

ORDINANCE #66965
Board Bill No. 327

An ordinance, authorizing and directing the Treasurer of the City of St. Louis, acting in his capacity as Supervisor of Parking (hereinafter referred to as "Treasurer") to enter into a Lease with Option to Purchase and a Sublease with the American Civil Liberties Union Eastern Missouri Fund, a Missouri non profit corporation, OF certain real estate belonging to the City of St. Louis and located in city Block 3892, granting authority to take such further actions as are necessary to effectuate the Lease with Option to Purchase, and containing a severability clause.

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

SECTION ONE. The Treasurer is hereby authorized and directed to enter into a Lease with Option to Purchase and a Sublease, to sell to the American Civil Liberties Union Eastern Missouri Fund, at a price of not less than Ten Thousand and no/100 Dollars (\$10,000.00) certain real estate belonging to the City of St. Louis and more fully described as follows (hereinafter "Property"), to wit:

A tract of land lying in City Block 3892 of the City of St. Louis, with the address of 4551 Rear Laeclde Avenue and having the Parcel No. 38920001850 and containing approximately 6457 square feet of land.

SECTION TWO. Terms and Conditions. The lease of the Property herein authorized is subject to such terms and conditions of the Ground Lease with Option to Purchase in substantially such form as Exhibit A attached hereto and incorporated herein by reference and the Sublease in substantially such form as Exhibit B attached hereto and incorporated herein by reference.

SECTION THREE. The Treasurer is hereby authorized and directed to execute and deliver a Special Warranty Deed to The American Civil Liberties Union Eastern Missouri Fund or their assignees, upon the exercise of the option to purchase and payment of the Purchase Price as defined in the Lease with Option to Purchase.

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 deliver such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the terms of the Lease with Option to Purchase and Sublease 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 to this Ordinance are hereby incorporated herein by this reference as if such exhibits were duly set forth herein.

EXHIBIT A TO BOARD BILL

**GROUND LEASE WITH
OPTION TO PURCHASE
LEASE COVER PAGE**

Parties	LANDLORD:	Treasurer of the City of St. Louis, Missouri
	TENANT:	American Civil Liberties Union/ Eastern Missouri Fund
Date		_____, 2005

2. TERM

The term of this Lease shall be for a period commencing on the Commencement Date as defined in Section 3 below and expiring on the date which is three (3) years after the Commencement Date; however, if the Commencement Date is any date other than the first (1st) day of a calendar month, then this Lease shall expire on the last day of the calendar month within which falls the third (3rd) anniversary of the Commencement Date. Tenant's obligation to pay rent shall commence on the Commencement Date. Within thirty (30) days after establishment of the Commencement Date, Landlord and Tenant shall execute a separate memorandum, setting forth the Commencement Date, the date on which the term expires, the date when all rent shall become payable, and any other information reasonably requested by Landlord.

3. COMMENCEMENT DATE

The Commencement Date of this Lease shall be _____.

4. TERMINATION

Notwithstanding Landlord's right to terminate this lease pursuant to Section 13, this Lease will terminate at the earlier date of: (i) three (3) years after the Commencement Date or (ii) the date of Closing, as stated in Section 43, following Tenant's exercise of its Option to Purchase.

5. RENT

A. Tenant shall pay to Landlord at Landlord's address shown above, or at such other address as Landlord may from time to time designate in writing TEN AND 00/100 DOLLARS (\$10.00) annual rent ("**Annual Rent**").

B. The Annual Rent shall be paid in a lump sum of Thirty and 00/100 Dollars on the Commencement Date of this Lease.

C. The Annual Rent shall not be refundable in any part upon Tenant's exercise of its rights or options under this Lease, include its right to terminate, or option to purchase.

6. TAXES AND ASSESSMENTS

A. Landlord shall pay all "taxes" (hereinafter defined), including penalties and interest, for the duration of this Lease.

B. Landlord agrees to pay to the appropriate governmental agencies all other real property taxes, assessments, impositions, and all other claims or charges, water, sewer and other rents, rates and charges, traffic generation assessments, excises, levies, license fees, permit fees and other authorization fees and all other charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) (herein collectively called the "**taxes**") which may constitute or may be reduced to a lien upon the Real Property, before the same shall become delinquent.

7. ALTERATIONS

A. Tenant does hereby accept the Premises in its current as-is condition.

B. Tenant shall not make, or cause to be made any alterations, changes or additions to the Premises without obtaining Landlord's prior written consent thereto. If Landlord fails to disapprove the proposed alteration within 30 days after receiving written request for such approval (which request, to be valid, shall contain plans describing such alteration, and shall refer to this Section of the Lease, and shall expressly state in the letter seeking such approval that Landlord's failure to respond within 30 days of receipt shall be deemed approval by Landlord), then the alteration shall be deemed approved. All alterations, changes and additions by Tenant shall be performed in accordance with Section 18. Upon completion of any alterations, changes or additions, Tenant shall furnish Landlord with a complete set of "as built" plans.

8. TENANT SIGNS

Tenant shall not have the right to install signs without prior written approval of the Landlord.

9. LIENS NOT PERMITTED

Tenant shall not, at any time, suffer or permit the attachment to the Premises of any lien for work done or materials furnished in connection with the improvement maintenance, repair and/or alteration of the Premises. If any such lien attaches to the Premises and is not discharged or released within thirty (30) days from the date of receipt by Tenant of written notice of same from Landlord, Landlord may, at its option, in addition to its other remedies, pay to the lien claimant the amount of such lien and notify Tenant of, such payment, in which event such amount shall be immediately due and payable by Tenant and shall bear interest at the Default Rate from the date paid by Landlord to the date Tenant reimburses Landlord; provided, however, that if Tenant desires to contest said lien, Tenant shall furnish to Landlord security satisfactory to Landlord for an amount at least equal to one hundred fifty percent (150%) of the amount of the lien for the Landlord's protection against all loss or expense on account of such asserted lien during the period of contest.

