

## *St. Louis City Ordinance 64692*

FLOOR SUBSTITUTE

BOARD BILL NO. [99] 16

INTRODUCED BY ALDERMAN LYDA KREWSON

An ordinance, authorizing and directing the Mayor, the Comptroller, and the Treasurer to enter into a Purchase and Sale Agreement to sell to Pageant Building, L.L.C., a Missouri Limited Liability Corporation, certain real estate belonging to the City of St. Louis and located in City Block 5975, granting authority to take such further actions as are necessary to effectuate the Purchase and Sale Agreement, and containing a severability clause and an emergency clause.

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

SECTION ONE. The Mayor, the Comptroller, and the Treasurer are hereby authorized and directed to enter into a Purchase and Sale Agreement to sell to Pageant Building, L.L.C., at a price of not less than One Hundred Seventy Five Thousand and no/100 Dollars (\$175,000) certain real estate belonging to the City of St. Louis and more fully described as follows (hereinafter "Property"), to wit:

Parcel 1: Lot 17 in Block 1 of Rosedale Subdivision and in Block 5975 of the City of St. Louis, fronting 100 feet on the South line of Enright Avenue by a depth Southwardly of 175 feet to an alley.

Parcel 2: Lot 1 of Fox Subdivision, a re-subdivision of part of Lot 1 and all of Lots 2, 3 and 4 Block 1 of Rosedale Subdivision in City Block 5975 of the City of St. Louis, as per plat thereof recorded in Plat Book 60 Page 42 fronting 187.39 feet on the North line of Delmar Boulevard (100 feet wide), by a depth Northwardly of 155.00 feet to the South line of an alley 20.00 feet wide.

SECTION TWO. Terms and Conditions. The sale of the Property herein authorized is subject to such terms and conditions of the Purchase and Sale Agreement in substantially such form as Exhibit A attached hereto and incorporated herein by reference.

SECTION THREE. The Mayor, Comptroller and Treasurer are hereby authorized and directed to execute and deliver a Special Warranty Deed to

Pageant Building, L.L.C. upon payment of the Purchase Price as defined in the Purchase and Sale Agreement

SECTION FOUR. The net proceeds of this sale shall be placed in the Parking Trust Fund.

SECTION FIVE. Further Authority. The Mayor, the Comptroller, the City Treasurer, and other appropriate City officials are hereby authorized and directed to take such further actions and execute and delivery such other documents, certificates and instruments as may; be necessary or desirable to carry out and comply with the terms of the Purchase and Sale Agreement and the intent of this Ordinance.

SECTION SIX. Severability. 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 unconstitutional, the remaining sections of this Ordinance shall remain valid, unless the Court finds the valid sections of this Ordinance are so essentially and inseparably connected with, and do depend upon, the void section, that it cannot be presumed that the Board of Aldermen would have enacted the valid sections without the void ones; or unless the court finds the valid sections, standing alone, are incomplete and incapable of being executed in accordance with the legislative intent.

SECTION SEVEN. Incorporation of Exhibits. The Exhibits attached to this Ordinance are hereby incorporated herein by this reference as if such exhibits were duly set forth herein.

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

## REAL ESTATE PURCHASE CONTRACT

THIS REAL ESTATE PURCHASE CONTRACT (hereinafter, **Contract**), made and entered into by and between the Treasurer of the City of St. Louis, acting in his capacity as the Supervisor of Parking Meters, a municipal agency of the City of St. Louis ("Seller") and PAGEANT BUILDING, L.L.C., a Missouri limited liability company ("Purchaser").

WITNESSETH, for and in consideration of the covenants and agreements herein contained, and other good and valuable consideration, Seller hereby agrees to sell to Purchaser, and Purchaser hereby agrees to purchase from Seller, the property hereinafter described upon the terms and conditions hereinafter set forth:

## ARTICLE 1. SALE

Seller agrees to sell and convey to Purchaser and Purchaser agrees to purchase from Seller that certain real property and improvements thereon described as follows:

1.1 Land. Those certain tracts of land described in Exhibit A attached hereto and incorporated herein by reference (hereinafter referred to as the "Land"), together with all rights, easements and interests appurtenant thereto, including, but not limited to any streets or other public ways adjacent to the Land and owned by Seller and all water and mineral rights owned by Seller.

1.2 Improvements. All buildings, improvements, fixtures and structures now or hereafter located on the Land, (the "Improvements"), excepting, however, any Improvements not owned by Seller, including but not limited to those Improvements in connection with the cellular telephone tower lease dated February 11, 1993 between R.G. T. Partnership and Cybertel Cellular Telephone Company (the  Tower Lease .

