ORDINANCE #67692
Board Bill No. 293

An ordinance authorizing and directing the Mayor and Comptroller of the City of St. Louis to execute a lease of City-owned property located in City Block 436 to Cannon Design Powerhouse, LLC, for a period of Fifteen (15) years with Two (2) additional Five (5) year options for renewal at lessee's request; and containing an emergency clause.

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

SECTION ONE. The Mayor and Comptroller of the City of St. Louis are hereby authorized and directed to enter into the following Lease of City-owned property located in City Block 436, as more fully described in such Lease, for purposes of storing materials and installing and operating HVAC equipment in connection with Lessee's renovation of 1100 Clark Avenue, as set forth in such Lease, which is attached hereto as Exhibit A.

SECTION TWO. Emergency Clause. This ordinance, being necessary for the immediate preservation of public peace, health, safety, and general welfare, shall be and is hereby declared to be an emergency measure within the meaning of Sections 19 and 20 of Article IV of the Charter of the City of St. Louis and, as such, this ordinance shall take effect immediately upon its passage and approval by the Mayor.

EXHIBIT A

LEASE AGREEMENT

THIS AGREEMENT made and entered into this ____day of _____, 2007, by and between the City of St. Louis, a Municipal Corporation of the State of Missouri, through its Comptroller pursuant to Article XV, Section 2 of the Charter of the City of St. Louis, hereinafter referred to as Lessor, and Cannon Design Powerhouse, LLC, whose address is One City Centre - 25th Floor, St. Louis, MO 63101, hereinafter referred to as Lessee.

WITNESSETH:

WHEREAS, There does exist certain property owned by the City of St. Louis and more fully described as follows:

Premises located in the northeast corner of the building known as and numbered 1122 Clark Avenue comprised of an open first floor garage area, basement, and roof; said footprint containing approximately 3,000 square feet, and excluding an existing AmerenUE substation, hereinafter collectively to be referred to as the "Subject Property".

AND WHEREAS, Subject Property currently is unused by the City of St. Louis.

AND WHEREAS, Lessee has submitted a proposal whereby it desires to lease said Subject Property for the sole use of storing materials and installing and operating HVAC equipment in connection with Lessee's renovation of 1100 Clark Avenue.

NOW, THEREFORE, in accordance with the covenants and agreements herein contained, the parties hereto hereby obligate themselves as follows: The City of St. Louis, Lessor, lets unto Lessee the above legally described real property for a period of Fifteen (15) years, commencing on the 1st. day of November 2007 and ending on the 30th day of October 2022, with Two (2) additional Five (5) year options for renewal at lessee's request subject to the terms, conditions, and covenants hereinafter set forth.

1. The rent for the term of this lease shall be Three Thousand Dollars ($3,000.00) per year, paid in advance in annual installments, and other valuable considerations as heretofore set forth in this agreement. Beginning in the 11th lease year, rent shall be adjusted each lease year in an amount equal to the ratio of the Consumer Price Index ("CPI") last published before the commencement of the lease year in for which annual rent is computed and the CPI last published before the commencement of the lease year immediately preceding the lease year for which annual rent is being computed. For purposes of applying the CPI adjustment, the parties agree that the CPI utilized shall be the Revised Consumer Price Index of the United States Department of Labor Bureau of Labor Statistics for Urban Wage Earners and Clerical Workers, St. Louis Average (1982-84=100).

2. The use of the Subject Property let hereunder shall be for the sole and exclusive purpose of storing materials and

installing and operating HVAC equipment (including without limitation ongoing maintenance, repair and replacement) in connection with Lessee's renovation and occupancy of 1100 Clark Avenue ("Adjacent Property"). Lessee and Lessee's tenants and invitees are hereby granted the right to undertake all activities contemplated by and incidental to said exclusive purpose, including without limitation uninterrupted access to the Subject Property. This lease is not assignable, except to a subsidiary or affiliated entity of Lessee, nor shall Subject Property be used or permitted to be used for any purpose other than set forth above without the written consent of Lessor.

3. Possession of the Subject Property shall be given to Lessee by Lessor upon full execution of this agreement by both parties hereto. LESSEE AGREES AND COVENANTS TO TAKE THE SUBJECT PROPERTY IN "AS IS" CONDITION. Lessee acknowledges that City has made no representations, warranties, or statements regarding the condition of the Subject Property, any improvements thereon, or the suitability of the Subject Property for the use contemplated by Lessee and described in Section 2 of this agreement. Lessee states that it has inspected the Subject Property and improvements thereon, finds their current condition satisfactory and suitable to its needs, and accepts them under this agreement in "AS IS" condition with the exception of the City of St. Louis removing all personal property from the Subject Property prior to commencement of the lease.

