

1 **AN ORDINANCE RECOMMENDED BY THE BOARD OF PUBLIC**
2 **SERVICE RATIFYING THE EXECUTION OF AN OPTION TO**
3 **PURCHASE REAL ESTATE FOR ADDITIONAL PARK LAND**
4 **LOCATED IN CITY BLOCK 3899 BETWEEN THE CITY OF ST. LOUIS**
5 **AND ROTHSCHILD WINZERLING, LLC; ACKNOWLEDGING AND**
6 **APPROVING THE FORM AND DETAILS OF SAID OPTION; MAKING**
7 **CERTAIN FINDINGS AND REPRESENTATIONS AND WARRANTIES**
8 **THEREIN INCLUDING THE PAYMENT OF \$425,000.00 AS ADJUSTED;**
9 **AUTHORIZING OTHER RELATED ACTIONS IN CONNECTION**
10 **THEREUTO; AND CONTAINING AN EMERGENCY CLAUSE.**

11 **WHEREAS**, the City of St. Louis, Missouri, (the “City” or sometimes “Optionee”) is a
12 body corporate and a political subdivision of the State of Missouri, duly created, organized and
13 existing under and by virtue of its charter, the Constitution and laws of the State of Missouri; and

14 **WHEREAS**, upon the recommendation of the Board of Public Service, the Board of
15 Aldermen finds it is necessary and desirable and in the best interest of the City to enter into the
16 Option to Purchase Real Estate (the “Option Contract”), attached hereto as Exhibit 1 and
17 incorporated by reference herein as if fully set out, with Rothschild Winzerling, LLC, (the
18 “Optionor”) in order that the City may purchase certain real property (the “Property”) located in
19 City Block 3899 to provide for additional park land, and

20 **WHEREAS**, pursuant to the provisions of the Option Contract, the City may and is
21 authorized to purchase title to the Property by Special Warranty Deed on or before September 1,

22 2007, for the sum of FOUR HUNDRED TWENTY-FIVE THOUSAND DOLLARS
23 (\$425,000.00) with any necessary adjustments as provided therein, which sum was previously
24 appropriated by Ordinance _____ [Board Bill No. 1]; and

25 **WHEREAS**, the Board of Aldermen acknowledge and approve the City's
26 representations and warranties as Optionee as set forth in the Option Contract and finds
27 acceptable the representations and warranties of the Optionor.

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

30 1. **SECTION ONE.** Upon the recommendation of the Board of Public Service, the
31 execution by the Mayor and Comptroller of the Option Contract with the
32 Rothschild Winzerling, LLC, as attached hereto as Exhibit 1 and incorporated by
33 reference herein as if fully set out, is hereby ratified; and the form and details of
34 said Option Contract are hereby acknowledged and approved including the
35 representations and warranties therein; and the City is authorized to acquire title
36 to the Property in City Block 3899 described in Exhibit 1 by Special Warranty
37 Deed for additional park land and to pay the sum of FOUR HUNDRED
38 TWENTY-FIVE THOUSAND DOLLARS (\$425,000.00) with certain
39 adjustments from funds previously appropriated in Ordinance _____ [Board Bill
40 No. 1].

41 **SECTION TWO.** The Mayor and Comptroller of the City or their designated
42 representatives are hereby authorized and directed to take any and all actions to execute and
43 deliver for and on behalf of the City any and all additional certificates, documents, agreements or
44 other instruments as may be necessary and appropriate in order to carry out the matters herein

45 authorized, with no such further action of the Board of Aldermen necessary to authorize such
46 action by the Mayor and the Comptroller or their designated representatives.

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

54 **SECTION FOUR.** Emergency Clause. This ordinance, being necessary for the
55 immediate preservation of the public health, safety, welfare and morals, it is hereby declared to
56 be an emergency measure with the meaning of Sections 19 and 20 of Article IV of the Charter of
57 the City of St. Louis, and as such, this ordinance shall take effect immediately upon its passage
58 and approval by the Mayor

EXHIBIT 1

Option to Purchase Real Estate by and between the City of St. Louis and
Rothschild Winzerling, LLC
(Attached hereto.)