10. USE AND OCCUPANCY

A. Tenant shall use and occupy the Premises in a careful, safe and proper manner, and will not occupy or use said premises or permit the same to be occupied or used for any purpose or business which is unlawful and will comply with all lawful requirements of all valid laws, ordinances, rules and regulations of all governmental authorities.

Landlord shall be responsible for obtaining any and all permits or other licenses or permits from any and all governmental authorities, which may be necessary for Tenant's intended use of the Premises.

11. REPAIRS AND MAINTENANCE

A. During the Term of this Lease, Landlord shall, at its own cost and expense, when and if needed, as Landlord determines, maintain and make all needed repairs, maintenance and replacements to the Premises, including but not limited to, the maintenance and repairs which may be necessary to the Premises. Landlord shall be required to maintain and repair the paved and landscaped areas of the Premises and shall be responsible for all grass-cutting and for all trash and snow removal from the parking area.

B. Tenant shall have no obligation to repair, maintain or replace any portion of the premises except for repairs and maintenance as required under Section 44.

12. UTILITIES

Landlord shall pay or cause to be paid when due, all charges for electricity, water, sewage services and any and all other utilities used in or upon the Premises during the term of this Lease.

13. DEFAULT BY TENANT

A. If Tenant shall fail to keep and perform promptly any covenant of this Lease, in accordance with the terms of this Lease and such failure shall continue for a period of thirty (30) days (or such longer period as may be reasonably required to cure such default, provided Tenant commences to cure such default prior to the expiration of such thirty (30) day period, and thereafter pursues the same to completion with due diligence) after notice thereof from Landlord, the Landlord shall have the right, at its sole option, and subject only to the provisions of Section 9 hereof, to do any one or more of the following:

(i) without terminating this Lease, to make such alterations and repairs as Landlord shall reasonably determine may be necessary to relet the Premises, and to relet the same or any part thereof for such term or terms (which may be for a term extending beyond the term of this Lease) and upon such other terms and conditions as Landlord in its sole discretion may deem advisable. Upon each reletting, all rentals received by Landlord from such reletting shall be applied, first, to the payment of any indebtedness other than rent or other charges due under this Lease from Tenant to Landlord; second, to the payment of any costs and expenses of such reletting, including brokerage fees and attorneys' fees and costs of such alterations and repairs; and third, to the payment of rent and other charges due and unpaid hereunder. In no event shall Tenant be entitled to receive any surplus of any sums received by Landlord on a reletting in excess of the rental and other charges payable hereunder. If such rentals and other charges received from such reletting during any month are less than those to be paid during that month by Tenant hereunder, Tenant shall pay any such deficiency to Landlord (notwithstanding the fact that Landlord may have received rental in excess of the rental and other charges payable hereunder in previous or subsequent months), such deficiency to be calculated and payable monthly;

(ii) to terminate this Lease and to enter into and upon the Premises and take possession of the same, and Landlord may hold and retain the Premises as of its first or former estate. If Landlord takes possession of the Premises in accordance herewith, Landlord shall be entitled to recover damages from Tenant on account of Tenant's default as provided by law; or

(iii) to exercise any other right or remedy available at law or in equity.

B. Should Tenant file, or have filed against it, a petition under the Bankruptcy Code (11 U.S.C. Section 101 et. seq. as from time to time amended), then this Lease shall be in default, and Landlord shall be entitled to all rights and remedies hereunder and otherwise.

C. In the event that Tenant shall become a debtor under Chapter 7 of the Bankruptcy Code and Tenant shall elect to assume this Lease for its own use or for the purpose of assigning the same or otherwise, such election or assignment may be made only if all the provisions of this Section 13 are satisfied. If Tenant shall fail to elect to assume this Lease within sixty (60) days after the filing of a petition or such additional time as provided by the Bankruptcy Court within such sixty (60) day period, then this Lease shall be deemed to have been rejected. Immediately thereupon, Landlord shall be entitled to possession of the Premises without further obligation to Tenant and this Lease shall terminate, but Landlord's right to be compensated for damages (including, without limitation, liquidated damage pursuant to the terms of this Lease) in any such proceeding shall survive.

D. In the event that a petition for reorganization or adjustment of debts is filed concerning Tenant under Chapter 11 of the Bankruptcy Code, or a proceeding is filed under Chapter 7 of the Bankruptcy Code and is transferred to Chapter 11, Tenant must assume or reject this Lease within the earlier of: (i) confirmation of the plan; or (ii) 60 days from the date of the filing of the petition under Chapter 11 or such transfer thereto, or Tenant shall be deemed to have rejected this Lease. In the event that Tenant has failed to perform all of Tenant's obligations under this Lease within the time period (excluding grace periods) required for such performance, no election by Tenant to assume this Lease, whether under Chapter 7 or Chapter 11, shall be effective unless each of the following conditions has been satisfied:

(i) Tenant has cured or has provided Landlord with "Assurance" (as that term is hereinafter defined) that it will cure: (i) all monetary defaults under this Lease within ten (10) days from the date of such assumption, and (ii) all non-monetary defaults under this Lease within thirty (30) days from the date of such assumption;