4. Upon prior written permission of Lessor, said permission to be reasonably given, Lessee shall provide at its sole cost and expense, all necessary renovations and repairs to the Subject Property, and any improvements placed thereon, by Lessee deemed desirable by Lessee. Any permanent construction and/or substantial alterations at or on demised premises, including but not limited to upgrades or repairs to; paved surfaces, floors, plumbing, sewer, electrical roof, walls, foundation, appliances, and lighting, shall become part of the Subject Property and become property of Lessor; provided, however, Lessee's personal property, trade fixtures and the HVAC, fire protection and electrical work installed on or in the Subject Property that is solely for the use and operation of the Adjacent Property (including but not limited to chillers, air handlers, ductwork, controls, panel boards, switches, disconnects and associated connections between these items necessary for the complete operation of such equipment in support of the Adjacent Property), shall remain the sole and exclusive property of Lessee and may be removed by Lessee at the expiration of this lease. It is understood that the Lessee shall provide utilities for the operation of the Subject Property from the Adjacent Property. During the term of this Agreement, Lessee shall use reasonable diligence in the care and protection of the Subject Property. Lessee agrees to keep the Subject Property in continued good order, free from any nuisance or filth upon or adjacent thereto. Lessee covenants that it will follow all laws and regulations applicable to the Subject Property, and not to use or permit the use of the same or any part thereof for any purposes forbidden by law or ordinance now in force or hereafter enacted in respect to the use or occupancy of the Subject Property. Additionally and specifically, Lessee agrees to provide Lessor with reasonable access to the property and any improvements placed thereon.

5. Lessee shall provide all utilities required for the intended purpose as set forth in Section 2 of this agreement.

6. Lessee shall at all times during the term of this agreement maintain at its own expense liability insurance coverage in the amount of $100,000 per person, $300,000 per incident, and $50,000 property damage, or in a different amount if deemed desirable by the Comptroller of the City of St. Louis, naming the City of St. Louis as an additional insured, and file a certificate of same with the Comptroller of the City of St. Louis. Lessee hereby agrees to hold Lessor harmless and indemnify Lessor from all and any claims, demands, actions, causes of action or judgments against Lessor for personal injuries or damages to property arising out of or resulting from, directly or indirectly, Lessee's use of the Subject Property, including reimbursement of all costs expended by Lessor in defense of any such claim, demands, actions, causes of action, or judgments. Lessee shall be fully and completely responsible, at its sole cost and expense, to remediate any environmental contamination resulting from Lessee's use and/or possession of the demised premises under the terms of this agreement. Lessee shall be fully and completely responsible, during the full term of this agreement, for any destruction to the Subject Property or any improvements placed thereon, by any act of God or other cause. In the event that any such act of God or other cause renders the Subject Property unfit or unusable by Lessee, Lessee may, at its option, terminate this agreement upon 90-day written notice to the Comptroller, or Lessee may repair or reconstruct the Subject Property. Termination under this section of the lease shall be Lessee's sole recourse against Lessor in the event of destruction by act of God or other cause.

7. In the event that Lessee fails to cure any default under this lease within thirty (30) days following written notice from Lessor (unless such default is of a nature that it cannot reasonably be cured within 30 days, then such

reasonable time as is necessary to effect such cure), The Comptroller of the City of St. Louis, upon review of the information made available to Lessor pursuant to this agreement, shall be empowered to terminate this lease in accordance with the default, breach and/or termination provisions set forth in this Agreement.

8. From and after the date of execution of this lease, both parties shall comply with all laws, ordinances, regulations, and orders of Federal, State, County, and Municipal authorities pertaining to the Subject Property and any improvements and operations thereon.

9. Both parties agree that Lessee is not an agent or employee of Lessor.

10. Lessee agrees that in the use of the Subject Property or in the use of any property used in connection with the Subject Property, 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 said property.

11. The Americans with Disabilities Act (ADA) prohibits discrimination based on disability. Lessee covenants to comply with the provisions of the Americans with Disabilities Act and provide necessary documentation of their compliance efforts as required by the Commissioners of the Office on the Disabled; provided, however, Lessee shall not be required to make any improvements for the purpose of bringing the Subject Property into compliance with the ADA.

