

ORDINANCE #65219
Board Bill No. 54

An ordinance pertaining to South St. Louis Square Park; repealing Ordinance 65153, approved on February 15, 2001, and enacting in lieu thereof a new ordinance authorizing and directing the execution of a lease reviewed and recommended by the Board of Public Service and approved by the City Counselor as to form and as being in all respects consistent with Ordinance 59741, of certain land and a certain building, commonly known as the Schmidt House in said South St. Louis Square Park; and containing an emergency clause.

WHEREAS, the Carondelet Community Betterment Federation (the“CCBF”) and the Cultural Resources Office of the Planning and Urban Design Agency have been working to restore the Schmidt House as an historical asset to the community; and

WHEREAS, the CCBF desires to rehabilitate the Schmidt House as a educational and cultural center; and

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

SECTION ONE. Ordinance 65153, approved on February 15, 2001 is hereby repealed and in lieu thereof the following provisions are enacted.

SECTION TWO. The Mayor and the Comptroller are hereby authorized and directed to execute a lease between the City and the Carondelet Community Betterment Federation (the “CCBF”) of certain land and a certain building, commonly known as the Schmidt House in South St. Louis Square Park to the CCBF, in substantially the form attached hereto as Exhibit 1, which is incorporated herein and made a part of this ordinance by this reference.

SECTION THREE. This ordinance being deemed necessary for the immediate preservation of the public health and safety is hereby declared an emergency measure pursuant to Sections 19 and 20 of Article IV of the City Charter, and shall become effective upon its passage and approval by the Mayor or its adoption over the Mayor’s disapproval.

EXHIBIT 1

LEASE

This Lease “this Lease”) made and entered into this ____ day of _____, 20____, (the “Date of this Lease”) between the City of St. Louis, Missouri (the “City”) and the Carondelet Community Betterment Federation (the “CCBF”) witnesses that:

WHEREAS, the CCBF and the Cultural Resources Office of the Planning and Urban Design Agency have been working together to restore the Schmidt House as a asset to the community ; and

WHEREAS, the CCBF wants to rehabilitate the Schmidt House as a educational and cultural center; and

WHEREAS, the Mayor and the Comptroller of the City, acting for and on behalf of the City pursuant to the City Charter and Ordinance _____ have been authorized and directed to execute and deliver this Lease; and

WHEREAS, this Lease has been reviewed and favorably recommended in writing by the Board of Public Service, and approved by the City Counselor as to form and as being in all respects consistent with Ordinance 59741, which is codified as Chapter 22.42, Revised Code, prior to the adoption of Ordinance _____ ; and

WHEREAS, this Lease complies with all of the terms, conditions required by said Ordinance 59741 and all procedures specified by said Ordinance 59741 have been followed with respect to this Lease;

NOW, THEREFORE, in consideration of the premises and their mutual promises, undertakings, and agreements hereinafter set forth, the parties hereto agree as follows:

1. LEASED PREMISES. The City hereby leases, lets and rents to the CCBF, and the CCBF hereby leases, lets and hires from the City, subject to all the provisions of this Lease, that certain tract of land and that certain building, commonly known as the Schmidt House (the “Leased Premises”) in South St. Louis Square Park described in Exhibit A and depicted on Exhibit B hereto, which are incorporated herein by this reference.

2. TERM. The initial term of this Lease shall be one (1) year from the Date of this Lease. This Lease may be renewed thereafter for one (1) or more successive renewal terms of five (5) years each upon the same terms and conditions, provided, however, that any such renewal term shall be subject to the approval of the City's Board of Aldermen by Resolution upon favorable recommendation by the City's Director of Parks, Recreation and Forestry and the City's Board of Estimate and Apportionment, obtained prior to the commencement thereof.