(ii) Tenant has compensated, or has provided Landlord with Assurance that within ten (10) days from the date of such assumption it will compensate Landlord for any pecuniary loss incurred by Landlord arising from the default of Tenant, indicated in any statement of pecuniary loss sent by Landlord to Tenant;

(iii) Tenant has provided Landlord with Assurance of the future performance of each of the obligations under this Lease of Tenant and has: (i) deposited with Landlord, as security for the timely payment of rent hereunder, an amount equal to three (3) monthly installments or rent, and (ii) paid in advance to Landlord on the date the rent is due and payable one-twelfth of Tenant's annual obligations for additional rent pursuant to this Lease. The obligations imposed upon Tenant shall continue with respect to Tenant or any assignee of Tenant's interests in this Lease after the completion of bankruptcy proceedings; and

(iv) Such assumption will not breach or cause a default under any provision of any other lease, mortgage, financing agreement, reciprocal operating agreement or other agreement by which Landlord is bound relating to the Shopping Center.

For purposes of this Section, Landlord and Tenant acknowledge that "Assurance" shall mean no less than that: (i) Tenant has and will continue to have sufficient unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that sufficient funds will be available to fulfill the obligations of Tenant under this Lease, and (ii) the Bankruptcy Court shall have entered an order segregating sufficient cash payable to Landlord, and/or Landlord shall have been granted a valid and perfected first lien and security interest and/or mortgage in property of Tenant, acceptable as to value and kind to Landlord and Landlord's mortgagees, to secure to Landlord and Landlord's mortgagees the obligation of Tenant to cure the defaults under this Lease, monetary and non-monetary, within the time periods set forth above.

E. Tenant shall have further complied with all provisions of Section 365 of the Bankruptcy Code

F. If Tenant has assumed this Lease pursuant to the terms and provisions of this Section for the purpose of assigning

(or elects to assign) this Lease, this Lease may be so assigned only if the proposed assignee has provided adequate assurance of future performance of all of the terms, covenants and conditions of this Lease to be performed by Tenant. Landlord shall be entitled to receive all cash proceeds of any such assignment. As used herein, “adequate assurance of future performance” shall mean that no less than each of the following conditions has been satisfied:

(i) The proposed assignee has furnished Landlord with: (i) a current financial statement audited by a certified public accountant, indicating a net worth and working capital in amounts which Landlord and Landlord’s mortgagees reasonably determine to be sufficient to assure the future performance by such assignee of Tenant’s obligations under this Lease, and (ii) a guarantee or guarantees in form and substance satisfactory to Landlord and Landlord’s mortgagees from one or more persons with aggregate net worth equal to or in excess of Tenant’s net worth as of the date of this Lease. Tenant hereby acknowledges Landlord’s reliance upon the provisions of this subsection;

(ii) Said assignment shall be subject to Landlord’s receipt from said assignee of Assurance, as defined above, along with a prior finding by the Bankruptcy Court of compliance with all provisions of Section 365 of the Bankruptcy Code; and

(iii) Any such assignment shall be specifically subject to all the provisions hereof.

G. For purposes of this Section 13 only, the term “**Tenant**” shall also mean and apply to Tenant’s trustee in any bankruptcy proceeding and/or Tenant as debtor-in-possession, as the case may be appropriate.

H. If Tenant shall fail to pay an installment of Fixed Rent by the fifth (5th) day of the month, and Landlord shall notify Tenant of such default, then for each month thereafter in the succeeding twelve (12) months that such five (5) day delinquency shall occur, Tenant shall pay a processing charge of \$250.00. Additionally, if any amounts are not paid prior to the expiration of the notice and grace period set forth in Paragraph A. above, then in addition to Landlord’s other remedies, such delinquent amounts shall bear interest from the original due date until paid at a rate per annum equal to the lesser of (i) the highest lawful rate that may be charged under the laws of the State of Missouri, or (ii) 4% in excess of the “Prime Rate” from time to time published in The Wall Street Journal.

14. LANDLORD’S RIGHT TO CURE-DEFAULTS

If Tenant fails to perform any of the agreements or obligations on its part to be performed under this Lease, Landlord shall have the right (i) if no emergency exists, to perform the same after giving thirty (30) days’ notice to Tenant, and (ii) if in Landlord’s reasonable determination, any emergency situation (which may include Tenant’s default causing Landlord to be in default under another agreement by which Landlord is bound), to perform the same immediately without notice or delay. For the purpose of rectifying Tenant’s defaults as aforesaid, Landlord shall have the right to enter the Premises. Tenant shall on demand reimburse Landlord for the reasonable costs and expenses incurred by Landlord in rectifying Tenant’s defaults as aforesaid, including reasonable attorneys’ fees. Except for gross negligence by Landlord, Landlord shall not be liable or in any way responsible for any loss, inconvenience, annoyance or damage resulting to Tenant or anyone holding under Tenant for any action taken by Landlord pursuant hereto. Any act or thing done by Landlord pursuant to the provisions hereof shall not constitute a waiver of any such default by Tenant or a waiver of any covenants term or condition herein contained or the performance thereof.

15. QUIET ENJOYMENT

Landlord hereby covenants and agrees that if Tenant shall not then be in default beyond any period for the cure thereof, Tenant shall, at all times during the original term of this Lease and any renewal term, have peaceable and quiet enjoyment and possession of the Premises without any manner of hindrance from the Landlord or any other person, firm or corporation claiming by or through Landlord.

16. CODE COMPLIANCE

Landlord shall, at Landlord’s sole cost and expense, comply or cause the Premises to comply with all applicable laws, rules, regulations, requirements and ordinances now in force or which may hereafter be in force.