1.3 Personal Property. Certain personal property and other tangible property pertaining to the Property, including but not limited to surveys, aerial photographs, geological reports, environmental reports, building plans, drawings, and specifications, zoning approvals, prepaid water and sewer tap-  
ons, prepaid development fees and deposits, utility deposits, escrow accounts with governmental authorities and the like (the "Personal Property"), excepting, however, any Personal Property not owned by Seller in connection with the Tower Lease and all rents from the Tower Lease as such rents were not assigned to Seller upon Seller s acquisition of the Property.

The Land, Improvements and Personal Property are sometimes hereinafter referred to as the "Property".

## ARTICLE 2. PURCHASE PRICE AND PAYMENT

2.1 Purchase Price. The Purchase Price ("Purchase Price") for the Property is One Hundred Seventy-Five Thousand and no/100 Dollars (\$175,000.00) and shall be paid as follows:

2.1.1 Earnest Deposit. Within five (5) days following the date upon which the ordinance authorizing the sale of the Property and execution of this Contract is passed by the Board of Aldermen for the City of St. Louis and this Contract is fully executed by the parties hereto, Purchaser shall deposit with the Escrow Agent (as hereinafter defined), as an Earnest Money Deposit, the sum of Ten Thousand and no/100 Dollars (\$10,000.00).

2.1.2 Payment at Closing. At Closing, Purchaser shall cause the Escrow Agent to pay all Earnest Money, together with interest thereon, to Seller and Purchaser shall pay the balance of the Purchase Price subject to prorations and adjustments, in immediately available funds.

2.2 Prorations and Adjustments. The following prorations and adjustments shall be made to the Purchase Price at Closing:

2.2.1 Taxes. All ad valorem real estate taxes ("Taxes") imposed on the Property for the year in which Closing occurs shall be prorated and adjusted to the Closing Date, based on the latest information available with respect to Taxes. All past due advalorem real estate taxes, special taxes or assessments due and payable on or before the Closing Date shall be paid by Seller on or before the Closing Date. All prorations will be on the basis of a 365 day calendar year with the Closing Date being credited or charged to Purchaser.

2.2.2 Rents. Paid rents (other than those paid in connection with the Tower Lease), common area charges, payments toward taxes and insurance and other amounts paid by tenants for the month of Closing, if any, shall be prorated based on the actual number of days in the month in which closing occurs. The amount of such paid rentals representing the prorated portion for the day of Closing and thereafter shall be deducted from the Purchase Price. Purchaser will be given credit for the day of Closing. The parties agree to provide one another with all documentation reasonably necessary to support calculation of the parties' pro rata share of any monthly or other rentals or charges.

2.2.3 Other Prorated Items. Fees and charges for utilities, including water, sewer, gas and electric, if any, shall be prorated to the day of Closing and the amount thereof shall be added to or deducted from the Purchase Price as the case may be. All such expenses shall be prorated and adjusted on the actual

number of days in the month in which Closing occurs with the day of Closing credited or charged to Purchaser as the case may be.

2.3 Expenses. In addition to any other expenses referred to herein, Seller and Purchaser shall be responsible for the following:

2.3.1 Seller shall be responsible to pay for all expenses in connection with the curing of any objections to title, if Seller opts to so cure such objections, payment of any consensual liens created by Seller and filing of curative documents in connection therewith, one-half of the Escrow Agent's customary closing fee, Seller's own attorneys' fees and such other expenses as provided herein.

2.3.2 Purchaser shall be responsible to pay for its title insurance commitment, title insurance policy, recording fee for the general warranty deed, one-half the Escrow Agent's customary closing fee, Purchaser's own attorney's fees and such other expenses as provided herein.

2.4 Earnest Money . The Earnest Money Deposits made pursuant to this Contract shall be held in escrow by the Clayton, Missouri office of Commonwealth Land Title Insurance Company at 7980 Clayton Road (hereinafter, "Escrow Agent" or "Title Insurance Company"). If the purchase and sale contemplated under this Contract is not consummated due to the default of Purchaser, then all Earnest Money Deposits and interest thereon shall be paid to Seller as liquidated damages and in full settlement of all damages sustained, and this Contract shall thereupon be canceled, and neither party shall have any further liability or obligation to the other. If the purchase and sale contemplated under this Contract is not consummated due to any reason other than the default of Purchaser, including, without limitation, the default of the Seller or otherwise, then the Earnest Money Deposits and all interests thereon shall be paid to Purchaser and, in the event of a default by Seller, the parties shall proceed as more specifically set forth in Article 13 below. Upon the Closing of this transaction, all Earnest Money Deposits shall be paid to Seller and credited to the Purchase Price.