OPTION TO PURCHASE REAL ESTATE

This OPTION TO PURCHASE REAL ESTATE (the “*Agreement*”), is made and entered into as of _____, 2007 (the “*Effective Date*”), by and between _____, a _____ of the State of Missouri (the “*Optionor*”), and THE CITY OF ST. LOUIS, MISSOURI, a municipal corporation organized and existing under the laws of the State of Missouri (“*Optionee*”).

WITNESSETH:

WHEREAS, Optionor is the owner of certain real property generally located at 228-34 North Taylor in the City of St. Louis, State of Missouri, as more fully described in Exhibit A attached hereto and incorporated by reference herein (“*Property*”); and

WHEREAS, Optionee desires to obtain an option to purchase such Property from Optionor, and Optionor is willing to grant Optionee such option, upon the terms and conditions stated herein, including; and

WHEREAS, Optionor and Optionee have agreed to a price of FOUR HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$425,000.00) for the Property.

NOW, THEREFORE, in consideration of the payment of Ten Dollars (\$10.00) by Optionee to Optionor and of the foregoing premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I

GRANT OF OPTION

1.1 Grant of Option. On and subject to the terms and conditions hereinafter contained, Optionor hereby irrevocably grants to Optionee the exclusive option (the “*Option*”) to purchase the Property from Optionor.

1.2 Special Contingencies and Covenants. In the event Optionee exercises the Option, Optionee’s purchase of the property will remain subject to enactment of an ordinance (the “*Authorizing Ordinance*”), as hereinafter defined.

1.3 Term of the Option. The term of the Option and this Agreement (the “*Term*”) shall commence on the Effective Date and expire at midnight on September 1, 2007, unless earlier terminated or subsequently extended as otherwise set forth herein or as mutually agreed to.

1.4 Lapse or Termination of Option. If Optionee fails to deliver the Option Exercise Notice (as hereinafter defined) on or before the end of the Term, then in any such event the Option shall automatically lapse and terminate.

ARTICLE II

EXERCISE OF OPTION: PURCHASE PRICE: CLOSING

2.1 Exercise of Option. Optionee may exercise the Option at any time during the Term by delivery of a written notice of such exercise (the “*Option Exercise Notice*”) by Optionee to Optionor in accordance with Section 9.3 hereof, which notice shall designate a Closing Date pursuant to Section 2.4 hereof. If the Option is timely exercised, Optionor shall sell and convey the Property to Optionee, and Optionee shall purchase and accept the Property from Optionor (provided the St. Louis Board of Aldermen enacts the Authorizing Ordinance), on and subject to the terms and conditions set forth in this Agreement.

2.2 Purchase Price. The total purchase price for the Property shall be FOUR HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$425,000.00) (the “*Purchase Price*”), subject to adjustment as hereinafter provided. In the event Optionee shall elect to exercise the Option herein, Optionee shall, on the Closing Date (as defined in Section 2.4 hereof), pay Optionor, in cash or by wire-transfer of current funds, the Purchase Price, subject to credit, debit, and adjustment as provided in this Section 2.2 and Exhibit B attached hereto and incorporated herein by reference.

2.3 Possession. In the event Optionee shall elect to exercise the Option (and provided the St. Louis Board of Aldermen enacts the Authorizing Ordinance), Optionor shall, on the Closing Date (as hereinafter defined), transfer possession of the applicable Property to Optionee.

2.4 Closing. In the event Optionee shall elect to exercise the Option, closing (“*Closing*”) shall be at the office of such title insurer as Optionee may select (the “*Title Company*”). The closing date (“*Closing Date*”) shall be specified by Optionee in its Option Exercise Notice, which date shall be no earlier than thirty (30) days from the date of said notice and no later than one hundred twenty (120) days from the date of said notice.

