

1 **BOARD BILL NO. 132** **INTRODUCED BY ALDERWOMAN LYDA KREWSON**

2 An ordinance pertaining to Forest Park; authorizing and directing the execution of a
3 Second Amendment to the Lease by the City of St. Louis (the “City”) to Forest Park Forever, Inc.
4 (“FPF”) dated November 6, 2002 (the “Lease”) of certain property in Forest Park, reviewed and
5 recommended by the Board of Public Service and approved by the City Counselor as to form and
6 as consistent except as expressly noted with Ordinance 59741 (Chapter 22.42, St. Louis City
7 Code); authorizing the construction by Forest Park Forever, Inc. of a playground on a site in
8 Forest Park, subject to the provisions of the Cooperation Agreement authorized by Ordinance
9 65480 and the Cooperation Agreement authorized by this Ordinance; authorizing and directing
10 the execution of a Cooperation Agreement among the City, FPF and Variety – The Children’s
11 Charity of St. Louis, a Missouri not-for-profit corporation (“Variety”); with an emergency
12 provision.

13 WHEREAS, Ordinance 65614 authorized the lease by the City to FPF of the “Lindell
14 Pavilion” and adjacent land situated in Forest Park, subject to and in accordance with the terms,
15 covenants and conditions set forth in the Lease; and

16 WHEREAS, FPF has requested that the Lease be amended, subject to the terms and
17 conditions contained in the Second Amendment to Lease (“Second Amendment”), Exhibit A hereto,
18 so as to remove from the Lease area an approximately .34 acre site adjacent to the Dennis and Judith
19 Jones Visitor’s & Education Center as described in the Second Amendment (the “Site”), to enable
20 Variety to provide to FPF the funds required to construct a children’s playground on the Site which
21 shall, upon completion, be owned by the City.

1 WHEREAS, this ordinance has been reviewed and recommended by the Board of Public
2 Service and approved by the City Counselor as to form and as consistent except as expressly noted
3 with Ordinance 59741 (Chapter 22.42, St. Louis City Code); and

4 WHEREAS, it is in the best interests of the City to enter into a Cooperation Agreement with
5 FPF and Variety concerning the construction and maintenance of the playground;

6 **BE IT ORDAINED BY THE CITY OF SAINT LOUIS AS FOLLOWS:**

7 **SECTION ONE.** The Mayor and the Comptroller are hereby authorized and directed to
8 enter into the Second Amendment to the Lease, which terminates the Lease for the approximately
9 .34 acre site (the “Playground Site”), on which a children’s playground shall be built by FPF
10 with funds from Variety and donated to the City upon its completion, as more fully provided in
11 the Cooperation Agreement authorized by this ordinance. The Second Amendment to the Lease
12 shall be in substantially the form attached hereto as Exhibit A, incorporated herein by this
13 reference.

14 **SECTION TWO.** FPF is hereby authorized to construct a playground on the
15 Playground Site, subject to the provisions of the Cooperation Agreement by and between the City
16 and FPF authorized by Ordinance 65480 and to the provisions of the Cooperation Agreement
17 authorized by this Ordinance. All construction or work on the Site shall be done in complete
18 compliance with all applicable City, State and Federal Codes.

19 **SECTION THREE.** The Mayor and Comptroller are hereby authorized and directed
20 to execute and deliver, on behalf of the City, a Cooperation Agreement among the City, FPF and
21 Variety concerning the construction and maintenance of the playground, substantially in the form

June 10, 2005

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Sponsor: Krewson

1 attached hereto as Exhibit B.

2 **SECTION FOUR.** This being an ordinance providing in part for the immediate
3 preservation of the public welfare, it is hereby declared to be an emergency measure within the
4 meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis, and shall
5 become effective upon its passage and approval by the Mayor or its adoption over the Mayor's
6 disapproval.

