

Summary

Board Bill Number 21

Sponsored by: Alderman James Page

May 7, 2021

This Board Bill authorizes a new Lease Agreement with the City of St. Louis and St. Louis Produce Market, Inc., a Missouri corporation (“Lessee”), for a period of ten (10) years with three (3) five (5) year mutual options for the purpose of parking Lessee or Lessee’s customers vehicles and trucks at an annual base rent of \$11,427.40 with a 2 percent annual escalator for the first ten (10) years at or near 2901 Hall Street in the City of St. Louis.

BOARD BILL NUMBER 21 INTRODUCED BY: ALDERMAN JAMES PAGE

1 An Ordinance authorizing the execution of a new Lease Agreement between The City of St.
2 Louis, Missouri (the “City”) and St. Louis Produce Market, Inc., a Missouri Corporation
3 (“Lessee”), for certain land consisting of 45,709 square feet at or near 2901 Hall Street in the
4 City (the “Property”) for a period of ten (10) years with three (3) five (5) year mutual options for
5 the purpose of vehicles and trucks of Lessee or Lessee’s customers at an annual base rent
6 \$11,427.40 with a 2 percent annual escalator for the first ten (10) years and containing a
7 severability clause.

8 **WHEREAS**, the City and Lessee desire to enter into a new Lease Agreement under
9 certain terms and conditions described below for a period of ten (10) years with three (3) five (5)
10 years mutual options for the purpose of parking Lessee or Lessee’s customers vehicles and
11 trucks; and

12 **WHEREAS**, Lessee is willing to lease the Property for a period of ten (10) years with
13 three (3) five (5) year mutual options at an annual base rent of \$11,427.40 with a 2 percent
14 annual escalator for the first ten (10) years.

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

17 **SECTION ONE.** The Board of Aldermen hereby approves, and the Mayor and
18 Comptroller are hereby authorized to execute, on behalf of the City, a new Lease Agreement for
19 a period of ten (10) years with three (3) five (5) year mutual options with St. Louis Produce
20 Market, Inc., a Missouri corporation (“Lessee”), for the purpose of parking Lessee or Lessee’s
21 customers vehicles and trucks at an annual base rent of \$1,427.40 per year with an annual

1 escalator of 2 percent for the first ten (10) years for certain land at or near 2901 Hall Street
2 consisting of 45,709 square feet, with other terms and conditions with Lessee, which shall read in
3 words and figures substantially as attached hereto as **Exhibit A**. Any permit issued to Lessee for
4 the Property shall terminate on the execution of this Lease Agreement.

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

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

17 **SECTION FOUR.** It is hereby declared to be the intention of the Board of Aldermen
18 that each and every part, section and subsection of this Ordinance shall be separate and severable
19 from each and every other part, section and subsection hereof and that the Board of Aldermen
20 intends to adopt each said part, section and subsection separately and independently of any other
21 part, section and subsection. In the event that any part, section or subsection of this Ordinance
22 shall be determined to be or to have been unlawful or unconstitutional, the remaining parts,
23 sections and subsections shall be and remain in full force and effect, unless the court making

1 such finding shall determine that the valid portions standing alone are incomplete and are
2 incapable of being executed in accord with the legislative intent.

3 **SECTION FIVE.** After adoption of this Ordinance by the Board of Aldermen, this
4 Ordinance shall become effective on the 30th day after its approval by the Mayor or adoption
5 over her veto.

EXHIBIT A

LEASE AGREEMENT

Board Bill Number 21
Exhibit A

LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”) is made and entered into to be effective of the ____ day of _____, 2021 (“Effective Date”), by and among The City of St. Louis, Missouri, a city and political subdivision duly organized and existing under its charter, the Constitution and laws of the State of Missouri (hereinafter “Lessor”), and St. Louis Produce Market, Inc., a Missouri corporation (“hereinafter Lessee”).

1. Leasehold. That, for and in consideration of the rents hereinafter reserved to be paid by Lessee to Lessor, and the mutual covenants and agreements herein contained, Lessor hereby leases and lets to Lessee the exclusive use of the land totaling 45,709 square feet and other improvements on the land as more particularly highlighted in yellow and depicted on Exhibit A attached hereto (collectively, the “Leased Premises”).

2. Term. The term of this Lease (“Term”) shall be for a period of ten (10) Lease Years (as hereinafter defined), beginning on the Effective Date (“Commencement Date”) and terminating on 11:59 p.m. on the date that is ten (10) Lease Years after the Commencement Date, unless sooner terminated or extended as provided herein. In the event the Commencement Date is a date other than the first day of a calendar month, then (i) the first month of the Term shall consist of the partial month in which the Commencement Date occurs plus the first full calendar month immediately following such partial month, and (ii) the base rent for such partial month shall be pro-rated based on the number of days in such month. For purposes of this Lease, the first “Lease Year” of the Term shall mean the period beginning on the Commencement Date and ending on the last day of the twelfth (12th) full calendar month following the Commencement Date and, with respect to each Lease Year thereafter, “Lease Year” means each successive 12-month period following the first Lease Year. As used herein, “Lease Term”, “Term” and “the term of this Lease” shall have the same meaning and shall include any properly

exercised and mutually agreed upon Option Period (as hereinafter defined). In no event shall the lease of wharf property be extended to cover a period of time exceeding a total of twenty-five (25) years as provided by City Charter Article I, Section 1(16).