2.5 Documents at Closing. On (or prior to) the Closing Date, Optionor, with acceptance or counterpart execution where appropriate by Optionee, shall execute and deliver or cause to be executed and delivered the documents and items set forth on Exhibit C attached hereto and incorporated herein by reference.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF OPTIONOR

3.1 In order to induce Optionee to enter into this Agreement, Optionor makes the following representations and warranties, each of which representations and warranties is true and correct on the date hereof and will be true and correct on (and restated as of) the Closing Date, and each of which shall survive the Closing and the sale contemplated hereby:

(a) **Authority of Optionor / Binding Nature.** Optionor represents and warrants to the Optionee that Optionor’s execution, delivery and performance of this Agreement will not conflict with or violate any constitutional provision, statute, rule, order or regulation of any governmental body applicable to Optionor and will not conflict with or violate any bylaw or rule however denominated of any government or governmental agency applicable to Optionor. Optionor represents and warrants that the execution and delivery of this Agreement has been duly authorized by Optionor and that no further authorizations or approvals of Optionor or of any third party or agency are needed or will be needed with respect to the performance by Optionor of any of its obligations or agreements under this Agreement throughout the Term. Optionor further represents that it is not a foreign person or entity under the Foreign Investment in Real Property Tax Act of 1980, as amended.

(b) **Commissions.** Optionor has not dealt with any broker, finder or other person in connection with the offering, sale or negotiation of the sale of the Property in any manner that might give rise to any claim for commission against Optionee or any lien against the Property.

3.2 In order to induce Optionee to enter into this Agreement and to purchase the Property, Optionor makes the following representations and warranties respecting title to the Property, which representations and warranties will be true and correct on (and restated as of) the Closing Date, and which shall survive the Closing and the sale contemplated Optionor is the owner of marketable fee simple title to the Property free of any occupancy, tenancy, or possessory rights of any person, and otherwise subject only to utility easements and, if any, rights of way and other instruments of record, and the lien of general real estate taxes for the current tax fiscal year not yet due and payable. At Closing there will be no mortgages, deeds of trust or other liens encumbering or otherwise affecting the Property.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF OPTIONEE

4.1 In order to induce Optionor to enter into this Agreement, Optionee makes the following representations and warranties, which representations and warranties will be true and correct on (and restated as of) the Closing Date, and which shall survive the Closing and the sale contemplated hereby:

(a) **Authority of Optionee.** Optionee represents and warrants to Optionor that Optionee's execution, delivery and performance of this Agreement will not conflict with or violate any constitutional provision, statute, rule, order or regulation applicable to the Optionee and will not conflict with or violate the Charter of the City of St. Louis. The Optionee represents and warrants to Optionor that the execution and delivery of this Agreement has been duly authorized by the City of St. Louis's Board of Aldermen and that no further authorizations or approvals of the Optionee or of any third party or agency or governmental body are needed to enter into this Agreement, provided that additional authorization is required by the City of St. Louis's Board of Aldermen on or prior to the Closing Date in the event Optionee elects to exercise the Option.

(b) **Commissions.** Optionee has not dealt with any broker, finder or other person in connection with the offering, sale or negotiation of the sale of the Property in any manner that might give rise to any claim for commission against Optionor or any lien against the Property.

ARTICLE V
CONDITIONS

5.1 **Closing Contingencies.** The obligations of Optionee to consummate the transactions provided for in this Agreement shall be subject to the satisfaction of each of the following conditions on or before the Closing, subject to the rights of Optionee to waive any one or more of such conditions:

(a) Optionee shall have obtained at Closing (for the applicable premium), an owner's policy of title insurance (the "*Policy*") from the Title Company in the amount of the Purchase Price, insuring the title and interest of Optionee in and to

the Property and any easements or rights-of-way appurtenant thereto, on ALTA Form B (2005), with exception only for the lien of general real estate taxes for the current tax fiscal year not yet due and payable and the other Permitted Exceptions (as hereinafter defined). As used in this Agreement, the term “*Permitted Exceptions*” shall mean all exceptions disclosed in the title insurance commitment issued by the Tide Company to Optionee other than the following: (i) any deeds of trust, mortgages or other liens against the Property; and (ii) such other exceptions which Optionor, prior to the date on which Optionee delivers the Option Exercise Notice, has in its discretion agreed in writing to remove or cause to be removed prior to Closing.

