

AFTER RECORDING MAIL TO:

CITY OF DETROIT, DEPARTMENT OF PUBLIC WORKS
CITY ENGINEERING DIVISION
65 CADILLAC TOWER, SUITE 1000
DETROIT, MI 48226

AND

ST JOHN HEALTH SYSTEM
28000 DEQUINDRE
WARREN, MI 48092
ATTN: CORPORATE REAL ESTATE

MAINTENANCE AGREEMENT

This Agreement is made and entered into this 8th day of May 2006 by and between the City of Detroit, a body public, through its Department of Public Works, (referred to as the "CITY") and ST JOHN HEALTH SYSTEM-DETROIT-MACOMB CAMPUS, doing business as ST JOHN-PROVIDENCE RIVERVIEW HOSPITAL (ST JOHN), a Michigan Non Profit Corporation, the owner of 7733 E. Jefferson Avenue, Detroit, MI 48214

NOW, THEREFORE, for valuable consideration, including the covenants and undertakings herein contained, it is mutually agreed as follows

1. **Purpose of Agreement:** ST JOHN agrees to construct and/or maintain during the Term set forth in Paragraph 2 the following infrastructure improvements as detailed in the engineering plans attached as Exhibits "A" and "B" and "C" and incorporated by reference herein:

- Public Alley Improvements: Heavy Duty Asphalt re-surfacing of the public alley in the block bounded by Seyburn Avenue, Van Dyke Avenue, East Jefferson Avenue and Van Dyke Place. The improvements stated herein are attached as Exhibit "A" which contains Engineering Plans prepared by the professional engineering firm of Giffels Webster Engineering, dated July 8, 2005, Job #16970.00D.
- Public Street Maintenance: A) Seyburn Avenue as bounded by Van Dyke Place and E. Jefferson Avenue. B) Van Dyke Place as bounded by Seyburn and Baldwin Avenues and C) The remaining portion of Baldwin Avenue, north of Van Dyke Place and D) E. Congress Street, between Sheridan Avenue and Baldwin Avenue, all as depicted in the Site Plan attached as Exhibit "B."
- Construction of a pedestrian sidewalk and designated berm improvements (Baldwin Avenue/ Van Dyke Place Improvements) adjacent to 672 Baldwin, Detroit, MI 48214 as well as ADA compliant access for five (5) designated, asphalt paved and graded parking spaces. Signage marking the designated parking as private, exclusively reserved for the use the owner of 672 Baldwin, Detroit, MI

48214. The designation of the parking described herein shall remain private only so long as 672 Baldwin, Detroit, MI 48214 is owned solely or jointly by Mrs. Mary Cokely and will not run to the benefit of her heirs or assigns. The improvements stated herein are attached as Exhibit "C" which contains Engineering Plans prepared by the professional engineering firm of Giffels Webster Engineering, dated November 1, 2004 as revised March 10, 2006, Job #16970, Sheet C003.

2. **Term:** The Term of this agreement shall commence upon ST JOHN's completion of the Baldwin/VanDyke Place Improvements and re-paving of the public alley bounded by Seyburn Avenue and Van Dyke Avenue and shall continue for a period of ten (10) years thereafter. Following the initial term, the Agreement shall be automatically extended on a year to year basis unless and until terminated by either party upon thirty (30) days prior written notice. The improvements set forth within Exhibits "A" and "B" are scheduled to commence upon execution of this Maintenance Agreement and are to be completed no later than September 1, 2006.

3. **Scope and Definition of Duty to Maintain and Repair:** The CITY hereby contracts with ST JOHN for the maintenance and repair of the improvements set forth in Paragraph 1 of this Agreement. The terms "maintenance and repair" shall include snow removal and the repair of ordinary wear and tear associated with asphalt paving and construction and the scope of work approved by the City of Detroit as set forth in Exhibits "A" and "C". It is exclusive however of damages incurred as a result work done within the public

right of ways identified in this Agreement either by the CITY or any public utility or other governmental entity, holding a recorded easement or other such encumbrance. Any such damages incurred or caused by a municipal, other governmental or publicly regulated utility shall be repaired at such third party's expense. ST JOHN shall perform its obligations under this Agreement in accordance with all applicable municipal ordinances, regulations and laws of the State of Michigan.

4. **Financial Responsibility.** It is understood that all physical improvements and repairs set forth herein shall be at the sole cost and expense of ST JOHN except as set forth to the contrary in Paragraph 3.

5. **Indemnification and Hold Harmless:** ST JOHN hereby agrees to indemnify, defend and hold the City harmless only from all loss, costs, expense, actions, claims, causes of action, damages and liability (including attorneys' fees and costs) for injury to or death of any person or persons and for damage to or destruction of property arising from the sole negligence or misconduct of ST JOHN in the performance of its obligations as set forth under this Agreement.