17. ENVIRONMENTAL COMPLIANCE

A. For the purposes hereof, the following definitions shall apply:

(1) “Law or Regulation” means and includes the Comprehensive Environmental Response Compensation and Liability Act (“CERCLA” or the Federal Superfund Act) as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”) 42 U.S.C., Sections 9601-9675; the Federal Resource Conservation and Recovery Act of 1976 (“RCRA”); the Clean Water Act, 33 U.S.C., Section 1321, et seq.; the Clean Air Act, 42 U.S.C., Section 7401, et seq.; all as the same may be from time to time amended and any other federal, state, county, municipal, local or other statute, law, ordinance or regulation which may relate to or deal with human health or the environment, including, without limitation, all regulations promulgated by a regulatory body pursuant to any such statute, law or ordinance.

(2) “Hazardous Substance or Materials” means asbestos, ureaformaldehyde, polychlorinated biphenyls, nuclear fuel or materials, chemical waste, radioactive materials, explosives, known carcinogens, petroleum products or other dangerous, toxic, or hazardous pollutant, contaminant, chemical, material or substance defined as hazardous or as a pollutant or contaminant in, or the release, or disposal of which is regulated by, any Law or Regulation.

B. Tenant shall not permit any Hazardous Substance to be used, Stored, generated, or disposed of (collectively, “Used”) on, in, or under the Real Property, except for those Hazardous Substances which may lawfully be Used in the ordinary course of business in the operation of the Premises, or as are reasonably required in performing the obligations of Tenant under this Lease, and then only to the extent no Law or Regulation is violated in so doing. Tenant shall promptly furnish Landlord with copies of any notices filed by Tenant, or received by Tenant relating to Tenant’s compliance with any Law or Regulation pertaining to its operations at the Premises.

18. CONDITIONS OF WORK FOR ALTERATIONS AND REPAIRS

A. All work for Alterations as contemplated by Section 7, for complying with laws and regulations as required by Section 16 and 17, and for the making of repairs as required by Section 11, (each hereinafter in this Section called the “**Work**”), shall be done in all cases in accordance with the following conditions, which Tenant covenants to observe and perform:

(1) No Work involving shall be undertaken until detailed plans describing such changes have first been submitted to and approved in writing by Landlord.

(2) All Work shall be commenced only after all required municipal and other governmental permits and authorizations have been obtained (Landlord agreeing, subject to the other provisions of this Lease, to join in any application therefor, at Tenant’s expense, whenever necessary) and shall be done in a good and workmanlike manner and in compliance with the building and zoning laws and with all other laws, ordinances, regulations and requirements of all federal, state and municipal governmental agencies, and in accordance with the recommendations of Tenant’s hazard insurer. The cost of the Work shall be paid in cash so that the Premises shall be free at all times from liens for labor and materials supplied or claimed to have been supplied to the Premises. The Work shall be prosecuted with reasonable dispatch.

19. INDEMNIFICATION BY LANDLORD

Landlord will indemnify Tenant and save Tenant harmless from and against any and all claims, actions, damages, liability and expense (including reasonable attorneys fees) in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence on the Premises, except to the extent caused by the negligence of Tenant, its agents, contractors or employees.

20. BROKERS

Landlord and Tenant warrant that they have dealt with no broker or other person claiming a commission in connection with this transaction; and each party shall indemnify and hold the other party harmless for any breach of such warranty. The indemnifications and hold harmless provisions of this paragraph include, but are not limited to, court costs, reasonable attorney fees and other professional fees and expenses, including the cost of any appeals.

21. CONDEMNATION

In the event that the Premises shall be taken partially or in its entirety by the exercise of the power of eminent domain or pursuant to any agreement in lieu of the exercise of such power (hereinafter called a “Condemnation Proceeding”), then the Lease shall terminate and Landlord and Tenant shall each make their respective claims to the appropriate condemning authority for any

compensation in connection with said condemnation.

22. ESTOPPEL INSTRUMENTS

At any time and from time to time, within ten (10) business days after receipt of the written request of either of the parties hereto, shall deliver to the party requesting the same a certificate executed in recordable form stating (i) the date of commencement of this Lease, (ii) whether or not this Lease is in full force and effect, (iii) whether or not any rights to renew the term of this Lease have been exercised and the date on which this Lease will terminate, (iv) whether or not this Lease has been modified or amended in any way and attaching a copy of such modification or amendment, (v) whether or not there are any existing defaults under this Lease to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any, and (vii) any other facts regarding the operation of the Lease as may be reasonably requested.

23. ASSIGNMENT AND SUBLETTING BY TENANT

Tenant shall not transfer, assign, sublet, enter into license or concession agreements, change ownership or hypothecate this Lease or sublease all or any portion of the Premises, nor allow the same to be used or occupied by any other person, without the prior written consent of Landlord. Notwithstanding any assignment or subletting, Tenant shall remain fully liable under this Lease, and shall not be relieved from performing any of its obligations hereunder.

24. INJUNCTION

In addition to all other remedies, Landlord and Tenant are entitled to the restraint by injunction of all violations, actual, attempted or threatened of any covenant, condition or provision of this Lease.

25. ATTORNEY'S FEES

In the event of any suit, action or proceeding at law or in equity, by either of the parties hereto against the other by reason of any manner or thing arising out of this Lease, the prevailing party shall recover, not only its legal costs, but a reasonable attorney's fee (to be figured by the Court) for the maintenance or defense of said action or suit, as the case may be.