### ARTICLE 3. REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Seller's Representations, Warranties and Covenants. In order to induce Purchaser to enter into this Contract, and in addition to any other

representations, warranties or covenants contained herein, Seller makes the following representations, warranties and covenants, each of which is material to the Purchaser and each of which is effective as of the date of this Contract and will be effective as of the date of Closing and shall survive the Closing:

3. 1.1 Title to Land. Seller has good and marketable fee simple title to the Property, subject only to existing zoning ordinances, liens, utility and road easements and restrictions of record and the Tower Lease. To the best of Seller's actual knowledge, there are no purchase contracts, options or other agreements of any kind, written or oral, formal or informal, whereby any person or entity other than Seller has acquired or has any basis to assert any right, title or interest in, or right to possession, use, enjoyment or proceeds of all or any portion of the Property, except any documents of record as of the date hereof and the Tower Lease.

3.1.2 Litigation. Seller has not received any written notice of any pending or threatened matters of litigation, administrative action or examination, claim or demand whatsoever relating to the Property.

3.1.3 Authority of Signatories; No Breach of Other Agreements; etc. The execution, delivery of and performance under this Contract is pursuant to authority validly and duly conferred upon Seller and the signatories hereto.

3.1.4 Bills and Invoices. To the best of Seller's actual knowledge, all bills and invoices for labor and material of any kind directed by Seller and relating to the Property, have been paid in full, and there are no mechanic's or materialmen's liens or other claims outstanding or available to any party in connection with the Property due to Seller's non-payment.

3.1.5 Executory Agreements. Seller is not a party to, and the Property is not subject to, any contract or agreement of any kind whatsoever, written or oral, formal or informal, with respect to the Property, other than (i) this Contract (ii) the Tower Lease and (iii) those matters set forth and described in detail in Exhibit B attached hereto and incorporated herein by reference (the "Executory Agreements"). Purchaser shall not, by reason of entering into or Closing under this Contract, become subject to or bound by any agreement, contract, lease, license, undertaking or understanding which it shall not have previously agreed in writing to accept.

3.1.6 Conduct Prior to Closing. From and after the date of this Contract, and while this Contract is in effect, Seller shall not solicit, initiate or negotiate a sale of the Property or any portion thereof with any person other than Purchaser

and Seller shall not enter into any agreement with or grant any option or right to any person other than Purchaser with respect to the sale, transfer or conveyance of the Property or any portion thereof, nor shall Seller take any other action which would cause any representation, warranty or covenant set out herein to be untrue as of Closing without Purchaser's prior consent.

3.2 Purchaser's Representations and Warranties. The execution and delivery of, and performance under, this Contract is pursuant to authority validly and duly conferred upon Purchaser and the signatures hereto.

3.2.1 Condition of Property. Subject to Seller's representations and warranties set forth above, Purchaser has had ample opportunity to inspect the Property and is purchasing the Property in its  as is,  where is  condition.

3.2.2 Development of Property. Buyer shall initially develop and operate or cause to be operated the Property as a mixed-use entertainment venue, including use as a nightclub and concert venue containing approximately 10,000 square feet of retail and/or office storefront space behind which will be located the entertainment venue and for parking in connection therewith.

3.3 Breach of Representations, Warranties or Covenants. In the event of the breach of any representation, warranty or covenant made herein or elsewhere in this Contract by either party, the breaching party hereby agrees to indemnify, to the extent provided by law, and hold the other harmless against all losses, damages, liabilities, costs, expenses (including reasonable attorneys' fees), and charges arising as a direct or indirect consequence of such breach.

#### ARTICLE 4. ITEMS TO BE DELIVERED

4.1 Items to Deliver. Within five (5) days following the date of this Contract, Seller shall deliver to Purchaser, the following items or, with respect to all or a portion of any such items that do not exist, a statement stating that the same do not exist:

4.1.1 Engineering Reports, Surveys, Plats and Plans. A true and accurate copy of any and all engineering reports, surveys, plats and plans of the Property which are in the possession or control of Seller.

4.1.2 Title Information. A true and accurate copy of any abstracts of title, certificates of title, title insurance policies or title insurance commitments, covering the Property which are in the possession or control of Seller.