(b) Optionee shall have reviewed and approved a survey of the Property, the zoning of the Property, any environmental studies, and any other matter relating to or affecting the Property which Optionee deems suitable to review, in its sole discretion. Optionee agrees to review and approve the above-described items (or disapprove the same and thereby terminate this Agreement upon written notice to Optionor), in Optionee’s sole discretion, on or before the earlier of (i) the Closing Date or (ii) the expiration of 60 days following the date of Optionee’s Option Exercise Notice.

(c) The Board of Aldermen of the City of St. Louis shall have enacted the Authorizing Ordinance.

5.2 Failure of Satisfaction of Conditions. In the event that any one or more of the matters referred to in Section 5.1 has not been reviewed and approved and the condition set forth in each such subsection thereby satisfied on or before the Closing Date and in the event Optionee shall give Optionor notice thereof on or before the Closing Date, this Agreement shall be thereby terminated, and neither party shall have any further liability or obligation hereunder.

ARTICLE VI

COVENANTS

6.1 Maintenance of Property. Optionor covenants and agrees that it will, prior to the Closing Date, maintain the Property, or cause the Property to be maintained, subject to the following provisions and limitations:

(a) Optionor shall maintain the Property in its “AS IS” condition, it being the intention of the parties hereto that the general condition and use of the Property shall not be changed between the date of Optionee’s Option Exercise Notice and the Closing Date.

(b) Optionor shall not (i) construct or install or contract for the construction, installation or alteration of any improvements at the Property, (ii) enter into any leases or occupancy agreements with respect to the Property, or (iii) record or suffer to be recorded against the Property any easements, liens or other encumbrances without, in each instance, obtaining the prior written consent of Optionee, such consent not to be unreasonably withheld.

6.2 **Risk of Loss.** Optionor shall bear the risk of loss to the Property to and including the Closing Date.

ARTICLE VII

CASUALTY; CONDEMNATION

7.1 **Casualty.** In the event of the damage or destruction (including earthquake damage) of all or any part of the Property prior to Closing, then Optionee at its option, exercisable by written notice to Optionor, may terminate this Agreement, whereupon neither party will have any further obligations hereunder.

7.2 **Condemnation.** In the event of the taking of all or any part of the Property prior to Closing, by eminent domain or condemnation, then Optionee at its option, exercisable by written notice to Optionor, may either (i) terminate this Agreement, whereupon neither party will have any further obligations hereunder, or (ii) continue under this Agreement and participate in the prosecution of Optionor's claim for an award, whereupon Optionor will assign to Optionee all their interest in and to any award and proceeds thereof payable as a result of such taking (or, if collected prior to Closing, Optionee will be entitled to an additional credit against the Purchase Price in the amount of such award).

ARTICLE VIII

REMEDIES

If Optionee shall elect to terminate this Agreement before or after delivery of the Option Exercise Notice owing to failure of satisfaction of a condition precedent to Optionee's obligations as provided in Article 5 hereof, this Agreement shall then terminate and neither party shall have any further liability hereunder. If, after exercise of the Option, the sale of the Property is not closed by the date fixed therefor owing to failure of performance of Optionor, Optionee shall be entitled to pursue only an action in specific performance. If, after delivery of the Option Exercise Notice, the sale of the Property is not closed by the date fixed therefor owing to failure of performance by Optionee, Optionor shall be entitled to pursue only an action in equity for specific performance. If within the Term of the Option, Optionee fails to exercise the Option as hereinabove provided, then the Option shall automatically lapse and terminate, Optionor shall be free to sell the Property free of the Option or to otherwise develop the Property in its discretion.