3. Rent. Lessee shall pay Lessor, at the address of Lessor indicated herein (or at such other place as Lessor may designate in writing), without demand, deduction or setoff, annual base rental (such rent, as the same may be adjusted from time to time as specifically set forth in this Lease, is herein referred to as the “Base Rent”), in equal monthly installments (the “Monthly Base Rent”) in advance commencing on the Commencement Date and continuing on the first (1st) day of each Lease Year during the Term. Base Rent, Monthly Base Rent or any other payments due under this Lease (collectively, “Rent”) shall be made payable to Lessor and mailed or hand delivered to 1520 Market, Street, Suite 2000, St. Louis, Missouri 63103, Attention: Charlie Hahn, Controller, or to such other person or to such other place as directed from time to time by written notice to Lessee from Lessor.

| Period | Annual Base Rent | Monthly Base Rent |
|--------------|------------------|-------------------|
| Lease Year 1 | \$11,427.40 | \$952.28 |
| Lease Year 2 | \$11,655.95 | \$971.33 |
| Lease Year 3 | \$11,889.07 | \$990.76 |
| Lease Year 4 | \$12,126.85 | \$1,010.57 |
| Lease Year 5 | \$12,369.39 | \$1,030.78 |
| Lease Year 6 | \$12,616.77 | \$1,051.40 |
| Lease Year 7 | \$12,869.11 | \$1,072.43 |
| Lease Year 8 | \$13,126.49 | \$1,093.87 |
| Lease Year 9 | \$13,389.02 | \$1,115.75 |

| | | |
|---------------|-------------|------------|
| Lease Year 10 | \$13,656.80 | \$1,138.07 |
|---------------|-------------|------------|

4. Option Periods. Lessee shall have the option to extend the Term of the Lease for three (3) additional periods of five (5) years each (each an “Option Period”) subject to the mutual consent of Lessee, the Commission of the Port Authority of the City of St. Louis (the “Port Authority”), and the Board of Public Service of the City of St. Louis (the “Board of Public Service”), which consent may be withheld for any reason or no reason at all. Lessee must give written notice to Lessor (“Option Notice”) of its desire to exercise an option to extend the Term for an Option Period at least nine (9) months, but no more than eighteen (18) months, prior to the expiration of the initial Term or any prior Option Period, as the case may be. Lessor shall have sixty (60) days after receipt of Lessee’s Option Notice to notify Lessee in writing if Lessor will terminate the Lease at the expiration of the initial Term or current Option Period, as the case may be, or agree to extend the Term for an additional Option Period in accordance with the terms of this Lease and at a Base Rent mutually acceptable to Lessor and Lessee. If Lessor and Lessee fail to agree in writing upon a mutually agreeable Base Rent for the Option Period, the Lease will terminate at the expiration of the initial Term or current Option Period, as the case may be.

5. Intentionally Deleted.

6. Maintenance and Repair. Lessee shall, at its sole cost and expense, maintain the Leased Premises during the Term in a safe condition in compliance with all laws and ordinances, including, but not limited to, all pavement, gravel and curbs and other improvements located thereon, removal of snow, ice, debris and rubbish and trimming weeds and brush. Lessee may not drive or park trucks, vehicles or trailers or store equipment, containers, cargo or heavy items on any sidewalks and shall be responsible for all damage, repairs and maintenance to any

sidewalks, underground utility lines and pipes located under sidewalks and the Leased Premises caused by Lessee or its employees, agents, licensees, invitees, and contractors.

Lessee shall not store, or allow the storage of, any garbage or trash on the Leased Premises. Further, Lessee shall ensure that Lessee, Lessee's customers, and employees and/or guests of Lessee do not throw trash or any articles or materials of any sort whatsoever onto any portion of the Leased Premises. Lessee shall be responsible for enforcing this prohibition. Lessee shall also be responsible for ensuring that the Leased Premises are at all times free of all trash, rubble and debris regardless of whether or not such trash, rubble or debris was deposited by Lessee. Lessee's failure to abide by the provisions of this Section shall be considered a breach of this Lease. Lessee shall periodically trim weeds and brush to keep the Leased Premises in a neat and orderly condition.

7. Permitted Use. The Leased Premises shall be used by Lessee only for the purpose of parking vehicles and trucks of Lessee or Lessee's customers, and their respective employees, agents, invitees and contractors. Lessee may not park or store abandoned or derelict vehicles or equipment on the Leased Premises. Lessee shall keep, operate and maintain the Leased Premises, including all structures and improvements located thereon, in full compliance with all federal, state and local environmental, health and/or safety laws, ordinances, rules, regulations, codes, orders, directives, guidelines, permits or permit conditions currently existing and as amended, enacted, issued or adopted in the future which are applicable to the Leased Premises. Lessee shall provide copies of all permits to Lessor upon written request of Lessor.

8. Equal Opportunity and Nondiscrimination Guidelines. Lessee will not exclude or discriminate against any person solely because of race, color, or creed, or for any reason not sanctioned by law and not applicable alike to persons generally in the use of the Leased

Premises. Further, the Americans with Disability Act (ADA) prohibits discrimination based on disability. Lessee covenants to comply with the provisions of the ADA and provide necessary documentation of their compliance efforts as required by the Commissioner of the Office on the Disabled.

