

ORDINANCE #68522
Board Bill No. 221

An Ordinance authorizing and directing the Mayor and the Comptroller of the City of St. Louis to enter into and execute a lease, which is hereto attached and substantially in the same form as Lease Agreement (Exhibit A), of City-owned property located at the basement level of 1520 Market Street for a maximum period of ninety-nine (99) years with the Treasurer of the City of St. Louis; and containing a severability clause.

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

SECTION ONE. The Mayor and the Comptroller of the City of St. Louis are hereby authorized and directed to enter into and execute on behalf of the City the "Lease Agreement," attached and substantially in the same form and incorporated by reference as Exhibit A, between the City and the Treasurer of the City of St. Louis ("Lessee"), for a period not to exceed ninety-nine (99) years.

SECTION TWO. The terms, covenants and conditions set forth in this Ordinance shall be applicable exclusively to the "Lease Agreement" and shall not be applicable to any other existing or future agreements, documents or instruments unless specifically authorized by an ordinance after the effective date of this Ordinance.

SECTION THREE. The Mayor and the Comptroller or their designated representatives, with the advice and concurrence of the City Counselor and after approval by the Board of Estimate and Apportionment, are hereby further authorized and directed to make any changes to the documents, agreements and instruments approved and authorized by this Ordinance as may be consistent with the intent of this Ordinance and necessary and appropriate in order to carry out the matters herein authorized, with no such further action of the Board of Aldermen necessary to authorize such changes by the Mayor and the Comptroller or their designated representatives.

SECTION FOUR. The sections, conditions and provisions of this Ordinance or portions thereof shall be severable. If any section, condition or provision of this Ordinance or portion thereof is held invalid by a court of competent jurisdiction, such holding shall not invalidate the remaining sections, conditions or provisions of this Ordinance.

EXHIBIT A

LEASE AGREEMENT

THIS AGREEMENT made and entered into this ___ day of _____, 2009, by and between the City of St. Louis, a municipal corporation, organized and existing under the Constitution and laws of the State of Missouri ("City"), acting by and through its Comptroller pursuant to Article XV, Section 2 of its Charter, and the Treasurer of the City of St. Louis, acting as the Supervisor of Parking under the laws of the State of Missouri ("Treasurer").

WHEREAS, the City has purchased the land and improvements at 1520 Market Street within the City from the United States of America, which building was formerly known as the Abram Building and is presently know as the "1520 Building;"

WHEREAS, the City is renovating the 1520 Building and is relocating its offices from owned and leased and other space to the 1520 Building;

WHEREAS, the City employees relocated will need parking at the 1520 Building;

WHEREAS, the Treasurer desires to develop and operate parking within the 1520 Building for those relocated City employees; and

WHEREAS, the Treasurer or his designee will determine who parks within the Treasurer's developed parking within the 1520 Building.

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Section One: Premises. City hereby leases to Treasurer and Treasurer hereby leases from City the entire basement parking level of the 1520 Building located at 1520 Market Street in the City, with the exception of a mutually agreed upon area for holding cells and a sallyport.

Section Two: Improvements. Treasurer shall repair and improve the Premises as set forth in Exhibit A entitled “Project Manual – Office of the City Treasurer – L. Douglas Abram Federal Office Building Parking Garage Renovation – OWH Project No. 0870000, by Ottoluo Winters Huebner dated January 7, 2009.” hereto, which is incorporated by reference herein as if fully set out. City shall secure the Premises by way of all doors leading to adjacent floors of the 1520 Building. Additionally, City shall construct and maintain a sallyport and necessary cells for those detained persons attending the City’s Municipal Courts.

Section Three: Use. The Premises shall be used for the purpose of a parking garage. For so long as the City houses employees at the 1520 Building, and such employees fully utilized the parking, daytime use of the Premises (6:00 A.M. to 6:00 P.M.) will be limited to parking by employees of the City employed to work in the 1520 Building as determined by the Treasurer or his designee. The Treasurer shall assign specific spaces to City employees parking on a monthly basis. The Treasurer may charge in advance a monthly parking fee to City employees as determined in the sole discretion of the Treasurer. In the event City employees do not fully utilize the parking, the Treasurer may make the unutilized parking available to the general public on terms and conditions determined by the Treasurer. Event parking may be provided upon terms and conditions established by the Treasurer for events held in the Scottrade Center, Kiel Auditorium/Opera House and for other events that the Treasurer desires to provide parking.