4.1.3 Governmental Notices. A schedule and summary of any oral notices and a copy of any written notices received from any governmental or quasi-governmental authority or utility company relating to violations of any laws, regulations or ordinances affecting the Property which have not been corrected as of the date of this Contract.

4.1.4 Executory Agreements. A copy of each Executory Agreement.

4.1.5 Leases. A copy of each Lease affecting the Property.

4.2 Form of Delivery. All items described in this Article shall be delivered to Purchaser in the form of executed originals or photocopies of executed originals. If the same are not in writing, Seller shall provide written summaries thereof. Seller represents and warrants all such items will be true and complete and will include any and all amendments, modifications or changes thereto.

4.3 Failure to Deliver. If Seller fails to deliver any of the items required to be delivered to Purchaser (or, if appropriate, fails to supply Purchaser with a written statement that all or a portion of such items do not exist) within the period of time set forth in Section 4. 1, then, Purchaser shall have the right and option to extend the Investigation Period (as defined below) and the Closing Date hereunder, by written notice given to Seller by Purchaser within two (2) business days of such failure, for a period of time equal to the number of days during which Seller fails to deliver any of said items.

## ARTICLE 5. INVESTIGATION OF THE PROPERTY

5.1 Investigation Period. From and after the date of this Contract, and continuing for a period of forty-five (45) days thereafter (hereinafter referred to as the "Investigation Period"), Seller grants to Purchaser and its agents and representatives the full right of access to the Property, and Purchaser may, through its agents and representatives, and subject to the terms and conditions of the Confidentiality and Property Access Agreement previously entered into by Seller and Purchaser the terms of which are hereby incorporated by reference as if fully set forth herein, make (i) complete physical inspections of the Property, including the preparation of boundary line, spot and topographical surveys, taking soil samples, conducting boring tests and conducting

engineering and mechanical investigations and such other inspections as Purchaser may reasonably require; and (ii) investigations of all records, financial data, maintenance and service contracts and all other papers and matters, public or private, affecting or related to the Property pertaining to Seller's ownership and operation of the Property.

5.2 Option to Extend Investigation Period. In the event that Purchaser, in the course of its Investigation Period as set forth in Section 5.1 above, discovers any facts or information which, in the sole discretion of Purchaser, require or warrant further investigation and Purchaser cannot reasonably complete such further investigation within the forty-five (45) day period provided despite the exercise of diligent efforts, Purchaser, upon written notice to Seller within said forty-five (45) day period, shall have the right, but not the obligation, to extend the Investigation Period for up to an additional thirty (30) day period.

5.3 Purchaser to Indemnify Seller . Purchaser shall indemnify Seller against any mechanic's liens or other claims against the Property or Seller's ownership therein for any services rendered to the Property by Purchaser's inspection, surveying, test borings or other work performed by or through Purchaser. Purchaser shall immediately restore any damage to such Property caused by said inspections or otherwise by reason of Purchaser's entry, at Purchaser's sole expense.

5.4 Purchaser's Option to Terminate Contract. If Purchaser, in its sole discretion, determines that the Property is not satisfactory for Purchaser's proposed use, for any reason or for no reason at all, then Purchaser shall so notify the Seller in writing on or before termination of the Investigation Period and upon such notice this Agreement shall become null and void, the Earnest Money shall be returned to Purchaser and neither party shall have any further rights against the other hereunder. If Purchaser fails to notify Seller that the Property is not acceptable, this Agreement shall terminate and be deemed null and void, the Earnest Money shall be returned to Purchaser and neither party shall have any further rights against the other. Purchaser's investigation and inspection of the Property shall in no way abrogate, diminish or affect the representations, warranties and covenants made by Seller in this Contract.

## ARTICLE 6. MARKETABLE TITLE

6.1 Commitment for Title Insurance. Purchaser represents that within ten (10) days of full execution of this Contract, it will order from the Title Insurance Company a commitment for an ALTA (Form B) Owner's policy of title insurance, and copies of all documents referred to therein as exceptions.

Purchaser shall have the entire Investigation Period in which to examine title to the Property and to notify Seller that there is a defect in title such that there are liens or encumbrances against the Property, there are undisclosed leases or tenancies affecting the Property or there are other defects in title. If Purchaser does not give notice of any defects pursuant to this Section within the period provided above, then Purchaser shall be deemed to be satisfied with the status of the title as evidenced by the title insurance commitment and all exceptions shown on such commitment shall be Approved Exceptions. Notwithstanding the foregoing, Purchaser may at any time and at its option accept such title as Seller may deliver.