9. Surrender. Lessee shall repair any and all damage to the Leased Premises resulting from Lessee's equipment and operations. Upon the expiration or earlier termination of this Lease, Lessee shall quit and peacefully surrender the Leased Premises to Lessor in the same condition in which the Leased Premises was at the commencement of this Lease, except as repaired, rebuilt, restored, altered, replaced or added to as permitted or required by any provision of this Lease, reasonable wear and tear excepted. Upon such surrender, Lessee shall (a) remove from the Leased Premises all property which is owned by Lessee or third parties other than the Lessor and (b) repair any damage caused by such removal. Lessee further agrees and warrants that, upon the expiration or earlier termination of this Lease, Lessee shall return the Leased Premises to the Lessor free of any and all hazardous material, infectious waste, solid waste, pollutants, and contaminants which were placed, released, discharged, disposed, and/or spilled on, into, or about the Leased Premises by Lessee, or of any of its agents, contractors, employees, invitees or licensees, sublessees or other occupants.

10. Utilities. Lessee shall pay for all utilities and services used on the Leased Premises during the Term. Additionally, Lessee shall not store anything over any existing sewers of MSD (the "MSD Sewers") that would impair the structural integrity or operation of the MSD Sewers or prevent MSD from accessing the MSD Sewers.

11. No Partnership. Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture of or between Lessor and Lessee, or to create any other relationship between the parties hereto other than that of Lessor and Lessee.

12. Insurance, Liability and Indemnity. Lessee, at its sole cost and expense, shall procure and maintain throughout the Term of this Lease for the benefit of Lessor and Lessee of the types of insurance listed below and such other coverages as Lessee or Lessor may deem advisable:

A. Workers Compensation– Worker’s Compensation limits shall be statutory and coverage shall be in compliance with the laws of the applicable state and federal laws.

B. Commercial General Liability - Minimum policy limit of USD \$1,000,000.00 per occurrence and USD \$2,000,000.00 aggregate applicable to liabilities assumed hereunder and the use or occupancy of the Leased Premises by Lessee or any of Lessee’s agents, employees, licensees, customer, invitees or contractors.

C. Automobile Liability - Minimum policy limit of USD \$2,000,000.00 combined single limit per occurrence or accident for bodily injury and property damage. Policy shall be applicable to and cover all owned, non-owned, hired and/or rented autos for bodily injury and/or property damage.

D. Excess Liability Insurance in an amount no less than USD \$5,000,000.00 with coverage with terms and conditions no less broad than the primary.

E. Property damage insurance covering the Leased Premises and all of Lessee’s leasehold improvements, including trade fixtures and personal property from time to time in, on or upon the Leased Premises, including any alterations, improvements, additions or changes made by Lessee thereto in an amount not less than USD \$1,000,000.00, providing protection

against perils included within the special form of fire and extended coverage insurance policy, vandalism and malicious mischief. Any policy proceeds from such insurance payable for the physical damage to improvements within the Leased Premises, so long as this Lease shall remain in effect, shall be applied first for the repair, reconstruction, restoration or replacement of the improvements damaged or destroyed.

F. Where allowable by law, Lessee shall obtain from each of its insurers a waiver of subrogation on all required coverage of the Lessee in favor of Lessor and the Port Authority and, with the exception of Workers' Compensation, name Lessor and the Port Authority as additional insureds in each insurance policy required of Lessee set forth above. With respect to the property coverage required, Lessor and the Port Authority shall be named as a loss payee as their interest may appear. No "other insurance" provision shall be applicable to Lessor by virtue of having been named an additional insured or loss payee under any policy of insurance and Lessee's insurance shall be primary and non-contributory with respect to Lessor. Lessee shall ensure that any endorsement naming Lessor and the Port Authority as an additional insured shall not exclude from coverage the sole negligence of the additional insureds. Lessee shall be responsible for payment of all deductibles, premiums, and retentions in connection with the insurance required of Lessee hereunder, and for payment for all expenditures incurred under any "sue and labor" provision under any policy. The foregoing insurance policies shall each provide that there shall be no recourse against Lessor for payment of premiums, commissions, club calls, assessments, or advances.

G. All policies referred to above shall: (i) be taken out with insurers licensed to do business in Missouri having an A.M. Best's rating of A-, Class IX, or better, or otherwise approved in advance by Lessor, such approval not to be unreasonably withheld; (ii) be non-

contributing with, and shall apply only as primary and not as excess to any other insurance available to Lessor; (iii) [intentionally deleted]; and (iv) provide for ten (10) days' prior written notice in the event of cancellation due to the non-payment of premium to be provided to Lessor. Lessee shall provide certificates of insurance to Lessor on or before the Commencement Date and thereafter at times of renewal or changes in coverage or insurer and upon request by Lessor.

H. Lessee hereby agrees to indemnify, defend and hold Lessor, the Board of Public Service, and the Port Authority free and harmless from and against any and all damages, losses, claims, demands, costs, liabilities, expenses, demands, obligations, actions, causes of action of any kind or nature whatsoever (including any claim for damage to property or injury to or death of any persons and including reasonable attorney's fees and costs) to the extent arising out of or caused by acts or omissions of Lessee or its employees, officers, agents, invitees, and contractors in their use of the Leased Premises arising from any breach of this Lease by Lessee. This section will not require Lessee to indemnify or hold harmless Lessor for any losses, claims, damages, and expenses arising out of the gross negligence or willful misconduct of Lessor, the Board of Public Service or the Port Authority, or their respective employees, officers, agents, invitees, and contractors.

I. Lessee agrees to use and occupy the Leased Premises at Lessee's own risk. Lessee agrees that Lessor shall not be responsible or liable to Lessee, or its employees, agents, invitees, and contractors, for any loss or damage that may be occasioned by or through the acts or omissions of persons occupying any part of the Leased Premises or otherwise, except to the extent arising out of the gross negligence or willful misconduct of Lessor, the Board of Public Service, or the Port Authority, or their respective employees, officers, agents, invitees, and contractors. LESSOR SHALL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE

SUSTAINED TO LESSEE'S VEHICLES OR ANY PERSONAL PROPERTY WITHIN LESSEE'S VEHICLES WHILE IN THE LEASED PREMISES, WHETHER OCCASIONED BY FIRE, THEFT, OR ANY OTHER CAUSE OF ANY KIND OR NATURE EXCEPT TO THE EXTENT ARISING OUT OF OR IN CONNECTION WITH THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSOR, THE BOARD OF PUBLIC SERVICE OR THE PORT AUTHORITY OR THEIR RESPECTIVE EMPLOYEES, OFFICERS, AGENTS, INVITEES OR CONTRACTORS. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS LEASE.

J. WAIVER AND RELEASE. LESSEE, FOR ITSELF AND ALL OF OFFICERS, EMPLOYEES, AGENTS, INVITEES AND CONTRACTORS ("LESSEE REPRESENTATIVES"), HEREBY WAIVES AND RELEASES LESSOR, THE BOARD OF PUBLIC SERVICE AND THE PORT AUTHORITY FROM ALL CLAIMS RESULTING DIRECTLY OR INDIRECTLY FROM ACCESS TO, ENTRANCE UPON, OR INSPECTION OF THE LEASED PREMISES BY LESSEE OR ANY OF THE LESSEE REPRESENTATIVES, EXCEPT TO THE EXTENT ARISING OUT OF OR IN CONNECTION WITH THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSOR, THE BOARD OF PUBLIC SERVICE OR THE PORT AUTHORITY OR THEIR RESPECTIVE EMPLOYEES, OFFICERS, AGENTS, INVITEES OR CONTRACTORS. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS LEASE.

K. Notwithstanding anything to the contrary contained herein, nothing in this Lease shall be construed to broaden the liability of the Lessor beyond the provisions of Sections 537.600 to 537.610 of the Revised Statutes of Missouri, as amended, or abolish or waive any

defense at law that might otherwise be available to the Lessor or its officers, agents and employees.

L. Lessee shall require all licensees, sublessees or other occupants of the Leased Premises to provide insurance consistent with the terms and conditions set forth above and upon written request of Lessor, promptly furnish to Lessor reasonable satisfactory evidence that such insurance is in effect.

13. Event of Default. The occurrence of any one or more of the following events shall constitute an “Event of Default” by Lessee:

A. The failure by Lessee to make any payment of Rent or other amounts owed hereunder within five (5) business days after written notice from Lessor that said payment is due and unpaid.

B. The failure by Lessee to maintain the insurance required under this Lease, where such failure shall continue for a period of five (5) business days after written notice hereof from Lessor to Lessee, unless Lessee’s insurance shall have lapsed in which event no such notice shall be required.

C. The failure by Lessee to observe or perform any of the other covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than described in Sections (A) and (B) above, where such failure shall continue for a period of thirty (30) days after written notice hereof from Lessor to Lessee, provided that if it reasonably takes longer than thirty (30) days to cure the default, Lessee shall have such longer period as it reasonably takes to cure the default, provided Lessee commences the cure within such thirty (30) days and is working diligently to cure the default.

14. Remedies. Upon an Event of Default by Lessee, Lessor shall have the following remedies, which shall not be exclusive but shall be cumulative and shall be in addition to any other remedies now or hereafter allowed by law, with or without further notice or demand:

A. Terminate this Lease, in which event Lessee shall immediately surrender possession of the Leased Premises to Lessor, and Lessor shall have the right to regain possession of the Leased Premises by any lawful means should Lessee fail to surrender the same.

B. Pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the State of Missouri or in equity.

15. Late Charge. Lessee hereby acknowledges that late payment by Lessee to Lessor of Rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Accordingly, if any installment of Rent or any other sum due from Lessee shall not be received by Lessor or Lessor's designee within ten (10) days after written notice from Lessor that such amount is due and has not been paid, Lessee shall pay to Lessor a late charge equal to the lesser of (i) five percent (5%) of such overdue amount, or (ii) One Thousand Dollars (\$1,000.00). The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder. In addition, any payment due pursuant to this Lease which is not timely paid shall be delinquent and shall bear interest from the date due at the rate of twelve percent (12%) per annum.

16. No Constructive Waiver. No waiver of any forfeiture, by acceptance of rent or otherwise, shall waive any subsequent cause of forfeiture, or breach of any condition of this

Lease; nor shall any consent by Lessor to any assignment or subletting of said Leased Premises, or any part thereof, be held to waive or release any assignee or sub-lessee from any of the foregoing conditions or covenants as against him or them; but every such assignee and sub-lessee shall be expressly subject thereof.

17. Assignment and Sublease.

(a) Lessee shall not assign, sell, lease, sublease, convey or in any way transfer, mortgage or encumber this Lease, nor shall any assignment or transfer of this Lease be effectuated by operation of law or otherwise, without the express prior written consent of Lessor, the Board of Public Service and the Port Authority's Commission, which consent shall not be unreasonably withheld, conditioned or delayed. All parts of this Lease are binding on any permitted sublessee, assignee, or new or modified corporate entity and Lessee shall not be released therefrom.