Section Four: Terms. The First Term of this Lease Agreement shall be for fifty (50) years beginning on July 1, 2009. There shall be one (1) option to extend the First Term for twenty-five (25) years, as mutually agreed to by the parties, by either party giving ninety (90) day notice prior to the termination of the First Term, which notice may be waived. There shall be a second option to extend the option for twenty-four (24) years, as mutually agreed to by the parties, by either party giving ninety (90) day notice prior to the termination of the option, which notice may be waived.

Section Five: Rent. Rent for the first Term shall consist of two portions, a cash portion and a tenant improvement portion. The cash portion shall be prepaid and shall be in the amount of Five Hundred and Ninety-Nine Thousand Eight Hundred Seventy-Eight Dollars and Fifty-One cents (\$599,878.51). The parties acknowledge payment of the cash portion of the rent. The tenant improvement portion of the rent shall be the completion by the Treasurer at it’s sole expense of the improvements provided for in Section 2 within one year of the execution of this Lease Agreement. The cost of these improvements is estimated to be at least Seven Hundred and Fifty Thousand Dollars (\$750,000.00).

Section Six: Possession. Possession of the Premises shall be on or about July 1, 2009. The Treasurer agrees and covenants to take the Premises in “AS IS” condition. The Treasurer acknowledges that City has made no representations, warranties, or statements regarding the condition of the Premises, any improvements thereon, or suitability of the Premises for the use contemplated by the Treasurer as described above. The Treasurer states that it has inspected the Premises and improvements therein, finds their current condition satisfactory and suitable to its needs, and accepts them under this Lease Agreement in “AS IS” condition.

Section Seven: Repairs. Treasurer shall provide all necessary repairs and renovations to the Premises and any improvements placed thereon. In addition, the Treasurer shall provide all necessary and ongoing repairs, maintenance and janitorial services of any improvements or devices place thereon. Additionally, the Treasurer shall provide the City with reasonable access to the Premises.

Section Eight: Utilities. City shall provide utilities, such as heat, air conditioning, water, gas and electric. All fluorescent and incandescent lamps shall by furnished by Treasurer. The City shall allow the Treasurer to install any reasonable communications systems, revenue control systems and security systems necessary for the conduct of its business.

Section Nine: Notices. All notices to be given shall be in writing, be deposited in the United States Mail, and certified with return receipt requested, postage prepaid.

If to City:	City of St. Louis Asset Manager 1520 Market St. Louis, MO 63102
With a copy to	City Counselor 314 City Hall St. Louis, MO 63102
If to Treasurer	Treasurer’s Office

133 South 11th Street, Suite 510
St. Louis, MO 63102
Attn.: Treasurer

With a copy to Polsinelli Shughart PC
100 S. Fourth Street, Suite 1100
St. Louis, MO 63102
Attn: William Kuehling

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

Section Ten: Miscellaneous.

10.1: Agency. Both parties agree that no agency nor employment relationship is created by this Lease Agreement.

10.2: Waiver. No waiver of any breach or default hereunder shall constitute or be construed as a waiver by Lender of any subsequent breach or default or of any breach or default of any other provisions of this Lease Agreement. Any waiver by Lender must be in writing and will not be construed as a continuing waiver. No waiver will be implied from any delay or failure to take action on account of any default of Developer.

10.3: Counterparts. This Lease Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Lease Agreement.

10.4: Brokerage. The parties warrant that they have dealt with no broker or other person claiming a commission in connection with this transaction; and each party shall hold the other party harmless for any breach of such warranty.

10.5: Recording. Either party may record a summary of this Lease Agreement with the written consent of the other party, which consent shall not be unreasonably withheld.

10.6: Governing Law. This Lease Agreement and the terms, provisions and conditions herewith shall be governed by and construed and enforced in accordance with the laws of the State of Missouri.