ARTICLE IX

MISCELLANEOUS PROVISIONS

9.1 **Binding Agreement.** This Agreement shall be binding on and shall inure to the benefit of the parties named herein, and their respective successors and assigns.

9.2 **Assignment.** Neither party may assign its rights and interests hereunder.

9.3 **Notices and Addresses.** All notices, demands, requests or replies provided for or permitted by this Agreement shall be in writing and delivered by deposit with the United States Postal Service as certified or registered mail, return receipt request, postage prepaid to the addresses stated below or by deposit with an overnight express delivery service. Notices mailed in the manner described above shall be deemed effective three (3) business days after deposit with the Postal Service and notices sent by overnight express delivery shall be deemed effective one (1) business day after deposit with such delivery service.

If to Optionee:

Comptroller of the City of St. Louis
Room 311, City Hall
St. Louis, Missouri 63103
Attn: Jim Garavaglia, Asset Manager
and
Department of Parks Recreation and Forestry
Forest Park
5600 Clayton Road
St. Louis, Missouri 63110
Attn: Gary Bess, Director
and
City Counselor
Room 314, City Hall
St. Louis, Missouri 63103
Attn: Patricia A. Hageman, City Counselor
<u>If to Optionor:</u>
393 North Euclid
St. Louis, Missouri 63108
Attn: Peter Rothschild

Each party shall have the right to designate a different address or addressee within the United States of America by giving of notice in conformity with this Section 10.3.

9.4 Nature of Representations, Warranties, Covenants and Agreements. Each and every representation and warranty and covenant and agreement made by the parties and contained in this Agreement or in any instrument, certificate or other document delivered pursuant to this Agreement, shall be deemed to be material, shall survive the execution and delivery of this Agreement and the Closing and the consummation of the transactions contemplated hereby, and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, personal representatives, successors and assigns.

9.5 Governing Law. This Agreement shall be construed and interpreted according to the laws of the State of Missouri.

9.6 Time of the Essence. Time is of the essence with respect to each and every provision of this Agreement.

9.7 Performance on Business Days. If any date for the occurrence of an event or act under this Agreement falls on a Saturday or Sunday or legal holiday in the State of Missouri, then the time for the occurrence of such event or act shall be extended to the next succeeding business day.

9.8 Amendments. None of the covenants, terms, or conditions of this Agreement to be kept and performed by Optionor or Optionee shall in any manner be waived, modified, changed or

abandoned except by written instrument, duly signed and acknowledged by Optionor and Optionee.

9.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original.

9.10 Attorneys' Fees. In any action to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its reasonable costs and expenses, including its attorneys' fees and disbursements.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Option Agreement as of the day and year first above written.

	CITY OF ST. LOUIS, MISSOURI
[SEAL]	
	By: _____
	Name: Francis G. Slay
	Title: Mayor
ATTEST:	
	By: _____
Name: Parrie L. May	Name: Darlene Green
Title: City Register	Title: Comptroller
APPROVED AS TO FORM	
Name: Patricia A. Hageman	
Title: City Counselor	

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

On this ____ day of June, 2007, before me appeared Francis G. Slay, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the City of St. Louis, Missouri, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrument to be the free act and deed of said City.

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
	Printed Name: _____
	<i>Please affix stamp in area designated above</i>

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

On this ____ day of June, 2007, before me appeared Darlene Green, to me personally known, who, being by me duly sworn, did say that she is the Comptroller of the City of St. Louis, Missouri, a political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its Board of Aldermen, and said individual acknowledged said instrumIN 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
	Printed Name: _____
	<i>Please affix stamp in area designated above</i>

EXHIBIT A

DESCRIPTION OF THE PROPERTY

Lots 3,4,5, and 6 of the Bradford Court Subdivision, according to the plat thereof recorded in Plat Book 59, page 29 of the St. Louis City Recorder's Office and in Block 3899 of the City of St. Louis, MO.