26. NON-MERGER

During the term of this Lease, the leasehold estate of Tenant shall not merge with the fee simple or other estate in the Premises but shall always remain separate and distinct, notwithstanding the union of all or any part of said estate either in the Landlord or Tenant, or in a third party by purchase or otherwise, unless and until all persons having an interest therein, including a leasehold mortgagee, shall join in a written instrument Consenting to or effecting such merger.

27. NON-WAIVER

The failure of the Landlord or Tenant to enforce any of the rights given to it under this Lease by reason of the violation of any of the covenants in this Lease to be performed by Tenant or Landlord shall not be construed as a waiver of the rights of the Landlord or Tenant to exercise any such rights as to any subsequent violations of such covenants, or as a waiver of any of the rights given to the Landlord or Tenant by reason of the violation of any of the other covenants of this Lease.

28. RECORDABLE LEASE

Tenant, at Tenant's cost, may record a Memorandum of Lease, in a form reasonably acceptable to Landlord, which Memorandum may describe the Premises, the original term of this Lease and any options. In no event shall any such Memorandum set forth Tenant's rent or rate per square foot, or any other economic term of this Lease. Upon the expiration or earlier termination of this Lease, Tenant shall record such additional memorandums, at Tenant's cost, as Landlord reasonably deems necessary to place third persons on notice that Tenant's rights in the Property are terminated. In the event Tenant should fail or refuse to execute any such supplemental or confirmation memorandums, Tenant shall be liable to Landlord for any damages sustained by Landlord as a result of Tenant's failure or refusal. This provision shall survive the termination of this Lease.

29. CONSTRUCTION OF LEASE

Words of any gender used in this Lease shall be held to include any other gender, and words in the singular number shall

be held to include the plural, when the sense requires. Wherever used herein, the words "Landlord" and "Tenant" shall be deemed to include the heirs, personal representatives, legal representatives, successors, subtenants and assigns of said parties, unless the context excludes such construction.

30. INVALIDITY OF PROVISIONS

If any term or provision of this Lease or the application thereof to any person or circumstances shall to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons whose circumstances are other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

31. SERVICE OF NOTICE

A. Notices hereunder shall be in writing signed by the party serving the same and shall be sent by Registered or Certified U. S. Mail, Return Receipt Requested, postage prepaid, or by private express mail service, and (a) if intended for Landlord, shall be addressed to:

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

with a copy to:

William J. Kuehling, Esq.
Polsinelli Shalton Welte Suelthaus PC
100 South Fourth Street, Suite 1100
St. Louis, MO 63102
Fax: 314-231-1776

and (b) if intended for Tenant, shall be addressed to:

with a copy to:

or to such other addresses as either party may have furnished to the other from time to time as a place for the service of Notice.

B. All notices shall be effective upon being sent in the manner described in Paragraph A above. However, the time period in which a response to any such notice must be given shall commence to run from the date of receipt by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given, shall be deemed to be receipt of the notice as of the date of such rejection, refusal, or inability to deliver.

32. SURVIVAL OF LEASE COVENANTS; JOINT AND SEVERAL LIABILITY

A. The terms, conditions and covenants of this Lease shall be binding upon and shall inure to the benefit of each of the parties hereto, their heirs, personal representatives, legal representatives, successors or assigns, and shall run with the land. All obligations of Tenant which by their nature involve performance, in any particular, after the end of the term, or which cannot be ascertained to have been fully performed until after the end of the term, shall survive the expiration or sooner termination of the term.

B. The obligations and liability of all parties named as the Tenant hereunder shall be joint and several.

C. This Lease shall be construed and enforced in accordance with the laws of the State of Missouri.

33. HEADINGS

It is understood and agreed that the headings are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of this Lease, not in any way affect this Lease.

34. ENTIRE AGREEMENT

This Lease contains the entire agreement between the parties and any agreement hereafter made shall be ineffective to change, modify or discharge it in whole or in part unless such agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought.

35. BENEFIT

This Lease shall inure to the benefit of and be binding upon the parties hereto and their representatives, executors, administrators, legal representatives, successors and assigns.

36. COUNTERPARTS

This Lease may be executed simultaneously in several counterparts, each of which will be deemed an original, but all of which together will constitute one in the same instrument.

37. DATE OF LEASE

Whenever there is reference in this Lease to the term, "the date of this Lease," the date of this Lease shall be considered to be the date on which Tenant receives a fully executed copy of the Lease from Landlord.

38. HOLIDAY; NON-BUSINESS DAY; OR BUSINESS DAY

If any date set forth in this Lease is to occur on a holiday or other non-business day, or if any period of time set forth in this Lease expires on a holiday or non-business day, then such expiration date shall be extended to the next business day thereafter, As used in this paragraph and in this Lease, the terms "holiday," "non-business day," and "business day" shall have the following meanings:

- (a) "holiday" shall mean those dates upon which nationally chartered banks of the United States of America are not open for business;
- (b) "non-business day" shall mean holidays and Saturday and Sunday; and
- (c) "business day" shall mean any day that is not either a holiday or a non-business day.

39. EXHIBITS

The following Exhibits are attached hereto and incorporated herein by this reference:

EXHIBIT A Legal Description

EXHIBIT B Memorandum of Lease Term

40. WAIVER OF TRIAL BY JURY

THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, OR TENANT'S USE AND OCCUPANCY OF THE PREMISES.