18. Successors. Whenever the word "Lessor" is used herein it shall be construed to include the successors, assigns or legal representatives of Lessor; and the word "Lessee" shall include the successors, assigns or legal representatives of Lessee and the words Lessor and Lessee shall include single and plural, individual or corporation, subject always to the restrictions herein contained, as to subletting or assignment of this Lease.

19. Lessor's Access. Lessor has the right, but not the obligation, to inspect the Leased Premises at any reasonable time on no less than one (1) business day prior written notice (except no prior notice is required in the event of an emergency) to determine whether the Leased Premises are in the condition required under this Lease, whether Lessee is complying with its obligations under this Lease, and to evaluate all maintenance and repairs of the Leased Premises, and in connection therewith. Lessor and its representatives, contractors, agents and

other governmental authorities and entities, may enter upon the Leased Premises at all reasonable times for the purpose of exercising any or all of the foregoing rights hereby reserved without being deemed guilty of an eviction or disturbance of Lessee's use or possession and without being liable in any manner to Lessee. Lessor assumes no obligation to enter the Leased Premises or to make any inspections thereof.

20. Holdover. If Lessee remains in possession of any part of the Leased Premises after the expiration or sooner termination of the Term, without the express consent of Lessor and if Lessor elects to accept Rent thereafter, Lessee's occupancy shall be deemed a month-to-month tenancy upon the same terms and conditions set forth in this Lease, except that Monthly Base Rent shall increase to an amount of one hundred fifty percent (150%) of the Monthly Base Rent in effect just prior to the switch to a month-to-month tenancy. Such month-to-month tenancy may not continue for more than one year. Any such month-to-month tenancy may be terminated by Lessor at any time.

21. Lease Forfeiture. In the event Lessee's business fails for any reason for any period beyond one year, this Lease shall be forfeited.

22. No Personal Liability. No member, official, or employee of the Lessor, the Board of Public Service, the Port Authority, or Lessee shall be personally liable to another or any successor in interest or assign of another party, in the event of any default or breach by such party, or its successors or assigns of any of the obligations of this Lease.

23. Notices. All notices, demands, consents, approvals, certificates and other communications required by this Lease to be given by either party hereunder shall be in writing and may be given by (i) United States Certified Mail, Return Receipt Requested, postage prepaid, (ii) hand delivery, or (iii) overnight courier (such as UPS or Fed Ex), addressed to the

appropriate party at its address set forth below, or at such other address as such party shall have last designated by notice to the other. Notices may also be sent via email to the email addresses set forth below (which may be changed by notice to the other parties), provided an email notice shall not be effective unless its receipt was acknowledged by the recipient, or unless the email notice is followed by a copy sent via one of the other authorized methods of sending notice. Notices, demands, consents, approvals, certificates and other communications shall be deemed given when delivered or three days after mailing; provided, however, that if any such notice or other communication shall also be sent electronically, such notice shall be deemed given at the time and on the date of electronic transmittal if the sending party receives a written send verification and forwards a copy thereof with its mailed or courier delivered notice or communication.

In the case of Lessor, to:

The Port Authority Commission of the City of St. Louis
1520 Market, Street, Suite 2000
St. Louis, Missouri 63103
Attention: Executive Director

With copies to:

City of St. Louis
City Counselor
City Hall
1200 Market Street, Room 314
St. Louis, Missouri 63103
Attention: City Counselor

and

The Port Authority Commission of the City of St. Louis
1520 Market, Street, Suite 2000
St. Louis, Missouri 63103
Attention: Susan Taylor, Director
Email: taylors@stlouis-mo.gov

In the case of Lessee, to:

St. Louis Produce Market, Inc.
1 Produce Row
St. Louis, Missouri 63102
Attention: Sean Kelley
office phone: 314-621-4383
Email: sean@stlouisproducemarket.com

With a copy to:

Christopher J. Lawhorn
Carmody MacDonald P.C.
120 S. Central Ave., Suite 1800
St. Louis, Missouri 63105
Direct Phone: 314.854.8621
Email: cjl@carmodymacdonald.com

24. As Is; Where Is. Lessee acknowledges that Lessor has made no representations, warranties, express or implied, or statements regarding the condition of the Leased Premises, and improvements thereon. Lessor has made no representations or warranties, express or implied, and explicitly disclaims the same, concerning the absence of any pollution, contamination, hazardous material, infectious waste, solid waste, underground storage tanks, or hazardous building materials in, on or about the Leased Premises or its improvements. Lessee acknowledges and agrees that it has had an opportunity to inspect the Leased Premises and that it is leasing the Leased Premises in its “as-is, where-is” condition and Lessor shall not be required to furnish any services or facilities or to make any repairs, replacements or alterations in, about or to the Leased Premises or any improvements now or hereafter erected thereon

25. Choice of Laws. This Lease shall be construed and enforced in accordance with the internal laws of the State of Missouri applicable to contracts performed wholly therein without reference to its conflict of laws principles. The parties shall comply with the City of St.

Louis Charter and ordinances of the City of St. Louis, including Chapter 21 of the Revised Code of the City, and relevant Mayor's Executive Orders.