3. RENT. As and for rent throughout the initial term and any renewal term hereof, the CCBF shall pay to the City rent in the amount of One Dollar (\$1) per year. The receipt of the rental payment for the entire initial term hereof is hereby acknowledged by the City. Such payment shall be held by the Comptroller in the South St. Louis Square Park Fund authorized by Ordinance 61988, which is codified as Chapter 5.74, Revised Code, for use pursuant to that ordinance.

4. LEASEHOLD IMPROVEMENTS.

a.)As additional consideration for this Lease, the CCBF agrees to commence promptly after the Date of this Lease, those projects, which are hereby expressly authorized, listed and depicted in Exhibit C hereto, which is incorporated herein by this reference, pursuant to plans and specifications approved by the City's Board of Public Service after review by the City's Preservation Board. All such leasehold improvements shall be and remain the property of the City. b.) CCBF agrees and covenants that it will complete any and all renovations or improvements to Schmidt House within one (1) year of the date of this lease. The City may, at its option, terminate this Lease if CCBF fails to complete said renovations or improvements within the specified time period.

5. USE. The Leased Premises shall be held and maintained by the CCBF solely for the use and benefit of the CCBF and the public generally as a cultural and educational center.

6. SIGNS & COMMERCIAL ADVERTISEMENT.

a. No exterior signs shall be erected without the prior written approval of the City's Director of Parks, Recreation and Forestry after review by the City's Preservation Board.

b. Permanent commercial advertisements visible to the public from outside the Leased Premises are prohibited.

7. MAINTENANCE, REPAIRS AND EXPENSES.

a. All costs and expenses of any kind whatever of maintaining, repairing, operating, or which are related to the Leased Premises shall be borne by the CCBF, including, but not limited to, the costs and expenses of the maintenance of all grass, trees, shrubbery and other landscaping from time to time on the Leased Premises. Such maintenance shall be performed in a manner which is approved in advance by the City's Director of Parks, Recreation and Forestry and in complete compliance with all applicable City, State and Federal Codes. All leasehold improvements made within the Leased Premises pursuant to Section 4 hereof, if any, shall be properly maintained and kept in good repair by and at the sole cost and expense of the CCBF.

b. Charges for all utilities, including but not limited to, water, electricity, telephone, security alarm, power, heat, refrigeration, sewage and waste disposal within the Leased Premises shall be paid at the sole cost and expense of the CCBF.

8. CONSTRUCTION OR WORK. Any and all construction or work on the Leased Premises or on or in the facilities thereon by the CCBF shall be done in complete compliance with all applicable City, State and Federal Codes, any requirements or conditions of the City's Board of Public Service, and pursuant to plans and specifications approved by the City's Board of Public Service after review by the City's Preservation Board and subject to approval by or permit of any other City department or agency whose approval or permission may be required under the City Charter or City ordinances prior to the commencement of any such construction or work; provided, however, that construction or work not expressly authorized by this Lease shall also be subject to the approval provisions of said Ordinance 59741, which is codified as Chapter 22.42, Revised Code.

9. LICENSES AND PERMITS. The CCBF will secure and keep in force all licenses and permits required for its use of the Leased Premises. Except as otherwise specifically provided in this Lease, nothing in this Lease shall be construed to exempt the CCBF from the provisions of any City ordinance of general applicability.

10. ENVIRONMENTAL LAWS.

a. The CCBF shall comply in its occupancy and its use of the Leased Premises with any applicable laws pertaining to health of the environment including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, as hereafter amended ("CERCLA"), the Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Hazardous and Solid Waste Amendments of 1984, as hereafter amended ("RCRA"), the Federal Water Pollution Control Act, as now or hereafter amended ("FWPCA"), and any laws of the State of Missouri or any subdivision thereof, relating to the presence of, removal, spill, release, leaking or disposal of oil, petroleum, toxic pollutants, solid waste or other hazardous substances.

b. The CCBF shall, periodically furnish the City's Director of Parks, Recreation and Forestry with satisfactory proof that it is in full compliance with any and all federal and/or state laws and regulations and City ordinances relating to or concerning air quality, water quality, noise, hazardous or toxic materials, hazardous wastes, infectious wastes, solid wastes, underground storage tanks and hazardous building materials. Further, the City shall have the right to inspect any and all portions of the Leased Premises, including facilities or vehicles located thereon, at any time during normal business hours or at any time if the City has reason to believe that a violation of any federal or state law or City ordinance has occurred or is about to occur.

11. INSPECTION. From time to time during the term of this Lease, and in addition to the inspections authorized in Section 10 hereof, authorized personnel of the City shall at all reasonable hours (with reasonable advance notice to the CCBF be permitted to enter upon and inspect the Leased Premises and the facilities thereon in order to ascertain that the Leased Premises and the facilities are being properly maintained and kept in repair and good order by the CCBF.

12. ANNUAL REPORT. The CCBF shall submit to the City's Director of Parks, Recreation and Forestry a written annual report describing in detail its activities and operations on the Leased Premises in the preceding calendar year, by June 30 of each year.

13. INDEMNIFICATION. The CCBF shall indemnify and hold harmless the City, and all its departments, boards, officers, agents, and employees from all suits, actions, loss, expense, or claims or any kind whatsoever, including attorneys' fees and expenses, arising out of or relating in any way to the execution, performance, or non-performance of this Lease or the operation, use, occupancy or any condition of the Leased Premises, or of any improvement, facility, improvement, or thing of any kind on the Leased Premises, or caused by any action or omission, whether or not covered by insurance. The CCBF shall defend the City, at the sole expense of the CCBF, against any such claim, suit or action. This provision shall not apply, however, to any such liability as may be the result of the negligence or willful misconduct of the City or its employees or agents acting within the scope of their employment or agency.

14. INSURANCE.

a. During the term of this Lease, the CCBF shall at no cost or expense to the City, maintain public liability and property damage insurance, naming the City as an insured on forms and with companies reasonably satisfactory to the City, against claims for personal injury, death, or property damage occurring upon, in, or about the Leased Premises and the facilities thereon and on, in, or about the adjoining sidewalks and park area. Said insurance shall be a combined single limit of not less than Three Hundred Thousand Dollars (\$300,000.00) per occurrence and an aggregate amount Two Million Dollars (\$2,000,000.00). The policies for such insurance may be for the mutual benefit of the CCBF (including any entity affiliated with or acting with, under or through the CCBF) and the City, or for the benefit of the City alone.

b. If at any time any of the insurance policies required by this Section shall be or become unsatisfactory to the City, as to form or substance (including coverage amounts) or issuer, the CCBF shall, upon notice to that effect from the City, promptly obtain a new policy, and submit the same for approval to the City's Comptroller, provided, however, that within ten (10) days of receipt of notice to such effect from the City, the CCBF may notify the City that it disputes the content of such notice. In that event, such issue shall be resolved within forty-five (45) days by a panel consisting of the City's Comptroller or her/his designee, a designee of the CCBF, and an insurance broker doing business in the Metropolitan Saint Louis Area jointly selected by the City's designee and the CCBF's designee within ten (10) days after the CCBF's notice under this paragraph.

c. Copies of certificates of all such policies of insurance (or the renewals thereof) showing the City as a "named insured" shall be forwarded to and maintained on file at all times with the City's Comptroller, accompanied by evidence that the premiums thereon have been paid.

d. All policies of insurance issued pursuant to this Section shall contain an agreement by the insurer that such

policies shall not be canceled or altered without at least thirty (30) days prior written notice to the City.

15. NONDISCRIMINATION. The CCBF agrees that in the use of the Leased Premises or in the use of any premises, it will not exclude or discriminate against any person solely because of race, color or creed, sex, sexual orientation, or for any reason not sanctioned by law and not applicable alike to persons generally in the use of said Leased Premises.

16. MINORITY PARTICIPATION. As specified in Exhibit D, which is incorporated herein by this reference, the CCBF agrees to maximum utilization of minority business enterprises in construction on the Leased Premises. The CCBF agrees to conform to all applicable federal, state and local equal opportunity laws. The CCBF agrees to designate one of its employees as a Minority Participation Administrator, and to notify the City of the name, business address and telephone number of such administrator. During periods of major construction on the Leased Premises the CCBF shall report monthly to the City's contract compliance officer the level of MBE and WBE participation in such construction projects. Such reports shall identify the MBE and WBE participants and set forth the amounts paid to such participants and the total project cost.

17. NON-ASSIGNABILITY. Without the prior written consent of the other party first obtained, neither party shall assign, sublease, lease or transfer, in whole or in part, this Lease or such party's interest in the Leased Premises. This Lease shall automatically and forthwith terminate if assigned, sold or otherwise transferred by the CCBF without prior written consent by the City.

18. NOTICE AND OPPORTUNITY TO CURE; TERMINATION. In the event of the CCBF's failure to comply with or perform any of the terms, covenants or agreements herein required to be complied with or performed by the CCBF and the continuation of such failure for sixty (60) days after written notice of such failure from the City to the CCBF (by registered or certified mail, return receipt requested), or, if the failure is of such a character as cannot reasonably be cured within a sixty (60) day period, then upon failure by the CCBF within such sixty (60) day period to undertake such action as reasonably can be taken toward curing same, or failure thereafter diligently to prosecute such action to completion as promptly as reasonably possible after such action is initiated, then such failure shall constitute a breach of this Lease and all rights of the CCBF hereunder, and this Lease, shall cease, terminate, be forfeited, and be void.

19. RE-ENTRY. If this Lease shall be terminated pursuant to Sections 17 or 18 hereof, the City may immediately or at any time thereafter re-enter the Leased Premises and remove therefrom the CCBF, its agents, employees, or other persons, and all or any if its property therefrom.

20. SUCCESSOR AND ASSIGNS. The covenants and agreements herein contained shall bind and inure to the benefit of the City, its successors and assigns, and the CCBF, its successors and assigns.

21. LESSEE'S ACKNOWLEDGMENTS. The CCBF acknowledges that neither expenditures of funds by the CCBF, nor construction of improvements by the CCBF, nor any representation by any City official or employee, shall create any valid expectancy or right in the CCBF to renewal of this Lease, or obligation by the City to renew this Lease, and that the CCBF's performance of all its undertakings in this Lease, over the term thereof, is a valid factor for consideration by the City in determining whether this Lease shall be renewed.

22. REPRESENTATIONS.

a. The CCBF represents and warrants to the City that the CCBF's execution, delivery and performance of this Lease will not conflict with or violate any constitutional provision, statute, rule, order or regulations of any governmental body applicable to the CCBF and will not conflict with or violate any bylaw or rule however denominated of any corporation or any government or governmental agency applicable to the CCBF. The CCBF represents and warrants that the execution and delivery of this Lease has been duly authorized and that no further authorizations or approvals of the CCBF or of any third party or agency are needed or will be needed with respect to the performance by the CCBF of any of its obligations or agreements under this Lease throughout the term of this Lease (except for such routine and customary authorizations, permits or approvals as are described in this Lease).

b. The City represents and warrants to the CCBF that the City's execution, delivery and performance of this Lease, will not conflict with or violate any constitutional provision, statute, rule, order or regulation applicable to the City and will not conflict with or violate the City Charter. The City represents and warrants that the execution and delivery of this Lease has been duly authorized by the City's Board of Aldermen.

23. GOVERNING LAW. This Lease and the rights and liabilities of the parties to this Lease shall be governed by the laws of the State of Missouri. If any provision of this Lease is invalidated by judicial decision or statutory enactment, the invalidity of any such provision will not affect the validity of any other provisions of this Lease.

24. CAPTIONS. The captions or headings of the several sections of this Lease are for convenience only and shall not define, limit or construe the contents of such sections.