41. NO PERSONAL LIABILITY

Larry C. Williams has executed this Agreement on behalf of the Treasurer's Office of the City of St. Louis solely in his official capacity as Treasurer of the City of ST. Louis. Neither Larry C. Williams, nor any employee or agent or consultant of the Treasurer's Office of the City of St. Louis, nor any other official, agent, or employee of the City of St. Louis, or an of an affiliated entity, shall be held to any personal liability under this Agreement, and no resort shall be had against them personally, or their property or assets, for the satisfaction of any claim under this Agreement.

42. RIGHT OF ENTRY

Landlord and its designees shall have the right to enter the Premises for all lawful purposes and to whatever extent necessary or appropriate to enable Landlord to exercise all of its rights under this Lease, and to carry out all of Landlord's obligations hereunder. The exercise by Landlord of its rights of entry herein granted shall not constitute an eviction of Tenant, and the rent payable under this Lease shall not abate by reason thereof.

43. OPTION TO PURCHASE

Landlord does hereby grant Tenant the "Option to Purchase" the Premises upon the terms and conditions set forth below, provided that this Lease is in full force and effect:

A. Tenant may exercise its Option to Purchase the Premises pursuant to the provisions of this Section 47 by delivering a written notice (the "Option Notice") to Landlord whereby Tenant notifies Landlord of the exercise of said option. Written notice of election by Tenant shall be delivered to Landlord in person or mailed to Landlord by Certified United State Mail, postage prepaid, addressed to Landlord at the address given in the Lease.

B. The Option to Purchase may only be exercised if Tenant has entered into a binding contract with a third party to buy the Premises and adjacent real property owned by Tenant at the Commencement date of this Lease ("Combined Properties").

C. Tenant may exercise this Option to Purchase at any date after Commencement of the Lease and before Termination of the Lease.

D. The "Purchase Price" for the Premises shall be the greater of Ten and 00/100 Dollars (\$10.00) per square foot or twenty-two and one-half percent (22.5%) of the net proceeds of the sale of the Combined Properties.

E. The closing date for the purchase of the Premises, pursuant to the exercise of the option, shall be a date to be mutually agreed upon by Landlord and Tenant, but in no event later than 180 days nor less than 30 days after the date of delivery of the Option Notice ("Closing").

F. Landlord shall cooperate with Tenant in the Closing and shall execute such documents as may be requested by the title company or as may be reasonably requested by Tenant or third-party buyer.

G. All costs related to the purchase of the Premises, including the owner's title insurance, shall be paid by Tenant and the premium of the mortgagee's title policy if any, shall be paid by Tenant.

H. It is understood and agreed that Landlord shall deliver to Tenant good and marketable title subject only to all easements, rights of way, restrictions, instruments of record as of the date of this Lease, current real estate taxes, zoning and other ordinances. Landlord shall cause any monetary liens to be paid at Closing except current real property taxes. General taxes on the Property shall be prorated as of the date of delivery of the deed. Any special assessments which become liens after the date of this Lease shall be paid by Landlord.

I. Landlord shall convey all of Landlord's right, title and interest in and to the Premises by a Special Warranty Deed, free and clear of all liens and encumbrances except

J. If any improvements on the Premises are damaged or destroyed during the period of this Option, and the Option is exercised, then any insurance proceeds received on account of said destruction or damage shall be paid or assigned to Tenant at Closing.

K. Tenant shall, within five days after delivery of Option Notice, order a commitment for an Owner’s Policy of Title Insurance issued by a title insurance company selected by Tenant and approved by Landlord showing title to the Property in Landlord’s name and

L. Landlord shall provide Tenant its cooperation in connection with Tenant’s efforts to obtain approval from the City of St. Louis relative to the following: (i) obtaining zoning variances and exceptions for the Premises that Tenant may deem necessary, (ii) the establishment of tax abatement and/or tax increment financing and/or other available assistance programs for the Premises; provided however, that such assistance shall not require the incursion of any expense on behalf of Landlord

44. RIGHT OF INSPECTION

After delivering Option Notice, Tenant and it designees shall have the right to access the Premises for purposes of performing tasks associated with its exercise of its option to purchase, subject to the restrictions below:

A. Tenant shall not conduct or allow any physically intrusive testing of, on or under the Premises without first obtaining Landlord’s written consent as to the timing and scope of the work to be performed. Landlord does hereby consent to Tenant’s taking core samples of the Premises to determine the subsoil condition of the Premises and to insure that the Premises are in compliance with all environmental laws and regulations and no further consents will be required for this work.

B. Tenant agrees that it will cause it and any person accessing the Premises hereunder for the purpose of conducting any physically intrusive testing, such as taking core samples of the Premises to be covered by not less than One Million and no/100 Dollars (\$1,000,000.00) commercial general liability insurance (with, in the case of Tenant’s coverage, a contractual liability endorsement, insuring its indemnity obligation under this Lease), insuring all activity and conduct of such person while exercising such right of access and naming Landlord as an insured, issued by a licensed insurance company reasonably acceptable to Landlord.

C. Tenant agrees that, in the exercise of the right of access hereby granted, it will not unreasonably interfere with or permit unreasonable interference with any person occupying or providing service at the Premises. Tenant shall provide Landlord with three (3) days’ prior written notice of those days upon which Tenant intends to take core samples of the premises, it being acknowledged and understood by Landlord and Tenant that such activities may interfere with Landlord’s operation of a parking lot on the Premises for the day or two that Tenant shall be taking said core samples.