6.2 Survey Matters. During the Investigation Period Purchaser shall, at its option, obtain an accurate survey of the Property as may be required to delete the standard exceptions to the title insurance policy on the Property. If as a result of the examination by Purchaser of any surveys obtained by Purchaser or any surveys provided by Seller, there are disclosed any encroachments, protrusions, flood plains, encroachments, overlaps or boundary line disputes, any easements or rights of way not of record, any strips or gores or any other defects in title, Purchaser may give notice of such defect to Seller on or before termination of the Investigation Period. If the Purchaser does not give notice of any defects pursuant to this Section, then Purchaser shall be deemed to be satisfied with the status of the title as evidenced by any surveys and any exceptions to title which are shown by such survey shall be "Approved Exceptions." Notwithstanding the foregoing, Purchaser may at any time at its option accept such title as Seller may deliver.

6.3 Title Defects. Upon receipt of notice of a title defect, Seller may, at its option, but shall not be obligated to cure such defect. Pending correction of such defect if undertaken by Seller at its option, the time for Purchaser to perform any obligations or contingencies under this Contract, the Closing Date and obligations and payments required of Purchaser hereunder shall be postponed and extended for such time as may be required to cure such defect. In the event that Seller opts not to or is unable to cure any title defect to the satisfaction of Purchaser within fifteen (15) days following Purchaser's notice of such defect, Purchaser may: (i) accept the state of title subject to the defect, in which event said conditions and exceptions shall be accepted for all purposes and shall thereby be deemed Approved Exceptions and Purchaser shall be obligated to close on the Closing Date (as same may have been extended); or (ii) reject the state of title, in which event this Contract shall become null and void and of no further force and effect, and the Earnest Money Deposit shall be returned without further liability of either party to the other; or (iii) at

Purchaser's cost, cause the Title Insurance Company to insure over such defect. If title to the Property is not marketable for any reason other than a title defect created or suffered by Seller and neither Seller nor Purchaser corrects any such defect and Purchaser does not waive any such defect or accept title insurance over same, Purchaser may terminate this Contract and all Earnest Money and interest thereon shall be refunded to Purchaser as Purchaser's sole and exclusive remedy.

## ARTICLE 7. CONTINGENCIES

7.1 Purchaser's Contingencies . Purchaser's obligation to consummate the purchase called for herein shall be subject to the fulfillment or satisfaction or waiver of the contingencies set out below on or before forty-five (45) days after the date of execution of this Contract by all parties hereto (the "Contingency Date"). If Purchaser does not give written notice to Seller on or before the Contingency Date, as extended if at all, that all of the contingencies herein have been satisfied or waived by Purchaser, then such contingencies shall be deemed not to be satisfied or waived and this Contract shall be terminated and of no further force or effect and the Earnest Money Deposit together with any interest thereon shall be returned to Purchaser, and thereafter neither party shall have any further liability or obligation hereunder. Seller agrees to fully cooperate with Purchaser in Purchaser's attempt to satisfy the contingencies, and in connection therewith Seller agrees to execute such documents as may be reasonably required by any governmental or other agency or other party in order for satisfaction of any of the contingencies, provided, however, Seller shall not incur any cost, liability or expense in connection therewith.

7. 1.1 General Investigation. Purchaser shall be satisfied with the investigation of the Property to be made by Purchaser pursuant to Article V.

7.1.2 Feasibility. Purchaser will have determined, at Purchaser's sole discretion, that the proposed development of the Property is economically feasible, taking into account demographics, condition of the Property, utility easements affecting the Property, available financing and other relevant matters, all in Purchaser's sole and absolute discretion.

7.1.3 Permits and Approvals. Purchaser shall have obtained all permits and approvals (including, without limitation, site plan approvals, zoning or rezoning, building permits, storm water approvals, and utility approvals) from all applicable federal, county, state and municipal authorities and private and public utilities including plan commissions and legislative bodies, so as to permit, in the opinion of Purchaser, the use by Purchaser of the Property in

accordance with the building, use and development plans proposed or to be proposed by Purchaser. The attachment or imposition to any rezoning, permits or approvals by any federal, county, municipality, or state authority or public or private utility company of conditions objectionable to Purchaser, in Purchaser's sole discretion, shall be deemed to prevent the fulfillment of this contingency by satisfaction. Furthermore, any such approvals or permits shall not be deemed obtained until they become non-appealable.