6. **Insurance:** ST JOHN covenants and agrees at its sole cost and expense to maintain for the mutual benefit of it and the CITY comprehensive general liability insurance on an occurrence form against claims for bodily injuries (including but not limited to death) or property damage (including but not limited to destruction) occurring upon, in or about the public right of ways described herein, at combined single limits of not less than One Million (\$1,000,000) Dollars per occurrence, One Million (\$1,000,000) Dollars aggregate, subject to the exclusion set forth in Paragraph 3. Such insurance coverage shall name the

City of Detroit as an additional insured and shall provide that the same may not be canceled or materially modified without prior written notice by certified mail to the City to the attention of the City of Detroit, Finance Department , Coleman A. Young Municipal Center, Detroit, MI 48226 Attn: Risk Management Division. Said coverage may be affected by a certificate of insurance issued upon so-called "blanket" coverage, but either a certificate or the original of an insurance policy affecting such coverage. This insurance shall be primary and any such insurance maintained by the CITY shall be secondary and non-contributory and excess over the CITY's comprehensive general liability insurance. ST JOHN shall be responsible for payment of all deductibles relating to insurance maintained by ST JOHN provided however that CITY waives and releases ST JOHN from any claims for such deductible amount to the extent the CITY has liability insurance coverage unless this waiver and release causes an increase in the CITY's insurance premiums, in which event the CITY shall give ST JOHN written notice of such additional insurance premiums and ST JOHN's liability for such deductible shall be waived and released upon the reimbursement to the CITY of such additional premiums. The provision requiring ST JOHN to carry such insurance shall not be construed as waiving or restricting the liability of ST JOHN under this Agreement.

7. **Right to Assign.** ST JOHN may assign its rights and obligations under this Agreement to an entity under ST JOHN control, such as a wholly owned affiliate or subsidiary, with out CITY's prior consent. ST JOHN shall immediately notify in writing the CITY of such an assignment and such assignment shall not relive ST JOHN of its obligations hereunder in the event its assignee fails to comply with the terms and conditions of this Agreement. ST JOHN may also assign its rights and obligations under this Agreement to an unrelated third party upon CITY'S prior consent, not to be

unreasonably withheld. Upon such authorized assignment to an unrelated third party, ST JOHN's obligations under this Agreement will cease.

8. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

9. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties. Any prior agreements, negotiations or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to or modification of this Agreement shall be of no force and effect unless it is in writing and signed by an authorized signatory for each of the parties.

10. **Successors and Assigns.** This agreement shall be binding upon the successors and assigns. This Agreement is for the exclusive benefit of the parties stated herein shall not be deemed to give any legal or equitable right remedy or claim whatsoever to any other person.

11. **Binding Arbitration.** All disputes under the terms of this Agreement will resolved through binding Arbitration under the rules and procedures of the American Arbitration Association. The parties agree such Arbitration shall be conducted by an Arbitrator mutually agreed upon by the parties. Any such arbitration will be conducted in or near Detroit, Michigan.

12. **Historic Designation.** This agreement is in accordance with the Historic Designation of that portion of the public alley bounded by Seyburn and Van Dyke Avenues which falls within the Indian Village/West Village Historic District.

13. **Improvement Changes:** Any changes outside the scope of this agreement by ST JOHN to the public right of ways described herein shall be subject to the prior approval of the CITY.

SIGNATURES FOLLOW ON PAGES EIGHT AND NINE

Witness the execution hereof [under seal] as of the date first above written.

CITY OF DETROIT, A BODY PUBLIC, THROUGH ITS DEPARTMENT OF PUBLIC WORKS

By: William Talley

Printed Name: William Talley

Title: HEAD ENGR. CED /DPW

STATE OF MICHIGAN)
) SS.
COUNTY OF WAYNE)

On MAY 22nd, 2006, personally appeared William Talley the above-named HEAD ENGINEER, City ENGINEERING Division of the CITY OF DETROIT, DEPARTMENT OF PUBLIC WORKS, a Body Public, and acknowledged the foregoing to be the free act and deed of said entity, before me.

Leida Jean Daniel
Notary Public
My commission expires: OCTOBER 2, 2006

**ST JOHN HEALTH SYSTEM-MACOMB CAMPUS doing
business as ST JOHN PROVIDENCE RIVERVIEW
HOSPITAL**


By: 

PRINTED NAME: JOSEPH M. TASSE

TITLE: PRESIDENT

STATE OF MICHIGAN)
) SS.
COUNTY OF)

On May 15th, 2006, personally
appeared Joseph Tasse, the above-named
PRESIDENT of the ST JOHN HEALTH
SYSTEM, a Michigan Non Profit Corporation and
acknowledged the foregoing to be the free act and deed of said
entity, before me.


Notary Public
My commission expires: 9/27/10

**CHERYL HILL
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Sep 27, 2010
ACTING IN COUNTY OF**

“EXHIBIT C”

DRAWING ATTACHED LABELED
JOB #16970, SHEET C003

"EXHIBIT B"



“EXHIBIT A”

DRAWINGS ATTACHED LABELED
JOB #16970.00D