10.7: General. This Lease Agreement may not be modified or amended except by written agreement of each of the parties hereto. The headings contained herein have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms and provisions hereof. If any term, covenant or condition of this Lease Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Lease Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term, covenant and condition of this Lease Agreement shall be valid and enforceable to the fullest extent permitted by law. This Lease Agreement represents the entire agreement between the parties and all prior negotiations and communications between the parties concerning the subject loan are superseded hereby.

10.8: Subordination and Attornment. The City agrees that as long as the Treasurer is not in default under this Lease, the Treasurer's use, possession and enjoyment of the Premises and all other rights, easements and privileges related thereto shall not be disturbed, affected, or impaired, nor will the Lease or Term or any Renewal Term thereof be terminated, disturbed or otherwise affected in any way if the City subjects or subordinates the Lease to any mortgages or deeds of trust now or hereafter placed of record on the Premises. The City further agrees to obtain and furnish to the Treasurer, within thirty (30) days of the date of execution of this Lease, or upon execution of the initial bond agreement and/or Indenture of Trust associated therewith if such agreement and/or Indenture is executed after such thirty (30) day period, a recognition and non-disturbance agreement fully executed and in substantially the form as is hereto attached as Exhibit B between the Treasurer and any superior interest holder, whether now of record or in the future created.

10.9: Creation of Condominium Plat. Within ten (10) years of the effective date of this Lease, the Treasurer, at its sole cost and expense, may cause the Premises to be converted into a two (2) unit condominium plat, one unit of which shall consist of the portion of the Premises leased to the Treasurer (the "Treasurer Unit") and the other unit of which shall consist of the remainder of the Premises (the "City Unit"). City shall have the right to participate in the negotiation and drafting of the declaration of condominium and shall have the right to approve the final form thereof, provided, however, said declaration shall reflect the terms and conditions of this Lease. Said condominium conversion shall comply in all respects with applicable local and state laws and

ordinances and, once finalized, shall be filed of record with the recorder of deeds for the City of St. Louis at which time this Lease shall be amended to reflect the property description of the Premises.

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[Signature Pages to Follow]

COUNTERPART SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have caused this Lease Agreement to be duly executed as of the year and date first set forth above.

CITY OF ST. LOUIS, MISSOURI

By: _____
Comptroller

(SEAL)

Attest:

City Register

Approved as to form:

City Counselor

COUNTERPART SIGNATURE PAGE

TREASURER

By: _____
Name: Larry C. Williams
Title: Treasurer

EXHIBIT A TO LEASE AGREEMENT

PROJECT MANUAL – office of City Treasurer

L. Douglas Abram Federal Office Building Garage Renovation

OWH Project NO. 0870000 by Ottolino, Winters Huebner

Dated January 7, 2009

On file in Treasurer’s Office – City of St. Louis

EXHIBIT B TO LEASE AGREEMENT

FORM OF RECOGNITION, NON-DISTURBANCE and ATTORNMENT

This AGREEMENT, made this ____ day of _____, 20__, by and between _____, a _____, whose mailing address is _____

(hereinafter referred to as "Mortgagee") and the Treasurer of the City of St. Louis, whose mailing address is _____, Attention: Treasurer (hereinafter referred to as "Lessee");

WITNESSETH:

WHEREAS, Mortgagee is the owner and holder of, and the beneficiary under that certain Indenture of Trust (hereinafter collectively referred to as the "Financing Agreement") given by the City of St. Louis, MO, a municipal corporation (hereinafter referred to as "the City") to Mortgagee to secure the payment of certain indebtedness therein described, in the principal amount of _____ (\$ _____), which Financing Agreement is dated _____, and recorded on _____, as Document Number _____ in the Records of the Recorder of Deeds for the City of St. Louis, State of Missouri, and which constitutes a lien on certain real property (hereinafter referred to as the "Mortgaged Premises") and legally described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, Pursuant to that certain Lease (hereinafter referred to as the "Lease") between the City and Lessee dated _____, the City leased to Lessee certain real property and any improvements thereto, covering all or a part of the Mortgaged Premises and more particularly described in the Lease (hereinafter together with any and all easements, appurtenances, rights and privileges now or hereafter belonging thereto referred to as the "Premises").