EXHIBIT B

ADJUSTMENTS

The following items shall be credited, debited and otherwise adjusted as of the Closing Date, and the resulting calculation shall be an adjustment to the Purchase Price payable at Closing pursuant to Section 2.2 hereof (where appropriate, such adjustments shall be made on the basis of an actual year of 365 days, Optionor to have the last day, unless otherwise provided):

(a) General property taxes (state, county, municipal, school and fire district, and other local real estate taxes and personal property taxes), if any, accrued for the current tax fiscal year (in addition, if not fully paid prior to Closing, all taxes for years prior to the current tax fiscal year, shall be charged to Optionor as a credit to the Optionee against the Purchase Price).

(b) Special taxes or assessments, if any, upon the Property, assessed or becoming a lien on or prior to the Closing Date, including deferred payments or installment payments therefor payable after the Closing Date (all of which shall be deemed due and payable in full as of Closing), shall be charged to Optionor as a credit to the Optionee against the Purchase Price.

(c) Fuel, electricity, water, sewer, gas, electric, telephone and other utility assessments, levies and other charges shall be prorated between the parties so that Optionee shall be charged with any prepaid charges (as to the portion of such charges attributable to the period subsequent to Closing) as a debit to the proceeds of the Purchase Price, and Optionor shall be charged with any accrued but unpaid, past due or delinquent charges (as to the portion of such charges attributable to the period prior to Closing) as a credit against the Purchase Price.

In the event, on the Closing Date, the precise figures necessary for any of the foregoing adjustments are not capable of determination, the adjustments shall be made on the basis of the good faith estimates of Optionee and Optionor (using currently available information, including, but not limited to, currently available projections as to tax assessments and rates and the like).

In addition, certain costs incidental hereto and to the transactions contemplated hereby shall be borne such that at (or prior to) Closing, Optionee shall pay all recording fees for the conveyance instruments, Optionor shall pay all fees for releases of liens, and any stamp, documentary, transfer taxes and intangible taxes (including, without limitation, such costs and taxes applicable to the Special (Limited) Warranty Deed, or otherwise). All title commitment and title insurance premiums shall be paid in accordance with local custom for the county in which the Property is located. Optionee shall pay all costs of studies and due diligence. Except as expressly provided in this Exhibit B or as expressly provided elsewhere in this Agreement, Optionee and Optionor shall pay their own respective costs and expenses, including attorneys' fees, incidental to this Agreement and the transactions contemplated hereby.

EXHIBIT C

CLOSING DOCUMENTS

(i) *Special (Limited) Warranty Deed, duly executed by Optionor, transferring and conveying to Optionee marketable fee simple title to the Property, subject only to Deed Restriction and the lien of general real estate taxes (if any) for the then current tax fiscal year and thereafter and the other Permitted Exceptions, which deed shall be in form reasonably satisfactory to Optionee.*

(ii) *An affidavit from Optionor, duly executed by the appropriate officer of Optionor, in form reasonably satisfactory to Optionee, reaffirming Optionor's certification that Optionor is not foreign persons under the Foreign Investment in Real Property Tax Act of 1980, as amended, and that no taxes or withholding shall be assessed or applied to Optionee in connection with the Closing and the transactions contemplated hereby.*

(iii) *Such releases, affidavits, other evidence of title, resolutions, consents, seller's and owner's affidavits against possessing rights, mechanic's liens, bankruptcies and the like from Optionor or other third parties as may be required by the Title Company, on or in forms customarily used by the Title Company, in order to issue the owner's policy of title insurance, as specified in Section 5.1 hereof.*

(iv) *Closing Statements, duly executed in counterpart by Optionor and Optionee.*