25. NON-WAIVER. No failure of either party to exercise any power given under this Lease or to insist upon strict compliance with the undertakings, duties and obligations of the other party hereunder, and no custom or practice of either party at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the provisions, covenants, terms and conditions of this Lease.

26. GENDER. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

27. MEMORANDUM OF LEASE. The parties shall record a Memorandum of Lease with respect to this Lease in the real estate records of the City of St. Louis, Missouri.

28. NOTICES AND ADDRESSES. All notices, demands, requests or replies provided for or permitted by this Lease shall be in writing and may be delivered by any one of the following methods: (1) by personal delivery; (2) by deposit with the United States Postal Service as certified or registered mail, return receipt requested, postage prepaid to the addresses stated below; or (3) by deposit with an overnight express delivery service. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (3) business days after deposit with the Postal Service. Notice by overnight express delivery service shall be deemed effective one (1) business day after deposit with the express delivery service. Notice by personal delivery shall be deemed effective at the time of personal delivery.

For purposes of notice, demand, request, reply or payment, if to the City, delivery of such shall be to the City's Comptroller at the following address:

Comptroller, City of St. Louis
Room 212, City Hall
1200 Market Street
St. Louis, Missouri 63103

With copies to:
Director of Parks, Recreation & Forestry
5600 Clayton Avenue (in Forest Park)
St. Louis, Missouri 63110

And
City Counselor's Office
Room 314 City Hall
1200 Market Street
St. Louis, Missouri 63103

If to the CCBF, delivery shall be to:
Carondelet Community Betterment Federation
6408 Michigan Avenue
St. Louis, Missouri 63111

With a copy to:

Each party shall have the right to designate a different address within the United States of America by the giving of notice in conformity with this section.

IN WITNESS WHEREOF, this Lease was executed the day and year first above written.

By: _____

(SEAL)

CITY OF ST. LOUIS, MISSOURI

By: _____
Mayor

By: _____
Comptroller

(SEAL)

City Register

Approved as to form:

City Counselor

Executed this ____ day of _____, 20__.

**EXHIBIT A
DESCRIPTION OF LEASED PREMISES**

Beginning at the southeastern corner of the Schmidt House building which is located at the inside corner of the public sidewalk at the northwest corner of the intersection of South Broadway and Courtois Street, proceed west along the inside edge of the public sidewalk for fifty feet; at that point proceed west along the inside edge of the public sidewalk for fifty feet; at that point proceed north into South St. Louis Square Park for fifty feet; at that point proceed east for fifty feet; and then at that point proceed south for fifty feet along the eastern wall of the Schmidt House Building.

**EXHIBIT B
DEPICTION OF LEASED PREMISES**

**EXHIBIT C
AUTHORIZED LEASEHOLD IMPROVEMENTS**

The Carondelet Community Betterment Federation (CCBF) shall undertake complete rehabilitation of the Anton Schmidt House. Rehabilitation shall be in compliance with the Secretary of the Interior's Standards for Rehabilitation of National Register listed structures. Rehabilitation shall be performed in accordance with attached architectural plans completed by the Sutton Studio Architects, Inc and dated 7/1/00. All work shall be performed in accordance with federal and local regulations including, but not limited to, those regarding hazardous materials, lead paint, asbestos, building codes, and fire safety.

All work, both interior and exterior, shall be reviewed and approved by the staff of the Cultural Resources Office of the Planning and Urban Design Agency and the Department of Parks, Recreation and Forestry, Parks Commissioner's Office. All appeals and disputes will be resolved at a public hearing before the Preservation Board of the City of St. Louis. Lessees will obtain all necessary permits before commencing any work.

**EXHIBIT D
POLICY STATEMENT OF
Carondelet Community Betterment Federation
REGARDING DISADVANTAGED BUSINESS
ENTERPRISE PARTICIPATION**

Qualified and bonafide Minority Business Enterprises ("MBE") and Women Business Enterprises ("WBE") shall have the maximum feasible opportunity to participate fully in the business activities and projects of the Carondelet Community Betterment Federation (CCBF).