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. any of its rights, remedies, and options therein shall not constitute a default under the Mortgage.
2. Lessee agrees with Mortgagee that the Lease is subject and subordinate to the lien of the Mortgage, and to all modifications and extensions thereof, subject, however, to the provisions of this Agreement.
3. Mortgagee agrees that so long as the Lease shall be in effect:
 - a) Lessee shall not be named or joined as a party or otherwise in any suit, action or proceeding for foreclosure of the Mortgage or to enforce any rights under the Mortgage or the bonds, note or other obligation secured thereby;
 - (b) The use, possession and enjoyment by Lessee of the Premises and all other rights, easements and privileges in the Land, shall not be disturbed, affected or impaired, nor will the Lease or the Term or any Renewal Terms thereof be terminated, disturbed or otherwise affected in any way by (i) any suit, action or proceeding on the Mortgage or the loan, note or other obligation secured thereby; (ii) the foreclosure of the Mortgage or the exercise of the power of sale thereunder, if any; (iii) the enforcement of any rights under the Mortgage or any other documents held by the holder of the Mortgage; (iv) any judicial sale or execution or other sale of the Land or any part thereof, or any deed given in lieu of foreclosure; (v) the exercise of any other rights given to any holder of the Mortgage or such other documents as a matter of law; or (vi) any default under the Mortgage or the loan, note or other obligation secured thereby, and the Lease will continue in full force and effect;
 - (c) All condemnation awards and insurance proceeds paid or payable with respect to any of the Mortgaged Premises (including the Premises) and received or receivable by Mortgagee shall be made available to the Treasurer and/or Lessee as set forth in the Lease for use as called for therein; and
 - (d) Neither the Mortgage nor any other security instrument executed in connection therewith shall cover, or be construed as subjecting in any manner to the lien thereof, any of Lessee's equipment or trade fixtures.
4. If Mortgagee or any future holder of the Mortgage shall become the owner of the Mortgaged Premises or any portion thereof which includes the Premises by reason of foreclosure of the Mortgage or otherwise; or if the Mortgaged Premises or such portion thereof which includes the Premises shall be sold as a result of any action or proceeding to foreclose the Mortgage, or if ownership of the Mortgaged Premises or such portion thereof which includes the Premises shall be transferred by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing a new lease, as a direct lease between Lessee and the new owner of the Mortgaged Premises, as landlord (herein called "New Owner"), on all of the same terms, covenants, and provisions of the Lease, and Lessee and New Owner shall attend to each other.

5. All notices, consents, approvals or other communications given under or pursuant to this Agreement shall be in writing and shall be given by registered or certified mail, return receipt requested, postage prepaid, (a) if to Mortgagee, at the address of Mortgagee set forth above, or at such other address as Mortgagee may designate by notice to the City and Lessee; (b) if to the Treasurer at the address of the City set forth in the Financing Agreement, or at such other address as the City may designate by notice to Mortgagee and Lessee; or, (c) if to Lessee, then at the address of Lessee set forth above or at such other address or to such other persons as Lessee may designate by notice to Mortgagee and the City.

6. This Agreement shall inure to the benefit of and be binding on and enforceable by the parties hereto and their respective heirs, personal representative, successors and assigns (including New Owner). The Agreement and covenants herein contained run with and bind the lands affected hereby. This Agreement is made in and shall be governed by the laws of the State in which the Premises is located. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, then all other provisions hereof shall remain in full force and effect notwithstanding such unenforceable provision.

7. This Agreement may be executed by the parties hereto on any number of separate counterparts, and all such counterparts so executed constitute an agreement binding on all the parties hereto notwithstanding that all the parties hereto are not signatories to the same counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed, sealed and delivered effective as of the date first above written.

Mortgagee:

By: _____
Name: _____
Title: _____

Lessee:

Treasurer of the City of St. Louis, acting in his capacity
as Supervision of Parking

By: _____
Name: _____
Treasurer

STATE OF)
)SS.
COUNTY OF)

On this ____ day of _____, before me appeared _____ to me personally known, who, being by me duly sworn, did say that he is the Authorized Signatory of _____, a _____ institution, and that said instrument was signed in behalf of said _____, by authority of _____ and said _____ acknowledged said instrument to be the free act and deed of said _____.

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

Notary Public

My term expires:
