracts and purchase orders;
- (c) To be bound by the conditions and procedures regarding the utilization of MBEs and WBEs established by the City;
- (d) To adhere to the requirements of the Executive Order of the Mayor of the City, dated July 24, 1997, as has been extended.
- (e) To comply with applicable requirements of Ordinance No. 60275 of the City (First Source Jobs Policy, as codified at St. Louis City Revised Code Chapter 3.90);
- (f) To cooperate with those programs and methods supplied by the City with the purpose of accomplishing, pursuant to this paragraph, minority and women subcontractors and material supplier participation in the construction pursuant to the Plan. The Redeveloper(s) will report semi-annually during the construction period the results of its endeavors under this paragraph, to the Office of the Assistant Director-Certification and Compliance of the City and the President of this Board; and
- (g) That the language of this Section Thirteen shall be included in its general construction contract and other construction contracts entered into directly by Redeveloper(s).

The term MBE shall mean a sole proprietorship, partnership, corporation, profit or non-profit organization owned, operated and controlled by Minority Group Member(s) (as defined below) who have at least fifty-one percent (51%) ownership therein. The Minority Group Member(s) must have operational and management control, interest in capital and earnings commensurate with their percentage of ownership. The term Minority Group Member(s) shall mean persons legally residing in the United States who are Black, Hispanic, Native American (American Indian, Eskimo, Aleut or Native Hawaiian), Asian Pacific American (persons with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, U.S. Trust Territory of the Pacific Islands, Laos, Cambodia or Taiwan) or Asian Indian American (persons with origins from India, Pakistan or Bangladesh). The term WBE shall mean a sole proprietorship, partnership, corporation, profit or non-profit organization owned, operated and controlled by a woman or women having at least fifty-one percent (51%) ownership. The woman or women must have operational and managerial control, interest in capital and earnings commensurate with their percentage of ownership.

The term "Redeveloper(s)" as used in this Section shall include heirs, successors in interest, and assigns.

SECTION FOURTEEN. The Redeveloper(s) may seek ten (10) year real estate tax abatement pursuant to Sections 99.700 - 99.715, RSMo, as amended, upon application as provided therein. Such real estate tax abatement shall not include any Special

Business District, Neighborhood Improvement District, Commercial Improvement District, or any other similar local taxing district created in accordance with Missouri law, whether now existing or later created.

In lieu of the ten (10) year abatement outlined above, any Redeveloper(s) which is an urban redevelopment corporation formed pursuant to Chapter 353 of the Missouri Statutes shall hereby be entitled to real property ad valorem tax abatement which shall not include any Special Business District, Neighborhood Improvement District, Commercial Improvement District or any other similar local taxing district created in accordance with Missouri law, whether now existing or later created, for a total period of up to ten (10) years from the commencement of such tax abatement, in accordance with the following provisions of the Plan:

If property in the Area is sold by the LCRA to an urban redevelopment corporation formed pursuant to Chapter 353 of the Missouri Statutes, or if any such urban redevelopment corporation shall own property within the Area, then for a period of up to the first ten (10) years after the date such urban redevelopment corporation shall acquire title to property in the Area, taxes on that property shall be based upon the assessment of land, exclusive of any improvements thereon, during the calendar year two (2) years prior to the calendar year during which such urban redevelopment corporation shall have acquired title to that property. In addition to such taxes, any such urban redevelopment corporation shall for a period of up to ten (10) years make a payment in lieu of taxes to the Collector of Revenue of the City in an amount based upon the assessment on the improvements located on the property during the calendar year two (2) years prior to the calendar year during which such urban redevelopment corporation shall have acquired title to such property. If such property shall be tax exempt because it is owned by the LCRA and leased to any such corporation, then such urban redevelopment corporation for such period of up to the first ten (10) years of the lease shall make payments in lieu of taxes to the Collector of Revenue of the City in an amount based upon the assessment on the property, including land and improvements, during the calendar year two (2) years prior to the calendar year during which such urban redevelopment corporation shall lease such property.

All payments in lieu of taxes shall be a lien upon the real property and, when paid to the Collector of Revenue of the City shall be distributed as all other property taxes. These partial tax relief and payment in lieu of taxes provisions, during up to said ten (10) year period, shall inure to the benefit of all successors in interest in the property of the urban redevelopment corporation, so long as such successors shall continue to use such property as provided in the Plan and in any agreement with the LCRA. In no event shall such benefits extend beyond ten (10) years after any urban redevelopment corporation shall have acquired title to the property.

SECTION FIFTEEN. Any proposed modification which will substantially change the Plan must be approved by this Board in the same manner as the Plan was first approved. Modifications which will substantially change the Plan include, but are not necessarily limited to, modifications on the use of eminent domain, to the length of tax abatement, to the boundaries of the Area, or to other items which alter the nature or intent of the Plan.

The Plan may be otherwise modified (e.g. urban design regulations, development schedule) by the LCRA, provided that such revisions shall be effective only upon the consent of the Planning Commission of the City.

SECTION SIXTEEN. The sections of this Ordinance shall be severable. In the event that any section of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining sections of this Ordinance are valid, unless the court finds the valid sections of the Ordinance are so essential and inseparably connected with and dependent upon the void section that it cannot be presumed that this Board would have enacted the valid sections without the void ones, or unless the court finds that the valid sections standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

OPERATING LEASE AGREEMENT

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

PREMISES

1. The City owns the West End Community Center, a recreational and office facility located at 5242 Enright Avenue/724 Union Boulevard, St. Louis, Missouri 63112 (the “Center”).