The goal of the CCBF is that for all construction projects costing over \$100,000 that thirty percent (30%) of the dollar value of all construction work be performed by MBE/WBE firms certified as such by the City of St. Louis with 25% to be performed by MBE firms and with 5% to be performed by WBE firms.

See attached Exhibit B

Approved: June 29, 2001

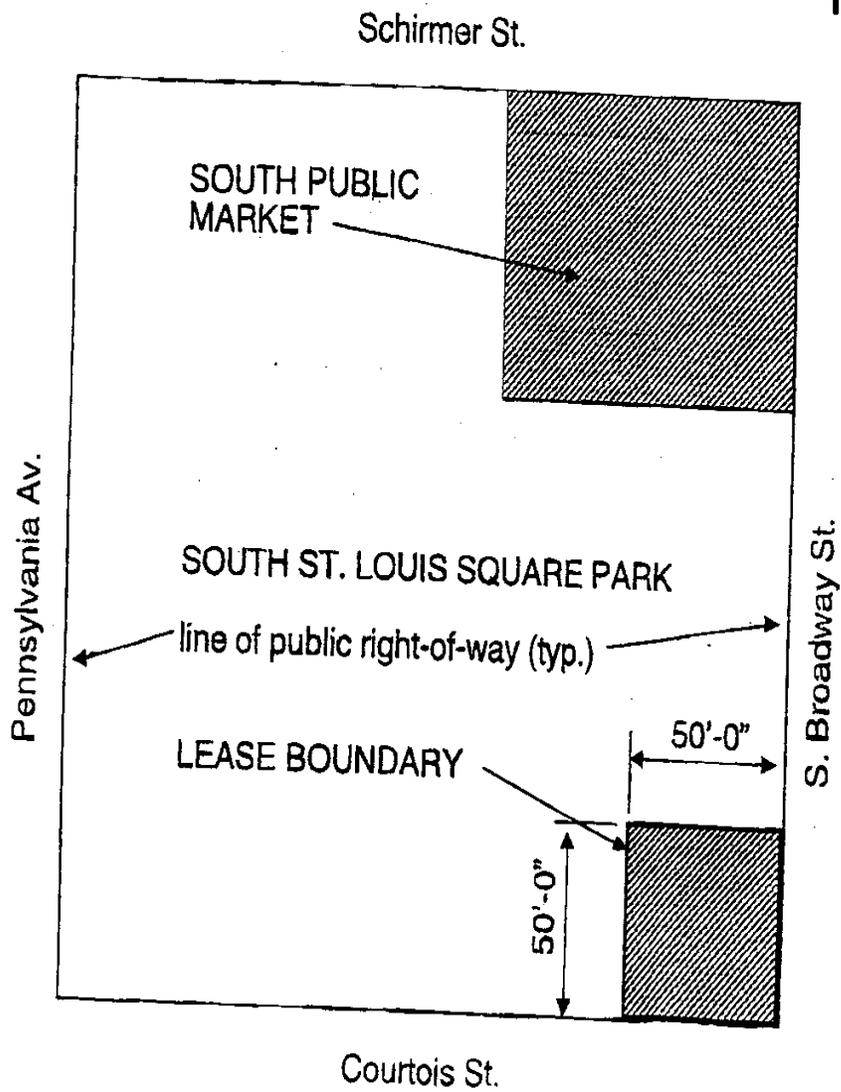
ORDINANCE #65219 - EXHIBIT B (SCHMIDT HOUSE PROPOSED LEASE AREA)

May-15-2001 09:36am From-PARKS ADMINISTRATION

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**EXHIBIT B:
SCHMIDT HOUSE PROPOSED LEASE AREA**



Courtois St.

Scale: 1" = 50'