D. Tenant agrees to give Landlord three (3) days prior notice of its intent to conduct any physically intrusive inspections or tests so that Landlord will have the opportunity to have a representative present during any such inspection or test, the right to do which Landlord expressly reserves. Tenant agrees to promptly cooperate with any reasonable request by Landlord in connection with the timing of any such physically intrusive inspection or test. Tenant agrees to provide Landlord upon Landlord’s request with a copy of any written inspection or test report or summary prepared by any third party. Tenant’s right to access the Premises shall exist throughout the Term of this Lease.

E. Tenant agrees that any inspection, test or other study or analysis of the Premises shall be performed at Tenant’s expense and in strict accordance with applicable law.

F. Tenant agrees at its own expense to promptly repair or restore the Premises, or, at Landlord’s option, to reimburse Landlord for any repair or restoration costs, if any inspection or test requires or results in any damage to or alteration of its condition.

G. Tenant agrees to the extent provided by law to indemnify, defend, and hold harmless Landlord and its affiliates, officers, and agents from any loss, injury, damage, claim, lien, cost or expense, including reasonably attorneys’ fees and costs, arising from the exercise by Tenant or its prospective buyers, consultants, agents, or representatives of the right of access under this Lease or out of any of the foregoing. The indemnity in this section shall survive any termination of this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the date first above written.

TENANT:

LANDLORD:

 BY: _____ BY: _____
 Print Name: _____ Print Name: _____
 Title: _____ Title: _____

STATE OF _____)
) SS:
 COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by _____, who, being duly sworn, says that he/she is the _____ of _____, a _____, on behalf of said _____ . He/She is personally known to me.

 NOTARY PUBLIC

My Commission Expires

 STATE OF _____)
) SS:
 COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by _____, who, being duly sworn, says that he/she is the _____ of _____, a _____, on behalf of said _____ . He/She is personally known to me.

 NOTARY PUBLIC

My Commission Expires

EXHIBIT A TO GROUND LEASE

LEGAL DESCRIPTION

Parcel "A" of the A.C.L.U. Subdivision of Lot 30 and the eastern 30 feet of Lot 31 of "Davis Subdivision" in City Block 3092 of the City of St. Louis, according to the Plat and Survey thereof, by R. Dan Boles & Co. dated April 19, 1983.

EXHIBIT B TO GROUND LEASE

COMMENCEMENT AGREEMENT

TENANT: AMERICAN CIVIL LIBERTIES UNION
 LANDLORD: TREASURER OF THE CITY OF ST. LOUIS
 PREMISES: Parcel "A" of the A.C.L.U. Subdivision of Lot 30 and the eastern 30 feet of Lot 31 of "Davis

Subdivision” in City Block 3092 of the City of St. Louis, according to the Plat and Survey thereof, by R. Dan Boles & Co. dated April 19, 1983.

DATE OF ORIGINAL LEASE EXECUTION: _____

This Lease Commencement Agreement is executed by Tenant and Landlord pursuant to Section 2 of the Lease referenced above, and shall be attached thereto and become a part thereof for all purposes.

1. Tenant hereby acknowledges that it has inspected the Premises and finds same to be substantially complete, in a tenable condition and now suitable for Tenant's intended use.

2. Tenant and Landlord hereby agree, pursuant to Section 2 of the Lease, that the actual Lease Commencement Date of the Term of the Lease shall be _____ and that the rent, as provided for in the Lease, shall commence as of such date, and further, that the Lease will terminate at Midnight (local time) on _____, if not otherwise terminated pursuant to the provisions of the Lease.

Executed this _____ day of _____, 200_____.

TENANT:

LANDLORD:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT B TO BOARD BILL

SUBLEASE

THIS SUBLEASE (the “Sublease”) is made as of _____, _____, between American Civil Liberties Union, Eastern Missouri Fund (“Sublandlord”) and the Treasurer of the City of St. Louis, Missouri, a _____ (“Subtenant”).

WITNESSETH:

WHEREAS, Sublandlord leases certain property in St. Louis, Missouri, pursuant to a Lease dated _____ (the “Lease”) between the Treasurer of the City of St. Louis, as the Landlord thereunder (“Landlord”), and Sublandlord, as the tenant thereunder. A copy of the Lease, including all amendments, is attached hereto and made a part hereof as **Exhibit A**. All capitalized terms not defined herein shall have the meanings ascribed to them in the Lease; and

WHEREAS, Subtenant desires to lease from Sublandlord, and Sublandlord desires to lease to Subtenant, all of the property demised by the Lease, consisting of approximately 6457 square feet of space, as shown on the Outline of the Subleased Premises attached hereto as **Exhibit B** (the “Subleased Premises”), all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SUBLEASE OF SUBLEASED PREMISES

Sublandlord hereby leases the Subleased Premises to Subtenant, and Subtenant hereby leases the Subleased Premises from Sublandlord, on the terms and conditions set forth herein, including without limitation, the terms and conditions of the Lease set forth in Exhibit A; however, any terms of the Lease which have expressly been modified by the terms of this Sublease shall only apply

to Subtenant as they have been modified by the provisions of this Sublease. Subtenant expressly assumes all obligations of Sublandlord under the Lease, except as expressly set forth herein.

TERM

The term of this Sublease (the "Term") shall commence on _____, and shall continue in effect until _____, 2008, or such earlier date as the Lease may be terminated pursuant to the terms thereof; provided, that the Term of this Sublease shall be subject to earlier termination in accordance with the terms and conditions hereof.

RENTS

A. Subtenant agrees to pay directly to Sublandlord TEN AND 00/100 DOLLARS (\$10.00) annual rent ("Annual Rent").

B. This Annual Rent shall be paid by Subtenant in one lump sum of THIRTY AND 00/100 (\$30.00) DOLLARS on the first day of the Term of this Sublease.