12. Lessee bears full and complete authority for obtaining any permits, licenses, and/or approval required from the City of St. Louis and/or its boards, departments, and agencies, as may be applicable, and Lessee covenants that it will follow all laws and regulations applicable to the Subject Property. Lessee hereby agrees to complete all improvements necessary to meet City codes and to obtain any required occupancy or use permit(s) within Three Hundred Sixty Five (365) days after this agreement has been properly signed by all parties to this Lease.

13. The covenants and agreements contained herein shall bind and the benefits and advantages shall inure to the respective successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural; the plural, the singular, and the use of any gender shall be applicable to all genders. All covenants, agreements and undertaking shall be joint and several. Notwithstanding the aforementioned provisions, Lessee may not sublease the Subject Property nor may the Subject Property be used by Lessee's successors or assigns for any purpose other than those delineated in Section 2 of this agreement during the full term of this lease agreement, unless the Board of Estimate and Apportionment of the City of Saint Louis provides Lessee with written approval of such a sublease or amended exclusive purposes. No modifications or changes shall be made to this Lease unless the same are made in writing and signed by all parties to this Lease.

14. Lessee may terminate this Lease prior to the expiration of its term upon 90-day written notice to Lessor. In the event Lessor shall desire to sell the Subject Property, Lessee and its successors are hereby granted a right of first offer to purchase the Subject Property. Prior to entering into substantive negotiations for the sale of the Premises to an outside person or entity, Lessor shall give Lessee written notice of the terms and conditions under which Lessor is disposed to sell its interest; provided, however the purchase price for the Subject Property may not exceed fair market value as determined by an independent third party appraiser with MAI designation using USPAP (Lessor and Lessee shall mutually agree on the appraiser). Lessee shall have thirty (30) days after receipt of notice to exercise the right of first offer in writing. If Lessee fails to accept the offer within the time provided, Landlord shall be free to enter into substantive negotiations for, and to consummate a sale of the Subject Property to an outside party in accordance with the terms of the written agreement which accompanied the notice to Lessee or such other terms and conditions which are more favorable to Lessor. In the event that the Subject Property or any portion thereof is required for any municipal purpose (and in lieu of exercising any governmental right of eminent domain or otherwise), and it is not possible, in the reasonable judgment of Lessor or Lessee, for Lessee to continue to utilize the Subject Property for the uses permitted hereunder, without interference, Lessor may upon at least One Hundred Eighty (180) days prior written notice, either (i) move Lessee from the Premises to another location reasonably acceptable to Lessee of approximately equal size and area which will accommodate Lessee's HVAC equipment to provide HVAC service to the Adjacent Property. Lessor shall bear all expenses of said relocation and reinstallation as well as the expense of any renovations or alterations (including without limitation utility lines) necessary to make the new space accommodate Lessee's equipment. The terms, covenants, and conditions of this lease shall remain in full force and effect and be deemed

applicable to such new space, and such new space shall thereafter be deemed to be the Subject Property as though Lessor and Lessee had entered into an express written amendment of this Lease with respect thereto; or (ii) terminate this lease and pay to Lessee an amount equal to all costs and expenses associated with removing and relocating Lessee's HVAC equipment and related utility lines as well as the expense of any renovations or alterations necessary to make the Adjacent Property or other property accommodate Lessee's equipment for the purpose of providing HVAC service to the Adjacent Property, costs of terminating and moving utility services and the cost of moving all of Lessee's personal property from the Subject Property. Notwithstanding the foregoing, Lessor shall make every good faith effort to avoid the early termination of this Lease by Lessor for municipal purposes recognizing the fact that Lessee is making an investment in the City of St. Louis by renovating the Adjacent Property and Lessee is, in part, relying on Lessee's ability to provide HVAC services to the Adjacent Property by way of the Subject Property in connection with such renovation.

15. All notices to be given shall be in writing, be deposited in the United States Mail, certified with return receipt requested, postage prepaid.

If to Lessee: Cannon Design Powerhouse, LLC
Allan Pinchoff, Esq.
2170 Whitehaven Road
Grand Island, NY 14072-2091

If to Lessor: City of St. Louis Comptroller
Real Estate Section
1200 Market Street, Room 311
St. Louis, Missouri 63103

w/copy to: City Counselor
1200 Market Street, Room 314
St. Louis, Missouri 63103

or to such other addresses as either party may later designate.

16. This agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first written above.

LESSEE

CANNON DESIGN
POWERHOUSE, LLC

By: _____
Allan Pinchoff, Esq
President

Approved as to legal form:

By: _____
Stephen J. Kovac
Deputy City Counselor

LESSOR

CITY OF ST. LOUIS

By: _____
Darlene Green
Comptroller

Attest:

By: _____
Parrie L. May
City Register

Approved: October 11, 2007