## ARTICLE 8. CLOSING

8.1 Place and Closing Date. The closing ("Closing") of the purchase and sale of the Property shall take place not less than fifteen (15) days or more than thirty (30) days after the satisfaction or waiver of all contingencies set forth above in the offices of the Title Insurance Company (the "Closing Date"), or such other place and time as the parties may mutually agree.

8.2 Possession. At closing, Seller shall deliver possession of the Property to Purchaser free and clear of all leases (other than the Tower Lease), tenants, tenancies, occupancies or rights of possession of any person, other than those disclosed to and accepted by Purchaser prior to the termination of the Investigation Period.

8.3 Seller's Obligations at Closing. At Closing, Seller shall, in addition to any other obligations of Seller as set forth in this Contract:

8.3.1 Deed. Deliver a Special Warranty Deed, duly executed and acknowledged by Seller and in mutually acceptable form, conveying fee simple title to the Property to Purchaser, subject only to Approved Exceptions, if any, and real estate taxes for the year of Closing which are not then due and payable.

8.3.2 Assignment of Leases and Other Agreements. Deliver an Assignment of Leases and Other Agreements, duly executed and acknowledged by Seller, in a form reasonably acceptable to the parties hereto, transferring Seller's right, title and interest in and to the leases and other contracts set forth on Exhibit B of this Agreement, if any.

8.3.3 Certified Resolutions. Deliver a Resolution and/or other duly authorized document requested by the Title Company, of the Board of Aldermen of the City of St. Louis evidencing Seller's authority to enter into this Contract and to convey the Property to Purchaser.

8.3.4 Releases. Release or cause to be released and/or terminated (i) any consensual liens created by Seller, and, (ii) any security interest, mortgage or deed of trust, mechanic's lien, lease or other encumbrance affecting the Property which is not an Approved Exception and which Seller has opted to cure, if any.

8.3.5 Seller's Affidavit. Deliver an executed and acknowledged Seller's Affidavit in a form acceptable to Seller and the Title Company which will permit Purchaser to obtain title insurance without reference to standard title exceptions and in conformance with the provisions of this Contract.

8.3.6 Keys. Deliver to Purchaser any and all keys to the Property.

8.3.7 Non-Foreign Seller Affidavit. Deliver an executed affidavit of Seller setting forth the tax identification number of Seller, and certifying that, (i) Seller is not a foreign person as that term is used and defined in Sections 1455 and 7701 of the U.S. Internal Revenue Code-, and (ii) Seller is a United States tax resident.

8.3.8 Maintenance Records. Deliver true and correct copies of any current maintenance records, together with all books and records of the Property.

8.3.9 Security Deposits. Cause any and all Security Deposits made by tenant(s) in the Property and held by Seller to be paid to Purchaser.

8.3.10 Miscellaneous. Deliver to Escrow Agent and/or the Title Insurance Company any other documents required by this Contract to be delivered by Seller or necessary to implement and effectuate this Contract.

8.4 Purchaser's Obligations at Closing . At Closing, Purchaser shall, in addition to any other obligations of Purchaser as set forth in this Contract:

8.4.1 Earnest Money. Cause all Earnest Money and interest thereon to be delivered to Seller. proration).

8.4.2 Purchase Price. Deliver the balance of the Purchase Price to Seller (subject to adjustment and proration).

8.4.3 Certified Resolutions. Deliver a certificate of resolutions of the Managing Member of Purchaser evidencing Purchaser's authority to enter into this Contract.

8.4.4 Miscellaneous. Deliver any other documents required by this Contract to be delivered by Purchaser or necessary to implement and effectuate this Contract.

## ARTICLE 9. EMINENT DOMAIN

9.1 Commencement of Action. In the event that at any time prior to the Closing, any proceeding shall be commenced or consummated for the taking of all or any part of the Property for public or quasi-public use pursuant to the power of eminent domain or otherwise, Seller shall promptly give written notice thereof to Purchaser.

9.2 Purchaser's Option to Cancel. The commencement or completion of any such proceeding shall have no effect on this Contract unless Purchaser, by reason thereof, elects at its option, within thirty (30) days after receipt by it of Seller's notice of such taking, to cancel this Contract by giving written notice thereof to Seller to such effect, and upon the giving of such notice, the Earnest Money Deposits made by Purchaser shall be refunded to Purchaser, and thereupon this Contract shall become null and void and of no further force or effect, with neither party having any further rights or liabilities hereunder.