2. The City desires to lease the Center for operation by a suitable entity, and has conducted a selection process to identify such an operator.
3. The Foundation has been duly selected to be the operator for the City, subject to a mutually acceptable agreement concerning such operation.
4. The City and the Foundation have agreed upon terms for rental and operation of the Center by the Foundation, as hereinafter set forth.

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

TERMS

1. **Lease.**

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

2. **Term.**

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

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

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

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

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

3. **Rent.**

As and for monetary rent, the Foundation shall pay to the City the sum of One Dollar (\$1.00) per year. Receipt of the

monetary rent for the initial term of this Agreement is hereby acknowledged by the City.

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

4. **Business Plan.**

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

5. **Subleases; Sublease Agreements.**

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

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

6. **Tenant Meetings; Advisory Board.**

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

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

7. **Alterations.**

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

8. **Revocation of Lease/Rental Agreement.**

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

- Non-payment or late payment of fees;
- Abusive damage to property;
- Failure to comply with terms of sublease agreement.

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

9. **City Use and Access.**

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

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

10. **Swimming Pool.**

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

11. **Rental Fees/Program Fees.**

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

12. **Responsibilities of Foundation.**

The Foundation shall:

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

13. **Repairs, Damages.**

In the event a repair to the facility under \$10,000 is necessary and the Foundation cannot make the repair, the Director can, in the Director's sole discretion, cause the necessary work to be performed in order to preserve the safety and continued operation of the Center, and then bill the Foundation for said work. Failure by the Foundation to reimburse the City may be deemed a cause for termination or may result in non-renewal of this Agreement. Any damage to the Center caused by the Foundation, its employees, agents, or contractors, or by Foundation operations or programs, shall be repaired, or the costs of repair shall be paid, regardless of the amount, by the Foundation; failure of the Foundation to make any such repair or pay such cost, within sixty days after notice to do so from the Director, shall be grounds for termination of this Agreement.

14. **Utilities.**

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

15. **Insurance.**

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

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

(b) Workers Compensation Insurance. The Foundation shall obtain and maintain insurance sufficient to discharge its obligations under all applicable workers compensation laws in the state as to work that is to be performed, including any of the federal or maritime laws.

(c) Miscellaneous. The Foundation shall cause any contractors employed by or contracted with the Foundation to purchase and maintain insurance of the types and limits specified herein (including appropriate motor vehicle insurance). The Foundation shall furnish the City with standard certificates of insurance as evidence of confirmation of all such insurance. All certificates shall provide for thirty (30) days written notice to the City prior to the cancellation, expiration or reduction of the limits of any insurance referred to therein and shall name the City, its officers, and employees as additional insureds. All insurers shall have an A.M. Best rating of A-, IX or higher and be fully authorized to conduct business in the State of Missouri.

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

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

16. **Capital repairs.**

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

17. **West End Center Accepted As Is.**

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

warranties or guarantees of any kind as to the suitability of the West End Center or the facilities therein for their intended use.

18. **Non-Discrimination Policy.**

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

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

19. **Living Wage.**

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

20. **Audits.**

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

21. **Service Contracts.**

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

- A. A provision specifying the minimum prevailing wages to be paid by the service contractor to any service employee;
- B. A provision specifying the minimum prevailing fringe benefits, to be provided by the service contractor to any service employee; and
- C. A representation by the service contractor to abide by the terms of Ch. 6.20 of the Revised Code, City of St. Louis and to pay and provide to all service employees the minimum prevailing wage and minimum prevailing fringe benefits as noted in the service contract; and

2. The Foundation warrants and represents to the City that it shall not enter into any service contract with (a) any service contractor debarred in accordance with Ch. 6.20 of the Revised Code, City of St. Louis or (b) any service contractor managed, controlled, or more than fifty percent (50%) owned by a person or entity so debarred; and

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

22. Notice and Addresses

All notices, demands, request or replies provided for or permitted by this Contract shall be in writing and may be delivered by any one of the following methods: (1) personal delivery or facsimile (followed immediately by a copy sent first class mail); (2) deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepared to the address as stated below; or (3) deposit with an overnight express delivery service. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (3) business days after deposit with the Postal Service. Notice by overnight express delivery service shall be deemed effective one (1) business day after deposit with the express delivery service. Notice by personal delivery or facsimile shall be deemed effective at the time of personal delivery or confirmed transmission.

For purposes of notice, demand, request, reply or payment;

i) if to the City, delivery of such shall be to both the Director and the Comptroller at the following addresses:

Director of Parks, Recreation & Forestry
5600 Clayton in Forest Park
St. Louis, MO 63110

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

ii) if to the Foundation, delivery of such shall be at the following address:

Demetrious Johnson Charitable Foundation
c/o Demetrious Johnson
840 Garonne
Ballwin, MO 63021-5656

THE CITY OF ST. LOUIS, MISSOURI

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

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

DEMETRIOUS JOHNSON CHARITABLE FOUNDATION

By _____

APPROVED AS TO FORM:

Secretary, Board of E & A

City Counselor

Date

Date

Register

Approved: March 29, 2010