EXHIBIT A

SECOND AMENDMENT TO LEASE

This Second Amendment to the Lease authorized by Ordinance 65614, by the City of St. Louis (the “City”) to Forest Park Forever, Inc. (“FPF”) dated November 6, 2002 (the “Lease”) of certain property in Forest Park, made and entered into this ____ day of _____, 2005 (the “Date of this Second Amendment”), between the City and (“FPF”), witnesses that:

WHEREAS, the Mayor and Comptroller of the City, acting for and on behalf of the City pursuant to the City Charter, Chapter 22.42 of the City Code and Ordinance 65614 were authorized and directed to lease to FPF the “Lindell Pavilion” and adjacent land situated in Forest Park described and depicted in Exhibit 1 hereto, (the “Original Lease Area”) subject to and in accordance with the terms, covenants and conditions set forth in the Lease; and

WHEREAS, the parties have agreed to amend the Lease, subject to the terms and conditions contained in this Second Amendment to Lease (“Second Amendment”), so as to remove from the Original Lease Area an approximately .34 acre site adjacent to the Dennis and Judith Jones Visitor’s & Education Center, which site is described and depicted in Exhibit 2 hereto (the “Site”); and

WHEREAS, the City’s execution and delivery of this Second Amendment of the Lease has been authorized by Ordinance _____ (B.B. _____); and

WHEREAS, this Second Amendment to the Lease has been reviewed and favorably recommended in writing by the Board of Public Service, and approved by the City Counselor as to form and as being consistent with Ch. 22.42, City Code, except as otherwise herein expressly provided, prior to the adoption of Ordinance _____ (B.B. _____);

PROVISIONS

1. This Second Amendment is effective as of the last date that this Second Amendment is signed by a party hereto.

2. The words used in this Second Amendment have the same meaning as in the Lease.

3. Except as otherwise modified herein, the Lease shall remain unchanged and in full force and effect.

4. The Lease is hereby amended by deleting the Site from the Original Lease Area. FPF hereby relinquishes any and all claims or rights relating to the Site under the Lease.

5. FPF hereby grants to the City, throughout the term of the Lease, an easement and right-of-way across, over and above the amended Lease Area to the Site and the Playground, for pedestrian and vehicular use. FPF agrees to execute any further instruments reasonably requested by the City to effectuate the intent of this paragraph.

6. FPF hereby grants and gives a license, throughout the term of the Lease, to any and all persons to enter upon and cross any part of the amended Lease Area for access to the Site and the Playground. FPF agrees to execute any further instruments reasonably requested by the City to effectuate the intent of this paragraph.

CITY OF ST. LOUIS

By: _____
Title

Date: _____

By: _____
Comptroller

Date: _____

VARIETY - THE CHILDREN'S CHARITY
OF ST. LOUIS

By: _____
Title

Date: _____

FOREST PARK FOREVER

By: _____
Title

Date: _____

APPROVED AS TO FORM: _____
City Counselor

ATTEST: _____
Register

EXHIBIT B

COOPERATION AGREEMENT

This is a Cooperation Agreement (“this Agreement”) among the City of St. Louis, Missouri (the “City”), Forest Park Forever, Inc., a Missouri not-for-profit corporation (“FPF”), and Variety - The Children’s Charity of St. Louis, a Missouri not-for-profit corporation (“Variety”), made and entered into this ___ day of _____, 2005 (the “date hereof”).

RECITALS

1. Variety plans to give FPF the sum of approximately One Million One Hundred Thousand Dollars (\$1,100,000.00) to construct and install a children’s playground (the “Playground”) on a City-owned site in Forest Park.
2. The Playground construction is authorized by City Ordinance ____ (B.B. ____).
3. Upon completion of the Playground in compliance with plans and specifications which the City, Variety and FPF have approved, FPF and Variety shall give the Playground to the City, and upon its acceptance by the City, the City shall own it.
4. The parties wish to agree, as hereinafter provided, on certain provisions and procedures relating to the construction of the Playground and the maintenance and repair of the Playground after it has been accepted by the City.
5. This Agreement is authorized by Sections 70.210 et seq. RSMo, 2005.

For and in consideration of the foregoing recitals, and of their mutual promises and undertakings hereinafter set forth, the parties agree as follows as of the date hereof:

PROVISIONS

1. The construction of the Playground by FPF will be done in compliance with and subject to the provisions of the Cooperation Agreement between the City and FPF, which was authorized by Ordinance 65480 (the “2002 Cooperation Agreement”), as an “FPF Project” as that term is used in the 2002 Cooperation Agreement. In the event of any conflict between the 2002 Cooperation Agreement and any agreement of FPF and Variety relating to the construction and installation or maintenance of the Playground, the 2002 Cooperation Agreement will control. In the event of any conflict between this Cooperation Agreement and any agreement of FPF and Variety relating to the construction and installation or maintenance of the Playground, this Cooperation Agreement will control. In the event the construction of the Playground by FPF according to plans and specifications approved by the City is not completed by August 30, 2006, the City, in its sole discretion, may

complete the construction in such manner as it deems appropriate, and thereafter will own same, or it may remove what has been installed from the Playground site.