9.3 Purchaser's Right to Purchase. If Purchaser shall elect to proceed with the performance of this Contract, notwithstanding the commencement of any such proceedings described herein, or the completion of any such taking, then Seller shall assign any and all awards and other compensation for any such taking to Purchaser but only up to the amount of the Purchase Price, and Seller shall convey all or such portion of the Property, if any, as shall be left after such taking in accordance with the terms of this Contract.

## ARTICLE 10. RISK OF LOSS OR DAMAGE

The risk of loss or damage to the Property by fire or otherwise, is assumed by Seller until closing of this transaction. In the event of such loss or damage, the Purchaser may, at Purchaser's option, (i) terminate this Contract and secure an immediate refund of all Earnest Money paid or (ii) purchase the Property as is in which event all available insurance proceeds shall be paid to Purchaser but only up to the amount of the Purchase Price.

## ARTICLE 11. NOTICES

Any notice, request, approval, demand, instruction or other communication to be given to either party hereunder, except those required to be delivered at Closing, shall be in writing, and shall be conclusively deemed to be delivered when personally delivered or on the day following deposit for delivery by any nationally recognized overnight express delivery company, such as Federal Express, and addressed to the following addresses:

If to Seller:

Larry C. Williams  
Treasurer of the City of St. Louis  
City Hall  
1200 Market Street, Rm. 220  
St. Louis, MO 63103

with a copy to:

Bill Kuehling, Esq.

The Stolar Partnership  
911 Washington Ave.  
St. Louis, Missouri 63 101

If to Purchaser:

Pageant Building, L.L.C.  
6504 Delmar  
St. Louis, Missouri 63130  
Attn: Joe Edwards

with a copy to:

Marcia Smith Niedringhaus, Esq.  
Greensfelder, Hemker & Gale, P.C.  
10 South Broadway, Suite 2000  
St. Louis, MO 63102

## ARTICLE 12. BROKERS' COMMISSIONS

Each party hereto hereby represents and warrants to the other that they have dealt with each other directly in connection with this transaction, and that neither party has knowledge of any broker working in connection with this

transaction. Each party hereby indemnifies (to the extent permitted by law), defends and holds the other harmless against any and all claims of brokers, finders or the like, and against the claims of all third parties claiming any right to commission or compensation by or through acts of that party or that party's partners, agents or affiliates in connection with this Contract. Each party's indemnity obligations shall include all damages, losses, costs, liabilities and expenses, including reasonable liabilities and expenses, including reasonable attorneys' fees, which may be incurred by the other in connection with all matters against which the other is being indemnified hereunder.

## ARTICLE 13. DEFAULTS AND REMEDIES

13.1 Default by Seller. In the event that any of Seller's representations or warranties contained herein are untrue (either when made or at Closing) or if Seller shall have failed to have timely performed any of its obligations, covenants and/or agreements contained herein which are to be performed by Seller, then Purchaser, at its option may:

13.1.1 Elect to close the purchase of the Property pursuant to the provisions hereof hereby waiving any claims against Seller for damages as a result of Seller's default.

13.1.2 Purchaser may specifically enforce the provisions of this Contract.

13.1.3 Purchaser may cancel and terminate this Contract and in such event all Earnest Money and interest thereon shall be immediately paid to Purchaser in full settlement of any damages claimed by Purchaser as a result of such default.

13.2 Default by Purchaser. If Purchaser shall fail to close the purchase of the Property as contemplated hereby due to the default of Purchaser hereunder, then the Earnest Money and any interest thereon shall be paid to Seller as liquidated damages as Seller's sole and exclusive remedy for such default, Seller hereby specifically waiving any and all rights which it may have to damages or specific performance as a result of Purchaser's default under this Contract, and the parties acknowledging that the valuation of Seller's damages would be very difficult in light of changing real estate market conditions and certain tax law changes.

13.3 Recovery of Additional Costs and Expense . In any action or litigation by Purchaser and Seller as a result of either party's failure to perform or default under this Contract, the prevailing party shall be entitled to recover such reasonable attorneys' fees and court costs as may be awarded by the court.

## ARTICLE 14. MISCELLANEOUS

14.1 Assignment. Purchaser may not assign its rights under this Contract without the prior written consent of Seller. Notwithstanding the foregoing, consent of Seller shall not be required for the assignment of this Contract to an entity in which Purchaser owns at least fifty percent (50%) of the voting stock or beneficial interest.