CONDITIONS OF SUBLEASED PREMISES

Subtenant has inspected the Subleased Premises and agrees to accept the Subleased Premises "AS IS, WHERE IS" without any obligation on the part of Sublandlord to modify, improve or otherwise prepare the Subleased Premises for Subtenant's occupancy.

USE AND OCCUPANCY

Subtenant shall comply with all applicable laws, ordinances and regulations of governmental authorities and shall also comply with the terms of the Lease relating to the use of the Subleased Premises by the "Tenant" under the Lease (which terms are disclosed in the aforesaid Exhibit A). Subtenant shall abide by the Rules and Regulations described in the Lease, as from time to time in force and effect.

SUBORDINATION TO LEASE

This Sublease is subject and subordinate, in all respects, to the Lease.

ASSIGNMENT AND SUBLETTING BY SUBTENANT

Subtenant may not assign this Sublease in whole or in part or further sublet the Subleased Premises in whole or in part without the prior written consent of Sublandlord (which consent shall not be unreasonably withheld or delayed) and Landlord. If Sublandlord and Landlord consent to any such assignment or subletting, Subtenant shall remain fully and primarily liable to Sublandlord, in all respects, under this Sublease. Subtenant may not otherwise assign this Sublease or sublet the Subleased Premises.

COMPLIANCE WITH LEASE

In the event that either Sublandlord or Subtenant shall receive any notice from Landlord regarding a default pursuant to any of the provisions of the Lease, the party receiving such notice shall promptly give a copy thereof to the other party. If either Subtenant or Sublandlord shall default in the performance of any of their obligations under the Lease, Landlord shall have the right (after allowing for any and all applicable notices and cure periods under the Lease) to make, demand or institute any appropriate action or proceeding against Subtenant and/or Sublandlord for the enforcement of the obligations of Subtenant and Sublandlord.

CERTAIN LEASE MATTERS

With respect to the Subleased Premises, Subtenant shall be entitled to the maintenance and other services to which Sublandlord is entitled under the Lease and shall be subject to those limitations upon such maintenance and other services pertaining to Sublandlord under the Lease. Subtenant agrees that Sublandlord shall not be required to perform any of the obligations of Landlord; and insofar as any of the obligations of Sublandlord herein are required to be performed under the Lease by Landlord, Subtenant shall rely on and look solely to Landlord for the performance of such obligations. If Landlord shall default in the performance of any of its obligations under the Lease, Subtenant shall have the right, at Subtenant's sole cost and expense, but in the name of Sublandlord, to make, demand or institute any appropriate action or proceeding against Landlord for the enforcement

of the obligations of Landlord. Sublandlord agrees that it will sign such demands, pleadings or other papers that may be reasonably required and will otherwise cooperate with Subtenant as may be reasonably necessary to enable Subtenant to proceed in Sublandlord's name to enforce the obligations of Landlord, including proper requests for Landlord's consent to alterations by Subtenant to the Subleased Premises. Subtenant shall pay, and shall indemnify and hold Sublandlord harmless against, any and all liability arising in connection with this Paragraph 9 (including attorney fees), any and all costs and expenses incurred by Sublandlord pursuant to this Paragraph 9, or any and all liabilities, costs and expenses otherwise incurred by Sublandlord in the prosecution of any proceedings or actions so taken by Subtenant.

CONDITION PRECEDENT

The effectiveness of this Sublease is expressly subject to and conditional upon obtaining Landlord's written consent to this Sublease pursuant to Section 16 of the Lease.

HEADINGS

The captions in this Sublease are inserted only as a matter of convenience and for reference and in no way define, limit, enlarge or describe the scope or intent of this Sublease nor in any way affect this Sublease or the construction of any provisions hereof.

SEVERABILITY

If any clause or provision of this Sublease or the application thereof to any person or circumstance becomes illegal, invalid or unenforceable to any extent because of present or future laws or any rule or regulation of any governmental body or entity, effective during the Term, the intention of the parties hereto is that the remainder of this Sublease and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

ESTOPPEL INSTRUMENTS

At any time and from time to time, within ten (10) business days after receipt of the written request of either of the parties hereto, shall deliver to the party requesting the same a certificate executed in recordable form stating (i) the date of commencement of this Sublease, (ii) whether or not this Sublease is in full force and effect, (iii) whether or not any rights to renew the term of this Sublease have been exercised and the date on which this Sublease will terminate, (iv) whether or not this Sublease has been modified or amended in any way and attaching a copy of such modification or amendment, (v) whether or not there are any existing defaults under this Sublease to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any, (vi) the status of rent payments and (vii) any other facts regarding the operation of the Sublease as may be reasonably requested.

BROKERS

Sublandlord and Subtenant warrant that they have dealt with no broker or other person claiming a commission in connection with this transaction; and each party shall indemnify and hold the other party harmless for any breach of such warranty. The indemnifications and hold harmless provisions of this paragraph include, but are not limited to, court costs, reasonable attorney fees and other professional fees and expenses, including the cost of any appeals.

IN WITNESS WHEREOF, the parties have executed this Sublease as of the date first above written.

SUBLANDLORD:

SUBTENANT:

By: _____
Its: _____

By: _____
Its: _____

The undersigned Landlord hereby consents to the above Sublease.

Date: _____

By: _____

Its: _____

**EXHIBIT A TO SUBLEASE
THE LEASE**

**EXHIBIT B TO SUBLEASE
OUTLINE OF THE SUBLEASED PREMISES**

Approved: January 3, 2006