2. Upon conclusion of the construction of the Playground, FPF and Variety will offer the Playground to the City. If the Playground has been completed in substantial compliance with the plans and specifications approved by the City, the City will accept the Playground. Thereupon, FPF will place in its "Forest Park Trust" account the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) for the maintenance and repair of the Playground. Variety and FPF will assign to the City upon acceptance of the Playground by the City the right to enforce all warranties and guaranties of contractors or suppliers relating to the Playground.

3. The City's Director of Parks, Recreation and Forestry (the "Director") and FPF shall agree, prior to the final approval by the City of plans and specifications for the Playground, on a written maintenance program for maintenance and repair of the Playground and maintenance, repair and replacement of Playground equipment, including landscape and plant materials and nearby trees (the "Maintenance Program"). The Maintenance Program shall be consistent with recognized recreation facility standards. It shall provide schedules, procedures and forms for maintenance tasks, for a system of maintaining records of maintenance, repair and replacement work and inspections by FPF, to which system the City may have access during business hours, and for daily removal of trash, litter and debris from the Playground by FPF. FPF agrees that it will take no action, and will not omit any action, relating to maintenance, repair and replacement of the Playground and/or equipment, which act or omission would void or impair any applicable guaranty or warranty relating to the Playground. The Maintenance Program shall be subject to modification upon the written consent of the Director and FPF, which consents shall not be unreasonably withheld. FPF agrees that it will maintain and repair the Playground and maintain, repair and replace the Playground equipment as provided in the Maintenance Program. All other provisions of this Agreement notwithstanding FPF's total annual expenditures for maintenance and repair and replacement of the playground and playground equipment pursuant to this Cooperation Agreement hereof shall not in any year exceed Twelve Thousand Five Hundred Dollars (\$12,500.00). Playground inspections performed under the Maintenance Program will be performed by inspectors certified in playground safety by the National Recreation and Park Association. Copies of reports of inspections made by or on behalf of FPF will be delivered to the City Representative not later than five (5) business days after receipt by FPF.

4. FPF will coordinate its maintenance and repair of the Playground with the City's designated representative of the City's Department of Parks, Recreation and Forestry (the "City Representative").

5. In the event the City Representative determines that FPF is not maintaining the Playground as provided in the Maintenance Program, the City Representative will notify FPF in writing of the maintenance deficiencies. FPF and the City Representative shall meet within five (5) days of FPF's receipt of the written notice from the City to determine the course of action required. If FPF has not corrected the maintenance deficiencies within ten (10) days thereafter, the City may do the necessary work and FPF will reimburse the City for the cost thereof.

6. If at any time the City Representative determines that a condition exists at the Playground which creates an immediate risk of injury of any kind to users of the Playground, the City may take any and all measures appropriate and necessary to correct the condition, including closing all or part of the Playground, and FPF will reimburse the City for the cost thereof.

7. FPF shall report to the City Representative by January 31 each year, in writing, the actions it took and the expenditures it made during the preceding calendar year to maintain, repair and replace the Playground and Playground equipment, and the actions it anticipates taking and the expenditures it anticipates making during the current calendar year therefor.

8. The City agrees to allow one or more signs identifying donors of funds for the Playground on or near the Playground Site. The location, size, materials and design of such signage is subject to City approval. FPF and Variety agree that the City's authorization of construction of the Playground, its willingness to accept the Playground which they proposed, and its allowance of signage identifying donors constitute valid legal consideration for their undertakings and promises in this Agreement.

CITY OF ST. LOUIS

By: _____
Title

Date: _____

By: _____
Comptroller

Date: _____

VARIETY - THE CHILDREN'S CHARITY
OF ST. LOUIS

By: _____
Title

Date: _____

FOREST PARK FOREVER

By: _____
Title

Date: _____

APPROVED AS TO FORM:

City Counselor

ATTEST:

Register