26. WAIVER OF JURY TRIAL AND VENUE. THE PARTIES VOLUNTARILY, KNOWINGLY, AND IRREVOCABLE WAIVE ANY CONSTITUTIONAL OR OTHER RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN THE EVENT OF LITIGATION CONCERNING ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS LEASE, THE PARTIES' PERFORMANCE HEREUNDER OR ANY OTHER RELATED INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH; WHETHER NOW EXISTING OR HEREAFTER ARISING, AT LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH OF LESSOR AND LESSEE HEREBY CONSENTS AND AGREES THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY A TRIAL COURT WITHOUT A JURY, AND THAT EITHER PARTY TO THIS LEASE MAY FILE AN ORIGINAL COUNTERPART OR A COPY HEREOF WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF LESSOR AND LESSEE TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY. LESSOR AND LESSEE EACH ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE OTHER ENTERING INTO THIS LEASE. THE PARTIES AGREE THAT ANY ACTION AT LAW OR IN EQUITY RELATING TO THIS LEASE SHALL BE BROUGHT IN THE CIRCUIT COURT FOR THE CITY OF ST. LOUIS, STATE OF MISSOURI OR IN THE UNITED STATES DISTRICT

COURT, EASTERN DISTRICT OF MISSOURI, AND THAT NO PARTY SHALL OBJECT TO THE FOREGOING VENUES AS AN INCONVENIENT FORUM.

27. Headings. The headings of the Sections of this Lease are inserted for convenience only and shall not affect the meaning or interpretation of this Lease or any provisions hereof.

28. Representations of Lessee. Lessee hereby represents and warrants to Lessor as of the date hereof:

A. Lessee is a corporation duly created and existing under the laws of the State of Missouri and is authorized to do business in the State of Missouri.

B. Lessee has full power and authority to enter into this Lease and to carry out its obligations under this Lease and, by proper corporate actions, has been duly authorized to execute and deliver this Lease.

C. This Lease is and, when executed and delivered, will be, the legal, valid and binding obligation of Lessee, enforceable against Lessee in accordance with its terms.

D. There is no litigation or other proceedings pending or threatened against Lessee affecting the right of Lessee to execute or deliver this Lease or the ability of Lessee to comply with its obligations under this Lease.

E. Additionally, Lessee represents that Lessee has not dealt with any real estate broker, sales person, or finder in connection with this Lease, and no such broker, salesperson or finder initiated or participated in the negotiation of this Lease on behalf of Lessee, or showed the Leased Premises to Lessee, and Lessee hereby agrees to indemnify, protect, defend and hold Lessor harmless from and against any and all liabilities and claims for commissions and fees arising out of a breach of its foregoing representation.

F. Lessee has carefully and fully inspected and performed its due diligence with respect to the Leased Premises, including the physical condition, quality, quantity, state of repair of the Leased Premises and all improvements located thereon in all respects, and has reviewed all applicable laws, ordinances, rules and governmental regulations affecting the development, use, occupancy or enjoyment of the Leased Premises, and has determined that the same are satisfactory to Lessee for Lessee's use and obligations under this Lease.

29. Representations of Lessor. Lessor hereby represents and warrants to Lessee as of the date hereof:

A. Lessor is a city and political subdivision duly organized and existing under its charter, the Constitution and laws of the State of Missouri.

B. Lessor has full power and authority to enter into this Lease and to carry out its obligations under this Lease and, by proper actions of its governing body, has been duly authorized to execute and deliver this Lease.

C. This Lease is and, when executed and delivered, will be, the legal, valid and binding obligation of Lessor, enforceable against Lessor in accordance with its terms.

D. There is no litigation or other proceedings pending or threatened against Lessor affecting the right of Lessor to execute or deliver this Lease or the ability of Lessor to comply with its obligations under this Lease.

E. Additionally, Lessor represents that Lessor has not dealt with any real estate broker, sales person, or finder in connection with this Lease, and no such broker, salesperson or finder initiated or participated in the negotiation of this Lease on behalf of Lessor, or showed the Leased Premises to Lessee, and Lessor hereby agrees to indemnify, protect, defend and hold

Lessee harmless from and against any and all liabilities and claims for commissions and fees arising out of a breach of its foregoing representation.

30. Severability. If any clause, covenant, paragraph or provision herein is declared fully or partially invalid or unenforceable, the remaining clauses, covenants, paragraphs and provisions shall remain enforceable and valid to the fullest extent allowed by law.

31. Counterparts. This Lease may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

32. Entire Agreement. This is the entire agreement and no amendment or modification may be made without the express written consent of the parties hereto.

33. Municipal Purpose. The Lessor reserves the right to modify, amend, or cancel this Lease in the event any portion of the Leased Premises is needed for any municipal purpose, which shall include, but is not limited to, right of way, sewer, floodwall construction or repair, any other necessary or reasonable municipal purposes or use, and/or economic development in the Port District as defined by the Lessor in Lessor's sole discretion.

In the event that any portion of the Leased Premises shall be needed for any municipal purpose as set forth in this section, the Lessor shall have the right to modify, amend, or cancel this Lease upon one (1) year's written notice thereof to Lessee (or, in the case of an emergency, the existence of which shall be determined in Lessor's reasonable discretion, upon no less than thirty (30) days' notice) and to eliminate from the Leased Premises such portion of the Leased Premises as shall be needed for such purpose, which portion may include all of such Leased Premises. In such event, it is agreed and understood by Lessee that no claim or action for damages or other compensation shall arise or be allowed by reason of such termination or modification, other than as set forth below.