14.2 Seller's Repurchase Right. In the event Purchaser fails to construct a mixed use entertainment venue, including use as a night club and concert venue containing approximately 10,000 square feet of retail and/or office storefront space behind which will be located the entertainment venue and for parking in connection therewith, and open same for business with the public within twenty-four (24) months from the Closing, then Seller shall have the right, at its sole option, to repurchase the Property from Purchaser for \$175,000.00 as adjusted upwards for inflation, if any, based upon the Consumer Price Index for All Urban Consumers, St. Louis area plus the value of any improvements, upgrades, betterments or other such value adding work performed or made to the Property which are consistent in all respects with Purchaser's construction obligations set forth hereinabove, if any (collectively, Improvements). In the event of a dispute regarding the value of any Improvements, the parties shall each appoint an independent appraiser with experience in valuing property of this type in the State of Missouri. The two appointed appraisers shall mutually agree upon a third independent appraiser, and the price for the Improvements shall be the mathematical average of the three independent appraisals performed by such appraisers. Notwithstanding the foregoing, the value of the Improvements shall not in any event exceed the actual cost paid to construct such Improvements. Such repurchase option may be exercised by Seller by giving Purchaser written notice within the six (6) month period immediately following such twenty-four (24) month period and designating the closing date which will not be earlier than thirty (30) days from Purchaser's receipt of Seller's written notice of its intent to so exercise such repurchase option.

14.3 Binding Effect. This Contract is binding upon and inures to the benefit of the parties hereto and their respective heirs, legal representatives, executors, administrators, successors and assigns.

14.4 Entire Agreement. This Contract constitutes the entire agreement between Seller and Purchaser, and there are no other covenants, agreements, promises,

terms and provisions, conditions, undertakings or understandings either oral or written, between them concerning the Property other than those herein set forth. No subsequent alteration, amendment, change, deletion or addition to this Contract shall be binding upon Seller or Purchaser unless in writing and signed by both Seller and Purchaser.

14.5 Person Define. The word "person" as used herein shall include all individuals, partnerships, corporations, or any entities whatsoever.

14.6 Exhibits. Any reference herein to any exhibits, addenda or attachments refers to the applicable exhibit, addendum or attachment that is attached to this Contract, and all such exhibits, addenda or attachments shall constitute a part of this Contract and are expressly made a part hereof.

14.7 Contract Separable. If any provision hereof is for any reason unenforceable or inapplicable, the other provisions hereof will remain in full force and effect in the same manner as if such unenforceable or inapplicable provision had never been contained herein.

14.8 Counterparts. This Contract may be executed in any number of counterparts, each of which will, for all purposes, be deemed to be an original, and all of which are identical.

14.9 Governing Law. This Contract shall be construed under and in accordance with the laws of the State of Missouri.

14.10 Survival of Representations. The representations, warranties and covenants contained herein shall not merge in any document delivered at Closing and shall survive Closing.

14. 11 Date of Contract. Whenever the term "date of this Contract", "Contract date" or other similar term is used in this Contract, such date shall mean the date on which this Contract was executed by the last party to execute this Contract.

IN WITNESS WHEREOF, the parties have executed this Contract the date shown below.

PURCHASER:

PAGEANT BUILDING, L.L.C., a Missouri limited liability company

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

Name: Joe Edwards  
Title: Managing Member

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

**SELLER:**

THE TREASURER OF THE CITY OF ST. LOUIS, in his capacity as  
Supervisor of Parking Peters, a Municipal Agency of the City of St. Louis

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

Name: Larry C. Williams  
Title: Treasurer of the City of St. Louis  
Date: \_\_\_\_\_

**EXHIBIT A**

Property to be Conveyed

6151-6161 Delmar  
6 100 Enright Avenue

All in the City of St. Louis, Missouri

Legal description from Seller's deed shall govern subject to confirmation by  
Purchaser's survey.

**EXHIBIT B**

**EXECUTORY AGREEMENTS**

1. The Tower Lease.
2. The lease rights pertaining to the billboard located on the property.

<b>Legislative History</b>				
<b>1ST READING</b>	<b>REF TO COMM</b>	<b>COMMITTEE</b>	<b>COMM SUB</b>	<b>COMM AMEND</b>
<b>04/30/99</b>	<b>04/30/99</b>	<b>W7m</b>		
<b>2ND READING</b>	<b>FLOOR AMEND</b>	<b>FLOOR SUB</b>	<b>PERFECTN</b>	<b>PASSAGE</b>

<b>05/21/99</b>			<b>07/01/99</b>	<b>07/01/99</b>
<b>ORDINANCE</b>	<b>VETOED</b>		<b>VETO OVR</b>	
<b>64692</b>				