If this Lease is amended or modified under the provisions of this section, the current Rent shall be adjusted in direct proportion to the change made in the Leased Premises. Lessee shall have the right to terminate this Lease without penalty by written notice within thirty (30) days after Lessor sends the notice to amend provided in this section if Lessee determines, in Lessee's sole discretion, that the portion of the Leased Premises which will remain after the elimination of the portion to be used for municipal purposes is not suitable to the Lessee. Lessee hereby acknowledges and agrees all other provisions of this Lease shall remain in effect for the duration of the Term for that remaining portion of the Leased Premises not used for municipal purposes under this section. Lessee hereby acknowledges and agrees that the Lease shall be deemed terminated with respect to the portion of the Leased Premises eliminated pursuant to the notice referenced in this section on the one-year anniversary of the date of the notice referenced above, provided, however, that in the case of an emergency as described above, the Lease shall be deemed terminated on the date specified in the notice.

34. Non-appropriation. Notwithstanding anything contained herein to the contrary, the parties agree that Lessor, being a governmental entity, has the limitation of appropriation on its financial obligations herein.

[Signature Page Follows]

IN WITNESS WHEREOF, the said parties aforesaid have duly executed the foregoing instrument or caused the same to be executed the day and year first above written.

LESSEE:

St. Louis Produce Market, Inc.,
a Missouri corporation

By: _____
Name: _____
Title: _____

LESSOR:

City of St. Louis, Missouri

By: _____
Mayor

By: _____
Comptroller

Approved as to form only:

By: _____
City Counselor

Attest:

By: _____
City Register

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

On this ___ day of _____, 2021, before me personally appeared Tishaura Jones, to me personally known or satisfactory proven, who, being by me duly sworn did say that she is the Mayor of the City of St. Louis and that she is authorized to execute this lease agreement on behalf of the City of St. Louis under the authority of Ordinance _____ and acknowledged said instrument to be the free act and deed of the City of St. Louis

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires: _____

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

On this ___ day of _____, 2021, before me personally appeared Darlene Green, to me personally known or satisfactory proven, who, being by me duly sworn did say that she is the Comptroller of the City of St. Louis and that she is authorized to execute this lease agreement on behalf of the City of St. Louis under the authority of Ordinance _____ and acknowledged said instrument to be the free act and deed of the City of St. Louis

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires: _____

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

On this ____ day of _____, 2021, before me appeared _____, to me personally known or satisfactorily proven, who, being by me duly sworn did say that he is the _____ of St. Louis Produce Market, Inc., a Missouri corporation, and that said instrument was signed in behalf of said corporation by authority of its _____; and said _____ acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

Notary Public

My Commission Expires: _____

EXHIBIT A
LEASED PREMISES

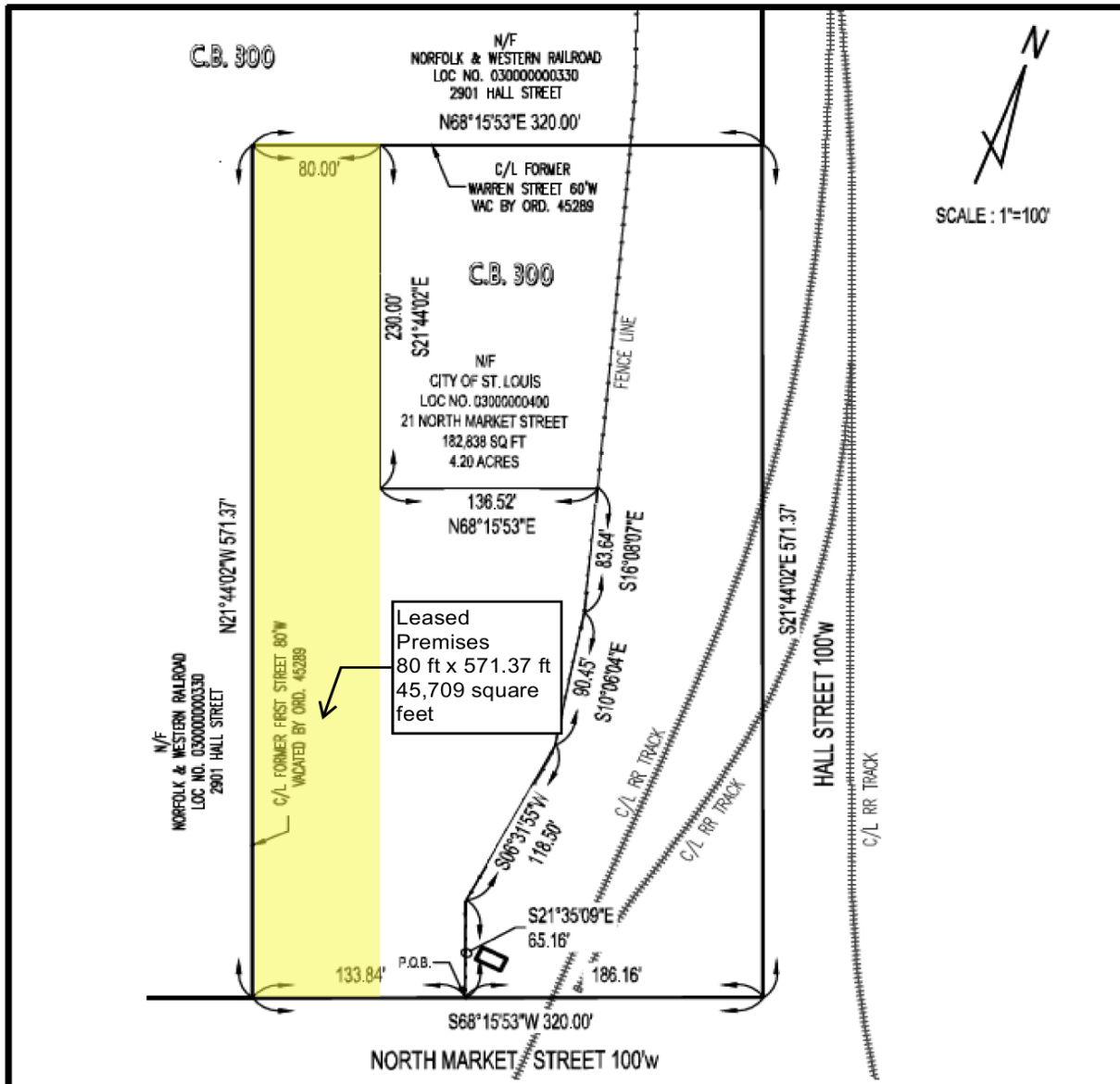


EXHIBIT "A"

INITIAL:

TRUCK PARKING LEASE
21-99 NORTH MARKET STREET
CITY BLOCK 300
CITY OF ST. LOUIS, MISSOURI



PITZMAN'S CO. of
SURVEYORS & ENGINEERS
2725 SUTTON BLVD.
ST. LOUIS, MO. 63143
PHONE: (314) 781-5665
www.pitzmans.com

4/22/20

P:\2019 PITZMAN S\19-615 ST. LOUIS - BSNF RAILROAD PH #3\3-Survey\19-615 #19 21-99 N MARKET.dwg Plotted Date: 12/4/20 Time: 1:55 PM

BOARD BILL NUMBER 21

FISCAL NOTE

Preparer's Name: Roland Comfort

Contact Information: SLDC (Port Authority) 657-3744, comfortr@stlouis-mo.gov

Bill Sponsor: Alderman James Page

| | |
|---------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Bill Synopsis: | This Board Bill authorizes a new Lease Agreement with the City of St. Louis and St. Louis Produce Market, Inc., a Missouri corporation ("Lessee"), for a period of ten (10) years with three (3) five (5) year mutual options for the purpose of parking Lessee or Lessee's customers vehicles and trucks at an annual base rent of \$11,427.40 with a 2% annual escalator for the first ten (10) years at or near 2901 Hall Street in the City of St. Louis. |
| Type of Impact: | None |
| Agencies Affected: | None |

SECTION A

Does this bill authorize:

- An expansion of services which entails additional costs beyond that approved in the current adopted city budget? ___Yes _X_No
- An undertaking of a new service for which no funding is provided in the current adopted city budget? ___Yes _X_No
- A commitment of city funding in the future under certain specified conditions? ___Yes _X_No
- An issuance of bonds, notes and lease-purchase agreements which may require additional funding beyond that approved in the current adopted city budget? ___Yes _X_No
- An execution or initiation of an activity as a result of federal or state mandates or requirements? ___Yes _X_No

- A capital improvement project that increases operating costs over the current adopted city budget? ___Yes _X_No
- A capital improvement project that requires funding not approved in the current adopted city budget or that will require funding in future years? ___Yes _X_No

If the answer is yes to any of the above questions, then a fiscal note must be attached to the board bill. Complete Section B of the form below.

SECTION B

- Does the bill require the construction of any new physical facilities? ___Yes ___No

- o If yes, describe the facilities and provide the estimated cost:

- Is the bill estimated to have a direct fiscal impact on any city department or office? ___Yes ___No

- Does the bill create a program or administrative subdivision? ___Yes ___No

- o If yes, then is there a similar existing program or administrative subdivision? ___Yes ___No

- o If yes, explain the how the proposed programs or administrative subdivisions may overlap:

- Describe the annual operating, equipment, and maintenance costs that would result from the proposed bill, as well as any funding sources:

Complete the chart below to list the total estimated expenditures required of the City resulting from the proposed board bill and any estimated savings or additional revenue.

| Financial Estimate of Impact on General Fund | | | |
|------------------------------------------------------|-------------------------------------------------|----------------------|----------------------|
| Fiscal Impact | <u>Year 1</u> <u>(current)</u> | <u>Year 2</u> | <u>Year 3</u> |
| Additional Expenditures | N/A | N/A | N/A |
| Additional Revenue | N/A | N/A | N/A |
| Net | N/A | N/A | N/A |
| Financial Estimate of Impact on Special Funds | | | |
| Fiscal Impact | <u>Year 1</u> <u>(current)</u> | <u>Year 2</u> | <u>Year 3</u> |
| Additional Expenditures | N/A | N/A | N/A |
| Additional Revenue | N/A | N/A | N/A |
| Net | N/A | N/A | N/A |

- Describe any assumptions used in preparing this fiscal note:

- List any sources of information (including any City officials, agencies, or departments) used in preparing this fiscal note:

- Have the financial estimates of this bill been verified by the City Budget Division?
___Yes ___No
 - o If yes, by whom? _____ .